



MINUTES OF THE MEETING OF THE
REAL ESTATE AND FINANCE COMMITTEE
OF
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
July 30, 2019

A meeting of the Real Estate and Finance Committee (the "Committee") of the Board of Directors (the "Board") of New York City Economic Development Corporation ("NYCEDC"), was held on Tuesday, July 30, 2019, at NYCEDC's offices at One Liberty Plaza, in Conference Room 12A, New York, New York.

The following members of the Committee were present:

Mitch Draizin (by conference telephone)
James McSpiritt
Patrick J. O'Sullivan, Jr.
Mark Russo (by conference telephone)
Betty Woo

Members of NYCEDC staff also were present.

The meeting was chaired by Mr. O'Sullivan and called to order at 2:10 p.m. Meredith Jones, an Executive Vice President, General Counsel and Secretary of NYCEDC, served as secretary of the duly constituted meeting, at which a quorum was present.

1. Approval of the Minutes of the April 23, 2019 Committee Meeting

It was moved that the minutes of the April 23, 2019 meeting of the Committee be approved, as submitted. Such a motion was seconded and unanimously approved.

2. Deed Modification for Flushing Commons Property Owner LLC

Jamie Horton, an Associate of NYCEDC, presented a proposal for NYCEDC to enter into an amendment to the deed for NYCEDC's sale of Block 4978, Lot 25 on the Tax Map of the Borough of Queens (the "Site") to Flushing Commons Property Owner LLC (the "Purchaser" and "Developer"), on substantially the terms set forth in Exhibit A hereto.

In answer to a question from Mr. Draizin, Mr. Horton stated that each building being developed would have its own tax lot and that NYCEDC's right of reacquisition

with regard to each building would cease upon completion of that building. In answer to a question from Mr. McSpiritt, Mr. Horton stated that once the Phase 2 parking was built, it would operate as one parking lot together with the Phase 1 parking. He added that currently the new parking lot in Phase 1 was at about 50% occupancy. In answer to a question from Ms. Woo, Mr. Horton explained the Phase 2B timeline and the fee structure for any delays.

A motion was made that the Committee recommend that the Board of Directors approve the matter set forth for approval in the Proposed Resolution section of Exhibit A hereto. Such motion was seconded and approved. Mr. O'Sullivan recused himself from voting on this item.

3. Sublease for a Portion of South Brooklyn Marine Terminal

Alex Brady, a Vice President of NYCEDC, and Romulo Garza, an Assistant Vice President of NYCEDC, presented a proposal for NYCEDC to enter into a sublease (the "Sublease") with an entity (the "Subtenant") formed and controlled by an affiliate of Red Hook Container Terminal, LLC and an affiliate of Bush Terminal Holdings LP for a majority of the South Brooklyn Marine Terminal ("SBMT"), which portion is identified as Block 662, Lot 136 and portions of Block 662, Lots 1, 130 and 155 on the Tax Map of the Borough of Brooklyn (the "SBMT Site"). The Sublease would be on substantially the terms approved by NYCEDC's Board of Directors on May 9, 2018, with additions and/or modifications substantially as set forth in Exhibit B hereto.

In answer to a question from Mr. Draizin, Matthew Kwatinetz, an Executive Vice President of NYCEDC, stated that the appraisal mentioned in the item presented to the Committee was for the highest and best use of the SBMT Site unrestricted by the terms of the Sublease, and that such highest and best use was parking, which was not a permitted use under the Sublease. In answer to a second question from Mr. Draizin, Mr. Kwatinetz stated that the appraised fair market fixed-base rental value was \$20 million per year without lease restrictions. In answer to a question from Mr. McSpiritt, Mr. Kwatinetz stated that the only portion of SBMT that was not included in the Sublease was a small area where the New York City Department of Transportation will be relocating.

In answer to a question from Mr. Russo, Mr. Brady stated that the NY Wheel components on the SBMT Site were sold in a bankruptcy auction and were being removed by the purchaser. In answer to a question from Mr. McSpiritt, Mr. Brady stated that the Subtenant was proposing a variety of different subtenancies.

A motion was made that the Committee recommend that the Board of Directors approve the matters set forth for approval in the Proposed Resolutions section of Exhibit B hereto. Such motion was seconded and approved. Mr. O'Sullivan recused himself from voting on this item.

4. Adjournment

There being no further business to come before the meeting, pursuant to a motion made, seconded and unanimously approved the meeting of the Committee was adjourned at 2:30 p.m.

