

NEW YORK STATE PUBLIC AUTHORITIES CONTROL BOARD

R E S O L U T I O N No. 22-UD-1958

APPROVING AN AGREEMENT FOR A SPECIFIED PROJECT OF THE NEW YORK
STATE URBAN DEVELOPMENT CORPORATION, D/B/A/ EMPIRE STATE
DEVELOPMENT - PENNSYLVANIA STATION AREA CIVIC AND LAND USE
IMPROVEMENT PROJECT

WHEREAS, the New York State Public Authorities Control Board ("PACB"), created pursuant to Chapter 38, Laws of 1976, as amended, has been empowered by section 51 of the Public Authorities Law to receive applications from designated public benefit corporations, including the New York State Urban Development Corporation d/b/a Empire State Development ("UDC") and its subsidiaries, for approval of the acquisition, construction, or financing of any project by any such public benefit corporation; and

WHEREAS, UDC has made an application to PACB to enable UDC to enter into an agreement with the City of New York (the "City") regarding the Pennsylvania Station Area Civic and Land Use Improvement Project (the "Project," as described below), established pursuant to the General Project Plan ("GPP") that UDC's Directors adopted and affirmed in accordance with the New York State Urban Development Corporation Act ("UDC Act"); and

WHEREAS, the Project is a comprehensive redevelopment initiative to create a revitalized, transit-oriented mixed-use area centered around New York Pennsylvania Station ("Penn Station"); address long-standing substandard and insanitary

conditions in the area; and support and generate essential revenue to help fund public realm and transit improvements in the Project Area and the reconstruction and potential expansion of Penn Station, two public transportation initiatives that are independent from but related to the Project and are being undertaken by one or more of the involved public rail transportation entities, namely, the Metropolitan Transportation Authority of the State of New York ("MTA"), National Railroad Passenger Corporation ("Amtrak"), and New Jersey Transit ("NJT", and MTA, Amtrak, and NJT, collectively, the "Railroads"); and

WHEREAS, the Project will result in the development of up to ten new buildings on up to eight development sites (each a "Development Site" or "Site") and provide significant public transit and public realm improvements in a project area (the "Project Area") that is located in the Borough of Manhattan and the City, County and State of New York; potentially includes all or portions of Manhattan Tax Blocks 754, 755, 780, 781, 783, 806, 807, 808, and 809; and encompasses Penn Station, Madison Square Garden, the 1 Penn Plaza building, the 2 Penn Plaza building, the James A. Farley Building (the "Farley Building"), the Moynihan Train Hall (constructed within the Farley Building), and surrounding blocks; and

WHEREAS, The Project, when fully implemented in accordance with the GPP, will facilitate (i) additional Class A commercial

office, retail, community facility and hotel space and additional residential dwelling units (all residential Sites will require that at least 30 percent of the DUs are permanently affordable); (ii) major transit improvements to area subway stations, including eighteen new entrances to Penn Station and subway stations, and an extensive new below-grade network of pedestrian concourses; and (iii) public realm improvements to address pedestrian, bicycle, and vehicular circulation and enhance the surrounding streetscape;

WHEREAS, the Project's redevelopment of the Development Sites will further the economic development interests of the State, the City and the local community; and

WHEREAS, pursuant to the UDC Act, UDC shall not be required to pay any taxes, upon or in respect of a project or of any property or moneys of UDC levied by State or any municipality or political subdivision of the State, and UDC shall at all times be free from taxation of every kind by the State and the municipalities and all other political subdivisions of the State, and when acquired by UDC for the Project each Development Site will thereby become exempt from payment of such taxes; and

WHEREAS, revenues generated by the Project will be structured in a value-capture framework that could be used toward the New York State contribution to the reconstruction and potential expansion of Penn Station and will fund the Project's public realm and transit improvements; these revenues include (i) land value

payments (upfront and/or periodic payments received through long-term lease agreements); (ii) additional development rights payments (payments for additional development rights to be used on Development Sites); and (iii) payments that correspond to the amounts that would have been paid as taxes by the developer if the Development Site was not part to the Project (e.g., owned by the developer rather than owned by UDC and long-term net leased to the developer), including ad valorem property tax, mortgage recording tax, and sales tax for materials and fixtures incorporated into the structures constructed on each Development Site; and

