

EMPIRE STATE DEVELOPMENT CORPORATION AND
HARLEM COMMUNITY DEVELOPMENT CORPORATION

VICTORIA THEATER
LAND USE IMPROVEMENT AND CIVIC PROJECT

Danforth Development Partners LLC/233 West 125TH Street Danforth, LLC

**GENERAL PROJECT PLAN DATED JULY 18, 2012
AS MODIFIED JULY 17, 2013**

I. Background

Conditional Designation of the Project Developer

In September 2004, Empire State Development Corporation (“ESD”) and Harlem Community Development Corporation (“Harlem CDC”) issued a Request for Proposals (“RFP”) for the redevelopment of the land and improvements known as the Victoria Theater located at 233-235 West 125th Street, New York County, between Adam Clayton Powell, Jr. and Frederick Douglass Boulevards (the “Project Site”). The RFP sought proposals that would create an “economically viable destination” to “complement recent economic activity, create jobs..., create and support a venue for local arts, entertainment and cultural uses..., consider preservation and/or adaptive reuse, to the extent practicable ... [and] provide an economic return to the public entities that have an interest in the Site.”

The staff of Harlem CDC, after a review of the eleven timely responses to the RFP, recommended to the Harlem CDC Board of Directors that Danforth Development Partners LLC (“Danforth”) be conditionally designated as developer of the Victoria.

In October 2007 the Directors of Harlem CDC authorized its President or his designees to enter into a Memorandum of Understanding and Conditional Designation (“MOUCD”) with Danforth, subject to the terms and conditions of the MOUCD and to the Danforth responding favorably to the concerns raised by the Board with respect to minority contracting, local employment and the inclusion of affordable housing. The MOUCD and Addendum No. 1 thereto, which includes as Exhibits letters describing in greater detail the minority contracting, local employment and affordable housing goals for the proposed project as well as the parameters for the financing and build out of the cultural units that are included in the proposed Project, were simultaneously executed on November 26, 2007..

Subsequent to the execution of the MOUCD, as a result of downturns in the real estate and captial markets, Danforth sought additional equity investors. In Spring 2011 Danforth came to an agreement with Exact Capital, a New York City based diversified real estate development firm engaged in the acquisition, finance, development and management of mixed-use

residential and commercial properties (“Exact”) to join the development team as an additional investor and development partner.

Danforth is a minority-owned real estate development entity that is wholly owned by M. Steven C. Williams. Mr. Williams has 25 years of experience in real estate and construction. He partnered with Cogswell Realty in the redevelopment of two commercial office buildings - 55 West 125th Street and 215 West 125th Street.

Exact is a diversified real estate development firm that is principally engaged in the acquisition, finance, development and management of mixed-use residential and commercial properties. Exact’s projects include the Livmor Condominium, a 160,000 SF \$48 million new construction project in Harlem, 374 Manhattan Avenue, a \$7 million gut-renovation condominium project in Harlem, Diego Beekman Houses, a \$33 million renovation of a 1,240 unit low-income property in the South Bronx, and 1800 Southern Boulevard, a 68 unit \$23 million new development on a former Brownfield site in the West Farms Square section of the Bronx.

The Falconwood Corporation (“Falconwood”) is a New York City investment banking and venture capital firm with an emphasis on real estate.

Danforth and its investors have formed a single purpose New York State limited liability company entity known as “233 West 125th Street Danforth, LLC” (the “Developer”) to undertake the development of Project. The members of Developer are Danforth, Exact Capital Corporation, d/b/a Starliner Properties, Inc. and WISK, an affiliate of The Falconwood Corporation (an equity investor and principal at the time of execution of the MOUCD). The Developer is an affiliate of Danforth; Danforth is the majority member of the Developer.

History of the Project Site

The terms “Project Site” and “the Victoria” will be used interchangeably throughout this document.

The Project Site was designed and built for the Loew’s Corporation in 1917 by Thomas W. Lamb, one of America’s great theater architects of the era, and is one of the few theaters from Lamb’s early career remaining in New York. Upon its opening, the Loew’s Victoria Theater (as it was known until 1977) a 2,394-seat, luxury vaudeville and motion picture theater was hailed “as one of the largest and most beautiful theaters in greater N.Y.” The theater joined the *Apollo Theater* (then known as the *Hurtig & Seamon’s New Burlesque Theater*) a short distance to its East, as well as the *Alhambra* and the *Proctor, Hammerstien Opera House*, all on West 125th Street, which became known as Harlem’s “Opera Row”.

