



**Harlem
Community
Development
Corporation**

163 West 125th Street
New York, NY 10027
212-961-4100
212-961-4143 fax
www.harlemcdc.com

BOARD OF DIRECTORS' MEETING

Wednesday, July 17, 2013

10:00 A.M.

AGENDA

FOR CONSIDERATION:

COMMUNITY INITIATIVES PROGRAM – Authorization to increase the amount of a previously approved grant to the Harlem Business Alliance by \$29,460 (Twenty Nine Thousand Four Hundred Sixty Dollars) to partially finance renovation and related administrative and project management costs associated with its Back-Office Support Services Program; Authorization to Take Related Actions.

NEW YORK (NEW YORK COUNTY)-VICTORIA THEATRE REDEVELOPMENT PROJECT – Affirmation of Land Use Improvement and Civic Project Findings (the “UDC Findings”) Pursuant to Section 10 of the New York State Urban Development Corporation Act, as amended (the “UDC Act”); Acceptance of General Project Plan, as Modified (the “MGPP”); Acceptance of State Environmental Quality Review Act (“SEQRA”) Findings; Approval of Ground Lease With Option to Purchase; Adoption of Finding Pursuant to the Public Authorities Law (the “PAL Finding”); Recommendation that ESD Directors take the following actions: (a) Affirm the UDC Findings; (b) Affirm the MGPP; (c) Adopt Findings Pursuant to SEQRA; (d) Override the New York City Zoning Ordinance and New York City Charter Uniform Land Use Review Procedure; and (e) Adopt the PAL Finding; and Authorization to Take Related Actions

FOR INFORMATION: President’s Report

OLD BUSINESS

NEW BUSINESS

ADJOURNMENT



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FOR CONSIDERATION

July 17, 2013

TO: The Directors

FROM: Curtis L. Archer

REQUEST FOR: COMMUNITY INITIATIVES PROGRAM – Request authorization to increase the amount of a previously approved grant to the Harlem Business Alliance by \$29,460 (Twenty Nine Thousand Four Hundred Sixty Dollars) to partially finance renovation and related administrative and project management costs associated with its Back-Office Support Services Program; Authorization to Take Related Actions.

I. Requested Action

It is requested that the directors (the “Directors”) of Harlem Community Development Corporation (the “Corporation”) authorize the Corporation to increase a previously approved grant of \$45,000 (Forty Five Thousand Dollars) from the Community Initiatives Program (“CIP”) fund to partially finance Interior renovation and related administrative/project management costs associated with the Harlem Business Alliance’s Back Office Support Services Program (the “Project”) by \$29,460 (Twenty Nine Thousand Four Hundred Sixty Dollars) for a total grant of up to \$74,460. It is also requested, that the Directors authorize the President to take such actions as are necessary in connection with the requested action.

II. Project Summary

Grantee: Harlem Business Alliance, Inc.
275 Lenox Avenue, 2nd Floor, New York, NY 10027
Telephone: (212) 665-7010 / Fax: (866) 429-6319
Contact: Regina Smith, Executive Director, Rsmith@hbany.org

Project Description: The renovation of commercial space to provide office facilities for the HBA Back-Office Support Services Program, an expansion of programs and services provided by the Harlem Business Alliance.

Project Site: 275 Lenox Avenue, 1st Floor, New York, NY 10027 - (Block 1908 / Lot 34)

Funding Source: The Community Initiatives Program was established by the Directors in June 2001 for the purpose of making loans and grants to community-based organizations located within the Corporation’s service area. The criteria for determining eligibility for financial assistance under the program's guidelines are set out in **Appendix I**.

CIP Assistance: A grant of up to \$74,460 (Seventy Four Thousand Four Hundred Sixty Dollars).

Use of Funds: Interior and exterior renovations and administrative and project management costs to prepare facilities for use by the HBA Back-Office Support Program.

Project Team:	Harlem CDC	Wayne Benjamin
		Francisco Guzman
	ESD Legal	Eunice Jackson, Esq.
	ESD EEO/AA	Vikas Gera
	ESD Finance	Amit Nihalani

III. Project Description

A. Background

On September 28, 2012 the Directors approved a \$45,000 grant to the Harlem Business Alliance (“HBA”) to partially finance costs associated with the interior renovation of ground floor space (the “Space” or the “Small Business Support Center”) located at 275 Lenox Avenue and related administrative and project management costs necessary to make the Space ready for use by the HBA’s Back-Office Support Services Program (the “Program”).

The Program provides pro-bono technical assistance to support back office operations for small Harlem-based businesses. It includes intensive technical assistance in the areas of bookkeeping and administrative services, including accounting, payroll, budgeting, taxation and insurance. The Program will help participating businesses to insure that all financial records conform to Generally Accepted Accounting Principles. The services provided also cover strategic planning, preparing bid documents, securing MWBE and other certifications, accessing capital, and using technology and marketing.

Renovations to the Space are complete. A grand opening for HBA’s Small Business Support Center was held on March 1, 2013. The Program is in operation providing services to local businesses.

B. Justification for Increase to Grant Amount

Total project cost for renovations, administrative and project management and furniture, fixtures & equipment (“FF&E”) cost were originally budgeted at \$90,000. In the course of renovating the Space HBA encountered unforeseen site conditions which increased project cost by \$65,170. The additional work generally included the following and is more fully described in **Exhibit 1 - Summary of Additional Project Costs**.