WHEREAS, on February 18, 2021, UDC's Directors adopted the GPP for the Project, authorized the holding of a public hearing on the GPP and Draft Environmental Impact Statement ("DEIS") for the Project under the State Environmental Quality Review Act ("SEQRA"), and authorized such other actions as necessary or appropriate to allow the Project to proceed; and

WHEREAS, on December 8, 2021 and January 20, 2022, UDC held public hearings on the GPP and DEIS for the Project; received public comments at the hearings and during a public comment period that ended on February 22, 2022; and UDC participated in meetings with the Project's Community Advisory Committee and its Working Group ("CACWG") between April 27, 2021 and November 9, 2021, which resulted in submission to UDC of multiple recommendations for the Project, and UDC staff worked diligently to respond to these

recommendations and all substantive comments received during this public process; and

WHEREAS, on July 21, 2022, UDC's Directors, upon consideration of the Final Environmental Impact Statement ("FEIS") for the Project, other materials presented by UDC's staff, and consideration of public comments received, approved SEQRA findings for the Project; and affirmed the GPP as modified; and

WHEREAS, The Governor's Office has formed the Public Realm Task Force ("PRTF") which will advise ESD on public realm improvements in the Project Area related to the GPP, and ESD (in consultation with PRTF) will prepare a Public Realm Improvement Concept Plan (the "Concept Plan") that will recommend public realm improvements in and adjacent to the Project Area; and it is expected that the PRTF will solicit guidance and comment from the New York City Department of City Planning and other stakeholders during the Concept Plan's development; and

WHEREAS, On July 21, 2022 UDC authorized the creation of a UDC Act subsidiary, tentatively named the Pennsylvania Station Area Development Corporation ("PSADC"), with a Board of Directors consisting of seven Directors with three Directors designated by the Mayor of the City of New York and four Directors designated by the Governor; and PSADC shall make all decisions regarding or otherwise impacting the (i) public realm improvements to be funded by Project revenues (including without limitation, the nature,

scope, and manner of implementation and financing of such improvements), and (ii) any transit improvements to be funded by Project revenues that would result in the total cost for such transit improvements to exceed \$1.5 billion, and shall, in each such case, require a 2/3 majority vote (i.e., 5 affirmative votes); and PSADC will be empowered to audit (and will receive full access to) all records related to the collection, distribution, accounting, and/or utilization of PILOT revenue, including without limitation, all Project records required to determine the amount of any required pre-payment of Project debt; and UDC will ensure that periodic, regular updates are provided to the PSADC regarding the Project's transit improvements; and

WHEREAS, UDC will require the developer of each Development Site make to UDC payments for the Development Site, including payments that correspond to the amounts that would have been paid to the City and the State by the developer if the Development Site was not part of the UDC Project for ad valorem property tax ("payments in lieu of taxes" or "PILOT"), mortgage recording tax ("payments in lieu of mortgage recording tax" or "PILOMRT"), and sales tax for materials and fixtures incorporated into the structures constructed on the Development Sites ("payments in lieu of sales taxes" or "PILOST"), provided any such agreement with a developer is approved by the PACB at a future meeting; and

WHEREAS, the Railroads currently estimate that the cost for

Penn Station reconstruction would be approximately \$7 billion and the potential southward Penn Station expansion, if approved, would cost approximately \$13 billion; and UDC estimates that additional public realm and transit improvement costs associated with the Project are anticipated to total up to \$2 billion upon full build of the Project; and

WHEREAS, the Project will use PILOT revenues to help fund construction of the Project's public realm improvements, public transit improvements, and the reconstruction and potential expansion of Penn Station; and

