

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N. Y. 10007

ROBERT C. LIEBER
DEPUTY MAYOR FOR ECONOMIC DEVELOPMENT

October 7, 2008

Honorable Melissa Mark-Viverito
New York City Council Member, 8th District
105 E 116th Street
New York, NY 10029

Re: East 125th Street Development Project

Honorable Council Member Mark-Viverito:

Enclosed within this letter, please find a "Points of Agreement" reflecting recent discussions between the Administration and you with respect to the East 125th Street development project. The input that we have received from you, your staff and the East 125th Street Task Force has been extremely valuable over the course of the more-than-two-year community-based planning process that led to the crafting of the RFP and the Points of Agreement. This project will be transformative for the East Harlem community, creating thousands of jobs, hundreds of units of affordable housing, public open space, local and national retail space, and a cultural facility.

Pursuant to your conversations with EDC and the Department of Housing Preservation and Development, the City will draft disposition documents, including a Land Disposition Agreement (LDA) and Regulatory Agreement, that will reflect the goals of the development project, affordability levels, the number of units, and permanent affordability.

We have made the conditional designation of East Harlem M/E/C LLC subject to the development team's acceptance of these Points of Agreement as the basis for negotiation of the contract of sale between the New York City Economic Development Corporation (EDC) and the development team.

East 125th Street Development Project Points of Agreement:

With respect to the consideration of the East 125th Street Development Project ("Project"), the conditional designation of East Harlem M/E/C LLC was made subject to the development team's acceptance of and agreement to the following Points of Agreement, which will be attached to the term sheet and conditional designation letter and will be the basis for the negotiation of the contract of sale between the New York



City Economic Development Corporation (“NYCEDC”) and the development team. The contract of sale will have standard termination and default provisions which will survive contract closing.

The East 125th Street Development Project is reflective of a more than two-year community-based planning process. In January 2006, the East 125th Street Task Force (“Task Force”), comprised of Community Board 11 representatives, Council Member Melissa Mark-Viverito, local community based organization members and community residents, was formed to address the community’s major priorities for the development, including affordable housing, economic development, local participation, the impact of development on health and services, and promoting arts and culture. The Task Force and the City has worked collaboratively to establish development principles and goals, and review proposals.

- I. Affordable Housing.** The City agrees to seek to maximize the number of affordable income targeted housing units to be built at the Project as set forth in this Section.
 - a. Percentage Affordable Units.** The City agrees that at minimum 80% of the units constructed within the Project will be affordable to individuals or families earning up to 150% of Area Median Income (“AMI”). The Project will include a minimum of 800 units; therefore, the City’s affordable housing commitment would be a minimum of 600 units.
 - b. Income Targeting.** The distribution of affordable units shall include:
 - i.** A minimum of 200 units affordable to individuals or families earning up to 60% of AMI, including 50 units affordable to individuals or families earning up to 40% of AMI;
 - ii.** A minimum of 200 units affordable to individuals or families earning 61% to 100% of AMI; and
 - iii.** A minimum of 200 units affordable to individuals or families earning 101% to 150% of AMI.
 - c. Term of Affordability.** All units up to 150% of AMI will be permanently affordable and regulated in accordance with Department of Housing Preservation Development (“HPD”) mechanisms for ensuring permanent affordability, as is outlined in HPD’s Regulatory Agreement.
 - d. Unit Type.** A mix of unit types, including 2 and 3 bedroom units, will be provided.
 - e. Homeownership Units.** Approximately 50% of the affordable units will be homeownership units and distributed as follows:
 - i.** To the greatest extent possible, affordable homeownership units will be equally distributed between families earning 61%-100% and 101% - 150% of AMI.
 - ii.** A minimum of 300 homeownership units will be affordable to families earning up to 150% of AMI.

iii. A minimum of 10 units will be affordable to families earning up to 50% of AMI.

f. **Affordable Unit Preference.** Residents in Community Board 11 will be given preferential consideration for 50% of the affordable units.

g. **Phasing.** The City will ensure that the development includes a minimum of 225 units of affordable housing in the first two phases.

