

42ND ST. DEVELOPMENT PROJECT, INC.

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

Meeting of the Directors

March 19, 2015

AGENDA

ADMINISTRATIVE ACTIONS

1. Approval of Minutes of the October 21, 2010 Directors' Meeting
2. Appointment of Officers – President, Executive Vice President, Executive Vice President & General Counsel, Chief Financial Officer, and Treasurer

FOR CONSIDERATION

3. New York (New York County) – Forty-Second Street Development Land Use Improvement Project - Authorization to Amend Initial Theater Capital Reserve Fund Agreement with The New 42nd Street, Inc.; Authorization to Execute a Second Theater Capital Reserve Fund Agreement with the New 42nd Street, Inc.

42nd ST. DEVELOPMENT PROJECT, INC.

MINUTES

of a
Meeting of the Directors
held on

Thursday, October 21, 2010

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

Directors

In Attendance: Dennis Mullen, Chairman
Paul Ciminelli
Robert Dyson
Joyce Miller

Also Present:

Peter Davidson, Executive Director
Anita W. Laremont, Senior Vice President and
General Counsel, ESD
Eileen McEvoy, Secretary
Robin Stout, Senior Counsel
Frances Walton, Chief Financial Officer

The meeting was called to order at 2:46 p.m. It was noted for the record that notice to the public and news media of the time and place of the meeting had been given in compliance with the New York State Open Meetings Law.

DRAFT – SUBJECT TO REVIEW AND REVISION

The Chair then set forth the guidelines regarding comments by the public on matters on the Agenda.

Before proceeding to the business of the meeting, the Chair asked Mr. Stout to provide a status report on the 42nd Street Development Project which is a wholly owned subsidiary of ESD.

Mr. Stout provided a detailed outline of the various milestones of the project addressing for the most part, the current status of the properties condemned by ESD and transferred to 42DP, Inc. with a reversion of any interest to the City of New York. Mr. Stout noted that 42DP then ground leased all of those properties to various developers generally for a term of 99 years.

Mr. Stout added that 42DP continues to own the properties and continues to oversee the properties for conformity with the financial and design terms of the various leases. Mr. Stout explained that a day-to-day control of the properties, however, largely rests with the relevant developer.

Mr. Stout then provided a more detailed description of the status of certain of the properties.

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Among other things, Mr. Stout noted that although the project site is essentially built, there remains much for 42DP, Inc. to do as owner of nearly 13 acres of prime midtown Manhattan.

Chair Mullen thanked and congratulated Mr. Stout and his team for their outstanding work, noting that it has contributed mightily to the economic vitality of the City of New York and the State of New York.

The first item on the Agenda was the approval of the Minutes of the March 20, 2008 meeting. Upon motion duly made and seconded, the following resolution was unanimously adopted:

APPROVAL OF MINUTES AND RATIFICATION OF ACTIONS TAKEN AT THE MARCH 20, 2008 MEETING OF THE DIRECTORS OF THE 42nd STREET DEVELOPMENT PROJECT, INC.

RESOLVED, that the Minutes of the meeting of the Corporation held on March 20, 2008, as presented to this meeting, are hereby approved and all actions taken by the Directors presented at such meeting as set forth in such Minutes, are hereby in all respects ratified and approved as actions of the Corporation.

* * *

Chairman Mullen then asked the Directors to approve the appointment of Peter Davidson as Vice President of 42DP, Inc.

DRAFT – SUBJECT TO REVIEW AND REVISION

The Chair called for questions or comments. Director Dyson asked who serves as the President of the Corporation and he was informed that that office is vacant and that it is currently believed that there is no reason to fill that vacancy as the project is winding down.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

New York (New York County) – Forty-Second Street Development Land Use Improvement Project – Appointment of Peter Davidson as Vice President of 42nd St. Development Project, Inc. (the “Corporation”)

RESOLVED, that in accordance with the materials presented to this meeting and ordered filed with the records of the Corporation, the Directors do hereby appoint Peter Davidson as Vice President of the Corporation, to have and hold all the powers of Vice President of the Corporation, until his earlier resignation or removal; and be it further

RESOLVED, that in accordance with and for all purposes of the By-Laws of the Corporation, Mr. Davidson is an “officer” of the Corporation with full signing authority on behalf of the Corporation; and be it further

RESOLVED, that the Vice President of the Corporation or his designees be, and each of them hereby is, authorized to take any and all actions necessary to implement the foregoing resolutions.

