

LEGAL NOTICE

NEW YORK STATE URBAN DEVELOPMENT CORPORATION

D/B/A EMPIRE STATE DEVELOPMENT AND

HARLEM COMMUNITY DEVELOPMENT CORPORATION

NOTICE OF PUBLIC HEARING TO BE HELD MONDAY, DECEMBER 10, 2012

PURSUANT TO SECTIONS 6 AND 16 OF THE NEW YORK STATE URBAN

DEVELOPMENT CORPORATION ACT AND

ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW

IN CONNECTION WITH THE PROPOSED

VICTORIA THEATER REDEVELOPMENT PROJECT,

A LAND USE IMPROVEMENT AND CIVIC PROJECT.

**A PUBLIC HEARING FOR THE PROPOSED PROJECT DESCRIBED HEREIN,  
PREVIOUSLY SCHEDULED TO BE HELD MONDAY, OCTOBER 29, 2012  
WAS CANCELLED DUE TO THE EFFECTS OF HURRICANE SANDY.**

PLEASE TAKE NOTICE that a public hearing, open to all persons, will be held at the Adam Clayton Powell, Jr. State Office Building, 163 West 125th Street, 8<sup>th</sup> Floor Meeting Rooms A, B and C, New York, New York, on Monday, December 10, 2012, from 5:00 p.m. to 7:30 p.m., by the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”) and Harlem Community Development Corporation (“Harlem CDC”) pursuant to Sections 6 and 16 of the New York State Urban Development Corporation Act (Chapter 174, Section 1, Laws of 1968, as amended, the “UDC Act”) and the State Environmental Quality Review Act (Article 8 of the New York State Environmental Conservation Law) and the regulations adopted pursuant thereto (6

NYCRR Part 617) (collectively, “SEQRA”), to consider: (a) the General Project Plan (the “General Project Plan”) for the proposed Victoria Theater Redevelopment Land Use Improvement and Civic Project (the “Project”); (b) the essential terms of a proposed lease, disposition of a portion of the Project and other documents for the Project with Danforth Development Partners LLC or its affiliates; and (c) the Draft Environmental Impact Statement (“DEIS”) for the Project.

The public hearing is for the purpose of: (1) informing the public about the Project; (2) giving all interested persons an opportunity to give testimony or comment on the General Project Plan, pursuant to Section 16 of the UDC Act; (3) giving all interested persons an opportunity to give testimony or comment on the essential terms of a proposed ground lease and other documents for the Project, with Danforth Development Partners, LLC or its affiliates and other parties, pursuant to Section 6 of the UDC Act; (4) giving all interested persons an opportunity to present oral or written statements or submit other documents concerning the Project; and (5) offering all interested persons the opportunity to give testimony or comment on the DEIS, pursuant to applicable environmental laws.

The public purposes of the Project include to (a) redevelop a blighted, underutilized and obsolete building at the Project Location (described below) into a structure that preserves or restores historically significant architectural components, such as the façade, lobby, and marble staircase; (b) return the Project Location to the New York City tax roll; (c) create both construction related and permanent jobs, which will enhance the tax base of the City and State; (d) create affordable housing for low, moderate and middle income households; and (e) create performance and administrative space for cultural institutions in the Harlem community.

A number of Harlem CDC and ESD discretionary actions are subject to review pursuant to the UDC Act and SEQRA, including Harlem CDC's and ESD's approval of the General Project Plan, and the disposition by lease and sale by Harlem CDC of its interest in real property. ESD is serving as the lead agency under SEQRA. ESD's Directors have determined that the DEIS is complete for purposes of public review. After the public hearing is held and a thirty-day public comment period is concluded pursuant to applicable laws, a Final Environmental Impact Statement ("FEIS") will be completed and ESD's Directors will be requested to issue the FEIS, and Harlem CDC's Board and ESD's Directors will be requested to affirm or, if appropriate, modify the General Project Plan and make statutory findings under the UDC Act, SEQRA, and other applicable law.

I. The Project Location: The Project Location is a site located on the north side of 125<sup>th</sup> Street in Harlem with an address of 233-237 West 125<sup>th</sup> Street, mid-block between Frederick Douglass Boulevard and Adam Clayton Powell, Jr. Boulevard. It consists of two buildings on an approximately 20,000 square foot (“SF”) T-shaped through lot (Manhattan Block 1931, Lot 17), with approximately 50 feet of frontage along West 125th Street and 150 feet of frontage along West 126th Street.

II. Project Description: The design, development, construction and operation at the Project Location of an approximately 360,000 SF, 26-story mixed-use development that will include but not be limited to hotel, residential, retail, cultural arts and parking facilities, with improvements that shall conform to agreed guidelines, to be incorporated within a short term ground lease and other documents.