In 1977 the Harlem Urban Development Corporation, the predecessor to Harlem CDC, acquired fee title interest in the Project Site. The Project Site has experienced numerous changes, the most radical being its conversion to a multi-screen movie theater in 1987 when five movie theaters were created from the large auditorium, mezzanine and stage areas. The Project Site has been substantially vacant since 1997.

The 1987 renovation was completed pursuant to a 1985 Memorandum of Agreement (“MOA”)

including the City of New York, the New York State Historic Preservation Office (“SHPO”) and the Advisory Council on Historic Preservation, an independent federal agency “that promotes the preservation, enhancement, and productive use of America’s national historic resources, and advises the President and Congress on national historic preservation policy”. As a result of the MOA, a permanent record of the appearance of the main auditorium and lobby areas was created and filed with the Library of Congress. SHPO determined that the Project Site was eligible for listing on the National Register of Historic Places.

In a 2002 review of the Project Site, SHPO determined that despite alterations and building deterioration, the Project Site still met the eligibility criteria for inclusion on the National Register. At that time, SHPO concluded after a site visit and review of a 2000 conditions assessment report that, notwithstanding localized water damage, the structure was excellent or good and that the Project Site was eminently viable for rehabilitation. Unfortunately, as revealed in a 2008 Existing Conditions Report for the Victoria, as updated by a 2011 Conditions Assessment Update, both included in Appendix B of the Final Environmental Impact Statement (“FEIS”) prepared in connection with the Project (together with the 2008 report and the 2011 update, the “Environmental Reports”), the condition of the Project Site has deteriorated significantly since 2002. This chronic deterioration, primarily the result of prolonged water infiltration, has led to heavy mold growth, potential threats to the structural integrity of the building and other defects, which when coupled with the outdated mechanical systems, threaten to seriously undermine the long term viability of this historically significant structure.

II. Project Location

The Project, specifically described below under “Project Description” (the “Project”), would be located at 235-237 West 125th Street in Harlem, on the north side of West 125th Street, mid-block between Frederick Douglass Boulevard and Adam Clayton Powell, Jr. Boulevard, near the world famous Apollo theatre. The Project Site is an approximately 20,000 square foot (“SF”) T-shaped through lot (Manhattan Block 1931, Lot 17), with approximately 50 feet of frontage along West 125th Street and 150 feet of frontage along west 126th Street. The Project Site is improved by a three-story approximately 40,000 SF structure built in 1917. It consists of two buildings: the South Building, which fronts onto West 125th Street and contains the original entrance and lobby of the theater; and the North Building, which is located on West 126th Street and contains the former theater auditorium and other accessory public spaces. The auditorium and stage area in the North building were subdivided into five movie theaters in the mid-1980’s.

A “Project Site Map” is attached.

III. Project Description

The primary goal of the Project is to redevelop the Project Site in a manner that is beneficial to the local community and contributes to the ongoing revitalization of the area as an arts, entertainment, cultural, and commercial destination. The Project seeks to address the persistent need for affordable housing and the growing need for market-rate housing as well as

to meet the demand for hotel accommodations in upper Manhattan and the greater Harlem area.

The Project will consist of the design, redevelopment, and construction of several improvements at the Project Site as well as the preservation or adaptive reuse of many of the elements from the original theater, which improvements shall conform to agreed design, use and operating guidelines to be included in a ground lease with a purchase option (the "Ground Lease", and related documents, a declaration of covenants, conditions and restrictions (the "CCR") by and between Harlem CDC and the Developer, and as otherwise to be established in Harlem CDC's sole discretion.

The Project will include the Developer subdividing the Project Site's existing tax lot into as many as five tax lots, which will then be included in a condominium regime for the ownership and operation of the Project. The subdivided lots would be designated as one or a combination of: "Cultural Condominium"; "Hotel Condominium"; "Parking Condominium"; "Residential Condominium"; and "Retail Condominium". During construction Harlem CDC will lease the entire Project Site to the Developer, pursuant to the Ground Lease with option to purchase. Harlem CDC will convey title to the Project Site, other than the Cultural Condominium unit, to Developer or Developer's designees, if Developer exercises the option to purchase by tendering a temporary certificate or certificates of occupancy for all of the Project improvements and complies with all other requirements of the Ground Lease and related agreements concerning the development of the Project, including the payment of any outstanding purchase price balance.

