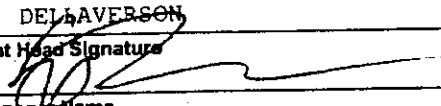




Staff Summary

Subject Atlantic Yards Project
Department FINANCE
Department Head Name GARY J. DELLAVERSON
Department Head Signature 
Project Manager Name

Date June 22, 2009
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance	6/22/09		X	
2	Board	6/24/09	X		

Internal Approvals			
Order	Approval	Order	Approval
2	Executive Director 		Affirmative Action
	Chief of Staff	1	Legal 
	Chief Financial Officer		IST&P
	Procurement		Other

PURPOSE

To advise the Board of a proposed transaction involving the Forest City Ratner Companies ("FCR") with respect to the Vanderbilt Yard ("VD Yard") and to request that the Board approve a resolution that authorizes the Executive Director and Chairman and their respective designees to proceed as set forth below.

BACKGROUND

Pursuant to a Request for Proposals dated May 24, 2005, the MTA solicited interest for the sale or lease of the air space above and certain real property interests in the VD Yard, which is located over portions of three city blocks between Fifth Avenue to the west and Vanderbilt Avenue to the east and Atlantic Avenue to the north and Pacific Street to the south, in downtown Brooklyn. The VD Yard is currently used by LIRR as a commuter rail car storage yard, with associated support facilities.

On July 6, 2005, the MTA received two proposals: a proposal from Extell Development Company ("Extell") and a proposal from FCR. The FCR proposal was for a mixed-use community development project known as the Atlantic Yards Project ("Project") consisting of approximately 6,000 units of housing, including 2,250 affordable residential rental units, approximately 1.2 million square feet of commercial space, 180,000 square feet of retail space, 322,344 square feet of parks and open space, and a significant number of parking spaces. Also included in the Project was an 850,000 square foot arena that would be the future home of the New Jersey Nets NBA franchise. The FCR proposal involved the purchase of a fee interest in property that did not have a continued transportation use and the purchase of a fee interest in the air space above a limiting plane over property that did have a continued transportation use. FCR agreed to construct a temporary as well as a permanent replacement rail yard for the LIRR, which was necessary because the new arena and certain of the buildings would be located on the site of the current VD Yard. FCR would be responsible for the planning, design, construction and maintenance of the Yard improvements and the new Yard, and would also be responsible for any environmental remediation and clean-up and any additional operating expenses of the Yard. Finally, FCR also agreed to construct mass transit improvements that would provide for direct pedestrian access to the Atlantic Avenue/Pacific Street subway station complex.

The Board considered the Extell and FCR proposals at a July 27, 2005 meeting and approved a Resolution authorizing the Chairman and the Executive Director and their respective designees to negotiate the terms and conditions of agreements to sell or lease the airspace and related real property interests related to the VD Yard to FCR. Following such negotiations, the proposed purchase price increased from FCR's initial cash offer of fifty million dollars (\$50,000,000) to a cash offer of one hundred million dollars (\$100,000,000). At a September 14, 2005 meeting, the Board decided to take no further action with respect to the Extell proposal and to authorize the Chairman to continue negotiations with FCR concerning the terms and conditions of the FCR proposal.

Subsequent to the September 14, 2005 Board meeting, the Empire State Development Corporation ("ESDC"), the lead agency under the State Environmental Quality Review Act ("SEQRA"), completed its environmental review, and on November 27, 2006, the ESDC Board adopted the Final Environmental Impact Statement for the Project. ESDC's Board subsequently adopted detailed SEQRA findings with respect to the Project. At a Board meeting on December 7, 2006, the MTA Board approved a resolution adopting the Project's SEQRA findings and authorizing the Chairman and the Executive Director to proceed with the transaction, including entering into and executing any necessary agreements to effectuate the transaction.

On February 14, 2007, MTA, LIRR and FCR entered into a license agreement for the construction of the temporary yard, and the temporary yard work commenced thereafter. This work is currently ongoing, and it is anticipated that the temporary yard work will be completed by the fourth quarter 2009.