Pursuant to the UDC Act, ESD will override certain requirements of the New York City Zoning Resolution and other local laws including the Uniform Land Use Review Procedure review and certification process, specifically, zoning resolutions related to: (1) Floor Area; (2) Floor Area Ratio; (3) Maximum Number of Units; (4) Maximum Building Height; (5) Maximum Base Height; (6) Initial Setback Above Base Height; (7) Minimum Base Height and Streetwall; (8) Clearance when lot line is adjacent to neighboring rear lot line; and, (9) Minimum Square feet per car in an attended parking facility, all as more particularly described in the GPP and the DEIS.

III. Essential Terms of the Ground Lease and Property Disposition:

A. Harlem CDC is the fee owner of the Project Location. As a subsidiary of ESD, Harlem CDC is exempt from real estate taxes and the Project Location is therefore

exempt from taxation. Harlem CDC will be the Landlord under a short-term ground lease of the Project Location (the “Ground Lease”).

B. 233 West 125<sup>th</sup> Street Danforth, LLC, an affiliate of Danforth Development Partners, LLC, will be the developer/tenant under the Ground Lease (the “Developer/Tenant”). Developer/Tenant will design, develop and construct the Project in accordance with the terms of the Ground Lease and other documents.

C. The Ground Lease shall commence on or about the date Developer/Tenant closes on a construction loan(s) to assist with financing construction of the Project and shall terminate upon issuance of a new temporary certificate of occupancy or certificates of occupancy (“TCO”) for the improvements to be constructed at the Project Location pursuant to the guidelines set forth in the Ground Lease and other documents, which is anticipated to occur approximately thirty months after the commencement of construction.

D. Since Harlem CDC is exempt from taxes, during the Ground Lease term Developer/Tenant would be exempt from sales and use taxes on materials and equipment incorporated into the Project, and from property taxes for so long as Harlem CDC retains title to the Project Location. However, Harlem CDC could impose Payment in Lieu of Real Property Tax (“PILOT”) on Developer/Tenant in the event construction extends beyond thirty (30) months. PILOT payments would be based upon the real property taxes that would apply to the Project Location if Harlem CDC were not tax-exempt, reduced by any exemptions or abatements for

which the Developer/Tenant would qualify pursuant to the applicable requirements for those exemptions or abatements.

E. Developer/Tenant will subdivide the Project Location into as many as five tax lots, which would then be included in a condominium regime for the ownership and operation of the Project. Each condominium unit will include one or more of the hotel, retail, residential and parking portions of the Project, with one of the units including solely the cultural arts center (“Cultural Arts Condominium Unit”).

F. Upon termination of the Ground Lease and payment to Harlem CDC of the full purchase price for the Project Location, Harlem CDC will retain ownership of the Cultural Arts Condominium Unit only and convey title to the remaining portions of the Project to Developer or its designee. The Cultural Arts Condominium Unit retained by Harlem CDC will be utilized for cultural arts for the life of the development and leased to one or more cultural organizations.

G. Any tax exemption based upon Harlem CDC’s ownership of the Project will cease upon termination of the Ground Lease and the conveyance of title to any portion of the Project to Developer/Tenant.

H. Developer/Tenant will retain and restore portions of the Victoria Theater’s south building, including restoration of the original lobby, grand staircase and south building façade and marquee and replicate the original blade sign as well as identify, salvage and reuse other architectural elements in the north building of the

Victoria Theater (which would be demolished) or reference those elements in the design of new spaces in the Project.

I. Developer/Tenant will construct the following at the Project Location:

1. An approximately 210-room hotel;
2. An approximately 25,000 SF cultural arts center that would feature performance, exhibit, rehearsal and administrative office spaces;
3. Approximately 229 rental apartments, of which 50% would be affordable to low, moderate, and middle income individuals and households (the “Affordable Apartments”). Developer/Tenant will be obligated to maintain the affordability of the Affordable Apartments for low, moderate and middle income families for a minimum of fifty years, with the obligation being secured by a recorded enforcement mortgage;
4. Approximately 27,000 SF of non-hotel related retail space with approximately 3,000 SF allocated to smaller stores and leased at below market rents to small local retailers; and
5. Sub-grade parking for approximately 90 cars.

J. During Construction Developer/Tenant shall provide and maintain payment and completion bonds or a letter(s) of credit acceptable to Harlem CDC, in an amount equal to the estimated cost of performing all construction on the Project Location and naming Harlem CDC as beneficiary.

K. Developer/Tenant would indemnify ESD and Harlem CDC and hold ESD and Harlem CDC harmless from all lawsuits and liabilities arising out of Harlem CDC and ESD participation in the Project.

L. Developer/Tenant will negotiate a labor peace agreement with the New York Hotel and Motel Trades Council, AFL-CIO in connection with the operation of the hotel that is included in the Project.

