

ORDINANCE NO. 008-86

AN ORDINANCE AUTHORIZING THE
SECOND AMENDMENT TO THE MILLS/CTA
DEVELOPMENT AGREEMENT DATED
OCTOBER 15, 2005 BETWEEN THE
CHICAGO TRANSIT AUTHORITY AND 108
NORTH STATE STREET II, LLC, RELATING
TO A TRACK CONNECTION AND SUBWAY
STATION AND AIRPORT CHECK-IN
FACILITY AT BLOCK 37 AND AUTHORIZING
ENTRY INTO A SETTLEMENT AGREEMENT

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 (the "Company"), and an affiliate of The Mills Limited Partnership, a Delaware limited partnership, relating to a track connection and subway station and airport check in facility (the "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 (the "Development Agreement") in connection with the CTA Block 37 Project; and

WHEREAS, Pursuant the Development Agreement, the CTA was to construct the so called "CTA Portion" of the CTA Block 37 Project, including improvements to be constructed by CTA outside the perimeter boundaries of the Block 37 in order to connect the tunnel structure to be constructed by the Company within the perimeter boundaries of the Block 37 to the existing CTA tunnel structures located under State and Dearborn Streets and all CTA rail-operations related systems, including fare collection and control equipment, traction power equipment, rail tracks, ties, switches and signals; and

WHEREAS, Pursuant the Development Agreement, the Company was to construct the so called "Mills Portion" of the CTA Block 37 Project, including components of the CTA tunnel structures and other improvements within the below-grade portions of Block 37 and an airport check-in facility and baggage facilities and other related improvements; and

WHEREAS, The CTA Portion of the CTA Project was to be financed by CTA through the CTA Financial Contribution in the amount of One Hundred Seventy Two Million Three Hundred Fifty-One Thousand Six Hundred Dollars (\$172,351,600), which includes certain funds to be provided by the City of Chicago to CTA in an amount not to exceed Forty Two Million Three Hundred Fifty Thousand

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Dollars (\$42,350,000), and the Mills Portion of the CTA Project was to be financed in part by CTA through the CTA Financial Contribution and in part by the Company through the Mills Financial Contribution in the amount of Forty Million Nine Hundred Ninety One Thousand Six Hundred Dollars (\$40,991,600); and

WHEREAS, Pursuant to the Development Agreement, the Company and CTA approved a "Preliminary Project Budget" for the CTA Block 37 Project in an amount equal to Two Hundred Thirteen Million Three Hundred Forty-Three Thousand Two Hundred Dollars (\$213,343,200); and

WHEREAS, Pursuant to Chicago Transit Board Ordinance No. 007-4 adopted on January 10, 2007, the Board authorized the Company 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, and DDL, LLC, an Illinois limited liability company; and

WHEREAS, Pursuant to Chicago Transit Board Ordinance No. 007-146 adopted on November 30, 2007, the Board authorized entry into First Amendment to Mills/CTA Development Agreement (the "First Amendment"), Transit LLC, as successor to the Company, and agreed to a revised Preliminary Project Budget (the "Revised Preliminary Project Budget"), which Revised Preliminary Project Budget is attached to the First Amendment as Exhibit A and provides for the reallocation of funds in certain line items of the Project Budget allocable to the CTA Financial Contribution; and

WHEREAS, Pursuant to a Second Amendment to Mills/CTA Development Agreement ("Second Amendment"), Transit LLC, as successor to the Company, and the Authority propose to modify and reduce the scope of the Mills Portion of the CTA Project to encompass an unfinished "shell and core" to permit future construction and operation by the Authority of its proposed Station Facility and Airport Check-In Facility ("Reduced Scope"), revise the amount of the CTA Financial Contribution for the Reduced Scope to the amount of Eighty-nine Million One Hundred Twenty-nine Thousand Two Hundred Dollars (\$89,129,200) and provide construction access easements to provide access to the Authority to complete the Mills Portion of the CTA Project at a future date; and

WHEREAS, The Second Amendment further deletes any liability to the Authority for liquidated damages and provides for cross indemnification between Transit LLC and the Authority; and

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WHEREAS, A copy of the proposed Second Amendment is attached hereto as **Exhibit A**; and

WHEREAS, Pursuant to a Settlement Agreement between Transit LLC and the Authority ("Settlement Agreement"), the parties waive and release all claims, provide that the sum of Eighty-nine Million One Hundred Twenty-nine Thousand Two Hundred Dollars (\$89,129,200) is the total amount to be paid by the Authority for the Reduced Scope Mills Portion of the CTA Project, provide that the Authority will use its best efforts to cause a Request for Proposals to be issued to complete the Mills Portion of the CTA Project and waive liquidated damages against the Authority; and

WHEREAS, A copy of the proposed Settlement Agreement is attached hereto as **Exhibit B**; and

WHEREAS, The Board must approve the Second Amendment and the Settlement Agreement; now, therefore:

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

SECTION 1. The Chairman, or her designee, is authorized to execute and deliver to Transit LLC, the Second Amendment, substantially in conformance with **Exhibit A** attached hereto and the Settlement Agreement, substantially in conformance with **Exhibit B** attached hereto.

SECTION 2. This ordinance shall be in full force and effect from and after its passage.

APPROVED:

PASSED:

Chairman

Assistant Secretary

June 11, 2008

June 11, 2008