II. **Open Space.** The City agrees to maximize publicly accessible open space and green roofs and will include a minimum of 24,000 square feet of open space in the Project.

III. **Green Building Principals.** The City agrees to require at minimum, LEED Silver Certification for all buildings within the Project under the Leadership in Energy and Environmental Design Green Building Rating System for New Commercial and Major Renovations (LEED – NC) (Version 2.2).

a. **Required LEED Points.** As part of the commitment to obtain LEED Silver certification, the Project will achieve the following LEED points:

i. Sustainable Sites Category:

1. SS Credit 6.1 Stormwater Design: Quantity Control
2. SS Credit 7.1 Heat Island Effect: Non-Roof

ii. Water Efficiency Category:

1. WE Credit 3.2 Water Use Reduction: 30% Reduction

iii. Energy & Atmosphere Category:

1. EA Credit 1.3-4: Optimize Energy Performance: 21%
2. EA Credit 3: Enhanced Commissioning
3. EA Credit 5: Measurement & Verification

iv. Indoor Environmental Quality:

1. IEQ Credit 1: Outdoor Air Delivery Monitoring
(Commercial Only)
2. IEQ Credit 2: Increased Ventilation (Commercial Only)
3. IEQ Credit 3.1: Construction IAQ Management Plan:
During Construction
4. IEQ Credit 3.2: Construction IAQ Management Plan: Before
Occupancy
5. IEQ Credit 4.1: Low-Emitting Materials: Adhesives &
Sealants
6. IEQ Credit 4.2: Low-Emitting Materials: Paints & Coatings
7. IEQ Credit 4.3: Low-Emitting Materials: Composite Wood
& Agrifiber Products
8. IEQ Credit 5: Indoor Chemical & Pollutant Source Control
9. IEQ Credit 7.1: Thermal Comfort: Design
10. IEQ Credit 7.2: Thermal Comfort: Verification

IV. Locally Owned Business. The requirements set forth relative to locally owned businesses are intended to ensure ongoing opportunities for these businesses. A locally owned business will be defined to include a resident or an owner of a local business currently operating in or from Manhattan Community Board #11, Manhattan Community Board # 10, Manhattan Community Board #12, Manhattan Community Board #9 and Bronx Community Board #1.

- a. Provision of Space for Locally Owned Business.** A minimum of 50,000 of retail square footage will be designated for locally owned businesses. Preference shall be given to Manhattan Community Board # 11 locally owned businesses.
 - i. Store Sizes.** The Project will include a variety of store sizes from 300 to 5,000 square feet.
 - ii. Marketing.** If all or any portion of the local retail space has been vacant for at least 60 days or the Developer demonstrates that the space has been actively marketed to locally owned businesses for at least three consecutive months without being able to fill the space, the Developer may lease or convey the vacant space to a non-locally owned business. However, the 50,000 square footage requirement is not eliminated for the life of the development, and Developer must continue to meet this requirement each time an open space becomes available in the Development. Developer shall provide proof of marketing efforts upon request to the Task Force or other body deemed sufficient by the Task Force.
 - iii.** The Developer will inform the Task Force, or other body deemed sufficient by the Task Force, of vacant locally owned business space.
 - iv.** The Developer will inform the Task Force, or other body deemed sufficient by the Task Force, before filling locally owned business space with a non-locally owned business.
 - v.** The Developer will provide a semi-annual report on locally owned businesses at the development to the Task Force or other body deemed sufficient by the Task Force.

