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Plans Promote The Rebuilding Of Downtown

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IN ADDITION to the unfathomable loss of innocent mothers, fathers, children and friends, approximately 13 million square feet of commercial real estate was lost in the attack on the World Trade Center. According to Philip F. Russo, director of media relations at Cushman & Wakefield, another 12.5 million square feet of commercial and office space was damaged and could not be occupied, at least for a time, following the attack. All seven World Trade Center buildings were completely destroyed. Countless others were severely damaged or have been demolished. Throughout New York City, as many as 80,000 jobs could be lost as a result of the attack. Initially, thousands of residents were displaced and vacancies in residential buildings were staggering. The face of Lower Manhattan has been altered forever. The task of reconstructing this part of New York City is daunting.

Developers want to commence rebuilding, but are concerned about costs, property values and safety issues. Property owners must deal with an enormous decline in revenues and increased costs. Commercial and residential tenants of buildings throughout Lower Manhattan are either eager to return to their neighborhood or immediately need a permanent alternative place to settle.

To rebuild we will need a comprehensive recovery plan coordinated between the city, state and federal governments. They must act in concert to assist property owners, businesses, developers and residents. Tax incentives alone will not be sufficient. Moreover, substantial loss of tax revenues will hamper the government's ability to deliver important services and will further diminish the economy.

How do we encourage investors and lenders to invest in and rebuild Lower Manhattan? How do we entice businesses and residents back to the neighborhood? How do we ensure that once they return, businesses and residents remain during the difficult times ahead? This article will explore existing and proposed programs to address these issues.

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Government Proposals

On Oct. 9, 2001, Governor Pataki released his $54 billion plan to rebuild New York by providing for statewide infrastructure improvements and general benefits. He proposed the creation of a federal WTC "Liberty Recovery Zone" in Lower Manhattan. The goals of the Liberty Zone are to encourage sustainable, long-term economic development in New York, with special emphasis on the areas damaged or destroyed during the attack. Benefits proposed to be available in the Liberty Zone would include tax incentives and grants for qualified businesses and financial incentives to encourage businesses to hire area residents, and to encourage investment in construction and rehabilitation of buildings, equipment and infrastructure within the area.

Mayor Giuliani's proposal primarily focuses on rebuilding New York City. On Nov. 2, Governor Pataki and the Mayor announced the creation of the Lower Manhattan Redevelopment Corporation (LMRC), which is expected to oversee all aspects of the plans to revitalize and rebuild Lower Manhattan. The redevelopment corporation will be a subsidiary of the Empire State Development Corporation, and be governed by a nine member board of directors, appointed by the Governor (six members) and the Mayor (three members).

On Oct. 30, Assembly Speaker Sheldon Silver released his Lower Manhattan Economic Recovery Package. The $200 million proposal, which primarily uses state funds, incorporates financial assistance for the families of victims, the creation of a memorial commission, establishment of a Lower Manhattan Resurgence Authority to address the issue of redevelopment and a tax incentive package to promote economic stability and growth in Lower Manhattan.

Senators Charles Schumer and Hillary Rodham Clinton urged Congress to consider programs that fall between the Governor's and Mayor's plans. The Senators' $5 billion dollar economic stimulus package was approved by the Senate Finance Committee, as part of a larger bill on Nov. 8. Programs under consideration include expansion of existing tax incentive programs such as the Industrial and Commercial Incentive Program, to the creation of new tax exempt bond programs and wage subsidies to employers.

Different priorities and interests among the various levels of government, business owners, interest groups (including insurers) and residents must be rapidly harmonized in order to create and implement any comprehensive plan to rebuild. Complicating matters further are concerns that insurance proceeds may not cover the enormous loss of business revenues, as well as the cost of reconstruction. Additionally, insurance coverage may become prohibitively expensive and difficult to obtain in the future, making new financing and construction more difficult.

How should the government apply its limited resources to the rebuilding efforts? Some believe the focus should be on rebuilding exactly what was lost, a world trade center and an expansive commercial office complex. Others believe that significant improvements in infrastructure are crucial. Many believe that both are essential.

Much of Governor Pataki's proposal is focused on infrastructure improvements, rather than replacement office construction. The New York City Partnership appears to concur and has made infrastructure a major focus of its efforts to rebuild. According to Kathryn Wylde, the Partnership's president, the circumstances present an opportunity to redesign Lower Manhattan's infrastructure, including transit, telecommunications and power, to 21st century standards. Ms. Wylde said in an interview that the areas which need improvement include rebuilding the PATH train station destroyed when the buildings collapsed, ensuring adequate ferry service for New Jersey residents who work in Lower Manhattan and whose commute now takes two hours, and improving public transportation from suburbs. Commuters from Westchester and Long Island have long complained that they must travel into Grand Central Station, Penn Station or Brooklyn, exit the commuter rail system and take an overcrowded subway to their final destination.

