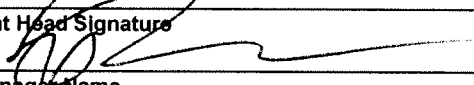
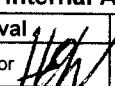
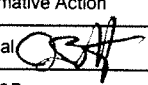


# Staff Summary

<b>Subject</b> Atlantic Yards Project
<b>Department</b> FINANCE
<b>Department Head Name</b> GARY J. DELLAVERSON
<b>Department Head Signature</b> 
<b>Project Manager Name</b>

<b>Date</b> June 22, 2009
<b>Vendor Name</b>
<b>Contract Number</b>
<b>Contract Manager Name</b>
<b>Table of Contents Ref #</b>

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance	6/22/09		X	
2	Board	6/24/09	X		

Internal Approvals			
Order	Approval	Order	Approval
2	Executive Director 		Affirmative Action
	Chief of Staff	1	Legal 
	Chief Financial Officer		IST&P
	Procurement		Other

## PURPOSE

To advise the Board of a proposed transaction involving the Forest City Ratner Companies ("FCR") with respect to the Vanderbilt Yard ("VD Yard") and to request that the Board approve a resolution that authorizes the Executive Director and Chairman and their respective designees to proceed as set forth below.

## BACKGROUND

Pursuant to a Request for Proposals dated May 24, 2005, the MTA solicited interest for the sale or lease of the air space above and certain real property interests in the VD Yard, which is located over portions of three city blocks between Fifth Avenue to the west and Vanderbilt Avenue to the east and Atlantic Avenue to the north and Pacific Street to the south, in downtown Brooklyn. The VD Yard is currently used by LIRR as a commuter rail car storage yard, with associated support facilities.

On July 6, 2005, the MTA received two proposals: a proposal from Extell Development Company ("Extell") and a proposal from FCR. The FCR proposal was for a mixed-use community development project known as the Atlantic Yards Project ("Project") consisting of approximately 6,000 units of housing, including 2,250 affordable residential rental units, approximately 1.2 million square feet of commercial space, 180,000 square feet of retail space, 322,344 square feet of parks and open space, and a significant number of parking spaces. Also included in the Project was an 850,000 square foot arena that would be the future home of the New Jersey Nets NBA franchise. The FCR proposal involved the purchase of a fee interest in property that did not have a continued transportation use and the purchase of a fee interest in the air space above a limiting plane over property that did have a continued transportation use. FCR agreed to construct a temporary as well as a permanent replacement rail yard for the LIRR, which was necessary because the new arena and certain of the buildings would be located on the site of the current VD Yard. FCR would be responsible for the planning, design, construction and maintenance of the Yard improvements and the new Yard, and would also be responsible for any environmental remediation and clean-up and any additional operating expenses of the Yard. Finally, FCR also agreed to construct mass transit improvements that would provide for direct pedestrian access to the Atlantic Avenue/Pacific Street subway station complex.

The Board considered the Extell and FCR proposals at a July 27, 2005 meeting and approved a Resolution authorizing the Chairman and the Executive Director and their respective designees to negotiate the terms and conditions of agreements to sell or lease the airspace and related real property interests related to the VD Yard to FCR. Following such negotiations, the proposed purchase price increased from FCR's initial cash offer of fifty million dollars (\$50,000,000) to a cash offer of one hundred million dollars (\$100,000,000). At a September 14, 2005 meeting, the Board decided to take no further action with respect to the Extell proposal and to authorize the Chairman to continue negotiations with FCR concerning the terms and conditions of the FCR proposal.

Subsequent to the September 14, 2005 Board meeting, the Empire State Development Corporation ("ESDC"), the lead agency under the State Environmental Quality Review Act ("SEQRA"), completed its environmental review, and on November 27, 2006, the ESDC Board adopted the Final Environmental Impact Statement for the Project. ESDC's Board subsequently adopted detailed SEQRA findings with respect to the Project. At a Board meeting on December 7, 2006, the MTA Board approved a resolution adopting the Project's SEQRA findings and authorizing the Chairman and the Executive Director to proceed with the transaction, including entering into and executing any necessary agreements to effectuate the transaction.

