9747342

Sidwell #08-36-376-012

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

RECEIVED MAY 17 2006

Redevelopment Agency of Salt Lake City
Room 418, City and County Building
451 South State Street
Salt Lake City, Utah 84111
Attn: Executive Director

9747342 6/8/2006
06/08/2006 12:51 PM $0.00
Book - 9305 Pg - 5127-5151
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
REDEVELOPMENT AGENCY OF SL CO.
BY: HNP, DEPUTY - MA 25 P.

AMENDED AND RESTATED

PARTICIPATION AND REIMBURSEMENT AGREEMENT

by and between

THE REDEVELOPMENT AGENCY OF SALT LAKE CITY

and

GATEWAY ASSOCIATES, LTD.

May 30, 2006

732075_8

TABLE OF CONTENTS

Page

1. Defined Terms 2
2. No Condemnation 5
3. Remaining Developer Obligations 5
   - 3.1 North Temple Street Frontage 5
   - 3.2 North Temple Street 5
   - 3.3 Utah Transit Authority 5
   - 3.4 City Creek Conduit 6
   - 3.5 Security 6
4. Reimbursement of Project Tax Increment 6
   - 4.1 Reimbursement of Project Tax Increment 6
   - 4.2 Interest 6
   - 4.3 Limitations on Project Tax Increment 7
   - 4.4 Project Tax Increment Reimbursement and Procedures 7
   - 4.5 Reduction in Developer's Tax Increment Share 8
   - 4.6 Limited Obligation 8
   - 4.7 Agency's Encumbrance of Project Tax Increment or Tax Increment 8
   - 4.8 Prepayment of Reimbursements 9
   - 4.9 Assignability 9
5. Default 9
   - 5.1 Default Generally 9
   - 5.2 Default by Developer 9
   - 5.3 Right to Cure 9
   - 5.4 Default by Agency 10
   - 5.5 Alternative Dispute Resolution 10
6. Miscellaneous 10

Exhibit A Legal Description of Phase II Parcel

Exhibit B Depiction of Phase II Parcel

Exhibit C Depiction of Project Parcels

Exhibit D Form of Relocated Users Worksheet

BK 9305 PG 5128

AMENDED AND RESTATED
PARTICIPATION AND REIMBURSEMENT AGREEMENT

THIS AMENDED AND RESTATED PARTICIPATION AND REIMBURSEMENT AGREEMENT ("Agreement") is made and entered into as of the _____ day of May, 2006, between the REDEVELOPMENT AGENCY OF SALT LAKE CITY, a public agency ("Agency"), and GATEWAY ASSOCIATES, LTD., a Utah limited partnership ("Developer"), collectively referred to as the "Parties", and individually as a "Party".

RECITALS

A. Agency exercises its functions and powers and is organized and existing under the act entitled "Limited Purpose Local Government Entities – Community Development and Renewal Agencies", Section 17C-1-101, et seq., Utah Code Annotated 1953, as amended from time to time (the "Act").

B. Agency prepared and approved, and Salt Lake City through its City Council adopted, a Redevelopment Plan and Project Area Budget on October 15, 1998, which plan and budget are known as the "Depot District Redevelopment Project Area Plan" and "Depot District Redevelopment Project Area Budget" (collectively, the "Redevelopment Plan"). The Redevelopment Plan covers that certain real property in Salt Lake City, Utah that generally includes the area located between North Temple Street and 400 South Street and 400 West Street and I-15 but which is more particularly described therein (the "Depot Project Area").

C. Pursuant to the Redevelopment Plan, the Parties entered into that certain Participation and Reimbursement Agreement dated as of December 23, 1998, which has been amended six times (as more particularly defined below, the "Original Agreement").

D. Under the Original Agreement, Developer agreed to develop the Project Land (as defined therein) in accordance with the terms specified therein (the "Project"), and Agency agreed to reimburse Developer for a portion of the costs of such development as specified therein.

E. On April 26, 2005, Agency issued a Certificate of Completion for Phase 1 of the Project pursuant to the Original Agreement.

F. As a result of actions taken and obligations satisfied prior hereto, many parts of the Original Agreement are no longer operative, and therefore the Parties have determined it would be desirable to amend and restate the Original Agreement to delete provisions that are no longer needed and to restate the Parties' remaining rights and obligations.

NOW, THEREFORE, in consideration of the terms and conditions hereby agreed to, and other good and valuable consideration, the Parties hereby agree as follows:

1. Defined Terms. As used herein, the following terms shall have the meanings respectively indicated:

"500 West Infrastructure Reimbursement" shall have the meaning set forth in Section 5.3 of the Original Agreement.

"Act" shall have the meaning set forth in Recital A.

"Agency" means the Redevelopment Agency of Salt Lake City, a public agency exercising its functions and powers and organized and existing under the Act, and includes any successor designated by Agency or succeeding to Agency.

"City" means Salt Lake City Corporation, a municipal corporation.

"Conditions to Reimbursement" are defined in Section 4.4.

"Depot Easement" shall mean that certain Depot Pedestrian and Public Use Easement dated December 23, 1999, and recorded January 13, 2000, as Entry No. 7553966 in Book 8336 at Page 1284 in the Official Records by Gateway Associates, Ltd. in favor of Redevelopment Agency of Salt Lake City and Salt Lake City Corporation, as amended by that certain First Amendment to Depot Pedestrian and Public Use Easement dated May 3, 2005, and recorded May 6, 2005, as Entry No. 9370281 in Book 9182 at Page 497-505 in the Official Records.

"Depot Preservation Reimbursement" shall have the meaning set forth in Section 5.3 of the Original Agreement.

"Depot Project Area" shall have the meaning set forth in Recital B.

"Developer" means Gateway Associates, Ltd., a Utah limited partnership, with its principal offices located at 90 South 400 West, Suite 200, Salt Lake City, Utah 84101.

"Developer Improvements" shall have the meaning set forth in Section 4.1 of the Original Agreement.

"Developer's Tax Increment Share" shall have the meaning set forth in Section 4.4.