- Replacement of the entire floor and sub-floor due to water damage
- Relocation of a concealed steam pipe
- Modification to the space requirements and construction required to house IT systems
- Modifications to storage requirements
- Additional soundproofing
- Installation of CCTV and Security systems
- Renovations to the building exterior / storefront

C. Project Budget and Funding

USE OF FUNDS	TOTAL (ORIGINAL)	TOTAL (REVISED)	HARLEM CDC	HBA/OTHER SOURCES
DIRECT COSTS:	\$	\$	\$	\$
EXTERIOR RENOVATION	\$2,000	\$7,875	\$4,350	\$5,525
INTERIOR RENOVATION	\$53,000	\$97,385	\$67,110	\$29,475
FURNITURE, FIXTURES & EQUIPMENT	\$25,000	\$39,910	\$0	\$39,910
INDIRECT COSTS				
ADMINISTRATIVE / PROJECT MGMT.	\$10,000	\$10,000	\$3,000	\$7,000
TOTAL	\$90,000	\$155,170	\$74,460	\$81,910

In its initial request for CIP funds HBA pledged its own reserves to fulfill the matching funds requirement. Subsequent to that initial request HBA has received a three year federal community economic development grant for the Program that includes \$30,000 for construction and \$15,000 for FF&E. HBA also entered into an agreement with Incubate NYC (a business incubation program designed help entrepreneurs develop their ideas into sustainable, revenue generating business), which includes \$24,910 in FF&E. However, much of HBA's operating budget is funded from contracts with the Upper Manhattan Empowerment Zone and the New York City Department of Small Business Services. These contracts are paid on a reimbursement basis requiring HBA to expend the costs required to fulfill contracts and wait months for reimbursement. HBA advises that managing ongoing cash flow obligations and absorbing project cost over-runs place undue financial burdens on its resources.

To cover these additional costs HBA has requested that Harlem CDC increase the previously approved \$45,000 CIP grant by \$29,460 (\$25,110 for additional interior renovation costs and \$4,350 for exterior renovation costs), which if approved would increase the grant amount to \$74,460.

IV. Harlem CDC Financial Assistance Subject to Availability of Funds

The provision of Harlem CDC's financial assistance is contingent upon the availability of funds.

V. Recommendation

It is recommended that the Directors authorize the requested increase to the grant amount.

VI. Additional Submission(s) to Directors

Resolution
September 28, 2012 HBA Directors Materials
Exhibit 1 – Summary of Additional Project Costs



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July 17, 2013

COMMUNITY INITIATIVES PROGRAM – Request authorization to increase the amount of a previously approved grant to the Harlem Business Alliance by \$29,460 (Twenty Nine Thousand Four Hundred Sixty Dollars) to partially finance renovation and related administrative and project management costs associated with its Back-Office Support Services Program; Authorization to Take Related Actions.

RESOLVED, that based upon the materials presented at this meeting (the “Materials”), a copy of which is ordered filed with the corporate records, the Corporation be and hereby is authorized to increase by up to \$29,460 (Twenty Nine Thousand Four Hundred Sixty Dollars) a previously approved grant of up to \$45,000 (Forty Five Thousand Dollars) for a total of up to \$74,460 (the “Grant”) from the Community Initiatives Program (“CIP”) to partially finance renovation and related administrative and project management costs, for the purposes, and substantially on the terms and conditions, set forth in the Materials, and that President or the President’s designee(s) is authorized to execute such documents and agreements as are required to effectuate modification of the grant award as the President or his designee(s) may deem appropriate; and be it further

RESOLVED, that the Directors find that an increase to the grant to partially fund the finance renovation and administrative and project management costs related to the Harlem Business Alliance’s Back-Office Support Program are in compliance with the eligibility criteria established under the guidelines for the Community Initiatives Program; and be it further

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

RESOLVED, that the provision of CIP financial assistance is expressly contingent upon receipt of any and all necessary approvals and subject to the availability of funds; and be it further

RESOLVED, that the President or the President’s designee(s) be, and each of them hereby is, authorized to take such actions or to execute on behalf of the Corporation such documents as he or she may deem necessary or appropriate in connection with the foregoing resolutions.

APPENDIX I

The Community Initiatives Program Fund (the "Program") is intended to fund initiatives by community-based organizations and other successful applicants within the Corporation's service area that will enhance stability and contribute to the future economic development of the community. The Program is further intended to promote projects which will facilitate planning, increase development and related economic activity, or contribute to the planning or enhancement of vital community resources, including cultural facilities.