On February 14, 2007, MTA, LIRR and FCR entered into a license agreement for the construction of the temporary yard, and the temporary yard work commenced thereafter. This work is currently ongoing, and it is anticipated that the temporary yard work will be completed by the fourth quarter 2009.

The Project has been the subject of multiple lawsuits that have delayed the commencement of construction. None of the lawsuits has been successful. Last month, the Appellate Division, Second Department rejected a challenge to the Project based upon ESDC's use of its condemnation powers. With the resolution of this case, FCR is taking affirmative steps to move the Project forward.

During the pendency of the litigation, however, as the result of the economic downturn, financial and credit markets have tightened considerably and the Brooklyn real estate market has markedly deteriorated. As a result of this downturn, FCR has sought to make changes to the Project. The proposed changes require the Board of ESDC to revise the General Project Plan ("GPP") for the Project. The ESDC Board is scheduled to meet on June 23, 2009, and it is anticipated that at this meeting the ESDC Board will: (i) approve modifications to its 2006 GPP; (ii) authorize ESDC to hold a public hearing and take related action regarding the revised 2009 GPP; and (iii) approve a Technical Memorandum providing that the revised GPP would not require a Supplemental Environmental Impact Statement.

In recognition of the impact that the financial and real estate downturn has had upon the economics of the original FCR proposal, MTA staff and FCR have negotiated other changes to the transaction. Details of the proposed transaction are set forth in an attachment to the Staff Summary. To summarize, the FCR/MTA transaction would be revised as follows:

**Purchase Price** – FCR would pay \$20 million in cash for the property upon which the arena would be built. FCR would pay to MTA/LIRR for the air rights parcel an amount equal to eighty million dollars (\$80,000,000) net present value as of January 1, 2010, discounted at 6.5% per annum as follows: down payment of \$8 million, payable in four equal annual installments of \$2 million each on June 1<sup>st</sup> of 2012, 2013, 2014 and 2015; remainder of the purchase price payable in fifteen annual installments of approximately \$11 million each beginning on June 1, 2016.

**Timing of conveyances** – MTA/LIRR would convey the parcel necessary for construction of the arena at closing for the \$20 million purchase price. The air rights parcel would be conveyed only after substantial completion of the new permanent rail yard and only upon payment in full of the price of a development parcel. The transaction contemplates a master escrow closing. Escrow would break upon the closing of the sale of bonds for the arena construction or the closing of alternative financing adequate for the arena construction project, and ESDC's vesting of title to the first phase of condemnation properties, including certain property rights necessary for the construction of the new rail yard. The agreements held in escrow will be deemed null and void and will be returned if either (i) the sale of the arena bonds does not close before January 1, 2010 and no alternative financing is closed before March 1, 2010, or (ii) the vesting of title for the first phase of condemnation parcels by ESDC does not occur by the earlier of fifteen months of the sale of the arena bonds, or March 31, 2011.

**Rail Yard** – Last year, FCR requested that LIRR undertake a value engineering exercise to identify the potential for reductions in the cost of the yard construction. In addition to the value engineering exercise, LIRR and FCR subsequently worked together to revise the design to identify other possible areas for cost savings in yard design and construction. Although the yard previously proposed by FCR would have contained nine tracks, with capacity of 76 cars, the parties subsequently agreed upon a design with seven tracks and a capacity of 56 cars. The new improvements are valued at approximately \$147 million and include an in-ground manifold system for toilet servicing, new lighting, security, a new electrical substation, employee facilities and the addition of a western entrance to the yard (in addition to the eastern entrance), which allows for greater yard functionality. LIRR has determined that this revised design would support the Brooklyn shuttle service that it will implement in connection with the opening of East Side Access service into Grand Central Terminal. MTA/LIRR and FCR will execute a construction agreement with respect to the improved rail yard prior to closing on the arena parcel. This agreement will contained specifications and requirements for the improved yard and will provide for LIRR review and approval of the improved yard construction documents. Commencement of the yard must begin on or before June 30, 2012 and FCR will be required to provide a fully operational permanent yard by September 1, 2016. FCR will provide a letter of credit to secure its obligations to construct the yard in the amount of \$86 million. In the event FCR fails to construct the yard, it will lose all development rights in the air space and MTA/LIRR will be able to draw on the letter of credit.