"Easement Agreements" means the Plaza Easement, the Depot Easement, the North Temple Frontage Easement, the Rio Grande Easement and the Walkway Easement.

"Housing Building Improvements Reimbursement" shall have the meaning set forth in Section 5.3 of the Original Agreement.

"Housing Restriction" shall mean that certain Housing Restriction dated December 23, 1999, and recorded January 13, 2000, as Entry No. 7553962 in Book 8336 at Page 1201 in the Official Records between Redevelopment Agency of Salt Lake City and Gateway Associates, Ltd.

"Mortgage" shall have the meaning set forth in Section 6.24.

"Mortgagee" shall have the meaning set forth in Section 6.24.

"North Temple Frontage Easement" shall mean that certain North Temple Frontage Road Grant of Easement dated December 23, 1999, and recorded January 13, 2000 as Entry No. 7553965 in Book 8336 at Page 1263 in the Official Records between Developer, Agency and City, as amended by that certain First Amendment to North Temple Frontage Road Grant of Easement dated May 3, 2005, and recorded May 6, 2005, as Entry No. 9370279 in Book 9128 at Page 466-480 in the Official Records.

"Official Records" means the official records of the Salt Lake County Recorder, State of Utah.

"Original Agreement" shall mean that certain Participation and Reimbursement Agreement dated as of December 23, 1998, between Agency and Developer, as amended by that certain First Amendment to Reimbursement Agreement dated as of November 1, 1999, that certain Second Amendment to Reimbursement Agreement dated as of December 23, 1999, that certain Third Amendment to Reimbursement Agreement dated as of July 5, 2000, that certain Fourth Amendment to Reimbursement Agreement dated as of January 25, 2002, that certain Fifth Amendment to Reimbursement Agreement dated December 5, 2002, and that certain Sixth Amendment to Reimbursement Agreement dated April 21, 2005.

"Other Improvements Reimbursements" shall mean the Housing Building Improvements Reimbursement and the Depot Preservation Reimbursement.

"Person" means any natural person, trust, partnership, firm, joint venture, association, corporation, limited liability company, any other form of incorporated or unincorporated business entity, or any public body corporate and politic.

"Phase I" means that portion of the Developer Improvements depicted on the Site Plan of the Original Agreement as "Phase I" and described on Exhibit "F" of the Original Agreement as Phase I.

"Phase II Parcel" means the legal parcel of land more particularly described on Exhibit A attached hereto and depicted on Exhibit B attached hereto.

"Plaza Easement" shall mean that certain Plaza Pedestrian and Public Use Easement and Programming Agreement dated December 23, 1999, and recorded January 13, 2000, as Entry No. 7553964 in Book 8336 at Page 1240 in the Official Records by Gateway Associates, Ltd. in favor of Redevelopment Agency of Salt Lake City and Salt lake City Corporation, as amended by that certain First Amendment to Plaza Pedestrian and Public Use Easement and Programming Agreement dated May 3, 2005, and recorded May 6, 2005, as Entry No. 93702982 in Book 9128 at Page 506-524 in the Official Records.

"Project" is defined in Recital D.

"Project Parcels" means the legal parcels of land within the area depicted as "Project Parcels" on Exhibit C attached hereto.

"Project Tax Increment" means the Tax Increment that is generated from the Project Parcels.

"Property" shall have the meaning set forth in Section 2.77 of the Original Agreement.

"Public Improvements Reimbursements" shall mean the Right of Way Reimbursement, the Public Plaza Reimbursement and the 500 West Infrastructure Reimbursement.

"Public Plaza Reimbursement" shall have the meaning set forth in Section 5.3 of the Original Agreement.

"Qualified Mortgagee" shall have the meaning set forth in Section 6.24.

"Records" shall have the meaning set forth in Section 6.8.

"Redevelopment Plan" shall have the meaning set forth in Recital B.

"Reimbursements" means collectively, the Right-of-Way Reimbursement, the Public Plaza Reimbursement, the 500 West Infrastructure Reimbursement, the Housing Building Improvements Reimbursement and the Depot Preservation Reimbursement.

"Reimbursement Term" means the tax years 2002 through 2021 (i.e., the twenty (20) tax year period as to which the Agency has agreed to pay a portion of the Project Tax Increment which it receives to Developer, sixteen (16) tax years of which remain as of the date hereof).

"Relocated Users" means, with respect to any tax year, the following retailers operating within the Project during all or any portion of such tax year: Express, Lane Bryant, Bastille, Bombay, Fortiers and Gymboree.

"Relocated Users Worksheet" shall have the meaning set forth in Section 4.4(c).

"Right-of-Way Reimbursement" shall have the meaning set forth in Section 5.3 of the Original Agreement.

"Rio Grande Easement" shall mean that certain Rio Grande Street Grant of Easement dated January 3, 2000, and recorded January 13, 2000, as Entry No. 7553963 in Book 8336 at Page 1217 in the Official Records by Gateway Associates, Ltd. in favor of Redevelopment Agency of Salt Lake City and Salt Lake City Corporation, as amended by that certain First Amendment to Rio Grande Street Grant of Easement dated May 3, 2005, and recorded May 6, 2005, as Entry No. 937-280 in Book 9128 at Page 481-496 in the Official Records.

"Tax Increment" means seventy-five percent (75%) of the property taxes each year in excess of the base tax amount which excess amount is to be paid into a special fund of the Agency in accordance with the Act. For purposes of this Agreement, the Parties agree that the "base tax amount" shall be Forty Five Thousand Three Hundred Forty Eight Dollars ($48,348).

"Union Pacific" means Union Pacific Company, a Utah corporation.

"Walkway Easement" shall mean that certain Hotel Pedestrian Easement dated December 23, 1999, and recorded January 13, 2000, as Entry No. 7553967 in Book 8336 at Page 1302 in the Official Records by Gateway Associates, Ltd. in favor of Redevelopment Agency of Salt Lake City and Salt Lake City Corporation, as amended by that certain First Amendment to Hotel Pedestrian Easement Now Known as Walkway Easement date May 3, 2005, and recorded May 6, 2005, as Entry No. 937-283 in Book 9128 at Page 525-535 in the Official Records.