The Project has been the subject of multiple lawsuits that have delayed the commencement of construction. None of the lawsuits has been successful. Last month, the Appellate Division, Second Department rejected a challenge to the Project based upon ESDC's use of its condemnation powers. With the resolution of this case, FCR is taking affirmative steps to move the Project forward.

During the pendency of the litigation, however, as the result of the economic downturn, financial and credit markets have tightened considerably and the Brooklyn real estate market has markedly deteriorated. As a result of this downturn, FCR has sought to make changes to the Project. The proposed changes require the Board of ESDC to revise the General Project Plan ("GPP") for the Project. The ESDC Board is scheduled to meet on June 23, 2009, and it is anticipated that at this meeting the ESDC Board will: (i) approve modifications to its 2006 GPP; (ii) authorize ESDC to hold a public hearing and take related action regarding the revised 2009 GPP; and (iii) approve a Technical Memorandum providing that the revised GPP would not require a Supplemental Environmental Impact Statement.

In recognition of the impact that the financial and real estate downturn has had upon the economics of the original FCR proposal, MTA staff and FCR have negotiated other changes to the transaction. Details of the proposed transaction are set forth in an attachment to the Staff Summary. To summarize, the FCR/MTA transaction would be revised as follows:

Purchase Price – FCR would pay \$20 million in cash for the property upon which the arena would be built. FCR would pay to MTA/LIRR for the air rights parcel an amount equal to eighty million dollars (\$80,000,000) net present value as of January 1, 2010, discounted at 6.5% per annum as follows: down payment of \$8 million, payable in four equal annual installments of \$2 million each on June 1st of 2012, 2013, 2014 and 2015; remainder of the purchase price payable in fifteen annual installments of approximately \$11 million each beginning on June 1, 2016.

Timing of conveyances – MTA/LIRR would convey the parcel necessary for construction of the arena at closing for the \$20 million purchase price. The air rights parcel would be conveyed only after substantial completion of the new permanent rail yard and only upon payment in full of the price of a development parcel. The transaction contemplates a master escrow closing. Escrow would break upon the closing of the sale of bonds for the arena construction or the closing of alternative financing adequate for the arena construction project, and ESDC's vesting of title to the first phase of condemnation properties, including certain property rights necessary for the construction of the new rail yard. The agreements held in escrow will be deemed null and void and will be returned if either (i) the sale of the arena bonds does not close before January 1, 2010 and no alternative financing is closed before March 1, 2010, or (ii) the vesting of title for the first phase of condemnation parcels by ESDC does not occur by the earlier of fifteen months of the sale of the arena bonds, or March 31, 2011.

Rail Yard – Last year, FCR requested that LIRR undertake a value engineering exercise to identify the potential for reductions in the cost of the yard construction. In addition to the value engineering exercise, LIRR and FCR subsequently worked together to revise the design to identify other possible areas for cost savings in yard design and construction. Although the yard previously proposed by FCR would have contained nine tracks, with capacity of 76 cars, the parties subsequently agreed upon a design with seven tracks and a capacity of 56 cars. The new improvements are valued at approximately \$147 million and include an in-ground manifold system for toilet servicing, new lighting, security, a new electrical substation, employee facilities and the addition of a western entrance to the yard (in addition to the eastern entrance), which allows for greater yard functionality. LIRR has determined that this revised design would support the Brooklyn shuttle service that it will implement in connection with the opening of East Side Access service into Grand Central Terminal. MTA/LIRR and FCR will execute a construction agreement with respect to the improved rail yard prior to closing on the arena parcel. This agreement will contain specifications and requirements for the improved yard and will provide for LIRR review and approval of the improved yard construction documents. Commencement of the yard must begin on or before June 30, 2012 and FCR will be required to provide a fully operational permanent yard by September 1, 2016. FCR will provide a letter of credit to secure its obligations to construct the yard in the amount of \$86 million. In the event FCR fails to construct the yard, it will lose all development rights in the air space and MTA/LIRR will be able to draw on the letter of credit.

