NYC HDC

NEW YORK CITY
HOUSING DEVELOPMENT
CORPORATION

MEMORANDUM

To: The Chairperson and Members

From: Marc Jahr
President

Date: November 30, 2012

Subject: Multi-Family Mortgage Revenue Bonds (461 Dean Street Development), 2012 Series A and 2013 Series A

I am pleased to recommend that the Members approve the issuance of the Corporation's Multi-Family Mortgage Revenue Bonds (461 Dean Street), 2012 Series A and 2013 Series A (the "2012 Bonds" and the "2013 Bonds," respectively, and collectively, the "Bonds") in an amount not to exceed $100,000,000. Interest on the Bonds is anticipated to be exempt from Federal, state and local income tax. The 2012 Bonds in an approximate amount of $50,000,000, and the 2013 Bonds, in an approximate amount of $50,000,000, will be subject to the private activity bond volume cap.

The proceeds of the Bonds will be used by Atlantic Yards B2 Owner, LLC, a Delaware limited liability company (the "Borrower" and "Mortgagor") for the purpose of paying a portion of the costs of acquiring and constructing a 363-unit multi-family rental housing development to be located at 461 Dean Street in Brooklyn (the "Project") to be developed under the Corporation's Mixed Income Program. The managers of Atlantic Yards B2 Owner, LLC are described below and are controlled by Forest City Enterprises, Inc.

The Bonds will be issued as variable rate obligations in the weekly mode. The 2012 Bonds will be sold by the Corporation to Morgan Stanley & Co. LLC ("Morgan Stanley"), as underwriter for the 2012 Bonds, pursuant to a Bond Purchase Agreement. The 2013 Bonds will be sold by the Corporation to Barclays Capital Inc. ("Barclays"), as underwriter for the 2013 Bonds, pursuant to a Forward Bond Purchase Agreement. During the construction and lease up period, the Bonds are expected to be secured by an irrevocable direct pay Letter of Credit ("LOC") to be issued by The Bank of New York ("BNY").

This memorandum will provide a description of the Project and the Mortgagor, and a discussion of the structure, security and risks of the Bonds.

Project Description

The Project consists of the new construction of a thirty-two story residential tower to be located at 461 Dean Street between Flatbush and Atlantic Avenues adjoining the newly constructed Barclay's Center Arena in the Prospect Heights section of Brooklyn. The Project will contain 363 rental units (149 studio units, 166 one-bedroom units, and 48 two-bedroom units) financed under the Corporation's Mixed Income Program. Seventy-three (73) of the units (20% of the project) will be reserved for tenants earning no more than 50% of Area Median Income ("AMI") which is currently $41,500 for a family of four. Of those seventy-three (73) units, eleven (11) will be reserved for tenants earning no more than 40% of AMI, which is currently $33,200 for a family of four. One hundred and eight (108) units (30% of the Project) will be reserved for middle-income households earning between 80% to 160% of AMI, which is currently $66,400 to $132,800 for a family of four. The remaining one hundred and eighty-one (181) units will not have income restrictions and will be rented at market rents. The project is also expected to contain approximately 3,529 square feet of commercial space and approximately 19,826 square feet of storage space which will be rented to the Barclays Arena located adjacent to the Project. The thirty-two story tower will be the largest modular building constructed in the United States.

Following initial occupancy, rents on the Project will be subject to Rent Stabilization. Pursuant to the terms of a regulatory agreement to be executed by the Corporation and the Mortgagor (the "Regulatory Agreement"), the occupancy restrictions will remain in effect for as long as the Bonds are outstanding and for a minimum of thirty (30) years from the date the Project is first occupied (the "Occupancy Restriction Period"). Both the low and middle-income tenants in occupancy at the expiration of the Occupancy Restriction Period will be protected by the terms of the HDC Regulatory Agreement, which mandates that the tenants be offered continuous lease renewals in accordance with Rent Stabilization.

At construction closing, the Borrower will enter into a Development Lease with the Empire State Development Corporation, the current fee owner of the development site. $34,300,000 of the approximate total of $300,000,000 in site acquisition and infrastructure costs for the entire 22-acre Atlantic Yards development site will be applied to the Project. Once construction is complete, title will transfer to the Borrower for a nominal sum.

The Project will receive an additional loan (the "Subordinate Loan") from the Corporation's unrestricted reserves of $11,605,000 or $64,116 per unit for the 181 low- and middle-income units in the Project in accordance with the Mixed Income Program guidelines and the Atlantic Yards Development Agreement dated March 4, 2010. The Subordinate Loan will not be credit enhanced and will bear interest at a rate of 1%, with scheduled amortization based on a 2% constant payment beginning at the earlier of 36 months after construction loan closing or conversion to permanent financing.

The Project will benefit from the Borrower's contribution of approximately $79,435,000 in equity during construction including the site acquisition cost recognized by the Corporation. It is anticipated that $10,700,000 of the Borrower's equity will be repaid from the proceeds generated by the syndication of Low-Income Housing Tax Credits.

A fact sheet with a brief description of the Project is attached (see "Exhibit A").

