

FOR CONSIDERATION

July 13, 2011

TO: The Directors

FROM: Kenneth Adams

SUBJECT: North Castle (Westchester County) – IBM Headquarters Relocation Project

REQUEST FOR: Adoption of Amendment to General Project Plan; Determination of No Significant Adverse Effect on the Environment; Adoption of Amendments to Sale-Leaseback Agreement and Agreement of Lease with International Machines Business Corporation (“IBM”); Authorization to Hold Public Hearing(s) Thereon; Authorization to Acquire Real Property; Authorization to Lease Real Property; and Authorization to take Related Actions.

I. Background

IBM owned an approximately 370-acre office park in Armonk, Town of North Castle, Westchester County (and owns additional contiguous parcels both within Armonk and across the adjacent Connecticut border). The two largest pieces of such property are known as Lot A to the north (approximately 133 acres) and Lot B to the south (currently approximately 211 acres). See Attachment A. IBM currently owns all of Lot A, where IBM’s former corporate headquarters is located.

II. Existing Project

Beginning in 1995, IBM constructed its 283,500 SF new Corporate Headquarters Building on Lot B. ESD facilitated this construction by, among other things, entering into: (a) a Sale-Leaseback Agreement, pursuant to which IBM conveyed to ESD, for a \$1 Purchase Price, Lot B and existing and future buildings, equipment, and personal property at Lot B (collectively, the “Premises”); and (b) an Agreement of Lease, pursuant to which: (i) ESDC simultaneously leased back to IBM all of the Premises through 2018; and (ii) IBM was granted a Purchase Option to purchase the Premises for a \$1 Purchase Price at Lease termination. This sale-leaseback (the “Existing Project”) provided IBM with certain tax benefits, including reduced real estate taxes (via an agreed “payment-in-lieu-of-taxes”, or PILOT) and sale/use tax exemptions on construction materials and equipment and personal property. As agreed by the parties, IBM pays “Rent” under the Lease solely in the form of the PILOT which is paid directly to the Town of North Castle. ESD entered into the Existing Project pursuant to the 1995 IBM Headquarters Relocation General Project Plan (“GPP”). ESD continues to own, and IBM continues to lease, the Premises at Lot B.

III. Summary of Proposed Modifications

A. Location

New Orchard Road (between NY Routes 22 and 120), Armonk, Town of North Castle, Westchester County.

B. Description

IBM proposes to convey to ESD an additional approximately 18.2 acre parcel, to be taken from Lot A and added to Lot B, inclusive of existing and future buildings, equipment, and personal property therein or thereon, all currently owned by IBM (the “Additional Property”), for inclusion in the Premises in furtherance of the GPP. The Additional Property is located at the southern perimeter of Lot A (contiguous with the northern perimeter of Lot B). See the cross-hatched portion of Attachment A. Simultaneously with the IBM conveyance to ESD, ESD would lease back the Additional Property to IBM. The IBM conveyance and the ESD leaseback would be pursuant to amendments of, but otherwise on the same terms and conditions of, the original GPP, Sale-Leaseback Agreement, and Agreement of Lease between the parties, inclusive of: (i) nominal \$1 conveyance price; (ii) any enhanced “Rent” by IBM paid as PILOT directly to Town of North Castle; (iii) 2018 Lease termination; and (iv) 2018 IBM Purchase Option for nominal \$1 value.

The Additional Property will create a greater security buffer for IBM’s new Corporate Headquarters Building, and will provide other facilities incidental or appurtenant to the Existing Project. Although mostly wooded, the Additional Property also encompasses an access road and salt storage area which primarily serve existing Lot B. The inclusion of the Additional Property within Lot B will allow IBM’s Headquarters operation to be self-contained within a single property, i.e., the enlarged Lot B (which would thereafter be referred to as Lot B-1). There would no longer be any access to adjoining Lot A through Lot B-1, and the source of public water will be entirely located on Lot B-1. There are no residential structures on the Additional Property. The Town of North Castle (and/or its Planning Board) has: (a) issued a Negative Declaration as Lead Agency under NYS SEQRA; (b) granted Final Subdivision Plat Approval; and (c) agreed in concept with IBM on a revised “Rent” PILOT to be paid to the Town (subject to ESD acquiring from IBM, and leasing back to IBM, the Additional Property).

C. ESD Investment: None. IBM will pay all costs associated with this transaction.

D. IBM Contact: Mr. Anthony Canonaco
Asset Management & Investments, Corporate Real Estate
New Orchard Road
Armonk, New York 10504
(914) 499-4811
canon@us.ibm.com

E. Proposed Amendment to the General Project Plan

The Proposed Amendment to the GPP is attached hereto as Attachment B. The GPP is proposed to be amended to include, as part of the Premises conveyed by IBM to ESD and

simultaneously leased by ESD back to IBM, the approximately 18.2 acre Additional Property more fully described in the legal description attached as Exhibit 1 to Attachment B. But for this Amendment, the GPP remains unchanged, and remains in full force and effect.

