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Gentlemen:

We are writing with respect to the proposed regulations issued by the Internal Revenue Service on October 19, 2006 concerning the treatment of payments in lieu of tax ("PILOTs") under the private activity bond test applicable to tax-exempt bonds (the "Proposed Regulations") and as a follow-up to recent meetings on this subject.

As you know, the Proposed Regulations would apply to bonds sold after February 18, 2007. Although we have a number of substantive concerns with the Proposed Regulations, we believe that those concerns have been expressed in comments submitted by the New York State Empire State Development Corporation ("ESDC") and the New York City Industrial Development Agency (the "NYCIDA") and others and in our recent meetings on these issues. To illustrate the difficulties that the Proposed Regulations create, 9 out of 10 methods that the NYCIDA has used in the past to set PILOTs (and which it described in its comments) would not satisfy the requirements of the Proposed Regulations. As we discussed, we are hopeful that the IRS and Treasury will carefully consider the ESDC and NYCIDA comments and, when that process is completed, will substantially modify the Proposed Regulations. However, as part of our discussions, we also stressed the need for immediate relief from the effective date provisions contained in the Proposed Regulations. The impact of the proposed effective date is that projects that were in progress long before the Proposed Regulations were issued are prevented from going forward. This broad impact did not seem intended since the 120 day window for bonds to be issued after those Proposed Regulations were issued but before they became "effective" seemed designed to enable transactions that were already in progress to move forward under the existing regulations. The effective date in the Proposed Regulations also prevents additional bonds from being issued to complete projects that were underway prior to the issuance of the Proposed Regulations. Finally, the Proposed Regulations would prevent the issuance of bonds to refund bonds that were not subject to the Proposed Regulations.

Proposed modifications to effective date. We believe that the 120-day transitional period contained in the Proposed Regulations to complete ongoing transactions, although appreciated, was not sufficient and should be modified. First, as we discussed, the new regulations should not apply to bonds issued to refund bonds that were not subject to the revised regulations. Second, the new regulations should not apply to bonds issued for projects that were partially financed with bonds that were not subject to the new rules. Finally, the new regulations should not apply to bonds issued to finance a project that was described in a resolution, memorandum of understanding, or other preliminary approval adopted by a governmental entity prior to October 19, 2006. As we discussed, the Atlantic Yards project fits into this last category. The bonds for the Atlantic Yards project are expected to be issued in 2008, although there are several ongoing litigation appeals and there could be additional litigation-related delays. A chronology of the Atlantic Yards project, including both the governmental actions that have occurred and the litigation related to the project, is attached as Exhibit A. As we discussed, additional bonds are required for the Mets and Yankee Stadium projects and are expected to be issued by February 19, 2009 and August 31, 2008, respectively.

Although we would strongly prefer the form of effective date described above, there are alternative approaches. For example, another approach would be to modify the effective date in the Proposed Regulations to extend the date on which they are proposed to be effective (and to provide that refundings of bonds that were not subject to the regulations are also permitted). One problem with this approach is that it does not allow for unexpected delays that could arise due to litigation or additional market disruptions. The risk of delays due to litigation is of particular concern with respect to the Atlantic Yards transaction, where an IRS imposed deadline based on a date certain could encourage that Project's opponents to use litigation to seek to delay the financing beyond that date. Accordingly, if this type of approach is chosen, we suggest a date of no earlier than February 19, 2009 subject to an extension in the event of litigation that prevents the bonds from being issued. We believe that this narrow extension opportunity (for litigation which delays the issuance of the bonds) is both essential and reasonable in light of the amount of litigation the Atlantic Yards project has already withstood and the uncertainty surrounding the timing of the resolution of the few remaining legal challenges.

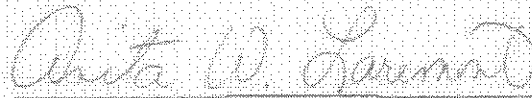
Mr. Korb requested that we prioritize the relief requested for refundings, completion bonds, and bonds for the Atlantic Yards Project as described above. From the point of view of both the State of New York and the City of New York, the relief requested is, in each case, of equal and critical importance, and we continue to request relief for each of these three types of financing.

Additional information. We are also attaching additional information regarding certain matters that were discussed in our meetings. Specifically, the attached Exhibits B through G provide additional information on (1) taxes and abatements in Minnesota and California, (2) August, 2006 projections of actual taxes for the Met and Yankee stadium projects, (3) historical information on the PILOT arrangements used by the NYCIDA, (4) an analysis of the application of the Proposed Regulations to certain types of PILOT arrangements that have been used by the NYCIDA, and (5) information on the original bond authorizations of additional bonds for the

NYCIDA, and (5) information on the original bond authorizations of additional bonds for the Met and Yankee Stadium projects. If you would like additional information, please let us know as soon as possible.

We would be happy to discuss these matters further if you have any questions.

