

CITY OF JERSEY CITY

Tax Abatement Committee

280 Grove Street
Jersey city, New Jersey 07302



Agenda

Tax Abatement Committee

Tuesday, July 10, 2012 at 1:00 p.m.

Efrain Rosario Memorial Caucus Room

Room 204, City Hall, 280 Grove Street, Jersey City, NJ

Please note:

1. (a) **ROLL CALL:**
- (b) **SALUTE TO THE FLAG:**
- (c) **STATEMENT IN COMPLIANCE WITH SUNSHINE LAW:**
2. **PENDING APPLICATION:**

1. The applicant, 110 First Street Urban Renewal, LLC; formerly Athena BLDG 110 Urban Renewal, L.L.C. (the "Applicant"), seeks to amend a ten(10) year tax abatement at the rate of ten per cent (10%) of annual gross revenue for the construction of a thirty-five (35) story mixed use rental building. When completed, the Project will consist of four hundred fifty-two (452) residential units, Sixteen thousand five hundred ninety-seven (16,597) square feet of retail space and three hundred forty three (343) parking spaces.

City Clerk Robert Byrne stated on behalf of the Tax Exemption Committee: "In accordance with the New Jersey P.L. 1975, Chapter 231 of the Open Public Meetings Act (Sunshine Law), adequate notice of this meeting was provided by mail and/or fax to The Jersey Journal and The Reporter on Friday, July 6, 2012 @ 12:30 p.m.

Department of Housing, Economic Development & Commerce

Director's Office



Inter-Office Memorandum

DATE: July 6, 2012

TO: Tax Abatement Committee

FROM: Al Cameron, Deputy Director, HEDC

SUBJECT: Tax Abatement Committee Agenda July 10, 2012

CC: R. Byrne, S. Harold, R. McFadden, J. Monahan, K. Tayari, D. Toon

AGENDA

A Tax Abatement Meeting will be held on Tuesday July 10, 2012, 1:00 PM in the City Council Caucus Room, City Hall, 280 Grove Street, Jersey City, New Jersey.

The applicant, 110 First Street Urban Renewal, LLC; formerly Athena BLDG 110 Urban Renewal, L.L.C. (the "Applicant"), seeks to amend a ten (10) year tax abatement at the rate of ten per cent (10%) of annual gross revenue for the construction of a thirty-five (35) story mixed use rental building. When completed, the Project will consist of four hundred fifty-two (452) residential units, Sixteen thousand five hundred ninety-seven (16,597) square feet of retail space and three hundred forty three (343) parking spaces.

The Jersey City Council approved a ten (10) year ten percent (10%) tax abatement that will expire in 2022. The applicant is requesting that be extended to fourteen (14) years from the date of City Council approval of an amendment to the existing amendment. The applicant has also proposed that the existing requirement to provide twenty-five (25) affordable dwelling units on site be reduced to ten (10) in exchange for an additional contribution to the Affordable Housing Trust Fund.

**Next Scheduled Meetings: September 13, 2012, October 25, 2012,
December 20, 2012**

WATERS, McPHERSON, McNEILL

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SECAUCUS · TRENTON · NEW YORK

MEADOWLANDS OFFICE

300 LIGHTING WAY

P.O. Box 1560

SECAUCUS, NEW JERSEY 07096

201-863-4400

www.lawwmm.com

JOSEPH G. RAGNO

DIRECT DIAL
201-330-7465

E-MAIL

jragno@lawwmm.com

FAX

201-863-2866

July 5, 2012

Al Cameron
Department of Housing & Economic
Development & Commerce
30 Montgomery Street
Jersey City, N.J. 07302

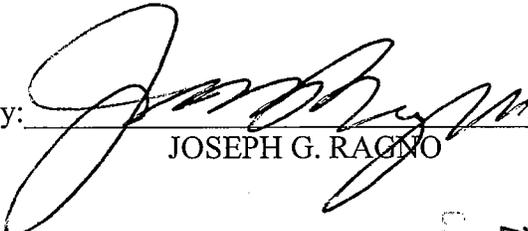
**RE: 110 First Street Urban Renewal Associates, LLC
Application for Amendment to Financial Agreement**

Dear Mr. Cameron:

Enclosed please find original and twenty-one (21) copies of Application to Amend Financial Agreement for the project known as 110 First Street. Also enclosed is our check for \$9,000 to cover the filing fee.

Very truly yours,

WATERS, McPHERSON, McNEILL, P.C.

By: 

JOSEPH G. RAGNO

JGR/pm
Enclosures

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FAX

201-863-2866

July 5, 2012

HAND DELIVERED

Honorable Jerramiah T. Healy, Mayor
City of Jersey City
City Hall
280 Grove Street
Jersey City, N.J. 07302

**Re: 110 First Street Urban Renewal Associates, LLC
Application for Amendment to Financial Agreement**

Dear Mayor Healy:

On behalf of 110 First Street Urban Renewal Associates, LLC ("Applicant"), we submit for your consideration this letter-application to amend the Financial Agreement entered into between Applicant and the City of Jersey City dated June 17, 2008. The basis for the application is as set forth below.

A. The History of the Tax Abatement-

In March 14, 2008, Applicant (formerly known as Athena BLDG 110 Urban Renewal, LLC) filed an application for tax abatement under the "Long Term Tax Exemption Law"; N.J.S.A. 40A:20-1 *et seq.* ("LTTE Law") for an urban renewal project described as a 35 story, 452 unit residential rental building with 16,597 sf of retail space and a 154,578 sf 343 space parking facility (the "Project") to be constructed on a .7254 acre parcel identified as Block 11603, Lot 42 (formerly designated as Block 109, Lot WA) on the Official Tax Map of the City of Jersey City, New Jersey and commonly known as 110 First Street in a redevelopment plan area currently known as the Powerhouse Arts Redevelopment Plan Area (the "Project Site").

Preliminary Major Site Plan Approval was obtained on January 29, 2008 (See Resolution of Planning Board #P07-157 and Site Plan attached as Exhibit A).

At its May 28, 2008 regular meeting, the City Council adopted Ordinance 08-074 approving the application and authorizing the City to enter into a Financial Agreement with the Applicant providing for a term of the earlier of ten (10) years from the date of substantial

completion or fourteen (14) years from the date of approval, May 28, 2008 and calling for an Annual Service Charge in lieu of real estate taxes on the Project improvements of ten percent (10%) of the Annual Gross Revenue from the Project (the "Financial Agreement"). The Financial Agreement, which was executed by the parties on June 17, 2008 further provided that, pursuant to a certain Consent Order entered into by the City and the Applicant, the Applicant had agreed, in fulfillment of its affordable housing obligation, to set aside 25 units on-site as Affordable Dwelling Units ("ADUs") and in addition to pay \$2,500,000 to subsidize 25 Choice Program Units off-site in the project known as Summit Heights. The affordable housing obligation for this Project was previously negotiated between the City the the Applicant and incorporated into a Settlement Consent Order entered in the matter entitled New Gold Equities Corp. and BLDG Management Company, Inc. v. City of Jersey City, et al., Docket #05-cv-03561-DRD-SDW (the "SCO"). The \$2,500,000 affordable housing contribution was paid in full. In addition, the City required the Applicant to enter into a Prepayment Agreement dated June 17, 2008 by which the Applicant was obligated to prepay \$1,000,000 of the Annual Service Charges due under the Financial Agreement (the "Prepayment Agreement"). Since construction was never started, the prepayment was never made. See Financial Agreement with Exhibits and Prepayment Agreement attached as Exhibits B and C. Finally, the applicant agreed to enter into a Project Labor Agreement.

On September 18, 2008, a Certificate of Amendment, duly approved by the Department of Community Affairs was filed with the Office of the State Treasurer changing the name of the Applicant urban renewal entity from Athena BLDG 110 Urban Renewal, LLC to 110 First Street Urban Renewal Associates, LLC to reflect the restructuring of the entity. See Original Certificate of Formation for Athena BLDG 110 Urban Renewal, LLC, Exhibit D, Certificate of Amendment (Name Change), Exhibit E and Letter Dated June 15, 2009 notifying the City of Jersey City of the amendment, Exhibit F and Ownership Disclosure Statement. Exhibit G.

B. The Need to Amend the Financial Agreement-

In the wake of the formal approval of the tax abatement for the 110 First Street Project, the recession plunged the real estate market into a major crisis. Financing sources dried up, construction on the Project was, as a consequence, never commence. Since 2008, the owner of the Project Site has been searching for a suitable joint venture partner to enable it to get the Project started. The requested amendments will make it possible to bring a joint venture partner into the Project.

The key areas of the Financial Agreement requiring amendment are:

1. Affordable Housing Contribution- The City's current need for funds to subsidize affordable residential projects elsewhere in the City would provide the Applicant with the opportunity to make a one-time payment of \$750,000 to the Affordable

Housing Trust Fund in addition to the \$2,500,000 paid in 2008 and bringing the Applicant's total contribution to \$3,250,000 (more than \$7,300/per market rate unit to be developed on-site as contrasted with the standard contribution of \$1500/unit). In consideration for the additional contribution, the Applicant's obligation to set-aside 25 ADUs on-site would be amended to 10. Apart from the amendment of the Financial Agreement, the SCO provisions establishing the obligation would also require amendment.

2. Term of Financial Agreement- Given that economic conditions since the 2008 approval have not been conducive to beginning construction on the Project, nearly four years of the fourteen (14) year outside term of the Financial Agreement have expired. Assuming Project construction could commence before the end of 2012 and finish by the end of 2015, unless the Financial Agreement is amended to reset the term, the Project will only receive the benefit of the abatement for seven years at most, whereas all of the investment and financing decisions are premised on a full 10 year term.
3. Prepayment- The prepayment obligation, requiring the outlay of \$1 million three years before Project completion is a discouraging factor for prospective joint venture partners and lenders alike. Since, construction will start within 180 days if the amendments which are the subject of this Application are approved, a prepayment will not be necessary. Nevertheless, the Appellant would agree to pay the interest which has accrued under the Prepayment Agreement now estimated at \$240,000.

C. The Proposed Amendments-

The proposed amendments to the Financial Agreement are as follows:

1. Term- Section 3.1 of the Financial Agreement would be amended to restate the term of the abatement as "the earlier of ten (10) years from the date of the Substantial Completion of the Project or fourteen (14) years from the date of the approval of the Ordinance authorizing the execution of the Amended Financial Agreement on the condition that construction begins within 180 days of the last to occur of 1) the execution of the Amended Financial Agreement or 2) the execution of the amendments to the affordable housing provisions of the SCO. The Annual Service Charge would be 10% of Annual Gross Revenue.
2. Affordable Housing Contribution- Section 4.6 of the Financial Agreement would be amended to reflect that the Applicant would make an additional contribution to the Affordable Housing Trust Fund in the amount of \$750,000 in lieu of the

set-aside of 15 ADUs on-site and in addition to the \$2,500,000 contribution for the 25 units in the Summit Heights project paid in 2008. The Financial Agreement would reflect Applicant's obligation to set aside 10 ADUs on-site. The SCO would likewise be amended to reflect the necessary modification in Applicant's obligation.

3. Prepayment Agreement- The Prepayment Agreement dated June 17, 2008 would be cancelled conditioned on Applicant's agreement to pay all interest which has accrued thereunder. Applicant would not be obligated to enter into a new prepayment agreement in connection with the Amended Financial Agreement.
4. Construction Period- The Amended Financial Agreement will require the Applicant to begin construction within 180 days of the last to occur of a) the execution of the Amended Financial Agreement or b) the execution of the amendment of the affordable housing provisions of the SCO. Failure to begin construction on time will result in reversion to the original abatement term as stated in the 2008 Financial Agreement. Construction Schedule, Exhibit H.

D. Impact of Amendments-

- Resetting the commencement of the term of the Financial Agreement will have a salutary impact for the City as it will enable the Project to be constructed in the near-term and will ensure that the completed Project will enjoy ten full years of tax abatement.
- The \$750,000 additional contribution to the Affordable Housing Trust Fund will give the City the flexibility to apply the funds where they are most needed. While at the same time, the Applicant's agreement to set aside 10 ADUs on-site is a significant achievement which is without recent precedent on the Jersey City Waterfront.
- The elimination of the prepayment obligation conditioned on the payment of the accrued interest contributes to the overall viability of the Project and ensures that construction on this long under-utilized development site will commence in 2012.
- Construction Schedule-The Applicant's commitment to a 180 day construction start (from execution of Amended Financial Agreement and SCO amendment) means that the City could begin to realize the benefits of the Project in the first quarter of 2013.

- Jobs Creation - The construction of the Project will result in the creation of 300 construction jobs and 15 new permanent jobs on completion. The Applicant is committed to entering into a Project Labor Agreement.
- Revenue Generation - Based on the Good Faith Lease Estimates attached as Exhibit I, the Applicant Projects that the Project will generate in the first year following substantial completion and stabilization Annual Service Charges of approximately \$1,491,198 and over \$17,094,915 over the ten (10) year term. In contrast, the undeveloped Project Site generated just \$110,726.40 in conventional taxes in 2011. See Estimated Annual Service Charge Schedule, Exhibit J and Estimated Financial Plan, Exhibit K.

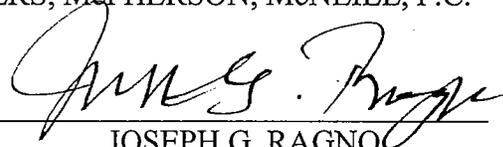
A proposed form of Amended Financial Agreement is attached as Exhibit L.

110 First Street Urban Renewal Associates, LLC respectfully requests that this Application be considered by the Tax Enhancement Committee at a Special Meeting in July. We are available to meet with your staff on short notice to address any concerns which may arise regarding this application

Respectfully submitted,

WATERS, MCPHERSON, MCNEILL, P.C.

