

TERM SHEET

This term sheet (Term Sheet), dated March 8, 2010, sets forth the mutual understandings among The City of New York (City), The State of New York (State) and the New York State Urban Development Corporation d/b/a The Empire State Development Corporation (ESDC) with regard to the restructuring of the Brooklyn Bridge Park and Jacob K. Javits Convention Center projects.

Brooklyn Bridge Park Project

1. Financial Commitments:

- (a) The City and State confirm the previous financial commitments to the project, in the amounts of \$139 Million and \$85 Million, respectively, including contribution of Port Authority funds.
- (b) The City will fund \$55 million in additional capital and commit to completion of the Park, subject to the terms and conditions set forth in the MOU (as defined below).

2. Overall Structure:

- (a) A new City-controlled, not-for-profit, the Brooklyn Bridge Park Operating Entity (BBPOE), will be formed.
- (b) The Brooklyn Bridge Park Development Corporation (BBPDC) will remain in place (i) as necessary to ensure the continuance of BBPDC, and to discharge its statutory obligations with respect to, and compliance with, the Brooklyn Bridge Park Civic and Land Use Improvement Project Modified General Project Plan adopted by BBPDC on December 18, 2006 (GPP) (including the maintenance of the override) and (ii) as necessary for compliance with condominium and related PILOT legislation.
- (c) BBPDC will designate BBPOE (or a City designee) as developer of the park and the development parcels. If necessary, BBPDC and ESDC will seek modification of the GPP to effectuate such designation. It is contemplated that the following transactions will occur:
 - i. the execution and delivery of 99-year ground leases of the park parcels to BBPOE (it being understood that those park parcels that are City owned shall be first ground leased for 99 years to BBPDC and then sub-ground leased for 99 years to BBPOE);
 - ii. the City's grant of a 99-year ground lease(s) (or, at the City's option, the City's transfer of the fee) to BBPDC for the upland of Pier 6 development parcels and a (sub)ground lease(s) of such parcels for 99 years to the City (or a City designee);
 - iii. BBPOE's acquisition of fee title to the John Street site, and BBPOE's grant of a 99-year ground lease (or, at the City's option, BBPOE's transfer of the fee) to BBPDC, and a subsequent 99-year (sub)ground lease of such site for 99 years back to BBPOE (or a City designee);
 - iv. the execution and delivery of an assignment to BBPOE of BBPDC's rights and interests (A) as Landlord and (B) under any other agreements, with respect to 360 Furman Street, (or, at the City's option, such other agreements that will transfer revenue and operating control to BBPOE); and
 - v. the execution and delivery of 99-year ground leases by BBPDC of all remaining development parcels to BBPOE.

The City and/or BBPOE (or a City designee) will be the entity to select developers and further transfer or dispose of the development parcels to its designees, as well as enter into leases and other appropriate agreements, and to control all revenue and all development and operational decisions regarding the park and development parcels.

- (d) BBPDC and ESDC will promptly seek all necessary board approvals, and upon receipt thereof, promptly seek any approvals of the Public Authorities Control Board (PACB) that

are necessary to effectuate the terms of this Term Sheet and the transactions contemplated hereby without further action by BBPDC, ESDC or the PACB.

- (e) Promptly after receipt of all necessary approvals, the parties will in good faith and with all due diligence proceed to negotiate, execute and deliver, or cause to be negotiated, executed and delivered, definitive documentation satisfactory to each of the parties in their respective discretions, which shall include without limitation the fee transfers, ground leases and other documentation provided in Section 2(c). Such documentation shall also include reasonably satisfactory indemnification and insurance undertakings and shall provide BBPOE (or a City designee) with operational control and responsibility for and all revenue control of the park and development parcels, as well as the right to select developers and otherwise dispose of BBPOE's interest in parcels, subject to applicable law, the GPP and the definitive documentation. Such documentation shall include conditions to the effectiveness of the transfers/leases to BBPDC satisfactory to the City.
- (f) If the necessary approvals are not received from the PACB by June 30, 2010, or the definitive documentation provided for in Section 2(e) is not executed and delivered by July 31, 2010, the City may notify the other parties hereto that the City will no longer pursue the Brooklyn Bridge Park project restructuring as contemplated in this Term Sheet. In such case, the provisions of this Term Sheet with respect to the Brooklyn Bridge Park project shall terminate including without limitation, the termination of the City commitment stated in Section 1(b) above (i.e. \$55 million in additional capital and the commitment to complete the Park) and the Brooklyn Bridge Park project will be governed by the May 2, 2002 Memorandum of Understanding between the City and the State regarding such project, including without limitation the funding commitments set forth therein, and without reference to this Term Sheet.
- (g) The parties recognize that BBPDC will remain a subsidiary of ESDC and that certain statutory and fiduciary duties and limitations accrue as a result thereof. The parties will agree to a protocol consistent with these duties and limitations that provides that BBPDC's actions will be consistent with the plans and actions of BBPOE.

