

MEMORANDUM

TO: Atlantic Yards File

FROM: Rachel Shatz
Vice President of Planning and Environmental Review

DATE: December 13, 2013

RE: Greenland Joint Venture

I. Introduction

In 2006 Empire State Development (“ESD”), as lead agency, in cooperation with the Metropolitan Transportation Authority (“MTA”), Long Island Rail Road (“LIRR”) and the City of New York (“City”), as involved agencies, prepared the Final Environmental Impact Statement (“FEIS”) for the Atlantic Yards Land Use Improvement and Civic Project (the “Project”) in Brooklyn. In December 2006, the ESD Directors adopted findings under the New York State Environmental Quality Review Act (“SEQRA”) and affirmed a Modified General Project Plan for the Project (the “2006 MGPP”). Thereafter, in September 2009, the ESD directors affirmed a further modification of the general project plan for the Project (the “2009 MGPP”). At a master preliminary closing held in December 2009, numerous contractual documents were executed to implement the Project. Parties to certain of the agreements included ESD, MTA, the City, affiliates of Forest City Ratner Companies, LLC (collectively, “FCRC”) and other entities. Various of these documents became effective as of the Project’s Title Vesting Date of March 4, 2010 or the Project Effective Date of May 12, 2010.

Significant progress has been made towards construction of certain Project elements, including but not limited to the following: ESD has acquired a substantial portion of the 22-acre Project site through conveyance or the exercise of eminent domain; all but one of the buildings on the ESD-acquired property have been cleared; a new Carlton Avenue bridge spanning the rail yard has been built and opened; the Barclays Center arena and adjoining subway entrance have been constructed and were opened to the public in September 2012; construction of the first residential building (B2) on the Arena Block commenced in December 2012; and much progress has been made towards construction of the new LIRR yard on the project site.

On July 13, 2011, the Supreme Court of the State of New York ordered ESD to prepare a Supplemental Environmental Impact Statement ("SEIS") to examine the potential impacts of a delay in construction of Phase II of the Project, and that decision was affirmed by the Appellate Division of the Supreme Court on April 12, 2012. ESD is currently preparing the SEIS for Phase II, and expects that the Draft SEIS will be released to the public in the first half of 2014, at which time it will be subject to a public hearing and comment period. A final SEIS for Phase II and further findings with respect to Phase II will then be prepared in accordance with the Court Order.

On October 11, 2013, Forest City Enterprises, Inc. ("FCE"), the parent company of FCRC, filed a Form 8-K with the Securities and Exchange Commission ("SEC") giving notice of the signing of a non-binding Memorandum of Understanding for a proposed joint venture between FCRC and Greenland Group Co. ("Greenland") to develop the remaining elements of the Project, which includes completing construction of the new LIRR rail yard, building the platform over the new rail yard and Buildings 1, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 and Site 5, providing 8-acres of publicly accessible open space, and certain modifications to the Barclays Center arena. For purposes of this memorandum, these Project elements are referred to as the "Development Project"; as used herein, the term Development Project does not include Barclays Center (except for certain modifications that will be made to that facility) or B2. According to that SEC filing, under the proposed joint venture, Greenland would acquire 70 percent of the Development Project, co-develop the Development Project with FCRC, and share in the Development Project costs going forward at the same percentage interest. The Form 8-K statement also reported that FCRC would manage day-to-day activities on behalf of the joint venture, which would develop the Development Project in accordance with the approved master plan set forth in the 2009 MGPP.

On December 9, 2013, FCE filed with the SEC a second Form 8-K (and a simultaneous press release), stating as follows:

As our investors are aware, we have been actively committed to Atlantic Yards in Brooklyn for a decade, even as the project has been delayed by numerous lawsuits from opponents and the impact of the recession. To date, we and our minority partners have invested equity of approximately \$545 million, with total costs of approximately \$770 million, including debt. This significant investment, made while overcoming multiple unforeseen obstacles, reflects Forest City's unwavering commitment to this project over the past 10 years, and

includes development costs, interest carry and other costs. In addition to our current investment, we are committed to invest in future project costs, including construction of the permanent rail yard, the foundations and a platform above the rail yard, land acquisition and air rights.

