

EMPIRE STATE NEW MARKET CORPORATION

at the offices of the
New York State Urban Development Corporation
d/b/a Empire State Development
633 Third Avenue
New York, New York 10017

Meeting of the Directors

Tuesday

August 14, 2012 – 3:00 p.m.

PROPOSED AGENDA

CORPORATE ACTIONS

1. Approval of the Minutes of the September 15, 2011 and June 19, 2012 Directors' Meetings

FOR CONSIDERATION

2. Brooklyn (New York City Region -- Kings County) -- Brooklyn Navy Yard Development Corporation - New Markets Tax Credit Transaction (the "NMTC Transaction") - Authorization to Perform Certain Acts in Connection with the Sub-Allocation of New Markets Tax Credits ("NMTCs") to ESNMC Subsidiary CDE II, LLC (the "Subsidiary CDE") and the Closing of the NMTC Transaction and to Take Related Actions

Item # 1

EMPIRE STATE NEW MARKET CORPORATION

Meeting of the Directors
Held at the Offices of
Empire State Development
633 Third Avenue
New York, New York 10017

September 15, 2011

MINUTES

**In Attendance
Directors:**

Kenneth Adams – Acting Chairman
Leecia Eve
Sam Hoyt (via video conference)
Susan Shaffer
Frances A. Walton

ESNMC Staff:

Kevin McLaughlin – President (via telephone conference)
Kathleen Mize – Controller
Deborah Royce – Corporate Secretary

ESD Staff:

Jonathan Beyer – Senior Counsel
Helen Daniels – Director - Affirmative Action
Steven Gawlik - VP, Capital Projects & Sr. Counsel (via video conference)
Robert Godley – Treasurer
Jonevan Hornsby – Senior Financial Analyst
Natasha Pallan – Director - Subsidiary Finance
Sheila Robinson – Deputy to the Chief Financial Officer
Renzo Sosa – Manager - Procurement & Administrative Services

The meeting of the Empire State New Market Corporation (“ESNMC”) was called to order at 12:32 p.m. Kenneth Adams noted for the record that the meeting was being webcast and that he would be the Acting Chairman for the meeting. He further stated for the record that the Directors received the relevant written materials in advance of the meeting and noted the Corporation’s policy, which welcomes public comments on the items on the current Agenda.

Acting Chairman Adams then asked Kevin McLaughlin to present the first Agenda item, a request to appoint an officer of the Corporation.

Mr. McLaughlin stated that the Corporation is going to be required to open and maintain bank accounts for transactions to carry out its corporate duties. Noting that Kathleen Mize is currently the Controller to the New York Job Development Authority and the Deputy Chief Financial Officer and Controller to Empire State Development, he then recommended that the Directors approve her appointment as the Corporation’s Controller.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

26. EMPIRE STATE NEW MARKET CORPORATION – Officers of Empire State New Market Corporation (the “Corporation”) – Appointment of Controller

RESOLVED, that the following individual be, and she hereby is, appointed to the office of Controller, until her earlier resignation or removal, such appointment being effective as of the date indicated in the attached materials, a copy of which is hereby ordered to be filed with the records of the Corporation:

<u>Name</u>	<u>Office</u>
Kathleen Mize	Controller

and be it further

RESOLVED, that in accordance with and for all purposes of the Corporation’s By-Laws, including but not limited to the indemnification provisions thereof, the above-referenced individual is an “officer” of the Corporation.

* * *

Rob Godley then presented a request for authorization to establish depositories for the Corporation and its Subsidiary LLCs in order to carry out the New Markets Tax Credit program according to the requirements of each specific transaction.

In his presentation Mr. Godley requested the Directors to authorize the Chief Financial Officer, General Counsel, Controller and/or Treasurer, to establish the bank accounts. In addition, the Directors were being asked to authorize these same Corporate Officers to have the authority to withdraw funds from the bank, noting that any withdrawal over \$10,000 would require the signature of two Officers. Mr. Godley noted that this authorization procedure is substantially similar to Empire State Development’s authorization procedure.

Following Mr. Godley’s presentation a motion was duly made and seconded, and the following resolution was unanimously adopted:

27. EMPIRE STATE NEW MARKET CORPORATION - Approval of Empire State New Market Corporation (“Corporation”) Depositories and Depositories for Subsidiary LLCs; Authorization to Establish Accounts; and Adoption of Standard Corporation Banking Resolution
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WHEREAS, the Corporation wishes to provide for the establishment of bank accounts on behalf of itself and its Subsidiary LLCs;

NOW THEREFORE, on the basis of and subject to the materials presented to this meeting, a copy of which is hereby ordered to be filed with the records of the Corporation, the Board of Directors of the Corporation upon motion duly made and seconded, duly adopts the following Resolutions:

RESOLVED, that any banking institution approved by the Directors of the Corporation in connection with a specific New Markets Tax Credit Transaction be, and each of them here is, designated as a depository of the Corporation and/or its Subsidiary LLCs ("Bank") and that the officers and agents of this Corporation and/or the Subsidiary LLCs be and hereby are, and each of them hereby is, authorized to deposit any of the funds of the Corporation and/or the Subsidiary LLCs and to establish accounts to specific projects or programs in the Bank either at its head office or at any of its branches.