Transit Improvements – FCR and MTA/NYCT will be required to execute a Transit Improvement Agreement governing design and construction of the new subway station entrance prior to closing. The Transit Improvement Agreement will contain specifications and requirements for the new entrance and will provide for NYCT review and approval of the construction documents. The Transit Improvement construction is required to progress to the point of beneficial use prior to the arena opening for a public event. FCR's parent, Forest City Enterprises, will provide a completion guaranty for the Transit Improvement. In addition to the costs of constructing the Transit Improvement, FCR will also pay a fee of \$200,000 per year to have the subway station at Atlantic Avenue/Pacific Street include the name "Barclay's Center."

RECOMMENDATION

That the Board approve a resolution: (1) authorizing the Chairman and/or the Executive Director and their designees, to negotiate, execute and deliver contracts and any other necessary documents and to take any other necessary or appropriate steps, to implement the Project, provided, however, that the contract and other Project documents shall not be executed on behalf of the MTA, LIRR and NYCT without ESDC's having first affirmed its proposed modifications to the GPP, substantially as proposed and approved at its directors' meeting on June

Staff Summary

23, 2009, in accordance with the requirements of the New York State Urban Development Corporation Act; and (2) authorizing the Chairman and/or the Executive Director and their respective designees to take any and all actions as may be necessary, desirable or convenient to satisfy applicable legal or regulatory requirements in connection with the foregoing actions.

ATTACHMENT - MAJOR ATLANTIC YARD TRANSACTION POINTS

<p>Deal Structure</p>	<p>The Atlantic Yards Transaction proposed between MTA/LIRR/NYCT and FCR has several major components:</p> <ul style="list-style-type: none"> • <u>Arena Block Parcel Sale Agreement</u> with FCR providing for conveyance to ESDC at closing of fee simple interest in Block 1119, Lot 7 (“Arena Block Parcel”), upon receipt from FCR of payment of purchase price in full. • <u>Air Rights Transfer Agreement</u> with FCR governing sale of air rights over Blocks 1120, Lot 1 and Block 1121, Lot 1 (“Air Rights Parcel”), which provides for scheduled periodic payments by FCR, with conveyance of Air Rights only upon completion of the Upgraded Yard and payment in full for a Development Parcel. • <u>Transit Improvement Agreement</u> with FCR requiring its construction of new subway station entrance at Arena site. • <u>Rail Yard Construction Agreement</u> with FCR requiring its construction of an Upgraded Yard. • <u>Easement Agreements and Transfer Agreement</u> providing LIRR and NYCT needed fee interests and needed permanent and temporary easements in connection with the construction and operation of the Upgraded Yard and the Transit Improvement. • <u>Development Agreement</u> with FCR outlining terms governing planned construction of a platform, foundations, systems, buildings and other structures within and over the Upgraded Yard. <p>The consummation of the Transaction requires prior approval and affirmance by ESDC of a modified General Project Plan for the Atlantic Yards Project.</p>
<p>Financial Terms Summary</p>	<p><u>Arena Block Parcel</u>: \$20 million in cash, payable in full at Closing.</p> <p><u>Upgraded Yard Letter of Credit</u>: \$86 million, provided at Closing, drawable upon breach of Developer’s obligations under the Rail Yard Construction Agreement</p>