* * *

Mr. Stout then provided a further update for the Directors information. The update provided related to the projects reversion to the City of New York.

Mr. Stout explained that as previously mentioned, pursuant to one of the initial project documents, the City of New York has a reversionary interest in the project sites. He added that

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essentially, the ownership of the project properties reverts to the City once the Project has been fully built out.

Since the project is nearing that point, Mr. Stout continued, ESD and 42DP staff have been discussing with the staff of New York City's Economic Development Corporation ("EDC"), the transfer of 42nd Street properties to EDC along with the project's administrative responsibilities currently performed by ESD and 42DP.

Mr. Stout further noted that ESD, 42DP and EDC staff have been performing annual reconciliations of the project revenues and expenses for many years and that for the past many years, the project has generated more revenue than expenses. These revenues, he continued, have been divided between 42DP and EDC per the project documents.

Mr. Stout added that recently the project fully repaid ESD and 42DP the nominal value of its initial investment and going forward, the City will be the sole recipient of the bulk of 42nd Street's future revenues mostly in the form of payments in lieu of property taxes.

Accordingly, Mr. Stout noted, it is anticipated that both the ownership of the properties and the related administrative responsibility will be transferred to EDC in the relatively near future.

DRAFT – SUBJECT TO REVIEW AND REVISION

Mr. Stout continued and noted that given that some project costs are ongoing, ESD and 42DP will continue to recover any and all project outlays via the financial reconciliation with EDC which will be ongoing.

Director Corbett asked if it is correct that all of the funding will go directly to the City so that anything that ESD needs will then be reimbursed from the City and Mr. Stout said that that was correct.

Mr. Stout then asked the Directors to authorize the Corporation to execute a Capital Theatre Reserve Fund with The New 42nd Street, Inc. for up to \$5,000,000.

Mr. Stout provided the relevant background information with regard to this request which included the source of these funds as being a portion of a \$23.2 million project fee paid to the City and the State by the private developer.

The Chair called for questions or comments. Director Miller noted that the rest of the capital plan is going to be financed through private donations and Mr. Stout stated that that was correct.

Director Miller then asked if there is any kind of matching requirement or contingency in case complications arise.

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Mr. Stout explained that the capital repair items to be funded are set forth in specific annual requests that come from the new 42 will be items different from the items covered by private fundraising.

Director Corbett asked if there is a sense of what kind of work will be done over the coming year.

Specifically, he asked if there is work that is already scheduled or will the funding stimulate this type of activity.

Mr. Stout stated that the first of these monies will be used to redo HVAC and operating systems with the Victory Theatre and the rehearsal building and any remaining funds will be utilized for other unspecified, at this time, capital repairs.

There being no further questions or comments, and upon motion duly made and seconded, the following resolution was unanimously adopted:

NEW YORK (NEW YORK COUNTY) – FORTY-SECOND STREET DEVELOPMENT LAND USE IMPROVEMENT PROJECT – Authorization to Enter into a Theater Capital Reserve Fund Agreement with The New 42nd Street, Inc.

RESOLVED, that in accordance with the materials presented to this meeting and ordered filed with the records of the Corporation (the “Materials”), the Corporation is hereby authorized to enter into a Theater Capital Reserve Fund Agreement with The New 42nd Street, Inc. for up to \$5,000,000, substantially on the terms and conditions set forth in the Materials; and be it further

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RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take all such further actions, enter into and deliver all such agreements and instruments, and to publish and file all such notices, as they shall deem necessary or appropriate to effectuate the foregoing resolution; and be it further

RESOLVED, that all continuing authority of the officers of the Corporation or their designee(s) to carry out the Project pursuant to the resolutions previously adopted and adopted today by the Directors with respect to the Project is hereby ratified and confirmed.

* * *

Next Mr. Stout asked the Directors to authorize the Corporation to amend its contract with Li-Saltzman Architects, PC.

