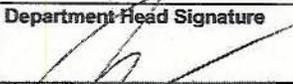
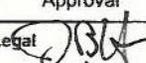
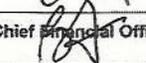


Staff Summary

Subject WEST SIDE YARD DEVELOPMENT
Department REAL ESTATE
Department Head Name JEFFREY B. ROSEN
Department Head Signature 
Project Manager Name JEFFREY B. ROSEN

Date April 28, 2010
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Finance Comm.	4/26/2010	X		
2	Board	4/28/2010	X		

Internal Approvals			
Order	Approval	Order	Approval
		1	Legal 
		2	Chief Financial Officer 
		3	Chief of Staff 

Narrative	
AGENCY:	Metropolitan Transportation Authority ("MTA") / Long Island Rail Road Company ("LIRR")
DEVELOPER:	The Related Companies, L.P. (together with its affiliates, the "Developer")
LOCATION:	The Eastern Rail Yard ("ERY") and Western Rail Yard ("WRY") portions of the John D. Caemmerer West Side Yard ("WSY"), located between 10 th and 12 th Avenues and West 30 th and 33 rd Streets.
ACTIVITY:	Mixed-use development.
ACTIONS REQUESTED:	<ol style="list-style-type: none"> Adoption of State Environmental Quality Review Act ("SEQRA") findings relating to proposed actions intended to facilitate development of the WRY. Authorize the Chairman and Chief Executive Officer of MTA, LIRR, Triborough Bridge and Tunnel Authority ("TBTA") and New York City Transit Authority ("NYCT") and his designees to execute and deliver contracts and other documents and take other actions to implement the proposed disposition and development of certain developable property rights in the ERY and the WRY.
TERM:	99-year ground leases, severable, with options to purchase fee interests in severed parcels.
SPACE:	Land and air-rights parcels containing approximately 1.14 million sq. feet of site area and 11.97 million sq. feet of zoning floor area.
COMPENSATION:	The ERY and WRY leases will provide MTA with revenues having a present value of \$1,054,000,000, calculated using a discount rate of 6%, based on a pro-forma that assumes the exercise of purchase options.

BACKGROUND:

At its regular meetings on May 22, 2008, the MTA Board adopted resolutions which, among other things, authorized (1) the MTA Chief Executive Officer to execute Conditional Designation Letters ("CDLs") naming a joint venture of The Related Companies, L.P. and Goldman Sachs Group Inc. ("Related/Goldman") as the conditionally designated developer for the proposed disposition of certain developable property rights in the WRY (conditioned on SEQRA review and approval) and the ERY; (2) the MTA to serve as co-lead agency with the New York City Planning Commission ("CPC") for the environmental review of the proposed mixed-use development over the WRY and associated actions pursuant to applicable State and local environmental laws and regulations; and (3) the MTA Chief Executive Officer to enter into contracts and other project documents with Related/Goldman negotiated pursuant to the CDLs. A copy of the May 22, 2008 Staff Summary associated with those actions (the "May 22, 2008 Staff Summary") is attached hereto as Attachment A.

In connection with the execution of the CDLs, Related/Goldman paid MTA non-refundable participation fees of \$6 million and made an additional deposit of \$5 million into an expenses fund to cover pre-development expenses associated with the projects. As the Board has previously been apprised (see Memorandum dated February 3, 2009 attached as Attachment G), the severe downturn in both the commercial and residential real estate markets since May, 2008 resulted in January 31, 2009 CDL modifications that extended the conditional designation periods under the CDLs for ERY and WRY through January 31, 2010, in connection with which Related/Goldman paid MTA additional amounts totaling \$8,600,000 (\$4,300,000 for each of the WRY and ERY), half of which constituted non-refundable fees and half of which was paid into the aforementioned expenses fund. In the meanwhile, the parties continued to work with the City of New York to achieve the anticipated re-zoning of the WRY, which was successfully concluded in December, 2009, when the New York City Council approved new zoning enabling mixed-use development of the WRY.

MTA and LIRR were advised in late January, 2010 that Goldman Sachs Group Inc. no longer intended to play an active role in these development projects, while The Related Companies, L.P. remained committed to proceeding to contract with or without a new partner.

Negotiation and drafting proceeded with Related in an effort to finalize the project documents. This has been a particularly complex undertaking given the size of the project, its numerous components, the need to accommodate various project phasing scenarios and the intricacy of building and operating over a critical transportation facility. The CDLs have been further extended given the progress in negotiations. The parties have now completed negotiations on the essential deal terms and expect to be in a position to sign final contracts in May, 2010.

ADOPTION OF EIS FINDINGS

As authorized by the Board, MTA served as co-lead agency with the CPC for the environmental review of the proposed mixed-use development over the WRY and associated actions pursuant to applicable State and local environmental laws and regulations. That environmental review has been completed. Environmental findings based upon the review must be considered and adopted by the Board prior to MTA's entry into a binding contract and other project documents with respect to the development of the WRY.

A proposed Findings Statement has been distributed to Board members, together with copies of the Final Environmental Impact Statement (FEIS) issued by MTA and the City Planning Commission as co-lead agencies and technical memoranda, dated October 19, 2009, and December 14, 2009, addressing certain changes to the proposals analyzed in the FEIS that were adopted by the City Planning Commission and City Council.

The Findings Statement, attached to this Staff Summary as Attachment E, describes MTA's role as a co-lead agency for the environmental review of the several actions ("Proposed Actions") intended to facilitate development at the WRY, as well as permanently affordable residential development at the sites at 54th St. and 9th Avenue and 48th St. and 10th Avenue, and sets forth proposed findings of the MTA Board in connection with such Proposed Actions. As analyzed by the FEIS, and summarized in the Findings Statement, the rezoning and proposed subsequent redevelopment of the WRY by a developer selected by the MTA (and the creation of additional affordable housing) will avoid or minimize adverse environmental impacts to the maximum extent practicable. Accordingly, the Board is being requested to adopt the Findings Statement.

CHANGES TO ERY AND WRY TRANSACTION TERMS

The major transaction terms for the ERY and WRY transactions were originally described, respectively, in Attachments A and B to the May 22, 2008 Staff Summary (Attachment A hereto).

The central economic terms remain as previously described at the time of the Board's original May 22, 2008 authorization: as before, each contract will provide for the parties to enter into a single 99-year lease that can be "severed" in due course into separate leases for separate development parcels, with options to purchase the fee interests in severed parcels (in each case for a price equal to the present value of the remaining base rent under the applicable severance lease). Annual base rent remains at 6.5% of "Initial Land Value" (with ILV, as before, reduced by lump sum closing and post-closing payments to be made by the Developer). Rent remains subject to fixed escalations of 10% every 5 years plus fair market value resets at years 30, 55 and 80. Based on unchanged pro-forma assumptions with respect to the exercising of such purchase options, the ERY and WRY ground leases continue to have a combined present value of \$1.054 billion, calculated at a discount rate of 6%, which present value remains subject to potential reduction to \$1.011 billion depending on the timing of construction.

Modifications to certain of the original WRY and ERY deal terms (outlined in the May 22, 2008 Staff Summary) have been made as a result of negotiations and are described in Attachments B and C. The most significant changes pertain to the timing of the required contract deposits and closings.

As set forth in the January 31, 2009 CDL extensions, the contract deposit terms have been modified to permit the Developer to make the 5% deposits in installments, as follows: 2.5% of the Initial Land Value ("ILV") of each of the ERY and WRY at contract execution and the remainder in two installments: 1.25% of ILV in escrow 180 days after contract execution and an additional 1.25% of ILV in escrow 360 days after contract execution. The contract would permit the Developer to provide promissory notes of The Related Companies, L.P. to satisfy the two 1.25% deposit requirements, provided that the financial condition of the Related Companies does not materially worsen and such notes are secured by pledges of collateral reasonably acceptable to MTA.

As also contemplated by the January 31, 2009 CDL extension for the ERY, the parties have agreed that the Developer will be obligated to close under the ERY contract within 90 days after certain "triggers" (i.e. market indicia relating to commercial office availability, residential condominium pricing and architectural activity as described in greater detail in Attachment C) are satisfied. Nonetheless, at any time before such triggers are satisfied, MTA will be entitled to give notice to the Developer that it has 90 days to close under the ERY contract, failing which MTA may terminate the ERY and WRY contracts. If MTA were to terminate the contracts prior to January 1, 2011, the Developer would be entitled to a refund of the contract deposits made to date, together with specified unexpended Developer-funded expense deposits (but not the above-referenced CDL-period fees). If MTA exercised such termination right after January 1, 2011, MTA would be entitled to retain \$10,000,000 in the aggregate of contract deposits made under the ERY and WRY contracts, with the balance to be refunded to Developer. The deadline for closing on the WRY lease remains as before -- i.e. one year after the ERY closing date. Closing under the ERY contract is a pre-condition to the closing under the WRY contract.

In addition, modifications to certain of the Construction Agreement terms (outlined in the March 26, 2008 Staff Summary and cross-referenced in the May 22, 2008 Staff Summary) are described in Attachment D. These include modifications to the plan review process, compensable LIRR delays, and the allocation of responsibility for code review as between LIRR and the New York City Department of Buildings.

MTA and the City have also negotiated terms to address the City's ownership of a volume of space above a limiting plane over the demapped 32nd Street in the ERY, which was discovered in the course of the WSY title analysis process. The proposed terms for conveyance of this space, which is needed for the ERY mixed-use development, are outlined in Attachment E. In summary, MTA would accept the transfer of the City's retained air space parcel above 32nd Street, together with the reduction by 50% of the amount of zoning floor area MTA has agreed with the City to reserve for cultural facility uses (which reduction will provide MTA with an additional 100,000 sq. feet of zoning floor area that can be sold to the Developer or conveyed offsite as transferable development rights), in satisfaction of the City's \$15 million payment obligation to MTA for such cultural facility space reservation. In addition, the parties would extend by 7 years the time period during which the City is permitted to sell ERY transferable development rights under the existing September 2006 Rail Yards Agreement at pricing equal to or exceeding the agreed upon minimum (escalated by CPI) set forth in that Agreement.

AUTHORIZATION TO ENTER INTO ERY AND WRY CONTRACTS

Consistent with the terms set forth herein (as further described in Attachments B, C and D), Board authorization is sought for the MTA, LIRR, TBTA and NYCT to enter into contracts and other project documents to implement the proposed disposition of the developable property rights in the ERY and WRY.

RECOMMENDED ACTIONS:

It is recommended that the Boards of MTA, LIRR, TBTA and NYCT adopt the attached resolutions which, among other things:

1. Adopt the Findings set forth in the Findings Statement that is attached to this Staff Summary.
2. Authorize the Chairman and Chief Executive Officer of MTA, TBTA, LIRR and NYCT and his designees, including the MTA Director of Real Estate and the President of LIRR, to execute and deliver any and all contracts and other necessary or appropriate agreements, leases, deeds, documents, writings and other instruments and to take any other necessary or appropriate steps as he may deem necessary, desirable or appropriate to implement the proposed disposition of certain developable property rights in the Eastern Rail Yard and the Western Rail Yard and the construction of improvements thereon.

ERY/WRY RESOLUTION

BOARDS OF THE
METROPOLITAN TRANSPORTATION AUTHORITY
LONG ISLAND RAIL ROAD
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY
and NEW YORK CITY TRANSIT AUTHORITY

WHEREAS, Metropolitan Transportation Authority (“MTA”) owns (a) the land located in Manhattan between West 30th Street, 10th Avenue, West 33rd Street and 11th Avenue (the “Eastern Rail Yard” or “ERY”) and (b) the land located in Manhattan between West 30th Street, 11th Avenue, West 33rd Street and 12th Avenue (the “Western Rail Yard” or “WRY”); and

WHEREAS, the City of New York has taken steps to promote the economic development interests of the City and State of New York by revitalizing the Far West Side of Manhattan into a mixed-use commercial and residential area by, among other things, rezoning portions of what is known as the Hudson Yards Redevelopment Area and undertaking, in conjunction with the MTA and New York City Transit Authority (“NYCT”), the extension of the Number 7 subway line west from Times Square (the “Number 7 Line Extension Project”); and

WHEREAS, (a) the MTA, Triborough Bridge and Tunnel Authority (“TBTA”), Long Island Rail Road (“LIRR”) and the City of New York (“City”) entered into the Rail Yards Agreement, dated as of September 28, 2006 (the “Rail Yards Agreement”), which provided for, among other things, the issuance of Requests for Proposals by the MTA for development of the Eastern Rail Yard and for the Western Rail Yard, with the selection of a developer or developers for such yards to be made by the MTA Board; and (b) a memorandum of understanding (the “Number 7 Line MOU”) for the design, construction and funding of the Number 7 Line Extension Project; and

WHEREAS, on July 11, 2007, MTA and the City entered into a memorandum of understanding (the “July 11 MOU”), by which the City and MTA recognized that certain actions within the control of the City and MTA should be undertaken to accomplish the City’s goals of promoting the orderly development of the Hudson Yards Redevelopment Area in accordance with sound planning objectives and MTA’s goals of achieving the maximum revenue from the development of the ERY and the WRY for application to MTA’s capital plans for investment in the New York region’s public transportation system while assuring safe, continuous, uninterrupted service by the Long Island Rail Road (“LIRR”); and

WHEREAS, pursuant to the July 11 MOU, the City and MTA set forth a number of shared understandings, including that (a) Design Guidelines for the WRY annexed to the July 11 MOU represented planning and design goals that WRY development should promote and achieve; (b) an affordable housing commitment by the developer of the WRY would be included in the WRY RFP, requiring the development of all rental housing at the WRY as “80/20” housing (subject to allocation of sufficient tax-exempt bond cap or other equivalent low-cost financing to the developer and the availability of such other incentives as generally available for development of 80/20 housing in the City of New York); (c) the City would support in the WRY rezoning a

density bonus in an effort to foster the creation of permanently affordable low income housing on-site and the City would additionally contribute \$40 million to construct or otherwise create new affordable housing off-site of the WRY, including at a possible site (the “48/10 Site”) owned by the City at 48th Street and 10th Avenue, to complement the on-site affordable housing commitment; (d) in the event the City wished to construct off-site affordable housing using such capital funds at a site (the “54/9 Site”) at 54th Street and 9th Avenue (which is owned in fee by the City but subject to NYCT leasehold control), authorization of the Board would be sought to make such site available to the City for such project (subject to the right of NYCT to maintain occupancy of a portion of the premises for operations) at the time MTA was closing the sale or lease of the WRY for development based upon a re-zoning complying with the Design Guidelines; (e) a WRY School Floor Area bonus should be included in the WRY rezoning, subject to the creation of which bonus the WRY RFP would require a WRY developer to reserve a location for a school, to be built and paid for by the City; (f) the City would fund and perform in a timely manner a re-profiling of 33rd Street to provide better site access at WRY; (g) the City would make water and sewer available in the streets adjacent to the ERY and WRY, at City expense, in sufficient capacities and on a timely basis to service the contemplated development on the ERY and WRY; (h) the City would pay the annual operations and maintenance costs of the linear open space located on the High Line structure along West 30th Street; and (i) MTA agreed to require the ERY developers to reserve space in the ERY for use as a cultural facility, in consideration for which reservation of space the City agreed to pay the MTA the sum of \$15,000,000 at the time of closing by the MTA of the sale or lease of the ERY; and

WHEREAS, on July 13, 2007, MTA issued and thereafter publicly advertised a Request for Proposals for development proposals for the ERY (the “ERY RFP”) and a Request for Proposals for development proposals for the WRY (the “WRY RFP”), which invited proposals for dispositions in the form of either a sale, or up to a 99-year lease, of the developable property rights on the ERY and WRY; and

WHEREAS, on October 11, 2007, MTA received submissions from five proposers in response to the ERY RFP and the WRY RFP;

WHEREAS, on January 28, 2008, MTA requested supplemental proposals from the five proposers, and, in such supplemental proposal solicitation, included draft Conditional Designation Letters (“CDL”) to be completed by each of the proposers, which CDL, if later executed by the MTA and a proposer in a mutually acceptable form, would provide a conditionally designated developer an exclusive term (the “Designation Term”) to fully negotiate and execute a contract to enter into ground lease and the other documents and agreements needed in connection with the proposed disposition of each of the developable ERY rights and the developable WRY rights; and

WHEREAS, on February 26, 2008, MTA received supplemental submissions from four of the five above-noted proposers in response to its solicitation; and

WHEREAS, as further described in the staff summary presented to the Board in May, 2008 with respect to certain actions relating to the ERY and WRY (the “2008 Staff Summary”), MTA staff, in working groups formed with representatives of Hudson Yards Development Corporation,

engaged in detailed review of the October 11, 2007 and February 26, 2008 submissions of the proposers, heard presentations from proposers, conducted discussions and negotiations with the proposers, and reported on relevant aspects of the proposals to the Selection Committee created pursuant to the 2006 MOU (the “Selection Committee”); and

WHEREAS, the submissions of the proposers were summarized to the Board, as set forth in the materials contained within and annexed to the 2008 Staff Summary, and the Selection Committee recommended the MTA Board authorize the MTA to conditionally designate a joint venture of The Related Companies, L.P. and Goldman Sachs Group Inc. (“Related/Goldman”) as the ERY developer and the WRY developer, and the MTA, LIRR and TBTA Boards adopted the Resolutions attached to the 2008 Staff Summary; and

WHEREAS, the fair market value of the ERY development rights and the WRY development rights in question was tested and evaluated through a competitive selection process, the methods, terms and conditions of which permitted full and free competition, involving public advertisement for proposals, the receipt of competitive proposals, the conduct of discussions and negotiations with the proposers in order to maximize value, and the presentation of the competitive proposals to the Board by public staff summary; and

WHEREAS, in the Resolutions adopted in connection with the 2008 Staff Summary, the Boards of the MTA, TBTA and LIRR found the proposal of Related/Goldman to be the most advantageous to the MTA, price and other factors set forth in the ERY RFP and the WRY RFP having been considered; and