**Transit Improvements** – FCR and MTA/NYCT will be required to execute a Transit Improvement Agreement governing design and construction of the new subway station entrance prior to closing. The Transit Improvement Agreement will contain specifications and requirements for the new entrance and will provide for NYCT review and approval of the construction documents. The Transit Improvement construction is required to progress to the point of beneficial use prior to the arena opening for a public event. FCR's parent, Forest City Enterprises, will provide a completion guaranty for the Transit Improvement. In addition to the costs of constructing the Transit Improvement, FCR will also pay a fee of \$200,000 per year to have the subway station at Atlantic Avenue/Pacific Street include the name "Barclay's Center."

## RECOMMENDATION

That the Board approve a resolution: (1) authorizing the Chairman and/or the Executive Director and their designees, to negotiate, execute and deliver contracts and any other necessary documents and to take any other necessary or appropriate steps, to implement the Project, provided, however, that the contract and other Project documents shall not be executed on behalf of the MTA, LIRR and NYCT without ESDC's having first affirmed its proposed modifications to the GPP, substantially as proposed and approved at its directors' meeting on June

23, 2009, in accordance with the requirements of the New York State Urban Development Corporation Act; and (2) authorizing the Chairman and/or the Executive Director and their respective designees to take any and all actions as may be necessary, desirable or convenient to satisfy applicable legal or regulatory requirements in connection with the foregoing actions.

**ATTACHMENT - MAJOR ATLANTIC YARD TRANSACTION POINTS**

<p><b>Deal Structure</b></p>	<p>The Atlantic Yards Transaction proposed between MTA/LIRR/NYCT and FCR has several major components:</p> <ul style="list-style-type: none"> <li>• <u>Arena Block Parcel Sale Agreement</u> with FCR providing for conveyance to ESDC at closing of fee simple interest in Block 1119, Lot 7 (“Arena Block Parcel”), upon receipt from FCR of payment of purchase price in full.</li> <li>• <u>Air Rights Transfer Agreement</u> with FCR governing sale of air rights over Blocks 1120, Lot 1 and Block 1121, Lot 1 (“Air Rights Parcel”), which provides for scheduled periodic payments by FCR, with conveyance of Air Rights only upon completion of the Upgraded Yard and payment in full for a Development Parcel.</li> <li>• <u>Transit Improvement Agreement</u> with FCR requiring its construction of new subway station entrance at Arena site.</li> <li>• <u>Rail Yard Construction Agreement</u> with FCR requiring its construction of an Upgraded Yard.</li> <li>• <u>Easement Agreements and Transfer Agreement</u> providing LIRR and NYCT needed fee interests and needed permanent and temporary easements in connection with the construction and operation of the Upgraded Yard and the Transit Improvement.</li> <li>• <u>Development Agreement</u> with FCR outlining terms governing planned construction of a platform, foundations, systems, buildings and other structures within and over the Upgraded Yard.</li> </ul> <p>The consummation of the Transaction requires prior approval and affirmance by ESDC of a modified General Project Plan for the Atlantic Yards Project.</p>
<p><b>Financial Terms Summary</b></p>	<p><u>Arena Block Parcel</u>: \$20 million in cash, payable in full at Closing.</p> <p><u>Upgraded Yard Letter of Credit</u>: \$86 million, provided at Closing, drawable upon breach of Developer’s obligations under the Rail Yard Construction Agreement</p>