2. No Condemnation. Agency agrees that the Property has been deemed rehabilitated pursuant to the provisions of the Redevelopment Plan and is no longer blighted and that Agency will not exercise its power of eminent domain to acquire the Project Parcels.

3. Remaining Developer Obligations.

3.1 North Temple Street Frontage. No later than the date on which a certificate of occupancy is issued for the first building located on the Phase II Parcel north of the North Temple Easement (as defined in the North Temple Frontage Easement), Developer shall, at its sole cost, construct a permanent road parallel to North Temple Street within the North Temple Easement which will provide an outlet from Rio Grande Street to 400 West Street (proceeding East of Rio Grande Street) and to 500 West Street (proceeding West of Rio Grande Street). Solely for the purposes of Section 1.2 of the North Temple Frontage Easement, this Section 3.1 shall be deemed to be Section 11.1 of this Agreement.

3.2 North Temple Street. If the City determines it is necessary to construct an at-grade street or an underpass street in the property historically used as North Temple Street, Developer shall dedicate to the City that portion of the one hundred thirty-two (132) feet of land area that was originally part of North Temple Street and that was acquired from Union Pacific and which is required by the City for an at-grade or underpass street. Notwithstanding the provisions of the previous sentence, Developer may give the City written notice that it is revoking the right and option of the City set forth in the prior sentence and, if the City does not exercise the option within two (2) years following the notice, the option shall terminate. Such dedication shall, at the City's option, be made in favor of the City or the State of Utah. Agency acknowledges that Developer intends to give such notice to the City simultaneously with the execution of this Agreement.

3.3 Utah Transit Authority Developer shall negotiate in good faith with the Utah Transit Authority so as to permit the Utah Transit Authority (with payment of appropriate consideration to Developer) to construct an extension of light rail in the area occupied by or adjacent to North Temple Street.

3.4 City Creek Conduit. Developer agrees to cooperate with the City and permit City to place an underground conduit for City Creek through those portions of the Phase II Parcel constituting the property historically used as North Temple Street that are not covered by buildings, the exact location of the conduit to be reasonably designated by Developer. The Parties shall enter into an easement agreement providing that (a) the City may install and maintain such underground conduit in such location, (b) as a condition to entering the Phase II Parcel to install the underground conduit, the City agrees that it shall, at its sole cost and expense, promptly restore (or cause to be restored) any damage and replace (or cause to be replaced) any improvements and landscaping damaged or removed in connection with the installation of the underground conduit, and (c) upon completion of such installation, the City, at its sole cost and expense, shall provide Developer with a survey accurately depicting the location of the underground conduit.

3.5 Security. Developer shall provide (or cause to be provided) private security services in the Project consistent with the security services in other multi-use developments in Salt Lake City (such as, but not limited to, the Block 57, Plat A project) to assist in providing for the protection and safety of the occupants thereof and the public (in public areas) each day of the week during the hours of 6:00 p.m. through 6:00 a.m.

4. Reimbursement of Project Tax Increment.

4.1 Reimbursement of Project Tax Increment. Subject to the terms and conditions contained herein, Agency agrees to reimburse Developer a portion of its costs for constructing certain elements of the Developer Improvements through reimbursement of Project Tax Increment in the following amounts, together with interest as provided below:

Public Improvements Reimbursements:

Right of Way Reimbursement	$2,632,977
Public Plaza Reimbursement	$4,227,292
500 West Infrastructure Reimbursement	$ 115,833
Total	$6,976,102

Other Improvements Reimbursements:

Housing Building Improvements Reimbursement	$2,734,295
Depot Preservation Reimbursement	$5,668,713
Total	$8,403,008

4.2 Interest. Developer acknowledges that Agency has paid interest on the Reimbursements through December 31, 2005. Commencing as of January 1, 2006:

(a) Agency agrees to pay interest on the principal amount of the Public Improvements Reimbursements at the rate per annum of Five and Four Hundredths Percent (5.04%).

(b) Agency agrees to pay interest on the principal amount of the Other Improvements Reimbursements at the rate per annum of seven and one-half percent (7.5%).

Interest shall be paid annually as provided in Section 4.4.

4.3 Limitations on Project Tax Increment. Developer acknowledges that increases in taxes due to a factored increase in the assessed value, a change in the tax rates, or to items described in Section 17C-1-408 of the Act, cannot be paid by Agency because Agency does not receive these increases as a part of Tax Increment. Further, Tax Increment may be adjusted, diminished or discontinued in the future by actions of governmental agencies and bodies, including, without limitation, the Salt Lake County Assessor, the Salt Lake County Auditor (which might include, among other things, a reassessment of the Project after Agency files its request for Tax Increment), taxing entities, the Utah Tax Commission, and the Utah legislature. Consequently, Agency makes no representation (and Developer assumes all risk) with regard to the amount of Project Tax Increment (if any) that will be available to pay Reimbursements. The Parties acknowledge that Agency has approved a Tax Increment collection budget which entitles Agency to receive only 75% of the Tax Increment from the Depot Project Area.

4.4 Project Tax Increment Reimbursement and Procedures. Subject to the Conditions to Reimbursement and subject to the reduction specified in Section 4.5 below, Agency shall reimburse Developer on account of the Reimbursements fifty percent (50%) of the Project Tax Increment that Agency receives during the Reimbursement Term ("Developer's Tax Increment Share"), payable in annual installments as provided below. The Developer's Tax Increment Share shall be allocated on a proportionate basis among the respective Reimbursements. The following are conditions to Developer's receipt of any installment of Project Tax Increment towards any Reimbursement, each of which must be satisfied before Agency shall have an obligation to disburse Project Tax Increment under this Agreement (collectively referred to as the "Conditions to Reimbursement"):

(a) Developer shall have delivered to Agency the estimated amount of Project Tax Increment and the portion thereof estimated to be reimbursed under this Agreement no later than on October 15 of the prior tax year (i.e., for Reimbursements due March 31, 2007, Developer must provide to Agency such estimates by October 15, 2005).