In general, financial assistance under the Program shall be made subject to the following guidelines:

1. Financial assistance shall be made available for feasibility, planning and/or design studies related to future economic development projects, including studies designed to ensure optimal utilization of privately and publicly owned properties. Planning activities that encourage board community participation are preferred.
2. A project must demonstrate the potential to result in a specific community benefit within the next 18-24 months.
3. Loans shall not exceed one-third of total project cost or \$100,000, whichever is less, and shall be for a term not exceeding 18 months from disbursement.
4. Grants shall not exceed one-half of the total project cost or \$75,000, whichever is less.
5. Loans shall be available for economic stabilization activities when the applicants can demonstrate a source of repayment over the next 18 months. Economic stabilization activities may include emergency repairs as well as the re-use and redevelopment of deteriorated or underutilized properties.
6. Applicants for loans must own or have been formally designated to develop the site of a proposed project.
7. Applicants for loans must demonstrate that alternative sources of funds have been sought and that none is readily available.
8. Where appropriate, the Directors may authorize Harlem CDC to assist in administration of a project by entering into a contract with consultants selected by the applicant to perform specific aspects of a project.

EXHIBIT 1

SUMMARY OF ADDITIONAL PROJECT COSTS

	<u>TOTAL ADDITIONAL PROJECT COST</u>	<u>ADDITIONAL HCDC GRANT REQUEST</u>
EXTERIOR RENOVATION:		
Storefront	\$5,115	\$3,800
Awning	\$1,500	
Exterior Signage	\$710	
Repairs – Transom & Door Hardware	<u>\$550</u>	<u>\$550</u>
TOTAL EXTERIOR	<u>\$7,875</u>	<u>\$4,350</u>
INTERIOR RENOVATION:		
Doors	Note 1	\$175
Network Wiring	Note 1	\$531
Cabinetry	Note 1	\$1,000
Carpentry	Note 1	\$836
Contingency	Note 1	\$7,398
Air Conditioning	\$8,265	
Steam Pipe Relocation	\$1,175	
Emergency, Exit & Recessed Lights	\$1,750	
Clean-up	\$1,000	\$700
Front Coat Closet	\$400	\$400
Rear Window	\$200	\$200
Additional Carpentry & Framing	\$7,200	\$1,600
Flooring	\$3,000	
Stone & Tile Flooring	(\$1,000)	
Additional Doors (server, storage, etc.)	\$800	\$800
Pantry / Kitchen Cabinets	\$1,500	\$1,500
New Accessible Restroom	\$1,595	\$1,595
Electrical / Security	\$2,775	\$875
Soundproofing	\$4,060	\$4,060
Heating System – gas	\$7,950	\$1,725
Miscellaneous	<u>\$1,715</u>	<u>\$1,715</u>
TOTAL INTERIOR	<u>\$42,385</u>	<u>\$25,110</u>
FURNITURE, FIXTURES & EQUIPMENT:		
Additional FF&E	<u>\$14,910</u>	
TOTAL FF&E	<u>\$14,910</u>	
TOTAL ADDITIONAL COSTS	<u>\$65,170</u>	<u>\$29,460</u>

Note 1: Cost was included in original the project scope but was not allocated to CIP grant requested from Harlem CDC.



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FOR CONSIDERATION

July 17, 2013

TO: The Directors

FROM: Curtis Archer

SUBJECT: New York City (New York County) -- Victoria Theatre Redevelopment Land Use Improvement and Civic Project

REQUEST FOR: NEW YORK (NEW YORK COUNTY)-VICTORIA THEATRE REDEVELOPMENT PROJECT – Affirmation of Land Use Improvement and Civic Project Findings (the “UDC Findings”) Pursuant to Section 10 of the New York State Urban Development Corporation Act, as amended (the “UDC Act”); Acceptance of General Project Plan, as Modified (the “MGPP”); Acceptance of State Environmental Quality Review Act (“SEQRA”) Findings ;Approval of Ground Lease With Option to Purchase; Adoption of Finding Pursuant to the Public Authorities Law (the “PAL Finding”); Recommendation that ESD Directors take the following actions: (a) Affirm the UDC Findings; (b) Affirm the MGPP; (c) Adopt Findings Pursuant to SEQRA; (d) Override the New York City Zoning Ordinance and New York City Charter Uniform Land Use Review Procedure; and (e) Adopt the PAL Finding; and Authorization to Take Related Actions

Developer: 233 West 125th Street Danforth, LLC, an affiliate of Danforth Development Partners, LLC (“Danforth”), the Conditionally Designated Developer.

Project Location and Site: 233-235 West 125th Street
New York County, New York City
a/k/a Manhattan Block 1931, Lot 17 (“Project Site”)
The Project Site is a “T-shaped” through lot of approximately 20,000 SF connecting West 125th and West 126th Streets with approximately 50 feet of frontage along West 125th Street and 150 feet of frontage along West 126th Street. The Project Site is currently improved by a three-story, approximately 40,000 square foot theater, the former Lowes Victoria Theater.

Proposed Project: The Project consists of: (a) redevelopment of the historic Victoria Theater, preserving and restoring elements of the original theater; and (b) creating a 27-story, approximately 385,000 square foot (“SF”) mixed-use building consisting of hotel, arts and culture, residential, dining and entertainment, retail, and parking uses. The Project will create jobs, increase the inventory of hotel rooms in Harlem, provide a permanent facility for cultural organizations, and increase the inventory of affordable housing in Harlem.

ESD/
Harlem CDC Investment: An ESD Metropolitan Economic Revitalization Fund Loan of up to \$5,000,000.

Project Summary

For a complete description of the Project, please see the Modified General Project Plan (“MGPP”) that is attached as Attachment 1.