WHEREAS, the Boards of the MTA, TBTA and LIRR further found that the proposed disposition of the ERY property rights and the WRY property rights was for not less than fair market value and was proposed to be made upon proper terms and conditions, and that an appraisal of the value of such property rights has been made by an independent appraiser as set forth in the 2008 Staff Summary and included in the record of the transaction; and

WHEREAS, the Boards of the MTA, TBTA and LIRR further found that the disposal of the ERY property rights and the WRY property rights were intended to further the public welfare and to advance the economic development interests of the MTA by, *inter alia*, enhancing the ability of MTA to develop and improve commuter transportation and other services related thereto within the metropolitan commuter transportation district and creating substantial sources of revenue to MTA, and that, in addition, the disposal of the property rights in question were intended to advance the economic development interests of the City and State of New York (“State”) as well as the interest of MTA in transit-oriented development, by spurring the revitalization of the Hudson Yards Redevelopment Area, which is expected to result in the creation and retention of substantial number of job opportunities and the creation or retention of substantial sources of revenues to the City, State, and MTA; and

WHEREAS, the Boards of the MTA, TBTA and LIRR found that the terms and conditions of the proposed disposition will provide for safe, continuous, and uninterrupted LIRR service, while enhancing the ERY and the WRY by providing for a roof structure, or platform, over such yard, as well as other improvements to such yard; and

WHEREAS, the ERY CDL, upon execution by the MTA and Related/Goldman, served to designate Related/Goldman as the exclusive party with whom MTA would negotiate the transaction for the ERY during the Designation Term, and

WHEREAS, the WRY CDL, upon execution by the MTA and Related/Goldman, served to designate the Related/Goldman as the exclusive party with whom MTA would negotiate the transaction for the WRY during the Designation Term, and

WHEREAS, in the Resolution adopted in May 2008 concerning the WRY, the Boards authorized the MTA to serve with the New York City Planning Commission (“CPC”) as co-lead agencies for the environmental review of the proposed development over the WRY, the 48/10 Site and the 54/9 Site pursuant to the State Environmental Quality Review Act (“SEQRA”) and, in the case of CPC, the New York City Environmental Quality Review (“CEQR”); and

WHEREAS, the MTA and CPC, as co-lead agencies, conducted an environmental review of the proposed development, and the actions analyzed in such review (collectively, the “Proposed Action”) included (a) the lease and/or sale of land, air space and related real property interests on and over the WRY by MTA to an entity selected by MTA through a competitive process to carry out such mixed-use development; (b) the rezoning (and related actions) by the City of the WRY pursuant to the Uniform Land Use Review Procedure; (c) the establishment of new legal grades in West 33rd Street between 11th and 12th Avenues to facilitate a proposed platform over the WRY; (e) the site selection of a PS/IS school above the WRY; and (f) the associated disposition of the 54/9 Site and the 48/10 Site for the development of affordable housing at such sites; and the review considered such other zoning map changes, text amendments, off-site improvements, development rights transfers, and other agency actions as may be necessary or appropriate to facilitate such mixed-use development and to implement any necessary mitigation measures; and

WHEREAS, in view of the size and scope of the Proposed Action, MTA determined that the Proposed Action might result in one or more significant environmental impacts, and accordingly recommended that MTA cooperate with the CPC in issuing a positive declaration, undertaking scoping, and preparing a draft and a final environmental impact statement for the Proposed Action;

WHEREAS, on May 19, 2009, the CPC and MTA, as Co-Lead Agencies, approved a Draft Environmental Impact Statement (“DEIS”) for the proposed actions on the WRY and the 54/9 and 48/10 Sites, on September 9, 2009 held a public hearing on the DEIS in accordance with the requirements of SEQRA and CEQR and on October 9, 2009 adopted a Final Environmental Impact Statement (“FEIS”) for such proposed actions;

WHEREAS, the Board of the MTA has reviewed the FEIS and the related documents described in the Findings Statement attached as Attachment F to the Staff Summary to which these Resolutions are attached; and

WHEREAS, Related/Goldman advised MTA that Goldman Sachs Group Inc. no longer intended to play an active role in these development projects, while The Related Companies, L.P. (Related

or its affiliates, the “Developer”) remained committed to proceeding to contract with or without a new partner as permitted by the CDLs.

NOW THEREFORE, the Boards of the MTA, TBTA, LIRR and NYCT resolve as follows:

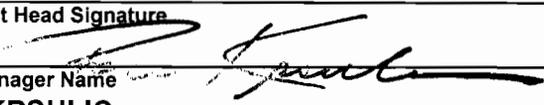
1. The MTA, TBTA, LIRR and NYCT hereby ratify and confirm the actions of their officers and staff in approving and adopting the DEIS and the FEIS and otherwise carrying out the obligations of MTA, TBTA, LIRR and NYCT under SEQRA.
2. The MTA, TBTA, LIRR and NYCT hereby adopt the SEQRA Findings Statement attached as Attachment F to the Staff Summary to which these Resolutions are attached.
3. The Chairman and Chief Executive Officer of MTA, TBTA, LIRR and NYCT and his designees, including the MTA Director of Real Estate and the President of LIRR, are hereby authorized to execute and deliver any and all contracts and other necessary or appropriate agreements, leases, deeds, documents, writings and other instruments and to take any other necessary or appropriate steps as he may deem necessary, desirable or appropriate to implement the proposed disposition of certain developable property rights in the Eastern Rail Yard and the Western Rail Yard and the construction of improvements thereon as part of the development thereof, including but not limited to: (i) the effectuation of the terms and conditions of the ERY Conditional Designation Letter and the WRY Conditional Designation Letter, as amended, and/or such other terms and conditions as MTA and Developer may negotiate, such terms to be acceptable to the Chief Executive Officer, and (ii) the effectuation of the terms and conditions of the July 11 MOU as pertinent to the ERY and the WRY, including the surrender by NYCT of a portion of the 54/9 Site to the City of New York; (iii) the modification of the July 11 MOU to reflect the changes of the terms relating to the proposed cultural facility as described in the Staff Summary to which this Resolution is attached and/or such other terms and conditions as MTA and the City may negotiate, such terms to be acceptable to the Chief Executive Officer; (iv) the modification of the Rail Yards Agreement to reflect the changes of the terms relating to the sale price of the ERY transferable development rights as described in the Staff Summary to which this Resolution is attached and/or such other terms and conditions as MTA and the City may negotiate, such terms to be acceptable to the Chief Executive Officer; and (v) the transfer to TBTA of the City’s interests in demapped 32nd Street on the ERY and the subsequent transfer of such property interests from TBTA to MTA.
4. The Chairman and Chief Executive Officer and his designees are hereby authorized 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.

Dated: April 28, 2010

STAFF SUMMARY ATTACHMENT A: May 22, 2008 Staff Summary

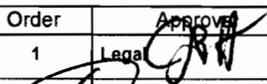
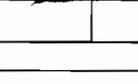
Staff Summary



Subject WEST SIDE YARD DEVELOPMENT
Department REAL ESTATE
Department Head Name ROCO KRSULIC
Department Head Signature 
Project Manager Name ROCO KRSULIC

Date MAY 22, 2008
Vendor Name
Contract Number
Contract Manager Name
Table of Contents Ref #

Board Action					
Order	To	Date	Approval	Info	Other
1	Board	05/22/08	X		

Internal Approvals			
Order	Approval	Order	Approved
		1	Legal 
		2	Chief Financial Officer 
		3	Executive Director 

Narrative	
AGENCY:	Metropolitan Transportation Authority ("MTA") / Long Island Rail Road Company ("LIRR")
DEVELOPER:	Joint venture entity of Related Companies L.P. and Goldman Sachs Group Inc. ("Developer" or "Related/Goldman")
LOCATION:	John D. Caemmerer West Side Yard ("WSY"), consisting of The Western Rail Yard ("WRY") bounded by 11 th and 12 th Avenues and West 30 th and 33 rd Streets (Block 676, Lot 3); and The Eastern Rail Yard ("ERY") bounded by 10 th and 11 th Avenues and West 30 th and 33 rd Streets (Block 702, Lots 1 and 50 and Block 704, Lots 1, 5 and 6)
ACTIVITY:	Mixed-use development
ACTION REQUESTED:	<ol style="list-style-type: none"> 1. Authorize the MTA Chief Executive Officer to execute Conditional Designation Letters with Developer for the WRY and ERY. 2. Authorize the MTA Chief Executive Officer to enter into Contracts and other project documents with the Developer.
TERM:	99-year ground leases, severable, with options to purchase severed fee parcels. See Attachment A - Major WRY Transaction Points, and See Attachment B - Major ERY Transaction Points.
SPACE:	Approximately 26.17 acres (each yard is approximately 13.085 acres)
COMPENSATION:	Net Present Value of Ground Leases: One billion and fifty-four million (\$1,054,000,000), calculated at a discount rate of 6%.

BACKGROUND:

In July of 2007, the Metropolitan Transportation Authority ("MTA") issued two separate Requests For Proposals (the "RFPs") for the sale of and/or long term leasing of air space and related real property interests for development at the Eastern Rail Yard ("ERY") and Western Rail Yard ("WRY") sections of the Long Island Rail Road's John D. Caemmerer West Side Yard ("WSY"). The ERY was re-zoned in 2005 as part of the Special Hudson Yards District and presently permits on-site floor area ratio ("FAR") mixed-use development of approximately 6.27 million square feet (11 FAR). The WRY will require a re-zoning pursuant to the City's Uniform Land Use Review Procedure ("ULURP"), and associated environmental review, to accommodate large-scale mixed use development and a PS/IS public school. The current WRY zoning is industrial M2-3 with an FAR of 2.

Two of the primary objectives of the RFPs are to maximize revenue for MTA's capital plan and to assure safe, uninterrupted LIRR service at the WSY, which functions as a 24/7 active storage, maintenance, and cleaning facility for LIRR. The RFPs also express MTA's goals of promoting excellence in architecture, urban design, and sustainability in keeping with the City's and State's vision for the economic development and revitalization of the Hudson Yards area.

In response to the RFPs, on October 11, 2007 the MTA received proposals for both yards from five qualified real estate development firms. An appraisal report commissioned for each site at the time of the issuance of the RFPs was received in November 2007 with the valuation date established to coincide with the proposal submission date. The ERY, assuming a zoning compliant commercial FAR of 8 and a residential FAR of 3, for a total of 11 FAR (approximately 6.27 million square feet), is valued at \$1.176 billion (\$187.56 PSF of FAR). The WRY, with an assumed commercial and residential FAR of 5 each after rezoning, for a projected total of 10 FAR (approximately 5.7 million square feet), is valued at \$1.149 billion (\$201.58 PSF of FAR).

The appraisals consider the sites as developable greenfields and do not deduct from value the substantial costs attributable to the platform and/or infrastructure that must be constructed over the existing railroad tracks and accessory facilities to support development. However, the appraisals do attribute a 10% discount to reflect the fact that buildings located on the proposed platform would lack basement areas. In addition, the land use parameters of the Rail Yards Agreement and the Principals Memorandum of Understanding (MOU), each between the City and the MTA, are considered in the reports, as well as the Design Recommendations and Guidelines attached to the Principals MOU.

In connection with the proposed development of the WRY, beyond the on-site affordable housing requirements set forth in the Principals MOU, the MTA is proposing to make a parcel located on the southeast corner of 54th Street and 9th Avenue (Block 1044, Lot 3), available to the City of New York for the construction of additional affordable housing at the time of a closing of a WRY development transaction. This parcel, which is owned by the City of New York, is part of the NYCTA Master Lease Agreement.

COMMUNITY REQUESTS:

Community Board 4, elected officials, and other civic and community groups have expressed concerns and provided recommendations relating to the development of the WSY, including on the following subjects: density, transportation improvements, affordable housing, community facilities, the public school, open space and urban design elements, connection to the potential Hudson River Park, total preservation of the High Line, and sustainability issues.

DISCUSSION OF PROPOSALS:

The RFPs stated that the MTA would consider proposed dispositions in the form of either a sale, or up to a 99-year non-subordinate lease. The property interests to be conveyed consist of land, in the case of the "Terra Firma" (the vacant land area where there are no LIRR tracks or facilities), or space above a limiting plane, in the case of the areas over which a roof will be required above the LIRR tracks and facilities. Proposers were encouraged to recommend both sale and lease alternatives.

In response to the RFPs, on October 11, 2007, submissions were received from the following five (5) proposers, each seeking to purchase and/or lease development rights at both the ERY and WRY:

1. Brookfield Properties Developer LLC ("Brookfield")
2. Extell Development Company ("Extell")
3. Hudson Center East LLC and Hudson Center West LLC
(a Joint Venture of The Durst Organization, Inc. and Vornado Realty Trust) ("D-V").
4. The Related Companies in a partnership with Goldman Sachs ("Related/Goldman")
5. TS West Side Holding, LLC (a Joint Venture of Tishman Speyer and Morgan Stanley) ("TSW").

The net present value ("NPV") of each combined yard proposal received in October 2007, assuming exercise of purchase options (and calculated at a 6% discount rate) was as follows: \$908 million from Brookfield; \$1.015 billion from D-V; \$598 million from Extell; \$1.049 billion from Related/Goldman; and \$819 million from TSW. These figures are net of proposer-estimated costs for the construction of the roof over the WSY, including related Force Account.

To aid in the analysis of the proposals, three working groups were formed to address the following subject areas: Design, Finance, and Constructability/Technical Issues, with each group including staff members from the MTA, LIRR, and the Hudson Yards Development Corporation ("HYDC"), with support from outside real estate, legal, and architectural/engineering consulting firms. After the working groups considered the initial responses and an oral presentation, each working group held separate meetings and presentations with each of the five proposers in order to clarify certain aspects of their submissions or to update the proposers on engineering requirements.

Each working group gave a presentation of its evaluations to the Selection Committee, which consists of a majority of MTA members and two representatives from HYDC. The Selection Committee was formed pursuant to the Rail Yards Agreement made between the MTA and the City in September 2006.

In late January, 2008, following the analysis of the October 11, 2007 proposals, the MTA solicited Supplemental Proposals from the five development teams. The solicitation included a form of a Conditional Designation Letter ("CDL"), and summaries of principal terms of a Construction Agreement, Ground Lease, and related transaction documents, reflecting MTA's preferred deal terms and transaction structure.

DISCUSSION OF SUPPLEMENTAL PROPOSALS:

Four out of the original five proposers responded to the request for revised proposals in late February, 2008. Their responses are summarized in the chart below. Brookfield declined to submit a Supplemental Proposal.

		D-V	Extell	Related/Goldman	TSW
Commercial Office Space	WRY	1,004,000 zsf within one building.	982,000 zsf within one building.	1,923,600 zsf within one building.	3,190,000 zsf within two buildings.
	ERY	4,111,000 zsf within three buildings.	2,680,000 zsf Within three buildings.	3,572,980 zsf within two buildings.	4,860,000 zsf within three buildings.
PS/IS School	WRY	120,000 zsf	120,000 zsf preferably within the ERY Cultural Facility.	120,000 zsf	120,000 zsf
Retail Space	WRY	141,000 zsf	256,000 zsf	191,956 zsf	210,000 zsf
	ERY	185,000 zsf	409,000 zsf	565,641 zsf	270,000 zsf
Community Space Component	WRY	TBD.	Not included.	8,500 zsf	TBD.

Staff Summary

		D-V	Extell	Related	TSW
Preferred Treatment of High Line	WRY and ERY	Removes 10 th Ave. Spur. Dismantles and reconstructs Curve on 12th Ave. Dismantles 12th Ave. segment. Design allows for Bridge across 12 th Ave.	Removes 33 rd /34 th Streets connection segment. Design allows for Bridge across 12 th Ave.	Retains 30 th Street and 12 th Ave. segments. Possibly removes 33 rd /34 th Streets connection segment. Design allows for Bridge across 12 th Ave.	Removes 10 th Ave. Spur. Demolition and replacement of the High Line Curve where necessitated by the construction of underground garage structure. Design allows for Bridge across 12 th Ave.
Residential Space	WRY	2,284,000 zsf of Rental Residential 80/20 affordable housing within seven buildings (about 2,950 units, 20% affordable - about 590 units).	3,800,000 zsf of Residential (rental and/or condominium) within seven buildings (about 2,617 units, including about 339 affordable units).	961,576 zsf of Rental Residential 80/20 affordable housing within three buildings (about 1,324 units, 20% affordable – about 265 units), including 173,084 zsf of Permanently Affordable Housing within three buildings (about 261 units).	880,000 sf of Rental Residential 80/20 affordable housing within two buildings (about 984 units, 20% affordable - about 197 units), including 162,800 sf of Permanently Affordable Housing within two buildings (about 182 units).
	WRY	2,284,000 zsf of Condominium within six buildings (about 2,250 units).		2,671,145 zsf of Condominium within seven buildings (about 1,927 units).	1,420,000 zsf of Condominium within four buildings (about 1,092 units).
	ERY	1,778,000 zsf within three buildings (market rate residential: rental and/or condominium, about 1,750 units).	1,718,000 zsf within two buildings (market rate residential: rental and/or condominium, about 1,183 units).	612,392 zsf of 80/20 affordable housing within two buildings (about 830 units, 20% affordable – about 166 units).	460,000 zsf in one building (market rental, about 528 units)
	ERY			1,054,668 zsf of Condominium within three buildings (about 692 units).	480,000 zsf of Condominium within four buildings (about 444 units).
Cultural Facility Component	ERY	200,000 zsf of Reserved FAR; 67,780 sf above-grade footprint for the Cultural Facility Area.	200,000 zsf of Reserved FAR; no stated footprint of the Cultural Facility Area.	200,000 zsf of Reserved FAR; 30,000 sf above-grade footprint for the Cultural Facility Area.	200,000 zsf of Reserved FAR; 18,000 sf above-grade footprint for the Cultural Facility Area.
Parking Component	WRY	200-1,000 below-grade accessory parking spaces, plus a portion of the 75 spaces for LIRR Operations to be located within WSY.	50 (minimum) below-grade accessory parking spaces, plus a portion of the 75 spaces for LIRR Operations to be located within WSY.	263 below-grade accessory parking spaces, plus 30 of the 75 spaces for LIRR Operations to be located within the WSY.	750 below-grade accessory parking spaces, plus a portion of the 75 spaces for LIRR Operations to be located within WSY.
	ERY	450 (minimum) to 1,000 below-grade accessory parking spaces, plus a portion of the 75 spaces for LIRR Operations to be located within the WSY.	450 (minimum) to 1,000 below-grade accessory parking spaces, plus a portion of the 75 spaces for LIRR Operations to be located within the WSY.	450 (minimum) to 1,000 below-grade accessory parking spaces, plus 45 of 75 spaces for LIRR Operations to be located within the WSY.	450 below-grade accessory parking spaces, plus a portion of the 75 spaces for LIRR Operations to be located within the WSY.