By: _____



JOSEPH G. RAGNO

JGR/pm
Enclosures

cc: Councilman Michael Sottolano
Al Cameron
Robert Byrne, City Clerk
Joanne Monahan, Assistant Corporation Counsel
William Matsikoudis, Corporation Counsel
Donald Olenick, Esq.
John Smallwood
Kenneth G. Browne

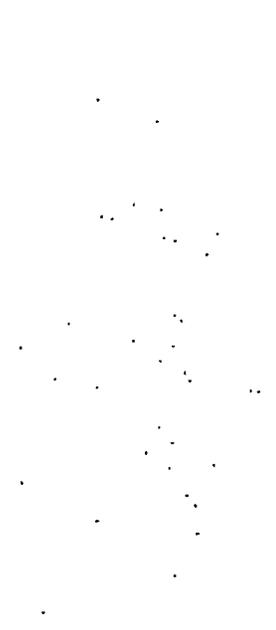
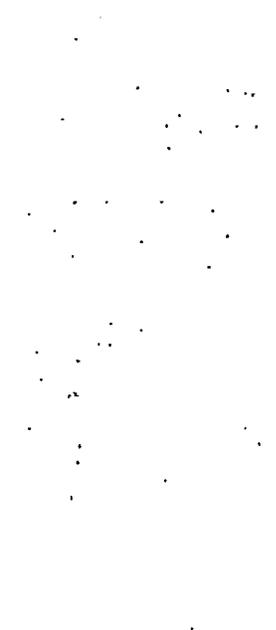


EXHIBIT A
SITE PLAN



RESOLUTION OF THE PLANNING BOARD OF THE
CITY OF JERSEY CITY

APPLICANT: ATHENA BUILDING URBAN RENEWAL, LLC
PROPERTY: 110 FIRST STREET
BLOCK 109 LOT W.A
FOR: PRELIMINARY MAJOR SITE PLAN APPROVAL
CASE No. P07 - 157
HEARING DATE: JANUARY 29, 2008
RESULT: APPROVED

WHEREAS, the Applicant, Athena Building Urban Renewal, LLC, (hereinafter "Applicant") has made application to the Planning Board of the City of Jersey City, County of Hudson and State of New Jersey for preliminary major site plan approval, filed under case no. P07-157, involving the construction of a 452 dwelling unit residential high rise building with 343 parking spaces and 13,970 sq. ft. of retail, located at Block 109, Lot W.A, on property more commonly known as 110 First Street (hereinafter "Property"); and

WHEREAS, Applicant is the owner of Property; and

WHEREAS, it appears that due notice of a hearing of the above-described Application, before the Board, on Tuesday, 1-29-08, at 5:30 PM, was duly published, as prescribed in the zoning ordinance of the City of Jersey City; and

WHEREAS, Applicant has submitted proof that he has complied with applicable procedural requirements, including public notice and the payment of fees; and

WHEREAS, the Board formally has heard and considered the evidence presented by Applicant in support of the within application, including the sworn testimony of his witnesses, the comments and recommendations of Planning Staff and the comments of interested members of the public; and

WHEREAS, having considered the within application, all supporting documents, the sworn testimony in support of the application, the comments and recommendations of Planning Staff and the comments of interested members of the public, the Planning Board of the City of Jersey City hereby makes the following findings of fact and conclusions thereon:

FINDINGS OF FACT

1. Applicant has applied to the Board for preliminary and final major site plan approval, involving the construction of a 452 dwelling unit residential high - rise building, with 343 parking spaces and 13,970 sq. feet of retail, located at Block 109, Lot W.A, on Property more commonly known as 110 First Street.
2. Applicant is the owner of Property.
3. Property is located within the Powerhouse Arts Redevelopment Plan Area.
4. The Property in question was the subject of litigation in the U.S. District Court for the District of New Jersey, captioned New Gold Equities Corp., et al, v City of Jersey City, et al, Docket No. 05 - CV - 03561 - DRD - SDW, which case also incorporated several similar lawsuits that had been pending in the Superior Court of New Jersey, Law Division - Hudson County.

5. The above – referenced matters were resolved by a consent order for the consolidation of all state actions, final settlement, injunction, and dismissal of all actions with prejudice, which consent order was finalized as to all issues and all parties as of 7-21-06.

6. Pursuant to the terms and conditions of the consent order, the Applicant and the City of Jersey City entered into a consent agreement to change certain details of the original development proposal, which consent agreement is dated 12-20-07.

7. Pursuant to the terms and conditions of the 12-20-07 consent agreement, the total unit count allowable thereunder is 452 units in a structure not to exceed 350 feet

8. The above-referenced consent order required an affordable housing contribution by Applicant for one (1) affordable housing unit for every nine (9) market-rate units in the development. The consent order further required that one-half (1/2) of those affordable housing units be provided by Applicant on-site and that the other one-half (1/2) be provided for off-site through a financial contribution by Applicant to the City.

9. The within Application is consistent with the affordable housing contribution requirements of the consent order. More specifically, Applicant shall provide said requirements herein as follows:

- One-half (1/2) of the required affordable housing units shall be provided by Applicant on site.

- One-half (1/2) of the required affordable housing units shall be satisfied by a financial contribution by Applicant to the City of Jersey City, totaling \$2,500,000.00, as follows:

- \$1,250,000.00 shall be paid by Applicant upon approval of the within preliminary major site plan Application
- \$1,250,000.00 shall be paid by Applicant upon either acquisition by the Jersey City Redevelopment Agency of additional parcels of lands herein or Applicant herein moving forward to obtain building permits for the within development, whichever occurs first

10. The above-referenced affordable housing obligations are referenced, if not fully set forth, in the Memorandum of Understanding as to offsite affordable housing contributions, between Applicant and the City of Jersey City, which Memorandum is incorporated herein and made a part hereof by reference.

11. The within Application is consistent with the above - stated terms and conditions of the above-referenced 12-20-07 consent agreement.

12. The Application seeks approval for preliminary major site plan that conforms with and to the requirements of the Powerhouse Arts Redevelopment Plan, as affected by the terms and conditions of the above-referenced consent order and consent agreement. As such, the within Application advances the goals

of the Powerhouse Arts Redevelopment Plan and is an appropriate development of the property that will benefit the immediate neighborhood and promote the general welfare. The proposed development will promote a desirable visual environment that will add to the quality and character of the area and is an appropriate use of the land.

13. The Board heard from the following sworn witnesses for Applicant:

- Peter DeWitt, AIA, a licensed architect in New Jersey, who testified as to various design and other architectural elements of the Plan
- Kenneth Browne, a principal with Applicant, who testified as to various elements of the application, including but not limited to the parking garage and the ventilation system therein

NOW, THEREFORE, BE IT RESOLVED that the Planning Board of the City of Jersey City, County of Hudson and State of New Jersey, for the foregoing reasons, as well as those reasons stated on the record herein, which reasons are incorporated herein by reference, that the within application for preliminary major site plan approval, filed under case no. P07-157, involving the construction of a 452 dwelling unit residential high – rise building, with 343 parking spaces and 13,970 sq. ft. of retail, located at Block 109, Lot W.A, on Property more commonly known as 110 First Street, hereby is approved, subject to the following conditions:

- A) The Applicant will provide two documents to the Planning Department for supplement to the file. One is a signed

Memorandum of Understanding regarding the offsite Affordable Housing contributions, and the other is a letter countersigned by Corporation Counsel amending the provisions of the Settlement Agreement which controls the development of this site;

- B) The Applicant shall evaluate the issue of the practicability of using the existing dog run which services the "A Building" adjacent to this Property should the building allow pets in order to minimize the impact of additional dogs in nearby public parks;
- C) The Applicant shall track the LEED points to the building;
- D) The Applicant shall comply with the comments and conditions of all Jersey City review agencies and departments;
- E) The "First Street drop-off" is excluded from the approval of the Site Plan and is eliminated from the present design of the building. Should the Applicant wish to pursue the building design with the "First Street drop - off" the Applicant will follow the procedure for an amended site plan approval, after having secured a franchise ordinance from the City Council;
- F) The Applicant agrees that no construction will occur without permits for the work, nor will any construction occur on Saturdays or 'after-hours' without special permits permitting construction outside of the norm; and
- G) The Applicant agrees to have signed plans on site during construction.

Handwritten note: The Applicant shall track the LEED points to the building.

RESOLUTION OF THE PLANNING BOARD OF THE

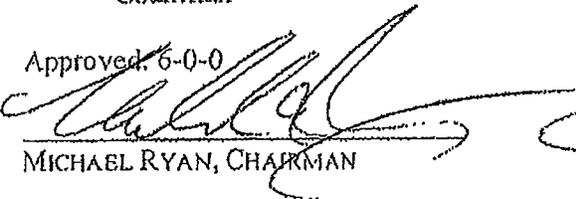
CITY OF JERSEY CITY

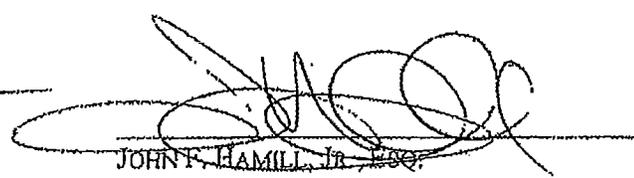
In the Matter of the Application of Athena Building Urban Renewal, LLC for preliminary / major site plan approval on Property known as 110 First Street, Block 109, Lot W.A

A motion to approve the application was approved by the following vote:

COMMISSIONER:	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>
Leon Yost Vice-Chairman	X		
Karen McIntyre	X		
Mike Jenner	X		
Mike Sims	X		
Roseanna Petruzzelli	X		
Michael Ryan Chairman	X		

Approved: 6-0-0


MICHAEL RYAN, CHAIRMAN


JOHN F. HAMILL, JR., Esq.
APPROVED AS TO LEGAL FORM

ROBERT D. COTTER, SECRETARY

DATE PROPOSAL APPROVED: JANUARY 29, 2008

DATE PROPOSAL MEMORIALIZED: JANUARY 29, 2008
4-8-08

EXHIBIT B

Rev. 8-23-05
Long Term Tax Exemption
N.J.S.A. 40A:20-1, et seq.
(Market Rate Residential Rental).

Re: Athena BLDG 110 Urban Renewal, LLC
Approximately .73 Acres
Block 109, Lot WA
Powerhouse Arts Redevelopment Plan

PREAMBLE

THIS FINANCIAL AGREEMENT, [Agreement] is made the 17th day of June, 2008 by and between ATHENA BLDG 110 URBAN RENEWAL, LLC, an urban renewal entity formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., having its principal office at c/o The Athena Group, 712 Fifth Avenue, Eighth Floor, New York, NY 10019 [Entity], and the CITY OF JERSEY CITY, a Municipal Corporation of the State of New Jersey, having its principal office at 280 Grove Street, Jersey City, New Jersey 07302 [City].

RECITALS

WITNESSETH:

WHEREAS, the Entity is the Owner of certain property designated as Block 109, Lot WA, more commonly known by the street address of 110 First Street, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

WHEREAS, this property is located within the boundaries of the Powerhouse Arts Redevelopment Plan Area; and

WHEREAS, the Entity plans to construct a 35 story building, containing approximately 452 residential rental units, approximately 16,597 square feet of retail space and 343 parking spaces for the use of the residents and retail customers only, [Project]; and

WHEREAS, on March 14, 2008, the Entity filed an Application with the City for a long term tax exemption for the Project; and

WHEREAS, the City made the following findings:

A. Relative Benefits of the Project when compared to the costs:

1. the current real estate tax generates revenue of only \$87,674, whereas, the Annual Service charge as estimated, and will generate revenue to the City of approximately \$1,585,212;
2. the Entity has agreed, as part of its stipulation of settlement and consent order in the matter entitled New Gold Equities Corp., and BLDG Management Co., Inc., vs. City of Jersey City, et al, Docket No. 05-cv-03561-DRD-SDW [Consent Order], to set aside 25 units on-site as Affordable Dwelling Units and pay \$2,500,000 to subsidize 25 units of Choice Program off-site at the Summit Heights Project, which obligations were intended to subsume any other Affordable Housing obligations imposed by the City of Jersey City, specifically those set forth in Section 304-28 of the Jersey City Municipal Code;
3. in view of the uniqueness of the Project and the complex litigation and negotiated settlement, the City hereby agrees to waive payment of the \$665,396 to the City's Affordable Housing Trust Fund as required by Section 304-28 of the Jersey City Municipal Code;
4. it is expected that the Project will create approximately 300 jobs during construction and 15 new permanent jobs;
5. the Project should stabilize and contribute to the economic growth of existing local business and to the creation of new business, which cater to the new residents;
6. the Project will further the redevelopment objectives of the Powerhouse Arts Redevelopment Plan;
7. the City's impact analysis, on file with the Office of the City Clerk, indicates that the benefits of the Project outweigh the costs to the City; and

B. Assessment of the Importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

1. the relative stability and predictability of the annual service charges will make the Project more attractive to investors and lenders needed to finance the Project; and
2. the relative stability and predictability of the service charges will allow the owner to stabilize its operating budget, allowing a high level of maintenance to the building over the life of the Project, which will insure the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area; and

WHEREAS, by the adoption of Ordinance 08-074 on May 28th, 2008, the Municipal Council approved the above findings and the tax exemption Application and authorized the execution of this Agreement:

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., Executive Order of the Mayor, 02-003, Ordinance 02-075, and Ordinance 08- 074, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

Section 1.2 General Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms shall have the following meanings:

i. Allowable Net Profit- The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to N.J.S.A. 40A:20-3(c).

ii. Allowable Profit Rate - The greater of 12% or the percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of 12% or the percentage per annum arrived at by adding 1.25% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in Hudson County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

iii. Gross Revenue - Any and all revenue collected from the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties,

including but not limited to fees or income paid or received for parking, laundry, health club user fees or other services (such as lease premiums for views, fireplaces, etc.). No deductions will be allowed for operating or maintenance costs, including, but not limited to gas, electric, water and sewer, other utilities, garbage removal and insurance charges, whether paid for by the landlord, tenant or a third party, except for customary operating expenses of commercial tenants such as utilities, insurance and taxes (including payments in lieu of taxes) which shall be deducted from Gross Revenue based on the actual amount of such costs incurred.

iv. Annual Service Charge - The amount the Entity has agreed to pay the City for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, pursuant to N.J.S.A. 40A:20-12.

v. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholders' equity, a statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items required by Law. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

vi. Certificate of Occupancy - A document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

vii. Debt Service - The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for the project for a period equal to the term of this agreement.

viii. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

ix. Entity - The term Entity within this Agreement shall mean Athena BLDG 110 Urban Renewal, LLC, which Entity is formed and qualified pursuant to N.J.S.A. 40A:20-5. It

shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under the Law.

x. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

xi. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

xii. Land Taxes - The amount of taxes assessed on the value of land, on which the Project is located and, if applicable, taxes on any pre-existing improvements. Land Taxes are not exempt; however, Land Taxes are applied as a credit against the Annual Service Charge.

xiii. Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

xiv. Law - Law shall refer to the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq.; Executive Order of the Mayor 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance 02-075, and Ordinance 08-074 which authorized the execution of this Agreement; and Ordinance 07-123, as may be amended or supplemented from time to time, which requires the execution of a Project Labor Agreement, and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and regulations.

xv. Lease Up Period - Shall begin on the date of the issuance of the first Certificate of Occupancy (whether permanent or temporary) for any floor or any portion thereof. During the Lease Up Period, the Entity shall pay the sum equal to the estimated Annual Service Charge divided by the number of Units divided by 12 for each Unit for each month after that Unit has received a Certificate of Occupancy, whether the floor is actually occupied or generated revenue. The payment shall begin on the 1st day of the month following the issuance of the Certificate of Occupancy for that Floor. The Lease Up Period for the Project expires twelve (12) months after the issuance of the first Certificate of Occupancy for any floor.

xvi. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the greater of:

(a) the amount of the total taxes levied against all real property in the area covered

by the Project in the last full tax year in which the area was subject to taxation, or in the case of tax exempt property, the projected tax levy based upon the assessed value for the year in which the application is filed, which amount the parties agree is \$87,674; or

(b) the sum of \$1,200,000 per year, which sum will be prorated only in the years in which Substantial Completion occurs and this Agreement terminates.