In October, we announced a memorandum of understanding with the Greenland Group to create a joint venture to continue the development of Atlantic Yards in Brooklyn. We are excited about the potential opportunity this joint venture presents to accelerate vertical development at the project, including delivery of affordable housing. We hope to reach a definitive agreement with Greenland in the fourth quarter, but cannot give assurances that the transaction will occur. If the joint venture closes, there is a strong possibility the project will convert from full consolidation to equity-method accounting treatment on our books. The change in accounting treatment would require us to record our investment in the project at the lesser of fair value or our current carrying cost, likely resulting in a non-cash impairment in the range of \$250 million to \$350 million, as early as our fourth quarter, to more closely reflect current market values. The likely impairment relates only to land and other costs to date, and not to Barclays Center and B2, which are not part of the contemplated joint venture with Greenland Group.

If we are able to finalize our strategic partnership, the Greenland Group will invest with us, in proportion to their acquired ownership in future project costs, including a capital contribution for certain costs to date, and their share of the equity required for future vertical development. We believe creating a joint venture with the Greenland Group would further strengthen our ability to take this important project to the next level. It would also align with our strategy of creating partnerships to activate our pipeline, generate liquidity and reduce risk.

FCRC has requested that ESD issue an "Estoppel Certificate" under certain of the Project contract documents to which ESD and various FCRC affiliates are parties. As required by the Project contract documents, an Estoppel Certificate verifies, among other things, that such contracts remain in effect and that as of the date of the issuance of the Estoppel Certificate, there is no outstanding default, event of default or any event that constitutes a default. The Estoppel Certificate that ESD has been asked to execute includes the following two paragraphs, as well:

Nothing contained herein shall be deemed to be a consent or approval by ESDC of any transaction by JV [*i.e.*, the Joint Venture entity with Greenland], Interim Developer, AYDC Regional and/or any of their respective affiliates.

This Estoppel Certificate and each statement made therein is subject, to the extent applicable, to the Order of the New York State Supreme Court for New York County dated July 13, 2011 (the "Court Order") requiring preparation of a Supplemental Environmental Impact Statement ("SEIS") for Phase II of the Atlantic Yards Project ("Phase II") and findings for Phase II. Neither this Estoppel Certificate nor any statement made therein shall be construed as constraining, limiting or otherwise affecting ESDC's obligations under the Court Order, the scope of the SEIS being prepared pursuant to the Court Order, or the determinations to be made in the findings required by the Court Order.

ESD expects to issue the requested Estoppel Certificate as of the date of this memorandum, but has at this time neither consented to the proposed transactions with the joint venture between Greenland and FCRC nor determined whether such transactions are subject to ESD consent. ESD, with the assistance of its transactional counsel, is undertaking due diligence on the proposed transactions in order to determine, among other things, whether ESD consent is required.

FCRC also has requested that MTA consent to the transactions proposed to implement the joint venture with Greenland. As lead agency under SEQRA, ESD has prepared this memorandum, working with its attorneys and in cooperation with MTA, to determine whether MTA's consent to the Greenland joint venture would require preparation of a further SEIS under SEQRA. For the reasons stated below, ESD has determined that preparation of another SEIS is not required in these circumstances, and in the exercise of its discretion finds that preparation of an SEIS for the proposed Greenland joint venture is neither appropriate nor in the public interest. MTA has made the same determination.

II. Project Status

The 2006 MGPP, 2009 MGPP and FEIS described and examined the Project in two phases (Phase I and Phase II). Phase I includes construction of the Barclays Center arena, four other buildings (Buildings 1, 2, 3 and 4) and a new subway entrance on the Arena Block, which is located at the southeast corner of Atlantic and Flatbush Avenues, in the area bounded by Atlantic, Sixth and Flatbush Avenues and Dean Street. Phase I also includes a building on Site 5, which is located at the southwest

corner of Atlantic and Flatbush Avenues, and construction of a new rail yard and associated LIRR facilities south of Atlantic Avenue in an area spanning portions of the Arena Block and extending to Vanderbilt Avenue. Phase I also includes parking facilities located on the Arena Block, Site 5 and south of Atlantic Avenue between Sixth and Vanderbilt Avenues, including temporary parking facilities on Block 1129, between Vanderbilt Avenue, Carlton Avenue, Pacific Street, and Dean Street. Phase II is comprised of a platform over the new LIRR yard, 11 buildings (Buildings 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15) south of Atlantic Avenue between Sixth and Vanderbilt Avenues, below-grade parking facilities in that area, and 8 acres of publicly accessible open space. Phase I includes all components of the Project west of 6th Avenue and some components east of 6th Avenue; all Phase II components are east of 6th Avenue.

