

## **ATLANTIC YARDS - CITY PARTICIPATION AGREEMENT**

This ATLANTIC YARDS - CITY PARTICIPATION AGREEMENT (together with all Exhibits attached hereto, this "Agreement") is made as of March 4, 2010, by and among Atlantic Yards Development Company, LLC, a Delaware limited liability company ("AYDC"), The City of New York (the "City") and each Affiliate of AYDC that executes a Joinder pursuant to Section 2 hereof (each, a Site Owner).

### **RECITALS**

WHEREAS, the New York State Urban Development Corporation d/b/a the Empire State Development Corporation ("ESDC") has adopted that certain Modified General Project Plan, dated as of June 23, 2009 (the "MGPP") for the Atlantic Yards Land Use Improvement and Civic Project (the "Project") in accordance with the New York State Urban Development Corporation Act;

WHEREAS, portions of the Project are being undertaken by ESDC, the New York City Economic Development Corporation, the AYDC and its Affiliates;

WHEREAS, pursuant to the MGPP, the ESDC shall condemn certain City Properties;

WHEREAS, the City and the ESDC have entered into that certain Land Acquisition Agreement, dated as of November 23, 2009;

WHEREAS, as of the date hereof, ESDC and AYDC Interim Developer, LLC, a Delaware limited liability company ("Interim Developer") have entered into certain leases (each, an "Interim Lease") whereby: (i) ESDC presently leases certain real property (including the City Properties) to Interim Developer pending the creation of certain development sites from such real property (each, a "Development Site"); and (ii) the ESDC and the Interim Developer contemplate and provide that ESDC and the Site Owners will enter into certain development leases with respect to such Development Sites (each, a "Development Lease");

WHEREAS, pursuant to each Development Lease: (i) the Site Owner shall develop a portion of the Project on the applicable Development Site; and (ii) upon the expiration thereof, the ESDC shall convey its fee interest in the Development Site to the Site Owner;

WHEREAS, by virtue of the Interim Leases and the Development Leases (collectively, the "ESDC Leases") the Site Owners will benefit from: (i) the contributed value of the City Properties; and (ii) the ESDC's tax exempt status; and

WHEREAS, the parties have agreed that, as compensation for the taking of the City Properties, the City shall be entitled to receive certain City Participation Payments with respect to the Participating Sites.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the City and AYDC agree as follows.

1. Definition of Participating Sites and Expiration Date; Termination.

(a) "Participating Site" means any Development Site other than an Exempt Site. An "Exempt Site" is any Development Site that either: (i) is the Arena Parcel (as defined in that certain Agreement of Arena Lease to be entered into between Brooklyn Area Local Development Corporation and Brooklyn Events Center, LLC); (ii) contains any residential building (other than a building that participates in the so-called 80-20 program) containing a number of affordable housing units (as such term is used in the MGPP) that is more than twenty-one percent (21 %) of the total number of housing units in such building; or (iii) is otherwise so designated by the City.

(b) "Expiration Date" means, with respect to all or any portion of any Participating Site, the earliest of: (i) the date on which such Participating Site's Outstanding City Balance is reduced to zero; (ii) the date on which all or such portion of the Participating Site has been Transferred; (iii) the date on which such Participating Site becomes an Exempt Site; or (iv) the fifteenth (15<sup>th</sup>) anniversary of the Participating Site's Substantial Completion Date. For the avoidance of doubt, in the case of a Transfer of a portion of a Participating Site (but not all of the Participating Site), the Expiration Date shall not be deemed to have occurred with respect to all other portions of the Participating Site which have not been so Transferred. If no Construction Commencement Date has occurred by the fifteenth (15<sup>th</sup>) anniversary of the Project Effective Date (as defined in that certain Development Agreement to be entered into by and among the ESDC, AYDC and Brooklyn Arena, LLC), then the Expiration Date shall be deemed to have occurred with respect to all Participating Sites as of the fifteenth (15<sup>th</sup>) anniversary of the Project Effective Date. If, at any time, no Construction Commencement Date shall have occurred within fifteen (15) years since the last Substantial Completion Date that has occurred, then the Expiration Date shall be deemed to have occurred with respect to all Participating Sites on the fifteenth (15<sup>th</sup>) anniversary of the last Substantial Completion Date that has occurred.

(c) This Agreement shall commence on the date hereof and shall terminate, with respect to all (or any portion, if applicable) of each Participating Site, and with respect to all parties bound by this Agreement with respect to such Participating Site or portion thereof, on the applicable Expiration Date. When this Agreement is so terminated, the relevant Site Owner shall have no further obligations hereunder. Upon the Expiration Date with respect to all Participating Sites, this Agreement shall terminate. A Site Owner may elect at any time to terminate this Agreement with respect to any Participating Site by paying to the City an amount equal to the Participating Site's Outstanding City Balance as of such time.

2. Joinder of Site Owners; Recording of Memoranda.

(a) If any Affiliate of AYDC executes a Development Lease, then upon

such execution, AYDC shall cause such Affiliate to execute a Joinder to this Agreement, the form of which is attached hereto as Exhibit G (a "Joinder"). Upon such Affiliate's execution of a Joinder, such Affiliate shall be deemed a "Site Owner" and party to this Agreement on the terms set forth in the Joinder Agreement and in this Agreement. The obligations of each Site Owner that becomes a party to this Agreement shall be several and not joint with any other Site Owner or AYDC, and, in furtherance of the foregoing, the City acknowledges and agrees that no Site Owner who becomes a party to this Agreement shall be liable for any obligation of any other Site Owner or AYDC under this Agreement. Without limiting the foregoing, each Site Owner is responsible under this Agreement only for obligations that relate to the Participating Site owned by such Site Owner.

(b) Upon each Site Owner's execution of a Joinder, the Site Owner shall execute and acknowledge a short-form memorandum of this Agreement substantially in the form attached hereto as Exhibit E (a "Memorandum") that the City may record against the Site Owner's Participating Site in the Office of the City Register, Kings County, New York (the "Register's Office"). The costs, if any, of recording any Memorandum shall be borne by the relevant Site Owner. The failure to record any Memorandum shall not affect or impair the validity or effectiveness of this Agreement.

(c) As a condition precedent to any Site Owner's obligation to execute a Memorandum, the City shall execute a release of said Memorandum the form of which is attached as Exhibit F (a "Release") which Release shall be held in escrow by a reputable title company reasonably selected by the Site Owner (the "Escrow Agent"), at no cost or expense of the City, until the Escrow Agent may release the Release from escrow and record the same in the Register's Office in accordance with this Section 2(c). On or after the Expiration Date with respect to its Participating Site, the Site Owner may send to the Escrow Agent a written acknowledgment that such Expiration Date has occurred (an "Expiration Date Acknowledgment"). A copy of such Expiration Date Acknowledgment shall be sent to the City, and if the City believes that the Expiration Date has not occurred, the City may, within twenty (20) business days after receiving said copy, deliver to the Escrow Agent and to such Site Owner a written notice stating such belief (an "Objection Notice"). If (i) the Escrow Agent or Site Owner does not receive an Objection Notice from the City within ten (10) business days after receiving an Expiration Date Acknowledgment from a Site Owner, then the Site Owner may send a second acknowledgment to the Escrow Agent and the City that the Expiration Date has occurred with respect to such Participating Site (a "Second Expiration Date Acknowledgment"). Such Second Expiration Date Acknowledgment shall contain a legend in not less than 14 point font bold upper case letters as follows: "THIS IS A TIME SENSITIVE ACKNOWLEDGMENT AND, PURSUANT TO SECTION 2(e) OF THE MASTER PARTICIPATION AGREEMENT, THE CITY SHALL NOT BE ENTITLED TO RESPOND TO THIS ACKNOWLEDGMENT AFTER THE DATE WHICH IS TEN (10) BUSINESS DAYS FOLLOWING THE DATE

HEREOF. IF THE CITY DOES NOT SO RESPOND TO THIS ACKNOWLEDGMENT WITH AN OBJECTION NOTICE WITHIN SUCH TEN (10) BUSINESS DAYS, THEN THE ESCROW AGENT SHALL BE ENTITLED TO RELEASE THE MEMORANDUM CURRENTLY HELD BY THE ESCROW AGENT WITH RESPECT TO [IDENTIFY THE PARTICIPATING SITE]." If, within ten (10) business days after the date of such Second Expiration Date Acknowledgment, the Escrow Agent or site Owner does not receive an Objection Notice, then (i) the Site Owner's Expiration Date acknowledgment shall be deemed conclusive and final, and (ii) the Escrow Agent shall release the Release from escrow and record the applicable Release in the Register's Office. If the Escrow Agent receives such a notice from the City within ten (10) business days after receiving a Second Expiration Date Acknowledgment from a Site Owner, then the Escrow Agent shall continue to hold the Release in escrow pending receipt of written notice from the City instructing the Escrow Agent to release the Release from escrow and record the same in the Register's Office. If there is any dispute as to whether the Expiration Date has occurred with respect to any Participating Site, then either party may submit such dispute to be resolved by an arbitration conducted in accordance with the Commercial Arbitration Rule (Expedited Procedures) of the American Arbitration Association. Each party shall bear its own costs and expenses with respect to the arbitration; provided, however, that the costs of the arbitration shall be borne by the losing party of such arbitration. The Site Owner shall be responsible for all recording fees, charges and taxes (if any) in connection with the recording of such Release.

3. Contributed City Property; Appraisals; Definitions of City Property Value and Contributed Property Value. The MGPP provides that ESDC will condemn each of the following which collectively shall be termed the "City Properties": (i) the development rights reserved by the City with respect to that certain Site 5 (as portrayed on Exhibit B-1, "Site 5") in that certain deed dated July 3, 1997 (the "Site 5 Development Rights"); (ii) that certain lot 6 portrayed on Exhibit B-2 ("Lot 6"); (iii) that certain parcel portrayed on Exhibit B-3 (the "FDNY Parcel"); (iv) the streets currently owned by the City within the area portrayed on Exhibit B-4 (the "Arena Block Streets"); and (v) the streets currently owned by the City within the area portrayed on Exhibit B-5 (the "Block 1129 Streets"). Pursuant to the ESDC Leases; the City Properties shall be assembled on their respective blocks which shall be subdivided into separate, individual Development Sites. The value of the City Properties or portions thereof contributed to each Participating Site shall be calculated in accordance with this Section 3.

(a) Subject to Sections 3(b) and 3(c), as applicable: (i) separate Condemnation Appraisals shall determine the respective "Appraised Value" of each City Property other than the Site 5 Development Rights; and (ii) within one year after the Title Vesting Date, the "Appraised Value" of the Site 5 Development Rights shall be determined by an appraisal conducted by an Appraiser mutually selected by the City and AYDC (or if the City and AYDC cannot agree on an Appraiser by the date that is ninety

(90) days before the first anniversary of the Title Vesting Date, an independent Appraiser selected by the appraiser that conducted the Condemnation Appraisals), and such appraisal shall be conducted in accordance with the standards set forth in Section 3(b) with respect to Second Appraisals as if such Site 5 Development Rights were appurtenant to a zoning lot on Site 5. As used herein, "Condemnation Appraisal" means a condemnation appraisal which shall, with respect to each City Property, be conducted within an ESDC condemnation proceeding. Each Appraisal to be conducted pursuant to this Section 3(a) shall be referred to herein as a "First Appraisal". AYDC shall pay all costs reasonably incurred in connection with each First Appraisal.

(b) If, within sixty (60) days after the later to occur of (x) receipt of the Condemnation Appraisal for any City Property or (y) the Title Vesting Date (the "Condemnation Appraisal Date"), either party delivers written notice to the other party that it disagrees with the Appraised Value determined by the Condemnation Appraisal for such City Property (a "Second Appraisal Notice"), then an Appraiser mutually selected by the City and AYDC (or if the City and AYDC cannot agree on an Appraiser within twenty (20) days after the delivery of the Second Appraisal Notice, an independent Appraiser selected by the appraiser that conducted the applicable Condemnation Appraisal) shall conduct a second appraisal (a "Second Appraisal") to determine the applicable Appraised Value. If either party delivers a Second Appraisal Notice within sixty (60) days of the Condemnation Appraisal Date, then a Second Appraisal shall: (i) be completed within one (1) year after the applicable Condemnation Appraisal Date; (ii) conclusively determine the Appraised Value of the applicable City Property; and (iii) be conducted in accordance with the standards set forth in this Section 3(b). If neither party delivers a Second Appraisal Notice pursuant to this Section 3(b) within thirty (30) days of the Condemnation Appraisal Date, then either party may send to the other party a notice (an "Appraisal Reminder Notice") reminding such other party that if such other party fails to deliver a Second Appraisal Notice within thirty (30) days of the Appraisal Reminder Notice, then the Appraised Value determined by the Condemnation Appraisal shall be deemed conclusive. Each Appraisal Reminder Notice shall contain a legend in not less than 14 point font bold upper case letters as follows: "THIS IS A TIME SENSITIVE APPRAISAL REMINDER NOTICE WITH RESPECT TO [*identify the applicable City Property*] (THE "CITY PROPERTY") AND, PURSUANT TO SECTION 3(b) OF THE MASTER PARTICIPATION AGREEMENT, IF NEITHER PARTY DELIVERS A SECOND APPRAISAL NOTICE WITHIN THIRTY (30) DAYS AFTER THE DATE HEREOF, THEN THE APPRAISED VALUE OF SUCH CITY PROPERTY SHALL BE THE APPRAISED VALUE DETERMINED BY THE CONDEMNATION APPRAISAL OF SUCH CITY PROPERTY." If, within thirty (30) days after the delivery of an Appraisal Reminder Notice, neither party delivers a Second Appraisal Notice, then the Appraised Value determined by the Condemnation Appraisal shall be deemed conclusive. Each Second Appraisal shall be conducted in accordance with the following standards:

(1) the fair market value of each City Property shall be determined on a "stand alone" basis;

(2) with respect to the Block 1129 Streets and the Arena Block Streets (each, a group of City Streets) the fair market value of such City Streets shall be determined as if the City Streets had zoning (for use and bulk) equivalent to the then current zoning of surrounding properties;

(3) zoning and other conditions existing as of the day before the applicable Title Vesting Date, including any encumbrances, physical conditions or other considerations that reasonably could bear upon the fair market value of the City Properties shall be considered;

(4) the impact that the Project or the uses described in the MGPP could have on the applicable value shall not be considered; and

(5) the Second Appraisals shall be subject to review by each of the City and AYDC before completion.

(c) Each appraisal conducted pursuant to this Section 3 shall be conducted by an "Appraiser" that is a certified member of the Appraisal Institute and has at least ten (10) years experience appraising real property in Brooklyn, New York. The First Appraisal of the Site 5 Development Rights shall be final and conclusive. Each Second Appraisal shall be final and conclusive. Either AYDC or the City may commence the process to obtain a Second Appraisal. AYDC shall bear all costs reasonably incurred in connection with any Second Appraisal, but AYDC shall be entitled to a credit for such costs for inclusion in the "costs incurred by AYDC in connection with the appraisals" as per Section 3(d) below.

(d) "Net Appraised Value" means, with respect to each City Property, the Appraised Value of such City Property, minus: (i) the costs incurred by AYDC in connection with the appraisals conducted with respect to such City Property pursuant to this Section 3, but not including cost of the First Appraisal which shall be deemed to be a General Acquisition Cost (as defined herein below); and (ii) with respect to the FDNY Parcel only, the Moving Costs incurred by the AYDC (or any Affiliate thereof) in relocating the equipment cleaning and storage facility heretofore operated by the Fire Department of New York thereon.

(e) "City Property Value" means, with respect to each City Property, the Net Appraised Value of such City Property, as such Net Appraised Value shall accrue with interest compounding annually: (i) at the Primary Accrual Rate from and after the Title Vesting Date until the date on which a Site Owner commences construction on the first Development Site containing such City Property (with respect to each City Property, the "Construction Commencement Date"); and (ii) at the Regular Accrual Rate from and

after the Construction Commencement Date until the applicable Substantial Completion Date.