The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to N.J.S.A. 40A:20-12 or this Agreement, would be less than the Minimum Annual Service Charge.

xvii. Net Profit - The Gross Revenues of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles, but:

(1) there shall be included in expenses: (a) all Annual Service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the City of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits over the term of this agreement; (d) all reasonable annual operating expenses of the Entity and any other entity whose revenue is included in the computation of excess profits including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies and payments into repair or maintenance reserve accounts; (e) all payments of rent including but not limited to ground rent by the Entity; (f) all debt service; and

(2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of debt service, income taxes or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the entity, or officers, partners or other persons holding a proprietary ownership interest in the entity.

xviii. Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

xix. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

xx. Termination - Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

xxi. Total Project Cost - The total cost of constructing the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are set forth in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred by the Entity and certified by an independent and qualified architect or engineer, which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or Federal law and any extraordinary costs incurred including the cost of demolishing structures, relocation or removal of public utilities, cost of relocating displaced residents or buildings and the clearing of title. The Entity agrees that final Total Project Cost shall not be less than its estimated Total Project Cost.

ARTICLE II - APPROVAL

Section 2.1 Approval of Tax Exemption

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 109, Lot WA, more commonly known by the street address of 110 First Street, and described by metes and bounds in Exhibit 1 attached hereto.

Section 2.2 Approval of Entity

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit 4. Entity represents that its Certificate contains all the requisite provisions of the Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Office of the State Treasurer or Office of the Hudson County Clerk, all in accordance with N.J.S.A. 40A:20-5.

Section 2.3 Improvements to be Constructed

Entity represents that it will construct a 35 story building, containing approximately 452 residential rental units, approximately 16,597 square feet of retail space and 343 parking spaces for the use of the residents and retail customers only, all of which is specifically described in the Application attached hereto as Exhibit 3.

Section 2.4 Construction Schedule

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as Exhibit 5.

Section 2.5 Ownership, Management and Control

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

The Entity represents that it is the owner of the Land upon which the project is to be constructed and will manage and control the Project. The City acknowledges that the Entity may enter into a management agreement for the Project and will pay a management fee in accordance with HUD regulations as provided in the Entity's agreement with HUD, which fee was disclosed in its tax exemption application. The City acknowledges that the Entity may enter into future management agreements so long as such agreements are not used to reduce the City's economic benefits under this Agreement and the management fees to be paid are comparable to those disclosed in the application.

Section 2.6 Financial Plan

The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit 6. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

Section 2.7 Statement of Rental Schedules and Lease Terms

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit 7.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1 Term

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of 14 years from the date of the adoption of Ordinance 08-074 on May 28th, 2008, which approved the tax exemption or 10 years from the date of Substantial Completion of the Project. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned by a corporation or association formed and operating under the Law.

ARTICLE IV - ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

In consideration of the tax exemption, the Entity shall make the following payments to the City:

(i) City Service Charge: an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge equal to 10% of the Annual Gross Revenue for the 427 market rate units, parking and retail space and 10% of the Annual Gross Revenue for the 25 ADUs. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue which shall not be less than the its estimate of Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Agreement.

A Minimum Annual Service Charge shall be due beginning on the effective date of this Agreement. The Annual Service Charge shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

Notwithstanding anything herein to the contrary, upon Substantial Completion, the Minimum Annual Service Charge shall be prorated in accordance with Section 1.2(xvi)(b) and the Lease Up Period.

(ii) County Service Charge: an amount equal to 5% of the Annual Service Charge upon

receipt of that charge, for remittance to the County by the City.

Section 4.2 Staged Adjustments

The Annual Service Charge shall be adjusted, in Stages over the term of the tax exemption in accordance with N.J.S.A. 40A:20-12(b) as follows:

- i. Stage One: From the 1st day of the month following Substantial Completion until the last day of the 6th year, the Annual Service Charge shall be 10% of Annual Gross Revenue;
- ii. Stage Two: Beginning on the 1st day of the 7th year following Substantial Completion, an amount equal to the greater of the Annual Service Charge or 20% of the amount of the taxes otherwise due on the value of the land and Improvements;
- iii. Stage Three: Beginning on the 1st day of the 8th year following the Substantial Completion, an amount equal to the greater of the Annual Service Charge or 40% of the amount of the taxes otherwise due on the value of the land and Improvements;
- iv. Stage Four: Beginning on the 1st day of the 9th year following Substantial Completion, an amount equal to the greater of the Annual Service Charge or 60% of the amount of the taxes otherwise due on the value of the land and Improvements.
- v. Final Stage: Beginning on the 1st day of the 10th year following Substantial Completion through the date the tax exemption expires, an amount equal to the greater of the Annual Service Charge or 80% of the amount of the taxes otherwise due on the value of the land and Improvements.

Section 4.3 Credits

The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments, including any tax on the pre-existing improvements, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any quarter that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that quarter. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property

pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

Section 4.4 Quarterly Installments

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

Section 4.5 Administrative Fee

The Entity shall also pay an annual Administrative Fee to the City in addition to the Annual Service Charge and Land Tax levy. The Administrative Fee shall be calculated as two (2%) percent of each prior year's Annual Service Charge. This fee shall be payable and due on or before December 31st of each year, and collected in the same manner as the Annual Service Charge. In the event that the Entity fails to timely pay the Administrative Fee, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

Section 4.6 Affordable Housing Contribution and Set-Aside

The Entity, the City and others are party to the Consent Order, have agreed to set aside 25 units on-site as Affordable Dwelling Units and pay \$2,500,000 to subsidize 25 units of Choice Program off-site at the Summit Heights Project, which obligations were intended to subsume any other Affordable Housing obligations imposed by the City of Jersey City, specifically those set forth in Section 304-28 of the Jersey City Municipal Code. The performance of the Affordable Housing obligations in that agreement is a material inducement to the City to enter into this Financial Agreement and a material breach of that agreement shall be considered a material breach of this Financial Agreement.

- A. **Contribution.** Waived.
- B. **Remedies.** Not applicable.

Section 4.7 Material Conditions

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative

Fees, compliance with the Affordable Housing obligations imposed by the Consent Order, and any interest thereon, are Material Conditions of this Agreement.

ARTICLE V - PROJECT EMPLOYMENT AND CONTRACTING AGREEMENT

Section 5.1 Project Employment and Contracting Agreement

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment and Contracting Agreement, attached hereto as Exhibit 8. In addition, the Entity shall execute a Project Labor Agreement as required by Ordinance 07-123 as it exists or as it may be amended from time to time.

ARTICLE VI - CERTIFICATE OF OCCUPANCY

Section 6.1 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the proposed construction schedule attached hereto as Exhibit 5. The failure to secure the Certificates of Occupancy shall subject the property to full taxation for the period between the date of Substantial Completion and the date the Certificate of Occupancy is obtained.

Section 6.2 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not militate against any action or non-action, taken by the City, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

ARTICLE VII - ANNUAL REPORTS

Section 7.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

Section 7.2 Periodic Reports

A. An Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that the Agreement shall continue in effect, the

Entity shall submit to the Mayor and Municipal Council and the NJ Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: condominium unit purchase price, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Disclosure Statement: On the anniversary date of the execution of this Agreement, and each and every year thereafter while this agreement is in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the City may request from time to time.

Section 7.3 Inspection/Audit

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the NJ Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

All costs incurred by the City to conduct the audit, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the City as part of the Entity's Annual Service Charge. Delinquent payments shall accrue interest at the same rate as for a delinquent service charge.

ARTICLE VIII- LIMITATION OF PROFITS AND RESERVES

Section 8.1 Limitation of Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to five (5%) percent of the Gross Revenue of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. The reserve is to be non-cumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of five (5%) percent of the preceding year's Gross Revenue. Pursuant to N.J.S.A. 40A:20-14(b) there is expressly excluded from the calculation of Gross Revenue and Net Profit in the determination of Excess Profit, any gain realized by the Entity on the sale of any condominium unit, whether or not taxable under federal or state law.

Section 8.2 Annual Payment of Excess Net Profit

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred and twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the City as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned paragraph 8.1. The calculation of the entity's excess net profits shall include those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the definition of Total Project Cost in Section 1.2 (xx) of this agreement even though those costs may have been deducted from the project costs for purposes of calculating the annual service charge.

Section 8.3 Payment of Reserve/ Excess Net Profit Upon Termination, Expiration or Sale

The date of termination, expiration or sale shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the City the amount of the reserve, if any, maintained by it pursuant to this section and the excess Net Profit, if any.

ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION

Section 9.1 Approval

Subject to the provisions of N.J.S.A. 40A:20-5(e), any sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council. It is understood and

agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity does not own any other Project subject to long term tax exemption at the time of transfer; 2) the new Entity is formed and eligible to operate under the Law; 3) the Entity is not then in default of this Agreement or the Law; 4) the Entity's obligations under this Agreement is fully assumed by the new Entity, 5) the Entity shall pay the City a transfer fee equal to 2% of the then current Annual Service Charge as required by N.J.S.A. 40A:20-10d.

Section 9.2 Fee

Where the consent or approval of the City is sought for approval of a change in ownership or sale or transfer of the Project, the Entity shall be required to pay to the City a new tax exemption application fee for the legal and administrative services of the City, as it relates to the review, preparation and/or submission of documents to the Municipal Council for appropriate action on the requested assignment. The fee shall be non-refundable.

ARTICLE X - COMPLIANCE

Section 10.1 Operation

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of Project under this Agreement shall not only be terminable as provided by N.J.S.A. 40A:20-1, et seq., as currently amended and supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

Section 10.2 Disclosure of Lobbyist Representative

During the term of this Agreement, the Entity must comply with Executive Order 2002-005, and Ordinance 02-075, requiring Written Disclosure of Lobbyist Representative Status. The Entity's failure to comply with the Executive Order or the Ordinance shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

ARTICLE XI - DEFAULT

Section 11.1 Default

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

Section 11.2 Cure Upon Default

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default due to a failure to pay any charges defined as Material Conditions in Section 4.7, the Entity shall not be subject to the default procedural remedies as provided herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein.

Section 11.3 Remedies Upon Default

The City shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, or the Annual Service Charges or its failure to comply with the Affordable Housing obligations imposed by the Consent Order shall not be subject to the default procedural remedies as provided in Article XI herein, but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII. All of the remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No termination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge, Annual Service Charge, or Administrative Fees or its failure to comply with the Affordable Housing provisions of the Consent Order. This right shall apply to arrearages that are due and

owing at the time or which, under the terms hereof, would in the future become due as if there had been no termination. Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, Administrative Fees, or for breach of the Consent Order or of any covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land.

ARTICLE XII- TERMINATION

Section 12.1 Termination Upon Default of the Entity

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

Section 12.2 Voluntary Termination by the Entity

The Entity may after the expiration of one year from the Substantial Completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

Section 12.3 Final Accounting

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the City the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 12.4 Conventional Taxes

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

Section 12.5 Termination Payment

In addition to any other remedies available to the City upon termination whether voluntary or upon default, the Entity shall pay to the City an amount equal to the difference between the service charge actually paid and the service charge that would have been due had each adjustment period provided in Section 4.2 hereof, been of the shortest duration permitted by law, thereby generating the most accelerated increases, permitted by law.

ARTICLE XIII - DISPUTE RESOLUTION

Section 13.1 Arbitration

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article IV, Section 4.7 as Material Conditions.

ARTICLE XIV - WAIVER

Section 14.1 Waiver

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provision of this Agreement.

ARTICLE XV - INDEMNIFICATION

Section 15.1 Defined

It is understood and agreed that in the event the City shall be named as party defendant in any action alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of N.J.S.A. 40A:20-1 et seq., the Entity shall indemnify and hold the City harmless against any and all liability, loss, cost, expense (including reasonable attorneys' fees and costs, through trial and all stages of any appeal, including the cost of enforcing this indemnity) arising out of Agreement. In addition, the Entity expressly waives all statutory or common law defenses or legal principles which would defeat the purposes of this indemnification. The Entity also agrees to defend the suit at its own expense, counsel to be selected by the City, subject to the reasonable consent of the Entity. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the City.

ARTICLE XVI- NOTICE

Section 16.1 Certified Mail

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

Section 16.2 Sent by City

When sent by the City to the Entity the notice shall be addressed to:

The Athena Group
712 Fifth Avenue
Eighth Floor
New York, New York 10019

and

Joseph G. Ragno, Esq.
Waters, McPherson, McNeil, P.C.
300 Lighting Way
Seventh Floor
Secaucus, New Jersey 07096

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

In addition, provided the City is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the City agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

Section 16.3 Sent by Entity

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk
City Hall
280 Grove Street
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Urban Renewal Entity and the Property's Block and Lot number).

ARTICLE XVII-SEVERABILITY

Section 17.1 Severability

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties and the Law. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties and the Law. However, the City shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the City.

ARTICLE XVIII - MISCELLANEOUS

Section 18.1 Construction

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

Section 18.2 Conflicts

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

Section 18.3 Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

Section 18.4 Entire Document

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof.

Section 18.5 Good Faith

In their dealings with each other, utmost good faith is required from the Entity and the City.

ARTICLE XIX - EXHIBITS

Section 19 Exhibits

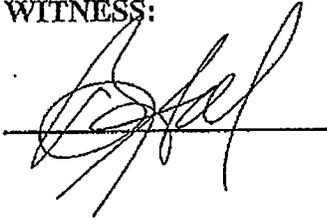
The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds description of the Project;
2. Ordinance of the City authorizing the execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;

7. Good Faith Estimate of Initial Rental Schedule and Lease Terms;
8. Project Employment and Contracting Agreement;
9. Architect's Certification of Actual Construction Costs.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

WITNESS:

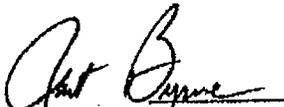


ATHENA BLDG 110 URBAN RENEWAL, LLC

BY:



ATTEST:



ROBERT BYRNE
CITY CLERK

CITY OF JERSEY CITY



BRIAN O'REILLY
BUSINESS ADMINISTRATOR

500802

1

DESCRIPTION

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Jersey City, County of Hudson and State of New Jersey. The legal description is:

COMMENCING at the point formed by the intersection of the easterly line of Warren Street with the northerly line of First Street;

RUNNING THENCE northerly along said easterly line of Warren Street 200 feet to the southerly line of Second Street;

THENCE easterly along the said southerly line of Second Street about 158 feet to the line of property conveyed by American Snuff Company, a New Jersey Corporation, by Deed dated December 27, 1915;

THENCE southerly parallel with the said easterly line of Warren Street and along the line of said property conveyed by American Snuff Company 200 feet to said northerly line of First Street;

THENCE westerly along said northerly line of First Street about 158 feet to the point or place of BEGINNING.

