



MINUTES OF THE MEETING OF THE
REAL ESTATE AND FINANCE COMMITTEE
OF
NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION
September 14, 2021

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, September 14, 2021, in Conference Center A/B, on the 14th Floor at NYCEDC's offices at One Liberty Plaza, New York, New York.

The following members of the Committee were present:

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

Members of NYCEDC staff also were present.

The meeting was chaired by Mr. O'Sullivan and called to order at 2:03 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 June 8, 2021 Committee Meeting

It was moved that the minutes of the June 8, 2021 meeting of the Committee be approved, as submitted. Such a motion was seconded and unanimously approved.

2. Amended and Restated Sublease and Non-Disturbance and Consent Agreement for South Brooklyn Marine Terminal

Romulo Garza, a Vice President of NYCEDC, presented a proposal (i) to amend and restate the sublease (the "Original Sublease") that NYCEDC entered into with SSBMT, L.P. ("Subtenant") for the South Brooklyn Marine Terminal ("SBMT") in Sunset Park, Brooklyn, to modify the terms of the Original Sublease with Subtenant, including increasing the subleased premises to an approximately 72-acre property and some adjacent land under water (together, the "Site"), (ii) for NYCEDC to enter into a Non-Disturbance and Consent Agreement with an entity ("Equinor") that is 50% owned by Equinor US Holdings Inc. and 50% owned by bp Wind Energy North America Inc. or

100% owned by Equinor US Holdings Inc., a potential sub-sublessee of Subtenant, and any related funding agreement, and (iii) for NYCEDC to enter into any other needed agreements related thereto, all to better reflect and facilitate the proposed use of the Site for the offshore wind power industry, on substantially the terms set forth in Exhibit A hereto.

In answer to a question from Mr. O'Sullivan, Mr. Garza stated that Subtenant had been working with Equinor to execute its sub-sublease agreement (the "Sub-sublease") for the Site, that the Sub-sublease was subject to Equinor's agreement with New York State (the "State") for power procurement, and that NYCEDC expected that the Sub-sublease would be executed by the end of 2021. In answer to a second question from Mr. O'Sullivan, Mr. Garza explained that no infrastructure work related to Equinor's project had been done on the Site because it was subject to permitting, and that the infrastructure work would start once the permitting was secured, which was expected to be within approximately 2 years. In answer to a question from Ms. Woo, Mr. Garza stated that the Sub-sublease would revert back to the Original Sublease in the event that Equinor's power agreement with the State was not entered into, and that NYCEDC had been told that such agreement was expected to be executed within the next 30-45 days. In answer to a question from Ms. Woo, Mr. Garza stated that the draft Sub-sublease contained an outside date in November for various approvals, and that failure to obtain the approvals could trigger reverting back to the Original Sublease.

In answer to a question from Mr. McSpiritt, Mr. Garza explained that Equinor intended to lease the full 72 acres subject to different terms for different portions for staging and installation, for an operations and maintenance facility, and for a substation. In answer to a question from Mr. Russo, Mr. Garza noted that the offshore wind turbines would be located off the coast of Long Island. In answer to a second question from Mr. McSpiritt, Julie Stein, a Senior Vice President of NYCEDC, stated that there was consensus among the community stakeholders that the proposal was an appropriate maritime use of the Site. In answer to a question from Mr. O'Sullivan, Mr. Garza noted that current activity on the Site included an operation of the Office of Chief Medical Examiner of the City of New York (the "City"), which was anticipated to be off the Site by the end of September, certain sidewalk and pedestrian ramp work by the City's Department of Transportation, and a small amount of maritime repair activity. He added that although Subtenant had executed the Original Sublease, it did not yet have possession of the Site.

