Empire State Development

FOR CONSIDERATION
January 20, 2012

TO:	The Directors
FROM:	Kenneth Adams
SUBJECT:	New York City (New York County) – 120 Wall Street Civic Project
REQUEST FOR:	Civic Project Findings; Determination of No Significant Adverse Effect on Environment; Adoption of General Project Plan; Adoption of Sale-Leaseback Agreement, Bargain and Sale Deed, and Agreement of Lease with Owner of 120 Wall Street; Authorization to Hold Public Hearing(s) Thereon; Authorization to Acquire Real Property; Authorization to Lease Real Property; and Authorization to Take Related Actions

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General Project Plan
120 Wall Street Civic Project

I. Project Summary

Property Location	120 Wall Street; City, County, and State of New York (Land and Improvements; hereafter, the "Property")
Property Owner	120 Wall Company L.L.C., an affiliate of Silverstein Properties, Inc. (hereafter, "Owner")
Owner Contact	Roger A. Silverstein c/o Silverstein Properties, Inc. 250 Greenwich Street, 38th Floor New York, New York 10007 (212) 732-9700 rsilverstein@silvprop.com
ESD Investment	None. Owner will pay ESD costs associated with the Project.
Project Description	Owner would convey the Property to ESD; ESD would simultaneously lease the Property back to Owner for a 20-year term; Owner would retain all responsibility and obligation to operate and maintain the Property, and would indemnify ESD; ESD would impose, as rent, a "payment-in-lieu-of-real-estate-taxes" ("PILOT") which would be less than full real estate taxes otherwise due; Owner would be required to pass all such PILOT benefit directly through to sub-tenant occupants of

the Property which qualify as Internal Revenue Code 501(c)(3) or 501(c)(6) not-for-profit organizations; Owner would purchase the Property for nominal value at lease expiration or termination.

Project Team:	Origination	Justin Ginsburgh
	Legal	Robin Stout
	Affirmative Action	Helen Daniels
	Environmental	Soo Kang

II. Project Description

A. Background

120 Wall Street is a 34-story, 615,000 square foot office building located near Front Street (between Water Street and the FDR Drive) in lower Manhattan. The Property is owned by 120 Wall Company L.L.C., an affiliate of Silverstein Properties, Inc. ("Owner"). In 1992, Owner, in cooperation with the New York City Economic Development Corporation ("EDC"), obtained designation of the Property as New York City's first and only "Association Center". Such designation provided certain tax incentives which enabled qualified not-for-profits to occupy up to approximately 400,000 square feet of cost-effective office space at the Property. The tax incentives were created through the participation of the New York City Industrial Development Agency ("NYCIDA") which supported the Property as a civic facility. As a result, the Property has attracted many of the nation's top not-for-profit organizations, including, currently, offices for the National Urban League and The United Negro College Fund, among others. Overall, not-for-profits at the Property currently occupy approximately 370,000 square feet and employ approximately 900 people.

The IDA Civic Facilities Legislation which permitted the NYCIDA to support not-for-profit civic facilities, such as the Property, has expired, thus endangering the ability of not-for-profit agencies to remain in occupancy at the Property. The not-for-profit sector is an important component of Lower Manhattan economic activity. The growth of this sector has helped to preserve Lower Manhattan as a vibrant, mixed-use central business district. More broadly, not-for-profit agencies have improved the quality of life in New York State and City and have enhanced the ability of the State and City to retain and attract private sector employers and skilled employees.

B. Proposed Project

In order to preserve the ability of not-for-profits to continue in occupancy at the Property on cost-effective terms, Owner seeks to partner with ESD to create a structure at the Property which will facilitate the retention of not-for-profits at the Property. See "Project Description" set forth in Section I above.

More specifically, ESD and Owner would enter into a Sale-Leaseback Agreement pursuant to which Owner (as Seller) would agree to sell the Property to ESD (as Buyer) for $1, on the condition that ESD (as Landlord) simultaneously lease the Property back to Owner (as Tenant).