- b. Provision of Rent for Locally Owned Business.** To assist in attracting and retaining locally owned businesses, the 50,000 square feet dedicated to locally owned businesses will be offered at below market rent.
 - i. Market Rent.** Market rent is the rent that a retail space without restrictions would command on the open market considering its location, features and amenities. Market rent will be adjusted for concessions and owner paid operating expenses included in the rent.
 - ii. Below Market Rent.** Below market rent is defined as:
 - 1.** 30% below market rent on Parcel A
 - 2.** 50% below market rent on Parcel B & C
 - 3.** or otherwise agreed upon by developer and Task Force, or other body deemed sufficient by the Task Force

- c. **Locally Owned Business Consultant.** To ensure that the Locally Owned Business space is successful and that community's needs and goals are represented, the City will require the development team to appoint a retail specialist to work with the Task Force, or other body deemed sufficient by the Task Force, and assist in the development and ongoing operations, including store sizes, lease terms and selection of tenants, for the Locally Owned Business space. The specialist will be selected by the local development partner.
- d. **Selection of Tenants.** The development team and the Task Force, or other body deemed sufficient by the Task Force, will create guidelines to select tenants for the Locally Owned business space.
- e. **Notification of Impending Leases.** The Development team will notify the Task Force, or other body deemed sufficient by the Task Force, of impending leases.
- f. **Local Investment Fund.** A \$10 million Local Investment Fund will focus on small businesses and entrepreneurs from Manhattan Community Board #11 that locate in the proposed development. The Development team will establish a fund, in consultation with the Task Force or other body deemed sufficient by the Task Force, to be used for the following purposes:
 - 20% for marketing of local businesses at the new development.
 - 20% for low-interest revolving loans for new small businesses moving into the new development.
 - 20% for grants to support culture and arts education reflecting East Harlem's ethnic diversity at the new development.
 - 20% for seed capital for start-ups and local business expansion at the new development.
 - 20% for job training programs for local residents to be hired at the new development.

V. **Community Participation.** To ensure the community's needs and interests are well represented, the City will require the development team to maintain an on-going dialogue, which will include regular meetings and reporting, with the Task Force, or another body deemed sufficient by the Task Force, throughout the planning, construction and operations of the Project. The developer will work with the Task Force and the cultural space user to create guidelines for the management and community access of the cultural space.

VI. **Cultural Space.** The cultural space will be an important community asset and should reflect the ethnic and cultural diversity found throughout East Harlem.

- a. **Provision of Space for Cultural Space.** The cultural space will be a minimum of 30,000 square feet.
- b. **Provision of Local Ownership.** At least one not-for-profit organization, which will be selected in consultation with the Task Force or other body deemed sufficient by the

Task Force, must have an ownership interest in the Cultural Space. The amount of ownership interest will be directly proportional to the organization's equity commitment to the construction and on-going maintenance and operations of the cultural space.

- c. **Cultural Space Tenants / Users.** In order to ensure that the cultural space will be accessible to local arts and cultural organizations, the City agrees to:
 - i. **Fit-out costs.** The developer will contribute a minimum of \$1.8 million towards cultural space fit-out costs, and assist in securing additional funding as necessary.
 - ii. **Management & Operations.** The cultural space's management structure will include local representation. At least one member will be from a local arts or cultural organization and at least one member will be appointed by the Task Force. The amount of local representation in the structure of the cultural space's management and operations will be proportional to the amount of ownership interest.
 - iii. **Community Access.** Cultural Space will be made available on a regular basis to local arts and cultural organizations, and community events, at affordable rates. Local organizations will be given scheduling and booking preference.
 - iv. **Community Outreach.** The cultural space's management will work with the community to identify new, undeveloped and/or underserved audiences or participant groups to engage through space access and or programming.
 - v. **Desired Uses.** The types of uses the community desires include office space, a theater, rehearsal space, exhibition space, classrooms, multi-purpose ball room, flexible space and studio space. The City will require the developer to work with the community to incorporate these elements where financially and logistically feasible.

