



Metro

Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

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**PLANNING AND PROGRAMMING COMMITTEE
NOVEMBER 19, 2008**

SUBJECT: WESTLAKE/MACARTHUR PARK JOINT DEVELOPMENT

**ACTION: EXECUTION OF VARIOUS AGREEMENTS FOR THE
WESTLAKE/MACARTHUR PARK JOINT DEVELOPMENT PROJECT**

RECOMMENDATION

- A. Authorize the Chief Executive Officer (“CEO”) to:
1. Lend up to \$4 million dollars in Prop C-10% funds (the “Loan”) to an entity (the “MBS Lender”) controlled and managed by McCormack Baron Salazar, Inc. (“MBS”) on terms set forth in Attachment A for the purpose of constructing, as part of MBS’s Westlake/MacArthur Park joint development, 100 parking spaces for use by transit patrons (the “Commuter Parking Spaces”);
 2. Ground lease the Los Angeles County Metropolitan Transportation Authority (LACMTA) property encompassing the Commuter Parking Spaces (the “Commuter Parking Ground Lease”) to an entity (the “MBS Parking Ground Lessee”) controlled and managed by MBS;
 3. Sublease back from MBS Parking Ground Lessee the right to use the Commuter Parking Spaces during that period commencing at the beginning of each weekday morning’s commute and ending at the end of each weekday evening’s commute (the “Commuter Parking Sublease”); and
 4. Enter into and execute loan documents, security instruments, intercreditor agreements, the Commuter Parking Ground Lease, the Commuter Parking Sublease, covenants on our interest regarding the development, and other related documents and agreements with MBS, MBS Lender, MBS Parking Ground Lessee and financial institutions involved in the Westlake/MacArthur Park joint development, as applicable, all in accordance with the terms and conditions set forth on Attachment A.
- B. Find that it is in best interest of LACMTA to authorize the CEO to take the actions set forth in Items A1 through A4, above.

ISSUE

As contemplated in the development transaction previously authorized by the Board on October 25, 2006, we would repay MBS for Parking Structure costs attributable to the Commuter Parking Spaces, up to a maximum of \$4 million. In exchange, we would retain ownership of the Commuter Parking Spaces and the right to use them during that period commencing at the beginning of each weekday morning's commute and ending at the end of each weekday evening's commute, while MBS would have the right to use these spaces at all other times.

Taking the recommended actions will change how the \$4 million expenditure is treated and how our rights to use the Commuter Parking Spaces are documented, but will not alter our beneficial use of the Commuter Parking Spaces or change any physical characteristic of the previously approved project. Specifically, these actions would result in recasting the \$4 million into a loan and changing our right to use the Commuter Parking Spaces from a retained right to subleased rights backed by a restrictive covenant limiting the use of the commuter parking spaces to transit users and Metro operations during the commuting period noted above.

The new transaction structure is necessary to meet technical requirements related to MBS's use of the New Market Tax Credit equity as part of the first phase's construction financing. In addition, recasting the \$4 million as a loan, instead of a direct payment for the Commuter Parking Spaces, will provide MBS with important income tax benefits, that will free up additional capital necessary for the project. Without the New Market Tax Credit equity and the income tax benefits, MBS would not have adequate funding to move forward with construction of the project, as currently proposed.

Board authorization of the recommended actions will allow MBS to secure the final piece of financing necessary to move forward with construction of the first phase of their proposed Westlake/MacArthur Park joint development project. This financing consists of \$3 million in New Market Tax Credit equity funds, a \$3 million loan from a private institutional lender and the recommended \$4 million Loan. These funds are necessary to construct the first phase's small retail component, 42 retail-related parking spaces and the Commuter Parking Spaces. MBS has already secured commitments for the funds necessary to construct the remainder of the first phase (90 affordable apartments and their 91 related parking spaces). The retail parking spaces, Commuter Parking Spaces and 91 residential parking spaces will be constructed in a shared, above ground parking structure (the "Parking Structure"), which will be situated beneath the first phase's 90 affordable apartments.

