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Petition

April 4, 2006

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VIA OVERNIGHT MAIL

Hon. Jaclyn A. Brilling, Secretary
New York State Public Service Commission
Three Empire State Plaza
Albany, NY 12223-1350

***Re: Joint Petition of Consolidated Edison Company of
New York, Inc., and 405 W. 53rd Development
Group LLC For Authority Under Section 70 of the
Public Service Law To Transfer Certain Real
Property Located at 405-427 West 53rd Street and
For Related Relief***

Dear Secretary Brilling:

Enclosed is a Joint Petition of Consolidated Edison Company of New York, Inc., and 405 W. 53rd Development Group LLC requesting Public Service Commission authorization under Section 70 of the Public Service Law for the transfer of certain real property located in New York City. Also enclosed is a copy of this letter which I would appreciate being date-stamped and returned to me in the enclosed self-addressed envelope. Please contact me if you need any additional information regarding this filing.

Very truly yours,

Celeste A. Smith

Enclosures: 5 copies
Raymond H. Levin, Esq.
Mario Procida

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

-----X
Joint Petition of Consolidated Edison :
Company of New York, Inc., and 405 W. 53rd :
Development Group LLC For Authority Under :
Section 70 of the Public Service Law To Transfer :
Certain Real Property Located at 405-427 West 53rd :
Street and For Related Relief :
-----X

**JOINT PETITION OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
AND 405 W. 53rd DEVELOPMENT GROUP LLC
FOR AUTHORITY UNDER SECTION 70 OF THE PUBLIC SERVICE LAW
TO TRANSFER CERTAIN REAL PROPERTY
LOCATED AT 405-427 WEST 53rd STREET AND FOR RELATED RELIEF**

April 3, 2006

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EXHIBITS

Exhibit A – Information Required Under Parts 18 and 31 of the Commission’s Rules and Regulations

Exhibit B – Sale And Purchase Agreement Between D.C.K. Management Corp., A Wholly-Owned Subsidiary Of Consolidated Edison Company Of New York, Inc., And 405 W. 53rd Development Group LLC

Exhibit C – Environmental Assessment Form

AFFIDAVITS

Affidavit of Edward J. Rasmussen, Vice President and Controller, Consolidated Edison Company Of New York, Inc., regarding Rate Treatment of the Net Proceeds

Affidavit of T. Andrew Behymer, Senior Account Director, Cushman and Wakefield, Inc., regarding Auction Protocols

Affidavit of Mario Procida, Principal, West 53rd Development Group, regarding the Purchaser’s Development Team and Public Benefits of the Sale

**BEFORE THE NEW YORK STATE
PUBLIC SERVICE COMMISSION**

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Joint Petition of Consolidated Edison :
Company of New York, Inc., and 405 W. 53rd :
Development Group LLC For Authority Under :
Section 70 of the Public Service Law To Transfer :
Certain Real Property Located at 405-427 West 53rd :
Street and For Related Relief :
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**JOINT PETITION OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.,
AND 405 W. 53rd DEVELOPMENT GROUP LLC
FOR AUTHORITY UNDER SECTION 70 OF THE PUBLIC SERVICE LAW
TO TRANSFER CERTAIN REAL PROPERTY
LOCATED AT 405-427 WEST 53RD STREET AND FOR RELATED RELIEF**

I. OVERVIEW

1. Pursuant to Section 70 of the Public Service Law, Consolidated Edison Company of New York, Inc. ("Con Edison"), and 405 West 53rd Development Group LLC ("West 53rd Development Group") (referred to herein as "the Petitioners") hereby request authorization from the Public Service Commission ("the Commission") to transfer a parcel of real property located at 405-427 West 53rd Street, New York, New York ("the Property"), from D.C.K. Management, a subsidiary of Con Edison, to West 53rd Development Group.¹ The Property is to be transferred pursuant to a Sale and Purchase Agreement between D.C.K. Management and West 53rd Development Group, dated as of June 30, 2005 (the "Agreement").
2. As will be described below and in the attached affidavit of T. Andrew Behymer, Senior Account Director of Cushman and Wakefield, Inc. ("C&W"), the process used by C&W, as

¹ The Property was acquired by and is held by D.C.K. Management, a wholly-owned subsidiary of Con Edison.

agent for Con Edison, for the auction of the Property was designed to maximize the value received for the Property. The affidavit of Edward J. Rasmussen, Con Edison Vice President and Controller, outlines the proposed accounting and rate treatment of the expected net gain resulting from the sale. The affidavit of Mario Procida, a Principal of West 53rd Development Group, describes the development team and the anticipated public interest benefit resulting from the sale of the Property by Con Edison to West 53rd Development Group. Collectively, this Joint Petition and affidavits demonstrate that the transfer is in the public interest and should be approved by the Commission after full compliance with all applicable SEQRA requirements.

3. The Petitioners request authorization for the transfer of the Property to West 53rd Development Group, a New York limited liability company, for a purchase price of \$ 32,119,200 million. The asset to be transferred to West 53rd Development Group consists of real property.

4. Petitioners also request that the Commission approve the Agreement in connection with the transaction. A copy of the Agreement is attached as Exhibit B to this Joint Petition and is summarized herein.

5. Con Edison requests approval of Con Edison's proposed accounting and rate treatment for the sale of the Property and the resulting rate treatment of the net proceeds, as detailed in the accompanying affidavit of Mr. Rasmussen.

6. Finally, Petitioners respectfully request that the Commission act expeditiously on this Joint Petition.

7. The information required to be presented under Parts 31 and 18 of the Commission's Rules and Regulations is set forth in Exhibit A.

8. A full Environmental Assessment Form ("EAF") is attached as Exhibit C.

II. HISTORY OF THE PROPOSED TRANSFER

9. The Property was acquired by Con Edison's wholly-owned subsidiary, D.C.K. Management, in 1965 and was being held for the future construction of a substation. As stated in the affidavit of Mr. Rasmussen, the original book cost of the Property is \$ 1,574,916. The Property has never been used in Company operations and was classified as "non-utility" in August 2004. Previously, the Property was classified as Electric Plant Held for Future Use.

10. At the time the Property was acquired, the applicable New York City zoning laws permitted the construction of a substation as a matter of right. Subsequently, New York City amended the zoning map and rezoned the district in which the Property is located from a manufacturing district to a district permitting only residential and commercial uses. The new zoning does not permit the construction of substations as a matter of right.

11. Recently, the Company purchased land situated on Eleventh Avenue at West 49th Street, Manhattan, for the construction of a new substation, and, as a result, the Property is no longer needed by the Company, and the sale of the Property will not adversely impact Con Edison's utility operations.

III. DESCRIPTION OF THE PARTIES

A. Con Edison

12. Con Edison is an electric, gas, and steam corporation organized under the laws of the State of New York, including the Transportation Corporations Law, and has its principal place of business at 4 Irving Place, New York, New York 10003. Con Edison supplies electric service in all of New York City (except part of Queens) and in most of Westchester County; gas service in Manhattan, the Bronx and parts of Queens and Westchester Counties; and steam service in part of Manhattan.

B. West 53rd Development Group

13. West 53rd Development Group is a New York limited liability company, with an office at 456 East 173rd Street, Bronx, New York 10457, a nominee of GPG Equities LLC, an entity formed by the principals of SDS/Procida Venture and Gordon Group Holdings LLC ("GPG"). The principals of GPG have developed over 1,000 housing units and significant retail projects, both locally and nationally, over a ten-year period.

IV. THE AUCTION PROCESS

14. Con Edison states that the auction process was undertaken by C&W and Con Edison to assure that Con Edison maximized the proceeds to be received for the Property. The affidavit of Mr. Behymer sets forth in detail the manner in which the auction of the Property was conducted.

15. As described in greater detail in Mr. Behymer's affidavit, C&W, as agent for Con Edison, began the auction process in August 2004. At that time, C&W mailed a one-page sales announcement and confidentiality letter to one hundred and eighty-five prospective purchasers that included New York-based and national-based developers and investors. Forty-four prospective bidders executed confidentiality agreements and were provided a formal offering memorandum and certain due diligence materials, including title work, excerpts from an environmental "Phase I" report, and other property information, including a copy of the license agreement with the parking operator for the Property.

16. Bid guidelines and first round non-binding bidding solicitations were provided to the forty-four prospective bidders. On October 22, 2004, eleven first-round bids were received, ranging from \$ 12 million to \$ 32.1 million. Upon review of the first-round bid proposals, five bidders were invited to participate in the second round of bidding.

17. These five bidders submitted second-round bids on November 3, 2004, with the range of bids from \$ 20.1 million to \$ 36.1 million. The highest of these bidders subsequently elected not to participate in the second round of bidding. C&W and Con Edison conducted follow-up meetings and/or teleconference calls with the four highest bidders, and two of these bidders were invited to submit "best and final offer" bids. Offers from these two bidders were received on November 22, 2004, with the highest bidder, GPG Equities, offering \$ 32.119 million, and the second bidder offering \$ 26.097 million. West 53rd Development Group, a nominee of GPG Equities, was provided a draft agreement in January 2005, and the parties negotiated the agreement that was executed as of June 30, 2005. As stated in Mr. Behymer's affidavit, C&W confirmed that the sales price of the Property is consistent with its appraised value.

V. THE SALE AND PURCHASE AGREEMENT

18. Under the terms of the Agreement between D.C.K. Management and West 53rd Development Group, the Scheduled Closing Date (subject to certain customary adjournment rights provided for in the Agreement) is the first Business Day following the ninetieth day after the "Final PSC Approval Date." Subject only to any right of adjournment specifically and expressly granted to either party in the Agreement, time is of the essence for the Purchaser to close thirty days after the Scheduled Closing Date. However, if the Final PSC Approval Date has not occurred on or prior to July 1, 2010, either party shall have the right to terminate the Agreement on written notice to the other, and the deposit will be refunded to the Purchaser.

19. West 53rd Development Group tendered a deposit of \$ 2,408,940 to the escrow agent, Commonwealth Land Title Insurance Company, on June 30, 2005. If PSC approval has not been received by the first anniversary of the signing of the Agreement, the deposit will be reduced to

\$ 1,605,960, provided Con Edison receives from the Purchasers the guaranty specified in the Agreement. In such case, the balance due at the closing will be \$ 30,513,240.

20. Subject to certain representations, warranties and agreements expressly set forth in the Agreement, the Property is being sold in its "as is" condition, and West 53rd Development Group must provide Con Edison a release of environmental liability at the closing.

21. At the closing of title for the Property, West 53rd Development Group is required to sign a covenant to be recorded against the Property, which will provide that if the Property is rezoned so that the floor area ratio ("FAR") of the Property exceeds 4.2, and West 53rd Development Group or its successor or assign obtains and utilizes additional floor area in excess of 4.2 FAR, then Con Edison will be entitled to receive an additional payment from West 53rd Development Group or its successor or assign in an amount of \$ 240 per square foot of Future Floor Area plus 50 percent of the Fair Market Value of Utilized Excess Development Rights, less the amounts paid to any third party for any Utilized Excess Development Rights, as these terms are defined in Exhibit E to the Agreement. This covenant is to remain effective for a period of 30 years after the closing date. The covenant will not be applicable in certain situations outlined in Exhibit E to the Agreement.

22. The Agreement also states that West 53rd Development Group's purpose in acquiring the Property is for development and not re-sale, other than for certain permitted sales, including sales of condominium units and leases to tenants. The Agreement requires West 53rd Development Group, or its successors and assigns, in certain instances, to pay or cause to be paid to Con Edison 50 percent of all net sales proceeds received by West 53rd Development Group, or its successors or assigns, from certain transfers of the property or of interests in the Property or the

owner of the Property. Such payments, if any, are in addition to the \$ 32.1 million purchase price provided for in the Agreement.

23. Con Edison and West 53rd Development Group may terminate the Agreement if the Commission imposes certain conditions to its approval of the sale of the Property. These conditions ("Transaction Conditions") include the imposition of certain costs, liabilities or other obligations on the affected party that are not set forth in the Agreement and (i) materially and adversely affect such party; (ii) will result in Con Edison being required to expend more than \$ 250,000 to perform such conditions or West 53rd Development Group incurring increased development costs of more than \$ 250,000; and/or (iii) have a material adverse effect upon Con Edison's authority and/or ability to convey title and possession of the Property in accordance with the provisions of the Agreement. However, Transaction Conditions do not include certain Commission actions, including those with respect to (i) standard or boiler-plate non-financial procedural conditions which are typical for PSC approval of property dispositions such as this and not materially adverse to the party in question and (ii) the allocation of sale proceeds between Con Edison's shareholders and ratepayers, unless such conditions impose any costs, charges or obligations on Con Edison's shareholders in excess of \$ 250,000.

VI. THE SALE OF THE PROPERTY IS IN THE PUBLIC INTEREST

24. West 53rd Development Group's development plans for the Property are consistent with the development trends in the area and will result in benefits to the community. As discussed in the affidavit of Mario Procida, Manager of West 53rd Development Group, the West 53rd Development Group plans to construct a seven-story, 83-unit residential building, which may include an underground parking garage, on now-vacant land being used as a parking lot. As explained by Mr. Procida, this building, planned to be consistent with the design of the

neighborhood, will provide new housing in Manhattan and contribute to the economic development of the area.

25. Neither Con Edison's sale of the Property nor West 53rd Development Group's proposed development of the Property will have any substantial adverse impact on the environment, Con Edison's system, or service to its customers. The Petitioners are submitting with this Petition a full Environmental Assessment Form ("EAF") (Exhibit C), which contains a detailed analysis of the potential environmental impacts of the proposed development project and concludes that West 53rd Development Group's development project will not have a significant impact on the environment.

VII. PROPOSED RATE TREATMENT OF THE NET GAIN RESULTING FROM THE SALE

26. As described in the affidavit of Mr. Rasmussen, the sale of the Property is expected to produce a net gain of \$ 16,278,070 (*i.e.*, total proceeds in excess of the Company's unrecovered investment, certain taxes, and other sale-related costs). As more fully explained by Mr. Rasmussen, the proposed sale of the Property will benefit Con Edison's customers since the entire net proceeds will be deferred for the benefit of customers, with interest accrued at the Other Customer-Provided Capital Rate.

VIII. CORRESPONDENCE AND COMMUNICATIONS

27. All communications and correspondence with respect to this Joint Petition should be addressed to the following:

For Con Edison:

Candida Canizio
Director, Real Estate
Consolidated Edison Company of New York, Inc.
4 Irving Place, Room
New York, New York 10003
Tel: 212-460-3188
Email: canizioc@coned.com

With a copy to:

Celeste A. Smith
Consolidated Edison Company of New York, Inc.
4 Irving Place, Room 1850-S
New York, New York 10003
Tel: 212-460-6699
Fax: 212-677-5850
Email: smithce@coned.com

For West 53rd Development Group:

West 53rd Development Group
456 East 173rd Street
Bronx, New York 10457
Attn: Mario Procida
Tel: 718-299-700
Fax: 718-716-9054
Email: mprocida@procidarealty.com

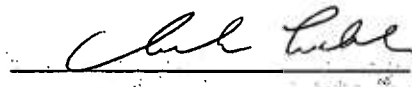
With a copy to:

Wachtel & Masyr, LLP
110 East 59th Street
New York, New York 10022
Attn: Raymond H. Levin
Tel: 212-909-9500
Fax: 212-909-9457
Email: rlevin@wmlp.com

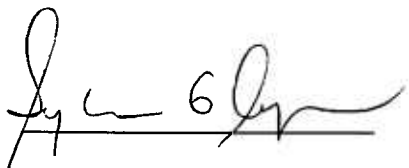
VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

Chanoch Lubling , being duly sworn, deposes and says that he is a Vice President of Consolidated Edison Company of New York, Inc., one of the Petitioners above named; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information and belief.



Sworn to before me this
4th of April 2006



Notary Public

SYLVEN GLYNN
Notary Public, State of New York
No. 01GL5065881
Qualified in Kings County
Commission Expires September 16, ~~19~~2006

VERIFICATION

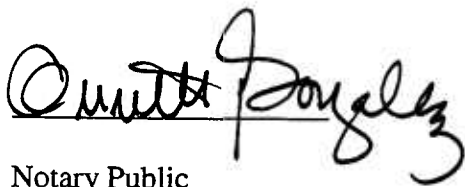
STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

Mario Procida, being duly sworn, deposes and says that he is a Principal of 405 West 53rd Development Group LLC, a New York corporation, one of the Petitioners above named; that he has read the foregoing Joint Petition and knows the contents thereof; and that the same is true to the best of his knowledge, information and belief.



Mario Procida

Sworn to before me this
3 of April 2006



Notary Public

ANNETTE GONZALEZ
NOTARY PUBLIC, State of New York
No. 01G05045928
Qualified in Rockland County
Commission Expires June 26, 2007

AFFIDAVIT OF EDWARD J. RASMUSSEN

I, Edward J. Rasmussen, being duly sworn, deposes and says as follows:

1. I am Vice President and Controller of Consolidated Edison Company of New York, Inc. ("Con Edison" or the "Company"). The purpose of this affidavit is to provide preliminary calculations of the expected net gain to be realized by Con Edison from the sale of property located at 405-427 West 53rd St., Manhattan, New York, and designated on the Tax Map of the City of New York, New York County as Block 1063, Lot 17 (the "Property") to 405 West 53rd Development Group LLC ("Purchaser"), under the Sale and Purchase Agreement between D.C.K. Management Corp., a wholly-owned subsidiary of Consolidated Edison Company of New York, Inc. ("Seller"), and the Purchaser, dated as of June 30, 2005. My affidavit will also describe the proposed ratemaking treatment for the expected net gain, and proposed accounting entries that will be used to record the sale and ratemaking treatment of the Property.

Net Gain Resulting From the Sale of the Property

2. The closing on the Property is contingent upon the Public Service Commission's approval. The Property was acquired by Con Edison's wholly-owned subsidiary, D.C.K. Management Corp., in 1965 and was initially classified as Electric Plant Held for Future Use because it was held for the future construction of a substation. The Property has never been used in Company operations and was re-classified as "non-utility" in August 2004 when it became clear that it was no longer needed for utility purposes.

3. The calculation of Con Edison's estimated net gain on the sale of the Property in current year dollars, both before and after income taxes, is shown on Attachment 1, page 1. The calculation of the net gain as shown therein does not reflect possible payments to Con Edison under the Agreement's rezoning covenant for additional floor area obtained by the Purchaser over a FAR of 4.2 because such amount cannot be ascertained at this time and may never become due. For the same reason, the calculations cannot reflect any possible payments to Con Edison that become payable under the Agreement upon certain property transfers by Purchaser.

4. As shown on Attachment 1, page 1, the estimated net gain on the sale was calculated by subtracting from the sales price of \$32,119,200: (a) the net book cost of the asset (original book cost); (b) estimated selling costs, including the fee to Cushman & Wakefield and the cost of the appraisal, totaling \$1,291,118 as shown on Attachment 1, page 2; (c) other incremental costs of \$90,000, which are more fully described on Attachment 1, page 3 (d) statutory New York State and New York City transfer taxes at a rate of 3.025% of the sales price, totaling approximately \$971,606; and (e) New York City gross receipts taxes on the sales, totaling approximately \$662,502, as shown on Attachment 1, page 1. After these amounts are deducted from the estimated sales price, the net gain, before income taxes, resulting from the sale of the Property, in current dollars, is \$27,529,058. As further shown on Attachment 1, page 1, after reflecting New York State income taxes on the sale totaling approximately \$2,485,874, and Federal income tax payable of approximately \$8,765,114, the estimated after-tax net gain, in current dollars, is \$16,278,070.

5. Within 60 days after closing, the Company will update its calculation of the net gain and inform the Commission's Staff of the actual net gain realized on the sale.

Proposed Ratemaking and Accounting

6. In line with established accounting protocols respecting such property dispositions, Con Edison proposes to defer the net after-tax proceeds on the sale of the Property, plus interest at the Commission-approved Other Customer Provided Capital Rate, for the future benefit of Con Edison's electric customers.

7. Preliminary accounting entries necessary to implement the sale and the rate treatment contemplated by the Joint Proposal, assuming total proceeds, costs and taxes as estimated on Attachment 1, are enumerated on Attachment 2 to my affidavit.

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)


EDWARD J. RASMUSSEN, being duly sworn, says:

The foregoing affidavit and the information contained therein is true and correct
to the best of my knowledge and belief.



EDWARD J. RASMUSSEN

Sworn to before me this
4th day of April 2006



MARIA DALTON
Notary Public, State of New York
No. 01DA5010017
Qualified in Nassau County
Commission Expires March 22, 2007

Consolidated Edison Company of New York, Inc.
Sale of 405-427 W. 53rd St.
Summary

		<u>Amount</u>
Estimated Sales Proceeds		<u>\$ 32,119,200</u>
Book Cost - Non-Utility Plant - Land		1,574,916
<u>Estimated Costs</u>		
Selling Costs	\$ 1,291,118	
Other Costs	<u>90,000</u>	
Total Costs		1,381,118
<u>Taxes, Other than Income Taxes</u>		
Transfer Taxes @ 3.025%	\$ 971,606	
NYC Gross Receipts Taxes @ 2.35%	<u>662,502</u>	
Total Taxes, Other than Income Taxes		<u>1,634,108</u>
Net Gain Before Income Taxes		27,529,058
<u>Income Taxes</u>		
New York State Income Tax @ 9.03%	\$ 2,485,874	
Federal Income Tax @ 35%	<u>8,765,114</u>	
Total Income Taxes		<u>11,250,988</u>
Net Gain After Income Taxes		<u><u>\$ 16,278,070</u></u>

Consolidated Edison Company of New York, Inc.
Sale of 405-427 W. 53rd St.
Estimated Selling Costs

	<u>Amount</u>
Cushman & Wakefield Commission @ 4%	\$ 1,284,768
Appraisal Fee	5,000
Recording Fee	350
Other	<u>1,000</u>
Total Estimated Selling Costs	<u><u>\$ 1,291,118</u></u>

Consolidated Edison Company of New York, Inc.
Sale of 405-427 W. 53rd St.
Estimated Other Costs

	<u>Amount</u>
Consultant Cost - Oversight of Buyer's Environmental Due Diligence Testing	\$ 6,000
Public Notice Ads	33,000
Incremental Costs to Secure Site (fencing, etc.)	50,000
Other	<u>1,000</u>
Total Other Costs Estimated	<u>\$ 90,000</u>

Consolidated Edison Company of New York, Inc.
Sale of 405-427 W. 53rd St.
Proposed Journal Entries - Sale

PSC				
<u>No.</u>	<u>Account</u>	<u>Description</u>	<u>Debit</u>	<u>Credit</u>
1	143	Other Accounts Receivable	\$ 32,119,200	
	102	Plant Purchased or Sold		\$32,119,200
	131	Cash	\$ 32,119,200	
	143	Other Accounts Receivable		\$32,119,200
To record the sale, receipt of cash and defer the income effect.				
2	102	Plant Purchased or Sold	\$ 1,574,916	
	121	Non-Utility Plant		\$ 1,574,916
To transfer to the former account the unrecovered cost of the Company's investment in 405-427 W. 53 St., Manhattan, NYC property.				
3	182.3	Other Regulatory Assets	\$ 1,381,118	
	131	Cash		\$ 1,381,118
	102	Plant Purchased or Sold		
	182.3	Other Regulatory Assets	\$ 1,381,118	\$ 1,381,118
To record the payment of selling and other costs and defer the income effect.				
4	182.3	Other Regulatory Assets	\$ 971,606	
	131	Cash		\$ 971,606
	102	Plant Purchased or Sold	\$ 971,606	
	182.3	Other Regulatory Assets		\$ 971,606
To record the payment of transfer taxes and defer the income effect.				
5	102	Plant Purchased or Sold	\$ 662,502	
	236	Taxes Accrued		\$ 662,502
To accrue gross receipts taxes on the gain on sale of property.				
6	102	Plant Purchased or Sold	\$ 27,529,058	
	254	Other Regulatory Liabilities		\$27,529,058
To defer pre-tax gain on sale of the property.				

Consolidated Edison Company of New York, Inc.
Sale of 405-427 W. 53rd St.
Proposed Journal Entries - Sale

7	409.11	Income Taxes, Utility Operating Income	\$ 2,485,874	
	236	Taxes Accrued		\$ 2,485,874
	190	Accumulated Deferred State Income Tax	\$ 2,485,874	
	411.11	Income Taxes, Utility Operating Income		\$ 2,485,874
To record and defer the New York State Income Tax effect.				
8	409.1	Income Taxes, Utility Operating Income	\$ 8,765,114	
	236	Taxes Accrued		\$ 8,765,114
	190	Accumulated Deferred Federal Income Tax	\$ 8,765,114	
	411.1	Income Taxes, Utility Operating Income		\$ 8,765,114

To record and defer the Federal Income Tax effect.

AFFIDAVIT OF T. ANDREW BEHYMER

I, T. Andrew Behymer, Senior Account Director of Cushman & Wakefield, Inc. ("C&W"), do hereby certify as follows with respect to the auction procedures followed by C&W in connection with the potential sale of 405-427 W. 53rd Street, New York, New York ("Property") on behalf of Consolidated Edison Company of New York, Inc. ("Con Edison"):

1. Marketing of the Properties was formally initiated with the mailing of a one page sales announcement and confidentiality letter to one hundred eighty-five prospective purchasers in August 2004. These prospective purchasers included New York-based developer/investors, area institutions, and national real estate developers. The purpose of this initial mailing was to generate awareness that the Property was being offered for sale and to obtain executed confidentiality agreements from prospective purchasers.

2. A total of forty four purchasers executed confidentiality agreements. These respondents were provided with a Formal Offering Memorandum providing preliminary terms and conditions for the offering and additional details regarding the Property. The respondents also were provided due diligence material, including a title report, excerpts from a Phase I environmental report, and a copy of the license agreement with the parking operator for the Property.

3. In October 2004, bid guidelines and a form for first round non-binding bid submissions were provided to the forty four respondents. The bid form required the respondent to provide an offer price for the Property, a summary of relevant development and transactional experience, and conditions to the bid. Bidders were given the option of

providing information regarding financial resources and relationships with financial institutions.

4. On October 22, 2004, eleven first round bids were received. Response was strongest from residential developers. The price terms of the offers ranged from \$12 million to \$30.1 million. (One respondent requested to submit its bid after the deadline, and Con Edison agreed to accept it. That bid was for \$32.1 million, resulting in a first round bid range of \$12 million to \$32.1 million).

6. After receipt and evaluation of the first round bids, Con Edison elected to invite five bidders to participate in a second round of bidding.

7. These five bidders submitted second round bids on November 3, 2004, with the range of bids from \$20.1 million to \$ 36.1 million. (The second round bidder offering the highest bid of \$36.1 million subsequently elected not to participate in the second round of bidding). C&W and Con Edison conducted follow-up meetings and/or teleconference calls with the four highest bidders.

8. Based on the results of this follow-up, two bidders were requested to submit "best and final" offers. These two offers were received on November 22, 2004, with the higher bidder, GPG Equities, offering \$32.119 million. (The second bidder offered \$26.097 million.)

8. Based on superior pricing and other terms offered by GPG Equities, in January 2005, Con Edison issued a draft purchase and sale agreement with GPG Equities. Over the next several months, negotiations on the agreement were conducted between Con Edison and GPG Equities, culminating in a Sale and Purchase Agreement with West 53rd Development Group LLC, a nominee of GPG Equities, dated June 30, 2005.

9. C&W conducted an appraisal providing an opinion of the market value as of March 2005 of the fee simple interest in the property that further supports the purchase price.

10. I believe that the auction process outlined above was commercially reasonable and resulted in a competitive auction process which broadly exposed the Property to the market and maximized the value to be received for the Property as substantiated by the appraised value of the Property.



T. ANDREW BEHYMER

Sworn to before me this

30 day of MARCH 2006



Notary Public

MILTON R. MILLER
Notary Public, State of New York
No. 01M1506135
Qualified in Queens County
Commission Expires June 17, 2006

**Joint Petition of Consolidated Edison Company of New York, Inc. and 405 West 53rd Development Group LLC :
For Authority Under Section 70 of the Public Service :
Law to Transfer Certain Real Property Located at :
405-427 West 53rd St, New York, New York :
and for Related Relief :**
----- X

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

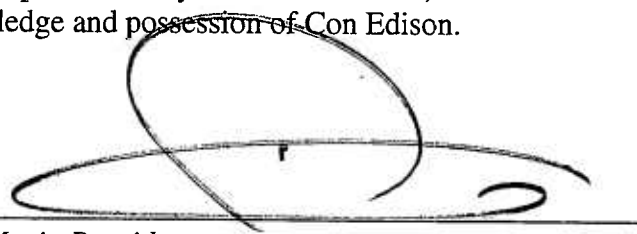
Mario Procida, having been duly sworn, deposes and says:

- West 53rd Development Group LLC sole members are GGH 405 W 53rd St, a New York limited liability company, and GPF 405 West 53rd LLC, a New York limited liability company each owning a 50% share interest in 405 West 53rd Development Group. The principal of GGH 405 W 53rd St is Sheldon Gordon

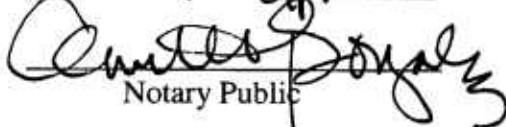
while the principal members of GPF 405 West 53rd LLC are Mario Procida and Linda Greco.

5. As indicated in the Joint Petition, pursuant to the requirements of the Agreement, West 53rd Development Group has delivered a cash deposit in the amount of \$2,408,940 (the "Deposit") to Commonwealth Land Title Insurance Company, the escrow agent, under the Agreement (the "Escrow Agreement") Under the Agreement, if, for any reason, the closing does not occur on or prior to June 30, 2006, then Escrow Agent is required to refund to West 53rd Development Group a portion of the deposit equal to \$1,605,960 plus interest thereon. In the event that deposit is returned, the cash proceeds due at closing increase accordingly.
6. West 53rd Development Group LLC intends to take advantage of the unique location of the Property by developing a new 7 story market-rate residential condominium complex containing approximately 83 simplex, duplex, and townhouse units, and which may include an approximate 180 car two story underground parking garage. The planned residential portion of the development will be "as-of-right" under the applicable provisions of the New York City Zoning Resolution while the underground parking lot will require a special permit issued with New York City Planning Commission approval. Using modern design elements, 405 West 53rd St will be consistent with the height, scale, and bulk of the surrounding neighborhood and fit in contextually with the urban design of the area. While 405 W. 53rd St will not contain affordable housing units, 405 W. 53rd Development Group LLC will further assist in supporting low income housing in the community through the purchase of real estate tax exemption certificates pursuant to Section 421-a of the Real Property Tax Law. 405 W. 53rd Development Group LLC believes that developing the current surface parking lot into residential use will strengthen the residential character and promote economic development of the surrounding community.
7. The participation by 405 W. 53rd Development Group in the Joint Petition is solely for the purpose of (a) requesting from the New York State Public Service Commission the authorization for the Transaction required under Section 70 of the Public Service Law and (b) confirming the terms of the Agreement as set forth in the Joint Petition. West 53rd Development Group cannot be deemed to have affirmed, either directly or by implication, any other information, as that information is within the knowledge and possession of Con Edison.

Dated: April 3, 2006


Mario Procida

Sworn to before me this 3 the day of April, 2006.


Notary Public

ANNETTE GONZALEZ
NOTARY PUBLIC, State of New York
No. 01G05045928
Qualified in Rockland County
Commission Expires June 26, 2007

**Requirements Under
16 NYCRR Parts 31 and 18**

In accordance with Sections 31.1 and 18.1 of the Commission's regulations, the Petitioners state as follows:

Section 31.1(a) - - Financial Condition.

Attached to this Exhibit are the following financial statements of Con Edison: income statement, balance sheet, and statement of capitalization for the fiscal year 2005. 16 NYCRR § 18.1(f), (p). West 53rd Development Group has no operating history to date and hence, does not have an income statement or balance sheet. Therefore, Petitioners request that the Commission waive the requirement in this section for submission of these financial statements as such applies to West 53rd Development Group.

As required by section 18.1(g) of the Commission's regulations, the Petitioners state that there are no mortgages upon the Property to be transferred. In addition, there are no advances from affiliated interests or other indebtedness to affiliates. 16 NYCRR § 18.1(i).

Section 31.1 (b) - - General Description of the Property to be Transferred.

The real property to be transferred consists of vacant land located at 405-427 West 53rd Street, New York, New York and designated on the Tax Map of the City of New York, New York County, as Block 1063, Lot 17. A complete description of the Property to be transferred is set forth in the Sale and Purchase Agreement between D.C.K. Management and West 53rd Development Group, a copy of which is attached to this Joint Petition (Exhibit B).

Section 31.1 (c) - - List of Franchises, Consents and Rights to be Transferred.

Con Edison's franchised retail operations will not be transferred, merged or consolidated as part of the proposed transaction.

Section 31.1 (d) - - Local Approvals.

Upon information and belief, no local approvals will be required for Con Edison to transfer the Property to West 53rd Development Group and for it to develop the Property in accordance with its development plans other than ministerial permits.

Section 31.1 (e)- - A Copy of the Proposed Agreement to be Approved.

A copy of the proposed Sale and Purchase Agreement between D.C.K. Management and West 53rd Development Group is attached to this Joint Petition (Exhibit B).

Section 31.1 (f) and (g) - - Original Cost of the Property to be Transferred

See Attachment 1 to the Rasmussen affidavit.

Section 31.1 (h)- - Accumulated Depreciation Reserve of the Property to be Transferred.

Not Applicable.

Section 31.1 (i) - - Cost of the Property to be Transferred.

See Attachment 1 to the Rasmussen affidavit.

Section 31.1 (j)- - Depreciation Reserves of Property to be Transferred.

Not Applicable.

Section 31.1 (k)- - Statement of Contributions.

There are no contributions toward construction of the Property to be transferred.

Section 31.1 (l) - - Statement of Operating Revenues, Expenses and Taxes Relating to the Property to be Transferred.

	2005	2004	2003
Rent	\$ 300,000	\$ 300,000	\$ 300,000
Taxes ²	\$ 204,526	\$ 209,000	\$ 211,000

² A portion of the taxes was paid by the tenant in possession of the Property.

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549**

FORM 10-K

☒ Annual Report Pursuant To Section 13 or 15(d) of the Securities Exchange Act of 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2005

OR

☐ Transition Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

For the transition period from _____ to _____

Commission File Number	Exact name of registrant as specified in its charter and principal office address and telephone number	State of Incorporation	I.R.S. Employer ID. Number
1-14514	Consolidated Edison, Inc. 4 Irving Place, New York, New York 10003 (212) 460-4600	New York	13-3965100
1-1217	Consolidated Edison Company of New York, Inc. 4 Irving Place, New York, New York 10003 (212) 460-4600	New York	13-5009340

Securities Registered Pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Consolidated Edison, Inc. Common Shares (\$.10 par value)	New York Stock Exchange
7.25% Public Income NotES (7.25% Debentures, Series 2002A) due 2042	New York Stock Exchange
Consolidated Edison Company of New York, Inc. 7.50% Public Income NotES (7.50% Debentures, Series 2001A) due 2041	New York Stock Exchange
\$5 Cumulative Preferred Stock, without par value	New York Stock Exchange
Cumulative Preferred Stock, 4.65% Series C (\$100 par value)	New York Stock Exchange

Securities Registered Pursuant to Section 12(g) of the Act:

Title of each class
Consolidated Edison Company of New York, Inc. Cumulative Preferred Stock, 4.65% Series D (\$100 par value)

Indicate by check mark if the registrant is a well-known seasoned issuer, as defined in Rule 405 of the Securities Act.

Con Edison, Inc. (Con Edison)	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Con Edison Company of New York, Inc. (Con Edison of New York)	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>

Indicate by check mark if the registrant is not required to file reports pursuant to Section 13 or Section 15(d) of the Act.

Con Edison	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
Con Edison of New York	Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Con Edison

Yes ☒ No ☐

Con Edison of New York

Yes ☒ No ☐

Indicate by check mark if the disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in the definitive proxy statement incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, or a non-accelerated filer. See definition of "accelerated filer and large accelerated filer" in Rule 12b-2 of the Exchange Act.

Con Edison

Large accelerated filer



Accelerated filer



Non-accelerated filer



Con Edison of New York

Large accelerated filer



Accelerated filer



Non-accelerated filer



Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2) of the Exchange Act).

Con Edison

Yes ☐ No ☒

Con Edison of New York

Yes ☐ No ☒

The aggregate market value of the common equity of Con Edison held by non-affiliates of Con Edison, as of June 30, 2005, was approximately \$11.4 billion.

As of January 31, 2006, Con Edison had outstanding 245,436,666 Common Shares (\$.10 par value).

All of the outstanding common equity of Con Edison of New York is held by Con Edison.

Documents Incorporated By Reference

Portions of Con Edison's definitive proxy statement and Con Edison of New York's definitive information statement, for their respective Annual Meetings of Stockholders to be held on May 15, 2006, to be filed with the Commission pursuant to Regulation 14A and Regulation 14C, respectively, not later than 120 days after December 31, 2005, are incorporated in Part III of this report.

Filing Format

This Annual Report on Form 10-K is a combined report being filed separately by two different registrants: Consolidated Edison, Inc. (Con Edison) and Consolidated Edison Company of New York, Inc. (Con Edison of New York). Con Edison of New York is a subsidiary of Con Edison and, as such, the information in this report about Con Edison of New York also applies to Con Edison. As used in this report, the term the "Companies" refers to Con Edison and Con Edison of New York. However, Con Edison of New York makes no representation as to the information contained in this report relating to Con Edison or the subsidiaries of Con Edison other than itself.

Report of Independent Registered Public Accounting Firm

To the Stockholders and Board of Trustees of Consolidated Edison Company of New York, Inc.:

In our opinion, the consolidated financial statements listed in the accompanying index present fairly, in all material respects, the financial position of Consolidated Edison Company of New York, Inc. and its subsidiaries at December 31, 2005 and 2004, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2005 in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statement schedule listed in the accompanying index presents fairly, in all material respects, the information set forth therein when read in conjunction with the related consolidated financial statements. These financial statements and financial statement schedule are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and financial statement schedule based on our audits. We conducted our audits of these statements in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, and evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

PricewaterhouseCoopers LLP
New York, New York
February 16, 2006

Consolidated Edison Company of New York, Inc.
Consolidated Balance Sheet

(Millions of Dollars)	At December 31,	
	2005	2004
Assets		
Utility Plant, at Original Cost (Note A)		
Electric	\$12,740	\$12,100
Gas	2,683	2,531
Steam	1,624	823
General	1,418	1,379
Total	18,465	16,833
Less: Accumulated depreciation	3,960	3,906
Net	14,505	12,927
Construction work in progress	739	1,328
Net Utility Plant	15,244	14,255
Non-Utility Property (Note A)		
Non-utility property	19	19
Net Plant	15,263	14,274
Current Assets		
Cash and temporary cash investments (Note A)	61	10
Accounts receivable – customers, less allowance for uncollectible accounts of \$35 and \$29 in 2005 and 2004, respectively	880	666
Other receivables, less allowance for uncollectible accounts of \$5 and \$3 in 2005 and 2004, respectively	226	113
Accounts receivable from affiliated companies	34	115
Fuel oil, at average cost	32	24
Gas in storage, at average cost	183	125
Materials and supplies, at average cost	100	94
Prepayments	417	73
Fair value of derivative assets	175	18
Recoverable energy costs (Notes A and B)	192	176
Other current assets	73	69
Total Current Assets	2,373	1,483
Investments	3	3
Deferred Charges, Regulatory Assets and Noncurrent Assets		
Prepaid pension costs (Note E)	1,474	1,442
Regulatory assets (Note B)	1,782	1,829
Other deferred charges and noncurrent assets	251	213
Total Deferred Charges, Regulatory Assets and Noncurrent Assets	3,507	3,484
Total Assets	\$21,146	\$19,244

The accompanying notes are an integral part of these financial statements.

Consolidated Edison Company of New York, Inc.
Consolidated Balance Sheet

(Millions of Dollars)	At December 31,	
	2005	2004
Capitalization and Liabilities		
Capitalization		
Common shareholder's equity (See Statement of Common Shareholder's Equity)	\$ 6,437	\$ 6,116
Preferred stock (See Statement of Capitalization)	213	213
Long-term debt (See Statement of Capitalization)	6,055	5,235
Total Capitalization	12,705	11,564
Noncurrent Liabilities		
Obligations under capital leases (Note K)	30	33
Provision for injuries and damages (Note G)	160	170
Pensions and retiree benefits	122	109
Superfund and other environmental costs (Note G)	186	141
Asset retirement obligations (Note R)	93	-
Other noncurrent liabilities	32	34
Total Noncurrent Liabilities	623	487
Current Liabilities		
Long-term debt due within one year	-	450
Notes payable	520	100
Accounts payable	1,015	738
Accounts payable to affiliated companies	23	40
Customer deposits	215	218
Accrued taxes	103	58
Accrued interest	87	79
Accrued wages	70	81
Deferred derivative gains (Note B)	170	8
Deferred income taxes - recoverable energy costs (Note M)	78	72
Other current liabilities	332	160
Total Current Liabilities	2,613	2,004
Deferred Credits and Regulatory Liabilities		
Deferred income taxes and investment tax credits (Notes A and M)	3,258	3,274
Regulatory liabilities (Note B)	1,924	1,887
Other deferred credits	23	28
Total Deferred Credits and Regulatory Liabilities	5,205	5,189
Total Capitalization and Liabilities	\$21,146	\$19,244

The accompanying notes are an integral part of these financial statements.

Consolidated Edison Company of New York, Inc.
Consolidated Income Statement

(Millions of Dollars)	For the Years Ended December 31,		
	2005	2004	2003
Operating Revenues (Note A)			
Electric	\$6,993	\$6,153	\$6,334
Gas	1,630	1,303	1,295
Steam	649	550	537
Total Operating Revenues	9,272	8,006	8,166
Operating Expenses			
Purchased power	3,367	3,064	3,124
Fuel	526	404	358
Gas purchased for resale	965	709	715
Other operations and maintenance	1,421	1,234	1,157
Depreciation and amortization (Note A)	509	477	458
Taxes, other than income taxes	1,114	1,013	1,040
Income taxes (Notes A and M)	329	280	372
Total Operating Expenses	8,231	7,181	7,224
Operating Income	1,041	825	942
Other Income (Deductions)			
Investment and other income (Note A)	31	39	27
Allowance for equity funds used during construction (Note A)	9	25	15
Other deductions	(11)	(13)	(11)
Income taxes (Notes A and M)	(1)	2	5
Total Other Income (Deductions)	28	53	36
Interest Expense			
Interest on long-term debt	350	333	346
Other interest	21	34	42
Allowance for borrowed funds used during construction (Note A)	(7)	(18)	(12)
Net Interest Expense	364	349	376
Net Income	705	529	602
Preferred Stock Dividend Requirements	11	11	11
Net Income for Common Stock	\$ 694	\$ 518	\$ 591

The accompanying notes are an integral part of these financial statements.

Consolidated Edison Company of New York, Inc.
Consolidated Statement of Comprehensive Income

(Millions of Dollars)	For the Years Ended December 31,		
	2005	2004	2003
Net Income	\$705	\$529	\$602
Other Comprehensive Income/(Loss), Net of Taxes			
Minimum pension liability adjustments, net of \$(2) taxes in 2005	(4)	-	-
Unrealized losses on derivatives qualified as cash flow hedges, net of \$0 taxes in 2003	-	-	(1)
Less: Reclassification adjustment for gains/(losses) included in net income, net of \$1 and \$0 taxes in 2005 and 2003, respectively	1	-	(1)
Total Other Comprehensive Income/(Loss), Net of Taxes	(5)	-	-
Comprehensive Income	\$700	\$529	\$602

The accompanying notes are an integral part of these financial statements.

Consolidated Edison Company of New York, Inc.
Consolidated Statement of Common Shareholder's Equity

(Millions of Dollars/ Except Share Data)	Common Stock Shares	Common Stock Amount	Additional Paid-In Capital	Retained Earnings	Repurchased Con Edison Stock	Capital Stock Expense	Accumulated Other Comprehensive Loss	Total
Balance as of								
December 31, 2002	235,488,094	\$589	\$893	\$4,412	\$(962)	\$(36)	\$(6)	\$4,890
Net income				602				602
Common stock dividend to parent				(377)				(377)
Capital contribution by parent			381			(3)		378
Cumulative preferred dividends				(11)				(11)
Balance as of								
December 31, 2003	235,488,094	\$589	\$1,274	\$4,626	\$(962)	\$(39)	\$(6)	\$5,482
Net income				529				529
Common stock dividend to parent				(396)				(396)
Capital contribution by parent			528			(16)		512
Cumulative preferred dividends				(11)				(11)
Balance as of								
December 31, 2004	235,488,094	\$589	\$1,802	\$4,748	\$(962)	\$(55)	\$(6)	\$6,116
Net income				705				705
Common stock dividend to parent				(368)				(368)
Cumulative preferred dividends				(11)			(5)	(16)
Balance as of								
December 31, 2005	235,488,094	\$589	\$1,802	\$5,074	\$(962)	\$(55)	\$(11)	\$6,437

The accompanying notes are an integral part of these financial statements.

Consolidated Edison Company of New York, Inc.
Consolidated Statement of Cash Flows

(Millions of Dollars)	For the Twelve Months Ended December 31,		
	2005	2004	2003
Operating Activities			
Net income	\$ 705	\$ 529	\$ 602
Principal Non-Cash Charges/(Credits) to Income			
Depreciation and amortization	509	477	458
Deferred income taxes	(112)	317	374
Electric rate case (amortization)/accruals	(124)	-	-
Common equity component of allowance for funds used during construction	(9)	(25)	(15)
Prepaid pension costs (net of capitalized amounts)	(43)	(139)	(179)
Electric, gas and steam rate plan charges	-	124	-
Other non-cash items (net)	(5)	52	(61)
Changes in Assets and Liabilities			
Accounts receivable - customers, less allowance for uncollectibles	(215)	26	(90)
Materials and supplies, including fuel oil and gas in storage	(72)	(15)	(63)
Prepayments, other receivables and other current assets	(388)	(118)	(49)
Recoverable energy costs	(88)	(81)	47
Accounts payable	274	42	(30)
Pensions and retiree benefits	13	2	-
Accrued taxes	45	(37)	2
Accrued interest	7	(9)	8
Deferred charges and other regulatory assets	(144)	(164)	(40)
Deferred credits and other regulatory liabilities	112	182	188
Other assets	175	46	(17)
Other liabilities	178	(8)	34
Net Cash Flows from Operating Activities	818	1,201	1,169
Investing Activities			
Utility construction expenditures (excluding capitalized support costs of \$(11), \$45, and \$54 in 2005, 2004 and 2003, respectively)	(1,530)	(1,280)	(1,221)
Cost of removal less salvage	(180)	(136)	(126)
Non-utility construction expenditures	-	-	(1)
Common equity component of allowance for funds used during construction	9	25	15
Proceeds from/(cost of) sale of First Avenue properties	534	(21)	(4)
Net Cash Flows Used in Investing Activities	(1,167)	(1,412)	(1,337)
Financing Activities			
Net proceeds from short-term debt	420	1	99
Retirement of long-term debt	(578)	(923)	(805)
Issuance of long-term debt	951	1,019	575
Application of funds held for redemption of long-term debt	-	-	275
Debt issuance costs	(13)	(14)	(25)
Capital contribution by parent	-	512	381
Dividend to parent	(369)	(396)	(376)
Preferred stock dividends	(11)	(11)	(11)
Net Cash Flows from Financing Activities	400	188	113
Cash and Temporary Cash Investments:			
Net Change for the Period	51	(23)	(55)
Balance at Beginning of Period	10	33	88
Balance at End of Period	\$ 61	\$ 10	\$ 33
Supplemental Disclosure of Cash Flow Information			
Cash paid during the period for:			
Interest	\$ 330	\$ 327	\$ 327
Income taxes	\$ 352	\$ 127	\$ 127

The accompanying notes are an integral part of these financial statements.

Consolidated Edison Company of New York, Inc.
Consolidated Statement of Capitalization

(Millions of Dollars)	Shares outstanding		At December 31,	
	December 31, 2005	December 31, 2004	2005	2004
Total Common Shareholder's Equity Less Accumulated Other Comprehensive Income/(Loss)	235,488,094	235,488,094	\$6,448	\$6,122
Accumulated Other Comprehensive Income/(Loss)				
Minimum pension liability adjustment, net of \$(6) and \$(4) taxes in 2005 and 2004, respectively.			(10)	(6)
Unrealized losses on derivatives qualified as cash flow hedges, net of \$(2) taxes in 2005 and 2004			(3)	(3)
Less: Reclassification adjustment for losses included in net income, net of \$(1) and \$(2) taxes in 2005 and 2004, respectively			(2)	(3)
Total Accumulated Other Comprehensive Income/(Loss), Net of Taxes			(11)	(6)
Total Common Shareholder's Equity (See Statement of Common Shareholder's Equity and Note C)			6,437	6,116
Preferred Stock (Note C)				
\$5 Cumulative Preferred, without par value, authorized 1,915,319 shares	1,915,319	1,915,319	175	175
Cumulative Preferred, \$100 par value, authorized 6,000,000 shares				
4.65% Series C	153,296	153,296	16	16
4.65% Series D	222,330	222,330	22	22
Total Preferred Stock			\$ 213	\$ 213

The accompanying notes are an integral part of these financial statements.

Consolidated Edison Company of New York, Inc.
Consolidated Statement of Capitalization

Long-term Debt (Note C) (Millions of Dollars)			At December 31,	
Maturity	Interest Rate	Series	2005	2004
Debentures:				
2005	6.625%	1995A	\$ -	\$ 100
2005	6.625	2000C	-	350
2007	6.45	1997B	330	330
2008	6.25	1998A	180	180
2008	6.15	1998C	100	100
2009	7.15	1999B	200	200
2009	4.70	2004C	275	275
2010	8.125	2000A	325	325
2010	7.50	2000B	300	300
2012	5.625	2002A	300	300
2013	4.875	2002B	500	500
2013	3.85	2003B	200	200
2014	4.70	2004A	200	200
2015	5.375	2005C	350	-
2026	7.75	1996A	100	100
2028	7.10	1998B	105	105
2028	6.90	1998D	75	75
2033	5.875	2003A	175	175
2033	5.10	2003C	200	200
2034	5.70	2004B	200	200
2035	5.30	2005A	350	-
2035	5.25	2005B	125	-
2041	7.50	2001A	400	400
Total Debentures			4,990	4,615
Tax-Exempt Debt – Notes issued to New York State Energy Research and Development Authority for Facilities Revenue Bonds*:				
2020	6.10%	1995A	-	128
2032	3.00	2004B Series 1	127	127
2034	3.17	1999A	293	293
2035	3.06	2004B Series 2	20	20
2036	4.70 (Note P)	2001A	221	225
2036	3.30	2001B	98	98
2039	3.37	2004A	98	98
2039	3.56	2004C	99	99
2039	3.51	2005A	126	-
Total Tax-Exempt Debt			1,082	1,088
Unamortized debt discount			(17)	(18)
Total			6,055	5,685
Less: long-term debt due within one year			-	450
Total Long-Term Debt			6,055	5,235
Total Capitalization			\$12,705	\$11,564

* Other than Series 2001A, rates reset weekly or by auction held every 35 days; December 31, 2005 rates shown.

The accompanying notes are an integral part of these financial statements.

Notes to the Financial Statements

General

These combined notes accompany and form an integral part of the separate consolidated financial statements of each of the two separate registrants: Consolidated Edison, Inc. and its subsidiaries (Con Edison) and Consolidated Edison Company of New York, Inc. and its subsidiaries (Con Edison of New York). Con Edison of New York is a subsidiary of Con Edison and as such its financial condition and results of operations and cash flows, which are presented separately in the Con Edison of New York consolidated financial statements, are also consolidated, along with those of Con Edison's other utility subsidiary, Orange and Rockland Utilities, Inc. (O&R), and Con Edison's competitive businesses (discussed below) in Con Edison's consolidated financial statements. The term "Utilities" is used in these notes to refer to Con Edison of New York and O&R.

As used in these notes, the term "Companies" refers to Con Edison and Con Edison of New York and, except as otherwise noted, the information in these combined notes relates to each of the Companies. However, Con Edison of New York makes no representation as to information relating to Con Edison or the subsidiaries of Con Edison other than itself.

Con Edison has two regulated utility subsidiaries: Con Edison of New York and O&R. Con Edison of New York provides electric service and gas service in New York City and Westchester County. The company also provides steam service in parts of Manhattan. O&R, along with its regulated utility subsidiaries, provides electric service in southeastern New York and adjacent areas of northern New Jersey and eastern Pennsylvania and gas service in southeastern New York and adjacent areas of eastern Pennsylvania. Con Edison has the following competitive energy businesses: Consolidated Edison Solutions, Inc. (Con Edison Solutions), a retail energy services company that sells electricity to delivery customers of utilities, including Con Edison of New York and O&R, and also offers energy-related services; Consolidated Edison Energy, Inc. (Con Edison Energy), a wholesale energy supply company; and Consolidated Edison Development, Inc. (Con Edison Development), a company that owns and operates generating plants and participates in other infrastructure projects.

In December 2004, after a comprehensive strategic review, Con Edison determined to sell Con Edison Communications, LLC (Con Edison Communications): See Note U.

Note A – Summary of Significant Accounting Policies

Principles of Consolidation

The Companies' consolidated financial statements include the accounts of their respective majority-owned subsidiaries, and variable interest entities (see Note Q), as required. All intercompany balances and transactions have been eliminated.

Accounting Policies

The accounting policies of Con Edison and its subsidiaries conform to accounting principles generally accepted in the United States of America. For the Utilities, these accounting principles include the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards (SFAS) No. 71, "Accounting for the Effects of Certain Types of Regulation," and, in accordance with SFAS No. 71, the accounting requirements of the Federal Energy Regulatory Commission (FERC) and the state public utility regulatory commissions having jurisdiction.

SFAS No. 71 specifies the economic effects that result from the causal relationship of costs and revenues in the rate-regulated environment and how these effects are to be accounted for by a regulated enterprise. Revenues intended to cover some costs may be recorded either before or after the costs are incurred. If regulation provides assurance that incurred costs will be recovered in the future, these costs would be recorded as deferred charges or "regulatory assets" under SFAS No. 71. If revenues are recorded for costs that are expected to be incurred in the future, these revenues would be recorded as deferred credits or "regulatory liabilities" under SFAS No. 71.

The Utilities' principal regulatory assets and liabilities are detailed in Note B. The Utilities are receiving or being credited with a return on all of their regulatory assets for which a cash outflow has been made, and are paying or being charged with a return on all of their regulatory liabilities for which a cash inflow has been received. The Utilities' regulatory assets and liabilities will be recovered from customers, or applied for customer benefit, in accordance with rate provisions approved by the applicable public utility regulatory commission.

Other significant accounting policies of the Companies are referenced below in this Note A and in the notes that follow.

Plant and Depreciation

Utility Plant

Utility plant is stated at original cost. The cost of repairs and maintenance is charged to expense and the cost of betterments is capitalized. The capitalized cost of additions to utility plant includes indirect costs such as engineering, supervision, payroll taxes, pensions, other benefits and an allowance for funds used during construction (AFDC). The original cost of property is charged to expense over the estimated useful lives of the assets. Upon retirement, the original cost of property is charged to accumulated depreciation. See Note R.

Rates used for AFDC include the cost of borrowed funds and a reasonable rate of return on the regulated utilities' own funds when so used, determined in accordance with regulations of the FERC or the state public utility regulatory authority having jurisdiction. The rate is compounded semiannually, and the

Notes to the Financial Statements – Continued

amounts applicable to borrowed funds are treated as a reduction of interest charges, while the amounts applicable to the regulated utilities' own funds are credited to other income (deductions). The AFDC rates for Con Edison of New York were 7.4 percent, 6.9 percent and 7.1 percent for 2005, 2004 and 2003, respectively. The AFDC rates for O&R were 3.9 percent, 3.6 percent and 1.1 percent for 2005, 2004 and 2003, respectively.

The Utilities generally compute annual charges for depreciation using the straight-line method for financial statement purposes, with rates based on average service lives and net salvage factors. The average depreciation rates for Con Edison of New York were 2.9 percent for 2005 and 3.0 percent for 2004 and 2003. The average depreciation rates for O&R were 2.9 percent for 2005 and 2004 and 3.1 percent for 2003, respectively.

The estimated lives for utility plant for Con Edison of New York range from 25 to 80 years for electric, 15 to 85 years for gas, 30 to 70 years for steam and 8 to 50 years for general plant. For O&R, the estimated lives for utility plant range from 5 to 65 years for electric, 7 to 75 years for gas and 5 to 55 years for general plant.

At December 31, 2005 and 2004, the capitalized cost of the Companies' utility plant, net of accumulated depreciation, was as follows:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Electric				
Generation	\$ 289	\$ 381	\$ 289	\$ 381
Transmission	1,479	1,361	1,387	1,262
Distribution	8,814	8,147	8,324	7,691
Gas*	2,448	2,310	2,176	2,056
Steam	1,397	623	1,397	623
General	1,008	987	928	910
Held for future use	5	5	4	4
Construction work in progress	771	1,354	739	1,328
Net Utility Plant	\$16,211	\$15,168	\$15,244	\$14,255

* Primarily distribution.

Non-Utility Plant

Non-utility plant is stated at original cost. For the Utilities, non-utility plant consists primarily of land and telecommunication facilities that are currently not used within electric, gas or steam utility operations. For Con Edison's competitive businesses, non-utility plant consists primarily of electric generating facilities. Depreciation on these assets is computed using the straight-line method for financial statement purposes over their estimated useful lives, which range from 3 to 70 years.

The average non-utility depreciation rates for Con Edison Development were 2.8 percent, 2.7 percent and 3.0 percent for 2005, 2004 and 2003, respectively.

In accordance with SFAS No. 34, "Capitalization of Interest Costs," Con Edison capitalizes interest on its borrowings associated with the competitive businesses' capital projects in progress. Capitalized interest is added to the asset cost, and is amortized over the useful lives of the assets. The amount of such capitalized interest cost for 2003 was \$6 million. There was no capitalized interest cost in 2004 and 2005.

Goodwill

In accordance with SFAS No. 142, "Goodwill and Other Intangible Assets," Con Edison is required to test goodwill for impairment annually. Goodwill is tested for impairment using a two-step approach. The first step of the goodwill impairment test compares the estimated fair value of a reporting unit with its carrying value, including goodwill. If the estimated fair value of a reporting unit exceeds its carrying value, goodwill of the reporting unit is considered not impaired. If the carrying value exceeds the estimated fair value of the reporting unit, the second step is performed to measure the amount of impairment loss, if any. The second step requires a calculation of the implied fair value of goodwill. See Note L.

Impairments

In accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived Assets," the Companies evaluate the impairment of long-lived assets, based on projections of undiscounted future cash flows, whenever events or changes in circumstances indicate that the carrying amounts of such assets may not be recoverable. In the event an evaluation indicates that such cash flows cannot be expected to be sufficient to fully recover the assets, the assets are written down to their estimated fair value. See Note U.

Revenues

The Utilities and Con Edison Solutions recognize revenues for electric, gas and steam service on a monthly billing cycle basis. The Utilities defer over a 12-month period net interruptible gas revenues, other than those authorized by the New York State Public Service Commission (PSC) to be retained by the Utilities, for refund to firm gas sales and transportation customers. O&R and Con Edison Solutions accrue revenues at the end of each month for estimated energy service not yet billed to customers, while Con Edison of New York does not accrue such revenues, in accordance with current regulatory agreements. Con Edison of New York estimates its unbilled revenues at December 31, 2005 and 2004 to be approximately \$432 million and \$380 million, respectively. Unbilled revenues included in Con Edison's balance sheet at December 31, 2005 and 2004 were \$116 million and \$73 million, respectively.