Sincerely yours,



Empire State Development Corporation

  
Executive Director  
New York City Industrial Development Agency

## EXHIBITS

- Exhibit A Atlantic Yards Chronology
- Exhibit B Abatement Bonds in Minnesota
- Exhibit C Use of Abatements to Create a Fixed Tax in California
- Exhibit D August 2006 Projections of Actual Taxes for Mets and Yankee Stadiums
- Exhibit E Information on PILOT Arrangements Entered into New York
- Exhibit F Application of Proposed Regulations to PILOT Arrangements used by NYCIDA
- Exhibit G Original Bond Authorizations for Bonds for Yankee and Mets Stadium Projects

## EXHIBIT A ATLANTIC YARDS CHRONOLOGY

The Atlantic Yards Project (the “Project”) is a master plan to create a mixed-use development of massive scope that promises to transform a vital yet blighted section of Brooklyn, N.Y., situated at the third largest transit hub in the City of New York. This \$4 billion Project is expected to include over 336,000 square feet of Class A office space, over 6,400 units of low and middle income, and market-rate housing, 247,000 square feet of retail space, a 165,000 square foot hotel, 8 acres of publicly accessible open space, and an 850,000 square foot arena (the “Arena”) which will be the new home of the Nets professional basketball franchise and will host a variety of other events. The Project is located on 22 acres that consist of the Long Island Railroad Vanderbilt Yard (the “Rail Yard”) as well as assorted empty lots, gas stations, repair shops, and various types of underutilized or vacant buildings and some residential buildings. Forest City Ratner Companies (“FCRC”), the developer of the Project, has already acquired approximately 85% of the project site. The Empire State Development Corporation will use eminent domain to acquire those and the remaining parcels needed for the Project. In order to illustrate the substantial progress that had been made with respect to the Project prior to the issuance of the Proposed Regulations, we have provided the chronology of events set forth below. The Project commenced in 2003; the Arena is anticipated to be completed in 2010, and the balance of the Project is expected to be built over the next decade. Substantial amounts have been spent on the Project: approximately \$99 million prior to 2006 (of which \$15 million related to the Arena) and approximately \$219 million prior to 2007 (of which \$47 million related to the Arena).

Since the Dodgers left Brooklyn in 1957, the desire to bring professional sports back to the borough has been intense. A feasibility study, “Brooklyn Sports Complex”, commissioned by the City of New York in 1974, examined a variety of sites for such a venue and gave particular focus to Downtown Brooklyn and the Project site. In 2003, FCRC began acquiring property on the site and commenced masterplanning of the Project. The plan, which included a state-of-the-art arena, was unveiled by FCRC and elected officials in December 2003. It has long been planned that the Arena would be financed through the issuance of tax-exempt bonds to be issued by a local development corporation (the “LDC”) created under New York law by the New York Job Development Authority, which is administered by the Empire State Development Corporation (“ESDC”). The intended source of repayment of the bonds to finance the Arena (the “Arena Bonds”) is to be PILOTs made with respect to the Arena. The structure of the Arena Bonds is intended to be very similar to structures used by the New York City Industrial Development Agency in connection with its financing of the stadiums described in Private Letter Rulings 200640001 and 200641002 (the “Stadium PLRs”).

The issuance of tax-exempt bonds for the Arena has been planned for several years. Unfortunately, litigation seeking to block the Project has delayed the issuance of the Arena Bonds. Based upon current assumptions regarding the timing of the resolution of the two remaining active lawsuits, it is anticipated that the Arena Bonds will be issued sometime in 2008. Despite the inability to issue the Arena Bonds before February 19, 2007, we believe that the financing of the Arena is the type of transaction that Treasury and the IRS intended to be permitted in providing the extended window between the release of the Proposed Regulations

and February 18, 2007. As detailed below, a number of crucial steps were taken prior to October 19, 2006 that make clear the intent of ESDC (and other governmental entities) to have an LDC created to issue tax-exempt bonds backed by PILOTs for the Arena Project. These acts are summarized below, with the relevant supporting documentation attached hereto.

February 2005 Memorandum of Understanding. On February 18, 2005, ESDC, the City of New York, the New York City Economic Development Corporation (“EDC”), and FCRC executed a Memorandum of Understanding on the Arena and the Project as a whole (the “MOU”). The MOU contains a detailed description of the agreement by the parties that the Arena Bonds would be issued using PILOTS as the source of repayments, including the following:

(ii) The Public Parties and FCRC intend that the LDC will issue tax-exempt bonds to finance all or a portion of the cost of constructing the Arena and the on-site Arena garage. The LDC bonds shall be (a) non-recourse to the Public Parties and (b) special obligation bonds of the LDC, payable solely from PILOT, and non-recourse to the LDC and its members, directors, officers and employees.