	<p>(which breaches also constitute cross-defaults under Air Rights Transfer Agreement).</p> <p><u>Air Rights Parcel</u>: \$80 million net present value (“NPV”) as of January 1, 2010, discounted at 6.5% per annum (the “ARP Purchase Price”), payable as follows:</p> <ul style="list-style-type: none"> <li>• Down payment of \$8 million, payable in four equal annual installments of \$2 million each on June 1<sup>st</sup> of 2012, 2013, 2014 and 2015.</li> <li>• Remainder of ARP Purchase Price paid in fifteen equal annual installments of \$11,033,357, commencing on June 1, 2016.</li> </ul>
<b>Timing of Conveyances</b>	<p><u>Arena Block Parcel</u>: to be conveyed at Closing, upon payment of full purchase price.</p> <p><u>Air Rights Parcel</u>: to be conveyed after FCR’s substantial completion of the Upgraded Yard and only upon payment in full of the price of a Development Parcel. Conveyance is further subject to FCR’s entry into an Air Space Parcel Improvements Agreement and a Declaration of Easements acceptable to MTA/LIRR.</p>

<b>Air Rights - Purchase of Development Parcels</b>	<ul style="list-style-type: none"> <li>• The Air Rights Parcel consists of six development parcels/sites (each a “Development Parcel”) as described in ESDC General Project Plan, with associated maximum zoning square footage densities. A Development Parcel Purchase Price is assigned to each Development Parcel based upon the total ARP Purchase Price and the proportional zoning square footage density associated with the Development Parcel.</li> <li>• Regular payments of the ARP Purchase Price are allocated proportionally to each Development Parcel. A Development Parcel is conveyable (to ESDC or FCR) only upon payment to MTA of the full Development Parcel Purchase Price, with FCR getting credit for payments of the ARP Purchase Price allocated to such Development Parcel through and including the purchase date.</li> </ul>
<b>Rail Yard Construction Agreement</b>	<ul style="list-style-type: none"> <li>• FCR must execute the Construction Agreement governing design and construction of the Upgraded Yard prior to closing on the purchase of the Arena Block Parcel, and must substantially complete the</li> </ul>

	<p>Upgraded Yard prior to closing on the purchase of any of the Development Parcels contained in the Air Rights Parcel</p> <ul style="list-style-type: none"> <li>• Construction Agreement to contain specifications and requirements for design and construction of the Upgraded Yard that must be met by FCR.</li> <li>• Conceptual design and main design criteria have been negotiated and are to be incorporated into Construction Agreement.</li> <li>• FCR must follow design development procedures and requirements for completion of 100% Improved Yard construction documents by June 2011 (with interim milestones at 30%, 60% and 90%).</li> <li>• Commencement of construction of Upgraded Yard by June 30, 2012 with fully operational Upgraded Yard in place by September 1, 2016.</li> <li>• Letter of Credit of \$86 million provided at Closing to secure performance of FCR's design and construction obligations for the Upgraded Yard. In addition, guarantee from Forest City Enterprises (FCR parent) of completion must be provided at time construction of Upgraded Yard commences, and payment bond meeting requirements of Lien Law.</li> <li>• FCR to pay incremental operating costs of LIRR incurred, until completion of Upgraded Yard, and to undertake at its sole expense any environmental remediation of new adjacent properties conveyed to LIRR for Upgraded Yard (Block 1121, Lots 42 and 47), which remediation work shall be secured by a Letter of Credit or insurance policy in form and amount acceptable to MTA/LIRR, and a completion bond upon commencement of such remediation work.</li> <li>• An Event of Default under Construction Agreement causes a cross-default under Air Rights Transfer Agreement.</li> </ul>
<p><b>Transit Improvement Agreement</b></p>	<ul style="list-style-type: none"> <li>• FCR must execute the Transit Improvement Agreement governing design and construction of the new subway station entrance on the Arena site prior to closing on the purchase of the Arena Block Parcel.</li> <li>• Transit Improvement Agreement to contain</li> </ul>

