

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

In the Matter of

VELMANETTE MONTGOMERY, JAMES F.
BRENNAN, JOAN L. MILLMAN, LETITIA
JAMES, NEW YORK PUBLIC INTEREST
RESEARCH GROUP/STRAPHANGERS
CAMPAIGN, and DEVELOP DON'T
DESTROY (BROOKLYN), INC.,

Petitioners,

For a Judgment Pursuant to Article 78

-against-

METROPOLITAN TRANSPORTATION
AUTHORITY and FOREST CITY RATNER
COMPANIES, LLC,

Respondents.

Index No. 114304/09
IAS Part 7
Justice Stallman

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

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

1. FCRC admits that petitioners seek the relief described in paragraph 1 of the petition but denies that petitioners are entitled to such

relief and denies that respondent Metropolitan Transportation Authority (the "MTA") has violated the Public Authorities Law.

2. FCRC denies the allegations contained in paragraph 2 of the petition, except that it admits that the Board of Directors of the MTA and two MTA affiliates (the "MTA Board") adopted a resolution on June 24, 2009, approving modified business terms for the sale to FCRC of the right to develop above the Vanderbilt Yard, and respectfully refers the Court to the resolution and to the record before the MTA Board for a complete statement of their contents.

3. Paragraph 3 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond, but FCRC denies that the MTA Board's June 24, 2009 resolution was illegal and may be annulled.

4. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the petition, except that it admits that petitioner Montgomery is a New York State Senator from a district in Brooklyn.

5. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 5 of the petition,

except that it admits that petitioner Brennan is a Member of the New York State Assembly from a district in Brooklyn.

6. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 6 of the petition, except that it admits that petitioner Millman is a Member of the New York State Assembly from a district in Brooklyn.

7. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 7 of the petition, except that it admits that petitioner James is a Member of the New York City Council from a district in Brooklyn.

8. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 8 of the petition.

9. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the petition.

10. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 10 of the petition, except that it admits, upon information and belief, that DDDDB is a not-for-profit corporation, and it denies that DDDDB's mission is anything other than to oppose the Atlantic Yards Land Use Improvement and Civic Project (the "Project") that was approved by the New York State Urban Development

Corporation, d/b/a Empire State Development Corporation ("ESDC"), for the redevelopment of a 22-acre site in Brooklyn, including the Vanderbilt Yard, on December 8, 2006.

11. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 11 of the petition, except that it admits that, in 2009, the MTA refused to consider a purported bid by DDDDB to develop the Vanderbilt Yard, and it denies that DDDDB ever had a *bona fide* desire to bid for the right to develop the Vanderbilt Yard or was or could be a responsible bidder for such right.

12. FCRC admits the allegations contained in paragraph 12 of the petition, except that it lacks knowledge or information sufficient to form a belief as to the truth of the allegation that the MTA operates North America's largest mass transportation network.

13. FCRC admits the allegations contained in paragraph 13 of the petition, except that it denies that its current street address is "1 Metrotech Center North."

14. FCRC admits the allegations contained in paragraph 14 of the petition.

15. FCRC admits the allegations contained in paragraph 15 of the petition, except that it denies that the Vanderbilt Yard is adjacent to rather

than in proximity with the LIRR Flatbush Avenue terminal station and the Atlantic Avenue-Pacific Street subway station, and denies that the Vanderbilt Yard is bordered to east by Vanderbilt Avenue and to the west by Fifth Avenue.

16. FCRC denies the allegations contained in paragraph 16 of the petition, except that it admits that it developed successful shopping mall projects known as the Atlantic Center and Atlantic Terminal to the north of the Vanderbilt Yard in the 1990's, it admits that three commercial buildings south of the Vanderbilt Yard were redeveloped to contain a total of close to 200 residential units, and it admits that the Brooklyn Academy of Music is world renowned and is situated approximately three blocks from the Vanderbilt Yard.

17. FCRC denies the allegations contained in paragraph 17 of the petition, except that it admits that the MTA's open-pit Vanderbilt Yard is an eyesore.

18. FCRC denies the allegations contained in paragraph 18 of the petition, except that it admits that, in 2003, FCRC proposed to various governmental agencies and officers a mixed-use redevelopment project for a site that would include the Vanderbilt Yard.

19. FCRC denies the allegations contained in paragraph 19 of the petition, except that it admits that ESDC adopted a General Project Plan (the "GPP") on December 8, 2006, and respectfully refers the Court to the GPP for a complete and accurate statement of its contents.

20. FCRC denies the allegations contained in paragraph 20 of the petition, except that it admits that the Pataki administration supported the Project, that ESDC is a New York State public benefit corporation created by the Urban Development Corporation Act (the "UDC Act"), that ESDC's powers include the power to acquire property by eminent domain and the power to override local zoning laws, that ESDC staff decided in or about early 2005 to consider whether to propose that ESDC's Board of Directors approve and adopt a General Project Plan for the Project and to conduct an environmental review and public review of the Project, all without making any commitment that ESDC ever would give the Project the final approval necessary to effectuate the Project, and that ESDC subsequently declared itself the "lead agency" for purposes of the environmental review of the Project pursuant to the State Environmental Quality Review Act ("SEQRA").