IV. Financial Terms:

A. Rent: During Ground Lease Developer/Tenant shall pay to Harlem CDC Base Rent of \$1 per month during the term of the Ground Lease.

B. Developer/Tenant has applied to ESD for a \$5 Million Metropolitan Economic Revitalization Fund loan as part of the permanent financing for the Project. In addition, Developer/Tenant has also submitted a Consolidated Funding Application to the New York Regional Councils to take advantage of potential energy and job development credits for which the Project may be eligible as well as to access alternative financing that may be available on more favorable terms.

C. Purchase Price: In accordance with and subject to the terms of the Ground Lease, Developer/Tenant will acquire the Project Location from Harlem CDC at a Purchase Price of \$25 million. The Purchase Price shall be payable in cash, as well as through credits for 1) the value of the build-out of the cultural arts center portion of the Project, and 2) for the inclusion of a significant number of housing

units in the Project that will be and shall remain affordable to low, moderate and middle income families for a minimum of fifty years.

D. Additional Developer/Tenant Obligations:

1. Pay all Harlem CDC's and ESD's costs in connection with the Project, in addition to pay all City of New York levies against the Property for water, sewer and similar assessments to which Harlem CDC is subject;
2. Pay all design, development, construction and operating costs related to the Project at the Project Location, including but not limited to the core and shell build-out of the cultural arts center space.

V. Potential Impacts of the Project:

A. ESD, as the SEQRA lead agency, has classified the Project as a SEQRA Type I action. ESD has determined that the DEIS, which has been prepared in accordance with both City and State environmental regulations for the actions described above, is complete for purposes of public review. The DEIS identifies the following areas of potential significant adverse impact: vehicular traffic and historic resources. The DEIS describes practicable and feasible measures that have been identified to mitigate these impacts.

VI. Non Discrimination and Contractor and Supplier Diversity:

Harlem CDC's and ESD's Non-Discrimination and Contractor and Supplier Diversity Policies will apply and are included within the General Project Plan.

VII. Availability of the General Project Plan and DEIS:

The General Project Plan and DEIS are on file at the corporate offices of Harlem CDC, 163 West 125<sup>th</sup> Street, 17<sup>th</sup> Floor, New York, New York and of ESD, 633 Third

Avenue, New York, New York and are available for inspection by the general public between the hours of 9:30 a.m. to 5:00 p.m., Monday through Friday, public holidays excluded. Copies of the General Project Plan and the Executive Summary of the DEIS are available, without charge, to any person requesting such copies at the offices of Harlem CDC and ESD at the addresses given above. To inspect and/or obtain copies of the foregoing documents, please contact Francisco Guzman at Harlem CDC at the address above or at (212) 961-4169 or Regina Stephens at ESD at the address above or at (212) 803-3818. Pursuant to Section 16(2) of the UDC Act, Harlem CDC and ESD have also filed a copy of the General Project Plan, including the DEIS and the findings required pursuant to Section 10 of the UDC Act, in the offices of the Clerks of the County and City of New York, and have provided copies thereof to the Mayor of the City of New York, the Borough President of the Borough of Manhattan, the Chair of the City Planning Commission, and the Chair of Manhattan Community Board No. 10. Copies of the DEIS also have been provided by ESD to involved and interested agencies. An additional copy of the DEIS is on file with branches of the New York City Public Library located at 518 West 125<sup>th</sup> Street, New York, NY and 9 West 124<sup>th</sup> Street, New York, NY. Copies of the General Project Plan, Executive Summary of the DEIS and an inspection copy of the full DEIS also will be available at the hearing location during the hearing and can be viewed at the following websites: [www.esd.ny.gov](http://www.esd.ny.gov). and [www.harlemcdc.org](http://www.harlemcdc.org).

VIII. Receipt of Comments:

Comments on the General Project Plan, essential terms of the Ground Lease and disposition, and DEIS are requested and may be made orally or in writing at the hearing on December 10, 2012 and/or in writing until January 10, 2013, addressed as follows: by

(1) email to: VictoriaTheaterProject@esd.ny.gov, or (2) mailed to Harlem CDC at 163 West 125<sup>th</sup> Street, New York, NY 10027 (Attention: Wayne Benjamin) or (3) mailed to ESD at 633 Third Avenue, New York, New York 10017 (Attention: Regina Stephens).

**COMMENTS RECEIVED AFTER THE CLOSE OF BUSINESS ON JANUARY**

**10, 2013 WILL NOT BE CONSIDERED.**

Dated: November 8, 2012  
New York, New York

NEW YORK STATE URBAN  
DEVELOPMENT CORPORATION d/b/a  
EMPIRE STATE DEVELOPMENT

By: \_\_\_\_\_  
Eileen McEvoy, Corporate Secretary