(iii) The Arena Building Site and the Arena and on-site Arena garage will be exempt from real estate taxes and sales taxes on materials used to construct the improvements thereon. ESDC, LDC and FCRC will enter into a PILOT Agreement with a term of 99 years pursuant to which (i) FCRC will pay a semi-annual PILOT not to exceed the full real estate taxes which the City would assess were the Arena Building Site and the Arena not exempt from such taxes and (ii) LDC shall have the right to pledge such PILOT payments to service the LDC tax-exempt bonds as described below.... The LDC and ESDC will assign PILOT to a trustee on behalf of the LDC in an amount sufficient to pay debt service on its tax-exempt bonds. For any annual period during which the LDC’s tax exempt bonds are outstanding. If PILOT exceeds the total debt service payments for such annual period, such excess shall be applied as follows: (i) 10% of the annual debt service payments for such annual period shall be used to pay the cost of maintenance and repair, including replacements and capital reserves, of the Arena and (ii) the remaining PILOT shall be paid to ESDC. For any period after repayment in full of the LDC’s tax exempt bonds, 100% of the PILOT shall be payable to ESDC.

July 2006 Environmental Impact Statement. In connection with the development of the Project, it was necessary that an Environmental Impact Statement (“EIS”) be prepared. The draft EIS was completed on July 18, 2006. The draft EIS, together with its appendices, is a several thousand page document and demonstrates the level of work that had been done with respect to the Atlantic Yards Project prior to the October, 2006 issuance of the Proposed Regulations. The Executive Summary contained within the draft EIS contains the following statement:

The costs of constructing and fitting-out the arena and its ancillary facilities would be financed through one or more series of tax-exempt and taxable bonds issued by a local development corporation. ESDC would retain ownership of the arena and the land under the arena for the term of the bonds. As a result, the arena and the land under the arena would be exempt from real estate taxes. The repayment of the tax exempt bonds would

be accomplished through a payment in lieu of tax (PILOT) that would be the sole responsibility of the arena's lessee.

A similar statement was contained in Chapter 4 of the draft EIS. Work required for the draft EIS commenced in 2004 and was completed at a cost in the millions of dollars. The final EIS for the Atlantic Yards Project was adopted on November 27, 2006.

July 2006 Adoption of General Project Plan. On July 18, 2006, the ESDC Board approved the General Project Plan (the "GPP") for the Atlantic Yards Land Use Improvement and Civic Project. Adoption of a General Project Plan is ESDC's method of initially approving a project. The GPP is a detailed 40 page document (plus exhibits) that describes the entire Project and ESDC's participation in that Project. With respect to the Arena Bonds, the GPP contains a detailed description of the planned issuance of tax-exempt bonds by an LDC at the direction of ESDC, with such bonds to be paid using PILOTs:

ArenaCo would enter into a payment-lieu-of-tax ("PILOTS") agreement with ESDC and the LDC under which it would agree to make payments equal to the lesser of (i) debt service on the tax-exempt bonds (plus perhaps a 10% overage) and (ii) the amount that full real estate taxes would be if the land and improvements were not exempt from such taxes as a result of ESDC's ownership thereof. ESDC will assign these PILOT payments to a PILOT trustee who, in turn, will assign to a bond trustee so much of the payments as is needed to pay debt service on the tax-exempt bonds. PILOT bonds will be payable solely out of PILOT payments, which will be funded from revenues received by ArenaCo from operation of the Arena. Excess PILOT payments during the life of the bonds would be used to defray the cost of operating and maintaining the Arena.

We note that the GPP was approved prior to the IRS release of the Stadium PLRs to the NYCIDA or the Proposed Regulations.

As part of the ESDC Board's approval of the GPP, the Chairman of the ESDC Board provided the Board with a summary of the GPP, the Draft EIS, and related matters. This summary document also indicates the intent to finance the Arena through the issuance of the tax-exempt bonds with debt service supported by payments in lieu of taxes related to the Arena.

July 2006 Public Hearing. On July 24, 2006, ESDC published a notice of a public hearing to be held on August 23, 2006 related to the Project, which hearing was required under ESDC's enabling legislation, as well as New York's related eminent domain and environmental requirements. The Notice of Public Hearing states that "ArenaCo" would be obligated to make PILOTS equal to the lesser of debt service on the tax exempt bonds expected to be issued to finance the Arena (plus a potential 10 percent overage) or actual taxes on the Arena (completed assuming it was not tax-exempt). The public hearing was held on August 23, 2006 and involved over 100 speakers and 7.5 hours of testimony. ESDC also held community forums on September 12, 2006 and September 18, 2006, which involved more than 100 speakers in the aggregate. ESDC accepted comments through September 29, 2006.