21. FCRC denies the allegations contained in paragraph 21 of the petition, except that it admits that the Project is expected to provide substantial public benefits, that numerous State and City officials have

supported and continue to support the Project, and that there are also people, including some elected officials and members of the public, who oppose the Project, and who have expressed concerns about the Project's size and scale, its potential effects on other neighborhoods and the use of eminent domain.

22. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of the petition, except that it admits that a charrette was conducted, that the so-called "Unity Plan" was created, and that the Unity Plan is intended to provide a lower-density alternative to the Project, but denies that the Unity Plan is or ever was a viable alternative to the Project.

23. FCRC denies the allegations contained in paragraph 23 of the petition, except that it admits that it entered into a Memorandum of Understanding with the MTA in February 2005, and it respectfully refers the Court to that document for a complete and accurate statement of its terms and provisions

24. FCRC denies the allegations contained in paragraph 24 of the petition, except that it admits that FCRC entered into Memoranda of Understanding with ESDC, the City of New York and the New York City Economic Development Corporation in February 2005 and respectfully

refers this Court to the Memoranda of Understanding for a complete and accurate statement of their contents (Exhibits A and B hereto).

25. FCRC denies the allegations contained in paragraph 25 of the petition, except that it admits that the MTA issued a Request for Proposals (the "RFP") dated May 24, 2005 (Exhibit C hereto), and FCRC respectfully refers this Court to the RFP for a complete and accurate statement of its contents.

26. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 26 of the petition, except that it admits that the MTA obtained an independent appraisal that valued the Vanderbilt Yard at \$214.5 million as of July 21, 2005.

27. FCRC denies the allegations contained in paragraph 27 of the petition but admits that an independent appraisal was prepared, respectfully refers the Court to the appraisal for a complete and accurate statement of its contents, and denies that the appraisal accurately and fairly valued the costs of relocating the rail yard's tracks and constructing a platform.

28. FCRC denies the allegations contained in paragraph 28 of the petition, except that it admits that it has been working on the Project since 2003 and submitted a bid to the MTA for the right to develop over the

Vanderbilt Yard, and it respectfully refers this Court to its bid for a complete and accurate statement of its contents (Exhibit D hereto).

29. FCRC denies the allegations contained in paragraph 29 of the petition and respectfully refers this Court to the Extell bid for a complete and accurate statement of its contents, but admits the allegations of the last sentence of paragraph 29.

30. FCRC denies the allegations contained in paragraph 30 of the petition, except that it admits that Extell submitted a bid and respectfully refers this Court to the Extell bid for a complete and accurate statement of its contents.

31. FCRC admits the allegations contained in paragraph 31 of the petition, except that it lacks knowledge or information sufficient to form a belief as to whether Extell's design for the new rail yard and platform would meet applicable requirements, and it respectfully refers this Court to the respective FCRC and Extell bids for a complete and accurate statement of their contents, and to the final environmental impact statement for the Project for an analysis of the Project in comparison to other alternatives.

32. FCRC denies the allegations contained in paragraph 32 of the petition, except that it admits that, after reviewing the FCRC and Extell bids, the MTA determined that the FCRC bid was preferable and that it would

negotiate exclusively with FCRC for a period of 45 days, and that during those negotiations FCRC increased the cash component of its bid from \$50 million to \$100 million.

33. FCRC admits the allegations contained in paragraph 33 of the petition.

34. FCRC admits the allegations contained in paragraph 34 of the petition but respectfully refers this Court to the MTA Board's September 14, 2005 resolution for a complete and accurate statement of its contents.

35. FCRC admits the allegations contained in paragraph 35 of the petition but respectfully refers this Court to the findings made by ESDC and the MTA for a complete and accurate statement of their contents.

36. FCRC denies the allegations contained in paragraph 36 of the petition, except that it admits that the MTA and FCRC have not yet entered into a final contract for the disposition to FCRC or an FCRC affiliate of property or development rights attributable to the Vanderbilt Yard, that substantial work that has been performed by FCRC in furtherance of the Project, that the pendency of multiple litigations by opponents of the Project nevertheless has delayed progress on the Project, and that the economic downturn has exacerbated the difficulties encountered by FCRC and ESDC in their efforts to proceed with the Project.

37. Paragraph 37 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond, except that FCRC admits that the MTA Board approved the sale to FCRC or an FCRC affiliate of the rights to develop over the Vanderbilt Yard in September 2005.