In answer to another question from Mr. O'Sullivan, Mr. Garza explained that the role of the terminal operator that was selected through an NYCEDC request for proposals was to operate the terminal and seek maritime activities on the Site. Ms. Stein added that there was a possibility that the Sub-sublease could be shorter than the full term of the Original Sublease, and that the operator would continue to be responsible for tenancing and operation of the Site. In answer to another question from Mr. O'Sullivan, Mr. Garza stated that NYCEDC expected construction work on the Site to start sometime at the end of 2023, and that it therefore expected offshore wind activity on the Site to begin in 2024. Ms. Stein then noted that what was helping to drive Equinor to start operations was the obligation to begin under its power agreement with

the State. In answer to a question from Mr. McSpiritt, Ms. Stein explained that Equinor would have the ability to bring in other wind tenants to use the Equinor-improved Site for the same purpose. She further explained that Equinor would have obligations that it would need to fulfill and would therefore be incentivized to either uphold those obligations itself or bring in someone else who would be paying for what Equinor would otherwise be obligated for. In answer to another question from Mr. O'Sullivan, Mr. Garza stated that Equinor had a history of projects in Europe, but that this project was its first entry into the U.S. market. Ms. Stein added that this was one of New York State's first projects in this industry, as well.

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 A hereto. Such motion was seconded and unanimously approved.

At this time, Mr. O'Sullivan recused himself from voting on the subsequent meeting item and then left the meeting.

3. Deed Modification for Flushing Commons Property Owner LLC

Jamie Horton, a Vice President 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 "Flushing Site") primarily to modify the time for construction of Phases 2A and 2B and related matters, to try to ensure that a new YMCA of Greater New York (the "YMCA") community facility condominium unit would be delivered as part of Phase 2A of the project, on substantially the terms set forth in Exhibit B hereto.

In answer to a question from Mr. McSpiritt, Mr. Horton stated that NYCEDC expected YMCA to sign its Purchase and Sale Agreement with the developer in the next 2 weeks, that the new timeline was done because of the way YMCA was funding the construction of its new condominium unit, and was done in close coordination with YMCA. In answer to a second question from Mr. McSpiritt, Mr. Horton stated that the proposed Phase 2A residential square footage was all market rate. He added that the program had not changed, but that as part of this project some of the affordable portion was delivered on an adjacent site. In answer to another question from Mr. McSpiritt, Mr. Horton explained that NYCEDC had worked out modified temporary parking in coordination with the community and the local Council Member.

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 B hereto. Such motion was seconded and approved. Mr. O'Sullivan had recused himself from voting on this item.

4. Adjournment

There being no further business to come before the meeting, the meeting of the Committee was adjourned at 2:37 p.m.

Mark Silverman

Assistant Secretary

Dated: July 29, 2022
New York, New York

EXHIBIT A

**AMENDED AND RESTATED SUBLEASE AND NON-DISTURBANCE AND CONSENT
AGREEMENT FOR SOUTH BROOKLYN MARINE TERMINAL**

**Board of Directors Meeting
September 28, 2021**

OVERVIEW:

On August 13, 2019 NYCEDC's Board of Directors approved NYCEDC to enter into a sublease for the South Brooklyn Marine Terminal ("SBMT"), a marine terminal located between 29th and 39th Streets, west of 2nd Avenue, in Sunset Park, Brooklyn, on terms which modified the Board approval of this sublease on May 9, 2018. The sublease was executed as of September 12, 2019 (the "Original Sublease") with SSBMT, L.P. ("Subtenant") on substantially the terms approved on August 13, 2019.

NYCEDC is seeking the Board's approval to amend and restate the Original Sublease to reflect the terms of the transaction modified substantially as described below. The premises contains the 35th Street Pier, the 39th Street Pier and an open upland area (together, with the Additional Premises as described below, containing approximately 72 acres) and some adjacent land under water (together, the "Site"). Additionally, NYCEDC is seeking the Board's approval to enter into a Non-Disturbance and Consent Agreement ("NDA") with an entity ("Equinor") that is fifty percent (50%) owned by Equinor US Holdings Inc. and fifty percent (50%) owned by bp Wind Energy North America Inc. or one hundred percent (100%) owned by Equinor US Holdings Inc., a potential sub-sublessee of Subtenant.

The Site is primarily 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 Site is approximately depicted in Attachment A.

SBMT has been identified by the New York State Energy Research and Development Authority ("NYSERDA") as a potential port facility for offshore wind activities. NYCEDC and Subtenant have been working on reactivating SBMT for offshore wind activities. Equinor has committed to using SBMT as a port facility in New York City to service recently awarded procurements to supply New York State with renewable energy.

