

FOR CONSIDERATION

September 17, 2009

TO: The Directors

FROM: Dennis Mullen

SUBJECT: New York (Kings County) – Atlantic Yards Land Use Improvement and Civic Project

REQUEST FOR: Affirmation of Modified General Project Plan; Authorization to Amend Funding Agreements; Authorization to Enter into Leases; Authorization to Convey Real Property; Authorization to Enter into other Project Documents and to Take Related Actions

Project Summary

Developer: Forest City Ratner Companies, acting through itself and various affiliates (collectively “Forest City”)

Project Site: The Project Site is generally bounded by Atlantic Avenue, Flatbush Avenue, Dean Street and Vanderbilt Avenue (exclusive of a portion of Block 1128) and also includes a portion of a parcel generally bounded by Atlantic Avenue, Flatbush Avenue, Pacific Street and 4th Avenue (referred to as “Site 5”) in Brooklyn, New York. A portion of the Project will be constructed on what is currently the LIRR Vanderbilt train yard and within the air space above the Vanderbilt train yard, as reconfigured. A Block and Lot Map is attached to the Modified General Project Plan.

Project Description: The development of an approximately 18,000 seat arena (the “Arena”), which will serve as the home arena for the relocating New Jersey Nets basketball franchise and for other suitable events; the development of a reconfigured and improved Vanderbilt train yard and subway facility improvements; the development of 16 buildings for residential, office and retail uses and potentially a hotel, including up to 6,430 units of housing, including 4,500 rental units, of which 2,250 units (50%) will be affordable to low, moderate and middle income households; and the creation of 8 acres of publicly accessible open space.¹

¹ See the 2009 Modified General Project Plan, attached hereto as Exhibit A, for a more detailed description of the Project.

Anticipated Funding Sources:

Private Equity / Other	\$ 1,517,000,000
Private Financing	\$ 2,650,000,000
Arena Financing ²	\$ 531,000,000
State/ESDC	\$ 100,000,000
NYC ³	\$ 100,000,000
Total	\$ 4,898,000,000

Funding Uses:

Site Acquisition	\$ 417,000,000
Arena	\$ 772,000,000
Residential	\$ 2,645,000,000
Office / Hotel	\$ 255,000,000
Infrastructure ⁴	\$ 717,000,000
Misc.	\$ 92,000,000
Total	\$ 4,898,000,000

Background

On June 23, 2009, the Directors authorized the Corporation to adopt a Modified General Project Plan (sometimes referred to as the “MGPP”) for the Atlantic Yards Project and to hold a public hearing on the MGPP and the proposed property dispositions envisioned thereunder. The MGPP had been modified to reflect certain changes from the prior plan, including a proposed staged acquisition of the Project site, modified commitments from Forest City related to the development of the new LIRR train Yard for the Metropolitan Transportation Authority (“MTA”) and a phased acquisition of the MTA air rights necessary to complete development of the Project site. The MTA approved the modified arrangements with respect to the MTA transaction at its June Board meeting.

² Arena financing is likely to be provided through some combination of (i) tax exempt bonds (debt service on the bonds will be supported by payments in lieu of taxes - generated from Arena revenues); and (ii) payments from Arena tenants. The Arena funding source is net of cost of issuance, debt service reserve and capitalized interest.

³ \$100 million constitutes direct funding by the City. In addition, the City has provided in its capital budget, through various City agencies, additional funds for neighborhood infrastructure improvements in and around the Project site. A portion of these additional funds may be provided directly to Forest City.

⁴ Infrastructure includes the reconfiguration of Vanderbilt Yard, a platform over a portion of the reconfigured yard and general infrastructure necessary for the project.

Public Hearing

A public hearing was held over the course of four sessions on July 29 and July 30 in Brooklyn. In addition, the Corporation accepted written comments on the Modified General Project Plan (and proposed property dispositions) through August 31, 2009. A total of 720 oral and written comments were received. It is estimated that 499 of the comments were in favor or supportive of the Project and 221 comments were in opposition to the Project.

Attached hereto as Exhibit B is a summary of the comments received and staff's responses to the comments. Attached as Exhibit C is an index to all public comments (oral and written), a complete transcript of testimony received at the public hearing and all written comments received by the Corporation during the comment period.