The description of the proposed improvements to and uses for these above described Project improvements is as follows:

Historic Preservation

Pursuant to consultation conducted with SHPO the Project will incorporate certain historic preservation measures such as retention and restoration of the Project Site's south building, including restoration of its original lobby, façade, marquee and blade sign. In addition, during the course of the Project design, the Developer and its architect, in consultation with Harlem CDC, ESD and SHPO will identify other architectural elements in the north building of the Project Site (which is to be demolished) that can be salvaged and reused or that can be referenced and used to inform and influence the design of new spaces in the Project as well as include the installation of educational materials concerning the historic Victoria Theater singly and in its larger context as part of Harlem's Opera Row.

Residential Condominium Unit

The residential component of the Project will be developed under the New York City Housing Development Corporation ("HDC") Mixed-Income Program, also known as the "50/30/20 Program". It will contain approximately 229 studio, one- and two-bedroom rental units (the "Residential Condominium"). Pursuant to HDC's program guidelines, a minimum of 20% of the units must be affordable to those households with earnings at or below 50% of area median

income (“AMI”) or alternatively 25% of the units must be affordable to households with income at or below 60% of AMI. Also pursuant to HDC guidelines a minimum of 30% of the units must be affordable to households with earning at or below 130% AMI, the maximum income limit for the “affordable units” in the Project Approximately, 40% of the Affordable Units will be two-bedroom units.

Hotel Condominium Unit

Construction of an approximately 210-room select service hotel, that will include an approximately 5,000 SF ballroom as well as dining and entertainment spaces. Developer has been in discussion with Cambria Suites by Choice International Hotels (“Choice”) regarding the flag for the hotel component of the Project.

Choice-branded properties provide business and leisure travelers with a range of high-quality, high-value lodging options throughout the United States and internationally. In addition to Cambria Suites some of its brands include Clarion, Comfort Inn, Comfort Suites, Main Stay Suites and the Ascend Collection. There are presently two other Cambria Suites hotels in development in Manhattan – one in the Times Square area and one in Chelsea. Choice’s expansion of its Cambria Suites flag into upper Manhattan and the Greater New York market would be accompanied by marketing support and regional and national advertizing. They have combined their growth strategy with strong financial support of the brand by supporting owners with use of their balance sheet to enhance project financing.

The Developer expects the hotel operator to engage in marketing activities aimed at establishing its hotel brand in Harlem and that these efforts will benefit both the Harlem community and the New York metropolitan area..

Cultural Arts Condominium Unit

The Developer will build out approximately 25,000 SF of the Project Site as a cultural arts center for use as performance and administrative office space for cultural arts organizations. The cultural arts center will feature a 199-seat black box theatre and a 99-seat flexible performance space, as well as exhibit and rehearsal spaces, a public lobby/event space, scenery and costume shops, office suites, meeting and educational spaces, dressing rooms, other backstage spaces, and a box office. Upon completion, Developer will not have an option to purchase this unit. Harlem CDC either will retain unencumbered fee title in the unit or transfer it to an affiliate. Harlem CDC will then make the unit available for use as a permanent home to cultural institutions it selects. The cultural space will be either leased or sold to the cultural organizations for a nominal amount, with the organizations being responsible for providing furniture, fixtures and equipment and operating costs for the cultural space. The Cultural Arts Condominium will be designated for use as a cultural arts facility for the life of the development. The initial cultural arts organizations that Harlem CDC anticipates will occupy the space are listed below. However, Harlem CDC will reserve the right to modify its selection of entities.

The Harlem Arts Alliance (“HAA”) is a not-for-profit arts service organization committed to nurturing the artistic growth and the development of artists and arts organizations based primarily in Harlem and its surrounding communities. Comprised of over 750 individual artists and arts organizations, HAA plays an essential role by helping to build the resources, network, and capacity of its richly diverse membership. In addition, HAA maintains strong partnerships with numerous arts organization and institutions throughout New York State, the region and the nation to maintain vital collaborative efforts to promote the arts in communities.