December 2006 Final Project Approvals. On December 8, 2006, the ESDC Board adopted a Modified General Project Plan (the "Modified GPP") with respect to the entire Project. The Modified GPP is, for the most part, similar to the GPP but reflects additional review of the project by ESDC and the City of New York and comments received during the comment period from agencies of the City of New York. The portion of the Modified GPP related to the issuance of the Arena Bonds supported by PILOTs is virtually identical to the discussion in the GPP (with certain minor clarifications). The changes made in the Modified GPP related to reducing the size of certain buildings, adding a school to the development, and adding additional green space. The Modified GPP also contains additional detail regarding the schedule for construction of the Arena and other aspects of the Project. As in the case of the original GPP, the package prepared for the ESDC Board included the planned issuance of tax-exempt bonds to be repaid with PILOTs.

At virtually the same time that ESDC approved the Modified GPP, the Board of the New York Metropolitan Transit Agency ("MTA") adopted a resolution approving the transfer of MTA property to ESDC, which property was critical to the Atlantic Yards Project.. We note that this transfer was in furtherance of a request for proposals made by the MTA on May 24, 2002 related to the disposition of the Rail Yard (which comprises a significant part of the Arena site).

In addition on December 20, 2006, the New York State Public Authorities Control Board adopted its Resolution No. 06-UD-953, in which it approved the issuance of \$102 million of bonds to make an additional contribution to the Project, which bonds were to be repaid from State of New York personal income taxes.

Collectively, the MOU, GPP, and draft EIS, and other matters described above demonstrate that the Arena Bonds, using PILOTs in a fixed dollar amount as the source of repayment and security, and the Arena were in progress long before the release of the Proposed Regulations. In fact, in many ways the Arena and Arena Bonds were moving forward on a parallel track to the two NYCIDA projects that were approved in the Stadium PLRs, except that it was expected early on that litigation would likely delay the development of the Arena.

## **SUMMARY OF LITIGATION**

Early in the development of the Project, the Project's opponents pledged to sue early and sue often. Despite these efforts, to date there have been 19 judicial decisions in favor of the Project proceeding. Several court challenges have delayed efforts to develop the Arena and the Atlantic Yards site. Among them is Goldstein, et. al. v. Pataki, et. al., an action seeking to enjoin the use of eminent domain by the State to acquire the property necessary for the Project's development, which was commenced on October 26, 2006. The plaintiffs assert that the exercise by ESDC of its powers of eminent domain to acquire title to and possession of the plaintiffs' properties in furtherance of the Project violates their rights under the federal Constitution. On June 6, 2007, the U.S. District Court dismissed all of plaintiffs' federal constitutional claims on the merits. On June 13, 2007, plaintiffs filed a notice of appeal from the decision to the United States Court of Appeals for the Second Circuit. The court granted a joint motion to expedite the appeal, and briefing was completed in September 2007. The court heard oral argument on October 9, 2007, and reserved decision. At the end of December 2007, the court advised the

parties that one member of the panel that heard the case, had recused himself and had been replaced on the panel. On January 11, 2008, plaintiffs moved for renewed oral argument, with no objection by defendants. On January 15, 2008, the court denied plaintiffs' motion for reargument. On February 1, 2008, the Court of Appeals unanimously affirmed the District Court's decision dismissing the complaint. On April 7, 2008, Plaintiffs filed a certiorari petition with the U.S. Supreme Court to review the lower Court's decision. ESDC would like to have a final determination in this case prior to exercising eminent domain for the Project.

On April 4, 2007, several Brooklyn community groups commenced a combined Article 78 proceeding and plenary action against ESDC and other defendants, asserting that the defendants violated several of the procedural and substantive requirements of the State Environmental Quality Review Act and the Urban Development Corporation Act (Develop Don't Destroy (Brooklyn), et. al v. Urban Development Corporation, et. al.). On April 20, 2007, the court denied a motion for a temporary restraining order, and it declined to hear argument on the motion for a preliminary injunction at the May 3, 2007 hearing of oral arguments. On January 11, 2008, the court issued a lengthy opinion dismissing the petition in its entirety. On January 18, 2008, petitioners filed a notice of appeal in the Appellate Division, First Department and made an application to the Appellate Division for an emergency stay and a preliminary injunction to prevent construction on the project while the appeal is pending. The court denied the emergency application on the same day. Respondents opposed the preliminary injunction motion and cross-moved to expedite the appeal. On February 26, 2008, the Appellate Division denied petitioners' motion for a preliminary injunction and directed petitioners to perfect their appeal for the September 2008 term. While ESDC and the other defendants believe that the determination of lower court will be affirmed, they do not believe it is appropriate to move forward with the development prior to a ruling from the Appellate Division.

EXHIBIT B  
ABATEMENT BONDS IN MINNESOTA

## Property Tax Abatements for Economic Development

*What is economic development property tax abatement?*

Minnesota law authorizes political subdivisions to grant property tax abatements for economic development (e.g., to encourage a business to locate or expand at a location or to redevelop an area). Minn. Stat. §§ 469.1813-469.1815.

Abatements may be either permanent forgiveness or temporary deferral of property tax. Abatements can serve similar purposes to tax increment financing (TIF), a widely used development tool. The legislature enacted the abatement law in 1997 to provide an alternative to TIF and to supplement it.