For information only: Said premises are known as 110 First Street, Jersey City, New Jersey and designated as Block 109 Lot West A on the Tax Map of the City of Jersey City.

2

City Clerk File No. Ord. 08-074

Agenda No. 3.P. 1st Reading

Agenda No. 4.N. 2nd Reading & Final Passage



ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE
offered and moved adoption of the following ordinance:

CITY ORDINANCE 08-074

TITLE: ORDINANCE APPROVING A 10 YEAR TAX EXEMPTION FOR A MARKET RATE RESIDENTIAL RENTAL PROJECT TO BE CONSTRUCTED BY ATHENA BLDG 110 URBAN RENEWAL, LLC, AN URBAN RENEWAL ENTITY, PURSUANT TO THE LONG TERM TAX EXEMPTION LAW N.J.S.A. 40A:20-1 ET SEQ.

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Athena BLDG 110 Urban Renewal, LLC, an urban renewal entity, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (Entity); and

WHEREAS, the Entity owns certain property known as Block 109, Lot WA, on the City's Official Tax map, consisting of approximately .73 acres, and more commonly known by the street address of 110 First Street, and more specifically described by metes and bounds, in the application (Property); and

WHEREAS, the Property is located within the Powerhouse Arts Redevelopment Plan Area as required by N.J.S.A. 40A:20-4 and N.J.S.A. 40A:12A-5(g); and

WHEREAS, since the Entity estimates construction costs that will exceed \$25 million, the project shall be subject to a Project Labor Agreement as required by Ordinance 07-123; and

WHEREAS, the Entity has applied for a 10 year long term tax exemption to construct a project consisting of a 35 story building to contain approximately 452 market rate residential rental units, approximately 16,597 square feet of retail space and 343 parking spaces for the use of the residents and retail customers only (Project); and

WHEREAS, Athena BLDG 110 Urban Renewal, LLC, has agreed to:

1. pay the greater of (i) the Minimum Annual Service Charge or (ii) 10% of the Annual Gross Revenue, which sum is estimated to be \$1,585,212 and which sum shall be subject to statutory staged increases over the term of the tax exemption; and
2. pay an annual sum equal to 2% of each prior year's Annual Service Charge as an Administrative Fee; and
3. provide employment and other economic opportunities for City residents and businesses; and
4. pay to the City, for remittance to Hudson County, an amount equal to 5% of the Annual Service Charge upon receipt of that charge; and
5. as part of its consent order in the matter entitled New Gold Equities Corp., and BLDG Management Co., Inc., vs. City of Jersey City, et al, Docket No. 05-cv-03561-DRD-SDW, set aside 25 units on-site as Affordable Dwelling Units and pay \$2,500,000 to subsidize 25 units of Choice Program off-site at the Summit Heights Project, which obligations were

intended to subsume any other Affordable Housing obligations imposed by the City of Jersey City, specifically the requirement to contribute to an affordable housing trust fund as set forth in Section 304-28 of the Jersey City Municipal Code; and

WHEREAS, the City hereby determines that the relative benefits of the project outweigh the cost of the tax exemption, for the following reasons:

1. the current real estate taxes generate revenue of only \$87,674, whereas, the Annual Service Charge as estimated, will generate revenue of more than \$1,585,212 to the City;
2. it is expected that the Project will create approximately 300 jobs during construction and 15 new permanent jobs;
3. the Project will stabilize and contribute to the economic growth of businesses in the surrounding area;
4. the Project will further the overall redevelopment objectives of the Powerhouse Arts Redevelopment Plan;
5. the City's impact analysis, on file with the Office of the City Clerk, indicates that the benefits of the Project outweigh the costs to the City; and

WHEREAS, the City hereby determines that the tax exemption is important in obtaining development of the project and influencing the locational decisions of probable occupants for the following reasons:

1. the relative stability and predictability of the Annual Service Charges will make the Project more attractive to investors needed to finance the Project;
2. the relative stability and predictability of the Annual Service Charges will allow the owner to stabilize its operating budget, allowing a high level of maintenance to the building over the life of the Project, which will attract tenants to the Project and insure the likelihood of the success of the Project; and

WHEREAS, Athena BLDG 110 Urban Renewal Company has initially complied with Executive Order 2002-005 concerning "Disclosure of Lobbyist Representative Status" by filing an appropriate letter in the Office of the City Clerk.

WHEREAS, Athena BLDG 110 Urban Renewal, LLC has agreed to comply with the City of Jersey City's Ordinance 07-123, Requiring Apprenticeships and Project Labor Agreements.

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

A. The application of Athena BLDG 110 Urban Renewal, LLC, an urban renewal company, formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 *et seq.*, a copy of which is on file in the office of the City Clerk, for Block 109, Lot WA, more commonly known by the street address of 110 First Street, more specifically described by metes and bounds in the application is hereby approved.

B. The Mayor or Business Administrator is hereby authorized to execute a tax exemption Financial Agreement and a Project Employment and Contracting Agreement, provided that the prepayment and contribution agreement relating to this Property authorized by separate Resolution has been fully executed. The Financial Agreement shall include at a minimum the following terms and conditions:

1. Term: the earlier of thirteen (14) years from the adoption of the within Ordinance or ten (10) years from the date the project is Substantially Complete;

2. Annual Service Charge: each year the greater of:
 - (a) the Minimum Annual Service Charge equal to \$87,674 upon Project Completion, whether or not the Project is occupied; or
 - (b) 10% of the Annual Gross Revenue, which sum is estimated to be \$1,585,212, which shall be subject to statutory increases during the term of the tax exemption.
3. Administrative Fee: 2% of the prior year's Annual Service Charge;
4. County Payment: 5% of the Annual Service Charge to the City for remittance by the City to Hudson County;
5. Project: A 35 story building to contain approximately 452 market rate residential rental units, approximately 16,597 square feet of retail space and 343 parking spaces for the use of the residents and retail customers only;
6. Affordable Housing Trust Fund: to set aside 25 units on-site as Affordable Dwelling Units and pay \$2,500,000 to subsidize 25 units of Choice Program off-site at the Summit Heights Project, which obligations were intended to subsume any other Affordable Housing obligations imposed by the City of Jersey City, specifically those set forth in Section 304-28 of the Jersey City Municipal Code, as part of its consent order in the matter entitled New Gold Equities Corp., and BLDG Management Co., Inc., vs. City of Jersey City, et al, Docket No. 05-cv-03561-DRD-SDW;
7. An obligation to execute a Project Employment and Contracting Agreement to insure employment and other economic benefits to City residents and businesses.
8. Execution of a Project Labor Agreement as required by Ordinance 07-123. The Project Labor Agreement shall be in substantially the form on file in the office of the City Clerk.
 - C: The City Clerk shall deliver a certified copy of the Ordinance and Financial Agreement to the Tax Assessor and Director of the Division of Local Government Services.
 - D: The application is on file with the office of the City Clerk. The Financial Agreement and Project Employment and Contracting Agreement shall be in substantially the form on file in the Office of the City Clerk, subject to such modification as the Business Administrator or Corporation Counsel deems appropriate or necessary.
 - E. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.
 - F. This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.
 - G. This ordinance shall take effect at the time and in the manner provided by law.
 - H. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore underlining has been omitted. For purposes of advertising only, new matter is indicated by bold face and repealed matter by *italic*.

JM/he
5/05/08

APPROVED AS TO LEGAL FORM

APPROVED: _____

Corporation Counsel

APPROVED: _____

Business Administrator

Certification Required

Ordinance of the City of Jersey City, N.J.

Ord. 08-074

ORDINANCE NO. _____

3.P. MAY 14 2008 4.N. MAY 28 2008

TITLE:

Ordinance approving a 10 year tax exemption for a market rate residential rental project to be constructed by Athena BLDG 110 Urban Renewal, LLC, an urban renewal entity, pursuant to the Long Term Tax Exemption Law N.J.S.A. 40A:20-1 et seq.



RECORD OF COUNCIL VOTE ON INTRODUCTION											
MAY 14 2008 8-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	ABSENT			GAUGHAN	✓			BRENNAN	✓		
SPINELLO	✓			FULOP	✓			FLOOD	✓		
LIPSKI	✓			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING											
MAY 28 2008 8-0											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
BRENNAN/SPINELLO				GAUGHAN	✓			BRENNAN	✓		
SOTTOLANO	✓			FULOP	✓			FLOOD	✓		
SPINELLO	✓			RICHARDSON	✓			VEGA, PRES.	✓		
LIPSKI	ABSENT										

✓ Indicates Vote

YVONNE DALCER

N.V.-Not Voting (Abstain)

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO				GAUGHAN				BRENNAN			
SPINELLO				FULOP				FLOOD			
LIPSKI				RICHARDSON				VEGA, PRES.			

✓ Indicates Vote

N.V.-Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE											
MAY 28 2008 7-1											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
SPINELLO	✓			FULOP		✓		FLOOD	✓		
LIPSKI	ABSENT			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on MAY 14 2008

Adopted on second and final reading after hearing on MAY 28 2008

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on MAY 28 2008

APPROVED:

Mariano Vega Jr.
Mariano Vega, Jr., Council President

Date: MAY 28 2008

APPROVED:

Jeremiah T. Hodson
Jeremiah T. Hodson, Mayor

Date: JUN 11 2008

Date to Mayor MAY 29 2008

Robert Byrne
Robert Byrne, City Clerk

*Amendment(s):

3

APPLICATION FOR LONG TERM TAX EXEMPTION
PURSUANT TO N.J.S.A. 40A: 20-1 ET SEQ. ON BEHALF OF
ATHENA BLDG 110 URBAN RENEWAL, L.L.C.

APPLICANT

Athena BLDG 110 Urban Renewal, L.L.C.
712 Fifth Avenue
Eighth Floor
New York, New York 10019

ATTORNEY FOR APPLICANT

JOSEPH G. RAGNO, ESQ.
Waters, McPherson, McNeill, PC
300 Lighting Way
Secaucus, New Jersey 07096
Telephone: (201) 863-4400
Facsimile: (201) 863-2866

DATE OF SUBMISSION: March 14, 2008

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EXHIBIT INDEX

Exhibit A	Certificate of Formation for Athena BLDG 110 Urban Renewal, L.L.C
Exhibit B	Ownership Disclosure Statement
Exhibit C	Metes & Bounds Description
Exhibit D	Site Plan
Exhibit E	Total Project Cost Estimate
Exhibit F	Good Faith Lease Estimates
Exhibit G	Proposed Financial Agreement
Exhibit H	Estimated Annual Service Charge Schedule
Exhibit I	Estimated Financial Plan

1. THE APPLICANT:

The Applicant, Athena BLDG 110 Urban Renewal, L.L.C. ("Applicant") is a duly formed New Jersey Urban Renewal Limited Liability Company, qualified to do business under the provisions of the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1 et seq. (The "Law"); The Applicant's principal place of business is c/o The Athena Group, 712 Fifth Avenue, Eighth Floor, New York, New York 10019. A copy of the Certificate of Formation for the Applicant is attached as Exhibit A.

The Applicant is wholly owned by its sole member Athena BLDG New Jersey, L.L.C. Ownership Disclosure, Exhibit B.

2. IDENTIFICATION OF PROJECT SITE

The site of the Project is a 31,588 square foot parcel of land identified as Block 109, Lot WA on the Official Tax Map of the City of Jersey City, more commonly known as 110 First Street and described with particularity in the Survey and Metes and Bounds Description set forth in Exhibit C (the "Project Site"). The Project Site will be conveyed to the Applicant in fee prior to the commencement of construction.

3. DESCRIPTION OF PROJECT

The Project which is the subject of this Application is a 35 story 452 unit residential rental building, composed of approximately 641,145 square feet in total (378,808 leasable), broken down as follows:

Residential	469,970± square feet	
Retail	16,597± square feet	
Parking	154,578± square feet	(343 spaces)

Of the 452 residential units, 25 are designated as Affordable Dwelling Units ("ADU") and 427 will be rented at market rates.

The Project Site is located entirely within the boundaries of the Powerhouse Arts Redevelopment Plan Area and the Project, which has received Preliminary Major Site Plan Approval, will conform with the requirements of the Redevelopment Plan. Site Plan, Exhibit D. The estimated Total Project Cost is \$172,286,037. Total Project Cost Estimate, Exhibit E.

4. PROJECT OWNERSHIP STRUCTURE

Applicant is the fee owner of the Project Site and will own the improvements constituting the Project. On substantial completion, the Applicant will lease the Project to residential tenants and third part retail users. Of the residential units, 427 will be leased at market rates and 25 will be leased at affordable lease rates. The 16,597± square feet of retail space will be leased at market rates. See, Good Faith Lease Estimates, Exhibit F attached.

5. REQUESTED TAX ABATEMENT TERMS

A. Estimated Annual Service Charge

Applicant will be obligated to make payment of an Annual Service Charge ("ASC") in lieu of taxes on the Project improvements in year one following full occupancy estimated as follows:

a).	Residential (452 Units)	
	<u>Market Rate (427 Units)</u>	
	10% of Annual Gross Revenue at 95% occupancy estimated to be.....	\$1,427,846
	<u>Affordable (25 Units)</u>	
	5% of Annual Gross Revenue at 100% occupancy estimated to be.....	\$ 12,309
b).	<u>Retail (16,597± square feet)</u>	
	10% of Annual Gross Revenue from Third Party Lessees estimated to be.....	\$ 73,027
c).	<u>Parking (343 Spaces)</u>	
	10% of Annual Gross Revenue at estimated to be	\$ <u>73,030</u>
		<i>Total \$1,585,212</i>

Over the 10 year exemption term it is estimated that more than \$18,100,000 in ASC will be generated by virtue of the rent escalations set forth in the unit and third party leases as well as the statutory staged adjustments. The ASC would be phased-in on a floor-by-floor basis as substantial completion occurs in respect of a floor, over a maximum twelve (12) month period from the substantial completion of the first floor, to allow for a reasonable lease-up period. Proposed Financial Agreement, Exhibit G; Estimated Annual Service Charge Schedule, Exhibit H; Estimated Financial Plan, Exhibit I.

B. Exemption Term

Applicant requests a Financial Agreement having a term of the lesser of 10 years from the date of substantial completion or 15 years from the execution of the Financial Agreement.

C. Affordable Housing Contribution

The Applicant has agreed to set aside 25 of the total of 452 units as Affordable Dwelling Units. In addition the Applicant will contribute \$2.5 million as a subsidy to the construction of a 45 unit Choice Program project concurrently being constructed in Jersey City.

D. Prepayment

In connection with the tax abatement, the Applicant will agree to make a prepayment of \$1,000,000 by June 1, 2009. The prepayment would be credited against the ASC due over the first four years after Substantial Completion.

E. Staged Adjustments

Applicant agrees to the statutory staged adjustments as required by N.J.S.A. 40A:20-12b (2) as follows:

Year	ASC
1 - 6	ASC
7	Greater of ASC or 20% of taxes otherwise due
8	Greater of ASC or 40% of taxes otherwise due
9	Greater of ASC or 60% of taxes otherwise due
10	Greater of ASC or 80% of taxes otherwise due

F. Administrative Fee

Applicant agrees to pay an Administrative Fee over and above the ASC in the amount of two percent (2%) of the prior year's ASC.