	<p>(which breaches also constitute cross-defaults under Air Rights Transfer Agreement).</p> <p><u>Air Rights Parcel</u>: \$80 million net present value (“NPV”) as of January 1, 2010, discounted at 6.5% per annum (the “ARP Purchase Price”), payable as follows:</p> <ul style="list-style-type: none"> • Down payment of \$8 million, payable in four equal annual installments of \$2 million each on June 1st of 2012, 2013, 2014 and 2015. • Remainder of ARP Purchase Price paid in fifteen equal annual installments of \$11,033,357, commencing on June 1, 2016.
Timing of Conveyances	<p><u>Arena Block Parcel</u>: to be conveyed at Closing, upon payment of full purchase price.</p> <p><u>Air Rights Parcel</u>: to be conveyed after FCR’s substantial completion of the Upgraded Yard and only upon payment in full of the price of a Development Parcel. Conveyance is further subject to FCR’s entry into an Air Space Parcel Improvements Agreement and a Declaration of Easements acceptable to MTA/LIRR.</p>
Air Rights - Purchase of Development Parcels	<ul style="list-style-type: none"> • The Air Rights Parcel consists of six development parcels/sites (each a “Development Parcel”) as described in ESDC General Project Plan, with associated maximum zoning square footage densities. A Development Parcel Purchase Price is assigned to each Development Parcel based upon the total ARP Purchase Price and the proportional zoning square footage density associated with the Development Parcel. • Regular payments of the ARP Purchase Price are allocated proportionally to each Development Parcel. A Development Parcel is conveyable (to ESDC or FCR) only upon payment to MTA of the full Development Parcel Purchase Price, with FCR getting credit for payments of the ARP Purchase Price allocated to such Development Parcel through and including the purchase date.
Rail Yard Construction Agreement	<ul style="list-style-type: none"> • FCR must execute the Construction Agreement governing design and construction of the Upgraded Yard prior to closing on the purchase of the Arena Block Parcel, and must substantially complete the

	<p>Upgraded Yard prior to closing on the purchase of any of the Development Parcels contained in the Air Rights Parcel</p> <ul style="list-style-type: none"> • Construction Agreement to contain specifications and requirements for design and construction of the Upgraded Yard that must be met by FCR. • Conceptual design and main design criteria have been negotiated and are to be incorporated into Construction Agreement. • FCR must follow design development procedures and requirements for completion of 100% Improved Yard construction documents by June 2011 (with interim milestones at 30%, 60% and 90%). • Commencement of construction of Upgraded Yard by June 30, 2012 with fully operational Upgraded Yard in place by September 1, 2016. • Letter of Credit of \$86 million provided at Closing to secure performance of FCR's design and construction obligations for the Upgraded Yard. In addition, guarantee from Forest City Enterprises (FCR parent) of completion must be provided at time construction of Upgraded Yard commences, and payment bond meeting requirements of Lien Law. • FCR to pay incremental operating costs of LIRR incurred, until completion of Upgraded Yard, and to undertake at its sole expense any environmental remediation of new adjacent properties conveyed to LIRR for Upgraded Yard (Block 1121, Lots 42 and 47), which remediation work shall be secured by a Letter of Credit or insurance policy in form and amount acceptable to MTA/LIRR, and a completion bond upon commencement of such remediation work. • An Event of Default under Construction Agreement causes a cross-default under Air Rights Transfer Agreement.
<p>Transit Improvement Agreement</p>	<ul style="list-style-type: none"> • FCR must execute the Transit Improvement Agreement governing design and construction of the new subway station entrance on the Arena site prior to closing on the purchase of the Arena Block Parcel. • Transit Improvement Agreement to contain

	<p>specifications and requirements for design and construction of the Transit Improvement that must be met by FCR.</p> <ul style="list-style-type: none"> • Conceptual design and technical terms for the Transit Improvement have been negotiated and are to be incorporated into Construction Agreement. • FCR must follow design development procedures and requirements for completion of 100% Transit Improvement construction documents (with interim milestones at 30% and 90%). • The Transit Improvement construction is required to progress to the point of beneficial use prior to the Arena opening for a public event. Schedules for the project must build in time for testing and acceptance prior to beneficial use. • A completion guarantee for the Transit Improvement must be provided by Forest City Enterprises (FCR parent) and a payment bond meeting requirements of Lien Law must be posted. • In addition to the costs of constructing the Transit Improvement, FCR shall pay a fee of \$200,000/yr to have the station at Atlantic Avenue/Pacific Street include the name "Barclays Center." • An Event of Default under the Transit Improvement Agreement causes a cross-default under Air Rights Transfer Agreement.
<p>Air Rights Development Agreement</p>	<ul style="list-style-type: none"> • Prior to closing, FCR must execute an Air Rights Development Agreement containing essential terms relating to the future planned construction of a platform, foundations, systems, buildings and other structures within and over the Upgraded Yards ("Air Space Parcel Improvements"), and the ongoing relations between the MTA/LIRR and FCR/successor owner/lessees of buildings to be constructed on the Platform. • The Development Agreement shall provide, among other things, that FCR may not commence any construction of the platform, foundations, systems, buildings over the platform, etc. prior to its entry into subsequent more detailed agreements acceptable to MTA/LIRR governing the design and construction of the Air Space Parcel Improvements consistent with the operation of the Upgraded Yard (an "Air Space Parcel Improvements Agreement") and the reciprocal