Background

On July 13, 2012, the Directors adopted the General Project Plan for the Project (“GPP”) and requested that the Directors of the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”), the Corporation’s parent organization, adopt the GPP. On July 18, 2012, the ESD Directors adopted the GPP and authorized staff to conduct a public hearing on the GPP and with respect to the Draft Environmental Impact Statement, or “DEIS,” prepared in connection with the Project.

Pursuant to the requirements of the Public Authorities Law, Harlem CDC obtained an independent appraisal of the fair market value of the Project Site, based upon existing zoning requirements. The fair market value was determined to be \$21.6 Million.

Project Description

The major components of the Project are listed below:

- Harlem CDC will enter into a ground lease with option to purchase with Developer or an affiliate of Developer;
- The ground lease is expected to be executed in the first quarter of 2014, prior to or simultaneously with Developer closing on construction financing for the Project;
- The ground lease will commence on the date of lease execution and have a term of approximately 30 months, during which time Developer will substantially complete construction;
- Developer will have an option to purchase the majority of the Project Site, excepting the cultural space, exercisable by delivering a temporary certificate of occupancy for the improvements to be constructed at the Project Site and satisfying other conditions, including the payment of a \$25 million purchase price to Harlem CDC in accordance with

a payment structure and schedule described in the MGPP and the satisfaction of other conditions described in the MGPP; and

- Developer will restore portions of the existing buildings and construct a 27-story, approximately 385,000SF mixed-use building consisting of hotel, arts and culture, residential, dining and entertainment, retail, and parking uses.
- The essential terms of the proposed ground lease with option to purchase are included as Attachment 2.

Public Hearing and Recent Actions

Pursuant to authorizations granted by the Directors on July 13, 2012, and the ESD Directors on July 18, 2012, Harlem CDC and ESD held a duly noticed public hearing on the Project on December 10, 2012 at which oral and written comments were received from the public. Further written comments were accepted through January 10, 2013. The purpose of the hearing, and of the comment period, was to inform the public about the Project and solicit public comment on: (a) pursuant to Section 16 of the UDC Act, the proposed GPP for the Project; (b) pursuant to Section 6 of the UDC Act, the essential terms of a proposed lease and related documents with Developer; and (c) pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted thereunder (collectively known as “SEQRA”), the DEIS prepared for the Project by AKRF, Inc. A summary of public comments received is set forth below under “Hearing Comments and Responses”. A transcript of the hearing, and copies of the written comments received are enclosed with these materials as Attachment 3.

The Directors accepted the the Project’s Final Environmental Impact Statement (“FEIS”) at their meeting on April 12, 2013 and the ESD Directors accepted the FEIS at their meeting on April 26, 2013. The FEIS reflected all changes made to the Project since the issuance of the DEIS, and included a chapter summarizing the public comments and provided responses to such comments.

Hearing Comments and Responses

As stated, a duly noticed public hearing was held on December 10, 2012, at which oral and written comments were received from elected officials, interested individuals and local agencies and organizations. Harlem CDC and ESD received twenty-one (21) oral and twelve (12) written comments. The comments were overwhelmingly in support of the Project. Supportive comments focused on the many public benefits, the support for cultural organizations and the other purposes to be served by the Project. The full Response to Comments is included in the FEIS. Set forth below are the principal adverse comments, made by two individual members of the public, along with Harlem CDC and ESD responses thereto, numbered to correspond with the numbering in the full Response to Comments.

Comment 1: Community Board members are concerned that there is no meaningful community input or vote on State-sponsored projects. As with City projects, there should be a mechanism with State-projects for community input to be recognized.

Response: Pursuant to SEQRA and the UDC Act, all members of the public (including Community Boards) have been invited and encouraged to provide comments on the GPP and DEIS. As noted in the EIS, the public has had the opportunity to make comments on the Draft Scope of Work for the preparation of the EIS, the DEIS, and the GPP, and all submitted comments have been considered by ESD and Harlem CDC. Further, Developer formally presented the project to Manhattan Community Board 10 on April 19, 2012.

Comment 2: The community has followed this project for years and nothing has come to fruition. The project, from beginning to end, has been misrepresented from its inception. We were misinformed and told that the developer had the contract to do the project. Not so—we found out that the developer only had a Memorandum of Understanding. A Memorandum of Understanding is not a contract. We're tired of doors being closed and the politicians or whoever represents us, go behind these doors, do private business, and come back and not tell us what they're doing.

Response: Harlem CDC and ESD worked diligently to advance the project from an RFP in 2004 to conditional developer designation in 2007, and worked collectively with the Developer to navigate through capital and real estate market changes in 2008 and 2009. The adoption of the GPP and acceptance of the DEIS in July 2012 represent significant milestones toward bringing the project to fruition. ESD issued a press release on November 27, 2007 announcing Harlem CDC's conditional designation of Danforth to be the developer of the project, and indicating that Danforth had executed a Memorandum of Understanding with Harlem CDC. The proposed project has been subject to public review and comment pursuant to SEQRA and the UDC Act, as explained in the response to Comment 1.

Comment 3: HCDC meetings have been held without any announcement to the community at large in that meeting. Hearings have been erratic in the past and you don't know when they're holding hearings. Therefore, the community did not have an opportunity to come out and speak against this project.