At a master preliminary closing held on December 21-23, 2009, several hundred contracts were executed to implement the Project, many of which were placed in escrow until certain conditions were satisfied. After ESD's acquisition by condemnation of certain Project properties, several of the documents were released from escrow on March 4, 2010 and became effective on that date, and, after vacant possession of certain of these properties was obtained, the remainder of the documents were released from escrow and became effective on May 12, 2010. The following is a general overview of several of the more important contracts.

A. Land Acquisition Funding, Property Management And Relocation Agreement

On September 18, 2009, ESD and certain FCRC affiliates entered into the Land Acquisition Funding, Property Management and Relocation Agreement as amended by the First Amendment to Land Acquisition Funding, Property Management and Relocation Agreement, dated December 23, 2009 (as amended, the "Land Acquisition Agreement"), in which ESD agreed to acquire certain properties required for the Project, including, if required, commencing eminent domain proceedings, and certain FCRC affiliates agreed to pay the costs incurred by ESD in connection with the acquisition of those properties. ESD commenced an eminent domain proceeding in the New York State Supreme Court for Kings County on December 23, 2009 for portions of the Project site. On March 1, 2010, the New York State Supreme Court for Kings County vested title in all of these properties in ESD. Additional eminent

proceedings were subsequently commenced to acquire permanent and temporary easements in two properties adjacent to the rail yard. Pursuant to the Land Acquisition Agreement, the FCRC affiliates have reimbursed (and continue to reimburse) ESD for the cost of acquiring these properties.

The proposed transaction with Greenland would transfer FCRC's interests and obligations in the Land Acquisition Agreement to the joint venture.

B. Development Agreement

The Development Agreement among ESD and certain FCRC affiliates, which was executed at the master preliminary closing in December 2009 and which became effective on March 4, 2010, requires FCRC, through those affiliates, to develop and construct the Project defined in the 2009 MGPP, in accordance with the Design Guidelines annexed to the 2006 MGPP and 2009 MGPP. The Development Agreement establishes the general legal framework for the Project and sets forth the contractual commitments among the parties on matters such as property acquisition, ownership and control; asbestos remediation and building demolition; Project construction; Project construction schedules; implementation of environmental remediation and mitigation measures; affordable housing requirements; school construction obligations; the provision of open space; parking requirements; events of default; and remedies for default. Subject to certain terms and conditions, the Development Agreement allows FCRC to assign its interest under an interim lease or a development lease (and thus its right to develop the building to be constructed under a development lease) to another developer (including a joint venture of FCRC and another developer), subject to certain terms and conditions, so as to allow additional capital resources to flow into the development process. FCRC is also permitted, subject to certain terms and conditions, to enter into a joint venture with another developer or investor (or multiple joint ventures with more than one developer or investor) for one or more of the Project buildings. FCRC's ability to assign or partner, if any, and ESD rights to review, if any, are defined by the terms and conditions of the relevant Project documents.

The Development Agreement requires that the Project comply with an Amended Memorandum of Environmental Commitments (the "MEC") dated as of December 21, 2009. The MEC specifies certain

environmental measures and mitigations that must be adhered to with the respect to implementation of the Project.

By transferring ownership interests in the contracting FCRC affiliates, the proposed transaction with Greenland would transfer certain of FCRC's interests and obligations in the Development Agreement to the joint venture.

C. Leases With FCRC Affiliates

As set forth in the Development Agreement, simultaneously with the acquisition of any parcels by ESD, those parcels are to be leased to FCRC affiliates under "interim leases" and then under "development leases." At the December 2009 closing, ESD entered into various interim leases with FCRC affiliates for the Arena Block and certain of the properties on the portion of the Project site east of 6th Avenue. These leases became effective shortly after March 1, 2010 when ESD acquired title to certain parcels on the Project site pursuant to the vesting Order of the New York State Supreme Court for Kings County as described above.

