

To: Tina Schultheis/USA[Tina.Schultheis@cushwake.com]
From: Marc Nakleh/USA
Sent: Mon 3/15/2021 2:49:07 PM
Subject: 4-6 East 57th Street - 2021 Hours
20-12002-902310 LOE.pdf
4-6 East 57th Street C&W Hourly Invoice.xlsx
FW: 4-6 East 57th Street Letter Agreement

Tina – Attached are my hours for 4-6 East 57th Street.
The report portion was booked in 2020.

The hourly portion was concluded today, with delivery of the attached email and signed conclusion letter.

Would you please create an invoice for the matter? Ready to book on my end. All to me.

Thank you!

Marc J. Nakleh, MAI

Executive Director
Valuation & Advisory

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PX-3213

Index No. 452564/2022 (AFE)

Marc J. Nakleh, MAI
Executive Director
Valuation & Advisory



Cushman & Wakefield, Inc.
1290 Avenue of the Americas, 9th Floor
New York, NY 10104-6178
1-212-698-5606 Tel
1-212-479-1877 Fax
marc.nakleh@cushwake.com

September 21, 2020

Debra G. Fechter
4-6 EAST 57TH STREET ASSOCIATES, L.L.C.
C/o Digby Management Company, L.L.C.
59 East 54th Street, Room 51
New York, NY 10022

Re: **LAND VALUATION**
4-6 East 57th Street
New York, NY 10022

Dear Ms. Fechter:

Thank you for requesting our proposal for appraisal services. This proposal letter will become, upon your acceptance, our letter of engagement to provide the services outlined herein.

TERMS OF ENGAGEMENT

I. PROBLEM IDENTIFICATION

- The Parties to This Agreement:** Cushman & Wakefield, Inc. ("C&W") and 4-6 EAST 57TH STREET ASSOCIATES, L.L.C. (the "Client" and "Fee Owner").
- Intended Users:** The appraisal will be prepared for the Client and is intended only for the use specified below. The Client agrees that there are no other Intended Users.
- Intended Use:** In connection with a contractual rent reset for the period commencing January 1, 2021 through December 31, 2040..
- Type of Opinion and Rights Appraised:** Market Value of the Underlying Land as if vacant, unimproved land, and unencumbered, but subject to the then existing declarations of rights to the air-space above the existing building in effect.
- Date of Value:**
 - December 31, 2020

CW LOE 2019-2020

Subject of the Assignment and Relevant Characteristics:

The subject property consists of a 5,020-square-foot parcel of land located on the southern side of East 57th Street between 5th and Madison Avenues in Midtown Manhattan. The site, along with the adjacent lot (8 East 57th Street) is improved with an approximately 54,000-square foot commercial/retail building. The site is zoned C5-3, which permits a maximum floor area ratio ("FAR") of 15.0 times the lot area.

The site is encumbered by a long-term lease between Fee Owner and The Trump-Equitable Fifth Avenue Company. The site is also encumbered by a declaration with respect to the air-rights above the existing building. Subject to your confirmation, we understand the declaration restricts development of the property to a maximum 4.0 FAR, or 20,080 square feet of zoning floor area.

The lease encumbering the property calls for the annual rent for the period commencing January 1, 2021, and ending December 31, 2040 to be reset to an amount equal to the greater of a) \$450,000, or b) 7% of the fair market value of the land, as of December 31, 2020. The lease further instructs that the land is to be valued as if vacant, unimproved, and unencumbered by the long-term lease, but subject to the existing declaration of rights to the air space above the existing building in effect. Should the landlord and tenant be unable to agree on the rent for this period, the lease calls for each party to retain a MAI-designated appraiser, who shall then select a third appraiser of the same qualifications. The majority decision of the three appraisers shall be binding on the parties.

This proposal contemplates both the preparation of the appraisal report estimating the fair market value of the land and the associated support services to bring the matter to a conclusion. We confirm that the undersigned and Brian R. Corcoran, MAI, CRE, meet the qualifications under the lease.