(f) For any value that is to accrue at a rate of interest equal to, or based upon, the Primary Accrual Rate under this Agreement, "Primary Accrual Rate" means a percentage equal to three percent (3%) per annum.

(g) "Contributed Property Value" means: (i) with respect to the Participating Site that contains Tower B1, the City Property Value of Lot 6; plus (ii) with respect to each Participating Site that is located within the area portrayed as Block 1129 on Exhibit B-5, twenty-five percent (25%) of the City Property Value of the Block 1129 Streets; and (iii) with respect to the Participating Site that contains the Site 5 Development Rights, an amount equal to the City Property Value of the Site 5 Development Rights. For the avoidance of doubt, the City Property Value of the Arena Block Streets and the FDNY Parcel shall not be included in the Contributed Property Value of any Participating Site.

4. Tax Benefit Contributions. By virtue of the ESDC Leases and ESDC's tax-exempt status, the Interim Developer and Site Owners will enjoy certain exemptions from real estate taxes (and shall be required to pay under the ESDC Leases, in lieu thereof, certain payments in lieu of taxes ("PILOTs"», and may also enjoy: (i) certain exemptions from mortgage recording taxes (each, a "MRT Exemption"); and (ii) certain exemptions from sales taxes on the materials incorporated in the improvements constructed on the Participating Sites (each, a "Sales Tax Exemption"). The values of the PILOTs, MRT Exemptions and Sales Tax Exemptions that will or may be available to each Participating Site shall be calculated in accordance with this Section 4.

(a) "PILOT Commencement Date" means, with respect to a Participating Site, the date on which the Interim Developer commences to pay PILOTs in accordance with the applicable Interim Lease.

(b) "PILOT Expiration Date" means, with respect to a Participating Site, the earlier of: (i) the last day that the Site Owner is required to make PILOTs under the Development Lease; (ii) the date which is the day before the twelfth (12<sup>th</sup>) anniversary of the PILOT Commencement Date (subject to force majeure); or (iii) the Substantial Completion Date.

(c) "PILOT Year" means, with respect to a Participating Site, any period commencing on the PILOT Commencement Date, or any anniversary thereof, and ending on the earlier of: (i) the day before the next anniversary of the PILOT Commencement Date; or (ii) the PILOT Expiration Date.

(d) "PILOT Year Share" means, with respect to any PILOT Year, a percentage equal to: (i) the number of days in such PILOT Year; divided by (ii) three

hundred sixty-five (365).

(e) With respect to each particular Development Site, Exhibit D-1 sets forth certain stipulated amounts that a Site Owner would otherwise likely be expected to pay in respect of taxes with respect to such Development Site (*i.e.* if such Development Site were owned in fee by the Site Owner) in each PILOT Year until the PILOT Expiration Date (each such amount, an "Annual PILOT Baseline").

(f) "Annual PILOT Value", with respect to a Participating Site and a PILOT Year, is equal to the excess, if any of (x) the PILOT Year Share of the applicable Annual PILOT Baseline; over (y) the PILOTs actually paid in such PILOT Year, as such excess amount shall accrue with interest compounding annually at the Regular Accrual Rate from and after the expiration of such PILOT Year until the Substantial Completion Date.

(g) "Regular Accrual Rate" means a percentage equal to six and one quarter percent (6.25%) per annum.

(h) "PILOT Value", with respect to a Participating Site, shall equal the accrued sum of each Annual PILOT Value for each PILOT Year until the PILOT Expiration Date. For illustration purposes, Exhibit 0-2 is a pro forma spreadsheet demonstrating how the PILOT Value for a Participating Site will be calculated using: (i) an assumed PILOT Commencement Date; (ii) an assumed PILOT Expiration Date; and (iii) assumed PILOTs actually paid in each PILOT Year.

(i) "MRT Exempt Mortgage" means a mortgage which is exempt from mortgage recording taxes by virtue of the ESDC's tax-exempt status.

U) "Principal MRT Value", with respect to a Participating Site which has a MRT Exempt Mortgage recorded against it, is equal to the excess, if any, of (i) the aggregate mortgage recording tax which otherwise would be payable if all of the MRT Exempt Mortgages on such Participating Site did not have the benefit of any exemption from the mortgage recording tax over (ii) the aggregate mortgage recording tax (if any) actually paid in connection with such MRT Exempt Mortgages.

(k) "MRT Value", with respect to a Participating Site which has a MRT Exempt Mortgage recorded against it, is equal to the Principal MRT Value of each MRT Exempt Mortgage so recorded, as such Principal MRT Value shall accrue with interest compounding annually at the Regular Accrual Rate from the date such MRT Exempt Mortgage is recorded until the Substantial Completion Date.

(l) "Sales Tax Value", with respect to a Participating Site that is subject to a Sales Tax Exemption, is equal to one and one tenth percent (1.1 %) of such Participating Site's Trade Costs.



(m) "Tax Value", with respect to a Participating Site, is equal to the sum of: (i) the Participating Site's PILOT Value; plus (ii) the Participating Site's MRT Value (if applicable); plus (iii) the Participating Site's Sales Tax Value (if applicable).

5. Outstanding City Balance.

(a) "Outstanding City Balance", with respect to a Participating Site and as of any particular date, is equal to the excess, if any, of (i) the Net City Investment in such Participating Site as of such date, over (ii) any City Participation Payments made (or deemed to have been made) with respect to such Participating Site prior to such date;

(b) "Net City Investment", with respect to a Participating Site and as of any particular date, is equal to the City Investment Share of the Gross City Investment for such Participating Site, as such amount shall accrue with interest compounding annually at the Regular Accrual Rate from and after the Substantial Completion Date through any particular date;

(c) "City Investment Share", with respect to a Participating Site, is equal to: (i) the amount of zoning square feet on such Participating Site that have not been Transferred and have not been dedicated to a school or other community facility use; divided by (ii) the total zoning square feet on such Participating Site; and

(d) "Gross City Investment", with respect to a Participating Site, is equal to the sum of: (i) such Participating Site's Contributed Property Value; plus (ii) such Participating Site's Tax Value.

6. Site Owner's Equity.

(a) Exhibit C sets forth a schedule (the "General Allocation Schedule") of certain costs that AYDC and its Affiliates (other than Site Owners) have incurred or expect to incur with respect to each Development Site, as such costs are proportionally allocated to each Development Site in accordance with: (i) the amount of zoning square feet ("ZSF") that are projected to be contained in each such Development Site; and (ii) the amount of costs per zoning square foot ("\$/ZSF") that are to be allocated to each Development Site within a similar building category (e.g. "50-30-20 Rental", "80-20 Rental", "Market Rental", "Condo", "Office", "Retail"). As used herein, a Participating Site's "General Acquisition Costs" include the costs set forth with respect to such Participating Site on the General Allocation Schedule, as the General Allocation Schedule may be amended in accordance with Sections 6(b) and 6(d).

(b) Upon written notice to the City within thirty (30) days after each GAC True-Up Date or any GAC Reallocation Date (as applicable), but subject to the City's audit and contest rights set forth in Section 6(d), the AYDC may amend the General Allocation Schedule in order to "true-up" the General Allocation Schedule in accordance

with the following:

(i) If, as of a GAC True-Up Date, the AYDC or an Affiliate thereof (other than a Site Owner) has paid or reasonably expects to pay Qualified Costs (defined below) that have not yet been reflected on the General Allocation Schedule, then:

(1) with respect to each Development Site for which the Construction Commencement Date has not yet occurred (each, a "Pre-Construction Site"), the "Qualified Costs Share" shall equal the quotient of (x) the General Acquisition Costs allocated to the applicable Pre-Construction Site as of the day before the applicable GAC True-Up Date divided by (y) the aggregate sum of General Acquisition Costs reflected on the General Allocation Schedule as of the day before the applicable GAC True-Up Date with respect to all Pre-Construction Sites;

(2) the General Acquisition Costs allocated to each Pre-Construction Site shall be increased by an amount equal to the product of (x) the applicable Pre-Construction Site's Qualified Costs Share multiplied by (y) such Qualified Costs; and

(3) the  $\$/ZSF$  for each such Pre-Construction Site shall be amended accordingly.

(ii) If, as of a GAC True-Up Date, AYDC and its Affiliates (other than Site Owners) have incurred and expect to incur fewer General Acquisition Costs than were previously reflected on the General Acquisition Schedule, then:

(1) the difference between (x) the General Acquisition Costs that AYDC and its Affiliates (other than Site Owners) previously incurred or expected to incur with respect to the Project and (y) the General Acquisition Costs that AYDC and its Affiliates (other than Site Owners) have then incurred and expect to incur with respect to the Project shall be referred to herein as the "Cost Savings";

(2) with respect to each Pre-Construction Site, the "Cost Savings Share" shall equal the quotient of (x) the General Acquisition Costs allocated to the applicable Pre-Construction Site as of the day before the applicable GAC True-Up Date divided by (y) the aggregate sum of General Acquisition Costs reflected on the General Allocation Schedule as of the day before the applicable GAC True-Up Date with respect to all Pre-Construction Sites;

(3) the General Acquisition Costs allocated to each Pre-Construction Site shall be decreased by an amount equal to the product of (x) the applicable Pre-Construction Site's Cost Savings Share multiplied by (y) the Cost Savings; and

(4) the  $\$/ZSF$  for each such Pre-Construction Site shall be amended accordingly.

(iii) If, as of a GAC Reallocation Date, the building category of any Pre-Construction Site has changed since the date hereof (or the last GAC True-UP Date, as applicable), then:

(I) subject to Section 6(b)(iii)(4), the General Acquisition Costs allocated to such Pre-Construction Site shall be equal to the product of (x) the ZSF of such Development Site, multiplied by (y) the  $\$/ZSF$  of the other Pre-Construction Sites in such Pre-Construction Site's new category as of the day before the applicable GAC Reallocation Date;

(2) the difference (whether positive or negative) between (x) the General Acquisition Costs previously allocated to such Pre-Construction Site, less (y) the General Acquisition Costs allocated to such Pre-Construction Site in accordance with Section 6(b)(iii)(1) shall be referred to herein as a "Use Change Difference";

(3) with respect to each Pre-Construction Site (including the Pre-Construction Site for which the building category has changed (the "Changed Site"», the "Use-Change Share;" shall equal the quotient of (x) the General Acquisition Costs allocated to the applicable Pre-Construction Site as of the day before the applicable GAC Reallocation Date (*provided, that*, for purposes of this subclause (x), the General Acquisition Costs of the Changed Site shall be deemed to be equal to the General Acquisition Costs of the Changed Site as determined pursuant to Section 6(b)(iii)(1) as if Section 6(b)(iii)(1) were not subject to Section 6(b)(iii)(4) divided by (y) the aggregate sum of General Acquisition Costs reflected on the General Allocation Schedule with respect to all Pre-Construction Sites as of the day before the applicable GAC Reallocation Date (*provided, that*, for purposes of calculating such aggregate sum of General Acquisition Costs, the General Acquisition Costs of the Changed Site shall be deemed to be equal to the General Acquisition Costs of such Changed Site as determined pursuant to Section 6(b)(iii)(1) as if Section 6(b)(iii)(1) were not subject to Section 6(b)(iii)(4);

(4) the General Acquisition Costs allocated to each Pre-Construction Site (including the Changed Site) shall be credited by an amount equal to the product of (x) the applicable Pre-Construction Site's Use-Change Share multiplied by (y) the Use Change Difference; and

(5) the  $\$/ZSF$  for each such Pre-Construction Site (including the Changed Site) shall be amended accordingly.

(iv) If, as of a GAC Reallocation Date, the Substantial Completion Date has occurred with respect to a Development Site (a "Substantially Completed Site")

and the building on such Substantially Completed Site contains more or less ZSF than the amount of ZSF theretofore indicated on the General Allocation Schedule, then:

(1) subject to Section 6(b)(iv)(4), the General Acquisition Costs allocated to such Substantially Completed Site shall be equal to the product of (x) the ZSF actually contained in the building on such Substantially Completed Site multiplied by (y) the \$/ZSF reflected on the General Allocation Schedule with respect to Pre-Construction Sites in the same building category as the Substantially Completed Site as of the day before the applicable GAC True-Up Date;

(2) the difference (whether positive or negative) between (x) the General Acquisition Costs previously allocated to such Substantially Completed Site, less (y) the General Acquisition Costs allocated to such Substantially Completed Site in accordance with Section 6(b)(iv)(1) shall be referred to herein as a "Completion Difference":

(3) with respect to each Pre-Construction Site and such Substantially Completed Site (each, a "Relevant Site"), the "Completion Difference Share" shall equal the quotient of (x) the General Acquisition Costs allocated to the applicable Relevant Site as of the day before the applicable GAC Reallocation Date (*provided, that*, for purposes of this subclause (x), the General Acquisition Costs of such Substantially Completed Site shall be deemed to be equal to the General Acquisition Costs of such Substantially Completed Site as determined pursuant to Section 6(b)(iv)(1) as if Section 6(b)(iv)(1) were not subject to Section 6(b)(iv)(4)) divided by (y) the aggregate sum of General Acquisition Costs reflected on the General Allocation Schedule with respect to all Relevant Sites as of the day before the applicable GAC Reallocation Date (*provided, that*, for purposes of calculating such aggregate sum of General Acquisition Costs, the General Acquisition Costs of the Substantially Completed Site shall be deemed to be equal to the General Acquisition Costs of the Substantially Completed Site as determined pursuant to Section 6(b)(iv)(1) as if Section 6(b)(iv)(1) were not subject to Section 6(b)(iv)(4)); and

(4) the General Acquisition Costs allocated to each Relevant Site shall be credited by an amount equal to the product of (x) the applicable Relevant Site's Completion Difference Share multiplied by (y) the Completion Difference; and

(5) the \$/ZSF for each such Relevant Site shall be amended accordingly.

(c) As used herein, "Qualified Costs" means all costs actually paid or reasonably expected to be paid by AYDC or any Affiliate thereof (other than the Site Owners) in connection with the Project to the extent such costs are not costs that are already included in the General Acquisition Costs reflected on the General Allocation Schedule ("Previously Counted GAC"), including: (i) increases in the Previously

Counted GAC that are particularly identified on the General Allocation Schedule; (ii) all costs with respect to any infrastructure and LIRR improvements within the Project (other than infrastructure improvements incurred solely with respect to the Arena) to the extent that such costs are not reimbursed by ESDC or the City and to the extent such costs are not Previously Counted GAC; (iii) master planning expenses with respect to the Project to the extent such costs are not Previously Counted GAC; (iv) interest paid on any financing outstanding with respect to the Project other than in connection with a Financing Transaction to the extent such interest is not Previously Counted GAC; (v) all other soft costs related to the development of the Project (other than Soft Costs paid by Site Owners) that are not included in the foregoing to the extent such costs are not Previously Counted GAC; (vi) on account of AYDC's extensive internal real estate capabilities (which include development, construction management, legal, financing, investment management, and cost control, that reduce AYDC's need for external consultants such as owner's representatives in the management of construction, construction attorneys), an amount equal to five percent (5%) of the total costs that AYDC and its Affiliates (other than the Site Owners) have actually paid or reasonably expect to pay with respect to the Project to the extent such costs are not Previously Counted GAC; (vii) any other costs that may be agreed upon by AYDC and the City to the extent such costs are not Previously Counted GAC; and (viii) to the extent that any of the foregoing expenses are paid prior to the Title Vesting Date, annually compounded interest accruing at ten percent (10%) on each such expense (to the extent such expense is paid for with the capital of AYDC or an Affiliate thereof), each from the date such expense was paid through the Title Vesting Date.