38. Paragraph 38 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

39. Paragraph 39 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

40. Paragraph 40 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond.

41. Paragraph 41 of the petition contains exclusively legal conclusions to which FCRC is not required to respond.

42. FCRC denies the allegations contained in paragraph 42 of the petition.

43. FCRC denies the allegations contained in paragraph 43 of the petition, except that it admits that ESDC, the MTA Board and the New York State Public Authorities Control Board gave the Project their final approvals in December 2006, which approvals have been sustained by multiple court decisions, that despite substantial progress in implementation of the Project progress on the Project has been delayed by the pendency of multiple

litigations by Project opponents (including almost all of the petitioners in this case), and that the economic downturn has further exacerbated the difficulties encountered by FCRC and ESDC in their efforts to proceed with the Project.

44. FCRC denies the allegations contained in paragraph 44 of the petition, except that it admits that in October 2008 Standard & Poor's changed its rating of the senior unsecured notes of FCRC's parent, Forest City Enterprises, Inc. to the below-investment-grade rating of BB-, and that in July 2009 Moody's changed its rating of those notes to the below-investment-grade rating of B3.

45. FCRC denies the allegations contained in paragraph 45 of the petition, except that it admits that there have been insubstantial changes in the Project since 2006, and that ESDC approved modifications to the General Project Plan for the Project on June 23, 2009 and thereafter held a public hearing on the modifications, received and considered public comments on the modifications and, on September 17, 2009, and adopted those modifications.

46. FCRC denies the allegations contained in paragraph 46 of the petition, except that it admits that, as permitted by its agreements with public agencies, it has replaced Frank Gehry as the architect of the arena,

that the arena has been redesigned by two highly regarded architectural firms, that the redesigned arena is expected to be less expensive to build than the Gehry design (and therefore easier to finance), and that one of the city blocks that is part of the Project site is expected to be used for construction staging and open-air parking for the arena until construction of the Project buildings on that block commences.

47. FCRC denies the allegations contained in paragraph 47 of the petition.

48. FCRC denies the allegations contained in paragraph 48 of the petition.

49. FCRC denies the allegations contained in paragraph 49 of the petition, except that it admits that the MTA Board has approved modified business terms for the disposition to FCRC or an FCRC affiliate of the development rights attributable to Vanderbilt Yard and respectfully refers to the resolution of the MTA Board and the materials that were presented to the MTA Board for a complete and accurate statement of the terms that were approved by the MTA Board.

50. FCRC denies the allegations contained in paragraph 50 of the petition.

51. FCRC denies the allegations contained in paragraph 51 of the petition.

52. FCRC denies the allegations contained in paragraph 52 of the petition, except that it admits that the MTA has determined that its operational needs do not require a new Vanderbilt Yard facility of the size and capacity of the facility that FCRC previously had proposed to build, and that FCRC and the MTA therefore have agreed to reduce the size and capacity of the new rail yard at Vanderbilt Yard to one containing seven tracks with a storage capacity of 56 rail cars.

53. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 53 of the petition, except that it admits that the MTA's Finance Committee issued a Staff Summary of the terms that had been negotiated with FCRC, and that the Finance Committee met on June 22, 2009, and it respectfully refers the Court to the Staff Summary for a complete and accurate statement of its contents.

54. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 54 of the petition, except that it admits that Gary Dellaverson is the MTA's Chief Financial Officer.

55. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 55 of the petition.

56. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 56 of the petition, except that it denies that the MTA was required to obtain a new independent appraisal of the Vanderbilt Yard's market value as of 2009.

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

58. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 58 of the petition, except that it admits that at an open meeting held on June 24, 2009, the MTA Board adopted a resolution approving a revised payment schedule and other terms that had been negotiated by the MTA with FCRC.

59. FCRC admits the allegations contained in paragraph 59 of the petition but refers to the MTA Board's resolution and the record before the MTA Board for a complete statement of the MTA's position regarding the requirements of the Public Authorities Law and its compliance with those requirements.

60. FCRC denies the allegations contained in paragraph 60 of the petition.

61. FCRC denies the allegations contained in paragraph 61 of the petition and respectfully refers the Court to the MTA Board's June 24, 2009 resolution for a complete and accurate statement of its contents.

62. FCRC denies the allegations contained in paragraph 62 of the petition.

63. FCRC denies the allegations contained in paragraph 63 of the petition, except that it admits that, since 2005, financial and credit markets have tightened considerably and the Brooklyn real estate market has markedly deteriorated, and it respectfully refers the Court to the MTA Finance Committee's Staff Summary for a complete and accurate statement of its contents.

64. FCRC denies the allegations contained in paragraph 64 of the petition and respectfully refers the Court to the Staff Summary for a complete and accurate statement of its contents.

65. FCRC denies the allegations contained in paragraph 65 of the petition and respectfully refers the Court to the MTA Board's June 24, 2009 resolution for a complete and accurate statement of its contents.

66. FCRC denies the allegations contained in paragraph 66 of the petition and respectfully refers the Court to the record of the proceedings

before the MTA Board for a complete and accurate statement of its contents.