JazzMobile was founded in 1964 by Daphne Arnstein, an arts patron and founder of the Harlem Cultural Council and Dr. William "Billy" Taylor, jazz pianist, composer, broadcaster, educator and advocate. It is a multifaceted organization whose mission is to present, preserve, promote and propagate "America's Classical Music"—Jazz. Signature programs include summer mobile concerts, jazz workshops, lecture/demonstrations and a vocal competition. It is the pioneer mobile music organization and has brought the great jazz artists of our time directly to the public throughout the five boroughs of New York City as well as to Westchester County, several cities in upstate New York, New Jersey, Washington D.C., Maryland and Virginia. JazzMobile’s also operates a not-for-profit music publishing and a recording company.

The Classical Theatre of Harlem (“CTH”), a 501(c) 3 not-for-profit corporation, is a professional theatre company founded in 1999 at the Harlem School for the Arts. Its mission is to maintain a professional theatre company dedicated to presenting the “classics” on the stages of Harlem; to create employment and educational outreach opportunities in the theatre arts for the Harlem community; create and nurture a new, young, and culturally diverse audience for the “classics”; and heighten the awareness of theater and of great art in Harlem.

The Apollo Theater Foundation, Inc. (“ATF”) a not-for-profit organization established in 1991, is dedicated to the preservation and development of the legendary Apollo Theater through the *Apollo Experience* of world-class live performances and education programs. ATF’s vision is to expand the reach of the Apollo Experience to a worldwide audience and to promote the world famous Apollo Theater as both an historic landmark, and also as a symbol of the brilliance of American artistic accomplishment.

In 2011, these Cultural Partners worked with Harlem CDC and consultants to review and refine the build program for the Cultural Condominium Unit. They are currently working with legal counsel and other consultants to review options for the creation of an operating structure or agreement the four Cultural Partners and advise on creating strategic plans for the operation, management and maintainance of the and Cultural Condominium Unit.

Retail Condominium Unit

The Project will include the construction of approximately 27,000 SF of non-hotel related retail space, including a larger restaurant, jazz club, gift shop and other retail uses offering amenities to both hotel guests and patrons of the cultural arts center. Approximately 3,000 SF of this

space will be allocated to smaller stores and leased at below market rents to small local retailers. Provision will also be made for vendor kiosks in public areas.

Parking Condominium

The Project will include construction of below-grade parking for approximately 90 vehicles . Stackers are anticipated to be used to effectively double the amount of cars that can be parked.

Timetable

Developer anticipates closing on the construction financing for the Project in the first quarter of 2014 and commence construction soon thereafter. The Ground Lease with Harlem CDC and related documents will be executed at or immediately before the construction loan closing.

IV. The Need for and Benefits Gained from the Project in the Project Location

Preservation of an Historically Significant Location

As the Environmental Reports reflect, the Project Site has deteriorated significantly in recent years, in many instances the result of inadequate or inoperable mechanical systems, roof and other leaks and other negative effects that typically occur in vacant buildings. These conditions in turn have led to the proliferation of mold in the building's interior, the compromising of the building's structure, and the continued deterioration of the Victoria's historic façade and marquee.

The north building of the Project Site has already been deemed infeasible to retain for purposes of the Project and will be demolished. The Project will prevent a similar fate for the south building, which, if left to further deteriorate, will undoubtedly and tragically lead to the loss of a major example of the work of the Victoria's architect Lamb and a significant piece of Harlem cultural arts history.

Permanent and Affordable Space for Cultural Arts Organizations

Four established local arts organizations, the Harlem Arts Alliance, Jazzmobile, the Classical Theatre of Harlem, and the Apollo Theatre Foundation (collectively the "Cultural Partners"), have been selected by the Developer's team and will occupy the Project's cultural space. All are established organizations in the Harlem Community. The space built and leased to the Cultural Partners at a nominal rent will help preserve and sustain Harlem's prominence as the artistic capital of Black America by securing for these organizations permanent homes within which they could consolidate administrative and performance space. The contemplated nominal rent charge as well as the sharing of common expenses such as utility costs, insurance and the use of the cultural arts space lobby, bathroom facilities and box offices will help reduce each organization's operating costs. In addition, the organizations will have the opportunity to

generate revenue not only via box office sales but also through short term rental of their space to other arts institutions, as well as other organizations and individuals for special events.

Increasing Affordable Housing Units in the Project Area

There is a great need for housing in New York City and the need is expected to increase as the population continues to grow. The need for affordable housing is even more acute in the greater Harlem area. The Plan to build the approximately 229 residential rental apartments that will be included in the Project, fifty percent of which would be affordable to low to moderate rate income households, will help to address both local and citywide housing needs.

