

BY BETSY KIM

FEBRUARY 2018

\$1.5B Ownership Buyout in Marriott Edition Hotel

Maefield Development and Fortress Investment Group are buying out the Witkoff Group and Winthrop Realty Trust in the hotel project at 20 Times Square, currently under construction.

NEW YORK CITY—Maefield Development and Fortress Investment Group are buying out the ownership interest at the Marriott Edition hotel under construction in Times Square as reported in *The Real Deal*.



Timothy F. Hegarty
Partner
Zetlin & De Chiara LLP

The SEC filing indicates the gross sales price is \$1.53 billion with the transaction scheduled to close by April 30, 2018. Real Capital Analytics notes in the transaction involving the property located at 701 Seventh Ave., (between 47th and 48th streets) Maefield and Fortress are buying out Winthrop Realty Trust, the Witkoff Group, Vector Group and the Infinity Group. The property also has the address of 20 Times Square. The construction, which is underway, is for a 39-floor, 452-unit full-service hotel, with 76,000 square feet of street retail. The database notes that the joint group of owners originally purchased an eleven-story office building sitting at the location in October 2012 for \$430 million.

The buyers and sellers did not comment on this transaction prior to the filing of this article.

Cameron Welch, a member of the law firm Cole Schotz, in the litigation and construction services departments, is not involved in the Marriott Edition development. However, having years of experience in construction matters, he tells GlobeSt.com that in general, a change of ownership interests even with a project underway is often motivated by a change in business strategy of one of the partners pursuing a different direction unrelated to the project at hand.

He notes as that at the closing of the ownership sale, Witkoff and Winthrop plan to sign a development services agreement to finish construction, suggesting this was not a contentious parting of ways. “It depends on the terms of the agreement, but in my experience fewer partners with controlling ownership interests can streamline the process,” says Welch. Thus, he opined this latest development should not be expected to delay the construction schedule.

Tim Hegarty, a partner at Zetlin & De Chiara, works in the construction law practice, and also is not representing any parties in the transaction. He tells GlobeSt.com that construction partnership buyouts are **“definitely not uncommon, certainly not rare.”**



701 Seventh Ave., site of the Marriott Edition hotel

The original owners purchased the property for development six years ago, but **Hegarty** says building such a development in the city takes time. Especially work with the Metropolitan Transit Authority, neighboring properties and licensing agreements can cause delays.

Hegarty says certain issues can be squared away to help ensure construction continues in a seamless way when there is a change in ownership.

He highlights a few points that developers would need to review:

- (1) Check into the project's financing with the transfer of ownership.**
- (2) Make sure design and consultant contracts are properly assigned.**
- (3) Modify contracts to reflect the ownership changes.**
- (4) Change owner representatives.**
- (5) Ensure all warranties are transferable.**

- (6) Review any bonds and named obligees.**
- (7) Complete an accounting of the finances relevant to the design, construction and contract compensations.**
- (8) Create a clean demarcation and documentation of when the new ownership is assuming responsibility of payment of prospective design and construction-related expenses.**
- (9) Perform due diligence to ensure insurance is being maintained.**
- (10) Update all agreements with the insurance agency.**

With the Marriott Edition partnership deal, **Hegarty** noted it's in the current owners' best interest to have the project built as quickly and expeditiously as possible as time is money. **"Usually ownership issues are resolved prior to commencement of construction but once the wheels are going it is not in anyone's interests to cause delays,"** he says.

***Betsy Kim** is the bureau chief, East and NY reporter for Real Estate Forum and GlobeSt.com. As a lawyer and journalist, Betsy has worked as the director of editorial and content for LexisNexis Lawyers.com, a TV/multi-media journalist for NBC and CBS affiliated TV stations in the Midwest, and an associate producer at Court TV.*

ZETLIN & DE CHIARA LLP

www.zdlaw.com