Staff Summary

The NPV of the combined-yard supplemental proposals were as follows: D-V \$842,000,000; Extell \$1,150,000,000; Related/Goldman \$943,000,000; and TSW \$897,000,000. These figures are again net of proposer-estimated costs for the construction of the LIRR Yards roof structure, including related Force Account, which estimated costs had been adjusted by these proposers after further consultations with LIRR staff.

Following receipt and review of the supplemental submissions, MTA met with each of the proposer teams. In these subsequent discussions, Related/Goldman revealed that it was not in a position to go forward with pursuing an ERY proposal at that time because of the unexpected withdrawal of its proposed anchor commercial tenant. Related/Goldman requested that its single-yard WRY proposal continue to be considered. Due to concerns about the difficulty of coordinating construction plans and activities of different developers at each of the yards, and the potential impacts of less coordinated construction on railroad operations, Related/Goldman's single-yard proposal was suspended from active consideration while discussions proceeded with those remaining proposers offering to develop both of the Yards.

Extell, in its response to the supplemental proposals solicitation, continued to deviate from the Hudson Yard Uniform Tax Exemption Policy ("UTEP"), pricing its proposals based upon an assumed level of property taxation well below that provided for by existing tax abatement policies. During on-going discussions, Extell revised its position in part, but continued to rely upon major deviations from UTEP and other tax policies. As a result, its proposal was no longer considered competitive.

Discussions proceeded with Durst-Vornado and TSW. During the discussions with these two proposers, both substantially improved their offers. Thereafter, TSW and D-V were requested to provide their final offers. They were directed to focus principally on financial return to the MTA, expressed as net present value, and project completion certainty. Both proposers were advised that targeted 'deal terms' negotiations would commence with the proposer making the most responsive final offer.

TSW markedly increased its financial offer, reaching a NPV of \$1,004,000,000 (which amount, if calculated taking into account land residual value in the pricing of purchase options, would increase to \$1,054,000,000). Additional negotiations with D-V resulted in it increasing its financial offer to an NPV of \$892,200,000, still far below the NPV represented by TSW's proposal. At that point, D-V was advised that its offer was not competitive and was encouraged to increase its offer prior to the MTA's determination to move to detailed deal negotiations with a single proposer. D-V did not increase its offer at that time. The MTA then advanced to more detailed negotiations with TSW in recognition of its superior final offer. (After MTA had requested and received what were "final" offers, and after MTA had, on that basis, proceeded with and made substantial progress in fleshing out deal terms with TSW, D-V advised MTA that it wished to raise its offer further, eventually describing an offer that MTA calculated was approximately \$970 million in NPV. This was still less than the NPV that had been proposed by TSW in its responsive final offer.)

SUBSEQUENT DEVELOPMENTS

The March 26, 2008 Selection Committee Recommendation.

On March 26, 2008, the Selection Committee unanimously agreed that TSW should be recommended for conditional designation as developer for both the ERY and WRY. At that time TSW offered the best overall combination of total financial return, certainty of return, railroad operational compatibility, and development experience. TSW's proposals offered MTA a NPV calculated at \$1,004,000,000 (or \$1,054,000,000 with the inclusion of the residual value), which was the highest of the proposers at that time. Moreover, after intensive negotiations on multiple deal points, MTA was able substantially to enhance the financial certainty features of TSW's proposal. See Attachments A and B to the Staff Summary of March 26, 2008, which summarized major transaction points for TSW's WRY and ERY proposals, as negotiated.

With respect to the scope and scale of impacts on LIRR operations and services, confidence was attained in the course of construction agreement negotiations that TSW would design and construct its project in a manner that would minimize the impact on the LIRR and ensure the ongoing viability of LIRR operations in the WSY. See Attachment C to the Staff Summary of March 26, 2008, outlining principal terms that TSW had agreed would be incorporated into the construction agreement.

Staff Summary



The Board Authorization of March 26, 2008 and Ensuing CDL Negotiations with TSW

At the March 26, 2008 meeting of the MTA Board, the Board accepted the Selection Committee's recommendation and adopted resolutions that, among other things, authorized MTA's Chief Executive Officer to execute Conditional Designation Letters ("CDLs") with TSW for the ERY and WRY, provided CDLs could be negotiated by MTA staff to a final form that was satisfactory to MTA and that substantially conformed to the proposed deal terms outlined in the March 26, 2008 staff summary.

Negotiations thereafter proceeded with TSW with the goal of finalizing the CDLs for execution. On April 30, 2008, after over a month of further negotiations, MTA determined that the CDL for the WRY was satisfactory and substantially conformed to the proposed deal terms authorized at the March Board meeting. The WRY CDL was then signed by the parties and held in escrow, together with a check from TSW in the amount of \$11,000,000 (representing \$6,000,000 in participation fees and a \$5,000,000 deposit into an expenses reimbursement fund), in anticipation of finalizing the ERY CDL terms within seven days. Under the terms of the escrow agreement, the release from escrow of the WRY CDL and the \$11,000,000 check was made conditional upon the parties coming to final acceptable terms for the ERY CDL as well as upon the satisfactory conclusion of discussions between TSW and the City of New York concerning various matters relating to Hudson Yards redevelopment.

Despite intensive negotiations, MTA and TSW were unable to agree to terms with respect to the ERY CDL that were consistent with the deal terms outlined in the March 26, 2008 staff summary and on May 13, 2008 TSW informed MTA that it was withdrawing its development proposals for the WRY and ERY.

MTA Staff's Renewed Discussions with the Remaining Proposers.

At the time of TSW's withdrawal, MTA publicly announced that it would be resuming discussions with the other proposers in an effort to obtain acceptable terms for development transactions for the ERY and WRY. MTA quickly received expressions of interest from all three of the remaining proposers that had participated in the Supplemental Proposal process.

Related/Goldman, as noted above, had in March 2008 indicated to MTA that it was not in a position at that time to go forward with pursuing an ERY proposal. Related/Goldman now advised MTA that it desired to conclude development transactions for both the ERY and WRY and that it would be willing to consider as a basis for the transaction the deal terms that MTA had negotiated at length with TSW. To that end, Related/Goldman asked to be provided with the detailed CDLs which had not been fully executed by TSW.

Extell Development Corp., as noted above, had previously submitted proposals with high land valuations, but which were based upon assumed real property tax levels well below those provided for by existing tax abatement policies, meaning that the value of its proposals to MTA would decline substantially in the event Extell did not obtain such favorable levels of tax abatement from the taxing authorities. Extell now indicated that it wished to reformulate its proposals to remove this highly problematic feature, assuming that it could reach an appropriate understanding with the City of New York with respect to real property taxation matters.

D-V also contacted the MTA to express an interest in both yards. Subsequently D-V stated that it wished to re-enter substantive discussions with MTA only if MTA would agree to negotiate exclusively with D-V in an effort to reach a final deal, meaning that the MTA would not be permitted to speak to other proposers about deal terms during such proposed exclusive period nor consider any offers from the other proposers in the event that a tentative agreement with D-V was reached. D-V also indicated that it did not want to recommence negotiations based on the TSW deal structure, but rather on the basis of the deal framework and terms that D-V had last discussed with the MTA in late March, and which had not been the subject of detailed negotiations between D-V and MTA. Finally, D-V did not confirm that its financial offer would remain at or above the level that had been reached when those discussions had left off in March.

MTA, in an effort to move the process forward to a prompt conclusion, provided copies of the CDLs – in the form that had been achieved through negotiations with TSW – to the three proposers, subject to a confidentiality agreement. Because MTA was not willing to limit competition by entering into exclusive negotiations with D-V on the terms described above, MTA staff resumed substantive discussions with the other two proposers.

Staff Summary



Extell initiated discussions with the City to address tax abatement issues that affected the framework of its proposal. Based upon progress it reported in those discussions, Extell indicated to MTA that it would be in a position to reformulate its proposals so that Extell, rather than MTA, assumed any risk arising from Extell obtaining a less favorable tax abatement treatment than it was seeking. Extell also communicated that MTA could anticipate revised offers with a combined NPV of at least \$900 million. Extell further indicated that although it was willing to negotiate using the TSW CDLs as a starting point, it was not willing to bind itself to the terms set forth in those documents.

After Related/Goldman had reviewed the relevant documents, they agreed to conclude a deal with the MTA by executing CDLs in substantially the form that had been negotiated with TSW at a combined NPV of \$1.000 billion dollars. Further discussions over the May 17 and 18 weekend culminated in Related/Goldman agreeing to increase its proposal such that the financial value to MTA increased to a NPV of \$1.054 billion, an amount equal to the value of the Board-authorized TSW transactions (incorporating the residual values in both calculations), subject to Related/Goldman's right to opt to delay base rent payments for up to an additional two years with respect to parcels upon which no building construction had begun within the original abatement period. Exercise of the extension of the abatement period by up to two years on such undeveloped parcels would only be permitted if (i) the Developer paid increased future rent in an amount that would result in MTA recouping one-half of the NPV of the delayed rent and (ii) the Developer increased its default payment guarantee by the full amount of the delayed rent such that MTA would recoup the full amount of the delayed rent in the event that Developer defaulted under the lease prior to construction start. The maximum anticipated impact of this abatement extension provision upon the NPV to the MTA (that is, under a scenario where no building had been commenced on any parcel on the WRY and the ERY and the abatement extension was for a full two year period) is approximately \$43 million, i.e., a reduction of the total NPV to the MTA from an estimated \$1.054 billion to an estimated \$1.011 billion.

SELECTION COMMITTEE RECOMMENDATION

On Sunday, May 18, 2008 the West Side Yards Selection Committee convened and unanimously agreed that the Selection Committee recommend that the MTA Board authorize the conditional designation of the Related/Goldman joint venture for the development of the WRY and ERY. Notable features of the Related/Goldman proposals that support this recommended outcome include the following:

- The economics of Related/Goldman 's proposals substantially conform to the favorable financial terms that the Board approved at its March meeting for a TSW transaction. The only material difference between the TSW and the Related/Goldman financial proposals is the potential for an additional two year abatement extension in the Related/Goldman transaction which, in the worst case as described above, could cause the NPV of the Related/Goldman transaction to be reduced from \$1.054 billion to \$1.011 billion were unfavorable economic conditions to result in the Developer not commencing building construction on any parcel within the first five years of the ERY lease, or the first four years of the WRY lease.
- The Related/Goldman development entities have signed CDLs (which embody the terms set forth in Attachments A and B hereto, which attachments are identical to Attachments A and B to the March 26, 2008 TSW staff summary except for the inclusion of the option for an additional two year abatement described above, and in Attachment C to the March 26, 2008 TSW staff summary) that are being held in escrow and will become effective upon MTA Board approval. Related/Goldman has also deposited an \$11 million check that will be cashed upon MTA Board approval (\$6 million of which is for participation fee payments and \$5 million of which is to fund an expenses reimbursement fund). The Selection Committee and MTA staff believe that MTA's interests are best served by consummating this certain transaction now, rather than exposing MTA to the substantial risk of reduced competition and the uncertainty of an acceptable future transaction.
- Related/Goldman agreed to substantially the same construction agreement terms that had been acceptable to LIRR and had been agreed to with TSW with respect to its interactions with the LIRR and the protection of LIRR operations and services.
- The Related/Goldman joint venture offers a compelling combination of development expertise and financial acumen and resources. Related has more than 30 years experience in development, including in mixed-use environments such as the Time Warner Center (developed on land purchased from MTA). Goldman Sachs, as a leading global investment bank, possesses the expertise and resources to provide sound financial structure to an undertaking of this magnitude.
- The Related/Goldman proposals have a higher proportion of residential space relative to commercial space, and offer more affordable (and more permanent affordable) housing on-site at the Hudson Yards than did the TSW proposals. These features may enhance the prospects for favorable zoning outcomes for the WRY ULURP process that are consistent with orderly achievement of a successful WRY closing.

Staff Summary

- The Related/Goldman proposals provide for retention of the High Line on both the south and the west, and do not propose removal of the Spur within the ERY, thus reducing the possibility of delays associated with disputes relating to the demolition of portions of the High Line.
- The Related/Goldman plan proposes LEED certification by the U.S. Green Building Council, as a LEED Neighborhood Development rated district, representing a significant commitment to green development in the United States.

In conclusion, it is recommended that the Boards of MTA, LIRR and TBTA adopt the attached resolutions which, among other things, authorize:

1. The MTA Chief Executive Officer to execute Conditional Designation Letters with Related/Goldman as the conditionally designated developer, for an exclusive period of 165 days, for the proposed disposition of certain developable property rights in the Eastern and Western Rail Yards.
2. The MTA Chief Executive to enter into Contracts and other project documents with Related/Goldman as may be negotiated pursuant to the Conditional Designation Letters.
3. The MTA to serve as Co-Lead Agency with the New York City Planning Commission ("CPC") for the environmental review of the proposed mixed-use development over the Western Rail Yard and associated actions pursuant to applicable State and local environmental laws and regulations.
4. The TBTA to convey its property interests in the WSY to the MTA prior to the Closing of the proposed transactions.

RESOLUTION

BOARDS OF THE
METROPOLITAN TRANSPORTATION AUTHORITY
LONG ISLAND RAIL ROAD
TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

WHEREAS, Metropolitan Transportation Authority (“MTA”) owns Lot 50 in Block 702 (the “MPB Lot”), which is located on the north side of West 30th Street between 10th and 11th Avenues in Manhattan; and

WHEREAS, Triborough Bridge and Tunnel Authority (“TBTA”) owns the remainder of the real property on the West Side of Manhattan generally bounded on the north by West 33rd Street, on the east by 10th Avenue, on the south by West 30th Street and on the west by 12th Avenue, including rights to occupy the portion of such property under 11th Avenue (the “TBTA Property”, and together with the MPB Lot, the “Rail Yards”), which Rail Yards comprise (i) that portion located to the east of 11th Avenue (the “Eastern Rail Yard” or “ERY”) and (ii) that portion located to the west of 11th Avenue (the “Western Rail Yard” or “WRY”); and

WHEREAS, TBTA intends to transfer ownership of the TBTA Property to the MTA for a nominal sum, pursuant to Section 553(p) of the Public Authorities Law; and

WHEREAS, the City of New York has taken steps to expand the Manhattan central business district and to promote the economic development interests of the City and State of New York by revitalizing the Far West Side of Manhattan into a mixed-use commercial and residential area by, among other things, rezoning portions of what is known as the Hudson Yards Redevelopment Area and undertaking, in conjunction with the MTA, the extension of the Number 7 subway line west from Times Square (the “Number 7 Line Extension Project”); and

WHEREAS, the MTA and City in September 2006 entered into (a) a memorandum of understanding (the “Rail Yards MOU”), which provided for, among other things, the issuance of Requests for Proposals by the MTA for development of the Eastern Rail Yard and for the Western Rail Yard, with the selection of a developer or developers for such yards to be made by the MTA Board; and (b) a memorandum of understanding (the “Number 7 Line MOU”) for the design, construction and funding of the Number 7 Line Extension Project; and

WHEREAS, on July 11, 2007, MTA and the City entered into a further memorandum of understanding (the “July 11 MOU”), by which the City and MTA, recognizing that the WRY requires re-zoning to accommodate mixed-use development, identified certain actions within the control of the City and MTA to be undertaken to accomplish the City’s goals of promoting the orderly development of the Hudson Yards Redevelopment Area in accordance with sound planning objectives and MTA’s goals of achieving the maximum revenue from the development of the WRY for application to MTA’s capital plans for investment in the New York region’s public transportation system while assuring safe, continuous, uninterrupted service by the Long Island Rail Road (“LIRR”); and

WHEREAS, pursuant to the July 11 MOU, the City and MTA set forth a number of shared understandings, including that (i) Design Guidelines for the WRY annexed to the July 11 MOU represented planning and design goals that WRY development should promote and achieve; (ii) an affordable housing commitment by the developer of the WRY would be included in the WRY RFP, requiring developing all rental housing at the WRY as “80/20” housing (subject to allocation of sufficient tax-exempt bond cap or other equivalent low-cost financing to the developer and the availability of such other incentives as generally available for development of 80/20 housing in the City of New York); (iii) the City would support in the WRY rezoning a density bonus in an effort to foster the creation of permanently affordable low income housing on-site and the City would additionally contribute \$40 million to construct or otherwise create new affordable housing off-site of the WRY, including at a possible site (the “48/10 Site”) owned by the City at 48th Street and 10th Avenue, to complement the on-site affordable housing commitment; (iv) in the event the City wished to construct off-site affordable housing using such capital funds at a site (the “54/9 Site”) at 54th Street and 9th Avenue (which is owned in fee by the City but subject to NYCT leasehold control), authorization of the Board would be sought to make such site available to the City for such project (subject to the right of NYCT to maintain occupancy of a portion of the premises for operations) at the time MTA was closing the sale or lease of the WRY for development based upon a re-zoning complying with the Design Guidelines; (v) a WRY School Floor Area bonus should be included in the WRY rezoning, subject to the creation of which bonus the WRY RFP would require a WRY developer to reserve a location for a school, to be built and paid for by the City; (vi) the City would fund and perform in a timely manner a re-profiling of 33rd Street west of 11th Avenue to provide better site access at WRY; (vii) the City would make water and sewer available in the streets adjacent to the WRY, at City expense, in sufficient capacities and on a timely basis to service the development on the WRY contemplated by the Design Guidelines; and (viii) the City would pay the annual operations and maintenance costs of the linear open space located on the High Line structure along West 30th Street; and