(b) Developer shall have delivered to Agency a copy of the applicable property tax notices for each tax year for which Reimbursements are requested no later than on December 31 of the prior tax year (i.e., for Reimbursements due March 31, 2007, Developer must provide to Agency a copy of such tax notices for the 2006 tax year by December 31, 2006).

(c) Developer shall have delivered to Agency a completed Relocated User Worksheet in the form of Exhibit D hereto (a "Relocated User Worksheet") filled out with the required information with respect to each Relocated User that occupied space in the Project during any portion of the applicable tax year no later than on December 31 of the prior tax year (i.e., for Reimbursements due March 31, 2007, Developer must provide to Agency a copy of such Relocated User Worksheet by December 31, 2006).

(d) Developer shall not be in default under this Agreement beyond any applicable cure periods.

Provided that the all of the Conditions to Reimbursement have been fully and timely satisfied by Developer, Agency shall pay each installment of Developer's Tax Increment Share by the later of March 31 following the applicable tax year or thirty (30) days following Agency's receipt of Project Tax Increment if Agency receives such Project Tax Increment after March 31. The next payment due hereunder is scheduled for March 31, 2007. Agency shall have no obligation to reimburse Developer for more than Developer's Tax Share as estimated by Developer pursuant to the requirements of subsection (a) above, and Agency shall only reimburse Developer on account of the Reimbursements fifty percent (50%) of the Project Tax Increment which has been paid by property owners and which the Agency has received. Agency shall not owe any Project Tax Increment with respect to any Project Parcels for which property taxes have not been paid by February 15 of the year following the applicable tax year.

4.5 Reduction in Developer's Tax Increment Share. The Developer's Tax Increment Share for each tax year shall be reduced by the amount (if any) shown as the "Total Relocated Users Reduction" on the Relocated Users Worksheet for such tax year.

4.6 Limited Obligation. Agency and Developer agree that Agency's obligation to pay Reimbursements hereunder shall be special limited obligations payable solely from the Project Tax Increment collected from the Project Parcels and generated from taxes paid by the owners of the Project Parcels.

4.7 Agency's Encumbrance of Project Tax Increment or Tax Increment. Developer and Agency agree that Agency may from time to time and at any time issue bonds and other indebtedness that may be secured by the Project Tax Increment and the Tax Increment, and which are payable senior to and ahead of the obligations of Agency under this Agreement; provided that (a) at the time of issuance of such bonds or other indebtedness, no event of default by Agency has occurred and is continuing beyond any applicable cure period under this Agreement, (b) the issuance of such bonds or indebtedness shall not release Agency from its obligations under this Agreement, and (c) the estimated aggregate Project Tax Increment, for each year to be received by the Agency is expected to equal or exceed 120% of the debt service or payments on such bonds, all other reimbursement obligations of the Agency, and the obligations of Agency under this Agreement to pay Project Tax Increment to Developer in respect of Developer's Tax Increment Share. The amounts due under this Agreement shall be amortized over the remaining term of such agreements when calculating the debt service, but in no event shall the calculation assume that Developer shall receive a greater proportion of Project Tax Increment, than it is entitled to receive under this Agreement. If necessary, Agency may

prepay or defease, at Developer's option, Developer's Tax Increment Share to meet the 120% test.

4.8 Prepayment of Reimbursements. Agency may elect at any time to prepay all or any of portion of Reimbursements, plus accrued interest thereon, with the written consent of Developer, which consent shall not be unreasonably withheld. All prepayments shall be applied first to accrued interest and second to the principal amount owing. At Agency's election, to be exercised in writing on or before the date of prepayment, any prepayment of principal shall proportionately reduce the percentage of Project Tax Increment to be paid pursuant to this Section 4, i.e., a prepayment of ten percent (10%) of the total principal amount owing under the Reimbursements would reduce the proportion of Project Tax Increment to be paid annually from fifty percent (50%) to forty-five percent (45%), resulting in a ten percent (10%) reduction in annual payments.

4.9 Assignability. Developer's Tax Increment Share to be paid to Developer pursuant to this Agreement may be assigned by Developer to a third party without Agency's consent so long as Developer is not in default under this Agreement.

5. Default.

5.1 Default Generally. Neither Party shall be in default under this Agreement unless such Party fails to perform an obligation required under this Agreement within thirty (30) days after written notice is given to the defaulting Party by the other Party, reasonably setting forth the respects in which the defaulting Party has failed to perform such obligation. If the nature of the defaulting Party's obligation is such that more than thirty (30) days are reasonably required for performance or cure, the defaulting Party shall not be in default if such Party commences performance within such thirty (30) day period (or, if such commencement is impossible due to Events of Force Majeure, commences performance when the Events of Force Majeure terminate) and after such commencement diligently prosecutes the same to completion, subject to Events of Force Majeure. The Conditions to Reimbursement are conditions, and Developer shall not be entitled to notice of default with respect to performance thereof.

5.2 Default by Developer. In the event Developer shall fail to perform any of its duties or obligations hereunder at the time for performance and cure periods set forth herein, Agency shall have all remedies at law or in equity and as provided in this Agreement, which shall include the right to restrain by injunction any violation or threatened violation and by decree to compel specific performance of any terms, covenants or conditions of this Agreement, it being agreed that the remedy at law for any breach of any term, covenant or condition of this Agreement is not adequate.

5.3 Right to Cure. Should Developer fail to timely perform any of the obligations set forth in the Housing Restriction or any maintenance obligations under the Plaza Easement, the Depot Easement, the North Temple Frontage Easement, the Rio Grande Easement or the Walkway Easement, within any applicable time for performance and any cure period set forth therein or herein (including, without limitation, any period during which a Mortgagee is entitled to notice and/or may cure), Agency, its successors and assigns, shall, in addition to any other remedy provided at law or in this Agreement, have the right (but not the obligation) to

perform such obligation on behalf of Developer and deduct the cost of performing such obligation from the Reimbursements.

5.4 Default by Agency. Agency shall be deemed to be in default hereunder in the event Agency shall, for any reason other than Developer's default, fail to meet, comply with, or perform any covenant, agreement, or obligation on its part required within the time limits (including applicable cure periods) and the manner required in this Agreement. In the event Agency shall be deemed to be in default hereunder, Developer may, at its sole and exclusive remedy, obtain specific performance of, or a writ of mandamus to compel performance of, such duties.