(d) If AYDC desires to amend the General Allocation Schedule in accordance with Section 6(b)(i), then the notice that AYDC sends to the City pursuant to Section 6(b) shall be accompanied by a certification from AYDC (a "Qualified Costs Certification") that AYDC or its Affiliates have in fact incurred, or reasonably expect to incur the Qualified Costs that AYDC desires to add to the General Allocation Schedule. The Qualified Costs Certification shall contain a legend in not less than 14 point font bold upper case letters as follows: "THIS IS A TIME SENSITIVE QUALIFIED COSTS CERTIFICATION AND, PURSUANT TO SECTION 6(d) OF THE MASTER PARTICIPATION AGREEMENT, THE CITY SHALL NOT BE ENTITLED TO RESPOND TO THIS QUALIFIED COSTS CERTIFICATION AFTER THE DATE WHICH IS TWENTY (20) DAYS FOLLOWING THE DATE HEREOF. IF THE CITY DOES NOT SO RESPOND TO THIS ACKNOWLEDGMENT WITH A QUALIFIED COSTS OBJECTION NOTICE WITHIN SUCH TWENTY (20) DAYS, THEN THE AYDC SHALL BE ENTITLED TO AMEND THE GENERAL ALLOCATION SCHEDULE TO INCLUDE THE QUALIFIED COSTS SET FORTH HEREIN IN ACCORDANCE WITH SECTION 6(b)(i) OF THE MASTER PARTICIPATION AGREEMENT." If, within twenty (20) days after receiving the Qualified Costs Certification, the City does not respond by delivering to the AYDC a notice requesting an audit of the AYDC's

books and records as are relevant to the Qualified Costs Certification (a "Qualified Costs Audit Notice"), then AYDC shall be permitted to amend the General Allocation Schedule to include the Qualified Costs set forth in the Qualified Costs Certification in accordance with Section 6(b)(i). If the City timely delivers a Qualified Costs Audit Notice, then the NYEDC or the City Comptroller may inspect, review and copy, at the AYDC's offices in the Brooklyn, New York (or such other office as may be reasonably designated by AYDC), the AYDC's or any Site Owner's books and records as are relevant to Qualified Costs Certification. Subject to any provision of applicable Laws, the NYCEDC and the City Comptroller shall treat all information within such books and records in accordance with Section 13(i). If, within thirty (30) days after delivering a Qualified Costs Audit Notice to AYDC, the City fails to deliver to AYDC a notice (a "Qualified Costs Contest Notice") stating the City's belief that all or any portion of the costs reflected in the Qualified Costs Certification are not Qualified Costs, then AYDC shall amend the General Allocation Schedule to include the Qualified Costs set forth in the Qualified Costs Certification in accordance with Section 6(b)(i). If the City timely delivers a Qualified Costs Contest Notice, then the City and AYDC shall attempt in good faith, to resolve the disagreement set forth therein, and upon such resolution, the City shall amend the General Allocation Schedule to include the Qualified Costs agreed to by the parties in accordance with Section 6(b)(i). If the parties fail to resolve such dispute within thirty (30) days after the City's delivery of a Qualified Costs Contest Notice, then, at any time prior to the resolution of such dispute, either party, upon written notice to the other party, may submit such dispute to be resolved by an arbitration conducted in accordance with the Commercial Arbitration Rule (Expedited Procedures) of the American Arbitration Association; and, upon the conclusion of such arbitration, AYDC shall be permitted to amend the General Allocation Schedule to include the Qualified Costs determined by the arbitration in accordance with Section 6(b)(i). Each party shall bear its own costs and expenses with respect to the arbitration; provided, however, that the costs of the arbitration shall be borne by the losing party of such arbitration.

(e) The "Site-Specific Share", with respect to any Participating Site for which Site-Specific Costs are incurred, is a percentage equal to: (i) the zoning square feet of such Participating Site; divided by (ii) the aggregate zoning square feet of all portions of the Project for which such Site-Specific Costs are incurred.

(f) The "Site-Specific Costs", with respect to any portion of the Project, is equal to: (i) the cost of any interest, fees, taxes, materials, goods, or services (in each case, other than General Acquisition Costs) incurred by AYDC or any Affiliate thereof (other than the Site Owners) with respect to such portion of the Project; plus (ii) to the extent any of the foregoing expenses are incurred prior to the Title Vesting Date, annually compounded interest accruing at ten percent (10%) on each such expense (to the extent such expense is paid for with the capital of AYDC or an Affiliate thereof), each from the date such expense was incurred through the Title vesting Date.

(g) "Site Owner's Equity" means, with respect to each Participating Site and as of any particular date, an amount equal to: (i) the Participating Site's General Acquisition Costs incurred prior to such date which shall be deemed contributed or attributed to the applicable Site Owner on the Title Vesting Date regardless of whether the Title Vesting Date precedes the date that such Site Owner was formed; plus (ii) the applicable Site-Specific Share of any applicable Site-Specific Costs incurred prior to such date which shall be deemed contributed or attributed to the applicable Site Owner on the Title Vesting Date regardless of whether the Title Vesting Date precedes the date that such Site Owner was formed; plus (iii) the aggregate amount of all capital contributions paid in by Third Parties and AYDC or AYDC Affiliates to the Site Owner in respect of common equity interests prior to such date.

7. Net Proceeds.

(a) "Reporting Year" means, with respect to each Participating Site: (i) the period commencing on the applicable Substantial Completion Date and ending on December 31 of the year of the Substantial Completion Date; and (ii) each period commencing on January 1 of each year thereafter and ending on December 31 of such year; provided that the last Reporting Year for such Participation Site shall end on the date this Agreement terminates with respect to such Participating Site.

(b) "Operating Proceeds" means, with respect to each Participating Site in each Reporting Year, the gross revenues before expenses received by the Site Owner (other than Transaction Proceeds) during such Reporting Year.

(c) "Net Operating Proceeds" means, with respect to each Participating Site in each Reporting Year, all Operating Proceeds received by the Site Owner during such Reporting Year less the amount of such Operating Proceeds actually applied to: (i) repay any principal in respect of any indebtedness incurred by the Site Owner, pay any Qualified Interest owed thereon during such Reporting Year and pay all other amounts (including any contingent interest or so-called "kicker" payments) reasonably owed by the Site Owner, on account of such indebtedness, out of such Operating Proceeds; (ii) pay for normal, customary or otherwise reasonable operating or capital expenses paid by the Site Owner in connection with the Participating Site during the Reporting Year (including all taxes, utility charges, fees and insurance); and (iii) fund reasonable reserves for any normal, customary or otherwise reasonable purpose in connection with the Participating Site as reasonably determined by the Site Owner of the Participating Site.

(d) "Sales Proceeds" means, with respect to all or any portion of a Participating Site that has been Transferred, all gross proceeds received by the Site Owner in connection with the Transfer of all or any portion of the Participating Site.

(e) "Net Sales Proceeds" means, with respect to all or any portion of a Participating Site that has been Transferred, (1) all Sales Proceeds received by the Site

Owner in connection with such Transfer, less (2) the sum of: (i) all costs incurred by the Site Owner in connection with the Transfer, including all marketing expenses, brokerage fees, taxes (other than income taxes), accounting costs and legal fees; and (ii) the aggregate amount of principal in respect of any indebtedness incurred by the Site Owner, accrued but unpaid Qualified Interest owed thereon, and all other amounts (including any contingent interest or so-called "kicker" payments) reasonably required to be paid by the Site Owner on account of such indebtedness in connection with the Transfer.

(f) "Financing Proceeds" means, with respect to any Participating Site that is subject to a Financing Transaction, any gross proceeds received by the Site Owner in connection with the Financing Transaction.

(g) "Net Financing Proceeds" means, with respect to each Participating Site that is subject to a Financing Transaction, (1) all Financing Proceeds received by the Site Owner in connection with such Financing Transaction, less (2) the sum of: (i) all costs incurred by the Site Owner in connection with the applicable Financing Transaction, including all expenses, brokerage fees, taxes (other than income taxes), accounting costs and legal fees; and (ii) the aggregate amount of principal in respect of any indebtedness incurred by the Site Owner and repaid in connection with the Financing Transaction, accrued but unpaid Qualified Interest owed thereon, and all other amounts (including any contingent interest or so-called "kicker" payments) paid by the Site Owner on account of such indebtedness in connection with the Financing Transaction.

(h) By way of illustration only, a "kicker payment" would include a payment owed by a Site Owner to a Third Party lender, other than a payment of Qualified Interest or a repayment of principal, on account of the amount of Operating Proceeds, Sales Proceeds or Financing Proceeds realized in connection with a Participating Site.

(i) "Casualty Proceeds" means, with respect to all or any portion of a Participating Site that is damaged by a casualty, any insurance proceeds received by the Site Owner as a result of such casualty.

(j) "Net Casualty Proceeds" means, with respect to all or any portion of a Participating Site that is damaged by a casualty, all Casualty Proceeds received by the Site Owner in connection with such casualty, after deducting: (i) the costs incurred by the Site Owner in obtaining such Casualty Proceeds; (ii) any amount of such Casualty Proceeds applied by the Site Owner towards repairing or reconstructing the portion of the Project affected by such casualty; and (iii) any payments that must be made to a Mortgagee in connection with such casualty.

(k) "Condemnation Proceeds" means, with respect to all or any portion of a Participating Site that is subject to a taking by an exercise of power of eminent domain, any proceeds received by the Site Owner as a result of the taking.



(l) "Net Condemnation Proceeds" means, with respect to all or any portion of a Participating Site that is subject to a taking by an exercise of power of eminent domain, all Condemnation Proceeds received by the Site Owner in connection with such taking, after deducting: (i) the costs incurred by the Site Owner in obtaining such Condemnation Proceeds; (ii) any amount of such Condemnation Proceeds applied by the Site Owner towards repairing or reconstructing the portion of the Project affected by such taking; and (iii) any payments that must be made to a Mortgagee in connection with such taking.

(m) "Net Transaction Proceeds" means, with respect to each Participating Site, any (i) Net Sales Proceeds; (ii) Net Financing Proceeds; (iii) Net Casualty Proceeds; or (iv) Net Condemnation Proceeds.

(n) "Net Proceeds" means any Net Operating Proceeds or any Net Transaction Proceeds, as applicable.

8. IRR: Return Hurdles.

(a) "IRR" means, as of a date and with respect to a Site Owner, a specified internal rate of return, as that term is understood and applied within the commercial real estate business community, on all Site Owner's Equity in the applicable Participating Site. Such specified internal rate of return on any Site Owner's Equity shall be calculated as of any given date by accounting for: (i) all distributions to such Site Owner of Net Proceeds in respect of the common equity interests of such Site Owner, where all such amounts under this clause (i) are treated as capital inflows; and (ii) all contributions or deemed contributions of Site Owner's Equity, where all such amounts under this clause (ii) are treated as capital outflows. For purposes of this definition, any Site Owner's Equity shall be deemed contributed, and each such distribution of Net Proceeds received by such Site Owner in respect of the common equity interests of such Site Owner shall be deemed to have been received, as of the date actually contributed or distributed or deemed contributed or distributed, regardless of whether such date was before or after the date of this Agreement or, in the case of Site Owner's Equity, prior to the date of formation of such Site Owner.

(b) "Initial Return Hurdle", with respect to a Participating Site, shall be satisfied with respect to such Participating Site on any particular date, if and only if, when taking into account all Net Proceeds received, on or prior to such date, by the Site Owner, the Site Owner has achieved an IRR, as of such date, of more than fifteen percent (15%);

(c) "Intermediate Return Hurdle", with respect to a Participating Site, shall be satisfied with respect to such Participating Site on any particular date, if and only if, when taking into account all Net Proceeds received, on or prior to such date, by the Site Owner, the Site Owner has achieved an IRR, as of such date, of more than seventeen and

one-half percent (17.5%); and

(d) "Final Return Hurdle", with respect to a Participating Site, shall be satisfied with respect to such Participating Site on any particular date, if and only if, when taking into account all Net Proceeds received, on or prior to such date, by the Site Owner, the Site Owner has achieved an IRR, as of such date, of greater than twenty percent (20%).

9. City Share; City Participation Payments; Termination.

(a) "City Share" means, with respect to any Net Proceeds received by a Site Owner as of any particular date:

(i) if the Initial Return Hurdle is not satisfied, zero;

(ii) if the Initial Return Hurdle is satisfied but the Intermediate Return Hurdle is not satisfied, five percent (5%) of the Net Proceeds (other than Net Proceeds to be distributed on such date in order to satisfy the Initial Return Hurdle) until the Intermediate Return Hurdle is satisfied;

(iii) if the Intermediate Return Hurdle is satisfied but the Final Return Hurdle is not satisfied, twenty percent (20%) of the Net Proceeds (other than Net Proceeds to be distributed on such date in order to satisfy the Initial Return Hurdle or the Intermediate Return Hurdle) until the Final Return Hurdle is satisfied; and

(iv) if the Final Return Hurdle is satisfied, fifty percent (50%) of the Net Proceeds (other than Net Proceeds to be distributed on such date in order to satisfy the Initial Return Hurdle, the Intermediate Return Hurdle or the Final Return Hurdle).

(b) "City Participation Payments", with respect to a Participating Site, is equal to the aggregate amount paid to the City under this Agreement with respect to a Participating Site. For illustration purposes, Exhibit H is a pro forma spreadsheet demonstrating how City Participation Payments will be calculated using relevant assumptions with respect to a Participating Site.

(c) On each date that is 120 days after the last day of each Reporting Year for each Participating Site (each, a "Reporting Date"), until the earlier of (i) the Participating Site's Expiration Date, or (ii) the date the Outstanding City Balance with respect to such Participating Site has been reduced to zero, the applicable Site Owner shall pay to the City an amount equal to the City Share (if any) of the Net Operating Proceeds received by the Site Owner within the immediately preceding Reporting Year; provided that in no case shall the City be entitled to receive in the aggregate under this Agreement an amount which is greater than the Outstanding City Balance with respect to such Participating Site.

(d) On each Transaction Date for each Participating Site, until the Outstanding City Balance with respect to such Participating Site is reduced to zero, the applicable Site Owner will pay to the City an amount equal to the City Share (if any) of the Net Transaction Proceeds received by the Site Owner on such Transaction Date; provided that in no case shall the City be entitled to receive in the aggregate under this Agreement an amount greater than the Outstanding City Balance with respect to such Participating Site.

(e) If the Construction Commencement Date of the Development Site that contains the Site 5 Development Rights has not occurred on or prior to the date (the "Site 5 Deadline") that is ten (10) years after the Project Effective Date, then on the Site 5 Deadline, either:

(i) the Site Owner of such Development Site shall convey to the City the Site 5 Development Rights, and such Site Owner shall be deemed to have made a City Participation Payment to the City in an amount equal to Appraised Value of the Site 5 Development Rights, as such value shall accrue with interest compounding annually at the Primary Rate from the Title Vesting Date to until the Site 5 Deadline (the "Site 5 Development Rights Value"); or

(ii) if either (x) the Site Owner cannot effectively transfer the Development Rights to the City through a zoning lot merger and associated zoning lot development agreement, (y) the Site Owner is prohibited from transferring the Site 5 Development Rights to the City or (z) the Site owner otherwise so elects in a written notice delivered to the City prior to the Site 5 Deadline, then the Site Owner shall pay to the City an amount equal to the Site 5 Development Rights Value, and such payment shall be deemed to be a City Participation Payment for all purposes of this Agreement.

#### 10. Certification of Financial Information.

(a) On each Reporting Date for each Participating Site, the Site Owner of such Participating Site shall deliver to the City an "Annual Statement" certifying, as of the expiration of the immediately preceding Reporting Year, the values of: (i) the applicable Site Owner's Equity and the components thereof; (ii) the Net Operating Proceeds received by the Site Owner during such Reporting Year; (iii) the Net Transaction Proceeds received by the Site Owner during such Reporting Year; and (iv) the Outstanding City Balance with respect to such Participating Site.