WHEREAS, the MTA and New York City Planning Commission (“CPC”) propose to serve as Co-Lead Agencies for the environmental review of the proposed mixed-use development over the WRY, pursuant to the State Environmental Quality Review Act (“SEQRA”) and, in the case of CPC, the New York City Environmental Quality Review (“CEQR”); and

WHEREAS, the actions to be analyzed in such review (collectively, the “Proposed Action”) include (1) the lease and/or sale of the air space and related real property interests over the WRY by MTA to an entity selected by MTA through a competitive process to carry out such mixed-use development; (2) the rezoning by the City of the WRY pursuant to the Uniform Land Use Review Procedure; (3) the establishment of new legal grades in West 33rd Street between 11th and 12th Avenues to facilitate a proposed platform over the WRY; (4) the construction of a PS/IS school above the WRY; (5) the associated disposition of the 54/9 Site and the 48/10 Site for the development of affordable housing at such sites; and (6) such other zoning map changes, text amendments, off-site improvements, development rights transfers, and other agency actions as may be necessary or appropriate to facilitate such mixed-use development and to implement any necessary mitigation measures; and

WHEREAS, in view of the size and scope of the Proposed Action, MTA staff has determined that the Proposed Action might result in one or more significant environmental impacts, and accordingly recommends that MTA cooperate with the CPC in issuing a positive declaration, undertaking scoping, and preparing a draft and a final environmental impact statement for the Proposed Action;

WHEREAS, on July 11, 2007, MTA issued and thereafter publicly advertised a Request for Proposals (the “WRY RFP”) for mixed-use development of the WRY, inviting proposals for dispositions in the form of either a sale, or up to a 99-year lease, of the developable WRY property rights; and

WHEREAS, on October 11, 2007, MTA received submissions from five proposers in response to the WRY RFP, including Extell Development Company (“Extell”); Brookfield Properties Developer LLC (“Brookfield”); The Related Companies in a partnership with Goldman Sachs (“Related/Goldman”); TS West Side Holding, LLC (c/o Tishman Speyer Properties) (“TSW”); and Hudson Center East LLC and Hudson Center West LLC (a joint venture of The Durst Organization, Inc. and Vornado Realty Trust) (“D-V”); and,

WHEREAS, on January 28, 2008, MTA requested supplemental proposals from the five proposers, and, in such supplemental proposal solicitation, included a draft Conditional Designation Letter (“CDL”) to be completed by each of the proposers, which CDL, if later executed by the MTA and a proposer in a mutually acceptable form, would provide a conditionally designated developer an exclusive term (the “Designation Term”) to fully negotiate and execute a contract to enter into ground lease and the other documents and agreements needed in connection with the proposed disposition of the developable WRY rights; and

WHEREAS, on February 26, 2008, MTA received supplemental submissions from four of the five above-noted proposers in response to its solicitation; and

WHEREAS, as further described in the staff summary accompanying this resolution, MTA staff, in working groups formed with representatives of Hudson Yards Development Corporation, engaged in detailed review of the October 11, 2007 and February 26, 2008 submissions of the proposers, heard presentations from proposers, conducted discussions and negotiations with the proposers, and reported on relevant aspects of the proposals to the Selection Committee created pursuant to the Rail Yards MOU (the “Selection Committee”); and

WHEREAS, the submissions of the proposers have been summarized to the Board, as set forth in the materials contained in and annexed to the staff summary, and the Selection Committee has recommended that Related/Goldman be conditionally designated by the MTA Board as the Western Rail Yard developer; and

WHEREAS, the fair market value of the WRY development rights in question has been tested and evaluated through a competitive selection process, the methods, terms and conditions of which have permitted full and free competition, involving public advertisement for proposals, the

receipt of competitive proposals, the conduct of discussions and negotiations with the proposers in order to maximize value, and the presentation of the competitive proposals to the Board by public staff summary; and

WHEREAS, the WRY CDL, upon execution by the MTA and a proposer, will serve to designate the Conditionally Designated Developer as the exclusive party with whom MTA will negotiate the transaction for the WRY during the Designation Term, and will provide that (i) the conditional designation does not create or give rise to any contractual or other legally enforceable rights, obligations or liabilities of any kind on the part of any party, other than for the conditionally designated proposer and MTA to negotiate the transaction in good faith and to carry out their express obligations set forth therein; (ii) if the conditionally designated proposer and MTA cannot in good faith successfully conclude contract negotiations during the Designation Term, either party may choose to terminate the conditional designation without liability for any costs or expenses incurred by the other party in the preparation, clarification, submission or negotiation of the RFP and proposer's response thereto, such CDL, the Contract or any other project document, except for any liabilities incurred under the Temporary Entry Permit that survive such termination and/or amounts reimbursed to MTA, LIRR and other parties under the WRY Expenses Reimbursement Agreement; and (iii) in the event that a Contract is not entered into on or prior to the end of the Designation Term for any reason, as more particularly set forth in the CDL, certain fees shall be retained by MTA, and MTA may choose to negotiate with other proposers or other potential developers, to terminate the selection process or to begin a new selection process for such Yard; and

WHEREAS, the Boards of the MTA, TBTA and LIRR find the proposal of the developer recommended by the Selection Committee for designation to be the most advantageous to the MTA, price and other factors set forth in the WRY RFP having been considered; and

WHEREAS, the Boards of the MTA, TBTA and LIRR further find that the proposed disposition of the WRY property rights is for not less than fair market value and is proposed to be made upon proper terms and conditions, and that an appraisal of the value of such property rights has been made by an independent appraiser as set forth in the accompanying staff summary and included in the record of the transaction; and

WHEREAS, the Boards of the MTA, TBTA and LIRR further find that the disposal of the WRY property rights is intended to further the public welfare and to advance the economic development interests of the MTA by, inter alia, enhancing the ability of MTA to develop and improve commuter transportation and other services related thereto within the metropolitan commuter transportation district and creating substantial sources of revenue to MTA, and that, in addition, the disposal of the property rights in question is intended to advance the economic development interests of the City and State of New York ("State") as well as the interest of MTA in transit-oriented development, by spurring the revitalization of the Hudson Yards Redevelopment Area, which is expected to result in the creation and retention of substantial number of job opportunities and the creation or retention of substantial sources of revenues to the City, State, and MTA; and

WHEREAS, the Boards of the MTA, TBTA and LIRR find that the terms and conditions of the proposed disposition will provide for safe, continuous, and uninterrupted LIRR service, while enhancing the WRY by providing for a roof structure, or platform, over such yard, as well as other improvements to such yard;

NOW THEREFORE, upon the recommendation of MTA's Chairman, Executive Director and Chief Executive Officer, and the Selection Committee, the Boards of the MTA, TBTA and LIRR resolve as follows:

1. The Executive Director and Chief Executive Officer is hereby authorized to execute a Conditional Designation Letter with RG WRY LLC, designating RG WRY LLC as the conditionally designated developer for the proposed disposition of certain developable property rights in the Western Rail Yard.
2. The Executive Director and Chief Executive Officer and his respective designees are hereby authorized to take all necessary or appropriate actions for the MTA to participate as a co-lead agency with the CPC in the environmental review of the Proposed Action and to cooperate with the CPC in carrying out their respective obligations under SEQRA and CEQR, including, without limitation, issuing a positive declaration for the Proposed Action, completing a public scoping process for and preparing a draft and final environmental impact statement with respect to the Proposed Action and publishing all notices and conducting all public meetings and hearings as shall be required in connection with the foregoing.
3. Subject to the foregoing, the Executive Director and Chief Executive Officer and his respective designees are hereby authorized to execute a contract and any other necessary or appropriate agreements, leases, deeds, documents, and other instruments and to take any other necessary or appropriate steps to implement the proposed disposition of certain developable property rights in the Western Rail Yard and the construction of improvements thereon as part of the development thereof, including but not limited to: (i) the transfer of the ownership of the WRY from TBTA to MTA; (ii) effectuation of the terms and conditions of the Conditional Designation Letter, and/or such other terms and conditions as MTA and Developer may negotiate, such terms to be acceptable to the Executive Director and the Chief Executive Officer, and (iii) effectuation of the terms and conditions of the July 11 MOU as pertinent to the WRY; *provided*, that the contract and other project documents shall provide that such contract and project documents shall not be binding on the MTA unless and until (a) the MTA Board and the CPC shall have completed the environmental review of the Proposed Action in accordance with the requirements of SEQRA and CEQR and (b) on the basis of that review, the MTA Board shall have made written findings concerning the environmental impacts of the Proposed Action in accordance with SEQRA and its implementing regulations, 6 NYCRR, Part 617, and approved the material terms of the contract and the other project documents.

4. The Executive Director and Chief Executive Officer and his respective designees are hereby authorized 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.

Dated: May 22, 2008

RESOLUTION

BOARDS OF THE
METROPOLITAN TRANSPORTATION AUTHORITY
LONG ISLAND RAIL ROAD
and TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

WHEREAS, Metropolitan Transportation Authority (“MTA”) owns Lot 50 in Block 702 (the “MPB Lot”), which is located on the north side of West 30th Street between 10th and 11th Avenues in Manhattan; and

WHEREAS, Triborough Bridge and Tunnel Authority (“TBTA”) owns the remainder of the real property on the West Side of Manhattan generally bounded on the north by West 33rd Street, on the east by 10th Avenue, on the south by West 30th Street and on the west by 12th Avenue, including rights to occupy the portion of such property under 11th Avenue (the “TBTA Property”, and together with the MPB Lot, the “Rail Yards”), which Rail Yards comprise (i) that portion located to the east of 11th Avenue (the “Eastern Rail Yard” or “ERY”) and (ii) that portion located to the west of 11th Avenue (the “Western Rail Yard” or “WRY”); and

WHEREAS, TBTA intends to transfer ownership of the TBTA Property to the MTA for a nominal sum, pursuant to Section 553(p) of the Public Authorities Law; and

WHEREAS, the City of New York has taken steps to expand the Manhattan central business district and to promote the economic development interests of the City and State of New York by revitalizing the Far West Side of Manhattan into a mixed-use commercial and residential area by, among other things, rezoning portions of what is known as the Hudson Yards Redevelopment Area and undertaking, in conjunction with the MTA, the extension of the Number 7 subway line west from Times Square (the “Number 7 Line Extension Project”); and

WHEREAS, the MTA and City in September 2006 entered into (a) a memorandum of understanding (the “Rail Yards MOU”), which provided for, among other things, the issuance of Requests for Proposals by the MTA for development of the Eastern Rail Yard and for the Western Rail Yard, with the selection of a developer or developers for such yards to be made by the MTA Board; and (b) a memorandum of understanding (the “Number 7 Line MOU”) for the design, construction and funding of the Number 7 Line Extension Project; and

WHEREAS, on July 11, 2007, MTA issued and thereafter publicly advertised a Request for Proposals for development proposals for the ERY (the “ERY RFP”), which is currently zoned as set forth in the Special Hudson Yards District zoning to accommodate large-scale mixed use development, which RFP invited proposals for dispositions in the form of either a sale, or up to a 99-year lease, of the developable property rights; and

WHEREAS, on July 11, 2007, MTA and the City entered into a further memorandum of understanding (the “July 11 MOU”), by which the City and MTA recognized that certain actions within the control of the City and MTA should be undertaken to accomplish the City’s goals of promoting the orderly development of the Hudson Yards Redevelopment Area in accordance with sound planning objectives and MTA’s goals of achieving the maximum revenue from the development of the ERY for application to MTA’s capital plans for investment in the New York region’s public transportation system while assuring safe, continuous, uninterrupted service by the Long Island Rail Road (“LIRR”); and

WHEREAS, pursuant to the July 11 MOU, the City has agreed, among other things, to make water and sewer available in the streets adjacent to the ERY, at City expense, in sufficient capacities and on a timely basis to service the development on the ERY contemplated by the ERY zoning, to fund and perform in a timely manner a re-profiling of 33rd Street east of 11th Avenue to provide better site access at ERY, and to pay the annual operations and maintenance costs of the linear open space located on the High Line structure along West 30th Street, and the MTA agreed, inter alia, to require ERY developers to reserve space in the ERY for use as a cultural facility, in consideration for which reservation of space the City has agreed to pay the MTA the sum of \$15,000,000 at the time of closing by the MTA of the sale or lease of the ERY; and

WHEREAS, on October 11, 2007, MTA received submissions from five proposers in response to the ERY RFP, including Extell Development Company (“Extell”); Brookfield Properties Developer LLC (“Brookfield”); The Related Companies in a partnership with Goldman Sachs (“Related/Goldman”); TS West Side Holding, LLC (c/o Tishman Speyer Properties) (“TSW”); and Hudson Center East LLC and Hudson Center West LLC (a joint venture of The Durst Organization, Inc. and Vornado Realty Trust) (“D-V”); and

WHEREAS, on January 28, 2008, MTA requested supplemental proposals from the five proposers, and, in such supplemental proposal solicitation, included a draft Conditional Designation Letter (“CDL”) to be completed by each of the proposers, which CDL, if later executed by the MTA and a proposer in a mutually acceptable form, would provide a conditionally designated developer an exclusive term (the “Designation Term”) to fully negotiate and execute a contract to enter into ground lease and the other documents and agreements needed in connection with the proposed disposition of the developable ERY rights; and

WHEREAS, on February 26, 2008, MTA received supplemental submissions from four of the five above-noted proposers in response to its solicitation; and

WHEREAS, as further described in the staff summary accompanying this resolution, MTA staff, in working groups formed with representatives of Hudson Yards Development Corporation, engaged in detailed review of the October 11, 2007 and February 26, 2008 submissions of the proposers, heard presentations from proposers, conducted discussions and negotiations with the proposers, and reported on relevant aspects of the proposals to the Selection Committee created pursuant to the Rail Yards MOU (the “Selection Committee”); and

WHEREAS, the submissions of the proposers have been summarized to the Board, as set forth in the materials contained within and annexed to the staff summary, and the Selection Committee has recommended the MTA Board authorize the MTA to conditionally designate Related/Goldman as the Eastern Rail Yard developer; and

WHEREAS, the fair market value of the ERY development rights in question has been tested and evaluated through a competitive selection process, the methods, terms and conditions of which have permitted full and free competition, involving public advertisement for proposals, the receipt of competitive proposals, the conduct of discussions and negotiations with the proposers in order to maximize value, and the presentation of the competitive proposals to the Board by public staff summary; and

WHEREAS, the ERY CDL, upon execution by the MTA and a proposer, will serve to designate the conditionally designated developer as the exclusive party with whom MTA will negotiate the transaction for the ERY during the Designation Term, and will provide that (i) the conditional designation does not create or give rise to any contractual or other legally enforceable rights, obligations or liabilities of any kind on the part of any party, other than for the conditionally designated proposer and MTA to negotiate the transaction in good faith and to carry out their express obligations set forth therein; (ii) if the conditionally designated proposer and MTA cannot in good faith successfully conclude contract negotiations during the Designation Term, either party may choose to terminate the conditional designation without liability for any costs or expenses incurred by the other party in the preparation, clarification, submission or negotiation of the RFP and proposer's response thereto, such CDL, the contract or any other project document, except for any liabilities incurred under the Temporary Entry Permit that survive such termination and/or amounts reimbursed to MTA, LIRR and other parties under the ERY Expenses Reimbursement Agreement; and (iii) in the event that a contract is not entered into on or prior to the end of the Designation Term for any reason, (a) as more particularly set forth in the CDL, certain fees shall be retained by MTA, and (b) MTA may choose to negotiate with other proposers or other potential developers, to terminate the selection process or to begin a new selection process for such Yard; and

WHEREAS, the Boards of the MTA, TBTA and LIRR find the proposal of the developer recommended by the Selection Committee for designation to be the most advantageous to the MTA, price and other factors set forth in the ERY RFP having been considered; and

WHEREAS, the Boards of the MTA, TBTA and LIRR further find that the proposed disposition of the ERY property rights is for not less than fair market value and is proposed to be made upon proper terms and conditions, and that an appraisal of the value of such property rights has been made by an independent appraiser as set forth in the accompanying staff summary and included in the record of the transaction; and

WHEREAS, the Boards of the MTA, TBTA and LIRR further find that the disposal of the ERY property rights is intended to further the public welfare and to advance the interests of the MTA by, inter alia, enhancing the ability of MTA to develop and improve commuter transportation and

other services related thereto within the metropolitan commuter transportation district and creating substantial sources of revenue to MTA, and that, in addition, the disposal of the property rights in question is intended to advance the economic development interests of the City and State of New York ("State"), and the interest of the MTA in transit oriented development, by spurring the revitalization of the Hudson Yards Redevelopment Area, which is expected to result in the creation and retention of substantial number of job opportunities and the creation or retention of substantial sources of revenues to the City, State, and MTA; and

WHEREAS, the Boards of the MTA, TBTA and LIRR find that the terms and conditions of the proposed disposition will provide for safe, continuous, and uninterrupted LIRR service, while enhancing the ERY by providing for a roof structure over such yard, as well as other improvements to such yard.