Adding Hotel Capacity in Harlem

The hotel is a particularly important component of the Project. It will be only the second new hotel constructed since 1913 (when the Hotel Theresa opened) in Upper Manhattan, an area with a population of more than 500,000 that is also one of the top three destinations for tourists to the City. It will be the Project's primary generator of permanent jobs and is expected to offer guests a more full-service experience than is offered by the 124-room Harlem Aloft, a Starwood brand hotel located only a few blocks from the Victoria, which opened in December 2010. The banquet and meeting spaces will also serve the community by providing these services/amenities that are sorely lacking in the Harlem area.

In an analysis prepared in March 2012 by HVS Consulting and Valuation Services on behalf of Choice, HVS described the development of the Harlem lodging market as being in "in its budding stages". They estimate minimum potential room night demand to be approximately 319,000. This estimate will support a total room supply of roughly 1,105 guestrooms at a 79.0% occupancy rate.

Adding Retail Capacity

The retail portion of the Project will generate jobs for New York City residents, including Harlem residents. In addition, a portion of the non-hotel related retail space built into the Project will be marketed at affordable rents to encourage participation by local small businesses.

Jobs Creation

The project is expected to generate approximately 580 construction related employment and approximately 373 permanent jobs. The personal income that will be earned by the Project's permanent direct employees, over a seven-year analysis period, is estimated at \$19.3 million. The total personal income of direct, indirect, and induced employment is estimated to be \$28.1 million. The total New York State tax revenue that to be generated by Project operations is an estimated \$4.7 million, with an additional estimated \$4.5 million for New York City, for total estimated tax revenues of \$9.2 million.

Local Outreach and Employment Opportunities

The Developer is committed to providing opportunities for community employment and economic opportunities at all phases of the Project. The Developer proposes to, hire a workforce compliance monitor, establish an aggressive outreach campaign concerning contracting and work force hiring opportunities, establish a minimum goal of 30% minority business participation, establish a program to maximize the utilization of local vendors and contractors, and work with the selected hotel chain to recruit and train local residents for the hotel jobs generated by the Project. The Developer will establish a minority business utilization plan that promotes hiring workers from Harlem zip codes, including drafting into construction contracts language that sets forth the requirements and procedures for compliance with M/WBE participation goals.

Green building amenities

The Project will be built as a high performance, environmentally-responsible structure, expected to substantially reduce energy and water consumption. The Developer will build the Project to achieve the equivalent of a “Silver” rating in conformance with the guidelines of the United States Green Building Council and “Leadership in Energy and Environmental Design” (“LEED”) rating system, or its equivalent.

BALANCE OF PAGE LEFT BLANK INTENTIONALLY

V. Estimated Project Costs And Financing Sources		
CONSTRUCTION FINANCING		
<u>FINANCING USES</u>	<u>AMOUNT (\$)</u>	
Acquisition (Land and Building)	25,000,000	
Hard Costs (including contingency)	85,600,210	
Soft Costs (including contingency)	<u>29,194,733</u>	
Sub-Total	139,794,943	
Developers Fee's	<u>2,300,000</u>	
Total	<u>142,094,943</u>	
<u>FINANCING SOURCES</u>		
First Mortgage: IDA (NYC Industrial Development Agency ("IDA") & NYC Housing Devel. Corp ("HDC") bond issues	80,894,869	
Upper Manhattan Empowerment Zone ("UMEZ") Second Mortgage*	6,500,000	
HDC Mortgage	8,800,000	
Hotel Loan Facility	10,916,555	
Harlem CDC Enforcement Mortgage	7,400,000	
Low Income Housing Tax Credit ("LIHTC") Equity	1,500,000	
Developer's Equity***	<u>\$ 26,083,519</u>	
Total	<u>142,094,943</u>	
PERMANENT FINANCING		
<u>HOTEL</u>		<u>TERM/RATE/LIEN</u>
First Mortgage: IDA	31,844,271	20 yrs / 7.1% / 1st on RE
UMEZ Second Mortgage	6,500,000	10 yrs / 3.25% / 2nd on RE
MERF Second Mortgage	5,000,000	10 yrs / 3% / 2nd on RE
Hotel Loan Facility	10,916,555	5 yr max./8.5-12%
Cultural Build Out/Developer Equity	<u>10,175,000</u>	
Subtotal	64,435,826	
<u>RESIDENTIAL</u>		
First Mortgage: HDC	49,050,598	30 yrs / Tax-Exempt Bond, 5.8%/1st on RE
HDC Second Mortgage	8,800,000	30 yrs / 1% / 2nd on RE
Harlem CDC Enforcement Mortgage**	7,400,000	50 yrs / 2nd on RE
LIHTC Equity	5,598,874	NA
Developer Equity, incl'g cultural build out	<u>6,809,645</u>	NA
Subtotal	77,659,117	
Total	<u>142,094,943</u>	
* To be presented to ESD Directors at a later date		
** No payments of principal or interest due unless default on residential affordability obligations		
***Includes \$2.5 million obligation to Harlem CDC, payment of which is deferred during construction		