Notes to the Financial Statements – Continued

The PSC requires utilities to record gross receipts tax revenues and expenses on a gross income statement presentation basis (i.e., included in both revenue and expense). The recovery of these taxes is included in the revenue requirement within each of the respective PSC approved rate plans.

Recoverable Energy Costs

The Utilities generally recover all of their prudently incurred fuel, purchased power and gas costs, including hedging gains and losses, in accordance with rate provisions approved by the applicable state public utility commissions. If the actual energy supply costs for a given month are more or less than the amounts billed to customers for that month, the difference in most cases is recoverable from or refundable to customers. Differences between actual and billed electric and steam supply costs are generally deferred for charge or refund to customers during the next billing cycle (normally within one or two months). For the Utilities' gas costs, differences between actual and billed gas costs during the 12-month period ending each August are charged or refunded to customers during a subsequent 12-month period.

New York Independent System Operator (NYISO)

The Utilities purchase electricity through the wholesale electricity market administered by the NYISO. The difference between purchased power and related costs initially billed to the Utilities by the NYISO and the actual cost of power subsequently calculated by the NYISO is refunded by the NYISO to the Utilities, or paid to the NYISO by the Utilities. The reconciliation payments or receipts are recoverable from or refundable to the Utilities' customers. At December 31, 2005 and 2004, Con Edison of New York had deferred \$20 million and \$160 million, respectively, of funds received from the NYISO as a regulatory liability to be applied for customer benefit.

Certain other payments to or receipts from the NYISO are also subject to reconciliation, with shortfalls or amounts in excess of specified rate allowances recoverable from or refundable to customers. These include proceeds from the sale through the NYISO of transmission rights on Con Edison of New York's transmission system (Transmission Congestion Contracts or TCCs). For Con Edison of New York, TCC sales proceeds in excess of \$60 million are deferred as a regulatory liability to be applied for customer benefit and do not affect net income.

Sulfur Dioxide Allowances

In accordance with the federal Clean Air Act, the Utilities have been allocated sulfur dioxide (SO₂) emission allowances which the Utilities may sell, trade or hold for future use. Generally, the Utilities defer their proceeds from the sale of SO₂ allowances as regulatory liabilities to be applied for customer benefit. See Note B. For the competitive energy businesses, sales of SO₂

allowances are reflected in earnings in the periods in which the sales occur. The proceeds received from the sale of SO₂ allowances are included in net cash flows from operating activities in the Companies' Statements of Cash Flows.

Temporary Cash Investments

Temporary cash investments are short-term, highly-liquid investments that generally have maturities of three months or less at the date of purchase. They are stated at cost, which approximates market. The Companies consider temporary cash investments to be cash equivalents.

Investments

Investments consist primarily of the investments of Con Edison's competitive businesses, which are recorded at cost or accounted for under the equity method (depending on the subsidiaries' percentage ownership) or accounted for as leveraged leases in accordance with SFAS No. 13, "Accounting for Leases." See Note K for a discussion of investments in Lease In/Lease Out transactions.

Federal Income Tax

In accordance with SFAS No. 109, "Accounting for Income Taxes," the Companies have recorded an accumulated deferred federal income tax liability for temporary differences between the book and tax bases of assets and liabilities at current tax rates. In accordance with rate agreements, the Utilities have recovered amounts from customers for a portion of the tax liability they will pay in the future as a result of the reversal or "turn-around" of these temporary differences. As to the remaining tax liability, in accordance with SFAS No. 71, the Utilities have established regulatory assets for the net revenue requirements to be recovered from customers for the related future tax expense. See Notes B and M. In 1993, the PSC issued a Policy Statement approving accounting procedures consistent with SFAS No. 109 and providing assurances that these future increases in taxes will be recoverable in rates.

Accumulated deferred investment tax credits are amortized ratably over the lives of the related properties and applied as a reduction to future federal income tax expense.

Con Edison and its subsidiaries file a consolidated federal income tax return. The consolidated income tax liability is allocated to each member of the consolidated group using the separate return method. Each member pays or receives an amount based on its own taxable income or loss in accordance with tax sharing agreements between the members of the consolidated group.

State Income Tax

The New York State tax laws applicable to utility companies were changed effective January 2000. Certain revenue-based taxes were repealed or reduced and replaced by a net income-based tax. In June 2001, the PSC authorized each utility to use deferral accounting to record the difference between taxes being collected and the actual tax expense under the new tax law until that expense is incorporated in base rates. For Con Edison of New York, effective October 2004, state income tax is being recovered through base rates for its gas and steam businesses and effective April 2005, for its electric business. For O&R, state income tax is being recovered through base rates for its electric and gas businesses effective November 2003.

Con Edison and its subsidiaries file a combined New York State Corporation Business Franchise Tax Return. Similar to a federal consolidated income tax return, the income of all entities in the combined group is subject to New York State taxation, after adjustments for differences between federal and New York law and apportionment of income among the states in which the company does business. Each member of the group pays or receives an amount based on its own New York State taxable income or loss.

Research and Development Costs

Research and development costs are charged to operating expenses as incurred. Research and development costs were as follows:

	For the Years Ended December 31,		
(Millions of Dollars)	2005	2004	2003
Con Edison	\$14	\$11	\$11
Con Edison of New York	\$14	\$10	\$10

Reclassification

Certain prior year amounts have been reclassified to conform with the current year presentation.

Earnings Per Common Share

In accordance with SFAS No. 128, "Earnings per Share," Con Edison presents basic and diluted earnings per share on the face of its consolidated income statement. Basic earnings per share are calculated by dividing earnings available to common shareholders ("Net income" on Con Edison's consolidated income statement) by the weighted average number of Con Edison common shares outstanding during the period. In the calculation of diluted EPS, weighted average shares outstanding are increased for additional shares that would be outstanding if potentially dilutive securities were converted to common stock.

Potentially dilutive securities for Con Edison consist of restricted stock, deferred common shares and stock options for which the

average market price of the common shares for the period was greater than the exercise price. See Note N.

Basic and diluted EPS for Con Edison are calculated as follows:

	For the Years Ended December 31,		
(Millions of Dollars, except per share amounts/Shares in Millions)	2005	2004	2003
Income from continuing operations	\$ 732	\$ 549	\$ 634
Loss from discontinued operations, net of tax	(13)	(12)	(109)
Income before cumulative effect of changes in accounting principles	719	537	525
Cumulative effect of changes in accounting principles, net of tax	-	-	3
Net income	\$ 719	\$ 537	\$ 528
Weighted average common shares outstanding – Basic	243.9	235.8	220.9
Add: Incremental shares attributable to effect of potentially dilutive securities	0.8	0.6	0.9
Adjusted weighted average common shares outstanding – Diluted	244.7	236.4	221.8
Earnings per Common Share – Basic			
Continuing operations	\$ 3.00	\$ 2.33	\$ 2.87
Discontinued operations	(0.05)	(0.05)	(0.50)
Before cumulative effect of changes in accounting principles	2.95	2.28	2.37
Cumulative effect of changes in accounting principles	-	-	0.02
Net income	\$ 2.95	\$ 2.28	\$ 2.39
Earnings per Common Share – Diluted			
Continuing operations	\$ 2.99	\$ 2.32	\$ 2.86
Discontinued operations	(0.05)	(0.05)	(0.50)
Before cumulative effect of changes in accounting principles	2.94	2.27	2.36
Cumulative effect of changes in accounting principles	-	-	0.02
Net income	\$ 2.94	\$ 2.27	\$ 2.38

The computation of diluted earnings per share excludes 0.9 million, 4.4 million and 4.1 million Con Edison common shares for the years ended December 31, 2005, 2004 and 2003, respectively, because the average closing market price of the common shares during these periods exceeds the exercise prices on the options.

Stock-Based Compensation

Con Edison accounts for its stock-based compensation plans using the intrinsic value model of Accounting Principles Board (APB) Opinion No. 25, "Accounting for Stock Issued to Employees," and its related interpretations. See Note N.

Notes to the Financial Statements – Continued

The following table illustrates the effect on net income and earnings per share if Con Edison had applied the fair value recognition provisions of SFAS No. 123, "Accounting for Stock-Based Compensation," as amended by SFAS No. 148, "Accounting for Stock-Based Compensation – Transition and Disclosure – An Amendment of FASB Statement No. 123," for the purposes of recognizing compensation expense on employee stock-based arrangements.

(Millions of Dollars, except per share amounts)	Con Edison			Con Edison of New York		
	2005	2004	2003	2005	2004	2003
Net income, as reported	\$ 719	\$ 537	\$ 528	\$705	\$529	\$602
Add: Stock-based compensation expense included in reported net income, net of related tax effects	6	7	3	5	5	3
Deduct: Total stock-based compensation expense determined under fair value method for all awards, net of related tax effects	10	12	8	8	9	7
Pro forma net income	\$ 715	\$ 532	\$ 523	\$702	\$525	\$598
Earnings per common share:						
Basic – as reported	\$2.95	\$2.28	\$2.39			
Basic – pro forma	\$2.93	\$2.26	\$2.37			
Diluted – as reported	\$2.94	\$2.27	\$2.38			
Diluted – pro forma	\$2.92	\$2.25	\$2.36			

Certain of Con Edison's stock-based compensation plans allow employees to continue vesting in an award in accordance with the stated vesting terms even though the employee has retired from the company. In its pro forma disclosures, Con Edison has historically recognized compensation cost over the employee's nominal vesting period with any remaining compensation cost recognized at the date of retirement (the nominal vesting period approach). The pro forma compensation cost would not have materially increased had the company recognized compensation cost immediately for awards granted to retirement eligible employees and over the period from the grant date to the date of retirement eligibility, if that is expected to occur during the nominal vesting period (non-substantive vesting period approach).

Con Edison plans to adopt the non-substantive vesting period approach in connection with its implementation of SFAS 123 (R), "Share-Based Payment." See Note N.

Estimates

The preparation of financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates.

Note B – Regulatory Matters Rate and Restructuring Agreements Electric

In September 1997, the PSC approved a restructuring agreement between Con Edison of New York, the PSC staff and certain other parties (the 1997 Restructuring Agreement). The 1997 Restructuring Agreement provided for a transition to a competitive electric market through the development of a retail access plan, a rate plan for the period ended March 31, 2002, the divestiture of most of the company's electric generating capacity, and a reasonable opportunity for recovery of "strandable costs" (costs that may not be recoverable in a competitive electric supply market).

At December 31, 2005, approximately 190,000 Con Edison of New York customers representing approximately 31 percent of aggregate customer peak demand were purchasing electricity from other suppliers under the electric retail access program (which is available to all of the company's electric customers). The company delivers electricity to participating customers in this program through its regulated transmission and distribution systems. In general, its delivery rates for retail access customers are equal to the full-service rates applicable to other comparable customers, less the cost of supplying customers with energy and capacity.

In November 2000, the PSC approved an agreement (the 2000 Electric Rate Agreement) that revised and extended the rate plan provisions of the 1997 Restructuring Agreement. Pursuant to the 2000 Electric Rate Agreement, the company reduced the distribution component of its electric rates by \$170 million on an annual basis, effective October 2000.

Notes to the Financial Statements – Continued

Under the 2000 Electric Rate Agreement, as approved by the PSC and as modified in December 2001, 35 percent of any earnings in each of the rate years ending March 2002 through 2005 above a specified rate of return on electric common equity were to be retained for shareholders and the balance was to be applied for customer benefit as determined by the PSC. There was no sharing of earnings for the rate years ended March 2002 and 2005. In 2002 and 2003, Con Edison of New York established an electric shared earnings reserve totaling \$49 million for the rate year ending March 2003. In 2004, an electric shared earnings reserve of less than \$1 million for the rate year ending March 2004 was established. In addition, the company recorded penalties relating to reliability standards tied to targets established in regulatory proceedings of \$2 million, \$8 million and \$3 million in 2004, 2003 and 2002, respectively.

The 2000 Electric Rate Agreement also continued the rate provisions pursuant to which Con Edison of New York recovers its potential straddle costs and its purchased power and fuel costs from customers. See "Recoverable Energy Costs" in Note A.

In March 2005, the PSC approved a Joint Proposal by Con Edison of New York, the staff of the PSC and other parties with respect to the rates the company can charge its customers for electric delivery service (the 2005 Electric Rate Agreement). The 2005 Electric Rate Agreement covers the three-year period April 2005 through March 2008, and provides for increases in electric base rates of \$104.6 million, effective April 1, 2005, and \$220.4 million, effective April 1, 2007. In addition, the company will retain the first \$60 million of auction proceeds from the sale of transmission rights on the company's transmission system (transmission congestion contracts) in each of the three years. The rate increases also include the amortization of certain regulatory assets and liabilities. The net effect of this amortization will be to increase electric revenues by \$128 million, \$173 million and \$249 million in the first, second and third rate years, respectively.

The 2005 Electric Rate Agreement provides for annual reconciliations of the differences between the actual amount of transmission and distribution utility plant, net of depreciation (Net T&D) and the actual amount of certain operating costs experienced over the term of the agreement, as compared in each case to the amounts reflected in electric rates.

If the actual Net T&D is greater than the Net T&D reflected in rates, the company will accrue a regulatory asset and increase its revenues by the revenue requirement impact of such difference (i.e., a return on investment, depreciation and income taxes). If the actual Net T&D is less than the Net T&D reflected in rates, the company will accrue a regulatory liability and decrease its revenues by the revenue requirement impact of such difference.

At December 31, 2005, a regulatory asset of \$38 million was deferred related to this reconciliation.

If the actual amount of pension or other postretirement benefit costs, environmental remediation costs and, if the variation exceeds 2.5 percent, property taxes or the cost of moving facilities to avoid interfering with government projects is greater than the respective amount for each such cost reflected in rates, the company will accrue a regulatory asset for the difference and defer recognition in income of the difference. If the actual amount is less than the amount reflected in electric rates, the company will accrue a regulatory liability for the difference and decrease its revenues by the amount of such difference. Any regulatory asset resulting from these cost reconciliations is subject to offset, as described below, if the company earns, excluding the effect of the incentives and penalties discussed below (Adjusted Earnings), between an 11.4 percent and a 13 percent return on equity (based on the company's actual capitalization, subject to a maximum equity ratio of 50 percent). No regulatory asset is to be accrued if Adjusted Earnings exceed a 13 percent return on equity.

Under the 2005 Electric Rate Agreement, any Adjusted Earnings between an 11.4 percent and a 13 percent return on equity are to be used to offset 50 percent of any regulatory asset resulting from the cost reconciliation. The company can retain 50 percent of any remaining above-target Adjusted Earnings, with the balance being deferred for the benefit of customers. If Adjusted Earnings exceed a 13 percent return, the company can retain 25 percent of the above-target Adjusted Earnings, with the balance being deferred for the benefit of customers.

The 2005 Electric Rate Agreement also provided for the continuation of the rate provisions pursuant to which the company recovers its potential straddle costs and its purchased power and fuel costs from customers.

The 2005 Electric Rate Agreement included potential positive earnings adjustments (incentives) if the company meets certain standards for its retail access and demand side management programs, and potential negative earnings adjustments (penalties), which could be substantial, if it does not meet certain standards for (i) frequency and duration of service interruptions; (ii) major outages; (iii) repair, removal or replacement of damaged poles, temporary shunts, street lights, traffic signals and circuit breakers; and (iv) customer service. In 2005, an \$8 million penalty for not meeting certain standards for duration of service interruptions was recorded.

In accordance with the 2005 Electric Rate Agreement, the company recognized a \$100 million pre-tax charge in 2004 to

Notes to the Financial Statements – Continued

resolve certain issues raised in the proceeding, relating primarily to prior period pension credits.

In accordance with the 2005 Electric Rate Agreement, at December 31, 2005, Con Edison of New York estimated that its Adjusted Earnings above 11.4 percent for the rate year ending March 31, 2006 would exceed the target sharing level by \$59 million, of which \$47 million was applied to reduce regulatory assets arising from the cost reconciliations, and \$6 million was reserved for customer benefit.

In 1997, the PSC approved a four-year O&R restructuring plan pursuant to which O&R sold all of its generating assets and made retail access available to all of its electric customers effective May 1999. In 1998 and 1999, similar plans for O&R's utility subsidiaries in Pennsylvania and New Jersey were approved by state regulators.

In October 2003, the PSC approved agreements among O&R, the staff of the PSC and other parties with respect to the rates O&R can charge to its New York customers for electric service. The electric agreement, which covers the period from July 2003 through October 2006, provides for no changes to electric base rates and contains provisions for the amortization and offset of regulatory assets and liabilities, the net effect of which will reduce electric operating income by a total of \$11 million (pre tax) over the period covered by the agreement. The agreement continues to provide for recovery of energy costs from customers on a current basis. It also provides for O&R to share equally with customers earnings above a 12.75 percent return on common equity during the three-year period from July 2003 through June 2006. Beginning July 2006, O&R will not be subject to earnings sharing.

In July 2003, the New Jersey Board of Public Utilities (NJBP) ruled on the petitions of Rockland Electric Company (RECO) for an increase in electric rates and recovery of deferred purchased power costs. The NJBP ordered a \$7 million decrease in RECO's electric base rates, effective August 2003, authorized RECO's recovery of approximately \$83 million of previously deferred purchased power costs and associated interest and disallowed recovery of approximately \$19 million of such costs and associated interest. At December 31, 2002, the company had accrued a reserve for \$13 million of the disallowance, and at June 30, 2003 reserved an additional \$6 million for the disallowance.

In July 2004, the NJBP approved RECO's Phase II petition to increase base rates annually by \$2.7 million (2.0% increase), effective August 1, 2004. The Phase II decision provides for the recovery of carrying costs for two substation projects and specified additional reliability programs. Also in July 2004, a

special purpose entity formed by RECO (which is included in the consolidated financial statements of Con Edison) issued \$46 million of 5.22% Transition Bonds and used the proceeds thereof to purchase from RECO the right to be paid a Transition Bond Charge (TBC) and associated tax charges by its customers relating to the balance of previously deferred purchased power costs, discussed above. The TBC replaced a Transition Recovery Charge, a temporary surcharge that was effective August 1, 2003.

Pike County Light & Power Company (Pike) is obligated under Pennsylvania law to serve those customers who do not purchase electricity from other suppliers. In January 2006, Pike began charging new rates to these customers that reflected prices resulting from a competitive auction, overseen and approved by the Pennsylvania Public Utility Commission (PPUC). As a result, customers' bills increased substantially. Subsequently, the PPUC initiated a fact-finding investigation into the competitive electric market in Pike's service territory.

Gas

In April 2002, the PSC approved a Con Edison of New York gas rate agreement for the three-year period ending September 30, 2004. The rate agreement reduced gas rates by \$25 million annually.

In September 2004, the PSC approved a Joint Proposal by Con Edison of New York, the staff of the PSC and other parties with respect to the rates the company can charge its customers for gas and steam services. The approved gas rate plan covers the three-year period October 2004 through September 2007, and provided for an increase in gas base rates of \$46.8 million, effective October 1, 2004, with deferral accounting to be used to allocate the income statement effect of the increase over the term of the agreement. The rate increase is net of a \$17.5 million pre-tax charge to gas operating revenues, which the company recognized in 2004, to resolve certain issues raised in the proceeding, relating primarily to the treatment of prior period pension credits. In addition to this rate increase, the company will retain the first \$35 million of net revenues from non-firm customer transactions in each year of the plan. The rate increases also include the amortization of certain regulatory assets and liabilities. The net effect of this amortization will be to increase gas revenues by \$41 million over the period of the three-year rate plan.

Additional provisions of the gas rate plan include: equal sharing with customers of earnings above an 11.75 percent return on common equity (based upon the actual average common equity ratio, subject to a maximum common equity ratio of 50 percent of capitalization); reconciliation of pension and other post-employment benefit costs allocable to the gas business to the

amounts for such costs reflected in rates, with the difference deferred as a regulatory asset or liability, as the case may be, for future recovery from or refund to customers; opportunities to retain for shareholders a percentage of annual gas net revenues from non-firm customer transactions (20 percent of revenues between \$35 million and \$50 million, 25 percent between \$50 million and \$70 million and 10 percent over \$70 million), and to earn an incentive of up to \$8.5 million over the period of the rate plan depending upon the number of customers that migrate to retail access; continuation of provisions for the recovery from customers on a current basis of the cost of purchased gas and for the recovery of environmental remediation expenses; continuation of provisions pursuant to which the effects of weather on gas income are moderated; and continuation of the deferral as a regulatory asset or liability, subject to certain limitations, of differences between actual costs and amounts reflected in rates for property taxes and interference costs.

In October 2003, the PSC approved a new gas rate agreement among O&R, the PSC staff and other parties. This agreement, which covers the period November 2003 through October 2006, provides for increases in gas base rates of \$9 million (5.8 percent) effective November 2003, \$9 million (4.8 percent) effective November 2004 and \$5 million (2.5 percent) effective November 2005. The agreement provides for O&R to share equally with customers earnings in excess of an 11 percent return on common equity. It continues to provide for recovery of energy costs from customers on a current basis and continues a weather normalization clause that moderates, but does not eliminate, the effect of weather-related changes on net income. The rate increases also include the amortization of certain regulatory assets and liabilities. The net effect of this amortization will be to increase gas revenues by \$2 million over the period of the three-year rate plan.

In May 2005, the PPUC approved an increase to the rates Pike charges for gas service by \$0.1 million (8.7%), effective June 1, 2005.

In November 2005, O&R filed a request with the PSC for an increase in the rates it charges for gas service, effective November 1, 2006, of \$24 million (4.7%). The filing reflects a return on common equity of 11 percent and a common equity ratio of 48.9 percent of capitalization. The filing includes a proposal for a three-year plan, with additional increases effective November 1, 2007 and 2008 of \$2.1 million and \$1.8 million, respectively. The filing proposes continuation of the current gas rate plan provisions with respect to the reconciliation of actual expenses allocable to gas to the amounts reflected in rates for pension and other postemployment benefit costs, property taxes, interference, environmental remediation and research and development costs.

Steam

In November 2000, the PSC authorized implementation of an agreement between Con Edison of New York, the PSC staff and certain other parties, that provided for a \$17 million steam rate increase in October 2000 and, with limited exceptions, no further changes in steam rates prior to October 2004. The agreement continued the rate provisions pursuant to which Con Edison of New York recovered purchased steam and fuel costs on a current basis.

In September 2004, the PSC approved a steam rate plan covering the two-year period October 2004 through September 2006. The plan provides for increases in steam base rates of \$49.6 million, effective October 1, 2004, and \$27.4 million, effective October 1, 2005. The increases are net of a \$6.2 million pre-tax charge to steam operating revenues, which the company recognized in 2004 to resolve certain issues raised in the proceeding, relating primarily to the treatment of prior period pension credits. The rate increases also include the amortization of certain regulatory assets and liabilities. The net effect of this amortization will be to decrease steam revenues by \$3 million over the period of the two-year rate plan.

Additional provisions of the steam rate plan include: equal sharing with customers of earnings in excess of an 11.75 percent return on common equity (based upon the actual average common equity ratio, subject to a maximum common equity ratio of 50 percent of capitalization); reconciliation of pension and other post-employment benefit costs allocable to the steam business to the amounts for such costs reflected in rates, with the difference deferred as a regulatory asset or liability, as the case may be, for future recovery from or refund to customers; continuation of provisions for the recovery from customers on a current basis of the cost of fuel and purchased steam and for the recovery of environmental remediation expenses; and continuation of the deferral as a regulatory asset or liability, subject to certain limitations, of differences between actual costs and amounts reflected in rates for property taxes and interference costs.

In April 2005, Con Edison of New York commenced commercial operation of the East River Repowering Project (ERRP) and retired its Waterside generating station. Under the steam rate plan, the company credited customers with the estimated net monthly fuel savings from the ERRP until the plant was in service. The company will recover all benefits credited to customers during the period January 2005 through March 2005 over the subsequent 18 months.

In November 2005, Con Edison of New York filed a request with the PSC for a net increase in the rates it charges for steam service, effective October 1, 2006, of \$68 million (9.6 percent).

Notes to the Financial Statements – Continued

The filing reflects a return on common equity of 11 percent and a common equity ratio of 49 percent. The filing includes a proposal for a three-year rate plan, with additional increases effective October 1, 2007 and 2008 of \$15 million and \$12 million, respectively. The filing proposes continuation of the current steam rate plan provisions with respect to recovery from customers of the cost of fuel and purchased steam, environmental remediation expenses and the reconciliation of actual expenses allocable to steam to the amounts reflected in rates for pension and other post-employment benefit costs, property taxes and interference costs.

In December 2005, the PSC issued an order regarding a steam business development plan developed by a task force on which

Con Edison of New York, governmental, consumer, environmental and steam producer representatives participated. The PSC characterized negatively the company's steam business development efforts and ordered the company to implement certain of the plan's recommendations, including developing account management and geographic information systems, and preparing steam resource and targeted marketing plans, strengthening relationships with customers' advisors and vendors of steam equipment and promoting hybrid chiller systems (which would use steam for cooling purposes during periods of high electric demand). Certain of the recommendations were reflected in the company's pending steam rate request and others may also be considered in connection with the request.

Regulatory Assets and Liabilities

Regulatory assets and liabilities at December 31, 2005 and 2004 were comprised of the following items:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Regulatory assets				
Future federal income tax	\$ 952	\$ 762	\$ 902	\$ 715
Environmental remediation costs	241	165	182	106
World Trade Center restoration costs	127	104	127	104
Recoverable energy costs	120	81	120	81
Pension and other postretirement benefits deferrals	96	42	46	-
O&R Transition bond charges	70	74	-	-
Revenue taxes	59	46	59	46
Unbilled gas revenue	44	44	44	44
Workers' compensation	42	48	42	48
Net T&D reconciliation	38	-	38	-
Asbestos-related costs	25	26	25	25
Other retirement program costs	24	29	24	29
Sale costs – First Avenue properties	-	178	-	178
Sale of nuclear generating plant including interest	-	176	-	176
Electric interference costs	-	44	-	44
NYS tax law changes	-	40	-	40
Electric cost reconciliations	(47)	-	(47)	-
Other	235	205	220	193
Regulatory Assets	2,026	2,064	1,782	1,829
Recoverable energy costs – current	221	194	192	176
Total Regulatory Assets	\$2,247	\$2,258	\$1,974	\$2,005
Regulatory liabilities				
Allowance for cost of removal less salvage	\$ 558	\$ 723	\$ 501	\$ 666
Net electric deferrals	288	-	288	-
Gain on sale of First Avenue properties	256	-	256	-
Transmission congestion contracts	163	391	163	391
2004 electric, gas and steam one-time rate plan charges	121	124	121	124
Prior year deferred tax amortization	81	-	81	-
EPA SO ₂ allowance proceeds – electric and steam	76	20	76	20
Utilities' hedging unrealized gains	75	2	59	-
NYS tax law changes	51	44	39	32
Interest on federal income tax refund	41	37	41	37
O&R Refundable energy costs	40	29	-	-
Property tax reconciliation	31	1	31	1
NYISO reconciliation	20	160	20	160
DC service incentive	17	33	17	33
Gas interference – cost sharing	9	11	9	11
Gas interruptible sales credits	8	22	8	22
Earnings sharing reserve	7	50	7	50
Excess dividends tax	4	18	4	18
Gain on divestiture	-	56	-	55
Other	216	278	203	267
Regulatory Liabilities	2,062	1,999	1,924	1,887
Deferred derivative gains – current	224	23	170	8
Total Regulatory Liabilities	\$2,286	\$2,022	\$2,094	\$1,895

Notes to the Financial Statements – Continued

"Net electric deferrals" represents the remaining unamortized balance of certain regulatory assets and liabilities of Con Edison of New York that were combined effective April 1, 2005 and are being amortized to income over the period April 2005 through March 2008, in accordance with the electric rate plan discussed above.

The \$81 million "prior year deferred tax amortization" represents the revenue equivalent of \$48 million for the amortization of deferred taxes in the years 2000 to 2004 that was not recorded during that period. The correction was recognized in 2005 with this balance deferred as a regulatory liability pending disposition by the PSC.

Other Regulatory Matters

In May 2005, Con Edison of New York completed the sale of certain properties located on First Avenue in Manhattan. Net proceeds from the sale received at closing totaled \$534 million, resulting in a pre-tax gain on the sale of \$256 million. In accordance with the PSC order approving the sale of the properties, the company has deferred the net gain for the benefit of customers. The net after-tax gain on the sale, including additional expenses to be incurred, is estimated at \$114 million. There may be additional proceeds in the event of certain zoning changes or other developments.

Note C – Capitalization

Common Stock

At December 31, 2005 and 2004, Con Edison owned all of the issued and outstanding shares of common stock of the Utilities. Con Edison of New York owns 21,976,200 shares of Con Edison stock, which it purchased prior to 2001 in connection with Con Edison's stock repurchase plan. Con Edison of New York presents in the financial statements the cost of the Con Edison stock it owns as a reduction of common shareholder's equity.

Capitalization of Con Edison

The outstanding capitalization for each of the Companies is shown on its Consolidated Statement of Capitalization, and for Con Edison includes the Utilities' outstanding preferred stock and debt.

Preferred Stock of Con Edison of New York

As of December 31, 2005, 1,915,319 shares of Con Edison of New York's \$5 Cumulative Preferred Stock (the "\$5 Preferred") and 375,626 shares of its Cumulative Preferred Stock (\$100 par value) were outstanding.

Dividends on the \$5 Preferred Stock are \$5 per share per annum, payable quarterly, and dividends on the Cumulative Preferred Stock are \$4.65 per share per annum, payable quarterly. The preferred dividends must be declared by Con

Edison of New York's Board of Trustees to become payable. See "Dividends" below.

With respect to any corporate action to be taken by a vote of shareholders of Con Edison of New York, Con Edison (which owns all of the 235,488,094 shares of Con Edison of New York's common stock that are outstanding) and the holders of the \$5 Preferred are each entitled to one vote for each share held. Except as otherwise required by law, holders of the Cumulative Preferred Stock have no right to vote; provided, however, that if the \$5 Preferred is no longer outstanding, the holders of the Cumulative Preferred Stock are entitled to one vote for each share with respect to any corporate action to be taken by a vote of the shareholders of Con Edison of New York. In addition, if dividends are in arrears for certain periods, the holders are entitled to certain rights with respect to the election of Con Edison of New York's Trustees. Without the consent of the holders of the Cumulative Preferred Stock, Con Edison of New York may not create or authorize any kind of stock ranking prior to the Cumulative Preferred Stock or, if such actions would affect the holders of the Cumulative Preferred Stock adversely, be a party to any consolidation or merger, create or amend the terms of the Cumulative Preferred Stock or reclassify the Cumulative Preferred Stock. Con Edison of New York may redeem the \$5 Preferred at a redemption price of \$105 per share and the Cumulative Preferred Stock at a redemption price of \$101 per share (in each case, plus accrued and unpaid dividends). In the event of the dissolution, liquidation or winding up of the affairs of Con Edison of New York, before any distribution of capital assets could be made to the holders of the company's common stock, the holders of the \$5 Preferred and the Cumulative Preferred Stock would each be entitled to receive \$100 per share, in the case of an involuntary liquidation, or an amount equal to the redemption price per share, in the case of a voluntary liquidation, in each case together with all accrued and unpaid dividends.

Dividends

In accordance with PSC requirements, the dividends that the Utilities generally pay are limited to not more than 100 percent of their respective income available for dividends calculated on a two-year rolling average basis. Excluded from the calculation of "income available for dividends" are non-cash charges to income resulting from accounting changes or charges to income resulting from significant unanticipated events. The restriction also does not apply to dividends paid in order to transfer to Con Edison proceeds from major transactions, such as asset sales, or to dividends reducing each utility subsidiary's equity ratio to a level appropriate to its business risk.

In addition, no dividends may be paid, or funds set apart for payment, on Con Edison of New York's common stock until all dividends accrued on the \$5 Preferred Stock and Cumulative

Notes to the Financial Statements – Continued

Preferred Stock have been paid, or declared and set apart for payment.

Long-term Debt

Long-term debt maturing in the period 2006-2010 is as follows:

(Millions of Dollars)	Con Edison	Con Edison of New York
2006	\$ 22	\$ -
2007	374	330
2008	507	280
2009	491	475
2010	701	625

The Utilities have issued certain series of tax-exempt debt through the New York State Energy Research and Development Authority (NYSERDA) that currently bear interest at a rate determined weekly and, in certain circumstances, is subject to mandatory tender for purchase by the Utilities.

Long-term debt is stated at cost, which in total, as of December 31, 2005, approximates fair value (estimated based on current rates for debt of the same remaining maturities), except for \$225 million of Con Edison of New York's tax-exempt financing. See "Interest Rate Hedging" in Note P.

At December 31, 2005 and 2004, long-term debt of Con Edison included \$23 million of mortgage bonds collateralized by substantially all the utility plant and other physical property of O&R's New Jersey and Pennsylvania utility subsidiaries and for 2004, \$46 million of Transition Bonds issued by O&R's New Jersey utility subsidiary through a special purpose entity. See Note B. At December 31, 2005 and 2004, long-term debt of Con Edison included: \$115 million and \$128 million, respectively, of non-recourse debt of a Con Edison Development subsidiary collateralized by a pledge of the Lakewood power plant, a related power purchase agreement and project assets; and \$333 million and \$336 million, respectively, of debt secured by the Newington power plant and related assets. See Note Q. At December 31, 2005 and 2004, restricted cash relating to the operations of the Lakewood plant was \$11 million and \$16 million, respectively.

Significant Debt Covenants

There are no significant debt covenants under the financing arrangements for the debentures of Con Edison or Con Edison of New York, other than obligations to pay principal and interest when due and covenants not to consolidate with or merge into any other corporation unless certain conditions are met, and no cross default provisions. The tax-exempt financing arrangements of the Utilities are subject to these covenants and the covenants discussed below. The Companies believe that they were in compliance with their significant debt covenants at December 31, 2005.

The tax-exempt financing arrangements involved the issuance of uncollateralized promissory notes of the Utilities to NYSERDA in exchange for the net proceeds of a like amount of tax-exempt bonds with substantially the same terms sold to the public by NYSERDA. The tax-exempt financing arrangements include covenants with respect to the tax-exempt status of the financing, including covenants with respect to the use of the facilities financed. The failure to comply with these covenants would, except as otherwise provided, constitute an event of default with respect to the debt to which such provisions applied. The arrangements include provisions for the maintenance of liquidity and credit facilities, the failure to comply with which would, except as otherwise provided, constitute an event of default with respect to the debt to which such provisions applied. If an event of default were to occur, the principal and accrued interest on the debt to which such event of default applied might and, in certain circumstances would, become due and payable immediately.

The liquidity and credit facilities currently in effect for the tax-exempt financing include covenants that the ratio of debt to total capital of the obligated utility will not at any time exceed 0.65 to 1 and that, subject to certain exceptions, the utility will not mortgage, lien, pledge or otherwise encumber its assets. Certain of the facilities also include as events of default, defaults in payments of other debt obligations in excess of specified levels (\$100 million for Con Edison of New York).

Note D – Short Term Borrowing

In April 2005, Con Edison and the Utilities entered into a five-year revolving credit agreement, under which banks committed to provide loans and letters of credit in an aggregate amount of up to \$937.5 million, and terminated a three-year credit agreement that was to expire in November 2005. Bank commitments under the new revolving credit agreement and an existing three-year credit agreement that expires in November 2006 total \$1.5 billion, with the full amount available to Con Edison of New York and \$500 million available to Con Edison, the parent company. Neither Con Edison nor either of the Utilities is responsible for the obligations under the credit agreements of any company other than itself. The credit agreements support the Companies' commercial paper program.

At December 31, 2005, Con Edison had \$755 million of commercial paper outstanding of which \$520 million was outstanding under Con Edison of New York's program, at a weighted average interest rate of 4.3 percent. At December 31, 2004, Con Edison had \$156 million of commercial paper outstanding of which \$100 million was outstanding under Con Edison of New York's program, at a weighted average interest rate of 2.2 percent.

Notes to the Financial Statements – Continued

The banks' commitments under the credit agreements are subject to certain conditions, including that there be no event of default. The commitments are not subject to maintenance of credit rating levels or the absence of a material adverse change. Upon a change of control of, or upon an event of default by one of the Companies, the banks may terminate their commitments with respect to that company and declare any amounts owed by that company under the credit agreements immediately due and payable. Events of default include the exceeding at any time of a ratio of consolidated debt to consolidated total capital of 0.65 to 1 (at December 31, 2005, this ratio was 0.52 to 1 for Con Edison and 0.50 to 1 for Con Edison of New York); having liens on its assets in an aggregate amount exceeding 5 percent of its consolidated total capital, subject to certain exceptions; and the failure by the company, following any applicable notice period, to meet certain other customary covenants. The fees charged for the revolving credit facilities and any loans made or letters of credit issued under the credit agreements reflect the Companies' respective credit ratings. At December 31, 2005, \$13 million of letters of credit were outstanding under the agreements.

See Note S for information about short-term borrowing between related parties.

Note E – Pension Benefits

Con Edison maintains a tax-qualified, non-contributory pension plan that covers substantially all employees of Con Edison of

New York and O&R and certain employees of Con Edison's competitive businesses. The plan is designed to comply with the Internal Revenue Code and the Employee Retirement Income Security Act of 1974. In addition, Con Edison maintains additional non-qualified supplemental pension plans.

Investment gains and losses are fully recognized in expense over a 15-year period. Other actuarial gains and losses are fully recognized in expense over a 10-year period. This amortization is in accordance with the Statement of Policy issued by the PSC and is permitted under SFAS No. 87, "Employers' Accounting for Pensions," which provides a "corridor method" for moderating the effect of investment gains and losses on pension expense, or alternatively, allows for any systematic method of amortization of unrecognized gains and losses that is faster than the corridor method and is applied consistently to both gains and losses.

Effective April 1, 2005, in accordance with the 2005 Electric Rate Agreement and October 1, 2004, in accordance with the gas and steam Joint Proposal, Con Edison of New York began deferring the difference between expenses recognized under SFAS No. 87 and the rate allowance. Generally, O&R has also been deferring such difference pursuant to its rate agreements. See Note B.

Con Edison uses a measurement date of December 31 for its pension plan.

Net Periodic Benefit Cost

The components of the Companies' net periodic benefit costs for 2005, 2004 and 2003 were as follows:

(Millions of Dollars)	Con Edison			Con Edison of New York		
	2005	2004	2003	2005	2004	2003
Service cost – including administrative expenses	\$ 118	\$ 105	\$ 102	\$ 108	\$ 97	\$ 95
Interest cost on projected benefit obligation	430	414	420	402	388	393
Expected return on plan assets	(642)	(652)	(654)	(618)	(629)	(631)
Amortization of net actuarial (gain)/loss	81	(38)	(95)	64	(50)	(104)
Amortization of prior service costs	13	12	15	12	11	14
Net periodic benefit cost	\$ -	\$(159)	\$(212)	\$ (32)	\$(183)	\$(233)
Amortization of regulatory asset*	4	4	4	4	4	4
Total periodic benefit cost	\$ 4	\$(155)	\$(208)	\$ (28)	\$(179)	\$(229)
Cost capitalized	2	45	60	9	51	65
Cost deferred	(44)	1	(9)	(33)	2	-
Cost credited to operating expenses	\$ (38)	\$(109)	\$(157)	\$ (52)	\$(126)	\$(164)

* Relates to increases in Con Edison of New York's pension obligations of \$33 million from a 1993 special retirement program and \$45 million from a 1999 special retirement program.

Notes to the Financial Statements – Continued

Funded Status

The funded status at December 31, 2005, 2004 and 2003 was as follows:

(Millions of Dollars)	Con Edison			Con Edison of New York		
	2005	2004	2003	2005	2004	2003
Change in Projected Benefit Obligation						
Projected benefit obligation at beginning of year	\$7,315	\$6,695	\$6,434	\$6,840	\$6,267*	\$6,030
Service cost – excluding administrative expenses	116	104	101	107	96	94
Interest cost on projected benefit obligation	430	414	420	402	388	393
Plan amendments	-	32	-	-	22	-
Net actuarial loss	577	400	54	538	373	43
Benefits paid	(355)	(330)	(314)	(330)	(306)	(290)
Projected Benefit Obligation at End of Year	\$8,083	\$7,315	\$6,695	\$7,557	\$6,840	\$6,270
Change in Plan Assets						
Fair value of plan assets at beginning of year	\$7,254	\$6,710	\$5,760	\$6,985	\$6,474	\$5,563
Actual return on plan assets	609	872	1,261	586	840	1,218
Employer contributions	34	28	22	2	2	2
Benefits paid	(355)	(330)	(313)	(330)	(306)	(290)
Administrative expenses	(31)	(26)	(20)	(29)	(25)	(19)
Fair Value of Plan Assets at End of Year	\$7,511	\$7,254	\$6,710	\$7,214	\$6,985	\$6,474
Funded status	\$ (572)	\$ (61)	\$ 15	\$ (343)	\$ 145	\$ 204
Unrecognized net loss	1,908	1,351	1,108	1,750	1,217	981
Unrecognized prior service costs	75	87	67	62	73	63
Net Prepaid Benefit Cost	\$1,411	\$1,377	\$1,190	\$1,469	\$1,435	\$1,248
Accumulated Benefit Obligation	\$7,297	\$6,582	\$5,998	\$6,796	\$6,127	\$5,591

* Amounts for certain competitive businesses were previously included in the Con Edison of New York balance.

The amounts recognized in the consolidated balance sheet at December 31, 2005 and 2004 were as follows:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Prepaid pension cost	\$1,474	\$1,442	\$1,474	\$1,442
Accrued benefit cost	(58)	(58)	-	-
Additional minimum pension liability	(22)	(12)	(19)	(11)
Intangible asset	2	-	2	-
Accumulated other comprehensive income	20	12	17	11
1993 special retirement program	(5)	(7)	(5)	(7)
Net prepaid benefit cost	\$1,411	\$1,377	\$1,469	\$1,435

At December 31, 2005 and 2004, Con Edison's other current assets include \$53 million and \$50 million, respectively, held in an external trust account for benefit payments pursuant to the supplemental retirement plans. Included in these amounts for Con Edison of New York were \$42 million and \$40 million, respectively. The accumulated benefit obligations for the supplemental retirement plans for Con Edison and Con Edison of New York were \$120 million and \$87 million as of December 31, 2005 and \$104 million and \$72 million as of December 31, 2004, respectively.

Notes to the Financial Statements – Continued

Assumptions

The actuarial assumptions were as follows:

	2005	2004	2003
Weighted-average assumptions used to determine benefit obligations at December 31:			
Discount rate	5.70%	5.90%	6.30%
Rate of compensation increase			
– Con Edison of New York	4.00%	4.00%	4.00%
– O&R	4.00%	4.00%	4.00%
Weighted-average assumptions used to determine net periodic benefit cost for the years ended December 31:			
Discount rate	5.90%	6.30%	6.75%
Expected return on plan assets	8.80%	8.80%	8.80%
Rate of compensation increase			
– Con Edison of New York	4.00%	4.00%	4.30%
– O&R	4.00%	4.00%	4.15%

The expected return assumption reflects anticipated returns on the plan's current and future assets. The Companies use historical investment data as well as the plan's target asset class and investment management mix to determine the expected return on plan assets. This analysis incorporates such factors as real return, inflation, and expected investment manager performance for each broad asset class applicable to the plan. Historical plan performance and peer data are also reviewed to check for reasonability and appropriateness.

Discount Rate Assumption

To determine the assumed discount rate, the Companies use a model that produces a yield curve based on yields on selected highly rated (Aaa or Aa, by Moody's Investors Service) corporate bonds. Bonds with insufficient liquidity, bonds with questionable pricing information and bonds that are not representative of the overall market are excluded from consideration. For example, the bonds used in the model cannot be callable, they must have a price between 50 and 200, the yield must lie between 1 percent and 20 percent, and the amount of the issue must be in excess of \$100 million. The spot rates defined by the yield curve and the plan's projected benefit payments are used to develop a weighted average discount rate.

Expected Benefit Payments

Based on current assumptions, the Companies expect to make the following benefit payments over the next ten years:

(Millions of dollars)	2006	2007	2008	2009	2010	2011-2015
Con Edison	\$378	\$399	\$421	\$442	\$465	\$2,642
Con Edison of New York	351	371	392	412	433	2,461

Expected Contributions

Based on current estimates, the Companies are not required under funding regulations and laws to make any contributions to the pension plan during 2006. The Companies' policy is to fund their accounting cost to the extent tax deductible, therefore, Con Edison and Con Edison of New York expect to make discretionary contributions of \$70 million and \$34 million, respectively, to the pension plan during 2006.

Plan Assets

The asset allocations for the pension plan at the end of 2005, 2004 and 2003, and the target allocation for 2006 are as follows:

Asset Category	Target Allocation	Plan Assets at December 31,			
	2006	2005	2004	2003	
Equity Securities	65%	67%	67%	64%	
Debt Securities	30%	28%	28%	32%	
Real Estate	5%	5%	5%	4%	
Total	100%	100%	100%	100%	

Con Edison has established a pension trust for the investment of assets to be used for the exclusive purpose of providing retirement benefits to participants and beneficiaries.

Pursuant to resolutions adopted by Con Edison's Board of Directors, the Management Development and Compensation Committee of the Board of Directors (the Committee) has general oversight responsibility for Con Edison's pension and other employee benefit plans. The pension plan's Named Fiduciaries have been granted the authority to control and manage the operation and administration of the plans, including overall responsibility for the investment of assets in the trust and the power to appoint and terminate investment managers. The

Notes to the Financial Statements – Continued

Named Fiduciaries consist of Con Edison's chief executive, financial and accounting officers and others the Board of Trustees may appoint in addition to or in place of the designated Named Fiduciaries.

The investment objective for the pension trust is to maximize the long-term total return on the trust assets within a prudent level of risk. The investment strategy is to diversify its funds across asset classes, investment styles and fund managers. The target asset allocation is reviewed periodically based on asset/liability studies and may be modified as appropriate. The target asset allocation for 2006 reflects the results of such a study conducted in 2003.

Individual fund managers operate under written guidelines provided by Con Edison, which cover such areas as investment objectives, performance measurement, permissible investments, investment restrictions, trading and execution, and communication and reporting requirements. Manager performance, total fund performance, and compliance with asset allocation guidelines are monitored on an ongoing basis, and reviewed by the Named Fiduciaries and reported to the Committee on a regular basis. Changes in fund managers and rebalancing of the portfolio are undertaken as appropriate. The Named Fiduciaries approve such changes, which are also reported to the Committee.

The Companies also offer a defined contribution savings plan that covers substantially all employees and made contributions to the plan as follows:

(Millions of Dollars)	For the Years Ended December 31,		
	2005	2004	2003
Con Edison	\$19	\$19	\$18
Con Edison of New York	17	17	17

Note F – Other Postretirement Benefits

The Utilities currently have contributory comprehensive hospital, medical and prescription drug programs for all retirees, their dependents and surviving spouses.

Con Edison of New York also has a contributory life insurance program for bargaining unit employees and provides basic life insurance benefits up to a specified maximum at no cost to retired management employees. O&R has a non-contributory life insurance program for retirees. Certain employees of Con Edison's competitive businesses are eligible to receive benefits under these programs.

Investment plan gains and losses are fully recognized in expense over a 15-year period for the Companies. Other actuarial gains and losses are fully recognized in expense over a 10-year period.

The Utilities generally defer any difference between expenses recognized under SFAS No. 106, "Employers' Accounting for Postretirement Benefits Other Than Pensions," and the current rate allowances for their electric, gas and steam operations.

Con Edison uses a measurement date of December 31 for its other postretirement benefit plans.

Net Periodic Benefit Cost

The components of the Companies' net periodic postretirement benefit costs for 2005, 2004 and 2003 were as follows:

(Millions of Dollars)	Con Edison			Con Edison of New York		
	2005	2004	2003	2005	2004	2003
Service cost	\$ 14	\$ 11	\$ 10	\$ 10	\$ 8	\$ 8
Interest cost on accumulated other postretirement benefit obligation	84	74	82	74	66	73
Expected return on plan assets	(79)	(79)	(78)	(73)	(74)	(74)
Amortization of net actuarial loss	72	40	46	63	35	41
Amortization of prior service cost	(15)	(15)	(16)	(15)	(15)	(15)
Amortization of transition obligation	4	4	4	4	4	4
Net Periodic Postretirement Benefit Cost	\$ 80	\$ 35	\$ 48	\$ 63	\$ 24	\$ 37
Cost capitalized	(25)	(10)	(15)	(21)	(7)	(11)
Cost deferred	(24)	11	(3)	(18)	12	-
Cost charged to operating expenses	\$ 31	\$ 36	\$ 30	\$ 24	\$ 29	\$ 26

Notes to the Financial Statements – Continued

Funded Status

The funded status of the programs at December 31, 2005, 2004 and 2003 was as follows:

(Millions of Dollars)	Con Edison			Con Edison of New York		
	2005	2004	2003	2005	2004	2003
Change in Benefit Obligation						
Benefit obligation at beginning of year	\$1,315	\$1,238	\$1,248	\$1,157	\$1,107	\$1,116
Service cost	14	11	10	10	8	8
Interest cost on accumulated postretirement benefit obligation	84	74	82	74	66	73
Net actuarial loss	244	117	99	221	91	89
Benefits paid and administrative expenses	(108)	(102)	(91)	(97)	(92)	(83)
Participant contributions	19	19	18	18	19	18
Medicare prescription benefit	-	(42)	(128)	-	(42)	(114)
Benefit Obligation at End of Year	\$1,568	\$1,315	\$1,238	\$1,383	\$1,157	\$1,107
Change in Plan Assets						
Fair value of plan assets at beginning of year	\$ 882	\$ 839	\$ 717	\$ 826	\$ 790	\$ 674
Actual return on plan assets	59	91	145	56	87	143
Employer contributions	71	31	46	58	22	38
Participant contributions	18	19	18	18	19	18
Benefits paid	(104)	(98)	(87)	(97)	(92)	(83)
Fair Value of Plan Assets at End of Year	\$ 926	\$ 882	\$ 839	\$ 861	\$ 826	\$ 790
Funded status	\$ (642)	\$ (433)	\$ (399)	\$ (522)	\$ (331)	\$ (317)
Unrecognized net loss	576	386	363	496	322	319
Unrecognized prior service costs	(104)	(119)	(133)	(103)	(118)	(132)
Unrecognized net transition liability at January 1, 1993	26	29	33	26	29	33
Accrued Postretirement Benefit Cost	\$ (144)	\$ (137)	\$ (136)	\$ (103)	\$ (98)	\$ (97)

* Being amortized over a period of 20 years and reduced by an additional amount in 2002 due to plan amendments.

Assumptions

The actuarial assumptions were as follows:

	2005	2004	2003
Weighted-average assumptions used to determine benefit obligations at December 31:			
Discount Rate	5.70%	5.90%	6.30%
Weighted-average assumptions used to determine net periodic benefit cost for the years ended December 31:			
Discount Rate	5.90%	6.30%	6.75%
Expected Return on Plan Assets			
Tax-Exempt	8.80%	8.80%	8.80%
Taxable			
Con Edison of New York	7.80%	7.80%	7.80%
O&R	8.30%	8.30%	8.30%

The health care cost trend rate used to determine net periodic benefit cost for the year ended December 31, 2005 was 10 percent, which is assumed to decrease gradually to 4.5 percent by 2011 and remain at that level thereafter. The health care cost trend rate used to determine benefit obligations for the year ended December 31, 2005 was 9 percent, which is assumed to decrease gradually to 4.5 percent by 2011 and remain at that level thereafter.

Refer to Note E for descriptions of the basis for determining the expected return on assets, investment policies and strategies, and the assumed discount rate.

Notes to the Financial Statements – Continued

A one-percentage point change in the assumed health care cost trend rate would have the following effects at December 31, 2005:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	1-Percentage-Point			
	Increase	Decrease	Increase	Decrease
Effect on accumulated other postretirement benefit obligation	\$36	\$29	\$17	\$13
Effect on service cost and interest cost components for 2005	3	2	1	1

Expected Benefit Payments

Based on current assumptions, the Companies expect to make the following benefit payments over the next ten years:

(Millions of Dollars)	2006	2007	2008	2009	2010	2011-2015
Gross benefit payments						
Con Edison	\$99	\$108	\$113	\$117	\$122	\$655
Con Edison of New York	88	97	100	104	108	579
Medicare prescription benefit receipts						
Con Edison	\$ 8	\$ 9	\$ 10	\$ 11	\$ 12	\$ 72
Con Edison of New York	8	8	9	10	11	64

Expected Contributions

Based on current estimates, Con Edison and Con Edison of New York expect to make contributions of \$64 million and \$51 million, respectively, to the other postretirement benefit plans in 2006.

Plan Assets

The asset allocations for Con Edison of New York's other postretirement benefit plans at the end of 2005, 2004 and 2003, and the target allocation for 2006 are as follows:

Asset Category	Target Allocation	Plan Assets at December 31,		
	2006	2005	2004	2003
Equity Securities	65%	66%	66%	62%
Debt Securities	35%	34%	34%	38%
Total	100%	100%	100%	100%

Con Edison has established postretirement health and life insurance benefit plan trusts for the investment of assets to be used for the exclusive purpose of providing other postretirement benefits to participants and beneficiaries.

Refer to Note E for a discussion of Con Edison's investment policy for its benefit plans.

Effect of Medicare Prescription Benefit

In December 2003, President Bush signed into law the Medicare Prescription Drug, Improvement and Modernization Act of 2003. FASB Staff Position (FSP) No. FAS 106-2, issued by the FASB in May 2004, provides accounting and disclosure requirements relating to the Act. The Companies' actuaries have determined that each prescription drug plan provides a benefit that is at least

actuarially equivalent to the Medicare prescription drug plan and projections indicate that this will be the case for 20 years; therefore, the Companies are eligible to receive the benefit that the Act makes available. When the plans' benefits are no longer actuarially equivalent to the Medicare plan, 25% of the retirees in each plan are assumed to begin to decline participation in the Companies' prescription programs.

To reflect the effect of the Act on the plans, the accumulated postretirement benefit obligations were reduced for Con Edison and Con Edison of New York by \$206 million and \$178 million, respectively, as of December 31, 2005. The 2005 postretirement benefit costs were reduced by \$28 million for Con Edison and \$24 million for Con Edison of New York. The Companies will recognize the 28 percent benefit (reflected as an unrecognized net gain to each plan) as an offset to plan costs. The 28 percent benefit is expected to reduce prescription drug plan costs by about 25 percent starting in 2006.

Note G — Environmental Matters Superfund Sites

Hazardous substances, such as asbestos, polychlorinated biphenyls (PCBs) and coal tar, have been used or generated in the course of operations of the Utilities and their predecessors and are present at sites and in facilities and equipment they currently or previously owned, including sites at which gas was manufactured or stored.

The Federal Comprehensive Environmental Response, Compensation and Liability Act of 1980 and similar state statutes (Superfund) impose joint and several liability, regardless of fault, upon generators of hazardous substances for investigation and

Notes to the Financial Statements – Continued

remediation costs (which includes costs of demolition, removal, disposal, storage, replacement, containment and monitoring) and environmental damages. Liability under these laws can be material and may be imposed for contamination from past acts, even though such past acts may have been lawful at the time they occurred. The sites at which the Utilities have been asserted to have liability under these laws, including their manufactured gas plant sites, are referred to herein as "Superfund Sites."

For Superfund Sites where there are other potentially responsible parties and the Utilities are not managing the site investigation and remediation, the accrued liability represents an estimate of the amount the Utilities will need to pay to discharge their related obligations. For Superfund Sites (including the manufactured gas plant sites) for which one of the Utilities is managing the investigation and remediation, the accrued liability represents an estimate of the undiscounted cost to investigate the sites and, for sites that have been investigated in whole or in part, the cost to remediate the sites. Remediation costs are estimated in light of the information available, applicable remediation standards and experience with similar sites.

The accrued liabilities and regulatory assets related to Superfund Sites at December 31, 2005 and 2004 were as follows:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Accrued Liabilities:				
Manufactured gas plant sites	\$173	\$148	\$121	\$ 92
Other Superfund Sites	65	50	65	49
Total	\$238	\$198	\$186	\$141
Regulatory assets	\$241	\$165	\$182	\$106

Most of the accrued Superfund Site liability relates to sites that have been investigated, in whole or in part. As investigations progress on these and other sites, the Utilities expect that additional liability will be accrued, the amount of which is not presently determinable but may be material. Under their current rate agreements, the Utilities are permitted to recover or defer as regulatory assets (for subsequent recovery through rates) certain site investigation and remediation costs.

Environmental remediation costs incurred and insurance recoveries received related to Superfund Sites at December 31, 2005 and 2004, were as follows:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Remediation costs incurred	\$46	\$47	\$41	\$44
Insurance recoveries received	2*	36**	2*	36**

* Reduced amount deferred for recovery from customers.

** \$35 million reduced amount deferred for recovery from customers and \$1 million reduced related expenses.

In 2002, Con Edison of New York estimated that for its manufactured gas plant sites, most of which had not been investigated, its aggregate undiscounted potential liability for the investigation and remediation of coal tar and/or other manufactured gas plant-related environmental contaminants could range from approximately \$65 million to \$1.1 billion. In 2004, O&R estimated that for its manufactured gas plant sites, each of which has been investigated, the aggregate undiscounted potential liability for the remediation of such contaminants could range from approximately \$31 million to \$87 million. These estimates were based on the assumption that there is contamination at each of the sites and additional assumptions regarding the extent of contamination and the type and extent of remediation that may be required. Actual experience may be materially different.

Asbestos Proceedings

Suits have been brought in New York State and federal courts against the Utilities and many other defendants, wherein a large number of plaintiffs sought large amounts of compensatory and punitive damages for deaths and injuries allegedly caused by exposure to asbestos at various premises of the Utilities. The suits that have been resolved, which are many, have been resolved without any payment by the Utilities, or for amounts that were not, in the aggregate, material to them. The amounts specified in all the remaining thousands of suits total billions of dollars; however, the Utilities believe that these amounts are greatly exaggerated, based on the disposition of previous claims. In 2004, Con Edison of New York estimated that its aggregate undiscounted potential liability for these suits and additional suits that may be brought over the next 15 years is \$25 million. The estimate was based upon a combination of modeling, historical data analysis and risk factor assessment. Actual experience may be materially different.

In addition, certain current and former employees have claimed or are claiming workers' compensation benefits based on alleged disability from exposure to asbestos. Under its current rate agreements, Con Edison of New York is permitted to defer as regulatory assets (for subsequent recovery through rates) liabilities incurred for its asbestos lawsuits and workers' compensation claims.

Notes to the Financial Statements – Continued

The accrued liability for asbestos suits and workers' compensation proceedings (including those related to asbestos exposure) and the amounts deferred as regulatory assets for the Companies at December 31, 2005 and 2004 were as follows:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Accrued liability – asbestos suits	\$ 25	\$ 26	\$ 25	\$ 25
Regulatory assets – asbestos suits	\$ 25	\$ 26	\$ 25	\$ 25
Accrued liability – workers' compensation	\$118	\$122	\$113	\$119
Regulatory assets – workers' compensation	\$ 42	\$ 48	\$ 42	\$ 48

Note H – Northeast Utilities Litigation

In March 2001, Con Edison commenced an action in the United States District Court for the Southern District of New York (the District Court), entitled Consolidated Edison, Inc. v. Northeast Utilities (the First Federal Proceeding), seeking a declaratory judgment that Northeast Utilities has failed to meet certain conditions precedent to Con Edison's obligation to complete its acquisition of Northeast Utilities pursuant to their agreement and plan of merger, dated as of October 13, 1999, as amended and restated as of January 11, 2000 (the merger agreement). In May 2001, Con Edison amended its complaint. As amended, Con Edison's complaint seeks, among other things, recovery of damages sustained by it as a result of the material breach of the merger agreement by Northeast Utilities, and the District Court's declaration that under the merger agreement Con Edison has no further or continuing obligations to Northeast Utilities and Northeast Utilities has no further or continuing rights against Con Edison.