NOW THEREFORE, upon the recommendation of MTA's Chairman, Executive Director and Chief Executive Officer, and the Selection Committee, the Boards of the MTA, TBTA and LIRR resolve as follows:

1. The Executive Director and Chief Executive Officer is hereby authorized to execute a Conditional Designation Letter with RG ERY LLC, designating RG ERY LLC as the conditionally designated developer for disposition of certain developable property rights in the Eastern Rail Yard.
2. The Executive Director and Chief Executive Officer and his respective designees are hereby authorized to execute a contract and any other necessary or appropriate agreements, contracts, leases, deeds, documents, and other instruments, and to take any other necessary or appropriate steps, to implement the proposed disposition of certain developable property rights in the Eastern Rail Yard and the construction of improvements thereon as part of the development thereof, including but not limited to (i) the transfer of the ownership of the ERY from TBTA to MTA; (ii) effectuation of the terms and conditions of the Conditional Designation Letter, and/or such other terms and conditions as MTA and Developer may negotiate, such terms to be acceptable to the Executive Director and the Chief Executive Officer, and (iii) effectuation of the terms and conditions of the July 11 MOU as pertinent to the ERY.
3. The Executive Director and Chief Executive Officer and his respective designees are hereby authorized 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.

Dated: May 22, 2008

STAFF SUMMARY ATTACHMENT B: MAJOR WRY TRANSACTION POINTS

<u>Subject</u>	<u>May 22, 2008 Staff Summary</u>	<u>Current</u>
Deal Structure	99-year ground lease, severable, with options to purchase severed fee parcels.	Same.
Contract Deposit, Closing and Post-Closing Payments	<p>Total 10% of Initial Land Value (ILV), payable as follows:</p> <ul style="list-style-type: none"> • 5% of ILV deposited in escrow on Contract execution; payable to MTA at Transaction Closing (delivery of possession) • 2.5% of ILV payable at first anniversary of Transaction Closing • 2.5% of ILV payable at second anniversary of Transaction Closing 	<p>Total 10% of Initial Land Value (ILV), payable as follows:</p> <ul style="list-style-type: none"> • 2.5% of ILV deposited in escrow (cash or LOC) on Contract execution. • 1.25% of ILV deposited in escrow (cash or LOC) 180 days after Contract execution if closing has not occurred; • 1.25% of ILV deposited in escrow (cash or LOC) 360 days after Contract execution if closing has not occurred; <p>In connection with both 1.25% deposits, if the financial condition of The Related Companies, L.P. has not materially worsened, MTA will accept in lieu of cash or LC a promissory note of The Related Companies, L.P. secured by a pledge of collateral reasonably acceptable to MTA.</p> <p>Post-Closing payments same as before:</p> <ul style="list-style-type: none"> • 2.5% of ILV payable at first anniversary of Transaction Closing • 2.5% of ILV payable at second anniversary of Transaction Closing
Initial Land Value	\$494 Million ILV.	Same.
Rent Factor; Annual Base Rent	Annual Base Rent equal to 6.5% of ILV less Contract Deposit (or, in case of Severed Parcel on which construction of Building has been commenced prior to full funding of Contract Deposit, less such portion of Contract Deposit as has been or is thereafter funded), escalated as below.	Same.
Base Rent Escalations	<ul style="list-style-type: none"> • Fixed Escalation: 10% every 5 years following Transaction Closing • FMV Reset: at years 30, 55 and 80 of each Severed Lease Parcel, with 	Same, except for clarification that if an FMV reset occurs in the same year as a fixed escalation bump, only the FMV reset is implemented.

<u>Subject</u>	<u>May 22, 2008 Staff Summary</u>	<u>Current</u>
	<p>initial Reset on all Severed Lease Parcels no later than 40th anniversary of Transaction Closing</p> <ul style="list-style-type: none"> • FMV Resets valued as if encumbered by Lease and unimproved by Roof, capped at 120% of previous year's Base Rent, with valuation disputes to be resolved by a "baseball" arbitration process. 	
Base Rent Abatement	<ul style="list-style-type: none"> • Annual Base Rent 100% abated for maximum 2 years from Transaction Closing; 50% abated for maximum of additional 3 years from third anniversary of Transaction Closing • Base Rent with respect to Severed Parcels during Building construction is greater of (i) allocated Severed Parcel Base Rent at then-current abatement level, or (ii) 50%. Allocated Base Rent at completion (TCO) of each Building or severed portion of a Building is 100%. 	Same.
Option for Rent Delay	<p>Developer has the option to delay base rent payments for up to an additional two years with respect to parcels upon which no building construction had begun within the original base abatement period described above. Developer's right to exercise such option to extend the abatement period by up to two years on such undeveloped parcels is conditioned upon (i) the Developer agreeing to pay increased future rent in an amount that would result in MTA recouping one-half of the reduction in the present value as a result of the delayed rent and (ii) the Developer increasing its default payment guaranty by the full amount of the delayed rent such that MTA would recoup the full amount of the delayed rent in the event that Developer defaults under the lease prior to construction start.</p>	Same.
Mixed-Use Buildings	Not specifically addressed.	CDL provisions have been clarified to allow for severance leases with respect to a limited number of separately owned and financed components of mixed-use building (e.g. commercial, residential, and hotel)

<u>Subject</u>	<u>May 22, 2008 Staff Summary</u>	<u>Current</u>
Fee Purchase Option Exercise, Price	<ul style="list-style-type: none"> • Fee purchase option for each Building exercisable at time of receipt of TCO or any time thereafter. • Fee purchase price equals present value of all remaining Base Rent under Severed Parcel lease, including escalations and FMV Resets (with FMV Resets assumed at 120% of previous year's rent), plus value of MTA reversionary interest at lease expiration, discounted to date of fee closing at 6.5%. 	<p>First bullet changed as follows:</p> <ul style="list-style-type: none"> • Fee purchase option exercisable after substantial completion of the portion of the roof under the severed parcel and substantial completion of each Building located on the severed parcel. If the Building is a residential condominium, fee purchase option can be exercised upon the closing of the first condominium even if the residential portion is not substantially completed provided that the portion of the roof is completed and either the rest of the Building is substantially completed or the residential portion has been severed into a separate severed subparcel.
Guaranties	<ul style="list-style-type: none"> • Base Rent Guaranty of full amount of Base Rent, in effect from commencement of initial phase of Roof construction until completion of full WRY Roof, capped at \$250 Million. • Roof Completion Guaranty in effect from commencement of each respective phase of Roof construction, guaranteeing lien-free final completion of such phase of Roof construction capped at (x) 115% of hard costs plus (y) associated soft costs such as architectural and engineering, to the extent not theretofore paid, less amounts to be funded pursuant to the Roof construction loan (other than loan amounts which are not funded by reason of Borrower default.) • Building Completion Guaranty in effect during period of Building construction, guaranteeing lien-free substantial completion of Building on each Severed Parcel capped at (x) 115% of hard costs plus (y) associated soft costs such as architectural and engineering, to the extent not theretofore paid, less amounts to be funded pursuant to the Building construction loan (other than loan amounts which are not funded by reason of Borrower default.) • Default Payment Guaranty covers required Default Payments (i.e., any unpaid installments of Deposit and 	Same.

<u>Subject</u>	<u>May 22, 2008 Staff Summary</u>	<u>Current</u>
	Base Rent due under Lease from Transaction Closing until Developer surrenders possession of site (other than Severed Parcels with respect to which a Buildings Completion Guaranty has been delivered) to MTA, plus additional default payment per schedule). Default Payment Guaranty expires when Default Payments have been paid in full or are otherwise reduced to zero.	
Guarantor Standards	Guarantor to be creditworthy entity satisfactory to MTA with net worth at all times sufficient to provide commercially reasonable coverage levels of Guaranty obligations.	Same.
PILOT and PILOST	<ul style="list-style-type: none"> • Full PILOT payable, subject to UTEP, 421-a, and other statutory abatements available to Developer without regard to MTA exemption. • Full PILOST to MTA on core and shell and initial tenant improvements in all buildings (commercial and residential). 	Second bullet is clarified to reflect that in multi-tenant commercial office buildings, MTA's entitlement to PILOST on the initial tenant improvements is assured as to the largest tenant in the building (and will extend to all tenants whose work is performed prior to a fee conversion).
Tax-Exempt Roof Financing Savings	50% of net savings to MTA.	Same.
No. 7 Line	<ul style="list-style-type: none"> • If at any point, No. 7 Line target completion date is extended: <ul style="list-style-type: none"> • (x) for first 12 months of delay, 50% "Base Rent holiday" (i.e., 50% of whatever Base Rent would otherwise be payable during that period) • (y) for any delay beyond 12 months, 100% Base Rent abatement until date that is 2 years prior to then-scheduled completion date, at which time 50% Base Rent abatement commences, (i.e., schedule is pushed out, such that in all events, Base Rent will not be payable until 2 years prior to the anticipated delivery of the No. 7 Line.) 	Same, with the following addition: All of the No. 7 Line related dates are extended on a day-for-day basis for each day between June 30, 2010 and the WRY Transaction Closing.

<u>Subject</u>	<u>May 22, 2008 Staff Summary</u>	<u>Current</u>
	<ul style="list-style-type: none"> All of the above is subject to true-up if lost time is made up and No. 7 is completed by January 2014. Developer will have the right to terminate transaction with Deposit and all Base Rent refunded to Developer if No. 7 Line is terminated or if target completion date does not provide for completion by January 2020. 	
Litigation	<p>So long as no injunction, Developer to close on original Contract terms at earlier of (i) favorable final non-appealable order in litigation, or (ii) 18 months. If Developer demonstrates to MTA's reasonable satisfaction that due to pending litigation it is not feasible to obtain financing on commercially reasonable terms for Project commencement, closing extended for additional period until favorable final non-appealable order in litigation, not to exceed additional 18 months. If Developer does not close after additional extension, MTA may elect to terminate Contract and retain 25% of Deposit, and refund to Developer the remainder of the Contract Deposit plus all unspent/uncommitted funds in the WRY Expenses Fund, the WRY portion of the Shea Facility Fund and the WRY portion of the Site Preparation Fund.</p>	Same.
Zoning Risk	<p>If final zoning does not allow for 10 FAR with mix of commercial and residential square footages per WRY Design Guidelines, Developer may terminate Contract with MTA to retain 25% of Contract Deposit and refund to Developer the remainder of the Contract Deposit plus all unspent/uncommitted funds in the WRY Expenses Fund, the WRY portion of the Shea Facility Fund and the WRY portion of the Site Preparation Fund.</p>	Not applicable (zoning completed).
Environmental	<ul style="list-style-type: none"> Liability for pre-existing conditions discovered during Study Period and Contract Period capped at \$2.5MM if no Transaction Closing, so long as Developer undertakes no additional invasive environmental testing or work at Site during Contract period. If 	Same.

<u>Subject</u>	<u>May 22, 2008 Staff Summary</u>	<u>Current</u>
	<p>Developer undertakes additional invasive environmental testing or work at Site during Contract period, Developer assumes full environmental liability as set forth in CDL.</p> <ul style="list-style-type: none"> • Upon Transaction Closing, Developer assumes full liability (other than Spill No. 04-07411 as identified in RFP, for which Developer assumes no liability). 	
SEQRA/Board Approval Risk	<p>If MTA Board makes the SEQRA findings that would allow the Project but does not approve the Transaction, Developer gets refund of Deposit plus all amounts previously advanced to MTA (full amounts of deposits made for Environmental Fund, Expenses Fund, Shea Fund, Site Preparation Fund), PLUS liquidated damages in amount equal to 10% of ILV plus 18 months of WRY Rent, PLUS at Developer's option, unwinding of ERY transaction (with Deposit plus all ERY Rent theretofore paid by Developer refunded to Developer).</p>	<p>Not applicable (Board action will have occurred prior to Contract execution).</p>
Terra Firma Construction Prior to Roof Commencement	<p>If zoning would allow WRY to be developed in a manner which would allow substantial development to take place without commencement of a reasonable allocation of the Roof, then the parties will agree on an equitable mechanism to the adjust the purchase price with respect to early land development where no portion of the Roof is required, subject to subsequent true-up.</p>	<p>The parties have agreed on a mechanism to require each terra firma parcel lessee/owner to participate in its proportionate share of the Roof costs.</p>
Springing Payment on ERY Default	<p>If Developer defaults on ERY lease, a springing payment of \$100M, payable in no more than two installments over the 24 month period next following the ERY default, will be due under WRY lease. If Developer fails to make such payment Developer will be in default under the WRY lease, in which case WRY Default Payment provisions apply (but not the \$100M payment).</p>	<p>Same.</p>
Construction Issues	<p>SEE ATTACHMENT D.</p>	<p>SEE ATTACHMENT D.</p>
WRY Outside Closing Date	<p>WRY Contract will contain performance milestones to undertake ULURP and close</p>	<p>The WRY must be closed no later than one year after the ERY closing, subject only to litigation</p>

<u>Subject</u>	<u>May 22, 2008 Staff Summary</u>	<u>Current</u>
	Transaction by specified outside date, subject only to litigation extension, delays caused by MTA and/or other governmental delays not due to Developer fault.	extension, delays caused by MTA and/or other governmental delays not due to Developer fault. It shall be a condition to the closing of the WRY that the closing of the ERY shall have occurred prior to or concurrently with the WRY closing. (Milestones for ULURP no longer needed in Contract, given completion of zoning.)
CDL Fees and Expense Deposits	<ul style="list-style-type: none"> • Expense Fund initial deposit at \$5M for ERY and WRY, replenished to \$2M • Environmental Deposit (or LOC) at \$2.5M WRY • WRY portion of Shea Facility Fund (and WRY portion of Site Preparation Fund, if applicable), per MTA CDL Draft (may be funded upon Contract execution, rather than CDL, at Developer election) • Participation Fee of \$3M upon CDL execution. 	<ul style="list-style-type: none"> • The first two bullets are the same. • The third bullet is changed as follows: <ul style="list-style-type: none"> • WRY portion of Shea Facility Fund funded at closing unless earlier, at Developer election. • Fourth bullet (regarding Participation Fee) is the same <p>The following bullet is new:</p> <ul style="list-style-type: none"> • Pursuant to the second extension agreements, each dated January 31, 2009, the Developer paid MTA an additional participation fee totaling \$8,600,000 (\$4,300,000 for each of the WRY and ERY). For each of the ERY and WRY, \$2,150,000 of that amount was non-refundable and the other \$2,150,000 was deposited in the expenses fund held by MTA to be available for the payment of pre-development expenses.
Site Plan and Uses	Consistent with Developer Site Plan and Master Plan Proposal.	Consistent with WRY zoning and applicable law.
High Line	Developer to reconstruct and maintain (or cause to be maintained) High Line per Developer proposal, at Developer's sole cost and risk.	Developer shall, at no expense to MTA, cause to be designed, constructed and completed the treatment of the portion of the High Line which is located on the WRY, in accordance with a plan to be developed by Developer and subject to the reasonable approval of MTA.

STAFF SUMMARY ATTACHMENT C - MAJOR ERY TRANSACTION POINTS

Subject	May 22, 2008 Staff Summary	Current
Deal Structure	99-year ground lease, severable, with options to purchase severed fee parcels.	Same.
Contract Deposit, Closing and Post-Closing Payments	<p>Total 10% of Initial Land Value (ILV), payable as follows:</p> <ul style="list-style-type: none"> • 5% of ILV deposited in escrow on Contract execution; payable to MTA at Transaction Closing (delivery of possession) • 2.5% of ILV payable at first anniversary of Transaction Closing • 2.5% of ILV payable at second anniversary of Transaction Closing. 	<p>Total 10% of Initial Land Value (ILV), payable as follows:</p> <ul style="list-style-type: none"> • 2.5% of ILV deposited in escrow (cash or LOC) on Contract execution. • 1.25% of ILV deposited in escrow (cash or LOC) 180 days after Contract execution if closing has not occurred; • 1.25% of ILV deposited in escrow (cash or LOC) 360 days after Contract execution if closing has not occurred; <p>In connection with both 1.25% deposits, if the financial condition of The Related Companies, L.P. has not materially worsened, MTA will accept in lieu of cash or LC a promissory note of The Related Companies, L.P. secured by a pledge of collateral reasonably acceptable to MTA.</p> <p>Post-Closing payments same as before:</p> <ul style="list-style-type: none"> • 2.5% of ILV payable at first anniversary of Transaction Closing • 2.5% of ILV payable at second anniversary of Transaction Closing
ERY Closing Date	Addressed in CDL, with Closing contemplated within 150 days of Contract execution.	<p>ERY Contract will require that if the following three measurements are simultaneously "on" at any determination date, the Developer will have 90 days to close the ERY Transaction, subject only to litigation extension, delays caused by MTA and/or other governmental delays not due to Developer fault.</p> <p>(i) <u>Commercial Office Availability Trigger</u>: The Commercial Office Availability Trigger will be considered "on" during any period (x) commencing on the date that the CB Richard Ellis Commercial Office Availability - Midtown Manhattan percentage is published with respect to the prior quarter, and is equal to or less than 11 % and (y) terminating on the date that the CB Richard Ellis Commercial Office</p>

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		<p>Availability - Midtown Manhattan percentage is published with respect to a quarter and is more than 11 %.</p> <p>(ii) <u>Construction/Finance Activity Trigger</u>: The Construction Finance Activity Trigger will be considered "on" during any period (x) commencing on the date that the Architectural Billings Index (ABI) - Commercial Sector Index is published for the last month in a calendar quarter and the average of the Architectural Billings Index (ABI) - Commercial Sector Index for that month and the two months prior thereto is equal to or more than 50 and (y) terminating on the date that the Architectural Billings Index (ABI) - Commercial Sector Index is published for the last month in a calendar quarter and the average of the Architectural Billings Index (ABI) - Commercial Sector Index for that month and the two months prior thereto is less than 50.</p> <p>(iii) <u>Residential Condominium Pricing Trigger</u>: The Residential Condominium Pricing Trigger will be considered "on" during any period (x) commencing on the date that the Miller Samuel Manhattan Residential Condominium and Co-op Market Overview -- Manhattan Market Matrix -- Average Price per Square Foot is published with respect to a quarterly period and such Average Price per Square Foot for such quarterly period is equal to or more than the simple average of the following (the "Trigger Average"):</p> <p>(1) The highest Average Price per Square Foot from the previous four quarters;</p> <p>(2) The lowest Average Price per Square Foot from the previous four quarters; and</p> <p>(3) Twelve hundred dollars (\$1,200) per square foot; and</p> <p>(y) terminating on the date that the Miller Samuel Manhattan Residential Condominium and Co-op Market Overview -- Manhattan Market Matrix --Average Price per Square Foot is published with respect to a quarterly period and such Average Price per Square Foot for such quarterly period is less than the Trigger Average.</p>

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MTA Termination Right	Not addressed.	Even if the three measurements described above are not simultaneously “on”, MTA shall have the right to demand closing on the ERY at any time upon 90 days notice and may terminate the ERY and WRY contracts if Developer fails to do so. If MTA were to terminate the contracts prior to January 1, 2011, the Developer would be entitled to a refund of the contract deposits made to date, together with specified unexpended Developer-funded expense deposits (but not the above-referenced CDL-period fees). If MTA exercised such termination right after January 1, 2011, MTA would be entitled to retain \$10,000,000 in the aggregate of contract deposits made under the ERY and WRY contracts, with the balance to be refunded to Developer.
Initial Land Value	\$376 Million ILV.	Same.
Rent Factor; Annual Base Rent	Annual Base Rent equal to 6.5% of ILV less Contract Deposit (or, in case of Severed Parcel on which construction of Building has been commenced prior to full funding of Contract Deposit, less such portion of Contract Deposit as has been or is thereafter funded), escalated as below.	Same.
Base Rent Escalations	<ul style="list-style-type: none"> • Fixed Escalation: 10% every 5 years following Transaction Closing • FMV Reset: at years 30, 55 and 80 of each Severed Lease Parcel, with initial Reset on all Severed Lease Parcels no later than 40th anniversary of Transaction Closing • FMV Resets valued as if encumbered by Lease and unimproved by Roof, capped at 120% of previous year’s Base Rent, with valuation disputes to be resolved by a “baseball” arbitration process. 	Same, except for clarification that if an FMV reset occurs in the same year as a fixed escalation bump, only the FMV reset is implemented.
Base Rent Abatement	<ul style="list-style-type: none"> • Annual Base Rent 100% abated for maximum 3 years from Transaction Closing; 50% abated for maximum of additional 3 years from fourth 	Same.