The interim leases with certain FCRC affiliates currently in effect are:

- Agreement of Interim Lease (Arena Block, Non-Arena Parcel) dated as of March 4, 2010 as amended by First Amendment dated February 28, 2012, as further amended by Second Amendment dated April 23, 2012 and as further amended by Third Amendment dated December 14, 2012.
- Agreement of Interim Lease (Blocks 1120 and 1121) dated March 4, 2010 as amended by First Amendment dated February 28, 2012.

The development leases with certain FCRC affiliates currently in effect and pertaining to the Development Project are:

- Agreement of Development Lease (Parcel B-1) dated February 28, 2012.
- Agreement of Development Lease (Parcel B-4) dated April 23, 2012.

- Agreement of Development Lease (Parcel 11) dated February 28, 2012.
- Agreement of Development Lease (Parcel B-12) dated July 26, 2011 as amended by First Amendment to Agreement of Development Lease (Block 1129, Parcel 12) dated February 28, 2012
- Agreement of Development Lease (Parcels 13/14) dated February 28, 2012.

By transferring ownership interests in the contracting FCRC affiliates, the proposed transaction with Greenland would transfer FCRC's interests and obligations in these Interim Leases and Development Leases to the joint venture.

D. MTA Agreements

At the December 2009 master preliminary closing, MTA and various FCRC affiliates entered into a complex series of agreements, declarations and transactions under which, among other things: MTA subdivided the air space above the Vanderbilt Yard to create up to six separate air space parcels, and granted FCRC affiliates the right to acquire such parcels for development of the Project, subject to extensive obligations imposed under related agreements; and MTA created the easements necessary to allow the Project to be constructed.

In connection with the proposed transaction with Greenland, FCRC has notified MTA that FCRC proposes to transfer FCRC's interests and obligations in three documents, each dated as of March 4, 2010 (the Air Space Parcel Purchase and Sale Agreement; Yard Relocation and Construction Agreement; and Air Space Parcel Development Agreement) and certain other agreements with MTA (all of which, collectively, the "MTA Agreements") to the joint venture, subject to specified conditions in MTA's consent (as discussed below).

Under the MTA Agreements:

- MTA subdivided portions of the Vanderbilt Yard property into a "Yards Parcel" lying below a specified horizontal plane and an "Air Space Parcel" above that plane, and

granted easements allowing Project construction within and over the Yard. The Air Space Parcel may be subdivided into six Air Space Subparcels (corresponding to the six buildings over the Yard, *i.e.*, Buildings 5, 6, 7, 8, 9, and 10) to facilitate acquisition and development of the Air Space Subparcels.

- An FCRC affiliate is granted the right “from time to time” until June 1, 2031 to purchase any of the Air Space Subparcels, subject to certain conditions. One such condition is that FCRC has constructed the new LIRR rail yard in accordance with the Yard Relocation and Construction Agreement.
- At the closing of such Air Space Subparcel, MTA is to deliver fee title to such Subparcel to a specified FCRC affiliate or its designee. (The parties anticipated that ESD would be the designee, and would simultaneously lease such Air Space Subparcel to an affiliate of FCRC.) The FCRC affiliate that so acquired the Air Space Subparcel for the Project is granted the right to convey its rights in such Air Space Subparcel to another entity (such as a third-party developer) subject to certain conditions.
- MTA may terminate FCRC’s right to acquire the Air Space Parcel if the new LIRR rail yard is not completed by 90 days after September 1, 2016, subject to certain extensions and payment of per diem fees.
- Each separate Air Space Subparcel owner must build and contribute to the continued maintenance of its portion of the platform in accordance with plans and specifications approved by the MTA parties.
- An FCRC affiliate became obligated to first provide a temporary rail yard and maintenance facility to support rail operations for an interim period, and then construct a new rail yard and associated facilities (such as an employee facility, access ramp, parking area, substation, drill track and storage area). Construction of the temporary rail yard has already been completed.