The process is time consuming, uncomfortable and costly. Improvements such as those proposed by the Governor, Ms. Wylde and others could further encourage businesses and residents to return to the area.

Speaker Silver agrees that infrastructure improvements are vital. His recovery plan largely focuses on improving utility service, communication systems and public transportation.

In addition to infrastructure, replacement of some, if not all, of the lost commercial office space will be a primary focus. How much commercial office space is needed is the subject of debate. Estimates range from the entire 13 million square feet estimated to have been lost in the attack, to as little as 2 million square feet of replacement space. According to Cushman & Wakefield, on Sept. 1, 2001, there was almost 28 million square feet of vacant office space in Manhattan. Barry Gosin, vice chairman and chief executive officer of Newmark & Co., said in an interview that he believes there is now 45 to 50 million square feet of vacant office space citywide, if one considers "A", "B" and "C" quality buildings. Mr. Gosin noted that a large citywide vacancy rate does not necessarily mean that available space will meet the particular needs of a commercial tenant. Thus, should existing vacancies in other areas of Manhattan affect how Lower Manhattan is rebuilt?

Regardless of how much new space is needed in Lower Manhattan, developers and businesses are wary of the costs they will incur to reconstruct the destroyed space and recognize that meaningful government incentives will be necessary to encourage them to rebuild and return to the area.

Incentive Programs

The Industrial and Commercial Incentive Program (ICIP) is a New York City program which has successfully encouraged development. The ICIP, which is administered by the New York City Department of Finance, provides for partial real estate tax exemptions on eligible buildings which are rehabilitated or, in limited cases, are newly constructed. Eligible commercial projects receive a partial real estate tax exemption based upon their location.

Under ICIP, benefits are available only to the rehabilitation of existing buildings located south of 96th Street in Manhattan. Except for a limited category of "SMART" buildings, no ICIP benefit is available for new construction south of 96th Street. Increasing the term of the exemption, as well as, expanding the ICIP to include new commercial/office development in Lower Manhattan, would assist the rebuilding and renovation of the area.

While ICIP is not available for new construction in Manhattan, businesses that construct "Smart Buildings" in Lower Manhattan south of Murray Street, are entitled to an eight-year partial real estate tax exemption on the increase in assessed value solely attributable to the new construction. Smart buildings must meet a variety of criteria including, they must have: (a) 12'-9" floor heights in at least 50 percent of the floors, and (b) a fiber-optic telecommunications wiring system and a vertical delivery system for same to individual tenants in each floor. The building must meet two additional criteria from a list of five, which criteria relate to building size, electrical capacity and interior structure.

IDA Bonds

To aid in the rebuilding effort, developers can obtain government funded financing through Industrial Development Agency Bonds (IDA). IDA bonds generally are tax exempt bonds used by eligible commercial, industrial and non-profit corporations to acquire land and/or a building, construct a new facility, renovate an existing facility or purchase machinery or equipment within the five boroughs. They are issued through the New York City IDA. The bond term can range from as few as five years (for machinery and equipment) to as many as 30 years (for brick and mortar). As part of the bond program, the IDA receives bare title to the property. Beneficial ownership remains with the owner and the property is eligible for a partial real property tax exemption (PILOT). A lease is entered into between the IDA as landlord and the owner as tenant with the rental payments set at an amount required to amortize the repayment, with interest, of the bonds over a specified number of years. The obligation to pay PILOT arises from the lease.

IDA bond programs also typically include a package of additional benefits including real estate tax exemptions, sales tax and mortgage recording tax exemptions. To qualify for these benefits the IDA must find that (a) the company merits the benefit and (b) the incentives are necessary to induce the company to remain in the city and/or commit to future job growth in the city. Once granted, an IDA package can save a developer significant amounts of money when purchasing property and obtaining financing.

The IDA package also offers an exemption from the 8.25 percent sales tax on both equipment purchases and capital expenditures, as well as, construction materials for both renovations and new construction. The amount of the available sales tax exemption benefit typically is capped and the sales tax benefit is expected to be used over a period of time, depending upon the company's projections of annual purchases. By eliminating sales taxes, the cost of construction is decreased and rehabilitation of, and investment in, the property becomes more economically feasible.