(b) Upon reasonable prior written notice to the AYDC and the applicable Site Owner, the New York City Economic Development Corporation (the "NYCEDC") or the City Comptroller may inspect, review and copy, at the AYDC's offices in the Brooklyn, New York (or such other office as may be reasonably designated by AYDC), the AYDC's or any Site Owner's books and records as are relevant to an Annual Statement. Subject to any provision of applicable Laws, the NYCEDC and the City Comptroller

shall treat all information within such books and records in accordance with Section 13(i).

(c) Each Annual Statement shall be conclusive unless the EDC or the City delivers to AYDC an Annual Statement Contest Notice within one hundred eighty (180) days after the delivery of the Annual Statement. If the EDC or City timely delivers an Annual Statement Contest Notice, then: (i) the City and AYDC shall attempt, in good faith, to resolve the disagreement set forth therein; and (ii) the Annual Statement shall not be deemed to be conclusive until such disagreement is resolved.

(d) If any conclusive Annual Statement reveals that any Site Owner failed to pay to the City the full amount of any City Participation Payment required to be paid pursuant to Section 9 then: (i) the Site Owner shall promptly pay to the City any amounts that were revealed to have been underpaid together with interest on such amounts at the Regular Accrual Rate from the date such payments became due to the date such payments are actually made; and (ii) all amounts paid by the Site Owner to the City (other than interest paid pursuant to subclause (i) of this Section IO(d)) shall be credited against the Participating Site's Outstanding City Balance as of the date such amounts are actually paid.

(e) If any conclusive Annual Statement reveals that a Site Owner paid to the City any amount that is greater than the City Participation Payment required to be paid pursuant to Section 9, then any amounts so paid by the Site Owner to the City shall be credited against the Participating Site's Outstanding City Balance as of the date such amounts were so paid.

11. Estoppels; Subordination:

(a) The City shall, within thirty (30) days after its receipt of written notice (which notice may not be given more often than four (4) times in any twelve month period) from any Site Owner, execute, acknowledge and deliver to the Site Owner, or to any other Person reasonably requested by the Site Owner, a written statement from the City certifying, as of the date thereof: (i) that this Agreement is unmodified and in full force and effect (or if there are modifications, that this Agreement, as modified, is in full force and effect, stating the date of each such modification and providing a copy thereof, if requested); and (ii) the date on which the applicable Site Owner executed a Joinder; (iii) if such statement is delivered prior to the Participating Site's Substantial Completion Date, the Participating Site's Contributed Property Value, PILOT Value, MRT Value and Sales Tax Value; (iv) if the statement is delivered on or after the Participating Site's Substantial Completion Date, the Outstanding City Balance with respect to the Participating Site; (v) the dates on which this Agreement expired with respect to any portions of the Participating Site; (vi) a description of the Participating Site that remains subject to this Agreement; (vii) whether there are currently any disputes between the City

and the Site Owner with respect to any matters arising under this Agreement; (viii) whether the Site Owner has, to the best of the City's knowledge and subject to the City's rights in Section IO(c), fully performed all of the covenants, agreements and obligations to be performed by the Site Owner under this Agreement; and (ix) any other factual information as may be reasonably requested.

(b) All City Participation Payments owed with respect to any Participating Site are fully and completely subject and subordinate to the principal and Qualified Interest and fees due on each and every mortgage that has been or may be recorded against such Participating Site at any time and to the prior payment in full in cash of all such amounts due under any such mortgage, and the City will take no action to enforce any of its rights hereunder in any manner which interferes with such rights of any Mortgagee. This Section II(b) shall be self-operative and no further instrument of subordination shall be required to make the interest of any Mortgagee superior to the interest of the City hereunder. Without limiting the foregoing, the City shall execute and deliver promptly any agreement that any Site Owner or any Mortgagee may reasonably request to confirm such subordination and to confirm the termination of the Agreement as to any Participating Site upon the entry of a judgment of foreclosure and sale, deed in lieu of foreclosure or other similar enforcement action commenced by a Mortgagee with respect to any mortgage on all or any portion of the Participating Site.

12. Notices.

(a) Subject to Section 12(c), all notices from the City to AYDC or any Site Owner required or permitted by any provision of this Agreement shall be directed to the Site Owner at the address set forth in the Site Owner's Joinder and to the AYDC as follows:

c/o Forest City Ratner Companies  
One Metrotech Center  
Brooklyn, New York 11201  
Attention: General Counsel

with a copy to: Atlantic Yards Development Company, LLC  
c/o Forest City Ratner Companies  
50 Public Square  
Cleveland, Ohio 44113  
Attention: General Counsel

with a copy to: Fried, Frank, Harris, Shriver & Jacobson LLP  
One New York Plaza  
New York, New York 10004  
Attention: Stephen Lefkowitz, Esq.

Subject to Section 12(c), all notices from AYDC to the City required or permitted by any provision of this Agreement shall be directed to the City as follows:

The City of New York  
City Hall  
New York, New York 10007  
Attention: Deputy Mayor for Economic Development

New York City Economic Development Corporation  
110 William Street  
New York New York 10038  
Attention: [President]

with a copy to: New York City Law Department  
100 Church Street  
New York, New York 10007  
Attention: Chief, Economic Development Division

(b) Subject to Section 12(c), whenever it is provided in this Agreement that a notice, demand, request, consent, approval, or other communication (each, a "Notice") shall or may be given to or served upon either party by the other, and whenever either party shall desire to give or serve upon the other any Notice with respect hereto, each Notice given hereunder by either party shall be written and, any Laws to the contrary notwithstanding, shall be effective for any purpose if sent, given or served by hand delivery, or by registered or certified mail, return receipt requested, postage prepaid, or via a nationally recognized next day courier service (such as Federal Express or other reputable overnight national courier service) addressed to the party intended to be notified at the address set forth above. Either party may, at any time, or from time to time, notify the other in writing of a substitute address for that provided under this Section 12, and thereafter notices shall be directed to the substitute address. All Notices shall be deemed given on the date evidenced by the postal service return receipt or the delivery receipt of the hand delivery service or nationally recognized next day courier service that delivered such Notice. Notices hand delivered shall be deemed given on the day delivered (or first refused for delivery). The attorneys for the respective parties are hereby authorized to send notices on behalf of their respective clients.

(c) **In** each case where (i) one party to this Agreement (the "Initiating Party") sends a Notice (an "Initiating Notice") to the other party (the "Responsive Party"), and (ii) the Responsive Party's failure to deliver a written response to the Initiating Notice (a "Responsive Notice") would waive any of the Responsive Party's rights hereunder, the Initiating Notice shall include the addressees) to which the Responsive Party shall send its Responsive Notice, and the Responsive Party shall send the Responsive Notice to such address(es). The Initiating Party's failure to include such addressees) in the Initiating Notice shall not render such Initiating Notice ineffective.

However, if the Initiating Party fails to include such addressees) in the Initiating Notice, then the Responsive Party shall not be deemed to have waived any of its rights hereunder by virtue of its failure to timely deliver a Responsive Notice to such Initiating Notice.

13. Miscellaneous.

(a) Capitalized terms used but not otherwise defined herein or on Exhibit A have the meaning ascribed thereto in the MGPP. Definitions in this Agreement apply equally to both the singular and plural forms of the defined terms, as applicable. The definitions set forth herein and in Exhibit A shall apply throughout this Agreement in its entirety. The words "include" and "including" shall be deemed to be followed by the phrase "but not limited to". The terms, "herein", "hereof" and "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular Section, paragraph or subdivision. The word "or" shall be deemed inclusive of "and".

(b) Except for the definitions of the MGPP that are incorporated herein, this Agreement embodies the entire understanding between the parties with respect to the subject matter hereof, and all prior agreements, understandings and statements, oral or written, with respect thereto are merged in this Agreement.

(c) Except as otherwise provided herein, this Agreement may not be modified or terminated, nor may any provision hereof be waived, orally or in any manner other than by an agreement in writing signed by the City, AYDC and each Site Owner, or their respective successors, administrators and assigns. The City will make such amendments to this Agreement and agree to changes in the ownership structure, in each case with respect to any Participating Site, as may be reasonably requested by any lender in connection with mezzanine debt financing for such Participating Site; provided, however, that the rights of the City hereunder shall not be reduced, but the mezzanine debt financing will be treated analogously to indebtedness incurred by a Site Owner hereunder, including that the interest payments owed with respect to such mezzanine debt financing shall be treated analogously to the treatment of Qualified Interest payments hereunder.

(d) Each party represents and warrants to the other party that this Agreement has been duly authorized, executed and delivered by such party.

(e) If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by Laws.

(f) This Agreement shall be construed under the laws of New York State,

without giving effect to any principles of conflicts of laws.

(g) EACH PARTY HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY ONE PARTY AGAINST THE OTHER, OR AS TO ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT.

(h) Notwithstanding anything to the contrary contained herein, in the event of any default by a Site Owner hereunder, the City shall look only to the Site Owner and no other property or assets of the AYDC, or either of the AYDC's or Site Owner's agents, officers, directors, shareholders, partners or principals, disclosed or undisclosed, shall be subject to levy, execution or other enforcement procedure for the satisfaction of the City's remedies under or with respect to this Agreement. The City in any event hereby waives any right to collect from AYDC or any Site Owner or to seek specific performance for any indirect, consequential, special or punitive damages whatsoever, whether or not AYDC or such Site Owner was or should have been aware of the probability or magnitude of such damages.

(i) The City represents that it does not have and agrees that it will not assert any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, principal, parent, subsidiary or other affiliate of the Site Owners, including, without limitation, AYDC, Forest City Ratner Companies and Forest City Enterprises, Inc. or any officer, director, employee, trustee, shareholder, partner or principal of any such parent, subsidiary or other affiliate (collectively, other than the Site Owners, "AYDC Parties"), arising out of or in connection with this Agreement or the transactions contemplated hereby. The City agrees: (i) to look solely to the Site Owner of a Participating Site for the satisfaction of any liability or obligation arising under this Agreement with respect to such Participating Site, or for the performance of any of the covenants, warranties or other agreements contained herein with respect to that Site Owner's Participating Site; and (ii) not to sue or otherwise seek to enforce any personal obligation against any other Site Owner or any AYDC Party with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby with respect to such Participating Site. Without limiting the generality of the foregoing provisions of this Section 13(i), the City hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter have against the AYDC Parties, and hereby unconditionally and irrevocably releases and discharges the AYDC Parties from any and all liability whatsoever which may now or hereafter accrue in favor of the City against the AYDC Parties, in connection with or arising out of this Agreement or the transactions contemplated hereby. The provisions of this Section 13(i) shall survive the termination or expiration of this Agreement.

U) AYDC hereby advises the City that certain information furnished by



AYDC, the Site Owners and their Affiliates (as applicable, the "Disclosing Parties") in accordance with the terms of this Agreement may contain trade secrets, the disclosure of which could cause harm to the Disclosing Parties' competitive position. Subject to all applicable Laws, including the Freedom of Information Law (Article 6 of the New York State Public Officers Law) ("FOIL"), the City will use reasonable efforts to maintain the confidentiality of all information provided by any Disclosing Party pursuant to the terms of this Agreement and which are not, to the City's knowledge, otherwise in the public domain or obtained from third party sources on a non-confidential basis; provided, however that the foregoing shall not restrict the City from making any disclosure of such information as the City deems necessary or desirable to any other agency or instrumentality of the State of New York, and/or to the respective board of directors of each, the staff members of such directors, and/or to the City's employees, legal, financial and other professional advisors and/or to comply with any applicable Laws, provided that the City shall in each case inform the party to which such disclosure is made that such information is confidential and shall inform such party of the confidentiality provisions of this Agreement. In the event that the City is required by subpoena, court order or other similar process to disclose such information or if the City receives any written FOIL request seeking disclosure of the materials described in this Section 13(i), the City shall, prior to complying with such subpoena, court order or similar process or FOIL request, provide the Disclosing Party with written notice so that the Disclosing Party shall have an opportunity to seek, at such Disclosing Party's sole cost and expense, a protective order or other appropriate remedy. If the Disclosing Party does not obtain a protective order or other remedy to preclude the disclosure of the requested materials, the Disclosing Parties hereby acknowledge that the City may disclose such requested materials, but shall comply with such subpoena, court order, similar process or FOIL request by providing the minimum of such requested materials being sought as advised by the City's legal counsel and the governmental or judicial authority requiring such compliance. The City shall not have any liability of any nature for a breach or failure to comply with this Section 13(i).

(k) Subject to this Section 13(k), this Agreement shall inure to the benefit of, and be binding upon, the parties hereto and their successors and assigns. If the Interim Developer assigns an Interim Lease in its entirety, then (i) AYDC shall assign to the Interim Lease assignee (the "Assignee") all of AYDC's right, title and interest in this Agreement to the extent this Agreement relates to the real estate leased pursuant to such Interim Lease (the "Interim Site"); (ii) such Assignee shall assume all of AYDC's obligations hereunder to the extent this Agreement relates to such Interim Site; and (iii) following such assignment and assumption, neither AYDC nor any of its Affiliates shall have any obligation with respect to such Interim Site.

(l) Nothing contained herein is intended to be for, or to inure to, the benefit of any Person other than the City, the AYDC, the Site Owners and their respective successors and assigns. No Person other than the City, the AYDC and the Site Owners is

entitled, as a consequence of any term, condition, covenant or agreement contained in this Agreement to seek, claim or recover damages or any other legal or equitable remedy hereunder.

(m) This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same agreement with the same effect as if all parties had signed the same signature page.

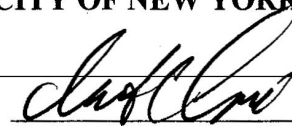
[Signature Page Follows]

IN WITNESS WHEREOF, the City and AYDC have executed this Agreement as of the date and year first above written.

**CITY:**

**THE CITY OF NEW YORK**


By: \_\_\_\_\_



Name: Robert C. Lieber

Title: Deputy Mayor for Economic  
Development

Approved as to form:

  
\_\_\_\_\_  
Acting Corporation Counsel

**AYDC:**

**ATLANTIC YARDS DEVELOPMENT  
COMPANY, LLC**, a Delaware limited liability  
company

By: \_\_\_\_\_

Name:

Title: Authorized Signatory

IN WITNESS WHEREOF, the City and AYDC have executed this Agreement as of the date and year first above written.

**CITY:**

**THE CITY OF NEW YORK**


By: \_\_\_\_\_  
Name: Robert C. Lieber  
Title: Deputy Mayor for Economic  
Development

Approved as to form:

\_\_\_\_\_  
Acting Corporation Counsel

**AYDC:**

**ATLANTIC YARDS DEVELOPMENT  
COMPANY, LLC**, a Delaware limited liability  
company

By:   
Name: David L. Berliner  
Title: Authorized Signatory

## Exhibit A

### Additional Definitions

"Affiliate" means, with respect to any designated Person, any other Person that Controls, is Controlled by, or is under common Control with, such designated Person.

"Affiliate Loan" means any loan made by an Affiliate of Forest City Enterprises to a Site Owner.

"Affiliate Loan Fees" means, with respect to any Affiliate Loan, the sum of all fees, charges, "kicker" payments and other amounts (other than stated annual interest payments) that are payable by the applicable Site Owner with respect to such Affiliate Loan.

"Amortized Annual Fee Amount" means, with respect to any Affiliate Loan, the yearly amount of all Affiliate Loan Fees if such Affiliate Loan Fees were to be amortized on a straight-line basis over the term of the Affiliate Loan.