RESOLVED, that until the further order of the Directors, any funds of this Corporation deposited in the Bank be subject to withdrawal or charge at any time and from time to time upon checks, wires, undertakings or other instruments or orders for the payment of money when made, signed, drawn, accepted or endorsed on behalf of this Corporation and/or the Subsidiary LLCs by the General Counsel, Chief Financial Officer, Controller or Treasurer, provided however, that any such amount in excess of \$10,000.00 shall require the signature of two of the aforementioned officers and that the Bank is hereby authorized to pay any such instrument or make any such charge and also to receive the same instruments of issue or the disposition of the proceeds even if drawn to the individual order of any signing person, or payable to the Bank or others for his account, or tendered in payment of his individual obligation, and whether drawn against an account in the name of this Corporation or in the name of any officer or agent of this Corporation as such, and, at the option of the Bank, even if the account shall not be in credit to the full amount of such instrument or charge.

RESOLVED, that the General Counsel, Chief Financial Officer, Controller, Treasurer, or any person acting in any such designated capacity are hereby authorized on behalf of this Corporation:

1. To withdraw from the Bank and give receipt for or to authorize the Bank to deliver to bearer or to one or more designated persons, all or any documents and securities of other property held by it, whether held as collateral security or for safekeeping or for any other purpose;
2. To create and deliver all security and other agreements, financing statements and other papers required by the Bank in connection with any of the foregoing matters and affix thereto the seal of this Corporation.

RESOLVED, that the Secretary or any other officer of this Corporation be, and hereby is, authorized to certify to the Bank that the Corporation has adopted any resolution in a form required by the Bank with respect to the authority granted herein. The names of the present officers of this Corporation and other persons authorized to sign for it and the offices respectively held by them together with specimens of their signatures, and in case of any change of any holder of any such office or holders of any such offices, the fact of such change and names of any new officers and the offices respectively held by them together with

specimens of their signatures, and the Bank be, and hereby is, authorized to honor any instrument signed by any new officer or officers in respect of whom it has received any such certificate or certificates with the same force and effect as if said officer or said officers were named in the foregoing resolutions in the place of any person or persons with the same title or titles.

RESOLVED, that the Bank be promptly notified in writing by the Secretary or any other officer of this Corporation of any change in these resolutions, such notice to be given to each office of the Bank in which any account of the Corporation and/or the Subsidiary LLCs may be maintained and that until it has actually received such notice in writing it is authorized to act in pursuance of these resolutions, and that until it has actually so received such notice it shall be indemnified and saved harmless from any loss suffered or liability incurred by it in continuing to act in pursuance of these resolutions, even though these resolutions may have been changed.

RESOLVED, that the Chief Executive Officer, or his designee(s) be, and each of them hereby is, authorized to take such actions or execute on behalf of the Corporation such agreements, instruments and resolutions as he or she may consider necessary or appropriate in connection with the foregoing.

* * *

Jonathan Beyer presented the last Agenda item, requesting authorization for the Corporation to perform certain acts in connection with a sub allocation of New Markets Tax Credits for the Agra Farma project.

Mr. Beyer stated the Corporation previously adopted a General Project Plan for the Agra Farma Project to develop or incorporate new machinery and equipment. ESNMC and a subsidiary qualified community development entity (“CDE”) will close this New Markets Tax Credit transaction. He explained that the proceeds of the loans to be made by the CDE, upon closing of the New Markets Tax Credit transaction, will be used by Agra Farma to purchase and install new machinery and equipment at its existing facility in New Berlin, New York. Mr. Beyer

reminded the Directors that the full details of the transaction were explained in the Director's prior action.

The Directors were requested to approve the terms and provisions of certain agreements, indemnities and documents relating to the sub allocation of New Markets Tax Credit to the sub CDE and the closing. In addition, the Directors are being asked to delegate authority to an Officer of the Corporation to determine certain terms of the transaction and to execute the required documents on behalf of the Corporation in connection with the closing.

Mr. Beyer advised the Directors of the terms of the indemnity document negotiated in this transaction. He explained that ESNMC and the subsidiary created for this transaction, whom will be signing the indemnity, will have the indemnity limited to the fees generated by this particular transaction, with the exception for bad acts and if ESNMC and the sub CDEs fail to keep qualified pursuant to all terms of the treasury regulations that regulate the entire New Markets Tax Credit program.

In exchange for obtaining these favorable terms the Corporation agrees to pledge other fees that it gets for a qualification period of seven years. However, there is a ladder in the indemnity that reduces the amount of the pledge funds after a certain period of time, and after three years the Corporation would get some money back, if nothing happens. Staff determined that this is an acceptable exchange to limit the liability overall and obtain the other terms of the transaction as previously described.