Board authorization is needed at this time to allow timely execution of loan documents, ground leases, the Commuter Parking Sublease, covenants restricting the use of Metro property subject to the Residential Ground Lease to affordable housing, together with other agreements affecting title or necessary for the construction of the first phase of the development. These documents must be executed prior to December 23, 2008, a deadline imposed by the State related to tax exempt bond funding commitments slated for the first phase's residential component. Failure to meet this deadline will result in the loss of this necessary funding.

BACKGROUND

As currently contemplated and approved by the Board, the proposed development will be constructed in two phases under ground leases and will consist of the following:

- Phase A: 90 affordable apartments; approximately 20,000 gross square feet of retail space; and 233 structured parking spaces (91 residential parking spaces, 42 retail parking spaces in support of the retail space in both phases of the project and the 100 Commuter Parking Spaces).
- Phase B: 82 affordable apartments; approximately 18,000 gross square feet of retail space; and 83 structured residential parking spaces.

Ownership of the Commuter Parking Spaces under the previously approved transaction would be retained by us. Use of the New Market Tax Credit equity requires a different structure. These tax credits require the user to meet New Market Tax Credit-related restrictions and requirements through a seven year compliance period. These include a requirement that the user of the tax credits own the asset that the tax credits were invested in through the compliance period. A long term ground lease is deemed ownership for compliance purposes. This is why we propose ground leasing the Commuter Parking Spaces to MBS Ground Lessee via the 55-year Commuter Parking Ground Lease. Subleasing the Commuter Parking Spaces back for our use does not violate New Market Tax Credit requirements, so long as the sublease term is not so long as to impute ownership of the parking spaces back to us. As such, we propose the 30-year Commuter Parking Sublease. In the event the Loan is not prepaid or the Commuter Parking Ground Lease is not terminated prior to the expiration of the Commuter Parking Sublease term, our right to use the Commuter Parking Spaces will be preserved by a restrictive covenant.

The Loan to MBS Lender, together with the New Market Tax Credit equity and the loan from an institutional lender, will be passed through to MBS Parking Ground Lessee via various entities and funds set up by MBS. This pass through mechanism is necessary to meet New Market Tax Credit technical requirements and thus allow the MBS Parking Ground Lessee and the MBS entity under the retail ground lease to use the tax credit equity towards construction of the Phase A retail space, the 42 retail parking spaces and the Commuter Parking Spaces.

The Loan will have a term of 30 years, and may be prepaid at any time after the date occurring seven years after completion of the Parking Structure (the "Prepayment Date"). For that portion of the Loan term preceding the Prepayment Date, MBS Lender shall make monthly interest only payments to us. Interest will accrue on the outstanding principal balance of the Loan at a fixed rate equal to the annual Applicable Federal Rate at the time the loan documents are executed ("AFR"). Currently, the Applicable Federal Rate is 4.16% per year. From and after the Prepayment Date, MBS Lender shall make monthly principal and interest payments to us equal to the outstanding Loan balance amortized over the remaining Loan term at the annual AFR.

Interest payments under the Loan will be offset by rent we will pay under the Commuter Parking Sublease. These rent payments will be equal to one twelfth of the annual AFR multiplied by the outstanding Loan balance. Prior to the Prepayment Date, interest income to us will be fully offset by Commuter Parking Sublease rent. Thereafter, the difference between the fully amortized Loan payments and Commuter Parking Sublease rent payments will net us up to \$119,500 per year, provided the Loan is not prepaid (assuming the full \$4 million is loaned, the annual AFR remains at 4.16% and construction is completed two years after commencement of the Loan).

The seven year tax credit compliance period will end on the Prepayment Date, and it is presumed that MBS Lender will likely prepay the Loan at this time, because beginning on the Prepayment Date the Loan payments will exceed Commuter Parking Sublease rent. In lieu of repayment of the Loan principal, it is expected that MBS Lender will offer a termination of the Commuter Parking Ground Lease and title to the improvements located thereon (i.e.; the Commuter Parking Spaces) without any encumbrance other than LACMTA permitted encumbrances and MBS Parking Ground Lessee's right to control and use the Commuter Parking Spaces at non-commuting times.

POLICY IMPLICATIONS

Since the recommended actions will allow for the full funding of the first phase of the proposed development, as previously approved by the Board, these actions are consistent with the goals of our Joint Development Policies and Procedures.