G. County Share

Applicant agrees to pay annually, over and above the ASC, an amount equal to five percent (5%) of the ASC to be remitted to the County of Hudson pursuant to N.J.S.A. 40A:20-12b.

6. BENEFIT TO CITY

Aside from the \$1,585,212 in ASC estimated to be generated in Year One, on completion, 110 First Street Project will contribute substantially to the City's housing stock in general. In addition, the Project will result in the creation of 25 new ADUs on site and additional assistance to below market Choice Program housing offsite.

The construction of the Project will result in the creation of 300 construction jobs and, on completion, 15 new permanent jobs.

The obvious direct economic benefit of the Project is the additional revenue flowing by virtue of the ASC which is estimated to exceed \$18,100,000 million over the ten (10) year abatement term.

Whereas the current site generates approximately \$87,674 land taxes, it is estimated that the Project, once fully occupied, will generate at least \$1,585,212 in Annual Service Charges.

7. CONSTRUCTION SCHEDULE

It is currently projected that, following execution of the Financial Agreement, construction will commence in July, 2008. The Project is expected to take 36 months to complete and occupancy is projected for June, 2011. The construction schedule is subject to modification based on any presently unforeseen circumstances.

8. REAL ESTATE TAX INFORMATION

\$87,674.20 real estate taxes were paid on the Project Site to the City in 2007.

9. MUNICIPAL TAX ASSESSMENT

The Project Site, (Block: 109, Lot: WA) is assessed for \$1,580,000 in 2008.

10. STATUS OF THE MUNICIPAL TAXES AND OTHER CHARGES

Municipal taxes and other charges are current through the date of this Application.

11. CERTIFICATION AS TO COMMENCEMENT

Applicant certifies that it will not commence construction on the Project until the Financial Agreement has been authorized and fully executed.

12. ESTIMATED JOBS TO BE CREATED

300 construction jobs are estimated in total.

15 permanent full-time jobs.

13. COMPLIANCE WITH STATE AND LOCAL REDEVELOPMENT LAWS

Applicant certifies that the Project complies with all State and local redevelopment laws and is in conformity with the requirements of the Powerhouse Arts Redevelopment Plan.

Based upon the foregoing, we respectfully request, on behalf of the Applicant, that the City grant this Application and authorize the execution of the proposed Financial Agreement between the Applicant and the City.

Respectfully submitted,

ATHENA BLDG 110 URBAN RENEWAL, L.L.C.

By: Lee S. Faltyn
AUTHORIZED SIGNATORY

Date: March 14, 2008

EXHIBIT

“A”

EXHIBIT A

**CERTIFICATION OF FORMATION FOR
ATHENA BLDG 110 URBAN RENEWAL, L.L.C.**



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO BOX 800
TRENTON, NJ 08625-0204

JON S. CORZINE
GOVERNOR

CHARLES A. RICHMAN
ACTING COMMISSIONER

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer
RE: ATHENA BLDG 110 URBAN RENEWAL, LLC
File # 825
An Urban Renewal Entity

This is to certify that the attached CERTIFICATE OF FORMATION OF AN URBAN RENEWAL ENTITY has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c.431.

Done this 21ST day of SEPTEMBER 2007 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

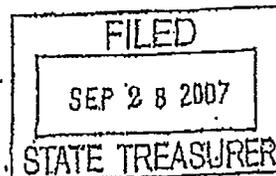
BY Cynthia A. Wilk
Cynthia A. Wilk, Director
Division of Codes and Standards



CERTIFICATE OF FORMATION

OF

Athena BLDG 110 Urban Renewal, LLC



To: Department of the Treasury
State of New Jersey

THE UNDERSIGNED, for the purpose of forming a Limited Liability Company pursuant to the provisions of N.J.S.A. 42:2B-1 et seq., the New Jersey Limited Liability Company Act, hereby executes the following Certificate of Formation:

1. The name of the Limited Liability Company is

Athena BLDG 110 Urban Renewal, LLC

2. The address of the initial registered office of the company in the State of New Jersey is

c/o Kraemer, Burns, Mytelka, Lovell & Kulka, P.A.
675 Morris Avenue, Springfield, New Jersey 07081

and the name of the initial registered agent for service of process at that address is

Athena BLDG 110 Urban Renewal, LLC

3. The company has one or more members.

4. Duration: perpetual

5. The limited liability company has been organized to serve a public purpose; its operations shall be directed toward providing for and making possible the clearance, re-planning, development, or redevelopment of blighted areas or the acquisition, management and operation of a project under the Comprehensive Housing and Redevelopment "Long Term Tax Exemption Law" P.L. 1991, c. 431 (N.J.S.A. 40A:20-1, et seq.)

The purpose for which it is formed shall be to operate under P.L. 1991, c. 431 (C. 40A:20-1 et seq.) and to initiate and conduct projects for the redevelopment of a redevelopment area pursuant to a redevelopment plan, or projects necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or part of one or more redevelopment areas, or low and moderate income housing projects, and, when authorized by financial agreement with the municipality, to acquire, plan, develop, construct, alter, maintain or operate housing, senior citizen housing, business, industrial, commercial, administrative, community, health, recreational, educational or welfare projects, or any combination of two or more of these types of improvement in a single project, under such conditions as to use, ownership, management and control as regulated pursuant to P.L. 1991, c. 431 (C. 40A:20-1 et seq.)

So long as the entity is obligated under financial agreement with a municipality made pursuant to P.L. 1991, c. 431 (C. 40A:20-1 et seq.), it shall engage in no business other than the ownership, operation and management of the project.

The entity has been organized to serve a public purpose; its operations shall be directed toward (1) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (2) the acquisition, management and operation of a project, redevelopment relocation housing project, or low and moderate income housing project under P.L. 1991, c. 431 (C. 40A:20-1 et seq.); and (3) it shall be subject to regulation by the municipality in which its project is situated, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as it remains the owner of a project subject to P.L. 1991, c. 431 (C. 40A:20-1 et seq.)

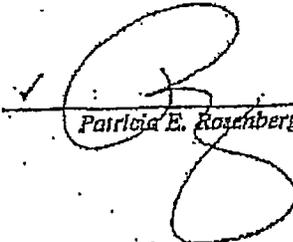
The entity shall not voluntarily transfer more than 10% of the ownership of the project or any portion thereof undertaken by it under P.L. 1991, c. 431 (C. 40A:20-1 et seq.), until it has first removed both itself and the project from all restrictions of P.L. 1991, c. 431 (C. 40A:20-1 et seq.) in the manner required by P.L. 1991, c. 431 (C. 40A:20-1 et seq.) and, if the project includes housing units, has obtained the consent of the Commissioner of Community Affairs to such transfer, with the exception of transfer to another urban renewal entity, as approved by the municipality in which the project is situated, which other urban renewal entity shall assume all contractual obligations of the transferor entity under the financial agreement with the municipality. The entity shall file annually with the municipal governing body a disclosure of the persons having an ownership interest in the project, and of the extent of the ownership interest of each. Nothing herein shall prohibit any transfer of the ownership interest in the urban renewal entity itself provided that the transfer, if greater than 10 percent, is disclosed to the municipal governing body in the annual disclosure statement or in correspondence sent to the municipality in advance of the annual disclosure statement referred to above

The entity is subject of the provisions of Section 18 of P.L.1991, c.431 (C.40A:20-18) respecting the powers of the municipality to alleviate financial difficulties of the urban renewal entity or to perform actions on behalf of the entity upon a determination of financial emergency.

Any housing units constructed or acquired by the entity shall be managed subject to the supervision of, and rules adopted by, the Commissioner of Community Affairs.

The undersigned represents that this filing complies with State law as detailed in NJSÁ 42 and that she is authorized to sign this form on behalf of the Limited Liability Company.

Dated: 8/1/07


Patricia E. Rosenberg, Esq.

EXHIBIT

“B”

EXHIBIT B

OWNERSHIP DISCLOSURE STATEMENT

EXHIBIT B

OWNERSHIP DISCLOSURE STATEMENT

ATHENA BLDG 110 URBAN RENEWAL, L.L.C.

NAME	ADDRESS	PERCENTAGE OWNED
Athena BLDG New Jersey, L.L.C.	c/o The Athena Group 712 Fifth Avenue - Eighth Floor New York, NY 10019	100%
<u>ATHENA BLDG NEW JERSEY, L.L.C</u>		
Athena BLDG 110, L.L.C.	c/o The Athena Group 712 Fifth Avenue - Eighth Floor New York, NY 10019	100%
<u>ATHENA BLDG 110, L.L.C.</u>		
Athena Jersey City 110 First Street, L.L.C.	c/o The Athena Group 712 Fifth Avenue - Eighth Floor New York, NY 10019	50%
(a) BLDG 110 Associates, L.L.C.	c/o BLDG Management Co., Inc. 417 Fifth Avenue - Fourth Floor New York, NY 10019	50%
(b) New Gold Equities Corporation		

I certify that the above represents the names and addresses of all entities who own a 10% or greater interest in Athena BLDG 110 Urban Renewal, L.L.C.

I further certify that no officer or employee of the City of Jersey City has any interest, direct or indirect, in the above entity.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

ATHENA BLDG 110 URBAN RENEWAL, LLC

By:

Name:

Its:

EXHIBIT

“C”

EXHIBIT C

METES & BOUNDS DESCRIPTION

~~Title No. 63824~~

DESCRIPTION

ALL THAT CERTAIN plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the City of Jersey City, County of Hudson and State of New Jersey. The legal description is:

COMMENCING at the point formed by the intersection of the easterly line of Warren Street with the northerly line of First Street,

RUNNING THENCE northerly along said easterly line of Warren Street 200 feet to the southerly line of Second Street;

THENCE easterly along the said southerly line of Second Street about 158 feet to the line of property conveyed by American Snuff Company, a New Jersey Corporation, by Deed dated December 27, 1915;

THENCE southerly parallel with the said easterly line of Warren Street and along the line of said property conveyed by American Snuff Company 200 feet to said northerly line of First Street;

THENCE westerly along said northerly line of First Street about 158 feet to the point or place of BEGINNING.

For information only: Said premises are known as 110 First Street, Jersey City, New Jersey and designated as Block 109 Lot West A on the Tax Map of the City of Jersey City.

EXHIBIT

“D”

EXHIBIT

“E”

EXHIBIT E

TOTAL PROJECT COST ESTIMATE

EXHIBIT E

TOTAL PROJECT COST ESTIMATE

1. Cost of the land to the entity, whether acquired from a private or a public owner.	\$10,000,000
2. Architect, engineer and attorney fees, paid or payable by the entity in connection with the planning, construction and financing of the project.	\$3,625,000
3. Surveying and testing charges in connection therewith.	\$50,000
4. Actual construction costs which the entity shall cause to be certified and verified to the municipality and the municipal governing body by an independent and qualified architect, including the cost of any preparation of the site undertaken at the entity's expense.	\$139,067,039
5. Insurance, interest and finance costs during construction.	\$8,878,991
6. Costs of obtaining initial permanent financing.	\$744,164
7. Commissions and other expenses paid or payable in connection with initial leasing.	\$2,700,824
8. Real estate taxes and assessments during the construction period.	\$266,667
9. A developer's overhead based on a percentage of actual construction costs (5% of item #4).	\$6,953,352
<i>Total Project Cost</i>	<i>\$172,286,037</i>

EXHIBIT

“F”

EXHIBIT F

GOOD FAITH LEASE ESTIMATES

EXHIBIT F

GOOD FAITH LEASE ESTIMATES

The following is a good faith estimate of the initial rents to be achieved from the Project.

A. RESIDENTIAL - MARKET

427 Units (357,856 sf net rentable @ \$42/sf) \$15,029,962

B. RESIDENTIAL - AFFORDABLE

25 One Bedroom @ \$820/month \$246,183/annum

C. RETAIL

16,597 square feet @ \$44/square foot \$730,268/annum

D. PARKING

343 Spaces @ \$175/month \$720,300/annum

EXHIBIT

“G”

EXHIBIT G

PROPOSED FINANCIAL AGREEMENT

EXHIBIT

“H”

EXHIBIT H

**ESTIMATED ANNUAL
SERVICE CHARGE SCHEDULE**

EXHIBIT H

ESTIMATED ANNUAL SERVICE CHARGE

Based on good faith estimates of the rents to be achieved, the Annual Service Charge over the term of the exemption is estimated as follows:

	YEAR 1	10 YEAR TOTAL
A. Market Rate - Residential (427 Units)*	\$1,427,846	\$16,368,658
B. Affordable Dwelling Units (25 Units)	\$12,309	\$141,111
C. Retail (16,597 square feet)	\$73,027	\$837,170
D. Parking (343 spaces)	\$72,030	\$825,743
<i>Grand Total</i>	<i>\$1,585,212</i>	<i>\$18,172,682</i>

* at 95% occupancy

EXHIBIT

“I”

EXHIBIT I

ESTIMATED FINANCIAL PLAN

THE ATHENA GROUP
110 1st Street - Jersey City, NJ

	4	5	6	7	8	9	10	11	12	13	14
	Jan-2012	Jan-2013	Jan-2014	Jan-2015	Jan-2016	Jan-2017	Jan-2018	Jan-2019	Jan-2020	Jan-2021	Jan-2022
OH	15,029,962	15,480,861	15,945,286	16,423,645	16,916,354	17,423,845	17,946,560	18,484,957	19,039,506	19,610,691	19,610,691
	246,183	253,569	261,176	269,011	277,081	285,394	293,956	302,774	311,858	321,213	321,213
	(751,498)	(774,043)	(797,264)	(821,182)	(845,818)	(871,192)	(897,328)	(924,248)	(951,973)	(980,555)	(980,555)
	14,524,647	14,960,386	15,409,198	15,871,474	16,347,618	16,838,047	17,342,188	17,865,484	18,399,388	18,951,570	18,951,570
	790,268	752,176	714,741	791,984	821,923	846,581	871,978	898,138	925,082	952,834	952,834
	720,300	741,922	764,166	787,091	810,704	835,025	860,076	885,878	912,454	939,828	939,828
	-1,450,568	1,494,085	1,538,908	1,585,075	1,632,917	1,681,606	1,731,654	1,784,016	1,837,256	1,892,662	1,892,662
	15,975,215	16,484,471	16,948,105	17,466,549	17,980,246	18,513,652	19,075,242	19,667,499	20,286,924	20,844,032	20,844,032
	(2,462,252)	(2,536,120)	(2,612,203)	(2,690,569)	(2,771,286)	(2,854,425)	(2,940,058)	(3,028,259)	(3,119,207)	(3,212,680)	(3,212,680)
	(1,427,846)	(1,470,682)	(1,514,802)	(1,560,246)	(1,607,094)	(1,655,265)	(1,704,823)	(1,755,071)	(1,808,755)	(1,865,016)	(1,865,016)
	(72,000)	(74,191)	(76,417)	(78,709)	(81,070)	(83,503)	(86,008)	(88,588)	(91,245)	(93,983)	(93,983)
	(73,027)	(75,218)	(77,444)	(79,798)	(82,192)	(84,638)	(87,198)	(89,814)	(92,508)	(95,283)	(95,283)
	(12,309)	(12,678)	(13,059)	(13,451)	(13,854)	(14,270)	(14,698)	(15,139)	(15,592)	(16,061)	(16,061)
	(3,390,096)	(4,006,801)	(4,377,005)	(4,750,819)	(5,178,340)	(5,609,690)	(6,044,981)	(6,484,330)	(6,927,840)	(7,375,696)	(7,375,696)
	12,086,117	12,447,670	12,821,100	13,205,733	13,601,965	14,009,962	14,430,261	14,863,169	15,309,064	15,768,336	15,768,336
	1,597,201.69	1,645,447.13	1,694,810.55	1,746,654.86	1,798,024.51	1,851,965.24	1,907,524.20	1,964,749.93	2,023,692.42	2,084,403.20	2,084,403.20
	8,946,406.30	8,946,406.30	8,946,406.30	8,946,406.30	8,946,406.30	8,946,406.30	8,946,406.30	8,946,406.30	8,946,406.30	8,946,406.30	8,946,406.30
	10,545,277.79	10,591,853.43	10,641,216.85	10,692,961.16	10,744,430.81	10,798,371.54	10,853,390.59	10,911,156.23	10,970,098.72	11,030,809.50	11,030,809.50
	1,541,188.73	1,855,816.58	2,179,883.27	2,513,671.96	2,857,474.58	3,211,596.72	3,576,330.63	3,952,012.74	4,338,966.31	4,737,526.46	4,737,526.46