Director Leecia Eve commented, among other things, that due to the unusual circumstances of ESNMC indemnifying the investors, a lot of time went into the negotiations of the indemnity agreement. She stated that she believed that the terms of the indemnity were negotiated well given the circumstances and given what is required by the market in these types of transactions. The indemnity does not expose ESD, as the Corporation's parent, at all and ESNMC's exposure is very limited by the terms of the indemnity document.

Director Frances Walton stated that she agreed with Ms. Eve's comments and that based on some research she did of other State entities that have undertaken similar types of transactions, the Corporation's transaction terms are much more favorable than have been for other State's entities. Ms. Walton commended the staff for achieving the best possible outcome in reaching this agreement of indemnity. She inquired whether the fees were limited to just this transaction. Mr. Beyer responded affirmatively. He stated that having not negotiated something favorable would have caused future investors to use it against the Corporation in future negotiations. Ms. Walton stated that this indemnity would be used as a model.

Ms. Eve stated that one reason the staff wanted to make sure this indemnity agreement would give the Corporation a level of comfort, is because it would be used in future negotiations, as what has been approved by the Board and used as the standard by which any kind of subsequent proposals are measured.

Acting Chairman Adams asked Kevin McLaughlin for his thoughts on what the future holds for these types of agreements going forward with New Markets. Mr. McLaughlin responded that he felt there will be indemnity agreements required in future deals, and the staff has done a great job in negotiating the terms of this agreement. He then asked Mr. McLaughlin how the Agra Farma Project is proceeding. Mr. McLaughlin responded that the first closing took place in July and Agra has decided to purchase their equipment and move forward with the Project. He anticipated that Agra will close on the second tranche on or about September 20th and he stated everything is moving along nicely.

Acting Chairman Adams thanked Mr. Beyer for his report and noted that Ms. Eve had helped the Directors to understand how much time and effort had gone into the indemnity agreement and advised that because of that this indemnity could set the precedent for future indemnity agreements.

Following the questions and comments by the Directors, upon motion duly made and seconded, the following resolution was unanimously adopted:

28. EMPIRE STATE NEW MARKET CORPORATION - New Berlin (Chenango County) – Agro Farma, Inc. - New Markets Tax Credit Transaction (the “NMTC Transaction”) - Authorization to Perform Certain Acts in Connection with the Sub-Allocation of New Markets Tax Credits (“NMTCS”) to ESNMC Subsidiary CDE I, LLC (the “Subsidiary CDE”) and the Closing of the NMTC Transaction and to Take Related Actions

WHEREAS, the Corporation has been certified by the Community Development Financial Institutions Fund (the “CDFI Fund”) as a “qualified community development entity” (a “CDE”), as such term is defined in the Internal Revenue Code of 1986, as amended (the “Code”), the Treasury Regulations and the related guidance, and the Corporation has entered into that

certain Allocation Agreement dated effective as of June 24, 2009 (the "Allocation Agreement") with the CDFI Fund in connection with an allocation of new markets tax credits under Section 45D of the Code ("NMTCs") in the amount of \$30,000,000 (the "Allocation");

WHEREAS, pursuant to that certain resolution approved June 24, 2011, the Corporation has agreed to sub-allocate to ESNMC Subsidiary CDE I, LLC, a New York limited liability company (the "Subsidiary CDE"), up to \$18,000,000 in NMTC authority from the Corporation's Allocation (the "Sub-Allocation") in connection with the proposed investment in Agro-Farma, Inc., a New York corporation (the "Borrower"), which Sub-Allocation is hereby ratified, confirmed and approved;

WHEREAS, pursuant to the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617), and in connection with the authorization to allocate New Market Tax Credits for the proposed project, the Directors of Corporation's sole shareholder, the New York State Urban Development Corporation, d/b/a Empire State Development, made a Determination of No Significant Effect on the Environment at their meeting of June 28, 2011, as a condition to Corporation's authority to make the investment in Borrower pursuant to Subdivision 1 of Section 12 of Section 1 of Chapter 174 of the New York Urban Development Corporation Act. This determination addressed all aspects of the proposed authorization. Therefore, no further environmental review is required in connection with this action.

WHEREAS, the board of directors has determined that the investment in the Borrower and the transactions contemplated by the Transaction Documents (as defined herein), are in the best interests of the Corporation and the Subsidiary CDE; and

WHEREAS, the board of directors has determined that, in connection with the investment in the Borrower and the transactions contemplated by the Transaction Documents, it is necessary and appropriate for the Corporation to establish on behalf of Subsidiary CDE certain bank accounts at Bank of America, N.A., (the "Bank Accounts") which Bank Accounts shall provide for such signatories as any Officer the Corporation may determine.