67. FCRC denies the allegations contained in paragraph 67 of the petition, except that it admits that the MTA did not solicit or offer to entertain bids for the right to develop over the Vanderbilt Yard in connection with the MTA Board's June 24, 2009 approval of revisions to the payment schedule or other terms that had been negotiated by the MTA and FCRC in 2005.

68. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 68 of the petition, except that it admits that Extell had submitted a bid to the MTA in 2005 and did not submit a bid to the MTA in 2009.

69. FCRC lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 69 of the petition.

70. FCRC admits the allegations contained in paragraph 70 of the petition, except that it denies that the purported offer of DDDDB was a *bona fide* offer by a responsible bidder.

71. FCRC denies the allegations contained in paragraph 71 of the petition.

72. FCRC denies the allegations contained in paragraph 72 of the petition and respectfully refers the Court to DDDDB's purported proposal and

the record of the proceedings before the MTA Board for complete and accurate statements of their respective terms and contents.

73. FCRC denies the allegations contained in paragraph 73 of the petition.

74. FCRC denies the allegations contained in paragraph 74 of the petition, except that it admits that the MTA Board refused in 2009 to entertain competing bids for the right to develop over the Vanderbilt Yard and that DDDDB purported to submit what it characterized as a bid for that right.

75. Responding to paragraph 75 of the petition, FCRC repeats and realleges, as fully as if here set forth at length, its responses to the allegations of the petition that are incorporated by reference in paragraph 75.

76. Paragraph 76 of the petition consists exclusively of legal conclusions to which FCRC is not required to respond, but FCRC admits that the MTA is a public authority within the meaning of the Public Authorities Law.

77. FCRC denies the allegations contained in paragraph 77 of the petition and respectfully refers the Court to the MTA Board's June 24, 2009 resolution for a complete and accurate statement of its contents.

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

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

80. FCRC denies the allegations contained in paragraph 80 of the petition.

81. FCRC denies the allegations contained in paragraph 81 of the petition.

82. FCRC denies the allegations contained in paragraph 82 of the petition, except that it admits that the MTA refused to consider the purported proposal by DDDDB at the June 24, 2009 MTA Board meeting.

83. FCRC denies the allegations contained in paragraph 83 of the petition, except that it admits that the MTA refused to consider the purported proposal by DDDDB at the June 24, 2009 MTA Board meeting.

84. FCRC denies the allegations contained in paragraph 84 of the petition.

85. FCRC denies the allegations contained in paragraph 85 of the petition.

86. FCRC denies each and every allegation in the petition that is not otherwise responded to in this answer.

Objections in Point of Law and Defenses

87. None of the petitioners has standing to bring or maintain this proceeding, because none of the petitioners has suffered special injury, different from the public at large, within the zone of interests that the relevant statute is intended to protect.

88. None of the petitioners was a *bona fide* bidder for the property and development rights that the MTA is disposing of.

89. The petitioners who are elected officials (petitioners Montgomery, Brennan, Millman and James) have neither capacity nor standing to sue inasmuch as this litigation is not brought to protect their powers and responsibilities as legislators, and they have no standing to bring claims on behalf of their constituents.

90. Petitioner "New York Public Interest Research Group/Straphangers Campaign" is neither a corporation nor an unincorporated association suing by its president or treasurer pursuant to CPLR 1025, and therefore lacks the capacity to sue.

91. Petitioner DDDDB was never a responsible bidder within the meaning of applicable laws. Its mandatory filings with the New York State Department of Law and the Internal Revenue Service (Exhibits E and F hereto) demonstrate that it has no meaningful income or assets and no

sources of income sufficient to raise the \$120 million that it purported to offer in its ostensible bid for the Vanderbilt Yard. In addition, DDDDB's only reported sources of income were donations, walkathons, dance parties and concerts, at which no more than several thousand dollars are raised (see Exhibit G hereto). Furthermore, it has no record as a developer of real estate projects, let alone highly complex projects.

92. The MTA has acted reasonably, lawfully and properly in all respects and has not violated the Public Authorities Law or the Public Authorities Accountability Act of 2005 in approving modified business terms for its disposition of property and rights to FCRC.

Affirmative Statement of the Case

A. The Project

93. The Atlantic Yards Land Use Improvement and Civic Project (the "Project") is an ambitious public-private undertaking to transform a largely derelict 22-acre swath of underutilized land near central Brooklyn into a vibrant, revitalized community. The 22-acre Project site is bounded by Flatbush and Fourth Avenues to the west, Vanderbilt Avenue to the east, Atlantic Avenue to the north, and Dean and Pacific Streets to the south. The site includes Blocks 927, 1118, 1119, 1120, 1121 and 1127, a portion of Block 1128, and Block 1129. Maps that show the Project site in

its present configuration and the Project as it is intended to appear once completed are Exhibit H hereto.