Based on all comments received, Corporation staff is recommending that the Directors affirm the Modified General Project Plan without further modification. Subject to such affirmation, the Corporation expects to continue implementation of the Project, by acquiring a portion of the Project site and entering into the various real estate transactions and related agreements as described below and as generally set forth in the MGPP.

Site Acquisition and Conveyances

In accordance with the MGPP, ESDC, through condemnation and various agreements with Forest City, the City of New York and the MTA, expects to acquire title to the Project site in two or more stages. A portion of the Project site will be acquired directly from the MTA and the balance will be acquired through condemnation.

The acquisition of the first portion of the Project site, including the Arena block, Block 1129, Pacific Street between Carlton and Vanderbilt Avenues and Block 1121, Lots 42 and 47 (which, in part will be conveyed to the MTA and incorporated into the new MTA Yard), is expected to occur in 2009.

Upon acquisition of the Project site, or portions thereof, ESDC will enter into various Interim Leases with Forest City. The Interim Leases will generally permit demolition, site remediation excavation, infrastructure improvements, construction staging and parking and general site work and will generally prohibit above-grade improvements. The Interim Leases will permit Forest City to designate parcels for development consistent with the MGPP and such parcels will be severed from the Interim Leases and become subject to a Development Lease pursuant to which the applicable Project buildings will be constructed.

With respect to the development of the arena, ESDC will own the arena parcel and improvements thereon. ESDC will lease the arena parcel to the newly created Brooklyn Arena Local Development Corporation ("LDC"), created by ESDC's affiliate, the Job Development Authority. The LDC will simultaneously sub-lease the parcel to a Forest City affiliate and that affiliate will build the arena pursuant to the requirements of the MGPP. The initial term of the

leases are expected to be approximately 33 years, with options to extend the lease to up to 99 years.

ESDC expects to enter into Development Leases for each of the 16 non-arena parcels with Forest City or transferees of Forest City. Pursuant to the terms of each development lease, the applicable improvements will be constructed consistent with the Modified General Project Plan.

The Project site includes two parcels, Block 1121 lots 42 and 47 (the “MTA Parcels”), that are necessary for the new Vanderbilt Yard. Upon acquisition of the MTA parcels, or soon thereafter, ESDC will convey a portion of these parcels (below a specified limiting plane) to the MTA. The air space above the MTA Parcels will be retained by ESDC and used for development of a portion of the Project.

An abstract of the proposed business terms for the Interim Leases, the Arena Development Lease, 16 non-arena Development Leases and the proposed terms for the transfer of the MTA parcels are set forth in Exhibit D attached hereto.

State Funding Agreement

As of the date hereof, the Corporation has funded or approved disbursements totaling approximately \$75 million of the \$100 million State funding commitment. The State funding commitment is memorialized in a State Funding Agreement, dated September 12, 2007. State funds have been applied to eligible infrastructure costs incurred by Forest City related to the development of the Arena or Vanderbilt train yard. It is proposed that ESDC enter into an amended State Funding Agreement with Forest City to permit the Corporation to disburse the balance of the State funds at closing for eligible costs – including soft costs incurred by Forest City in connection with the design and engineering of the infrastructure improvements and certain site preparation costs (e.g. demolition costs) related to the development of the Arena or Vanderbilt train yard.

City Funding Agreement

The New York City Economic Development Corporation (“NYCEDC”) and ESDC entered into a City Funding Agreement on September 12, 2007. Pursuant to that Agreement, NYCEDC agreed to fund up to \$100 million of costs incurred by Forest City in acquiring portions of the Project site. ESDC has, to date, received \$85 million of the \$100 million City funds and, by separate agreement with Forest City, has disbursed the same to Forest City for eligible acquisition costs. As referenced in the footnote above, the City has also agreed to make available additional funds for neighborhood related infrastructure improvements typically funded by City agencies. A portion of these additional funds may be made available by the City directly to ESDC, in which case, the City Funding Agreement will be amended to reflect the same. Subject to the submission of satisfactory documentation, it is anticipated that remaining City funds, plus any additional funds, if any, will be disbursed from the City to ESDC at closing and ESDC shall simultaneously disburse the same to Forest City.