- The new yard must be designed and constructed in accordance with specific design criteria, subject to an orderly process for the development, review and approval of the design for the new yard, and the schedule for its construction.
- Several preconditions must be satisfied before construction of the new rail yard may formally be commenced, including delivery of a guarantee of the performance of the work from FCE to the MTA and the posting of a letter of credit in favor of the MTA. The MTA consent to the transaction with the joint venture would not waive the requirement for an FCE guarantee.
- Formal commencement of construction of the permanent yard was initially required to have begun by June 30, 2012, subject to specified force majeure provisions. That deadline was subsequently modified by the MTA in connection with FCRC's commitment to continue construction of certain rail yard improvements. Currently, the contractual outside date for FCRC's delivery of a completion guarantee to MTA for the permanent rail yard is June 30, 2014. The New Yard Construction Completion deadline of September 1, 2016 remains unchanged.
- Procedures and obligations are established with respect to the construction of the Project buildings in and above the new rail yard and platform, after the construction of the new rail yard.

III. The Proposed Greenland Joint Venture

In a letter dated December 12, 2013, FCRC formally provided written notice of its proposed transaction with Greenland. The summary below is based primarily on that letter. ESD's transactional counsel has also examined drafts of the joint venture operating agreement that FCRC is negotiating with Greenland. If the transactional documents that may ultimately be executed between FCRC and

Greenland do not conform in material respects to the summary below, ESD may revisit the assessment and conclusions stated in this memorandum.¹

As described in the December 12 letter, the parties are contemplating entering into agreements to create a joint venture with a subsidiary of Greenland Holding Group Overseas Investment Company, a division of Greenland Holding Group Co Ltd.² Greenland Holding Group Co Ltd. is listed in *Fortune* magazine's "Global 500" (a listing of the largest 500 corporation in the world). The headquarters of Greenland Holding Group Co Ltd. is in Shanghai, China, and it is described as being owned primarily by the government of China.

ESD has reviewed a copy of Greenland's 2013 corporate brochure. According to this document, Greenland was the largest real estate enterprise in China in 2012, with more than \$35 billion in revenues. It has construction projects in more than 70 cities in China and has entered overseas real estate markets in Korea and Australia. According to this brochure, as of the end of 2012, Greenland has completed, or is currently building, 17 high-rise buildings, in which four rank among the top ten tallest buildings in the world. On July 26, 2013, the *Wall Street Journal* reported that Greenland recently purchased a development parcel in Los Angeles for \$1 billion and plans to build a hotel, office space and residential units at that site.

As described by FCRC, the joint venture would be a Delaware limited liability company, with a subsidiary of FCE owning a 30% interest and a wholly-owned subsidiary of Greenland owning a 70% interest. The FCE subsidiary that would enter into the joint venture is majority-owned by FCE, but apparently includes certain existing investors not affiliated with either FCRC or Greenland. Under the joint venture's operating agreement, the joint venture will be managed by a 5-person Board of managers, three of whom will be appointed by Greenland and will hold the titles of Chairman, CEO and CFO, and two of whom will be appointed by FCRC and will hold the titles of Vice Chairman and

¹ There are numerous terms of the joint venture agreement and associated transactional documents that are not summarized here. In addition, for the sake of simplicity, no effort is made in this overview to distinguish between and among the various FCRC affiliates that are parties to the various agreements and leases with ESD and MTA. They are simply referred to as "FCRC" or "FCRC affiliates."

² This memorandum generally refers to each of these entities and their affiliates as "Greenland."

President. Decisions of particular importance, including decisions about the commencement of construction of a new Project building or component, will require a majority vote of the Board of managers including a vote of at least one appointee of Greenland and one of FCRC, which, in effect requires that both Greenland and FCRC agree to such decisions. The joint venture's operating agreement does not allow the membership interests in the joint venture to be freely transferrable, but the agreement does provide for a possible buy-out in the event of a deadlock among the members of the Board of managers, after exhaustion of certain dispute resolution procedures, and it also provides for dilution of a member's interest if it fails to meet certain obligations. Accordingly, it cannot be assumed that the 30%-70% division of interests described above is a permanent arrangement.