	<p>easements needed to facilitate the design, construction, operation, maintenance, repair and reconstruction of the Air Space Parcel Improvements consistent with maintaining the operation of the Upgraded Yard (a "Declaration of Easements").</p> <ul style="list-style-type: none"> • FCR and its successors shall be obligated to pay for the actual net increased operating cost of the Upgraded Yard arising as a result of operating out of an enclosed Yard, and provide security acceptable to MTA/LIRR for the performance of such obligation.
<p>Escrow Closing</p>	<ul style="list-style-type: none"> • A master escrow closing is contemplated, at which the executed Arena Block Parcel Sale Agreement, various Easement and Transfer Agreements, the Construction Agreement, Transit Improvement Agreement, Air Rights Transfer Agreement and Air Rights Development Agreement shall be placed in escrow, together with completed ESDC project documents that are a condition of MTA's proceeding. • FCR shall be required to deposit in escrow the \$86 million L/C for the Upgraded Yard plus a \$20 million L/C for the Arena Block Parcel purchase plus the L/C or Insurance Policy for environmental remediation work. • Escrow shall break upon both (i) the closing of the sale of bonds for the Arena construction or the closing of alternative financing adequate for the Arena construction and (ii) ESDC's vesting of title to the Atlantic Yard Phase I condemnation properties, including the property rights needed for the Upgraded Yard. • The Agreements shall be null and void and the instruments held in escrow returned if either (i) the sale of the Arena bonds does not close before January 1, 2010 and no alternative financing is closed before March 1, 2010; or (ii) the vesting of title for Phase I condemnation properties does not occur by the earlier of fifteen months of the sale of the Arena bonds or March 31, 2011.

RESOLUTION

BOARDS OF THE
METROPOLITAN TRANSPORTATION AUTHORITY
LONG ISLAND RAIL ROAD
AND NEW YORK CITY TRANSIT AUTHORITY

WHEREAS, the Vanderbilt Yard owned and operated by Long Island Rail Road is situated on portions of three city blocks (Block 1119, Lot 7, Block 1120, Lot 1 and Block 1121, Lot 1) in Brooklyn located between 5th Avenue to the west, Atlantic Avenue to the north, Pacific Street to the south and Vanderbilt Avenue to the east, close to the Atlantic Terminal, a major transportation hub next to the intersection of Flatbush and Atlantic Avenues, which provides direct access to service on the LIRR and 10 New York City Transit ("NYCT") subway lines and is proximate to 11 bus lines and two additional subway lines; and

WHEREAS, the New York State Urban Development Corporation, d/b/a the Empire State Development Corporation ("ESDC") adopted a General Project Plan ("GPP") for the Atlantic Yards Land Use Improvement and Civic Project (the "Atlantic Yards Project") in accordance with the New York State Urban Development Corporation Act (the "UDC Act"), which Project comprises the construction of a major mixed-use development in the Atlantic Terminal area of Brooklyn, including in and over portions of the Vanderbilt Yard; and

WHEREAS, the Atlantic Yards Project is being undertaken by ESDC in conjunction with the City of New York and the New York City Economic Development Corporation ("EDC") and calls for the development of a sports arena ("Arena"), 16 mixed-use buildings and a newly reconfigured LIRR train yard, all in close proximity to the Atlantic Terminal transportation hub; and