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	anniversary of Transaction Closing <ul style="list-style-type: none"> Base Rent with respect to Severed Parcels during Building construction is greater of (i) allocated Severed Parcel Base Rent at then-current abatement level, or (ii) 50%. Allocated Base Rent at completion (TCO) of each Building is 100%. 	
Option for Rent Delay	Developer has the option to delay base rent payments for up to an additional two years with respect to parcels upon which no building construction had begun within the original base abatement period described above. Developer's right to exercise such option to extend the abatement period by up to two years on such undeveloped parcels is conditioned upon (i) the Developer agreeing to pay increased future rent in an amount that would result in MTA recouping one-half of the reduction in the present value as a result of the delayed rent and (ii) the Developer increasing its default payment guaranty by the full amount of the delayed rent such that MTA would recoup the full amount of the delayed rent in the event that Developer defaults under the lease prior to construction start.	Same.
Mixed-Use Buildings	Not specifically addressed.	CDL provisions have been clarified to allow for severance leases with respect to a limited number of separately owned and financed components of mixed-use building (e.g. commercial, residential, and hotel)
Fee Purchase Option Exercise, Price	<ul style="list-style-type: none"> Fee purchase option for each Building exercisable at time of receipt of TCO or any time thereafter. Fee purchase price equals present value of all remaining Base Rent under Severed Parcel lease, including escalations and FMV Resets (with FMV Resets assumed at 120% of previous year's rent), plus value of MTA reversionary interest at lease expiration, discounted to date of fee closing at 6.5%. 	First bullet changed as follows: Fee purchase option exercisable after substantial completion of the portion of the roof under the severed parcel and substantial completion of each Building located on the severed parcel. If the Building is a residential condominium, fee purchase option can be exercised upon the closing of the first condominium even if the residential portion is not substantially completed provided that the portion of the roof is completed and either the rest of the Building is substantially completed or the residential portion has been severed into a separate severed subparcel.
Guaranties	<ul style="list-style-type: none"> Roof Completion Guaranty in effect 	Same.

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	<p>from commencement of each respective phase of Roof construction, guaranteeing lien-free final completion of such phase of Roof construction capped at (x) 115% of hard costs plus (y) associated soft costs such as architectural and engineering, to the extent not theretofore paid, less amounts to be funded pursuant to the Roof construction loan (other than loan amounts which are not funded by reason of Borrower default.)</p> <ul style="list-style-type: none"> • Building Completion Guaranty in effect during period of Building construction, guaranteeing lien-free substantial completion of Building on each Severed Parcel capped at (x) 115% of hard costs plus (y) associated soft costs such as architectural and engineering, to the extent not theretofore paid, less amounts to be funded pursuant to the Building construction loan (other than loan amounts which are not funded by reason of Borrower default.) • Default Payment Guaranty covers required Default Payments (i.e., any unpaid installments of Deposit and Base Rent due under Lease from Transaction Closing until Developer surrenders possession of site (other than Severed Parcels with respect to which a Buildings Completion Guaranty has been delivered) to MTA, plus additional default payment per schedule). Default Payment Guaranty expires when Default Payments have been paid in full or are otherwise reduced to zero. 	
Guarantor Standards	<ul style="list-style-type: none"> • Guarantor to be creditworthy entity satisfactory to MTA with net worth at all times sufficient to provide commercially reasonable coverage levels of Guaranty obligations. 	Same.
PILOT and PILOST	<ul style="list-style-type: none"> • Full PILOT payable, subject to UTEP, 421-a, and other statutory abatements available to Developer without regard to MTA exemption. • Full PILOST to MTA on core and shell and initial tenant improvements in all 	Second bullet is clarified to reflect that in multi-tenant commercial office buildings, MTA's entitlement to PILOST on the initial tenant improvements is assured as to the largest tenant in the building (and will extend to all tenants whose work is performed prior to

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	buildings (commercial and residential).	a fee conversion).
Tax-Exempt Roof Financing Savings	50% of net savings to MTA.	Same.
No. 7 Line	<ul style="list-style-type: none"> • If at any point, No. 7 Line target completion date is extended: <ul style="list-style-type: none"> • (x) for first 12 months of delay, 50% “Base Rent holiday” (i.e., 50% of whatever Base Rent would otherwise be payable during that period) • (y) for any delay beyond 12 months, 100% Base Rent abatement until date that is 2 years prior to then-scheduled completion date, at which time 50% Base Rent abatement commences, (i.e., schedule is pushed out, such that in all events, Base Rent will not be payable until 2 years prior to the anticipated delivery of the No. 7 Line.) • All of the above is subject to true-up if lost time is made up and No. 7 is completed by January 2014. • Developer will have the right to terminate transaction with Deposit and all Base Rent refunded to Developer if No. 7 Line is terminated or if target completion date does not provide for completion by January 2020. 	<p>Same, with the following addition:</p> <p>All of the No. 7 Line related dates are extended on a day-for-day basis for each day between May 31, 2009 and the ERY Transaction Closing.</p>
Litigation	So long as no injunction, Developer to close on original Contract terms at earlier of (i) favorable final non-appealable order in litigation, or (ii) 18 months. If Developer demonstrates to MTA’s reasonable satisfaction that due to pending litigation it is not feasible to obtain financing on commercially reasonable terms for Project commencement, closing extended for additional period until favorable final non-appealable order in litigation, not to exceed additional 18 months. If Developer does not close after additional extension, MTA may elect to terminate Contract and retain 25% of Deposit, and refund to Developer the	Same.

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	remainder of the Contract Deposit plus all unspent/uncommitted funds in the ERY Expenses Fund, the ERY portion of the Shea Facility Fund and the ERY portion of the Site Preparation Fund.	
Environmental	<ul style="list-style-type: none"> • Liability for pre-existing conditions discovered during Study Period and Contract Period capped at \$2.5MM if no Transaction Closing (such amount (or LOC) put into environmental fund prior to entry onto site). • Upon Transaction Closing, Developer assumes full liability. • MTA to demolish Metals Purchasing Building and cap soil at MTA's cost and expense. Developer responsible for abatement of soil conditions below Metals Purchasing Building. 	<p>Same, except last bullet replaced as follows:</p> <ul style="list-style-type: none"> • Developer to demolish Metals Purchasing Building and cap soil at MTA's cost and expense. Developer responsible for abatement of soil conditions below Metals Purchasing Building.
Terra Firma Construction Prior to Roof Commencement	If zoning would allow WRY to be developed in a manner which would allow substantial development to take place without commencement of a reasonable allocation of the Roof, then the parties will agree on an equitable mechanism to adjust the purchase price with respect to early land development where no portion of the Roof is required, subject to subsequent true-up.	The parties have agreed on a mechanism to require each terra firma parcel lessee/owner to participate in its proportionate share of the Roof costs.
Springing Payment on ERY Default	If Developer defaults on ERY lease, a springing payment of \$100M, payable in no more than two installments over the 24 month period next following the ERY default, will be due under WRY lease. If Developer fails to make such payment Developer will be in default under the WRY lease, in which case WRY Default Payment provisions apply (but not the \$100M payment).	Same.
Construction Issues	SEE ATTACHMENT D.	SEE ATTACHMENT D.
CDL Fees and Expense Deposits	<ul style="list-style-type: none"> • Expense Fund initial deposit at \$5M for ERY and WRY, replenished to \$2M • Environmental Deposit (or LOC) at \$2.5M • ERY portion of Shea Facility Fund (and ERY portion of Site Preparation Fund, if applicable), per MTA CDL Draft (may 	<ul style="list-style-type: none"> • The first two bullets are the same. • The third bullet is changed as follows: <ul style="list-style-type: none"> • ERY portion of Shea Facility Fund funded at closing unless earlier, at Developer election. • Fourth bullet (regarding Participation Fee)

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	<p>be funded upon Contract execution, rather than CDL, at Developer election)</p> <ul style="list-style-type: none"> • Participation Fee of \$3M upon CDL execution. 	<p>is the same</p> <p>The following bullet is new:</p> <p>Pursuant to the second extension agreements, each dated January 31, 2009, the Developer paid MTA an additional participation fee totaling \$8,600,000 (\$4,300,000 for each of the WRY and ERY). For each of the ERY and WRY, \$2,150,000 of that amount was non-refundable and the other \$2,150,000 was deposited in the expenses fund held by MTA to be available for the payment of pre-development expenses.</p>
Site Plan and Uses	Consistent with Developer Site Plan and Master Plan Proposal.	Consistent with ERY zoning and applicable law.
High Line	Developer to reconstruct and maintain (or cause to be maintained) High Line per Developer proposal, at Developer's sole cost and risk.	Developer shall, at no expense to MTA, cause to be designed, constructed and completed the treatment of the portion of the High Line which is located on the ERY, in accordance with a plan to be developed by Developer and subject to the reasonable approval of MTA.

STAFF SUMMARY ATTACHMENT D - MAJOR CONSTRUCTION AGREEMENT POINTS

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<p>Compensation and Damages for Compensable MTA Party Changes / Compensable MTA Party Delays</p>	<p>In the event of a compensable MTA Party Change or a Compensable MTA Party Delay, the responsible MTA Party must pay all Developer's Direct Costs. "Developer's Direct Costs" shall mean any actual increase, not avoidable or able to be mitigated by Developer's use of good faith efforts, in the cost of designing, redesigning and constructing the Roof, LIRR Facilities or Facility Airspace Improvements to the extent resulting from a Compensable MTA Party Change or a Compensable MTA Party Delay, provided, however, that "the cost of designing, redesigning or constructing the Roof, LIRR Facilities or Facility Airspace Improvements" shall mean only those costs and expenses actually incurred by the Developer on trade contractors costs, labor, material, equipment, Contractors' overhead and profit, Construction Manager's general conditions and construction management fees, additional interest payable to the construction lender, professional services, overhead and personnel costs for Developer's project specific personnel (but excluding overhead and personnel costs for Developer's general management), and additional Force Account costs for the purpose of designing, redesigning or constructing the Roof, LIRR Facilities or Facility Airspace Improvements and shall in no event include any indirect or consequential costs or damages (including, without limitation, lost rentals or lost profits, and any damages or penalties payable to actual or prospective tenants).</p>	<p>Same, except that a severed parcel tenant will also be entitled to a 50% abatement of rent for Compensable MTA Party Delays (after a 30 day grace period) that cause delays associated with Buildings which have leases in place.</p>
<p>LIRR Changes</p>	<p>Reviews by LIRR of Developer's various submissions through the course of the project shall be based on considerations of ensuring the safety of the railroad's passengers, employees and the general public ("public safety"), the ability of the LIRR reliably to provide rail transportation services consistent with its prevailing schedules and service levels ("service reliability"), and compliance with applicable law and the terms of the Construction Agreement and Approved Plans and Specifications ("legal compliance"). In determining the nature and extent of any</p>	<p>Same.</p>

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	<p>changes, the LIRR shall consider potential options and shall endeavor in good faith to select an option that, to the greatest extent practicable, minimizes cost and schedule impact to the Developer while not sacrificing, as the primary consideration, public safety, service reliability and legal compliance.</p> <p>The LIRR acknowledges that the Developer will proceed in reliance upon the LIRR's reviews of 30%, 60%, and 90% submittals, based upon the assumption that LIRR will use good faith efforts to identify safety, service level, and legal compliance issues as early as possible and to be as consistent as possible through the process.</p> <p>Up to and including a 30% design submission and in its review and comments upon such submission, the LIRR may require that Developer modify its plans in order to incorporate LIRR system-wide standards, where applicable, that affect public safety, service reliability or legal compliance provided that the LIRR will, in requiring such modifications, make good faith efforts to minimize the costs of such modifications. Developer shall bear the cost of such modifications required by LIRR. However, modifications required by LIRR after its approval of such 30% submissions shall be a Compensable MTA Party Change and the cost of such modifications shall be borne by LIRR, provided, however, that LIRR shall not be responsible for the cost of modifications required to comply with the Design Criteria (as defined herein), as modified by any waivers and interpretations previously given by LIRR.</p>	
Security	<p>To the best knowledge of LIRR, there has been no threat assessment relating to the West Side Yards to date which recommends construction standards that are materially contrary to the criteria set forth in Exhibit N. A threat and vulnerability assessment shall be performed prior to Contract execution and the results of such study shall be appropriately addressed. LIRR will work in good faith to develop appropriate operational controls to minimize the scope of the identified threat.</p>	<p>MTA, LIRR and Developer have heretofore agreed to the Design Criteria. Except as the parties shall otherwise agree, all LIRR Work shall conform to the Design Criteria, as augmented by any design and/or operational requirements mandated by the New York Police Department with respect to addressing threats, vulnerabilities and risks relating to the Project.</p>
LIRR Reviews		

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	<p>The LIRR shall notify the Developer in writing within twenty-one (21) days of receipt of 30%, 60% and 90% design and schedule submittals, and other major submittals (“Major Submittals”) whether or not such Major Submittal has been approved. If the LIRR fails to notify the Developer of its determination with respect to such Major Submittal within such twenty-one (21) day time period, the Developer may notify the LIRR of its failure by means of certified mail, return receipt requested, to the [designated point of contact]. The notice shall identify the date of submission of the Major Submittal and contain a statement that a determination is sought with respect to approval of such Major Submittal. If the LIRR fails to notify the Developer of its determination within ten (10) days after receipt of such notice, such Major Submittal shall be deemed approved. The LIRR will use good faith efforts to review and comment on Major Submittals as soon as possible, and to provide comments, as appropriate, on approvals, and to provide in reasonable detail, the reasons for any disapproval, or partial disapprovals.</p> <p>LIRR will provide, at Developer’s expense, a dedicated staff of qualified personnel who will be available to review and comment on Developer submissions. Initial reviews of Developer submissions will be “on board” reviews. Responses to submissions will indicate elements which are disapproved and elements not so noted will be deemed approved.</p>	<p>The Developer shall be required to submit an ordinal schedule to the LIRR outlining its proposed schedule for design and schedule submittals and other major submittals (“Major Submittals”). The LIRR shall notify the Developer in writing within twenty-one (21) days of receipt of the 30% and Pre-Final 100% design and other Major Submittals (other than the 60% and 90% design submittals) whether or not such Major Submittals have been approved. The LIRR shall notify the Developer in writing within twenty-one (21) days of receipt of the 60% and 90% design submittals whether or not the LIRR has any comments on such design submittals. If the LIRR’s comments to the 60% design submittal indicate, in the LIRR’s judgment that the Developer’s continuing to the 90% design submittal could result in inefficiencies for review and approval of the 90% design submittal, the LIRR has the right to delay further submissions and require the Developer to submit, within fourteen (14) days of request, an action plan describing the Developer’s plan for resolving the LIRR review comments to the 60% design submittal.</p> <p>If the LIRR fails to notify the Developer of its determination with respect to a Major Submittal within such twenty-one (21) day time period, the Developer may notify the LIRR by overnight courier or hand delivery to LIRR’s Vice-President for East Side Access and Special Projects. The notice shall identify the date of submission of the Major Submittal and contain a statement that a determination is sought with respect to approval of such Major Submittal. If the LIRR fails to notify the Developer of its determination within ten (10) days after receipt of such notice, such Major Submittal shall be deemed approved. The LIRR will use good faith efforts to review and comment on Major Submittals as soon as possible, and to provide comments, as appropriate, on approvals, and to provide in reasonable detail, the reasons for any disapproval, or partial disapprovals.</p> <p>LIRR will provide, at Developer’s expense, a dedicated staff of qualified personnel who will be available to review and comment on Developer submissions. Initial reviews of Developer submissions may be “on board” reviews. Responses to submissions will indicate elements which are disapproved and</p>