Zoning

Zoning and environmental regulations also are significant considerations for developers. The Zoning Resolution City of New York is intended to create a rational plan for development. Under certain circumstances, strict application of the Zoning Resolution may in fact hinder the city's goals. The Empire State Development Corporation (ESDC), a corporate governmental agency of the State of New York, constituting a political subdivision and public benefit corporation,[1] has legislative authority to "override" local zoning ordinances in certain limited circumstances. In urgent situations, the ESDC's override authority can legitimately avoid lengthy local review processes (such as New York City's ULURP) and help encourage economic development. Historically, localities request ESDC to exercise its override powers. On Nov. 2, the Lower Manhattan Revitalization Corporation (LMRC) was created to oversee all aspects of the plan to rebuild and revitalize Lower Manhattan. The LMRC is a subsidiary corporation of ESDC.

The IDA reportedly issues approximately $130 million in tax-exempt bonds each year. Bond cap limitations affect the city's ability to issue additional bonds without a modification of federal law. To encourage businesses to return to Lower Manhattan, Senators Schumer and Clinton have proposed a legislative increase in the city's ability to borrow, to $15 billion. The Federal Office of Management and Budget supports this proposal. Governor Pataki supports an increase in New York State's private activity volume bond cap to $2.8 billion. The Governor also supports the addition of telecommunications infrastructure to the list of eligible private activity bond purposes.

The State Environmental Quality Review Act (SEQRA) requires that public officials and developers consider and address the existing conditions and environmental needs of an area in connection with new development or changes in the use of existing properties. SEQRA attempts to strike a balance between development and environmental considerations, SEQRA review is often a time consuming process which can be extremely costly.

Because redevelopment of Lower Manhattan would include replacement of existing buildings that were destroyed in the attack, full SEQRA review may not be necessary. An abbreviated form of SEQRA could be applied to properties directly affected by the attack, thereby aiding the redevelopment efforts. Because no mechanism similar to ESDC's override authority is available for SEQRA, any significant changes to the statute would have to be made through legislation.

Taxes

To encourage redevelopment and financing, the real property transfer tax and mortgage recording tax exemptions could be made "as of right" for all properties in Lower Manhattan. They could be applied to acquisition and rehabilitation of existing properties with respect to transactions entered into between Sept. 12, 2001 and Sept. 11, 2003.

Governor Pataki also has proposed that state and local taxes be deductible from federal income and corporate taxes. The deduction could lower the cost of construction for affected businesses and decrease the tax consequence of constructing in, moving or returning to Lower Manhattan. The amount of the deduction, which has not yet been determined, would apply to taxes paid in connection with the acquisition of certain property used in trade or business. The deduction would probably be limited to rehabilitation or construction related to the approximately 13 million square feet of lost commercial office space. However, to strengthen the entire city, the Governor has also proposed that the deduction be made available in other redevelopment areas.

Accelerating depreciation of new, non-residential buildings in Lower Manhattan could also encourage development. The Governor proposes to reduce the depreciation period for real property to 20 years from 39 years. He proposes similar changes for (i) tenant leasehold improvements, (ii) building improvements such as roofs, HVAC systems, elevators and escalators (iii) and utility transmission and distribution. Such changes in the Internal Revenue Code would decrease the tax liability faced by owners who elect to build in the proposed Liberty Zone.

Similarly, the amortization term for expenses such as planning costs, land use approvals, design and architectural fees, local fees and other preconstruction costs, could be shortened. This would have a similar effect to decreasing depreciation periods by making available much needed capital and liquid assets to developers during construction.

Short term bonds, sold by the government to the public can be used to raise funds for appropriate government projects. On Sept. 28, 2001, New York City offered $1 billion in one year bonds at a 2.10 percent interest rate to help aid the WTC clean-up effort. While the bonds will not directly encourage redevelopment of Lower Manhattan, they will help speed the clean-up process. The bonds, offered to individual and institutional investors, will help fund World Trade Center related expenses, including site clean-up, overtime salaries,and unemployment insurance premiums.[2] Because of the success of the offering, more bonds may be made available in the future.

Pursuant to federal legislation, any project funded by federal subsidies must pay union wages to construction personnel regardless of union affiliation or lack thereof. Some have argued that the legislation should be revised to permit employers to pay construction personnel non-union wages. They claim that this would reduce the costs of construction and encourage development.