Mortgagor Description

The developer will be Forest City Ratner Companies which is a subsidiary of Forest City Enterprises, Inc., a publicly traded real estate company. Forest City Enterprises, Inc. owns and manages more than 48,000 multi-family units in 23 states and the District of Columbia. This will be Forest City Ratner Company's second project with financing from the Corporation and its third residential development in New York City.

At construction closing, the Borrower of the Project will be Atlantic Yards B2 Owner, LLC of which Forest City Enterprises, Inc. is both Member and Managing Member.

Structure of the Bonds

The Bonds will initially be issued as seven-day variable-rate obligations with an approximate final maturity in 34 years. The interest rate on the Bonds will be reset weekly (the "Weekly Rate") by Morgan Stanley in its capacity as Remarketing Agent for the 2012 Bonds and by Barclays in its capacity as Remarketing Agent for the 2013 Bonds. On the basis of the prevailing financial market conditions, Morgan Stanley and Barclays will each establish a Weekly Rate at the minimum interest rate that it determines will be necessary to market the 2012 Bonds and the 2013 Bonds, respectively, at par. Similar to other multi-modal transactions undertaken by the Corporation, the Bond Resolution and other agreements to be entered into in connection with the financing provide that the Bonds may be converted to (i) a Daily Rate, (ii) a Term Rate (with a semi-annual term or any multiples thereof), or (iii) a Fixed Rate, all at the option of the Mortgagor with the approval of the credit enhancer and the Corporation pursuant to the terms of the resolution for the Bonds (the "Bond Resolution"). The Bonds will be subject to a maximum interest rate of 12% per annum in any of the above interest rate modes, although the maximum rate may be increased to 15% in accordance with the provisions of the Bond Resolution.

Security for the Bonds

The Bonds will be secured by a credit enhancement facility in the form of a direct-pay credit enhancement instrument (the "Credit Facility") executed and delivered by BNY to the Trustee concurrently with the issuance of the Bonds. The Trustee will draw upon the BNY Credit Facility to make all regularly scheduled payments due on the Bonds. The Credit Facility may also be drawn upon in the event the Bonds are not successfully remarketed by the Remarketing Agent. The initial term of the Credit Facility is four years. It is anticipated that the Borrower will secure a long-term Credit Facility upon construction completion with BNY or with another financial institution acceptable to the Corporation. As a result, the Corporation believes that the financing is structured to effectively insulate the Corporation from credit, market and real estate risks. Under the terms of the Credit Facility, the Mortgagor is not required to obtain interest rate protection.

BNY expects to be reimbursed for draws on the LOC from payments made by the Mortgagor, pursuant to the LOC and a Credit and Disbursement Agreement. The obligations of the Mortgagor are expected to be secured by one or more leasehold mortgages on the property and evidenced by one or more mortgage notes to be executed by the Mortgagor as well as an equity letter of credit to be provided by the Borrower to the BNY. The approximate amount of the loan secured by the mortgage is $83,700,000 and the balance will be secured by the equity letter of credit. At the closing of the Bonds, the Corporation will assign its interest in the first mortgage and related notes to BNY and the Trustee, as security for BNY extending the LOC and assuming the real estate risks of this Project.

The Bond Resolution permits the substitution of letters of credit and confirming letters of credit or the provision of alternate forms of credit enhancement, provided that the Corporation provides the Trustee certain items detailed in the Bond Resolution including, but not limited to, (i) an opinion of bond counsel stating that the substitute letter of credit or alternate form of credit enhancement meets the requirements of the Bond Resolution and will not adversely affect the tax exemption relating to such bonds, and (ii) a letter from the nationally recognized rating agency or agencies then rating the Bonds stating that the provision of (a) the substitute letter of credit or confirming letter of credit will not result in a reduction or withdrawal of the rating on the Bonds or (b) in the case of an alternate security, to the effect that such alternate form of credit enhancement will provide the Bonds with an investment grade rating. The Corporation, pursuant to its Financing Agreement with the Borrower, requires any alternate security to be in the "A" category or higher. The Mortgagor must pay all costs incurred by the Trustee and the Corporation in connection with the provision of a substitute letter of credit, confirming letter of credit or alternate form of credit enhancement.

Under the terms of the Bond Resolution, a change in either (i) the security for the Bonds, or (ii) the method of establishing the interest rate on the Bonds will result in a mandatory tender of such series of Bonds for purchase at par plus accrued interest.

Risks and Risk Mitigation

The primary risks associated with this bond issue are the potential failure of BNY to honor its obligations under the LOC and the failure to secure permanent credit enhancement, both which would be a default under the transaction documents. The Corporations staff believes that a default by a highly rated financial institution is an unlikely scenario. BNY is currently rated AA-/A-1+ by Standard and Poor's Rating Service ("Standard and Poor's"). Additionally, the Bond Resolution allows the Corporation to require the replacement or substitution of the LOC, at the Corporation's option. The likely circumstance under which the Corporation might require a replacement or substitution would be if BNY were downgraded to below investment grade. However, as a practical matter, the Borrower would have an incentive to replace the LOC from BNY if it were downgraded, because the Borrower's financing costs could increase substantially as the capital markets recognized the increase in risk with respect to the Bonds due to such downgrade.