Paul Schwezomatt
Assistant Secretary

Dated: September 10, 2019
New York, New York

Exhibit A

**SUBLEASE FOR A PORTION OF SOUTH BROOKLYN MARINE TERMINAL
Board of Directors Meeting
August 13, 2019**

OVERVIEW:

On May 9, 2018 the Board of Directors approved that NYCEDC enter into a master sublease (the "Sublease") with an entity formed and controlled by an affiliate of Red Hook Container Terminal, LLC and an affiliate of Bush Terminal Holdings LP (the "Subtenant") for a majority of the South Brooklyn Marine Terminal ("SBMT"), a marine terminal located between 29th and 39th Streets, west of 2nd Avenue, in Sunset Park, Brooklyn. The premises to be subleased (the "Site") is identified as Block 662, Lot 136 and portions of Block 662, Lots 1, 130 and 155 on the Tax Map of the Borough of Brooklyn. It contains the 35th Street Pier, the 39th Street Pier and an open upland area. The Site is approximately depicted in Attachment A.

NYCEDC is seeking the Board's approval to enter into the Sublease on terms substantially as approved by NYCEDC's Board on May 9, 2018 with additions and/or modifications substantially as described below.

ADDITIONAL/MODIFIED SUBLEASE TERMS:

**Landlord
Capital
Work:**

NYCEDC shall make certain infrastructure improvements to the Site, which are expected to include but not be limited to upgrades to the 39th and 35th Street Piers, extensions of utilities, fire suppression improvements, construction of an entry/exit gate complex, demolition of a vacant building, and asbestos abatement and oversight. In total, NYCEDC will spend an amount not to exceed \$57,325,000 for this capital work (including any and all related remediation work, if needed) it performs on the Site, anticipated to be funded with City Capital Budget funds. The contracts for such work will be brought before the Executive Committee for approval, to the extent such approval is required.

During the period of NYCEDC's capital work, Subtenant will only be permitted to enter into sublicenses, with potential users of the Site, to allow for maximum flexibility to complete the work. If NYCEDC's capital work is not substantially completed prior to the third anniversary of the Sublease, NYCEDC will annually reimburse approximately 75% of any net loss of Subtenant, until NYCEDC's capital work is substantially complete. Net loss shall be the amount, if negative, of Subtenant's gross revenues minus the

space and the YMCA required in Phase 2. Phase 2B construction commencement may be delayed by up to four years. To compensate for the possible delay in delivery of the Phase 2B program, the Developer will pay extension fees of \$500,000 for the first year, \$750,000 for the second year, \$1,250,000 for the third year, and a \$1,500,000 letter of credit drawable if construction does not commence by the end of the fourth year. Further, a \$10,000,000 payment guaranty of liquidated damages that was to be in effect until Phase 2 construction commencement will now be in effect until the completion of the Phase 2A public benefits, at which time it will be replaced by a \$4,000,000 guaranty of liquidated damages until Phase 2B construction commencement. The project sequencing would be substantially as detailed below:

	Phase 2 2013 Board Approval	Proposed New Phase 2A	Proposed New Phase 2B
Program	<p>Three buildings that include not less than approximately:</p> <ul style="list-style-type: none"> - 350,000 gsf of mixed use space compliant with zoning; - 90,000 gsf of mixed use commercial; - 62,000 gsf YMCA; and - a sufficient number of parking spaces in an underground garage so that the total number of parking spaces with the spaces in the Phases 1 and 2 buildings will be 1,600; and <p>1.5 acres open space</p>	<p>Two buildings that include:</p> <ul style="list-style-type: none"> - not less than approximately 100,000 gsf of mixed use commercial; - not less than approximately 160,000 gsf of residential; - YMCA space currently anticipated to be approximately 62,000 gsf but still subject to negotiation; and - not less than 27 parking spaces; <p>and</p> <p>Approximately one acre open space</p>	<p>A building that includes:</p> <ul style="list-style-type: none"> - not less than approximately 300,000 gsf of residential; - not less than approximately 35,000 gsf of mixed use commercial; and - not less than a number of parking spaces (so that the total number of parking spaces in Phases 1, 2A and 2B will be 1,600 parking spaces); <p>and</p> <p>Open space (so that the total open space in Phases 1, 2A and 2B will be approximately 1.5 acres)</p>
Construction Commencement	July 1, 2021 (with all extensions in the deed exercised)	July 1, 2021	July 1, 2025 (if all extensions are exercised)