WHEREAS, the principal stated goal of the Atlantic Yards Project as stated in the GPP is to transform the area of the Project into a vibrant, mixed-use, mixed-income community that capitalizes on the tremendous mass transit service available at this unique location, and the Project's stated aims include a number of significant public uses and purpose, including (a) creation of a publicly owned arena to accommodate the return of a major-league sports franchise to Brooklyn, while also providing a valuable athletic facility for the City's colleges and local academic institutions and a new venue for a variety of musical, entertainment, educational, social and civic events; (b) the construction of thousands of rental housing units for low-, moderate- and middle-income New Yorkers, as well as market-rate rental and condominium units, in close proximity to mass transportation; (c) the erection of commercial office space to promote future economic growth and new jobs through sustainable, transit-oriented development; (d) publicly accessible open space that links together the surrounding neighborhoods; (e) new ground level retail spaces to activate the street frontages; (f) community facility spaces, programmed in coordination with local community groups, including a health care center and an intergenerational facility, offering child care as well as youth and senior center services; (g) sustainability and green design through the application of comprehensive sustainable design

goals that make efficient use of energy, building materials and water; and (h) environmental remediation of the site of the Project ("Project Site"); and

WHEREAS, the Project provides for important transportation improvements, namely, (a) the construction of an upgraded rail storage, cleaning and inspection facility at the Vanderbilt Yard for the LIRR (the "Upgraded Yard") that would enable the LIRR to support service enhancements planned in connection with the MTA's East Side Access project, and other transit improvements; and (b) the construction of a subway entrance on the south side of Atlantic Avenue at the intersection of Atlantic and Flatbush Avenues, eliminating the need for pedestrians approaching the transportation hub from the south to cross Atlantic Avenue to enter the subway, and thereby enhancing pedestrian safety, and with sufficient capacity to accommodate fans entering or leaving an event at the Arena as well as new residents and workers inhabiting the Project's planned commercial and residential buildings; and

WHEREAS, pursuant to a Request for Proposals ("RFP") dated May 24, 2005, the MTA solicited interest for the sale or lease of the air space and related real property interests in the Vanderbilt Yard (the "MTA Property"), thereafter receiving two proposals, one from Extell Development Company ("Extell") and one from Forest City Ratner Companies ("FCR" or "Developer"), to purchase property interests in the Vanderbilt Yard; and

WHEREAS, at meetings of the Board on July 27, 2005 and September 14, 2005, the Board decided to take no further action with respect to the Extell proposal, and to authorize continued negotiations with FCR concerning the terms and conditions of FCR's proposed purchase of property rights in the Vanderbilt Yard as part of the Atlantic Yards Project; and

WHEREAS, during the course of those further negotiations in 2005, FCR proposed (a) to purchase the MTA Property for One Hundred Million Dollars in cash; (b) to construct a temporary and replacement yard for the LIRR, and to be responsible for the planning, design, construction and incremental costs of operating in the temporary and new permanent yards, as well as environmental remediation and clean-up of the site; and (c) to construct a mass transit improvement to provide direct pedestrian access between the proposed development located over the Yard and the Atlantic Avenue/Pacific Street subway station complex, for which it would be responsible for the costs of planning, design, and construction.

WHEREAS, the FCR proposal was consistent with ESDC's requirements for the Atlantic Yards Project that the Project Sponsors relocate and improve the Vanderbilt Yard, including by constructing a temporary yard and an Upgraded Yard (the "Rail Yard Improvements") and to construct a new entrance to the Atlantic Avenue/Pacific Street subway station complex and related circulation improvements (the "Transit Improvements"); and

WHEREAS, ESDC, as lead agency for the Atlantic Yards Project, completed an extensive environmental review of the Atlantic Yards Project, pursuant to the State Environmental Quality Review Act ("SEQRA") and MTA participated in that environmental review as an involved agency; and

WHEREAS, on November 27, 2006, ESDC accepted the corrected and amended Final Environmental Impact Statement ("FEIS") for the Atlantic Yards Project, and on December 8, 2006, adopted detailed findings with respect to the Project's environmental impacts in accordance with the requirements of SEQRA and its implementing regulations (the "Lead Agency SEQRA Findings"); and