As described by FCRC, the operating agreement further provides that the day-to-day operations of the joint venture will be vested in a Management Team responsible for managing development of the Development Project and a Development Team responsible for design development, construction, infrastructure, marketing, leasing, financing, accounting cost control, community relations, public relations, legal and governmental relations. The Management Team will consist of seven named individuals who are executives at FCRC, and it will also include up to five additional persons appointed by Greenland. The Development Team will include at least 14 current FCRC employees who presently work on the Project, as well as other members who may be appointed by Greenland. There may be some overlap in the members of the Management Team and Development Team. The operating agreement provides for procedures for terminating the employment of persons not performing his or her duties.

At the closing of the transaction, the joint venture will purchase substantially all of the assets of the FCRC umbrella affiliate that has ownership interests in various other FCRC affiliates who have entered into the agreements and leases with ESD and MTA relating to the Development Project summarized above.

The December 12 letter contains an explanation of the basis for FCRC's position that FCRC may transfer its interests in the Development Project to the joint venture without ESD's consent. At this

time, ESD is still reviewing the information available about the transaction to determine whether its consent is or is not required under the circumstances.

FCRC's December 12 letter also states as follows:

The transaction and documents effectuating the transaction do not (and do not purport to) change the physical components of the Project in any way. They do not alter (or purport to alter) ESDC's obligations under the order and judgment of the Supreme Court, New York County, entered on July 19, 2011, with respect to Phase II of the Project. They do not alter or modify in any way the tenants' obligations under any leases with ESDC, the obligations of AYDC [an FCRC affiliate] or its affiliates under the Development Agreement (including the Memorandum of Environmental Commitments annexed thereto) or any other agreement with ESDC, the obligations of AYDC or its affiliates under any agreements with the MTA, the provisions of the current Modified General Project Plan for the Project, the Design Guidelines for the Project, or the dates, schedules and deadlines established by any of the foregoing documents.

IV. The MTA Consent Conditions

The MTA has informed ESD that it intends to impose certain conditions on any consent it may give to FCRC with respect to the assignment of any rights under the MTA Agreements to the joint venture. Among such conditions are the following:

- In addition to maintaining the existing FCE rail yard completion guarantee requirement (discussed above), a guarantee will also be required from a creditworthy Greenland guarantor.
- Restrictions are imposed on removal of FCRC as a managing member of the joint venture exercising day-to-day control over the development work prior to the completion of the rail yard and platform. If FCRC's interests in the joint venture were to be bought out in such circumstances, Greenland must retain as its development manager either FCRC itself or another real estate company with at least 10 years of

relevant development experience (and not less than five years of such experience in New York City) and meeting certain other specified criteria.

- Greenland and/or FCRC must obtain all required consents and approvals required by the Governments of the United States and the People's Republic of China.

The MTA consent will also include certain representations by FCRC and Greenland confirming the terms of the transaction as described above.

V. Environmental Assessment

The threshold issue is whether either ESD or MTA has been asked to take any action that is subject to SEQRA. ESD's view is that its issuance of an Estoppel Certificate is a Type II action under SEQRA and is therefore not subject to the statute's environmental review requirements. An Estoppel Certificate is a routinely issued document under leases and other commercial agreements that states certain factual matters as of a particular date (*e.g.*, that a lease or other agreement is in effect, there are no defaults, and rent or other payments have been made). This type of action should be considered a non-discretionary "ministerial action" or "routine or continuing agency administration and management." Accordingly, it is a Type II action and not subject to review under SEQRA.

At least one of the consents MTA has been requested to provide (the consent to the assignment of FCRC's rights under the "Atlantic Yards Air Space Parcel Development Agreement") is a discretionary action because MTA may withhold such consent in its "sole and absolute discretion." Nevertheless, MTA's consent also falls within a Type II category under the SEQRA regulations. In particular, ESD has considered whether the granting of such consent comes within the Type II exclusion for "license, lease and permit renewals, or transfers of ownership thereof, where there will be no material change in permit conditions or the scope of permitted activities." The thrust of this exclusion is that transferring rights under a license, lease or permit from one party to another, without alteration of the scope of such rights, is not the sort of action that triggers a SEQRA review. The SEQRA regulations do not define the terms "license" or "lease," but they do define the term "permit." That term is defined as a "permit, lease, license, certificate or other entitlement for use or permission to act that may be granted or issued

by an agency.” This definition encompasses the “entitlement” that MTA granted FCRC, under specified circumstances, to build the rail yard and platform, and to purchase and develop the air space parcels above the platform. For this reason, the transfer of this “entitlement” from FCRC to the joint venture fits within this Type II category and, in ESD’s view, is not subject to review under SEQRA. (If ESD were to determine that its consent were needed for the transfer of FCRC’s interests in its agreements with ESD to the joint venture entity, the same reasoning and conclusion would apply to that consent, as well: it would also be a Type II action.)