Pursuant to the terms of the Lease:
(a) Lease term would be for 20 years;
(b) Owner/Tenant would retain all responsibility and obligation to operate and maintain the Property;
(c) Tenant would indemnify ESD from, and hold ESD harmless against, any liability arising from ESD's participation in the Lease;
(d) "rent" under the Lease would be paid directly to The City of New York, and would be calculated as a "payment-in-lieu-of-real-estate-taxes" ("PILOT") which would be less than full real estate taxes otherwise due;
(e) Owner/Tenant would be required to pass any and all such PILOT benefit directly through to sub-tenant occupants of the Property which qualify as Internal Revenue Code ("IRC") 501(c)(3) or 501(c)(6) not-for-profit organizations ("Eligible Occupants");
(f) the extent of the discounted PILOT would be such as to exempt from real estate taxes 100% of the rentable square footage ("RSF") leased to 501c3 organizations and 50% of the RSF leased to 501c6 organizations;
(g) Owner/Tenant will pay to ESD, as of each June 1 during the term of the Lease, an administrative fee of $5,000, which amount shall be subject to adjustment for inflation every 5 years; and
(h) at Lease expiration or termination, Owner/Tenant would purchase the Property from ESD/Landlord for nominal value, and ESD would convey the Property back to Owner pursuant to Bargain and Sale Deed.

C. Financial Terms and Conditions

ESD will make no investment in and will not fund the Project. Owner will pay ESD costs associated with the Project. During the term of the Lease, Owner will submit to ESD annual audited financial statements and quarterly internal financial statements certified by an officer of Owner.

III. Statutory Basis

Staff believes, and recommends that the Directors find, that the proposed Project is consistent with the requirements of the UDC Act for civic projects and satisfies the findings required under UDC Act Section 10(d) as follows (statutory language underscored):

(1) That there exists in the area in which the project is to be located, a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the project. Not-for-profit organizations generate substantial economic activity in New York and constitute an important sector of the State and City economies. Further, diversifying the employment base of Lower Manhattan is critically important to the stability of New York State and City finances. Not-for-profit organizations provide opportunities and community benefits not otherwise found in the private for-profit sector, and will add to the vibrant, mixed-use growth of the Downtown community.

(2) That the project shall consist of a building or buildings or other facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes. The Property, under the now-extinguished IDA Civic Facilities Legislation, suitably

provided not-for-profits with cost-effective office space, and is projected to continue to do so under the terms of the proposed Project, which use constitutes a community, public service, and civic purpose.

(3) That such project will be leased to or owned by the state or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been, or will be, made for the payment of the cost of the acquisition, construction, operation, maintenance and upkeep of the project. Pursuant to the proposed terms of the Project: ESD would acquire ownership of the Property and simultaneously lease the Property to Owner for purposes of maintaining cost-effective rental space at the Property for eligible not-for-profit occupants; and Owner would be responsible for all operation and maintenance of the Property.

(4) That the plans and specifications assure or will assure adequate light, air, sanitation and fire protection. The Property would continue to comply with all applicable Building Code(s), including making adequate provision for light, air, sanitation and fire protection.

The requirements of UDC Act Section 10(g) also are satisfied. No residential relocation is required because no families or individuals reside on the Project site.

IV. Essential Terms of Proposed Contract Documents

A. Sale-Leaseback Agreement between Owner and ESD
Owner (as Seller) would agree to sell the Property to ESD (as Buyer) for $1, on the condition that ESD (as Landlord) simultaneously lease the Property back to Owner (as Tenant), pursuant to the terms of a lease as set forth below.

B. Bargain and Sale Deed from Owner to EDC
Owner would sell and convey the Property to ESD.

C. Agreement of Lease between ESD as Landlord and Owner as Tenant
Simultaneously with acquiring the Property by Bargain and Sale Deed, ESD (as Landlord) would lease the Property back to Owner (as Tenant) on the following terms and conditions:
(a) Lease term would be for 20 years;
(b) Owner/Tenant would retain all responsibility and obligation to operate and maintain the Property;
(c) Tenant would indemnify ESD from, and hold ESD harmless against, any liability arising from ESD's participation in the Lease;
(d) "rent" under the Lease would be paid directly to The City of New York, and would be calculated as a "payment-in-lieu-of-real-estate-taxes" ("PILOT") which would be less than full real estate taxes otherwise due;
(e) Owner/Tenant would be required to pass any and all such PILOT benefit directly through to sub-tenant occupants of the Property which qualify as Internal Revenue Code ("IRC") 501(c)(3) or 501(c)(6) not-for-profit organizations ("Eligible Occupants");

(f) the extent of the discounted PILOT would be such as to exempt from real estate taxes 100% of the rentable square footage ("RSF") leased to 501c3 organizations and 50% of the RSF leased to 501c6 organizations;
(g) Owner/Tenant will pay to ESD, as of each June 1 during the term of the Lease, an administrative fee of $5,000, which amount shall be subject to adjustment for inflation every 5 years; and
(h) at Lease expiration or termination, Owner/Tenant would purchase the Property from ESD/Landlord for nominal value, and ESD would convey the Property back to Owner pursuant to Bargain and Sale Deed.