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		elements not so noted will be deemed approved.
Warranties	Developer will warrant for each phase of the platform and associated equipment, and for LIRR facilities constructed by Developer, that the Work conforms to the requirements of the Construction Agreement and to generally accepted standards and is free from defects of equipment, material and workmanship. This warranty will be for one (1) year from LIRR acceptance of each phase of Work. Developer will assure that the systems as a whole function in an integrated fashion, consistent with the specifications for such system. LIRR will be responsible for operation and maintenance of equipment and facilities after they are completed and accepted by LIRR.	Same.
Construction Requirements and Design Criteria	The parties acknowledge that (a) Developer has submitted, and the LIRR has reviewed Developer's conceptual plan for the Project and (b) the LIRR has developed the WRY LIRR Construction Requirements and Design Criteria (the "Design Criteria") to ensure that the Project is designed and constructed in a manner that is protective of public safety, service reliability, and legal compliance. In reviewing proposed Plans and Specifications, the Construction Schedule, and other design and construction submittals, the LIRR agrees that it shall apply the Design Criteria in a manner which, to the greatest extent practicable, preserves the ability of Developer to execute a project consistent with the design intent and construction process embodied in the conceptual plan as reflected therein, while not sacrificing, as the primary consideration, protection of public safety, service reliability and legal compliance. The LIRR acknowledges certain waivers from the requirements in the Design Criteria are likely to be necessary, which waivers will be subject to evaluation and negotiation.	Same, except LIRR has not commented on the Developer's conceptual plans as previously stated.
Permits and Codes	LIRR and Developer recognize that the LIRR will be responsible for signing off on State code compliance for construction of the platform and for LIRR facilities and improvements below the platform, and that the New York City Department of Buildings	LIRR and Developer recognize that LIRR will be responsible for signing off on State code compliance for construction of the platform mechanical equipment, platform utility facilities and improvements below the platform, and that the New York City Department of Buildings will

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	<p>will issue permits for construction of buildings above the platform. The parties also recognize that in some cases (e.g., support structures for the buildings), there will likely be overlap between the LIRR and the D.O.B., and the parties will work together to coordinate approvals and permitting. For each phase of Work, LIRR will provide the Developer with the then current Design Criteria for the West Side Yards at the commencement of the design process subject to changes permitted under the provisions of <u>LIRR Changes</u>.</p>	<p>issue permits for construction of the platform slab, the support facilities and buildings above the platform. The parties also recognize that in some cases (e.g., support structures for the buildings), there will likely be overlap between the LIRR and the D.O.B., and the parties will work together to coordinate approvals and permitting.</p>
<p>Return of Tracks to Service</p>	<p>If at any time the Developer requests, and the LIRR approves, any Non-Continuous Track Outage, the Developer shall be obligated to return each track taken out of service, pursuant to such Non-Continuous Track Outage, on or prior to the date and time identified in the Construction Schedule for the return of such track to service. If any track covered by such Non-Continuous Track Outage is not returned to service on or prior to the date and time identified in Construction Schedule for its return to service, plus any extension allowed pursuant to the Construction Agreement for an MTA Party Delay, and after a grace period of fifteen (15) minutes, then, in addition to any other rights or remedies available to the MTA Parties, the LIRR may demand from the Developer, and the Developer upon such demand shall pay to the LIRR, in addition to all other sums payable hereunder, as liquidated damages, the sum of Five Hundred Dollars (\$500) per minute for each minute that such track (or in the case of outages involving more than one track, Five Hundred Dollars (\$500) per minute for all of such tracks in the aggregate) is kept out of service beyond the applicable grace period.</p> <p>If the Developer fails to comply with its obligations in connection with Track Outages or Safety Requirements, then LIRR may, in addition to any other remedies it may have, order the Developer (and the Developer's contractors and other persons connected with the Developer's construction) to cease those activities that do not so comply without any liability to Developer and without same constituting an MTA Party Delay.</p>	<p>Same, except that the liquidated damages amount of Five Hundred Dollars (\$500) is now subject to an annual CPI increase. Developer now has ninety (90) minutes (rather than sixty (60) minutes) to restore a track to service before the LIRR may exclude the Developer from the Yards Parcel.</p>

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	<p>If Developer fails to comply with its obligation to return tracks to service when required after an approved Track Outage, then LIRR may, in addition to any other remedies it may have, notify the Developer and order the Developer to fully restore the subject track or tracks to service within ninety (90) minutes.</p> <p>If Developer fails to fully restore the subject track or tracks to service to the satisfaction of the LIRR within such ninety (90) minute period, then the MTA Parties may exclude the Developer from the Yards Parcel until such track or tracks are fully restored to service to the satisfaction of the LIRR (but such exclusion shall not bar access solely for the purposes of restoring such track or tracks to service to the satisfaction of the LIRR), without any liability to Developer and without same constituting a Compensable MTA Party Delay. In such case, Developer shall immediately vacate, and allow the LIRR sufficient space to initiate restoration efforts for, such track, and if so directed shall as soon thereafter as is practical vacate the Yards Parcel. In addition to the foregoing, and without limiting any other rights or remedies of the MTA Parties, if the Developer fails to fully restore such tracks or tracks to service to the satisfaction of the LIRR within the time allotted, the LIRR may but shall not be obligated to, in its sole discretion and without further notice or grace period, restore the track or tracks itself and in such event the Developer shall promptly reimburse the LIRR for all direct costs incurred by LIRR in effectuating such restoration.</p>	
<p>Compensable MTA Party Delays</p>	<p>A “Compensable MTA Party Delay” is any delay resulting from:</p> <ol style="list-style-type: none"> 1) A Compensable MTA Party Change, or 2) Failure to provide a determination on a Developer Submittal or take any action within the time provided for herein, or 3) Failure by the LIRR for reasons other than an Excusable Event: (a) to provide force account personnel pursuant to the construction agreement or (b) to arrange for track outages at the agreed time and 	<p>Same except daily nighttime outages are seven (7) hours (rather than eight (8) hours).</p>

<u>Subject</u>	<u>March 26, 2008 Staff Summary</u>	<u>Current</u>
	<p>location(s), in each case during the period(s) set forth in the agreed-upon baseline Schedule as modified by the appropriate agreed upon Look-Ahead Schedules and subject to the Developer's conformance with LIRR advance scheduling requirements, in accordance with the following minimum outage delivery requirements:</p> <p>i) Continuous outages – 96% of the number of days of the approved scheduled outage period in a calendar year, for failure to provide the outage or failure to provide personnel pursuant to the construction agreement.</p> <p>ii) Daily seven (7) hour nighttime outages – 93% of the scheduled nighttime outage events in a calendar year, as per the approved Schedule.</p> <p>iii) Fifty-four (54) hour weekend outages – 93% of the Required Weekend Outages in a calendar year, as per the approved Schedule. It is the intention of both parties that the Developer will present, well in advance of need, a schedule projecting the number of weekend outages required to accomplish a specific scope of work (Required Weekend Outages). MTA will make a good faith effort to schedule Required Weekend Outages plus an additional allowance of reasonably contiguous weekend outages totaling approximately 10% of Required Outages (in combination with the Required Outages, the "Scheduled Weekend Outages").</p> <p>4) LIRR shall make best efforts to fully staff and provide all weekend outages in conformance with approved schedule. Developer understands there are a maximum of thirty-four (34) weekend outages available per year. Subject to paragraph 3 above, LIRR understands that Developer will, during certain limited phases of ERY construction, require extended series of such outages and agrees, based on Developer's compliance with LIRR scheduling requirements, to the maximum extent practical give first priority to Developer's track closure requirements.</p> <p>For purposes of this provision, "Excusable Event" shall mean (1) an act of God,</p>	

<u>Subject</u>	<u>March 26, 2008 Staff Summary</u>	<u>Current</u>
	<p>(2) inability to obtain labor, equipment, supplies, or materials due to extraordinary governmental action, (3) unscheduled extraordinary actions taken by Amtrak, including without limitation, train movement control actions in and around Penn Station and between Penn Station and the WSY, (4) unscheduled extraordinary actions taken by New Jersey Transit or the Port Authority in connection with the construction of facilities in and around the WSY, (5) enemy action, terrorism, civil commotion, earthquake, flood, extreme weather (consisting of a hurricane, or a snow storm at a predicted level of Level 2 or above, per the classification of the LIRR), major fire, casualty, war, hostilities, invasion, insurrection, riot, mob violence, malicious mischief, or sabotage, (6) a strike of any labor union or a lockout, in both cases which affects all or a substantial portion of the LIRR system, or (7) failure by Developer to comply with the terms of the Construction Agreement which failure is the cause of the MTA Party Delay.</p>	

ATTACHMENT E TO STAFF SUMMARY

Reservation of Space for Cultural Facility and Transfer of City's Reserved Interest in West 32nd Street

Pursuant to the Memorandum of Understanding Concerning Development of Sites at John D. Caemmerer West Side Yard, dated July 11, 2007, between MTA and the City (the "MOU"), MTA and the City previously agreed that in support of the City's planned implementation of a cultural facility on the ERY, (a) the ERY developer would be required to reserve (i) the entirety of the portion of the ERY designated in the ERY zoning for community facility uses and (ii) 200,000 sq. feet of ERY on-site zoning floor area; (b) the ERY developer would be required to construct the platform for such cultural facility; and (c) the City would pay MTA \$15 million at the time of closing of the sale or lease of the ERY by MTA to the Developer, which sum would be refundable to the City in the event the reserved space was not used for the cultural facility. As the ERY site plan has been refined, it has been determined that the reserved cultural facility footprint should be 21,000 square feet and the reserved zoning floor area can be reduced to 100,000 sq. feet.

At the time of WSY title analysis process, it was discovered that in 1983, as part of the acquisition of the land for the LIRR's West Side Yards, the City reserved the property located above a limiting plane (a portion of which was then anticipated to be used for a MaBSTOA bus depot that was connected to the Westway Project). The limiting plane of the City's reserved parcel is close to the level at which the platform over the ERY will be constructed, meaning that the inclusion of the City's parcel in the air-rights parcel to be conveyed to the Developer is critical to enable the development based on the current ERY site plan.

MTA and the City have negotiated terms for the conveyance of the City's 32nd Street reserved parcel to TBTA which will then convey such parcel to MTA. In connection with the City's conveyance, MTA would agree to (i) accept the transfer of the City's parcel in satisfaction of the City's obligation under the MOU to pay for the reservation of space for the Cultural Facility and (ii) extend by seven years the time period during which the City is permitted to sell ERY transferable development rights at the minimum price (escalated by CPI) set forth in the 2006 Rail Yards Agreement, dated as of September 28, 2006, among the City, MTA, TBTA, and LIRR (the "Rail Yards Agreement"). Under the new arrangement with the City, MTA will be receiving the City's 32nd Street parcel, which is critical to the ERY development plan and which has a value in excess of the \$15,000,000 cultural facility payment that is to be foregone.

From a valuation perspective, the ERY has on-site zoning floor area development rights equal to 11 times the footprint of the site. The West 32nd Street footprint is 60 feet by 800 feet or 48,000 sq. feet, yielding 528,000 zoning floor area square feet. Given the location of the limiting plane, about 4/5ths of the zoning floor area over the W.32nd Street footprint is allocable to the City's reserved parcel, which amounts to approximately 422,400 sq. feet. Applying the average price per zoning floor area sq. foot for the Related transaction (\$1,054,000,000 divided by 11,970,000 sq. feet = \$88), the value of the City's 32nd Street parcel to be conveyed to TBTA would be \$37 million. In addition, MTA will have the rights to the 100,000 sq. feet of zoning floor area that is no longer being reserved for cultural facility use (which can be sold to the ERY developer or sold as transferable development rights).

In the Rail Yards Agreement, the City (through the Hudson Yards Infrastructure Corporation) agreed to purchase a portion of the ERY transferable development rights for \$200 million, payment of which was received by MTA, the final installment having been made in 2009. MTA, in turn, agreed that Hudson Yards Development Corporation ("HYDC") could arrange for the sale of the ERY transferable development rights and keep the proceeds of such sales until it had received back the \$200 million plus interest. The remaining ERY transferable development rights would then be sold for MTA's own account. One of the pricing parameters that was put into place provided that for a period of 7 years following the effective date of the Rail Yards Agreement, HYDC could sell the ERY transferable development rights without MTA consent if such price was equal to or greater than the price per square foot then in effect for the District Improvement Fund Bonus under Section 93-31 of the New York City Zoning Resolution. That

price was set at \$100 in 2005 dollars and escalates by CPI. After that 7 year period, MTA and the City would annually agree on the minimum price. Because of the downturn in the real estate market, the City has not yet sold any of the ERY transferable development rights and wants to extend the period of time during which it can sell at or above the District Improvement Fund Bonus price without MTA consent for an additional 7 years. In such an extended period, MTA would remain assured of air rights being sold by HYDC for no less than the Rail Yards Agreement minimum price, escalated by inflation. That escalated price (\$113 as of August, 2009) is in excess of the appraised value of such transferable development rights as determined in the 2006 appraisal prepared by Jerome Haims Realty, Inc. for MTA.

STAFF SUMMARY ATTACHMENT F

MTA FINDINGS STATEMENT

State Environmental Quality Review Act

This Findings Statement has been prepared in accordance with Article 8 of the Environmental Conservation Law, the State Environmental Quality Review Act (“SEQRA”), and its implementing regulations codified at 6 NYCRR Part 617.

Co-Lead Agencies: Metropolitan Transportation Authority (“MTA”)
347 Madison Avenue
New York, NY 10017

City of New York City Planning Commission (“CPC”)
New York City Department of City Planning
22 Reade Street
New York, NY 10007

Name of Proposed Actions: Western Rail Yard
SEQRA Classification: Type 1 Action

Introduction

The MTA and CPC served as co-lead agencies for the environmental review of several actions (“Proposed Actions”) intended to facilitate development at three Manhattan project sites—a proposed mixed-use development over the western section (“Western Rail Yard”) of the MTA-Long Island Rail Road (“LIRR”) John D. Caemmerer Yard (“Caemmerer Rail Yard”), and permanently affordable residential development at two City-owned “Additional Housing Sites.” The Western Rail Yard (“Development Site”) is bounded by Eleventh and Twelfth Avenues, West 30th and West 33rd Streets. (The easterly portion of the Caemmerer Rail Yard, or “Eastern Rail Yard,” was zoned for mixed-use development when the Special Hudson Yards District was created in 2005.) The mixed-use development on the Development Site is expected to include commercial space (retail and office or hotel), residential units, a public school, open space, and accessory parking. The Additional Housing Sites are located near Tenth Avenue and West 48th Street (“Tenth Avenue Site”) and Ninth Avenue near West 54th Street (“Ninth Avenue Site”). Together, these three project sites comprise approximately 14 acres.

The Proposed Actions include: (1) the lease of, with option to purchase, an air space parcel over the Western Rail Yard and related property interests by MTA to a development entity selected by MTA to carry out such mixed-use development; this entity is the conditionally designated developer, WRY TENANT LLC (f/k/a RG WRY LLC), an affiliate of The Related Companies, L.P.; (2) zoning map and text amendments, and accessory parking special permits by the City of New York pursuant to the Uniform Land Use Review Procedure (“ULURP”); (3) the establishment of new legal grades on West 33rd Street between Eleventh and Twelfth Avenues; (4) the site selection by the New York City School Construction Authority for an

elementary/intermediate public school on the Western Rail Yard; (5) the partial release of MTA's interest in the Ninth Avenue Site; and (6) the disposition, zoning map text change, and zoning map change by the City of New York pursuant to ULURP for the Ninth and Tenth Avenue Sites to facilitate the development of permanently affordable housing at the two Additional Housing Sites.

Project Description

Development Site

The proposal for the Western Rail Yard project would include eight high-rise buildings organized around a network of open spaces. The proposed 5.7 million square-foot mixed-use development would contain approximately 3.8 to 4.8 million square feet of residential space (roughly 4,600 – 5,700 dwelling units), 1.5 to 2.2 million square feet of commercial office and/or hotel space, 210,000 square feet of retail space, a 120,000 square-foot public school, 1,600 accessory parking spaces, and approximately 5.4 acres of publicly-accessible open space. Of the eight towers, seven are envisioned to be wholly or primarily residential, and one would be a commercial office and/or hotel space. A new public school would be located in the base of one of the residential buildings. A minimum of 265 of the housing units constructed on the Development Site must be affordable. The Development Site must also include additional affordable housing units sufficient to bring the total number of affordable units on the Development Site and the Eastern Rail Yard, collectively, to 431 units.

The towers are proposed to range between approximately 350 feet and 900 feet tall. The tallest building would be located at the northeast corner of the site, and the shortest building at the southwest corner of the site, at the curve of the High Line.

A major organizing principle of the proposed site plan is the introduction of two new private streets into the Western Rail Yard superblock. The new private streets are equivalent to the westerly extensions of West 31st Street and West 32nd Street, and would be included to help establish neighborhood scale and connectivity to the surrounding area. They would break up the interior of the superblock as well as the Eleventh Avenue frontage which spans the equivalent of three blocks. Both private streets are proposed to be two-way roads which would each end in cul-de-sacs at the western portion of the site. A connector road would link the two private streets at a location near the cul-de-sacs, and allow passage for pedestrians and emergency vehicles only. In addition to the new private streets, the proposed site plan is organized around six development parcels and multiple publicly-accessible open spaces. The network of publicly-accessible open areas contains spaces that would vary in scale and purpose. The network includes a regional destination open space overlooking the Hudson River and connecting to the High Line, a large neighborhood park with children's playground in the center of site, a continuation of the High Line elevated park, a plaza-like space to provide relief from congestion in the base of the building on Site 2, a gateway entry space visible from Hudson River Park, and various paths and connections to bring pedestrians into and through the site. Extensive landscaping, seating, planting, and other public amenities would be provided throughout the open areas.