Mr. Stout explained that Li-Saltzman Architects had been hired by the 42nd Street Project many years ago to assist the Corporation in reviewing the construction plans for conformity with the design guidelines to ensure, among other things, that the historic features are protected.

The need for these services continues, Mr. Stout explained, and the contract is almost out of money.

Mr. Stout noted that the Directors therefore are being asked to authorize the Corporation to amend the contract by an additional \$55,000.

The Chair called for questions or comments. Hearing none, and upon motion duly made and seconded, the following resolution was unanimously adopted:

DRAFT – SUBJECT TO REVIEW AND REVISION

NEW YORK (NEW YORK COUNTY) – FORTY-SECOND STREET DEVELOPMENT LAND USE IMPROVEMENT PROJECT – Authorization to Amend a Contract with Li-Saltzman Architects, PC to Serve as Owner’s Representative for Project Sites 6W, 8E and 10

RESOLVED, that in accordance with the materials presented to this meeting and ordered filed with the records of the Corporation (the “Materials”), the Corporation is hereby authorized to amend the existing contract with Li-Saltzman Architects, PC for Owner’s Representative services at the Project’s Sites 6W, 8E and 10 to increase the aggregate limit of such contract by an additional \$55,000, from the present \$348,000 to a new aggregate limit of \$403,000, substantially on the terms and conditions set forth in the Materials; and be it further

RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take all such further actions, enter into and deliver all such agreements and instruments, and to publish and file all such notices, as they shall deem necessary or appropriate to effectuate the foregoing resolution; and be it further

RESOLVED, that all continuing authority of the officers of the Corporation or their designee(s) to carry out the Project pursuant to the resolutions previously adopted and adopted today by the Directors with respect to the Project is hereby ratified and confirmed.

* * *

There being no further business, the meeting was adjourned at 3:06 p.m.

Respectfully submitted,

Eileen McEvoy
Secretary



42nd Street Development Project

FOR CONSIDERATION

March 19, 2015

TO: The Directors

FROM: Howard Zemsky

SUBJECT: New York (New York County) – Forty-Second Street Development Land Use Improvement Project

REQUEST FOR: Appointment of Officers – President, Executive Vice President, Executive Vice President & General Counsel, Chief Financial Officer, and Treasurer

BACKGROUND

42nd St. Development Project, Inc. (“42DP”) is a wholly-owned subsidiary of New York State Urban Development Corporation d/b/a Empire State Development (“ESD”) and was the corporate entity responsible for implementing and overseeing the 42nd Street Development Project (the “Project”). At present, the officers of 42DP are:

- President..... [Vacant]
- Vice President..... Peter Davidson
- Secretary..... Eileen McEvoy
- Assistant Secretary..... Robin Stout
- Treasurer..... [Vacant]
- Assistant Treasurer..... [Vacant]

(Note that 42DP By-Laws provide that “Any Vice President shall be capable of performing all of the duties of the President and ... shall, in the absence ... of the President, perform the duties and exercise the powers of the President.”)

Mr. Davidson is 42DP’s sole officer with 42DP signing authority, but Mr. Davidson is no longer employed with ESD and is no longer resident in New York.

CONTINUING CORPORATE RESPONSIBILITIES

42DP transferred the Project and the Project properties to The City of New York (the “City”) and the New York City Economic Development Corporation (“EDC”) in September 2012. However, as former long-time lead agency for, and former Landlord of, the Project, 42DP retains certain responsibilities under Project documents, including: (1) 42DP remains signatory to certain Project documents, which require 42DP to provide estoppels or to execute amendments as

42nd Street Development Project

633 Third Avenue, 33rd Floor, New York, NY 10017-6754 Tel 212 803 3800 Fax 212 803 3839

necessary; (2) pursuant to the Project's General Project Plan, 42DP must consent to any modification of the Project's Design, Use, and Occupancy guidelines; (3) pursuant to Project documents relating to Disney's New Amsterdam Theater, 42DP and the City remain jointly liable for "Landlord Repair and Replacement Items" (which 42DP funds from a dedicated New Amsterdam Theater Percentage Rent account), and 42DP must review and approve any such expenses; (4) 42DP and EDC jointly oversee a Site 8 North Project Fee which by contract is dedicated to Project area improvements or expenses; and (5) pursuant to agreement with the City (and subject to reimbursement from the City), EDC may seek ESD/42DP advice on other Project matters.