In June 2001, Northeast Utilities withdrew the separate action it commenced in March 2001 in the same court and filed as a counter-claim in the First Federal Proceeding its claim that Con Edison materially breached the merger agreement and that, as a result, Northeast Utilities and its shareholders have suffered substantial damages, including the difference between the consideration to be paid to Northeast Utilities' shareholders pursuant to the merger agreement and the market value of Northeast Utilities' common stock (the so-called "lost premium" claim), expenditures in connection with regulatory approvals and lost business opportunities. Pursuant to the merger agreement, Con Edison agreed to acquire Northeast Utilities for \$26.00 per share (an estimated aggregate of not more than \$3.9 billion) plus \$0.0034 per share for each day after August 5, 2000 through the day prior to the completion of the transaction, payable 50 percent in cash and 50 percent in stock.

In March 2003, the District Court ruled on certain motions filed by Con Edison and Northeast Utilities in the First Federal Proceeding. The District Court ruled that Con Edison's claim against Northeast Utilities for hundreds of millions of dollars for breach of the merger agreement, as well as Con Edison's claim that Northeast Utilities underwent a material adverse change, will go to trial. The District Court also dismissed Con Edison's fraud and misrepresentation claims. In addition, the District Court ruled that Northeast Utilities' shareholders were intended third-party beneficiaries of the merger agreement and the alleged \$1.2 billion lost premium claim against Con Edison would go to trial.

In May 2003, a lawsuit by a purported class of Northeast Utilities' shareholders, entitled Rimkoski, et al. v. Consolidated Edison, Inc., was filed in New York County Supreme Court (the State Proceeding) alleging breach of the merger agreement. The complaint defined the putative class as holders of Northeast Utilities' common stock on March 5, 2001, and alleged that the class members were intended third party beneficiaries of the merger agreement. The complaint sought damages believed to be substantially duplicative of those sought by Northeast Utilities on behalf of its shareholders in the First Federal Proceeding. In December 2003, the District Court granted Rimkoski's motion to intervene in the First Federal Proceeding and, in February 2004, the State Proceeding was dismissed without prejudice. In January 2004, Rimkoski filed a motion in the First Federal Proceeding to certify his action as a class action on behalf of all holders of Northeast Utilities' common stock on March 5, 2001 and to appoint Rimkoski as class representative. The motion is pending.

In May 2004, the District Court ruled that the Northeast Utilities' shareholders who may pursue the lost premium claim against Con Edison are the holders of Northeast Utilities' common stock on March 5, 2001 and the District Court therefore dismissed Northeast Utilities' lost premium claim. The District Court certified its ruling regarding the lost premium claim for interlocutory appeal to the United States Court of Appeals for the Second Circuit (the Court of Appeals), and in June 2004 Northeast Utilities filed its motion for leave to appeal the issue to the Court of Appeals. The District Court further certified for interlocutory appeal its March 2003 determination that Northeast Utilities' shareholders are intended third-party beneficiaries under the merger agreement, and in June 2004 Con Edison filed its motion for leave to appeal the issue to the Court of Appeals. In October 2004, the Court of Appeals granted both Con Edison's motion and Northeast Utilities' motion. In October 2005, the Court of Appeals reversed the District Court's March 2003 ruling that Northeast Utilities' shareholders were intended third-party beneficiaries of the merger agreement, and held that Northeast Utilities' shareholders therefore could not sue Con Edison for the claimed lost premium. Also, in October 2005, Northeast Utilities

Notes to the Financial Statements – Continued

and Rimkowski each filed petitions for rehearing of that Court of Appeals' decision. In January 2006, the petitions for rehearing were denied.

In May 2004, the District Court dismissed the lawsuit that was commenced in October 2003 by a purported class of Northeast Utilities' shareholders, entitled *Siegel et al. v. Consolidated Edison, Inc.* (the Second Federal Proceeding). The Second Federal Proceeding had sought unspecified injunctive relief and damages believed to be substantially duplicative of the damages sought from Con Edison in the First Federal Proceeding. A motion by the plaintiffs in the Second Federal Proceeding to intervene in the First Federal Proceeding is pending.

Con Edison believes that Northeast Utilities materially breached the merger agreement, and that Con Edison did not materially breach the merger agreement. Con Edison believes it was not obligated to acquire Northeast Utilities because Northeast Utilities did not meet the merger agreement's conditions that Northeast Utilities perform all of its obligations under the merger agreement. Those obligations include the obligation that it carry on its businesses in the ordinary course consistent with past practice; that the representations and warranties made by it in the merger agreement were true and correct when made and remain true and correct; and that there be no material adverse change with respect to Northeast Utilities.

Con Edison is unable to predict whether or not any Northeast Utilities related lawsuits or other actions will have a material adverse effect on Con Edison's financial position, results of operations or liquidity.

Note I – Other Material Contingencies **Lower Manhattan Restoration**

Con Edison of New York estimates that its costs for emergency response to the September 11, 2001 attack on the World Trade Center, and for resulting temporary and subsequent permanent restoration of electric, gas and steam transmission and distribution facilities damaged in the attack will total \$430 million, net of insurance payments. Most of the costs, which are capital in nature, have already been incurred. At December 31, 2005, the company had received reimbursement for \$169 million of these costs (\$76 million under insurance policies and \$93 million from the federal government). The company expects to receive additional funds from insurance policies and federal reimbursement. At December 31, 2005, the company had incurred capital costs of \$193 million and, pursuant to a petition it filed with the PSC in 2001, deferred non-capital costs of \$135 million, including interest, as a regulatory asset (these amounts are net of reimbursements received). The company expects the PSC to permit recovery from customers of the costs, net of any federal reimbursement, insurance payments and tax savings.

Suits brought on behalf of several thousand plaintiffs alleged to have been working at the World Trade Center site following the attack are pending in the United States District Court for the Southern District of New York against numerous parties, including the City of New York, Con Edison and Con Edison of New York. The suits generally seek unspecified amounts of damages allegedly resulting from exposure to hazardous substances in connection with emergency response and restoration activities at the site. The Companies believe that their activities were prudent and in compliance with applicable laws. Neither of the Companies, however, is able to predict whether or not any proceedings or other actions relating to the activities will have a material adverse effect on its financial condition, results of operations or liquidity.

Based upon New York City's announced plans for improvement projects in lower Manhattan, the company anticipates that over the next five years it may incur up to \$250 million of costs to move its facilities to avoid interfering with these projects. The company's rate plans include provisions for the recovery of such costs. See Note B.

Generating Assets Sold To Mirant

In June 1999, O&R completed the sale of all of its generating assets and Con Edison of New York completed the sale of its two-thirds interest in the Bowline Point generating facility to affiliates of Mirant Corporation (formerly Southern Energy, Inc.). The total gross proceeds from the sale amounted to \$476 million (\$343 million attributable to O&R and \$133 million attributable to Con Edison of New York). In 2003, Mirant and most of its subsidiaries filed a voluntary petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code. Effective January 3, 2006, Mirant and most of its subsidiaries, but not including the Mirant affiliates to which the O&R and Con Edison of New York generating assets referenced above were sold, emerged from bankruptcy.

The Utilities are parties to an agreement with Mirant and its affiliates tolling the running of any statute of limitations with respect to any claim Mirant or its affiliates may have against the Utilities. Mirant has indicated that it is considering a lawsuit against the Utilities in which it may seek to claim that some portion of what was paid in 1999 to purchase the generating assets exceeded the fair value of the assets.

Mirant has also indicated that it may pursue claims against O&R for compensation for certain system reliability services it alleges it provided to O&R customers since November 1999, as well as claims related to certain of the former O&R facilities.

In addition, Mirant has indicated in certain filings in its bankruptcy proceeding that under certain circumstances it would retire its

Notes to the Financial Statements – Continued

Lovett generating units in 2007 and 2008. O&R is in the process of upgrading its transmission and distribution system to meet anticipated demand growth, and believes that by 2007 it would be able to meet existing transmission reliability criteria in the event that the Lovett units were shut down.

The Companies are unable to predict whether or not any Mirant related lawsuits or other actions will have a material adverse effect on their financial position, results of operations or liquidity.

Guarantees

Con Edison and its subsidiaries enter into various agreements providing financial or performance assurance primarily to third parties on behalf of their subsidiaries. In addition, a Con Edison Development subsidiary has issued a guarantee on behalf of an entity in which it has an equity interest. Maximum amounts guaranteed by Con Edison totaled \$ 1.1 billion and \$989 million at December 31, 2005 and 2004, respectively.

A summary, by type and term, of Con Edison's total guarantees at December 31, 2005 is as follows:

Guarantee Type (Millions of Dollars)	0 – 3 years	4 –10 years	> 10 years	Total
Commodity transactions	\$780	\$ 3	\$197	\$ 980
Affordable housing program	-	33	-	33
Intra-company guarantees	40	43	1	84
Other guarantees	32	14	-	46
Total	\$852	\$93	\$198	\$1,143

Commodity Transactions – Con Edison guarantees payments on behalf of its subsidiaries in order to facilitate physical and financial transactions in gas, pipeline capacity, transportation, oil, electricity and related commodity services. In addition, a Con Edison Development subsidiary has guaranteed payment for fuel oil purchases by a 42 MW foreign generating project in which it has an equity interest. To the extent that liabilities exist under the contracts subject to these guarantees, such liabilities are included in the consolidated balance sheet.

Affordable Housing Program – Con Edison Development guarantees the repurchase and remarketing obligations of one of its subsidiaries with respect to the debt relating to moderate-income rental apartment properties eligible for tax credits under Section 42 of the Internal Revenue Code. In accordance with EITF Issue No. 94-01, "Accounting for Tax Benefits Resulting from Investments in Affordable Housing Projects," neither the rental apartment properties nor the related indebtedness is included on Con Edison's consolidated balance sheet.

Intra-company Guarantees

- \$43 million relates to a guarantee issued by Con Edison on behalf of Con Edison Communications to Con Edison of New York for payment relating to the use of space in the latter's facilities and the construction of new telecommunications underground facilities. (This guarantee will continue subsequent to the sale of Con Edison Communications with respect to facilities in operation at the time of sale. See Note U.)
- \$41 million relates to commodity guarantees issued by Con Edison on behalf of Con Edison Energy and Con Edison Solutions to O&R and Con Edison of New York, respectively.

Other Guarantees – Con Edison, Con Edison Development and its subsidiaries also guarantee the following:

- \$25 million for a parental guarantee provided by Con Edison on Con Edison Solutions' indemnity agreement for surety bonds;
- \$10 million for certain rent payment obligations of Con Edison's subsidiaries under various lease agreements for office buildings;
- \$9 million for guarantees, standby financial letters of credit and comfort letters in connection with investments in energy infrastructure power and cogeneration projects; and
- \$2 million for franchise agreements with the City of New York and other localities.

Note J – Non-Utility Generators and Other Power Purchase Agreements

The Utilities have long-term power purchase agreements (PPAs) with non-utility generators (NUGs) and others for generating capacity. The Utilities recover their purchase power costs in accordance with provisions approved by the applicable state public utility commissions. See "Recoverable Energy Costs" in Note A.

Notes to the Financial Statements - Continued

At December 31, 2005, the significant terms of the PPAs were as follows:

Facility	Equity Owner	Plant Output (MW)	Contracted Output (MW)	Contract Start Date	Contract Term (Years)
Con Edison of New York					
Indian Point	Entergy Nuclear Indian Point 2, LLC	1,000	1,000*	April 2004	6
Independence	Sithe/Independence Partners, LP	1,000	740	November 1994	20
Linden Cogeneration	East Coast Power, LLC	715	645	May 1992	25
Astoria Energy	Astoria Energy LLC	500	500	April 2006**	10
Selkirk	Selkirk Cogen Partners, LP	345	265	September 1994	20
Brooklyn Navy Yard	Brooklyn Navy Yard Cogeneration Partners, LP	325	286	November 1996	40
Indeck Corinth	Indeck Energy Services of Corinth, Inc.	140	128	July 1995	20
Wheelabrator	Wheelabrator Westchester, LP	51	51	April 1984	25
O&R					
Lederle	Wyeth Laboratories	20	20	January 1991	15
Crossroads	Algonquin Power	4	4	January 1988	20

* Contracted output will decrease to 650 MW in 2008 and 250 MW in 2009.

** Date plant is scheduled to commence commercial operations.

Assuming performance by the parties to the PPAs, the Utilities are obligated over the terms of the PPAs to make capacity and other fixed payments.

For the years 2006 through 2010, the capacity and other fixed payments under the contracts are estimated to be as follows:

(Millions of Dollars)	2006	2007	2008	2009	2010
Con Edison	\$484	\$504	\$507	\$509	\$504
Con Edison of New York	476	499	504	509	504
O&R	8	5	3	-	-

For energy delivered under most of the PPAs, the Utilities are obligated to pay variable prices. The Utilities' payments under the PPAs for capacity, energy and other fixed payments in 2005, 2004 and 2003 were as follows:

(Millions of Dollars)	For the Years Ended December 31,		
	2005	2004	2003
Con Edison of New York			
Indian Point	\$373	\$333*	\$375*
Independence	106	128	127
Linden Cogeneration	594	471	452
Astoria Energy	-	-	-
Selkirk	206	178	170
Brooklyn Navy Yard	139	131	129
Indeck Corinth	109	99	91
Wheelabrator	32	20	20
O&R			
Lederle	\$ 14	\$ 12	\$ 12
Crossroads	2	3	2

* Amounts include payments under the PPA in effect prior to April 2004.

Note K - Leases

Con Edison's subsidiaries lease electric generating and gas distribution facilities, other electric transmission and distribution facilities, office buildings and equipment. In accordance with SFAS No. 13, these leases are classified as either capital leases or operating leases. Most of the operating leases provide the option to renew at the fair rental value for future periods. Generally, it is expected that leases will be renewed or replaced in the normal course of business.

Capital leases: For ratemaking purposes capital leases are treated as operating leases; therefore, in accordance with SFAS No. 71, the amortization of the leased asset is based on the rental payments recovered from customers. The following assets under capital leases are included in the Companies' consolidated balance sheets at December 31, 2005 and 2004:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Utility Plant				
Transmission	\$14	\$16	\$ 8	\$10
Common	25	26	25	26
Total	\$39	\$42	\$33	\$36

The accumulated amortization of the capital leases for Con Edison and Con Edison of New York was \$38 million and \$37 million, respectively, at December 31, 2005, and \$35 million and \$34 million, respectively, at December 31, 2004.

Notes to the Financial Statements – Continued

The future minimum lease commitments for the above assets are as follows:

(Millions of Dollars)	Con Edison	Con Edison of New York
2006	\$ 7	\$ 7
2007	7	7
2008	8	8
2009	8	8
2010	7	7
All years thereafter	12	12
Total	49	49
Less: amount representing interest	16	16
Present value of net minimum lease payment	\$33	\$33

In 2004, Con Edison Development paid \$6 million to terminate its future minimum lease commitments with respect to its 330 MW electric generating facility, Ocean Peaking Power, located in Lakewood (NJ).

Con Edison of New York subleases one of its capital leases. The minimum rental to be received in the future under the non-cancelable sublease is \$26 million.

Operating leases: The future minimum lease commitments under the Companies' non-cancelable operating lease agreements are as follows:

(Millions of Dollars)	Con Edison	Con Edison of New York
2006	\$ 45	\$ 36
2007	45	37
2008	44	37
2009	44	38
2010	43	39
All years thereafter	194	172
Total	\$415	\$359

Con Edison of New York has entered into a 10-year Revocable Consent Agreement (the "Agreement") with New York City for the use of streets and public places for continued maintenance, operation, installation and removal of transformer vaults, transformers and appurtenant equipment in vaults and on poles and other overhead structures, effective November 1, 2004. The Agreement is renewable on one year's notice. Payments by the company will increase by 2.8 percent annually, unless adjusted downward to reflect a decrease in the number of transformer vaults and overhead transformers installed.

Lease In/Lease Out Transactions

As part of a broad initiative, the Internal Revenue Service (IRS) is reviewing certain categories of transactions. Among these are

transactions in which a taxpayer leases property and then immediately subleases it back to the lessor (termed "Lease In/Lease Out," or LILO transactions). In 1997 and 1999, Con Edison Development entered into LILO transactions, involving gas distribution and electric generating facilities in the Netherlands, with a total investment of \$259 million. The transactions were financed with \$93 million of equity and \$166 million of non-recourse, long-term debt secured by the underlying assets. In accordance with SFAS No. 13, Con Edison is accounting for the two LILO transactions as leveraged leases. Accordingly, the company's investment in these leases, net of non-recourse debt, is carried as a single amount in Con Edison's consolidated balance sheet and income is recognized pursuant to a method that incorporates a level rate of return for those years when net investment in the lease is positive, based upon the after-tax cash flows projected at the inception of the leveraged leases. At December 31, 2005 and 2004, the company's investment in these leveraged leases (\$225 million and \$215 million, respectively) net of deferred tax liabilities (\$187 million and \$165 million, respectively), amounted to \$38 million and \$50 million, respectively. The estimated tax savings from the two LILO transactions through December 31, 2005, in the aggregate, was \$137 million. On audit of Con Edison's tax return for 1997, the IRS disallowed the tax losses in connection with the 1997 LILO transaction.

Con Edison believes that its LILO's have been correctly reported. In December 2005, Con Edison paid a \$0.3 million income tax deficiency asserted by the IRS for the tax year 1997 with respect to the 1997 LILO transaction. Con Edison intends to commence litigation in 2006 in federal court to obtain a refund of this tax payment.

In July 2005, the FASB issued a proposed FSP No. FAS 13-a, "Accounting for a Change or Projected Change in the Timing of Cash Flows Relating to Income Taxes Generated by a Leveraged Lease Transaction." The proposed FSP would require the expected timing of income tax cash flows generated by Con Edison's LILO transactions to be reviewed at least annually. If the expected timing of the cash flows is revised, the rate of return and the allocation of income would be recalculated from the inception of the LILO transactions, the company could be required to recalculate the accounting effect of the LILO transactions, which could result in a charge to earnings that could have a material adverse effect on its results of operations.

Note L – Goodwill and Intangible Assets

In 2005 and 2004, Con Edison completed impairment tests for its goodwill of \$406 million related to the O&R merger, and determined that it was not impaired. For the impairment test, \$245 million and \$161 million of the goodwill were allocated to Con Edison of New York and O&R, respectively.

Notes to the Financial Statements – Continued

Con Edison's intangible assets consist of the following:

(Millions of Dollars)	December 31, 2005			December 31, 2004		
	Gross	Accumulated Amortization	Net	Gross	Accumulated Amortization	Net
Power purchase agreement of an unregulated subsidiary	\$112	\$23	\$89	\$112	\$13	\$ 99
Other	2	1	1	2	1	1
Total	\$114	\$24	\$90	\$114	\$14	\$100

In 2003, upon implementation of new FASB guidance on derivatives (Derivatives Implementation Group Issue C20), the power purchase agreement was measured at its fair value of \$112 million and is currently being amortized over its remaining useful life. Con Edison also recognized at fair value certain power sales contracts at Con Edison Development. The cumulative

effect of this change in accounting principle was an increase to net income of \$8 million. The amortization expense was \$10 million and \$11 million for the years ended December 31, 2005 and 2004, respectively, and is expected to be \$10 million annually for the years 2006 through 2010.

Note M – Income Tax

The components of income tax are as follows:

(Millions of Dollars)	Con Edison			Con Edison of New York		
	2005	2004	2003	2005	2004	2003
Charge/(benefit) to operations:						
State						
Current	\$ 64	\$ 32	\$ 18	\$ 65	\$ 39	\$ 33
Deferred – net	10	30	72	1	30	56
Federal						
Current	387	(102)	(80)	385	(76)	(36)
Deferred – net	(90)	338	395	(115)	293	325
Amortization of investment tax credit	(7)	(6)	(6)	(7)	(6)	(6)
Total Charge to Operations	364	292	399	329	280	372
Charge/(benefit) to other income:						
State						
Current	(7)	(8)	(2)	-	(2)	(1)
Deferred – net	(1)	4	5	2	5	4
Federal						
Current	(22)	(12)	(10)	(8)	-	(6)
Deferred – net	7	(4)	(2)	7	(5)	(2)
Total Charge/(Benefit) to Other Income	(23)	(20)	(9)	1	(2)	(5)
Total	\$341	\$ 272	\$390	\$ 330	\$278	\$367

Notes to the Financial Statements – Continued

The tax effect of temporary differences, which gave rise to deferred tax assets and liabilities, is as follows:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Depreciation	\$1,965	\$1,938	\$1,789	\$1,777
Regulatory asset – future income tax	952	762	902	715
State income tax	305	299	253	251
Capitalized overheads	418	443	390	413
Other	(87)	106	(163)	24
Net Liabilities	3,553	3,548	3,171	3,180
Investment Tax Credits	91	99	87	94
Deferred Income Taxes and Investment Tax Credits	\$3,644	\$3,647	\$3,258	\$3,274
Deferred Income Taxes – Recoverable Energy Costs	90	79	78	72
Total Deferred Income Taxes and Investment Tax Credits	\$3,734	\$3,726	\$3,336	\$3,346

Reconciliation of the difference between income tax expense and the amount computed by applying the prevailing statutory income tax rate to income before income taxes is as follows:

(% of Pre-tax income)	Con Edison			Con Edison of New York		
	2005	2004	2003	2005	2004	2003
Statutory Tax Rate						
Federal	35%	35%	35%	35%	35%	35%
Changes in computed taxes resulting from:						
State income tax	4	5	6	4	6	6
Depreciation related differences	2	3	3	2	3	3
Cost of removal	(6)	(6)	(5)	(6)	(6)	(5)
Amortization of taxes associated with divested assets	(1)	-	-	(1)	-	-
Other	(3)	(4)	(1)	(2)	(4)	(1)
Effective Tax Rate	31%	33%	38%	32%	34%	38%

Timing of Deduction of Construction-Related Costs

In August 2005, the IRS issued Revenue Ruling 2005-53 with respect to when federal income tax deductions can be taken for certain construction-related costs. The Companies' used the "simplified service cost method" (SSCM) to determine the extent to which these costs could be deducted in 2002, 2003 and 2004, and as a result reduced their current tax expense, by \$289 million, of which \$264 million is attributable to Con Edison of New York. Under Revenue Ruling 2005-53, the Companies may be required to repay, with interest, a portion of their past SSCM tax benefits and to capitalize and depreciate over a period of years costs they previously deducted under SSCM. The interest could range from zero to approximately \$42 million. Repayment of the SSCM tax benefits would not otherwise affect the Utilities' results of operations because deferred taxes have been previously provided for the related temporary differences between the SSCM deductions taken for federal income tax purposes and the corresponding amounts charged to expense for financial reporting purposes.

Note N – Stock-Based Compensation

The Companies provide stock-based compensation in the form of stock options, restricted stock units and contributions to a stock purchase plan.

Stock Options

The Stock Option Plan (the 1996 Plan) provided for awards of stock options to officers and employees for up to 10 million shares of the common stock.

The Long Term Incentive Plan (LTIP) among other things, provides for awards of restricted stock units to officers, stock options to employees and deferred stock units to Con Edison's non-officer directors for up to 10 million shares of common stock (of which not more than four million shares may be restricted stock or stock units).

Stock options generally vest over a three-year period and have a term of ten years. Options are granted at an exercise price equal to the fair market value of a common share when the option was

Notes to the Financial Statements – Continued

granted. Upon exercise of a stock option, the option holder may receive Con Edison common shares, cash, or a combination of both.

See "Stock-Based Compensation" in Note A for an illustration of the effect on net income and earnings per share if the Companies had applied the fair value recognition provisions of SFAS No. 123 to their stock-based employee compensation. The weighted average fair values of options granted in 2005, 2004 and 2003 are \$4.51, \$5.12 and \$4.30 per share,

respectively. These values were estimated at the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions:

	2005	2004	2003
Risk-free interest rate	3.95%	3.47%	3.35%
Expected life	4.6 years	6 years	6 years
Expected stock volatility	19.00%	20.63%	21.44%
Expected dividend yield	5.37%	5.16%	5.66%

A summary of changes in the status of stock options awarded as of December 31, 2005, 2004 and 2003 is as follows:

	Con Edison		Con Edison of New York	
	Shares	Weighted Average Exercise Price	Shares	Weighted Average Exercise Price
Outstanding at 12/31/02	6,797,651	\$39.506	6,166,151	\$39.532
Granted	1,621,700	39.639	1,346,700	39.704
Exercised	(692,175)	32.728	(660,425)	32.705
Forfeited	(110,000)	45.365	(99,000)	45.764
Outstanding at 12/31/03	7,617,176	40.065	6,753,426	40.142
Granted	1,333,400	43.771	1,073,700	43.765
Exercised	(943,142)	34.005	(880,175)	33.971
Forfeited	(198,250)	45.092	(187,700)	45.154
Outstanding at 12/31/04	7,809,184	41.302	6,759,251	41.381
Granted	1,300,950	42.723	1,037,750	42.713
Exercised	(1,149,533)	38.529	(1,023,650)	38.457
Forfeited	(93,450)	43.943	(75,950)	44.668
Outstanding at 12/31/05	7,867,151	\$41.913	6,697,401	\$42.000

The following table summarizes stock options outstanding at December 31, 2005 for each plan year for the Companies:

Plan Year	Remaining Contractual Life	Con Edison		Con Edison of New York	
		Options Outstanding	Weighted Average Exercise Price	Options Outstanding	Weighted Average Exercise Price
2005	9	1,294,150	\$42.726	-	-
2004	8	1,299,050	43.768	-	-
2003	7	1,593,700	39.648	-	-
2002	6	1,276,550	42.510	1,276,550	42.510
2001	5	772,550	37.750	772,550	37.750
2000	4	249,050	32.500	249,050	32.500
1999	3	905,650	47.938	905,650	47.938
1998	2	409,050	42.563	409,050	42.563
1997/96	1	67,401	30.397	67,401	30.397
Total		7,867,151		3,680,251	6,697,401

Notes to the Financial Statements – Continued

The exercise prices of options awarded in 2005 and 2004 range from \$42.18 to \$43.72 and from \$43.06 to \$44.10, respectively. Options outstanding awarded in prior years have exercise prices equal to the weighted average exercise prices stated above.

Restricted Stock Units

Restricted stock unit awards under the LTIP have been made as follows: (i) annual awards to officers under restricted stock unit agreements that provide for adjustment of the number of units (as described in the following paragraph); (ii) the directors' deferred compensation plan; and (iii) restricted stock unit agreements with three officers. Each restricted stock unit represents the right to receive, upon vesting, one share of Con Edison common stock, the cash value of a share or a combination thereof.

The number of units in each annual restricted stock unit award under the LTIP is subject to adjustment as follows: (i) 50 percent of the units awarded will be multiplied by a factor that may range from 0 to 150 percent based on Con Edison's total shareholder return relative to the Standard & Poor's Electric Utilities Index during a specified performance period (the TSR portion); and (ii) 50 percent of the units awarded will be multiplied by a factor that may range from 0 to 150 percent based on determinations made in connection with Con Edison of New York's Executive Incentive Plan (or, for four officers, the O&R Annual Team Incentive Plan or goals relating to Con Edison's competitive businesses). Units vest when the performance period ends. In 2005, Con Edison recognized compensation expense of \$4 million for the portion of the awards for which the performance period ended December 31, 2005.

Con Edison has a deferred stock compensation plan for non-officer directors. Beginning in 2004, awards under the deferred compensation stock plan are covered by the LTIP. Pursuant to APB No. 25, Con Edison is recognizing compensation expense and accruing a liability for these units. Each director receives 1,500 stock units for each year of service as a director. These stock units are deferred until the director's termination of service. Directors may elect to receive dividend equivalents earned on stock units in cash payments.

The compensation expense recognized by the Companies in relation to the non-officer director deferred stock compensation plan in 2005, 2004 and 2003 was \$1 million each year.

Pursuant to employment agreements, certain senior officers of Con Edison and its subsidiaries were granted restricted stock units, subject to the officers' meeting the terms and conditions of the agreements. The units, each of which represents the right to receive one share of Con Edison common stock, vest over various periods through March 2009 or immediately upon the

occurrence of certain events. The restricted stock units granted in 2004 and 2005 were under the LTIP. Pursuant to APB No. 25, Con Edison is recognizing compensation expense and accruing a liability for the units over the vesting period. The following table summarizes restricted stock activity for the three years ended December 31, 2005:

	Shares
Shares outstanding at 12/31/02	500,000
Granted	-
Redeemed	(25,000)
Shares outstanding at 12/31/03	475,000
Granted	30,000
Redeemed	(195,000)
Shares outstanding at 12/31/04	310,000
Granted	22,500
Redeemed	(120,000)
Shares outstanding at 12/31/05	212,500

The following table summarizes the expense recognized in relation to the restricted stock units:

(Millions of Dollars)	Con Edison			Con Edison of New York		
	2005	2004	2003	2005	2004	2003
Compensation expense – restricted stock	\$5	\$6	\$5	\$4	\$4	\$4

Stock Purchase Plan

The Stock Purchase Plan provides for the Companies to contribute \$1 for each \$9 invested by their directors, officers or employees to purchase Con Edison common stock under the plan. Eligible participants may invest up to \$25,000 during any calendar year (subject to an additional limitation for officers and employees of not more than 20% of their pay). Dividends paid on shares held under the plan are reinvested in additional shares unless otherwise directed by the participant.

During 2005, 2004 and 2003, 590,413, 605,118 and 584,928 shares were purchased under the Stock Purchase Plan at a weighted average price of \$45.05, \$41.67 and \$40.56 per share, respectively.

Adoption of SFAS 123(R)

In January 2006, Con Edison adopted SFAS No. 123(R), "Share-Based Payment." This Statement requires that the Companies recognize the cost of a transaction where it exchanges its equity instruments for goods and services as an expense on its income statement using a fair-value measurement method. SFAS No. 123(R) provides for two alternative methods of adoption, the modified prospective application and the modified retrospective

Notes to the Financial Statements – Continued

application. The modified prospective application applies to new awards and to awards modified, repurchased, or cancelled after the Statement's effective date. Additionally, compensation cost for the portion of awards for which the requisite service has not been rendered that are outstanding after the Statement's effective date will be recognized as the service is rendered on or after the effective date. Alternatively, the modified retrospective application may be applied either to all prior years for which SFAS No. 123 was effective or only to prior interim periods in the year of initial adoption. The company has elected the modified prospective application method for adopting SFAS No. 123(R). The fair value of stock options, which contain an employee service condition, will be determined on the grant date using the Black-Scholes valuation model. The fair value of the TSR portion of performance-based restricted stock units, will be valued on the grant date using a model that accommodates the plan's market-based conditions, with changes in fair value recorded in net income each reporting period. The fair value of all other restricted stock units will be based upon the closing market price on the grant date with changes in fair value recorded in earnings each reporting period. Con Edison will also adopt a non-substantive vesting period approach to record compensation expense related to retirement eligible employees. See Note A. The company elected to apply the provisions of FSP 123(R)-3, "Transition Election Related to Accounting for the Tax Effects of Share-Based Payment Awards," to determine the pool of tax benefits as of the adoption date of SFAS No. 123(R). Beginning with adoption of SFAS No. 123(R), the Companies are computing diluted EPS using the treasury stock method, which considers unrecognized compensation cost as well as the potential tax benefits or shortfalls that reflect the current market price and total compensation cost to be recognized.

In October 2005, the FASB issued FSP 123(R)-2, "Practical Accommodation to the Application of Grant Date as Defined in FASB Statement No. 123(R)." This FSP allows companies to use the date the awards are approved as grant date in calculating the fair value as long as the awards are non-negotiable and the key terms and conditions are communicated to employees within a relatively short period of time. The Companies will use the date the awards are approved as the grant date because both conditions are satisfied.

The company does not expect the adoption of SFAS No. 123(R) to have a material impact on its financial position, results of operations or liquidity.

Note O – Financial Information By Business Segment

The business segments of each of the Companies were determined based on management's reporting and decision-making requirements in accordance with SFAS No. 131, "Disclosures About Segments of an Enterprise and Related Information."

Con Edison's principal business segments are Con Edison of New York's regulated electric, gas and steam utility activities, O&R's regulated electric and gas utility activities and Con Edison's competitive businesses. Con Edison of New York's principal business segments are its regulated electric, gas and steam utility activities. O&R's principal business segments are its regulated electric and gas utility activities.

All revenues of these business segments, excluding revenues earned by Con Edison Development on certain energy infrastructure projects, which are deemed to be immaterial, are from customers located in the United States of America. Also, all assets of the business segments, excluding certain investments in energy infrastructure projects by Con Edison Development (\$234 million at December 31, 2005), are located in the United States of America. The accounting policies of the segments are the same as those described in Note A.

Common services shared by the business segments are assigned directly or allocated based on various cost factors, depending on the nature of the service provided.

Notes to the Financial Statements – Continued

The financial data for the business segments are as follows:

As of and for the Year Ended December 31, 2005 (Millions of Dollars)	Operating revenues	Intersegment revenues	Depreciation and amortization	Income tax expense	Operating income	Interest charges	Total assets*	Construction expenditures*
Con Edison of New York								
Electric	\$ 6,993	\$ 10	\$394	\$224	\$ 784	\$270	\$15,609	\$1,186
Gas	1,630	3	76	75	170	59	3,551	201
Steam	649	55	39	30	87	35	1,986	154
Total Con Edison of New York	\$ 9,272	\$ 68	\$509	\$329	\$1,041	\$364	\$21,146	\$1,541
O&R								
Electric	\$ 596	\$ -	\$ 25	\$ 25	\$ 56	\$ 15	\$ 1,082	\$ 61
Gas	228	-	9	6	16	7	459	26
Other**	-	-	-	-	-	2	47	-
Total O&R	\$ 824	\$ -	\$ 34	\$ 31	\$ 72	\$ 24	\$ 1,588	\$ 87
Competitive businesses	\$ 1,604	\$ -	\$ 41	\$ 1	\$ 48	\$ 42	\$ 1,647	\$ 19
Other***	(10)	(68)	-	3	(3)	34	469	-
Total Con Edison	\$11,690	\$ -	\$584	\$364	\$1,158	\$464	\$24,850	\$1,647
As of and for the Year Ended December 31, 2004 (Millions of Dollars)	Operating revenues	Intersegment revenues	Depreciation and amortization	Income tax expense	Operating income	Interest charges	Total assets*	Construction expenditures*
Con Edison of New York								
Electric	\$ 6,153	\$ 11	\$383	\$222	\$ 652	\$264	\$14,375	\$ 595
Gas	1,303	3	75	68	151	55	3,116	138
Steam	550	2	19	(10)	22	30	1,753	502
Total Con Edison of New York	\$ 8,006	\$ 16	\$477	\$280	\$ 825	\$349	\$19,244	\$1,235
O&R								
Electric	\$ 499	\$ -	\$ 25	\$ 13	\$ 49	\$ 13	\$ 935	\$ 51
Gas	204	-	8	4	16	6	406	28
Other**	-	-	-	-	-	1	49	-
Total O&R	\$ 703	\$ -	\$ 33	\$ 17	\$ 65	\$ 20	\$ 1,390	\$ 79
Competitive businesses	\$ 1,049	\$ -	\$ 41	\$ (1)	\$ 37	\$ 43	\$ 1,560	\$ 38
Other***	-	(16)	-	(4)	4	32	366	-
Total Con Edison	\$ 9,758	\$ -	\$551	\$292	\$ 931	\$444	\$22,560	\$1,352
As of and for the Year Ended December 31, 2003 (Millions of Dollars)	Operating revenues	Intersegment revenues	Depreciation and amortization	Income tax expense	Operating income	Interest charges	Total assets*	Construction expenditures*
Con Edison of New York								
Electric	\$ 6,334	\$ 11	\$367	\$301	\$ 758	\$292	\$13,675	\$ 829
Gas	1,295	3	72	66	149	60	2,918	181
Steam	537	2	19	5	35	24	1,171	158
Total Con Edison of New York	\$ 8,166	\$ 16	\$458	\$372	\$ 942	\$376	\$17,764	\$1,168
O&R								
Electric	\$ 530	\$ -	\$ 26	\$ 26	\$ 52	\$ 14	\$ 906	\$ 53
Gas	197	-	8	8	16	7	361	18
Other**	-	-	-	-	-	-	2	-
Total O&R	\$ 727	\$ -	\$ 34	\$ 34	\$ 68	\$ 21	\$ 1,269	\$ 71
Competitive businesses	\$ 915	\$ -	\$ 24	\$ 5	\$ 22	\$ 14	\$ 1,554	\$ 105
Other***	-	(16)	-	(12)	12	23	379	-
Total Con Edison	\$ 9,808	\$ -	\$516	\$399	\$1,044	\$434	\$20,966	\$1,344

* Competitive businesses include amounts related to discontinued operations of Con Edison Communications.

** Includes amounts related to the RECO securitization.

*** Parent company expenses, primarily interest, and consolidation adjustments. Other does not represent a business segment.

Notes to the Financial Statements – Continued

Note P – Derivative Instruments and Hedging Activities

Derivative instruments and hedging activities are accounted for in accordance with SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," as amended (SFAS No. 133). Under SFAS No. 133, derivatives are recognized on the balance sheet at fair value, unless an exception is available under the standard. Certain qualifying derivative contracts have been designated as normal purchases or normal sales contracts. These contracts are not reported at fair value under SFAS No. 133.

Energy Price Hedging

Con Edison's subsidiaries hedge market price fluctuations associated with physical purchases and sales of electricity, natural gas, and steam by using derivative instruments including futures, forwards, basis swaps, transmission congestion contracts and financial transmission rights contracts. The fair values of these hedges at December 31, 2005 and 2004 were as follows:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Fair value of net assets	\$280	\$49	\$223	\$9

Credit Exposure

The Companies are exposed to credit risk related to over-the-counter transactions entered into primarily for the various energy supply and hedging activities by the Utilities and the competitive energy businesses. The Companies use credit policies to manage this risk, including an established credit approval process, monitoring of counterparty limits, netting provisions within agreements and collateral or prepayment arrangements.

Con Edison and Con Edison of New York had \$430 million and \$204 million credit exposure in connection with energy supply and hedging activities, net of collateral and reserves, at December 31, 2005, respectively. Of these amounts, \$308 million and \$107 million was with investment-grade counterparties and \$108 million and \$97 million was primarily with the New York Mercantile Exchange, respectively.

Cash Flow Hedges

Con Edison's subsidiaries designate a portion of derivative instruments as cash flow hedges under SFAS No. 133. Under cash flow hedge accounting, to the extent a hedge is determined to be "effective," the unrealized gain or loss on the hedge is recorded in other comprehensive income (OCI) and reclassified to earnings at the time the underlying transaction is completed. A gain or loss relating to any portion of the hedge determined to be "ineffective" is recognized in earnings in the period in which such determination is made.

The following table presents selected information related to these cash flow hedges included in accumulated OCI at December 31, 2005:

(Term in Months/ Millions of Dollars)	Maximum Term		Accumulated Other Comprehensive Income/(Loss) Net of Tax		Portion Expected to be Reclassified to Earnings during the Next 12 Months	
	Con Edison	Con Edison of New York	Con Edison	Con Edison of New York	Con Edison	Con Edison of New York
Energy Price Hedges	41	15	\$(12)	\$1	\$(13)	\$-

The actual amounts that will be reclassified to earnings may vary from the expected amounts presented above as a result of changes in market prices. The effect of reclassification from accumulated OCI to earnings will generally be offset by the recognition of the hedged transaction in earnings.

The unrealized net gains and losses relating to the hedge ineffectiveness of these cash flow hedges that were recognized in net earnings for the years ended December 31, 2005, 2004 and 2003 were immaterial to the results of operations of the Companies for those periods.

Other Derivatives

The Companies enter into certain derivative instruments that do not qualify or are not designated as hedges under SFAS No. 133. However, management believes these instruments represent economic hedges that mitigate exposure to fluctuations in commodity prices. The Utilities are permitted by their respective regulators to reflect in rates all reasonably incurred gains and losses on these instruments. See "Recoverable Energy Costs" in Note A. Con Edison's competitive energy businesses record unrealized gains and losses on these derivative contracts in earnings in the reporting period in which they occur. For the year ended December 31, 2005, unrealized pre-tax losses amounting to \$4 million were recorded in earnings as compared with \$5 million of unrealized pre-tax gains for 2004 and \$1 million of unrealized pre-tax losses for 2003.

Interest Rate Hedging

Con Edison's subsidiaries use interest rate swaps to manage interest rate exposure associated with debt. The fair values of these interest rate swaps at December 31, 2005 and 2004 were as follows:

(Millions of Dollars)	Con Edison		Con Edison of New York	
	2005	2004	2005	2004
Fair value of interest rate swaps	\$(18)	\$(19)	\$(3)	\$1

Fair Value Hedges

Con Edison of New York's swap (related to its \$225 million of Series 2001A tax-exempt debt) is designated as a fair value hedge, which qualifies for "short-cut" hedge accounting under SFAS No. 133. Under this method, changes in fair value of the swap are recorded directly against the carrying value of the hedged bonds and have no impact on earnings.

Cash Flow Hedges

Con Edison Development's and O&R's swaps are designated as cash flow hedges under SFAS No. 133. Any gain or loss on the hedges is recorded in OCI and reclassified to interest expense and included in earnings during the periods in which the hedged interest payments occur. The contractual components of the interest rate swaps accounted for as cash flow hedges are as follows:

Debt	Maturity Date	Notional Amount (Millions of Dollars)	Fixed Rate Paid	Variable Rate Received
O&R				
Pollution Control Refunding Revenue Bond, 1994 Series A	2014	\$55	6.09%	Current bond rate
Con Edison Development				
Amortizing variable rate loans – Lakewood	2008	\$44	6.68%	LIBOR

In late 2004 and early 2005, Con Edison of New York entered into forward starting swap agreements to hedge the interest payments associated with the anticipated issuance of \$300 million of its debentures later in 2005. The swaps were designated as cash flow hedges. At the inception of each hedge, the company locked in a swap rate that had a high correlation with the company's total borrowing costs. The swap agreements were settled in 2005 at the issuance of the debentures. A net loss of \$4 million with respect to the swap agreements was recorded in OCI in 2005, which will be reclassified to interest expense over the term of the related debentures.

The following table presents selected information related to these cash flow hedges included in the accumulated OCI at December 31, 2005:

(Millions of Dollars)	Accumulated Other Comprehensive Income/(Loss) Net of Tax		Portion Expected to be Reclassified to Earnings during the Next 12 Months	
	Con Edison	Con Edison of New York	Con Edison	Con Edison of New York
Interest Rate Swaps	\$(11)	\$(2)	\$(1)	\$-

The actual amounts that will be reclassified to earnings may vary from the expected amounts presented above as a result of changes in interest rates. For the Utilities, these costs are recovered in rates and the reclassification will have no impact on results of operations.

Note Q – Variable Interest Entities

FASB Interpretation No. 46 (revised December 2003), "Consolidation of Variable Interest Entities," (FIN 46R) addresses the consolidation of a variable interest entity (VIE) by a business enterprise that is the primary beneficiary. A VIE is an entity that does not have sufficient equity investment at risk to permit it to finance its activities without additional subordinated financial support, or whose equity investors lack the characteristics of a controlling financial interest. The primary beneficiary is the business enterprise that absorbs a majority of the VIEs expected losses, receives a majority of its expected residual returns, or both.

Con Edison enters into arrangements including leases, partnerships and PPAs, with various entities. As a result of these arrangements, Con Edison retains or may retain a variable interest in these entities.

VIE assets and obligations included in Con Edison's consolidated balance sheet are as follows:

(Millions of Dollars)	2005	2004
Non-utility plant and other assets	\$338	\$347
Debt and other liabilities	\$360	\$363

VIE assets include \$338 million and \$346 million in 2005 and 2004, respectively, related to a lease arrangement entered into by a Con Edison Development subsidiary in 2000, to finance the construction of a 525 MW gas-fired electric generating facility in Newington, New Hampshire (the "facility"). The debt and other liabilities related to the facility were \$359 million and \$362 million for 2005 and 2004, respectively. At the expiration of the initial lease term in June 2010, the subsidiary has the option to extend the lease or purchase the facility for the then outstanding amounts expended by the lessor for the facility. In the event the subsidiary chooses not to extend the lease or acquire the facility, Con Edison has guaranteed a residual value for an amount not to exceed \$240 million. The subsidiary also has contingent payment obligations to the lessor if an event of default should occur during the lease period. If the subsidiary were to default, its obligation would equal up to 100% of the lessor's investment in the facility plus all other amounts then due under the lease, which could exceed the aforementioned residual value guarantee. The subsidiary's payment and performance obligations are fully and unconditionally guaranteed by Con Edison. Upon adoption of FIN 46R in 2003, Con Edison recorded a \$5 million after-tax charge

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to reflect the cumulative effect of a change in accounting principle.

Con Edison has a variable interest in a non-consolidated VIE related to Con Edison Development's sole limited interest in an affordable housing partnership that began in 2000. Con Edison Development's maximum exposure to loss as a result of its involvement with the VIE is \$6 million at December 31, 2005 and 2004. In addition, Con Edison has guaranteed the debt undertaken by the partnership. See Note I.

Con Edison of New York did not apply FIN 46R to the following five potential VIEs with which it has long-term PPAs: Sithe/Independence Partners, LP; East Coast Power, LLC; Selkirk Cogen Partners, LP; Brooklyn Navy Yard Cogeneration Partners, LP; and Indeck Energy Services of Corinth, Inc. In each quarter of 2005, requests were made of the counterparties for information necessary to determine whether the entity was a VIE and whether Con Edison of New York is the primary beneficiary; however, the information was not made available. See Note J for information on these PPAs.

Note R – Asset Retirement Obligations

Con Edison and Con Edison of New York account for retirement obligations on their assets in accordance with SFAS No. 143, "Accounting for Asset Retirement Obligations" (SFAS No. 143). This accounting standard requires recognition of a liability for legal obligations associated with the retirement of long-lived assets. When the liability is initially recorded, asset retirement costs are capitalized by increasing the carrying amount of the related asset. The liability is accreted to its present value each period and the capitalized cost is depreciated over the useful life of the related asset.

The Utilities include in depreciation the estimated removal costs, less salvage, for utility plant assets. In accordance with SFAS No. 143, future removal costs that do not represent legal asset retirement obligations are recorded as regulatory liabilities pursuant to SFAS No. 71. The related regulatory liabilities recorded for Con Edison and Con Edison of New York were \$558 million and \$501 million in 2005 and \$723 million and \$666 million in 2004, respectively.

In March 2005, the FASB issued FIN 47, "Accounting for Conditional Asset Retirement Obligations – An Interpretation of SFAS No. 143," which is effective for fiscal years ending after December 15, 2005. The Interpretation clarifies that a legal obligation to perform an asset retirement activity that is conditional on a future event is within the scope of SFAS No. 143. Accordingly, an entity is required to recognize a liability for the fair value of an asset retirement obligation that is conditional on a future event if the liability's fair value can be

reasonably estimated. The Interpretation provides guidance for evaluating whether sufficient information is available to make a reasonable estimate of the fair value.

The Companies identified future asset retirement obligations associated with the removal of asbestos and asbestos-containing material in their buildings and equipment within the generating stations and substations, and within the steam and gas distribution systems. The Companies also identified asset retirement obligations relating to gas pipelines abandoned in place. The estimates of future liabilities were developed using historical information, and where available, quoted prices from outside contractors.

The obligation for the cost of asbestos removal from the Companies' generating stations and substation structures was not accrued since the retirement dates cannot be reasonably estimated.

In December 2005, Con Edison and Con Edison of New York recorded liabilities of \$94 million and \$93 million, respectively, for the fair value of their legal asset retirement obligations. In addition, Con Edison and Con Edison of New York increased utility plant, net of accumulated depreciation, by \$18 million and \$17 million, respectively, for asset retirement costs. Pursuant to SFAS No. 71, Con Edison of New York also recorded a reduction of \$76 million to the regulatory liability associated with cost of removal to reflect accumulated depreciation and interest accretion costs for the period between the date the obligations were incurred and the date FIN 47 was implemented by the Companies.

If the standard had been in effect as of December 31, 2004, Con Edison and Con Edison of New York would have recorded asset retirement obligations of \$94 million and \$93 million, respectively.

Note S – Related Party Transactions

The Utilities and Con Edison's competitive businesses provide administrative and other services to each other pursuant to cost allocation procedures approved by the PSC. The costs of administrative and other services provided by Con Edison of New York and received by it from Con Edison and its competitive businesses for the years ended December 31, 2005, 2004 and 2003 were as follows:

	Con Edison of New York		
(Millions of Dollars)	2005	2004	2003
Cost of services provided	\$64	\$58	\$37
Cost of services received	\$48	\$44	\$25

In addition, Con Edison of New York sold to O&R \$185 million, \$142 million and \$128 million of natural gas for the years ended

Notes to the Financial Statements – Continued

December 31, 2005, 2004 and 2003, respectively. These amounts are net of the effect of related hedging transactions.

Con Edison of New York also sold to O&R \$16 million of electricity for the year ended December 31, 2003. This amount includes the net effect of all electric hedging transactions executed by Con Edison of New York on behalf of O&R. In 2005 and 2004, such sales resulted in a net credit of \$3 million and \$2 million to O&R, reflecting hedging gains.

As a result of an auction held in October 2005, Con Edison of New York entered into financial contracts with Con Edison Energy to hedge purchases of electricity in 2006. In accordance with SFAS No. 133, these intercompany contracts are recognized on Con Edison of New York's balance sheet at fair value. At December 31, 2005, Con Edison of New York recorded an unrealized loss of \$9 million as a regulatory asset for such contracts. See Note P.

In December 2005, the FERC authorized Con Edison of New York to lend funds to O&R, for periods of not more than 12 months, in amounts not to exceed \$200 million outstanding at any time, at prevailing market rates. O&R has not borrowed any funds from Con Edison of New York.

Note T – New Financial Accounting Standards

In September 2005, the Emerging Issues Task Force ("EITF") reached a consensus on Issue 04-13, "Accounting for Purchases and Sales of Inventory with the Same Counterparty" (EITF 04-13). The FASB Task Force concluded that inventory purchases and sales transactions with the same counterparty should be combined for accounting purposes if they were entered into in contemplation of each other. The Task Force provided indicators to be considered for purposes of determining whether such transactions are entered into in contemplation of each other. The Task Force also provided guidance on the circumstances under which nonmonetary exchanges of inventory within the same line of business should be recognized at fair value. EITF 04-13 will be effective for reporting periods beginning after March 15, 2006, although no final guidance has been provided on its applicability to the purchase and sale of electricity by utilities. The adoption of EITF 04-13 is not expected to have a material impact on the Companies' financial position, results of operations or liquidity.

In July 2005, the FASB issued Exposure Draft titled "Accounting for Uncertain Tax Positions," an interpretation of FASB Statement No. 109, "Accounting for Income Taxes" (the Exposure Draft). The proposed interpretation would clarify the accounting for uncertain tax positions in accordance with FASB Statement No. 109. Under the interpretation, an enterprise would not be allowed to recognize, in its financial statements, the benefit of a

tax position unless that position will more likely than not be sustained on audit by taxing authorities based solely on the technical merits of the position. The IRS has completed its audits of the Companies' tax returns through 1996. The Companies' tax returns for subsequent years, which the IRS is reviewing, reflect certain tax positions with which the IRS does not or may not agree, including tax positions with respect to Con Edison's leveraged lease transactions and the deduction of certain construction-related costs. See "Lease In/Lease Out Transactions" in Note K and "Timing of Deduction of Construction-Related Costs" in Note M. As to Con Edison's other tax positions, the Companies are unable to predict whether the Exposure Draft, if adopted in its present form, would have a material impact on their financial position, results of operations or liquidity.

In June 2005, the Derivatives Implementation Group (DIG) task force of the FASB issued guidance on SFAS No. 133 implementation, Issue No. B38, which provides guidance on whether the potential settlement of the debtor's obligation to the creditor that would occur upon exercise of a put option or call option embedded in a debt instrument meets the criteria for net settlement. The DIG also issued guidance on SFAS No. 133 implementation, Issue No. B39, which clarifies that certain conditions in the evaluation of embedded derivative debt instruments do not apply to an embedded call option if the right to accelerate the settlement of the debt can be exercised only by the debtor (issuer/borrower). Both these DIG issues are effective in the first fiscal quarter after December 15, 2005. The adoption of Issue Nos. B38 and B39 is not expected to have a material impact on the Companies' financial position, results of operations or liquidity.

In June 2005, the EITF reached a consensus on Issue 05-6, "Determining the Amortization Period for Leasehold Improvements" (EITF 05-6), which is effective for periods beginning after June 30, 2005. EITF 05-6 states that leasehold improvements acquired in a business combination and those acquired after the inception of a lease should be amortized over the shorter of the useful life of the assets or a term that includes renewals that are reasonably assured at the date of the acquisition of the leasehold improvements. The adoption of EITF 05-6 did not have a material impact on the Companies' financial position, results of operations or liquidity.

In May 2005, the FASB issued Statement No. 154, "Accounting for Changes and Error Corrections" (SFAS No. 154), which is effective for fiscal years beginning after December 15, 2005. This statement replaces Accounting Principles Board Opinion No. 20, "Accounting Changes" (APB 20) and FASB Statement No. 3, "Reporting Accounting Changes in Interim Financial Statements." APB 20 previously required that most voluntary changes in

Notes to the Financial Statements – Continued

accounting principle be recognized by including in net income of the period of the change the cumulative effect of changing to the new accounting principle. SFAS No. 154 requires retrospective application to prior periods' financial statements of changes in accounting principle, unless it is impracticable to determine either the period specific effects or the cumulative effect of the change. The adoption of SFAS No. 154 is not expected to have a material impact on the Companies' financial position, results of operations or liquidity.

In March 2005, the FASB issued FSP FIN 46R-5, "Implicit Variable Interests under FASB Interpretation No. 46 (revised December 2003), *Consolidation of Variable Interest Entities*." This FSP is effective as of April 1, 2005. The FSP requires a company to consider whether it holds an implicit variable interest in a variable interest entity (VIE) or potential VIE. An implicit interest involves the absorbing and/or receiving of variability indirectly from the VIE, and may take many different forms such as a lessee under a leasing arrangement or a party to a supply contract, service contract or derivative contract. The adoption of FSP FIN 46R-5 did not have a material impact on the Companies' financial position, results of operations or liquidity.

In December 2004, the FASB issued SFAS No. 153, "Exchanges of Nonmonetary Assets – an amendment of APB Opinion No. 29." APB No. 29 requires exchanges of nonmonetary assets to be measured on the basis of the fair value of the assets exchanged, with certain exceptions. SFAS No. 153 eliminates the exception for nonmonetary exchanges of similar productive assets and replaces it with a general exception for exchanges of nonmonetary assets that do not have commercial substance, that is, transactions that are not expected to result in significant changes in the future cash flows of the reporting entity. This Statement is effective for nonmonetary exchanges occurring in fiscal periods beginning after June 15, 2005. The adoption of SFAS No. 153 did not have a material impact on the Companies' financial position, results of operations or liquidity.

In November 2004, the FASB issued SFAS No. 151, "Inventory Costs – an amendment of ARB No. 43, Chapter 4." This Statement clarifies the accounting for abnormal amounts of idle facility expense, freight, handling costs and wasted material. The Statement is effective for inventory costs incurred during fiscal periods beginning after June 15, 2005. The adoption of SFAS No. 151 did not have a material impact on the Companies' financial position, results of operations or liquidity.

Note U – Con Edison Communications (CEC)

In 2003, Con Edison decided to consider various strategic alternatives for its telecommunications business. Testing of CEC's assets for impairment, in accordance with SFAS No. 144, "Accounting for the Impairment or Disposal of Long-Lived

Assets," resulted in a pre-tax impairment charge of \$140 million. In addition, \$1 million of pre-tax capitalized interest at Con Edison, related to the investment in CEC, was deemed impaired.

In December 2004, Con Edison signed an agreement to sell CEC to FiberNet Telecom Group, Inc. (FiberNet) for approximately \$37 million in cash, subject to certain adjustments. In May 2005, Con Edison and FiberNet mutually agreed to terminate their agreement for the sale of CEC.

In December 2005, Con Edison signed an agreement to sell CEC to RCN Corporation (RCN) for approximately \$32 million in cash, including the discharge of certain intercompany liabilities, and subject to certain adjustments. The sale is subject to review or approval by the City of New York, the PSC and various federal, state and local regulators. CEC's assets held for sale were tested for impairment in December 2005, which resulted in an after-tax impairment charge of \$5 million reflected in losses from discontinued operations. Exit costs associated with the disposal activity include one-time termination benefits and other transaction costs of \$5 million, of which \$3 million has been incurred to date. The company expects to complete the sale in 2006. The sale is not expected to have a material impact on Con Edison's financial position, results of operations or liquidity.

Con Edison of New York receives lease payments from CEC for the right to use its electric conduit system in accordance with the tariff approved by PSC. Subsequent to the sale, Con Edison of New York will continue to receive such lease payments from RCN. The continuing cash flows related to the lease payments are not considered significant in relation to the revenues expected to be generated by the CEC business.

In accordance with SFAS No. 144, in 2004, CEC's assets and liabilities were classified as "held for sale" on Con Edison's consolidated balance sheet and effective December 1, 2004, CEC ceased recording depreciation expense. CEC's total operating revenues were \$42 million, \$33 million and \$19 million for the years ended December 31, 2005, 2004 and 2003, respectively. As of December 31, 2005, CEC had assets and liabilities of \$60 million and \$21 million, respectively. CEC's losses, net of income taxes, are reported as "Discontinued operations" on Con Edison's consolidated income statement. Losses for 2003 have been restated to conform to the 2005 and 2004 presentation.