Approximately two-thirds of the development on the Development Site would be constructed on a new platform over the LIRR railroad tracks and facilities buildings. The remainder of the development would be on land (“terra firma”) not occupied by the rail yard. Once the Developer and MTA have entered into a lease, the MTA and LIRR must separately approve construction plans to assure the uninterrupted and safe operation of the Caemmerer Rail Yard. It is anticipated that development would begin with the construction of the platform. Construction of the platform is anticipated to progress sequentially from north to south in phases that would require the temporary closure of sets of adjacent tracks within the Caemmerer Rail Yard for a duration of approximately four months for each phase, although some phases would be completed in as little as three months and some would take as much as six months. Rail yard operations would be interrupted only on the tracks to be removed from service during each phase.

For each phase of platform construction, the subsurface components (caissons), platform support columns, below-platform elements (lighting, fire proofing and fire suppression systems, ventilation and communication systems), and the platform structure (including parking, if approved by MTA) would be substantially finished before moving to the next phase. By scheduling and conducting the work in this manner, interruptions to rail operations in the Caemmerer Rail Yard would be minimized. Because the capacity of the Caemmerer Rail Yard to store and service trains would be reduced by continuous track outages, it is anticipated that some of the trains that would normally use the yard would be diverted during weekday periods to LIRR yard facilities located at Long Beach Yard and Shea Yard.

Additional Housing Sites

The Additional Housing Sites are proposed to be mixed-use developments that will be the subject of future Requests for Proposals issued by the New York City Department of Housing and Preservation. The Tenth Avenue site is currently envisioned to include permanently-affordable housing for low-, middle- and moderate-income levels and ground floor retail. The Ninth Avenue Site would also include permanently affordable housing, ground floor retail, and office space for MTA-New York City Transit (“NYCT”) and below-grade NYCT emergency vehicle parking spaces.

It is anticipated that the Additional Housing Sites will contain a total of approximately 267 permanently affordable housing units.

Environmental Review

The Proposed Actions were reviewed pursuant to SEQRA, the SEQRA regulations set forth in Volume 6 of the New York Code of Rules and Regulations, Part 617, and the New York City Environmental Quality Review (“CEQR”) Rules of Procedure of 1991 and New York City Executive Order No. 91 of 1977.

A Positive Declaration and a Draft Scope of Work for the Draft Environmental Impact Statement (“DEIS”) were issued on September 2, 2008. A public scoping meeting was held on the Draft Scope of Work on October 2, 2008. A Final Scope of Work, reflecting the comments made during the scoping process, was issued on May 8, 2009.

The co-lead agencies prepared a DEIS and a Notice of Completion for the DEIS was issued May 15, 2009. Pursuant to SEQRA regulations and CEQR procedures, a joint public hearing was held on the DEIS on September 9, 2009 in conjunction with the ULURP applications.

The Final Environmental Impact Statement (“FEIS”) was completed, and a Notice of Completion of the FEIS was issued on October 9, 2009.

The FEIS examines a full range of potential environmental impacts: land use, zoning and public policy; socioeconomic conditions; community facilities and services; open space; shadows; historic resources; urban design and visual resources; neighborhood character; natural resources; hazardous materials; waterfront revitalization; infrastructure; solid waste and sanitation services; traffic and parking; transit and pedestrians; air quality; noise; construction; and public health. The FEIS also considers a range of alternatives to the Proposed Actions—No Action, No Unmitigated Significant Adverse Impact, Reduced Density, and Tri-Generation Energy Supply. The FEIS disclosed that the Proposed Actions would have significant adverse environmental impacts on public child care, open space, shadows, traffic, transit, and pedestrian conditions in the vicinity of the Development Site and a temporary significant adverse impact on elementary schools.

The analyses and conclusions set forth in the FEIS were based upon the incorporation into the Western Rail Yard Project of certain project components related to the environment (“PCREs”), including measures relating to construction and the design and operation of buildings, open space and other features of development. The FEIS also identified proposed mitigation measures to mitigate certain significant adverse impacts disclosed in the FEIS. The FEIS anticipated that the PCREs and the mitigation measures would be incorporated as conditions to the approval of the Proposed Actions by means of a Restrictive Declaration, which is to be recorded against the airspace parcel to be leased to the developer.

The Restrictive Declaration specifies aspects of the development, such as the number, location, permanency, and timing of affordable housing units; the phasing, use, management, and operations of open space; parking limitations; access to the High Line; and provision of cultural space. The Restrictive Declaration also requires PCREs to avoid or mitigate environmental impacts both during construction and during the project’s operation. Construction period PCREs include measures to reduce air emissions and noise; manage hazardous materials; protect historic resources such as the High Line; and manage stormwater. Operations period PCREs include restrictions on the use of fuel oil, the locations of building air intakes and exhaust stacks, requirements for building noise attenuation, requirements for further testing of pedestrian wind conditions, ventilation noise controls, and the use of the Long Island Rail Road outfall for a portion of the site’s stormwater runoff. The Restrictive Declaration also mandates sustainability measures, including designing all buildings in accordance with the Leadership in Energy and Environmental Design (“LEED”) Silver standard, stormwater management and water conservation measures, and the provision of car sharing spaces and stations for charging of electric vehicle batteries. Finally, the Restrictive Declaration provides a mechanism for the implementation of mitigation measures, which include a new public school, open space requirements, day care space availability, and traffic and pedestrian mitigation measures. Although not part of the Western Rail Yard project, a separate Restrictive Declaration would

also be recorded against the developer's property interest in the Eastern Rail Yard, which will require the use of shade tolerant plantings to mitigate the effects of shadows on the Eastern Rail Yard caused by the Western Rail Yard buildings.

On October 19, 2009, a Technical Memorandum was issued that described and analyzed modifications to the Proposed Actions adopted by the CPC. The CPC modifications included height and use regulation changes, such as:

- increasing the amount of lobby space on various street frontages;
- treating certain non-transparent ground floor walls with decorative elements or plantings;
- allowing flashing signs near Eleventh Avenue and West 33rd Street;
- increasing flexibility of rooftop design;
- allowing the increase of combined floorplate of towers on Sites 1 (Buildings WR-6 and WR-7) and 6 (WR-2 and WR-3) to promote lower building heights;
- modifying or eliminating certain tower and bustle requirements;
- providing design flexibility by allowing multiple pieces of structure to support the building on Site 5 (WR-4) over the High Line and lowering the height requirement over the High Line from 60 to 50 feet;
- lowering the maximum height of Site 5 (WR-4) from 450 to 350 feet;
- permitting the use of temporary publicly accessible open space on the platform; and
- other clarifications, corrections, and minor refinements to the zoning regulations.

The October 19, 2009 Technical Memorandum concluded that the Proposed Actions with the modifications would not result in any new or different significant adverse environmental impacts not already identified in the FEIS. The October 19, 2009 Technical Memorandum is attached as Exhibit A.

CPC issued its SEQRA findings on October 19, 2009. A form of declaration of restrictions containing provisions with respect to the PCREs and the Mitigation Measures was referenced in, and made an exhibit to the CPC's findings. Section 93-06 of the Zoning Resolution, as amended by the CPC, provides that no building permit shall be issued for any development or enlargement on the Western Rail Yard unless a restrictive declaration in substantially the form reviewed by the CPC, and referenced in and made an exhibit to the CPC SEQRA findings, is filed and recorded against all property in Subdistrict F of the Special Hudson Yards District.

On December 14, 2009, a second Technical Memorandum was issued that described and analyzed modifications to the Restrictive Declaration, as well as a modification to the proposed amendment of Section 93-06 of the New York City Zoning Resolution, based on negotiations with the City Council.

The changes analyzed in the December 14 memorandum included changing the number of affordable housing units, increasing the size of the arts and cultural space, restricting the location of the proposed public school, specifying the amount and timing of the developer's payments to

an open space fund, requiring the developer to offer the City space for a day care facility, and additional clarifications and refinements to the Restrictive Declaration. The December 14, 2009 Technical Memorandum concluded that the modifications would not result in any significant adverse environmental impacts not already identified in the FEIS. The December 14, 2009 Technical Memorandum is attached as Exhibit B.

On December 21, 2009, the New York City Council approved the rezoning for the Proposed Actions, as modified by changes described in the October 19 and December 14, 2009 Technical Memoranda.

The form of Restrictive Declaration, as revised to reflect the City Council changes, is attached as Exhibit C.

SEQRA Findings

This Findings Statement sets forth the MTA's findings with respect to the environmental impacts of the Proposed Actions, based on the FEIS approved and filed by the Co-Lead Agencies on October 9, 2009, as well as related documents and public comments received during the environmental review process, including the Technical Memorandum dated October 19, 2009, the Technical Memorandum dated December 14, 2009, and the form of Restrictive Declaration, as modified by the City Council.

The relevant environmental impacts, facts, and conclusions disclosed in the FEIS and the rationale for these findings and subsequent agency decisions include the MTA's review of the Proposed Actions' purpose and need, the environmental impacts of the Proposed Actions, the ability of the Proposed Actions to satisfy the project purpose and need, the environmental impacts of alternatives to the Proposed Actions, the ability of alternatives to meet the project purpose and need, and the public comments received on the DEIS.

Despite the significant adverse impacts to public child care, open space, shadows, traffic, transit, and pedestrian conditions, and schools disclosed in the FEIS, the Proposed Actions would have an overall beneficial effect on neighborhood character at the Development Site, Additional Housing Sites, and the areas surrounding them. Replacing a large, underutilized, and inaccessible site with a mix of uses, open spaces, (including maintaining the High Line, which would be preserved as passive open space on the Development Site) and streets would complement the emerging development in the Hudson Yards and West Chelsea neighborhoods, and would provide a link in the system of open spaces now under development. Construction of permanently affordable housing on the sites would support the Clinton neighborhood by emphasizing its residential character and helping to preserve its mixed-income character. Thus, the Proposed Actions would succeed in meeting project goals — to provide much-needed funds for MTA's capital program, to create a transit-oriented development, to accommodate anticipated population and employment growth in Manhattan, to enhance the vitality of the Hudson Yards area, to add to the system of public open spaces now emerging in the Hudson Yards and West Chelsea areas, to help meet the need for affordable housing, and to expand the City's tax base.

Based on the reasons and conclusions set forth in the FEIS and the related documents referred to above, the MTA finds that the Proposed Actions meet the project's purpose and need and satisfy the project's goals and objectives. The Proposed Actions have been designed and are expected to achieve these goals and objectives while minimizing the potential for adverse environmental impacts to the maximum extent practicable.

Neither the No Action Alternative nor the No Unmitigated Significant Adverse Impact Alternative would meet the goals and objectives of the Proposed Actions. The Reduced Density Alternative would have most of the significant adverse environmental impacts of the Proposed Actions, but would not fully achieve the goals and objectives of the Proposed Actions. The Tri-Generation Energy Supply Alternative, while requiring somewhat greater initial investment, would meet the goals and objectives of the Proposed Actions and offer the opportunity to achieve modest increases in energy efficiency and somewhat reduced greenhouse gas emissions. If the developer elects to install tri-generation energy supply systems for electricity, heat and cooling, the Restrictive Declaration would require that those systems exclusively use natural gas.

Certification to Approve/Fund/Undertake

The MTA has considered the relevant environmental impacts, facts and conclusions disclosed in the FEIS and has weighed and balanced relevant environmental impacts with social, economic and other considerations. Based on the foregoing, the MTA certifies that the requirements of 6 NYCRR Part 617 have been met and, consistent with social, economic and other essential considerations from among the reasonable alternatives available, the Proposed Actions avoid or minimize adverse environmental impacts to the maximum extent practicable, and that adverse environmental impacts will be avoided or minimized to the maximum extent practicable by incorporating as conditions to this decision those mitigation measures that were identified as practicable, including the filing and recordation by the designated developer of a Restrictive Declaration substantially in the form attached as Exhibit C, and compliance by such developer with the provisions of the New York City Zoning Resolution.

The MTA further finds that the Proposed Actions are consistent to the maximum extent practicable with New York City's Local Waterfront Revitalization Program.

April __, 2010

Metropolitan Transportation Authority

Signature of Responsible Official

[Name of Responsible Official]

[Title of Responsible Official]

For further information, contact:

Robert Paley, Director, Transit Oriented Development
Metropolitan Transportation Authority
341 Madison Avenue
New York, NY 10017

212-878-7205

cc: All Involved Agencies
NYC Dept. of City Planning
WRY TENANT LLC/The Related Companies

[NOTE: EXHIBITS A, B, and C were previously provided to the Board for review]

STAFF SUMMARY ATTACHMENT G: FEBRUARY 3, 2009 MEMORANDUM TO BOARD

Gary DELLAVERSON - west side yards

From: Gary DELLAVERSON
To: MTA BOARD MEMBERS
Date: 2/3/2009 4:22 PM
Subject: west side yards
CC: Henly, James; Sander, Elliot
Attachments: Appendix A to CDL Extension FINAL.doc

Over the last several weeks, we have been engaged with the Related/GS development team regarding the developer's obligation to reach final contractual terms with MTA regarding disposition of the West Side Yards development rights. Despite substantial effort, we have been unable to reach satisfactory contractual terms that were completely consistent with the closing terms of the arrangements we reached last year. In light of the collapse of traditional commercial lending and the numerous impacts of the economic downturn on the New York real estate market, such difficulty should not be unexpected. On the other hand, the Related/GS team remains fully committed both to the ERY and WRY projects and the business terms of our deal. As a consequence, we have agreed to continue the period of 'conditional designation' for up to an additional year in exchange for an additional non-refundable payment of \$8.6 million (up to half of which may be used to offset expenses incurred by MTA, the City and the developer regarding, principally, the continuation of the zoning and ULURP process.)

In addition, we have agreed on a set of revised provisions to guide our contractual negotiations during the extended designation period, a copy of which is attached. Those provisions supplement the formerly agreed upon deal elements as altered in several respects. You will note that the down payment schedule is altered to allow one half to be paid in two installments over the first year. In addition, the parties would develop 'closing triggers' based on economic indices and/or specific milestones that would require closing within 90 days. As further protection of the MTA's business interests, MTA may, at any time, terminate the contract and refund the deposit unless developer agrees to close within 90 days.

If you have any questions, please let me know

Appendix A

Term Sheet

PROPOSED REVISED DEAL TERMS

Contract Deposit	<p>Total 5% of Initial Land Value (ILV), payable as follows:</p> <ul style="list-style-type: none">• 2.5% of ILV deposited in escrow (cash or LOC) on Contract execution• 1.25% of ILV deposited in escrow (cash or LOC) 180 days after Contract execution if closing has not occurred; provided, that MTA may, in its sole discretion, after a review of the creditworthiness of The Related Companies, L.P., accept a promissory note in lieu of cash or LOC• 1.25% of ILV deposited in escrow (cash or LOC) 360 days after Contract execution if closing has not occurred; provided, that MTA may, in its sole discretion, after a review of the creditworthiness of The Related Companies, L.P., accept a promissory note in lieu of cash or LOC <p>Upon Closing, full amount of Contract Deposit (i.e., 5% of ILV) paid in cash to MTA, regardless of amount then on deposit</p>
WRY Rezoning	<p>Developer to use diligent efforts to progress and complete WRY Rezoning (including during period prior to Contract execution).</p>
Closing Date; Extensions	<ul style="list-style-type: none">• Closing Date of ERY shall be scheduled pursuant to the process described below.• Closing Date of WRY shall be scheduled for the first anniversary of ERY Closing Date.• Parties endeavor to identify and agree upon suitable closing trigger based upon one or more indicators of economic conditions. In addition, parties endeavor to establish a set of performance milestones. Upon the attainment of the economic conditions upon which the trigger is based or another specific milestone agreed upon by the parties, Developer will be obligated to close upon 90 days notice.• If ERY Closing does not occur by end of the period established as per the bullet point above, both ERY and WRY Contracts will be deemed terminated and MTA retains full Contract Deposit.• It shall be a condition to the closing of the WRY that the

	<p>closing of the ERY shall have occurred prior to or concurrently with the WRY closing.</p>
MTA Termination Right	<ul style="list-style-type: none"> • MTA entitled to terminate the Contracts at any time upon 90 days prior notice to Developer, unless Developer closes the Transaction within such 90-day period. • Full refund of Contract Deposit to Developer upon such termination.
Shea Facility Fund	<ul style="list-style-type: none"> • ERY and WRY Shea Facility Fund Deposits not required until date of ERY Closing. • No 4-track outages available until 18 months after Shea Facility Fund Deposits for both ERY and WRY are made (i.e., Shea Facility work will not be commenced until deposits are made)
Environmental Liability	<ul style="list-style-type: none"> • Liability for pre-existing conditions discovered during Study Period and Contract Period capped at \$2.5MM if no Closing, so long as Developer undertakes no additional invasive environmental testing or work at Site during Contract period. If Developer undertakes additional invasive environmental testing or work at Site during Contract period, Developer assumes full environmental liability as set forth in CDL. • Upon Closing, Developer assumes full environmental liability as set forth in CDL.
No. 7 Line	<p>All Contract dates tied to No. 7 Line completion will be extended on a day-for-day basis to the extent of any closing delay beyond the anticipated Closing Dates set forth in CDL, assuming a Contract execution date of January 31, 2009 (per current extended CDL), and the completion of the WRY Rezoning on December 31, 2009. That is:</p> <ul style="list-style-type: none"> • for every day that the ERY Closing is delayed beyond May 31, 2009 (120 days from date of Contract execution per CDL), all No. 7 Line dates in ERY transaction will be extended by the same number of days, and • for every day that the WRY Closing is delayed beyond June 30, 2010 (180 days from outside date of Rezoning per CDL), all No. 7 Line dates in WRY transaction will be extended by the same number of days.