WHEREAS, the Board, in December 2006, in its capacity as the Board of MTA, LIRR and NYCT, received and reviewed the FEIS, the Lead Agency SEQRA Findings, the staff summary prepared for the Board's consideration and the MTA's proposed SEQRA findings regarding the Atlantic Yard Project and contemplated actions of MTA with respect to the Project (the transfer of Vanderbilt Yard property rights from LIRR to MTA; the disposition by the MTA of a property interest in portions of the Vanderbilt Yard property rights to ESDC or the Project Sponsors; approval of the Rail Yard Improvements and the Transit Improvements; and any related real property acquisitions or dispositions by MTA, LIRR or NYCT, collectively referred to as the "MTA Transactions") and approved and adopted the MTA proposed SEQRA findings and found and certified that the Project was one that avoids or minimizes adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to the MTA Transactions those mitigation measures that were identified as practicable; and

WHEREAS, the Board, in December 2006, in its capacity as the Board of MTA, LIRR and NYCT, authorized the Chairman and the Executive Director and their respective designees to proceed with the negotiation of the MTA Transactions and to enter into agreements, leases, contracts and other documents, and to perform such further acts as necessary, desirable or convenient to effectuate MTA Transactions; and

WHEREAS, in February, 2007, MTA, LIRR and FCR entered into a license agreement with respect to the construction by FCR of a temporary yard for LIRR, pursuant to which FCR commenced the construction of the temporary yard in accordance with plans approved by LIRR;

WHEREAS, litigation has delayed the progress of the Atlantic Yards Project as a whole and economic circumstances have affected the capacity of developers, including FCR, to secure financing for large real estate development projects; and

WHEREAS, MTA, LIRR and NYCT staff have engaged in extensive discussions and negotiations with the Developer concerning possible modification of the proposed terms of the MTA Transactions, and those discussions and negotiations have resulted in proposed terms and conditions for the MTA Transactions, which have been summarized to the Board, as set forth in materials contained in and annexed to the staff summary, including the document annexed to the staff summary entitled "Major Atlantic Yard Transaction Points;" and

WHEREAS, FCR has constructed much of the temporary yard and plans to complete the construction of the temporary yard by the end of December, 2009, and if the temporary yard is not completed by the time that under the proposed terms LIRR would be anticipated to transfer

title to the portion of the Arena site located on LIRR property, FCR and ESDC would, under the proposed terms grant LIRR an easement that would permit LIRR to continue to operate the existing yard without interference and interruption until operations can be transferred to the temporary yard;

WHEREAS, ESDC has proposed modifications to the Atlantic Yards GPP in order to progress the Atlantic Yards Project, such proposed modifications to the GPP having been adopted by the Board of ESDC at its Directors' meeting on June 23, 2009, for purposes of further hearing and public comment pursuant to the UDC Act.

WHEREAS, in the GPP and proposed modified GPP, ESDC has set forth a number of understandings and requirements for the Project, including (i) Design Guidelines for the Atlantic Yards Project that provide an overall framework for creating a cohesive development with a distinct architectural language that modulates scale and materials while providing a variety of programmatic uses and open space, and that sets forth the height, setback, envelope, density, lot coverage, signage, and open space controls for the developable parcels, including for the properties owned by LIRR that are within the Project Site; (ii) an affordable housing commitment by the Developer; (iii) the requirement that before the Developer is permitted to open the Arena, it must complete the Transit Improvement; (iv) the obligation of the Developer, at the option of the New York School Construction Authority, the New York City Department of Education or other appropriate agency, to construct, at the expense of the Department of Education, a public school comprised of approximately 100,000 square feet; and (v) the City and State's commitment to financially support the Project, including, in the case of the City, through the provision of infrastructure improvements to the Project site; and

WHEREAS, ESDC, as lead agency for the Atlantic Yards Project under SEQRA, has reviewed the potential environmental impacts of the proposed General Project Plan modifications for the Atlantic Yards Project, together with proposed design changes, schedule changes and other changes in circumstances relating to the Atlantic Yards Project, and at its Directors' meeting on June 23, 2009 determined, based on a Technical Memorandum prepared by ESDC and its consultants and reviewed by MTA staff, that (a) such modifications and changes would not result, either individually or collectively, in any new or substantially different significant adverse environmental impacts not previously addressed in ESDC's FEIS for the Project; and (b) if such modifications to the General Project Plan are affirmed substantially as proposed and adopted by ESDC at such meeting, there is no need for a supplemental environmental impact statement under SEQRA in connection with such modifications or changes; and