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

95. The Project is intended, among other things, to eliminate blight from the 22-acre Project site, bring a multipurpose arena to Brooklyn, remediate environmental contamination, create between 5,325 and 6,430 units of new housing, including 2,250 units of affordable (*i.e.*, below-market-rate) housing, as well as Class A commercial office space, neighborhood retail and community facility space (including a healthcare center and, at the City's option, a public school), eight acres of publicly accessible open space, and possibly a hotel. The Project will reconfigure, upgrade and partially relocate the Vanderbilt Yard to meet current railroad standards and address the current and future needs of the LIRR. The Project also will include a new subway station entrance and other

enhancements to the MTA's New York City Transit ("NYCT") Atlantic Avenue/Pacific Street subway station complex.

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

97. The arena, to be known as Barclays Center, will be the home of the New Jersey Nets N.B.A. basketball team and will bring a top-tier professional sports franchise to Brooklyn for the first time since the Brooklyn Dodgers baseball team left more than 50 years ago. In addition to serving as the home of the Nets, the arena will host amateur athletic events, circuses, graduations and other civic, community-sponsored and

entertainment events. The arena is being designed by Ellerbe Becket, a well-respected international architecture firm that has been designing sports and entertainment arenas (as well as other types of buildings) for over 40 years (see www.ellerbebecket.com) and SHoP Architects, a highly-regarded and innovative New York-based design firm (see www.shoparc.com).

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

99. By the Community Benefits Agreement, the Project's sponsors have bound themselves to carefully articulated commitments to the local communities, which are intended to address in a very serious manner the problems of unemployment and underemployment, lack of affordable

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

housing and other serious issues that have plagued communities within Brooklyn. As one example, not only does the Agreement commit the Project's sponsors to assuring that a percentage of the construction contracts for the Project will be awarded to minority- or women-owned businesses, but it also obligates the sponsors to establish, in consultation with the other parties to the Agreement, programs to hire residents of the surrounding communities who are members of minorities, women or people of low or moderate-income, and to train them for permanent employment (§ IV(A)). The Community Benefits Agreement also requires that priority for employment opportunities be given to residents of public housing and low- and moderate-income residents of the neighboring communities (§ IV(A)(3)), and also commits the Project's sponsors to offer "all residential tenants currently renting and legally occupying a legal residential dwelling unit as their primary residence within the Project site," and who are in good standing under their leases and had resided in their current residence for at least one year as of the date of the Agreement (June 27, 2005), with "reasonably comparable living space in a new unit within the Project, at their then current rent," plus interim housing at no greater cost than their current rent, plus the payment of brokerage commissions and reasonable relocation costs (§ VI(D)(1)). These commitments are only a handful of

those contained in the Agreement, but all of the Agreement's commitments have teeth in the form of substantial legally enforceable penalties for a failure by FCRC to fulfill its obligations.

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

B. FCRC and the MTA

101. Early in its work on the Project, FCRC began discussions with the MTA regarding potential development over the Vanderbilt Yard, an eight and one-half acre below-grade rail yard that is part of the Project site. The Project includes the dismantling of the existing yard, which will be the site of the Barclays Center arena and other buildings, and the construction of a new yard on blocks 1120 and 1121, the construction of a platform over the new yard and the construction of new buildings and open space on this platform.

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

103. On May 24, 2005, the MTA issued a request for proposals (“RFP”) for the purchase of the property and development rights attributable to the Vanderbilt Yard. The RFP contained detailed requirements as well as criteria for selection of the winning proposal. Those criteria were:

(1) Quantity and certainty of financial return to the MTA; (2) Financial viability of the proposal; (3) Overall economic development benefit of the proposal; (4) Proposer's experience in the development, management, marketing and design of projects of a scale, complexity, and quality similar to that required by the Request, and its ability to implement its proposal; (5) Proposed timeframe for commencement and completion of the Proposal; (6) Proposer's financial qualifications (including its proven ability to obtain financing for projects of similar size, experience with institutional lenders, and evidence of the willingness of such lenders to finance the proposed development), and the amount of equity or personal risk the Proposer proposes for the proposal; (7) Quality of the development program ... ; (8) Proposer's previous record of performance in business dealings with any municipal, state or federal agencies, including the MTA; (9) Ability of the Proposer and the MTA to agree on the terms of the Disposition contract; and (10) Proposer's commitment to ensure MTA/LIRR operating requirements with minimal impact to Railroad Operations.

(Ex. C hereto, at pp. 18-19.) The RFP required all bids to be submitted on or before 5:00 p.m. on July 6, 2005 (*id.* at p. 2).

104. In connection with the RFP, the MTA obtained an independent appraisal of the Vanderbilt Yard. The appraisal valued the yard at \$214.5 million, or at \$271.3 million without deducting the costs of track relocation and platform construction (Pet. ¶¶ 26-27).