V. Environmental Review

As required by the State Environmental Quality Review Act and the implementing regulations of the New York State Department of Environmental Conservation, ESD staff performed an environmental review of the proposed Project. This review determined that the Project would be an Unlisted Action, which would not have a significant adverse effect on the environment. Staff therefore recommends that the Directors make a Determination of No Significant Adverse Effect on the Environment.

VI. Affirmative Action

ESD's Non-Discrimination and Affirmative Action program will apply.

VII. Requested Actions

The Directors are requested: to make UDC Act Sections 10(d) and 10(g) findings in connection with the proposed Project; and to determine that the proposed Project will have no significant adverse effect on the environment.

For purposes of conducting a public hearing thereon, the Directors are requested to adopt the following documents, and to authorize the Corporation to hold public hearing(s) thereon:
(1) proposed General Project Plan as set forth in these materials;
(2) proposed Sale-Leaseback Agreement between Owner and ESD on the terms and conditions as described in these materials;
(3) proposed Bargain and Sale Deed from Owner to ESD as described in these materials;
(4) proposed Agreement of Lease between ESD as Landlord and Owner as Tenant on the terms and conditions as described in these materials; and
(5) proposed return Bargain and Sale Deed from ESD back to Owner as at Lease expiration or termination as described in these materials.

On the condition that, and subject to, there being no substantive negative testimony or comment on these documents at such public hearing(s), the Directors further are requested, on the terms and conditions set forth in these materials:
(i) to adopt the General Project Plan;
(ii) to approve the essential terms of the Sale-Leaseback Agreement, the Bargain and Sale Deeds, and the Agreement of Lease;
(iii) to authorize acquisition and disposal of the Property; and
(iv) to authorize execution of the Sale-Leaseback Agreement, the Bargain and Sale Deeds, and

the Agreement of Lease, and related documents as necessary to effectuate the Project described in these materials.

VIII. Attachments

Resolutions

January 20, 2012

New York City (New York County) – 120 Wall Street Civic Project – Civic Project Findings; Determination of No Significant Adverse Effect on Environment; Adoption of General Project Plan; Adoption of Sale-Leaseback Agreement, Bargain and Sale Deed, and Agreement of Lease with Owner of 120 Wall Street; Authorization to Hold Public Hearing(s) Thereon; Authorization to Acquire Real Property; Authorization to Lease Real Property; and Authorization to Take Related Actions

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RESOLVED, that, on the basis of the materials presented to this meeting (the "Materials"), a copy of which is hereby ordered filed with the records of the Corporation relating to the 120 Wall Street Civic Project (the "Project"), the Corporation hereby determines and finds pursuant to Section 10(d) of the New York State Urban Development Corporation Act of 1968, as amended (the "Act"), that:

(1) There exists in the area in which the Project is to be located, a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the Project. Not-for-profit organizations generate substantial economic activity in New York and constitute an important sector of the State and City economies. Further, diversifying the employment base of Lower Manhattan is critically important to the stability of New York State and City finances. Not-for-profit organizations provide opportunities and community benefits not otherwise found in the private for-profit sector, and will add to the vibrant, mixed-use growth of the Downtown community.

(2) The Project shall consist of a building or buildings or other facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes. The Property, under the now-extinguished IDA Civic Facilities Legislation, suitably provided not-for-profits with cost-effective office space, and is projected to continue to do so under the terms of the proposed Project, which use constitutes a community, public service, and civic purpose.

(3) Such Project will be leased to or owned by the state or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been, or will be, made for the payment of the cost of the acquisition, construction, operation, maintenance and upkeep of the Project. Pursuant to the proposed terms of the Project: the Corporation would acquire ownership of the Property and simultaneously lease the Property to Owner for purposes of maintaining cost-effective rental space at the Property for eligible not-for-profit occupants; and Owner would be responsible for all operation and maintenance of the Property.