CORPORATE OFFICERS WITH SIGNING AUTHORITY

Therefore, as a matter of corporate record-keeping, and to ensure that 42DP has a full complement of officers at any given time who can execute required documentation of behalf of 42DP, it is recommended that the following be appointed as 42DP officers with signing authority. In addition, it is recommended that the 42DP positions of President, Executive Vice President, Executive Vice President – Legal & General Counsel, Chief Financial Officer, and Treasurer be filled ex-officio with the corresponding positions of ESD President; ESD Executive Vice President; ESD Executive Vice President, Legal and General Counsel; ESD Chief Financial Officer; and ESD Treasurer, respectively, so that future ESD senior staff changes will not result in the need for additional 42DP Director action appointing new 42DP officers.

- President..... Howard Zemsky, ESD President, ex-officio
- Executive Vice President..... Joseph Chan, ESD Executive Vice President, ex-officio
(replacing Mr. Davidson)
- Executive Vice President – Legal
& General Counsel Elizabeth Fine, ESD Executive Vice President, Legal &
General Counsel, ex-officio
- Chief Financial Officer..... Margaret Tobin, ESD Chief Financial Officer, ex-officio
- Treasurer..... Robert Godley, ESD Treasurer, ex-officio

Eileen McEvoy and Robin Stout would remain as 42DP Secretary and Assistant Secretary, respectively, without 42DP signing authority, and the Assistant Treasurer position would remain vacant.

REQUESTED ACTIONS

The Directors are requested to approve the appointment of the above-mentioned officers to 42DP, ex-officio, and to confirm that each is an officer of 42DP within the meaning of the New York State Urban Development Corporation Act and the provisions of 42DP's By-Laws, including the indemnification provisions thereof.

RECOMMENDATION

Based on the foregoing, I recommend approval of the requested actions.

ATTACHMENTS

Resolutions

March 19, 2015

New York (New York County) – Forty-Second Street Land Use Improvement Project –
Appointment of Officers – President, Executive Vice President, Executive Vice President
& General Counsel, Chief Financial Officer, and Treasurer

RESOLVED, that in accordance with the materials presented to this meeting and ordered filed with the records of the 42nd St. Development Project, Inc. (“42DP”), the following individuals be, and hereby are, appointed to the office which appears opposite their name, to have and to hold all the powers of the respective office of 42DP as set forth in the 42DP By-Laws, until earlier resignation or removal:

President..... Howard Zemsky, ESD President, ex-officio
Executive Vice President..... Joseph Chan, ESD Executive Vice President, ex-officio
Executive Vice President – Legal
& General Counsel Elizabeth Fine, ESD Executive Vice President, Legal &
General Counsel, ex-officio
Chief Financial Officer..... Margaret Tobin, ESD Chief Financial Officer, ex-officio
Treasurer..... Robert Godley, ESD Treasurer, ex-officio;

and be it further

RESOLVED, that within the meaning of the NYS Business Corporation Law and in accordance with and for all purposes of the 42DP By-Laws, including but not limited to the indemnification provisions thereof, each of the above-mentioned individuals is an “officer” of 42DP with full signing authority on behalf of 42DP; and be it further

RESOLVED, that the 42DP positions of President; Executive Vice President; Executive Vice President – Legal & General Counsel; Chief Financial Officer; and Treasurer be filled ex-officio with the corresponding positions of ESD President; ESD Executive Vice President; ESD Executive Vice President – Legal & General Counsel; ESD Chief Financial Officer; and ESD Treasurer, respectively, and the Directors hereby confirm that such ESD positions are 42DP “officers” within the meaning of and for all purposes of the 42DP By-Laws, including but not limited to the indemnification provisions thereof.

* * *

42nd Street Development Project

FOR CONSIDERATION

March 19, 2015

TO: The Directors

FROM: Howard Zemsky

SUBJECT: New York (New York County) – Forty-Second Street Development Land Use Improvement Project

REQUEST FOR: Authorization to Amend Initial Theater Capital Reserve Fund Agreement with The New 42nd Street, Inc.; Authorization to Execute a Second Theater Capital Reserve Fund Agreement with the New 42nd Street, Inc.