Expedited State funding and City funding (described above) is being requested to achieve the goal of closing on the initial phase of the Project by the end of the calendar year.

Economic Benefit Analysis

The Economic Benefit Analysis for the Project, as set forth in the Modified General Project Plan, has been updated and, as a result, it is now projected that additional construction jobs and additional tax revenues to the State and City will result from the Project. It is now projected that the number of jobs resulting from the operation of the Project will be somewhat reduced. The new projections result from changes in estimated Project revenues, a significant increase in the Project budget based on more current information, revisions to the ESDC model used to predict job creation and fiscal benefits (some of these changes reflect the impact of the economic recession, such as changes in wage rates) and additional information with respect to Project costs and subsidies.

Current projections are that the Project will have the following impacts during construction and for the first 30 years of operation:

- (i) Construction of the Project will generate 16,427 new direct job years and 25,133 total job years (direct, indirect and induced);
- (ii) Personal income related to construction activities is projected at \$1.414 billion (direct, indirect and induced);
- (iii) Total construction related employment will generate \$57.6 million in New York City tax revenues and \$94.1 million in New York State tax revenues;
- (iv) Project operations will support 3,998 new City jobs and 4,277 new jobs in the State, inclusive of the City (direct, indirect and induced); and
- (v) On a present value basis, the Project will generate \$657.6 million in New York City tax revenues and \$794.7 million in New York State tax revenues.

Financial Analysis

Corporation staff has regularly reviewed the financial projections for the project to ensure that the Project remains viable as economic conditions change. In addition, the Corporation has retained the services of KPMG to perform a limited up-date of the analysis that it performed in 2006 based on the prior iteration of the Modified General Project Plan. Corporation staff and KPMG believe that the Project remains viable and that the project schedule is achievable based on existing and projected economic conditions.

Litigation Status

To date, the courts have rejected all legal challenges to the Atlantic Yards Project. Two lawsuits remain pending. The status of the lawsuits is as follows:

Goldstein v. New York State Urban Development Corp., No. 2008-7064 (App. Div. 2nd Dep't). In this case, brought as an original proceeding in the Appellate Division for the Second Department, certain project condemnees have challenged the public purpose of the project and

the constitutionality of the use of eminent domain for the Project, and also argued that aspects of the Project violate Section 6 of Article XVIII of the New York State Constitution. The Appellate Division dismissed this proceeding on May 12, 2009. Petitioners have filed a Notice of Appeal with the Court of Appeals which is scheduled to hear oral argument on the appeal on October 14, 2009.

Develop Don't Destroy Brooklyn, Inc. v. Urban Development Corporation d/b/a Empire State Development Corporation, Index No. 104597/07 (New York Sup. Ct., NY County). This case, brought by several community groups opposed to the Project, challenges the environmental review and related Project approvals of ESDC, the MTA and the PACB granted in December 2006. On January 11, 2008, the New York State Supreme Court dismissed this proceeding. In a unanimous decision entered February 26, 2009, the Appellate Division affirmed this dismissal. A motion for appeal is pending before the Court of Appeals.

Notwithstanding on-going or additional litigation, it is expected that the Corporation will be able to timely proceed with the acquisition of the Project Site and development of the Project.

Project Site Plan

The Project Site Plan, attached as Exhibit A-1 to the MGPP, has been updated to reflect minor changes in the design of the arena. A current Project Site Plan is attached hereto as Exhibit E. The updated Project Site Plan was made available to the public at the public hearing and includes relative minor modifications to the Project Site Plan set forth in the MGPP.

Site Control

Exhibit E to MGPP (Property Ownership and Control) has been corrected to reflect that Block 1129, Lots 4, 5, 6 and 13 are not controlled by Forest City. This change will not impact implementation of the Project. An updated Site Control Map is attached hereto as Exhibit F.

Requested Actions

The Directors are requested to affirm the Modified General Project Plan, authorize the Corporation to enter into an amended State Funding Agreement and City Funding Agreement, authorize the Corporation to enter into various leases, disposition agreements, development agreements and other Project agreements, all as necessary or appropriate to implement the Project in a manner consistent with the Modified General Project Plan and otherwise on such terms as the President and Chief Executive Officer, or any Senior Vice President, may deem appropriate.