NYCEDC is proposing to modify the Original Sublease with Subtenant ("Amended Sublease") to better reflect the proposed use of the terminal for the offshore wind power industry. In the event that neither the sub-sublease being entered into with Equinor or any participant in the offshore wind power industry ("Wind Subtenant") is entered into or all such sub-sublease(s) are terminated prior to the rent commencement date the modified sublease will be null and void and the Original Sublease will be reinstated in full force and effect.

MODIFIED SUBLEASE TERMS

PREMISES:

The Site will be modified to include an additional approximately 7.5 acres (the "Additional Premises") identified as Brooklyn Block 662, part of Lot 1 conditioned on Subtenant leasing the Site to a Wind Subtenant. The total Site, including the Additional Premises, other than adjacent land under water, will be approximately 72 acres.

LANDLORD CAPITAL WORK:

Under the approval for the Original Sublease NYCEDC was to make certain infrastructure improvements to the Site for an amount not to exceed \$57,325,000, which now may include improvements to the Additional Premises. Under the Amended Sublease such NYCEDC capital contribution shall either be (i) work done by NYCEDC, including through contractors and/or (ii) made pursuant to a funding agreement that contains a mechanism for disbursement of the capital contribution to Subtenant or Equinor or an affiliate of either for it to undertake the work.

RENT:

The commencement of the base rent under the Amended Sublease for the Site will be the date on which rent is payable to Subtenant by a Wind Subtenant. Until such time, an interim base rent will be payable in an amount equal to the greater of (x) fifteen percent (15%) of Subtenant's gross revenue or (y) fifty percent (50%) of Subtenant's net income. The amount of base rent for the Additional Premises shall be calculated in the same manner as the premises under the Original Sublease. If a portion of the Site is unavailable due to NYCEDC's short-term users, rent will be correspondingly abated for such portion of the Site which is unavailable. Under the Amended Sublease the participation rent for the Original Sublease premises (other than the Additional Premises) will begin from the date on which rent is payable to Subtenant by a Wind Subtenant and will be calculated as a percentage of annual gross revenue received by the Subtenant (in an amount as previously approved by the Board). However, participation rent for the Additional Premises will be (i) annually four dollars (\$4.00) per rentable square feet of the Additional Premises (reduced to the extent that Subtenant's gross revenue for the Additional Premises for that year is less than four dollars (\$4.00) per rentable square foot of the Additional Premises) plus (ii) fifty percent (50%) of Subtenant's gross revenue, which fifty percent (50%) shall be reduced by the payment made pursuant to (i) above and base rent received by NYCEDC for the Additional Premises. Participation Rent for the Additional Premises will begin the earlier of (i) the date of commencement of any sub-sublease on the Additional Premises and (ii) the first day of the fourth lease year. There will be no additional abatements to base rent for capital rehabilitation work, as there are in the Original Sublease.

CARGO VOLUME: The project commitments for minimum annual cargo volume of maritime business activity will not be in effect throughout the term of any sublease of all or substantially all of the Site with any Wind Subtenant.

NDA: NYCEDC approves and consents to the sub-sublease for SBMT to Equinor.

**FREIGHT INTRODUCTION/
RIGHT OF FIRST
REFUSAL:**

Under the Sublease between NYCEDC and SSBMT, L.P., 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 may agree that it will not exercise such freight introduction while the Site is leased to Equinor or any other Wind Tenant by Subtenant if such facilitation is expected to interfere with the use of the Site by Equinor or any other Wind Subtenant.

**PROPOSED
RESOLUTIONS:**

Approval for NYCEDC to amend and restate the Original Sublease and enter into the NDA and any related funding agreement, substantially as described herein, and to enter into any other needed agreements related thereto

**NYCEDC
PROJECT CODE:** 7238

STAFF: Vaughn Ratchford, Executive Vice President, Asset Management
Andrew Genn, Senior Vice President, Ports & Transportation
Julie Stein, Senior Vice President, Asset Management
Romulo Garza, Vice President, Asset Management
Tiffany Lacker, Senior Counsel, Legal

ATTACHMENT A



EXHIBIT B

DEED MODIFICATION FOR FLUSHING COMMONS PROPERTY OWNER LLC
Board of Directors Meeting
September 28, 2021