SCHEDULE I

**Condensed Financial Information of Consolidated Edison, Inc.
Condensed Balance Sheet
(Parent Company Only)**

(Millions of Dollars)	At December 31,	
	2005	2004
Assets		
Current Assets		
Cash and temporary cash investments	\$ 11	\$ 2
Restricted cash	2	-
Federal income tax due from taxing authority	8	105
Accounts receivable from affiliated companies	177	7
Other current assets	1	3
Total Current Assets	199	117
Investments in Subsidiaries and Others	8,391	8,134
Goodwill	409	409
Other assets	17	17
Total Assets	\$9,016	\$8,677
Capitalization and Liabilities		
Common Shareholders' Equity		
Common stock	\$2,749	\$2,624
Retained earnings	5,549	5,391
Total Common Shareholders' Equity	8,298	8,015
Long-term debt	525	525
Total Capitalization	8,823	8,540
Current Liabilities		
Notes payable	134	56
Accounts payable	15	12
Other current liabilities	58	82
Total Current Liabilities	207	150
Noncurrent Liabilities - Deferred Income Tax	(14)	(13)
Total Liabilities	193	137
Total Capitalization and Liabilities	\$9,016	\$8,677

Condensed Financial Information of Consolidated Edison, Inc.
Condensed Income Statement
(Parent Company Only)

(Millions of Dollars, except per share amounts)	2005	2004	2003
Equity in earnings of subsidiaries	\$ 744	\$ 562	\$ 650
Other income (deductions), net of taxes	21	19	12
Interest expense	(33)	(32)	(28)
Income from Continuing Operations	732	549	634
Loss from Discontinued Operations (Net of Income Taxes of \$4, \$8, and \$74 in 2005, 2004 and 2003, Respectively (Note U))	(13)	(12)	(109)
Income Before Cumulative Effect of Changes in Accounting Principles	719	537	525
Cumulative Effect of Changes in Accounting Principles (Net of Income Tax of \$2 Million in 2003)	-	-	3
Net Income	\$ 719	\$ 537	\$ 528
Earnings Per Common Share – Basic			
Continuing operations	\$ 3.00	\$ 2.33	\$ 2.87
Discontinued operations	\$ (0.05)	\$ (0.05)	\$ (0.50)
Before cumulative effect of changes in accounting principles	\$ 2.95	\$ 2.28	\$ 2.37
Cumulative effect of changes in accounting principles	-	-	\$ 0.02
Net Income	\$ 2.95	\$ 2.28	\$ 2.39
Earnings Per Common Share – Diluted			
Continuing operations	\$ 2.99	\$ 2.32	\$ 2.86
Discontinued operations	\$ (0.05)	\$ (0.05)	\$ (0.50)
Before cumulative effect of changes in accounting principles	\$ 2.94	\$ 2.27	\$ 2.36
Cumulative effect of changes in accounting principles	-	-	\$ 0.02
Net Income	\$ 2.94	\$ 2.27	\$ 2.38
Dividends Declared Per Share of Common Stock	\$ 2.28	\$ 2.26	\$ 2.24
Average Number of Shares Outstanding – Basic (in Millions)	243.9	235.8	220.9
Average Number of Shares Outstanding – Diluted (in Millions)	244.7	236.4	221.8

Condensed Financial Information of Consolidated Edison, Inc.
Condensed Statement of Cash Flows
(Parent Company Only)

(Millions of Dollars)	2005	2004	2003
Net Income	\$ 719	\$ 537	\$ 528
Equity in earnings of subsidiaries	(731)	(550)	(541)
Dividends received from:			
Consolidated Edison Company of New York, Inc.	369	396	376
Orange and Rockland Utilities, Inc.	71	28	28
Competitive companies	35	40	69
Other – net	(94)	(39)	(139)
Net Cash Flows from Operating Activities	369	412	321
Investing Activities			
Contributions to subsidiaries	-	(527)	(380)
Financing Activities			
Net proceeds from/(payments of) short-term debt	78	14	(119)
Issuance of long-term debt	-	-	200
Common shares issued	118	631	471
Common stock dividends	(556)	(529)	(492)
Net Cash Flows from Financing Activities	(360)	116	60
Net Change for the Period	9	1	1
Balance at Beginning of Period	2	1	-
Balance at End of Period	\$ 11	\$ 2	\$ 1

Valuation and Qualifying Accounts

For the Years Ended December 31, 2005, 2004 and 2003

Company	COLUMN A Description	COLUMN B Balance at Beginning of Period	COLUMN C Additions		COLUMN D Deductions**	COLUMN E Balance At End of Period
			(1) Charged To Costs And Expenses	(2) Charged To Other Accounts		
(Millions of Dollars)						
Con Edison	Allowance for uncollectible accounts*:					
	2005	\$33	\$51	-	\$45	\$39
	2004	\$36	\$42	-	\$45	\$33
	2003	\$35	\$43	-	\$42	\$36
Con Edison of New York	Allowance for uncollectible accounts*:					
	2005	\$29	\$48	-	\$42	\$35
	2004	\$30	\$39	-	\$40	\$29
	2003	\$29	\$36	-	\$35	\$30

* This is a valuation account deducted in the balance sheet from the assets (Accounts receivable-customers) to which they apply.

** Accounts written off less cash collections, miscellaneous adjustments and amounts reinstated as receivables previously written off.

**ITEM 9. CHANGES IN AND DISAGREEMENTS WITH
ACCOUNTANTS ON ACCOUNTING AND FINANCIAL
DISCLOSURE**

Con Edison

None.

Con Edison of New York

None.

ITEM 9A. CONTROLS AND PROCEDURES

The Companies maintain disclosure controls and procedures designed to provide reasonable assurance that the information required to be disclosed in the reports that they submit to the Securities and Exchange Commission (SEC) is recorded, processed, summarized and reported within the time periods specified in the rules and forms of the SEC. For each of the Companies, its management, with the participation of its principal executive officer and principal financial officer, has evaluated its disclosure controls and procedures as of the end of the period covered by this report and, based on such evaluation, has concluded that the controls and procedures are effective to provide such reasonable assurance. Reasonable assurance is not absolute assurance, however, and there can be no assurance that any design of controls or procedures would be effective under all potential future conditions, regardless of how remote.

For Con Edison's Report of Management On Internal Control Over Financial Reporting and the related attestation report of PricewaterhouseCoopers LLP (presented in the Report of Independent Registered Public Accounting Firm), see Item 8 of this report (which information is incorporated herein by reference).

There was no change in the Companies' internal control over financial reporting that occurred during the Companies' most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the Companies' internal control over financial reporting.

ITEM 9B. OTHER INFORMATION

Con Edison

None.

Con Edison of New York

None.

Part III

- ITEM 10. DIRECTORS AND EXECUTIVE OFFICERS OF THE REGISTRANT
- ITEM 11. EXECUTIVE COMPENSATION
- ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT AND RELATED STOCKHOLDER MATTERS
- ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS
- ITEM 14. PRINCIPAL ACCOUNTING FEES AND SERVICES

Con Edison

Information required by Part III as to Con Edison, other than the information required in Item 10 of this report by Item 406 of Regulation S-K and in Item 12 of this report by Item 201 (d) of Regulation S-K, is incorporated by reference from Con Edison's definitive proxy statement for its Annual Meeting of Stockholders to be held on May 15, 2006. The proxy statement is to be filed pursuant to Regulation 14A not later than 120 days after December 31, 2005, the close of the fiscal year covered by this report.

The information required pursuant to Item 406 of Regulation S-K is as follows: Con Edison has adopted a code of ethics that applies to, among others, its principal executive officer, principal financial officer and principal accounting officer. The same code of ethics applies to Con Edison of New York and, among others, its principal executive officer, principal financial officer and principal accounting officer. The code of ethics and any waivers of the code for any such officers, are available on or through the Investor Information section of Con Edison's website (www.conedison.com) and Con Edison of New York's website (www.coned.com). This information is available in print to any person who requests it. Requests should be directed to: Corporate Secretary, Con Edison, 4 Irving Place, New York, NY 10003.

The information required pursuant to Item 201 (d) of regulation S-K is as follows:

Equity Compensation Plan Information

Plan category	Number of securities to be issued upon exercise of outstanding options, warrants and rights	Weighted-average exercise price of outstanding options, warrants and rights	Number of securities remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))
	(a)	(b)	(c)
Equity compensation plans approved by security holders			
Stock options	7,867,151	\$41.913	4,385,450
Restricted stock	322,208	N/A	3,677,792
Total Equity compensation plans approved by security holders	8,189,359		8,063,242
Total Equity compensation plans not approved by security holders	375,376	N/A	N/A
Total	8,564,735	N/A	8,063,242

For additional information about Con Edison's stock-based compensation, see Note N to the financial statements in Item 8 of this report (which information is incorporated herein by reference).

In accordance with General Instruction G(3) to Form 10-K, other information regarding Con Edison's Executive Officers may be found in Part I of this report under caption "Executive Officers of the Registrant."

Con Edison Of New York

Information required by Part III as to Con Edison of New York, other than the information required by Item 406 of Regulation

S-K in Item 10, is incorporated by reference from Con Edison of New York's definitive information statement for its Annual Meeting of Stockholders to be held on May 15, 2006. The information statement is to be filed pursuant to Regulation 14C not later than 120 days after December 31, 2005, the close of the fiscal year covered by this report. The information required pursuant to Item 406 of Regulation S-K for Con Edison of New York is shown above under "Con Edison" in this Part III.

In accordance with General Instruction G(3) to Form 10-K, other information regarding Con Edison of New York's Executive Officers may be found in Part I of this report under the caption "Executive Officers of the Registrant."

Part IV

ITEM 15. EXHIBITS AND FINANCIAL STATEMENT SCHEDULES

(a) Documents filed as part of this report:

1. List of Financial Statements – See financial statements listed in Item 8.

2. List of Financial Statement Schedules – See schedules listed in Item 8.

3. List of Exhibits

Exhibits listed below which have been filed previously with the Securities and Exchange Commission pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, and which were designated as noted below, are hereby incorporated by reference and made a part of this report with the same effect as if filed with the report. Exhibits listed below that were not previously filed are filed herewith.

Con Edison

- 2.1 Amended and Restated Agreement and Plan of Merger, dated as of October 13, 1999, as amended and restated as of January 11, 2000, among Con Edison, Northeast Utilities, Consolidated Edison, Inc. (a Delaware corporation, originally incorporated as CWB Holdings, Inc.) and N Acquisition LLC. (Designated in Con Edison's Current Report on Form 8-K, dated January 11, 2000 (File No. 1-14514) as Exhibit 2.)
- 3.1.1 Restated Certificate of Incorporation of Consolidated Edison, Inc. (Con Edison) (Designated in the Registration Statement on Form S-4 of Con Edison (No. 333-39165) as Exhibit 3.1.)
- 3.1.2 By-laws of Con Edison, effective as of May 16, 2005. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2005 (File No. 1-14514) as Exhibit 3.1.)
- 4.1.1 Indenture, dated as of April 1, 2002, between Con Edison and JP Morgan Chase Bank (formerly known as The Chase Manhattan Bank), as Trustee. (Designated in the Registration Statement on Form S-3 of Con Edison (No. 333-102005) as Exhibit 4.1.)
- 4.1.2 The form of Con Edison's 7.25% Debentures, Series 2002 A. (Designated in Con Edison's Current Report on Form 8-K, dated April 3, 2002. (File No. 1-14514) as Exhibit 4.)
- 4.1.3 The form of Con Edison's 3.625% Debentures, Series 2003 A. (Designated in Con Edison's Current Report on Form 8-K, dated July 22, 2003. (File No. 1-14514) as Exhibit 4.)
- 4.1.4 5-Year Credit Agreement, dated as of April 14, 2005, among Con Edison of New York, Con Edison, O&R, the banks party thereto and JPMorgan Chase Bank, N.A., as Administrative Agent. (Designated in Con Edison's Current Report on Form 8-K, dated April 14, 2005, (File No. 1-14514) as Exhibit 4.1.)
- 4.1.5 3-Year Credit Agreement dated as of November 26, 2003 among Con Edison of New York, Con Edison, O&R, the banks party thereto and JPMorgan Chase Bank, N.A., as agent. (Designated in Con Edison's Current Report on Form 8-K, dated April 14, 2005, (File No. 1-14514) as Exhibit 4.2.)
- 10.1.1 Con Edison 1996 Stock Option Plan, as amended and restated effective February 24, 1998. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1997 (File No. 1-1217) as Exhibit 10.20.)
- 10.1.2 The following employment agreements, and amendments thereto, between Con Edison and the executive officer listed below, dated as of the effective dates listed below, which are designated as follows:

Executive Officer	Effective Date	Securities Exchange Act File No. 1-14514		
		Form	Date	Exhibit
Eugene R. McGrath	Agreement: 9/1/00	10-Q	9/30/00	10.1.1
	Amendment: 5/31/02	10-Q	6/30/02	10.1.1
	Amendment: 7/22/05	8-K	7/21/05	10.1.2
Joan S. Freilich	Agreement: 9/1/00	10-Q	9/30/00	10.1.2
	Amendment: 5/31/02	10-Q	6/30/02	10.1.2
	Amendment: 7/22/05	8-K	7/21/05	10.1.3
Kevin Burke	Agreement: 9/1/00	10-K	12/31/00	10.1.6
	Amendment: 5/31/02	10-Q	6/30/02	10.1.3
	Agreement: 7/22/05	8-K	7/21/05	10.1.1
John D. McMahon	Agreement: 9/1/00	10-K	12/31/00	10.1.5
	Amendment: 5/31/02	10-Q	6/30/02	10.1.4
	Agreement: 12/23/05	8-K	12/23/05	10.1

- 10.1.3.1.1 Restricted Stock Unit Award Agreement, dated as of May 31, 2002, between Con Edison and Stephen B. Bram. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2002 (File No. 1-14514) as Exhibit 10.1.5.)
- 10.1.3.1.2 Restricted Stock Unit Award Agreement, dated as of August 1, 2005, between Con Edison and Stephen B. Bram. (Designated in Con Edison's Current Report on Form 8-K, dated August 1, 2005, (File No. 1-14514) as Exhibit 10.)
- 10.1.3.2 Letter, dated July 27, 2005, to Stephen B. Bram. (Designated in Con Edison's Current Report on Form 8-K, dated July 21, 2005, (File No. 1-14514) as Exhibit 10.4.)
- 10.1.4 Severance Program for Officers of Consolidated Edison, Inc. and its Subsidiaries, effective as of September 1, 2000. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2000 (File No. 1-14514) as Exhibit 10.1.3.)
- 10.1.5.1 The Consolidated Edison, Inc. Stock Purchase Plan. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2000 (File No. 1-14514) as Exhibit 10.)
- 10.1.5.2 Amendment, dated April 8, 2002, to The Consolidated Edison, Inc. Stock Purchase Plan. (Designated in Con Edison's Registration Statement on Form S-8 (No. 333-86820) as Exhibit 10.2.)
- 10.1.5.3 Amendment, dated February 19, 2004 to The Consolidated Edison, Inc. Stock Purchase Plan. (Designated in Con Edison's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 1-14514) as Exhibit 10.1.5.3.)
- 10.1.5.4 Amendment, dated October 25, 2004 to the Consolidated Edison, Inc. Stock Purchase Plan. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2004 (File No. 1-14514) as Exhibit 10.1.)
- 10.1.6 Consolidated Edison, Inc. Deferred Stock Compensation Plan for Non-Officer Directors, effective July 1, 2002. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File No. 1-14514) as Exhibit 10.1.1.)
- 10.1.7 The Con Edison Retirement Plan as amended and restated, entered into November 16, 2004. (Designated in Con Edison's Current Report on Form 8-K dated November 9, 2004 (File No. 1-14514) as Exhibit 10.)
- 10.1.8.1 The Consolidated Edison Thrift Plan, as amended effective August 2003. (Designated in Con Edison's Annual Report on Form 10-K for the year ended December 31, 2005 (File No. 1-14514) as Exhibit 10.1.8.1.)
- 10.1.8.2 Amendment, executed April 5, 2005, to The Consolidated Edison Thrift Plan (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2005 (File No. 1-14514) as Exhibit 10.1.1.)
- 10.1.9.1 Guaranty, dated as of November 14, 2000, from Consolidated Edison, Inc. in favor of Hawkeye Funding, Limited Partnership. (Designated in Con Edison's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 1-14514) as Exhibit 10.9.1.)
- 10.1.9.2 Lease Agreement, dated as of November 14, 2000, between Hawkeye Funding, Limited Partnership, as Lessor, and Newington Energy, L.L.C., as Lessee (the Newington Project Lease). (Designated in Con Edison's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 1-14514) as Exhibit 10.9.2.)
- 10.1.9.3 Amendment No. 1, dated as of April 1, 2002, to the Newington Project Lease. (Designated in Con Edison's Annual Report on Form 10-K for the year ended December 31, 2002 (File No. 1-14514) as Exhibit 10.9.3.)
- 10.1.10.1 Consolidated Edison, Inc. Long-Term Incentive Plan. (Designated in Con Edison's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2003 (File No. 1-14514) as Exhibit 10.1.1.)
- 10.1.10.2 Form of Restricted Stock Unit Award under the Con Edison Long Term Incentive Plan. (Designated in Con Edison's Current Report on Form 8-K, dated January 24, 2005, (File No. 1-14514) as Exhibit 10.2.)
- 10.1.10.3 Form of Stock Option Agreement under the Con Edison Long Term Incentive Plan. (Designated in Con Edison's Current Report on Form 8-K, dated January 24, 2005, (File No. 1-14514) as Exhibit 10.3.)
- 10.1.11 Consolidated Edison, Inc. Annual Incentive Plan. (Designated in Con Edison's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 1-14514) as Exhibit 10.1.11.)
- 10.1.12 Description of Directors' Compensation. (Designated in Con Edison's Current Report on Form 8-K, dated May 16, 2005, (File No. 1-14514) as Exhibit 10.)
- 10.1.13 Letter, dated February 23, 2004, to Robert N. Hoglund. (Designated in Con Edison's Current Report on Form 8-K, dated July 21, 2005, (File No. 1-14514) as Exhibit 10.5.)

- 10.1.14 Restricted Stock Award Agreement, dated as of April 1, 2004, between Con Edison and Robert Hoglund. (Designated in Con Edison's Current Report on Form 8-K, dated July 21, 2005, (File No. 1-14514) as Exhibit 10.6.)
- 12.1 Statement of computation of Con Edison's ratio of earnings to fixed charges for the years 2001-2005.
- 21.1 Subsidiaries of Con Edison. (Designated in Con Edison's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 1-14514) as Exhibit 21.1.)
- 23.1 Consent of PricewaterhouseCoopers LLP.
- 24.1 Powers of Attorney of each of the persons signing this report by attorney-in-fact.
- 31.1.1 Rule 13a-14(a)/15d-14(a) Certifications – Chief Executive Officer.
- 31.1.2 Rule 13a-14(a)/15d-14(a) Certifications – Chief Financial Officer.
- 32.1.1 Section 1350 Certifications – Chief Executive Officer.
- 32.1.2 Section 1350 Certifications – Chief Financial Officer.

Con Edison of New York

- 3.2.1.1 Restated Certificate of Incorporation of Con Edison filed with the Department of State of the State of New York on December 31, 1984. (Designated in the Annual Report on Form 10-K of Con Edison of New York for the year ended December 31, 1989 (File No. 1-1217) as Exhibit 3(a).)
- 3.2.1.2 The following certificates of amendment of Restated Certificate of Incorporation of Con Edison of New York filed with the Department of State of the State of New York, which are designated as follows:

Date Filed With Department of State	Securities Exchange Act File No. 1-1217		
	Form	Date	Exhibit
5/16/88	10-K	12/31/89	3(b)
6/2/89	10-K	12/31/89	3(c)
4/28/92	8-K	4/24/92	4(d)
8/21/92	8-K	8/20/92	4(e)
2/18/98	10-K	12/31/97	3.1.2.3

- 3.2.2 By-laws of Con Edison of New York, effective February 16, 2006.
- 4.2.1.1 Participation Agreement, dated as of December 1, 1992, between New York State Energy Research and Development Authority (NYSERDA) and Con Edison of New York (designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 4(f).)
- 4.2.1.2 Supplemental Participation Agreement, dated as of July 1, 1995, to Participation Agreement, dated as of December 1, 1992 between NYSEDA and Con Edison of New York. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1995 (File 1-1217) as Exhibit 4.2.)
- 4.2.2 Participation Agreement, dated as of July 1, 1999, between NYSEDA and Con Edison of New York. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1999 (File No. 1-1217) as Exhibit 4.1.)
- 4.2.3.1 Participation Agreement, dated as of June 1, 2001, between NYSEDA and Con Edison of New York. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001 (File No. 1-1217) as Exhibit 10.2.1.)
- 4.2.3.2 Supplemental Participation Agreement, dated as of October 1, 2002, to Participation Agreement, dated as of June 1, 2001 between NYSEDA and Con Edison of New York. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File 1-1217) as Exhibit 4.2.2.)
- 4.2.4 Participation Agreement, dated as of November 1, 2001, between NYSEDA and Con Edison of New York. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2001 (File No. 1-1217) as Exhibit 10.2.1.)

- 4.2.5 Participation Agreement, dated as of January 1, 2004, between NYSERDA and Con Edison of New York. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 1-1217) as Exhibit 4.2.6.)
- 4.2.6 Participation Agreement, dated as of January 1, 2004, between NYSERDA and Con Edison of New York. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 1-1217) as Exhibit 4.2.7.)
- 4.2.7 Participation Agreement, dated as of November 1, 2004, between NYSERDA and Con Edison of New York. (Designated in Con Edison of New York's Current Report on Form 8-K, dated November 9, 2004, (File No. 1-1217) as Exhibit 4.1.)
- 4.2.8 Participation Agreement, dated as of May 1, 2005, between NYSERDA and Con Edison of New York. (Designated in Con Edison of New York's Current Report on Form 8-K, dated May 25, 2005, (File No. 1-1217) as Exhibit 4.1.)
- 4.2.9.1 Indenture of Trust, dated as of December 1, 1992, between NYSERDA and Morgan Guaranty Trust Company of New York, as Trustee (Morgan Guaranty) (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 4(i)), and the following amendments thereto, which are designated as follows:
- 4.2.9.2 Supplemental Indenture of Trust, dated as of July 1, 1995 to Indenture of Trust, dated as of December 1, 1992, between NYSERDA and Morgan Guaranty. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1995 (File No. 1-1217) as Exhibit 4.3.)
- 4.2.10.1 Indenture of Trust, dated as of July 1, 1999 between NYSERDA and HSBC Bank USA, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1999 (File No. 1-1217) as Exhibit 4.2.)
- 4.2.10.2 Supplemental Indenture of Trust, dated as of July 1, 2001, to Indenture of Trust, dated July 1, 1999 between NYSERDA and HSBC Bank USA, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001 (File No. 1-1217) as Exhibit 10.2.2.)
- 4.2.11.1 Indenture of Trust, dated as of June 1, 2001 between NYSERDA and The Bank of New York, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 2001 (File No. 1-1217) as Exhibit 10.2.3.)
- 4.2.11.2 Supplemental Indenture of Trust, dated as of October 1, 2002, to Indenture of Trust, dated as of June 1, 2002, between NYSERDA and The Bank of New York, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2002 (File 1-1217) as Exhibit 4.2.1.)
- 4.2.12 Indenture of Trust, dated as of November 1, 2001, between NYSERDA and The Bank of New York, as trustee. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2001 (File No. 1-1217) as Exhibit 10.2.2.)
- 4.2.13 Indenture of Trust, dated as of January 1, 2004, between NYSERDA and The Bank of New York. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 1-1217) as Exhibit 4.2.12.)
- 4.2.14 Indenture of Trust, dated as of January 1, 2004, between NYSERDA and The Bank of New York. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 2003 (File No. 1-1217) as Exhibit 4.2.13.)
- 4.2.15 Indenture of Trust, dated as of November 1, 2004, between NYSERDA and The Bank of New York. (Designated in Con Edison of New York's Current Report on Form 8-K, dated November 9, 2004, (File No. 1-1217) as Exhibit 4.2.)
- 4.2.16 Indenture of Trust, dated as of May 1, 2005, between NYSERDA and The Bank of New York. (Designated in Con Edison of New York's Current Report on Form 8-K, dated May 25, 2005, (File No. 1-1217) as Exhibit 4.2.)
- 4.2.17.1 Indenture, dated as of December 1, 1990, between Con Edison of New York and The Chase Manhattan Bank (National Association), as Trustee (the "Debenture Indenture"). (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1990 (File No. 1-1217) as Exhibit 4(h).)
- 4.2.17.2 First Supplemental Indenture (to the Debenture Indenture), dated as of March 6, 1996, between Con Edison of New York and The Chase Manhattan Bank (National Association), as Trustee. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1995 (File No. 1-1217) as Exhibit 4.13.)

- 4.2.17.3 Second Supplemental Indenture (to the Debenture Indenture), dated as of June 30, 2005, between Con Edison of New York and JPMorgan Chase Bank, N.A. (successor to The Chase Manhattan Bank (National Association)), as Trustee. (Designated in Con Edison of New York's Current Report on Form 8-K, dated November 16, 2005, (File No. 1-1217) as Exhibit 4.1.)
- 4.21.18 The following forms of Con Edison of New York's Debentures:

Debenture		Securities Exchange Act File No. 1-1217		
		Form	Date	Exhibit
7 3/4%	Series 1996 A	8-K	4/24/96	4
6.45%	Series 1997 B	8-K	11/24/97	4
6 1/4%	Series 1998 A	8-K	1/29/98	4.1
7.10%	Series 1998 B	8-K	1/29/98	4.2
6.15%	Series 1998 C	8-K	6/22/98	4
6.90%	Series 1998 D	8-K	9/24/98	4
7.15%	Series 1999 B	8-K	12/1/99	4
8 1/8%	Series 2000 A	8-K	5/3/00	4
7 1/2%	Series 2000 B	8-K	8/23/00	4
7 1/2%	Series 2001 A	8-K	6/14/01	4
5.625%	Series 2002 A	8-K	6/19/02	4
4.875%	Series 2002 B	8-K	12/19/02	4
5.875%	Series 2003 A	8-K	4/7/03	4
3.85%	Series 2003 B	8-K	6/12/03	4.1
5.10%	Series 2003 C	8-K	6/12/03	4.2
4.70%	Series 2004 A	8-K	2/11/04	4.1
5.70%	Series 2004 B	8-K	2/11/04	4.2
4.70%	Series 2004 C	8-K	2/11/04	4.3
5.30%	Series 2005 A	8-K	3/7/05	4
5.250%	Series 2005 B	8-K	6/20/05	4
5.375%	Series 2005 C	8-K	11/16/05	4.2

- 10.2.1 Amended and Restated Agreement and Settlement, dated September 19, 1997, between Con Edison of New York and the Staff of the New York State Public Service Commission (without Appendices). (Designated in Con Edison of New York's Current Report on Form 8-K, dated September 23, 1997, (File No. 1-1217) as Exhibit 10.)
- 10.2.2 Settlement Agreement, dated October 2, 2000, by and among Con Edison of New York, the Staff of the New York State Public Service Commission and certain other parties. (Designated in Con Edison of New York's Current Report on Form 8-K, dated September 22, 2000, (File No. 1-1217) as Exhibit 10.)
- 10.2.3.1 Planning and Supply Agreement, dated March 10, 1989, between Con Edison of New York and the Power Authority of the State of New York. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 10(gg).)
- 10.2.3.2 Delivery Service Agreement, dated March 10, 1989, between Con Edison of New York and the Power Authority of the State of New York. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1992 (File No. 1-1217) as Exhibit 10(hh).)

- 10.2.4 Employment Contract, dated May 22, 1990, between Con Edison of New York and Eugene R. McGrath (designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended June 30, 1990 (File No. 1-1217) as Exhibit 10) and the following amendments thereto, which are designated as follows:

Amendment Date	Securities Exchange Act File No. 1-1217		
	Form	Date	Exhibit
8/27/91			
8/25/92	10-Q	9/30/91	19
2/18/93	10-Q	9/30/92	19
8/24/93	10-K	12/31/92	10(o)
8/24/94	10-Q	9/30/93	10.1
8/22/95	10-Q	9/30/94	10.1
7/23/96	10-Q	9/30/95	10.3
7/22/97	10-Q	6/30/96	10.2
7/28/98	10-Q	6/30/97	10
7/27/99	8-K	9/24/98	10
7/20/00	10-Q	9/30/99	10.2
	10-Q	9/30/00	10.2.1

- 10.2.5 Agreement and Plan of Exchange, entered into on October 28, 1997, between Con Edison and Con Edison of New York. (Designated in the Registration Statement on Form S-4 of Con Edison (No. 333-39165) as Exhibit 2.)
- 10.2.6 The Consolidated Edison Company of New York, Inc. Executive Incentive Plan, as amended and restated as of August 1, 2000. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2001 (File No. 1-1217) as Exhibit 10.2.1.)
- 10.2.7 Consolidated Edison Company of New York, Inc. Supplemental Retirement Income Plan, as amended and restated as of April 1, 1999. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1998 (File No. 1-1217) as Exhibit 10.10.)
- 10.2.8 Deferred Compensation Plan for the Benefit of Trustees of Con Edison of New York, dated February 27, 1979, and amendments thereto, dated September 19, 1979 (effective February 27, 1979), February 26, 1980, and November 24, 1992 (effective January 1, 1993). (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1991 (File No. 1-1217) as Exhibit 10(i).)
- 10.2.9 Supplemental Medical Plan for the Benefit of Con Edison of New York's officers. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1991 (File No. 1-1217) as Exhibit 10(aa).)
- 10.2.10 The Con Edison of New York Severance Pay Plan for Management Employees. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 1997 (File No. 1-1217) as Exhibit 10.)
- 10.2.11.1 The Consolidated Edison Company of New York, Inc. Deferred Income Plan, as amended and restated as of April 1, 1999. (Designated in Con Edison of New York's Annual Report on Form 10-K for the year ended December 31, 1998 (File No. 1-1217) as Exhibit 10.19.)
- 10.2.11.2 Amendment No. 1 to The Consolidated Edison Company of New York, Inc. Deferred Income Plan, effective as of September 1, 2000. (Designated in Con Edison of New York's Quarterly Report on Form 10-Q for the quarterly period ended March 31, 2001 (File No. 1-1217) as Exhibit 10.2.2.)
- 10.2.12 The Consolidated Edison Company of New York, Inc. 2005 Executive Incentive Plan, effective as of January 1, 2005. (Designated in Con Edison of New York's Current Report on Form 8-K, dated December 29, 2005, (File No. 1-1217) as Exhibit 10.1.)
- 10.2.13.1 Trust Agreement, dated as of March 31, 1999, between Con Edison of New York and Mellon Bank, N.A., as Trustee.
- 10.2.13.2 Amendment Number 1 to the Con Edison of New York Rabbi Trust, executed October 24, 2003, between Con Edison of New York and Mellon Bank, N.A., as Trustee.
- 12.2 Statement of computation of Con Edison of New York's ratio of earnings to fixed charges for the years 2001-2005.

- 23.2 Consent of PricewaterhouseCoopers LLP.
- 24.2 Powers of Attorney of each of the persons signing this report by attorney-in-fact. (Included as part of Exhibit 24.1.)
- 31.2.1 Rule 13a-14(a)/15d-14(a) Certifications – Chief Executive Officer.
- 31.2.2 Rule 13a-14(a)/15d-14(a) Certifications – Chief Financial Officer.
- 32.2.1 Section 1350 Certifications – Chief Executive Officer.
- 32.2.2 Section 1350 Certifications – Chief Financial Officer.

Signatures

Pursuant to the requirements of Section 13 or 15(d) of the Securities and Exchange Act of 1934, each Registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, on February 22, 2006.

Consolidated Edison, Inc.

Consolidated Edison Company of New York, Inc.

By /s/ Robert N. Hoglund

Robert N. Hoglund
Senior Vice President and
Chief Financial Officer

Pursuant to the requirements of the Securities and Exchange Act of 1934, this report has been signed below by the following persons on behalf of the Registrant, and in the capacities, indicated on February 22, 2006.

Signature	Registrant	Title
Kevin Burke*	Con Edison	President, Chief Executive Officer and Director (Principal Executive Officer)
	Con Edison of New York	Chief Executive Officer and Trustee (Principal Executive Officer)
Robert N. Hoglund*	Con Edison	Senior Vice President and Chief Financial Officer (Principal Financial Officer)
	Con Edison of New York	Senior Vice President and Chief Financial Officer (Principal Financial Officer)
Edward J. Rasmussen*	Con Edison	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)
	Con Edison of New York	Vice President, Controller and Chief Accounting Officer (Principal Accounting Officer)
Eugene R. McGrath*	Con Edison	Chairman of the Board and Director
	Con Edison of New York	Chairman of the Board and Trustee
Vincent A. Calarco*	Con Edison	Director
	Con Edison of New York	Trustee
George Campbell Jr.*	Con Edison	Director
	Con Edison of New York	Trustee
Gordon J. Davis*	Con Edison	Director
	Con Edison of New York	Trustee
Michael J. Del Guidice*	Con Edison	Director
	Con Edison of New York	Trustee
Ellen V. Futter*	Con Edison	Director
	Con Edison of New York	Trustee
Sally Hernandez*	Con Edison	Director
	Con Edison of New York	Trustee
Peter W. Likins*	Con Edison	Director
	Con Edison of New York	Trustee
Frederic V. Salerno*	Con Edison	Director
	Con Edison of New York	Trustee
Stephen R. Volk*	Con Edison	Director

*By /s/ Robert N. Hoglund

Robert N. Hoglund, Attorney-in-fact

SALE AND PURCHASE AGREEMENT

between

**D.C.K. MANAGEMENTCORP., (a wholly owned subsidiary) of CONSOLIDATED
EDISON COMPANY
OF NEW YORK, INC.**

as "Seller"

and

405 W. 53RD DEVELOPMENT GROUP LLC

as "Purchaser"

Date: As of June 30, 2005

Property:

405-427 West 53rd Street and designated on the Tax Map of the City of New York, New York
County as Block 1063, Lot 17

SALE AND PURCHASE AGREEMENT

THIS AGREEMENT is made as of the 30th day of June, 2005, between D.C.K. MANAGEMENT CORP., a wholly owned subsidiary of CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, with an office at 4 Irving Place, New York, New York 10003 ("Seller"), and 405 W. 53rd DEVELOPMENT GROUP LLC, a New York limited liability company with an office at 456 East 173rd Street, Bronx, NY 10457 ("Purchaser").

ARTICLE I

Definitions

For purposes of this Agreement, the following terms shall have the meanings indicated:

Section 1.1. "Affiliate" means, with respect to any specified Person (as defined herein), any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with the specified Person. For purposes of this definition, the term "controls" (including, with correlative meanings, the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting stock, by contract or otherwise.

Section 1.2. "Business Day" means any day other than a Saturday, Sunday or day on which the banks in New York, New York are authorized or obligated by law to be closed.

Section 1.3. "Cash Balance" has the meaning given in Section 3.1.

Section 1.4. "CERCLA" means the Comprehensive Environmental, Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended.

Section 1.5. "Closing" has the meaning given in Section 7.1.

Section 1.6. "Closing Date" has the meaning given in Section 7.1.

Section 1.7. "DEC" means the New York State Department of Environmental Conservation.

Section 1.8. "Deposit" has the meaning given in Section 3.1

Section 1.9. "Depository Bank" has the meaning given in Section 3.1.

Section 1.10. "Dollars" means lawful currency of the United States of America, and all sums payable by either party to the other pursuant to this Agreement shall be paid in

Dollars.

Section 1.11. "Environmental Condition" means any condition, situation, circumstance or event, relating to or arising from the release of a Hazardous Substance to the environment, or from the presence of a Hazardous Substance at or about or emanating from the Property, which could serve as the basis for or element of any claim or liability under any law or regulation or under any common law or equitable theory of recovery.

Section 1.12. "Environmental Laws" means any applicable statute, regulation, rule, ordinance, code, license or order of any Governmental Authority (defined below) and all applicable judicial and administrative and regulatory decrees, judgments and orders, relating to the protection of public health, public safety or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. Sections 4321 et seq.; the Refuse Act, 33 U.S.C. Sections 401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sections 11001 et seq.; the Occupational Safety and Health Act of 1970; the Hazardous Materials Transportation Act, as amended by the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. Sections 5101 et seq.; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Sections 2701 et seq.; as each of these may be amended from time to time; and any and state or local analogues to any of these statutes.

Section 1.13. "Escrow Agent" means Commonwealth Land Title Insurance Company

Section 1.13(a) "Floor Area" means Floor Area as defined in Section 12-1 of the Zoning Resolution.

Section 1.13(b) "Future Rezoning Covenant" means an instrument in the form attached hereto as Exhibit F pursuant to which Seller shall receive an increase in the purchase price for increases in Floor Area of the Property after a rezoning in excess of 4.2 FAR as more particularly set forth therein.

Section 1.13(c). "Final PSC Approval Date" shall be determined as follows:

- (i) if no timely case or proceeding seeking judicial review of the PSC Approval shall have been commenced and continuing as of the Outside Review Date by a third party, then the term "Final PSC Approval Date" shall mean the Outside Review Date; and
- (ii) if a timely case or proceeding seeking judicial review of the

PSC Approval shall have been commenced and continuing as of the Outside Review Date by a third party prior to the Outside Review Date, then the term "Final PSC Approval Date" shall mean the first to occur of (1) the later to occur of (A) the date on which an order upholding or affirming the PSC Approval is entered pursuant to a decision by a court with jurisdiction over the case or proceeding seeking judicial review of the PSC Approval from which no appeal can be taken or (B) the date on which the time to take an appeal from the order upholding or affirming the PSC Approval of any court with jurisdiction over the case or proceeding seeking judicial review of the PSC Approval has expired; or (2) the date upon which a settlement agreement dismissing such action or proceeding with such outside party has been entered into.

Section 1.14. "Governmental Authority" means the United States, the State, County and City of New York, and any political subdivision, agency, authority, department, court, commission, board, bureau or instrumentality of any of the foregoing asserting jurisdiction over any of the parties hereto or over the Property.

Section 1.15. "Hazardous Substances" means any material, substance, compound, solid, liquid or gas, or any radiation, emission or release of energy in any form, whether naturally occurring, man-made or the product of any process, (i) which is or may under certain conditions be toxic, harmful, or hazardous to public health, public safety, or the environment, (ii) which is or may be defined or regulated as a "hazardous waste", "hazardous substance", "hazardous material", "toxic substance", pollutant or contaminant under any Environmental Law, (iii) the use, handling, management, release, treatment, storage, transportation or disposal of which is or may be regulated under any Environmental Law, or (iv) the removal, remediation or abatement of which is required under any Environmental Law. Hazardous Substances include, but are not limited to, asbestos, polychlorinated biphenyls, mercury, lead, petroleum and petroleum products and derivatives, urea formaldehyde foam insulation, and radon and other radioactive materials.

Section 1.16. "Improvements" means the buildings, improvements, structures and fixtures, if any, including, without limitation, the foundations and footings located on the Land, which are owned by Seller.

Section 1.17. "Land" means the parcel or parcels of land described on Exhibit A annexed hereto and made a part hereof and being further described as that parcel known as 405-427 West 53rd Street, and being further designated on the Tax Map of the City of New York, New York County as Block 1063, Lot 17

Section 1.17 (a) "License" means that certain License agreement between Seller, as Licensor, and Mary's W. 53rd Street Parking, Inc., as Licensee, as attached on Exhibit G..

Section 1.19(a) "Outside Review Date" means the date upon which the right to seek judicial review of the PSC Approval has expired.

Section 1.20. "Permitted Exceptions" has the meaning given in Section 5.1.

Section 1.21. "Person" means an individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government or any agency or subdivision thereof.

Section 1.21 (a) "PSC" means the New York State Public Service Commission.

Section 1.21 (b) "PSC Approval" means an order, issued by the PSC pursuant to Section 70 of the Public Service Law, approving the sale of the Property pursuant to the terms of this Agreement.

Section 1.22. "Property" means all of Seller's right, title and interest in, to and under the following:

- (a) the Land;
- (b) the Improvements, if any;
- (c) any strips and gores adjacent to the Land and any land lying in the bed of any street, road or avenue opened or proposed, in front of or adjoining the Land, to the center line thereof;
- (d) any easements, rights, privileges and appurtenances belonging or in any way appertaining to the Property;
- (e) subject to the provisions of Article XV below, any award made after the date of this Agreement for any taking by condemnation of the Property or any damage to the Property by reason of a change of grade of any street or highway; and
- (f) any permits attached to this Agreement or described on Exhibit B to the extent that they are transferable and Seller makes no representation as to whether said permits are transferable.

Section 1.23. "Purchase Price" has the meaning given in Section 3.1.

Section 1.24. "Purchaser's Adverse Changes" has the meaning given in Section 10.4(a).

Section 1.25. "Purchaser's Representation Certificate" has the meaning given in Section 10.4(a).

Section 1.26. "RCRA" means the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. 6901 et seq.

Section 1.27. "Restoration Costs" has the meaning given in Section 15.1.

Section 1.28. "Scheduled Closing Date" has the meaning given in Section 7.1.

Section 1.30. "Seller's Adverse Changes" has the meaning given in Section 10.4(b).

Section 1.31. "Seller's Representation Certificate" has the meaning given in Section 10.4(b).

Section 1.32. "Survival Period" has the meaning given in Section 18.3.

Section 1.33. "Title Exception(s)" means any lien, encumbrance, security interest, charge, reservation, lease, tenancy, easement, right-of-way, encroachment, restrictive covenant, condition or limitation affecting the Property.

Section 1.34. "Title Insurer" means Philip O'Hara Associates, Inc., as agent for Commonwealth Land Title Insurance Company.

Section 1.35. "To the actual knowledge of Seller" or words of similar import means that Seller has actual knowledge of the information or matter in question; it being understood that the use of such words is not intended, and shall not be construed, to (x) imply any covenant that Seller conduct, or have conducted, any inquiry or investigation of any kind or nature or (y) impute to Seller the knowledge of any other Person, including, without limitation, any past owner of the Property or any past tenant of any portion of the Property.

ARTICLE II

PROPERTY

Section 2.1. Sale and Purchase of Property. Seller agrees to sell and convey, and Purchaser agrees to purchase, the Property, subject to the terms, conditions and provisions of this Agreement.

ARTICLE III

PURCHASE PRICE

Section 3.1. Payment of Purchase Price.

- (a) The purchase price (the "Purchase Price") for the Property is: thirty-two million one hundred and nineteen thousand two hundred DOLLARS (\$32,119,200), payable by Purchaser as follows:

(i) \$2,408,940 (the "Deposit") on the signing of this Agreement, by check, subject to collection, payable to the order of Escrow Agent or by wire transfer of immediately available federal funds to Escrow Agent. The Deposit shall be delivered to the Escrow Agent and held and disbursed in accordance with the provisions set forth in Section 3.2 below; provided, however, in the event that PSC Approval has not been received by the first anniversary of this Agreement, the Deposit shall be reduced to \$1,605,960 and the excess amount (the "Excess") held by Escrow Agent shall on demand be refunded to Purchaser; provided further, however, that Seller shall have no obligation to reduce the Deposit until a guaranty from Mario Procida and Linda Greco is provided to Seller in the form annexed hereto as Exhibit H, which guaranty shall secure the payment to Seller of the Excess in the event Purchaser defaults under this Agreement
and

(ii) \$29,710,260 Dollars, or \$30,513,240 if the Excess was paid to Purchaser (the "Cash Balance") at the Closing, to be paid by Purchaser to Seller pursuant to the provisions of Section 3.1(b) below.

(b) The Cash Balance shall be paid at Closing by certified check or official bank check drawn on the New York office of a member bank of the New York Clearinghouse Association payable to the unendorsed order of Seller or Seller's designee or by wire transfer of immediately available federal funds transferred to one or more bank accounts designated by Seller (the "Depository Bank").

Section 3.2. Escrow of Deposit

(The Deposit shall be delivered to Escrow Agent in accordance with the provisions of Section 3.1 hereof, and shall be held by Escrow Agent in accordance with the Escrow Agreement, dated the date hereof, between Seller, Purchaser and Escrow Agent. As between Seller and Purchaser, the following provisions shall obtain with respect to the Deposit:

(a) The Deposit shall be held until the Closing or sooner termination of this Agreement. Escrow Agent shall pay over or apply the Deposit in accordance with the terms of this Section 3.2. Any interest earned on the Deposit shall be paid to the same party entitled to the Deposit hereunder (as and when such party is entitled to the Deposit), and the party receiving such interest shall pay any income taxes thereon. For purposes thereof, the tax identification numbers of the parties hereto are as follows:
13-6196749 DCK (Seller), and 20-2732870(Purchaser).

(b) At the Closing, the Deposit and the interest thereon, if any, shall be paid by Escrow Agent to Seller. Interest earned on the Deposit shall not be credited against the

Cash Balance.

(c) If for any reason the Closing does not occur, then Escrow Agent shall continue to hold the Deposit and the interest thereon, if any, and paid to either Seller or Purchaser as expressly provided herein or until otherwise directed by joint written instructions from Seller and Purchaser or a final judgment of a court having jurisdiction. Escrow Agent, however, shall have the right at any time to deposit the Deposit and the interest thereon with the clerk of any federal or state court sitting in the State of New York. Escrow Agent shall give written notice of such deposit to Seller and Purchaser. Upon such deposit, Escrow Agent shall be relieved and discharged of all further obligations and responsibilities hereunder.

(d) The parties acknowledge that Escrow Agent (i) is acting solely as a stakeholder at their request and for their convenience, (ii) shall not be deemed to be the agent of either of the parties and (iii) shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, willful disregard of this Agreement or involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrow Agent harmless from and against all costs, claims and expenses, including reasonable attorneys' fees and disbursements, incurred in connection with the performance of Escrow Agent's duties hereunder, except with respect to actions or omissions taken or suffered by Escrow Agent in bad faith, willful disregard of this Agreement or involving gross negligence on the part of Escrow Agent.

(e) Escrow Agent shall endeavor to invest the Deposit in an interest bearing money market account in the Depository Bank. Escrow Agent shall not be liable for any losses suffered in connection with any such investment and shall have no obligation to obtain the best, or otherwise seek to maximize, the rate of interest earned on any such investment. Any fees or charges in connection with such investment shall be paid out of the amounts held in escrow before any other payments shall be required to be made from such amounts.

(f) Upon any delivery of the amount remaining in escrow as provided in Section 3.2(b) or 3.2(c) above, Escrow Agent shall be relieved of all liability, responsibility or obligation with respect to or arising out of the escrow or under this Agreement. Escrow Agent shall not be bound by any modification to this Section 3.2 unless Escrow Agent shall have agreed to such modification in writing.

(g) Escrow Agent shall be entitled to rely or act upon any notice, instrument or document believed by Escrow Agent to be genuine and to be executed and delivered by the proper person, and shall have no obligation to verify any statements contained in any notice, instrument or document or the accuracy or due authorization of the execution of any notice, instrument or document.

(h) Escrow Agent shall be entitled to retain attorneys of its choice in connection with this escrow, and any dispute which may arise hereunder or otherwise.

ARTICLE IV

ADJUSTMENTS

The following are to be adjusted and prorated between Seller and Purchaser as of 11:59 P.M. on the day preceding the Closing Date, based upon a 365 day year, and the net amount thereof shall be added to (if such net amount is in Seller's favor) or deducted from (if such net amount is in Purchaser's favor) the Cash Balance:

Section 4.1. Taxes and Assessments. (a) Real estate taxes (and Business Improvement District (BID) charges, if any) shall be adjusted and prorated on the basis of the fiscal year for which assessed. If the Closing shall occur before the tax rate or assessed valuation is fixed for the Property, the apportionment of real estate taxes and BID charges for the Property shall be upon the basis of the tax rate for the preceding year applied to the most recently applicable assessed valuation of the Property, subject to further and final adjustment when the tax rate and/or assessed valuation for the Property is fixed for the year in which the Closing occurs. In the event that the Property or any part thereof shall be or shall have been affected by an assessment or assessments, whether or not the same become payable in annual installments, Seller shall, at the Closing, be responsible for any installments due prior to the Closing and Purchaser shall be responsible for any installments due on or after the Closing.

Section 4.2. Water and Sewer Charges. Water rates, water meter charges, sewer rents and vault charges, if any, shall be adjusted and prorated on the basis of the fiscal period for which assessed. If there be a water meter, or meters, on the Property, Seller agrees that it shall at the Closing furnish a reading of same to a date not more than 30 days prior to the Closing and the unfixed meter charges and the unfixed sewer rent thereon for the time intervening from the date of the last reading shall be apportioned on the basis of such last reading, and shall be appropriately readjusted after the Closing on the basis of the next subsequent bills. Unmetered water charges shall be apportioned on the basis of the charges therefor for the same period of the preceding calendar year, but applying the current rate thereto.

Section 4.3. Other. Any other item which, under the terms of this Agreement, is to be apportioned at Closing, including license fees due under the License (hereinafter defined). If any such items are not determinable at the Closing, the adjustment shall be made subsequent to the Closing when the charge is determined. Any errors or omissions in computing adjustments at the Closing shall be promptly corrected, provided that the party seeking to correct such error or omission shall have notified the other party of such error or omission on or prior to the date that is one (1) year following the Closing Date. The provisions of this Article IV shall survive the Closing.

ARTICLE V

TITLE AND PERMITTED EXCEPTIONS

Section 5.1. Permitted Exceptions. The Property shall be sold and is to be conveyed, and Purchaser agrees to purchase the Property, subject only to (a) those matters set forth on Exhibit B annexed hereto, (b) the standard exceptions and provisions contained in the

form of insuring agreement employed by the Title Insurer, (d) any exceptions and matters that are expressly approved or waived by Purchaser or Purchaser's attorney, (e) the existing occupancy at the Property of a parking lot operator whose right to occupy the Property is contained in that certain License to Occupy Vacant Land (the "License") dated January 1, 1999 between Seller and Marty's W. 53rd Street Parking, Inc. d/b/a S&N Parking., a copy of which is attached hereto as Exhibit G (the liens, claims, encumbrances, exceptions and matters set forth in subclauses (a) through (e) above with respect to the Property being collectively referred to as the "Permitted Exceptions"). In the event that Purchaser notifies Seller of exceptions that are not Permitted Exceptions but are exceptions that can be cured by the payment of money, including but not limited to tax liens, mechanics' liens or a judgment (other than violations), Seller shall be obligated to cure such exception prior to Closing by expending an amount no more than \$1,000,000, but the Closing shall be adjourned as provided in Section 5.5 Seller shall have no obligation to expend more than \$1,000,000 in the aggregate to cure such exceptions. If Seller notifies Purchaser that the cost to cure such title exceptions that are not Permitted Exceptions exceeds \$1,000,000, then Purchaser may (i) elect to close otherwise in accordance with this Agreement notwithstanding the existing of such title exceptions that are not Permitted Exceptions and which exceed \$1,000,000 and if Purchaser so elects, then (1) Purchaser shall be deemed to have waived all of the title exceptions that are not Permitted Exceptions as not having been discharged before Closing and the same shall not be grounds for an objection to title, and (2) Purchaser shall not have any right of action against Seller for or in connection with such undischarged title exceptions that are not Permitted Exceptions and Purchaser shall receive a credit against the Purchase Price in an amount equal to the cost of the undischarged title exceptions but the credit shall not exceed \$1,000,000 minus the amount expended by Seller on or prior to the Closing Date to discharge the exceptions that are not Permitted Exceptions; provided, however, if Purchaser's title insurer will omit such exceptions with an indemnity from Seller and/or Consolidated Edison Company of New York, Inc. ("Con Ed"), Seller shall provide such indemnity and Purchaser shall not be entitled to any credit, or (ii) Purchaser may elect to provide Seller with written notice on or prior to the scheduled Closing Date (as so adjourned) that it elects to terminate this Agreement. If Purchaser shall fail to notify Seller of such election to termination on or prior to the scheduled Closing Date (as so adjourned), then Purchaser shall irrevocably be deemed to have elected to proceed to Closing.

Section 5.2. Title Report. Purchaser has reviewed a copy of a recent title report with respect to the Property. Purchaser shall, within ten (10) Business Days after issuance of any title continuation, give notice to Seller specifying all Title Exceptions set forth in such continuation which Purchaser claims are not Permitted Exceptions. If Purchaser fails to object to any Title Exception set forth in any title continuation within such ten (10) Business Day period, such Title Exception shall not be deemed to be a Permitted Exception; provided, however, Seller shall have a reasonable opportunity to remove such title defect if required by the provisions of Section 5.1

Section 5.3. Use of Purchase Price to Discharge Title. If, at the Closing, there are any Title Exceptions which are not Permitted Exceptions and which Seller is obligated by this Agreement or elects to pay and discharge, Seller may use any portion of the Cash Balance to satisfy the same, provided that Seller shall have delivered to Purchaser at the Closing instruments in recordable form sufficient to satisfy such Title Exceptions of record, together with the cost of

any applicable recording or filing fees. Purchaser, if request is made by Seller within a reasonable time prior to the Closing, agrees to provide at the Closing separate certified or cashier's checks as requested, aggregating up to the amount of the Cash Balance, to facilitate the satisfaction of any such Title Exceptions. The existence of any such liens or encumbrances shall not be deemed objections to title if Seller shall comply with the foregoing requirements. Any unpaid liens for taxes, water charges and assessments applicable to the period prior to the Closing Date shall not be objections to title, but the amount thereof plus any interest and penalties thereon shall be deducted from the Cash Balance, subject to the provisions for apportionment of taxes, water charges and assessments contained in Article IV of this Agreement.

Section 5.4. Inability to Convey. Except as expressly set forth in Sections 5.6 and 5.7, nothing contained in this Agreement shall be deemed to require Seller to take or bring any action or proceeding or any other steps to remove any Title Exception or to expend any moneys therefor, nor shall Purchaser have any right of action against Seller, at law or in equity, for Seller's inability to convey title in accordance with the terms of this Agreement.

Section 5.5. Rights in Respect of Inability to Convey. In the event that Seller shall be unable to convey title to the Property, subject to the Permitted Exceptions, and Purchaser shall not, prior to the Scheduled Closing Date (as it may have been adjourned in accordance with this Agreement), give notice to Seller that Purchaser is willing to waive objection to each Title Exception which is not a Permitted Exception and close this transaction without abatement of the Purchase Price, credit or allowance of any kind or any claim or right of action against Seller for damages or otherwise, Seller shall have the right, at Seller's sole election, to either (1) take such action as Seller shall deem advisable to discharge each such Title Exception which is not a Permitted Exception or (2) terminate this Agreement. In the event Seller shall elect to take action to discharge each such Title Exception which is not a Permitted Exception, Seller shall be entitled to one or more adjournments of the Scheduled Closing Date for a period not to exceed one hundred eighty (180) days in the aggregate (inclusive of any adjournments made by Seller pursuant to Sections 5.6 and 5.7 hereof), and the Closing shall be adjourned to a date specified by Seller not beyond such one hundred eighty (180) day period. If, for any reason whatsoever, Seller shall not have succeeded in discharging each such Title Exception at the expiration of such adjournment(s) and if Purchaser shall not, prior to the expiration of the last of such adjournments, give notice to Seller that Purchaser is willing to waive objection to each such Title Exception and to close this transaction without abatement of the Purchase Price, credit or allowance of any kind or any claim or right of action against Seller for damages or otherwise, this Agreement shall be deemed to be terminated as of the last date to which the Scheduled Closing Date was adjourned by Seller pursuant to this Article V. Upon any termination of this Agreement pursuant to this Section 5.5, (I) the Deposit (together with any interest earned thereon) shall be refunded to Purchaser and (II) neither party shall have any further rights or obligations hereunder other than those which expressly survive the termination of this Agreement. No action taken by Seller to discharge, or attempt to discharge, any purported Title Exception shall be an admission that any such purported Title Exception is not a Permitted Exception. Notwithstanding anything to the contrary contained herein, Seller shall not grant or permit any rights on or to the Property to any third parties or permit mortgages to be placed on the Property and shall be obligated to remove any Title Exception resulting from such action.

Section 5.6. Purchaser's Right to Accept Title. As provided in Section 5.1 and notwithstanding the provisions of this Article V to the contrary, Purchaser may, by notice given to Seller at any time prior to the Scheduled Closing Date (as it may have been adjourned), elect to accept such title as Seller can convey, notwithstanding the existence of any Title Exceptions which are not Permitted Exceptions. In such event, this Agreement shall remain in effect and the parties shall proceed to Closing but Purchaser shall not be entitled to any abatement of the Purchase Price, any credit or allowance of any kind or any claim or right of action against Seller for damages or otherwise by reason of the existence of any Title Exceptions which are not Permitted Exceptions other than as provided in this Section 5.1

Section 5.7. Purchaser's Cooperation. Purchaser shall cooperate with the Title Insurer and Seller in connection with obtaining title insurance insuring title to the Property subject only to the Permitted Exceptions. In furtherance and not in limitation of the foregoing, at or prior to the Closing, Purchaser shall deliver to the Title Insurer such affidavits, certificates and other instruments as are requested by the Title Insurer and customarily furnished by purchasers of property who are seeking to obtain a policy of owner's title insurance.

Section 5.8. Violations. Seller shall pay up to \$50,000 in monetary amounts due and owing for violations of law or municipal ordinances, orders or requirements noted in or issued by any state or municipal departments having jurisdiction against or affecting the Property up to the Closing Date. If the cost to cure such violations exceeds \$50,000 and Seller refuses to cure, then Purchaser may (i) elect to close otherwise in accordance with this Agreement notwithstanding the existing of such violations in excess of \$50,000 and if Purchaser so elects, then (1) Purchaser shall be deemed to have waived all of the violations that are in excess of \$50,000 and the same shall not be grounds for an objection to title, and (2) Purchaser shall not have any right of action against Seller for or in connection with such undischarged violations and Purchaser shall receive a credit against the Purchase Price in an amount equal to the cost of the uncured violations not to exceed \$50,000 minus the amount expended by Seller on or prior to the Closing Date to discharge the violations; or (ii) Purchaser may elect to provide Seller with written notice on or prior to the scheduled Closing Date (as so adjourned) that it elects to terminate this Agreement. If Purchaser shall fail to notify Seller of such election to termination on or prior to the scheduled Closing Date (as so adjourned), then Purchaser shall irrevocably be deemed to have elected to proceed to Closing.

ARTICLE VI

CONDITION OF PROPERTY

Section 6.1. "As Is" Condition. Purchaser is a sophisticated investor and its valuation of, bid and decision to purchase the Property is based upon its own independent expert evaluations of such facts and materials deemed relevant by Purchaser and its agents. Other than the representations and warranties of Seller which are specifically set forth in this Agreement,

Purchaser has not relied in entering into this Agreement upon any oral or written information from Seller, in any capacity, or any of its employees, affiliates, agents, consultants, advisors or representatives. Without limiting the generality of the foregoing, Purchaser agrees upon Closing to accept the Property "as is" and "where is" and, except as expressly set forth in Sections 10.1 and 10.2, Subsection 10.4(b) and Article XI hereof, Seller is not making, and Purchaser is not relying upon, any representation, warranty or covenant, express or implied, with respect to, and Purchaser's covenants, agreements and obligations under this Agreement shall not be excused or affected by, (a) the business or financial condition of any tenant, licensee, agent, operator or occupant (whether authorized or unauthorized) of the Property, (b) the physical condition of the Improvements, or its fitness, merchantability or suitability for any use or purpose, (c) the leases, licenses, rents, income, fees or expenses of the Property, (d) the compliance or noncompliance with any laws, codes, ordinances, rules or regulations of any Governmental Authority and any violations thereof, (e) the environmental condition of the Property or the Property's compliance or non-compliance with any laws, codes, ordinances, rules or regulations of any Governmental Authority relating to the presence, use, storage, handling or removal of any Hazardous Substances, (f) the current or future use of the Property, including, but not limited to, the Property's use for residential, commercial, retail, industrial or other purposes or the community acceptance of such current or future use, (g) the current or future real estate tax liability, assessment or valuation of the Property, (h) the availability or non-availability of any benefits conferred by Federal, state or municipal laws, whether for subsidies, special real estate tax treatment or other benefits of any kind, (i) the availability or unavailability of any licenses, permits, approvals or certificates which may be required in connection with the operation of the Property or) the compliance or non-compliance of the Property, in its current or any future state, with applicable zoning ordinances and the ability to obtain a change in the zoning or a variance with respect to the Property's non-compliance, if any, with any zoning ordinances. Seller is not liable or bound in any manner by any verbal or written statements, representations, real estate brokers' "set-ups", offering memorandum or information pertaining to the Property furnished by any real estate broker, advisor, consultant, agent, employee, representative or other Person. Purchaser hereby waives, to the extent permitted by law, any and all implied warranties. Purchaser acknowledges that it has been informed by Seller that Marty's W. 53rd Street Parking, Inc. d/b/a S&N Parking has a license to occupy the Property pursuant to a certain License attached hereto as Exhibit G and that no warranty or representation is made by Seller that Purchaser will be able to collect any money pursuant to the Marty's W. 53rd Street Parking license. Seller makes no representation as to the identities(s) of parties who may be currently using, operating or occupying the property whether authorized or unauthorized by Con Edison or Marty's W. 53rd Street Parking, Inc. Seller also makes no warranty or representation that the terms of any applicable guarantee will be enforceable by Seller or Purchaser.

Section 6.2. Environmental Matters.