Attachments

Exhibit A - Modified General Project Plan (Adopted June 23, 2009)⁵

Exhibit B – Summary of Comments and Responses

Exhibit C – Index to Public Comments (oral and written); Public Hearing Transcript and Written Comments (on attached CD)

Exhibit D – Project Leases and Disposition Abstract

Exhibit E – Updated Project Site Plan

Exhibit F – Updated Site Control Map

⁵ Certain voluminous exhibits to the MGPP that remain unchanged from the General Project Plan adopted in 2006 are not attached. Such documents were provided to the Directors in December 2006 and are also include on the CD provided to the Directors with these materials.

September 17, 2009

New York (Kings County) – Atlantic Yards Land Use Improvement Project and Civic Project - Affirmation of Modified General Project Plan; Authorization to Amend Funding Agreements; Authorization to Enter into Leases; Authorization to Convey Real Property; Authorization to Enter into other Project Documents and to Take Related Actions

RESOLVED, that, pursuant to Section 16 of the UDC Act, after due consideration of the testimony given at the public hearing on July 29, 2009 and July 30, 2009 on the proposed Modified General Project Plan; all comments received by the Corporation during the comment period concluding August 31, 2009 and other findings, statement of facts and conclusions and other determinations previously made by the Corporation, the Corporation does hereby affirm the Modified General Project Plan, a copy of which is attached hereto and which has been presented to this meeting and is ordered filed with the records of the Corporation relating to the Project; and be it further

RESOLVED, that no comments received during the comment period for the Modified General Project Plan require any modification to the Technical Memorandum prepared under the State Environmental Quality Review Act, dated June 2009, and do not disturb the prior determination of the Corporation that no Supplemental Environmental Impact Statement is required for the Modified General Project Plan; and be it further

RESOLVED, having considered the Technical Memorandum, the comments received during the public comment period for the Modified General Project Plan and the view of the Corporation's staff that the preparation of a Supplemental Environmental Impact Statement would not provide information useful to the determination whether to affirm the Modified General Project Plan, the Corporation does hereby determine that a Supplemental Environmental Impact Statement is not warranted in connection with the affirmation of the Modified General Project Plan; and be it further

RESOLVED, that the Corporation is hereby authorized to enter into an Amended State Funding Agreement and an Amended City Funding Agreement on the terms substantially described herein; and be it further

RESOLVED, that the Corporation hereby authorizes the President and Chief Executive Officer, or any Senior Vice President of the Corporation, to enter into any and all acquisition agreements, leases, subleases, disposition agreements, development agreements and all other agreements (collectively the "Project Documents") with Forest City Ratner Companies and affiliates of Forest City Ratner Companies, the City of New York and the New York City Economic Development Corporation, the Metropolitan Transportation Authority, the Brooklyn Arena Local Development Corporation, and other entities, including, but not limited to, any existing or future lien holders on the project site and any arena naming rights or sponsor entities to effectuate the purposes of the Modified General Project Plan, on such terms and conditions as the President and Chief Executive Officer, or any Senior Vice President of the Corporation, deems necessary or appropriate; and be it further

RESOLVED, that the President and Chief Executive Officer, or any Senior Vice President of the Corporation be, and each of them hereby is, authorized and directed, in the name and on behalf of the Corporation, and to take any and all such actions as may be necessary or appropriate to effectuate the foregoing resolutions

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Exhibit A

Modified General Project Plan (Adopted June 23, 2009)

Exhibit B

Summary of Comments and Responses

Exhibit C

Index to Public Comments (oral and written); Public Hearing Transcript and Written
Comments (on attached CD)