VI. Harlem CDC and ESD Participation

ESD:

- (A) has served as lead agency pursuant to SEQRA and been responsible for preparing Draft and Final Environmental Impact Statements analyzing all environmental aspects of the Project; and
- (B) will override the New York City Zoning Resolution as it would otherwise apply to the Project Site and the Project, pursuant to Section 16 of the UDC Act (as specifically set forth below under “Design, Use and Operating Guidelines”); and

Harlem CDC will:

- (A) enter into the Ground Lease and other related documents with Developer or an affiliate of Developer, upon the terms set forth below under “Essential Lease Terms with Developer/Tenant;
- (B) pursuant to the terms of the Ground Lease and related documents upon Developer delivering a copy of a temporary Certificate of Occupancy for the Project and compliance with any other conditions of the Ground Lease, including compliance with the UDC Act requirements and the Public Authorities Law, proceed to transfer title to the, Hotel, Residential Retail and Parking condominium units to be created as part of the Project to Developer, as set forth herein; and

Harlem CDC or its designee will retain or take title to the Cultural Arts Condominium unit and will lease it for use by four cultural partners selected by Harlem CDC. This cultural arts center space will be leased at nominal rents and the spaces will be utilized for cultural purposes for the life of the development

VII. Urban Development Corporation Findings

Pursuant to the New York State Urban Development Corporation Act (“UDC Act”), ESD was created to implement the “policy of the state to promote a vigorous and growing economy, to prevent economic stagnation and to encourage the creation of new job opportunities...” UDC Act, Section 2. The UDC Act extends all the powers of UDC to its subsidiaries. To that end ESD and its subsidiaries are empowered to undertake land use improvement and civic projects upon making the finding specified in Sections 10 (c) and 10(d) of the UDC Act.

The primary purposes of Harlem CDC’s and ESD’s participation in the Project are to (i) stem the further deterioration of an historically significant site that is currently blighted; (ii) transform the vacant site into a vibrant, mixed use development; (iii) increase the number of hotel rooms in Harlem, a major tourist destination which currently lacks sufficient hotel rooms; (iv) increase the number of housing units affordable to low and moderate income families; (v) provide an

affordable permanent home for Harlem cultural institution; and (vi) generate additional economic activity and City and State tax revenues

Specifically, pursuant to UDC Act Section 10, Harlem CDC and ESD have made the findings set forth below.

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.

VIII. Zoning Override

It is not practicable for the Project to comply with certain sections of the New York City Zoning Resolution ("ZR"). The required size and financing for the Project dictates that the Project 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. ESD will override the ZR and other local laws inclusive of the Uniform Land Use Review Procedure review and certification process, including, 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 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. 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.

Some of the effects of the overrides are:

The maximum allowable building height on West 126th Street is 80 feet and is 195 feet along West 125th Street. To allow for the amount of program area needed while retaining and restoring the South Building, the proposed maximum building height is approximately 290 feet. While the new building will be taller than the maximum height limit allowed, the overall bulk and height of the proposed building will be in context with other tall buildings in Harlem, including the Adam Clayton Powell, Jr. State Office Building.

To accomplish the objectives, goals and programmatic needs of the Project, Developer also requests a zoning override to increase the allowed floor area to an estimated FAR of 17. The additional floor area will allow for an economically viable development that will create jobs, provide housing, provide hotel space to serve increased market demand, and create a venue for cultural programming.