Assignment Conditions:

We do not anticipate the use of any extraordinary assumptions or hypothetical conditions. However, the valuation will be based on the assumptions provided for in the lease.

II. ANTICIPATED SCOPE OF WORK

USPAP Compliance:

C&W will develop an appraisal in accordance with USPAP and the Code of Ethics and Certification Standards of the Appraisal Institute.

General Scope of Work:

- Property Inspection to the extent necessary to adequately identify the real estate
- Research relevant market data, in terms of quantity, quality, and geographic comparability, to the extent necessary to produce credible appraisal results
- Consider and develop those approaches relevant and applicable to the appraisal problem. Based on our discussions with the Client, and the limitation of the developable area, we anticipate developing the following valuation approaches:
 - Income Capitalization Approach, more specifically the residual model
 - Sales Comparison Approach

III. REPORTING AND DISCLOSURE

Scope of Work Disclosure: The actual Scope of Work will be reported within the report.

Reporting Option: The appraisal will be communicated in an Appraisal Report.

IV. FEE, EXPENSES AND OTHER TERMS OF ENGAGEMENT

Fee: The fee for the appraisal report shall be \$35,000, which shall be due upon delivery of the draft report. Any time spent outside the preparation of the appraisal will be billed hourly. Rates for the team are \$800 for the undersigned and \$1,200 for Brian R. Corcoran. Associates are available, as required, at hourly rates between \$350 and \$450. Should the matter be settled prior to a decision by the majority of appraisers, a success fee will be due at an amount to be agreed upon between Client and C&W.

All invoices are due upon receipt. The Client shall be solely responsible for C&W's fees and expenses hereunder. Acknowledgement of this obligation is made by the countersignature to this agreement by an authorized representative of the Client.

Additional Expenses: Fee quoted is inclusive of expenses related to the preparation of the report.

Retainer: A retainer of 50% is required for this assignment in order to commence work.

Report Copies: The final report will be delivered in electronic format. Up to three hard copies will be provided upon request.

Start Date: The appraisal process will initiate upon receipt of signed agreement, applicable retainer, and the receipt of the property-specific data.

Acceptance Date: This proposal is subject to withdrawal if the engagement letter is not executed by the Client within four (4) business days.

Debra G. Fechter
4-6 East 57th Street, New York, NY
September 21, 2020
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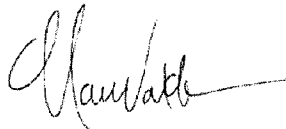
- Draft and Final Report Delivery:** As requested, a draft version of the report will be delivered within sixty (60) days of your written authorization to proceed, assuming prompt receipt of necessary property information. The finalization of the report will be dependent on the client comments and the commencement of the appraisal proceeding.
- Changes to Agreement:** The identity of the Client, Intended User(s) identified herein, or Intended Use identified herein; the date of value; type of value or interest appraised; or property appraised cannot be changed without a new agreement.
- Prior Services Disclosure:** USPAP requires disclosure of prior services performed by the individual appraiser within the three years prior to this assignment. The undersigned appraiser(s) has not provided prior services within the designated time frame.
- Future Marketing Disclosure:** Unless otherwise directed, at the conclusion of this engagement, we may disclose that we have appraised the subject property in future marketing documents and materials.
- Conflicts of Interest:** C&W adheres to a strict internal conflict of interest policy. If we discover in the preparation of our appraisal a conflict with this assignment, we reserve the right to withdraw from the assignment without penalty.
- Cancellation of Engagement:** Client may cancel this agreement at any time prior to C&W's delivery of the appraisal report upon written notification to C&W. Client shall pay C&W for work completed on the assignment prior to C&W's receipt of written cancellation notice, unless otherwise agreed upon by C&W and Client in writing.
- Withdrawal of Appraiser Prior to Completion of Assignment:** C&W may withdraw without penalty or liability from the assignment(s) contemplated under this agreement before completion or reporting of the appraisal in the event that C&W determines, at C&W's sole discretion, that insufficient information was provided to C&W prior to the engagement, that Client or other parties have not or cannot provide C&W with documentation or information necessary to C&W's analysis or reporting, that conditions of the subject property render the original scope of work inappropriate, or that the Client has not complied with its payment obligations under this agreement. C&W shall notify the Client of such withdrawal in writing.
- Further Conditions of Engagement:** The Conditions of Engagement attached hereto are incorporated herein and are part of this letter of engagement.