Exhibit D

Project Leases and Disposition Abstract

EXHIBIT D
Project Leases Abstract

Document	Interim Leases
Landlord	Empire State Development Corporation
Tenant	Atlantic Yards Development Company LLC or another affiliate of Forest City Ratner Companies
Rent	\$1 per year plus PILOT equal to full taxes (unless the City of New York agrees to different PILOT amounts)
PILOST	Each tenant required to make payments of PILOST on work performed or materials purchased for capital improvements to be made on the land and/or development parcel, except that no PILOST shall be paid on project infrastructure improvements
Term	<p><u>Arena Block and Site 5</u>: Expires upon the last remaining parcel demised thereunder becoming subject to a development lease with FCRC, and no later than the <u>12th anniversary</u> of vacant possession of the Arena Block and any other properties acquired in the first taking (subject to force majeure or <u>payment of liquidated damages</u>)</p> <p><u>East of 6th Avenue</u>: Expires upon the last remaining parcel demised thereunder becoming subject to a development lease with FCRC, and no later than the <u>25th anniversary</u> of vacant possession of the Arena Block (subject to force majeure)</p>

Document	Ground Lease
Parties	Empire State Development Corporation
Tenant	Brooklyn Arena Local Development Corporation
Rent	\$1 plus all casualty and condemnation proceeds received by the Landlord under the Arena Development Lease
Term	35 years (tentatively)

Document	Arena Development Lease
Landlord	Brooklyn Arena Local Development Corporation

Tenant	Brooklyn Events Center, LLC, an affiliate of Forest City Ratner Companies LLC
Rent	<u>Initial Term</u> : (A) \$10 per year; and (B) PILOT not to exceed real estate taxes. <u>Extension Term</u> : (A) Fair Market Value rent; and (B) PILOT equal to real estate taxes, with 10% reserved for maintenance and operation costs of the Arena
Term	<u>Initial Term</u> : 35 years (tentatively) <u>Extension Term</u> : Six extension terms of 10 years each; One extension term of 6 years. Simultaneously with the commencement of the first extension option, lease become a direct lease between Empire State Development Corporation and Tenant
PILOST	Payments of PILOST for all work associated with the Urban Room
Purchase Option	At the end of each term, Tenant has the right to purchase the Arena Project for the greater of (A) Fair Market Value and (B) indebtedness secured directly or indirectly by the Tenant's leasehold interest in the Arena Project, together with all costs related to defeasance, payment, retirement of such indebtedness and any other costs related to the release of the Premises from any lien related to such indebtedness

Document	Non-Arena Development Leases (16)
Landlord	Empire State Development Corporation
Tenant	An affiliate of Forest City Ratner Companies LLC
Rent	\$1 per year; <u>provided</u> that the tenants for Site 5, Block 1129 and portions of Pacific Street between Carlton Ave. and Vanderbilt Ave. must also pay PILOT equal to full real estate taxes unless otherwise agreed to by the City
PILOST	Each tenant required to make payments of PILOST on work performed or materials purchased for capital improvements to be made on the land and/or development parcel, except that no PILOST shall be paid on project infrastructure improvements
Term	Terminates upon completion of construction of the improvements to be located on the parcel of land leased thereby, but no later than the 25th anniversary of vacant possession of the Arena Block and any other properties acquired in the first taking (subject to force majeure)

Purchase Obligation	Upon completion of the improvements on each parcel, title to such development parcel and improvements is conveyed to the Tenant
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Document	Development Agreement
Party A	Empire State Development Corporation
Party B	Atlantic Yards Development Company, LLC and Brooklyn Arena LLC, each affiliates of Forest City
Development Obligation	<p>To construct the project described in the Modified General Project Plan including:</p> <ul style="list-style-type: none"> (a) improvements containing at least Four Million Four Hundred Seventy Thousand (4,470,000) gross square feet (exclusive of the square footage of the Arena); (b) no less than Two Thousand Two Hundred Fifty (2,250) affordable housing units, subject to governmental authorities making available to Party B or its applicable successor or assign, after good faith review by the applicable administering agency, affordable housing subsidies consistent with then applicable programs rules and standards then generally available to developers of affordable housing units. (c) have a completed Arena with a maximum seating capacity of approximately 18,000 (basketball events) and approximately 19,000 seats for certain other events; (d) have at least eight (8) acres of completed open space; (e) have the completed Urban Room; (f) have the completed Upgraded Yard; (g) have the completed Subway Entrance; and (i) have the completed Carlton Avenue Bridge.

Exhibit E

Updated Project Site Plan

Exhibit F

Updated Site Control Map