((a) For the purposes of this Agreement, the following terms shall have the following meanings:

"Environmental Defect" shall mean (1) the presence on or about the Property of any Hazardous Substance(s) which in accordance with Environmental Laws, in order for Purchaser to proceed with its multi-family residential project, require remediation at a cost in excess of \$750,000.

"Environmental Testing" shall mean the inspection and testing (including taking soil samples and test borings) of: (i) the Property, or (ii) public records regarding the Property, which relate to the generation, use, disposal, or transportation of Hazardous Substances at or from the Property.

"Governing Law" shall mean any statute, law, ordinance, rule, regulation, permit, license, order, directive, guideline or policy of any Governmental Authority, now or hereafter in effect, relating to the Project, exclusive of Environmental Laws.

(b) Purchaser shall have the right for a period expiring on the 60th day (the "Due Diligence Expiration Date") following the date of this Agreement, subject to extension as provided for in Section 6.2 (d) to conduct Environmental Testing and obtain at Purchaser's sole expense, a so-called "Phase I" environmental report (the "Phase I Report"), a so-called "Phase II" environmental report (the "Phase II Report") and other reports, opinions, studies, or reviews from professionals regarding the proposed development of the Property (the Phase I Report, the Phase II Report and such other reports, opinions, studies, or reviews are, collectively, the "Reports") which Purchaser deems necessary or desirable to establish to Purchaser's satisfaction that no Environmental Defect exists with respect to the Property. Within ten (10) Business Days of receipt, Purchaser shall provide Seller with a copy of each report received by Purchaser; provided, however, Purchaser shall make no representation or warranty with respect to the accuracy of such Report or otherwise. Seller shall cooperate, without cost, expense or liability to it, with the consultants and professionals selected by Purchaser (collectively, "Purchaser's Consultants") to prepare the Reports and cause Seller's affiliates, employees, agents and representatives to cooperate with Purchaser's Consultants, such cooperation to include, without limitation, providing Purchaser's Consultants with access to the Property and to the relevant records, surveys and documents in the possession of Seller and its employees, agents and representatives and making said employees, agents and representatives reasonably available for discussions with Purchaser's Consultants. Seller agrees to allow Purchaser, Purchaser's Consultants and their agents and employees reasonable access to the Property for the purpose of conducting such investigations (including archeological investigations), samplings, tests (including taking soil tests and boring samples), engineering studies and other procedures as they deem necessary or helpful in preparing the Reports, provided that Purchaser or Purchaser's Consultants at all times maintains general commercial liability insurance of at least \$5,000,000 and provides Seller with a certificate of insurance naming Seller as an additional insured on such insurance and further provided that Purchaser provides Seller with a health and safety plan ("HASP") for Purchaser's work to be performed on the Property and said HASP is acceptable to Seller in its reasonable discretion. Purchaser agrees to indemnify Seller and to hold Seller harmless against any claims, losses, damages, liabilities, costs and expenses (including reasonable attorneys' fees) which

may be incurred by or asserted against Seller in connection with Purchaser's Environmental Testing and the Reports, including, without limitation, any claims, loss, cost or expense arising out of claims for personal injury or death to persons or damage to property. c) In the event that any Report discloses any Environmental Defect that Seller is unwilling to cure, Purchaser may (i) elect to close otherwise in accordance with this Agreement notwithstanding the existing of such Environmental Defect and if Purchaser so elects, then (1) Purchaser shall be deemed to have waived all of the Environmental Defects that are in excess of \$750,000, and (2) Purchaser shall not have any right of action against Seller for or in connection with such Environmental Defects and Purchaser shall receive a credit against the Purchase Price in an amount equal to the cost of the Environmental Defects exceeding \$750,000; or (ii) Purchaser may elect to provide Seller with written notice sent not later than the fifth (5th) Business Day following the Due Diligence Expiration Date, time being of the essence for Purchaser to exercise such right, together with a copy of the Report or Reports which is the basis of such termination. In the event Purchaser shall fail to timely exercise any such termination right, such right shall be deemed waived and of no further force or effect. Neither Purchaser nor any Purchaser's Consultant shall be deemed to make any representation or warranty to Seller, with respect to any Report provided to Seller. In the event of such termination, the Deposit together with any accrued interest shall be paid to Purchaser, and neither party shall have any further obligation to the other under this Agreement.

(d) Purchaser acknowledges that Seller has informed Purchaser that Seller may not be able to provide access to Purchaser for the purposes of Purchaser's conducting its Environmental Testing on the Property as the Property is currently licensed to Marty's Parking West 53rd Street Parking Inc. In the event that Marty's West 53rd Street Parking Inc. fails to permit access to the Property by Purchaser, Seller shall immediately commence and utilize all commercially reasonable efforts, including but not limited to judicial enforcement of its rights, if any, under its license to gain such access. If Seller is able to secure access by November 15, 2005, Purchaser shall have 60 days from the date that access has been secured to perform its Environmental Testing in accordance with the provisions of this paragraph. If Seller is unable to secure access by November 15, 2005, Purchaser's sole remedy shall be to either terminate this Agreement and receive a refund of its Deposit and thereafter neither party shall have any further rights against the other or waive its rights to testing and purchase the Property without conducting due diligence. If Purchaser fails to notify Seller in writing by December 1, 2005 that it has elected to terminate the Agreement, Seller may elect to terminate this Agreement on ten (10) days notice to Purchaser during which period Period shall have the right to expressly waive in writing its due diligence rights to perform Environmental Testing at the Property, and Purchaser shall be obligated to purchase the Property without any credit at Closing for Environmental Defects. If Purchaser does not expressly so timely waive its due diligence rights, this Agreement shall terminate and the Deposit together with any accrued interest shall be paid to Purchaser, and neither party shall have any further obligation to the other under this Agreement.

(e) Purchaser hereby agrees, at the Closing, to assume all costs and liabilities, known or unknown, foreseeable or unforeseeable, arising out of or in any way connected to the existence of any Environmental Defect, including conditions existing prior to the date of this Agreement. Purchaser agrees that Seller shall have no obligation to Purchaser to perform any removal, abatement or mitigation of any Environmental Defect that existed prior to the date of this Agreement or following the Closing, and that Seller shall have no liability or obligation to

Purchaser whatsoever on account of, in connection with or arising out of the existence of any Environmental Defect (including, without limitation, any condition which may constitute a violation of any applicable legal requirements, whether or not such violation is noted of record), nor shall same constitute an excuse for failure of performance by Purchaser under this Agreement.

(f) At Closing, Purchaser shall release Seller and its Affiliates, and their respective officers, directors, agents, employees, successors and assigns, from and against any and all claims and causes of actions which Purchaser may now or in the future have against any of the foregoing parties arising out of the existence of any Environmental Condition by executing and delivering to Seller at Closing a release in favor of the foregoing parties in the form annexed hereto as Exhibit D (the "Hazardous Substances Release").

(g) The provisions of this Section 6.2 shall survive the Closing.

ARTICLE VII

CLOSING

Section 7.1. Closing Date.

(a) The closing of the transactions contemplated by this Agreement (the "Closing") shall be held at the offices of Seller at 4 Irving Place, New York, New York 10003 or such office in New York, New York designated by Purchaser's lender, at 10:00a.m., on the first Business Day following the ninetieth (90th) day after the Final PSC Approval Date in accordance with this Agreement (such date, as it may be adjourned pursuant to one or more of the provisions of this Agreement, being herein called the "Scheduled Closing Date"). Subject only to any right of adjournment specifically and expressly granted to Purchaser or Seller in this Agreement, TIME SHALL BE OF THE ESSENCE with respect to Purchaser's obligation to close within thirty (30) days after the Scheduled Closing Date and failure by Purchaser to close within thirty day after the Scheduled Closing Date shall be deemed a default under this Agreement unless Purchaser's failure to close is the result of Seller's default. The actual date on which the Closing occurs is referred to herein as the "Closing Date".

(b) Notwithstanding anything to the contrary contained in this Agreement, in the event the Final PSC Approval Date shall not have occurred on or prior to July 1, 2010, either party shall have the right to terminate this Agreement on written notice to the other and in such event the Deposit shall promptly be refunded to Purchaser.

ARTICLE VIII

CLOSING DELIVERIES

Section 8.1. Documents and Payments to be Delivered at the Closing. At the Closing:

(a) Purchaser shall deliver to Seller the Cash Balance and any other amounts payable by Purchaser to Seller, pursuant to this Agreement;

(b) Seller shall execute, acknowledge and deliver to Purchaser a deed with respect to the Property, in the form of Exhibit C attached hereto, in proper form for recording;

(c) Seller shall execute and deliver to Purchaser a certification of non-foreign status, in form required by the Internal Revenue Code Section 1445 and the regulations issued thereunder. Seller understands that such certification will be retained by Purchaser and will be made available to the Internal Revenue Service on request;

(d) Seller shall deliver to Purchaser (i) a copy of the certificate of incorporation of Seller, certified as true and correct by an officer of Seller, (ii) a certified copy of such corporate documents of Seller as are reasonably necessary to demonstrate that the transactions contemplated hereby have been authorized by all necessary corporate action of Seller and (iii) copy of the PSC Approval:

(e) Seller shall execute and deliver to Purchaser Seller's Representation Certificate required pursuant to Section 10.4(b);

(f) Purchaser shall execute and deliver to Seller Purchaser's Representation Certificate required pursuant to Section 10.4(a);

(g) Purchaser shall deliver to Seller (i) a copy of the operating agreement of Purchaser, certified as true and correct by the managing member of Purchaser and (ii) a certified copy of such limited liability company documents of Purchaser as are reasonably necessary to demonstrate that the transactions contemplated hereby have been authorized by all necessary limited liability company action of Purchaser;

(h) Purchaser shall execute, acknowledge and deliver the Hazardous Substances Release in the form of Exhibit D attached hereto and made a part hereof,

(i) Seller and Purchaser shall each execute, acknowledge and deliver a Real Property Transfer Tax Return pursuant to Chapter 46, Title II of the New York City Administrative Code;

Seller and Purchaser shall each execute, acknowledge and deliver a New York State Real Estate Transfer Tax Return/Credit Line Mortgage Certificate (TP-584), or any successor form(s) then required to be filed with respect to the payment of the New York State Real Estate Transfer Tax:

(k) Seller and Purchaser shall each execute and deliver to the Title Insurer the Future Rezoning Covenant in the form attached as Exhibit _.

(l) Seller shall execute and deliver such other instruments or documents which by the terms of this Agreement are to be delivered by Seller at Closing, and Purchaser shall execute and deliver such other instruments or documents which by the terms of this Agreement are to be delivered by Purchaser at Closing.

(m) Seller and Purchaser shall each execute a Memorandum of Sale Contract Provisions in the form attached as Exhibit F.

(n) Seller shall deliver an original of the License and to the extent permitted by the License shall execute and deliver an assignment of the License, including any and all guarantees and letters of credit given thereunder, and letter to the licensee under the License notifying it that transfer of the Property has occurred and that all license payments are to be paid to Purchaser, in form reasonably acceptable to Purchaser and Seller. Seller shall deliver to Purchaser any and all security deposits and/or letters of credit given to Seller by the licensee under the License, including any accrued interest thereon. The parties hereto acknowledge that they are familiar with the terms and conditions of License Agreement attached hereto as Exhibit ___ and Purchaser assumes the risk for all assignment and transfer restrictions contained within that certain License.

(o) Seller and Purchaser shall each execute and deliver to the Title Insurer such documents and certificates as reasonably requested by the Title Insurer consistent with the provisions of this Agreement.

ARTICLE IX

CONDITIONS TO CLOSING

Section 9.1. Conditions to Purchaser's Obligation to Close. Purchaser's obligation to purchase the Property is subject to the satisfaction of the following condition precedent, which may be waived by Purchaser:

- (a) Seller shall have complied, in all material respects, with its obligations under Article VIII hereof.
- (b) Purchaser shall have received PSC Approval and the Final PSC Approval Date shall have occurred.
- (c) Seller's representations and warranties shall be true and correct as of the Closing Date.

Section 9.2. Conditions to Seller's Obligation to Close. Seller's obligation to sell the Property is subject to the satisfaction of the following conditions precedent, any or all of which may be waived by Seller:

- (a) Purchaser shall have complied in all material respects with its obligations under Article VIII hereof,
- (b) Seller shall have received PSC Approval and the Final PSC Approval Date shall have occurred.

ARTICLE X

REPRESENTATIONS AND WARRANTIES

Section 10.1. Representations and Warranties by Seller as to Seller. Seller represents and warrants to Purchaser that, as of the date hereof:

(a) Authority Binding on Seller: Enforceability. Seller is duly organized, validly existing and in good standing in its jurisdiction of incorporation. Seller has: (i) corporate powers adequate for the making and performing of this Agreement; (ii) except as set forth in Section 9.2(b), taken all corporate action required to execute, deliver and perform this Agreement and to make all of the provisions of this Agreement the valid and enforceable obligations they purport to be subject to the terms of that certain License Agreement attached as Exhibit G hereof; and (iii) subject to the terms and conditions contained within Paragraph 9.2(b) has caused this Agreement to be executed by a duly authorized officer or officers of Seller.

(b) Conflict with Existing Laws or Contracts. The execution and delivery of this Agreement and all related documents and the performance of its obligations hereunder and thereunder by Seller does not conflict with any provision of any law or regulation

to which Seller is subject, conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Seller is a party or by which Seller is bound or any order or decree applicable to Seller or result in the creation or imposition of any lien on any of its assets or property, which would materially and adversely affect the ability of Seller to perform its obligations under this Agreement; and, except as set forth in Section 9.2(c), Seller has obtained all consents, approvals, authorizations or orders of any court or governmental agency or body, if any, required for the execution, delivery and performance by Seller of this Agreement.

(c) Legal Action Against Seller. There is no action, suit or proceeding pending against Seller in any court or by or before any other governmental agency or instrumentality which would materially and adversely affect the ability of Seller to perform its obligations under this Agreement.

(d) Bankruptcy of Seller. Seller has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Seller. Seller is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Seller insolvent. No general assignment of Seller's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Seller or any of its property.

(e) Seller to the best of its knowledge has received no notice of any Environmental Condition.

(f) This Agreement constitutes the legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms (subject to the conditions outlined in Section 9.2).

(g) Seller to the best of its knowledge has not received written notice of any pending condemnation or eminent domain proceeding which would affect the Property.

(h) No party other than Purchaser has any conditional or unconditional right and/or option to purchase the Property.

(i) Seller is the sole owner of the Property.

(j) Seller has ^{or will pay} paid all franchise and other similar corporation taxes ~~when the same have become due.~~ before Closing. RPS

(k) There are and at the time of Closing will be none of Seller's

employees employed at or in connection with the Property and Seller shall have no service, maintenance, union or supply contracts affecting the Property.

- (l) There is no litigation or administrative proceeding or governmental investigation pending (or to Seller's knowledge threatened) against or relating to any of the Property with the exception of potential litigation relating to the occupancy of Marty's Parking.
- (m) By notice dated February 8, 2005, Seller served notice on Marty's W. 53rd Street Parking, Inc., pursuant to paragraph "J" of the License, exercising Seller's option to terminate the License (a true and correct copy of such notice is annexed hereto as Exhibit I).

Section 10.2. Representations and Warranties by Seller as to the Property.

Seller represents and warrants to Purchaser that, as of the date hereof:

- (a) Owner. Seller is the owner of record title to the Property, and has the right to sell the Property pursuant to the terms of this Agreement.
- (b) Contracts. On the Closing Date, there shall be no service contracts, maintenance contracts, brokerage agreements, union contracts, management contracts, concession agreements, agency agreements or any other written contracts or agreements by which Seller is bound and which affect the Property on the date hereof other than the Order approving the sale by the PSC, the License Agreement attached hereto as Exhibit G and the brokerage agreement between Seller and Cushman and Wakefield.
- (c) Condemnation. As of the date hereof, there are no pending or, to Seller's actual knowledge, threatened condemnation or eminent domain proceedings that would affect any part of the Property which could have a material adverse effect upon the current use of the Property for its intended purposes.

Section 10.3. Representations and Warranties of Purchaser. Purchaser

represents and warrants to Seller that, as of the date hereof:

- (a) Authority Binding on Purchaser: Enforceability. Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, with limited liability company powers adequate for the making and performing of this Agreement and for carrying on the business now conducted or proposed to be conducted by it. Purchaser has taken all limited liability company action required to execute, deliver and perform this Agreement and to make all of the provisions of this Agreement the valid and enforceable obligations they purport to be and has caused this Agreement to be executed by a duly authorized officer. Purchaser is duly qualified and in good standing as a foreign limited liability company in all jurisdictions where it is required so to be qualified, except for failures to be so qualified that do not in the aggregate have any material adverse effect on Purchaser and

which will not affect the validity of this Agreement.

(b) Conflict with Existing Laws or Contracts. The execution and delivery of this Agreement and all related documents and the performance of its obligations hereunder and thereunder by Purchaser do not conflict with any provision of any law or regulation to which Purchaser is subject, conflict with or result in a breach of or constitute a default under any of the terms, conditions or provisions of any agreement or instrument to which Purchaser is a party or by which Purchaser is bound or any order or decree applicable to Purchaser, or result in the creation or imposition of any lien on any of Purchaser's assets or property, which would materially and adversely affect the ability of Purchaser to perform its obligations under this Agreement; and Purchaser has obtained all consents, approvals, authorizations or orders of any court or governmental agency or body, if any, required for the execution, delivery and performance by Purchaser of this Agreement.

(c) Legal Action Against Purchaser. There are no judgments, orders or decrees of any kind against Purchaser unpaid or unsatisfied of record or any legal action, suit or other legal or administrative proceeding pending, threatened or reasonably anticipated which could be filed before any court or administrative agency which has, or is likely to have, any material adverse effect on (i) the business or assets or the condition, financial or otherwise, of Purchaser or (ii) the ability of Purchaser to perform its obligations under this Agreement.

(d) Bankruptcy or Debt of Purchaser Financial Condition. Purchaser has not filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Purchaser. No general assignment of Purchaser's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Purchaser or any of its property. Purchaser is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Purchaser insolvent. Purchaser has now and will have as of the Closing Date sufficient capital or net worth to meet its current obligations. Purchaser certifies that any financial statements and any financial statements of Purchaser and/or any Affiliate of Purchaser submitted to Seller have been prepared in accordance with generally accepted accounting principles recognized by the American Institute of Certified Public Accountants or the Financial Accounting Standards Board, or any successors thereto, and are true and correct and that no circumstances have occurred or come to its attention since the date of such financial statements which would have a material adverse impact on the financial condition of Purchaser or such Affiliate as indicated on any such financial statements delivered to Seller.

Section 10.4. Closing Certificates of Seller and Purchaser.

(a) Purchaser's Closing Certificate. At the Closing, Purchaser shall execute and deliver to Seller an instrument in which Purchaser shall remake the representations and warranties made by Purchaser pursuant to Section 10.3 above as of the Closing Date; provided, however, that Purchaser, in such instrument, may also (i) advise Seller of any events occurring between the date hereof and the Closing Date which affect the accuracy of such

representations and warranties (as made as of the Closing Date) and (ii) correct such representations and warranties (as made as of the date hereof) to reflect any discovered inaccuracy therein; such instrument being herein called "Purchaser's Representation Certificate"; any updated information set forth in the Purchaser's Representation Certificate pursuant to the preceding sub-clause (i) which has a material adverse effect on Seller, together with any correction of any representation and warranty as set forth in the Purchaser's Representation Certificate pursuant to the preceding sub-clause (ii) which has a material adverse effect on Seller, are herein collectively called "Purchaser's Adverse Changes".

(b) Seller's Closing Certificate. At the Closing, Seller shall execute and deliver to Purchaser an instrument ("Seller's Representation Certificate") in which Seller shall remake the representations and warranties made by Seller pursuant to Section 10.1 and, subject to the following provisions of this Section 10.4(b), Section 10.2 above as of the Closing Date. Seller, in Seller's Representation Certificate, may also (i) advise Purchaser of any events occurring between the date hereof and the Closing Date which affect the accuracy of such representations and warranties (as made as of the Closing Date), and (ii) correct such representations and warranties (as made as of the date hereof, to reflect any discovered inaccuracy therein. Any updated information set forth in the Seller's Representation Certificate pursuant to sub-clause (i) of the preceding sentence which has a material adverse effect on Purchaser, together with any correction of any representation and warranty as set forth in the Seller's Representation Certificate pursuant to sub-clause (ii) of the preceding sentence which has a material adverse effect on Purchaser, are herein collectively called "Seller's Adverse Changes".

Section 10.5. Survival of Representations and Warranties. The representations and warranties of Seller set forth in Sections 10.1, 10.2(b), 10.2(c) and 10.2(d), and the representations and warranties of Purchaser set forth in Section 10.3, including, without limitation, any such representations and warranties which are remade in the Seller's Representation Certificate or Purchaser's Representation Certificate, as the case may be, shall survive the Closing for the Survival Period.

ARTICLE XI

COVENANTS

Section 11.1. Operation of Property. Between the date hereof and the Closing Date, Seller shall continue to maintain the Property in the ordinary course and substantially in accordance with the practices and procedures customarily followed by Seller in the maintenance of the Property prior to the date hereof, provided, however, that Seller shall have no obligation to make any repairs or expenditures that are capital in nature.

Section 11.2 PSC Approval.

(a) It is specifically agreed and acknowledged by the parties that this Agreement is subject to Seller and Purchaser receiving the PSC Approval and the Final PSC Approval Date

occurring. As soon after the date hereof as reasonably possible, Seller and Purchaser shall file with PSC a duly completed Joint Petition (as defined below), it being understood and agreed that promptly after the date hereof and thereafter until completion thereof, Seller and Purchaser shall use commercially reasonable efforts to prepare and complete such Joint Petition and to file same with PSC. Between the date hereof and the date that Final PSC Approval is obtained (the "PSC Approval Period"), Seller and Purchaser shall use commercially reasonable and diligent efforts to pursue, in good faith, obtaining Final PSC Approval and shall reasonably cooperate and consult with each other in connection therewith and shall promptly furnish to PSC such materials as are lawfully required by PSC in connection with the Joint Petition. Throughout the PSC Approval Period, Seller and Purchaser shall keep each other apprised of the status of the Joint Petition and shall furnish to the other party hereof, promptly upon receiving or giving, as applicable, the same copies of all notices and other materials furnished to such party by PSC or from such party to PSC with respect to the Joint Petition, the Property or the subject matter hereof.

(b) Conditional PSC Approval. If the PSC imposes on Seller or Purchaser (the "Affected Party") any Transaction Condition (hereinafter defined), in connection with the granting of an order, pursuant to Section 70 of the Public Service Law, approving the sale of the Property pursuant to the terms of this Agreement, and if the Affected Party does not choose (in its discretion) to accept such Transaction Condition, then, subject to the further provisions of this Section 11.2, such order shall not be deemed to constitute "PSC Approval" for purposes of this Agreement and therefore the condition set forth in Sections 9.2(c) or 9.1(b), as applicable, hereof shall not be deemed to have been satisfied as a result of the issuance of such order; provided, however, that the Affected Party shall have the right (at the Affected Party's expense), exercisable by giving notice to the other party to this Agreement (the "Non-Affected Party") within fifteen (15) days after such order is issued, to contest such Transaction Condition by Legal Proceedings; however, if the Affected Party makes such election, the Affected Party shall prosecute the particular Legal Proceedings to Final Determination unless (a) the Affected Party decides at any time (in its discretion) to accept the contested Transaction Condition (including by settlement with the PSC) or (b) the Non-Affected Party elects to pay and be responsible for all such Transaction Condition as set forth below.

(c) If, as, and when any Legal Proceeding under Section 11.2(b) results in a Final Determination that imposes any Transaction Condition on the Affected Party, the Affected Party may terminate this Agreement by notice to the Non-Affected Party given within 30 days after such Final Determination unless, within 21 days after the giving of the Affected Party's notice, the Non-Affected Party (in its discretion) gives notice to the Affected Party electing, at the Non-Affected Party's expense, to satisfy such Transaction Condition or contest such Transaction Condition by Legal Proceedings, in which event this Agreement shall remain in full force and effect. If the Non-Affected Party does not give such notice, this Agreement shall terminate on the 22nd day after the giving of the Affected Party's termination notice and, thereafter, neither party shall have any further liability to the other (except for any obligations that, pursuant to the express terms of this Agreement, survive the termination hereof); except that if Seller shall have terminated this Agreement pursuant to this Section 11.2(b), Seller shall pay Purchaser's Fees-And-Costs incurred to negotiate and perform Purchaser's obligations under, and to accomplish the purposes of, this Agreement, but not to exceed two hundred and fifty thousand dollars (\$250,000) in the aggregate for all such Fees-And-Costs.

(d) Notwithstanding anything to the contrary contained herein, in no event shall the Closing be adjourned beyond the last date by which the Closing may occur pursuant to Section 7.1 (b) hereof.

(e) In this Section 11.2, "**Transaction Condition**" means the imposition by the PSC, as a condition to the granting of an order, pursuant to Section 70 of the Public Service Law, approving the sale of the Property pursuant to the terms of this Agreement, of any costs, liabilities, other requirements and/or obligations on the Affected Party which (i) are not set forth in this Agreement and materially and adversely affect such party; (ii) will result in Seller being required to expend more than Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate in order to perform same (if Seller is the Affected Party) or Purchaser incurring increased development costs of more than Two Hundred Fifty Thousand Dollars (\$250,000) in the aggregate (if Purchaser is the Affected Party); and/or (iii) have a material adverse effect upon Seller's authority and/or ability to convey title and possession of the Property within the time or otherwise in accordance with the provisions of this Agreement. Notwithstanding the foregoing, Transaction Conditions shall in no event include any of the following: (x) standard or "boilerplate" non-financial procedural conditions which are typical for PSC approval of non-utility property dispositions and are not materially adverse to the party in question; (y) in the case of Seller, any condition which the PSC has advised Seller in writing on or before the date of this Agreement by letter or other official PSC document delivered to Seller that the PSC intends to impose in connection with the PSC Approval; and/or (z) in the case of the Seller, any requirement relating to the allocation of Net Purchase Proceeds between Seller's shareholders and ratepayers; provided, however that any condition or requirement, including an condition or requirement in the allocation of Net Purchase Proceeds, which imposes any costs, charges or similar obligations on Con Edison's shareholders in excess of \$250,000 in the aggregate shall be treated the same as any other Transaction Condition for purposes of this Section .

(f) For purposes of this Agreement:

(i) "**Con Edison Transaction Expenses**" means all expenses incurred by Seller to negotiate, and perform Seller's obligations under, and to accomplish the purposes of, this Agreement.

(ii) "**Final Determination**" means a decision or determination of (x) any administrative, regulatory or other governmental or quasi-governmental agency of competent jurisdiction or (y) any court of competent jurisdiction, from which the time in which to take an appeal or to otherwise seek review has expired or from which no appeal can be taken. A "Final Determination" shall be deemed to occur as of the date of such expiration of the appeal period or the date of such unappealable decision or determination, as the case may be.

(iii) "**Legal Proceeding**" means an action, litigation, administrative or other governmental proceeding, or other legal or equitable proceeding of any kind.

(iv) "Net Purchase Proceeds" means the Purchase Price less the Con Edison Transaction Expenses.

Section 11.3. Approvals. It is specifically agreed and acknowledged by the parties that this Agreement is subject to Seller's receiving PSC Approval and between the date hereof and the Closing Date, Seller shall pursue, in good faith, PSC Approval.

ARTICLE XII

INTENTIONALLY DELETED

ARTICLE XIII

TRANSACTION COSTS

Section 13.1. Seller's Transaction Costs. At the Closing, Seller shall pay all transfer taxes and/or deed stamps payable as a result of the conveyance of title to the Property to Purchaser pursuant to this Agreement. Seller, in addition to its apportionments obligations hereunder, if any, also shall be responsible for the cost of its legal counsel, advisors and the other professionals employed by it in connection with the sale of the Property

Section 13.2. Purchaser's Transaction Costs. Purchaser, in addition to its apportionments (if any) and its other payment obligations hereunder, shall be responsible for all costs and expenses associated with (a) Purchaser's due diligence, (b) Purchaser's legal counsel, advisors, engineers, consultants and the other professionals employed by it in connection with Purchaser's due diligence and the purchase of the Property, (c) title reports or abstracts issued by the Title Insurer, as well as all survey and search costs and updates related thereto ordered or requested by Purchaser or its agents, (d) the policy premiums in respect of any fee title insurance obtained by Purchaser and any mortgage title insurance required by Purchaser's lender (if any), (e) the recording fees for the deed and (for all costs and expenses of obtaining any financing Purchaser may elect to obtain (including any fees, financing costs, transfer taxes, mortgage taxes and intangible taxes in connection therewith), it being expressly acknowledged that Purchaser's inability to obtain any such financing shall not be a condition to Purchaser's obligations hereunder.

ARTICLE XIV

BROKERAGE

Section 14.1. Representations. Purchaser and Seller each represents and warrants to the other that such party has not had any conversations or dealings with any broker, finder or other similar party in connection with the transactions contemplated hereby other than Cushman & Wakefield, Inc. (the "Broker"). Purchaser and Seller shall indemnify, defend and hold the other harmless from and against any and all claims, liabilities, losses, damages, costs or expenses (including, without limitation, reasonable attorneys' fees and expenses), arising out of a claim of a breach of the representation made by such indemnifying party pursuant to the immediately preceding sentence. Seller shall pay to Broker any fees that Broker is entitled to pursuant to any broker's agreement that Seller may have with Broker. Purchaser shall pay to Broker any fees that Broker is entitled to pursuant to any broker's agreement that Purchaser may have with Brokers. The provisions of this Article XIV shall survive the Closing or the termination of this Agreement.

ARTICLE XV

CASUALTY AND CONDEMNATION

Section 15.1. Casualty.

(a) If, between the date hereof and the Closing, there shall occur a fire or other casualty affecting the Improvements, if any, then Purchaser shall have no right to terminate this Agreement and shall purchase the Property in its damaged condition without reduction of or offset against the Purchase Price or any other claim against Seller. Purchaser shall have no right to receive any insurance proceeds payable to Seller as a result of such fire or other casualty.

(b) In no event shall Seller have any obligation to repair any damage or destruction to the Property, but Seller shall have the right to do so and to utilize insurance proceeds for such purpose.

(c) Seller and Purchaser expressly intend that the provisions of this Section 15.1, and not Section 5-1311 of the New York State General Obligations Law, shall govern in the event of a fire or other casualty.

Section 15.2. Condemnation.

(a) If, between the date hereof and the Closing, any condemnation or eminent domain proceedings are initiated which would result in the taking of all or any material portion of the Property, then Purchaser may elect to terminate this Agreement by giving written

notice of its election to the other party within fifteen (15) days after receiving notice of such prospective taking. If Purchaser shall so elect to terminate this Agreement, then (i) Purchaser shall be entitled to the return of the Deposit (together with any interest earned thereon) and (ii) neither party hereto shall have any further obligations or liabilities to the other with respect to the Property (or under this Agreement), except for those which expressly survive the termination of this Agreement. If Purchaser elects not to terminate this Agreement, then the parties hereto shall proceed to the Closing without reduction of or offset against the Purchase Price and Purchaser shall have no other claim against Seller. In such event, all of Seller's right, title and interest in and to any condemnation proceeds paid or payable in connection therewith shall be assigned to Purchaser. In no event shall Seller have any obligation to repair or restore the Property or any portion thereof.

(b) If, between the date hereof and the Closing, any condemnation or eminent domain proceedings are initiated which would result in the taking of less than a material portion of the Property, then neither Seller nor Purchaser may terminate this Agreement and the parties shall proceed to the Closing without reduction of or offset against the Purchase Price and Purchaser shall have no other claim against Seller. In such event, all of Seller's right, title and interest in and to any condemnation proceeds paid or payable in connection therewith shall be assigned to Purchaser. In no event shall Seller have any obligation to repair or restore the Property or any portion thereof.

(c) Seller shall not enter into any settlement agreement with the condemning authority without Purchaser's express written consent.

ARTICLE XVI ASSIGNMENT

Section 16.1. No Assignment by Purchaser. Neither this Agreement nor any of the rights of Purchaser hereunder (nor the benefits of such rights) may be assigned, transferred or encumbered without Seller's prior written consent and any purported assignment, transfer or encumbrance without Seller's prior written consent shall be void; provided, however, any assignment to an entity controlled by Mario Procida, Linda Greco, Louis Greco and/or Sheldon Gordon shall not require Seller's prior written consent (an "Affiliate Transfer"). Purchaser expressly covenants and agrees that, except for an Affiliate Transfer, a sale or transfer of more than fifty (50%) percent (at any one time or, in the aggregate from time to time) of the beneficial interests of Purchaser, its successors or assigns, or the issuance of additional beneficial interests to the extent of more than fifty (50%) percent (at any one time or, in the aggregate from time to time) of the amount of beneficial interests issued on the date hereof shall, in any such case, constitute an assignment of this Agreement. Unless, in each instance, the prior written consent of Seller has been obtained, any such assignment shall constitute a material default under this Agreement and shall entitle Seller to exercise all rights and remedies under this Agreement, at law or equity, in the case of such a default. Purchaser has represented to Seller that Purchaser desires to acquire the Property for development – and NOT resale at any time before the Resale Date, defined herein. Accordingly, Purchaser agrees, as part of the consideration to Seller under this Agreement, that

Purchaser shall pay (or cause to be paid) to Seller fifty percent (50%) of all Net Sale Proceeds (defined below) received by Purchaser or by any person transferring an ownership interest in Purchaser, from every Covered Sale (defined below) occurring at any time before the Resale Date. For the avoidance of doubt this Section is not intended to prohibit Covered Sales, subject to compliance with the requirements of this Section. Notwithstanding the foregoing, Purchaser may transfer the Property to its Affiliate after the closing of title.

(a) Resale Date means with respect to the Property, the earlier of: (i) the date upon which a Certificate of Occupancy is issued for Improvements on the Property; or (ii) 5 years after the closing of title to the Property.

(b) Covered Sale means (i) any transfer of the Property or any interest therein other than in the ordinary course of condominium units in a development; or leases to tenants for occupancy space in such development, or Financing Transfers, as defined below or easements, covenants, or other land-use restrictions granted in connection with a development (without receipt of third-party payments for the same) and (ii) any transfer of an Ownership Interest, [see (i)] as defined below, in Purchaser other than a Financing Transfer, defined below; provided, however, a Covered Sale shall not include any lease or purchase and sale agreement entered into between Purchaser and a bona fide third party prior to the commencement of construction, pursuant to which Purchaser agrees to build to suit on the Property a structure to be used and occupied by the lessee or purchaser thereunder, and whose primary purpose is not to avoid the provisions of this Section.

(c) Financing Purpose means financing of the acquisition of the Property pursuant to this Agreement, financing of Purchaser's costs to perform its obligations under this Agreement and or financing cost of developing the Property.

(d) Financing Transfer means a transfer to a developer lender for a Financing Purpose and (ii) as to any Ownership Interest in Purchaser (1) a transfer to a developer lender as security for a Financing Purpose, or (2) a transfer to a person (a "New Investor") who contributes (or agrees to contribute) funds to any of those entities to be used for a Financing Purpose; provided that:

(A) All funds advanced by such Developer Lender or New Investor (other than Fees and Costs of the contribution or financing transaction) are paid into or for the benefit of Purchaser to be applied for a Financing Purpose and no such funds are paid or distributed other than as Replacement Funding, as defined below);

Replacement Funding means the repayment of an amount lent or invested (which may include interest or a return thereon) by a member or manager of Purchaser, provided that an amount equal to or greater than such amount (and the interest or return thereon) is simultaneously reinvested in Purchaser.

Net Sales Proceeds means all consideration of every kind received by Purchaser or any other applicable transferor, from or by reason of a Covered Sale (whether by cash, notes,

shares in a real estate investment trust, or other real or personal property of any kind) as and when received by Purchaser or the applicable transferor (as for example, cash at a closing, periodic payments of principal and interest under an installment agreement; etc.) minus:

- (i) in the case of the Property: (A) the Purchase Price paid by the Purchaser to Seller for the Property; (B) arm's length negotiated real estate brokerage commissions paid to licensed real estate brokers which are not entities Controlled by or under common Control with Purchaser, transfer taxes, and reasonable attorneys' fees incurred by Purchaser in connection with the Covered Sale; and (C) a return of the applicable transferor's investment in the Property (including repayment of borrowing and investment costs); in the case of an Ownership Interest: (A) the amount of the applicable transferor's investment in Purchaser, and (B) arm's length negotiated real estate brokerage commissions paid to licensed real estate brokers which are not entities Controlled by, Controlling or under common Control with Purchaser, transfer taxes; and reasonable attorneys' fees incurred by the transferor for the respective transaction; and (C) a return of the applicable transferor's investment in the Ownership Interest (including repayment of borrowings and investment costs); and (J) Ownership Interest means a direct or indirect interest in the equity or other ownership interests of a corporation, partnership, limited liability company, trust or other legal entity;

In the event of a Financing Transfer prior to the Closing of the Property, Purchaser shall provide notice to Seller prior to the Financing Transfer.

Purchaser shall give notice to Seller before the closing or other completion of any Covered Sale and shall direct the payor for the Net Sale Proceeds to make payment (or to execute and deliver any notes or other non-cash consideration) of Seller's share thereof directly to Seller at the applicable closing or other completion of the Covered Sale transaction. If the Net Sale Proceeds from a Covered Sale of the Property consist partly of cash and partly of non-cash consideration, such share being proportional to the amount due Seller under this Section. Purchaser shall promptly notify Seller of the occurrence of all Financing Transfers.

To confirm Seller's obligations under this Section, Purchaser shall execute and deliver to Seller at the Closing of the Property (a) a Memorandum of Sale Contract Provision, in the form attached hereto as Exhibit F which Seller may record against the respective Property after such Closing. Upon expiration of Purchaser's obligations under this Section, as to the Property, Seller shall execute and deliver an instrument in form for recording terminating the foregoing as to the Property.

ARTICLE XVII

TAX CERTIORARI PROCEEDINGS

Section 17.1. Prosecution and Settlement of Proceedings. If any tax reduction proceedings in respect of the Property, relating to any fiscal years ending prior to the fiscal year in which the Closing occurs, are pending at the time of the Closing, Seller reserves and shall have the right to continue to prosecute and/or settle the same. If any tax reduction proceedings in respect of the Property, relating to the fiscal year in which the Closing occurs, are pending at the time of Closing, then Seller reserves and shall have the right to continue to prosecute and/or settle the same; provided, however, that Seller shall not settle any such proceeding without Purchaser's prior written consent, which consent shall not be unreasonably withheld or delayed. Purchaser shall cooperate with Seller in connection with the prosecution of any such tax reduction proceedings.

Section 17.2. Application of Refunds or Savings. Any refunds or savings in the payment of taxes resulting from such tax reduction proceedings applicable to the period prior to the date of the Closing shall belong to and be the property of Seller, and any refunds or savings in the payment of taxes applicable to the period from and after the date of the Closing shall belong to and be the property of Purchaser. All attorneys' fees and other expenses incurred in obtaining such refunds or savings shall be apportioned between Seller and Purchaser in proportion to the gross amount of such refunds or savings payable to Seller and Purchaser, respectively.

Section 17.3. Survival. The provisions of this Article XVII shall survive the Closing.

ARTICLE XVIII

DEFAULT; REMEDIES; SURVIVAL

Section 18.1. Purchaser's Default On or Before Closing.

(a) If, on or prior to the Closing Date, (i) Purchaser defaults in any of the covenants, agreements or obligations to be performed by Purchaser under this Agreement on or as of the Closing Date (or at the Closing), (ii) Seller shall become aware of an inaccuracy in any representation or warranty made by Purchaser pursuant to Section 10.3 hereof (as made as of the date hereof) which has a material adverse effect on Seller, (iii) Seller shall become aware of an inaccuracy in any representation or warranty made by Purchaser pursuant to Purchaser's Representation Certificate (as made as of the Closing Date) which has a material adverse effect on Seller, (iv) Purchaser's Representation Certificate shall set forth any Purchaser's Adverse Changes or (v) Purchaser otherwise materially defaults hereunder and such other material default is not cured by the earlier of (A) the Scheduled Closing Date (as it may have been adjourned in accordance with this Agreement) or (B) the date which is ten (10) days after notice of such default from Seller to Purchaser, then, and in any of such events, Seller, as its sole remedy therefor, may terminate this Agreement by written notice to Purchaser, whereupon, as liquidated

damages on account thereof, Purchaser shall be liable to Seller for an amount equal to the Deposit (together with any interest earned thereon), and the Deposit (together with any interest earned thereon) shall be paid to Seller by Escrow Agent and credited against Purchaser's liability upon any such termination of this Agreement, neither party shall have any further rights or obligations hereunder other than those which expressly survive the termination of this Agreement. Seller and Purchaser agree that the damages that Seller will sustain as a result of such termination will be substantial but will be difficult to ascertain, and the aforesaid liquidated damages are a fair and reasonable amount to be retained by Seller as agreed and liquidated damages in light of Seller's removal of the Property from the market and the damages incurred by Seller and shall not constitute a penalty or a forfeiture.

(b) If Seller, with knowledge of (i) a default in any of the covenants, agreements or obligations to be performed by Purchaser under this Agreement, (ii) a material inaccuracy in any representation or warranty of Purchaser made in this Agreement or pursuant to Purchaser's Representation Certificate and/or (iii) any Purchaser's Adverse Changes, elects to proceed to Closing, then, upon the consummation of the Closing, Seller shall be deemed to have waived any such default, material inaccuracy and/or Purchaser's Adverse Changes and shall have no claim against Purchaser on account thereof.

Section 18.2. Seller's Default On or Before Closing. (a) If, on or prior to the Closing Date, (i) Seller defaults in any of the covenants, agreements or obligations to be performed by Seller under this Agreement on or as of the Closing Date (or at the Closing) or (ii) Seller otherwise materially defaults hereunder and such other material default is not cured by the earlier of (A) the Scheduled Closing Date (as it may have been adjourned in accordance with this Agreement) or (B) the date which is ten (10) days after notice of such default from Purchaser to Seller, then, and in any of such events, Purchaser as its sole remedy may either (1) seek specific performance of Seller's obligations hereunder, without abatement, credit against or reduction of the Purchase Price or (2) terminate this Agreement by written notice to Seller, whereupon the Deposit (together with any interest earned thereon) shall be refunded to Purchaser. It being understood and agreed that in no event shall Purchaser be entitled to monetary damages at law or equity. If Purchaser shall elect to so terminate this Agreement, then, upon such election, neither party shall have any further rights or obligations hereunder other than those which expressly survive the termination of this Agreement. Except as expressly provided in this Section 18.2, Purchaser waives any other right or remedy, at law or in equity, which Purchaser may have or be entitled to as a result of any default by Seller. The term "default" as used herein shall mean the failure to perform an obligation or covenant, and shall not be deemed to include an inaccuracy in any representation or warranty. Without limiting the generality of the foregoing, it is understood and agreed that Sections 18.2(b) and (c) hereof set for the exclusive remedies of Purchaser for any claims which might arise out of any provisions of Article X (and accordingly, the provisions of Section 18.2(a) shall not apply to any such claims.

(b) If Purchaser, with knowledge of (i) a default in any of the covenants, agreements or obligations to be performed by Seller under this Agreement, (ii) a material inaccuracy in any representation or warranty of Seller made in this Agreement or pursuant to Seller's Representation Certificate and/or (iii) any Seller's Adverse Changes, elects to proceed to Closing, then, upon the consummation of the Closing, Purchaser shall be deemed to have waived

any such default, material inaccuracy and/or Seller's Adverse Changes and shall have no claim against Seller on account thereof.

(c) Notwithstanding anything above to the contrary, if Purchaser elects, pursuant to Section 18.2(b) above, to terminate this Agreement because Seller's Representation Certificate shall set forth any Seller's Adverse Changes of the type that advise Purchaser of any events occurring between the date hereof and the Closing Date which affect the accuracy of the representations and warranties made by Seller pursuant to Section 10.1 and Section 10.2 above (as made as of the Closing Date) and not of the type that correct such representations and warranties (as made as of the date hereof) to reflect any discovered inaccuracy therein, then Seller shall have the right, in its sole and absolute discretion, to nullify and render void and of no force and effect Purchaser's termination notice, provided that Seller shall deliver to Purchaser, within ten (10) days after Seller's receipt of Purchaser's termination notice, a notice expressly nullifying and rendering void and of no force and effect Purchaser's termination notice. If Seller shall give such notice to Purchaser, then (i) Purchaser shall be required to proceed to the Closing, without abatement, credit against or reduction of the Purchase Price and (ii) Seller and Con Edison shall indemnify and hold harmless Purchaser from and against any and all liability, loss, cost, judgment, claim, damage or expense (including, without limitation, reasonable attorneys' fees and expenses) resulting from or arising out of such Seller's Adverse Changes, which indemnification shall survive the Closing.

Section 18.3. Survival. (a) Except as otherwise expressly provided in this Agreement, no provision of this Agreement (i.e., no representation, warranty, covenant, agreement or other obligation set forth in any provision of this Agreement, including, without limitation, any representation or warranty set forth in Seller's Representation Certificate or Purchaser's Representation Certificate) shall survive the Closing (and, accordingly, no claim arising out of the same may be commenced after the Closing), and the delivery and acceptance of the deed shall be deemed to be full performance and discharge of each such representation, warranty, covenant, agreement or other obligation.

(b) If, after the Closing, Seller shall first learn of (i) an inaccuracy in any representation or warranty of Purchaser made pursuant to Section 10.3 hereof (as made as of the date hereof) or pursuant to Purchaser's Representation Certificate (as made as of the Closing Date) which, in any case, has a material adverse effect on Seller and expressly survives the Closing pursuant to this Agreement or (ii) a default in any of the covenants, agreements or obligations to be performed by Purchaser under this Agreement which expressly survives the Closing, then Seller shall have a claim for damages on account thereof, provided that (1) any such claim not brought within 180 days after the Closing (such period, the "Survival Period") shall be deemed waived and (2) Seller hereby waives the right to collect or seek to collect consequential or punitive damages.

(c) If, after the Closing, Purchaser shall first learn of (i) an inaccuracy in any representation or warranty of Seller made pursuant to Section 10.1 or 10.2 hereof (as made as of the date hereof) or pursuant to Seller's Representation Certificate (as made as of the Closing Date) which, in any case, has a material adverse effect on Purchaser and expressly survives the Closing pursuant to this Agreement or (ii) a default in any of the covenants,

agreements or obligations to be performed by Seller under this Agreement which expressly survives the Closing, then Purchaser shall have a claim for damages on account thereof, provided that (1) any such claim not brought within the Survival Period shall be deemed waived and (2) Purchaser hereby waives the right to collect or seek to collect consequential or punitive damages.

Section 18.4. Determination of Material Inaccuracy. Notwithstanding any provision of this Agreement to the contrary, no inaccuracy in any representation or warranty made by Seller pursuant to Section 10.2 hereof or pursuant to Seller's Representation Certificate (to the extent making or remaking any representation or warranty pursuant to Section 10.2), or any Seller's Adverse Change (to the extent affecting any representation or warranty made or remade pursuant to Section 10.2), shall be deemed to have a material adverse effect on Purchaser unless Purchaser can reasonably demonstrate that the decrease in the value of the Property resulting from such inaccuracy or Seller's Adverse Change, as the case may be, is more than the sum of (i) \$2,000,000Dollars, plus (ii) all insurance proceeds, if any, payable to Purchaser by reason or arising out of the circumstances giving rise to such inaccuracy or Seller's Adverse Change. If any such inaccuracy in any representation or warranty under Section 10.2 or in Seller's Representation Certificate, or any Seller's Adverse Change, shall not have a material adverse effect on Purchaser, as determined in accordance with this Section 18.4, then Purchaser shall not be entitled to any right or remedy under this Agreement, at law or equity as a result of such inaccuracy or Seller's Adverse Change, including, without limitation, the right to terminate this Agreement if Purchaser shall become aware of such inaccuracy or Sellers Adverse Change on or before the Closing.

ARTICLE XIX

NOTICES

Section 19.1. Notices. All notices, demands, requests and other communications required hereunder shall be in writing and shall be deemed to have been given: (a) upon delivery, if personally delivered; (b) three (3) days after deposit in the United States Mail when delivered, postage prepaid, by certified or registered mail; or (c) one (1) Business Day after deposit with a nationally recognized overnight delivery service marked for delivery on the next Business Day, addressed to the party for whom it is intended at its address hereinafter set forth:

To Seller:

Consolidated Edison Company of New York, Inc
4 Irving Place, Room 206-S
New York, New York 10003
Attn: Director - Real Estate
Tel. (212) 460-3188
Fax (212) 529-0582

with a copy to:

Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attn: Associate General Counsel – Commercial Transactions
Tel. (212) 460 3245
Fax (212) 260-8627

To Purchaser:
456 East 173rd Street
Bronx, NY 10457
Tel.
Fax Attn: Mario Procida

with a copy to:
Schneider Goldstein Bloomfield LLP
90 Broad Street
New York, NY 10004
Tel. 212 265-2266
Fax 212 265-2442

Attn: Jay Bloomfield, Esq.

or at such other address in the United States of America as may be designated by either of the parties in a written notice given in accordance with the provisions of this Section. The attorney for any party may send notices on that party's behalf. Any notice which is rejected, the acceptance of which is refused or which is incapable or being delivered for any reason, shall be deemed received as of the date of attempted delivery.

ARTICLE XX

MISCELLANEOUS

Section 20.1. Governing Law; Jurisdiction and Venue.

(a) This Agreement shall be governed by, and construed in accordance with, the substantive laws of the State of New York, without regard to conflict of law principles.

(b) For the purposes of any suit, action or proceeding involving this Agreement, Purchaser hereby expressly submits to the jurisdiction of all federal and state courts sitting in the State of New York and consents that any order, process, notice of motion or other application to or by any such court or a judge thereof may be served within or without such court's jurisdiction by registered mail or by personal service, provided that a reasonable time for appearance is allowed, and Purchaser agrees that such courts shall have the exclusive jurisdiction over any such suit, action or proceeding commenced by either or both of said parties. In

furtherance of such agreement, Purchaser agrees upon the request of Seller to discontinue (or agree to the discontinuance of) any such suit action or proceeding pending in any other jurisdiction.

(c) Purchaser hereby irrevocably waives any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any federal or state court sitting in the State of New York and hereby further irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

Section 20.2. Further Assurances. In addition to the obligations required to be performed hereunder by Seller and Purchaser at or prior to the Closing, each party, from and after the Closing, shall execute, acknowledge and/or deliver such other instruments, as may reasonably be requested in order to effectuate the purposes of this Agreement; provided, however, that the foregoing provisions of this Section 20.2 shall not obligate either party to execute, acknowledge or deliver any instrument which would or might impose upon such party any additional liability or obligation (beyond that imposed upon on it under the documents delivered by such party at the Closing and the other provisions of this Agreement which survive the Closing).

Section 20.3. Successors. All of the provisions of this Agreement and of any of the documents and instruments executed in connection herewith shall apply to and be binding upon, and inure to the benefit of Seller and Purchaser, their successors and permitted assigns.

Section 20.4. No Third Party Beneficiary. This Agreement and each of the provisions hereof are solely for the benefit of Purchaser and Seller and their permitted assigns. No provisions of this Agreement, or of any of the documents and instruments executed in connection herewith, shall be construed as creating in any person or entity other than Purchaser and Seller and their permitted assigns any rights of any nature whatsoever.

Section 20.5. Entire Agreement. This Agreement, together with the documents and instruments executed and delivered in connection herewith, sets forth the entire agreement between Purchaser and Seller relating to the transactions contemplated hereby and all other prior or contemporaneous agreements, understandings, representations or statements, oral or written, relating directly to the Property are superseded hereby.

Section 20.6. Severability. If any provision in this Agreement is found by a court of competent jurisdiction to be in violation of any applicable law, and if such court should declare such provision of this Agreement to be unlawful, void, illegal or unenforceable in any respect, the remainder of this Agreement shall be construed as if such unlawful, void, illegal or unenforceable provision were not contained herein, and the rights, obligations and interests of the parties hereto under the remainder of this Agreement shall continue in full force and effect undisturbed and unmodified in any way

Section 20.7. Modification. This Agreement and the terms hereof may not be changed, waived, modified, supplemented, canceled, discharged or terminated orally, but only by

Section 20.12. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same original, and the execution of separate counterparts by Purchaser and Seller shall bind Purchaser and Seller as if they had each executed the same counterpart.

Section 20.13. No Waiver. Neither the failure of either party to exercise any power given such party hereunder or to insist upon strict compliance by the other party with its obligations hereunder, nor any custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof.

Section 20.14. Attorney's Fees. In the event that either party hereto shall commence litigation against the other in connection herewith, the losing party in such action shall reimburse the attorneys' fees and disbursements of the prevailing party in such action.

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

SELLER:

D.C.K. Management Corp.



By: Robert P. Stelben
Name
Title Vice President

PURCHASER:

405 W. 53RD DEVELOPMENT GROUP
LLC


By:

Name: Maria Prochida
Title: MGR

EXHIBIT A
(Description)

W. 53RD STREET SITE (MANHATTAN)

BEGINNING at a point on the northerly side of West 53rd Street distant 100 feet 0 inches (100' 00") westerly from the corner formed by the intersection of the said northerly side of West 53rd Street with the westerly side of Ninth Avenue;

THENCE westerly along said northerly side of West 53rd Street 300 feet 0 inches (300' 0") to a point;

THENCE northerly and parallel with the westerly side of Ninth Avenue one hundred forty seven feet four inches (147' 4") to a point;

THENCE easterly on an interior angle with the previous course of 85 degrees 37 minutes 00 seconds (85° 37' 00") twenty two feet six and three quarters inches (22' 6¾") to a point;


THENCE northerly and parallel with the westerly side of Ninth Avenue fifty five feet two and three quarters inches (55' 2¾") to the southerly side of West 54th feet;

THENCE easterly along the southerly side of West 54th Street twenty seven feet six inches (27' 6") to a point;

THENCE southerly and parallel with the westerly side of Ninth Avenue fifty seven feet four inches (57' 4") to a point;

THENCE easterly on an exterior angle with the previous course of 94 degrees 23 minutes 00 seconds (94° 23' 00") fifty feet one and three quarters inches (50' 1¾") to a point;

NOTE: ALL REFERENCES TO INCHES ARE INCORRECT AND SHOULD BE THE DECIMAL MEASUREMENT. FOR EXAMPLE, THE MEASUREMENT 147' 4" SHOULD BE 147.4 FEET. ALL MEASUREMENTS ARE SUBJECT TO FINAL SURVEY.



THENCE southerly on an interior angle with the previous course of 94 degrees 23 minutes 00 seconds (94° 23' 00") and parallel with the westerly side of Ninth Avenue thirty nine feet three inches (39' 3") to a point;

THENCE easterly on an exterior angle with the previous course of ninety degrees (90°) and parallel with the northerly side of West 53rd Street a distance of 75 feet 0 inches (75' 0") to a point;

THENCE southerly on an interior angle with the previous course of 90 degrees 00 minutes 00 seconds (90° 00' 00") and parallel with the westerly side of Ninth Avenue a distance of nine feet seven inches to a point;

THENCE easterly and parallel with the northerly side of West 53rd Street 125 feet zero inches (125' 0") to a Point;

THENCE Southerly and parallel with the westerly side of Ninth Avenue a distance of ninety feet ten inches (90' 10") to the northerly side of West 53rd Street, and the point or place of BEGINNING.

The most easterly portion of the above parcel which has dimensions of 100' by 90' 10" is subject to that certain Zoning Lot Agreement dated September 17, 1991 and recorded in Reel 1812, at Page 2398.

254168

W. 54th



AVENUE

INDEX

V. 53rd

STREET

References

1. FULL PARCEL = 34, 782 SQ. FT. MINUS 9083 SQ. FT. FOR DEVELOPMENT RIGHTS.
2. ABOVE SKETCH IS BASED ON A COMPILATION OF RECORDS, AND SUBJECT TO ANY STATEMENT OF FACTS AN ACCURATE SURVEY MAY SHOW.

SEE PRIOR NOTE
ON 1ST PAGE OF
THIS EXHIBIT.

W. 53rd Street, between 9th & 10 Avenues

BLOCK 1063, LOT 17

Based on 12-30-91 Sale

DATE: 4/28/2005

SCALE: 1" = 50'

DRAWN BY: A.M.L.

EXHIBIT B

PERMITTED EXCEPTIONS

1. Zoning and building regulations, ordinances, and requirements adopted by any governmental or municipal authority having jurisdiction thereof and amendments and additions thereto now in force and effect, which relate to the Property.
2. Encroachments of stoops, areas, roof cornices, window trims, vent pipes, cellar doors, steps, columns and column bases, flue pipes, signs, piers, lintels, window sills, fire escapes, ledges, fences, coping, retaining walls and yard walls, if any, upon any street or highway adjoining the Property.
3. Rights of utility companies to lay, maintain and repair pipes, lines, conduits, cable boxes and other installations on, under and across the Property and any rights, easements and licenses in favor of, or agreements with, any public utility company, including but not limited to, gas, electricity, telephone, telegraph and cable television services and private sewer agreements, if any.
4. All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by an state or municipal departments having jurisdiction, nor or hereafter against or affecting the Property subject to terms and conditions of 5.10 of this Agreement.
5. Any agreements, financing statements, chattel mortgages, liens or encumbrances entered into by or arising fro the acts of any tenant of the Property
6. Condition bills of sale or Uniform Commercial Code financing statements which were filed on a day more than five years prior to the Closing.
7. Subject to adjustment as herein provided, real estate taxes, tax liens, water and sewer charges, assessments and vault charges, and the liens of any of the foregoing.
8. State of facts shown on a accurate survey, provided said survey does not render title unmarketable.
10. Water Supply Agreement recorded in Liber 27 Section 4, Page 440.
11. Declaration of Zoning Lot Restrictions dated as of 9/17/1991 made by D.C.K. Management Corp. And Tenth and 51st Housing Development Fund Company, Inc. recorded on 9/25/1991 in Reel 1814 Page 1833.
12. Zoning Lot and Development Agreement dated as of 9/27/1991 between D.C.K. Management Corp., Consolidated Edison Company of New York, Inc. and Tenth and 51st Housing Development Fund Company Inc. recorded on 1/3/1992 in Reel 1838 Page 1280.
13. Zoning Lot Description and Ownership Statement recorded on 9/18/1991 in reel 1812, Page 2398.
14. .Variations between tax map and Exhibit A or record descriptions

15. That certain license agreement dated January 1, 1999 between Seller, as licensor and Marty's W. 53rd Street Parking, Inc. d/b/a S&N Parking, as Licensee

DEED

D.C.K. MANAGEMENT CORP., a New
York corporation, with an office at 4 Irving
Place, New York, New York, 10003
("Grantor")

And

("Grantee")

WITNESSETH, that Grantor, in consideration of Ten Dollars, and other valuable consideration paid by
Grantee, does hereby grant and release unto Grantee, its heirs or successors and assigns forever,

ALL that certain plot, piece or parcel of land more particularly described in Schedule A annexed hereto and made a part hereof and any improvements situated thereon,

TOGETHER with all right, title and interest, if any, of Grantor in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of Grantor in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto Grantee, its heirs or successors and assigns forever.

AND Grantor, in compliance with Section 13 of the Lien Law, covenants that Grantor will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose. The word "party" shall be construed as if it read "parties", whenever the sense of this indenture so requires.'

IN WITNESS WHEREOF, Grantor has duly executed this deed the day and year first above written.

D.C.K. MANAGEMENT CORP.