5.5 Alternative Dispute Resolution. For all disputes that are not resolved by agreement of the Parties, the Parties shall use such alternative dispute resolution procedures that they are able to agree upon; provided, if the Parties are unable or unwilling to agree upon alternative dispute resolution procedures, such disputes shall be resolved by litigation.

6. Miscellaneous.

6.1 Termination. This Agreement shall terminate upon the date that is the earliest of:

(a) the last to occur of the following:

(i) the date on which Developer has satisfied each of its obligations under Section 3, and

(ii) (ii) the date on which Agency makes the last required payment of Developer's Tax Increment Share pursuant to Section 4.4,

or

(b) June 30, 2022.

6.2 Agency's Best Efforts. Without limiting any other limitation on Agency's liability under this Agreement, the Parties agrees that if Agency is unable to fulfill any provision or requirement under this Agreement due to a court order or ruling, Agency shall have no liability to Developer with respect to such requirement if Agency has used reasonable efforts to fulfill such requirement.

6.3 Limitation on Recourse to Developer. The liability of Developer under this Agreement is limited to Developer's interest in the Project Parcels and its interest in the Reimbursements. Neither Agency, the City nor any other Person shall have, file, assert or pursue any claim, action or right of reimbursement against the partners of Developer or its respective members, managers or partners at any level removed, or its or their respective employees, agents, officers or attorneys.

6.4 Indemnity. Developer agrees to hold and indemnify Agency and the City, their officers, employees and agents harmless from, all liability, loss, damage, costs or expenses

(including attorneys' fees and court costs) arising from or as a result of the death of a person or any accident, injury, loss or damage caused to any Person or the property of any Person which shall occur during the term of this Agreement on the portions of the Project Parcels, its successors or assigns, to the extent directly or indirectly caused by the acts, errors or omissions of Developer or its agents, employees, servants or contractors, it being understood that such indemnification shall continue to include any claims made with respect to Phase I that would be subject to indemnification under Section 4.5 of the Original Agreement. Developer shall defend Agency and City, as the case may be, in any action or claim for which Agency and City, as the case may be, is indemnified hereunder, with counsel selected by Developer subject to the approval by Agency and /or City at its or their sole discretion.

6.5 Amendment and Restatement. The Parties intend that this Agreement shall amend and restate the Original Agreement in its entirety, except with respect to those provisions and definitions herein that expressly refer to provisions and definitions in the Original Agreement, in which case such provisions and definitions in the Original Agreement are incorporated herein by such references.

6.6 Captions. The captions, headings, and arrangements used in this Agreement are for convenience only and do not in any way affect, limit, amplify or modify the terms and provisions of this Agreement.

6.7 Number and Gender of Words. Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.

6.8 Attorneys' Fees. If either Party to this Agreement or their successors and assigns commences a dispute resolution proceeding, whether litigation, arbitration or otherwise, respecting any question between the Parties to this Agreement arising out of or relating to this Agreement or the breach thereof, the prevailing Party in such dispute resolution proceeding shall be entitled to the recovery of a reasonable attorneys' fee and all other reasonably incurred costs and expenses of the successful prosecution or defense of such proceeding. The term "dispute resolution proceeding" as used above shall be deemed to include appeals from a lower court judgment or arbitration award and it shall include proceedings in the Federal Bankruptcy Court, whether or not they are adversary proceedings or contested matters. For purposes of proceedings in the Federal Bankruptcy Court, the term "prevailing Party" as used above shall be deemed to mean the prevailing Party in an adversary proceeding or contested matter, or any other actions taken by the non-bankrupt Party which are reasonably necessary to protect its rights.

6.9 Notices. All notices, demands, requests, and other communications required or permitted hereunder shall be in writing and shall be deemed to be delivered, whether actually received or not, three (3) days after deposit in a regularly maintained receptacle for the United States mail, registered or certified (or another commercially acceptable means requiring a return receipt), postage prepaid, addressed as follows:

If to Developer: Gateway Associates, LTD.
c/o The Boyer Company, L.C.

90 South 400 West, Suite 200
Salt Lake City, Utah 84101
Attention: H. Roger Boyer

With a copy to: David E. Gee
Parr Waddoups Brown Gee & Loveless
185 South State Street Suite 1300
Salt Lake City, Utah 84111

If to Agency: Redevelopment Agency of Salt Lake City
Room 418, City & County Building
451 South State Street
Salt Lake City, UT 84111
Attn: Executive Director

Such communications may also be given by facsimile transmission, provided any such communication is concurrently given by one of the above methods. Notices shall be deemed effective upon the receipt, or upon attempted delivery thereof if the delivery is refused by the intended recipient or if delivery is impossible because the intended recipient has failed to provide a reasonable means of accomplishing delivery.

6.10 Books and Records; Agency's Right to Audit. For the period commencing on the date of the Original Agreement and ending on December 31, 2005, Developer shall keep complete and comprehensive records and books of account as to all of its activities, including the performance of its obligations, under this Agreement. Developer shall maintain all records pursuant to Generally Accepted Accounting Principles (GAAP) and pursuant to pronouncements by the Financial Accounting Standards Board (FASB). With prior written notice to Developer, Agency shall have reasonable access during customary business hours to all records, functions, property and personnel of Developer, including Developer's consultants and subcontractors under this Agreement, for the purpose of reviewing and auditing, at Agency expense, all records of Developer related to the Developer Improvements as necessary to determine Developer's entitlement to receive Reimbursements under this Agreement. Such right shall include access and rights to Developer's records, which shall include, but not be limited to, accounting records (hard copy, as well as computer readable data if it can be made available), written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating work sheets; correspondence; change order files (including documentation covering negotiated settlements); backcharge logs and supporting documentation; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other supporting evidence deemed necessary by Agency (all the foregoing hereinafter referred to as "Records"). The Records shall be open to inspection and subject to audit and/or reproduction by Agency or authorized representatives to the extent reasonably necessary to adequately permit evaluation and verification of cost of the work. Agency's audits may require inspection and copying from time to time and at reasonable times and places of any and all Records pertaining to the Reimbursements which may in Agency's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by this Agreement. Notwithstanding the foregoing, Agency's rights under this Section 6.10 shall terminate on December 31, 2008.