"Annual Statement Contest Notice" means, with respect to any Annual Statement, a written notice from the City to AYDC: (i) notifying AYDC that the City disagrees with the Annual Statement; (ii) specifying the amounts by which the City believes that any figures set forth in the Annual Statement are incorrect; and (iii) specifying in reasonable detail the basis for the City's disagreement.

"Arena Block" means the area portrayed on Exhibit B-4.

"Arena Block City Property" means each parcel of real property currently owned by the City that is located within the Arena Block.

"Arena Block Streets" means the streets that are located within the area portrayed on Exhibit B-4.

"Block 1129" means the area portrayed on Exhibit B-5.

"Block 1129 Streets" means the streets that are located within the area portrayed on Exhibit B-5.

"City Participation Payment" means, with respect to each Participating Site, any payment to the City of any Net Proceeds in accordance with this Agreement.

"Control" (and with correlative meaning, "Controlled by" and "under common Control with") means ownership or voting control, directly or indirectly, of fifty percent (50%) or more of the voting stock, partnership interests or other beneficial ownership interests of the entity in question.

"Effective Annual Payments" means, with respect to an Affiliate Loan, the sum of: (i) the stated annual interest payments owed with respect to such Affiliate Loan; plus (ii) the Amortized Annual Fee Amount.

"Effective Interest" means, with respect to any Affiliate Loan, a percentage equal to: (i) the Effective Annual Payments owed by the Site Owner with respect to the Affiliate Loan; divided by (ii) the outstanding principal balance of the Affiliate Loan.

"GAC Reallocation Date" means any GAC True-Up Date or any Substantial Completion Date.

"GAC True-Up Date" means each of the following: (i) the Title Vesting Date; (ii) the first Construction Commencement Date to occur with respect to any Participating Site; (iii) the date of the commencement of the LIRR Yard Construction; (iv) the Substantial Completion Date of the LIRR Yard Construction; (v) the date of the commencement of the LIRR Platform Construction; and (vi) the Substantial Completion Date of the LIRR Platform Construction.

"Financing Transaction" means, with respect to each Participating Site, a transaction consummated after the applicable Substantial Completion Date whereby: (i) the Site Owner receives cash from a lender in exchange for a security interest in the Site Owner's direct interest in the Participating Site; and (ii) such security interest is all or substantially all of the lender's collateral for such financing.

"Laws" means all laws, statutes, ordinances, rules, orders, regulations and requirements (present, future, ordinary, extraordinary, foreseen or unforeseen) of any federal, state and local governments and of any and all departments and bureaus, public or quasi-public authority, and of the New York Board of Underwriters, the New York Fire Insurance Rating Organization and any other entity performing similar functions, at any time duly in force.

"LIRR Platform Construction" means the construction of a new platform over the LIRR Yard.

"LIRR Yard Construction" means the construction of a new storage yard on the LIRR Yard.

"Mortgagee" means the holder of any mortgage recorded against a Participating Site.

"Participating Site" means any Development Site, other than an Exempt Site,

"Person" shall mean not only a natural person, corporation or other legal entity, but also two or more natural persons, corporations or other legal entities acting jointly as a firm, partnership, unincorporated association, consortium, joint venture or otherwise.

"Qualified Interest" means: (i) any interest owed on any indebtedness where a majority of the lenders of the original principal amount loaned with respect to such indebtedness at the time it was incurred were Third Parties; or (ii) any Effective Interest owed with respect to an Affiliate Loan to the extent that such Effective Interest does not exceed an annual rate of fifteen percent (15%), compounded monthly.

"Substantially Complete" means, with respect to any portion of the Project, that such portion of the Project has been substantially completed, as reasonably determined by the applicable Site Owner's architects, in accordance with (i) the provisions of the MGPP, (ii) the approved plans with respect to such portion of the Project, and (iii) all applicable Laws, except for minor details of construction, decoration and mechanical adjustments, if any, the non-completion of which does not materially interfere with the use of such portion of the Project as intended by the MGPP, or which in accordance with good construction practices should be completed after the completion of other work with respect to the Project.

"Substantial Completion Date" means: (i) with respect to each Participating Site, the date that all portions of the Project to be developed on such Participating Site are Substantially Complete; and (ii) with respect to any other portion of the Project, the date on which such portion of the Project is Substantially Complete.

"Third Party" means, as of a date, any Person that is not an Affiliate of AYDC as of such date.

"Title Vesting Date" means the date on which Interim Developer and the ESDC enter into the first Interim Lease.

"Tower B 1" means the tower to be constructed in the area so designated on Exhibit B-4.

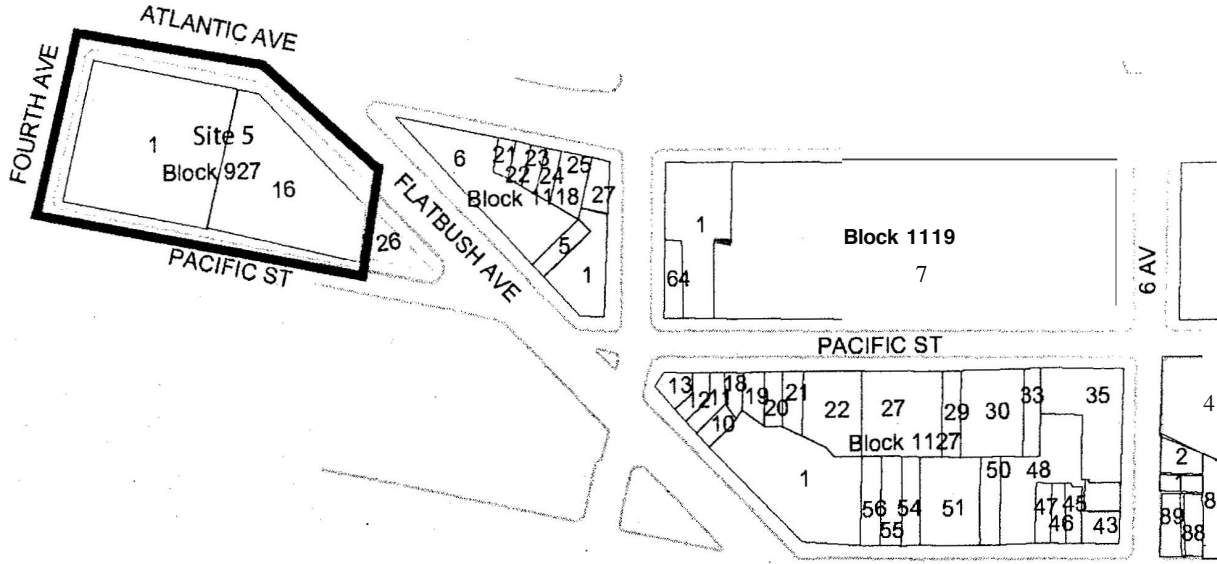
"Transaction Date" means any date on which a Site Owner receives any Net Transaction Proceeds.

"Trade Costs" means the cost of all labor and materials supplied by the contractor and subcontractors.

"Transfer" means, with respect to all or any portion of a Participating Site (including any condominium units, but not including easements and similar encumbrances): (i) the transfer of all or any portion of such Participating Site to a Third Party; or (ii) a foreclosure, deed in lieu of foreclosure or other similar enforcement action commenced by a Mortgagee with respect to any mortgage or other security interest on all or any portion of the Participating Site.

**Exhibit B-1**

**Site 5**





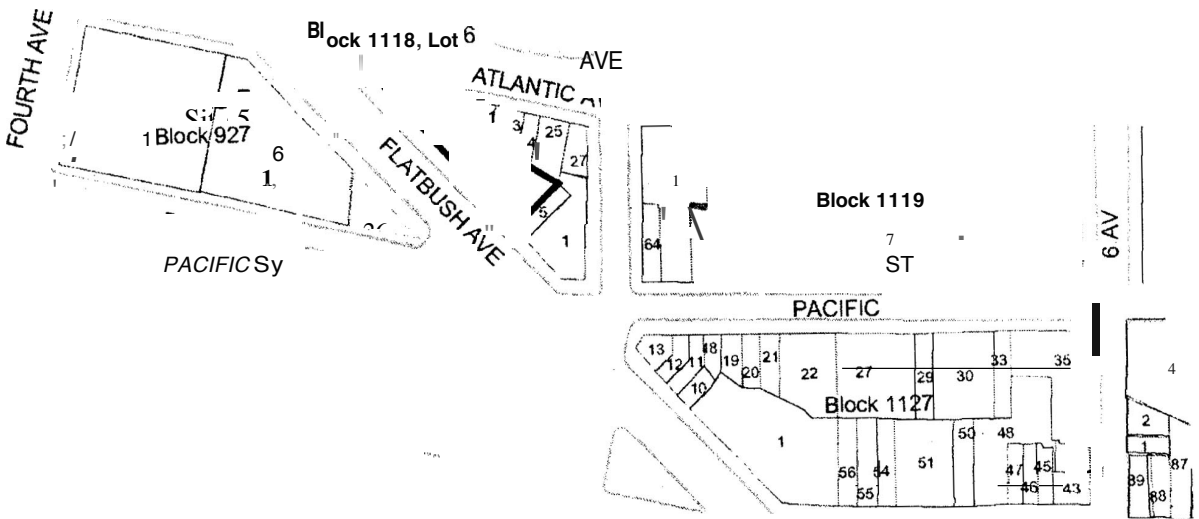


Exhibit B-2  
 Lot 6

B-2

**Exhibit B-3**

**FDNY Parcel**

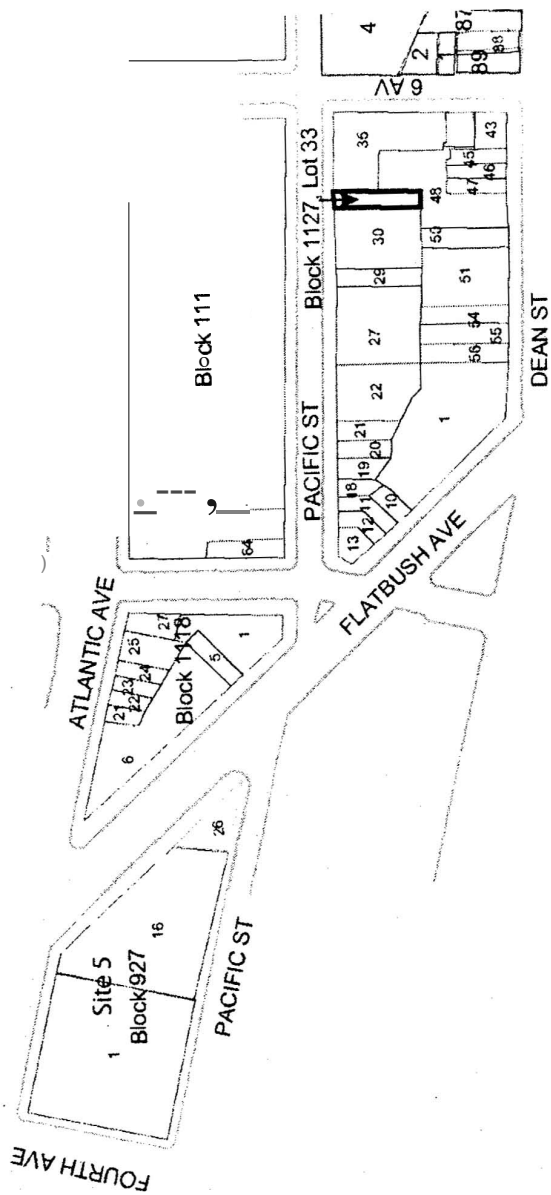
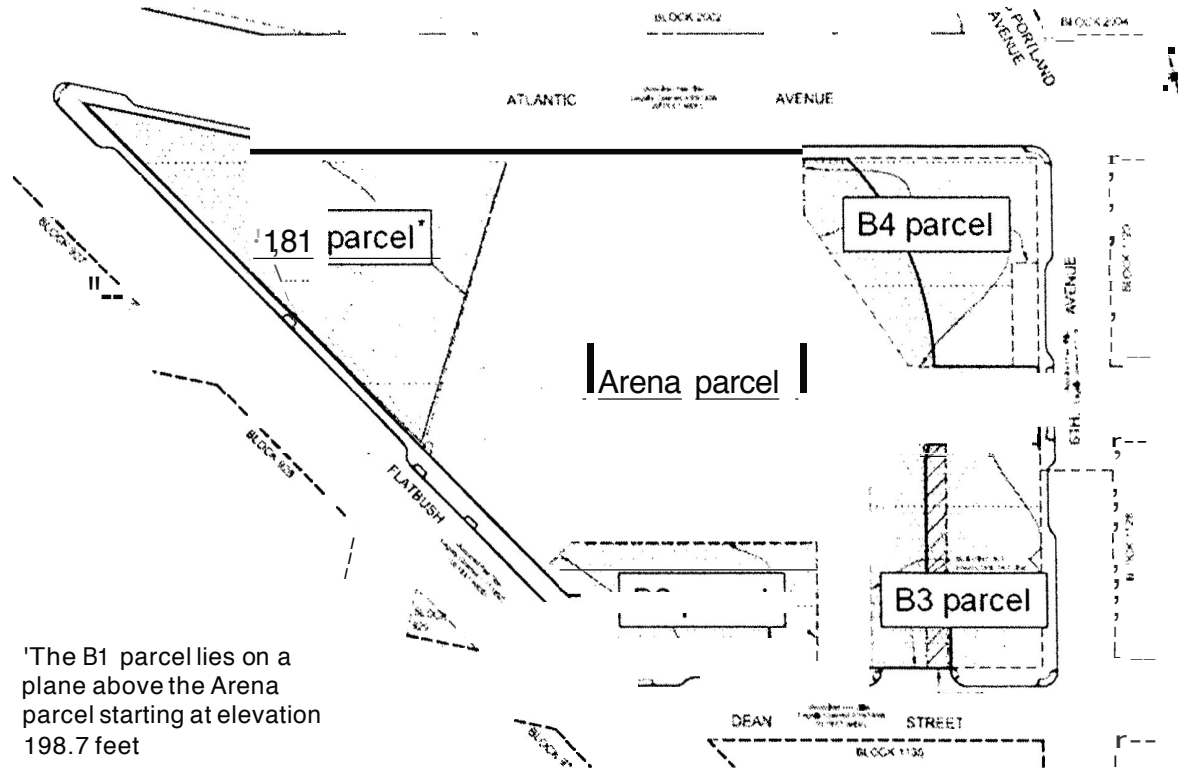


Exhibit B-4

Arena Group Sites and Arena Streets



The B1 parcel lies on a plane above the Arena parcel starting at elevation 198.7 feet