These economic development tax abatements should be distinguished from property tax abatements that are granted by the county board primarily to correct errors (e.g., to reduce the assessor's market value or to change the classification). Minn. Stat. § 375.192.

*For what purposes may abatements be used?*

The law allows abatements to be used for a broad range of projects and purposes, if the political subdivision finds that public benefits exceed the costs. Permitted uses of abatements include the following:

- General economic development, such as increasing the tax base or the number of jobs in the area
- Construction of public facilities or infrastructure (e.g., streets and roads)
- Redevelopment of blighted areas
- Providing access to services for residents (e.g., housing or retail would be common examples)
- Deferring or phasing in a large (over 50 percent) property tax increase
- Stabilize tax base resulting from the updated utility valuation administrative rules

*Which local governments can grant abatements?*

Counties, cities, towns, and school districts may grant abatements of the taxes they impose. The governing body grants an abatement by resolution. For towns, action at the town meeting is not required. Taxes imposed by special taxing districts (e.g., watersheds or regional agencies) cannot be abated. Similarly, the state general property tax (on commercial/industrial and seasonal-recreational properties) cannot be abated. In the Twin Cities metropolitan area and on the Iron Range, the fiscal disparities tax cannot be explicitly abated. However, a political subdivision may increase its abatement amount to reflect the amount of the tax imposed under fiscal disparities. The abatement does not directly enter into the fiscal disparities calculations.

*How long does an abatement apply?*

The political subdivision sets the length of the abatement. State law limits the duration to 15 years. The maximum term is extended to 20 years if only two of the three political subdivisions (city/town, county, and school district) grant an abatement.

***How do the mechanics of abatement work?***

The abatement resolution, approved by the political subdivision, specifies the duration and the amount of property taxes that will be abated. The political subdivision has considerable flexibility in setting the terms of the abatement; for example, it may set the abatement as a percentage of tax payable, a dollar amount, tax attributable to a portion of the parcel's market value, or something else. The local government adds the abatement to its property tax levy for the year. (The abatement levy is not subject to levy limits.) The owner pays property tax on a parcel and the political subdivision uses the payments as provided by the abatement resolution. For example, the abatement may be used to pay bonds or be given back to the property owner.

***May abatements be used to pay bonds?***

The abatement law authorizes the issuance of bonds to be paid back with the abatements. For example, bonds could be issued to construct public improvements or to pay for a site for a business. As the property owner pays the abated taxes, they are directed to pay off the bonds. These bonds can be general obligation bonds or revenue bonds. The abatement bond provisions parallel those in the TIF law: the abatement bonds are not subject to referendum approval and are excluded from debt limits.

***How do abatements compare with TIF?***

The legislature designed the abatement law to provide an alternative to and to supplement TIF. The two programs can be used for similar purposes and both rely upon property tax funding. Both programs have very similar bonding powers. However, abatement and TIF differ in many important respects. Some of these differences include the following:

- TIF can be used for longer durations (up to 25 years in some cases) than abatements (typically 15 years)
- TIF requires approval only by the municipality (usually the city) to capture all local property taxes, while abatement requires each city/town, county, and school to approve to capture its taxes
- TIF use is subject to many more legal restrictions than abatement. These include a blight test for redevelopment districts, but-for findings, limits on what increments may be spent on, and so forth. Abatement is more flexible.

***How widely has abatement been used?***

The abatement law does not require reporting of abatements to the state. Property tax levy data reported to the Department of Revenue shows 50 cities provided abatements of \$4.3 million of taxes for property taxes payable in 2006, and 21 counties provided \$1.8 million in abatements. These amounts do not include abatements by cities with populations under 2,500 and by school districts.

**For more information:** Contact legislative analyst Joel Michael at 651-296-5057 or Karen Baker at 651-296-8959. Also see the House Research publication *Tax Increment Financing*, October 2006.

The Research Department of the Minnesota House of Representatives is a nonpartisan office providing legislative, legal, and information services to the entire House.

EXHIBIT C  
EXAMPLE OF TAXES AND ABATEMENTS IN CALIFORNIA

In California local governmental redevelopment agencies are empowered to capture incremental *ad valorem* tax revenues arising from enhanced property values in redevelopment areas. Typically, that process involves the identification of blight and the formation of a redevelopment project area in the affected location. Property values within the boundaries of the project area are then fixed at a “base level” and *ad valorem* property tax revenues attributable to any increases in value above the base level are allocated to the redevelopment agency for a specified period.<sup>1</sup> The incremental tax revenues generated by increases in value above the base level and retained for use by the redevelopment agency typically must be used for the costs of economic redevelopment, affordable housing, and related purposes within the relevant project area. All or a portion of the incremental tax revenues may be pledged to secure and applied to the repayment of bonds issued by the redevelopment agency (“tax allocation bonds”) the proceeds of which are to be used to finance redevelopment agency projects in the redevelopment project area.