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

106. FCRC initially offered cash in the amount of \$50 million for the development rights plus substantial additional consideration. Specifically, FCRC also offered to (1) build a new Vanderbilt Yard facility for the MTA, (2) conduct environmental remediation and clean-up of the MTA's property, (3) compensate MTA for increased operating costs, (4) construct additional mass transit improvements relating to the nearby subway station, and (5) generate millions of dollars of sales tax revenue to the MTA by the Project (Ex. D hereto at p. 2.2; *see also* Exhibit J hereto at p. 2). Therefore, the value of FCRC's initial bid totaled \$329,400,000.

107. On July 27, 2005, the MTA's Board of Directors approved a 45-day period of exclusivity to negotiate the business terms of an agreement with FCRC (*see* Exhibit K hereto). On September 14, 2005, the MTA's Board of Directors approved the rejection of Extell's bid and authorized the MTA's staff to negotiate final agreements with FCRC and to take such other actions as necessary to comply with legal requirements. On the same day, the MTA and FCRC also announced that FCRC would increase its cash payment to \$100 million (Pet. Ex. H at p. 2; *see also* Exhibit L hereto). Therefore, the value of FCRC's increased bid totaled \$379,400,000.

C. The Public Approval Process

108. In February 2005, ESDC, the City of New York and its Economic Development Corporation and FCRC entered into two non-binding memoranda of understanding which outlined the proposed Project, its financing and anticipated public review, among other things, and served to ensure that FCRC would reimburse the agencies for planning and review costs (see Exs. A and B hereto).

109. On September 16, 2005, pursuant to the State Environmental Quality Review Act ("SEQRA") (Environmental Conservation Law § 8-0101, *et seq.*), and its implementing regulations (6 NYCRR Part 617), ESDC issued a notice of intent to serve as lead agency for environmental review of the Project and a draft Scope of Work for an environmental impact statement.² On March 31, 2006, ESDC issued a final Scope of Work, which incorporated consideration of the public comments received on the draft (§ 617.8(f)). ESDC then prepared a comprehensive draft environmental impact statement ("DEIS") in accordance with the final Scope of Work (§ 617.9(2)). On July 18, 2006, the Board of Directors of

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

ESDC accepted the DEIS as complete and issued a Notice of Completion (§ 617.9(3)).

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

111. On August 23, 2006, ESDC held a lengthy public hearing to consider the DEIS, the draft GPP and the proposed condemnation of property on the Project site pursuant to the Eminent Domain Procedure Law ("EDPL"). ESDC held two community forums on September 12 and September 18, 2006, and also accepted written comments until September 29, 2006,

112. On November 27, 2006, ESDC accepted the final environmental impact statement ("FEIS"), which is approximately 7,500 pages in length (relevant portions of which are Exhibit M hereto). The FEIS exhaustively analyzes the potential significant adverse environmental impacts resulting from the Project.

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

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

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

D. The Litigations Challenging the Project

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

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

F. Supp. 2d 254 (E.D.N.Y. 2007); Goldstein v. N.Y.S. Urban Development Corp., 64 A.D.3d 168 (2d Dep't 2009), appeal heard on Oct. 14, 2009.

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

E. The Modified General Project Plan

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

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

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

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

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

122. On June 23, 2009, ESDC adopted a Modified General Project Plan (the "MGPP") to allow for the acquisition of property for the Project by eminent domain in two phases rather than in one single acquisition, and to change the schedule for completion of the buildings to reflect the delays caused by litigation (see Exhibit N hereto). Phase I of the Project, originally anticipated to be completed by 2010, now is anticipated to be completed by 2014. Phase II, originally anticipated to be completed by 2016, now is anticipated to be completed by 2019. Thus, the modified schedule reflects a shift in construction of the Project's two phases of about three years from what was originally contemplated.

123. Phase I of the Project is expected to include construction of the arena and five other buildings. The other buildings are expected to contain a mix of approximately 1,005 to 2,110 rental and condominium units, of which 30% will be affordable, except that if fewer than 1,005 units are built, at least 300 units must be affordable. The buildings also will include Class

A commercial office space, ground-floor retail space and community facility space, and may include a 180-room hotel. In addition, the new LIRR rail yard will be constructed during Phase I as well as the new subway station entrance. There would be approximately 2,346 parking spaces on the Project site at the end of Phase I, including permanent parking on the arena block and interim surface parking on Block 1129. (See Exhibit O hereto, at pp. 10, 14-15.)

124. During Phase II, the remaining eleven buildings will be constructed as well as eight acres of publicly accessible open space and an intergenerational community center. In addition, at the option of the Department of Education, a public school will be constructed in the base of one of the Phase II buildings. The balance of the affordable housing units will be built in Phase II. Not more than 50% of the total residential units in Phase II will be completed without completion of 50% of the affordable units. (Ex. O hereto, at pp. 16-19.)