Private pension funds are a significant source of investment capital. Under ERISA, the federal law regulating such funds, private pension fund trustees must make "prudent" investment decisions, solely in the interest of, and for the exclusive purpose of providing benefits to, fund participants and beneficiaries. Private pension fund investments are generally governed by investment guidelines established by the fund trustees which define permissible types or classes of investments. The guidelines for many of these funds may prohibit non-traditional "economically targeted" investments in real estate development products to rebuild Lower Manhattan and would, therefore, require amendment before a fund could make such an investment. ERISA's fiduciary duty provisions also dictate that an economically targeted investment may be made only if a fund's trustees or investment manager expects it to provide a rate of return commensurate to alternative investments having similar risks. If private pension fund trustees conclude that investment of a portion of their portfolio may be prudently made in the Lower Manhattan rebuilding effort, significant financial resources would become available to the redevelopment effort without increasing the financial costs to the government.

In addition, Governor Pataki has proposed the creation of a new category of federally insured reconstruction bonds. The bonds could be purchased by public employee pension funds and would be issued to assist the reconstruction of the approximately 13 million square feet of commercial office space lost in, and around, the World Trade Center.

The Lower Manhattan Revitalization Plan (LMRP) was established in 1995 to provide a comprehensive tax incentive program to increase investment by encouraging renovation of older buildings for commercial and retail uses. Tenants who entered into leases for space in pre-1975 buildings in Lower Manhattan (defined by the program as the area south of Murray, Frank and Dover Streets, excluding Battery Park City), which leases commenced between April 1995 and March 2001 were eligible for Real Property Tax Abatements and Commercial Rent Tax Reductions. Legislation passed last year extended LMRP benefits to leases entered into and commencing before March 31, 2005.

LMRP Benefits

LMRP benefits are dependent upon the size of the tenants (so-called large tenants employing more than 125 individuals) and the term of the lease (minimum lease for large tenants was 10 years). Eligible tenants received a 100 percent real estate tax abatement of the base year tax liability (up to $2.50 per square foot) with benefits decreasing over time. Under the LMRP, qualified tenants who enter into leases of at least five years may also receive a 100 percent reduction of the base year's commercial rent tax liability in the first year, while benefits decrease thereafter over a period of five years. This benefit is also available for leases with a term of at least three, but less than five years, with the benefits decreasing over a three-year period.

Energy benefit programs are also available to businesses that relocate to new or renovated space. Under a comprehensive rebuilding plan, existing energy benefit programs may or may not be retained. The Energy Cost Savings Program (ECSP) is available to industrial and commercial firms whose energy costs are directly metered or submetered and which are relocating, renovating or expanding within the City. ECSP provides a 12 year benefit of up to a 30 percent reduction in electrical rates for eight years. Thereafter the benefit is reduced by 6 percent every two years. Gas rates are reduced up to 20 percent for eight years. Thereafter the benefit is reduced by 4 percent per year. ECSP discounts are not available for energy used for heating.

The City, together with Consolidated Edison, also offers an as-of-right energy cost reduction program which reduces base energy rates by 25 percent for 10 years. The reduction is phased down 1/6th per year in years 11 through 15. New buildings on which construction commenced after April 4, 1992 are eligible. Vacant buildings that were vacated on or after April 1, 1992, in which 75 percent of the rentable square footage were vacant for 12 consecutive months out of the 24 consecutive months proceeding the application for benefits are also eligible. This benefit is in addition to certain tax benefits and the property must already be receiving real property tax incentives, such as ICIP for example.

In addition, through the New York State Power Authority, the New York Public Utility Service can reduce costs by approximately 20-25 percent through a specific kilowatt allocation of Fitzpatrick Nuclear Power. The benefits generally run for 15 years. In order to be considered for allocation, a company's electrical demand must be 400 kilowatts or greater and the company must be committed to retain operations and job growth in New York City.

Employee Tax Credits

To encourage businesses to return or relocate to Lower Manhattan, incentives must be easily obtainable and financially material. Among the programs likely to be implemented is a form of employee tax credit. The credit would be drawn against new tax revenue as opposed to a cash distribution of funds by the government. This form of benefit is generally easier to administer and more palatable to the spending-conscious.

