

FOR CONSIDERATION

September 17, 2009

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: Empire State New Market Corporation (“ESNMC”)

REQUEST FOR: Approval of Advance for ESNMC Fiscal Year 2010 Operating Expenses and Execution of Funding Agreement with ESNMC

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Summary

Approval is hereby requested for the advance of up to \$165,000 to cover expenses pursuant to ESNMC’s Fiscal Year 2010 budget and execution of a funding agreement with ESNMC.

Background

ESNMC was incorporated in 2004 as a subsidiary of the New York State Urban Development Corporation, d/b/a Empire State Development Corporation (“ESDC” or the “Corporation”) for the purpose of applying for an allocation of New Markets Tax Credits (“NMTCs”) from the Community Development Financial Institutions (“CDFI”) Fund of the U.S. Department of Treasury. ESNMC was unsuccessful in its first two applications for a NMTC allocation, in 2004 and 2007. In April 2009, ESDC Directors approved an agreement whereby Enhanced Community Development, L.L.C. would submit a NMTC allocation application to the CDFI Fund in conjunction with ESDC. The following month, the CDFI Fund awarded a \$30 million NMTC allocation directly to ESNMC under the American Recovery and Reinvestment Act, as a result of the third allocation application that ESNMC had submitted in March 2008. The CDFI Fund has not yet made a decision about Enhanced Community Development’s subsequent allocation application; a decision is expected this coming fall.

ESNMC has begun to undertake activity and on August 26, 2009, ESNMC’s board of directors approved the attached Fiscal Year 2010 budget. (ESNMC’s fiscal year coincides with that of its parent, the, so its fiscal year starts on April 1 and ends on March 31.) Because ESNMC revenue will only be realized as transactions close and yet certain expenses incurred may be payable prior to revenue receipt, ESDC corporate cash may be needed in advance in certain cases to pay for such expenses. ESDC’s Directors are therefore asked to approve the advance of up to \$165,000 to cover expenses pursuant to ESNMC’s Fiscal Year 2010 budget.

ESNMC revenues will come from fees charged on transactions. The first such revenues received will be used to fully reimburse ESDC's cash advances. The expenses in ESNMC's following budget are those that will be paid from ESNMC's fees. In addition to these expenses, ESNMC will incur certain transaction-specific consulting expenses that will be paid by borrowers directly from transaction closing proceeds; such expenses (and the reimbursements associated therewith) have been excluded from this budget.

#### Budget Synopsis

ESNMC's Fiscal Year 2010 budget includes \$450,000 of revenue and \$165,000 of expenses, with net income of \$285,000. The revenue will be derived entirely from ESNMC's front end load earned upon transaction closings. The expenses will consist primarily of payments due to consultants, as follows:

- Consulting fees for deal structuring/closing, training and ESNMC's 2010 NMTC allocation application (29%)
- Success fee to National Development Council, which prepared ESNMC's 2008 NMTC allocation application (24%) (Note: this fee has already been earned.)
- Legal fees (21%)
- Accounting fees (18%)
- Consultant travel (6%)
- Advisory Board travel/meeting expenses (2%)

#### Requested Action

The Directors are requested to approve the advance of up to \$165,000 to cover expenses pursuant to ESNMC's Fiscal Year 2010 budget and execution of a funding agreement with ESNMC.

#### Attachments

ESNMC Fiscal Year 2010 Budget  
Resolution

## EMPIRE STATE NEW MARKET CORPORATION

### Revenue Assumptions

Front End Load	3.0%
Asset Management Fee	0.5% annually
Back End Fee	1.0%

Allocation	\$	30,000,000
Total deals		4
Average deal size	\$	7,500,000

### Expense Assumptions

Inflator		3%
Advisory Board members		8
Average AB travel reimbursement	\$	250
Average consultant travel reimbursement	\$	500

	FY2010	Projections	
		FY2011	FY2012
Deal closings	2	2	0
Advisory Board Albany mtgs.	2	1	1
Average consultant travel days	20	10	5

### Revenue

Front End Load	\$	450,000	\$	450,000	\$	-
Asset Management Fee				75,000		150,000
Total Revenue	\$	450,000	\$	525,000	\$	150,000

### Expenses

NDC Success Fee	\$	40,000	\$	-	\$	-
Advisory Board travel		4,000		2,060		2,122
Legal - Allocation + Sub-CDEs		16,000				
Legal - Ongoing		7,500		7,725		7,957
Legal - Failed deals		10,000		10,000		-
Accounting - first year flat fee		21,667		3,333		
Accounting - ESNMC audit + tax return		7,500		7,725		7,957
Consulting - training		6,000				
Consulting - prepare re-application		10,000		15,000		
Consulting - closed deals		17,500		17,500		
Consulting - failed deals		14,500		14,500		
Legal/Accounting/Consulting Travel		10,000		5,150		2,652
Total Expenses	\$	164,667	\$	82,993	\$	20,688
Net Income	\$	285,333	\$	442,007	\$	129,312

September 17, 2009

NEW YORK STATE URBAN DEVELOPMENT CORPORATION d/b/a/ Empire State  
Development Corporation – Approval of Empire State New Market Corporation  
("ESNMC") Fiscal Year 2010 Budget

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RESOLVED, that the Corporation hereby agrees to advance up to \$165,000 of corporate cash to cover the expenses in the Fiscal Year 2010 budget of the Empire State New Market Corporation and execution of a funding agreement with ESNMC, on substantially the terms and for the purposes set forth in the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation, with such changes as the President or his designee(s) may deem appropriate.

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