BACKGROUND

ESD's 42nd Street Development Land Use Improvement Project (the "**Project**") revitalized approximately 13 acres in midtown Manhattan, surrounding West 42nd Street between Broadway and Eighth Avenue from 40th to 43rd Streets, with entertainment, retail, and office uses. See attached Project Map. The Project was implemented by ESD's wholly-owned subsidiary 42nd St. Development Project, Inc. ("**42DP**"), in conjunction with New York City Economic Development Corporation ("**EDC**"). In accordance with Project documents, 42DP transferred ownership of Project properties to The City of New York ("**NYC**") in 2012.

Project components were completed as follows:

- 1995 Site 5A: New Victory (children's) Theater (499 seats)
- 1997 Site 6E: Disney New Amsterdam Theater (1,825 seats)
Site 5B: Lyric Theater [formerly "Ford", "Hilton", "Foxwoods"] (1,847 seats)
- 2000 Site 12: Durst 1.5M SF Office Tower (4 Times Square)
Site 7: Tishman 193,500 SF entertainment/retail complex
Site 8E: Forest City Ratner 446,000 SF entertainment/retail complex
Site 8E: Sunstone "Hilton" Hotel (460 rooms, 37 stories)
Site 5D: New 42 Rehearsal Building (199 seat theater/15 rehearsal studios)
Site 5C: Roundabout "American Airlines" [formerly Selwyn] Theater (764 seats)
- 2001 Site 3: Rudin 750,000 SF Rueters Headquarters Building (3 Times Square)

2002	<u>Site 4:</u> Werner 900,000 SF Ernst & Young Headquarters Building (5 Times Square)
	<u>Site 7:</u> Tishman "Westin" Hotel (860 rooms, 45 stories)
2004	<u>Site 1:</u> Boston Properties 1.0M SF Office Tower (7 Times Square)
2007	<u>Site 8S:</u> New York Times/Forest City Ratner 1.4M SF Office Tower
2011	<u>Site 8N:</u> SJP 900,000 SF Proskauer/MicroSoft Office Tower (11 Times Square)

The Project created and has maintained:

- (a) 6.5M SF of office space in six new office towers;
- (b) 1,300 rooms in two new hotels;
- (c) more than 600,000 SF of retail space, including two entertainment/retail complexes;
- (d) more than 4,600 theater seats in new or fully renovated theaters; and
- (e) 8,500 cinema seats at 39 new screens.

THE PROJECT'S HISTORIC THEATERS

The Project's critical heart always has been the preservation, renovation, and re-activation of the historic mid-block theaters (at Sites 5 and 6E). 42DP created an independent not-for-profit corporation, known as The New 42nd Street, Inc. ("**New 42**"), to oversee these theaters, which are leased to New 42¹. Each of the 42DP office towers pays a "Theater Surcharge" which is passed through to New 42 to assist in funding on-going operations. However, because most of the theaters are many decades old, capital repairs also are regularly required to maintain the theaters as functional, modern, entertainment venues. Toward that goal, New 42 maintains and updates a capital plan.

THE SITE 8 NORTH PROJECT FEE

Separately, pursuant to the last of 42DP's 11 major ground leases, executed in 2006 between 42DP as landlord and SJP TS LLC as tenant ("**SJP**") for Site 8 North, SJP paid 42DP a Project Fee of \$23.2M (the "**8N Project Fee**"). In keeping with the Project goal that the financial strength of the Project's private commercial elements will support the Project as a whole (and particularly the historic theaters), and in conformity with essential transaction terms approved by 42DP Directors in 2006, the SJP ground lease requires that the 8N Project Fee be used only to fund Project area improvements or expenses. 42DP and EDC jointly oversee distribution of the 8N Project Fee.

NEW 42 CAPITAL RESERVE FUND

¹ As shown on the Project Map at Site 5, the theaters include: (A) New Victory; (B) Lyric (formerly Ford Center); (C) Roundabout's American Airlines; (D) New 42's Rehearsal Building; and (E) Times Square.