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State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BROAD STREET
PO Box 800
TRENTON, NJ 08625-0204

JON B. CORZINE
GOVERNOR

CHARLES A. RICHMAN
ACTING COMMISSIONER

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer
RE: ATHENA BLDG 110 URBAN RENEWAL, LLC
File # 826
An Urban Renewal Entity

This is to certify that the attached CERTIFICATE OF FORMATION OF AN URBAN RENEWAL ENTITY has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c.431,

Done this 21ST day of SEPTEMBER 2007 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

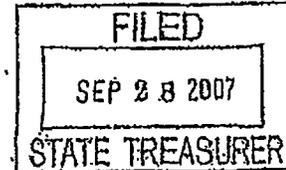
BY *Cynthia A. Wilk*
Cynthia A. Wilk, Director
Division of Codes and Standards



CERTIFICATE OF FORMATION

OF

Athena BLDG 110 Urban Renewal, LLC



To: Department of the Treasury
State of New Jersey

THE UNDERSIGNED, for the purpose of forming a Limited Liability Company pursuant to the provisions of N.J.S.A. 42:2B-1 et seq., the New Jersey Limited Liability Company Act, hereby executes the following Certificate of Formation:

1. The name of the Limited Liability Company is

Athena BLDG 110 Urban Renewal, LLC

2. The address of the initial registered office of the company in the State of New Jersey is

c/o Kraemer, Burns, Mytelka, Lovell & Kulka, P.A.
675 Morris Avenue, Springfield, New Jersey 07081

and the name of the initial registered agent for service of process at that address is

Athena BLDG 110 Urban Renewal, LLC

3. The company has one or more members.

4. Duration: perpetual

5. The limited liability company has been organized to serve a public purpose; its operations shall be directed toward providing for and making possible the clearance, re-planning, development, or redevelopment of blighted areas or the acquisition, management and operation of a project under the Comprehensive Housing and Redevelopment "Long Term Tax Exemption Law" P.L. 1991, c. 431 (N.J.S.A. 40A:20-1, et seq.)

The purpose for which it is formed shall be to operate under P.L. 1991, c. 431 (C. 40A:20-1 et seq.) and to initiate and conduct projects for the redevelopment of a redevelopment area pursuant to a redevelopment plan, or projects necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or part of one or more redevelopment areas, or low and moderate income housing projects, and, when authorized by financial agreement with the municipality, to acquire, plan, develop, construct, alter, maintain or operate housing, senior citizen housing, business, industrial, commercial, administrative, community, health, recreational, educational or welfare projects, or any combination of two or more of these types of improvement in a single project, under such conditions as to use, ownership, management and control as regulated pursuant to P.L. 1991, c. 431 (C. 40A:20-1 et seq.)

So long as the entity is obligated under financial agreement with a municipality made pursuant to P.L. 1991, c. 431 (C. 40A:20-1 et seq.), it shall engage in no business other than the ownership, operation and management of the project.

The entity has been organized to serve a public purpose; its operations shall be directed toward (1) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (2) the acquisition, management and operation of a project, redevelopment relocation housing project, or low and moderate income housing project under P.L. 1991, c. 431 (C. 40A:20-1 et seq.); and (3) it shall be subject to regulation by the municipality in which its project is situated, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as it remains the owner of a project subject to P.L. 1991, c. 431 (C. 40A:20-1 et seq.)

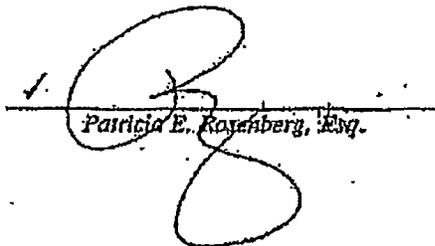
The entity shall not voluntarily transfer more than 10% of the ownership of the project or any portion thereof undertaken by it under P.L. 1991, c. 431 (C. 40A:20-1 et seq.), until it has first removed both itself and the project from all restrictions of P.L. 1991, c. 431 (C. 40A:20-1 et seq.) in the manner required by P.L. 1991, c. 431 (C. 40A:20-1 et seq.) and, if the project includes housing units, has obtained the consent of the Commissioner of Community Affairs to such transfer, with the exception of transfer to another urban renewal entity, as approved by the municipality in which the project is situated, which other urban renewal entity shall assume all contractual obligations of the transferor entity under the financial agreement with the municipality. The entity shall file annually with the municipal governing body a disclosure of the persons having an ownership interest in the project, and of the extent of the ownership interest of each. Nothing herein shall prohibit any transfer of the ownership interest in the urban renewal entity itself provided that the transfer, if greater than 10 percent, is disclosed to the municipal governing body in the annual disclosure statement or in correspondence sent to the municipality in advance of the annual disclosure statement referred to above.

The entity is subject to the provisions of Section 18 of P.L. 1991, c. 431, (C.40A:20-18) respecting the powers of the municipality to alleviate financial difficulties of the urban renewal entity or to perform actions on behalf of the entity upon a determination of financial emergency.

Any housing units constructed or acquired by the entity shall be managed subject to the supervision of, and rules adopted by, the Commissioner of Community Affairs.

The undersigned represents that this filing complies with State law as detailed in N.J.S.A. 42 and that she is authorized to sign this form on behalf of the Limited Liability Company.

Dated: 8/1/07


Patricia E. Rosenberg, Esq.

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EXHIBIT 5

ESTIMATED CONSTRUCTION SCHEDULE

It is currently projected that, following execution of the Financial Agreement, construction will commence in July, 2008. The Project is expected to take 36 months to complete and occupancy is projected for June, 2011. The construction schedule is subject to modification based on any presently unforeseen circumstances.

500272

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EXHIBIT F

GOOD FAITH LEASE ESTIMATES

The following is a good faith estimate of the initial rents to be achieved from the Project.

A. RESIDENTIAL - MARKET

427 Units (357,856 sf net rentable @ \$42/sf) \$15,029,962

B. RESIDENTIAL -- AFFORDABLE

25 One Bedroom @ \$820/month \$246,183/annum

C. RETAIL

16,597 square feet @ \$44/square foot \$730,268/annum

D. PARKING

343 Spaces @ \$175/month \$720,300/annum

8

PROJECT EMPLOYMENT & CONTRACTING AGREEMENT

This Project Employment & Contracting Agreement is made on the 17th day of June, 2008, between the **CITY OF JERSEY CITY [City]** and **ATHENA BLDG 110 URBAN RENEWAL, LLC**, having its principal office at 712 Fifth Avenue, Eighth Floor, New York, NY 10019. Recipient agrees as follows:

I. Definitions:

The following words and terms, when used in this agreement, shall have the following meanings unless the context clearly indicates otherwise.

1. "City" means the Business Administrator of the City of Jersey City, or his designee, including any person or entity which enters into a contract with the City to implement, in whole or in part, this agreement.
2. "Construction Contract" means any agreement for the erection, repair, alteration or demolition of any building, structure, bridge, roadway, or other improvement on a Project Site.
3. "Contractor" means any party performing or offering to perform a prime contract on behalf of the Recipient.
4. "DEO" means the Division of Economic Opportunity under the Department of Administration, located at 121-125 Newark Avenue, Jersey City, NJ 07302, Telephone #(201) 547-5611. DEO is in charge of Project Employment & Contracting coordination and monitoring on projects receiving abatements.
5. "Economic Incentive" means a tax abatement or exemption for a property or project which requires approval of the Municipal Council and which reduces the annual amount of taxes otherwise due, by \$25,000 or more in the aggregate;
6. "Employment" means any job or position during the construction and operational phase of the project. It includes positions created as a result of internal promotions, terminations, or expansions within the Recipient's work force which are to be filled by new employees. However, positions filled through promotion from within the Recipient's existing work force are not covered positions under this agreement.
7. "Local Business" means a bona fide business located in Jersey City.
8. Mayor Jerramiah T. Healy's Business Cooperative Program means the group within DEO under the Department of Administration responsible for collecting local and minority business contracts and capability information. This group operates the Supplier Alert service which is to be used by the Recipient to meet their good faith business contracting and construction subcontracting goals.

9. "Minority" means a person who is African, Hispanic, Asian, or American Indian defined as follows:
- a) "African-American" means a person having origins in any of the black racial groups of Africa.
 - b) "Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Latino culture or origin, regardless of race, excluding, however, persons of European origin.
 - c) "Asian" means a person having origins in any of the original people of the Far East, Southeast Asia, and subcontinent India, Hawaii or the Pacific Islands.
 - d) "American Indian" means a person having origins in any of the original people of North America who maintains cultural identification through tribal affiliation or community recognition.
10. "Minority or Woman Owned Local Business" means a bona fide business located in Jersey City which is fifty-one (51%) percent or more owned and controlled by either a Minority or woman.
11. "Non-Traditional Jobs" means jobs which are held by less than twenty (20%) percent women, as reported by the New Jersey Department of Labor, Division of Labor Market, and Demographic Research for Jersey City, which report shall be on file with the City Clerk.
12. "Permanent Jobs" mean newly created long term salaried positions, whether permanent, temporary, part time or seasonal.
13. "Project or Project Site" means the specific work location or locations specified in the contract.
14. The "Project Employment & Contracting Coordinator" is a member of the DEO staff under the Department of Administration who is in charge of coordinating Project Employment & Contracting projects. Contractors and developers engaged in projects covered by Project Employment & Contracting Agreements will direct inquiries to the Project Employment & Contracting Coordinator.
15. The "Project Employment & Contracting Monitor" or "Monitor" is a member of the DEO staff under the Department of Administration directly under the command of the Project Employment & Contracting Coordinator, who is in charge of monitoring the site, collecting the reports and documentation, and other day-to-day Project Employment & Contracting housekeeping as stipulated by this agreement.

16. The "Project Employment & Contracting Officer" or "Officer" is an employee of the Recipient who is designated by the Recipient to make sure the Recipient is in compliance with the Recipient's Project Employment & Contracting agreement.
17. "Recipient" means any individual, partnership, association, organization, corporation or other entity, whether public or private, or for profit or non-profit, or agent thereof, which receives an Economic Incentive and shall include any Contractor, Subcontractor or agent of the Recipient.
18. "The Registry" or "Jersey City Employment Registry" means a list maintained by the City or its designee of Jersey City residents seeking employment and Local Businesses, including Minority or Woman Owned Local Businesses, seeking contracts.
19. "Subcontract" means a binding legal relationship involving performance of a contract that is part of a prime contract.
20. "Subcontractor" means a third party that is engaged by the prime Contractor to perform under a subcontract all or part of the work included in an original contract.
21. "Substantial Completion" means the determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

II. Purpose:

The City wishes to assure continuing employment opportunities for City residents, particularly residents who are Minorities, and business opportunities for Local Businesses, especially Minority and Women Owned Local Businesses, with employers located in or relocating to the City who are the Recipients of Economic Incentives. The City has determined to accomplish that goal by requiring the Recipient of an Economic Incentive to act in Good Faith, as defined herein, and discharge its obligations under this Agreement. To the extent mandated by State and Federal law and so long as the Entity discharges its Good Faith obligations under this agreement, the City acknowledges that the Recipient and its contractors are free to hire whomever they choose.

III. Good Faith Goals:

In the event the Recipient is able to demonstrate that its work force already meets the goals set forth below or is able to meet such goals during the term of this agreement, the Recipient will not be required to comply with the interviewing or reporting obligations set forth in Section VI 1., A-L (Construction Jobs) and Section VI, 2., A-J (Permanent Jobs). All goals for Construction Jobs shall be calculated as a percentage of the total number of work hours in each trade from the beginning of the project to its completion.

1. **Employment:** The Recipient shall make a Good Faith effort to achieve the goal of a work force representing fifty-one (51%) percent City residents, fifty-one (51%) percent of whom

are residents who are Minorities and, in Non-Traditional Jobs, six point nine (6.9%) percent of whom are residents who are women, it being understood that one employee may satisfy more than one category.

2. **Business Contracting:** The Recipient shall make a Good Faith effort to achieve the goal of awarding twenty (20%) percent of the dollar amount of its contracts to Local Businesses, fifty-one (51%) percent of which shall be Minority or Women Owned Local Businesses. If fifty-one (51%) percent of Minority or Women Owned Local Businesses cannot be obtained, that percentage of contracts must still be applied to local vendors.

IV. Recipient Designee:

The Recipient shall designate a principal officer of its firm to be responsible for administering the agreement detailed herein and to report to and confer with the City in order to discharge its Good Faith obligations as defined in this agreement. This officer should be designated as the Project Employment & Contracting Officer.

The Recipient should send a letter of introduction regarding the "Project Employment & Contracting Compliance Officer" to the Project Employment & Contracting Coordinator prior to any preconstruction meetings. An example of this letter can be found in Appendix A. This principle officer should also be present for all preconstruction meetings.

The Recipient should send a letter regarding the "Project Employment & Contracting Compliance Officer" to the employees of the Recipient's company. An example of this letter can be found in Appendix AZ

V. Term:

This agreement shall be in effect for a period co-terminus with the effective period of the tax exemption [the Economic Incentive]. Thus, it will commence on the date the City Council adopted Ordinance 08-074 approving the tax exemption and terminate the earlier of 14 years from the date of the adoption of that Ordinance or 10 years from the date of Substantial Completion of the Project.