125. These modifications were analyzed by ESDC in a June 2009 Technical Memorandum prepared in conjunction with its environmental consultants to determine whether a supplemental EIS should be prepared (Exhibit P hereto). The Technical Memorandum also considered changes in the design of some buildings and the elimination of certain Project

elements on the arena block and, to a lesser extent, Block 1129, that have occurred as design development has progressed. As observed in the Technical Memorandum, none of the changes associated with design development involve a change in the proposed uses of the Project buildings, and all buildings still are required to conform to the Design Guidelines established in 2006 by the GPP (Ex. P hereto, at p. 4).

126. The Technical Memorandum described the prior FEIS, the Project status, the proposed changes and modifications to the Project as set forth in the MGPP, and changes in the background conditions and methodologies since completion of the FEIS. It then analyzed whether these changes reasonably could be expected to result in any significant adverse environmental impacts not addressed in the FEIS in each of the analysis categories: land use, zoning and public policy; socioeconomic conditions; community facilities; open space; shadows; historic resources; urban design and visual resources; hazardous materials; infrastructure; traffic and parking; transit and pedestrians; air quality; noise; neighborhood character; construction impacts; and public health. These analyses showed that the changes would not result in any significant environmental impacts not previously addressed in the FEIS (*id.* at p. 55).

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

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

129. On September 17, 2009, ESDC's Board of Directors affirmed the adoption of the MGPP (see Exhibit Q hereto). At the same time, based on the Technical Memorandum's analysis of the potential impacts of the modifications and background conditions, ESDC's Board of Directors concluded that the modifications to the Project would not result in significant adverse environmental impacts beyond those disclosed in the FEIS, and therefore, that no supplemental EIS was necessary.

F. The Amended Business Terms with the MTA

130. As discussed above, the delays caused by litigation and the 2008 economic downturn caused FCRC to begin discussions with ESDC and the MTA as well regarding certain minor modifications to the Project, primarily relating to timing.

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

132. The modified terms also amend the timing of FCRC's \$100 million payment to the MTA to allow FCRC to make an initial \$20 million payment for the land and rights actually necessary to construct the arena, which will be the first building of the Project that is to be built.

133. Thereafter, FCRC is to make \$80 million in further cash payments, with interest, for the development rights associated with the Vanderbilt Yard portion of the Project site, including the volume of air rights over the rail yard. These terms contemplate that, as FCRC acquires each of six additional development parcels making up the Vanderbilt Yard portion of the Project site, it will pay to the MTA, as the purchase price, the portion of the \$80 million attributable to that particular development parcel, which will be credited against the \$80 million in total purchase price for all of the remaining development rights (Attachment to Pet. Ex. B, at p. 2). As discussed above, the Project is anticipated to be completed by 2019, so FCRC will have acquired all of the development rights over the Vanderbilt Yard by then. However, to the extent that FCRC does not acquire any of the additional development parcels, it would be obligated to pay to the MTA the portion of the \$80 million attributable to the unpurchased parcels, with interest, in periodic payments beginning in 2012 and continuing until 2030.

134. Finally, as additional security, the modified terms also require FCRC to provide the MTA with a letter of credit in the amount of \$86 million. If FCRC fails to complete the replacement rail yard or abandons the Project, the MTA will be able to draw against this letter of credit in its entirety (Attachment to Pet. Ex. B, at p. 2), and the MTA also will retain

ownerships of the property and development rights not purchased by FCRC and will be able to sell them to one or more other developers.

135. FCRC and the MTA also will be entering into other agreements to effectuate the transaction that will contain liquidated damages clauses and penalties should FCRC fail to meet certain development milestones with respect to the entire Project. In addition, FCRC and ESDC will be entering into further agreements to effectuate the Project.

136. As now modified, FCRC's proposal includes: (1) \$100 million in cash payments spread over time, with interest; (2) construction of the replacement yard, valued at approximately \$150 million; (3) environmental remediation of the MTA's property; (4) payments to the MTA for increases in net operating costs; (5) the construction of other mass transit improvements, including a new subway entrance expected to cost FCRC in excess of \$50 million; and (6) payments to the MTA from sales tax revenues to be generated by the Project. These terms exceed the value of the terms approved by the MTA Board in 2005 and 2006, and exceed the appraised value of the Vanderbilt Yard development rights.

G. The Public Authorities Accountability Act and This Litigation

137. On January 16, 2006, after the MTA already had issued its RFP for the Vanderbilt Rail Yard and resolved to proceed with FCRC rather than

Extell, the Public Authorities Accountability Act of 2005 (the "PAAA") became effective. The PAAA amended provisions of the Public Authorities Law and several other statutes. With respect to the Public Authorities Law, the PAAA added provisions to, among other things, require public authorities to have annual independent audits, define the roles and responsibilities of board members, and establish competitive bidding rules for the disposition of property by public authorities. See, e.g., PAL §§ 1201, 1263, 2802, 2824, 2897. It is these last provisions that are the subject of this proceeding. Among other things, the new rules for the disposition of property require public authorities to publicly advertise for bids except in certain enumerated exceptions. See PAL § 2897.