Response: The Board of Directors of Harlem CDC meets on a regularly scheduled basis, typically every other month. Special board meetings are called as needed. The schedule of regular meetings for the year is generally established by the Board at the beginning of the year. Consistent with New York State law, Harlem CDC Board meetings are publicly announced and posted by its parent corporation. A Public Hearing was held on December 10, 2012 to obtain comments on the DEIS and the GPP. Notice of the Public Hearing was published in the New York Amsterdam News on November 8, 2012 and the New York Daily News on November 9, 2012, and was posted on the web sites of Harlem CDC and ESD. A Public Scoping meeting for the DEIS was held on December 15, 2008. Notice of the Public Scoping was published in the City Record and the Environmental Notice Bulletin and was also posted to the web sites of ESD and Harlem CDC.

Comment 4: Thousands of people in this community have signed that they do not want this

project, yet it's been pushed forward. We feel that it insults the cultural integrity of this community. We're not interested in the Victoria Theater being carved up so that some people can make money.

Response: Support for the proposed project has been expressed by members of the local community, community stakeholders and elected officials. No petitions or other significant numbers of "signatures" have been received by ESD or Harlem CDC in opposition to the proposed project. As noted in the EIS, while economic development is an important purpose of the proposed project, there are many other goals as well, including the provision of affordable housing, rehabilitation and reuse of an important Harlem landmark, and provision of facilities for local arts organizations.

Comment 5: I received an email that appeared to come from HUDC asking me to come to this meeting to support the project. If we were to come to give our opinion, why are you sending out a document saying that we should come basically only if we support this particular development.

Response: Harlem CDC did not circulate an email asking the public to support the project.

Notice

of the Public Hearing was published in the New York Amsterdam News on November 8, 2012 and the New York Daily News on November 9, 2012, and was posted on the web sites of Harlem CDC and ESD, inviting any and all comments on the proposed project. The public review of the proposed project includes an opportunity for all opinions to be expressed. All pertinent comments made in person or in writing are taken into consideration.

Comment 6: There are some so-called community organizations who feel they have a right to destroy this building or this theater so that they can get free or close to free rent. That may advance them personally but it harms the community.

Response: As noted in the EIS, the project is expected to result in a number of benefits to the community, City and State. The proposed project would provide important affordable space for local cultural organizations, which would pay nominal rent and all operating and occupancy costs associated with use of the space; create much-needed affordable and market-rate housing; generate new sources of employment and economic activity; and create a new hotel for an underserved market. The cultural arts partners are all well-established local community based organizations. While the north portion of the site does require demolition, the south portion would be restored. Overall, the proposed project would preserve and celebrate the heritage of the Victoria Theater and its role in the history of 125th Street, and contribute to the ongoing revitalization of 125th Street as a premier art, culture and entertainment district.

Modifications to the General Project Plan

Subsequent to the issuance of the original GPP adopted by the ESD Directors on July 18, 2012 and the DEIS, in the process of refining the architectural design for the Project, certain changes were made to the conceptual design of the proposed Project. These changes included:

- Increasing the building height by ten feet, from approximately 290 feet to approximately 300 feet, excluding rooftop mechanical space. This change was made to accommodate structural design considerations and clear ceiling heights required for the proposed theater spaces and the hotel ballroom.
- Eliminating the vehicular driveway, which would have entered the site from West 126th Street. This has been replaced by a proposed curb-side hotel loading and drop-off zone on West 126th Street.
- Reorganizing program elements on the project's lower floors, including moving some of the retail space to the ground floor, creating a new mezzanine floor (now called the fourth floor), and relocating some of the theater support functions to the new mezzanine floor.

As a result of the above changes and the need to address fire and safety code compliance requirements, the overall gross square footage of the building has increased from approximately 360,000 square feet to approximately 385,000 square feet. The number of hotel rooms, residential units and parking spaces have not increased, and the size of the cultural program components remains the same as in the DEIS.

Land Use Improvement and Civic Project Findings

Staff has reviewed the modifications to the GPP and concluded that the modifications do not have an effect on the findings the Directors made when adopting the GPP. The Directors are therefore requested to affirm the Land Use Improvement and Civic Project findings as set forth below and restated in the MGPP.

Land Use Improvement Project Findings

- (1) That the area in which the project is to be located is a substandard or insanitary area, or is in danger of becoming a substandard or insanitary area and tends to impair or arrest the sound growth and development of the municipality;

The Project Site has been substantially vacant since 1997. There has been prolonged water infiltration, heavy mold growth and chronic deterioration at the Project Site that result in insanitary and substandard conditions that threaten the structural integrity of the buildings and seriously undermine the long term viability of this historically significant structure.

- (2) That the project consists of a plan or undertaking for the clearance, re-planning, reconstruction and rehabilitation of such area and for recreational and other facilities incidental or appurtenant thereto;

The Project includes the restoration or reconstruction of some of the historic architecture at the Project Site in addition to the construction of hotel, cultural and retail spaces that will increase commercial traffic and tourism in the area.

(3) That the plan or undertaking affords maximum opportunity for participation by private enterprise, consistent with the sound needs of the municipality as a whole.