VI. Good Faith Defined:

I. **Construction Jobs:** Good Faith shall mean compliance with all of the following conditions:

A. Initial Manning Report:

- i) Prior to the commencement of their work on the Project, each Contractor /Subcontractor shall prepare an Initial Manning Report.
- ii) The Initial Manning Report should contain an estimate of the total hours in each construction trade or craft and the number of hours to be worked by City

residents, including a list of the number of minority residents and women residents that will work in each trade or craft, including the work hours to be performed by such employees of any and all Contractors and Subcontractors. Attached hereto as Appendix B is the Recipient's Initial Manning Report.

- iii) The Initial Manning Report shall be filed with the Project Employment and Contracting Monitor, who must accept said Report prior to the Recipient entering into any construction contract. An example of this acceptance letter is given in Appendix C.

B. Developer's Contracting Obligations

- i) Once the developer submits the project's initial manning report, he/she must forward a letter with requests for quotation or bid to Mayor Jerramiah T. Healy's Business Cooperative Program for local and minority vendors for any construction or building operating goods, services and sub-contracting opportunities. An example of this letter is given in Appendix D.
- ii) The developer shall make a good faith effort to contact those businesses and individuals who submit bids. This effort must be documented by letter, which will be sent to Mayor Jerramiah T. Healy's Business Cooperative Program at DEO under the Department of Administration. An example of this letter can be found in Appendix D2.

C. Contractor's/Subcontractor's Compliance Statement

Prior to commencement of their work on the Project, each Contractor or Subcontractor must agree in writing to comply with this agreement and the employment goals elaborated herein. An example of this Compliance Statement can be found in Appendix E.

D. Union Statement of Using Its Best Efforts

- i) Prior to commencement of their work on the Project, the contractor/subcontractor must submit a statement expressing its adherence to the Project Employment & Contracting Agreement to each union with which he/she has a collective bargaining agreement covering workers to be employed on the project.
- ii) The Compliance Statement shall include a union statement for the particular union to sign, which claims the union will use its best efforts to comply with the employment goals articulated in the Project Employment & Contracting agreement. This compliance statement is detailed in Appendix F. A copy of the signed compliance statement must be sent to the Project Employment & Contracting Monitor in DEO under the Department of Administration before work starts in order for a developer to be in compliance.

- iii) The Recipient will require the Contractor or Subcontractor to promptly notify the City of any refusal or failure of a union to sign the statement. If a particular union refuses to sign a statement, the Recipient will document its efforts to obtain such statement and the reasons given by the union for not signing such statement, and submit such documentation to the Project Employment & Contracting Monitor in DEO under the Department of Administration.

E. Sub-Contractors

The developer shall require that each prime contractor be responsible for the compliance of his/her subcontractors with the aforementioned Project Employment & Contracting requirements during the performance of the contract. Whenever the contractor sub-contracts a portion of the work on the project, the contractor shall bind the subcontractor to the obligations contained in these supplemental conditions to the full extent as if he/she were the contractor.

F. Union Apprentices

The contractor is responsible for assuring that resident and minority apprentices account for at least fifty (50%) percent of the total hours worked by union apprentices on the job in each trade listed in which apprentices are employed, according to the apprentice-to-journey-worker ratio contained in the collective bargaining agreement between the various unions, and shall hold each of his/her subcontractors to this requirement. The Recipient will require the contractor or subcontractor to promptly notify the City of any refusal of a union to utilize resident and minority apprentices.

G. Monthly Manning Report

- i). The Recipient will cause the Contractor to complete and submit Monthly Project Manning Reports to the Project Employment & Contracting Monitor in DEO under the Department of Administration by the seventh day of the month following the month during which the work is performed, for the duration of the contract.
- ii) The report will accurately reflect the total hours in each construction trade or craft and the number of hours worked by City residents, including a list of the number of minority resident and women resident workers in each trade or craft, and will list separately the work hours performed by such employees of the Contractor and each of its Subcontractors during the previous month. The Monthly Manning Report shall be in the form attached hereto as Appendix G.
- iii) The Recipient is responsible for maintaining or causing the Contractor to maintain records supporting the reported work hours of its Contractors or Subcontractors.

H. Monthly Certified Payroll Report

- i) The Recipient will cause the Contractor to furnish the Project Employment & Payroll report shall be in the form attached hereto as Appendix H.
- ii) Payroll reports must be submitted on a monthly basis with the Monthly Manning Report or the Recipient is no longer in compliance.

I. Equal Employment Opportunity Reports

Prior to commencement of work on the Project, the Recipient will request copies of the most recent Local Union Report (EEO-3) and Apprenticeship Information Report (EEO-2) which are required to be filed with the US Commission of Equal Employment Opportunity Commission by the collective bargaining unit. These reports will be forwarded to the Project Employment & Contracting Monitor within one month of the signing of the Project Employment & Contracting Agreement.

J. Other Reports

In addition to the above reports, the Recipient shall furnish such reports or other documents to the City as the City may request from time to time in order to carry out the purposes of this agreement.

K. Records Access

The Recipient will insure that the City will have reasonable access to all records and files reasonably necessary to confirm the accuracy of the information provided in the reports.

L. Work Site Access For Monitor

- i) The City will physically monitor the work sites subject to this agreement to verify the accuracy of the monthly reports. Each work site will be physically monitored approximately once every two weeks, and more frequently if it is deemed reasonably necessary by the City. The City's findings shall be recorded in a "Site Visit Report." An example of a bi-weekly site visit report can be found in Appendix I.
- ii) The Recipient shall require the Contractor and Sub-contractor to cooperate with the City's site monitoring activities and inform the City as to the dates they are working at the Project site. This includes specifically instructing the on-site construction manager about the monitoring process, and informing him/her that the monitor will contact him/her to set up an initial meeting. In the case of projects with multiple locations, the Recipient shall inform the City of the dates they are working at each site location(s) where they are working, in order to facilitate the monitoring.

2. **Permanent Jobs:** Good Faith shall mean compliance with all of the following conditions:

A. Pre-hiring Job Awareness: At least eight (8) months prior to the hiring of a Recipient's permanent workforce, the Project Employment & Contracting officer for the Recipient will sit down with the head of the Registry to discuss how the Recipient plans to hire its permanent workforce. The following issues should be covered in this meeting:

- i) whether subcontractors will be used in the hiring process.
- ii) the specific types of jobs that need to be filled.
- iii) the qualifications needed for these particular jobs.
- iv) possible training programs offered by the permanent employer.
- v) the Recipient's goals and how it plans to meet these goals.
- vi) any other issues which need to be addressed by the Registry.

1. Subcontractor Notification -- If the Recipient decides to subcontract any portion or all of its permanent workforce, then the Recipient must receive a signed acknowledgment from the subcontracting party that it will abide by the Project Employment & Contracting Agreement before said subcontractor begins staffing permanent employees. The Recipient must forward a copy of the signed acknowledgment to the Project Employment & Contracting Monitor. An example of this signed acknowledgment can be found in Appendix E.

2. Subcontractor Pre-Hiring Job Awareness Meeting -- Each subcontractor hired to staff permanent job positions must appoint a Project Employment & Contracting Officer to meet with the head of the Registry to discuss the same issues presented above in VI 2.A(I-vi).

3. Subcontractors of Subcontractors--Subcontractors of subcontractors are subject to the same requirements for the initial subcontractors above in Section VI 2.A.

B. Documentation of Hiring Plan--Once the Pre-Hiring Job Awareness Meeting has taken place, the Recipient must put together a document with goals and totals for future permanent employment needs. This plan should summarize all that was discussed in the Pre-Hiring Awareness Meeting, list estimates for manpower needs, set residential and minority employment goals commensurate with the Project Employment & Contracting Agreement, and show how the Recipient plans to meet these goals. An example of this plan is found in Appendix J.

C. Pre-Hiring Notification: At least ten (10) working days prior to advertising for any employees, the Recipient or the Recipient's subcontractor shall provide the Registry with a written notice, which shall state the job title, job description and minimum qualifications, rate of pay, hours of work and the hiring date for each position to be filled, in qualitative and objective terms which will enable the Registry to refer qualified applicants to the Recipient.

D. Advertisement: At the request of the City, or because the City does not have qualified applicants to refer to the Recipient, the Recipient will place an advertisement for the jobs in a newspaper which is regularly published in Jersey City. The Recipient must furnish the Project Employment & Contracting Coordinator in DEO under the Department of Administration with a copy of this advertisement.

E. Pre-Hiring Interview: The Recipient shall interview any qualified applicants referred to it from the Registry, to be maintained by the City or its designee. In the event advertisement is required, the Recipient agrees to interview any qualified persons responding to the advertisement.

F. Semi-Annual Employment Reports: The Recipient will submit written semi-annual employment reports to the Project Employment & Contracting Monitor in the form to be provided by the City. The report will describe the job, whether the job is held by a City resident, minority resident or woman resident. The report will explain in writing the reasons why any qualified applicant referred by the Registry (or in the event advertisement is required, any qualified person responding to the advertisement) was not hired. An example of this report is found in Appendix K.

G. Record Access: The Recipient shall provide the City with reasonable access to all files and records including payroll and personnel information reasonably necessary to confirm the accuracy of the information set forth in the semi-annual reports.

H. Work Place Access: The Recipient shall provide the City with reasonable access to the site to physically monitor the work site to verify the accuracy of the information set forth in the semi-annual reports.

I. Other Reports, Documents: In addition to the above reports, the Recipient shall furnish such reports or other documents that the City may request from time to time in order to implement the purposes of this agreement.

J. Incorporation of Agreement: The Recipient shall incorporate the provisions of this Agreement in all contracts, agreements and purchase orders for labor with any service, maintenance, security or management agent or Contractor engaged by the Recipient whose personnel will be assigned to the Recipient project.

3. Business Contracting

Good Faith shall mean compliance with all of the following conditions:

1) Solicitation of Businesses:

- a) One month before accepting bids for goods and services, the Recipient must forward a letter with requests for quotation or bid to Mayor Jerramiah T. Healy's Business Cooperative Program for local and local minority vendors for any construction or building operating goods, services and subcontracting opportunities. An example of this letter can be found in Appendix D.
- b) After submission of bids, the Recipient will document whether the bid was accepted or rejected, and state the reason why. An example of this documentation can be found in Appendix D2.

- i) Semi-Annual Purchasing Reports: The Recipient will submit written semi-annual purchasing reports which will include a list of all contracts awarded over a six month period and the dollar amounts of these contracts. The reports will specify the number and dollar amount of contracts awarded to Local Businesses and Minority or Women Owned Local Businesses. An example of these reports can be found in Appendix L.
- ii) No Utilization of Local and Local Minority Vendors As Conduits For Vendors That Are Not Local Or Minority Owned:

The Recipient pledges not to use local and local minority vendors solely as conduits for vendors that are not local and minority owned. Any discovery by DEO under the Department of Administration of a Recipient, either knowingly or unknowingly, using the masthead of a local or minority owned business as a way to get credit for local or minority employment when it should not, will immediately subject the Recipient to the penalties listed in Section VIII (d) below.

4. Summation of Documentation Needed For Compliance with Agreement

- 1. Letter Designating Project Employment & Contracting Officer (Appendix A)
- 2. Letter designating Project employment & Contracting Officer to Recipient's Employees (App.) AZ
- 3. Example of Initial Manning Report (Appendix B)
- 4. Letter Of Acceptance of Initial Manning Report (Appendix C)
- 5. Letter From Developer Forwarding Requests for Quotation or Bid for Minority and Residential Vendors from Mayor Jerramiah T. Healy's Business Cooperative Program (Appendix D)
- 6. Documentation of Bid Submission (Appendix D2)
- 7. Letter Expressing Project Employment & Contracting Obligations to Contractors/ Subcontractors (Appendix E)
- 8. Union Statement of Best Efforts (Appendix F)
- 9. Example of Monthly Manning Report (Appendix G)
- 10. Example of Monthly Certified Payroll Report (Appendix H)
- 11. Example of Bi-Weekly Site Visit Report (Appendix I)
- 12. Example of Documentation of Hiring Plan (Appendix J)
- 13. Example of Semi-Annual Employment Report (Appendix K)
- 14. Example of Semi-Annual Purchasing Report (Appendix L)

VII. Notices of Violation:

- 1. Advisory Notice: The City will issue a written Advisory Notice to the Recipient if there is non-compliance with a Good Faith requirement as defined in this agreement. The Advisory Notice shall explain in sufficient detail the basis of the alleged violation. The Recipient shall have four (4) working days to correct the violation. An example of an Advisory Notice can be found in Appendix M.

2. - Violation Notice: If the alleged violation set forth in the Advisory Notice has not been corrected to the satisfaction of the City within four (4) working days, the City shall then issue a Violation Notice to the Recipient. The Violation Notice shall explain in sufficient detail the basis of the alleged, continuing violation. The Recipient will have three (3) working days to correct the violation. An example of a Violation Notice can be found in Appendix N.
3. Correcting the Violation: Either or both the Advisory Notice or the Violation Notice may be considered corrected if the Recipient satisfies the requirements of this agreement and so advises the City in writing, subject to confirmation by the City.
4. Extension of Time to Correction: Either the Advisory Notice or the Violation Notice may be held in abeyance and the time for correction extended if the Recipient enters into satisfactory written agreement with the City for corrective action which is designed to achieve compliance. If Recipient fails to abide by the terms of such agreement the violation will be considered not corrected.
5. Meetings Concerning Violations: The City may provide an opportunity for a meeting with the Recipient, his Contractors or Subcontractors in an effort to achieve compliance; or may respond to Recipient's request for a meeting after the Recipient has made timely submission of a written explanation pursuant to the above. The meeting shall be requested no later than two days after the alleged violator has submitted the written explanation.
6. Interviews Relating to Violations: The City may conduct interviews and may request additional information from appropriate parties as is considered necessary to determine whether the alleged violation has occurred.
7. Determination of Violation: The City shall issue a determination of whether the Recipient is in violation of this agreement as soon as possible but not later than thirty days after the delivery of the Violation Notice to the Recipient. If the City determines that the Recipient is in violation, the City shall be entitled to the liquidated damages provided below.

VIII. Liquidated Damages/Interest:

While reserving any other remedies the City may have at law or equity for a material breach of the above terms and conditions, the parties agree that damages for violations of this agreement by the Recipient cannot be calculated within any reasonable degree of mathematical certainty. Therefore, the parties agree that upon the occurrence of a material breach of any of the above terms and conditions and after notice and expiration of any period to correct the violation, the City will be entitled to liquidated damages from the Recipient in the following amounts:

- a) failure to file Initial Manning Reports (Construction Jobs) or Pre-Hiring Notification (Permanent Jobs) or Pre-Contracting Notification (Business

Contracting): an amount equal to a Five (5%) percent increase in the estimated annual payment in lieu of taxes;

- b) failure to conduct Pre-hiring Interviews or submit Compliance Statement (Construction Jobs) or Solicit Bids (Business Contracting): an amount equal to Three (3%) percent increase in the estimated annual payment in lieu of taxes;
- c) failure to allow record or work place access or submit any other required reports (all categories): an amount equal to Two (2%) percent increase in the estimated annual payment in lieu of taxes.
- d) the use of the local or local minority business' masthead for labor or work supplied by a non local or local minority vendor: An amount equal to Five (5%) percent increase in the estimated annual payment in lieu of taxes. Interest shall be charged on any damages at the legal rate of interest as calculated by the Tax Collector.
- e) the late payment of any liquidated sum shall accrue interest at the rate of 8%.