In 2009, New 42 produced a \$12,500,000 Theater Capital Plan for FY 2010-2014 (the “**2009 Plan**”) which was primarily funded by private donations. However, to assist in completing the 2009 Plan, 42DP, NYC, EDC, and New 42 entered into a 2009 Theater Capital Reserve “Funding Agreement” (the “**Initial Agreement**”) pursuant to which \$5,000,000 of the 8N Project Fee was committed to fund the 2009 Plan. As required by the Initial Agreement, New 42 expended such monies only on repair, maintenance, preservation, and/or improvement of the theaters in order to keep the theaters in sound, secure condition and good working order, including major capital expenditures capitalized and depreciated in accordance with GAAP, but specifically excluding New 42 ordinary operating and administrative costs and expenses. 42DP and EDC staffs have reviewed expenditures made and renovations performed under the Initial Agreement and have found them to be satisfactory and performed under the requirements, terms, and conditions of the Initial Agreement.

PROPOSED AMENDMENT TO THE INITIAL AGREEMENT

Only \$4,000,000 of the \$5,000,000 allocated under the Initial Agreement has been spent; the final \$1,000,000 was expressly earmarked for initial construction work in the Times Square Theater, the sole remaining unrenovated theater on the Project site. See Project Map at 5E. However, to date, no tenant has been found for the Times Square; therefore, initial renovations would be premature. In the meantime, the New 42 has demonstrated (as discussed below) that the adjacent New Victory Theater for children has remaining unmet capital needs. Staff therefore recommends that the remaining \$1,000,000 under the Initial Agreement be dedicated to the New Victory instead of the Times Square, under the same requirements, terms, and conditions of the Initial Agreement. (Note that the proposed second Theater Capital Reserve Fund Agreement, discussed and recommended below, would re-establish a \$1,000,000 set-aside for the Times Square Theater, for initial renovation work once a tenant has been secured.)

The New Victory opened in 1995 and has become a stand-out venue for theatrical performances aimed at children of all ages. Consistently providing high-quality and affordable performing arts programming from all over the world, the New Victory also provides employment opportunities to New York youth and affordable arts education to New York schoolchildren. However, as the institution has grown, the theater and its public spaces have remained largely unchanged. While the auditorium has benefitted from periodic upgrades, the lobby spaces are outmoded. Proposed lobby renovation would include: new family ADA-compliant restroom; upgrades to security gates, box office, concession areas, and lobby amenities such as lockers and stroller-parking; and interactive pre- and post-show audience engagement experiences. A majority of the cost of such work will be funded via other sources, including private donations.

PROPOSED SECOND NEW 42 CAPITAL RESERVE FUND

New 42 has released a \$12,375,000 Theater Capital Plan for FY 2015-2019 (the “**2014 Plan**”), which also will be funded primarily by private donations. Upon review of the 2014 Plan, and after discussions between New 42, 42DP, and EDC, staff recommends that up to an additional \$5,000,000 of the 8N Project Fee (“**Dedicated Funds**”) be committed to fund the 2014 Plan, as

detailed below, pursuant to a second Theater Capital Reserve Fund Agreement between 42DP, NYC, EDC and New 42. New 42 would produce an annual capital budget, consistent with the 2014 Plan, subject to review and approval by 42DP and EDC. New 42 also would account for use of Dedicated Funds on an annual basis.

The historic mid-block theaters continue as the Project’s heart, and the continuing vitality of these theaters remains critical to the on-going success of the Project as an entertainment destination for New Yorkers and tourists alike. The Project’s historic theaters are in heavy use day and night, and even given on-going pro-active maintenance and repair, the theaters require major infrastructure replacement and modernizations. The 2014 Plan focuses on mechanical modernizations of key building infrastructure such as elevators, boilers, and HVAC. The annual capital budgets for the first two years of the 2014 Plan indicate that Dedicated Funds would be expended primarily on New 42’s Rehearsal Building, a heavily used rehearsal, performance, and office space which is now 15 years old.

Please note that New 42 has provided a 15-year financial forecast (FY 2015 to FY 2029) which indicates that, with renovation and activation of the Times Square Theater, New 42 will re-establish its ability to be self-sufficient (that is, no longer in need of public capital repair assistance) beginning FY 2020, the projected conclusion of the proposed second Theater Capital Reserve Fund Agreement. From that point forward, operating surpluses would be expected to support New 42 capital needs and would be adequate to rebuild reserve.