Tax allocation bonds in California have financed a broad range of redevelopment projects, including shopping centers and other retail improvements, parking facilities, affordable housing, convention centers’ and recreational areas. The structure of the financing for such projects is similarly diverse, and has included public financing and ownership, direct and indirect developer subsidies and various forms of public/private ownership and operation. In that regard, under California law the *ad valorem* tax is made applicable to governmentally-owned property that is leased to a nongovernmental person through application of the tax to the “possessory interest” of the lessee. While in California many alternative structures would be available for the financing of a professional sports stadium, one simple structure, analogous to the use of a “fixed” PILOT would include: (i) the creation of a redevelopment agency (if one did not already exist with jurisdiction over the site of the proposed stadium); (ii) the determination by the redevelopment agency that the proposed site was subject to blight and that the professional sports stadium would contribute to the elimination of the blight, and on that basis the determination of a redevelopment project area; (iii) the execution by the redevelopment agency of whatever pass-through agreements might be necessary with affected jurisdictions; (iv) the issuance of tax allocation bonds payable out of incremental tax revenues in the redevelopment project area, the proceeds of which would be applied to the costs of the stadium; (v) the execution by the redevelopment agency and the proposed lessee of a continuing grant contract under which the redevelopment agency would pay to, or for the benefit of, the lessee (i.e., the team) a portion of the incremental tax revenues received by the redevelopment agency as an inducement to the lessee to participate in the redevelopment project. The grant contract might very well be for the entire term of the lease of the new stadium.

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<sup>1</sup> Each redevelopment agency is empowered to enter into contractual arrangements (“pass-through agreements”) with one or more of the affected taxing jurisdictions that otherwise would have received a share of the incremental tax revenues, under which all or a portion of that share is “passed-through” by the redevelopment agency to the taxing jurisdiction. In that case, only the balance of the incremental tax revenues is available to the redevelopment agency for the purposes discussed in the text, above.

EXHIBIT D  
AUGUST 2006 PROJECTIONS OF ACTUAL TAXES FOR METS AND  
YANKEE STADIUMS

Project	Annual Estimated Taxes in 2009
Yankee Stadium	\$62.5 million <sup>2</sup>
Mets Stadium	\$50.4 million <sup>3</sup>

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<sup>2</sup> Report of Moody's Investors Service, August 9, 2006.

<sup>3</sup> Report of Moody's Investors Service, August 8, 2006.

EXHIBIT E  
PILOT ARRANGEMENTS IN NEW YORK STATE

The information set forth below was prepared in connection with a June 30, 2006 submission to the IRS related to the requests for rulings by the New York City Industrial Development Agency (the "NYCIDA"). In the interest of time, this information has not been updated, except to reflect the completion of the issuance of bonds for the Yankee Stadium Project and the Mets Stadium Project in August, 2006 and where otherwise specifically noted.

**PILOT Arrangements with a Negotiated Schedule of Fixed Payments.**

The following identifies the PILOT arrangements with negotiated fixed payments identified to date with respect to properties within New York City ("the City"). They include PILOT arrangements entered into by the NYCIDA, as well as other governmental entities.

The NYCIDA currently has identified five PILOT arrangements with negotiated schedules of fixed payments. These arrangements are with CS First Boston Corporation, McGraw-Hill, Inc., Morgan Stanley, Inc., NBC and Avon. These fixed arrangements either provide for a fixed schedule of payments in the PILOT agreement, or a fixed amount of PILOTs to be paid based on a specified amount of dollars per square foot of the facility in question. The NYCIDA also has an arrangement that a fixed assessed value of the property subject to the PILOT Agreement (subject to current tax rates), an arrangement with a fixed schedule of PILOTs (subject to reduction for certain potentially variable credits) and an arrangement where the PILOTs relating to the land are based on a schedule of fixed payments, but the PILOTs relating to the building are based on actual taxes.

The New York State Urban Development Corporation ("UDC") has identified three PILOT arrangements with negotiated schedules of fixed payments. These arrangements are for One Bryant Park (Bank of America Corporation), the Grand Hyatt Hotel and the Rodolitz Building.

In addition to the foregoing, the NYCIDA is aware anecdotally that it is common for other industrial development agencies throughout the State of New York to enter into PILOT arrangements that provide for a fixed schedule of payments. Moreover, in addition to the PILOT arrangements entered into with respect to properties in the City, the UDC has entered into PILOT arrangements with respect to properties outside of the City with negotiated schedules of fixed payments. For example, the UDC has identified fixed PILOT arrangements with IBM, Swiss Re and the Buffalo Avenue Development Corporation.<sup>4</sup>

Importantly, as the NYCIDA sought to identify additional PILOT arrangements with negotiated schedules of fixed payments, it identified numerous examples of negotiated PILOTs with varying types of payment arrangements. While the arrangement for the Yankee and Mets Stadium Projects is a fixed PILOT schedule, we believe that if there is relevant comparison, it is to the substantial number of PILOTs with negotiated payments. Ultimately, the City negotiates

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<sup>4</sup> Subsequent to the original preparation of this material, we learned of approximately two dozen electric utility projects throughout New York State with negotiated fixed PILOTs.

the arrangements at arm's length, and will agree to whatever payment structure is necessary to complete a particular transaction. The form of that payment structure is not significant. In each case of negotiated PILOTs, amounts are being collected for the benefit of the City to obtain revenue that the City would otherwise not receive.