6.11 Governing Law. This Agreement is intended to be performed in the State of Utah, and the laws of Utah shall govern the validity, construction, enforcement and interpretation of this Agreement.

6.12 Amendments. This Agreement may be amended or supplemented only by an instrument in writing executed by both Agency and Developer.

6.13 Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never composed a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement.

6.14 Further Acts. In addition to the acts and deeds recited herein and contemplated to be performed, executed and delivered by Agency and Developer, Agency and Developer agree to perform, execute and deliver or cause to be performed, executed, and delivered any and all such further acts, deeds and assurances as may be necessary to consummate the transactions contemplated hereby.

6.15 Survival. Except as otherwise provided for herein, all agreements, covenants, representations and warranties contained herein shall survive the expiration or termination of this Agreement and the performance by Developer of its obligations hereunder.

6.16 Warranty Against Payment of Consideration for Agreement. Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of professional services such as architects, engineers and attorneys.

6.17 Non-liability of Agency Officials and Employees. No member, official, or employee of Agency shall be personally liable to Developer, or any successor in interest, in the event of any default or breach by Agency, or for any amount which may become due to Developer or its successor, or on any obligation under the terms of this Agreement.

6.18 Governmental Immunity. Nothing in this Agreement shall be deemed to constitute or imply a waiver, modification or alteration of the caps or limitations on liability or privileges, immunities or other protection available to Agency and/or City under the Utah Governmental Immunity Act or such other statutes or laws affording governmental agencies caps or limitations on liability or privileges, immunities or other protections.

6.19 Constructive Notice and Acceptance. Every Person who now owns or hereafter acquires any right, title or interest in or to any portion of the Phase II Parcel is and shall be conclusively deemed to have consented and agreed to every covenant, condition, restriction and easement contained in this Agreement, regardless of whether any reference to this Agreement is contained in the instrument by which such Person acquired an interest.

6.20 Recordation. This Agreement or a notice or memorandum of this Agreement shall be recorded in the Official Records and in the office of the Salt Lake City Recorder.

6.21 No Relationship of Principal and Agent. Nothing contained in this Agreement, nor any acts of the Parties or the City, the City planning director, the Planning Commission (or its designee), shall be deemed or construed to create the relationship of principal and agent, or of limited or general partnership, or of joint venture or of any other similar association between Agency, its successors or assigns, and Developer, its successors or assigns.

6.22 No Presumption. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against either Party.

6.23 Exhibits. All references to "Exhibits" contained herein are references to exhibits attached hereto, all of which are deemed incorporated herein and made a part hereof for all purposes.

6.24 Mortgagee Protection.

(a) Definitions. As used in this Section 6.24, each of the following terms shall have the indicated meaning:

(i) "Mortgage" means a mortgage, or a deed of trust, or other security agreement recorded in the Official Records.

(ii) "Mortgagee" means the mortgagee under a mortgage, the beneficiary under a deed of- trust or the secured party under any security agreement recorded with respect to the Project Parcels or any portion thereof in the Official Records.

(iii) "Qualified Mortgagee" means a Mortgagee of which Agency has been given written notice, including such Mortgagee's name and address.

(b) Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Qualified Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement.

(c) Notices; Right to Cure. On delivering to Developer any notice, demand or other communication pursuant to the provisions of this Agreement, Agency shall at the same time deliver copies of such notice to each Qualified Mortgagee at the latest address provided to Agency by such Qualified Mortgagee. Although otherwise effective with respect to Developer, no notice delivered to Developer shall affect any rights or remedies of a Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance

with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to remedied within the time allowed to Developer plus, in the case of monetary defaults, an additional thirty (30) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee promptly commences such cure and thereafter diligently prosecutes such cure to completion.

(d) Performance. A Qualified Mortgagee shall have the right to act for and in the place of Developer to the extent permitted by the applicable Mortgage or otherwise agreed to by Developer in writing. Agency shall accept performance by or on behalf of a Qualified Mortgagee as if the same had been performed by Developer. A Qualified Mortgagee shall have the right, to the extent Developer agrees in writing, to appear in a legal action or proceeding on behalf of Developer in connection with the Project Parcels.

(e) Recognition. Within 30 days of a written request therefor together with evidence as Agency may reasonably require that a proposed Qualified Mortgagee in fact meets the requirements of a Qualified Mortgagee as set forth herein, Agency agrees to execute, acknowledge and deliver to such Qualified Mortgagee an instrument stating that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this Section 6.24.

(f) Estoppel Certificate. Within ten (10) days after a written request by Developer, a successor to Developer as to any portion of the Project, a Qualified Mortgagee or a proposed Qualified Mortgagee, and upon payment of Agency's reasonable out-of-pocket legal costs incurred in connection with the issuance thereof, Agency shall issue a certificate confirming:

(i) that this Agreement, the Housing Restriction and the Easement Agreements are in full force and effect;

(ii) if requested by Developer to be certified, the unpaid amount of Reimbursements;

(iii) that to Agency's knowledge no default (or event which with the giving of notice or passage of time, or both) exists on the part of Developer or Agency under this Agreement, the Housing Restriction or the Easement Agreements;

(iv) if requested by Developer that no change or modification of this Agreement, the Housing Restriction or the Easement Agreements shall be made without the written consent of Mortgagee;

(v) that Agency shall provide Mortgagee with a copy of all notices including, without limitation, notices of default sent to Developer or an owner's association existing with respect to the Project; and

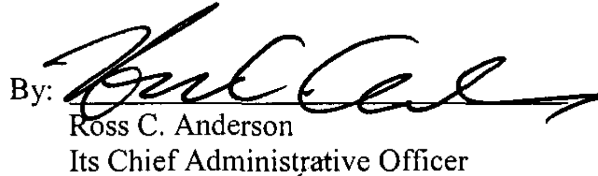
(vi) such other matters pertaining to this Agreement as may reasonably be requested.

