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**DECEMBER 21, 2006**

**TO: BOARD OF DIRECTORS**

**THROUGH: ROGER SNOBLE**   
**CHIEF EXECUTIVE OFFICER**

**FROM: ROGER MOLIERE**   
**CHIEF, REAL PROPERTY MANAGEMENT & DEVELOPMENT**

**SUBJECT: JOINT DEVELOPMENT PROJECTS - EXTENSIONS OF LEASE  
OUTSIDE CLOSING DATES**

**ISSUE**

Pre-set dates for close of escrow and execution of final ground lease documentation in joint development real estate projects may, despite the diligent efforts of the developer and Metro, require extensions due to processing delays, particularly in complex transactions requiring multiple governmental approvals. Such closing dates should be extended to accomplish the purposes of the Joint Development Agreement ("JDA") and the proposed joint development project so long as the developer is willing to pay a substantial fee, forfeitable to Metro in the event the transaction does not close by the date of any granted extension, while diligently pursuing satisfaction of all conditions to closing set forth in its JDA and no financial or other change to the terms and conditions of the JDA and lease are effected.

**DISSCUSSION**

The process for documenting Metro's real estate joint development projects involves a Board-authorized Exclusive Negotiating Agreement ("ENA") with a chosen private developer and culminates with a JDA setting forth terms and conditions that must be satisfied in order to enter into the Ground Lease ("Lease") that details the terms of the transaction. Particularly in complex transactions involving funding for affordable housing, entitlement/zoning issues, and the complex engineering requires to approve plans to accommodate the transportation elements present on building sites, "outside closing dates" set in the JDA for close of escrow and execution of the final ground lease may be jeopardized due to the extensive processing time required by city and state governmental agencies.

As the developer and Metro are continuing their efforts to satisfy closing conditions, we anticipate that upon developer payment of an additional fee to Metro, applicable to the

eventual ground rent once the transaction closes escrow but forfeited to Metro if the transaction is not closed by the date set for any extension, that the intent of the proposed transaction is most efficiently satisfied and there is no change to either the financial or other terms of the transaction authorized by your Board.

Many of Metro's joint development projects involve complex engineering and construction planning to accommodate the subterranean (subway "box", ventilation shafts, etc.) and surface (bus layover, commuter park and ride, pedestrian plaza and portal) elements, as well as entitlement/zoning and/or complex funding in the case of affordable housing elements. The preconditions to escrow closing and execution of the ground lease to enable construction and operation of contemplated joint development real estate projects requires that these elements be completed and approved by multiple governmental agencies as well as Metro.

While JDA and lease agreements commonly include "force majeure" provisions allowing for delays due to unanticipated catastrophic events (i.e., acts of war, natural disasters, etc.), a number of other elements may, despite the diligent efforts of the developer, cause delays in completion of lease pre-conditions. These conditions, most notably include the complex physical circumstances present in most Metro joint developments which are invariably built in close proximity to, and often directly over and upon, Metro transportation facilities. In addition, most projects require extensive governmental approvals for entitlement and re-zoning and most often the additional element of accommodating the approvals and funding for affordable housing elements.

It is increasingly difficult to accurately predict the time necessary to finalize and secure necessary governmental approvals for such necessary elements, even as they are diligently pursued by the developer in cooperation with Metro. In order to orderly most efficiently accommodate such delays, and to effect the most timely completion of proposed projects, we believe that allowing for extensions of the pre-set closing dates upon payment of a substantial fee (ranging from \$20,000 to \$35,000 per 60-day extension) that is forfeitable to Metro should the developer not satisfy all pre-conditions and close escrow by the extended outside closing date should be effected.

### **NEXT STEPS**

We propose to include provisions in forthcoming JDAs that will allow developers, upon payment of a fee that is forfeitable to Metro if escrow closing and execution of the ground lease is not accomplished by any re-set closing date, to extend the date for satisfaction of preconditions to closing in order to most efficiently provide for the timely completion of approved joint development projects. No such provisions shall otherwise effect any change in the financial or other Board-approved terms and conditions of the transaction.