

## **FOR CONSIDERATION**

December 16, 2010

**TO:** The Directors

**FROM:** Dennis M. Mullen

**SUBJECT:** City of New York (Kings County)  
Oceangate Apartments (Former UDC Loan No. 90)

### **REQUEST**

**FOR:** Authorization to (i) Accept Modified Prepayment of Mortgage Indebtedness and (ii) Take All Related Actions.

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## **PROJECT SUMMARY**

**Project Name:** Oceangate Apartments (“Oceangate” or the “Project”)

**Location:** City of New York, County of Kings

**Improvements:** A 542 unit affordable housing complex consisting of three sixteen story elevator buildings and three two story townhouses.

## **BACKGROUND**

Oceangate is a 542 unit affordable housing complex located in the Coney Island section of Brooklyn. The project was built in the early 1970s with ESDC financing. It was completed in 1975 and had a final mortgage determination (“FMD”) in 1985.

## **PRIOR BOARD ACTION**

In October 2006, the ESDC Board of Directors authorized the transfer of the General Partnership interest to an affiliate of the Starrett Corporation (“Starrett”) and the satisfaction of the FMD Mortgage in return for a Payment of Cash and Cash Flow Notes.

## **CURRENT STATUS**

Starrett is requesting that ESDC agree to forgive a portion of the \$17,935,000 owed to ESDC as part of the negotiated prepayment of its mortgage in 2007. According to Starrett, this request is a result of the shortfalls in projected revenues they expect to experience due to changes in utility allowance assumptions at the time of closing, swap breakage costs resulting from lower than anticipated interest rates, lower than expected project income during construction, and unplanned increases in water and sewer charges. As a result, Starrett anticipates that, following completion of construction (the final closing), when ESDC expected to receive its payment of \$17,935,000, there will be approximately \$9.8 million less than originally anticipated in 2007, leaving Starrett with \$8.1 million available to pay down the indebtedness owed to ESDC.

In August 2007, the NYC Housing Development Corporation (HDC) refinanced the Project. In settlement of its outstanding mortgage indebtedness, Starrett agreed to pay ESDC \$23,505,000, which represented ESDC's outstanding FMD balance, and to pay down additional arrears due to ESDC through a future participation in the project's cash flow. ESDC received \$5,570,000 at the August 2007 initial closing, with the balance of \$17,935,000 to be paid at final closing. The 2007 closing documents provide that if Starrett is unable to make the \$17,935,000 payment at final closing, HDC will loan Starrett up to \$10 million to fund Starrett's obligation to ESDC.

While HDC has acknowledged its financial obligation to assist Starrett in meeting its obligation to pay the remaining \$17,935,000 balance due to ESDC at final closing, they are reluctant to fund the total \$9.8 million shortfall, citing the need to use housing program funds to satisfy this commitment.

## **MANAGEMENT ACTION**

ESDC could insist on receiving its full \$17,935,000 payment at final closing in accordance with the 2007 closing documents by requiring that HDC and Starrett satisfy their obligations under the Deferred Payment Agreement executed at the initial closing in 2007. However, in recognition of the events identified as the source of the anticipated shortfalls, as well as the general decline in the economy since the 2007 closing, we have structured the following negotiated settlement of the \$17,935,000 outstanding indebtedness due to ESDC at final closing:

- (i) ESDC will receive a minimum cash payment of \$13,600,000 at final closing, of which \$5.5 million will be paid by HDC pursuant to its commitment;
- (ii) ESDC will agree to terminate HDC's loan commitment upon ESDC's receipt of the minimum cash payment of \$13,600,000 at final closing;
- (iii) HDC will be allowed to recover its loan amount, with interest at the rate of 5% per annum, over a 10 year period from cash flow of the project. The remaining cash flow will be shared 60:40 by ESDC and Starrett until the HDC loan has been repaid. Thereafter, in accordance with the Deferred Payment Agreement executed at the initial closing, cash flow will be shared 50:50 by ESDC and Starrett until year 12, after which ESDC will receive 75% and Starrett 25% of the cash flow.

While this proposal does not call for 100% payment of the funds due ESDC at final closing, it provides assurances that ESDC will receive a payment of \$13,600,000, approximately 76% of the amount owed to ESDC. Together with the \$5,570,000 received at the initial closing, the total repayment to ESDC would amount to approximately 82% of the outstanding FMD balance.

### **ENVIRONMENTAL REVIEW**

ESDC staff has determined that this request authorization constitutes a Type II action as defined by the New York State Environmental Quality Review Act (“SEQRA”) and the implementing regulations for the New York State Department of Environmental Conservation. No further environmental review is required in connection with the action.

### **AFFIRMATIVE ACTION**

ESD’s Non-Discrimination and Affirmative Action policy will apply. Oceangate L.P. is encouraged to include minorities and women in any job opportunities created by the Project and to solicit and utilize Minority and Women-owned Business Enterprises for any contractual opportunities generated in connection with the Project.

### **REQUESTED ACTION**

The Directors are requested to adopt the attached resolution authorizing (i) the acceptance of modified prepayment of mortgage indebtedness and (ii) the taking of all related actions.

### **RECOMMENDATION**

Based on the foregoing, I recommend approval of the attached resolution.

### **ATTACHMENT**

Resolution

December 16, 2010

CITY OF NEW YORK - KINGS COUNTY - OCEANGATE APARTMENTS (FORMER UDC LOAN NO. 90) - AUTHORIZATION TO (I) ACCEPT MODIFIED PREPAYMENT OF MORTGAGE INDEBTEDNESS AND (II) TAKE ALL RELATED ACTIONS.

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RESOLVED, on the basis of the materials submitted to this meeting and ordered filed with the records related to the Oceangate Apartments (Former UDC Loan No. 90), the New York State Urban Development Corporation ("Corporation") be and hereby is authorized to (i) Accept Modified Prepayment of Mortgage Indebtedness and (ii) Take All Related Actions; and be it further

RESOLVED, that the Chairman and Chief Executive Officer of the Corporation or his designee(s) be, and each of them hereby is, authorized to take such action and execute such documents as may be necessary or appropriate to carry out the foregoing resolution.