CW LOE 2019-2020

Debra G. Fechter
4-6 East 57th Street, New York, NY
September 21, 2020
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Thank you for calling on us to render these services and we look forward to working with you.

Sincerely,
CUSHMAN & WAKEFIELD, INC.



Marc J. Nakleh, MAI
Executive Director

cc: Justin Sutter
Brian R. Corcoran
Robert S. Nardella
Christopher C. Sauvigne

AGREED:
CLIENT: 4-6 EAST 57TH STREET ASSOCIATES, L.L.C.

By: Debra Fechter Date: 10/7/2020
Debra G. Fechter

Title: Manager

E-mail Address: dfechter@digbymgt.com

Phone Number: (212) 755-3063

Information Needed to Complete the Assignment

We understand that you will provide the following information for our review, if available.

Physical Information

- Plot plan/survey and legal description

Supporting Documentation

- Leases and/or detailed Lease Abstracts
- Zoning Analysis

Other Documentation

- Copy of your guidelines or instructions to appraisers/consultants
- Supplemental Standards, if applicable (applies only to government agencies, government sponsored entities, other entities that establish public policy)
- Additional Information to be considered in the appraisal

CONDITIONS OF ENGAGEMENT

- 1) Each Intended User identified herein should consider the appraisal as only one factor together with its independent investment considerations and underwriting criteria in its overall investment decision. The appraisal cannot be used by any party or for any purpose other than the Intended User(s) identified herein for the Intended Use described herein.
- 2) Unless identified expressly in this agreement, there are no third-party beneficiaries of agreement pertaining to the appraisal, and no other person or entity shall have any right, benefit or interest under such agreement. The identification of a party as an intended user of the appraisal does not mean that the party is a third-party beneficiary of the agreement.
- 3) The appraisal report will be subject to our standard Assumptions and Limiting Conditions, which will be incorporated into the appraisal. All users of the appraisal report are specifically cautioned to understand the standard Assumptions and Limiting Conditions as well as any Extraordinary Assumptions and Hypothetical Conditions which may be employed by the appraiser and incorporated into the appraisal.
- 4) C&W shall have the right to utilize its affiliates in the performance of its services, provided that they comply with the obligations of C&W pursuant to this engagement.
- 5) The appraisal report or our name may not be used in any offering memoranda or other investment material without the prior written consent of C&W, which may be given at the sole discretion of C&W. Any such consent, if given, shall be conditioned upon our receipt of an indemnification agreement from a party satisfactory to us and in a form satisfactory to us. Furthermore, Client agrees to pay the fees of C&W's legal counsel for the review of the material which is the subject of the requested consent. C&W disclaims any and all liability with regard to the appraisal prepared pursuant to the engagement to any party other than the Intended User(s). Under no circumstances will C&W consent to the quote, reference or inclusion of the appraisal in connection with crowd funding activities. Further, crowd funding investors are specifically excluded from any class of Intended Users.
- 6) In the event the Client provides a copy of the appraisal to, or permits reliance thereon by, any party not identified herein as an Intended User, Client hereby agrees to indemnify and hold C&W, its affiliates and the respective shareholders, directors, officers and employees, harmless from and against all damages, expenses, claims and costs, including attorneys' fees, incurred in investigating and defending any claim arising from or in any way connected to the use of, or reliance upon, the appraisal by any such party.
- 7) The balance of the fee for the appraisal will be due upon delivery of a report. Payment of the fee is not contingent on the appraised value, a loan closing, or any other prearranged condition. Additional fees will be charged on an hourly basis for any work, which exceeds the scope of this proposal, including performing additional valuation scenarios, additional research and conference calls or meetings with any party, which exceed the time allotted by C&W for an assignment of this nature. If we are requested to stop working on this assignment, for any reason, prior to our completion of the appraisal, C&W will be entitled to bill the Client for the time expended to date at C&W's hourly rates for the personnel involved.
- 8) If C&W or any of its affiliates or any of their respective employees receives a subpoena or other judicial command to produce documents or to provide testimony involving this assignment in connection with a lawsuit or proceeding, C&W will use reasonable efforts to notify the Client of our receipt of same. However, if C&W or any of its affiliates are not a party to these proceedings, Client agrees to compensate C&W or its affiliate for the professional time and reimburse C&W or its affiliate for the actual expense that it incurs in responding to any such subpoena or judicial command, including attorneys' fees, if any, as they are incurred. C&W or its affiliate will be compensated at the then prevailing hourly rates of the personnel responding to the subpoena or command for testimony.