138. By this proceeding, the petition seeks to annul the MTA Board's June 24, 2009 resolution approving the modifications to the business terms for the sale to FCRC of the land and development rights to the Vanderbilt Yard. The petition alleges that the MTA violated the competitive bidding provisions of the PAAA, by failing to solicit new bids, obtain an appraisal or consider DDDDB's bid before making the June 24, 2009 resolution.

139. In fact, the MTA complied in all respects with the PAAA. When the MTA Board adopted its June 24, 2009 resolution, it had in the record before it an independent appraisal that had been performed for the MTA in

2005. This appraisal and the undeniable fact that real estate values have declined since 2005-06 all supported the conclusion that the both the original business terms considered by the MTA Board in 2005 and approved in 2006 and the modified terms that were approved in 2009 yielded the MTA at least fair value for the disposition of the property and development rights of Vanderbilt Yard.

140. In addition, the PAAA authorized the MTA to approve the revised business terms in the public interest in view of the fact that the Project is expected to substantially benefit the public interest, ESDC and FCRC already have achieved substantial progress in implementing the Project, and the public would not be served by opening the Project to new bidding.

141. Furthermore, the ostensible bid purportedly submitted by DDDDB was not a genuine bid, and DDDDB was not a responsible bidder. Therefore, the MTA Board was under no obligation to entertain that bid even if it was required to open the matter for new bidding and had done so.

142. Finally, while the MTA Board in fact complied with the PAAA in 2009, it was under no obligation to do so. A preliminary determination to dispose of the Vanderbilt Yard properties and development rights to FCRC was made in 2005, before the effective date of the PAAA, and affirmed in

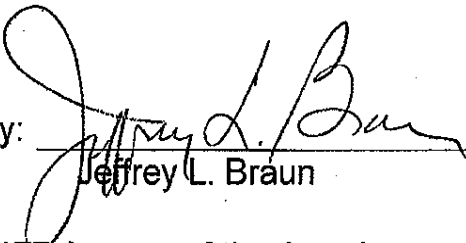
2006. The modifications to the business terms that were approved in 2009 did not alter the essential character or terms of the disposition and therefore did not require the MTA to reopen the matter for new bids or comply with the PAAA.

143. For the foregoing reasons, the actions of the MTA in modifying its business terms with FCRC and adopting the June 24, 2009 Board of Directors resolution were entirely reasonable, lawful and proper, and should be sustained in all respects.

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

Dated: November 5, 2009
New York, NY

KRAMER LEVIN NAFTALIS
& FRANKEL LLP

By: 
Jeffrey L. Braun

1177 Avenue of the Americas
New York, NY 10036
(212) 715-9100
jbrown@kramerlevin.com

FRIED, FRANK, HARRIS, SHRIVER &
JACOBSON LLP

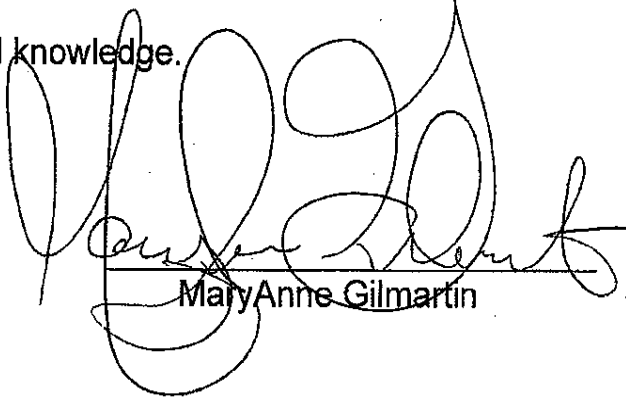
By: Richard G. Leland
One New York Plaza
New York, NY 10004
(212) 859-8000
richard.leland@friedfrank.com

*Attorneys for Respondent Forest City
Ratner Companies, LLC*

VERIFICATION


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

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



MaryAnne Gilmartin

Sworn to before me on this
4th day of November, 2009.



Notary Public

JEANNE MUCCI
Notary Public, State of New York
No. 30-4834577
Qualified in Nassau County
Commission Expires March 30, 2011

Index No. 114304/09
IAS Part 7
Justice Stallman

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

In the Matter of

VELMANETTE MONTGOMERY, JAMES F.
BRENNAN, JOAN L. MILLMAN, LETITIA JAMES, NEW
YORK PUBLIC INTEREST RESEARCH
GROUP/STRAPHANGERS CAMPAIGN, and DEVELOP
DON'T DESTROY (BROOKLYN), INC.,

Petitioners,

For a Judgment Pursuant to Article 78

- against -

METROPOLITAN TRANSPORTATION AUTHORITY and
FOREST CITY RATNER COMPANIES, LLC,

Respondents.

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

KRAMER LEVIN NAFTALIS & FRANKEL LLP
Attorneys for Respondent Forest City Ratner Companies, LLC
1177 Avenue of the Americas, New York, NY 10036
(212) 715-9100

All communications should be referred to:
Jeffrey L. Braun, Esq.