New York City already offers credits to eligible businesses through the Relocation and Employment Assistance Program (REAP). The REAP credit can be as much as $3,000 per employee, per year. The credit is applied against New York City general corporation taxes, unincorporated business taxes, bank taxes and utility taxes, and is available for a period of 12 years. The economic stimulus package proposed by Senators Schumer and Clinton would give a $4,800 per employee federal tax credit to any businesses which return, or relocate to Lower Manhattan. Mayor Giuliani's proposal creates a three-year credit, at $5,000 per employee for the first year, decreasing to $2,500 per employee in the remaining two years of the credit. The Mayor's proposed credit is also applied against federal taxes and, together with the REAP credit, would give a total $8,000 per employee credit in the first year. The Governor's plan also proposes a federal credit, which appears to have been incorporated into the Senators' economic stimulus package. Speaker Silver supports a smaller employee tax credit of $1,000 per employee for businesses located in Ground Zero which relocate and retain their employees within the city. The Speaker's credit would be applied against state taxes. Based upon recent developments, many believe that some form of employee tax credit, around $3,000 per employee, is likely to be approved by the federal government.

The Federal Office of Management and Business supports the request by Senators Schumer and Clinton that $700 million in community block grants be made available to New York State. The proposed employee tax credits are likely to be funded through these community block grants.

According to a spokesman for the Real Estate Board of New York, that group is also in favor of an employee tax credit, which it said would be an important aspect of any recovery plan.

The Governor has also proposed to expand the Business Expense deduction of the Internal Revenue Code for properties located in the proposed Liberty Zone. The expanded deduction would be applied to the costs of removal, replacement or improvement of property at the WTC site, as well as to repair of damaged property, which is already a deductible expense. The deduction would allow the developer or business owner to deduct the entire cost of the expense in the year it is incurred. The proposal requires that costs be incurred between Sept. 1 2, 2001 and Dec. 31, 2006. The approved $5 billion Schumer/Clinton plan also allows businesses to deduct the costs to replace uninsured equipment that was destroyed in the attack.[3]

In an effort to induce technology based and financial companies to return to Lower Manhattan, Governor Pataki proposes to expand the SMART Credit to buildings in the proposed Liberty Zone. The current SMART Building credit is applied against New York City Real Estate Taxes. Under the Governor's plan, Smart Buildings Technology Enhancement Credits would be used against federal income and corporate taxes. The program would encourage high technology businesses, in particular computer and financial services companies, to relocate, return to or expand in Lower Manhattan. The credits would encourage developers to rehabilitate existing buildings by adding technological capabilities. The credits would be available to eligible buildings completed between Sept. 12, 2001 and Dec. 31, 2006.

The Governor's proposal also suggests investment tax credits for equipment, security systems and Smart Buildings Technology Enhancements. Businesses located within the proposed Liberty Zone would qualify for a 10 percent credit toward the purchase price of tangible property (computers, office equipment, business vehicles). Also available would be a credit or deduction for costs related to increasing or replacing security devices.

In lieu of reinstating the LMRP, the city could create a new exemption from the Commercial Rent Tax for businesses in all buildings in Lower Manhattan. Such an exemption, in addition to other suggested programs, would help bring back the local business which added to the rich, vibrant culture and character of the neighborhood. Reintroducing such amenities would also help attract potential residents by allaying their concerns about a lack of services in the area.

The Governor's proposal also suggests a refundable credit against "federal income and corporate taxes for purchase of replacement goods by residents and businesses who suffered, and can document, uninsured losses." Consumers would purchase replacement goods free of state and city sales taxes. The federal government would reimburse the state and city for the tax loss. The program would encourage spending, and provide incentives to invest in security upgrades.

Speaker Silver has also proposed a sales tax exemption for replacement of "uninsured tangible personal property for use or consumption directly and predominantly in business by a person or entity" whose premises were destroyed or damaged in the attack.

Various tax credits and other benefits are also available to businesses located in New York State Empire Zones. There are currently nine Empire Zones throughout the city. Businesses within the zones receive sales tax, wage tax and investment tax credits, free security surveys and energy discounts. The program could be expanded to cover Lower Manhattan, and expansion supported by Speaker Silver.

Pursuant to legislation proposed by Speaker Silver, the so-called Liberty and Resurgence Zones will be allocated $10 million and build upon the state's existing Empire Zone Program. Under his proposal, businesses that returned, or moved, to the Liberty and Resurgence Zones will receive modified Empire Zone benefits. There would be a 10-year period in which businesses could join. Full benefits would be available for 10 years and phased out over the following five years. Benefits would include state business income tax credits for job creation. The credit would be equal to the business's percentage employment increase. Another benefit available in the Liberty and Resurgence Zones would be a state sales tax exemption on goods and services purchased by businesses located within the applicable zone. Speaker Silver's plan also provides that the local sales tax on goods and services purchased by businesses in the Liberty and Resurgence Zones could be exempted by the city.