BY:

NAME:

TITLE:

ACKNOWLEDGEMENTS

Intentionally
Left
Blank

EXHIBIT D

**FORM OF HAZARDOUS SUBSTANCES
RELEASE**

THIS RELEASE (this "Release") is made as of the ____ day of _____, ____ by _____ [Insert name of Purchaser], a _____ having an address at _____, New York, New York _____ (hereinafter sometimes called "Owner") to, and for the benefit of D.C.K. Management Corp. and the CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, having an address at 4 Irving Place, New York, New York 10003 (together, hereinafter sometimes called "Con Edison").

WITNESSETH:

WHEREAS, simultaneously herewith, Con Edison has conveyed to Owner the Property (including the existing improvements, if any, thereon) known as 405-427 West 53rd Street (such Property, together with all existing and future improvements thereon, collectively, the "Property");

WHEREAS, Con Edison, as a condition precedent to its conveyance of the Property to Owner, has required that Owner execute this Release, to provide Con Edison with the rights set forth herein.

NOW, **THEREFORE**, in consideration of the sum of \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Owner, Owner hereby agrees as follows:

1. **Definitions.** The terms defined below shall for this Release have the meanings herein specified:

(i) "**Environment**": Soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata, indoor air and outdoor air. The term "Environment" also includes foundational, structural, and other elements of any of the buildings or other structures on the Property.

(ii) "**Environmental Condition**": Any condition, situation, circumstance or event, relating to or arising from the release (or threatened release) of a Hazardous Substance to the Environment, or from the presence of a Hazardous Substance, upon, over, under, at, about, or emanating from the Property, which could serve as the basis for or element of any claim or liability under any law or regulation or under any common law or equitable theory of recovery, including, without limitation, the presence of underground storage tanks;

(iii) "**Environmental Damages**": Any and all claims, damages, losses, costs, debts, obligations, judgments, charges, expenses, penalties, fines, encumbrances, liens and liabilities of every kind or nature whatsoever, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, (including, without limitation, fees incurred for the services of attorneys, consultants, engineers, contractors, experts, laboratories, accountants and any other service providers) arising at law or in equity,

from or in connection with the existence of any Environmental Condition, including, but not limited to, the existence of a violation of any Environmental Law pertaining to the Property, regardless of whether such Environmental Condition or violation arose prior to the ownership by Owner of the Property, including, without limitation, the following:

- (A) Any and all response costs, cleanup costs, costs of construction or demolition of any improvements on real property, and other costs of any cleanup, remediation, removal, abatement, containment, closure, restoration or monitoring work required by any Governmental Authority, or reasonably necessary to protect human health or the environment, or otherwise expended;
- (B) any and all claims, costs and expenses of investigation and defense of any claims, costs of satisfying a judgment on any claims, and costs incurred settling any claims (whether or not any such claim is ultimately upheld);
- (C) any and all injury to or death of any person or persons or damage to or destruction of the environment, property or natural resources occurring upon or off the Property, including, without limitation, damages assessed for the maintenance of a public or private nuisance or for the carrying on of an abnormally dangerous activity at or near the Property;
- (D) any and all judgments, damages (including consequential and punitive damages), lost income, foregone profits, expenses (including litigation expenses), fines, liabilities, encumbrances, and liens; and
- (E) any and all costs incurred complying with any directives of any Governmental Authority that are in whole or in part, incurred in connection with the existence of any Environmental Condition; or the existence of any violation or alleged violation of Environmental Laws pertaining to the Property;

(iv) "Environmental Laws": Any applicable statute, regulation, rule, ordinance, code, license or order of any Governmental Authority (defined below) and all applicable judicial and administrative and regulatory decrees, judgments and orders, relating to the protection of public health, public safety or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Sections 9601 et seq., as amended by the Superfund Amendments and Reauthorization Act of 1986; the Resource Conservation and Recovery Act, 42 U.S.C. Sections 6901 et seq.; the Federal Water Pollution Control Act, as amended by the Clean Water Act, 33 U.S.C. Sections 1251 et seq.; the Clean Air Act, 42 U.S.C. Sections 7401 et seq.; the National Environmental Policy Act, 42 U.S.C. Sections 4321 et seq.; the Refuse Act, 33 U.S.C. Sections 401 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. Sections 136 et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. Sections 11001 et seq.; the Occupational Safety and Health Act of 1970; the Hazardous Materials Transportation Act, as amended by the Hazardous Materials Transportation Authorization Act of 1994, 49 U.S.C. Sections 5101 et seq.; the Toxic Substances Control Act, 15 U.S.C. Sections 2601 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. Sections 2701 et seq.; as each of these may be amended from time to time; and any and state or local analogues to any of these statutes.

(v) "Governmental Authority": Any municipal, county, state, federal and foreign governments, agencies, departments, authorities, both public and quasi-public, courts, boards, bureaus, commissions and officers of any of the foregoing.

(vi) "Hazardous Substance": Any material, substance, compound, solid, liquid or gas, or any radiation, emission or release of energy in any form, whether naturally occurring, man-made or the product of any process, (1) which is or may under certain conditions be toxic, harmful, or hazardous to public health, public safety, or the environment, (2) which is or may be defined or regulated as a "hazardous waste", "hazardous substance", "hazardous material" "toxic substance", pollutant or contaminant under any Environmental Law, (3) the use, handling, management, release, treatment, storage, transportation or disposal of which is or may be regulated under any Environmental Law, or (4) the removal, remediation or abatement of which is required under any Environmental Law. Hazardous Substances include, but are not limited to, asbestos, polychlorinated biphenyls, mercury, lead, petroleum and petroleum products and derivatives, urea formaldehyde foam insulation, and radon and other radioactive materials.

2. Receipt of Environmental Reports. Owner acknowledges that Con Edison has provided it with (i) that certain Phase I Environmental Site Assessment, dated November 2004, prepared by TRC Environmental Corporation.

3. Release of Claims. Owner, for itself and its successors and assigns, hereby releases and discharges Con Edison, and its officers, directors, agents, affiliates and employees, heirs, executors, administrators, successors and assigns (all such parties being hereinafter collectively called the "Indemnitees"), from all actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, damages, judgments, executions, claims, and demands whatsoever, in law, admiralty, or equity, or otherwise, which the Owner and its executors, administrators, successors, and assigns ever had, now have or hereafter can, shall, or may have against the Indemnitees, for, upon, or by reason of the presence of any Environmental Condition at the Property, whether from an on-site or off-site source, or emanating from the Property, or resulting in an Environmental Condition off-site relating to Hazardous Substances on the Property.

4. Binding Effect. All the covenants and agreements hereinabove contained on the part of Owner, shall apply to and bind its successors and assigns and shall inure to the benefit of each Indemnatee and its respective successors and assigns.

5. Governing Law. This Release shall be construed in accordance with and governed by the laws of the State of New York.

6. Amendments. No provision of this Release may be modified, amended, or waived, except by an instrument in writing executed by Owner and Con Edison.

7. Consent to Jurisdiction. Owner consents to the exercise of personal jurisdiction over Owner by any federal or state court in the State of New York and consents to the laying of venue in any jurisdiction over Owner by any federal or state court in the State of New York. Owner irrevocably appoints _____, having an address at _____ as Owner's agent for receipt of service or process on Owner's behalf in connection with any suit, writ, attachment, execution or discovery or supplementary proceedings in connection with the enforcement of this Release. Service shall be effected by any means permitted by the court in which any action is filed, or, at Con

Edison's option, by mailing process, postage prepaid, by certified mail, return receipt requested, to Owner's agent at the foregoing address or to Owner at the address hereinafter set forth. Service shall be deemed effective upon receipt. Owner may designate a change of address by written notice to Con Edison by certified mail, return receipt requested, at least ten (10) days before such change of address is to become effective.

8. **Severability.** If any provision of this Release shall be held to be invalid, illegal or unenforceable under applicable law, the remainder of this Release shall remain in full force and effect and shall not be affected thereby.

9. **No Delegation.** Owner shall not, without the prior written consent of Con Edison, delegate, in whole or in part, all or any part of the Owner's duties and obligations hereunder.

IN WITNESS WHEREOF, this Release is executed as of the date first set forth above.

By:

Name:

Title:

STATE OF NEW YORK

) ss:

COUNTY OF NEW YORK)

On the ____ day of ____ in the year ____ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

EXHIBIT E

FUTURE REZONING COVENANT

FUTURE REZONING COVENANT (this "Covenant") made as of _____, 200__ by and between D.C.K. Management Corp. and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., a New York corporation, with an office at 4 Irving Place, New York, NY 10003 ("DCK") and _____, a New York limited liability company, _____ with an office at _____,

Introductory Statement

DCK and _____, a _____ company ("Developer"), are parties to an agreement dated as of _____ (the "Agreement") pursuant to which DCK has conveyed to _____ real property located in the City of New York, commonly known as _____, New York, New York, and designated as Block ____ Lot ____ on the Tax Map of the City of New York as more particularly described in Exhibit "A" hereto (the "Property").

DCK, and Developer intend that DCK will receive, as increments of the Purchase Price for the Property under the Agreement, payment of the Future Rezoning Price (as defined below) for the Utilized Excess Development Rights (as defined below). Fee Owner (as defined below) will not seek a building permit for, construct, Transfer, or otherwise utilize the Utilized Excess Development Rights until the Fee Owner has made the payments specified below.

NOW, THEREFORE, in consideration of the promises set forth below and in the Agreement, and payments made and to be made under the Agreement and this Covenant, and intending to be legally bound hereby Developer and DCK covenant and agree as follows:

Article 1. Certain Definitions

1.1 The words and phrases set forth below have the following meanings in this Covenant:

"AAA" means the American Arbitration Association or a successor organization (and, for all proceedings and applications under this Covenant, the New York City office of the same).

"Fee Owner" means Developer and each and every successor fee owner of all or any portion of the Property at any time and from time to time (and specifically at the time when any payment of the Future Rezoning Price is due under this Covenant or when any other action is required of Fee Owner under this Covenant). If at any time a condominium has been created on the Property or any part thereof, "Fee Owner" shall mean the Board of Managers or other governing body of such condominium.

"Fees-And-Costs" means reasonable fees of attorneys, architects, engineers, expert witnesses, consultants and others, and reasonable costs, expenses and disbursements charged by, or reimbursable to, the foregoing.

"Final Determination" means a decision or determination of (i) any administrative, regulatory or other governmental or quasi-governmental agency or (ii) any court of competent jurisdiction, from which the time in which to take an appeal or to otherwise seek review has expired or from which no appeal can be taken. A "Final Determination" shall be deemed to occur as of the date of such expiration of the appeal period or the date of such unappealable decision or determination, as the case may be.

"Floor Area" or "FAR" means Floor Area as defined in the Zoning Resolution.

"Future Floor Area" means the Floor Area of the Property resulting from the particular Future Rezoning in excess of the Floor Area of the Property before that particular Future Rezoning (whether or not then permitted under the Zoning Resolution).

"Future Rezoning" means each and every Rezoning of the Property occurring after the date of this Covenant.

"Government Entity" means the United States; the State of New York; the City of New York; any other political subdivision of any of the foregoing; and any agency, authority, department, court, local development corporation, business improvement district, commission or other legal entity of any of the foregoing.

"Legal Proceeding" means an action, litigation, administrative or other governmental proceeding, or other legal or equitable proceeding of any kind (other than a dispute resolution pursuant to Article 4).

"Person" means an individual person, corporation, partnership, trust, joint venture, limited liability company, proprietorship, estate, association, land trust, other trust, Government Entity or other incorporated or unincorporated enterprise, entity or organization of any kind.

"Rezoning" means a Final Determination pursuant to the procedures set forth in the New York City Charter and/or such other laws, rules and regulations as are applicable thereto in respect of applications for any change in the zoning map affecting the Property and/or any special permits, authorizations, and/or certifications under and pursuant to the Zoning Resolution with respect to the Property creating, revising, or permitting Floor Area for the development of the Property for residential, commercial, community facility, or other uses permitted from time to time by the Zoning Resolution.

"Transfer" or "to Transfer" means to sell, transfer, assign, pledge, donate, exchange, swap, option or otherwise dispose of, voluntarily or involuntarily, with or without consideration.

"Utilization" or "to Utilize" means to occupy or put to any business or profitable use (and in this Covenant refers to any additional Floor Area that may be obtained by Developer in a Future Rezoning).

"Utilized Excess Development Rights" means increases in the Floor Area of the Property resulting from each and every Future Rezoning (as defined below) of the Property in excess of 4.2 FAR Utilized or Transferred by the Fee Owner.

"Zoning Resolution" means the Zoning Resolution of the City of New York (or any successor law), as amended from time to time.

1.2 Other words and phrases are defined elsewhere in this Covenant and in the Exhibits hereto.

1.3 Wherever used in this Covenant:

(a) the words "include" or "including" shall be construed as incorporating, also, "but not limited to" or "without limitation";

(b) the word "day" means a calendar day unless otherwise specified;

(c) the word "law" (or "laws") means any law, rule, regulation, order, statute, ordinance, resolution, regulation, code, decree, judgment, injunction, mandate or other legally binding requirement of a Government Entity applicable in the particular context;

(d) the word "notice" shall mean notice in writing (whether or not specifically so stated);

(e) the word "month" means a calendar month unless otherwise specified;

(f) the word "amended" means "amended, modified, extended, renewed, changed, or otherwise revised"; and the word "amendment" means "amendment, modification, extension, change, renewal, or other revision"; and

(g) references to "dollars" or "\$" mean United States dollars.

Article 2. Future Rezoning Price; Payment

2.1 In this Covenant, "Future Rezoning Price" means \$240 (\$) per square foot of Future Floor Area, plus fifty percent (50%) of the Fair Market Value of Utilized Excess Development Rights, less the amount paid to any third party for any Excess Utilized Development Rights pursuant to a bona fide agreement. In the event there is any dispute as to the amount of Utilized Excess Development Rights, such dispute shall be determined by arbitration in accordance with the rules of the AAA.

2.2 Fee Owner shall pay the Future Rezoning Price by wire transfer of funds to DCK upon Utilization or Transfer of the Utilized Excess Development Rights.

2.3 All wire transfers to DCK shall be transmitted to the account or accounts specified from time to time for payment of wire transfers by notice from DCK in each case at least seven days before the event requiring a wire transfer.

Article 3. Covenant

3.1 Unless and until Fee Owner has paid the full Future Rezoning Price due to DCK with respect to the Utilized Excess Development Rights, Fee Owner shall not: (a) Utilize any Future Floor Area created by the particular Future Rezoning; (b) apply for or obtain a building permit or other governmental permit to construct, alter, or otherwise improve any such Future Floor Area; (c) construct, alter, or otherwise improve any such Future Floor Area; or (d) Transfer any such Future Floor Area.

Article 4. Expiration

4.1 This Covenant shall expire, automatically and without the filing of termination documents, on _____, 203__ [30 years after the date this Covenant].

Article 6. Default: Remedies

6.1 The following shall constitute "Events of Default" under this Covenant:

(a) Fee Owner shall fail to pay the Future Rezoning Price as and when due and payable with respect to a particular Future Rezoning under this Covenant.

6.2 Upon the occurrence of an Event of Default, DCK shall have the following rights and remedies:

(a) the right to bring a Legal Proceeding for an injunction prohibiting Fee Owner from taking any of the actions described in (a) through (d) of Section 3.1 or for specific performance of any obligation of the respective Fee Owner under this Covenant;

(b) the right to bring an action for payment of all or any part of the Future Rezoning Price then due and payable to DCK under Section 2.2(a) and/or (b); and

(c) any and all other remedies available to DCK at law, in equity, or otherwise.

6.3 The remedies of DCK in this Covenant are intended to be cumulative; and the exercise of one remedy shall not preclude the concurrent or future exercise of any other remedy under this Covenant.

Article 7. Certain Representations and Covenants

7.1 Fee Owner represents and warrants to DCK as of the date of this Covenant as follows:

(a) Fee Owner is a _____ duly organized, validly existing, and in good standing under the laws of the State of _____ and is qualified or otherwise legally permitted to conduct business in the State of New York.

(b) Fee Owner has all necessary power and lawful authority to own and operate its assets and properties and to carry on its business (including all transactions contemplated under this Covenant).

(c) The execution and delivery by Fee Owner of this Covenant, and the consummation by Fee Owner of the transactions contemplated thereby, have been duly authorized by all necessary action of Fee Owner and have been duly approved and/or authorized by all members, managers, partners, shareholders, or directors of Fee Owner and by any and all other Persons whose approval is required for such approval and authorization under the organizing documents of Fee Owner and/or any other agreements applicable to Fee Owner under which such approval or authorization is required.

(d) The execution and delivery of this Covenant by Fee Owner, and the consummation of the transactions contemplated hereby, will not violate any provision of Fee Owner's certificate of incorporation or by-laws, articles of organization, limited liability operating agreement, partnership agreement, or other organizing or constituent documents, or result in the acceleration of any material indebtedness of Fee Owner.

7.2 Fee Owner agrees that this Covenant, and DCK rights in this Covenant, are intended to be (and shall be) superior and prior in title and interest in all respects whatsoever to any and all fee interests, mortgages, leases, or other agreements, instruments, or interests of any kind or nature in, to, or affecting the Property.

7.3 Fee Owner agrees that this Covenant, and DCK's rights hereunder, are irrevocable, exclusive, and not subject to rescission or cancellation by Fee Owner or any other Person acting by, through, or under Fee Owner. Fee Owner agrees that, subject to Article 5, the payments due to DCK under this Covenant shall not be subject to any defense, offset, set off, counterclaim, injunction, or other remedy of any kind. Fee Owner agrees that the granting of this Covenant to DCK is in consideration of a material benefit to Fee Owner, bargained for and supported by consideration to Fee Owner; and that any attempt by Fee Owner or any other Person to prevent DCK from enforcing its rights under this Covenant would deny DCK a material part of its bargain.

7.4 Fee Owner hereby irrevocably waives, to the fullest extent permitted by law, any and all defenses (legal, equitable, or otherwise) to the validity and enforceability of this Covenant.

Article 8. Notices

8.1 All notices, consents or other communications under this Covenant must be in writing and addressed to each party at its respective address set forth below (or at any other address which either party may designate by notice to the other party from time to time). Any notice required by this Covenant to be given or made within a specified period of time, or on or before a date certain, shall be deemed given or made if sent by hand or by U.S. Express, registered or certified mail (return receipt requested and postage and registry fees prepaid). Delivery "by hand" shall include delivery by commercial express or courier service. A notice sent by U.S. Express, registered or certified mail shall be deemed given on the date of receipt (or

attempted delivery if refused) indicated on the return receipt. All other notices shall be deemed given when actually received. A notice may be given by a party or by its legal counsel.

Notices to Con Edison shall be sent to:

D.C.K. Management Corporation, c/o
Consolidated Edison Company of New York
4 Irving Place
New York, New York 10003
Attn: Treasurer

with copies to:

Consolidated Edison Company of New York
4 Irving Place
New York, New York 10003
Attn: General Counsel

Notices to Fee Owner shall be sent to:

and

with copies to:

and

Article 9. Miscellaneous

9.1. Each of the parties shall take such additional actions and sign and deliver such other instruments and documents as may be reasonable, necessary or appropriate to effectuate the transactions contemplated under this Covenant; provided, however, that the taking of such acts or the execution of such documents will not result in material cost or liability to the respective party which is not otherwise required under this Covenant.

9.2. This Covenant shall be governed and construed in accordance with the laws of the State of New York (without regard to principles of conflicts of law). This Covenant

is intended to be recorded in the land records of the City of New York and may be recorded by either DCK or Fee Owner.

9.3. This Covenant shall not be modified, waived, or amended except by written agreement executed by DCK and Fee Owner.

9.4. This Covenant, together with any Exhibits hereto, constitute(s) the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings of the parties relating thereto.

9.5. Except as expressly provided in this Covenant, no delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof or as a waiver of any other right, power or privilege hereunder; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise hereunder. The rights and remedies of each party under this Covenant are cumulative and are not exclusive of any rights or remedies which the party may otherwise have at law or in equity.

9.6. This Covenant may be executed (a) in counterparts, a complete set of which together shall constitute an original and (b) in duplicates, each of which shall constitute an original. Copies of this Covenant showing the signatures of the respective parties, whether produced by photographic, digital, computer, or other reproduction, may be used for all purposes as originals.

9.7. This Covenant (and all terms thereof, whether so expressed or not), shall be binding upon the respective permitted successors, assigns and legal representatives of the parties and shall inure to the benefit of and be enforceable by the parties and their respective permitted successors, assigns and legal representatives. To the maximum extent permitted by law, this Covenant shall run with the land and be construed as a covenant running with the land.

9.8. The Exhibits attached hereto or subsequently incorporated herein are (and shall be deemed) parts of this Covenant. The headings of this Covenant are for purposes of reference only and shall not limit or otherwise affect the meaning hereof.

9.9. Each party irrevocably submits to the jurisdiction of the courts of (and service of process in) the State of New York and agrees that any action or proceeding arising out of or relating to this Covenant may be brought and/or defended in the Supreme Court of the State of New York, New York County.

9.10. If any term, covenant, condition or provision of this Covenant is determined by Final Determination to be invalid or unenforceable, the remaining terms, covenants, conditions and provisions of this Covenant shall not be affected thereby but shall be valid and enforceable to the fullest extent permitted by law. This Covenant shall be construed without regard to any presumption requiring construction against the party drafting this Covenant.

9.11. Nothing in this Covenant, express or implied, is intended: (a) to confer on any Person—(other than the parties hereto)—any rights, obligations, liabilities, or remedies; (b)

to constitute DCK as a partner or co-venturer of Fee Owner, or vice versa; or (c) to waive any claim or right of any party against any Person who is not a party to this Covenant.

9.12 DCK shall be responsible for any real property transfer taxes if and to the extent that DCK actual receipt of payment of any Future Rezoning Price is deemed taxable consideration for the conveyance of the Property by DCK.

9.13 Fee Owner shall pay DCK interest on any payment due under this Covenant which is not paid within 10 days after the date when due at an annual rate equal to the prime or base rate of Citibank, N.A. (or its successors) plus two percentage points from time to time (or, if Citibank shall cease to exist and have no successor, a bank designated by DCK which is a member of the New York Clearing House Association).

9.14. In event of any Legal Proceeding between or among DCK and Fee Owner concerning this Covenant, the prevailing party shall be entitled to reimbursement from the losing party for the Fees-And-Costs of such proceeding incurred by the prevailing party. For this purpose, "prevailing party" means the party who obtains a Final Determination adverse to the other party in or by reason of such Legal Proceeding.

9.15 At any time and from time to time upon not less than ten (10) days' prior notice by Fee Owner to DCK, DCK shall, without charge, execute, acknowledge and deliver to Fee Owner a statement in writing in recordable form prepared by Fee Owner addressed to such party as Fee Owner may designate (with such additions or changes as Fee Owner may reasonably request) or in form satisfactory to Fee Owner certifying (i) that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications), (ii) whether any amount has become payable hereunder and, if so, the date to which they have been paid, (iii) whether or not, to the best knowledge of the signer of such certificate, Fee Owner is in default in performance of any of the terms of this Agreement and, if so, specifying each such default of which the signer may have knowledge, (iv) whether DCK has made any uncollected claim against Fee Owner under this Agreement and, if so, the nature thereof and the dollar amount, if any, of such claim, (v) whether there exist any offsets or defenses against enforcement of any of the terms of this Agreement upon the part of DCK to be performed and, if so, specifying the same and (vi) such further information with respect to this Agreement as Fee Owner may reasonably request, it being intended that any such statement delivered pursuant hereto may be relied upon by any prospective purchaser of the Property or any part thereof or of the interest of Fee Owner in any part thereof, by any mortgagee or prospective mortgagee thereof, by any lessor or prospective lessor thereof, by any lessee or prospective lessee thereof, or by any prospective assignee of any mortgage or lease thereof.

IN WITNESS WHEREOF, DCK and Title LLC have executed this Covenant as of the date first above written.

D.C.K. MANAGEMENT CORP.

By: _____

CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: _____

Name:

Title:

[Developer - FEE OWNER]

By: _____

Name:

Title:

ACKNOWLEDGMENT

State of New York

)

ss.:

County of

)

On the ___ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of D.C.K. Managemnet Corp., and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGMENT

State of New York)
 ss.:
County of)

On the ___ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of Consolidated Edison Company of New York, Inc., and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

ACKNOWLEDGMENT

State of New York)
 ss.:
County of)

On the ___ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as _____ of _____ and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Exhibit "A"

Property Description

EXHIBIT F

Stet MEMORANDUM OF SALE CONTRACT PROVISION

THIS MEMORANDUM OF SALE CONTRACT PROVISION (this "Memorandum") dated as of _____, 200_ is made by D.C.K. MANAGEMENT CORP. and CONSOLIDATED EDISON COMPANY OF NEW YORK, INC. ("DCK") a New York corporation having an address at 4 Irving Place, New York, New York 10003 and _____ ("Purchaser"), a _____ having an address at _____. DCK and Purchaser shall be referred to collectively herein as the "Parties".

DCK and Purchaser are parties to that certain Agreement dated as of _____ (the "Purchase Agreement"). Pursuant to the Purchase Agreement, as of the date hereof, DCK has conveyed to Purchaser, real property located at 405-427 West 53rd Street, and designated Block 1063 Lot 17 on the Tax Map of the City of New York, as more particularly described in Exhibit A attached hereto (the "Property").

Purchaser has represented to DCK that Purchaser has acquired the Property for development, and not for resale until the earlier of (i) the date upon which the Temporary or Final Certificate of Occupancy is issued for the improvements on the Property or (ii) five years after the closing of title to the Property the "Resale Date." Accordingly, pursuant to the terms of the Purchase Agreement, Purchaser has agreed to pay (or cause to be paid) to DCK fifty percent (50%) of the net sale proceeds of certain sales, assignments, pledges, encumbrances and other transfers of the Property and certain direct and indirect sales, assignments, pledges, encumbrances and other transfers in Purchaser and/or the members and managers of Purchaser (as defined in the Purchase Agreement, "Covered Sales") which occur prior to the Resale Date. Payment is due to Con Edison at the closing or other completion of each Covered Sale. Certain sales, assignments, pledges, encumbrances and other transfers for financing purposes and estate planning purposes are not considered Covered Sales, as more particularly set forth in the Purchase Agreement.

This Memorandum is intended to provide notice of the payment and related obligations of Purchaser with respect to Covered Sales to third parties, including all persons and entities acquiring an interest in the Property, Purchaser, or any manager or member of Purchaser (which persons and entities shall be subject to and bound by such

obligations). This Memorandum shall not be deemed to create any separate or additional rights or obligations on the part of any of the Parties and shall not be deemed to modify any terms or conditions of the Purchase Agreement or any other documents relating to the transactions contemplated thereby.

This Memorandum is executed and delivered by the Parties as of the date first set forth above.

D.C.K. MANAGEMENT CORP.

By: _____

CONSOLIDATED EDISON COMPANY
OF NEW YORK, INC.

By:

Name:

Title:

By:

Name:

Title:

State of New York)

ss.:

County of)

On the ____ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as of _____, and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)

ss.:

County of)

On the ____ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as of _____, and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)

ss.:

County of)

On the ____ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared , personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as

of _____ and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

State of New York)

ss.:

County of)

On the _____ day of _____ in the year 200__ before me, the undersigned, a Notary Public in and for said State, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) as of _____ and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

EXHIBIT A

Property Description

[insert]

EXHIBIT G
(License Agreement)

LICENSE TO OCCUPY VACANT LAND

This LICENSE AGREEMENT ("License") entered into as of January 1, 1999 by and between D.C.K. Management Corp. ("D.C.K."), a New York corporation having a principal place of business at 4 Irving Place, New York, NY 10003 and Marty's W. 53rd Street Parking, Inc. d/b/a S&N Parking, having an office and place of business at 423 West 53rd Street, New York, New York 10019 ("Licensee");

W-I-T-N-E-S-S-E-T-H:

WHEREAS, D.C.K. is the owner of approximately 38,500 square feet of vacant land located at 405-429 West 53rd Street, Manhattan, New York also known as part of Lot 17, Block 1063, on the City of New York Tax Map and shown on Exhibit A, attached hereto and made a part hereof ("the Property"); and

WHEREAS, both Licensee and D.C.K. are agreeable to Licensee's access to and use of the Property as a parking lot operation for an extended term of ten (10) years on condition, among other things, that Licensee make the timely payments to D.C.K. for use of the property and that Licensee's use thereof, past, present and future, is in full compliance with all laws, rules and regulations of governmental agencies applicable to Licensee's use.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, in hand paid by Licensee to D.C.K., D.C.K. and Licensee hereby agree to the following:

A. Licensee's Use. Licensee hereby covenants and agrees to use and to conduct its parking lot activities on the Property in compliance with the current certificate of occupancy attached hereto as Exhibit C and pursuant to the requirements of the Standard Terms and Conditions for Tenants/Occupants/Users of Real Estate annexed hereto and made a part of this License for a term of ten (10) years commencing on January 1, 1999 and ending on December 31, 2008. Licensee shall use the Property for the sole and limited purpose of providing short-term parking. If at any time, Licensee is notified by D.C.K. that it is in violation of a provision or provisions of this License, Licensee shall, in accordance with the time parameters set forth in this License, take immediate action to correct or remediate such violation at its sole cost and expense. If Licensee fails to take appropriate action, D.C.K. may immediately revoke this License and Licensee shall forthwith vacate the Property and surrender full possession and control thereof to D.C.K.. Notwithstanding the foregoing, Licensee shall remain fully liable for all payments for the use of the Property to the date that 1) the violation is fully corrected, remediated and disposed of if the violation arises from relates to or is connected in whole or in part with Licensee's use and occupancy of the property from February 1, 1979, the

date Licensee commenced using the Property ("Initial Occupancy Date"), 2) the Property is vacated in compliance with this License, and 3) Licensee has satisfied all other requirements of this License, i.e., satisfaction of all monetary obligations up to the date that the Property is vacated in accordance herewith (without lease acceleration), Licensee shall be responsible for the payment of all costs of corrective action and remedial measures which are, in the reasonable opinion of D.C.K., required to satisfactorily dispose of violations if the violation arises from or relates to or is connected in whole or in part with Licensee's use and occupancy of the Property from the "Initial Occupancy Date", Licensee shall make such payments within 30 days of receipt of an invoice.

B. The Property. Title to the Property, and to each and every part thereof, is vested in D.C.K. Licensee specifically acknowledges that this License does not vest in Licensee any real property right, title or interest in or to the Property. At the end of the License period, at D.C.K.'s request, Licensee shall remove any equipment or improvements installed by Licensee and restore the Property to substantially its original condition at its sole cost and expense, and in a neat and orderly condition.

C. Licensee's Obligations. Licensee shall keep the Property in good order and repair, (and Licensee shall restore and replace the Property and each and every part thereof) and maintain it free and clear of all violations of law, regulation or ordinance and all liens, charges and encumbrances whatsoever, all at no expense to D.C.K. Repairs, replacements and restorations of the Property for which Licensee is obligated under this License include, but are not limited to all repairs of every kind and nature and any work of a temporary or permanent nature deemed reasonably necessary by D.C.K. to preserve and maintain the Property in the Property's condition as of the Initial Occupancy Date, along with any improvements thereto. In the event Licensee is notified that the Property or any part thereof is in need of repair, replacement, restoration or maintenance and Licensee fails to commence or complete the required work within thirty (30) days from delivery of such notice or within such other period as agreed upon in writing by the parties, at its election, D.C.K. may perform same at Licensee's sole cost and expense and Licensee shall reimburse D.C.K. for the entire cost of the work within thirty (30) days of delivery to Licensee of a bill therefor. In the alternative, D.C.K. may treat Licensee's failure as grounds for immediate revocation of this License in accordance with Paragraph A above.

D. Licensee Fees. Licensee shall make the payments to D.C.K., together with a security deposit, and tax payments in the amounts set forth:

SECURITY

Additional Security deposit of \$38,929.33. For a total Security deposit of \$ 44,833.00.

LICENSE FEES FOR YEARS 1 TO 3 OF THE LICENSE

\$275,000.00 annual license fee, payable in equally monthly installments of \$22,916.67.

For the months of January 1999, February 1999, March 1999 and April 1999, Licensee shall pay the monthly installment at the reduced rate of \$7,541.00

LICENSE FEES FOR YEARS 4 TO 7 OF THE LICENSE

\$300,000.00 annual license fee payable in equally monthly installments of \$25,000.00.

LICENSE FEES FOR YEARS 8 TO 10 OF THE LICENSE

\$330,000.00 annual license fee payable in equally monthly installments of \$27,500.00.

REAL ESTATE TAXES

Licensee will pay 100% of any and all increases over the tax base year 1998/99.

All monthly installments are due on the 1st day of the month. The payments due to D.C.K. for this License shall be strictly net to D.C.K. of taxes, over the tax base year July 1, 1998 to June 30, 1999, insurance and repairs and shall be paid by Licensee without any set-off, deduction or counterclaim whatsoever by the tenth (10) day of the month. Any expenses incurred by D.C.K. in connection with the Property which are the obligation of Licensee hereunder, shall be paid by Licensee within thirty (30) days of delivery to Licensee of a bill therefor.

E. **Improvements.** Licensee shall pave, fence and install lighting and a new booth on the Property and repair adjoining sidewalk, to D.C.K.'s reasonable satisfaction, at its sole cost and expense (the "Improvements"). Within 30 days hereof, Licensee shall submit to D.C.K. for review and approval the specifications for the Improvements. Within 30 days of receipt of the specifications, D.C.K. shall approve, disapprove or modify the specifications. Licensee shall within 30 days of D.C.K.'s approval complete all of the Improvements in accordance with the approved specifications. In the event that this License is terminated or cancelled by D.C.K. for other than the Licensee's failure to comply with any term herein, D.C.K. shall reimburse Licensee for the actual expenses incurred for the Improvements as follows:

- If License is canceled on or before December 1, 1999, D.C.K. shall reimburse Licensee 86% of the actual dollars spent by Licensee on the Improvements.
- If License is canceled on or before December 1, 2000, D.C.K. shall reimburse Licensee 71% of the actual dollars spent by Licensee on the Improvements.
- If License is canceled on or before December 1, 2001, D.C.K. shall reimburse Licensee 57% of the actual dollars spent by Licensee on the Improvements.
- If License is canceled on or before December 1, 2002, D.C.K. shall reimburse

Licensee 43% of the actual dollars spent by Licensee on the Improvements.

- If License is canceled on or before December 1, 2003, D.C.K. shall reimburse Licensee 29% of the actual dollars spent by Licensee on the Improvements.
- If License is canceled on or before December 1, 2004, D.C.K. shall reimburse Licensee 14% of the actual dollars spent by Licensee on the Improvements.

F. **Violations and Notice.** Licensee shall submit to D.C.K. upon execution of this License a check in the amount of \$13,413.97 to satisfy the governmental violation described on Schedule 1, attached hereto and made a part hereof. Failure to do so will result in immediate cancellation of this License. In addition, Licensee shall pay for the cost of disposing of any and all governmental violations and the cost of an updated municipal search annually. Licensee shall be responsible for any violations before and after the effective date of this License if such violation arose out of Licensee's possession, use or occupancy of the Property. If Licensee is required to satisfy a condition or dispose of a violation under the terms of this License, Licensee shall pay for the costs of satisfaction or disposition and furnish D.C.K. with satisfactory proof thereof. Licensee shall immediately notify D.C.K. of any contact or communications received from or sent to any federal, state or local government agency having environmental or consumer affairs jurisdiction over the Property.

G. **Utilities.** Providing all utilities and services to the Property, including gas, electric, water, heat, trash collection, etc. shall be the sole obligation of Licensee. Licensee shall arrange to have all utilities and services to the Property directly billed to Licensee. In no event shall D.C.K. be liable for the payment of utilities consumed on, or services to, the Property. Licensee's liability shall continue until D.C.K. releases Licensee in writing from the obligations of this License and determines that this License is no longer in effect under Paragraph A above.

H. **Precedence.** In the event of a conflict or inconsistency between the provisions of the Standard Terms and Conditions and the provisions herein (including Exhibits), the provisions herein shall take precedence and control.

I. **No Other Agreements.** All prior understandings and agreements between the parties with respect to the Property or any part thereof are hereby merged into this License. Licensee is thoroughly acquainted with the present condition of the Property and accepts same "as is". Neither party is relying upon any statement whatsoever, made by any person whatever, that does not appear in this License.

J. **Notice of Termination.** Licensee's occupancy of the Property pursuant to this License is at the pleasure of D.C.K., subject to at least a one (1) year notice of cancellation for any reason except for the sole purpose of obtaining increased annual license fees from a similarly situated competing public parking lot operator in which event the License may not be cancelled. Notwithstanding anything contained herein, D.C.K. may at any time cancel, terminate, or revoke this License for cause. At the end of the License period, the Property shall be delivered to D.C.K. vacant and broom clean, and in good order and repair, normal wear and tear excepted and all removable property of Licensee shall be removed from the Property. All sets of keys, including Licensee's set of keys to the Property, shall be delivered to D.C.K. upon termination. Licensee shall be bound by the provisions of this License until it is released in writing therefrom by D.C.K. and License is no longer in effect.

K. **Warranty.** The person signing for Licensee hereunder warrants and represents to D.C.K. that he or she has full power and authority to enter into this License on behalf of Licensee and to bind Licensee to the terms and conditions of this License. Licensee further represents and warrants that D.C.K. shall be promptly notified of information furnished to D.C.K. by Licensee in the annexed Questionnaire and that all such information is true and accurate on the date of issue.

L. **No Changes.** Neither party shall be entitled to rely on any purported change of any provision of this License unless such change is contained in a writing signed by both parties.

M. **Force Majeure.** Except as otherwise specifically provided herein, in any case where either party hereto is required to do any act, delays caused by or resulting from acts of God, war, civil commotion, fire or other casualty, labor difficulties, shortages of labor, materials or equipment, government regulations, or other causes beyond such party's reasonable control shall not be counted in determining the time during which work shall be completed, whether such time be designated by a fixed date, a fixed time, or a "reasonable time". Specifically, excluded are delays resulting from a party's inability to obtain financing or a party's lack of capital, except if due to the default of the other party. Either party entitled to the such extension shall give prompt written notice to the other party as soon as possible after the occurrence causing such delay asserting its claim of right to such extension and the reasons therefor and provided further that, except in the case of delays resulting from restrictions by governmental authorities, the maximum extension for any act shall be six (6) months from the date of the notice. Nothing herein, shall excuse Licensee from making timely payments of license fees and all other payments due under this License.

N. Real Estate Taxes. If the License shall not be in force and effect for all of a particular tax year Licensee's payment of Real Estate Taxes shall be pro-rated so that the amount payable by Licensee, if any, shall be based on the actual number of days that the License shall be in force and effect during such tax year.

O. Assignment. Licensee may assign or otherwise transfer its interest in this License to a Franchisee or operating subsidiary of Licensee or in connection with a public offering, without D.C.K.'s approval provided that 1) Licensee remains fully liable for full performance of all of its obligations under the License; 2) Licensee provides DCK with a copy of the instrument of assignment within ten (10) days of the execution thereof; and 3) a personal guaranty by the principals of the assignee is executed in the form signed by the principals herein and provided to DCK within ten (10) days of execution of the instrument of assignment. An assignment or transfer of the License shall not release the Guarantors of the attached Personal Guaranty from their obligations thereunder. Otherwise, this License may only be assigned with D.C.K.'s prior written consent, not to be unreasonably withheld or delayed.

D.C.K. may at any time and at its sole option assign or transfer any and all rights to the Property and/or this License to Consolidated Edison Company of New York, Inc. or any of its subsidiaries or affiliates.

IN WITNESS WHEREOF, D.C.K. and Licensee have caused this License to be executed by their duly authorized officials and their respective seals to be hereunto affixed as of the day and year first above written.

D.C.K. MANAGEMENT CORP.

ATTEST:

Robert B. Felt
~~Assistant~~ Secretary/Treasurer

(Seal)

CC By: Robert P. Stelben
Robert P. Stelben
Title: President

ATTEST:

X 3
Secretary
David Avital (Seal)

MARTY'S W. 53rd STREET PARKING, INC
By: Martin Gumer
Martin Gumer
Title: PRESIDENT
Marty's W. 53rd Street
Parking, Inc.
d/b/a S&N Parking


STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the day of _____, 1998, before me personally came
_____ to me known, who, being by me duly sworn, did depose
and say that he has a place of business at 4 Irving Place, New York, New York 10003,
that he is a _____ of D.C.K. Management Corp., the corporation
described in and which executed the foregoing License; that he knows the seal of said
corporation; that the seal affixed to said License is such corporate seal; that it was so
affixed by authority of the Board of Trustees of said corporation; and that he signed his
name thereto by like authority.

Notary Public

STATE OF NEW YORK)
) SS.:
COUNTY OF NEW YORK)

On the 22 day of Dec, 1998, before me personally came MARTIN
Gomer to me known, who, being by me duly sworn, did depose and say that he resides at
12 BREWSTER AVE, KINGS PENT, NY 11034,
that he is the President of MARTY'S W 53RD STREET PARTY INC, the corporation
described in and which executed the foregoing License; that he knows the seal of said
corporation; that the seal affixed to said License is such corporate seal; that it was so
affixed by authority of the Board of Directors of said corporation; and that he signed his
name thereto by like authority.


Notary Public

WILLIAM J. MALONE
Notary Public, State of New York
No. 2493000
Qualified in Nassau County
Commission Expires February 28, 2000

EXHIBIT B

INSURANCE REQUIREMENTS FOR TENANTS/OCCUPANTS/USERS OF D.C.K. MANAGEMENT CORP. ("D.C.K.") REAL ESTATE

The Tenant/Occupant/User shall procure and maintain the following insurance at its own expense, effective on or prior to the commencement date of the lease/ agreement (permit or license) to the extent stated below, with at least the monetary limits specified until the premises leased or occupied have been vacated and possession surrendered and accepted by D.C.K. Management Corp. ("D.C.K."). The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage and shall be placed with insurance companies acceptable to D.C.K., as follows:

Comprehensive (also called Commercial) General Liability Insurance, including Contractual Liability, with limits of \$5,000,000 per occurrence for bodily injury or death and \$1,000,000 per occurrence for property damage or a combined single limit of \$5,000,000 per occurrence.

The insurance policy shall be fully paid for and shall name D.C.K., Consolidated Edison Inc. and Consolidated Edison Company of New York, Inc. as additional insureds. Any exclusions from coverage must be consented to in writing by D.C.K.

The Tenant/Occupant/User shall cause all insurance carried hereunder to be endorsed by the insurer to require that the insurer furnish D.C.K. with at least ten (10) days' written notice prior to the effective date of cancellation of the insurance or the effective date of any changes in policy limits or scope of coverage. No changes shall be made in such insurance without the prior written consent of D.C.K..

Prior to entering D.C.K. premises, the Tenant/Occupant/User shall furnish D.C.K. with a certificate of insurance signed by the insurer or its authorized representative certifying that the required insurance has been obtained and will not be cancelled or altered without at least ten (10) days' prior written notice to D.C.K.. Such certificates shall state that the policies have been issued and are effective, show their expiration dates, and state that D.C.K. Management Corp., Consolidated Edison Inc. and Consolidated Edison Company of New York, Inc. are additional insureds with respect to all coverages enumerated above. Such certificates shall not contain a disclaimer of liability of the insured for failure to provide D.C.K. with notice of cancellation change or substantial alteration. D.C.K. reserves the right to require the Tenant/Occupant/User to deliver a copy of the insurance policy or policies required hereunder and proof of payment in full of the first years premium. D.C.K. reserves the right to change these insurance requirements upon thirty (30) days prior notice.

February 1998 (Rev.3)
Real Estate Dept.
D.C.K.

14-111M 701277(60)

EXHIBIT C

DEPARTMENT OF BUILDINGS

BOROUGH OF MANHATTAN, THE CITY OF NEW YORK

No. 53975

Date May 10, 1961

CERTIFICATE OF OCCUPANCY

Standard form adopted by the Board of Standards and Appeals and issued pursuant to Section 646 of the New York Charter, and Sections C26-181.0 to C26-187.0 inclusive Administrative Code 2.1.3.1 to 2.1.3.7 (Building Code.)

This certificate supersedes C. O. No.

the owner or owners of the building or premises:

THIS CERTIFIES that the ~~new~~ altered ~~building~~ premises located at

413-415-417 West 53rd Street

Block 1063 Lots 22, 23, 24

conforms substantially to the approved plans and specifications, and to the requirements of the building code and all other laws and ordinances, and of the rules and regulations of the Board of Standards and Appeals applicable to a building of its class and kind at the time the permit was issued; and

CERTIFIES FURTHER that any provisions of Section 646F of the New York Charter have been complied with as certified by a report of the Fire Commissioner to the Borough Superintendent.

Permit No. 1544-1960

Construction classification—

Occupancy classification— Commercial

Height — — — stories — — — feet

Date of completion— May 10, 1961

Located in Retail Use District

Block B Area 12

Height Zone at time of issuance of permit 544-1961

This certificate is issued subject to the limitations hereinafter specified and to the following resolutions of the Board of Standards and Appeals: (Calendar numbers to be inserted here)

PERMISSIBLE USE AND OCCUPANCY

STORY	LIVE LOADS (Lb. per Sq. Ft.)	PERSONS ACCOMMODATED			USE
		MALE	FEMALE	TOTAL	
On ground					<p>Parking lot for more than five (5) motor vehicles and auto sales, and</p> <p>One-story temporary frame shelter for attendant.</p> <p>NOTE: Permission to maintain a temporary shelter is revocable at option of Borough Superintendent.</p>

Sec. 2.1.2.3 Sub-4 Building Code, C26-273.0 Adm. Code

Prior to the occupancy of structure erected or altered after January 1, 1938, the authorized occupancy of each floor of said structure as stated in the certificate of occupancy shall be permanently posted under glass and maintained in the main entrance hall of such structures.

Thomas V. Burke
Borough Superintendent

11-04-1998 4:52PM FROM

P.3

ABSTRACTERS' INFORMATION SERVICE, INC.

138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681

405/421 WEST 53 ST AKA 428 WEST 54 ST
MANHATTAN
BLOCK 01063 LOT 00017

0461-CRTJERRY-1
11/02/98

CERTIFICATE OF OCCUPANCY REPORT

THE FOLLOWING INFORMATION IS ON FILE:

MANHATTAN BLOCK 01063 LOT 00017

CO 45612
ISSUED 05-04-56
ALT 812/1955
SEE ATTACHED CO FOR OCCUPANCY
COMPLETED 05-01-56

CO 53925
ISSUED 05-10-61
ALT 1644/1960
SEE ATTACHED CO FOR OCCUPANCY
COMPLETED 05-10-61

405 WEST 53 ST

DEMOLITION 100212280/1991
5 STORY
BUILDING
SIGNED OFF 03-10-92

409 WEST 53 ST

DEMOLITION 100212299/1991
5 STORY
BUILDING
PERMIT ISSUED 12-27-91
NOT SIGNED OFF

407 WEST 53 ST

DEMOLITION 100212306/1991
5 STORY
BUILDING
SIGNED OFF 03-10-92

11-04-1998 4:53PM FROM

P. 4

ABSTRACTERS' INFORMATION SERVICE, INC.

138-72 QUEENS BOULEVARD BRIARWOOD, N.Y. 11435
(718) 291-5900 (516) 742-2290 (914) 761-4451 FAX (718) 291-6681

0461-CRTJERRY-1

CONTINUED.....

411 WEST 53 ST

DEMOLITION 100212379/1991
5 STORY
BUILDING
SIGNED OFF 03-10-92

413 AND 415 WEST 53 ST

DEMOLITION 295/1960
2 TENEMENTS
COMPLETED 11-07-60

417 WEST 53 ST

DEMOLITION 296/1960
TENEMENT
COMPLETED 11-07-60

11/05/88 14:15 FAX

SCHEDULE 1

0002



SCHEDULE 1

FINANCE NEW YORK

THE CITY OF NEW YORK
DEPARTMENT OF FINANCE

TENTH & 51ST HDF COMPANY INC
150 NASSAU ST
NEW YORK NY 10038-1516

NOVEMBER 05, 1998
BOROUGH - MANHATTAN
BLOCK: 1063 LOT: 17

PAGE 01

PARCEL ADDRESS:
WEST 53 STREET
NEW YORK, NY 00000

ACCT TYPE	TAX CODE	ACCT ID	DUE DT	PD END	TAX DUE	INTEREST
SIDEWLK RP 73		10098	11/28/98	04/24/98	13413.47	0.00

TOTAL AMT DUE: \$13,413.47

DO NOT DETACH

INTEREST TO : 11/09/98
CUTOFF DATE : 11/05/98

EBL: 1-1063-17

TOTAL REMITTANCE DUE : \$13,413.47

TENTH & 51ST HDF COMPANY INC
150 NASSAU ST
NEW YORK NY 10038-1516

NYC DEPARTMENT OF FINANCE
P.O. BOX 37
CHURCH STREET STATION
NEW YORK, NY 10008

**STANDARD TERMS AND CONDITIONS FOR
TENANTS/OCCUPANTS/USERS OF REAL ESTATE**

1. **Revocation:** Licensee hereby expressly undertakes and covenants that all of the terms and conditions of this License require strict compliance in the default of which D.C.K. shall be entitled to revoke this License upon ten (10) days notice of any breach of a condition which Licensee does not immediately cure within ten (10) days of delivery of such notice. D.C.K. may terminate this License for any reason upon notice in writing to Licensee as provided elsewhere in this License. Revocation, termination or cancellation shall be without any liability, cost or expense to D.C.K.. This License is strictly contractual in nature and does not confer upon, or vest in Licensee, nor does it intend to confer upon, or vest in Licensee, any real property right, title or interest whatsoever in or to the Property.

2. **Restoration:** At the end of Licensee's occupancy for any reason whatsoever, the Property shall be vacated and full and complete possession delivered to D.C.K. in good order and repair, in substantially the same condition as existed prior to Licensee's occupancy, free and clear of all tenancies, occupancies, liens, encumbrances, structures, vehicles, equipment, trash and debris whatsoever, as required by D.C.K.. D.C.K. may re-enter the Property and remove Licensee's property at Licensee's sole expense. D.C.K. has the right to remove and dispose of any vehicles or any equipment or property on the Property and the right to discharge any lien, encumbrance or violation on the Property resulting from Licensee's activities at Licensee's sole cost and expense. Licensee shall promptly pay any of D.C.K.'s expenses in connection therewith. Any of Licensee's property remaining on the Property after thirty (30) days shall be deemed abandoned and may be disposed of by D.C.K. as it sees fit.

3. **Personal Guaranty:** If Licensee is a corporation, the individuals named in the unconditional guarantee annexed hereto shall be personally liable jointly and severally with Licensee (or Licensee alone, if Licensee is an individual) for the performance of all obligations of Licensee hereunder to the extent provided in the Guaranty and shall be obligated to pay D.C.K., within ten (10) days of presentation of a bill therefor, for any and all costs, expenses, and liabilities, including, but not limited to, liabilities arising out of third party actions against D.C.K. incurred in connection with (1) vacating the Property and delivering possession to D.C.K. free and clear of all tenancies, property, trash and debris; (2) any breach of this License by Licensee; (3) fulfillment of any of Licensee's obligations which have not been satisfied; (4) restoring the Property to its original condition; and (5) any acts or omissions of the Licensee.

4. **Monthly Payments:** Licensee is responsible for prompt and punctual payments of all fees and monies due pursuant to this License without set-off, deduction or counterclaim. All monthly payments are due on the 1st day of the month and shall be strictly net to D.C.K.. If Licensee's payment is not received by the tenth (10th) day of the month, it shall be considered late and subject to a late payment charge of 1 ½ % per month commencing on the date when such payment was due and calculated on the basis of 30 days/month, prorated for the number of days such payment is late, inclusive of the ten (10) day "grace" period. In the event of termination, cancellation or revocation of this License during any month of Licensee's occupancy because of Licensee's breach of any condition hereof, Licensee shall not be entitled any apportionment or refund of any payment theretofore made.

5. **Security Deposit:** Licensee shall deposit with D.C.K. on execution of this License for the faithful performance and observance by Licensee of the terms and conditions of this License the security deposit in the amount provided for elsewhere in this License. Such deposit shall not bear interest and may be commingled by D.C.K.. It is agreed that in the event, Licensee defaults in respect of any of the terms and conditions of this License, including but not limited to the failure to make payments when due, D.C.K. may retain the whole or any part of the security so deposited to the extent required for any payment or any other sum as to which Licensee is in default or for any sum which D.C.K. may expend or may be required to expend including attorney fees for any reason of Licensee's default in any of the terms and conditions of this License including but not limited to (1) a breach of this License by Licensee; (2) fulfillment of any of Licensee's obligations which have not been satisfied; (3) restoring the Property to its original condition, at the termination of the License, including, but not limited to the removal and disposal of any vehicles, equipment, or property remaining on the Property; (4) any acts or omissions of the Licensee; and (5) any liabilities, including, but not limited to liabilities, incurred from third party actions against D.C.K.. If Licensee shall fully, faithfully and strictly comply with all terms and conditions of this License, the security shall be returned to Licensee after delivery of possession of the Property of D.C.K. in accordance with the terms hereof.

6. **Right Of Entry:** a) D.C.K. reserves the right to enter upon the Property at any time during Licensee's occupancy or possession for any purpose and without any liability whatsoever. D.C.K. shall give Licensee at least twenty-four (24) hours prior notice of such entry, except in the event of an emergency, in which case D.C.K. agrees to provide Licensee with whatever notice may be practicable under the circumstances. In the exercise of this right, D.C.K. agrees to use its best efforts to avoid substantial interference with Licensee's occupancy of the Property. If D.C.K.'s exercise of its right of entry is impeded or obstructed by Licensee's occupancy, Licensee shall pay for any extra costs incurred by D.C.K. in the exercise of this right of entry.

b) D.C.K. reserves the right to enter the Property or to have consultants enter the Property at any time during Licensee's occupancy or possession for the purpose of (1) determining whether the Property is in conformity with the Hazardous Materials Requirements and other federal, state, and local statutes, regulations, ordinances, and policies, (2) conducting an environmental audit or investigation of the Property for purposes of sale, transfer, conveyance, or financing, (3) determining whether the Licensee has complied with the environmental requirements of this License, (4) determining the corrective measures, if any, required of Licensee to ensure the safe use, storage, and disposal of Hazardous Materials, or (5) removing Hazardous Materials (except to the extent used, stored, or disposed of by Licensee in compliance with Environmental Laws and the terms of this License). Licensee agrees to provide access and reasonable assistance for such inspections. To the extent such inspections disclose the presence of Hazardous Materials used, stored, or disposed of by Licensee or its agents, employees, contractors, or invitees in violation of the terms of this License, Licensee shall reimburse D.C.K. for the cost of such inspections within ten (10) days of receipt of a written statement thereof. If such inspections determine that Hazardous Materials have been released, discharged, stored, or used on the Property in violation of the terms of this License, Licensee shall, in a timely manner, at its expense, remove such Hazardous Materials.

7. **Condition Of Property:** Licensee expressly agrees that it is thoroughly familiar with the physical condition of the Property and any land use restrictions applicable thereto, and accepts the Property "as is", on behalf of itself and on behalf of its employees, agents and contractors. Licensee hereby undertakes to protect D.C.K. against all risks and assumes all liability resulting in whole or in part from Licensee's use and occupancy of the Property. D.C.K. has made no express, implied, or other representations of any kind in connection with the physical condition of the Property, and any improvements appurtenant thereto, including without limitations, the physical condition of any building materials, building systems, soils, or groundwater conditions or the presence of Hazardous Material in, or, under or about the Property and Licensee has relied solely on Licensee's own inspection and examination of such matters.

8. **Improvements:** Licensee shall at all times keep the Property, pavement, striping, adjoining sidewalks and fence in good order and repair at its sole cost and expense. If the Property is not paved or fenced, Licensee shall, upon D.C.K.'s request, pave and/or fence the Property at its sole cost and expense. Licensee shall provide D.C.K. with keys to locks for any gates, at D.C.K.'s request. No alterations or changes to the Property are allowed without D.C.K.'s prior written consent. All changes, modifications, alterations or improvements to the Property, authorized by D.C.K. shall become the property of D.C.K. at the end of this License. Licensee shall provide that no work or other work on the Property performed by Licensee or on Licensee's behalf shall give rise to a mechanic's lien or other encumbrances. Licensee is hereby prohibited from excavating or digging on the Property, or making any change or improvement without the

prior written consent of D.C.K..

9. Cleanliness: Licensee hereby undertakes and assumes full responsibility for the neat and orderly appearance of the Property at all times, subject to D.C.K.'s requirements. Licensee shall neither cause nor permit the accumulation or presence of waste, refuse, trash, garbage, debris, nor permit abandoned or unused vehicles or scrap vehicle parts anywhere on the Property. At Con Edison's request, Licensee shall cover all vehicles with canvas covers. Licensee shall not permit the Property to be maintained as an eyesore in the neighborhood or in an unsightly or unsanitary manner or in such a way as to constitute or contribute to a hazard, nuisance or potential hazard or nuisance to any person or property. All surfaces within the Property shall be regularly cleaned by Licensee and the Property shall be kept free of graffiti and postings of any kind; weeds shall be promptly removed by Licensee as well as all garbage, trash, litter, scrap paper and cans. The area surrounding the Property shall be kept clean, neat, sanitary and free of trash and litter of any kind. Any and all other forms of refuse and debris on the Property or on the area surrounding same shall be collected and disposed of periodically by Licensee. Trash barrels or containers, drums or other equipment shall be used by Licensee and they shall be stored in a neat and orderly manner and, whenever possible, kept from public view. Licensee shall keep the Property free of rodents and other vermin and shall employ the services of an exterminator at Licensee's sole cost and expense whenever necessary or whenever so advised by D.C.K. or by the governmental agencies or authorities having jurisdiction over the Property. Licensee shall not use or permit the Property to be used in any way detrimental to the appearance, character, or reputation of the Property, or the surrounding community, or in any other manner that is not expressly authorized by law. Any federal, state or municipal violations noted against the Property, from Licensee's entry thereon to the end of Licensee's occupancy, shall be Licensee's sole responsibility and such violations shall be removed or disposed of immediately at Licensee's sole cost and expense.

10. Insurance: Licensee shall, at its own cost and expense, procure and maintain during its occupancy under this License, Comprehensive (also called Commercial) General Liability including Contractual Liability with limits of \$5 million per occurrence for bodily injury or death, and \$1 million per occurrence for property damage or a combined single limit of \$5 million including legal liability for the vehicles in Licensee's care, custody, and control and property damage insurance with all risks insured against from a carrier approved in writing by D.C.K.. Such policies shall name D.C.K. Management Corp., Consolidated Edison Company of New York, Inc., and Consolidated Edison Inc. as "additional insureds" and proof of payment in full of the first year's premium shall be delivered to D.C.K. prior to the commencement date. The policy shall provide for at least 30 days notice to D.C.K. before cancellation of such policies becomes effective and D.C.K. shall have the right to pay the premium due and collect same from Licensee as additional payment for this License. Such insurance policies shall contain the contractual indemnity endorsement incorporating the indemnity provisions of

this License. D.C.K. may require any additional insurance coverage as it deems necessary for the activities of the Licensee under the License, including rent insurance, as provided elsewhere in this License.

11. **Live Parking Only:** Licensee agrees not to use any part or portion of the area surrounding the Property for the parking of vehicles or storing of equipment at any time. "Dead" parking of vehicles or equipment storage shall not be permitted on the Property at any time. Ignition keys to all parked vehicles on the Property shall be available at all times so that every vehicle may be promptly removed should D.C.K. exercise its right of entry should an emergency occur or in the event Licensee is not entitled to this License.

12. **Refusal To Leave:** In the event Licensee occupies, or any property remains on, the Property beyond the date permitted, the license fees payable for occupancy of the Property shall increase to exactly double the then current rate and shall be calculated from the day Licensee is required to leave the Property to the date the Property is delivered to D.C.K. in the condition required by this License. License fees due to D.C.K. under this License shall include water, sewer, all utilities and real estate taxes attributable to the Property, as required, during such period of unauthorized use of the Property by Licensee.