	<p>specifications and requirements for design and construction of the Transit Improvement that must be met by FCR.</p> <ul style="list-style-type: none"> <li>• Conceptual design and technical terms for the Transit Improvement have been negotiated and are to be incorporated into Construction Agreement.</li> <li>• FCR must follow design development procedures and requirements for completion of 100% Transit Improvement construction documents (with interim milestones at 30% and 90%).</li> <li>• The Transit Improvement construction is required to progress to the point of beneficial use prior to the Arena opening for a public event. Schedules for the project must build in time for testing and acceptance prior to beneficial use.</li> <li>• A completion guarantee for the Transit Improvement must be provided by Forest City Enterprises (FCR parent) and a payment bond meeting requirements of Lien Law must be posted.</li> <li>• In addition to the costs of constructing the Transit Improvement, FCR shall pay a fee of \$200,000/yr to have the station at Atlantic Avenue/Pacific Street include the name “Barclays Center.”</li> <li>• An Event of Default under the Transit Improvement Agreement causes a cross-default under Air Rights Transfer Agreement.</li> </ul>
<p><b>Air Rights Development Agreement</b></p>	<ul style="list-style-type: none"> <li>• Prior to closing, FCR must execute an Air Rights Development Agreement containing essential terms relating to the future planned construction of a platform, foundations, systems, buildings and other structures within and over the Upgraded Yards (“Air Space Parcel Improvements”), and the ongoing relations between the MTA/LIRR and FCR/successor owner/lessees of buildings to be constructed on the Platform.</li> <li>• The Development Agreement shall provide, among other things, that FCR may not commence any construction of the platform, foundations, systems, buildings over the platform, etc. prior to its entry into subsequent more detailed agreements acceptable to MTA/LIRR governing the design and construction of the Air Space Parcel Improvements consistent with the operation of the Upgraded Yard (an “Air Space Parcel Improvements Agreement”) and the reciprocal</li> </ul>

	<p>easements needed to facilitate the design, construction, operation, maintenance, repair and reconstruction of the Air Space Parcel Improvements consistent with maintaining the operation of the Upgraded Yard (a “Declaration of Easements”).</p> <ul style="list-style-type: none"> <li>• FCR and its successors shall be obligated to pay for the actual net increased operating cost of the Upgraded Yard arising as a result of operating out of an enclosed Yard, and provide security acceptable to MTA/LIRR for the performance of such obligation.</li> </ul>
<p><b>Escrow Closing</b></p>	<ul style="list-style-type: none"> <li>• A master escrow closing is contemplated, at which the executed Arena Block Parcel Sale Agreement, various Easement and Transfer Agreements, the Construction Agreement, Transit Improvement Agreement, Air Rights Transfer Agreement and Air Rights Development Agreement shall be placed in escrow, together with completed ESDC project documents that are a condition of MTA’s proceeding.</li> <li>• FCR shall be required to deposit in escrow the \$86 million L/C for the Upgraded Yard plus a \$20 million L/C for the Arena Block Parcel purchase plus the L/C or Insurance Policy for environmental remediation work.</li> <li>• Escrow shall break upon both (i) the closing of the sale of bonds for the Arena construction or the closing of alternative financing adequate for the Arena construction and (ii) ESDC’s vesting of title to the Atlantic Yard Phase I condemnation properties, including the property rights needed for the Upgraded Yard.</li> <li>• The Agreements shall be null and void and the instruments held in escrow returned if either (i) the sale of the Arena bonds does not close before January 1, 2010 and no alternative financing is closed before March 1, 2010; or (ii) the vesting of title for Phase I condemnation properties does not occur by the earlier of fifteen months of the sale of the Arena bonds or March 31, 2011.</li> </ul>