- 9) By signing this agreement Client expressly agrees that its sole and exclusive remedy for any and all losses or damages relating to this agreement or the appraisal shall be limited to the amount of the appraisal fee paid by the Client. In the event that the Client, or any other party entitled to do so, makes a claim against C&W or any of its affiliates or any of their respective officers or employees in connection with or in any way relating to this engagement or the appraisal, the maximum damages recoverable from C&W or any of its affiliates or their respective officers or employees shall be the amount of the monies actually collected by C&W or any of its affiliates for this assignment and under no circumstances shall any claim for consequential, indirect, special, punitive or liquidated damages be made.
- 10) C&W disclaims any and all liability to any party with regard to the appraisal report other than an Intended User identified herein.
- 11) The fees and expenses shall be due C&W as agreed in this letter. If it becomes necessary to place collection of the fees and expenses due C&W in the hands of a collection agent and/or an attorney (whether or not a legal action is filed) Client agrees to pay all fees and expenses including attorneys' fees incurred by C&W in connection with the collection or attempted collection thereof.
- 12) Unless the time period is shorter under applicable law, any legal action or claim relating to the appraisal or this agreement shall be filed in court (or in the applicable arbitration tribunal, if the parties to the dispute have executed an arbitration agreement) within two (2) years from the date of delivery to

Client of the appraisal report to which the claims or causes of action relate or, in the case of acts or conduct after delivery of the report, two (2) years from the date of the alleged acts or conduct. The time period stated in this section shall not be extended by any delay in the discovery or accrual of the underlying claims, causes of action or damages. The time period stated in this section shall apply to all non-criminal claims or causes of action of any type.

terminate this agreement and take such other actions as are permitted or required to be taken under law or in equity.

- 13) Notwithstanding that C&W may comment on, analyze or assume certain conditions in the appraisal, C&W shall have no monetary liability or responsibility for alleged claims or damages pertaining to: (a) title defects, liens or encumbrances affecting the property; (b) the property's compliance with local, state or federal zoning, planning, building, disability access and environmental laws, regulations and standards; (c) building permits and planning approvals for improvements on the property; (d) structural or mechanical soundness or safety; (e) contamination, mold, pollution, storage tanks, animal infestations and other hazardous conditions affecting the property; and (f) other conditions and matters for which licensed real estate appraisers are not customarily deemed to have professional expertise.
- 14) Legal claims or causes of action relating to the appraisal or this agreement are not assignable, except: (i) as the result of a merger, consolidation, sale or purchase of a legal entity, (ii) with regard to the collection of a bona fide existing debt for services but then only to the extent of the total compensation for the appraisal plus reasonable interest, or (iii) in the case of an appraisal performed in connection with the origination of a mortgage loan, as part of the transfer or sale of the mortgage before an event of default on the mortgage or note or its legal equivalent.
- 15) Each party represents and warrants to the other that it, and all persons and entities owning (directly or indirectly) an ownership interest in it: (a) are not, and will not become, a person or entity with whom a party is prohibited from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including, but not limited to, those named on OFAC's Specially Designated and Blocked Persons list) or under any statute, executive order or other governmental action; and (b) are not knowingly engaged in, and will not knowingly engage in, any dealings or transactions or be otherwise associated with such persons or entities described in clause (a) above.
- 16) Each party represents and warrants to the other that it (and any party acting on its behalf) has not, in order to enter into this agreement, offered, promised, authorized or made any payments or transfers of anything of value which have the purpose or effect of public or commercial bribery, kickbacks or other unlawful or improper means of doing business ("Prohibited Activity") and will not engage in Prohibited Activity during the term of this agreement. In the event of any violation of this section, the non-offending party shall be entitled to immediately