The Person requesting the certificate (and any designated purchaser of any interest in the Project Parcels shall be entitled to rely on the certificate.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first above written.

AGENCY:

REDEVELOPMENT AGENCY OF SALT LAKE CITY



By: ______________________
Ross C. Anderson
Its Chief Administrative Officer

By: ______________________
David J. Oka
Its Executive Director

Approved as to legal form
by Legal Counsel

Jones, Waldo, Holbrook & McDonough, P.C.

By: ______________________

DEVELOPER:

GATEWAY ASSOCIATES, LTD.,
a Utah limited partnership
by its general partner:

BOYER GATEWAY, L.C.,
a Utah limited liability company
by its Manager:

THE BOYER COMPANY, L.C.
a Utah limited liability company

By: ______________________
H. Roger Boyer, Chairman and Manager

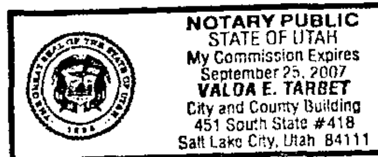
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 30th day of May, 2006, personally appeared before me Ross C. Anderson, who being by me duly sworn did say that he is the Chief Administrative Officer of The Redevelopment Agency of Salt Lake City, and that the within and foregoing instrument was signed on behalf of said Agency.

Valda E. Tarbet
NOTARY PUBLIC
Residing at: ____________________

My Commission Expires:

9/25/2007



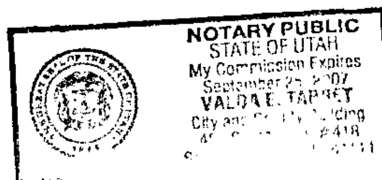
STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 30th day of May, 2006, personally appeared before me David J. Oka, who being by me duly sworn did say that he is the Executive Director of The Redevelopment Agency of Salt Lake City, and that the within and foregoing instrument was signed on behalf of said Agency.

Valda E. Tarbet
NOTARY PUBLIC
Residing at: ____________________

My Commission Expires:

9/25/2007



STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

On the 30th day of May, 2006, personally appeared before me H. Roger Boyer, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who, being by me duly sworn (or affirmed), did say that he is the Manager of The Boyer Company, L.C., which is the manager of Boyer Gateway, L.C. which is the general partner of Gateway Associates, Ltd., and that said document was signed by him in behalf of said entities.

NOTARY PUBLIC
Residing at: Salt Lake City

My Commission Expires:

8·20·07

EXHIBIT A

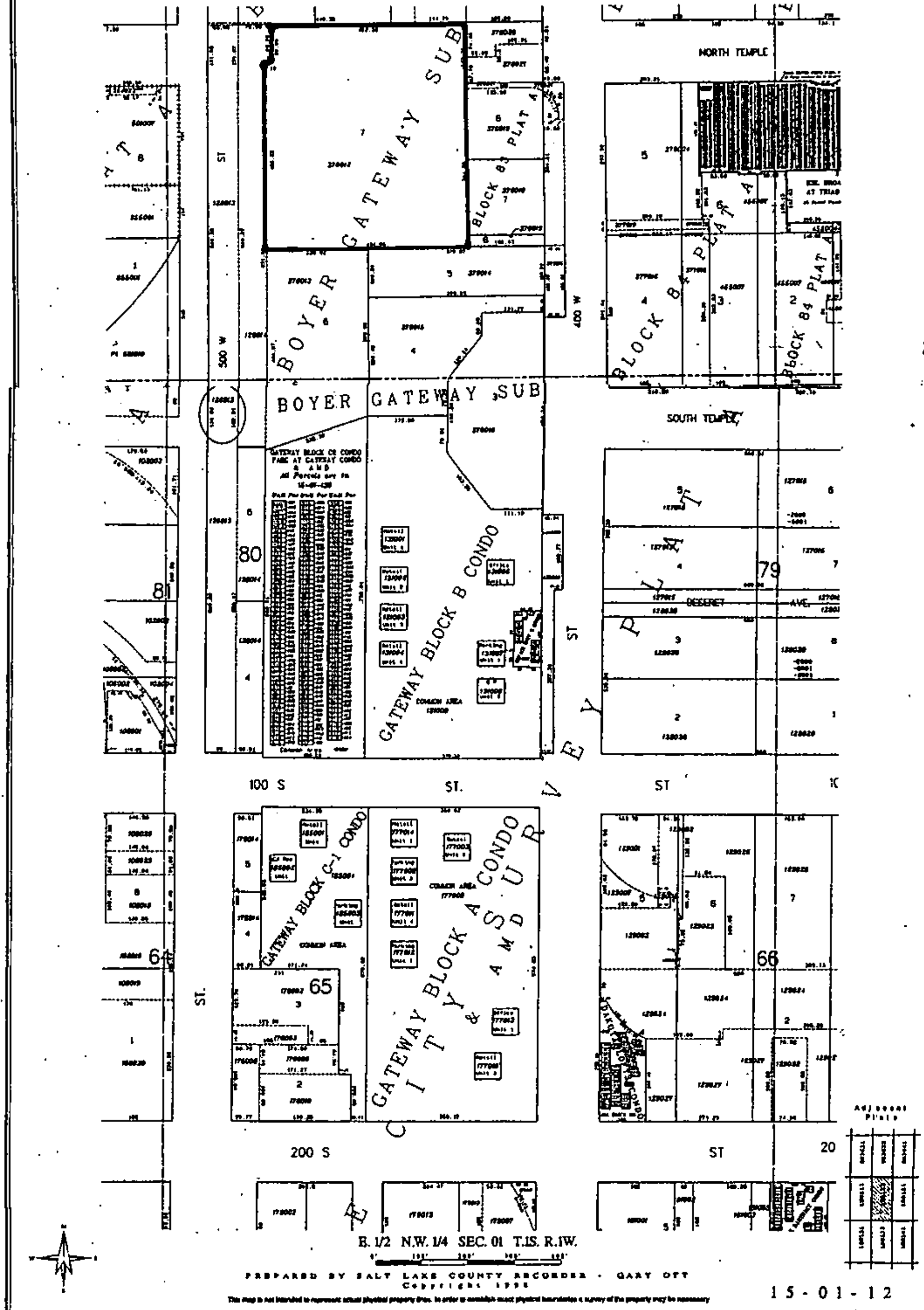
Legal Description of Phase II Parcel

Lot 7, Boyer Gateway Subdivision.