NOW, THEREFORE, BE IT:

RESOLVED that any Officer of the Corporation be, and each of them hereby is, authorized, empowered and directed, either alone or in conjunction with any one or more of the other officers of the Corporation, to issue, execute and deliver, on behalf of the Corporation, acting in its own capacity or as managing member of the Subsidiary CDE, the following agreements, documents and instruments, with such additional, modified or revised terms as may be acceptable to the Officer executing the same, each such determination to be conclusively evidenced by his or her execution thereof and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation, approved in all respects by the board of directors of the Corporation:

(a) Amended and Restated Operating Agreement of the Subsidiary CDE (the "Subsidiary CDE Operating Agreement") dated as of the date hereof by and between the Corporation and GS Agro-Farma NMTC Investment Fund, LLC, a Delaware limited liability company (the "Investment Fund") substantially in the form attached hereto as Exhibit A, pursuant to which the Corporation's continued appointment as managing member of the Subsidiary CDE will be confirmed, Empire State Local Development Corporation will withdraw as a member from the Subsidiary CDE and the Investment Fund will be admitted as a member of the Subsidiary CDE;

(b) Recapture Indemnity (the "CDE Indemnity") dated as of the date hereof by and between the Corporation and the Subsidiary CDE, in favor of GSGroup NMTC Investor LLC, a Delaware limited liability company, in substantially the same form as attached here to as Exhibit B;

(c) Credit Agreement (the "Loan Agreement") dated as of August 5, 2011 by and between Borrower and Banc of America CDE III, LLC, a North Carolina limited liability company ("BOA CDE"), and that certain Joinder Agreement between the Borrower, the Subsidiary CDE and BOA CDE, in its capacity as administrative agent ("Joinder Agreement"), pursuant to which Joinder Agreement the Subsidiary CDE will become a lender under the Loan Agreement, such Loan Agreement and Joinder Agreement in substantially the same form as attached hereto as Exhibit C;

(d) Sponsor Fee Agreement (the "Sponsor Fee Agreement") by and between the Corporation and the Subsidiary CDE in substantially the same form as attached hereto as Exhibit D;

(e) Asset Management Agreement (the "Asset Management Agreement") by and between the Subsidiary CDE and the Corporation in substantially the same form as attached hereto as Exhibit E;

(f) Intercreditor Agreement (the "Intercreditor Agreement") by and between Bank of America, N.A., a national banking association, in its capacity as agent for the senior lenders and as control agent, and the BOA CDE, in its capacity as agent for the Subsidiary CDE and certain other junior lenders, as acknowledged by the Borrower and in substantially the same form as attached hereto as Exhibit F;

(g) Side Letter ("Side Letter") dated as of August 5, 2011 by and among Borrower, GS Group NMTC Investor, LLC ("NMTC Investor"), GS Agro-Farma NMTC Investment Fund, LLC ("GS Fund"), Agro-Farma LL, Inc. ("Agro Lender"), as lender to GS Fund, and certain other Project lenders to Borrower, a copy of which is attached hereto as Exhibit G;

(h) Documentation necessary and appropriate to open the Bank Accounts. (the documents referred to in clauses (a) through (h) above are referred to herein collectively as the "Principal Documents"); and it is further

RESOLVED that action by any of the Officers of the Corporation, and any person or persons designated and authorized so to act by any such Officer of the Corporation, to do and perform, or cause to be done and performed, in the name and on behalf of the Corporation or the Subsidiary CDE, as the case may be, or the execution and delivery, or causing to be executed and delivered, such other security agreements, financing statements, notices, requests, demands, directions, consents, approvals, waivers, acceptances, appointments, applications, certificates, agreements, supplements, amendments, further assurances or other instruments or communications (together with the Principal Documents, the "Transaction Documents"), in the name and on behalf of the Corporation or the Subsidiary CDE, as the case may be, or otherwise, as they, or any of them, may deem to be necessary or advisable in order to carry into effect the intent of the foregoing resolutions or to comply with the requirements of the instruments approved or authorized by the foregoing resolutions is hereby approved, ratified and confirmed; and it is further

RESOLVED that the execution and delivery by any authorized Officer of the Corporation on behalf of the Corporation or the Subsidiary CDE, as the case may be, of any of the aforesaid agreements, documents and instruments authorized in the foregoing resolutions, including the Transaction Documents, with such changes and additions to the terms or provisions thereof as any Officer of the Corporation shall deem necessary or appropriate, and the taking by any Officer of this Corporation, on behalf of the Corporation or the Subsidiary CDE, as the case may be, of any acts in any way related to the transactions contemplated by the foregoing resolutions, and such other agreements, documents and instruments shall be conclusive evidence of their approval thereof and of their authority to execute and deliver such agreements, documents and instruments and to take and perform such acts in the name and on behalf of the Corporation or the Subsidiary CDE, as the case may be; and it is further

These resolutions shall be filed with the records of the meetings of the Corporation and the Subsidiary CDE.

* * *

There being no further business, the meeting was adjourned at 12:50 p.m.