WHEREAS, in accordance with SEQRA and its implementing regulations, such lead agency determination by ESDC is binding on MTA and other involved agencies; and

WHEREAS, the proposed terms and conditions do not create or give rise to any contractual or other legally enforceable rights, obligations or liabilities of any kind on the part of any party, and if the Chairman and/or Chief Executive Officer determine MTA cannot successfully conclude contract negotiations with the Developer, MTA may terminate such negotiations and may choose

to have discussions with other proposers or other potential developers, or to begin a new selection process for the disposition of the MTA Property; and

WHEREAS, the Boards of the MTA, LIRR and NYCT find the proposed terms offered by the Developer to be advantageous to the MTA, price and other factors having been considered; and

WHEREAS, the Boards of the MTA, LIRR and NYCT further find that an appraisal of the value of such MTA Property was previously made by an independent appraiser and is included in the record of the transaction; and

WHEREAS, the Boards of the MTA, LIRR and NYCT further find that the proposed disposition of the MTA Property in question is intended to further the public welfare and to advance the economic development interests of the MTA by, inter alia, enhancing subway and rail commuter transportation and other services related thereto within the metropolitan commuter transportation district; promoting transit-oriented economic development by spurring the construction of commercial and residential and cultural facilities in close proximity to a major transportation hub; and creating substantial sources of revenue to MTA to help finance its capital programs; and that, in addition, the disposal of the MTA Property is intended to advance the economic development interests of the City and State of New York by facilitating the achievement of the above-noted goals and public purposes and uses of the Atlantic Yards Project, which is expected to result in the creation and retention of substantial number of job opportunities and the creation or retention of substantial sources of revenues to the City, State, and MTA; and

WHEREAS, the Boards of the MTA, LIRR and NYCT find that the terms and conditions of the proposed disposition will provide for safe, continuous, and uninterrupted LIRR service, while enhancing the operations of the LIRR and the work environment of its employees by providing for the Developer's construction of an Upgraded Yard as well as a roof structure, or platform, over such Upgraded Yard and will provide for significant transit improvements to customers of NYCT by virtue of the Developer's construction of a subway connection on the south side of Atlantic Avenue at the intersection of Atlantic and Flatbush Avenues, eliminating the need for pedestrians approaching the transportation hub from the south to cross Atlantic Avenue to enter the subway, and thereby enhancing pedestrian safety, and with sufficient capacity to accommodate fans entering or leaving an event at the Arena as well as new residents and workers inhabiting the Project's planned commercial and residential buildings;

NOW THEREFORE, upon the recommendation of MTA's Interim Executive Director and Chief Executive Officer, the Boards of the MTA, LIRR and NYCT resolve as follows:

1. The Chairman or the Executive Director and their designees, acting singly, are hereby authorized to negotiate, execute and deliver contracts and any other necessary or appropriate agreements, leases, deeds, documents, and other instruments, and to take any other necessary or appropriate steps, to implement the Atlantic Yards Project as proposed to be modified in the modified Atlantic Yards General Project Plan, including but not limited to: (i) the transfer of the ownership of the Vanderbilt Yard, including the MTA Property, from LIRR to MTA; (ii)

effectuation of the terms and conditions described in the annexed Staff Summary and materials annexed thereto, and/or such other terms and conditions as MTA and Developer may negotiate, such terms to be acceptable to the Chief Executive Officer of the MTA, *provided*, that no such contract or other project documents shall be executed on behalf of the MTA, LIRR or NYCT unless the Empire State Development Corporation shall have previously affirmed its proposed modifications to the Atlantic Yards General Project Plan, substantially as proposed and approved at its Directors' meeting on June 23, 2009 in accordance with the requirements of the UDC Act.

2. The Chairman or the Executive Director and their designees, acting singly, and his or her respective designees are hereby authorized to take any and all actions as may be necessary, desirable or convenient to satisfy applicable legal or regulatory requirements in connection with the foregoing actions.

Dated: June 24, 2009