To: Debbie Fechter[dfechter@digbymgt.com]; Justin Sutter[jsutter@digbymgt.com]
Cc: Brian Corcoran/USA[Brian.Corcoran@cushwake.com]
From: Marc Nakleh/USA
Sent: Mon 3/15/2021 2:37:05 PM
Subject: FW: 4-6 East 57th Street Letter Agreement
[4-6 East 57th Street - Land FMV Agreement - Executed.pdf](#)

Attached is the executed letter agreement for 57th Street. Apologies for the delay again, as David had some family issues on Friday and couldn't sign.

As always, we appreciate your confidence in us to bring this matter to a close.

Marc

Marc J. Nakleh, MAI

Executive Director
Valuation & Advisory

Direct: +1 212 698 5606
Fax: +1 212 479 1877
marc.nakleh@cushwake.com



From: Marc Nakleh/USA
Sent: Monday, March 15, 2021 10:36 AM
To: David Fields <DEF44@msn.com>
Subject: RE: 4-6 East 57th Street Letter Agreement

Good morning David. I hope everything is ok at home.

I am ok with your edits. I have, however, always been taught to use a comma after a date...

Glad to have resolved this with you.

Marc

Marc J. Nakleh, MAI

Executive Director
Valuation & Advisory

Direct: +1 212 698 5606
Fax: +1 212 479 1877
marc.nakleh@cushwake.com



From: David Fields <DEF44@msn.com>
Sent: Monday, March 15, 2021 10:13 AM
To: Marc Nakleh/USA <Marc.Nakleh@cushwake.com>
Subject: 4-6 East 57th Street Letter Agreement

External Mail

Good morning Marc,

Hope all is well. Attached is the signed agreement. A few minor changes. The zip code is 10022, formatted the spacing and took out the comma after January 1, 2020. Let me know if that works.

Best,
David

Fieldstone Advisors, LLC
440 park Avenue South, 17th Fl.
New York, NY 10016
O: 646-487-9888
C: 917-621-7864

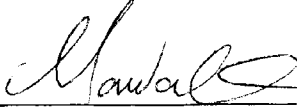
Sent from Mail for Windows 10

March 12, 2021

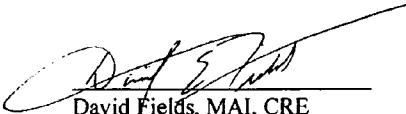
Re: 4-6 East 57th Street, New York, NY 10022

Reset of Rent Under Indenture of Lease, dated May 1, 1979, as amended ("Lease")

Pursuant to agreement of the parties, dated February 24, 2021, the undersigned appraisers for landlord 4-6 East 57th Street Associates, L.L.C. and tenant Fifty-Seventh Street Associates L.L.C. have met and discussed the fair market value of the land and the rent due under the Lease for the period commencing January 1, 2021 through December 31, 2040 (the "Reset Period"). The undersigned confirm their agreement that the fair market value for the property as of December 31, 2020, is \$12,750,000 and the annual rent due during the Reset Period is \$892,500.



Marc J. Nakleh, MAI
Cushman & Wakefield, Inc.



David Fields, MAI, CRE
Fieldstone Advisors, LLC