The balance of the 8N Project Fee would remain available for Project area expenses as determined jointly by 42DP and EDC, including potential 42DP and EDC liability for Disney’s New Amsterdam Theater (Site 6E) imposed under the ground lease for that property. 42DP and EDC have each paid approximately \$1.3M for New Amsterdam expenses to date. 42DP paid its share from New Amsterdam Percentage Rent receipts; EDC paid its share from its portion of the 8N Project Fee. So, the following would remain of the original \$23.2M 8N Project Fee:

	<u>42DP Share</u>	<u>NYC EDC Share</u>
Initial \$23.2	11.6M	11.6M
<u>minus</u>		
initial New 42 \$5M	2.5M	2.5M
New Amsterdam		1.3M
Proposed 2 nd New 42 \$5M	<u>2.5M</u>	<u>2.5M</u>
Remaining (excludes interest)	6.6M	5.3M

Disney has pending further capital repair requests totaling approximately \$4.7M, which are under review, but if approved would be split evenly between 42DP and EDC.

AFFIRMATIVE ACTION

ESD’s Non-Discrimination and Contractor & Supplier Diversity policies will apply.

REQUESTED ACTION

The Directors are requested to:

- (a) Authorize 42DP to amend the Initial 2009 TCRF Agreement to permit \$1,000,000 to be used for renovation of the New Victory Theater instead of the Times Square Theater;
and
- (b) Authorize 42DP either to enter into a second Theater Capital Reserve Funding Agreement pursuant to which a further \$5,000,000 from the 8N Project Fee would be dedicated to theater capital repair and renovation, substantially on the terms and conditions set forth in these materials.

RECOMMENDATION

Based on the foregoing, I recommend approval of the requested actions.

ATTACHMENTS

Project Map
Resolutions

March 19, 2015

NEW YORK (NEW YORK COUNTY) – FORTY-SECOND STREET DEVELOPMENT LAND USE IMPROVEMENT PROJECT – Authorization to Amend Initial Theater Capital Reserve Fund Agreement with The New 42nd Street, Inc.; Authorization to Execute a Second Theater Capital Reserve Fund Agreement with the New 42nd Street, Inc.