Respectfully submitted,

Deborah Royce
Corporate Secretary

EMPIRE STATE NEW MARKET CORPORATION

Meeting of the Directors
Held at the Offices of
Empire State Development
633 Third Avenue
New York, New York 10017

June 19, 2012

MINUTES

In Attendance

Directors:

Frances A. Walton – Acting Chair
Justin Ginsburgh
Sam Hoyt (via telephone conference)
Susan Shaffer

ESNMC Staff:

Kevin I. McLaughlin, President (via telephone conference)
Deborah Royce, Corporate Secretary

ESD Staff:

Robin Alpaugh – Sr. Project Manager – Binghamton Regional Office
(via telephone conference)
Jonathan Beyer – Senior Counsel
Maria Cassidy – Deputy General Counsel
Vikas Gera – Project Manager, Contractor & Supplier Diversity
Jonevan Hornsby – Sr. Financial Analyst
Kathleen Mize – Deputy CFO & Controller
Natasha Pallan – Director, Subsidiary Finance
Paula Roy – VP, Portfolio Management & Project Finance

The meeting of the Empire State New Market Corporation (“ESNMC”) was called to order at 3:03 p.m. Frances Walton noted for the record that the meeting was being webcast and that she would be the Acting Chairman for today’s meeting. Further, she stated that the Directors had received the relevant written materials in advance of the meeting and noted for the record the Corporation’s policy, which welcomes public comments on the items on the

current Agenda.

The first order of business was the approval of the Minutes of the June 24, 2011 meeting of the Directors. Noting no corrections and upon motion duly made and seconded, the following resolution was unanimously adopted:

29. APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE JUNE 24, 2011 MEETING OF THE DIRECTORS OF THE EMPIRE STATE NEW MARKET CORPORATION

RESOLVED, that the Minutes of the meeting of the Corporation held on June 24, 2011 as presented to this meeting, are hereby approved and all actions taken by the Directors present at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Acting Chair Walton then requested the ex-officio appointment of Empire State Development's ("ESD") Deputy General Counsel, Maria Cassidy, as Deputy General Counsel to the Corporation and further requested the Directors to make the ex-officio appointment of ESD's General Counsel, which is currently vacant, as General Counsel to the Corporation. Before calling for a motion, Ms. Walton noted that Ms. Cassidy has been Acting General Counsel of ESD for some time and is doing a tremendous job for which she and her colleagues are very appreciative.

Upon motion duly made and seconded, the following resolution was unanimously adopted:

30. EMPIRE STATE NEW MARKET CORPORATION – Officers of the Corporation -
Appointment of Officers

RESOLVED, that the following individual be, and hereby is, appointed to the office which appears opposite her name, until her earlier resignation or removal, her appointment being effective as of the date indicated in the attached materials, a copy of which is hereby ordered to be filed with the records of the Corporation:

<u>Name</u>	<u>Office</u>
Maria Cassidy	Deputy General Counsel, ex-officio

and be it further

RESOLVED, that in accordance with and for all purposes of the Corporations’ By-Laws, including but not limited to the indemnification provisions thereof, the above-referenced individual is an “officer” of the Corporation;

and be it further

RESOLVED, that the title of ESD General Counsel is an ex-officio appointment as General Counsel to the Corporation and confirms that this position is an “officer” of the Corporation within the meaning of the provisions of the Corporation’s bylaws, including the indemnification provisions thereof.

* * *

Kevin McLaughlin then requested authorization for the Corporation to, among other things, approve an allocation of up to \$12 million in New Market Tax Credits in connection with the Brooklyn Navy Yard Development Capital Project.

Mr. McLaughlin explained to the Directors that the Project is a major renovation of a 215,000 square-foot, multi-tenanted manufacturing facility that will ultimately house, at least initially, two major manufacturing companies, Crye Precision, which is a premier designer and manufacturer of camouflage uniforms, Kevlar vests and so forth, very well known by the United

States military; and the second tenant will be Macro Sea, which is a new model for manufacturing. Macro Sea will take about 50,000 square feet initially and Crye will take about 85,000 square feet.

Empire State Development (“ESD”) has been involved with this Project for some time and the Brooklyn Navy Yard came to ESNMC and asked it to partner with another community development entity, SeaCo, to provide enough new market allocation to fill the gap in the financing. The Corporation has been working with SeaCo and Goldman Sachs, which will be the investor on the Project. Mr. McLaughlin stated that it announced a few weeks ago that this is a \$50 million Project in the Brooklyn Navy Yard, so the Corporation is very excited to be involved with it.

ESNMC’s Advisory Board met last week and unanimously recommended to move ahead with the closing of the Project, and now Mr. McLaughlin is asking the Directors to approve the requested allocation of New Market Tax Credits. Expecting to close in the middle part of July, ESD will also meet on June 26th to consider this request, which would then be followed by a required public hearing on the Project with the hope of meeting the closing target date.

Following Mr. McLaughlin’s presentation Director Walton asked, if with this allocation, would the Corporation have fully allocated its portion of New Market Tax Credit. Mr.

McLaughlin answered in the affirmative, and that he agreed that this would put the Corporation in a good position to re-apply for additional allocations sometime in July or August.