Finally, the NYCIDA has PILOT arrangements for at least 18 industrial projects located in Empowerment Zones or Empire Zones that pay fixed PILOTs on land and existing and project-related improvements in accordance with the NYCIDA's PILOT formula (as opposed to a negotiated amount). For example, the PILOT formula for such projects provides for a fixed PILOT on existing improvements equal to the amount of real property taxes due on such improvements for the year prior to the commencement of the PILOT arrangement, and a full abatement of real property taxes on the value of the underlying land and any new project-related improvements made subsequent to the commencement of the PILOT arrangement. The abatements for the land and the improvements are phased out in the final four years of PILOT arrangements that are typically 25 years, resulting in fixed annual PILOTs for 21 years.

### **Negotiated, Non-Fixed PILOT Arrangements**

The amount of PILOTs to be paid under any negotiated PILOT arrangement is dependent on the facts and circumstances of each transaction. As illustrated with the numerous variations of PILOT arrangements described below, the NYCIDA has broad discretion to negotiate and structure tax incentives and other benefits with private entities that enter into PILOT arrangements with the NYCIDA. They have discretion to enter into PILOT arrangements with such terms as necessary to induce a private entity to remain in or relocate to the City, and there are no statutory limitations on what the NYCIDA can agree to in order to accomplish this goal. In general, the NYCIDA's approach to negotiating PILOT arrangements is to provide the minimum incentive necessary to induce a private entity to remain in or relocate to the City. For "commercial retention projects," the NYCIDA will often first offer sales and use tax exemptions before offering PILOT benefits, as the sales and use tax exemptions are enjoyed by the recipient during the construction of any project, as opposed to being over time like PILOTs, and can thus be an immediate engine for employment growth in the City. In the case of the Yankee and Mets Stadium Projects, as permitted by statute and policy guidelines, in order to retain the particular team in the City and to redevelop the area surrounding the related stadium, the NYCIDA is both providing PILOT benefits as well as sales and use tax exemptions.

Negotiated, non-fixed PILOTs are generally computed using three basic methods. One method is for the PILOT to be equal to actual real property taxes, less a negotiated fixed amount. The second method is for the PILOT to be based on a percentage of actual real property taxes. The third method involves excluding some of the improvements that comprise the property from the computation of the PILOTs (referred to as "stabilized" real property taxes). For example, the PILOT could be computed by taking the actual tax rate multiplied by the assessed value of a property prior to the completion of any improvements thereto. This exclusion of improvements from the assessed value is typically phased out over time. The third method often results in PILOTs that are very close to fixed, as the assessed value of the property is determined at the time of the transaction, and the only variable is the tax rate, which does not tend to change frequently or by significant amounts. In addition to and in conjunction with the foregoing

methods, the NYCIDA also provides additional credits against the amount of PILOTs payable, based on measures such as employment relocation and growth.

The following is a more specific breakdown of the types of non-fixed arrangements the NYCIDA has entered into:

1. Full real property taxes, less a fixed dollar amount, less an Employment Growth Credit;
2. Lesser of (a) stabilized real property taxes (i.e., taxes computed by excluding certain improvements from the assessed value), and (b) actual real property taxes, less a Commercial Rent Tax Credit, less an Employment Growth Credit, less an Energy Credit;
3. Stabilized real property taxes, less certain fixed credits for particular facility improvements;
4. (a) Full real property taxes on land, less a fixed dollar amount, plus (b) a percentage of full real property taxes on improvements;
5. Stabilized real property taxes (amount excluded from assessed value is phased out 20% per year for final 4 years);
6. Stabilized real property taxes (amount excluded from assessed value is phased out 10% per year for 9 years);
7. Full real property taxes, less an Employment Relocation Credit;
8. Fixed schedule of PILOTs per square foot, less a Commercial Rent Tax credit, less an Employment Growth Credit;
9. Fixed assessed value of land and building multiplied by current tax rate; and
10. Stabilized real property tax, less certain fixed credits (credits phase out over last 4 years).