	Phase 2 2013 Board Approval	Proposed New Phase 2A	Proposed New Phase 2B
Construction Completion	42 months from commencement	42 months from commencement, with one, one-year extension. If the extension is exercised, maximum 54 months from commencement.	36 months from commencement, with one, one-year extension. If the extension is exercised, maximum 48 months from commencement.
Construction Completion Extension	None	\$500,000 per annum. Pro-rated if extension is shorter than one year.	\$500,000 per annum. Pro-rated if extension is shorter than one year.
Payment Guaranty of Liquidated Damages	\$10,000,000 until commencement of Phase 2	\$10,000,000 until completion of Phase 2A public benefits	\$4,000,000 until construction commencement

**PROPOSED
RESOLUTION:**

Approval for NYCEDC to enter into a deed amendment reflecting the terms of the transaction modified substantially as described above

**NYCEDC
PROJECT
CODE:**

3017

STAFF:

Jamie Horton, Associate, Real Estate Transaction Services
Susan Goldfinger, Senior Vice President, Real Estate Transaction Services
Tiffany Lacker, Senior Counsel, Legal

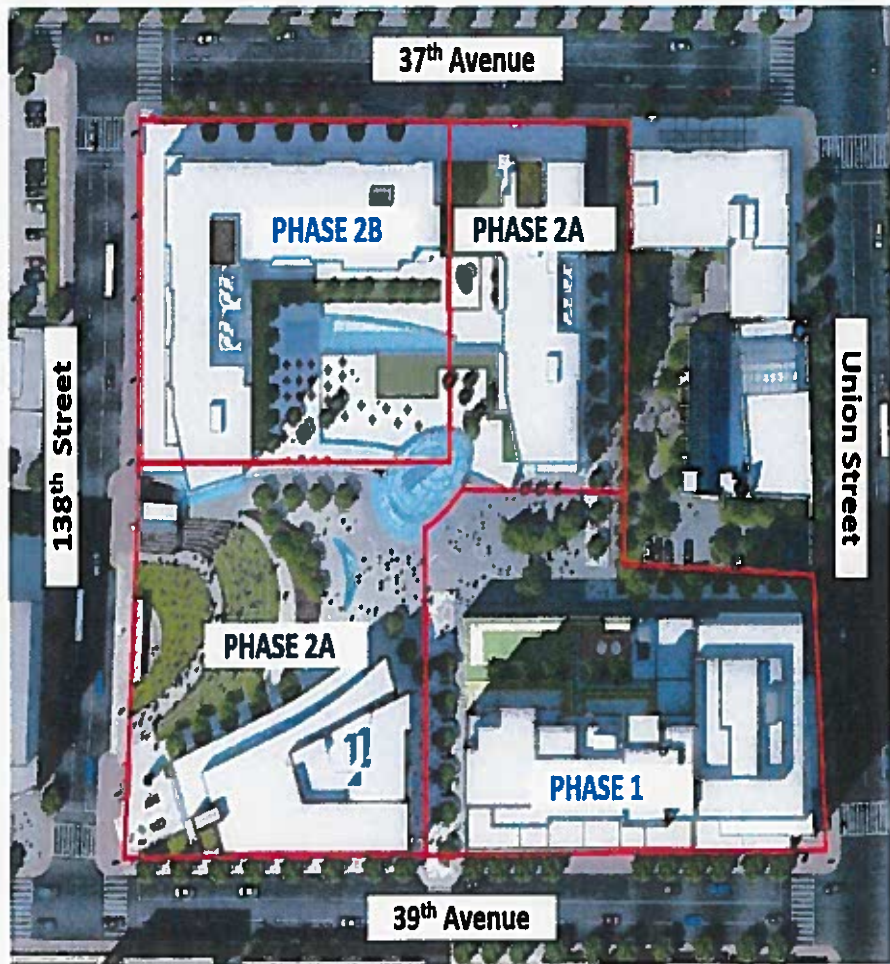


Exhibit B

**DEED MODIFICATION FOR FLUSHING COMMONS PROPERTY OWNER LLC
Board of Directors Meeting
August 13, 2019**

OVERVIEW: At its February 6, 2013 meeting, NYCEDC's Board of Directors approved NYCEDC's sale of Block 4978, Lot 25, Queens (the "Site") to Flushing Commons LLC or an affiliated entity for \$20,000,000 (all cash) and a two-phase development plan. In a subsequent meeting on December 19, 2013 the NYCEDC Board of Directors approved a revised phasing plan. The purchaser has delivered all its Phase I obligations in accordance with the deed and is seeking to modify the phasing plan, substantially as described below. In addition, the size of the project will be larger than originally described, substantially as described below.