Upon motion was duly made and seconded and the following resolution was unanimously adopted:

31. EMPIRE STATE NEW MARKET CORPORATION – Brooklyn (New York City Region - Kings County) – Brooklyn Navy Yard Development Corporation Capital – New Markets Tax Credit Allocation – Authorization to Adopt the Proposed General Project Plan; Authorization to Allocate New Markets Tax Credits and to Take Related Actions
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RESOLVED, that ESNMC (the “Corporation”) does hereby adopt, subject to the requirements of Section 16(2) of the UDC Act, the proposed General Project Plan (the “Plan”) for the Project submitted to this meeting, together with such changes therein as the President 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; and be it further

RESOLVED, that upon written finding of the President of the Corporation or his designee(s) that no substantive negative testimony or comment has been received at the public hearing held on the Plan, such Plan shall be effective at the conclusion of such hearing, and that upon such written finding being made, the President of the Corporation or his designee(s) be, and each of them hereby is, authorized to cause the Corporation to make to Brooklyn Navy Yard Development Corporation, an allocation for a total amount of up to Twelve Million Dollars (\$12,000,000) from the New Markets Tax Credit Program, for the purposes, and substantially on the terms and conditions, set forth in the materials presented to this meeting, with such changes as the President of the Corporation or his designee(s) may deem appropriate; and be it further

RESOLVED, that pursuant to Section 10 (g) of the New York State Urban Development Corporation Act of 1968, as amended (the “Act”), that there are no families or individuals to be displaced from the project area; and be it further

RESOLVED, that the President of the Corporation or his designee(s) be, subsequent to the making of the allocation, and each of them hereby is, authorized to cause the Corporation to take such actions and make such modifications to the terms of the allocation as he or she may deem necessary or appropriate in the administration of the allocation; and be it further

RESOLVED, that the President or his designee(s) be, and each of them hereby is, authorized in the name and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as he or she may in his or her sole discretion consider to be necessary or proper to effectuate the foregoing resolutions. Any actions previously taken by the Corporation in furtherance of the Plan are hereby ratified and approved.

* * *

There being no further business, the meeting was adjourned at 3:10 p.m.

Respectfully submitted,

Deborah Royce
Corporate Secretary

Item # 2

FOR CONSIDERATION

August 14, 2012

TO: The Directors

FROM: Kevin I. McLaughlin

SUBJECT: Brooklyn (New York City Region - Kings County) -- Brooklyn Navy Yard Development Corporation - New Markets Tax Credit Transaction (the "NMTC Transaction")

REQUEST FOR: Authorization to Perform Certain Acts in Connection with the Sub-Allocation of New Markets Tax Credits ("NMTCs") to ESNMC Subsidiary CDE II, LLC (the "Subsidiary CDE") and the Closing of the NMTC Transaction and to Take Related Actions

Introduction

The Directors are being asked to approve the form, terms and provisions of certain agreements, indemnities and related documents in connection with the sub-allocation of NMTCs to the Subsidiary CDE and the closing of the NMTC Transaction (collectively, the "NMTC Transaction Documents"). The Directors are also being asked to delegate to an authorized officer of the Corporation the authority to determine certain terms of the NMTC Transaction Documents and to execute such NMTC Transaction Documents on behalf of the Corporation and the Subsidiary CDE in connection with the closing of the NMTC Transaction.

Background

On June 19, 2012, the Board of Directors adopted the resolution regarding the "Brooklyn (Kings County) - Brooklyn Navy Yard Development Corporation - New Markets Tax Credit Allocation - Authorization to Adopt the Proposed General Project Plan; Authorization to Allocate New Markets Tax Credits and To Take Related Actions." The Corporation and the Subsidiary CDE now wish to close the NMTC Transaction. Using the proceeds of the loans to be made by the Subsidiary CDE and certain other unrelated community development entities that are affiliates of Goldman Sachs and Seedco Financial Services, Inc. (the "Other CDEs"), upon closing of the NMTC Transaction, GMC Landlord, LLC, a New York limited liability company. (the "Borrower"), will redevelop buildings 28, 123 and 128 of the Brooklyn Navy Yard, known as the Building 128 complex, into a 215,000-square foot, multi-tenanted, LEED-Silver certified commercial rental facility (the "Project"). In connection with the NMTC Transaction, the Corporation, the Subsidiary CDE, the Other CDEs and certain affiliates of the Other CDEs (the "Other Allocatees") will enter into a Community Benefits Agreement (the "Community Benefits Agreement") with the Borrower and the master tenant of the Project, GMC Master Tenant, LLC, a New York limited liability company (the "Master Tenant"),

pursuant to which the Borrower and the Master Tenant will endeavor to (and will cause any subtenants to endeavor to), among other things, create jobs and provide job training to residents of low-income communities (the "Community Impact Goals"). The Borrower and the Master Tenant will be obligated under the Community Benefits Agreement to prepare and submit annual reports describing their endeavors to achieve the Community Impact Goals; provided, however, any failure by the Borrower and the Master Tenant to satisfy the Community Impact Goals will not trigger a default under any of the NMTC Transaction Documents. For a more detailed description of the Project and the Borrower's business, please see the General Project Plan described in the memorandum dated June 19, 2012 submitted to the Board of Directors of the Corporation on June 19, 2012. In accordance with Section 6262 of the UDC Act, the NMTC Transaction was also approved by the Board of the Urban Development Corporation on June 24, 2012.