WHEREAS, the City views all PILOT above the current assessed value for the improvements on the Sites, adjusted for inflation, as its financial contribution to the Project and the basis for the City's participation in the Project; and

WHEREAS, the State, the City and UDC reached a consensus on the use of PILOT revenue to help finance the Project and that consensus is set out in the nonbinding Letter of Mutual Agreement for the Project dated as of July 18, 2022 (the "LMA") that expressly states that only subsequently formalized definitive agreements, if executed and delivered, shall obligate the parties on the matters set forth in the LMA, and that execution and delivery of the definitive agreements continues to be subject to all applicable governmental reviews and approvals; and

WHEREAS, UDC seeks to enter into an agreement (the "PILOT

Agreement") with the City regarding use of PILOT to help finance certain parts of the construction of the Project; and on July 21, 2022 the UDC Directors authorized UDC, subject to the affirmative determination by PACB, to enter into PILOT Agreement with the City based on the essential terms that are summarized as follows:

Use of PILOT Revenues

"PILOT Revenues" means payments made in lieu of taxes on any Site. PILOT Revenues can only be used for (i) Initial Project Construction Costs (defined below), (ii) the payment of debt service on bona fide debt or a portion thereof issued exclusively for Initial Project Construction Costs ("Debt Service"), and (iii) the repayment (without interest) of certain State Shortfall Support Payments (as defined below). "Initial Project Construction Costs" means costs for the following categories: (a) Project-related public realm improvements which will be determined by UDC in consultation with the PRTF and PSADC; (b) Project related transit improvements, which were identified by MTA and set forth in the LMA Schedule 1 and which will be updated at the time the City and UDC enter the PILOT Agreement if additional information is available; provided any material changes to such agreement are approved by the PACB; (c) Penn Station reconstruction, which was identified by MTA and set forth in the LMA Schedule 1 and which will be updated at the time the City and UDC enter the PILOT Agreement if additional information is available, provided any

material changes to such agreement are approved by the PACB; (d) the potential Penn Station expansion which was identified by MTA and set forth in the LMA Schedule 1 and which will be updated at the time the City and UDC enter the PILOT Agreement if additional information is available, provided any material changes to such agreement are approved by the PACB; and (e) reserves and financing costs related to the foregoing items (a), (b), (c), and (d) and which will be updated at the time the City and UDC enter the PILOT Agreement if additional information is available, provided any material changes to such agreement are approved by the PACB. The maximum portions of such Initial Project Construction Costs that can be funded from PILOT Revenues (each a "Percentage Cap") are: (a) 100% for public realm improvements, (b) 50% for public transit improvements, (c) 12.5% for the reconstruction of Penn Station, and (d) 12.5% for the potential expansion of Penn Station. Upon completion of bridging documents or equivalent at 50% of design documents for each of the Penn Station reconstruction and potential expansion, the City shall have the right to review such documents to determine whether the documents reflect a scope greater or materially different than the scope used to define the Initial Project Construction Cost for such item. If such scope in such documents is substantively greater than the corresponding scope for the Initial Project Construction Cost for such item, the City shall not be required to bear incremental costs associated with

such increased scope unless the City and UDC mutually consent to amend the Initial Project Construction Cost category set forth in the PILOT Agreement.

Subject to all the above-described limitations and restrictions on UDC's use of PILOT Revenues, the maximum amount of PILOT Revenues that UDC is permitted to use for each Initial Project Construction Cost category or portion thereof (the "City Agreed Costs") is determined in the following manner:

1. First, upon the date when a fixed or guaranteed maximum price contract is awarded with respect to each Initial Project Construction Cost category or portion thereof or, if the contracting method employed does not require a fixed or guaranteed maximum price, the date when 90% of all trades have been fully bid out with respect to each Initial Project Construction Cost category or portion thereof. The total cost for each Initial Project Construction Cost category or portion thereof includes the fixed or maximum price or reasonable projection established upon bid-out of 90% of the trades, plus a commercially reasonable contingency. The City Agreed Costs shall not include the cost of scope changes to the Initial Project Construction Cost for such item unless such changes have been agreed to by the City.