Parcel No: 08-36-376-012-0000 – Gateway Associates Ltd.

EXHIBIT B

Depiction of Phase II Parcel

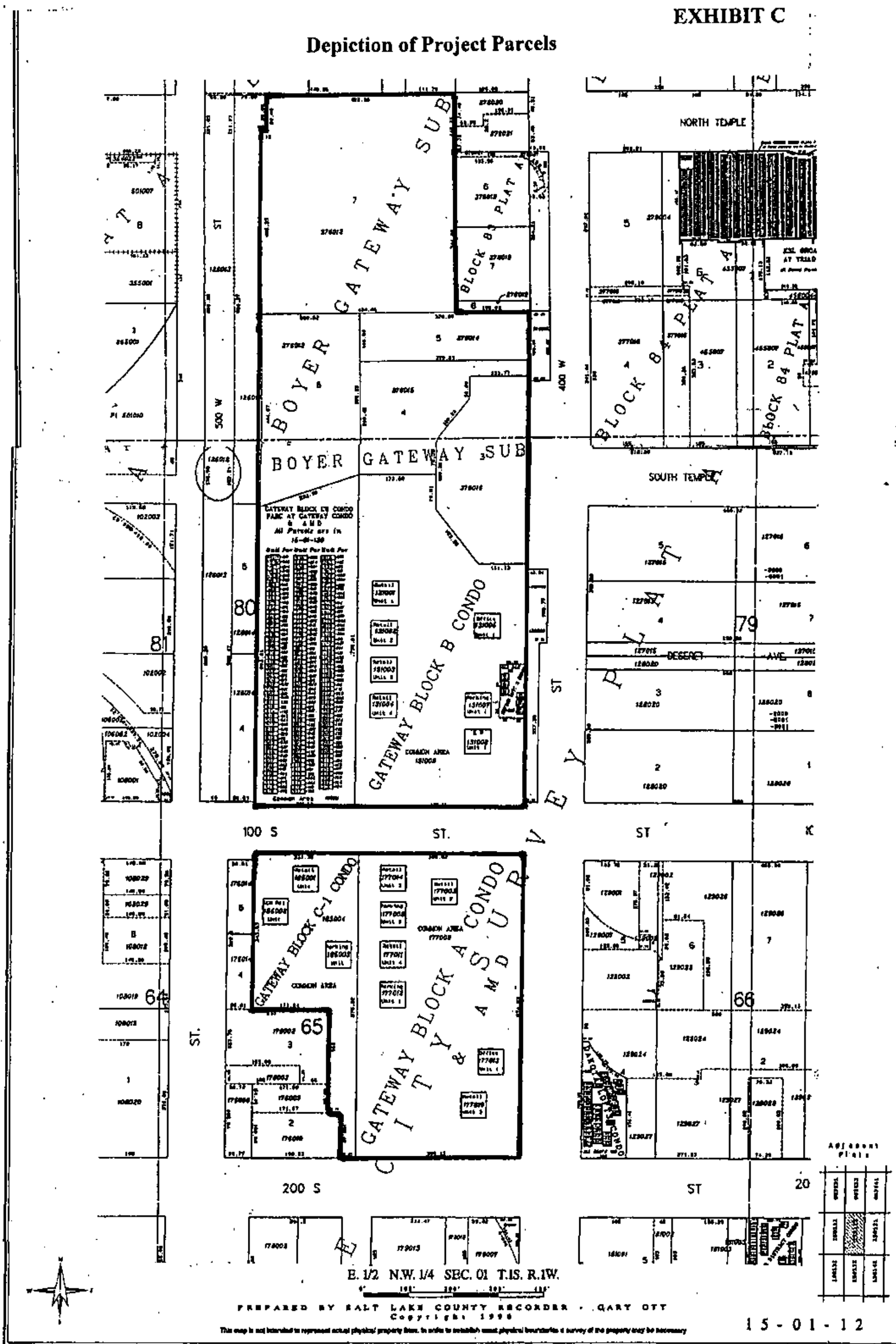


732075_8

BK 9305 PG 5148

EXHIBIT C

Depiction of Project Parcels



732075_8

BK 9305 PG 5149

EXHIBIT D

Form of Relocated Users Worksheet

GATEWAY
RELOCATED USERS WORKSHEET FOR CALENDAR YEAR 20____

(A) Relocated User	(B) Footage of Space (from attachment)	(C) Tax Parcel	(D) Footage of Tax Parcel (from attachment)	(E) % of Tax Parcel (B) ÷ (D)	(F) 20____ Tax (from attachment)	(G) Relocated User's Share of Tax (E) x (F)	(H) % of 20______ at Project (# months ÷ 12)	(I) Annual Share (G) x (H)
Express	6,546	15-01-177-003	72,399	9.0416%	$	$	%	$
Lane Bryant	6,499	15-01-130-001	131,191	4,9538%	$	$	%	$
Bastille	1,707	15-01-131-001	18,611	9.1720%	$	$	%	$
Bombay	4,535	08-36-376-015	48,172	2.4142%	$	$	%	$
Fortiers	1,295	15-01-131-003	23,171	5.5889%	$	$	%	$
Gymboree	2,205	15-01-130-001	131,191	1.6808%	$	$	%	$
							Total:	$
							X 37.50%	
Total Relocated User Reduction (for Section 4.5 of the Agreement):								$

Attached hereto is:

(a) a list of each space within the Project, broken down by tax parcel, showing for each space:
(i) the current tenant and
(ii) the number of square feet leased by such tenant, and

(b) tax valuation and the amount of taxes assessed for each tax parcel.

BK 9305 PG 5151