The loans to be made by the Subsidiary CDE to Borrower are expected to be in the approximate amount of \$11,640,000 and to be evidenced by, among other documents, a Building Loan Agreement, a Loan A Promissory Note in the amount of \$8,490,000 and a Loan B Promissory Note in the amount of \$3,150,000, and secured by a security interest in Borrower's non-real estate assets, certain account pledge agreements, and certain guaranties by BNYDC.

Environmental Review

Pursuant to the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617), and in connection with the approval of funding for the proposed project, the ESD Directors on behalf of the Empire State New Market Corporation made a Determination of No Significant Effect on the Environment at their meeting of March 23, 2011. This determination addressed all aspects of the proposed project. Therefore, no further environmental review is required in connection with this action.

Requested Action

In accordance with the attached resolution, you are hereby requested to authorize the Corporation, in its own capacity or as managing member of the Subsidiary CDE, to execute and deliver any and all NMTC Transaction Documents and to take any other actions necessary in connection with the closing of the NMTC Transaction. You are also requested to delegate to certain officers the power to determine the terms of the NMTC Transaction Documents and to make such changes to the related documents as he or she deems necessary and appropriate.

Attachments

Resolution with the following Exhibits (provided to the Directors only):

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| Exhibit A | Form of Amended and Restated Operating Agreement of ESNMC Subsidiary CDE II, LLC |
| Exhibit B | Form of Recapture Indemnity |
| Exhibit C | Form of Building Loan Agreement |
| Exhibit D | Form of Sponsor Fee Agreement |
| Exhibit E | Form of Asset Management Agreement |
| Exhibit F | Form of Pledge and Security Agreement (QLICI Loans) |

August 14, 2012

EMPIRE STATE NEW MARKET CORPORATION - Brooklyn (New York City Region - Kings County) -- Brooklyn Navy Yard Development Corporation - New Markets Tax Credit Transaction (the "NMTC Transaction") - Authorization to Perform Certain Acts in Connection with the Sub-Allocation of New Markets Tax Credits ("NMTCs") to ESNMC Subsidiary CDE II, LLC (the "Subsidiary CDE") and the Closing of the NMTC Transaction and to Take Related Actions

WHEREAS, the Corporation has been certified by the Community Development Financial Institutions Fund (the "CDFI Fund") as a "qualified community development entity" (a "CDE"), as such term is defined in the Internal Revenue Code of 1986, as amended (the "Code"), the Treasury Regulations and the related guidance, and the Corporation has entered into that certain Allocation Agreement dated effective as of June 24, 2009, as amended effective as of September 16, 2011 (the "Allocation Agreement"), with the CDFI Fund in connection with an allocation of new markets tax credits under Section 45D of the Code ("NMTCs") in the amount of \$30,000,000 (the "Allocation");

WHEREAS, pursuant to that certain resolution approved June 19, 2012, the Corporation has agreed to sub-allocate to ESNMC Subsidiary CDE II, LLC, a New York limited liability company (the "Subsidiary CDE"), up to \$12,000,000 in NMTC authority from the Corporation's Allocation (the "Sub-Allocation") in connection with the proposed investment in GMC Landlord, LLC, a New York limited liability company (the "Borrower"), which Sub-Allocation is hereby ratified, confirmed and approved;

WHEREAS, pursuant to the State Environmental Quality Review Act, Article 8 of the Environmental Conservation Law and its implementing regulations (6 NYCRR Part 617), and in connection with the authorization to allocate New Market Tax Credits for the proposed project, the Directors of Corporation's sole shareholder, the New York State Urban Development Corporation, d/b/a Empire State Development, made a Determination of No Significant Effect on the Environment at their meeting on June 26, 2012, as a condition to Corporation's authority to make the investment in Borrower pursuant to Subdivision 1 of Section 12 of Section 1 of Chapter 174 of the New York Urban Development Corporation Act. This determination addressed all aspects of the proposed authorization. Therefore, no further environmental review is required in connection with this action.

WHEREAS, the board of directors has determined that the investment in the Borrower and the transactions contemplated by the Transaction Documents (as defined herein), are in the best interests of the Corporation and the Subsidiary CDE; and

WHEREAS, the board of directors has determined that, in connection with the investment in the Borrower and the transactions contemplated by the Transaction Documents (as defined herein), it is necessary and appropriate for the Corporation to establish on behalf of the Subsidiary CDE certain bank accounts (the "Bank Accounts") at Carver Federal Savings Bank (the "Bank"), which Bank Accounts shall provide for such signatories as any Officer the Corporation may determine.