13. **Indemnification:** a) Licensee shall defend, indemnify and hold D.C.K., its trustees, directors, officers, employees agents, affiliates and assignees (the "Protected Parties") harmless from and against any and all claims, violations of law or regulations (including Environmental Laws, as defined infra) actions, losses, costs, damages, expenses, (including without limitation, attorneys fees and other legal costs and expenses) and liabilities whether based in contract, tort (including negligence, gross negligence and strict liability) or otherwise which are asserted, suffered or incurred by any person or entity (including the parties hereto) and which arise from, relate to, or are connected, in whole or in part, with Licensee's use and/or occupancy of the Property from February 1, 1979, the date Licensee commenced using the Property (the "Initial Occupancy Date"). (The foregoing claims, violations of law or regulations, actions, losses, costs, damages, expenses and liabilities are hereinafter referred to as the "Covered Claims.") To the fullest extent permitted by applicable law, Licensee's obligations pursuant to this Paragraph 10 shall apply regardless of whether the Covered Claims result in whole or in part from the negligence or gross negligence of the Protected Parties, or any of them. To the fullest extent permitted by law, Licensee hereby irrevocably and unconditionally agrees to release the Protected Parties from any liability for any of the Covered Claims asserted against the Protected Parties (or against any one or more of them) in the future. This Paragraph 10 shall specifically survive termination, expiration or cancellation of this License Agreement.

b) Covered Claims shall include, but not be limited to, any claims related to 1) the presence, suspected presence, release or suspected release of any Hazardous Material of any kind, whether into the air, soil, surface water, ground water, pavement, structures, fixtures, equipment, tanks, containers or other personalty on, in, under, or above the Property arising directly or indirectly, in whole or in part, from Licensee's use and/or occupancy of the Property; 2) the use, storage, release, discharge, handling, or presence of Hazardous Materials on, under, or abut the property in violation solely of Licensee's obligations under this License ("Hazardous Materials Release").

c) This indemnification shall include, but not be limited to: 1) diminution in value of the Property; 2) the cost of any investigation of site conditions; 3) the cost of any repair, cleanup, remediation, removal, or restoration work or detoxification if required by any governmental authorities or deemed necessary in D.C.K.'s reasonable judgment.

d) D.C.K. shall have the right, but not the obligation to join and participate in and control, if it so elects, any legal proceedings or actions initiated in connection with the Hazardous Materials Release. D.C.K. may also negotiate, defend, approve and appeal any action taken or issued by any applicable Governmental Authorities with regard to a Hazardous Materials Release.

14. **Hazardous Materials:** For purposes of this License, the term Hazardous Materials shall mean any product, substance, chemical, waste or electromagnetic emissions that is, has been, or shall hereafter be listed or defined as hazardous, toxic, or dangerous under Environmental Laws. 'Hazardous Material' includes without limitation petroleum products and polychlorinated biphenyl ("PCB's"). The term 'Environmental Laws' shall mean all the federal, state, local, environmental, health and safety, transportation laws, rules, orders, ordinances, regulations, codes and zoning provisions including, but not limited to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9601 et seq., the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, 33 U.S.C. 1251 et seq., the Clean Air Act, 42 U.S.C. 7401 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 1471 et seq., the Toxic Substances Control Act, 15 U.S.C. 2601 through 2629, the Safe Drinking Water Act, 42 U.S.C. 300f through 300h.

15. **Use of Hazardous Materials:** Licensee covenants and agrees that during the term of this License, neither, Licensee nor any of Licensee's agents, employees, contractors, invitees, assignees, or sublessees shall cause any Hazardous Materials to be brought upon, kept, or used in, on, or about the Property or transported to or from the Property. Licensee shall immediately advise D.C.K. in writing of, and if applicable provide D.C.K. with a copy of: (a) any notices of violation or potential or alleged

violation that are received by Licensee from any Governmental Authorities; (b) any and all inquiries, investigations, enforcement, cleanup, removal, or other governmental or regulatory actions instituted or threatened relating to Licensee or the Property; (c) all claims made or threatened by any third party against Licensee or the Property relating to any Hazardous Materials; and (d) any release of Hazardous Materials on or about the Property that Licensee knows of or reasonably believes may have occurred.

16. **Remediation of Hazardous Material Release:** If any Hazardous Materials are or have been since the Initial Occupancy Date released, discharged, or otherwise come to be located on or about the Property or the Property in violation of this License ("Hazardous Material Release"), Licensee shall promptly take all actions, at its sole expense and without abatement of rent, as are necessary to return the affected portion of the Property and any other affected soil or groundwater to their condition existing prior to the Hazardous Material Release. D.C.K. shall have the right to approve all such remedial work, including, without limitation: (i) the selection of any contractor or consultant Licensee proposes to retain to investigate the nature or extent of such Hazardous Material Release or to perform any such remedial work ; (ii) any reports or disclosure statements to be submitted to any Governmental Authorities prior to the submission of such materials; and (iii) any proposed remediation plan or any material revision thereto prior to submission to any Governmental authorities. Notwithstanding the foregoing, D.C.K.'s prior consent shall not be necessary if a Hazardous Material Release poses an immediate threat to the health, safety, or welfare of any persons and, despite Licensee's best efforts it is not possible to obtain D.C.K.'s consent before taking remedial action to abate such immediate threat; provided that: (a) Licensee shall notify D.C.K. as soon as possible and shall thereafter obtain D.C.K.'s consent as otherwise provided in this Paragraph; and (b) Licensee shall take only such action as may be necessary or appropriate to abate such immediate threat and shall otherwise comply with the provisions of this Paragraph. D.C.K. shall have the right, but not the obligation, to participate with Licensee and Licensee's consultants and contractors in any meetings with representatives of the Governmental Authorities, and Licensee shall provide D.C.K. reasonable notice of any such meetings. All remedial work shall be performed in compliance with all Environmental Laws. Licensee's consent to any remedial activities undertaken by Licensee shall not be withheld so long as D.C.K. determines, in its sole, good faith business judgment, that such activities will not cause any material adverse long-term or short-term effect on the Property, buildings, or adjacent property.

17. **Surrender of Premises:** Licensee shall surrender the Premises to D.C.K. upon the expiration or earlier termination of this License free of debris, waste, and Hazardous Materials discharged on the Property since the Initial Occupancy Date ~~during the term of this License~~. In all events, the Premises shall be surrendered in a condition that complies with all Environmental Laws, recommendations of environmental consultants hired by D.C.K., and such other reasonable environmental requirements as may be imposed by D.C.K..

18. **No Transfer:** This License is personal to Licensee and may not be transferred or assigned except as otherwise provided herein. Any transfer in whole or in part of the Property or the rights and privileges of Licensee under this License is absolutely prohibited.

19. **Compliance With Laws:** Licensee, at Licensee's sole cost and expense, shall comply with all federal, state, and local laws, rules, orders, ordinances, regulations, codes, and zoning provisions now or hereafter enacted or promulgated, whether enacted or promulgated by Federal Government, the State of New York, Public Service Commission or the City of New York and or by any authority, governmental or quasi-governmental agency department or bureau having jurisdiction over the Property or over the privileges connected therewith, whether or not such laws, rules, orders, ordinances, regulations, codes and zoning provisions shall necessitate changes, improvements, replacements or repairs to the Property. Licensee, at Licensee's sole cost and expense, shall comply with all federal, state and local environmental, health and safety, transportation land use laws, rules, orders, ordinances, regulations, codes and zoning provisions, whether they shall now exist or shall hereafter be enacted or promulgated, and whether or not such laws, rules, orders, ordinances, regulations, codes and zoning provisions can be said to be within the present contemplation of the parties hereto.

20. **Failure To Comply:** Any failure by Licensee to make a payment to D.C.K., to satisfy a condition of this License or otherwise to fail to perform an obligation required by this License shall constitute grounds for immediate cancellation if such failure is not corrected within 1) ten (10) days from the receipt of notice of same. In the event Licensee represents that corrective measures require more time, Licensee shall notify D.C.K. within such ten (10) day period and, subject to written approval by D.C.K., Licensee may be given additional time within which to remedy such failure. D.C.K. may perform an obligation of Licensee upon ten (10) days prior notice and charge the cost of performance to Licensee. Such charge shall be due and payable by Licensee with the next scheduled monthly payment for the Property. The return of any check made payable to D.C.K. in connection with this License marked "insufficient funds" or "not sufficient funds" shall be grounds to revoke this License if certified funds are not delivered and received by D.C.K. within 48 hours of delivery of notice to Licensee.

21. **Operating Property:** Licensee shall at all times be subject to all reasonable rules and regulations heretofore or hereinafter promulgated by D.C.K. and made applicable to the Property. TIME IS OF THE ESSENCE on the part of Licensee immediately vacating the Property in the event of revocation, cancellation or termination for any reason and D.C.K. has extended Licensee the use and occupancy of the Property in reliance upon Licensee's representation that the Property shall be vacated immediately upon demand by D.C.K. in accordance with this License.

22. **Utilities:** Any utility or other service to the Property required by Licensee shall be provided, installed and maintained at its sole cost and expense. Installation charges in connection with metering of utilities or provision of such services shall be Licensee's sole obligation.

23. **Signs:** Signs and other identification or informational notices on the Property shall require the prior written approval of D.C.K., which approval shall not be unreasonably withheld. No sign or similar installation shall be permitted on the Property unless Licensee demonstrates to D.C.K.'s reasonable satisfaction that same conforms to applicable legal requirements.

24. **Notices:** All correspondence, notices, acknowledgements, consents, approvals or other communications affecting the rights and/or obligations of Licensee or D.C.K. under this License shall be in writing and mailed by certified mail, return receipt requested, or hand delivered to Licensee at the Property. Service of any notice shall be deemed complete upon delivery or upon receipt of notice if acknowledged on the front thereof by any officer or employee of Licensee. Notices to D.C.K. shall be mailed by certified mail, return receipt requested to:

If to D.C.K.:

Director, Real Estate
4 Irving Place, Room 2115-S
New York, New York 10003
Telephone (212) 460-4069
Fax (212) 529-0582

With a copy to:

General Counsel, Law Department
Con Edison
4 Irving Place
New York, New York 10003
Telephone (212) 460-3192
Fax (212) 260-8627

If to Licensee:

David Avital
20 West 46th Street - Rm. 7
New York, NY 10036
Telephone (212)
Fax (212)

With a copy to:

Owen Wincig, Esq.
Wincig & Wincig
574 Fifth Avenue
New York, NY 10036
Telephone (212) 575-8333
Fax (212) 575-8525

In the event that Licensee cannot be served at the Property either by certified mail or personal delivery, service may be sent via certified mail or personally delivered to the Licensee at the following address:

MT.P 20W 46 St Apt 2, 600
NY NY 10036 or in the alternative
20W 46 St Apt 2 NYC 10036. Licensee will promptly notify D.C.K. of any change in primary or alternative address in writing.

25. Acceptance Of License: Licensee hereby accepts, assumes and agrees to perform all of the requirements of this License on the part of Licensee to be performed. Licensee's signature on this License shall be conclusive evidence of Licensee's representation.

26. Merger: All prior understandings and agreements between the parties are hereby merged into this License, which alone replaces and supersedes any and all prior understandings or agreements, written or oral, respecting Licensee's occupancy of the Property. No provision of this License shall be deemed to have been waived by D.C.K. unless Licensee is so notified by D.C.K. that D.C.K. agrees to such waiver. No change in this License shall become effective until signed by D.C.K. and delivered to Licensee.

27. D.C.K. Responsibility: Anything in this License to the contrary notwithstanding, nothing in this License shall be construed to relieve D.C.K. from responsibility to Licensee for any loss or damage caused Licensee wholly or in part by the negligent acts or omissions of D.C.K.; except, however, that in no event shall D.C.K. be responsible for such portion of such loss or damage which is recovered or recoverable from any insurance required by this License or for such portion of such loss or damage against which the Licensee or D.C.K. is or should be indemnified or insured under this License. This provision shall survive the expiration, revocation, cancellation or other termination of the License. Licensee shall notify D.C.K. of any damage or accident occurring on the Property within twenty-four (24) hours of any occurrence. Licensee may be required to file an "incident report" with D.C.K.

28. **Brokers:** D.C.K. and Licensee each respectively represent and warrant to each other that neither of them has dealt with any broker or finder in connection with this License ~~except the broker(s) or finder(s) identified in the brokerage agreements attached hereto and made a part hereof as Exhibit 1.~~ D.C.K. and Licensee will indemnify the other against and hold the other harmless against any and all actions, causes of action, claims, liabilities, suits, payment, demands, debts, dues, sums of money, accounts, bonds, bills, specialties, covenants, reckonings, contracts, controversies, agreements, promises, trespasses, variances, changes, judgments, executions and demands whatsoever, in law or equity including third party actions or claims by other brokers or finders arising out of, or in connection with the execution and delivery of this license, including attorney fees.

29. **Additional Insurance:** Licensee shall obtain Worker's Compensation and Employers Liability Insurance with Worker's compensation limits as required by the Labor Code of the State of New York and Employers Liability limits of \$500,000 per accident.

(a) If Licensee has or will have any automobiles on the Property, Licensee shall obtain automobile liability insurance with \$1,000,000 combined single limit per accident for bodily injury and property damage.

(b) Any deductibles or self-insured retentions must be declared to and approved by D.C.K.. At the option of D.C.K., either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects D.C.K., its officers, officials and employees; or the Licensee shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(c) All insurance policies shall be reasonably satisfactory in form and substance to D.C.K., shall be obtained from companies which are licensed to do business in the State of New York and shall name D.C.K. as an additional insured. Licensee shall also deliver to D.C.K., not less than ten (10) days prior to the expiration of any policy, an advice of renewal accompanied by evidence of payment of the premium.

(d) This License is granted on the further and express condition that all applicable laws now in force or which may hereafter be adopted regarding the Property or the conduct of any activity permitted hereunder shall be strictly complied with by Licensee at its sole cost and expense.

(e) Failure to maintain the insurance coverage required by this License shall be a default under this License.

30. **Insurance Requirements:** The attached "Insurance Requirements for Tenants/Occupants of D.C.K. Real Estate" are part of Exhibit B and shall be supplementary to, and not in lieu of paragraphs 10 and 29 hereof. In the event of a conflict or consistency between the provisions of Exhibit B and said paragraphs 10 and 29, the provisions of Exhibit B shall prevail.

179928

PERSONAL GUARANTY

WHEREAS, ~~Martha Gussner~~, residing at _____, (address)
and David Avital, residing at 20 W 46 St Apt 7 NY NY 10036, (address)

hereinafter referred to as the Guarantors, are desirous of a certain license agreement annexed hereto and made a part hereof, hereinafter referred to as the License; and

WHEREAS, the Guarantors on behalf of the licensee in the License, hereinafter referred to as "the Licensee", have requested D.C.K. Management Corp., hereinafter referred to as "D.C.K.", to issue the License to the Licensee; and

WHEREAS, D.C.K. is unwilling to enter into the License unless and until the Guarantors have executed this personal guaranty.

NOW THEREFORE, in consideration of D.C.K. issuing the License to the Licensee,

1. (a) The Guarantors unconditionally guarantee to D.C.K. the prompt payment of all charges under the License and the full and punctual performance and observance by the Licensee, of all terms, covenants and conditions in the License on the part of Licensee to be kept, performed or observed. This guarantee shall include any and all liability of Licensee which shall accrue under the License for any period preceding as well as any period following the term in the License and for any "holdover" period. The Guarantors hereby waive notice from D.C.K. of any breach or default by Licensee.

(b) If, at any time, D.C.K. notifies the Licensee that it has failed to perform or observe any of the terms, covenants and conditions of the License on the part of the Licensee to be performed or observed, the Guarantors will keep, perform and observe the same, as the case may be, in the place and stead of the Licensee.

(c) The Guarantors unconditionally guarantee to D.C.K. the full and punctual reimbursement of any and all costs and expenses incurred by D.C.K. as a result of the Licensee's acts or omissions, such as liabilities arising out of third-party actions and removal and disposal of any vehicles, property or equipment from the premises described in the License, hereinafter referred to as "the Property".

2. Any act of D.C.K. which may consist of or be construed as a waiver of any of the terms, covenants or conditions of the License, or D.C.K.'s consent to any manner or thing relating to the License, or the granting of any indulgences or extensions of time to the Licensee, shall not require any notice to the Guarantors and shall not release the obligations of the Guarantors hereunder.

3. The obligations of the Guarantors hereunder shall not be released by D.C.K.'s receipt, application or release of security given for the performance and observance of terms, covenants and conditions in the License; nor by any modification of the License, but in case of any such modification, the liability of the Guarantors shall be deemed modified in accordance with the terms of any such modification of the License. Notice to the Guarantors of such modifications shall not be required at any time.

4. The liabilities of the Guarantors hereunder shall in no way be affected by (a) the release or discharge of the Licensee in any creditors', receivership, bankruptcy or other proceedings, (b) the impairment, limitation or modification of the liability of the Licensee or the estate of the Licensee in bankruptcy, or of any remedy for the enforcement of the Licensee's said liability under the License, resulting from the operation of any present or future provision of the National Bankruptcy Act or other federal or state statute or from the decision in any court; (c) the rejection or disaffirmance of the License in any such proceedings; (d) the assignment or transfer of the License by the Licensee; (e) any disability or other defense of the Licensee; or (f) the cessation from any cause whatsoever of the liability of the Licensee.

5. Until all the terms, covenants and conditions in the License on the Licensee's part to be performed and observed are fully performed and observed, the Guarantors: (a) shall have no right of subrogation against the Licensee by reason of any payments or acts of performance by the Guarantors hereunder; (b) waives any right to enforce any remedy which the Guarantors now or hereafter shall have against the Licensee by reason of any one or more payment or acts of performance in compliance with the obligations of the Guarantors hereunder; and (c) subordinates any liability or indebtedness of the Licensee now or hereafter held by the Guarantors to the obligations of the Licensee to D.C.K. under the License.

6. This guarantee is a continuing guarantee and shall apply to the License, and any extension, reinstatement or renewal thereof.

7. This guarantee shall inure to the benefit of D.C.K., its successors and assigns and shall be binding upon the heirs, personal representatives, successors and assigns of the Guarantors.

8. This guarantee may not be changed, modified, discharged or terminated orally or in any manner other than by an agreement in writing signed by the Guarantors and D.C.K..

9. The obligations of the Guarantors hereunder are joint and several, and are independent of the obligations of the Licensee. Separate action or actions may be brought and prosecuted against Guarantors, or any of them, whether or not action is brought against Licensee and whether or not Licensee be joined in any such action or actions; and if and to the extent such a waiver is valid Guarantors waive the benefit of any statute of limitations affecting their liability hereunder or the enforcement thereof.

10. Upon Licensee's vacation of the Property, Guarantors may surrender the Property to D.C.K. in accordance with and in satisfaction of all the License provisions including, but not limited to all environmental and monetary provisions (to the date surrender is accepted by D.C.K., (the "effective date of surrender".) and in a condition reasonably satisfactory to D.C.K.. D.C.K.'s acceptance in writing of the surrender shall evidence the release of Guarantors of any further liability under this guaranty, including future license payments as of the effective date of the surrender. D.C.K. shall upon request execute the Form of Surrender attached hereto.

IN WITNESS WHEREOF, the Guarantors have hereunto set their hands and seals
this 22 day of December 1998.

GUARANTORS:

By: _____
Martin Gomer

By: _____
David Avital

Witness

Witness

179928

M.T.P. 59 ST. LLC
M.T.P. INVESTMENT GROUP
20 W. 46TH ST. #600
NEW YORK, NY 10036

1639

1-12/210 0009

DATE 12/22/98

PAY
TO THE
ORDER OF D.C.K. MANAGEMENT CORP.

\$ 38,929 ³³/₁₀₀

Thirty eight thousand nine hundred twenty nine dollars ³³/₁₀₀

DOLLARS

CHASE BANK
510 FIFTH AVENUE
NEW YORK, NY 10036

MARTY'S W. 53RD STREET PARKING, INC d/b/a S & N PARKING
FOR Additional Securing Deposit Prop. 405-429 West 53RD ST.

Remelt Andre

⑈001639⑈ ⑆021000128⑆1987001506665⑈

M.T.P. 59 ST. LLC
M.T.P. INVESTMENT GROUP
20 W. 46TH ST. #600
NEW YORK, NY 10036

1640

1-12/210 0009

DATE 12/22/98

PAY
TO THE
ORDER OF D.C.K. MANAGEMENT CORP.

\$ 13,413 ⁹⁷/₁₀₀

Thirteen thousand four hundred thirteen dollars ⁹⁷/₁₀₀

DOLLARS

CHASE BANK
510 FIFTH AVENUE
NEW YORK, NY 10036

FOR Side walk violation 405-429 W 53RD ST NY NY 1

Remelt Andre

⑈001640⑈ ⑆021000128⑆1987001506665⑈

M.T.P. 59 ST. LLC
M.T.P. INVESTMENT GROUP
20 W. 46TH ST. #600
NEW YORK, NY 10036

1641

1-12/210 0009

DATE 12/22/98

PAY
TO THE
ORDER OF D.C.K. MANAGEMENT CORP.

\$ 7,541 ^{xx}/₁₀₀

Seven thousand five hundred forty one dollars ^{xx}/₁₀₀

DOLLARS

CHASE BANK
510 FIFTH AVENUE
NEW YORK, NY 10036

FOR FIRST MONTH INSTALLMENT JANUARY -99

Remelt Andre

⑈001641⑈ ⑆021000128⑆1987001506665⑈



conEdison
a conEdison, Inc. company

Robert P. Stelben
Vice President

February 8, 2005

Marty's W. 53rd Street Parking, Inc.
d/b/a S & N Parking
423 West 53rd Street
New York, New York 10019
Attn: David Avital

Wincig & Wincig
574 Fifth Avenue
New York, New York 10036
Attn: Owen Wincig, Esq.

Marty's West 53rd Street Parking, Inc.
Division of S & N. Parking
413-427 West 53rd Street
New York, New York 10019

Marty's Parking MTP Operating Corp.
c/o David Avital
20 West 46th Street, Suite #600
New York, New York 10036

Marty's West 53rd Street Parking, Inc.
d/b/a S & N Parking
405-429 West 53rd Street
New York, New York 10019

Mr. Martin Gummer, President
S. & N. Parking
423 West 53rd Street
New York, New York 10019

J. DOE, and to any and all occupants,
persons or entities occupying the
"Property"
as hereinafter more fully described
405-429 West 53rd Street
New York, NY 10019

David Avital
20 West 46th Street, Room 7
New York, New York 10036

XYZ Corp., and to any and all occupants,
persons or entities occupying the
"Property"
as hereinafter more fully described
405-429 West 53rd Street
New York, NY 10019

MTP
20 West 46th Street, Suite #600
New York, New York 10036

Re: Termination of License to Occupy Vacant Land

Dear Sirs:

On January 1, 1999, D.C.K. Management Corp ("DCK"), a wholly owned subsidiary of Consolidated Edison Company of New York, Inc., entered into a license with Marty's W. 53rd Street Parking, Inc. ("Licensee"). A copy of the license is attached

EXHIBIT I
(Termination Notice)

February 8, 2005

to this letter. The license permits Licensee to occupy approximately 38,500 square feet of vacant land located at 405-429 West 53rd Street in Manhattan, as further identified on the attached Schedule A (the "Property") for the "sole and limited purpose of providing short-term parking" for a term expiring on December 31, 2008. Paragraph 3 of the license further states that "Licensee's occupancy of the Property pursuant to the License is at the pleasure of D.C.K., subject to at least a one (1) year notice of cancellation for any reason except for the sole purpose of obtaining increased annual license fees from a similarly situated competing public parking lot operator in which event the License may not be cancelled."

Please take notice that DCK elects to terminate your license and occupancy of the Property for the reason that the Property is being marketed for sale. This letter is to provide you and any and all occupants, persons or entities occupying the Property one-year notice of the cancellation of the license. The license shall terminate on April 30, 2006 without further action being required by DCK.¹ Please take further notice that unless you remove yourself, and any and all occupants, persons, entities and possessions from the Property on or before April 30, 2006, the day on which your license expires, that being more than one year from the date of service of this notice upon you, DCK will commence summary proceedings or an action to remove you, and any and all occupants, persons or entities from the Property for the holding over after the expiration of your term and will demand the reasonable fair market value of your use and occupancy of the Property during such holding over, and any other legal and equitable remedies available to DCK.

Please contact me should you have any questions regarding this notice of cancellation of the subject license.

Very truly yours,



251808-v1

¹ Please note that while an earlier termination notice was sent calling for a termination date of February 28, 2006, due to an error in the mailing, DCK has elected to re-serve you with the termination notice and cause the license to terminate on April 30, 2006.

2/14/05
out
certified

7002 2030 0000 6525 4280

7002 2030 0000 1

U.S. Postal Service CERTIFIED MAIL RECEIPT <small>(Domestic Mail Only - No Insurance Coverage Provided)</small>		Postage Certified Fee Return Receipt Fee Restricted Delivery Fee Total Postage & Fees	1.25 230 175 557	Sent To I, Doe, and to any and all occupants, persons or entities occupying the "Property" as hereinafter more fully described 405-429 West 53rd Street New York, New York 10019	Sent To Return Receipt Fee Restricted Delivery Fee Total Postage & Fees	1.25 230 175 557
McGraw-Hill Construction Information Group 1221 Avenue of the Americas New York, NY 10020-1396		Postmark Here		Postmark Here		

7002 2030 0000 6525 4254

7002 2030 0000

U.S. Postal Service CERTIFIED MAIL RECEIPT <small>(Domestic Mail Only - No Insurance Coverage Provided)</small>		Postage Certified Fee Return Receipt Fee Restricted Delivery Fee Total Postage & Fees	1.25 230 175 557	Sent To I, Doe, and to any and all occupants, persons or entities occupying the "Property" as hereinafter more fully described 20 West 46th Street Suite 600 New York, New York 10036	Sent To Return Receipt Fee Restricted Delivery Fee Total Postage & Fees	1.25 230 175 557
Wincig & Wincig 574 Fifth Avenue New York, New York 10016 Attention: Owen Wincig, Esq.		Postmark Here		Postmark Here		

PART I — PROJECT INFORMATION

Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

NAME OF ACTION 405 West 53rd Street		
LOCATION OF ACTION (INCLUDE STREET ADDRESS, MUNICIPALITY AND COUNTY) 405-427 West 53rd Street, New York, New York		
NAME OF APPLICANT/SPONSOR 405 West 53rd Development Group, LLC Contact: Mario Procida, Manager		BUSINESS TELEPHONE (718) 299-7000
ADDRESS 456 East 173rd Street		
CITY/PO Bronx	STATE NY	ZIP CODE 10457
NAME OF OWNER (IF DIFFERENT)		BUSINESS TELEPHONE ()
ADDRESS		
CITY/PO	STATE	ZIP CODE
DESCRIPTION OF ACTION The proposed action would result in the construction of a 7-story, 83-unit residential building on the project site at 405-427 West 53rd Street between Ninth and Tenth Avenues in Manhattan (Block 1063, Lot 17) (see Figure 1). The project may also include a 180-space public parking garage in the subcellar of the new building. The project site is currently occupied by a 225 space public parking lot. The project site is currently owned by D.C.K. Management Corp., a wholly owned subsidiary of Consolidated Edison Company of New York, Inc. (Con Edison) and is leased to the parking facility operator. The transfer of the project site from Con Edison to the developer, 405 West 53rd Development Group, LLC, would require review and approval by the New York State Public Service Commission (PSC), pursuant to Section 70 of Public Service Law. The public parking garage would require a special permit from the New York City Planning Commission (CPC) pursuant to Section 74-52 of the New York City Zoning Resolution.		

Please Complete Each Question—Indicate N.A. if not applicable

A. Site Description

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: ☒ Urban ☐ Industrial ☐ Commercial ☐ Residential (suburban) ☐ Rural (non-farm)
☐ Forest ☐ Agriculture ☐ Other

2. Total acreage of project area:	34,780 sf (0.79)	acres.	PRESENTLY	AFTER COMPLETION
APPROXIMATE ACREAGE				
Meadow or Brushland (Non-agricultural)			_____ acres	_____ acres
Forested			_____ acres	_____ acres
Agricultural (Includes orchards, cropland, pasture, etc.)			_____ acres	_____ acres
Wetland (Freshwater or tidal as per Articles 24, 25 of ECL)			_____ acres	_____ acres
Water Surface Area			_____ acres	_____ acres
Unvegetated (Rock, earth or fill)			_____ acres	_____ acres
Roads, buildings and other paved surfaces			0.79 acres	0.79 acres
Other (Indicate type) _____			_____ acres	_____ acres

3. What is predominant soil type(s) on the project site? _____ N/A, the site is currently paved

- a. Soil drainage: ☐ Well drained _____ % of site ☐ Moderately well drained _____ % of site.
☐ Poorly drained _____ % of site

- b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? _____ Acres (see 1NYCRR 370)

4. Are there bedrock outcroppings on project site? ☐ Yes ☒ No

March 31, 2006



- Project Site Boundary
- - - Study Area Boundary (400-Foot Perimeter)

0 100 200 FEET
SCALE

- What is the depth to bedrock? (in feet) 8 to 16 feet
5. Approximate percentage of proposed project site with slopes: ☒ 0-10% 100 % ☐ 10-15% _____ %
☐ 15% or greater _____ %
6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? ☐ Yes ☒ No
7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? ☐ Yes ☒ No
8. What is the depth of the water table? _____ (in feet)
9. Is site located over a primary, principal, or sole source aquifer? ☐ Yes ☒ No
10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? ☐ Yes ☒ No
11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? ☐ Yes ☒ No
- According to: _____
- Identify each species: _____
12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes or other geological formations?) ☐ Yes ☒ No
- Describe: _____
13. Is the project site presently used by the community or neighborhood as an open space or recreation area? ☐ Yes ☒ No
- If yes, explain: _____
14. Does the present site include scenic views known to be important to the community? ☐ Yes ☒ No
15. Streams within or contiguous to project area? N/A
- a. Name of Stream and name of River to which it is tributary: _____
16. Lakes, ponds, wetland areas within or contiguous to project area: N/A
- a. Name: _____
- b. Size (in acres): _____
17. Is the site served by existing public utilities? ☒ Yes ☐ No
- a. If YES, does sufficient capacity exist to allow connection? ☒ Yes ☐ No
- b. If YES, will improvements be necessary to allow connection? ☐ Yes ☒ No
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? ☐ Yes ☒ No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? ☐ Yes ☒ No
20. Has the site ever been used for the disposal of solid or hazardous waste? ☐ Yes ☒ No

B. Project Description

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor 0.79 acres.
- b. Project acreage to be developed: 0.79 acres initially; _____ acres ultimately.
- c. Project acreage to remain undeveloped 0 acres.
- d. Length of project, in miles: N/A (If appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed N/A %
- f. Number of off-street parking spaces existing 225 ; proposed 0
- g. Maximum vehicular trips generated per hour 6 for the residential uses (upon completion of project)?
- h. If residential: Number and type of housing units? 83 Units in a 7-story building

	One Family	Two Family	Multiple Family	Condominium
Initially				
Ultimately				

- i. Dimensions (in feet) of largest proposed structure ±66 height; ±90-175 width; ±300 length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? ±300 ft. On West 53rd Street
2. How much natural material (i.e., rock, earth, etc.) will be removed from the site? ±11,000 cubic yards.
3. Will disturbed areas be reclaimed? ☒ N/A ☐ Yes ☐ No
- a. If yes, for what intended purpose is the site being reclaimed? _____
- b. Will topsoil be stockpiled for reclamation? ☐ Yes ☐ No
- c. Will upper subsoil be stockpiled for reclamation? ☐ Yes ☐ No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? N/A acres.
5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project? ☐ Yes ☒ No
6. If single phase project: Anticipated period of construction 24 months, (including demolition)
7. If multi-phased:
- a. Total number of phases anticipated _____ (number)
- b. Anticipated date of commencement phase 1 _____ month _____ year, including (demolition)
- c. Approximate completion date of final phase _____ month _____ year.
- d. Is phase 1 functionally dependent of subsequent phases? ☐ Yes ☐ No
8. Will blasting occur during construction? [TO BE DETERMINED] ☐ Yes ☐ No
9. Number of jobs generated: during construction ±100 ; after project is complete Up to 10¹
10. Number of jobs eliminated by this project ±5
11. Will project require relocation of any projects or facilities? ☐ Yes ☒ No
- If yes, explain: _____
12. Is surface liquid waste disposal involved? ☐ Yes ☒ No
- a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____
- b. Name of water body into which effluent will be discharged _____
13. Is subsurface liquid waste disposal involved? Type _____ ☐ Yes ☒ No
14. Will surface area of an existing water body increase or decrease by proposal? ☐ Yes ☒ No
- If yes, explain: _____
15. Is project or any portion of project located in a 100 year flood plain? ☐ Yes ☒ No
16. Will the project generate solid waste? ☒ Yes ☐ No
- a. If yes, what is the amount per month? 8 tons
- b. If yes, will an existing solid waste facility be used? ☒ Yes ☐ No
- c. If yes, give name The New York City Department of Sanitation would handle the project's residential refuse. ; location _____
- d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? ☐ Yes ☒ No

¹ * based on 1 employee per 22 dwelling units and approximately 5 parking garage employees

e. If yes, explain: _____

17. Will the project involve the disposal of solid waste? ☐ Yes ☒ No
a. If yes, what is the anticipated rate of disposal? _____ tons/month
b. If yes, what is the anticipated site life? _____ years
18. Will project use herbicides or pesticides? ☐ Yes ☒ No
19. Will project routinely produce odors (more than one hour per day)? ☐ Yes ☒ No
20. Will project produce operating noise exceeding the local ambient noise levels? ☐ Yes ☒ No
21. Will project result in an increase in energy use? ☒ Yes ☐ No

If yes, indicate type(s): The project site would be served by local energy suppliers.

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute
23. Total anticipated water usage per day 17,428 gallons/day
24. Does project involve Local, State, or Federal funding? ☐ Yes ☒ No

If yes, explain: _____

25. Approvals Required:

			Type	Submittal Date
City, Town, Village Board	<input type="checkbox"/> Yes	<input type="checkbox"/> No	_____	_____
City, Town, Village Planning Board	<input type="checkbox"/> Yes	<input type="checkbox"/> No	_____	_____
City, Town, Village Zoning Board	<input type="checkbox"/> Yes	<input type="checkbox"/> No	_____	_____
City, County Health Department	<input type="checkbox"/> Yes	<input type="checkbox"/> No	_____	_____
Other Local Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>(Please see attached.)</u>	_____
Other Regional Agencies	<input type="checkbox"/> Yes	<input type="checkbox"/> No	_____	_____
State Agencies	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>(Please see attached.)</u>	_____
Federal Agencies	<input type="checkbox"/> Yes	<input type="checkbox"/> No	_____	_____

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? ☒ Yes ☐ No
If Yes, indicate decision required:
☐ Zoning amendment ☐ Zoning variance ☐ New/revision of master plan ☐ Subdivision
☐ Site plan ☐ Special use permit ☐ Resource management plan ☒ Other See above
2. What is the zoning classification(s) of the site? C6-2 within the Special Clinton District
3. What is the maximum potential development of the site if developed as permitted by the present zoning?
34,780 square feet x 4.2 FAR = 146,076 zsf residential and commercial
4. What is the proposed zoning of the site? No zoning change is requested
5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?
No zoning change is requested
6. Is the proposed action consistent with the recommended uses in adopted local land use plans? ☒ Yes ☐ No
7. What are the predominant land use(s) and zoning classifications within a ¼-mile radius of proposed action?
Residential, retail, studio, school, commercial, automotive uses.
8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? ☒ Yes ☐ No
9. If the proposed action is the subdivision of land, how many lots are proposed? N/A
a. What is the minimum lot size proposed? _____
10. Will the proposed action require authorization(s) for the formation of sewer or water districts? ☐ Yes ☒ No
11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)? ☒ Yes ☐ No
a. If yes, is existing capacity sufficient to handle projected demand? ☒ Yes ☐ No
12. Will the proposed action result in the generation of traffic significantly above present levels? ☐ Yes ☒ No
a. If yes, is the existing road network adequate to handle the additional traffic? ☐ Yes ☐ No

B. Project Description

25. Approvals Required:

Other Local Agencies:

Should the applicant pursue a public parking garage, a special permit from the New York City Planning Commission under Section 74-52 of the New York City Zoning Resolution would be required.

State Agencies:

New York State Public Service Commission review and approval of the transfer of the project site from the Consolidated Edison Company of New York, Inc. to 405 West 53rd Development Group, LLC pursuant to Section 70 of the Public Service Law.

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be an adverse impacts associated with your proposal, please discuss such impacts and the measures which you proposed to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name

MARIO PROCIDA

Date

3/30/06

Signature

[Signature]

Title

MANAGER

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

Part 2 - PROJECT IMPACTS AND THEIR MAGNITUDE

Responsibility of Lead Agency

General Information (Read Carefully)

In completing the form the reviewer should be guided by the question: Have my responses and determinations been **reasonable**? The reviewer is not expected to be an expert environmental analyst.

The **Examples** provided are to assist the reviewer by showing types of impacts and wherever possible the threshold of magnitude that would trigger a response in column 2. The examples are generally applicable throughout the State and for most situations. But, for any specific project or site other examples and/or lower thresholds may be appropriate for a Potential Large Impact response, thus requiring evaluation in Part 3.

The impacts of each project, on each site, in each locality, will vary. Therefore, the examples are illustrative and have been offered as guidance. They do not constitute an exhaustive list of impacts and thresholds to answer each question.

The number of examples per question does not indicate the importance of each question.

In identifying impacts, consider long term, short term and cumulative effects.

Instructions (Read Carefully)

- Answer each of the 20 questions in PART 2. Answer **Yes** if there will be **any** impact.
- Maybe** answers should be considered as **Yes** answers.
- If answering **Yes** to a question, then check the appropriate box (column 1 or 2) to indicate the potential size of the impact. If impact threshold equals or exceeds any example provided, check column 2. If impact will occur but threshold is lower than example, check column 1.
- Identifying that an Impact will be potentially large (column 2) does not mean that it is also necessarily **significant**. Any large impact must be evaluated in PART 3 to determine significance. Identifying an impact in column 2 simply asks that it be looked at further.
- If a reviewer has doubt about size of the impact then consider the impact as potentially large and proceed to PART 3.
- If a potentially large impact checked in column 2 can be mitigated by change(s) in the project to a small to moderate impact, also check the **Yes** box in column 3. A **No** response indicates that such a reduction is not possible. This must be explained in PART 3.

IMPACT ON LAND

1. Will the Proposed Action result in a physical change to the project site? ☐ NO ☒ YES

Examples that would apply to column 2

Any construction on slopes of 15% or greater, (15 foot rise per 100 foot of length), or where the general slopes in the project area exceed 10%.

Construction on land where the depth to the water table is less than 3 feet.

Construction of paved parking area for 1,000 or more vehicles.

Construction on land where bedrock is exposed or generally within 3 feet of existing ground surface.

Construction that will continue for more than 1 year or involve more than one phase or stage.

Excavation for mining purposes that would remove more than 1,000 tons of natural material (i.e., rock or soil) per year.

Construction or expansion of a sanitary landfill.

Construction in a designated floodway.

Other impacts See Attachment A, "Land Use, Zoning, and Public Policy"

2. Will there be an effect to any unique or unusual land forms found on the site? (i.e., cliffs, dunes, geological) ☒ NO ☐ YES

Other impacts

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact be Mitigated by Project Change
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

3. Will Proposed Action affect any water body designated? (Under Articles 15, 24, 25 of the Environmental Conservation Law, ECL) ☒ NO ☐ YES

Developable area of site contains a protected water body.

Dredging more than 100 cubic yards of material from channel of a protected stream.

■ **Extension of utility distribution facilities through a protected water body.**

Construction in a designated freshwater or tidal wetland.

Other impacts

4. Will Proposed Action affect any non-protected existing or new body of water? ☒ NO ☐ YES

Examples that would apply to column 2

10% increase or decrease in the surface area of any body of water or more than a 10-acre increase or decrease.

Construction of a body of water that exceeds 10 acres of surface area.

Other impacts

5. Will Proposed Action affect surface or ground water quality or quantity? ☒ NO ☐ YES

Examples that would apply to column 2

Proposed Action will require a discharge permit.

Proposed Action requires use of a source of water that does not have approval to serve proposed (project) action.

Proposed Action requires water supply from wells with greater than 45 gallons per minute pumping capacity.

Construction or operation causing any contamination of a water supply system.

Proposed Action will adversely affect groundwater.

Liquid effluent will be conveyed off the site to facilities which presently do not exist or have inadequate capacity.

Proposed Action would use water in excess of 20,000 gallons per day.

Proposed Action will likely cause siltation or other discharge into an existing body of water to the extent that there will be an obvious visual contrast to natural conditions.

Proposed Action will require the storage of petroleum or chemical products greater than 1,100 gallons.

Proposed Action will allow residential uses in areas without water and/or sewer services.

Proposed Action locates commercial and/or industrial uses which may require new or expansion of existing waste treatment and/or storage facilities.

Other impacts

[illegible]

- ☒ NO ☐ YES

Proposed Action would change flood water flows.

Proposed Action may cause substantial erosion.

Proposed Action is incompatible with existing drainage patterns.

Proposed Action will allow development in a designated floodway.

Other impacts

7. Will Proposed Action affect air quality? ☒ NO ☐ YES

Proposed Action will induce 1,000 or more vehicle trips in any given hour.

Proposed Action will result in the incineration of more than 1 ton of refuse per hour.

Emission rate of total contaminants will exceed 5 lbs. Per hour or a heat source producing more than 10 million BTU's per hour.

Proposed Action will allow an increase in the amount of land committed to industrial use.

Proposed Action will allow an increase in the density of industrial development within existing industrial areas.

Other impacts See Attachment E, "Air Quality"

8. Will Proposed Action affect threatened or endangered species? ☒ NO ☐ YES

Reduction of one or more species listed on the New York or Federal list, using the site, over or near the site, or found on the site.

Removal or any portion of a critical or significant wildlife habitat.

Application of pesticide or herbicide more than twice a year, other than for agricultural purposes.

Other impacts

- ☒ NO ☐ YES

Proposed Action would substantially interfere with any resident or migratory fish, shellfish, or wildlife species.

Proposed Action requires the removal of more than 10 acres of mature forest (over 100 years of age) or other locally important vegetation.

Other impacts

10. Will Proposed Action affect agricultural land resources? ☒ NO ☐ YES

The Proposed Action would sever, cross or limit access to agricultural land (includes cropland, hayfields, pasture, vineyard, orchard, etc.)

Construction activity would excavate or compact the soil profile of agricultural land.

The Proposed Action would irreversibly convert more than 10 acres of agricultural land or, if located in an Agricultural District, more than 2.5 acres of agricultural land.

The Proposed Action would disrupt or prevent installation of agricultural land management systems (e.g. subsurface drain lines, outlet ditches, strip cropping) or create a need for such measures (e.g. cause a farm field to drain poorly due to increased runoff).

Other impacts

1 Small to Moderate Impact	2 Potential Large Impact	3 Can Impact be Mitigated by Project Change
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
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<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> YES <input type="checkbox"/> NO

IMPACT ON AESTHETIC RESOURCES

11. Will Proposed Action affect aesthetic resources? (If necessary, use the Visual EAR Addendum Section 617.20, Appendix B.) ☒ NO ☐ YES

Examples that would apply to column 2

- Proposed land uses, or project components obviously different from or in sharp contrast to current surrounding land use patterns, whether man-made or natural.
Proposed land uses, project components visible to users of aesthetic resources which will eliminate or significantly reduce their enjoyment of the aesthetic qualities of that resource.
Project components that will result in the elimination or significant screening of scenic views known to be important to the area.

Other impacts

1
Small to
Moderate
Impact

- ☐
☐
☐
☐

2
Potential
Large
Impact

- ☐
☐
☐
☐

3
Can Impact be
Mitigated by Project
Change

- ☐ YES ☐ NO
☐ YES ☐ NO
☐ YES ☐ NO
☐ YES ☐ NO

IMPACT ON HISTORIC AND ARCHEOLOGICAL RESOURCES

12. Will Proposed Action impact any site or structure of historic, prehistoric or paleontological importance? ☒ NO ☐ YES

Examples that would apply to column 2

- Proposed Action occurring wholly or partially within or substantially contiguous to any facility or site listed on the State or National Register of Historic places.
Any impact to an archeological site or fossil bed located within the project site.
Proposed Action will occur in an area designated as sensitive for archeological sites on the NYS Site Inventory.

Other impacts See Attachment B, "Historic Resources"

- ☐
☐
☐
☐

- ☐
☐
☐
☐

- ☐ YES ☐ NO
☐ YES ☐ NO
☐ YES ☐ NO
☐ YES ☐ NO

IMPACT ON OPEN SPACE AND RECREATION

13. Will Proposed Action affect the quantity or quality of existing or future open spaces or recreational opportunities? ☒ NO ☐ YES

Examples that would apply to column 2

- The permanent foreclosure of a future recreational opportunity.
A major reduction of an open space important to the community.

Other impacts

- ☐
☐
☐

- ☐
☐
☐

- ☐ YES ☐ NO
☐ YES ☐ NO
☐ YES ☐ NO

IMPACT ON PUBLIC HEALTH

18. Will Proposed Action affect public health and safety? ☒ NO ☐ YES

Examples that would apply to column 2

Proposed Action may cause a risk of explosion or release of hazardous substances (i.e. oil, pesticides, chemicals, radiation, etc.) in the event of accident or upset conditions, or there may be a chronic low level discharge or emission.

Proposed Action may result in the burial of "hazardous wastes" in any form (i.e. toxic, poisonous, highly reactive, radioactive, irritating, infectious, etc.)

Storage facilities for one million or more gallons of liquefied natural gas or other flammable liquids.

Proposed Action may result in the excavation or other disturbance within 2,000 feet of a site used for the disposal of solid or hazardous waste.

Other impacts

IMPACT ON GROWTH AND CHARACTER OF COMMUNITY OR NEIGHBORHOOD

19. Will Proposed Action affect the character of the existing community? ☒ NO ☐ YES

Examples that would apply to column 2

The permanent population of the city, town or village in which the project is located is likely to grow by more than 5%.

The municipal budget for capital expenditures or operating services will increase by more than 5% per year as a result of this project.

Proposed Action will conflict with officially adopted plans or goals.

Proposed Action will cause a change in the density of land use.

Proposed Action will replace or eliminate existing facilities, structures or areas of historic importance to the community.

Development will create a demand for additional community services (e.g. schools, police and fire, etc.)

Proposed Action will set an important precedent for future projects.

Proposed Action will create or eliminate employment.

Other impacts

20 Is there, or is there likely to be, public controversy related to potential adverse environmental impacts?

☒ NO ☐ YES

If Any Action in Part 2 is identified as a Potential Large Impact or If you Cannot Determine the Magnitude of Impact, Proceed to Part 3

PROJECT DESCRIPTION

The proposed action would result in the construction of a 7-story, 83-unit residential building on the project site at 405-427 West 53rd Street between Ninth and Tenth Avenues in Manhattan (Block 1063, Lot 17). The project may also include a 180-space public parking garage in the subcellar of the new building. The project site is currently occupied by a 225-space public parking lot.

The project site is currently owned by D.C.K. Management Corp., a wholly owned subsidiary of Consolidated Edison Company of New York, Inc. (Con Edison) and is leased to the parking facility operator. The transfer of the project site from Con Edison to the developer, 405 West 53rd Development Group, LLC, would require review and approval by the New York State Public Service Commission (PSC), pursuant to Section 70 of the Public Service Law. Should a 180-space public parking garage be included in the building, it would require a special permit from the New York City Planning Commission (CPC) pursuant to Section 74-52 of the New York City Zoning Resolution.

For the purposes of this EAF, the following analyses consider the potential environmental effects of the proposed action without and with a 180-space public parking garage based on methodologies set forth in the 2001 *City Environmental Quality Review (CEQR) Technical Manual*.

LAND USE, ZONING, AND PUBLIC POLICY

See Attachment A, "Land Use, Zoning, and Public Policy."

SOCIOECONOMIC CONDITIONS

The *CEQR Technical Manual* specifies that a socioeconomic assessment should be conducted if an action would result in development that would directly or indirectly change an area's population, housing stock, or economic activities or if an action would result in development that is markedly different from existing uses or economic activities in the community. Residential development of 200 units or less would typically not result in significant socioeconomic impacts.

The proposed action would result in the construction of 83 residential units. The project may also include public parking. The project is consistent with development trends in the study area; the project block includes residential, ground-floor retail, and studio uses. This is below the *CEQR Technical Manual* threshold of 200 units requiring a detailed analysis of socioeconomic conditions, and the proposed action is not expected to result in any significant adverse impacts on the socioeconomic character of the surrounding community.

COMMUNITY FACILITIES AND SERVICES

The *CEQR Technical Manual* specifies actions that would add fewer than 100 residential units to an area generally do not need to consider community facilities and services unless the proposed action would have a direct effect on a community facility. The proposed action would result in the construction of 83 residential units and may include a public parking garage on a site that is currently developed with a public parking lot. Therefore, a detailed analysis of community facilities and services is not required, and the proposed action is not expected to result in any significant adverse impacts to community facilities and services.

OPEN SPACE

Open space is defined as publicly or privately owned land that has been designated for leisure, play, or sport, or land set aside for the protection and/or enhancement of the natural environment. The proposed action will not result in any direct adverse impact on open space as it will not cause physical loss, change of use, public access limitation, or shadows that would diminish the usefulness of open spaces. The proposed action would add fewer than 200 residents or 500 employees to the study area, the *CEQR Technical Manual* threshold requiring a detailed open space assessment. Therefore, a detailed assessment of open space is not required, and the proposed action is not expected to result in any significant adverse impacts to open space.

SHADOWS

Following the guidelines of the *CEQR Technical Manual*, a screening analysis was performed to determine whether the proposed project would cast any new shadows on public open spaces or on historic resources with elements that are enhanced by sunlight (such as historic landscapes or stained glass windows). As noted in the *CEQR Technical Manual*, the longest shadow that can be cast by a given building at any time of year is 4.3 times the height of that building. Shadows this long are cast early in the morning and late in the afternoon on December 21; at all other times during the year, shadows are shorter. Therefore, the longest shadows that could be cast at any time of year from the proposed 66 foot high building would be 284 feet long. There are no public open spaces or historic resources with sun-sensitive elements within 284 feet of the project site. Therefore, the project would not cast any new shadows on such resources, and no further analysis is necessary. The project would not result in any significant adverse impacts to shadows.

HISTORIC RESOURCES

See Attachment B, "Historic Resources."

URBAN DESIGN AND VISUAL RESOURCES

An assessment of potential impacts to urban design is generally considered appropriate if an action would result in structures that are substantially different in height, bulk, form, setbacks, size, scale, use, or arrangement from those that already exist or if the action would change the form, arrangement, or use of blocks and streets to interrupt the general pattern of an area or jeopardize the consistency of street walls, curb cuts, pedestrian flow, or other streetscape elements. A visual resources assessment is generally appropriate when above-ground construction would limit or alter existing view corridors.

The proposed project would replace the existing public parking facility on the project site with a 7-story residential building. With a height of approximately 66 feet, the proposed building would be consistent with the height, scale, and bulk of surrounding buildings. The proposed building's façade would consist of large, glass display windows on the ground floor, open balconies on the western edge of the building, three bays of stepped glass, and nine bays of projecting glass. The proposed project would not block any existing view corridors. Therefore, no further assessment of urban design and visual resources is considered necessary, and the proposed project would not result in significant adverse impacts to the urban design of the surrounding area.

NEIGHBORHOOD CHARACTER

Neighborhood character is considered to be an amalgam of the various elements that define a community's distinct personality. These elements include land use, urban design, visual and

historic resources, socioeconomics, traffic, air quality, and noise. The proposed residential use of the project site would be consistent with current trends in this area.

As described elsewhere in this EAF, the action would not result in any significant adverse impacts to socioeconomic conditions, historic resources, urban design and visual resources, traffic, air quality, or noise. The proposed action would result in the replacement of a public parking facility use with a continuation of the residential redevelopment occurring throughout the neighborhood. Therefore, no further analysis of neighborhood character is required, and the proposed action would not result in significant adverse impacts to the quality or character of the neighborhood.

NATURAL RESOURCES

The project site is located in a fully developed part of Manhattan, and no natural resources are known to be present on this site. Therefore, no further analysis is required and the proposed action would not result in any significant adverse impacts to natural resources.

HAZARDOUS MATERIALS

See Attachment C, "Hazardous Materials."

WATERFRONT REVITALIZATION PROGRAM

The project site is not located within the New York City Coastal Zone boundaries; therefore a the proposed action need not be evaluated for consistency with the New York City Waterfront Revitalization Program.

INFRASTRUCTURE

WATER SUPPLY

Applying the water usage rates presented in the *CEQR Technical Manual* of 112 gallons per day (gpd) per resident, the added user population would generate an estimated demand for approximately 18,000 gpd of water for consumption. This usage represents a very small addition to the approximately 1.4 billion gallons per day of water consumed Citywide. Therefore, the proposed action would not result in any significant adverse impacts to the City's water supply.

SEWAGE

Wastewater and sewage generated by the proposed project would be treated by the North River Water Pollution Control Plant (WPCP). This plant has a permitted dry weather capacity of 170 million gallons per day (mgd). For the 12-month period ending in July 2005, the plant processed an actual flow of 129 mgd, which is well below its permitted limit of 170 mgd. Conservatively assuming that all water consumed on-site is deposited for treatment, the proposed action would generate an additional demand for approximately 18,000 gpd of wastewater. This represents a small addition to the daily flows at the North River WPCP, and the overall capacity would be maintained below its permitted limit. Therefore, the proposed action would not result in any significant adverse impacts to wastewater and sewage treatment.

SOLID WASTE AND SANITATION SERVICES

The *CEQR Technical Manual* specifies that actions that generate less than 10,000 pounds of solid waste per week should not be considered to have significant adverse impacts to the collection or deposit of solid waste. Assuming a generation rate of 41 pounds per week per household (as recommended in the *CEQR Technical Manual*), the proposed action would generate approximately 3,000 pounds per week of solid waste. This amount of solid waste would

not overburden the City's solid waste disposal capacities, and no significant adverse impacts are expected.

ENERGY

The proposed building would contain primarily residential space and would have an estimated electrical demand of approximately 700 kW (0.7 MW), assuming gas for heating, cooking, and hot water, and electric for cooling. This demand would be supplied by Con Edison and fed from its Columbus Circle Network. The proposed building would be constructed near existing Con Edison distribution facilities that would be the source of supply for this building.

To supply the proposed building, three new 120/208-volt, 1,000-kva transformer vaults, one single bus compartment and one service take off would be required. The service take off would consist of 10 sets of 4-500 service cables. To facilitate construction of this installation, a sidewalk excavation of approximately 55 feet in length by 7 feet in width would be required. In addition, primary feeders would be extended from existing manholes to the transformer vaults, which involve roadway excavation. The point of service entry would be on West 53rd Street between Ninth and Tenth Avenues. Con Edison regularly performs such construction activities in the streets and sidewalks of Manhattan in accordance with permits issued by the New York City Department of Transportation (which imposes various conditions and stipulations designed to minimize impacts on access to adjacent buildings, traffic, and noise). Accordingly, such construction activities are not considered to have significant adverse impacts.

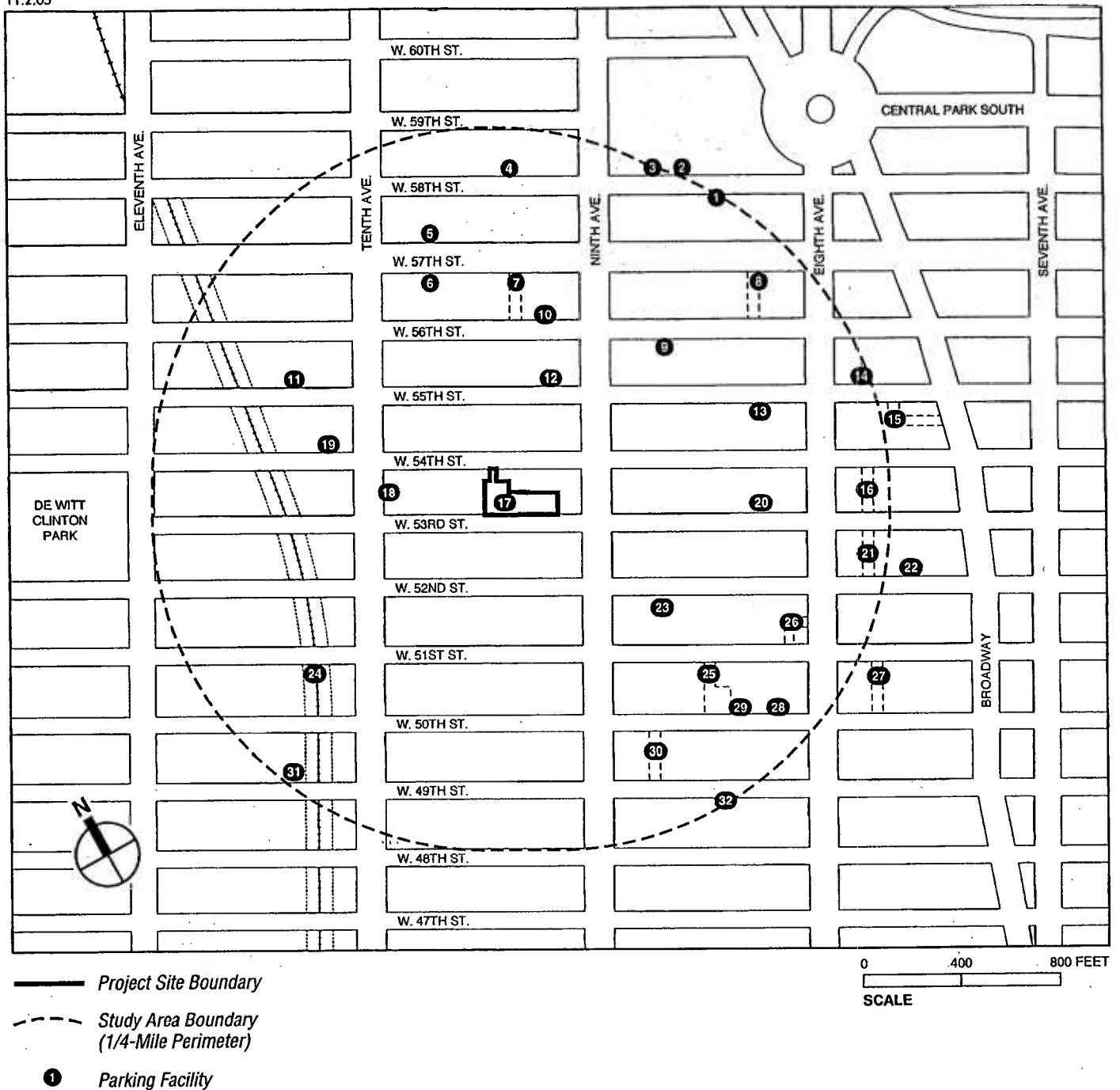
In its planning process, Con Edison routinely analyzes the adequacy of area substations and sub-transmission feeders as part of its 10-Year Load Relief Program. Con Edison has reviewed the potential impacts of the proposed project on its system. While the effects of the project's estimated demand is a function of when the building would require service and all other load growth within the area served, at this time, Con Edison does not anticipate that the proposed project would facilitate the need for an additional area substation. Therefore, the proposed project is not expected to result in any significant adverse impacts to energy.