The maximum allowable number of residential units on the Project Site under the ZR is 134; the number of residential units proposed for the Project is approximately 229. This override is necessary to accommodate the proposed housing, of which 50% will be affordable.

The City of New York has been advised of and supports the Project and ESD's participation in the Project and the overrides of the above referenced sections of the ZR that are being requested.

IX. Essential Terms

A. Financial Terms:

Acquisition (Purchase) Price: \$25 million

Payable as follows:

Credits to Purchase Price	Amount (\$)		
Deposit paid with MOUCD execution	1,000,000		
Payment Due at Execution of Ground Lease	4,000,000		
Credit for Cultural Buildout	12,600,000		
Affordability Enforcement Mortgage	<u>7,400,000</u>		
Total	25,000,000		

At the execution of the Ground Lease, Harlem CDC may defer the receipt of \$2.5 million of the \$4 million Purchase Price payment due from Developer on the Ground Lease execution date until as late as the issuance date for the temporary certificate of occupancy (“TCO”) for the Project. Any unpaid portion of the \$4 million obligation would be secured by a full recourse “Note” with a due date on or before the date of issuance of a TCO for the Project.

The \$12.6 million credit towards the Purchase Price for the cultural buildout represents the amount Harlem CDC will credit Developer for construction of the Cultural Condominium unit, provided the cost of the construction has an independent valuation of \$12.6 million. Ownership of the completed Cultural Condominium unit will be retained by Harlem CDC or its designee.

Harlem CDC will credit \$7.4 million dollars toward Developer’s Purchase Price obligation in exchange for Developer (i) constructing 50% of the residential units as Affordable Units and (ii) an extension of the affordability period by any City or State regulatory agreement. The affordable units will be subject to a regulatory agreement requiring that the units remain affordable for a fixed period expected to be 30 years. In exchange for Developer extending this period by an additional twenty years Harlem CDC will treat the extension of the affordability period as partial consideration for the purchase price. The obligation would be secured by an enforcement mortgage (“Affordability Enforcement Mortgage”) with a term coinciding with the length of the extended regulatory period. Failure to maintain the affordability of the units would be a default under the Enforcement Mortgage triggering repayment.

B. Ground Lease(s) and Purchase Option

Harlem CDC, as owner, will lease the Project Site to 233 West 125th Street Danforth, LLC, as Developer/Tenant during the construction period for the Project, which is estimated to be approximately thirty (30) months (the “Ground Lease”). Developer/Tenant will design, develop,

construct, and operate the Project at the Project Site pursuant to this General Project Plan and the Ground Lease.

The Ground Lease will have a purchase option, which is exercisable by the Developer completing the Project improvements in accordance with the terms of the Ground Lease, obtaining and delivering to Harlem CDC a TCO or TCO's for the entire Project Site, paying any outstanding balance due on the purchase price and executing any document or instrument required to effectuate the Project requirements, including the transfer of title.

In addition to the Purchase Price outlined above, Developer will pay a nominal rent of \$1 per month during the construction period. The Ground Lease will be "triple net", with Developer/Tenant responsible for all costs of construction and operation, all water, sewer and other charges that the City of New York levies against the Property, including but not limited to impositions with respect to business improvement districts and assessments.

Developer will also pay all Harlem CDC and ESD third-party costs in connection with the Project, including but not limited to consultant, counsel and environmental costs, litigation, and any other Harlem CDC and ESD out-of-pocket costs they may incur related to the Project.

Developer will pay all expenses related to drafting the condominium documents, submitting the condominium for acceptance and filing with the New York State Attorney General, and subdividing the tax lots, including without limitation the fees of outside legal counsel, filing and recording fees, as well as out-of-pocket disbursements related thereto.

Developer/Tenant will be exempt from sales and use taxes on the capital improvements included in the Project and from property taxes for so long as Harlem CDC retained title to the Project Site.

The Project Site is exempt from real property taxes as a result of Harlem CDC ownership. In the event of and effective upon the transfer of title to the Developer/Tenant those portions of the Project that are no longer owned by Harlem CDC will no longer benefit from Harlem CDC's exemptions from property, sales and use taxes.

In the event Developer/Tenant fails to deliver a TCO for the entire Project Site within thirty (30) months of the Ground Lease commencement date, Harlem CDC would have the right to charge Developer payment in lieu of taxes ("PILOT") payments equivalent to the amount of real property taxes that Harlem CDC would be obligated to pay if it were a taxable entity, adjusted to take into account real estate tax exemption benefits that might have been available to the Developer/Tenant if Developer/Tenant was the owner of the Project Site.