Other Lower Manhattan Empire Zone proposals would include a waiver of sales tax, in particular for cleaning, repairing, improvements, rehabilitation and construction, including on labor, materials and services for a period of at least two years. Unlike the Replacement Goods Sales Tax Exemption discussed above, Empire Zone sales tax waivers would apply to goods and services purchased in connection with the clean-up and rehabilitation of damaged property. This could result in substantial savings to affected businesses without the limitations and requirements of an IDA type transaction.

The Commercial Expansion Program (CEP) created in August 2000, is a package of tax benefits designed to help qualified businesses relocate and expand in specified areas of the city. The CEP was limited to certain zoning districts in the outer boroughs and in Manhattan, located north of 96th Street. Similar to Empire Zones, the CEP could be expanded to include Lower Manhattan, making benefits such as REAP, ICIP, ECSP and various rent abatements available to businesses who return to the area.

The Small Business Administration is a federal agency which, in part, makes loans to small businesses. The agency is offering two loan programs to businesses affected by the Sept. 11 tragedy. Business Physical Disaster Loans are available to help repair or replace damaged property. Covered property may include real property, machinery, equipment, inventory and supplies.

Economic Injury Disaster Loans provide working capital to help small businesses cover operating expenses they would have been able to pay if the attack had never occurred.

The Small Business Association traditionally makes loans up to $1.5 million. Financial services institutions and not-for-profit organizations are not generally eligible for the agency's assistance. Additionally, eligible business must have revenues less than $1.5 million. Because the effects of the attack have been felt throughout all businesses, large and small, New York City has proposed to expand the qualifying criteria for Small Business Assocation loans to include financial services institutions and not-for-profit organizations. Under the city's proposal, revenue limitations would be raised as well.

The State and City created the WTC Disaster Loan Recovery Program. The program offers bridge loans to businesses and not-for-profit organizations that suffered economic injury or physical damage as a result of the attack. The program is administered jointly by the EDC and ESDC. The loans will assist businesses during the small business loan processing period, which runs approximately three weeks from the date a completed application is submitted. EDC and ESDC have been reviewing loan applications in about three days.

Through the Disaster Loan Program, bridge loans up to $100,000 are available. The state and the city each contributed $25 million to the program to guarantee the loans and encourage bank participation. Because the bridge loans are intended to assist businesses only during the period in which the Small Business Association is reviewing an application, upon approval of an application, the bridge loan is repaid to the WTC Disaster Loan Recovery Program and the funds are made available for additional loans. If the small business application is rejected, the bridge loan becomes a term loan, subject to the participating bank's terms.

A pool of approximately $250 million is available through participating banks. According to an EDC spokesperson, as of this date, approximately 300 disaster loans have been approved by EDC, totaling approximately $20 million.

New York City has established a $5 million grant program to assist businesses. The grants range between $2,500 and $10,000. The program is administered by EDC. Businesses wishing to obtain a grant must simultaneously make an application to the WTC Disaster Recovery Loan Program. Grant benefits are not however, dependent upon approval of the loan application.

On Nov. 5, Governor Pataki announced the WTC Retail Recovery Grant Program, which will provide grants of up to $10,000 to small and medium size retail businesses. As much as $20 million will be available. The program is administered by ESDC.

WTC grants are available to retail businesses that employ fewer than 500 workers. Business owners must intend to resume operations in New York.

Before the attack, approximately 25,000 people called Lower Manhattan home. Through the Section 421-g program, many existing office buildings had been converted to residential properties. Approximately 4,500 apartments were created in this manner. Built in phases commencing in the 1980's, Battery Park City was home to approximately 9,000 residents,[4] many of whom could walk to and from work. Children attended school nearby. Restaurants, supermarkets, movies, hotels and other amenities, while not yet abundant, were becoming increasingly available.

Some residents now have left or are contemplating leaving. Residents are concerned about safety generally, the character of the neighborhood, employment, the availability of mass transit and other amenities and diminished property values. Lower Manhattan residential buildings may have to struggle to fill vacancies

According to Ms. Wylde of the New York Partnership, prior to the attack, approximately 50 percent of the residents of Battery Park City walked to work. Residents whose place of employment remains within walking distance, have had to cope with acrid smelling air. So many businesses have been displaced that many residents now rely on public transportation to travel to work. And while access to public transportation in Lower Manhattan was never easy, as a result of subway, bus and taxi service interruptions and the destruction of the PATH and 1 and 9 subway stations, today it is even more difficult to commute from the area. Those who may be willing to remain under the present conditions hope to convince landlords that they are entitled to significant rent reductions. Some residential landlords have agreed that reasonable concessions are appropriate. Major area landlords are offering tenants rent reductions, in some instances as much as 20 percent. Some have been willing to release tenants from their leases. Richard LeFrak, president of the Lefrak Organization, has explained that his company has encouraged residents to try return to their apartments for four months, with the understanding that they may terminate their lease after the trial period.