The Developer is responsible for the payment of all costs associated with the Project, including the \$12.6 million build-out of the cultural unit that Harlem CDC will own.

Civic Project Findings:

(1) That there exists in the area in which the project is to be located, a need for the educational, cultural, recreational, community, municipal, public service or other civic facility to be included in the project.

There are numerous cultural organizations in the Harlem community that provide performance and visual arts benefits to the community. Most are challenged by the tremendous overhead costs required to obtain and maintain affordable and suitable physical space for performances, exhibitions and back office operations.

(2) That the project shall consist of a building or buildings or facilities which are suitable for educational, cultural, recreational, community, municipal, public service or other civic purposes.

As more fully described within this MGPP, the Project includes the construction of performance and administrative office space, as well as shared lobby and box office areas that will be used by the cultural partners involved with the Project. The Project will add to and enhance existing area cultural and entertainment attractions.

(3) That such project will be leased to or owned by the state or an agency or instrumentality thereof, a municipality or an agency or instrumentality thereof, a public corporation, or any other entity which is carrying out a community, municipal, public service or other civic purpose, and that adequate provision has been or will be, made for the payment of the cost of acquisition, construction, operation, maintenance and upkeep of the project.

The Developer is obligated to build at its cost the cultural facility at the Project, which Harlem CDC will own and lease to the cultural organizations. The cultural organizations will pay a nominal rent to Harlem CDC but will be responsible for the payment of all costs associated with the operation and maintenance of the cultural facility space.

(4) That the plans and specifications assure or will assure adequate light air, sanitation and fire protection.

The Project would comply with all applicable Building Code(s), including making adequate provision for light, air, sanitation, and fire protection.

No findings regarding Project Site occupant relocation are required under Section 10(g) of the UDC Act because the Project Site is currently vacant and its most recent use was as a commercial facility. No residential relocation is required as there are no families or individuals residing on the Project site.

Labor Peace Agreement

Public Authorities Law Section 2879-b prohibits public authorities from entering into an agreement for the development of a project (in which the authority has a substantial proprietary interest) if the project includes, as one of its principal functions, a hotel with more than fifteen employees, unless the agreement requires, as a material condition, that a labor peace agreement (“LPA”) is entered into with a labor organization representing hotel or convention center employees in the State, for a period of at least five years. An LPA is an agreement between the project developer (or its contractor) and a labor organization prohibiting the labor organization and its members from engaging in labor activities that disrupt the hotel’s operations. The statute also provides that the LPA requirement can be waived if the authority determines that the project would not be able to go forward with an LPA or the costs of the project to the authority would be substantially increased by such a requirement.

Although efforts were made to reach an LPA with respect to the Project, discussions between the Developer and the labor union did not result in agreement. Developer has requested that Harlem CDC and ESD waive this requirement with respect to the Project. In support of its request, Developer has submitted pro-forma financial projections for the Project and other information regarding its proposed operations reflecting the effect of increased wage and benefits costs assuming prevailing local union wages as the result of an LPA. The information submitted includes a memorandum and other objective supporting materials prepared by HVS Consulting and Valuation Services (“HVS”), a leading consulting and services organization in the hotel and leisure industries.

The HVS memorandum indicates that having an LPA in effect would increase the Project’s hotel labor costs by approximately 60%. HVS concludes that the cash flow with an LPA in effect would not produce sufficient debt service coverage to give lenders adequate comfort as to feasibility of the Project. Nor would the Project produce a reasonable or desirable return on investment to any owner or equity investor, thus rendering the market value of the Project with an LPA in effect so low as to be infeasible. Staff has reviewed the Developer’s financial projections, along with the HVS memorandum and other supporting information and agrees that the increased costs associated with implementation of an LPA, if it were required, would render the Project infeasible. Staff, therefore recommends that Harlem CDC waive the LPA requirement for this project and that the Directors recommend to the ESD Board of Directors that ESD also waive the LPA requirement for this Project.

Design and Construction

The Project calls for the redevelopment of the vacant Victoria Theater including complete demolition of the north portion of the site and selective re-use and renovation of the existing

theater façade, lobby and monumental lobby stair. Renovation/selective demolition is tentatively scheduled to begin, subject to written authorization by Harlem CDC, in 2014. ESD's Design & Construction staff ("D&C") will advise Harlem CDC on matters pertaining to project costs and compliance of the plans and related documents with design criteria established for the Project and additionally will attend construction meetings and monitor construction progress. D&C would have the right to review contractor requisitions and change orders for the Project, review and approve change orders and contractor requisitions with respect to the Cultural Condominium Unit, and in connection with any ESD MERF loan, D&C would verify that all construction requirements for the Project had been satisfied prior to disbursement of the loan.

Environmental Review and SEQRA Findings

ESD, acting as lead agency pursuant to the requirements of SEQRA and the implementing regulations of the New York State Department of Environmental Conservation, performed a detailed and comprehensive environmental review of the proposed Project. On July 18, 2012, the ESD Directors accepted as complete the Draft Environmental Impact Statement ("DEIS") for the Project. Upon acceptance, the DEIS was circulated for public review and comment, the public hearing was held on December 10, 2012, and the public comment period remained open through January 10, 2013. As stated, a transcript of the hearing, and a copy of all written comments received, are enclosed with these materials. Specific responses to all comments made at the hearing and in writing are contained in Chapter 26 of the Project's FEIS.