VII. MWBE and Targeted Hiring Workforce Development Plan. The City is committed to maximizing MWBE and targeting hiring at the Project and commits to the following:

- a. **MWBE Consultant.** A consultant will be hired for the following:
 - i. **Community Assessment.** A community assessment of East Harlem will be done to determine the following:
 1. Number of construction, professional, service and supply firms with capacity
 2. Number of available skilled laborers
 3. Community organizations with capacity to provide skills and technical assistance
 - ii. **Certification.** The consultant will work with NYCEDC, the Department of Small Business Services ("DSBS"), and local community based organizations to identify MWBE eligible firms and assist those firms in the MWBE certification process.

b. Targeted Hiring Workforce Development Plan. The City will require the Development team to participate in a Targeted Hiring Workforce Development Plan, implemented in consultation with the Task Force or another body deemed sufficient by the Task Force.

i. Development team obligations:

1. Appoint a Workforce Development Liaison, in consultation with the Task Force or another body deemed sufficient by the Task Force.
2. Facilitate targeted hiring by arranging meetings and events with employers.
3. Incorporate Targeted Hiring Workforce Development program elements into tenant leases.
4. Assist with marketing through community based organizations, with the consultation of the Task Force or other body deemed sufficient by the Task Force.
5. Develop and maintain reporting system.
6. Make presentations to community stakeholders as necessary.
7. Provide temporary space for workforce development activities
8. Provide resources for training efforts.
9. Create website or other technology based tools to track and report efforts, notify tenants of opportunities and provide technical assistance to tenants.

ii. Targeted Population. Defined as persons who have an income that is below 200% of the poverty level.

iii. Hiring Process

1. Initial hiring: Employer will consider only referred applicants for the first 10 days
2. Ongoing Operations: Employer will consider only referred applicants for first 5 days

iv. Hiring Goals. Developers will use best efforts to achieve the following goals:

1. 40% of all new permanent jobs will be from the Target population
2. 40% of hires from Target population will be retained for a minimum of 9 months
3. 25% of hires form Target population will be promoted to higher paid position within one year.

v. Reporting. Developer and tenants must submit an annual employment and benefits survey to NYCEDC for eight years following commencement of business operations.

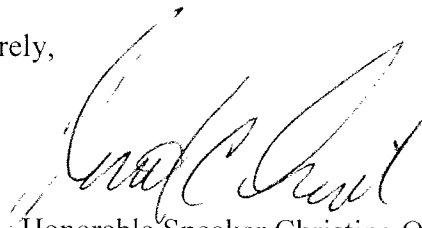
VIII. Development Rights. To facilitate the development of the Project, the City sponsored a zoning map amendment to rezone the Project area generally bounded by East 125th and East 127th Streets, and Second and Third Avenues from R7-2, C4-4 and M1-2 to C6-3. The C6-3 district allows 6 FAR for residential use, 7.52 FAR for commercial use and 10 FAR for community facility use. However, the Harlem East Harlem Urban Renewal Plan (“Plan”) Supplementary Controls would limit the Project’s maximum FAR to 7.2 FAR. The disposition

documents will restrict development to the building envelope required for the Project and reserve to the City all development rights in excess of what the Project requires.

- IX. Harlem East Harlem Urban Renewal Plan (“Plan”) Supplementary Controls.** The City will include the controls of the Plan in the documents of conveyance.
- X. Remedies.** The disposition documents will provide remedies that are standard such as specific performance, liquidated damages, and a right of reacquisition for condition broken if the developer is not performing. If the City or the Task Force, or other body deemed sufficient by the Task Force, notifies the City that the Developer is not performing as agreed to, the City will take appropriate action. If the Developer does not comply with the affordable housing stipulations required by the subsidy program, such failure to comply would constitute a default under any HPD/HDC loan, giving rise to a right to foreclose on the part of the City.

Your work has helped ensure that the project will best promote economic growth and improve the quality of life for the residents of East Harlem. We look forward to working further with you and the Task Force as the project progresses.

Sincerely,



cc: Honorable Speaker Christine Quinn
Honorable Council Member Melinda Katz