Mr. Gosin said that in addition to "bottom line" oriented commercial tenants looking for space at rents well below midtown rates, incentive programs will lure many new residential tenants to Lower Manhattan. Together, they will help recreate a true 24/7 community with a plethora of new amenities.

Residential property owners, who are striving to keep their buildings occupied and rent rolls current, must somehow continue to meet financial obligations relating to mortgage debt-service, clean-up and rehabilitative costs and operating expenses. They will require assistance while they struggle to rebuild. Jack Lester, an attorney representing many of the Lower Manhattan residential tenants, suggested in an interview that, in order to encourage residential rehabilitation and re-occupancy, tenants would be willing to collaborate with landlords to lobby for tax benefits and other government assistance.

Housing Incentives

Senators Schumer and Clinton have proposed an increase in the city's permitted allocation of federal tax exempt bonds. The bonds would be used, in part, to fund residential redevelopment. They would be offered by a yet-to-be-determined agency and would be exempt from federal, state and city taxes. If approved, the funds made available from these bonds would greatly assist in providing new housing opportunities.

Residential property owners may find that by making some of the residential units in Lower Manhattan more affordable, they will more easily be able to fill vacancies. One potential source of new residents are police officers, firefighters, assistant district attorneys, teachers and other workers who typically begin their careers earning around $40,000. This group generally cannot afford many of the renovated Lower Manhattan apartments that have been renting for more than $2,000 monthly. They can however, manage rents between $1,000 and $1,200. However, without government subsidies to help defray the loss of revenue, residential property owners may initially resist such significant rent decreases.

Various incentives, including tax exempt bonds, are available to developers and residential property owners who construct and operate buildings pursuant to affordable housing criteria established by the City of New York. Apartments which are made available at rents within the means of the "new" tenant base could be eligible for this type of incentive. Residential property owners, potential tenants and Lower Manhattan in general would all be benefitted by the creation of a much needed affordable housing program.

The Section 421-g Program was created as part of the Lower Manhattan Revitalization Plan (LMRP). Section 421-g of Chapter 32, Title 28 of the New York State Real Property Tax Law grants tax exemptions and abatements for conversion of commercial buildings to residential multiple dwellings. The benefits are available generally south of Murray Street at City Hall.

Section 421-g is a powerful existing tool used to encourage residential conversion. Program benefits include a 14 year exemption (full exemption for eight years; partial, phased out exemption for the remaining six years) from the increase in real estate taxes resulting from work associated with residential conversion. Section 421-g also abates substantially all existing real estate taxes on the site for the first year following completion of construction. Buildings with landmark designation are permitted one additional year of full benefits.

The Section 421-g program recently was extended to provide that applications for benefits must be made, and all conversion work must be completed, by Dec. 31, 2007. Work must be commenced no later than June 30, 2007.

To further encourage new residential conversions, Section 421-g benefits could be extended for an additional five years. If the market is strong enough to support new residential construction, this program, or the Section 421-a Program, also should be expanded to include new residential construction.

Many previously converted residential buildings already receive Section 421-g benefits. For those which survived the attack, but require clean-up and rehabilitation, the term of the benefits should be increased. Additionally, the extension could be applied to the previously completed work, as well as to new rehabilitative work. Extension of benefits would help offset the new costs incurred by the landlord to finance the building's rehabilitation. Additional changes to the Section 421-g Program, such as a full abatement of taxes and an extension of benefits for five years, would help owners of buildings during the rehabilitation period.

Government officials and tenant advocates have proposed a variety of economic incentives intended to encourage residential occupancy in Lower Manhattan. The Governor has proposed the creation of a federal income tax credit to residents below Canal Street. The Schumer/Clinton plan offers a similar tax credit. The credit would be available for up to two years and would be available to all residents in the eligible area. The details of such a credit have not yet been finalized. Another option might be to reduce state and city income taxes for those individuals who elect to reside in Lower Manhattan.

Residential property owners believe that they are entitled to receive the same benefits as commercial developers and that any redevelopment program should make benefits equally available for commercial and residential projects. Many support the following proposals.

Employee Tax Credits: Employee tax credits to businesses that remain in, or relocate to, Lower Manhattan could also be made available to residential property owners who employ maintenance, sales and management personnel for their Lower Manhattan properties.