(4) The plans and specifications assure or will assure adequate light, air, sanitation and fire protection. The Property would continue to comply with all applicable Building Code(s), including

making adequate provision for light, air, sanitation and fire protection.

and be it further

RESOLVED, that, on the basis of the Materials, the Corporation hereby determines and finds pursuant to Section 10(g) of the Act that there are no families or individuals to be displaced from the Project area; and be it further

RESOLVED, that based on the Materials, the Corporation hereby determines that the proposed Project will have no significant adverse effect on the environment; and be it further

RESOLVED, that, on the basis of the Materials, the Corporation hereby adopts, for purposes of the public hearing required by the UDC Act, and substantially on the terms and conditions described in the Materials:
(1) subject to the requirements of Section 16(2) of the Act, the proposed General Project Plan (the "Plan") for the Project set forth in the Materials, together with such changes therein as the President and Chief Executive Officer of the Corporation or his designee(s) may deem appropriate, a copy of which Plan, together with such changes, is hereby ordered filed with the records of the Corporation relating to this Project; and
(2) the essential terms of the proposed Sale-Leaseback Agreement between 120 Wall Company, L.L.C. ("Owner") and the Corporation, the Bargain and Sale Deeds, and the Agreement of Lease between ESD as Landlord and Owner as Tenant (collectively, the "Contract Documents"); and be it further

RESOLVED, that the President and Chief Executive Officer of the Corporation or authorized designee(s), be, and each of them is, hereby authorized and directed, in the name of and on behalf of the Corporation, to take all such actions as may be necessary or appropriate to schedule and hold such public hearing(s) as required by the Act or any other applicable law (which hearings may be held simultaneously), including, without limitation, the providing, filing, or making available of copies of the Plan and the essential terms of the Contract Documents, the fixing of a date for such hearing(s), the publication of a notice of such public hearing(s) as required by law and in accordance with procedures heretofore approved by the Corporation with respect to similar hearings, and the making of a report or reports to the Corporation on such hearing(s), oral or written comments received, or local municipality recommendation received, if any; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer or authorized designee(s) that no substantive negative testimony or comment on the Plan or Contract Documents was received at the public hearing and that the requirements of the Public Authorities Accountability Act have been complied with:
(1) the Plan, and the findings previously made with respect thereto, shall be deemed affirmed and effective as of the conclusion of such hearing; and
(2) the essential terms of the Contract Documents shall be deemed approved; and be it further

RESOLVED, that upon written finding of the President and Chief Executive Officer or authorized

designee(s) that no substantive negative testimony or comment on the Plan or Contract Documents was received at the public hearing and that the requirements of the Public Authorities Accountability Act have been complied with:
(1) the Corporation finds, pursuant to the UDC Act, that the Contract Documents are in conformity with the Plan;
(2) the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed to execute on behalf of the Corporation, substantially on the terms and conditions set forth in the Materials, the Sale-Leaseback Agreement, the Bargain and Sale Deeds, and the Agreement of Lease, including all exhibits and necessary documents related thereto;
(3) the Corporation finds that it is necessary and convenient for the Corporation to acquire the Property (as defined in the Plan) from Owner for the Corporation's immediate or future use in furtherance of the Corporation's corporate purposes and the Plan;
(4) the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed on behalf of the Corporation to execute and deliver such documents and to take such related actions as may be necessary or appropriate for the Corporation to acquire the Property from Owner pursuant to the Materials and these Resolutions; and
(5) the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed on behalf of the Corporation to execute and deliver such documents and to take such related actions as may be necessary or appropriate for the Corporation to dispose of the Property to Owner via lease, and upon the expiration or termination of the lease via Bargain and Sale Deed, pursuant to the terms and conditions described in the Materials and these Resolutions; and be it further

RESOLVED, that Corporation approval is expressly contingent upon: (1) approval of the Public Authorities Control Board; and (2) receipt of all other necessary approvals; and be it further

RESOLVED, that the President and Chief Executive Officer or authorized designee(s) be, and each of them hereby is, authorized and directed in the name of and on behalf of the Corporation to execute and deliver any and all such documents and to take all such related actions as may be necessary or appropriate to effectuate the foregoing resolutions.

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