NOW, THEREFORE, BE IT:

RESOLVED that any Officer of the Corporation be, and each of them hereby is, authorized, empowered and directed, either alone or in conjunction with any one or more of the other officers of the Corporation, to issue, execute and deliver, on behalf of the Corporation, acting in its own capacity or as managing member of the Subsidiary CDE, the following agreements, documents and instruments, with such additional, modified or revised terms as may be acceptable to the Officer executing the same, each such determination to be conclusively evidenced by his or her execution thereof and each such determination is hereby fully and completely approved and adopted as the valid action of and by the Corporation, approved in all respects by the board of directors of the Corporation;

(a) Amended and Restated Operating Agreement of the Subsidiary CDE (the "Subsidiary CDE Operating Agreement") by and between the Corporation and Building 128 Investment Fund, LLC, a Delaware limited liability company (the "Investment Fund") substantially in the form attached hereto as Exhibit A, pursuant to which the Corporation's continued appointment as managing member of the Subsidiary CDE will be confirmed, Empire State Local Development Corporation will withdraw as a member from the Subsidiary CDE and the Investment Fund will be admitted as a member of the Subsidiary CDE;

(b) Recapture Indemnity (the "CDE Indemnity") by and between the Corporation and the Subsidiary CDE, in favor of GSGroup NMTC Investor LLC, a Delaware limited liability company ("GSGroup"), in substantially the same form as attached here to as Exhibit B;

(c) Building Loan Agreement (the "Loan Agreement") by and among Borrower and GSNMF Sub-CDE 4, LLC, a Delaware limited liability company ("GS CDE"), Empowerment Reinvestment Fund XXI, LLC, a Delaware limited liability company ("ERF CDE"), Subsidiary CDE, and GSGroup, in its capacity as administrative agent, such Loan Agreement in substantially the same form as attached hereto as Exhibit C;

(d) Sponsor Fee Agreement (the "Sponsor Fee Agreement") by and between the Corporation and the Subsidiary CDE in substantially the same form as attached hereto as Exhibit D;

(e) Asset Management Agreement (the "Asset Management Agreement") by and between the Subsidiary CDE and the Corporation in substantially the same form as attached hereto as Exhibit E;

(f) Pledge and Security Agreement (QLICI Loans) (the "Pledge and Security Agreement") by GMC Brooklyn, Inc., a New York corporation, and GMC Brooklyn Master Tenant, LLC, a New York limited liability company, in favor of GSGroup for the benefit of the City First CDE, GS CDE and ERF CDE in substantially the same form as attached hereto as Exhibit E;

(g) Account control agreements with respect to certain disbursement and fee reserve accounts; and

(h) Documentation necessary and appropriate to open the Bank Accounts.

(the documents referred to in clauses (a) through (h) above are referred to herein collectively as the "Principal Documents"); and it is further

RESOLVED that pursuant to the terms of the CDE Indemnity, any Officer of the Corporation is authorized, in the name and on behalf of the Corporation, to deposit 50% of the sub-allocation fee in the amount of \$360,000 to be paid by the Subsidiary CDE to the Corporation in connection with the transaction described herein into an account at Bank of America, N.A. or another bank specified by GSGroup as security for the Corporation's and the Subsidiary CDE's obligations under the CDE Indemnity;

RESOLVED that action by any of the Officers of the Corporation, and any person or persons designated and authorized so to act by any such Officer of the Corporation, to do and perform, or cause to be done and performed, in the name and on behalf of the Corporation or the Subsidiary CDE, as the case may be, or the execution and delivery, or causing to be executed and delivered, such other security agreements, financing statements, notices, requests, demands, directions, consents, approvals, waivers, acceptances, appointments, applications, certificates, agreements, supplements, amendments, further assurances or other instruments or communications (together with the Principal Documents, the "Transaction Documents"), in the name and on behalf of the Corporation or the Subsidiary CDE, as the case may be, or otherwise, as they, or any of them, may deem to be necessary or advisable in order to carry into effect the intent of the foregoing resolutions or to comply with the requirements of the instruments approved or authorized by the foregoing resolutions is hereby approved, ratified and confirmed; and it is further

RESOLVED that the execution and delivery by any authorized Officer of the Corporation on behalf of the Corporation or the Subsidiary CDE, as the case may be, of any of the aforesaid agreements, documents and instruments authorized in the foregoing resolutions, including the Transaction Documents, with such changes and additions to the terms or provisions thereof as any Officer of the Corporation shall deem necessary or appropriate, and the taking by any Officer of this Corporation, on behalf of the Corporation or the Subsidiary CDE, as the case may be, of any acts in any way related to the transactions contemplated by the foregoing resolutions, and such other agreements, documents and instruments shall be conclusive evidence of their approval thereof and of their authority to execute and deliver such agreements, documents and instruments and to take and perform such acts in the name and on behalf of the Corporation or the Subsidiary CDE, as the case may be; and it is further

RESOLVED these resolutions shall be filed with the records of the meetings of the Corporation and the Subsidiary CDE.

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