EXHIBIT F  
APPLICATION OF PROPOSED REGULATIONS TO  
PILOT ARRANGEMENTS USED BY NYCIDA

PILOT ARRANGEMENT	TREATED AS GENERALLY APPLICABLE TAX UNDER PROPOSED REGULATIONS?
Full real property taxes, less a fixed dollar amount, less an Employment Growth Credit;	No
Lesser of (a) stabilized real property taxes (i.e., taxes computed by excluding certain improvements from the assessed value), and (b) actual real property taxes, less a Commercial Rent Tax Credit, less an Employment Growth Credit, less an Energy Credit	No
Stabilized real property taxes, less certain fixed credits for particular facility improvements	No
(a) Full real property taxes on land, less a fixed dollar amount, plus (b) a percentage of full real property taxes on improvements	Yes
Stabilized real property taxes (amount excluded from assessed value is phased out 20% per year for final 4 years)	No
Stabilized real property taxes (amount excluded from assessed value is phased out 10% per year for 9 years)	No
Full real property taxes, less an Employment Relocation Credit	No
Fixed schedule of PILOTs per square foot, less a Commercial Rent Tax credit, less an Employment Growth Credit	No
Fixed assessed value of land and building multiplied by current tax rate	No
Stabilized real property tax, less certain fixed credits (credits phase out over last 4 years)	No

EXHIBIT G  
INFORMATION RELATED TO AUTHORIZATION OF ADDITIONAL BONDS

The indentures for each issue of bonds for the Yankee and Mets Stadiums provided for the issuance of “additional bonds,” which could be issued if certain conditions are met. In addition, at the time the initial Bonds were issued, the financings were intentionally structured in such a way as to provide for the ability of the NYCIDA to issue “completion bonds” without the need to satisfy all the tests that ordinarily would apply to the issuance of additional bonds. For example, the rating agencies and the bond insurers agreed to permit the master indentures to provide for the issuance of completion bonds in connection with both projects without requiring the NYCIDA to receive either bond insurer consent or ratings confirmations. The provisions related to completion bonds are set forth below:

**Section 2.04 of the Master Indenture for the Yankee Stadium project:**

**Issuance of Additional PILOT Bonds**

(a) Subject to receipt by the Bond Trustee of the documents listed in Section 2.04(c), the Agency may issue one or more Series of Additional PILOT Bonds for the purposes set forth below in Section 2.04(b). Each such Series of Additional PILOT Bonds shall be issued pursuant to a Supplemental PILOT Indenture and shall be equally and ratably secured under this Master PILOT Indenture with any other Series of PILOT Bonds, including the Initial PILOT Bonds, issued hereunder of the same lien and priority, without preference, priority or distinction of any PILOT Bonds over any other PILOT Bonds of the same lien and priority. Unless provided otherwise in a Supplemental PILOT Indenture, all such Additional PILOT Bonds shall be in substantially the form of the Initial PILOT Bonds, but shall bear such date or dates, bear interest at such rate or rates, mature on such dates and in such amounts, have such Redemption Dates and Redemption Prices, contain an appropriate Series designation, and be issued at such prices as shall be approved by the Agency and set forth in a Supplemental PILOT Indenture. The Supplemental PILOT Indenture will specify the application of all proceeds of such Additional PILOT Bonds, including without limitation, amounts to be deposited in one or more of the Funds or Accounts.

(b) Additional PILOT Bonds may be issued (i) to provide the Agency with the funds, in an amount not to exceed \$100,000,000, necessary to achieve Completion, including the payment of capitalized interest (“Completion PILOT Bonds”), (ii) to pay the costs of a Capital Addition, including capitalized interest and Costs of Issuance, (iii) to fund the required deposit to the PILOT Bonds Debt Service Reserve Fund for such Additional PILOT Bonds, or (iv) for any combination of such purposes.

(c) The Bond Trustee shall authenticate and deliver Additional PILOT Bonds, but only upon receipt of the following:

\* \* \* \*

(ix) Except in connection with the issuance of Additional PILOT Bonds which are also Completion PILOT Bonds, a Rating Confirmation Notice.

**Section 2.04 of the Master Indenture for the Mets Stadium project:**

**Completion Bonds.** To the extent necessary in the opinion of an Authorized Representative of the Agency, one or more Series of Completion Bonds may be authenticated and delivered upon receipt by the PILOT Bonds Trustee of the documents described below, at any time or from time to time for the purpose of providing additional funds for the payment of the Project Costs in an aggregate principal amount for all Series of such Completion Bonds that will provide the Agency with funds necessary to achieve Completion, as set forth in a certificate of an Authorized Representative of the Agency, which certificate shall be delivered to the PILOT Bonds Trustee upon authentication and delivery of each such Series of Completion Bonds; provided, however, that in no event shall the aggregate principal amount of Completion Bonds issued exceed ten percent (10%) of the Series 2006 PILOT Bonds. Completion Bonds may be issued only upon receipt by the PILOT Bonds Trustee of the documents required to be delivered pursuant to Section 2.02(b) (other than subclauses (iv), (viii) [i.e., ratings confirmation] and (xi) [i.e., consent of bond insurer] thereof), together with a written statement from the Independent Engineer. . . .