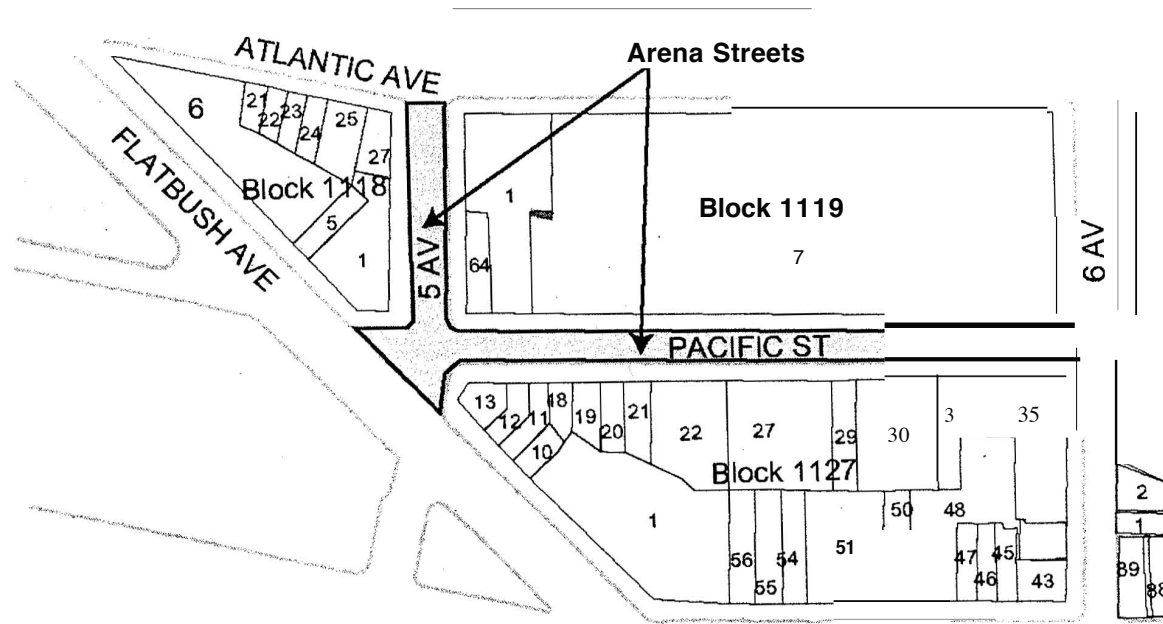
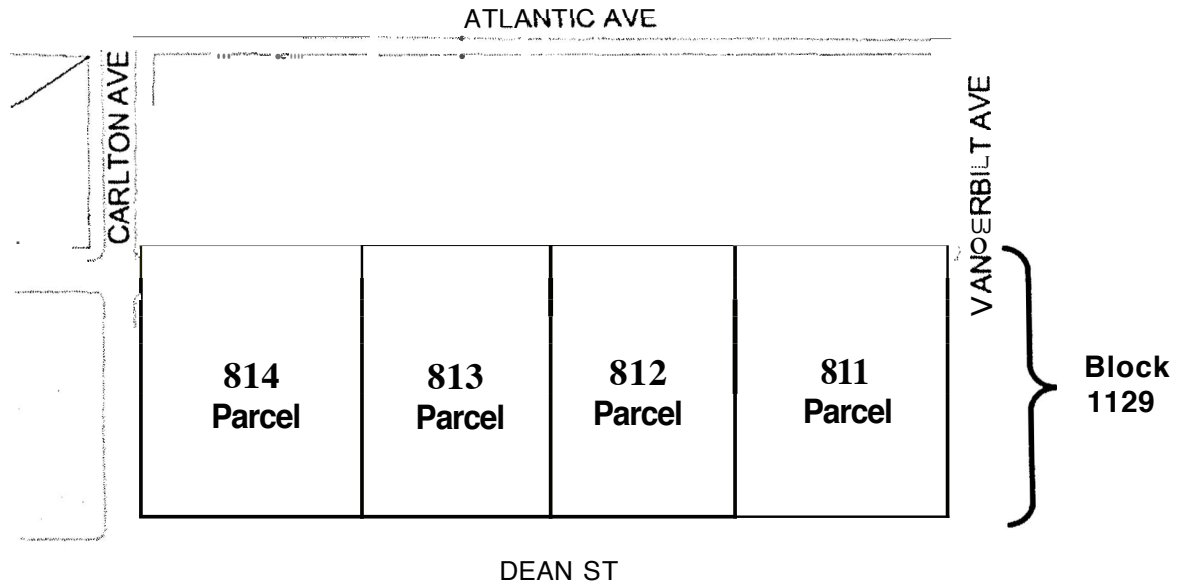
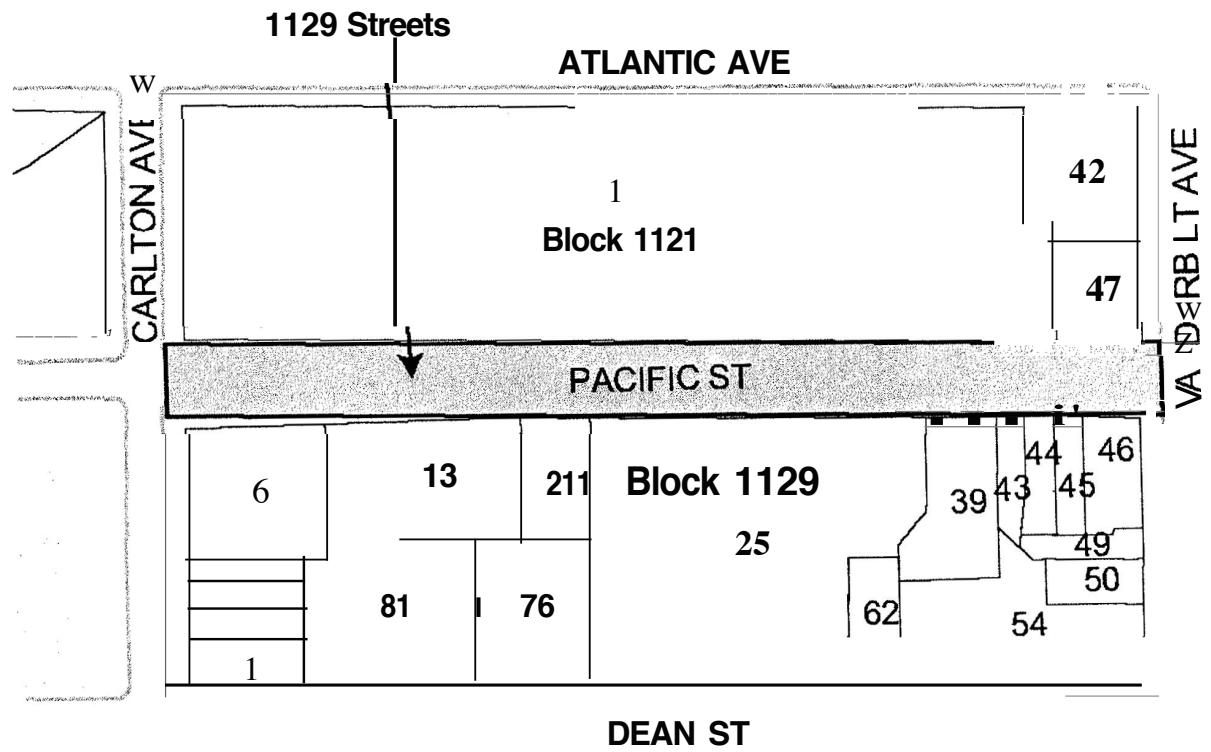


Exhibit B-S

Block 1129 Group Sites and Block 1129 Streets





## Exhibit C

### General Allocation Schedule

**EXHIBIT C: GENERAL ALLOCATION SCHEDULE**  
 Atlantic Yards General Acquisition Costs by Building  
 December 16, 2009

1 Total Projected AY Site Acquisition Costs	\$1,217.4
2 Carry through Title Vesting	113.4
3 General Acquisition Costs ("GAC")	<b>\$1,330.8</b>

	Total # of Units	# of Affordable Units	ZSF	GAC (In \$000,000's)	GAC (\$/ZSF)	GAC \$/ZSF as a % of Condo GAC \$/ZSF <sup>3</sup>
<b>Phase I</b>						
4 Tower 1 - Office			528,356	\$60.2	\$114	38%
5 Tower 2 - 50/30/20 Rental	402	201	327,031	46.8	143	47%
6 Tower 3 - 50/30/20 Rental	350	175	285,864	40.9	143	47%
7 Tower 4 - 80/20 Rental	887	179	673,806	173.6	258	85%
8 Phase I Total	1,639	555	1,815,057	<b>\$321.5</b>	<b>\$177</b>	
<b>Phase II</b>						
9 Tower 5 - 50/30/20 Rental	389	195	294,480	\$42.1	\$143	47%
10 Tower 5 - Condo	173	-	207,177	62.8	303	100%
11 Tower 6 - Condo	318	-	409,898	124.2	303	100%
12 Tower 7 - 50/30/20 Rental	499	250	377,728	54.0	143	47%
13 Tower 7 - Condo	185	-	209,825	63.6	303	100%
14 Tower 8 - 50/30/20 Rental	480	240	363,880	52.0	143	47%
15 Tower 8 - Condo	107	-	111,380	33.8	303	100%
16 Tower 9 - 50/30/20 Rental	426	213	323,221	46.2	143	47%
17 Tower 9 - Condo	185	-	212,398	64.4	303	100%
18 Tower 10 - 50/30/20 Rental	602	301	444,434	63.6	143	47%
19 Tower 11 - Condo <sup>1</sup>	200	-	320,404	97.1	303	100%
20 Tower 12 - Condo <sup>1</sup>	192	-	307,355	93.2	303	100%
21 Tower 13 - 50/30/20 Rental <sup>1</sup>	414	207	313,984	44.9	143	47%
22 Tower 14 - 80/20 <sup>1</sup>	343	72	260,470	67.1	258	85%
23 Tower 15 - 50/30/20 Rental	433	217	304,411	43.5	143	47%
24 Phase II Total	4,946	1,695	4,461,044	<b>\$952.5</b>	<b>\$214</b>	
25 Retail <sup>2</sup>			200,090	56.9	284	94%
26 Total	6,585	2,250	6,476,191	<b>\$1,330.8</b>	<b>\$205</b>	
<b>Totals by Program:</b>						
27 50/30/20 Rental			3,035,033	434.0	143	47%
28 80/20 Rental			934,276	240.7	258	85%
29 Condo <sup>3</sup>			1,778,436	539.0	303	100%
30 Office			528,356	60.2	114	38%
31 Retail			200,090	56.9	284	94%
32 Total			6,476,191	<b>\$1,330.8</b>	<b>\$205</b>	

**Notes:**

- (1) Block 1129 buildings
- (2) Retail space carried in pro formas of individual buildings
- (3) All Market Rental buildings would receive a GAC allocation per ZSF equal to 92.5% of Condo buildings' GAC allocation per ZSF

**EXHIBIT C: GENERAL ALLOCATION SCHEDULE**

Detail of 10% Carry on Equity Spent through Title Vesting Date

December 14, 2009

In millions of dollars

Paid During FY (1)	2003	2004	2005	2006	2007	2008	Projected 2009	
							2009 (Thru Sep.)	(Oct. - Jan.) (2)
Land Acquisition Costs			\$83.8	\$78.2	\$16.5	\$1.5	\$3.9	\$114.1
MTA LC/Breakup Fee			-	-	-	-	-	91.0
Land Taxes, Interest, Closing Costs			8.5	17.9	18.8	10.5	3.8	- (3)
Infrastructure/LIRR/LIRR Related Infrastructure			11.1	15.6	22.2	44.9	15.1	32.8
Masterplanning			15.8	20.7	19.0	13.3	12.4	15.0
Direct Building			10.8	3.3	8.2	2.9	(7.3)	-
Financing Fees			1.5	0.4	(0.2)	0.3	2.0	1.1
Development Costs			6.2	6.9	19.0	15.9	-	5.7
Arena Land Sale			-	-	-	-	-	(91.0) (4)
Reduction of Payables			-	-	-	-	-	10.8
<b>Subtotal</b>	-	-	137.7	143.1	101.4	89.3	29.9	179.5
Gramercy Land Loan			(46.4)	(66.1)	(44.0)	-	13.3	23.3 (5)
Public Party Contribution			-	-	-	(47.4)	(20.1)	(32.5)
<b>Subtotal</b>	-	-	(46.4)	(66.1)	(44.0)	(47.4)	(6.8)	(9.2)
<b>Total Equity Prior to Adjustments</b>	-	-	91.3	77.1	57.3	41.8	23.1	170.3
<b>Adjustment:</b>								
Equity Spent in FY 03 & 04	4.2	34.0	(38.2) (6)	-	-	-	-	-
<b>Total Equity Spent after Adjustments</b>	4.2	34.0	53.1	77.1	57.3	41.8	23.1	170.3
BOP Equity Balance	-	4.4	40.6	100.3	191.3	270.6	341.6	388.3
Total AY Equity Expended this Period	4.2	34.0	53.1	77.1	57.3	41.8	23.1	170.3
EOP Equity Balance	4.2	38.4	93.6	177.4	248.6	312.4	364.7	558.5
Average Balance	2.1	21.4	67.1	138.9	219.9	291.5	353.2	473.4
Carry Earned on Average Balance	10.00%	0.2	2.1	6.7	13.9	22.0	29.2	23.5 (7)
EOP Equity Balance with Carry	4.4	40.6	100.3	191.3	270.6	341.6	388.3	574.3
Total Equity Spent 2003 - 2009 Without Carry								460.9
Carry								113.4
<b>Total Equity Spent 2003 - 2009 With Carry</b>								574.3

**Notes:**

(1) FCE fiscal year runs from February 1 - January 31

(2) Includes master closing, currently anticipated to be 12/23/09, and title vesting, currently anticipated to be 1/23/09

(3) Included in "Land Acquisition Costs" above

(4) Balance of arena land (\$33MM) funded at vacant possession. Amount subject to change.

(5) Assumes paydown of land loan at master closing. Amount subject to change due to ongoing negotiations

(6) 2003 and 2004 amounts are included in the 2005 total; therefore these equity numbers are backed out of the 2005 equity total to avoid double counting

(7) Eight months of carry (February 1 - September 30)

(8) Four months of carry (October 1 - January 31)



EXHIBIT C: GENERAL ALLOCATION SCHEDULE  
Atlantic Yards Site Acquisition Costs  
December 15, 2010

\$'s in millions except per SF	Full Build	First Taking	Second Taking
		(Arena Blk and Blk 1129)	(Blks 1120, 1121, and 1128)
Land and Land Loan Interest	499.0	379.2	119.8 <sup>1</sup>
MTA LC	-	86.0	(86.0)
Infrastructure	380.5	126.3 <sup>2, 3</sup>	254.3
LIRR & Related Infrastructure	333.9	156.9	177.0
Masterplanning	100.5	100.5	-
Development Costs	88.0	88.0	-
MTA Interest	93.5	-	93.5
<b>AY &amp; Arena Gross SAC</b>	<b>1,495.4</b>	<b>936.9</b>	<b>558.5</b>
Public Subsidies	(154.0)	(154.0) <sup>4</sup>	-
<b>AY &amp; Arena SAC Less Subsidies</b>	<b>1,341.4</b>	<b>782.9</b>	<b>558.5</b>
Arena Land Sale	(124.1)		
<b>AY SAC</b>	<b>1,217.4</b>		
AY Million Zoning SF	6.48		
<b>AY SAC per ZSF</b>	<b>\$188</b>		

**Notes:**

1. Includes \$80 mm for MTA Land and \$39.8 mm condemnation LC for second taking
2. Excludes \$20 mm for water main, \$20 mm in corresponding targeted additional subsidy also deleted
3. Includes \$33.3 mm for block 1129 infrastructure not required for arena opening
4. Assumes \$285 mm in total subsidy less \$131 mm in subsidy allocated to the arena. \$20 mm in subsidy for water main has been deleted along with corresponding costs.