At an April 26, 2013 meeting, the ESD Directors accepted as complete the FEIS. The DEIS and FEIS considered the potential environmental effects of the Project as proposed in the General Project Plan.

SEQRA requires the adoption of written findings, supported by a statement of relevant facts and conclusions considered, prior to agency decisions on actions that have been the subject of a FEIS. The "SEQRA Findings Statement", Attachment 3 to the MGPP attached hereto, contains the facts and conclusions in the DEIS and FEIS relied upon to support the Corporation's and ESD's decisions on the Project, and indicates the social, economic and other factors and standards forming the basis of the decisions.

The findings that the ESD must adopt prior to the affirmation of the General Project Plan are that:

- ESD has given consideration to the DEIS and FEIS ;
- The requirements of the SEQRA process, including the implementing regulations of the New York State Department of Environmental Conservation, have been met;
- Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the Project is one that avoids or minimizes significant adverse environmental effects to the maximum extent practicable, including the effects disclosed in the FEIS by incorporating as conditions to the decision those mitigation measures described in the FEIS; and

- The Project is in compliance with Section 14.09 of the State Historic Preservation Act.

Accordingly, staff recommends that the Directors accept the SEQRA Findings Statement and recommend that ESD adopt the SEQRA findings included as Attachment 3 to the MGPP.

Zoning Override

The required size and financing for the Project dictates that the project will be developed in accordance with the Development Agreement to be attached to the Ground Lease as well as any other requirements to be established in Harlem CDC's sole discretion.

The Project is an important community and economic development initiative for the 125th Street corridor and for Harlem. Its cultural and affordable housing components and the scope of its historic preservation are elements that have been prioritized due to their importance to a broad range of community stakeholders. The cultural space will be constructed by the Developer and delivered debt free to the cultural partners. Fifty percent of the residential units will be affordable to low- and moderate-income households and individuals. The residential square footage was increased to allow for a larger percentage of family size affordable units to address concerns of Harlem CDC's Board. The market rate residential, hotel and retail spaces are effectively helping to finance the cultural space, the affordable units, and the historic preservation. Any reduction in building program for these debt-carrying elements would adversely impact the financial feasibility of the Project and its ability to deliver on the job development, business development and community revitalization goals and objectives that are important to the community.

For the reasons outlined above, it is not practicable for the Project to comply with the New York City Zoning Resolution ("ZR"). Staff therefore recommends that the Directors request that the ESD Directors override the ZR and other local laws inclusive of the Uniform Land Use Review Procedure review and certification process. The zoning overrides requested will facilitate a taller building with a greater floor area ratio, among other variances, than what the underlying zoning for the site allows.

The requested overrides include, specifically: i) ZR 97-42, ZR 97-421, ZR 97-422, ZR 23-145, ZR 34-112 (Floor Area); ii) ZR 97-42; ZR 97-421, ZR 97-422, ZR 23-145 and ZR 34-112 (Floor Area Ratio); ZR 23-22 (Maximum Number of Units); iii) ZR 35-24 and ZR 94-442 (Maximum Building Height); iv) ZR 35-24 (Maximum Base Height); v) ZR 35-24 (Initial Setback Above Base Height); vi) ZR 94-442, ZR 97-443 (Minimum [C4-7] Base Height and Streetwall; vii) ZR 33-303 (Clearance when lot line is adjacent to neighboring rear lot line); and viii) ZR 25-62 (Minimum Square feet per car in an attended parking facility). The City of New York has been advised of and supports the Project and ESD's participation in the Project and the zoning overrides that are being requested.

Non-Discrimination & Contractor and Supplier Diversity

Pursuant to New York State Executive Law Article 15-A, ESD and Harlem CDC recognize their obligation under the law to promote opportunities for maximum feasible participation of New York State certified Minority and Women-owned Business Enterprises (“MWBEs”) in the performance of ESD and Harlem CDC contracts. Accordingly, Harlem CDC’s and ESD’s Non-Discrimination and Contractor & Supplier Diversity policies will apply to the Project. Developer and its affiliates and/or partners shall be required to solicit and utilize MWBEs for any contractual opportunities generated in connection with the Project and to use Good Faith Efforts (5 NYCRR §142.8) to achieve an overall MWBE Participation Goal of 30% in relation to the total value of the Project. The aforementioned goal shall be divided to include a Minority Business Enterprise (“MBE”) Participation Goal of 22% and a Women Business Enterprise (“WBE”) Participation Goal of 8%, both related to the total value of the Project.