2. Second, the Percentage Cap will be applied to the total cost of each Initial Project Construction Cost category or portion thereof, which will determine the amount of costs for each category

or portion thereof that may be funded with PILOT Revenues.

3. Third, the cost of financing will be applied. The total amount of PILOT Revenues that may be utilized for each portion will be fixed by using the blended interest rate of the debt issued for the respective portion, applied to the above amounts over the fixed term of the debt (as expressed in nominal dollars).

Unless otherwise agreed between UDC and the City, PILOT Revenues cannot be used for any other purpose, including (a) costs to operate or maintain the reconstruction or potential expansion of Penn Station, (b) other Project capital expenditures not within an Initial Project Construction Cost category, or (c) future changes to the scope of Initial Project Construction Costs categories. City approval will be required for any refinancing that increases the principal balance of the debt used for Initial Project Construction Costs (with limited carve-outs that permit the capitalization of interest in default and workout situations). In determining PILOT for the redevelopment of a Site, no PILOT abatement for a commercial component on a Development Site offered to a developer of a Development Site by UDC will be deeper or more valuable, with respect to both percentage abated and term of abatement, than the lesser of the value of 20% of the ad valorem property taxes that would be owed and the value of the commercial abatement that is available within the Hudson Yards Uniform Tax Exemption Policy ("UTEF") area at the time of redevelopment of

such Development Site.

UDC can so use each Development Site's PILOT Revenues for a maximum term of forty years commencing on the date that such Site becomes exempt from real estate taxes, provided, however, that such term can be forty-five years should such initial issuance of Project debt so require. The outside date (the "Temporal Cap") for all PILOT Revenues to revert to the City shall be the earliest of (i) the date upon which the aggregate of City Agreed Costs (i.e. maximum allowed aggregate amount of PILOT Revenues that UDC is permitted to disburse for the Project) has been funded with PILOT Revenues; (ii) the date upon which no debt for the Initial Project Construction Costs remains outstanding; or (iii) the eightieth anniversary of the first date a Development Site in the Project Area is rendered tax exempt. After such anniversary, all PILOT Revenues shall be remitted to the City regardless of whether or not any Project debt then remains outstanding.

If UDC and/or the State (including any action taken exclusively by UDC or through the Governor-designated PSADC Directors): (i) dissolves the PSADC, (ii) fails to convene the PSADC for more than nine months (except by mutual agreement of the City and UDC), (iii) unilaterally takes any action or makes any determination that ordinarily falls within the purview of the PSADC (without the consent of the City's Mayor-designated PSADC Directors), and/or (iv) undertakes the functional equivalent of

any of the foregoing items (i)-(iii), then it is expected that the State (subject to New York State appropriations) would undertake to pay to the City an amount (the "PSADC Dissolution Penalty") equal to the estimated cost to complete the remaining public realm improvements (as set forth in the public realm concept plan approved by PSADC) with the value of such remaining costs to be estimated by a third party cost estimator selected by mutual agreement of the City and UDC or the State. It is expected that if the State fails to pay all such amounts within one year following the action that triggered the PSADC Dissolution Penalty payment obligation, UDC will pay any remaining amounts due from Excess PILOT Revenues (as defined below), if any, available at the end of each year after payment of Debt Service and City Make Whole Payments (as defined below). In addition, following the occurrence of any of the events set forth in items (i), (ii), (iii), and/or (iv) above, it is expected that the State would forfeit its right to recoup any portion of the State's Shortfall Support Payments (as defined below), and 100% of any Excess PILOT Revenues must be committed to payment/pre-payment of Project debt, with any excess being remitted to the City. The City will utilize any payments received on account of PSADC Dissolution Penalty for implementation of the Project's public realm improvements (or such portion as may be achievable with the funds so provided) set forth in the PSADC approved public real concept plan.