In an effort to alleviate the exposure of the Corporation's subordinate debt to the availability of permanent credit enhancement on the senior loan, the Borrower will be required to escrow additional principal payments. The additional payments will go into an escrow account until such time as the Borrower secures enhancement through year 20 of the Project. The escrow will be drawn on to pay down the Subordinate Loan in the event the Borrower cannot secure an additional term of enhancement after the BNY letter of credit expires or any subsequent enhancement period expires which is not through year 20 of the Project.

Future Issuance

In the event the Corporation is unable to issue the 2013 Bonds pursuant to a bond issuance agreement between the Corporation and the Borrower (the "Bond Issuance Agreement"), BNY, as the letter of credit provider, may enter into a mortgage participation agreement to fund the balance of the loan until such time as the Corporation can issue the 2013 Bonds. The Corporation is seeking authorization for the 2013 Bonds to be issued as taxable bonds if private activity volume cap is not available by conversion in order to purchase BNY's interest in the senior loan.

Fees

The Mortgagor will be obligated to pay the Corporation its costs of issuance for the Bonds plus an up-front fee equal to approximately 1% of the Bonds.

In addition, the Corporation will receive an annual servicing fee on the Project beginning at the earlier of construction completion or, at the Corporation's discretion, 36 months after the Bond closing date. The Corporation's annual servicing fee will be .20% of the outstanding amount of the senior loan.

BNY will receive an annual letter of credit fee at a rate of 2.50% per annum on the funds advanced to the Borrower and 0.50% on the average undrawn funds prior to the Project reaching certain occupancy and debt service requirements. Once the Project has met these requirements, BNY will receive an annual letter of credit fee at a rate of 2.00% per annum on the funds advanced to the Borrower and 0.50% on the undrawn funds.

Morgan Stanley and Barclays will each earn an up-front underwriters' fee not to exceed 0.50% of the respective Bonds plus expenses. While the Bonds bear interest at a Weekly Rate, Morgan Stanley and Barclays will each also receive an annual fee not expected to exceed 0.10% of the outstanding amount of the respective Bonds for acting as Remarketing Agent. All such fees will be paid by the Mortgagor.

Rating

It is expected that the Bonds will be rated AA-/A1+ by Standard & Poor's.

Trustee and Tender Agent

U.S. Bank National Association

Senior Manager and Remarketing Agent

Morgan Stanley & Co. LLC, with respect to the 2012 Bonds

Barclays Capital Inc., with respect to the 2013 Bonds

Bond Counsel

Hawkins Delafield & Wood LLP

Underwriter's Counsel

Nixon Peabody LLP

Action by the Members

The Members are requested to approve an authorizing resolution which provides for (i) the adoption of the Bond Resolution and the First Supplemental Resolution, (ii) the execution of the Bond Purchase Agreement regarding the sale of the 2012 Bonds and the Forward Bond Purchase Agreement regarding the sale of the 2013 Bonds, (iii) the execution of the Bond Issuance Agreement regarding the terms and conditions for the issuance of the 2013 Bonds (iv) the distribution of the Official Statements in connection with the financing of the 2012 Bonds and 2013 Bonds, v) the execution of a participation agreement with respect to the senior loan and (vi) the execution of mortgage related documents and any other documents necessary to accomplish the issuance of the Bonds and the financing of the loan.

In addition, the Members are requested to approve the making of a subordinate loan to be funded by the Corporation's unrestricted reserves in an amount not to exceed $11,605,000, and the execution by an authorized Officer of the Corporation of mortgage related documents and any other documents necessary to accomplish the subordinate financing.

Exhibit A"

461 Dean Street
Brooklyn, New York

Project Location:	461 Dean Street, Brooklyn, NY Block 1118, Tentative Lot 2
Project Description:	The new construction of a 32-story building with 363 mixed-income residential units and approximately 3,529 square feet of retail/commercial space and 19,826 of storage space.
Total Rental Units:	362 (plus one unit reserved for the superintendent)

Apartment Distribution:

Unit Size	No. of Units
Studio	149
1 bedroom	166
2 bedroom	48
Total Units*	363

*Total Units are inclusive of one superintendent unit

Market Rate Units:	181
Middle-Income Units (rents set at 30% of 80% of AMI):	36
Middle-Income Units (rents set at 30% of 120% of AMI):	36
Middle-Income Units (rents set at 30% of 150% of AMI):	36
Low-Income Units (rents set at 30% of 50% of AMI):	62
Very Low-Income Units (rents set at 30% of 40% of AMI):	11
Superintendent Unit:	1
HDC Estimated Tax-Exempt Bond Amount:	$91,960,000
Bond Structure:	7-day variable rate; may be converted to other modes
Credit Enhancement:	Direct Pay Letter of Credit from The Bank of New York Mellon.

Owner:	Atlantic Yards B2 Owner, LLC a Delaware limited liability company whose managing member is Forest City Enterprises, Inc.
Underwriter/Remarketing Agent:	Morgan Stanley with respect to the 2012 Bonds and Barclays with respect to the 2013 Bonds