Additional Submissions to the Directors

Resolutions

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| Attachment 1- | Modified General Project Plan |
| Attachment 2 | Essential Terms of the Proposed Lease |
| Attachment 3 | Hearing Transcript |



**Harlem
Community
Development
Corporation**

163 West 125th Street
New York, NY 10027
212-961-4100
212-961-4143 fax
www.harlemcdc.com

July 17, 2013

NEW YORK (NEW YORK COUNTY)-VICTORIA THEATRE REDEVELOPMENT PROJECT – Affirmation of Land Use Improvement and Civic Project Findings (the “UDC Findings”) Pursuant to Section 10 of the New York State Urban Development Corporation Act, as amended (the “UDC Act”); Acceptance of General Project Plan, as Modified (the “MGPP”); Acceptance of State Environmental Quality Review Act (“SEQRA”) Findings ;Approval of Ground Lease With Option to Purchase; Adoption of Finding Pursuant to the Public Authorities Law (the “PAL Finding”); Recommendation that ESD Directors take the following actions: (a) Affirm the UDC Findings; (b) Affirm the MGPP; (c) Adopt Findings Pursuant to SEQRA; (d) Override the New York City Zoning Ordinance and New York City Charter Uniform Land Use Review Procedure; and (e) Adopt the PAL Finding; and Authorization to Take Related Actions

RESOLVED, that, on the basis of the materials presented to this meeting and previously presented to the Directors, a copy of which is hereby ordered filed with the records of the Corporation (the “Materials”), relating to the Victoria Theater Redevelopment Land Use Improvement and Civic Project (the “Project”), the Corporation hereby affirms the findings made by the Directors on July 13, 2012 and ratifies the findings made by the Directors of the New York State Urban Development Corporation, d/b/a Empire State Development (“ESD”) on July 18, 2012 pursuant to Section 10 of the New York State Urban Development Corporation Act, as amended (the “Act”), including all related findings, resolutions, determinations and authorizations made by the Harlem CDC board on July 13, 2012 and the ESD Board on July 18, 2012 with respect to the Project (the “UDC Findings”); and be it further

RESOLVED, that on the basis of the Materials, pursuant to Sections 16(2) and (3) of the Act and after due consideration of: (1) the testimony given at the public hearing held by the Corporation and ESD on December 10, 2012 at the New York State Office building, 163 West 125th Street, New York, NY on the General Project Plan dated July 18, 2012 for the Project; (2) the entire record of such hearing; (3) the Final Environmental Impact Statement dated February 2013 adopted by the ESD Directors on April 26, 2013; (4) all written comments received on the Plan, copies of all of which were presented to this meeting and are ordered filed with the records of the Corporation, and substantially on the terms and conditions described in the Materials (collectively, the “Background Documents”), the Corporation does hereby accept the proposed Modified General Project 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 (the “Plan”), a copy of which Plan, together with such changes, is hereby ordered filed with the record of the Corporation; and be it further

RESOLVED, that on the basis of the Materials, and substantially on the terms and conditions described in the Materials, the Corporation does hereby find that the proposed ground lease with option to purchase as set forth in the Materials is consistent with and will serve to further the Plan; and be it further

RESOLVED, that subject to the Plan being affirmed by the Directors of ESD, the proposed lease be and hereby is approved; and be it further

RESOLVED, that the Plan shall not be final until action is taken by the Directors of Harlem CDC and ESD as provided in the UDC Act and until such time as all requirements of the UDC Act and other applicable law in connection therewith have been satisfied; and be it further

RESOLVED, that the Corporation recommends that the Directors of ESD affirm the UDC Findings; and be it further

RESOLVED, that that on the basis of the Background Documents, the Corporation recommends that the Directors of ESD affirm the Plan; and be it further

RESOLVED, that, with respect to the Project, the Corporation hereby recommends that ESD make and adopt pursuant to the State Environmental Quality Review Act (“SEQRA”) the following findings and determinations, which findings and determinations are made after full consideration of the SEQRA Findings Statement attached to the Project’s Plan, which Findings Statement is hereby accepted by the Corporation, and copies of which Findings Statement are hereby ordered filed with the records of the Corporation relating to the Project:

- ESD has given consideration to the Draft and Final Environmental Impact Statements (“DEIS” and “FEIS”, respectively) prepared for the Project;
- The requirements of the SEQRA process, including the implementing regulations of the New York State Department of Environmental Conservation, have been met;
- Consistent with social, economic and other essential considerations from among the reasonable alternatives available, the Project is one that will avoid or minimize significant adverse environmental effects to the maximum extent practicable, including the effects disclosed in the FEIS and the Findings Statement by incorporating as conditions to the decision those mitigation measures described in the FEIS and the Findings Statement; and;
- The Project is in compliance with Section 14.09 of the State Historic Preservation Act; and be it further

RESOLVED, that in connection with the Project, the Corporation hereby finds, pursuant to Section 16(3) of the UDC Act, that it is not feasible or practicable for the Project to be in conformity with the requirements of the New York City Zoning Resolution (“City Zoning”) and,

with respect to any disposition of City-owned property, the Uniform Land Use Review Procedure of the New York City Charter (“ULURP”), and other local zoning law, and accordingly, the Corporation recommends that the Directors of ESD override City Zoning and ULURP and other local zoning law for the specified purposes of the Project; and be it further

RESOLVED, that on the basis of the Materials, the Corporation hereby finds, and recommends that the Directors of ESD find, pursuant to New York State Public Authorities Law Section 2879-b, that the Project would not be able to go forward if a labor peace agreement were required and hereby waives such requirement in connection with the Project; and be it further

RESOLVED, that the President, or his designee, be, and each of them hereby is, authorized in the name of and on behalf of the Corporation to execute and deliver any and all documents and to take all actions as may be considered necessary or appropriate to effectuate the foregoing resolutions.