OWNER: Flushing Commons Property Owner LLC (the "Developer")

SITE DESCRIPTION: The Site is an approximately 211,000 square foot parcel in the heart of Downtown Flushing, Queens that had been used as an approximately 1,100 space municipal parking lot since the 1940s. In line with the Phase 1 requirements, the Developer has improved part of the lot with two buildings totaling approximately 690,000 gross square feet of residential, office, retail and parking space.

PROJECT STATUS: The Developer completed Phase 1 in August 2017, with larger total building space than required. Under the terms of the deed, it was to deliver two buildings in Phase 1 which were to include not less than approximately 160,000 gsf of residential, 160,000 gsf of commercial space, and 982 underground parking spaces. The Developer met all of these requirements and delivered 148 residential condominiums, 90 office condominiums, approximately 30,000 gsf of retail, and the 982-space underground garage. Phase 1 also included 618 temporary surface parking spaces.

SCOPE OF PHASING MODIFICATIONS: NYCEDC proposes to modify the time for construction of Phase 2 by dividing Phase 2 into Phase 2A and Phase 2B. The Developer will deliver a larger program than previously required by the deed, but it will be constructed over a longer time period. Phase 2A will commence in line with the previously approved Phase 2 schedule and will include the public benefits of approximately 1 acre of open

lesser of (a) Subtenant's actual operating expenses, or (b) \$2,000,000 (prorated for any partial year).

Base Rent:

Until NYCEDC's capital work has been substantially completed and the New York Wheel components currently on the Site have been removed from the Site (the "Rent Commencement Date") base rent will be the greater of (x) fifteen percent (15%) of Subtenant's gross revenue or (y) fifty percent (50%) of Subtenant's net income.

Following the Rent Commencement Date, base rent shall be at the level for that Sublease Year previously approved by NYCEDC's Board. For the 12 months following the Rent Commencement Date, base rent shall be subject to abatements for certain capital rehabilitation and tenant fit-out work undertaken by Subtenant and because portions of the Site may not be used immediately. The level of such abatements shall vary depending on the time necessary to complete the required improvements for occupancy and use, but shall in no event be greater than 50% of the base rent for the 12 month period. Pursuant to the May 9, 2018 Board approval, there was a similar abatement provision for Sublease Years 1-3.

Participation Rent:

The participation rent described in the May 9 Board item will commence in the fourth year following the Rent Commencement Date instead of at the end of Sublease Year 4.

Cargo Volume Guarantees:

The cargo volume guarantees described in the May 9 Board item shall commence in the fourth year following the Rent Commencement Date instead of at the beginning of Sublease Year 4. For the first three years following the Rent Commencement Date there shall be lower guarantees than the minimum of 900,000 metric tons in the fourth year.

**Freight Introduction/
Right of First Refusal:**

As described in the May 9 Board item, in the event of City-mandated use of the Site for containerized freight by Subtenant or others, Subtenant and NYCEDC will work together to facilitate the freight introduction. NYCEDC will adjust Subtenant's obligations should the freight introduction, in NYCEDC's reasonable discretion, cause material impacts on Subtenant's ability to meet its financial and performance obligations. Subtenant will possibly surrender some or all of the Site if the freight introduction occurs.

In addition to the above previously authorized terms, Subtenant will have a right of first refusal to incorporate such a freight introduction into Subtenant's operations through an amendment to the Sublease.

APPRAISAL: As described in the May 9 Board item, an appraisal concluded that the fair market rental value of the Site in 2018 was \$20,000,000 per annum.

**PURPOSE OF
DISPOSITION /
BENEFIT TO
THE PUBLIC:**

NYCEDC's sublease of the Site will reactivate a crucial transportation asset in New York City, and is anticipated to add approximately 250 living wage jobs, and reduce city-wide roadway congestion and emissions by carrying goods by vessels into and out of the City instead of by truck.

**PROPOSED
RESOLUTIONS:**

Approval of NYCEDC to enter into a sublease with the Subtenant on substantially the terms described in the May 9 Board item, modified substantially as described above

The Board of Directors further resolves that there is no reasonable alternative to the proposed sublease that will achieve the same purpose as the proposed sublease.

**NYCEDC
PROJECT CODE:** 7238

STAFF: Matthew Kwatinetz, Executive Vice President, Asset Management
Andrew Genn, Senior Vice President, Ports & Transportation
Alex Brady, Vice President, Asset Management
Romulo Garza, Assistant Vice President, Asset Management
Tiffany Lacker, Senior Counsel, Legal

ATTACHMENT A