Make Whole Payments to the City

It is expected that the State (subject to New York State appropriations) will make the City whole for property tax payments that would have been made had the Project not occurred, and Development Sites had remained on City tax rolls during the period that PILOT Revenue is used to fund the Project.

UDC understands that it will be agreed between the State and the City that each property or property interest in the Project Area will be rendered tax exempt at the time of its acquisition by the State; that if Sites 1, 2 and 3 are selected as the preferred alternative for Penn Station expansion, it is the State's intention to acquire those development Sites prior to the demolition of any improvements on such Sites in connection with Penn Station expansion; and that Sites 4, 5, 6, 7 and 8 will be acquired prior to commencement of construction of new improvements on each Development Site.

With respect to each property or property interest within the Project Area that is rendered tax exempt in furtherance of the Project, the State will make annual payments to the City in amounts equal to the real property taxes that the City would have received if the Project never happened (the "City Make Whole Payments"). With respect to each applicable property or property interest, City Make Whole Payments shall begin on the first day of the first

full tax year following the date when such property is rendered tax exempt and shall terminate on the date the aggregate City Agreed Costs are spent or Temporal Cap is achieved, whichever occurs first.

The City Make Whole Payments will be calculated for each applicable property or property interest on the date such property is rendered tax exempt. The amount of the applicable City Make Whole Payment will be calculated as follows by: (i(a)) for Development Sites 1, 2, and 3, by determining the average annual property tax amount due in the ten years prior to State acquisition of property interests in such Sites; or (i(b)), for Development Sites 4, 5, 6, 7 and 8 for the period commencing on the date that the applicable property or property interest is rendered tax exempt and ending on the date immediately preceding the date upon which construction of the improvements contemplated by the GPP on each Development Site is completed, the ground lease for such property or property interest (likely between UDC and the developer) shall require the developer to make payment of PILOT that includes an amount equal to what property taxes would have been during such period had the applicable property or property interest not been rendered tax exempt, which amount will be paid directly to the City when the same would have become due had the property or property interest not been rendered tax exempt; and (i(c)) for Development Sites 4, 5, 6, 7 and 8, for the period commencing on

the date that construction of the improvements contemplated by the GPP on each Development Site is completed, by (x) determining the average annual property tax amount due in the ten (10) years prior to a demolition permit being obtained for such property's redevelopment pursuant to the GPP and associated development agreement, and (y) assigning a multiplier of 1.16x to reflect the present value of such average at the time of calculation. Thereafter, for all Development Sites, the City Make Whole Payment shall escalate at 3% (compounding) per annum.

UDC expects that these payments will be funded from the PILOT Revenues received by UDC from the Development Site developer under the Site development agreement and ground lease, which shall be subject to all applicable governmental reviews and approvals. For each Development Site, UDC's obligation for such payments terminates upon that Site's return to the City's tax rolls. If PILOT Revenues received by UDC are insufficient to cover Debt Service and make the full City Make Whole Payment to the City in a given year, it is expected that the State (subject to New York State appropriations) would undertake to the City to identify and commit other funds to cover such shortfall. The incremental amount between actual PILOT Revenues received in such a year and the aggregate of Debt Service and the City Make Whole Payment that the State must pay constitutes a "State Shortfall Support Payment". Subject to the availability of funds, the Temporal Cap, and City

Agreed Costs, the State would be able to reimburse itself up to the amount of the aggregate State Shortfall Support Payments accrued over the applicable period (without interest) from Excess PILOT Revenues, as defined below.

"Excess PILOT Revenues" mean in any year, PILOT Revenues remaining after the payment of (i) Debt Service, (ii) Initial Project Construction Costs, (iii) the City Make Whole Payments, and (iv) any required pre-payment of debt (in each case due for the applicable year). "Project Revenues" shall include PILOT Revenues and any other revenue received by UDC from the Site (e.g. proceeds of ground lease payments and disposition of development rights and land). In any year "Excess Project Revenues" mean Project Revenues remaining after the payment of (i) all required Debt Service and (ii) the City Make Whole Payment. To the extent that there are Excess PILOT Revenues available in any year (after payment of Debt Service, Initial Project Construction Costs and City Make-Whole Payments), at least 35% of such excess revenue will be pledged to the prepayment of Project debt provided that any debt prepayments can be made without penalty, unless the City and UDC consent otherwise.