OPTIONS

The Board could choose not to authorize the recommended actions, but we do not recommend this option. At a minimum, it would further delay construction of the project while MBS seeks other funding alternatives. It could also lead to MBS's abandonment of the project altogether, due to the current state of the real estate and credit markets. Authorizing the recommended actions merely changes how we fund the construction of the Commuter Parking Spaces and establish our right to use the same. Such action will not alter our beneficial use of these spaces or the composition of the proposed development.

FINANCIAL IMPACT

Funding for joint development activities is included in the FY08-09 Budget under Project 610011, Task 01.01, in Cost Center 2210. Funding for the \$4 million Loan is included in the FY08-09 Budget under Project 401001, Task 2445.01, in Cost Center 2210. Revenues and deposits from joint development activities will offset our support costs for the proposed project.

NEXT STEPS

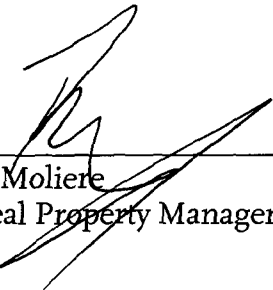
Upon approval of the recommended actions, satisfaction of the closing conditions under our joint development agreement with MBS, and receipt of required federal and state approvals and bond counsel clearance (as applicable), we will complete and execute the Loan

documents, Commuter Parking Ground Lease, Commuter Parking Sublease and the documents and agreements related thereto in substantial accordance with the terms and conditions set forth in Attachment A. At that time, we will also complete and execute the residential and retail ground leases for the first phase of the Westlake/MacArthur Park development project and other related documents in substantial accordance with the Board's October 25, 2006 authorization.

ATTACHMENTS

- A. Summary Key Terms and Conditions of the Loan, Commuter Parking Ground Lease & Commuter Parking Sublease

Prepared by: Greg Angelo, Director of Real Property Management & Development



Roger S. Moliere
Chief, Real Property Management and Development



Roger Snoble
Chief Executive Officer

**SUMMARY OF KEY TERMS AND CONDITIONS
OF THE
LOAN, COMMUTER PARKING GROUND LEASE & COMMUTER PARKING SUBLEASE**

THE LOAN:

- Lender:** Us
- Borrower:** MBS Lender
- Loan Amount:** A maximum of \$4 million in Prop C-10% funds.
- Loan Term:** 30 years
- Payments:** Prior to the Prepayment Date: Monthly interest only payments, with interest accruing on the outstanding balance of the Loan at a fixed rate equal to AFR .
- After the Prepayment Date: Monthly principal and interest payments equal to the outstanding Loan balance amortized over the remaining Loan term at the annual AFR.
- Nonrecourse:** The Loan will be a nonrecourse loan.
- Use of Funds:** Loan funds shall be used only for costs attributable to the Commuter Parking Spaces and the vehicular and pedestrian access thereto.
- Disbursement:** Loan funds will be disbursed through a typical construction draw process up to the maximum Loan amount of \$4 million. Funds will be disbursed to MBS Lender as costs related to the construction of the Commuter Parking Spaces are incurred by the MBS Parking Ground Lessee. Such draw process will include provisions requiring that a third-party accounting expert be retained to identify those costs that are equitably allocable to the Commuter Parking Spaces and shall provide that we and our employees, consultants and counsel, along with such third-party accounting expert, shall be granted full access to MBS Parking Ground Lessee's construction-related books, records, plans, and specifications.

Loan Pass Through:

The Loan from us to MBS Lender, together with New Market Tax Credit equity and the private loan from an institutional lender, will be passed through to MBS Parking Ground Lessee via various entities and funds set up by MBS. This pass through mechanism is necessary to meet New Market Tax Credit technical requirements and thus allow MBS Parking Ground Lessee and the MBS entity under the retail ground lease to use \$3 million of New Market Tax Credit equity along with the Loan proceeds and other proceeds to construct the Phase A retail space and that portion of the Parking Structure attributable to the Commuter Parking Spaces and the 42 retail parking spaces.

