

exclusion written into these indemnities for third-party lenders so that in the event a lender had to take possession of the property, or foreclosed on its mortgage, such lender would not be subject to the MBTA's indemnity requirements for this property?

Response

TRA has submitted these questions to the MBTA Risk Management department for review, however, we have not yet received a response. We will provide an answer with regard to these questions as soon as possible, but no later than Tuesday, October 9, 2001.

A Prospective Bidder asks:

Since the easements, covenants and indemnities the MBTA is seeking to reserve may impose substantial liability on the Successful Bidder, can the MBTA, prior to the bid submission deadline, make available to bidders the language it will require for:

- a. the easement for the Red Line tunnel system
- b. the reservation of easements for other utility easements;
- c. the easement for the vent shaft, concrete pad and standpipe;
- d. the covenant not to sue for Red Line noise, vibrations and noxious fumes to be Reserved in the Deed, and
- e. the indemnity and release specified in Section 9 of the Bid Specifications running with the land.

Response

Some of the reservation language will be newly created and negotiated between the Successful Bidder and the MBTA at the time of drafting the Purchase and Sale Agreement and the Deed. Other language has been applied to other transactions between the MBTA and third parties and is available for review and inspection at TRA's offices by appointment prior to the Bid Submission deadline.



related to the condition of the Property. This indemnification and release shall be by a deeded covenant running with the land.

The Successful Bidder will not be responsible for any liability, claims or costs associated with any existing conditions including, without limitation, those associated with the presence of any oil, toxic or hazardous materials in, on, at under, about, from or associated with the vent shaft and the Red Line rapid transit tunnels.

Page 6: Paragraph 16. Reservations and Restrictions is amended to read:

The MBTA will retain and/or reserve the following: (1) a permanent subsurface easement for the existing Red Line rapid transit system, and any reconstructed or alternate facility located within such rapid transit areas; (2) permanent easements for all existing and future utilities, including telecommunications, used by the MBTA or granted, leased or licensed to others in the future; (3) a permanent easement for the concrete pad surrounding the vent shaft, the standpipe and the subway grates; (4) a permanent easement for 24 hour a day, seven days a week, 365 days a year unobstructed access from Summer Street (including emergency access and maintenance) to the existing vent shaft (along the entire length of the vent shaft behind the subway grates), concrete pad, subway grates and standpipe; and (5) a permanent 15-foot wide easement area around the perimeter of the vent shaft as measured from the edges of the above-ground concrete pad, on the remaining three (3) sides for access and maintenance purposes. The easement areas described above must remain vacant and may not be utilized for storage or parking of vehicles or the like, but may be utilized, if necessary, to meet open space or FAR requirements.

The Authority will retain the fee ownership of the red line vent shaft and the subway emergency access grates.

These amended terms are also incorporated into and made a part of Appendix F, the TERM SHEET, as if fully stated.

Any other Sections and Paragraphs affected by this amendment to the Invitation to Bid will be modified or amended in subsequent addendum.

Cc: MBTA Real Estate