Any State Shortfall Support Payments shall only be repayable from Excess PILOT Revenues and shall not offset the City Make Whole Payments or any other payments due to the City.

While the PILOT Agreement may refer to expected State

undertakings to the City as conditions precedent to UDC's ability to use PILOT Revenues, the State will not be obligated pursuant to the PILOT Agreement between UDC and the City. Any accrued State Shortfall Support Payments would only be repayable from Excess PILOT Revenues and would not offset the City Make Whole Payments or any other payments due to the City. While it will not be part of the PILOT Agreement between UDC and the City, it is expected that the State would not undertake to reimburse or otherwise recoup from PILOT Revenues any portion of the initial \$1.8B State appropriation made in connection with the Penn Station reconstruction or potential expansion projects.

Commercial Rent Tax

The City will be entitled to bill, collect, and retain commercial rent tax from all applicable ground lease commercial subtenants on each Site, to the extent allowable under applicable law.

NOW THEREFORE BE IT RESOLVED, that the PACB approves UDC entering into the PILOT Agreement with the City in accordance with section 51 of the Public Authorities Law:

PROJECT IDENTIFICATION

<u>Project Description</u>	<u>PACB Approval of Proposed PILOT Agreement with the City</u>
<p>Borough of Manhattan City of New York County of New York</p> <p>(All or portions of Blocks 754, 755, 780, 781, 783, 806, 807, 808, and 809);</p> <p>Pennsylvania Station Area Civic and Land Use Improvement Project</p>	<p>Prior to the development of each Development Site or group of Sites, UDC will, subject to required governmental reviews and approvals, including without limitation approval by the PACB, enter into a development agreement with the designated developer, acquire title to the Development Site(s), and ground lease the Development Site(s) to the developer in order to among other things obligate the developer to make payments to UDC, including payments of PILOT Revenues that will be used by UDC in accordance with the PILOT Agreement, between UDC and the City, summarized above in the PACB Resolution for the Project. At this juncture, UDC only seeks PACB approval of the PILOT Agreement with the City.</p>

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This resolution shall take effect immediately.

Robert F. Mujica Jr. Chair
Public Authorities Control Board

Amy Paulin, Member of the Board

Leroy Comrie, Member of the Board

22-UD-1958

Date: July 27, 2022

CERTIFICATION

STATE OF NEW YORK
COUNTY OF ALBANY ss.

I, Elyse Young, Secretary of the New York State Public Authorities Control Board, do hereby certify that at a meeting of such Board, held on July 27, 2022, the attached resolution was duly adopted by the unanimous vote of the Members of the Board. The resolution attached is a true copy of the resolution and the certification of the determination made by such resolution and of the signatures thereto of each of the Members of the Board or their duly appointed representatives, the original of which is on file in my office. As of the date of this certification, such resolution has not been modified, superseded, amended or repealed and remains in full force and effect.

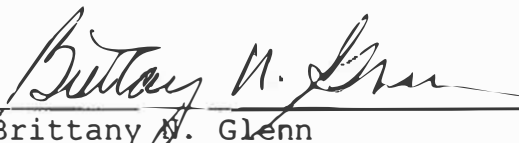
In witness thereof I have hereunto set my hand this 27th day of July 2022.



Elyse Young
Secretary

STATE OF NEW YORK
COUNTY OF ALBANY ss.

On this 27th day of July 2022, before me personally came Elyse Young to me known, who, being by me duly sworn, did depose and say that she is the Secretary of the New York State Public Authorities Control Board, that she executed the foregoing certification and that the contents thereof are true.



Brittany N. Glenn
Notary Public, State of New York
No. 01GL6253075
Qualified in Rensselaer County
Commission Expires: 12/19/2023