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. Terms for a further revised phasing plan and development timeline were approved at the August 13, 2019 NYCEDC Board of Directors meeting. Following such meeting NYCEDC and the Developer entered into an amended and restated deed (the "Deed Modification"). Per the original deed and the Deed Modification, the Developer is obligated to convey a community facility condominium unit to the YMCA of Greater New York (the "YMCA") in accordance with the terms of a contract between Developer and YMCA. The Developer at its cost is obligated to convey a unit with an estimated value of approximately \$25 million. During and subsequent to the negotiations for the Deed Modification, the COVID-19 pandemic severely impacted the business operations of the YMCA, hindering its ability to close on the community facility condominium unit on the timeline contemplated in the Deed Modification. To try to ensure that the YMCA remains in the project, certain deadlines in the Deed Modification must be revised, substantially as described below. There are no modifications to the project program.

**OWNER/
DEVELOPER:** Flushing Commons Property Owner LLC is a partnership managed by a joint venture among affiliates of Rockefeller Group International, Inc., F&T Group, and AECOM Technology Corporation, and developed Phase 1 of the Project. Flushing Commons Sponsor Phase II JV LLC, an affiliate of Flushing Commons Property Owner LLC, will develop Phase 2 of the Project.

**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 Site 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. The Deed Modification, memorializing the terms of the August 2019 Board item, was recorded against the property on August 26, 2020. The approved program for Phases 2A and 2B of the project as approved by the Board in August 2019 are as follows:

Phase 2A	Phase 2B
<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; and <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); and <p>Open space (so that the total open space in Phases 1, 2A and 2B will be approximately 1.5 acres)</p>

In addition to the above revised Phases 2A and 2B and terms detailed in the first two columns on the table on the following page which were approved at the August Board meeting, several provisions were added to the Deed Modification to provide further timeline certainty. An added provision was that should the YMCA be unable to proceed with the acquisition and fit out of the community facility condominium unit, NYCEDC has an option to either (1) assume ownership of the community facility unit at no acquisition cost or (2) receive a \$25,000,000 payment in exchange for waiving the community facility requirement. Either option would require additional approval from NYCEDC's Board of Directors.

PROPOSED

MODIFICATIONS: NYCEDC proposes to modify the time for construction of Phases 2A and 2B to try to ensure the new YMCA community facility condominium unit is delivered as part of the project's Phase 2A. As a result of the proposed changes, the project will be constructed over a longer time period. Phase 2A will commence two years later than was previously approved, will still include the public benefits of open space, and is expected to still include the YMCA community facility condominium unit. As a result, Phase 2B construction commencement will also be delayed by up to two additional years. Payments for delays in the program approved at the August 2019 Board meeting would be unchanged except that the due dates for such payments would be modified to reflect the new construction dates. Payment guarantees of liquidated damages would be unchanged.

The project sequencing would be substantially as detailed below:

	Phase 2A per 2019 Board Approval	Phase 2B per 2019 Board Approval	Proposed Phase 2A	Proposed Phase 2B
Construction Commencement	July 1, 2021	July 1, 2025 (if all extensions exercised)	June 1, 2023 (if all extensions are exercised)	June 1, 2027 (if all extensions exercised)
Construction Completion	42 months from commencement, with one, one-year extension as per below. If extension exercised, maximum 54 months from commencement.	36 months from commencement, with one, one-year extension as per below. If extension exercised, maximum 48 months from commencement.	42 months from commencement, with one, one-year extension as per below. If extension exercised, maximum 54 months from commencement.	36 months from commencement, with one, one-year extension as per below. If extension exercised, maximum 48 months from commencement.
Construction Completion Extension	\$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.	\$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.

Per the Deed Modification the Developer was to provide 618 spaces on the Phase 2A and Phase 2B sites until the Phase 2A construction commencement. As a result of a planned emergency demolition of the existing parking structure on the Site, the Developer will provide a reduced number (being negotiated) of spaces on the Phase 2A and Phase 2B sites until the Phase 2A 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, Vice President, Special Projects
Tiffany Lacker, Senior Counsel, Legal