Developer will indemnify ESD and Harlem CDC and hold ESD and Harlem CDC harmless from all lawsuits and liabilities arising out of ESD and Harlem CDC participation in the Project. Developer will provide liability insurance for the Project during the construction period naming Harlem CDC and ESD as additional insureds.

Developer shall provide and shall maintain until the completion of construction payment and completion bonds acceptable to Harlem CDC naming Harlem CDC as obligee or a letter(s) of credit naming Harlem CDC as beneficiary in an amount equal to the estimated cost of performing and completing all construction on the Project Site.

Harlem CDC is prepared to, create or cooperate in the creation of the condominium regime and subdivision of the Project Site into separate tax lots, and to enter into separate ground leases for one or more of the condominium units, in order to facilitate separate construction financing of the housing and commercial components of the Project, in order to permit Developer/Tenant to enter into separate leasehold mortgages for the separate condominium units.

C. Construction:

Developer will design, redevelop, and construct improvements at the Project Site, as well as preserve or adaptively reuse many of the elements from the original theater, including but not limited to the following, which improvements shall conform to an agreed design and the use to be included in or as attachments to the Ground Lease, a development agreement (the "Development Agreement"), and a declaration of covenants, conditions and restrictions (the "CCR") by and between Harlem CDC and Developer/Tenant, and as otherwise to be established in Harlem CDC's sole discretion:

The improvements include:

- An approximately 385,000 SF, 27-story mixed used facility, environmentally responsible ("green") building;
- Approximately 210-room select service hotel, that would include an approximately 5,000 SF ballroom;
- Build-out of an approximately 25,000 SF cultural arts center that would feature a 199-seat black box theatre, a 99-seat flexible performance space as well as office suites, exhibit and rehearsal spaces resulting in improvements with a cost or independent valuation of \$12.6 million;
- Approximately 229 studio, one-, and two-bedroom rental apartments, of which 50% will be affordable to low, moderate, and middle income individuals and households (the "Affordable Apartments"). Forty percent of the Affordable Apartments will be two-bedroom units. The Affordable Apartments will be subject to a subordinate mortgage in the amount of \$7.4 million dollars from Developer to Harlem CDC securing the obligation to maintain the units as affordable for fifty years;
- Approximately 27,000 SF of prime non-hotel related retail space suitable for a larger restaurant, jazz club, gift shop, and other retail uses offering amenities to both hotel guests and patrons of the cultural arts center. Approximately 3,000 SF will be allocated to smaller stores and leased at below market rents to small local retailers. Provision will also be made for vendor kiosks in public areas of the Project;
- Sub-grade parking that will include vehicle stackers that effectively double the amount of cars that can be parked in the same amount of square footage;
- Retention and restoration of the theater's south building, including restoration of the original lobby, grand staircase and south building façade, marquee and replication of the

original blade sign as well as the identification, salvaging and reuse of other architectural elements in the north building of the theater (which will be demolished) or referencing those elements in the design of new spaces in the Project.

- Construction of a permanent historic preservation installation open to the public chronicling both the historic Victoria Theater, and its place in the larger context as part of Harlem’s Opera Row.

X. Environmental Review

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 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. Specific responses to all comments made at the hearing and in writing are contained in the Project’s Final Environmental Impact Statement (“FEIS”).

At the April 26, 2013 meeting, the Directors accepted the FEIS as complete. The DEIS and FEIS considered the potential environmental effects of the Project as proposed in the General Project Plan. A copy of both the DEIS and the FEIS have been posted on the Harlem CDC and ESD websites.

ESD has issued a findings statement under SEQRA. The Project will be built and operated as described in the findings statement and the Developer will implement the mitigation measures as described in the findings statement. The findings statement is attached to the MGPP as Attachment 3.

XI. Non-Discrimination and Contractor Diversity

Pursuant to New York State Executive Law Article 15-A, Harlem CDC recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified Minority and Women-owned businesses (“MWBEs”) in the performance of Harlem CDC contracts. Accordingly, Harlem CDC’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.

Attachments

Attachment 1	Project Site Map
Attachment 2	Renderings and Plans
Attachment 3	SEQRA Findings Statement