3. **BBPDC Governance Changes:**

- (a) ESDC will remain sole shareholder and there will be 12 Directors on the Board (6 appointed on recommendation of the Governor, at least 3 of whom shall serve *ex officio*, and 6 appointed on recommendation of the Mayor, at least 3 of whom shall serve *ex officio*). Board actions will comply with the following requirements:
 - i. All Board actions will require at least a majority vote of the entire Board.
 - ii. Modifications to or termination of the GPP will require a majority vote of the entire Board, including the affirmative vote of at least 3 Mayoral *ex officio* directors and at least 3 Gubernatorial *ex officio* directors.
 - iii. Approval of the BBPDC budget will require a majority vote of the entire Board, including the affirmative vote of at least 3 Mayoral *ex officio* directors.
- (b) The requirements of the foregoing Section 3 will be in BBPDC's Certificate of Incorporation and bylaws.

4. **BBPOE Operations:**

- (a) Upon receipt of all necessary approvals and the execution and delivery of all definitive documentation, BBPOE shall be the designated developer of the park and development parcels and shall be responsible for all planning, construction, maintenance and operation of, and shall have all revenue control over, the Brooklyn Bridge Park project, subject to the other provisions of this Term Sheet and the GPP.

- (b) All elements of Brooklyn Bridge Park project work and all operational functions and responsibilities will be transferred from BBPDC to BBPOE and all contracts and funding agreements will be assigned to BBPOE, as well as all funds currently held by or for BBPDC, net of any BBPDC properly-accrued liabilities. Upon such transfer and assignment, BBPDC will have no further funding responsibility with respect to maintenance and operation of the Brooklyn Bridge Park project.
 - (c) The BBPOE President will be responsible for driving all project components forward, and for building a dedicated staff with the capacity to do so on a timely and professional basis.
 - (d) BBPOE will receive an assignment of all revenues (e.g., down payments, PILOT, PILOST, PILOMRT, and ground rent) from the Brooklyn Bridge Park project's development sites and park parcels. BBPOE will make provision from such revenues for incidental, out-of-pocket operational expenses of BBPDC related to the Park, as reasonably accrued by BBPDC taking into account its limited role in the administration of the Park as contemplated hereunder. At City's option, BBPDC shall designate BBPOE to collect and enforce the payment of PILOTs.
5. **BBPOE Governance:**
- (a) The BBPOE Board members will be made up of representatives of the following: the State Assembly member, 52nd District or such successor district that includes the Park ("State Assembly Member") (1), State Senator, 25th District or such successor district that includes the Park ("State Senator") (1), Governor (4) (at least two of whom shall be community representatives), the Mayor (9), a City Council member to be designated by the City Council Speaker (1) and Brooklyn Borough President (1) for a total of (17). All actions by the Board of BBPOE will require a majority vote of the entire Board, including the affirmative vote of at least 3 Mayoral *ex officio* directors.
 - (b) The Board will approve the President based upon a nomination by the Mayor. The President will be paid solely by BBPOE.
 - (c) BBPOE will engage an independent CPA firm to perform an annual audit of its financial statements.
 - (d) BBPOE will not be an ESDC subsidiary.
 - (e) With respect to the residential developments contemplated at each of the John Street site and the uplands of Pier 6, the State Senator's representative director and the State Assembly Member's representative director will have certain review rights as outlined in the MOU as described in Section 9.
6. **Parkland:**
- All areas of the project to be used for park purposes will be legally protected as such by mapping, state legislation, conservation agreement or other binding action.
7. **GPP:**
- BBPDC's and BBPOE's decisions will conform to the BBPDC General Project Plan.
8. **BBP Community Advisory Committee (BBPCAC):**
- (a) BBPOE will establish a CAC with membership identified by local electeds.
 - (b) CAC will have formal reporting responsibilities to BBPOE board as will be set forth in the formation document of BBPOE.

9. Memorandum of Understanding:

The parties expressly acknowledge that certain Memorandum of Understanding, dated as of March 8, 2010, by and among the City and the State Senator and the State Assembly Member, as amended by the parties from time to time, and agree that the governance and operation of BBPOE will at all times be carried out in a manner consistent with the terms and conditions contained therein.

Convention Center

- (a) The City will have no further financial obligations to the Convention Center Development Corp. (CCDC) or otherwise with respect to the Javits Center or any construction or expansion thereof including, without limitation, any obligation from the Memorandum of Understanding dated March 25, 2004 between the City and the State (2004 MOU).
- (b) The City will continue to have two seats on the CCDC.
- (c) The City will continue to have four seats on the Convention Center Operating Corp.
- (d) In the event the City and State choose to develop a new convention center in New York City, the City and State will work collaboratively and as development partners in regards to both planning and funding of that project, consistent with the 2004 MOU.

General Provisions

This Term Sheet is not a binding agreement, and merely sets forth the understandings of the City, State and ESDC. The City, State and ESDC will undertake to proceed in good faith and with all due diligence to negotiate such definitive agreements and instruments as may be appropriate, embodying the terms set forth herein. This Term Sheet may be signed in counterparts.

THE CITY OF NEW YORK

By: _____

THE STATE OF NEW YORK

By: _____

THE NEW YORK STATE URBAN DEVELOPMENT CORPORATION
D/B/A THE EMPIRE STATE DEVELOPMENT CORPORATION

By: _____