Moreover, in a prior decision relating to the Atlantic Yards Project, the Appellate Division held that a “financial inquiry” into aspects of the Project of the kind undertaken by the Public Authorities Control Board is not subject to SEQRA, because this “financial inquiry would not have been usefully informed by the EIS’s account of the project’s environmental effect.” Develop Don’t Destroy (Brooklyn) v. Urb. Dev. Corp., 59 A.D.3d 312, 316 (1st Dep’t 2009). Thus, the FEIS prepared in 2006 properly did not scrutinize the means by which FCRC intended to finance the Project, whether through equity capital, borrowing, or via joint venture agreements with other developers. Agencies do not examine this sort of information in EIS’s because SEQRA documents examine the environmental impacts of projects, not the means by which they are financed. Similarly here, an SEIS would not provide information relating to the financial benefits of the proposed joint venture with Greenland.

Moreover, even assuming *arguendo* that the granting of such consent by MTA is not a Type II action, it is clear that an SEIS is not warranted in these circumstances. Based upon FCRC’s representations, as set forth in its Form 8-K filings and the MTA consent and other materials received and/or reviewed by ESD, the effect of the transactions will be to provide an infusion of capital to the Project, and thereby facilitate its construction in accordance with the agreements that are now in place. None of the requirements for the Development Project itself (as specified in the 2009 MGPP, the Design Guidelines annexed thereto, the Development Agreement and the attached MEC, the Interim Leases, the Development Leases, and the MTA contracts addressing the rail yard, the platform and the purchase and development of the air space parcels and other Project documents) are being changed in any

respect.³ Rather, FCRC's proposal is to transfer its equity interest in the Development Project from its affiliates to a joint venture that, as currently structured, would be jointly owned by a Greenland affiliate and an FCRC affiliate in a 70%-30% split. In addition, under the joint venture as it has been proposed, FCRC's development team would continue to manage the day-to-day development activities at the Project site. Although there is a potential for there to be further changes in the ownership structure over time, and there are provisions that would allow Greenland to purchase the balance of FCRC's interest in the Project under certain circumstances, the joint venture – whether managed on a day-to-day basis by FCRC or another developer – must construct the Development Project in accordance with the requirements of the relevant Project documents, which are not being modified. Moreover, the MTA consent includes a condition imposing that, in the event Greenland assumes control over the Development Project prior to completion of the rail yard and platform, a manager with ample experience in U.S. and New York development would be retained to oversee construction of those central Project components.

In determining whether an additional SEIS should be prepared at this time, ESD has also taken into consideration the information in the 2006 FEIS prepared for the Project, which will be supplemented by the SEIS for Phase II currently being prepared and which is expected to be released in 2014. These documents will provide a sound basis for ESD, as lead agency, to consider reasonable alternatives and identify whether there are additional practicable measures to further mitigate the adverse environmental impacts of the Project. The proposed transaction with Greenland will do nothing to hamstring ESD's ongoing environmental review, nor will it affect ESD's compliance with the Court Order.

In particular, the proposed transaction would not affect ESD's consideration of reasonable alternatives in the SEIS the Court has required for a potential delay in Phase II of the Project. Whether the existing agreements are assigned to a joint venture between Greenland and FCRC – or remain with

³ Certain conditions accompany the MTA's consent, all of which leave the Development Project's physical attributes and deadlines unchanged, but include additional guarantees and payments and additional requirements regarding construction management should Greenland assume control over the Development Project.

the FCRC affiliates as they would be without such an assignment – would not preclude the consideration of the feasibility and efficacy of reasonable alternatives.

VI. Conclusion

ESD has determined that the preparation of an SEIS is not required for ESD's review, or MTA's review, of FCRC's proposed joint venture agreement with Greenland.