Security:

The Loan will be secured by a collateral assignment from MBS Lender of its subordinate pledge of the equity interest in an intermediate investment entity (the "Intermediate Entity") involved in the loan pass through process noted above. The Intermediate Entity will have received all of the proceeds from the Loan, the \$3 million loan from the private institutional lender and the \$3 million in New Market Tax Credit equity. The Intermediate Entity will invest those funds in the MBS Community Development Entity ("MBS CDE"), which will lend those funds to MBS Parking Ground Lessee, secured by a first deed of trust and security agreement recorded against and encumbering MBS Parking Ground Lessee's interest in the Commuter Parking Ground Lease. A default by the MBS Parking Ground Lessee on its obligations to MBS CDE will be a default in its covenants under the Commuter Parking Ground Lease, which cannot be cured by MBS CDE. Therefore, such a default will result in LACMTA recapturing the Commuter Parking Ground Lease premises and the improvements located thereon.

Prepayment Penalty:

None, after the Prepayment Date.

Prepayment:

The Loan may be prepaid after the Prepayment Date, but not prior thereto. In lieu of repayment of the Loan principal, we will accept as full loan repayment, if offered, a termination of the Commuter Parking Ground Lease from the MBS Parking Ground Lessee and delivery of the Commuter Parking Ground Lease premises and title to the improvements located thereon (i.e.; the Commuter Parking Spaces) free of any encumbrance other than LACMTA permitted encumbrances and MBS Parking Ground Lessee's right to control and use the Commuter Parking Spaces at all times other than during the period between the

beginning of each weekday morning's commute and ending at the end of each weekday evening's commute.

Default and Foreclosure:

Upon a default under MBS CDE's loan to the MBS Parking Ground Lessee, the Commuter Parking Ground Lease will terminate and the ground leased premises thereunder (i.e.; the Commuter Parking Spaces) will be returned to us without any encumbrance, other than LACMTA permitted encumbrances and MBS Parking Ground Lessee's right to control and use the Commuter Parking Spaces at all times other than during the period between the beginning of each weekday morning's commute and ending at the end of each weekday evening's commute. In addition, in the event of a default by MBS Lender, LACMTA would be entitled to all remedies available under MBS Lender's collateral assignment of its subordinate pledge of the equity interest in the Intermediate Entity.

Satisfaction:

Either full repayment of the Loan principal and interest, or termination of the Commuter Parking Ground Lease and delivery to us of the Commuter Parking Ground Lease premises and title to the improvements located thereon (i.e.; the Commuter Parking Spaces) without any encumbrance other than LACMTA permitted encumbrances and MBS Parking Ground Lessee's right to control and use the Commuter Parking Spaces at all times other than during the period between the beginning of each weekday morning's commute and ending at the end of each weekday evening's commute.

Guaranty/Payment & Performance Bonds:

Completion of the Phase A development, including the Parking Structure and the Commuter Parking, will be guaranteed by MBS, in a manner and with collateral reasonably acceptable to us. In addition, the Phase A improvements, including the Parking Structure and the Commuter Parking will be covered by payment and performance bonds in a form reasonably acceptable to us.

Audit Rights:

We will be provided with audit rights consistent with customary practice in the construction and permanent loan industry with respect to the Loan.

Other:

Other customary and relevant provisions consistent with standards in the construction and permanent loan industry

(as applicable) will be included in as part of the loan documents.

**MBS PARKING
GROUND LEASE:**

Lessor: Us

Lessee: MBS Parking Ground Lessee

Purpose: MBS Parking Ground Lessee, as tenant, will enter into the Commuter Parking Ground Lease with us, as landlord, to provide for the construction and operation of the Commuter Parking Spaces and the vehicular and pedestrian access thereto as part of the larger shared Parking Structure. The Commuter Parking Ground Lease will contain terms and conditions that are substantially consistent with those set forth in this *Summary of Key Terms and Conditions of the Loan, Commuter Parking Ground Lease & Commuter Parking Sublease*, as the same may be modified by the Board.

Unsubordinated Ground Leases: Our interest in the development site under the Commuter Parking Ground Lease will be unsubordinated to any interest MBS, MBS Parking Ground Lessee or its lenders (including MBS Lender) will have in the development site, whether under the Commuter Parking Ground Lease or otherwise.

