



September 7, 2007

Mr. Russell G. Golden
Chairman of Emerging Issues Task Force
Financial Accounting Standards Board
4001 Merritt 7
Norwalk, CT 06856-5116

Re: Issue No. 07-6, "Accounting for the Sale of Real Estate when
the Agreement Includes a Buy-Sell Clause" (EITF Issue No. 07-6)

Dear Mr. Golden:

Forest City Enterprises, Inc. is a publicly traded real estate corporation headquartered in Cleveland, Ohio with over \$9.2 billion in total assets. We own, develop, acquire and operate commercial and residential real estate and land throughout the United States.

We are submitting this letter as a request for the Emerging Issues Task Force (EITF) to strongly consider View B when discussing EITF Issue No. 07-6 as it has long been the industry standard of determining profit recognition when a buy-sell clause is included in an agreement. Based upon our substantial experience with buy-sell clauses, we believe that alternative View A fails to appreciate the many nuances contained within buy-sell clauses and recognize the purpose for which they are negotiated. Each buy-sell clause is unique and requires a careful evaluation of the terms and conditions to determine whether or not it constitutes a form of prohibited continuing involvement. To treat each and every buy-sell provision as an option would ignore the intent of many provisions and defy the reality that few, if any, of the provisions are ever called upon by investors to dispose of their interest.

Proponents of View A cite a very basic buy-sell provision, analogize it to a sale-leaseback transaction and characterize it as a contingent option because it is within the seller's control to economically compel the buyer to put the property back to the seller. Since an option has been granted the proponents then advocate that it should be "accounted for as a financing, leasing or profit sharing agreement rather than a sale" pursuant to paragraph 26 of FAS 66. This analysis focuses on an overly simplistic situation and fails to recognize the complex nature of an entire buy-sell clause because it assumes that a party has the ability to determine the outcome of the option by either artificially establishing the stated price for the interest in the entity above or below market value to encourage the desired outcome.

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It has been our experience that a buy-sell provision rarely gives a party such control to determine the outcome. When the buy-sell provision has given the party such control, we have determined that there is continuing involvement and the transaction has not been accounted for as a sale, in accordance with FAS 66. Far more commonly however, buy-sell provisions are drafted to encourage the parties to establish a fair market value for the interest in the entity and not to give them control over the outcome. We frequently use buy-sell provisions that include “shoot out” (i.e. the offeror has an election to either buy or sell at the price set forth in the offeror’s notice) or “auction” (i.e. the offeree has the right to counter the price set forth in the offeror’s notice) language. In either case, the offeror will not know whether they will be the buyer or seller and has no ability to determine the outcome. Sometimes these clauses provide that the offeror can elect to sell its interest to a third party if the parties cannot agree on a price. Again, the original seller does not have control. We have also dealt with buy-sell provisions that include a specific requirement for a third party appraisal to establish the fair market value of the interest. All these additional terms and conditions are designed to encourage the parties to negotiate in good faith and establish a fair value for the interest to be bought or sold thereby removing the likelihood that a party could determine the outcome of the transaction which would be deemed an option.

From an accounting standpoint, we believe a buy-sell is more aligned to a right of first refusal, as defined in footnote 7 in SFAS No. 66 or the antispeculation clauses as defined in EITF Issue No. 86-6 rather than an option as defined in FAS 66. Under a right of first refusal the original seller has no option to buy the property back unless a condition arises that is outside the control of the original seller. Similarly, a buy-sell clause does not give the original seller an option to repurchase the property unless the other investor accepts an offer made by the original seller or the other investor makes an offer to sell the property— also outside the control of the seller. Both the right of first refusal and the buy-sell clause may present opportunities to repurchase the property only upon action by another party outside the control of the original seller.

The antispeculation clauses provide that, if the buyer of land fails to comply with the provisions of the sales contract that require the buyer to develop the land in a specific manner at a specified pace or prohibit certain uses of the property, the seller can repurchase the property. Task Force members in EITF No. 86-6 concluded that, if the probability of the buyer not complying with the terms of the sale agreement is remote, these clauses would not preclude sale/profit recognition. In concluding that “a probability test would not be appropriate if the seller’s repurchase option is not contingent upon compliance by the buyer,” the EITF also took the position that a probability test is appropriate where the option to repurchase is contingent on actions outside the control of the seller.