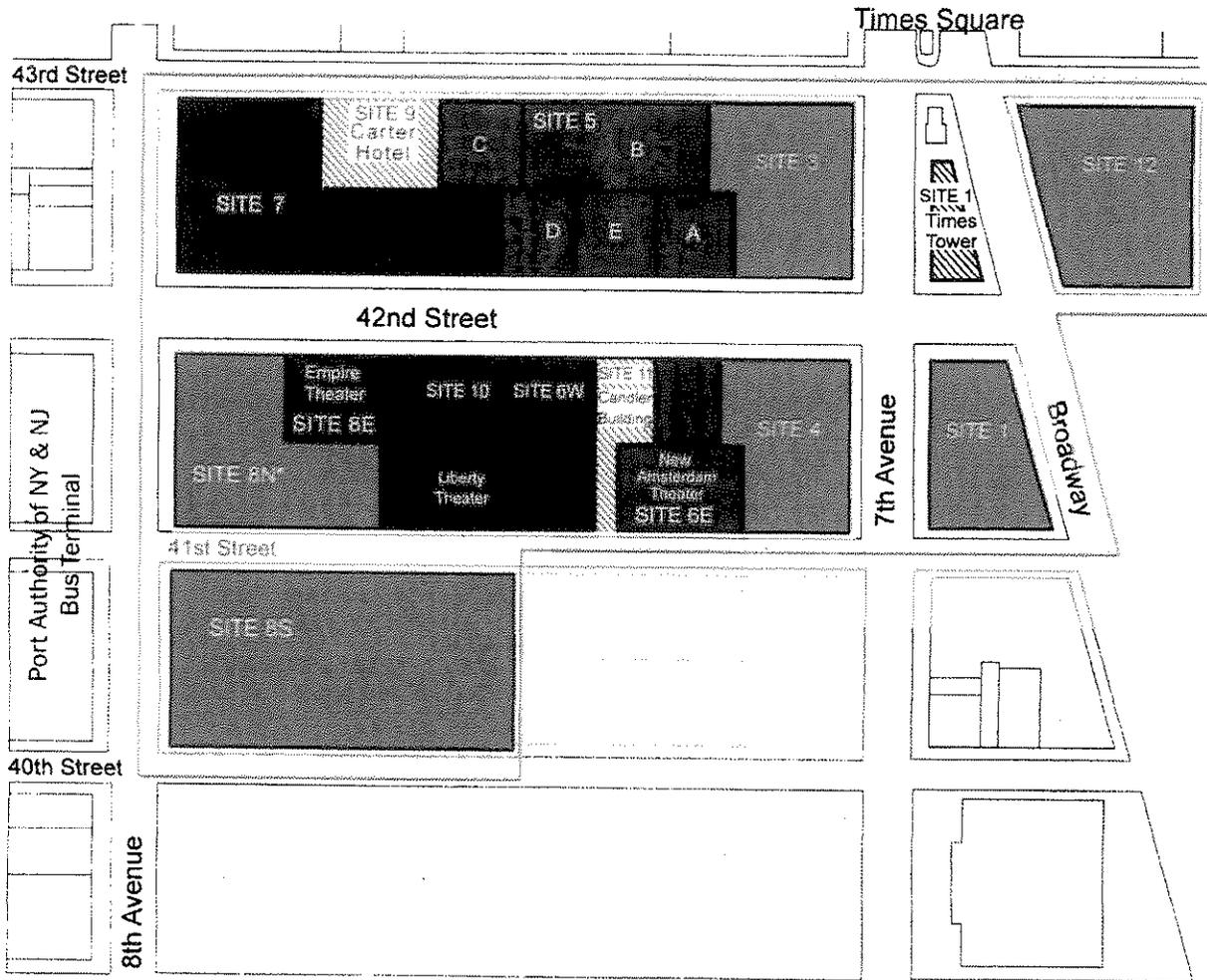
RESOLVED, that in accordance with the materials presented to this meeting (the “Materials”) and ordered filed with the records of 42nd St. Development Project, Inc. (the “Corporation”), the Corporation is hereby authorized to amend the initial Theater Capital Reserve Funding Agreement, dated as of July 1, 2009 (the “Initial Agreement”), among the Corporation, The City of New York (“NYC”), New York City Economic Development Corporation (“EDC”), and The New 42nd Street, Inc. (“New 42”) by permitting \$1,000,000 to be used for renovation of the New Victory Theater instead of the Times Square Theater, but subject to the requirements, terms, and conditions of the Initial Agreement, which shall remain otherwise unchanged; and be it further

RESOLVED, the Corporation is hereby authorized to enter into a second Theater Capital Reserve Funding Agreement with NYC, EDC, and New 42, pursuant to which up to an additional \$5,000,000 shall be used for capital repairs of the Project’s historic mid-block theaters, subject to substantially similar requirements, terms, and conditions as set forth in the Initial Agreement, and substantially on the terms and conditions set forth in the Materials; and be it further

RESOLVED, that the officers of the Corporation be, and each of them hereby is, authorized in the name and on behalf of the Corporation to take all such further actions, enter into and deliver all such agreements and instruments, and to publish and file all such notices, as they shall deem necessary or appropriate to effectuate the foregoing resolution; and be it further

RESOLVED, that all continuing authority of the officers of the Corporation or their designee(s) to carry out the Project pursuant to the resolutions previously adopted and adopted today by the Directors with respect to the Project is hereby ratified and confirmed.

* * *



PROJECT AREA DEVELOPMENT SITES

- Project Area Boundary
- Office Sites
- Theaters and Rehearsal Space
- Entertainment, Retail and Hotel
- ▨ Existing Buildings to be Retained
- * May Include Residential Use
- A: New Victory Theater
- B: Ford Center for the Performing Arts
- C: American Airlines Theater (Roundabout Theater Company)
- D: New 42nd Street Studio/Duke Theater
- E: Times Square Theater

42ND STREET DEVELOPMENT PROJECT