Ground Lease Premises: The premises under the Commuter Parking Ground Lease shall be that portion of the Parking Structure containing the Commuter Parking Spaces. The Commuter Parking Ground Lease shall reserve rights of vehicular and pedestrian access through the Parking Structure related to use of the Commuter Parking Spaces. At our sole and absolute discretion, such vehicular and pedestrian access rights may, instead, be granted in the Commuter Parking Sublease or a Reciprocal Easement Agreement covering the Parking Structure.

Ground Lease Term: 55 years

Ground Rent: 3% of gross rental income from MBS's leasing of the Commuter Parking Spaces during non-commute hours, in accordance with the terms and conditions of Attachment A to the October 18, 2008 staff report requesting authorization

to proceed with the Westlake/MacArthur Park joint development, which was approved by the Board on October 25, 2006.

**Restrictive Parking
Covenant/Retained Right:**

The Commuter Parking Ground Lease shall contain a restrictive covenant/retained right that will limit use of the Commuter Parking Spaces during the period commencing at the beginning of each weekday morning's commute and ending at the end of each weekday evening's commute to parking by transit users and parking related to our operations and will provide us with all of the use and operational rights we have under the Commuter Parking Sublease.

**Maintenance and
Operation:**

MBS shall maintain and operate the ground leased premises in accordance with the terms and conditions of Attachment A to the October 18, 2008 staff report requesting authorization to proceed with the Westlake/MacArthur Park joint development, which was approved by the Board on October 25, 2006.

Encumbrances:

Subject to our reasonable approval, MBS Parking Ground Lessee may encumber its leasehold estate with mortgages, deeds of trust or other financing instruments. The Commuter Parking Ground Lease will include mutually acceptable mortgagee protection provisions. In no event, however, shall our fee title or the rent payable to us under the Commuter Parking Ground Lease, or any portion thereof, be subordinated or subject to MBS's, MBS Parking Ground Lessee's or any other financing, claims or liens.

Other:

Other customary provisions contained in recent LACMTA ground leases and set forth in Attachment A to the October 18, 2008 staff report requesting authorization to proceed with the Westlake/MacArthur Park joint development, which was approved by the Board on October 25, 2006, will be included in the Commuter Parking Ground Lease.

**COMMUTER
PARKING
SUBLEASE:**

Sublessor: MBS Parking Ground Lessee

Sublessee: Us

Purpose: We, as subtenant, will enter into the Commuter Parking Sublease with MBS Parking Ground Lessee, as sublessor, to provide for our right to use the Commuter Parking Spaces during that period commencing at the beginning of each weekday morning's commute and ending at the end of each weekday evening's commute, as reasonably determined by us.

Subleased Premises: The premises under the Commuter Parking Sublease shall be the same as the premises under the Commuter Parking Ground Lease, with an appurtenant right of vehicular and pedestrian access to/from such premises through the Parking Structure. At our sole and absolute discretion, the appurtenant access rights may, instead, be set forth as a reservation in the Commuter Parking Ground Lease or granted in a Reciprocal Easement Agreement covering the Parking Structure.

Sublease Term: 30 years; coterminous with the Loan term.

Sublease Rent: An amount equal to one twelfth of the annual AFR, multiplied by the outstanding Loan balance, paid monthly, throughout the term of the Commuter Parking Sublease. Until the Prepayment Date under the Loan, this amount will equal the monthly interest payment due under the Loan.

Maintenance and Operation: MBS shall maintain and operate the subleased premises in accordance with terms and conditions of the Commuter Parking Ground Lease.

Encumbrances: We may encumber our subleasehold estate with mortgages, deeds of trust or other financing instruments. The Commuter Parking Sublease will include mutually acceptable mortgagee protection provisions.

Subordination and Non-Disturbance Agreements: MBS Parking Ground Lessee and each party having a security interest in the ground leased premises will enter into a subordination and non-disturbance agreement with us, in a form reasonably approved by us. Such agreements will provide for the quiet enjoyment of our rights under the Commuter Parking Sublease throughout the sublease term under all circumstances.

Other:

Other customary provisions consistent with Attachment A to the October 18, 2008 staff report requesting authorization to proceed with the Westlake/MacArthur Park joint development, which was approved by the Board on October 25, 2006.

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