

ORDINANCE NO. 007-4

AN ORDINANCE AUTHORIZING THE ASSIGNMENT AND ASSUMPTION BY 108 N. STATE TRANSIT, L.L.C., OF THE RIGHTS AND OBLIGATIONS OF 108 NORTH STATE STREET II, LLC, UNDER THE MILLS/CTA DEVELOPMENT AGREEMENT DATED OCTOBER 15, 2005, RELATING TO A TRACK CONNECTION AND SUBWAY STATION AND AIRPORT CHECK-IN FACILITY AT BLOCK 37

WHEREAS, Pursuant to Chicago Transit Board Ordinance No. 005-48, adopted on April 13, 2005, the Board authorized the entry by CTA into a development agreement with 108 North State Street II, L.L.C., a Delaware limited liability company ("Company") and an affiliate of The Mills Limited Partnership, a Delaware limited partnership ("TMLP") relating to a track connection and subway station and airport check in facility ("CTA Block 37 Project") to be located within a block of vacant property located between Washington, State, Randolph and Dearborn Streets in Chicago ("Block 37"); and

WHEREAS, The CTA and the Company executed and delivered that certain Mills/CTA Development Agreement dated as of October 15, 2005 ("Development Agreement") in connection with the CTA Block 37 Project; and

WHEREAS, In connection with the Development Agreement, TMLP executed and delivered to CTA a Guaranty of Payment and Performance, dated as of October 15, 2005 ("Mills Guaranty"), pursuant to which TMLP guaranteed the payment and performance obligations of the Company under the Development Agreement; and

WHEREAS, The Company has proposed to assign its rights and obligations under the Development Agreement to 108 N. State Transit, L.L.C., an Illinois limited liability company ("Transit LLC"), an affiliate of Joseph Freed and Associates, LLC, an Illinois limited liability company ("JFA LLC") and DDL, LLC, an Illinois limited liability company ("DDL"); and

WHEREAS, In connection with the proposed assignment and assumption by Transit LLC of the rights and obligations of the Company under the Development Agreement, DDL has agreed to provide to CTA a replacement Guaranty of Payment and Performance, guaranteeing all of the payment and performance obligations of Transit LLC under the Development Agreement; and

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WHEREAS, In connection with the proposed assignment and assumption by Transit LLC of the obligations of the Company under the Development Agreement and the delivery by DDL of a replacement Guaranty of Payment and Performance, TMLP has requested that CTA release TMLP from its obligations under the Mills Guaranty; and

WHEREAS, The Company may not assign its rights and obligations under the Development Agreement without the prior written consent of the CTA; and

WHEREAS, Such assignment also requires the prior written consent of the City of Chicago pursuant to that certain Intergovernmental Agreement between the City of Chicago and the CTA dated as of October 15, 2005 ("Block 37 IGA"), approved by the Board pursuant to Chicago Transit Board Ordinance No. 005-49, dated April 13, 2005; and

WHEREAS, The Board must approve any consent to an assignment by the Company of its rights and obligations under the Development Agreement and any release by CTA of the obligations of TMLP under the Mills Guaranty; now, therefore:

BE IT ORDAINED BY THE CHICAGO TRANSIT BOARD
OF THE CHICAGO TRANSIT AUTHORITY:

SECTION 1. The President, or his designee, is authorized to execute and deliver to Transit LLC a Consent to Assignment and Assumption of CTA/Mills Development Agreement, substantially in conformance with Exhibit A attached hereto. The Consent will be expressly conditioned upon, among other terms: (i) the execution and delivery by DDL of a Guaranty of Payment and Performance, substantially in conformance with Exhibit B attached hereto, and (ii) the receipt by CTA of the consent of the City of Chicago to such assignment and assumption.

SECTION 2. In connection with the Consent to Assignment and Assumption of the CTA/Mills Development Agreement and following receipt by CTA of a Guaranty of Payment and Performance executed by DDL, the President, or his designee, is also authorized to execute and deliver to TMLP a Release Agreement, substantially in conformance with Exhibit C attached hereto.

SECTION 3. In connection with the transactions referred to in Sections 1 and 2 above, the President, or his designee, is also authorized to execute and deliver to Transit LLC, JFA LLC and DDL an estoppel letter, substantially in

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conformance with Exhibit D attached hereto, setting forth representations by the CTA regarding certain factual matters with respect to the CTA Block 37 Project and the Development Agreement.

SECTION 4. This ordinance shall be in full force and effect from and after its passage.

APPROVED:

PASSED:

Chairman

Assistant Secretary

January 10, 2007

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