EXHIBIT C: GENERAL ALLOCATION SCHEDULE  
Atlantic Yards Site Acquisition Costs -- First Taking  
December 15, 2010

\$'s in millions except per SF	Breakdown of Costs to Develop Arena Block and Block 1129		
	Incurred Through 9/30/09	Projected 10/1/09 through Completion	Total First Taking
Land and Land Loan Interest	278.4	100.8	379.2
MTA LC	-	86.0	86.0
Infrastructure	57.3	69.0	126.3
LIRR & Related Infrastructure	77.3	79.6	156.9
Masterplanning	95.6	4.9	100.5
Development Costs	55.9	32.1	88.0
MTA Interest	-	-	-
<b>AY &amp; Arena Gross SAC</b>	<b>564.5</b>	<b>372.4</b>	<b>936.9</b>
<b>Land</b>			
Site Acquisition / Condemnation LC	209.4	57.6	267.0
Interest and Carrying Costs	69.0	23.2	92.2
MTA Land	-	20.0	20.0
<b>Total</b>	<b>278.4</b>	<b>100.8</b>	<b>379.2</b>
<b>Infrastructure</b>			
Utility Relocation	16.9	9.9	26.8
Demolition	11.1	11.1	22.2
Environmental Remediation	9.8	13.1	22.9
Other Infrastructure Costs	19.5	-	19.5
Parking	-	1.6	1.6
Block 1129 Infrastructure	-	33.3	33.3
<b>Total</b>	<b>57.3</b>	<b>69.0</b>	<b>126.3</b>
<b>LIRR &amp; Related Infrastructure</b>			
Temp Yard	53.9	11.9	65.7
Carlton Avenue Bridge	-	13.1	13.1
LIRR Yard Stage 2a	-	42.7	42.7
A&E & Other Yard Costs	23.4	12.0	35.5
<b>Total LIRR &amp; Related Infrastructure</b>	<b>77.3</b>	<b>79.6</b>	<b>156.9</b>

**Notes:**

1. Additional \$5 mm MTA LC is posted and returned within this time frame
2. Includes Yard Related Infrastructure
3. Included in Infrastructure Trust Account and monitored by Merritt & Harris in connection with arena PILOT Bond financing. See detail on next two pages
4. See detail on block 1129 infrastructure. Costs not required for arena opening

EXHIBIT C: GENERAL ALLOCATION SCHEDULE  
Atlantic Yards Site Acquisition Costs  
First Taking – Infrastructure and LIRR Costs Required for Arena Opening  
Costs from 10/1/09 through Completion  
December 15, 2010

<b>Arena Block</b>	
<b>Costs Required for Arena Opening to be Incurred After 10/1/09 *</b>	
<b>Utilities</b>	
PD-1 (Remainder)	2,353,400
Excav / SOE along Flatbush (prev Add/Alt)	3,193,417
Sewer extension north and ByPass	1,170,613
Extend eastside WM to tip	531,376
CO for Temp utilities for holdouts	50,000
<b>Utilities Trades:</b>	<b>7,298,806</b>
General Conditions / CM Fee	875,857
Bonds	91,235
Insurance	91,235
Permits	72,988
Construction Contingency	421,506
Design/Scope Contingency	421,506
<b>Utilities Hard Costs</b>	<b>9,273,133</b>
A&E: Base	129,000
A&E Consultants	50,000
A&E Reimbursables	20,000
Preconstruction Services	50,000
Owner's Testing/Survey	278,194
Railroad Protective Insurance	24,667
<b>Utilities Soft Costs</b>	<b>551,861</b>
<b>Sub-Total Project Costs</b>	<b>9,824,994</b>
Development Contingency	27,593
<b>Total Utilities Costs</b>	<b>9,852,587</b>
<b>Demolition</b>	
Arena (1st taking)	9,993,569
<b>Demolition Trades</b>	<b>9,993,569</b>
Insurance	124,920
Construction Contingency	505,924
Design/Scope Contingency	505,924
<b>Demolition Hard Costs</b>	<b>11,130,337</b>
<b>Total Demolition Costs</b>	<b>11,130,337</b>
<b>Environmental Remediation</b>	
Groundwater Remediation	750,000
UST Remediation	75,000
Arena Block - Arena	8,969,325
LIRR Yard	361,009
<b>Env. Remediation Trades</b>	<b>10,175,334</b>
Bonds	127,192
Insurance	127,192
Permits	101,753
Construction Contingency	526,574
Design/Scope Contingency	526,574
<b>Env. Remediation Hard Costs</b>	<b>1,409,284</b>
A&E: Base	90,272
Owner's Testing/Survey	1,361,168
<b>Env. Remediation Soft Costs</b>	<b>1,451,440</b>
<b>Sub-Total Project Costs</b>	<b>13,036,058</b>
Development Contingency	72,572
<b>Total Environmental Remediation Costs</b>	<b>13,108,630</b>

Atlantic Yards Site Acquisition Costs  
 First Taking – Infrastructure and LIRR Costs Required for Arena Opening  
 Costs from 10/1/09 through Completion  
 December 15, 2010

<b>Arena Block</b>	
<b>Temporary Yard Relocation</b>	
Trades & Other Hard Costs	3,551,336
Deadheading	8,307,180
<b>Subtotal</b>	<b>11,858,516</b>
<b>Total Temporary Yard</b>	<b>11,858,516</b>
<b>Carlton Avenue Bridge</b>	
Trades	10,790,000
CAB Trades	10,790,000
Bonds	134,875
Insurance	134,875
Construction Contingency	552,988
Design/Scope Contingency	552,988
<b>CAB Hard Costs</b>	<b>12,165,725</b>
A&E- Base	750,000
A&E Reimbursables	20,000
Owner's Testing/Survey	107,900
<b>CAB Soft Costs</b>	<b>877,900</b>
<b>Sub-Total Project Costs</b>	<b>13,043,625</b>
Development Contingency	43,895
<b>Total CAB Costs</b>	<b>13,087,520</b>
<b>LIRR Yard - Stage 2a</b>	
Trades	35,599,921
Stage 2a Trades	35,599,921
Bonds	444,999
Insurance	444,999
Construction Contingency	1,824,486
Design/Scope Contingency	1,824,486
<b>Stage 2a Hard Costs</b>	<b>40,138,911</b>
A&E- Base	1,500,000
A&E Reimbursables	50,000
Program Manager	500,000
Owner's Testing/Survey	355,999
<b>Stage 2a Soft Costs</b>	<b>2,405,999</b>
<b>Sub-Total Project Costs</b>	<b>42,544,910</b>
Development Contingency	120,300
<b>Total LIRR Stage 2a Costs</b>	<b>42,665,210</b>
<b>Total CAB and Stage 2a LIRR</b>	<b>55,752,730</b>
Surface Parking	1,578,404
<b>Total Arena Block</b>	<b>103,281,204</b>

<b>Reconciliation to POS</b>	
Total	103,281,204
Less incurred in October	(2,785,665)
<b>Remaining</b>	<b>100,495,539</b>

\* Costs for this scope of work will be funded into the Infrastructure Trust Account in connection with Arena Bond Financing. Work will be monitored and certified by Merritt & Harris. Merritt & Harris will also approve requisitions.

EXHIBIT C: GENERAL ALLOCATION SCHEDULE  
 Atlantic Yards Site Acquisition Costs  
 First Taking -- Infrastructure Costs Not Required for Arena Opening  
 Costs from 10/1/09 through Completion  
 December 15, 2010

<b>Block 1129 Infrastructure</b>	
Environmental Remediation - Ground Water Remediation	750,000
Environmental Remediation - Soil T&D	12,803,906
Open Space Landscaping	6,455,592
Sitework (Street Trees)	497,250
Mitigation	1,900,000
Demolition	4,938,060
TT Monitoring	300,000
<b>Subtotal</b>	<b>27,644,807</b>
General Conditions / CM Fee	1,062,341
Bonds	280,084
Insurance	345,560
Permits	224,067
Construction Contingency	1,477,843
Design/Scope Contingency	1,477,843
<b>Total Infrastructure Hard Costs</b>	<b>32,512,546</b>
A&E: Base	352,780
A&E Consultants	322,780
A&E Reimbursables	25,000
Preconstruction Services	50,000
Owner's Testing/Survey	6,318
<b>Total Infrastructure Soft Costs</b>	<b>756,877</b>
Development Contingency	37,844
<b>Total Infrastructure Costs for Block 1129</b>	<b>33,307,267</b>

EXHIBIT C: GENERAL ALLOCATION SCHEDULE  
Atlantic Yards Site Acquisition Costs  
Second Taking  
Detail of Infrastructure, LIRR, and LIRR Related Costs  
December 15, 2010

<b>Infrastructure</b>	
<b>Infrastructure</b>	
Infrastructure	
<b>Infrastructure</b>	
Utilities	8,348,228
Environmental Remediation	23,460,380
Open Space Landscaping	16,195,608
Site work (fka streetscape)	3,107,987
Mitigation (fka Roadway Reconfiguration)	1,800,000
Platform & MEP	131,666,700
Demolition	3,940,576
<b>Subtotal Trades</b>	<b>188,439,459</b>
General Conditions / CM Fee	17,106,480
Bonds	2,311,124
Insurance	2,360,493
Permits	1,848,899
Construction Contingency	10,331,212
Design/Scope Contingency	10,331,212
<b>Total Hard Costs</b>	<b>232,728,858</b>
Preconstruction Services	14,779,021
Owner's Testing/Survey	675,000
Owner's Testing/Survey	5,116,480
<b>Soft Costs</b>	<b>20,570,501</b>
Sub-Total Project Costs	253,299,358
Development Contingency	1,006,753
<b>Total Second Taking Infrastructure Costs</b>	<b>254,306,111</b>

<b>Remainder of LIRR and LIRR Related Infrastructure</b>	
<b>Remainder of Permanent Yard</b>	
Trades	82,532,125
General Conditions / CM Fee	18,329,580
Bonds	1,056,696
Insurance	1,056,696
Construction Contingency	12,875,346
Design/Scope Contingency	5,248,931
<b>Total LIRR Hard Costs</b>	<b>121,099,373</b>
Deadheading/TEAs/Other Soft Costs	11,193,413
Sub-Total Project Costs	132,292,786
Development Contingency	30,805
<b>Total Remainder of Permanent Yard</b>	<b>132,323,591</b>
<b>LIRR Yard Related Infrastructure <sup>1</sup></b>	
Trades	33,354,537
<b>LIRR Yard Related Infrastructure</b>	<b>33,354,537</b>
GC/Fee	4,669,636
Bonds	416,932
Insurance	416,932
Construction Contingency	3,886,804
Design/Scope Contingency	1,942,902
<b>Total Hard Costs</b>	<b>44,686,741</b>
<b>LIRR Yard Related Infrastructure <sup>1</sup></b>	<b>44,686,741</b>
<b>Tot. Remainder of Perm. Yard and Yard Related Infrastructure</b>	<b>177,010,332</b>

**Notes:**  
1. Net of 60% allocation to buildings

Exhibit D-1

Annual PILOT Baselines

Exhibit D-1  
Master Participation Agreement  
Annual PILOT Baseline Calculation  
December 16, 2009

Tax Rates            Class 2    13.053%  
                          Class 4    10.612%

Primary Accrual Rate            3.00%  
Year to Transition to Assessed Value            5

Building	Block	Lot	Land Assessed Val.	Land Trans. Val.	Taxes		Increase Amount	
					Assessed Val.	Escalated (1)		
Subtotal B1			2,630,475	2,630,475	279,146	323,607	279,146	44,461
Subtotal B2			4,381,605	1,142,958	464,976	539,035	121,291	417,744
Subtotal B3			222,033	210,513	26,704	30,957	25,481	5,476
Subtotal B4			-	-	-	-	-	-
Arena Block			7,234,113	3,983,546	770,826	893,598	425,918	467,680
Block 1129			7,922,058	2,449,302	841,151	975,124	260,382	714,742
B11 @	25%		1,980,515	612,325	210,288	243,781	65,096	178,686
B12 @	25%		1,980,515	612,325	210,288	243,781	65,096	178,686
B13 @	25%		1,980,515	612,325	210,288	243,781	65,096	178,686
B14 @	25%		1,980,515	612,325	210,288	243,781	65,096	178,686
Grand Total			15,156,171	6,433,248	1,611,977	1,868,723	686,300	1,182,423

Annual PILOT Baseline Amounts												
Fiscal Year (2)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021 (3)
Increase (4)	1	2	3	4	5	6	7	8	9	10	11	12
	0%	25%	25%	25%	25%	3%	3%	3%	3%	3%	3%	3%
Subtotal B1	279,146	290,261	301,376	312,492	323,607	333,315	343,314	353,614	364,222	375,149	386,403	397,995
Subtotal B2	121,291	225,727	330,163	434,599	539,035	555,206	571,862	589,016	605,688	624,689	643,635	662,944
Subtotal B3	25,481	26,880	28,219	29,588	30,957	31,886	32,842	33,828	34,842	35,888	36,964	38,073
Subtotal B4	-	-	-	-	-	-	-	-	-	-	-	-
Arena Block	425,918	542,838	655,758	776,678	893,598	920,406	948,018	976,459	1,005,753	1,035,925	1,067,003	1,099,013
Block 1129	260,382	439,068	617,753	796,439	975,124	1,004,378	1,034,510	1,065,545	1,097,511	1,130,437	1,164,350	1,199,280
B11 @	65,096	109,767	154,438	199,110	243,781	251,055	258,627	266,386	274,378	282,609	291,087	299,820
B12 @	65,096	109,767	154,438	199,110	243,781	251,055	258,627	266,386	274,378	282,609	291,087	299,820
B13 @	65,096	109,767	154,438	199,110	243,781	251,055	258,627	266,386	274,378	282,609	291,087	299,820
B14 @	65,096	109,767	154,438	199,110	243,781	251,055	258,627	266,386	274,378	282,609	291,087	299,820
Grand Total	686,300	981,906	1,277,511	1,573,117	1,868,723	1,924,784	1,982,528	2,042,004	2,103,264	2,166,362	2,231,353	2,298,293

**Note:**

- (1) Assessed value escalated at 3% annually until year 5
- (2) Fiscal year runs from July 1 to June 30, so FY 2010 would be July 1, 2009 through June 30, 2010
- (3) Should PILOT benefits continue to be granted after the timeline shown in this exhibit, expected taxes will continue to increase at 3% annually
- (4) Until the assessed value is reached, the increase represents the percentage of the total increase required to meet the assessed value; thereafter, the increase is a percentage increase over the previous year's tax amount.

## Exhibit D-2

### Pro Forma PILOT Value Calculation

**Exhibit D-2**

Master Participation Agreement  
PILOT Benefit - Illustrative Example  
December 16, 2009

**Building Eleven**

PILOT Payments Commence: 2/1/2010  
Regular Accrual Rate 6.25%  
Building Substantial Completion Date Jun-13 <sup>1</sup>

<b>Tax Year Ending</b>	<b>Jun-10</b>	<b>Jun-11</b>	<b>Jun-12</b>	<b>Jun-13</b>
Actual Tax Calculation (from Exhibit D-1) <sup>2</sup>	26,942	109,767	154,438	199,110
Less: PILOT (\$1 annually)	(1)	(1)	(1)	(1)
<b>Value of PILOT Benefit</b>	<b>26,941</b>	<b>109,766</b>	<b>154,437</b>	<b>199,109</b>

**City's PILOT Account**

BOP PILOT Value	-	26,941	138,391	301,478
PILOT Value Contributed this Period	26,941	109,766	154,437	199,109
Return Earned this Period (@ Regular Accrual Rate)	-	1,684	8,649	18,842
<b>EOP PILOT Value</b>	<b>26,941</b>	<b>138,391</b>	<b>301,478</b>	<b>519,429</b>

**Note:**

(1) After substantial completion, outstanding PILOT Value would continue to accrue at regular accrual rate until Expiration Date

(2) First year pro-rated for partial tax year (Feb 1 - June 30)



Exhibit E

Form of Memorandum

Dated as of \_\_\_\_\_, 20\_\_

Name and Address of Site  
Owner: \_\_\_\_\_

J

Execution Date of Joinder: \_\_\_\_\_, 20\_\_

Description of the Participating Site: The Premises, as defined in that certain Agreement of Development Lease, dated as of [ J, 200[ ], by and among the New York State Urban Development Corporation d/b/a the Empire State Development Corporation ("ESDC") and the Site Owner, and as more particularly described on Schedule 1 attached hereto and made a part hereof (the "Participating Site").

Memorandum of Master Participation Agreement: Reference is hereby made to that certain Master Participation Agreement, dated as of December [ J, 2009, by and among Atlantic Yards Development Company, LLC, a Delaware limited liability company ("AYDC"), The City of New York (the "City") and each Affiliate of AYDC that executes a Joinder pursuant to Section 2 thereof (each, a "Site Owner"), as the same may be amended from time to time (the "Agreement").