While SFAS No. 66 may not “specifically address the probability that a seller would reacquire the sold real estate”, the conclusion in EITF No. 86-6 clearly invokes a notion of probability of actions outside the control of the seller. We believe that companies should continue to be permitted to evaluate the facts and circumstances of the individual agreement provisions to determine whether such buy-sell clauses would be considered an option. This would include both the factors listed in paragraph 12 of the Issue Summary, as appropriate, as well as an assessment of probability surrounding exercise

The analysis used by proponents of View A also assumes that there are no other conditions on the exercise of the buy-sell provision and a party is free to invoke the provision whenever they want out of the venture. That however is rarely the case. Our experience indicates that most buy-sell provisions include explicit conditions on when, and if, the clause can be used. These restrictions may include specified time periods, failure to agree on major decisions affecting the entity, and detailed targets regarding the development and stabilization of the project. If those conditions are not met, the buy-sell clause cannot be utilized.

Furthermore, the assumption that the clause can be freely triggered fails to recognize that the departure of an investor often requires lender or other third-party consents. Those consents are often difficult, if not impossible, to obtain, particularly if the party wanting to depart is the financial backer or has the reputation within the business community. Obtaining lender consent is also hindered if the departing party wants to be released from guarantees or letters of credit associated with the entity. In those instances where lender or other third party consent cannot be obtained, the parties are often unable to utilize the buy-sell clause until such time as the property is refinanced with a new lender or circumstances change so that the necessary consent can be obtained.

Moreover, the characterization of the buy-sell clause as an option fails to appreciate the intent with which they are negotiated and environment in which they operate. Buy-sell clauses are almost universally included in any joint venture agreement that we enter into, but are almost never utilized as an exit strategy. In fact, in our experience with literally hundreds of buy-sell provisions, we have only encountered one instance in which a buy-sell clause was actually used to exit the joint venture. In that situation our partner thought he was being treated unfairly and tried to invoke the provision to regain possession of the property. However, the particular provision included auction language and we outbid him thereby retaining the property.

While both parties actively negotiate to include a buy-sell provision in the agreement at the outset, it operates more effectively as a backstop to ensure that the parties negotiate in good faith should a party desire to exit, rather than the easy exit strategy that the proponents of View A seem to believe. Our substantial real estate history indicates that if a party wants to exit a venture, both parties negotiate as market participants outside of the buy-sell clause to achieve an exit strategy that is satisfactory for all involved. To treat each and every buy-sell provision as an option or other form of prohibited continuing involvement that would preclude partial sale and profit recognition would be contrary to the reality in which such provisions exist.

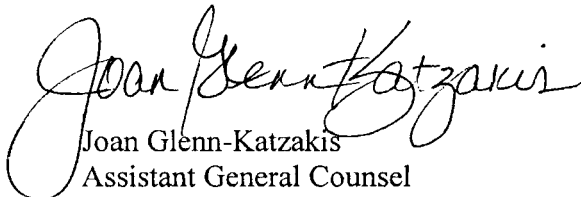
Our Land development business is a significant segment of our consolidated operations and is a reportable segment under FAS 131 "Disclosures about Segments of an Enterprise and Related Information". We have a significant amount of land sales to joint ventures in which we have a minority interest that include buy-sell clauses as a protective right as described above. Upon each land sale, we analyze each component of the transaction including any buy-sell clause to determine whether there should be partial sale recognition under FAS 66. In most circumstances, it has been determined that the buy-sell clause did not constitute an option or prohibited continuing involvement and that partial sale and gain recognition was appropriate, pursuant to FASB 66.

As supported by the fact that our extensive experience in this area has resulted in only one instance where a buy-sell clause was used to exit a joint venture, the conclusions reached appear proper and profits were appropriately recognized in the period when economic interest in the land was sold to third party joint venture partners. Proponents of View A would conclude that our accounting was not reflective of the economics of the transaction and that the partial gain should be deferred until the joint venture buyer develops the land and sells it to a third party or the other partners buy out our interest in the joint venture buyer. This would possibly retain the assets and liabilities on our books and delay sale and related gain recognition for as much as 10 years even though we sold a significant portion of our economic interest including all related risks and rewards in the land and received cash for the interest sold. It seems counter-intuitive that a buy-sell clause inserted as a protective right that has only been used once in our history would override the true economics of the transaction and not match the gain recognition with the same period that the risks and rewards of ownership were sold to third party joint venture partners.

We ask that you consider our comments and maintain the current and consistent accounting position that a buy-sell clause, in and of itself, does not constitute an option or other form of prohibited continuing involvement that would preclude partial sale and profit recognition. We appreciate the Emerging Issues Task Force's time and consideration of our comments. If you have any questions regarding our comments, please contact Joan Glenn-Katzakis at 216-416-3259 or Chuck Obert at 216-416-3318.

Sincerely,

Forest City Enterprises, Inc.



Joan Glenn-Katzakis
Assistant General Counsel



Chuck Obert
Vice President – Assistant Controller