TRAFFIC AND PARKING

The potential effect on traffic conditions from the proposed development is a function of its "trip generation"—the number of vehicular trips that would be made to and from the site during times of peak traffic. The proposed development would not exceed the 200 new dwelling units the *CEQR Technical Manual* lists as the minimum development densities potentially requiring traffic and parking analysis (see Table 3O-1, Zone 1). Therefore, a detailed traffic analysis is not required, and no significant adverse impacts to traffic would occur with the project.

If a 180-space parking garage is pursued, based on activity at the existing 225-space parking lot, it would result in 26, 33, and 45 vehicle trips during the AM, midday, and PM peak hours, respectively. However, this component would replace the existing 225-space parking lot on the project site, and the proposed project would not generate 50 or more peak hour vehicle trips, the *CEQR Technical Manual* threshold requiring detailed traffic analysis.

The proposed building would replace the existing 225 space public parking lot on the project site. In order to determine the loss of these parking spaces on the off-street parking capacity in the study area, an inventory of off-street parking facilities within ¼ mile of the project site was conducted by AKRF, Inc. in September 2005. The results of this survey are presented in Figure 2 and Table 1. Based on this survey, there are 32 public parking facilities with a total capacity of 5,912 permitted parking spaces. Field surveys showed that on average, during the weekday midday, pre-theater, and overnight peak periods, there is available capacity in the off-street parking facilities in the study area. In future conditions with the proposed project, accounting for



Off-Street Parking Facilities
Figure 2

Table 1
405 West 53rd Street
Off-Street Parking Facilities

Map No.	Company Name	Address	License No.	Capacity	2005 Existing Conditions						
					Utilization Rate (%)			Utilized Spaces			
					MD	PT	ON	MD	PT	ON	
1	Icon	330 W. 58th St	1118641	95	90%	53%	31%	86	50	30	
2	Central Parking System	10 Columbus Circle	1105005	662	79%	53%	31%	523	349	206	
3	Central Parking System	910-924 9th Ave	1113135	318	75%	50%	25%	239	159	80	
4	1 Columbus Place Garage	400 W. 59th St	960635	294	80%	53%	31%	235	155	91	
5	Effective Parking LLC	435 W. 57th St	368157	55	90%	40%	40%	50	22	22	
6	Apex Parking LLC	440 W. 57th St	368300	378	80%	53%	31%	302	199	117	
7	56-57 Holding Corp.	408 W. 57th St	1113944	80	75%	60%	50%	60	48	40	
8	Champion Parking	316-328 W. 57th St	1093313	372	79%	53%	31%	294	196	116	
9	N/A	330 W. 56th St	732836	115	100%	53%	CLOSED	115	61	CLOSED	
10	Epsilon Parking Corp.	409 W. 56th St	1195834	20	100%	100%	CLOSED	20	20	CLOSED	
11	Worthy Parking LLC	841 10th Ave	1148650	86	90%	60%	20%	77	52	17	
12	Rapid Park	411 W. 55th St	4276888	175	79%	53%	31%	138	92	54	
13	Imperial Parking System	300 W. 55th St	1010039	92	60%	33%	10%	55	30	9	
14	Central Parking System	1731-1745 Broadway	1144398	124	79%	53%	31%	98	65	39	
15	Icon	228-236 W. 55th St	900653	195	100%	70%	70%	195	137	137	
16	Icon	900 8th Ave	1156818	355	75%	53%	31%	266	187	110	
17	MTP Operating Corp.	428 W. 54th St	1132481	75	100%	86%	30%	75	65	23	
	(Project Site)		1013512	50	100%	86%	30%	50	43	15	
			1002242	100	100%	86%	30%	100	86	30	
18	53-10 Associates	455 W. 53rd St	963959	198	79%	53%	31%	156	104	61	
19	Icon	815 10th Ave	1179523	48	100%	70%	50%	48	34	24	
20	Imperial Parking System	301 W. 53rd St	1058507	53	100%	75%	50%	53	40	27	
21	Central Parking System	880-888 8th Ave	1000344	170	90%	53%	31%	153	90	53	
22	52 Broadway Garage	1675 Broadway	851958	61	30%	30%	30%	18	18	18	
23	Jay B Realty Corp.	354 W. 52nd St	0367661	18	85%	60%	CLOSED	15	11	CLOSED	
			0469511	41	85%	60%	CLOSED	35	25	CLOSED	
			0368777	18	85%	60%	CLOSED	15	11	CLOSED	
24	Icon	747 10th Ave	769937	107	60%	40%	20%	64	43	21	
25	50th St. Parking Corp.	336 W. 51st St	982918	124	95%	40%	20%	118	50	25	
26	Icon	851-859 8th Ave	1130762	226	85%	53%	31%	192	119	70	
27	Quik Park		1000070	225	60%	60%	10%	135	135	23	
28	Quik Park	305 W. 50th St	1002946	63	100%	75%	CLOSED	63	47	CLOSED	
29	Imperial Parking System	311 W. 50th St	1102792	60	95%	60%	25%	57	36	15	
30	Central Parking System	350 W. 50th St	0971881	473	60%	25%	30%	284	118	142	
31	Primary Parking LLC	721-735 10th Ave	780839	181	60%	60%	40%	109	109	72	
32	304 Associates	304 W. 49th St	0912341	205	85%	53%	31%	174	108	64	
			Total	5,912	Total Overnight			5,637	4,667	3,114	1,751
			% Utilized						79%	53%	31%

Source: Surveys conducted by AKRF, Inc. in September 2005

a growth rate of 0.5 percent per year, and additional demand from the proposed residential use on the project site, demand for off-street parking spaces would increase during the weekday midday, pre-theater, and overnight peak periods, but there would still be adequate parking supply to meet the parking demand.

If a 180-space public parking garage is pursued, the study area parking capacity would be approximately 5,867. The utilization of the proposed 180 space garage is expected to resemble that of the existing public parking facility, and there would be available capacity to meet parking demand in the study area.

Overall, the proposed project would not result in any significant adverse impacts to traffic or parking.

TRANSIT AND PEDESTRIANS

The proposed action would not result in more than 200 peak hour rail or transit riders, nor would it result in an increase of more than 200 pedestrian trips per hour at any pedestrian elements in the vicinity of the project site. In accordance with the guidelines presented in the *CEQR Technical Manual*, quantified transit and safety measures would be implemented at the project site driveway to minimize pedestrian-vehicle conflicts. Such measures would include a pedestrian warning system including a visual and audible warning device to alert pedestrians of the presence of an exiting vehicle, as well as stop signs for exiting vehicles. No significant adverse impacts to transit or pedestrian conditions would occur as a result of the proposed project.

AIR QUALITY

See Attachment D, "Air Quality."

NOISE

See Attachment E, "Noise."

CONSTRUCTION IMPACTS

The project's construction activities would be implemented in one phase over approximately 2 years. During this period, there may be temporary closure of adjacent sidewalks or curbside vehicle lanes and construction noise or dust. Such activities are typical of any construction project, and these effects would not be considered significant.

Construction noise is regulated by the New York City Noise Control Code and by the U.S. Environmental Protection Agency noise emission standards for construction equipment. These requirements mandate that certain classifications of equipment and construction vehicles meet specified noise emission standards; that, except under extreme circumstances, construction activities be limited to weekdays between 7 AM and 6 PM; and that construction material be handled and transported in such a manner as not to create unnecessary noise.

PUBLIC HEALTH

According to the *CEQR Technical Manual*, public health comprises the activities that society undertakes to create and promote a community's wellness. Public health may be jeopardized by poor air quality resulting from traffic or stationary sources, hazardous materials in soil or groundwater used for drinking water, significant adverse impacts related to noise or odors, solid waste management practices that attract vermin and pest populations, and actions would exceed city, state, or federal standards.

As described previously, the proposed action would not result in significant adverse impacts to air quality or noise. No exceedances of city, state, or federal standards would occur. The project would not involve solid waste management practices that would attract vermin or pest populations. Therefore, the proposed project would not result in any significant adverse impacts to public health and no further analysis is necessary. *

A. INTRODUCTION

The proposed action would result in the construction of a 7-story, 83-unit residential building on the project site at 405-427 West 53rd Street between Ninth and Tenth Avenues in Manhattan (Block 1063, Lot 17). The project may also include a 180-space public parking garage in the subcellar of the new building. The project site is currently occupied by a 225-space public parking lot.

The project site is currently owned by D.C.K. Management Corp., a wholly owned subsidiary of Consolidated Edison Company of New York, Inc. (Con Edison) and is leased to the parking facility operator. The transfer of the project site from Con Edison to the developer, 405 West 53rd Development Group, LLC, would require review and approval by the New York State Public Service Commission (PSC), pursuant to Section 70 of the Public Service Law. The public parking garage would require a special permit from the New York City Planning Commission (CPC) pursuant to Section 74-52 of the New York City Zoning Resolution.

This attachment describes the potential impacts of the proposed action on land use, zoning, and public policy in the vicinity of the project site.

A 400-foot study area was used to assess existing and future land use, zoning, and public policy trends near the project site since this vicinity would be most affected by the proposed action. As shown in Figure A-1, the 400-foot study area is roughly bounded by West 55th Street, Tenth Avenue, West 52nd Street, and Ninth Avenue.

B. EXISTING CONDITIONS**LAND USE***PROJECT SITE*

The project site is located west of Ninth Avenue between West 53rd and West 54th Streets in the Clinton section of Manhattan. The approximately 34,780 square foot site contains a 225-space surface parking lot.

STUDY AREA

Clinton is a diverse community having a variety of land uses and building types. Its eastern perimeter is within the Midtown business district and includes the Port Authority Bus Terminal, hotels and theaters, mid-rise offices, and mid- and high-rise apartment buildings. The interior blocks of the neighborhood are generally a mix of low- and mid-rise residential buildings. Local retail and restaurants line Ninth and Tenth Avenues. The area west of Tenth Avenue was traditionally a manufacturing district, but an industrial exodus from Manhattan during the 1940s and 1950s left many buildings vacant. In recent years, parcels have been refurbished or

redeveloped, and the area now hosts a mix of mid- and high-rise residential buildings, automobile showrooms, warehouses, office space, and film and television production studios.

Figure A-1 shows the land uses within the 400-foot study area. Located on the project block are a mix of residential buildings. The residences along Ninth Avenue also have ground-floor retail spaces containing stores that serve the neighborhood. The project block also contains several studio uses, including the Sony Studios and a studio where the Montel show is filmed. On the western edge of the project block is an auto service use.

The blocks surrounding the project site also contain a mix of uses. The block to the south of the project block is divided between residential uses, which occupy the eastern portion of the block, and school uses—P.S. 11 school buildings and play areas occupy the western portion of the block. The block to the north of the project block is a more mixed-use block, containing residential uses, storage facilities, several commercial uses, and a church. The remainder of the study area contains a similar mix of uses, with Ninth Avenue serving as a commercial corridor.

ZONING

PROJECT SITE

As shown in Figure A-2, the project site is zoned C6-2 in the Preservation Area of the Special Clinton District. The maximum residential floor area ratio (FAR) on the project site is 4.2. Within C6-2 districts in the Preservation Area of the Special Clinton District, the height of proposed buildings is limited to 66 feet. General C6-2 rules do not apply.

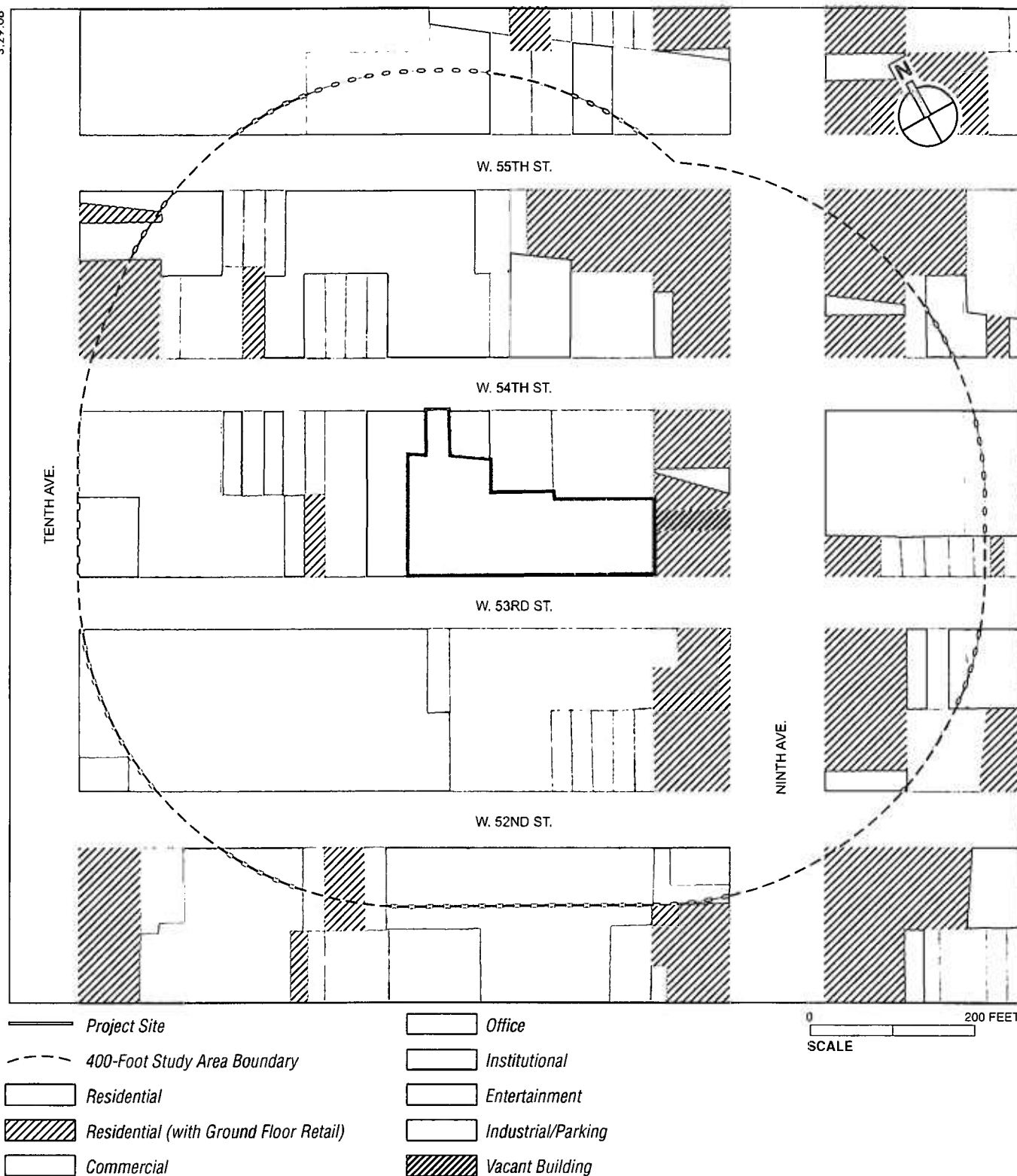
STUDY AREA

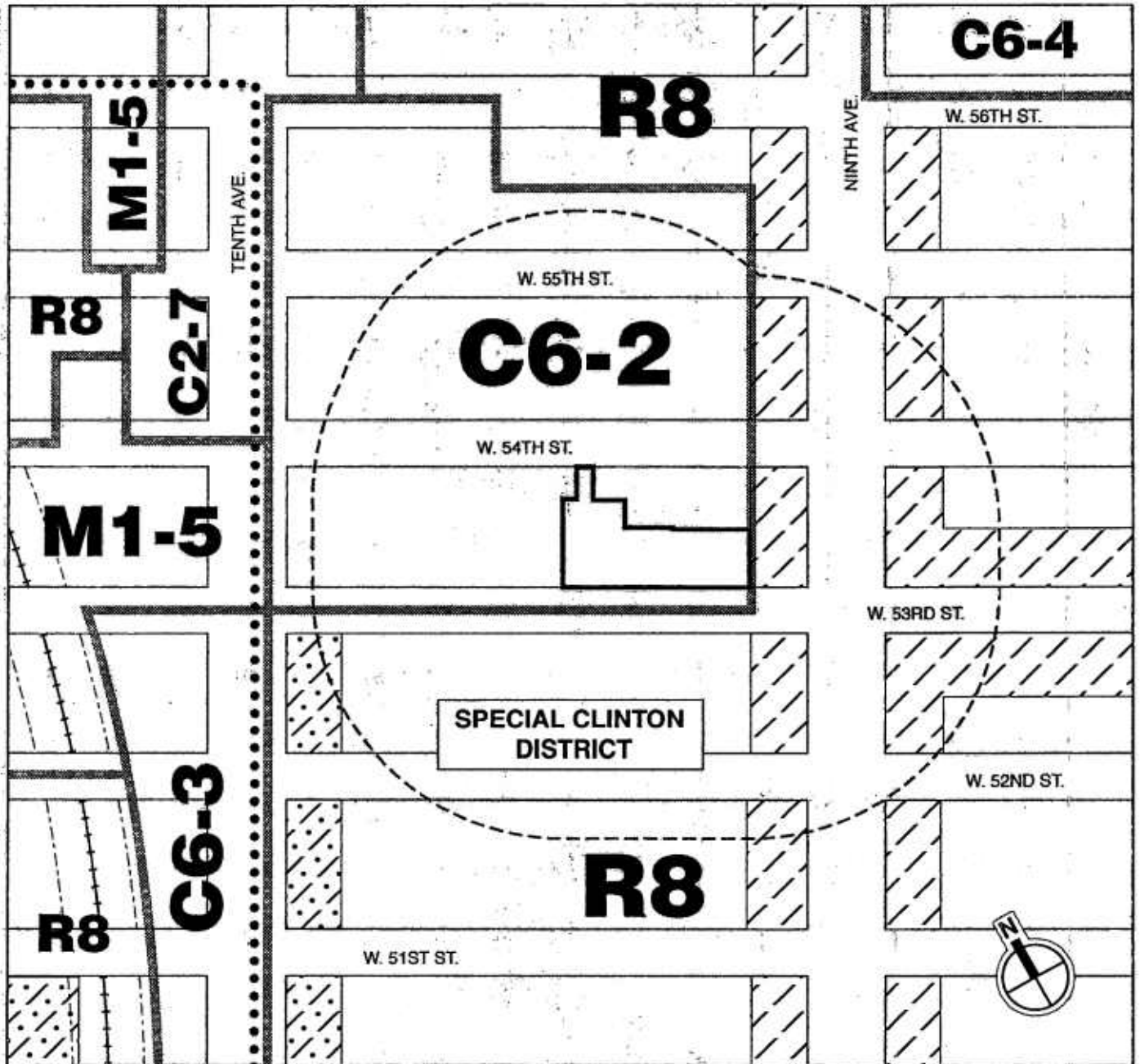
The study area contains C6-2 and R8 zoning. Along Ninth Avenue, there is a C1-5 commercial overlay.

SPECIAL CLINTON DISTRICT

As shown in Figure A-2, the project site is within the Special Clinton District, which is a special purpose district established by the New York City Planning Commission to promote and protect the unique characteristics of this community. The Special Clinton District is roughly bounded by West 57th and West 56th Streets, Eighth Avenue, West 41st Street, and Route 9A (see Figure A-3). It was created to promote the following goals:

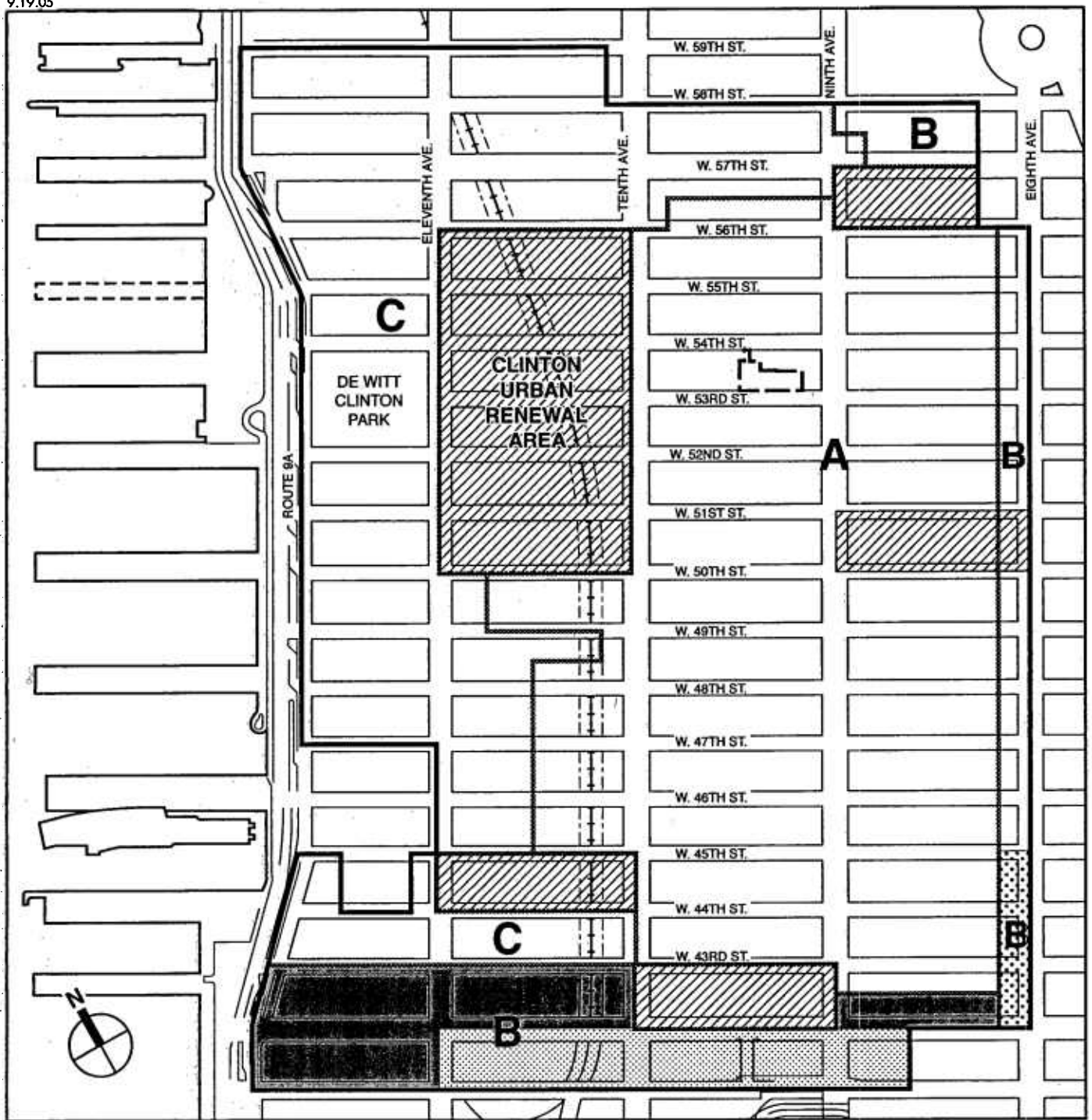
- To preserve and strengthen the residential character of the area;
- To allow for new construction and rehabilitation consistent with the existing architecture and demographic character of the area;
- To preserve the small-scale character and variety of retail services and to ensure the conformity of future commercial structures with the existing uses;
- To recognize the unique character of the eastern edge of the District as an integral part of the Theater Subdistrict within the Special Midtown District and the Special Clinton District;
- To provide an appropriate transition between the mixed-use structures along Eighth Avenue and the low-scale residential buildings on the narrow cross-streets;
- To promote public amenities and street landscaping;





- Project Site Boundary
- Study Area Boundary (400-Foot Perimeter)
- Zoning District Boundary
- Clinton Special Purpose District
- C1-5 Overlay
- C2-5 Overlay
- Clinton Urban Renewal Area

0 200 400 FEET
SCALE



--- Project Site Boundary

— Special Clinton District Boundary

--- Area Boundary

A Preservation Area

B Perimeter Area

B Portion of Perimeter Area also subject to Article VIII, Chapter I (Special Midtown District)

Subarea 1 of 42nd St. Perimeter Area

Subarea 2 of 42nd St. Perimeter Area

C Other Area

Excluded Area

0 500 FEET
SCALE

Special Clinton District
Figure A-3

- To restrict the demolition of existing buildings that are suitable for rehabilitation and continued residential use; and
- To promote the most desirable use of land to protect and strengthen the City's tax revenues.

All developments within the Special Clinton District are required to provide and maintain trees of at least 4 inch caliper at the time of planting on sidewalks for the entire length of the street frontage of the zoning lot. The trees must be planted at a maximum of 30 feet and in accordance with NYCDOT guidelines.

Within the Special Clinton District are three subdistricts as well as areas with multiple special district jurisdictions. The largest subdistrict is the Preservation Area, which comprises most of the blocks between West 43rd Street, Eighth Avenue, West 56th Street, and Eleventh Avenue. As stated above, the project site is located within the Preservation Area, and the proposed building would be a maximum of 66 feet high. Strict development guidelines apply to sites located within the Preservation Area to protect the low- and mid-rise residential character of these blocks. The second is the Perimeter Area, which bounds the Preservation Area west of Eighth Avenue and south of West 43rd Street, serving as a transition zone between the lower density Preservation Area and the higher density developments of Midtown. The third is "Other Areas," which are generally located between Eleventh Avenue and Route 9A. Other areas are generally subject to their underlying zoning, and have fewer development controls than the Preservation and Perimeter Areas.

PUBLIC POLICY

The project site is located near the Clinton Urban Renewal Area (URA). The Clinton URA encompasses six city blocks that have been excluded from the Special Clinton District. The New York City Department of Housing Preservation and Development (HPD) is redeveloping this 22-acre area encompassing six city blocks bounded by West 50th Street, West 56th Street, 10th Avenue, and 11th Avenue. The CURA was enacted to provide low- and moderate income housing and other active uses in an area of vacant and low-intensity industrial spaces. HPD has been working with private developers to construct buildings within the northern portion of the CURA between West 53rd and West 56th Streets, which has been fully developed. The blocks between West 50th and West 53rd Streets are currently being redeveloped.

C. THE FUTURE WITHOUT THE PROPOSED ACTION

The future without the proposed action ("No Build") condition is a projection of future land use, zoning, and public policy trends in the vicinity of the project site independent of the proposed action. The following sections describe future development projects and city actions, which are likely to affect the study area in or before 2008.

PROJECT SITE

Absent the requested approvals, the project site will continue to operate as a 225-space public parking lot.

STUDY AREA

Within the 400-foot study area, there are no known development projects anticipated to be constructed and operational in or before 2008.

D. PROBABLE IMPACTS OF THE PROPOSED ACTION

LAND USE

PROJECT SITE AND STUDY AREA

As described above, the proposed action would allow for the disposition of the project site from Con Edison to 405 West 53rd Development Group, LLC for subsequent development with a 7-story, 83-unit residential building. The project may also include a 180-space public parking garage in the subcellar of the new building. While the proposed action would result in a change in the use of this site as compared to the No Build condition, there would be no significant adverse impacts to on-site land use. Development of a residential project at this location would be consistent with existing land uses in the study Clinton and would support the residential character of the Clinton neighborhood.

ZONING AND PUBLIC POLICY

PROJECT SITE AND STUDY AREA

The proposed action would not alter the underlying zoning of the project site. The proposed use—residential and possibly parking—would be consistent with the goals of the Special Clinton District. Specifically, the proposed action would strengthen the residential character of the area by developing a site currently used for surface parking. Overall, the proposed action would not result in significant adverse impacts to the zoning or public policies that govern the project site. *

A. INTRODUCTION

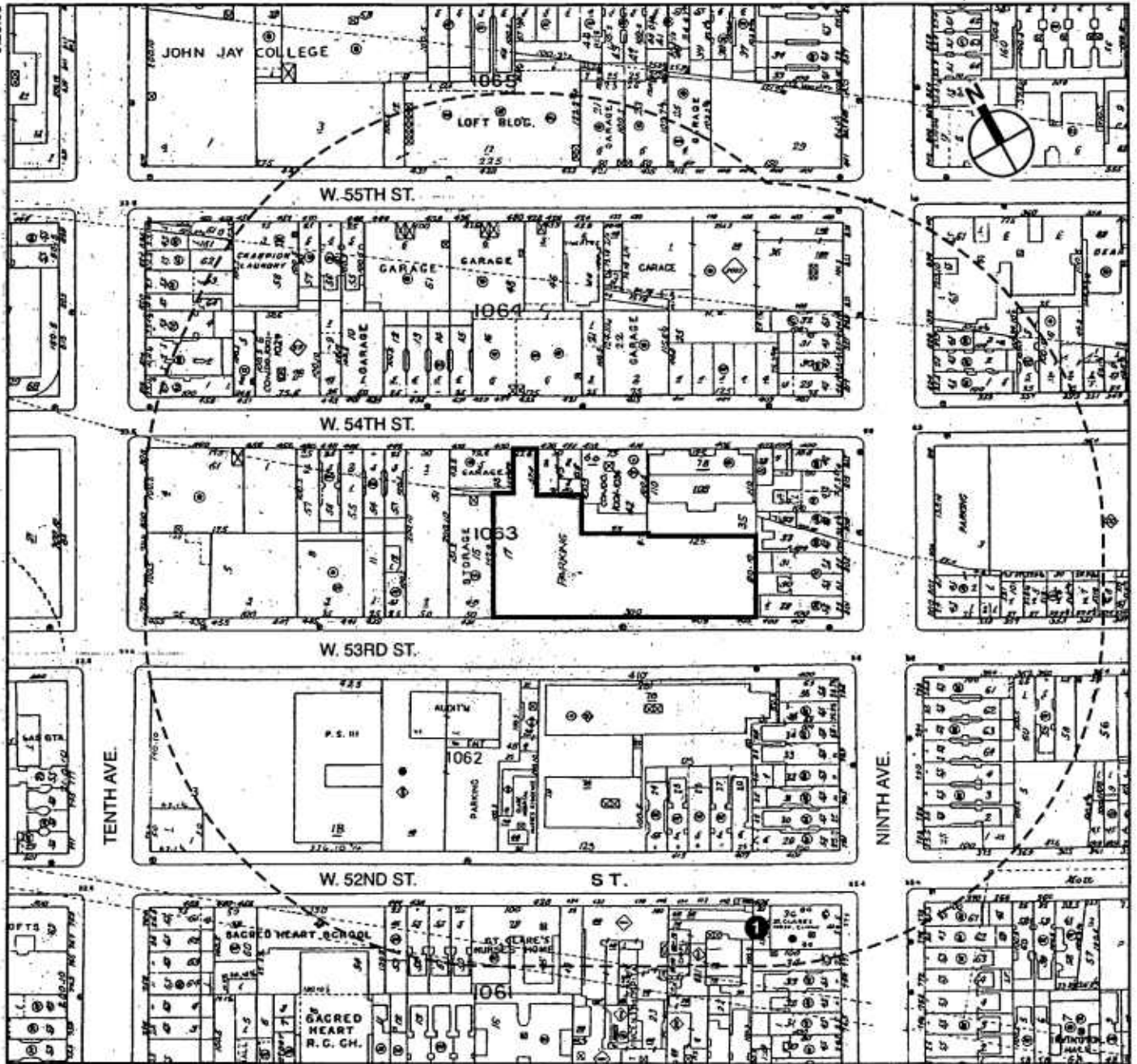
This attachment considers the potential impact of the proposed 405 West 53rd Street project on historic resources. The project site, which consists of Lot 17 of Block 1063, is located on the north side of West 53rd Street between Ninth and Tenth Avenues. Currently the site is a parking lot. The proposed project would result in the construction of a 7-story structure with 83 residential apartments and possibly 180 public parking spaces. The proposed project would include a cellar and subcellar.

Historic resources include both archaeological and architectural resources. The study area for archaeological resources is the project site, the area that would be disturbed by project construction. Historic maps indicate that the site was formerly occupied by residential buildings erected by 1854. It is possible that these buildings had rear yard shaft features, including wells and privies, if City water and sewage services had not yet been extended to the area. These shaft features, if they existed, may later have been filled with cultural materials that show the lifeways of 19th century residents. To determine if the project site is sensitive for archaeological resources, Historical Perspectives Inc. will prepare a disturbance memo to be submitted to the New York State Office of Parks, Recreation, and Historic Preservation (OPRHP) for review.

Study areas for architectural resources are determined based on the area of potential effect for construction period impacts, for example ground-borne vibrations. A larger study area looks at the area of potential effect for visual or contextual effects. The 2001 *City Environmental Quality Review (CEQR) Technical Manual* sets the guidelines for the study area as being within an approximately 400-foot radius of the project site (see Figure B-1). Within the study area, known architectural resources analyzed include properties listed on the State and National Registers of Historic Places (S/NR) or properties determined eligible for S/NR listing, National Historic Landmarks (NHLs), New York City Landmarks (NYCLs) and Historic Districts and properties determined eligible for landmark status. In addition, other properties in the study area were evaluated for their potential S/NR or NYCL eligibility.

B. EXISTING CONDITIONS**ARCHAEOLOGICAL RESOURCES****PROJECT SITE**

To evaluate the possibility that archaeological resources might exist on the project site, an archaeological resources disturbance memorandum was prepared by Historical Perspectives,



- Project Site Boundary
- - - Study Area Boundary (400-Foot Perimeter)

POTENTIAL ARCHITECTURAL RESOURCES

- ① 406 West 52nd Street

Potential Architectural Resources
Figure B-1

Inc.* That report, which is summarized below, concluded that the project site possesses a low to moderate sensitivity for archaeological resources.

Due to the relative absence of nearby known archaeological sites or trails, and the presence of more suitable sites for Native American occupation, the project site does not fit the predictive model for potential precontact (Native American) habitation sites. In addition, subsurface disturbance that has occurred on the project site would have had an adverse impact on any archaeological resources (e.g. tools) that may have been brought to the site. Prior site disturbance includes the construction of building basements, cellars, and foundation walls for buildings that previously existed on the site, as well as water main connections and sewer line hook-ups.

It is also unlikely that the project site contains archaeological resources associated with the site's historical development. During the 1830's to the early 1850's, the project site and its vicinity shifted from being utilized for farming to being laid out in an urban street grid. Small, wood frame buildings were erected on the site by between 1851 and 1862. While it is unknown when sewer lines were installed along West 53rd Street, surrounding streets, including West 52nd Street and Tenth Avenue were serviced by sewer lines starting in 1867/1868 and it assumed West 53rd Street also had sewers at this time. Therefore, early residents on the project site block would have used privies for approximately five years. When later tenement style development occurred, starting in 1885, the project site would have been fully serviced by water and sewer lines. This later development of five- and six-story tenements required the construction of foundation walls 8- to 10-feet below the present surface; this construction and subsequent regrading would have eliminated any potential shaft features. Therefore, there is little potential for undisturbed archaeological remains from the historical period.

Consequently, the site is not considered sensitive for precontact or historic-period resources and no further analysis of such resources on the project site is warranted.

ARCHITECTURAL RESOURCES

PROJECT SITE

The project site is currently a parking lot. There are no buildings on the project site, therefore there are no architectural resources on the project site.

STUDY AREA

Known Architectural Resources

There are no known architectural resources in the 400-foot study area.

The Second Evangelical Church (now the Julia Miles Theater), located at 424 West 54th Street has been evaluated by OPRHP and determined not eligible for S/NR listing.

* 405 West 53rd Street, New York, New York, Preliminary Assessment/Disturbance Record, prepared by Historical Perspectives, Inc. in October, 2005.

Potential Architectural Resources

One potential resource that may meet the eligibility criteria for NYCL designation or S/NR listing has been identified in the project's study area.

A 5-story building located approximately 330 feet from the project site at 406 West 52nd Street appears to date from the late 19th century. This brick building has a three-story projecting bay window, topped by an ornate cornice line. An additional row of windows run down the second bay of the building. Decorative bands of brick corbelling run below the cornice line (see Figure B-2, view 1).

C. THE FUTURE WITHOUT THE PROPOSED ACTION

ARCHAEOLOGICAL RESOURCES

Without the proposed action, it is assumed that there would be no subsurface disturbance of the site. However, since it has been determined that the site is not archaeologically sensitive, no resources would be disturbed in any case.

ARCHITECTURAL RESOURCES

In the future without the proposed project, the project site would remain in its current condition.

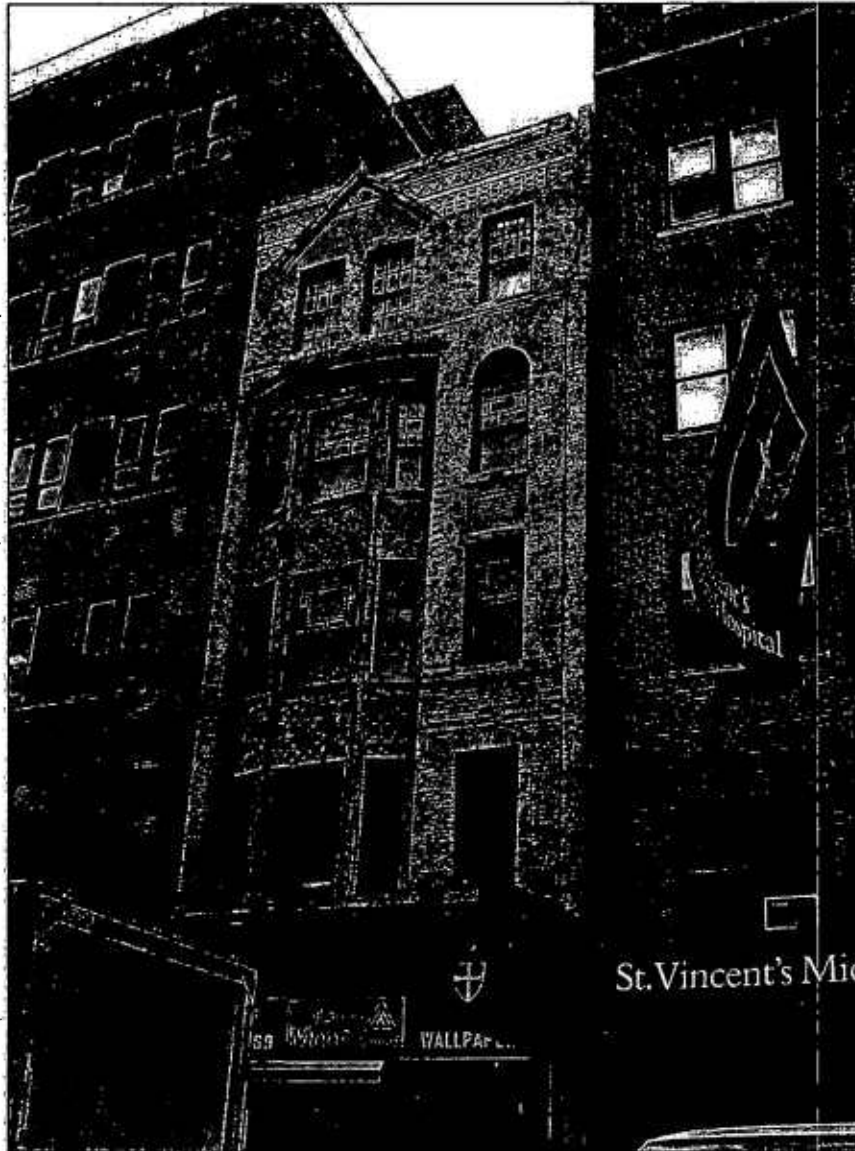
In the future without the proposed action, the building at 406 West 52nd Street could be determined eligible for listing in the State and National Registers or designated as a NYCL.

Historic resources that are listed on the State and National Registers or that have been found eligible for listing are given a measure of protection from the effects of federally-sponsored or federally-assisted projects under Section 106 of the National Historic Preservation Act. Although preservation is not mandated, federal agencies must attempt to avoid adverse impacts on such resources through a notice, review, and consultation process. Properties listed on the Registers are similarly protected against impacts resulting from state-sponsored or state-assisted projects under the State Historic Preservation Act. Private owners of properties eligible for, or even listed on, the Registers using private funds, can, however, alter or demolish their properties without such a review process. Privately-owned properties that are NYCLs, in New York City Historic Districts, or pending designation as Landmarks are protected under the New York City Landmarks Law, which requires New York City Landmarks Preservation Commission (LPC) review and approval before any alteration or demolition can occur. Publicly owned resources are also subject to review by LPC prior to the start of a project; however, LPC's role with other City agencies is advisory only.

D. PROBABLE IMPACTS OF THE PROPOSED ACTION

ARCHAEOLOGICAL RESOURCES

As described above under "Existing Conditions," the project site has been determined not sensitive for archaeological resources. Therefore, the proposed project would have no impact on archaeological resources.



406 West 52nd Street

1

ARCHITECTURAL RESOURCES

PROJECT SITE

The proposed project would develop the parking lot with a 7-story residential building. The proposed project would contain approximately 83 residential units and possibly 180 public parking spaces. The building would have large, glass display windows on the ground floor, open balconies on the western edge of the building, three bays of stepped glass, and nine bays of projecting glass.

STUDY AREA

Known Architectural Resources

As there are no known architectural resources in the study area there would be no impacts to architectural resources due to the proposed project.

Potential Architectural Resources

The building at 406 West 52nd Street is located approximately 330 feet from the proposed project. It is not expected that the proposed project would have adverse physical effects on this potential architectural resource, as it is located beyond 90 feet of the project site, and, therefore, outside the range of potential construction-period impacts from ground-borne vibrations, falling debris, or other damage from construction activities.

It is not expected that the proposed project would have adverse visual or contextual impacts on the potential architectural resource located in the study area. The proposed building would be 7 stories tall and comparable in height to other buildings in the study area. In addition, the proposed building would not block the views of any resources, or introduce incompatible visual elements to a resource's setting. The proposed building would contain a mix of commercial and residential uses which would be compatible with the residential and commercial mixed-use character of the study area. Overall, the proposed project would not have an adverse impact on architectural resources. *

This attachment addresses the potential for the presence of hazardous materials resulting from previous and existing uses on the site and adjacent areas, and potential risks from the proposed project with respect to any such hazardous materials. The proposed project would entail excavation of the site to construct a new residential building. The building would include a basement.

TRC Environmental Corporation (TRC) performed a Phase I Environmental Site Assessment (Phase I) for the project site in November 2004 and a Focused Phase II Environmental Site Assessment (Phase II) in September 2005 to investigate the potential for on-site contamination resulting from hazardous materials spills or the use of hazardous materials both on the project site and in the surrounding area. To gather information regarding the subject property and the surrounding neighborhood, the Phase I reviewed a variety of information sources including: Sanborn Fire Insurance maps; environmental regulatory agency databases identifying state and/or federally listed sites; and city databases and records (Department of Buildings, Fire Department and Department of Finance) to assist in identifying prior uses. In addition, the Phase I included reconnaissance of the site and surrounding neighborhood.

The Phase I research indicated that the site was vacant and used for surface parking by 1992, but had previously included buildings that contained a dye works (1882). Later uses of site buildings included a chapel and gymnasium, residential apartments and storefronts. No fuel tanks are known to be currently present at the site, but a 1,080-gallon #2 fuel oil tank was located at the 405 West 53rd Street Property according to a 1997 Fire Department database. It is also possible that other site buildings formerly contained basement or underground fuel oil tanks.

In addition to the on-site uses, the Phase I identified potential sources of contamination adjacent to or in the surrounding area including gasoline and fuel oil tanks, auto sales/service facilities and a dry cleaner. These types of operations pose a risk of potential releases. However, the project site, like all of Manhattan, is served by the New York City public water supply and there are no known drinking water wells within the vicinity of the project site.

A Focused Phase II Environmental Site Assessment was performed to address potential releases from the dye works, on-site fuel tanks or off-site uses. The Phase II included a geophysical survey (a non-intrusive investigation to determine the presence of buried tanks) and collection and subsequent laboratory analysis of soil samples from six borings with comparison of results to New York State Department of Environmental Conservation's Technical and Administrative Guidance Memorandum (TAGM) #4046 Recommended Soil Cleanup Objectives (RSCOs). The RSCOs are stringent criteria assuming unrestricted use of a property.

The geophysical survey identified two possible underground storage tanks. The laboratory analysis of soil samples indicated that although no volatile organic compounds (VOCs) were present above RSCOs, levels of semi-volatile organic compounds (SVOCs) and heavy metals were above RSCOs. The Phase II concluded these were more likely associated with historic fill

(e.g., the SVOCs found are commonly present in NYC fill containing ash and debris from historic structures) rather than previous site uses.

Since the future site development requires removal of soil to approximately 12 feet below grade and the thickness of fill ranges from approximately 6 feet to 25 feet below grade with an average depth of approximately 12 feet, excavation for the redevelopment of the site would effectively remediate the site. This removal would be performed under an Environmental Health and Safety Plan (HASP) which would address: measures (e.g., dust control) to minimize the exposure of site workers and the surrounding community; proper removal of the tanks and any associated contamination in accordance with local, state and federal requirements; and proper management and disposal of the excavated fill.

With the performance of the work in accordance with the HASP, no significant contaminated materials impacts are expected to result from the proposed project. *

A. INTRODUCTION

This analysis examines the potential for air quality impacts from the proposed project. Air quality impacts can be either direct or indirect. Direct impacts stem from emissions generated by stationary sources at the project site, such as emissions from fuel burned on site for heating, ventilation, and air conditioning (HVAC) systems. A screening analysis was conducted for potential air quality impacts from stationary sources since the proposed project would not be a major source of stationary source emissions. Indirect impacts are caused by potential emissions from nearby existing stationary sources and the potential for emissions due to mobile sources/vehicles generated by the proposed project. The proposed project is not expected to significantly alter traffic conditions. As discussed on page 10 of the EAS, the maximum hourly incremental traffic from the proposed project would not exceed the *CEQR Technical Manual* air quality screening threshold of 100 peak hour trips. Since the proposed project would result in fewer than 100 new peak hour vehicle trips at nearby intersections in the study area, a quantified assessment of on-street mobile source emissions is not warranted. However, the proposed building could include a public parking garage that would exhaust pollutants from its mechanical ventilation system and could therefore result in localized increases in carbon monoxide (CO) levels near vents outside the garage. Therefore, a stationary source parking garage analysis was conducted to evaluate future concentrations.

In addition, potential effects of stationary source emissions from existing nearby industrial facilities on the proposed project's residential uses are assessed. Based on the data available on the surrounding industrial uses, the proposed project would not experience significant air quality impacts from these facilities.

B. METHODOLOGY FOR PREDICTING POLLUTANT CONCENTRATIONS

HVAC SOURCES

To assess air quality impacts associated with emissions from the project's boiler system, a screening analysis was performed using the methodology described in the *CEQR Technical Manual*. The screening procedure utilizes information regarding the type of fuel to be burned, the maximum development size, and the HVAC exhaust stack height to evaluate whether a significant adverse impact is likely. Using the distance from the development to the nearest building of similar or greater height, if the maximum development size is greater than the threshold size in the *CEQR Technical Manual*, there is the potential for significant air quality impacts, and a refined dispersion modeling analysis would be required. Otherwise, the source passes the screening analysis, and no further analysis is required.

PARKING GARAGE

The proposed action may include the construction of an approximately 180 space public parking garage. The air exhausted from the garage's ventilation systems would contain elevated levels of CO due to emissions from vehicles using the garage. The ventilation air could potentially affect ambient levels of CO at receptors near the outlet vents. An analysis was performed using the methodology set forth in the *CEQR Technical Manual*, applying modeling techniques to the vent structures and calculating pollutant levels at various distances from the vents.

Emissions from vehicles entering, parking, and exiting the garage were estimated using the EPA MOBILE6.2 mobile source emission model and an ambient temperature of 50°F. For all arriving and departing vehicles, an average speed of 5 miles per hour was conservatively assumed for travel within the parking garages. In addition, all departing vehicles were assumed to idle for 1 minute before proceeding to the exit. The concentration of CO within the garage was calculated assuming a minimum ventilation rate, based on New York City Building Code requirements, of 1 cubic foot per minute of fresh air per gross square foot of garage area. To determine compliance with the National Ambient Air Quality Standards (NAAQS) for CO, concentrations were determined for the maximum 8-hour average period. (No exceedances of the 1-hour standard would occur and the 8-hour values are the most critical for impact assessment.)

To determine pollutant levels in the vicinity of the vents, the ventilation from the garage was analyzed as a "virtual point source" using the methodology in EPA's *Workbook of Atmospheric Dispersion Estimates, AP-26*. This methodology estimates CO concentrations at various distances from the vents by assuming that the concentration in the garage is equal to the concentration leaving the vent, and determining the appropriate initial horizontal and vertical dispersion coefficients at the vent faces.

The CO concentrations were determined for the time periods when overall garage usage would be the greatest, considering the hours when the greatest number of vehicles would exit the facility. Departing vehicles were assumed to be operating in a "cold-start" mode, emitting higher levels of CO than arriving vehicles. Maximum emissions would result in the highest CO levels and the greatest potential impacts. Traffic data for the parking garage analysis were derived from surveys conducted by AKRF, Inc.

The air from the parking garage would be vented through a single outlet. The garage vents towards West 54th Street, and "near" and "far" receptors were placed along the sidewalks at a pedestrian height of 6 feet and at a distance 6 feet and 46 feet, respectively, from the vent. A persistence factor of 0.77, supplied by New York City Department of Environmental Protection (NYCDEP), was used to convert the calculated 1-hour average maximum concentrations to 8-hour averages, accounting for meteorological variability over the average 8-hour period.

Background and on-street CO concentrations were added to the modeling results to obtain the total ambient levels. The on-street CO concentration was determined using the methodology in Air Quality Appendix 1 of the *CEQR Technical Manual*, utilizing traffic volumes from the traffic survey conducted in the study area.

INDUSTRIAL SOURCES

Potential effects from existing industrial operations in the surrounding area on the proposed project were analyzed. Initially, land use and Sanborn maps were reviewed to identify potential sources of emissions from manufacturing/industrial operations. Next, a field survey was conducted to identify buildings within 400 feet of the project site that have the potential for

emitting air pollutants. The field survey was conducted on August 29, 2005. To completely cover the study area, all of the blocks bounded by Eighth Avenue, West 51st Street, Tenth Avenue and West 56th Streets were surveyed to observe uses and to identify visible emissions. No visible or odorous emissions were detected from any of the existing uses during the site visit.

A request was made to NYCDEP's Bureau of Environmental Compliance (BEC) to obtain the most current information regarding the release of air pollutants from all existing manufacturing or industrial sources within the entire study area. The NYCDEP air permit data provided were compiled into a database of source locations, air emission rates, and other data pertinent to determining source impacts. A comprehensive search was also performed to identify New York State Department of Environmental Conservation (NYSDEC) Title V permits and permits listed in the EPA Envirofacts database.¹ Facilities that appeared in the Envirofacts database but did not also possess a NYCDEP certificate to operate were cross-referenced against NYSDEC's Air Guide-1 software emissions database, which presents a statewide compilation of permit data for toxic air pollutants, to obtain emissions data and stack parameters.

Table 3Q-3 of the *CEQR Technical Manual* provides an air quality dispersion model screening database, based on the EPA ISC3 dispersion model, which was used to estimate maximum potential impacts from different sources at various distances. The minimum distances between the property boundary of the project site and the source sites were used. Predicted worst-case impacts on the proposed project were compared with the short-term guideline concentrations (SGCs) and annual guideline concentrations (AGCs) recommended in NYSDEC's DAR-1 AGC/SGC tables. These guideline concentrations present the airborne concentrations, which are applied as a screening threshold to determine if the future residents of the proposed project could be significantly impacted by nearby sources of air pollution.

C. PROBABLE IMPACTS OF THE PROPOSED ACTION

INTRODUCTION

The following section presents the results of the studies performed to analyze the potential impacts on the surrounding community from project-related HVAC and parking garage sources, and impacts on the proposed project from nearby industrial sources.

HVAC SOURCES

The primary stationary source of air pollutants associated with the proposed project would be emissions from the combustion of natural gas by HVAC equipment. Natural gas would be used in the HVAC systems, and the stack would be located 20 feet above roof height. The primary pollutant of concern when burning natural gas is NO_x. The screening methodology in the *CEQR Technical Manual* was used for the analysis. At the distance to the nearest receptors of a similar or greater height the proposed action is below the maximum permitted levels specified in Figure 3Q-9 of the *CEQR Technical Manual*. Therefore, the proposed action would not result in any potential adverse air quality impacts from HVAC emission sources.

¹ EPA, Envirofacts Data Warehouse, http://oaspub.epa.gov/enviro/ef_home2.air.

PARKING GARAGE

Based on the methodology previously discussed, the maximum overall predicted future CO concentrations, including ambient background levels and on-site traffic, at sidewalk receptor locations, would be 6.75 ppm and 3.42 ppm for the 1- and 8-hour periods, respectively. The maximum 1- and 8-hour contribution from the parking garage would be 0.75 ppm and 0.52 ppm, respectively. These maximum predicted CO levels are below the applicable standards, and therefore, no significant adverse impacts from the proposed project's parking facilities are expected.

INDUSTRIAL SOURCES

As discussed above, a review of land use, Sanborn maps, and a field survey was conducted to identify manufacturing and industrial uses within 400 feet of the project site. Addresses with potential industrial emissions were identified based on existing on-site businesses, as well as the presence of visible venting apparatus.

Of the 10 addresses identified to have the potential for pollutant emissions, one business was on file with either NYSDEC or NYCDEP-BEC and determined to have potential air pollutant emissions. The screening methodology in the *CEQR Technical Manual* was utilized for the analysis, with the air contaminant emission rates from the source at the industrial facility and the distance to the proposed building. Table D-1 shows the air contaminants, calculated concentrations, and the respective, recommended short-term (a 1-hour period, unless otherwise noted) and annual guideline concentrations.

The conservative screening procedure used to estimate maximum potential impacts from this business showed that their operations would not result in any predicted violations of the National Ambient Air Quality Standards (NAAQS) or any exceedances of the recommended SGC or AGC. Therefore, based on the data available on the surrounding industrial uses, potential emissions from these sources would not result in any significant air quality impacts on future residents of the proposed development.

Table D-1
Businesses with BEC Permits

Source ID	Potential Contaminants	CAS No.	Hours of Operation		Estimated Emissions (g/s)	Estimated Short-Term Impact ($\mu\text{g}/\text{m}^3$)	SGC ($\mu\text{g}/\text{m}^3$)	Estimated Long-Term Impact ($\mu\text{g}/\text{m}^3$)	AGC ($\mu\text{g}/\text{m}^3$)	Notes
			hrs/day	days/yr						
1	Tetrachloroethylene	00127-18-4	5	300	0.0945	192	1,000	0.06	1	a
Notes: a) NYSDEC DAR-1 (Air Guide 1) AGC/SGC Tables AGC – Annual Guideline Concentrations SGC – Short-term Guideline Concentrations										

*

A. INTRODUCTION

The proposed project would not generate sufficient traffic to have the potential to cause a significant noise impact (i.e., it would not result in a doubling of passenger car equivalents [PCEs] which would be necessary to cause a 3 dBA increase in noise levels). However, ambient noise levels adjacent to the project site must be considered in order to address CEQR noise abatement requirements for the building. This potential is assessed in this attachment.

B. NOISE STANDARDS AND CRITERIA

NEW YORK CEQR NOISE STANDARDS

The *New York City Environmental Quality Review (CEQR) Technical Manual* defines attenuation requirements for buildings based on exterior noise level (see Table E-1, "Required Attenuation Values to Achieve Acceptable Interior Noise Levels"). Recommended noise attenuation values for buildings are designed to maintain interior noise levels of 45 dBA or lower, and are determined based on exterior $L_{10(1)}$ noise levels.

Table E-1
Required Attenuation Values to Achieve Acceptable Interior Noise Levels

	Marginally Acceptable	Marginally Unacceptable		Clearly Unacceptable		
Noise Level With Proposed Action	$65 < L_{10} \leq 70$	$70 < L_{10} \leq 75$	$75 < L_{10} \leq 80$	$80 < L_{10} \leq 85$	$85 < L_{10} \leq 90$	$90 < L_{10} \leq 95$
Attenuation*	25 dB(A)	(I) 30 dB(A)	(II) 35 dB(A)	(I) 40 dB(A)	(II) 45 dB(A)	(III) 50 dB(A)
Note: * The above composite window-wall attenuation values are for residential dwellings. Commercial office spaces and meeting rooms would be 5 dB(A) less in each category. All the above categories require a closed window situation and hence an alternate means of ventilation.						
Source: New York City Department of Environmental Protection						

C. EXISTING NOISE LEVELS

Existing noise levels were measured for 20-minute periods during the three weekday peak periods—AM (8 to 9 AM), midday (MD) (Noon to 2 PM), and PM (5 to 6 PM) peak periods on September 15, 2005 at two receptor sites adjacent to the project site. Site 1 was located on West 53rd Street between Ninth Avenue and Tenth Avenue, and Site 2 was located on West 54th Street between Ninth Avenue and Tenth Avenue (see Figure E-1).

The instrumentation used for the 20-minute noise measurements was a Brüel & Kjær Type 4176 ½-inch microphone connected to a Brüel & Kjær Model 2260 Type 1 (according to ANSI



- Project Site Boundary
- - - Study Area Boundary (400-Foot Perimeter)
- ① Noise Receptor

0 100 200 FEET
SCALE

Noise Receptor Locations
Figure E-1

Standard S1.4-1983) sound level meter. This assembly was mounted at a height of 5 feet above the ground surface on a tripod and at least 6 feet away from any large sound-reflecting surface to avoid major interference with sound propagation. The meter was calibrated before and after readings with a Brüel & Kjær Type 4231 sound-level calibrator using the appropriate adaptor. Measurements at each location were made on the A-scale (dBA). The data were digitally recorded by the sound level meter and displayed at the end of the measurement period in units of dBA. Measured quantities included L_{eq} , L_1 , L_{10} , L_{50} , and L_{90} . A windscreen was used during all sound measurements except for calibration. All measurement procedures conformed with the requirements of ANSI Standard S1.13-1971 (R1976).

The results of the measurements of existing noise levels are summarized in Table E-2.

Table E-2
Existing Noise Levels at Sites 1 and 2 (in dBA)

Site	Measurement Location	Time	L_{eq}	L_1	L_{10}	L_{50}	L_{90}
1	West 53rd Street between Ninth and Tenth Avenues	AM	69.0	76.8	71.8	66.6	64.2
		MD	65.6	72.0	67.8	63.8	62.2
		PM	67.3	74.6	68.4	65.1	63.4
2	West 54th Street between Ninth and Tenth Avenues	AM	67.2	76.4	70.6	63.6	60.6
		MD	67.8	78.4	69.4	64.8	62.4
		PM	66.1	73.4	68.8	63.8	61.6

Note: Field measurements were performed by AKRF, Inc. on September 15, 2005.

At all monitoring sites, traffic noise was the dominant noise source. Measured noise levels are moderate to relatively high and reflect the level of vehicular activity on the adjacent streets. In terms of the CEQR criteria, the existing noise levels at Sites 1 and 2 during the MD and PM peak periods are in the "marginally acceptable" category. The existing noise levels at Sites 1 and 2 during the AM period are in the "marginally unacceptable" category.

D. NOISE ATTENUATION MEASURES

As shown in Table E-1, the *CEQR Technical Manual* has set noise attenuation quantities for buildings, based on exterior $L_{10(1)}$ noise levels, and in order to maintain interior noise levels of 45 dBA or lower. The building design includes the use of well sealed double-glazed windows and central air conditioning (i.e., alternate means of ventilation). With these measures, the window/wall attenuation would provide more than 30 dBA for all facades of the building.

Based upon the $L_{10(1)}$ values measured at the project site, these design measures would provide sufficient attenuation to achieve the CEQR requirements.

In addition, the building mechanical system (i.e., heating, ventilation, and air conditioning systems) would be designed to meet all applicable noise regulations and to avoid producing levels that would result in any significant increase in ambient noise levels. *