Pursuant to Section 2 of the Agreement, the Site Owner set forth above has executed a Joinder to the Agreement as of the date hereof. Accordingly, this instrument, executed pursuant to Section 2(b) of the Agreement, is intended to be and is entered into as a memorandum thereof for the purpose of recordation and the giving of notice of the Agreement with respect to the Participating Site, and shall not, in any event, be construed to change, vary, modify or interpret the Agreement or any of the terms, covenants or conditions thereof. All of the terms, covenants and conditions contained in the Agreement are hereby incorporated herein by reference with like effect as if set forth herein verbatim.

Particular notice is hereby given of the right of the City to payment of a share of proceeds from the sale of all or part of the Participating Site or a financing or refinancing, in certain circumstances described in the Agreement, which, if not paid when due, the City will be entitled to payment thereof out of

the Participating Site.

This Memorandum shall constitute an encumbrance against the Participating Site and a lien for any amounts determined to be due to the City in accordance with the Master Participation Agreement.

This Memorandum may be executed in counterparts.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the City and Site Owner have executed this Memorandum as of the date and year first above written.

THE CITY OF NEW YORK

By: \_\_\_\_\_  
Name:  
Title:

Approved as to Form:

\_\_\_\_\_  
Acting Corporation Counsel

[SITE OWNER]

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

STATE OF NEW YORK

} 55

..

COUNTY OF NEW YORK

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_, 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

STATE OF NEW YORK

} 55

..

COUNTY OF NEW YORK

On the \_\_\_ day of \_\_\_\_\_ in the year 20\_\_, 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

SCHEDULE I (to Memorandum)  
Legal Description of Participating Site

Exhibit F

Form of Memorandum Release

THIS TERMINATION OF MEMORANDUM OF AGREEMENT, dated as of the \_ day of \_\_\_\_\_, 20\_\_ (this "Termination") by and between The City of New York (the "City") and [ \_\_\_\_\_ ] ("Site Owner") a Site Owner that is party to that certain Master Participation Agreement, dated as of December [ \_\_\_\_\_ ], 2009, by and among Atlantic Yards Development Company, LLC, a Delaware limited liability company ("AYDC"), the City of New York (the "City") and each Affiliate of AYDC that executes a Joinder pursuant to Section 2 thereof (as may be amended from time to time, the "Agreement").

WITNESSETH:

WHEREAS, Site Owner, as a Site Owner of the Participating Site more particularly described on Schedule 1 attached hereto (the "Participating Site"), executed a Joinder to the Agreement in accordance with Section 2 of the Agreement; and

WHEREAS, pursuant to Section 2 of the Agreement, the Site Owner and the City recorded a Memorandum of the Agreement (the "Memorandum") for the purpose of recordation and the giving of notice of the Agreement with respect to the Participating Site;

NOW, THEREFORE, Landlord and Tenant declare as follows:

1. Memorandum of Agreement. The Memorandum was recorded in the office of the Register of The City of New York on \_\_\_\_\_, 20\_\_, bearing City Register File No. (CFRN) \_\_\_\_\_.
2. Expiration of Agreement. Pursuant to Section 1(b) of the Agreement, the Expiration Date has occurred with respect to the Participating Site.
3. Termination of Memorandum of Agreement. In connection with the Expiration Date occurring with respect to the Participating Site, the Memorandum is of no further force and effect and the parties hereto wish to terminate the Memorandum pursuant to the recordation of this Termination.
4. Definitions. Capitalized terms used but not otherwise defined herein have the meaning ascribed thereto in the Agreement.
5. Counterparts. This Termination may be executed in counterparts.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the City and Site Owner have executed this Termination of Memorandum as of the date and year first above written.

THE CITY OF NEW YORK

By: \_\_\_\_\_  
Name:  
Title:

Approved as to Form:

\_\_\_\_\_  
Acting Corporation Counsel

[SITE OWNER]

By: \_\_\_\_\_  
Name:  
Title:

**ACKNOWLEDGMENT**

STATE OF NEW YORK

} 55

..

COUNTY OF NEW YORK

On the \_ day of \_\_\_\_\_ in the year 20\_, 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

STATE OF NEW YORK

} 55

..

COUNTY OF NEW YORK

On the \_ day of \_\_\_\_\_ in the year 20\_, 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



SCHEDULE I (to Termination of Memorandum of Agreement)

.Legal Description of Participating Site

Exhibit G

Form of Joinder

Reference is hereby made to that certain Master Participation Agreement, dated December \_\_, 2009, by and among Atlantic Yards Development Company, LLC, a Delaware limited liability company ("AYDC"), The City of New York (the "City") and each Affiliate of AYDC that executes a Joinder pursuant to Section 2 thereof, as the same may be amended from time to time (the "Agreement"). All capitalized terms used but not otherwise defined in this Joinder shall have the meaning given to such terms in the PILOT Agreement.

By execution of this joinder (this "Joinder"), the undersigned (the "Site Owner") hereby agrees to become a party to the Agreement as a "Site Owner" thereunder and to be bound and governed by the terms and conditions of the Agreement applicable to the Site Owner as a "Site Owner" thereunder. The Site Owner acknowledges and agrees that the City shall have the right, subject to certain limitations in the Agreement, to directly enforce the Site Owner's obligations under the Agreement.

The Site Owner represents and warrants that it has (i) received and reviewed a complete copy of the Agreement (including all exhibits thereto) and such other information requested by the Site Owner with respect to the rights and obligations of a "Site Owner" under the Agreement, and (ii) had the opportunity to ask questions about the Agreement and the rights and obligations of a "Site Owner" under the Agreement, and that all such questions have been answered to the Site Owner's satisfaction.

The address for the Site Owner for any notice, demand or request pursuant to the terms of this Joinder and the Agreement is as follows:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

With copies to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

IN WITNESS WHEREOF, the Site Owner has executed this Joinder as of this \_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

As Its: \_\_\_\_\_

## Exhibit H

### Pro Forma City Participation Payment Calculation

SAMPLE - ALL NUMBERS FOR ILLUSTRATIVE PURPOSES ONLY																																					
Exhibit H																																					
City Participation - Illustrative Example																																					
December 16, 2009																																					
Dollars in millions, except psf numbers																																					
Year of Title Vesting	2010																																				
Regular Accrual Rate	6.25%																																				
<b>Example: Building One</b>																																					
Zoning Square Feet (psf) (Exhibit C)	538,356																																				
Allocation of General Acquisition Costs per psf (Exhibit C)	\$114																																				
Total Allocated General Acquisition Costs (MM)	\$60.2																																				
	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th></th> <th>Total</th> <th>psf</th> </tr> </thead> <tbody> <tr> <td>Gen'l Acq. Costs</td> <td>\$60.2</td> <td>\$114</td> </tr> <tr> <td>Trades</td> <td>145.3</td> <td>275</td> </tr> <tr> <td>Other Costs</td> <td>153.7</td> <td>310</td> </tr> <tr> <td>Net Project Costs</td> <td>359.2</td> <td>669</td> </tr> <tr> <td>Debt</td> <td>(252.0)</td> <td>(477)</td> </tr> <tr> <td>Equity</td> <td>117.2</td> <td>222</td> </tr> </tbody> </table>																	Total	psf	Gen'l Acq. Costs	\$60.2	\$114	Trades	145.3	275	Other Costs	153.7	310	Net Project Costs	359.2	669	Debt	(252.0)	(477)	Equity	117.2	222
	Total	psf																																			
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Construction Commences	2010																																				
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Assumed Cap Rate on Ref/Sale	5.5%																																				
<b>Year</b>	<b>2004</b>	<b>2005</b>	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>	<b>2013</b>	<b>2014</b>	<b>2016</b>	<b>2018</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>																					
Net Operating Proceeds (Assumption)	-	-	-	-	-	-	-	-	-	2.8	4.2	5.7	7.2	8.9	10.7	12.5																					
Net Financing Proceeds (See Below)	-	-	-	-	-	-	-	-	-	57.9	-	-	-	-	-	-																					
Net Sales Proceeds (See Below)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	285.5																					
<b>Total Net Proceeds</b>	-	-	-	-	-	-	-	-	-	<b>60.7</b>	<b>4.2</b>	<b>5.7</b>	<b>7.2</b>	<b>8.9</b>	<b>10.7</b>	<b>302.1</b>																					
<b>Building's Capital Account</b>																																					
BOP Site Owner's Equity Balance	-	-	-	-	-	-	117.2	117.2	117.2	117.2	56.5	52.3	46.6	39.4	30.5	19.8																					
Allocation of Gen'l Acq. Costs Invested this Period	-	-	-	-	-	-	60.2	-	-	-	-	-	-	-	-	-																					
Additional Site Owner's Equity Invested this Period	-	-	-	-	-	-	57.0	-	-	-	-	-	-	-	-	-																					
Net Proceeds Distributed this Period	-	-	-	-	-	-	-	-	-	(60.7)	(4.2)	(5.7)	(7.2)	(8.9)	(10.7)	(285.5)																					
<b>BOP Site Owner's Equity Balance</b>	-	-	-	-	-	-	<b>117.2</b>	<b>117.2</b>	<b>117.2</b>	<b>66.6</b>	<b>52.3</b>	<b>46.6</b>	<b>38.4</b>	<b>30.5</b>	<b>19.8</b>	<b>(280.0)</b>																					
<b>Total Cash to Building One</b>	-	-	-	-	-	-	<b>(117.2)</b>	-	-	<b>60.7</b>	<b>4.2</b>	<b>5.7</b>	<b>7.2</b>	<b>8.9</b>	<b>10.7</b>	<b>298.6</b>																					
<b>IRR</b>	<b>18.04%</b>																																				
<b>City's Capital Account</b>																																					
BOP Net City Investment	-	-	-	-	-	-	0.8	1.1	1.5	1.6	1.7	1.8	1.8	2.0	2.1	-																					
New City Investment this Period (See below for detail)	-	-	-	-	-	-	0.8	0.3	0.3	-	-	-	-	-	-	-																					
City Return Earned this Period (@ Regular Accrual Rate)	-	-	-	-	-	-	0.0	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1																					
City Investment Repaid this Period	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(2.3)																					
<b>BOP Net City Investment</b>	-	-	-	-	-	-	<b>0.8</b>	<b>1.1</b>	<b>1.6</b>	<b>1.6</b>	<b>1.7</b>	<b>1.8</b>	<b>1.9</b>	<b>2.0</b>	<b>2.1</b>	<b>-</b>																					
<b>Total Cash to City</b>	-	-	-	-	-	-	<b>(0.8)</b>	<b>(0.8)</b>	<b>(0.3)</b>	-	-	-	-	-	-	<b>2.3</b>																					
<b>IRR</b>	<b>6.25%</b>																																				
<b>City Investment - Detail</b>																																					
Contributed Property Value (Block 1118, Lot 6) (1)	-	-	-	-	-	-	0.5	-	-	-	-	-	-	-	-	-																					
Tax Value (PILOT Amounts - From Exhibit D) (2)	-	-	-	-	-	-	0.3	0.3	0.3	-	-	-	-	-	-	-																					
<b>Total City Investment</b>	-	-	-	-	-	-	<b>0.8</b>	<b>0.3</b>	<b>0.3</b>	-	-	-	-	-	-	-																					
<b>Building One Operating &amp; Transaction Assumptions</b>																																					
Net Operating Income (Assumption)	-	-	-	-	-	-	-	-	-	23.2	24.6	26.1	27.6	29.3	31.0	32.9																					
Capitalization Rate	5.50%																																				
<b>Value</b>	<b>421.6</b>																																				
Loan-to-Value Ratio	75.00%																																				
Transaction Proceeds	316.2																																				
Repay Existing Loan	(262.0)																																				
Less: Cost of Transaction	Ref:	2.00%	Sale:	5.00%													(6.3)																				
<b>Net Transaction Proceeds</b>	<b>57.9</b>																																				

Notes:  
(1) Contributed value assumed to be \$500,000  
(2) PILOT benefit granted until substantial completion of Building One in this example.

Exhibit H  
City Participation - Illustrative Example  
December 16, 2009  
Dollars in millions, except psf numbers

SAMPLE - ALL NUMBERS FOR ILLUSTRATIVE PURPOSES ONLY

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
<b>Waterfall</b>																
Net Proceeds	-	-	-	-	-	-	-	-	-	2.8	4.2	5.7	7.2	8.9	10.7	12.6
Net Operating Proceeds	-	-	-	-	-	-	-	-	-	57.9	-	-	-	-	-	-
Net Transaction Proceeds	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	259.5
<b>Total Net Proceeds</b>	-	-	-	-	-	-	-	-	-	<b>60.7</b>	<b>4.2</b>	<b>5.7</b>	<b>7.2</b>	<b>8.9</b>	<b>10.7</b>	<b>302.1</b>
<b>Return of Site Owner's Equity</b>																
Site Owner's Equity - BOP	-	-	-	-	-	-	-	117.2	117.2	117.2	56.5	52.3	46.6	39.4	30.5	19.8
New Investment	-	-	-	-	-	-	117.2	-	-	-	-	-	-	-	-	-
Return of Site Owner's Equity	-	-	-	-	-	-	-	-	-	(60.7)	(4.2)	(5.7)	(7.2)	(8.9)	(10.7)	(19.8)
Site Owner's Equity - EOP	-	-	-	-	-	-	117.2	117.2	117.2	56.5	52.3	46.6	39.4	30.5	19.8	-
Amount Remaining After Return of Site Owner's Equity	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	282.2
<b>Initial Return Hurdle</b>																
Unpaid Return - BOP	16.0%	-	-	-	-	-	-	-	17.6	37.8	61.1	78.7	98.3	120.1	144.0	170.2
Return Earned this Period	-	-	-	-	-	-	-	17.6	20.2	23.3	17.6	15.7	21.7	23.9	26.2	26.5
Return Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(198.7)
Unpaid Return - EOP	-	-	-	-	-	-	-	17.6	37.8	61.1	78.7	98.3	120.1	144.0	170.2	-
Amount Remaining After Initial Return Hurdle	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	82.6
Amount to City	5%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(2.3)
Amount Remaining After City Payment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	81.3
<b>Intermediate Return Hurdle</b>																
Unpaid Return - BOP	17.6%	-	-	-	-	-	-	-	2.9	6.8	11.9	16.9	23.1	30.8	40.2	51.6
Return Earned this Period	-	-	-	-	-	-	-	2.9	3.9	5.1	5.0	6.2	7.7	9.4	11.4	13.8
Return Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(66.4)
Unpaid Return - EOP	-	-	-	-	-	-	-	2.9	6.8	11.9	16.9	23.1	30.8	40.2	51.6	-
Amount Remaining After Intermediate Return Hurdle	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	15.9
Amount to City	20%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Amount Remaining After City Payment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	15.9
<b>Final Return Hurdle</b>																
Unpaid Return - BOP	20.0%	-	-	-	-	-	-	-	2.9	7.0	12.4	18.1	25.4	34.7	46.4	61.1
Return Earned this Period	-	-	-	-	-	-	-	2.9	4.0	5.4	5.7	7.3	9.3	11.7	14.7	18.2
Return Paid	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(15.9)
Unpaid Return - EOP	-	-	-	-	-	-	-	2.9	7.0	12.4	18.1	25.4	34.7	46.4	61.1	83.4
Amount Remaining After Final Return Hurdle	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Amount to City	50%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Amount Remaining After City Payment	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
<b>Total to Building One</b>	-	-	-	-	-	-	-	-	-	(60.7)	(4.2)	(6.7)	(7.2)	(8.9)	(10.7)	(298.8)
<b>Total to City</b>	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(12.3)
<b>Total Distributed</b>	-	-	-	-	-	-	-	-	-	(60.7)	(4.2)	(6.7)	(7.2)	(8.9)	(10.7)	(302.1)