Commercial Rent Tax Exemption: The creation of a Commercial Rent Tax Exemption for businesses in Lower Manhattan would encourage, among other businesses, retail, restaurants and other amenities to return to the area.

Federal Income Tax Credits to Residents: There has also been discussion of a federal income tax credit that would be available to tenants who earn less than $150,000 per year. People have discussed tax credits of $3,000 to $5,000 for up to a two year period. This would amount to a credit of $250 to $416.67 per month. Richard LeFrak said in an interview that there should be a higher tax credit. He emphasizes that any tax credit must be of sufficient magnitude if it is to serve as a meaningful and realistic inducement to tenants, to remain under the present conditions.

Battery Park City is unique. The 92 acre parcel is owned by The Battery Park City Authority, a public benefit corporation and is home to thousands of tenants. The authority holds ground leases on the land on which the buildings are constructed. Some residential building owners have requested that the authority reduce the ground rents. Residential property owners could pass the reductions through to tenants in the form of rent concessions. If the decrease in rent is substantial enough, many residents say they will stay.

One Sept. 27, Governor Pataki announced that the New York Power Authority (NYPA) would make low cost power available to the Battery Park City Authority. The low cost power was to be applied to the public facilities of Battery Park City. The savings may be passed on to tenants to encourage them to return.

As a result of the present crisis New York City has lost and will continue to lose substantial revenue over the next several months and years. Suddenly, there is discussion of a significant deficit in the city's budget, where, just a few months ago, there was debate and controversy over how to use a surplus. To mitigate the financial burden brought by decreases in tax revenues, the federal government is considering a plan whereby local governments would be able to refinance municipal bonds multiple times. This process is known as "advanced refunding" of debt and allows the locality to benefit from decreasing interest rates. Under federal law, municipal bonds may be refinanced only once.[5]

Offers of Help

The Sept. 11 elicited an unbelievable outpouring of financial support and volunteer assistance from individuals and organizations in New York City, the nation and the world. Representative of such assistance was the help provided by Keyspan Corp. Although Keyspan does not provide utility services to Lower Manhattan, within one week of the tragedy, Robert Catell, chairman and chief executive officer of Keyspan who is also chairman of the New York City Partnership, established a telephone bank and resource network to assist New Yorkers to find new employment and relocation space for displaced business. Motorola Corp. contributed millions of dollars in equipment and support. Additional major contributors are too numerous to mention.

The challenge of rebuilding Lower Manhattan and, therefore, New York City, is daunting. With so many competing interests and varied proposals, establishing a comprehensive and effective assistance plan is a Herculean task. However, perhaps more important than the precise program itself, is the timing. Mr. LeFrak emphasizes that already some Lower Manhattan companies and residents have found new, permanent offices and homes. They have acted because of their immediate needs with respect to transportation, job relocation, air quality, schools and general quality of life. Therefore, it is essential that an aggressive plan be enacted forthwith.

Mr. Gosin said he believes that Lower Manhattan will ultimately come back. He said a more diverse tenant mix comprised of publicly held and private publishing, advertising, architectural and other service organizations would be drawn by strong financial incentives and improvements in transportation and public infrastructure.

Stephen Berliner is an executive director of Insignia ESG and branch manager of its downtown office. Although Mr. Berliner noted in an interview that restoration of the PATH station may take 18-24 months, he said he is bullish on the Lower Manhattan commercial real estate market. He cited the lack of available large block space in Midtown and attractive occupancy costs. Mr. Berliner also noted the Deutschebank recently closed on its acquisition of 60 Wall Street, the J.P. Morgan headquarters building. Insignia ESG anticipates increasing its downtown leasing staff by 50 percent by the year 2002.

New York City remains a resilient, vibrant, thriving and industrious metropolis. While its soul has suffered unspeakable pain, its business community, its labor unions, its cultural institutions, its people, are ready to rebuild. However, they need tools and they need them now.

(1) McKinney's Unconsolidated Laws, Section 6254.

(2) "New York Cleanup Bonds Attract Heavy Interest," Los Angeles Times, Oct. 3, 2001.

(3) New York State Assembly Bill A9480.

(4) "Downtown New York, A Community Comes of Age,' page 23. Prepared on behalf of Alliance for Downtown New York, Inc.; prepared by Hamilton, Rabinovitz & Alschuler Inc. Global Strategy Group, January 2001.

(5) Philip Lentz, "Incentive Plan Eyed: Sens. Clinton and Schumer Push for Tax Breaks for Downtown Firms: Higher Bond Limits for City,' Crain's New York Business, Oct. 22, 2001.