F. Proposed Amendments to Sale-Leaseback Agreement and Agreement of Lease

Proposed forms of Amendment to the original Sale-Leaseback Agreement and original Agreement of Lease are attached hereto as Attachments C and D, respectively. IBM would convey the Additional Property to ESD for nominal \$1 value pursuant to the Sale-Leaseback Amendment, and ESD simultaneously would lease back to IBM the Additional Property for revised "Rent" equivalent to PILOT paid to the Town of North Castle. Other terms and conditions of the Sale-Leaseback Agreement and Agreement of Lease would remain unchanged and in full force and effect.

IV. PAAA Appraisal

Prior to any disposal of the Additional Property (specifically, the leaseback to IBM), ESD will have had performed on its behalf an appraisal of the value of such Additional Property by an independent appraiser, as required by the Public Authorities Accountability Act.

V. Environmental Review

The Town of North Castle Planning Board, as Lead Agency, has completed an environmental review of the proposed project, pursuant to the requirements of the State Environmental Quality Review Act (SEQRA) and the implementing regulations of the New York State Department of Environmental Conservation. This review found the project to be an Unlisted Action which would not have a significant effect on the environment. The Town of North Castle Planning Board issued a Negative Declaration on October 26, 2009. ESD staff reviewed the Negative Declaration and supporting materials and concurs. It is recommended 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

For purposes of conducting a public hearing thereon, the Directors are requested to adopt the following documents attached hereto: (1) proposed General Project Plan amendment; (2) proposed Sale-Leaseback Agreement amendment; and (3) proposed Agreement of Lease amendment. The Directors also are requested to determine that the proposed action will have no significant adverse effect on the environment. On the condition and subject to there being no substantive negative testimony or comment on these documents at such public hearing, the Directors are further requested, on the terms and conditions set forth in these materials: (i) to adopt the General Project Plan as amended and to approve the essential terms of the Sale-Leaseback and Lease amendments; and (ii) to authorize execution of the Sale-Leaseback and Lease amendments and acquisition and disposal of the Additional Property.

VIII. Recommendation

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

IX. Attachments

Resolutions

A: Project Site Map

B: Proposed GPP Amendment

C: Proposed Sale-Leaseback Agreement Amendment

D: Proposed Agreement of Lease Amendment

July 13, 2011

North Castle (Westchester County) – IBM Headquarters Relocation Project
Adoption of Amendment to General Project Plan; Determination of No Significant Adverse
Affect on the Environment; Adoption of Amendments to Sale-Leaseback Agreement and
Agreement of Lease with International Machines Business Corporation (“IBM”);
Authorization to Hold Public Hearing(s) Thereon; Authorization to Acquire Real Property;
Authorization to Lease Real Property; and Authorization to take Related Actions.

RESOLVED, that on the basis of the materials presented to this meeting, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), the Corporation does hereby adopt, for purposes of the public hearing required by the UDC Act and substantially on the terms and conditions described in the Materials: (1) the proposed amendment (“Plan Amendment”) to the Project’s General Project Plan (“GPP”); and (2) the essential terms of proposed amendments to the Project’s Sale-Leaseback Agreement and Agreement of Lease with International Business Machines Corporation (the “Contract Amendments”); and be it further

RESOLVED, that based on the Materials, the Corporation hereby determines that the proposed action will have no significant adverse effect on the environment; 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 and on behalf of the Corporation, to take all such actions as are necessary or appropriate to schedule and hold such public hearings as required by the UDC Act or other applicable law (which hearings may be held simultaneously), including without limitation the providing, filing, or making available of copies of the Plan Amendment and Contract Amendments, the fixing of a date for such hearing, the publication of a notice of such public hearing 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, 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 Amendment or Contract Amendments was received at the public hearing and that the requirements of the Public Authorities Accountability Act have been complied with: (1) the GPP, as amended by the Plan Amendment, shall be deemed affirmed and effective as of the conclusion of such hearing; and (2) the essential terms of the Contract Amendments 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 Amendment or

Contract Amendments 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 Amendments are in conformity with the GPP; (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 First Amendment to the Sale-Leaseback Agreement and the Second Amendment to 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 from IBM, for ESD's immediate or future use in the furtherance of ESD's corporate purposes and the GPP, the Additional Property as defined in the Plan Amendment, which Additional Property constitutes facilities incidental or appurtenant to the Project described in the GPP; (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 Additional Property from IBM 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 Additional Property to IBM via lease pursuant to 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 on behalf of the Corporation to execute and deliver such documents and to take such related actions as may be necessary or appropriate to effectuate the foregoing resolutions.

* * *