IX. Commercial Tenants at the Project Site:

- 1. The Recipient shall send all tenants of commercial space within the Project Site a letter and a Tenant Employment Services Guide in the form attached as Appendix O.
- 2. The Recipient shall solicit information from tenants of commercial space about the composition of the work force of each tenant. The information solicited will be submitted to the Project Employment & Contracting Monitor, which shall provide the Recipient with a questionnaire in the form attached as Appendix P.
- 3. The Recipient will send the results of its solicitation to the Project Employment & Contracting Monitor no later than October 31 of each year.
- 4. The Recipient shall send all tenants of commercial space within the Project Site a Supplier Alert Service Registration Package in the form attached as Appendix Q.

X. Notices

Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, addressed as follows:

- 1. When sent by the City to the Recipient it shall be addressed to:

The Athena Group
712 Fifth Avenue
Eighth Floor
New York, New York 10019

and

Joseph G. Ragno, Esq.
Waters, McPherson, McNeil, P.C.
300 Lighting Way
Seventh Floor
Secaucus, New Jersey 07096

2. When sent by the Recipient to the City, it shall be addressed to:

Project Employment & Contracting Monitor
Department of Administration
Division of Economic Opportunity
121-125 Newark Avenue
3rd Floor
Jersey City, New Jersey 07302

with separate copies to the Mayor and the Business Administrator; unless prior to giving of such notice, the City or the Recipient shall have notified the other in writing.

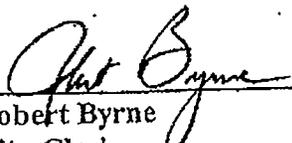
XI. Adoption, Approval, Modification:

This agreement shall take effect on the date that the Economic Incentive is approved by the Municipal Council.

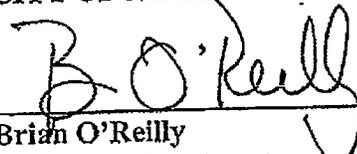
XII. Controlling Regulations and Laws:

To the extent required by State and Federal Law and so long as the Entity discharges its Good Faith obligations under this agreement, the City agrees and acknowledges that the Recipient and its contractors are free to hire whomever they choose. If this agreement conflicts with any collective bargaining agreement, the City agrees to defer to such agreements so long as the Recipient provides the City with a copy of the offending provision in the collective bargaining agreement.

ATTEST:


Robert Byrne
City Clerk

CITY OF JERSEY CITY

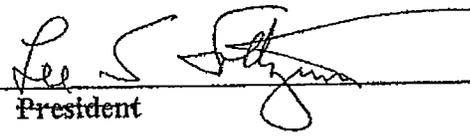

Brian O'Reilly
Business Administrator

WITNESS:



~~Secretary~~

ATHENA BLDG 110 URBAN RENEWAL, LLC

BY: 
President

500805

APPENDIX A

Kenneth Browne
110 FIRST STREET PROJECT
C/O THE ATHENA GROUP, LLC
1776 Broadway, Suite 606
New York, NY 10019

RE: DESIGNATION OF PROJECT EMPLOYMENT & CONTRACTING OFFICER ("PECO")
110 FIRST STREET PROJECT
APPENDIX A

Attention: All Employees

P. Angelique Morrison, of Crescent Consulting, has been retained and appointed the Project Employment & Contracting Officer, under the direct supervision of Kenneth Browne for the 110 First Street Project. Ms. Morrison will handle all complaints and notices regarding noncompliance with the Good Faith Effort goal as stipulated in the Project Employment & Contracting Agreement dated on _____ between 110 First Street Project and the City of Jersey City.

Ms. Morrison can be reached by telephone at (201) 984-1022. Her office address is as follows:

Crescent Consulting – New Jersey
123 Town Square Place, #436
Jersey City, New Jersey 07310

Kenneth Browne

110 First Street
Site

xc: Project Employment & Contracting Monitor
Division of Economic Opportunity

APPENDIX AZ

Kenneth Browne
110 FIRST STREET PROJECT
C/O THE ATHENA GROUP, LLC
1776 Broadway, Suite 606
New York, NY 10019

RE: DESIGNATION OF PROJECT EMPLOYMENT & CONTRACTING OFFICER TO RECIPIENT'S
EMPLOYEES
110 FIRST STREET PROJECT
APPENDIX AZ

Attention: All Employees

P. Angelique Morrison, of Crescent Consulting, has been retained and appointed the Project Employment & Contracting Officer, under the direct supervision of Kenneth Browne for the 110 First Street Project. Ms. Morrison will handle all complaints and notices regarding noncompliance with the Good Faith Effort goal as stipulated in the Project Employment & Contracting Agreement dated on _____ between 110 First Street Project and the City of Jersey City.

Ms. Morrison can be reached by telephone at (201) 984-1022. Her office address is as follows:

Crescent Consulting – New Jersey
123 Town Square Place, #436
Jersey City, New Jersey 07310

Kenneth Browne

110 First Street

Site

xc: Project Employment & Contracting Monitor
Division of Economic Opportunity

Form JCPE-1
5/98

INITIAL PROJECT MANNING REPORT - CONSTRUCTION

For Office Use Only

Rec'd _____
By _____
Action _____

READ INSTRUCTIONS ON BACK CAREFULLY BEFORE COMPLETING THIS FORM

(1) Name & address of prime contractor:	Project # _____	Date of Contract Award _____
	Contract # _____	Dollar Amount _____

name _____
street address _____
city _____ state _____ zip code _____

(2) MBE [] WBE [] (4) Name & location of Project _____

(5) Trade or Craft	Total number of Employees			Total Min. & Fem. JC Employees		Jersey City Residents	Projected phase-in date	Projected completion date
	Total	Minority	Female	Minority	Female			
01 Asbestos Worker								
02 Bricklayer or Mason								
03 Carpenter								
04 Electrician								
05 Glazier								
06 HVAC Mechanic								
07 Ironworker								
08 Operating Engineer								
09 Painter								
10 Plumber								
11 Roofer								
12 Sheet Metal Worker								
13 Sprinkler Fitter								
14 Steam Fitter								
15 Surveyor								
16 Tiler								
17 Truck Driver								
18 Laborer								
19 Other								
20 Other								
21 Other								
22 Other								

(6) Completed by _____
Date: ___/___/___

Appendix B-2

Instructions for completing Initial Project Manning Report -- Construction

1. Enter prime contractor's name, address, and zip code.
2. Enter project number.
3. Enter name and location (street address) of project; if multiple sites, so state.
4.
 - a) Total number of employees; for each trade or craft enter estimated number of persons in the work force of the prime contractor and all subcontractors, including females; under female enter anticipated number of females.
 - b) Total Jersey City resident employees: for each trade or craft enter estimated number of Jersey City residents in the total work force of prime contractor and all subcontractors.
 - c) Total Jersey City minority and female resident employees: for each trade or craft enter estimated number of Jersey City residents in the total work force of prime contractor and all subcontractors.
 - d) Enter projected phase-in and completion dates.
5. Print or type the name of the company official or authorized Project Employment & Contracting coordinator, and title, telephone number and date; the official must sign.

APPENDIX C

Letter of Acceptance of Initial Manning Report

Project Employment & Contracting Officer
Company
Street
City, State, Zip

Attn: Project Employment & Contracting Officer

Dear Sir/Madam:

Please be advised that I have reviewed and accepted your Initial Manning Report dated _____.

You are hereby notified that you must forward a letter with requests for quotation of bid to the Division of Economic Opportunity for local business and local minority construction vendors.

A copy of a briefing for corporate participants is attached. This is also a sample of a cover sheet than can be customized for your firm.

Truly Yours

Project Employment & Contracting Monitor

cc: Joseph Iwuala, Director
Division of Economic Opportunity

Appendix D

Letter from Developer Forwarding Requests for Quotation or Bid for Minority and Residential Vendors from Division of Economic Opportunity:

Division of Economic Opportunity
121-125 Newark Avenue, 3rd Fl.
Jersey City, NJ 07306

Attn: Mr. Joseph Iwuala

Dear Mr. Iwuala:

The policy of (your company's name) is to utilize local and local minority vendors where and whenever possible. Therefore, we are forwarding requests for quotations or bids for local and local minority vendors to fulfill the following needs as denoted by our initial manning report:

Goods

1. Concrete
2. Pipe
3. Mortar
4. Etc.

Labor

1. Carpenters
2. Plumbers
3. Bricklayers
4. Etc.

Yours truly,

Your Project Employment & Contracting Officer

Your Company's Name and Address

Site

Appendix D-2

Documentation of Bid Submission

Division of Economic Opportunity
121-125 Newark Avenue, 3rd Fl.
Jersey City, NJ 07302

Dear Mr. Joseph Iwuala:

We have just completed the bidding process. The following is a list of all those who submitted bids, whether we accepted the bids, and, if we rejected the bid, the reason why.

<u>Jersey City Contract</u>	<u>Submitted Bid</u>	<u>Bid Accepted</u>	<u>Reason Bid Rejected</u>
John's Electrical	Yes	No	Too Low
Dave's Electrical	No	No	NA
Ed's Electrical	Yes	Yes	NA
Tom's Electrical	Yes	No	Too Low
Pete's Plumbing	No	NA	NA

Yours truly,

(Your Project Employment Contracting Officer)
(Job Site)

Letter Expressing Project Employment & Contracting Obligations to
Contractors/Subcontractors

The President of the Company or Project Employment & Contracting Compliance Officer must send this letter to the subcontractors by certified mail with Return Receipt Requested, and subsequently send copies to Crescent Consulting – New Jersey, 123 Town Square Place - #436, Jersey City, N.J. 07310. Attention: P. Angelique Morrison.

[Date]

Contractors/Subcontractors
123 Main Street
Doetown, NJ

RE: NAME OF PROJECT - JERSEY CITY, NJ

Gentlemen:

(Name of your company) is legally obligated to abide by the terms of the Project Employment & Contracting Agreement. To this end, we request that you maximize Jersey City residential and local minority participation whenever and wherever possible. Furthermore, we ask that you do everything in your power to increase the number of local minorities and Jersey City residents who work on the job site.

Thank you for your attention to this matter.

Sincerely,

John Doe
(President of Your company or Project Employment & Contracting Officer)

Acknowledgment by Subcontractor:

I hereby acknowledge that I have read the above and agree to comply with the obligation and responsibilities aforementioned.

June 17, 2008

[Contact Person]
[Title]
[Company Name]
[Company Address Line 1]
[Company Address Line 2]

RE: WASHINGTON FIRST PLAZA URBAN RENEWAL PROJECT
EMPLOYMENT AND CONTRACTING AGREEMENT
REQUEST TO UNIONS

Dear [Contact Person]:

In analyzing your workforce at the above-referenced project and reviewing the requirements set forth in the Jersey City Department of Economic Opportunity Employment and Contracting Agreement, please be advised that [Company Name]'s workforce shows an underutilization of Jersey City Residents, Minorities and/or Women.

The attached Sample Letter is required to be submitted by your firm to your Local Union when underutilization of Jersey City Residents, Minorities and Women has been identified in your workforce. This letter must be sent Monthly with copies to my office for every month that you do not meet the Jersey City Department of Economic Opportunity Local Resident, Minority and Women workforce goals.

Failure to submit this document to your Local Union on a continuous basis can result in the withholding of future requisition payments.

Upon your review, if you have any questions, please contact me at (201) 984-1022.

Sincerely,

P. Angelique Morrison
Senior Project Manager

Enclosure:

cc: E. Geerloff (HRH)
J. Fusco (HRH)
R. de Freitas (Crescent)
File

Letter Expressing Contractors/Subcontractor Project Employment & Contracting Obligations to the Unions.

The President of the company must send this letter to the unions by certified mail with return receipt requested, and subsequently send copies to Crescent Consulting New Jersey, 123 Town Square Place - #436, Jersey City, N.J. 07310, Attention: P. Angelique Morrison.

Business Agent
Local Union 000
123 Elm Street
Town, NJ

RE: NAME OF PROJECT - JERSEY CITY, NJ SITE #

Gentlemen:

(Name of your company) is legally obligated to abide by the terms of the Project Employment & Contracting Agreement. We have agreed with the City that we will attempt to employ as many qualified Jersey City residents and local minorities as we possibly could.

To this end, we earnestly solicit your help in attempting to achieve these goals. May we count on you in this matter?

Please acknowledge your intentions in this matter and indicate whether or not your policies and practices will be consistent with the above-mentioned goal.

Thank you for your attention to this matter.

Sincerely,

Acknowledgement

John Doe
President

I, as business agent for Local 000 hereby state that I have read the above, and that my union, Local 000, agrees to comply with the obligation and responsibilities aforementioned.

Enter project number and project information.

Enter name and location (street address) of project.

Contractor Name: enter prime contractor first, and contractor's work force information; then names of subcontractors who worked on project during the reporting period, and each contractor's work force information.

Enter the % of the work the contractor or subcontractor has completed

List the trades or crafts applicable to the prime contractor and each sub; use a separate line for each trade or craft.

- a. Enter total number of employees for each employed for each craft at each level (J or AP or TR-trainee).
- b. Enter total number of Jersey City resident Black employees (including female) for each at each level.
- c. Enter number of Jersey City resident Hispanic employees (including female) for each at each level.
- d. Enter number of Jersey City resident American Indian or Alaskan native employees (including female) for each at each level.
- e. Enter number of Jersey City resident Asian employees (including female) for each at each level.
- f. Enter number of Jersey City resident female employees for each at each level; include both minority and non-minority females.

Total number of minority employees: total of columns b, c, d and e. (Do not include non-minority females).

Enter number of employees who are Jersey City residents.

- a. Enter total work hours for each craft at each level.
- b. Enter total Jersey City resident/minority work hours for each craft.
- c. Enter total Jersey City resident/female work hours for each craft at each level.
- d. Enter total work hours for Jersey City residents.

Minority group females will be counted in both the minority total and the female total.

Print or type the name of the company official or authorized Project Employment & Contracting Coordinator, and title, telephone number and date; the official must sign.

STATE OF NEW JERSEY
City of Jersey City
BI-WEEKLY SITE VISIT REPORT

COMPLIANCE WITH PROJECT EMPLOYMENT AGREEMENT

Project: _____ # _____

Contractor: _____

Date of Visit: _____ Time: _____ Location of Site: _____

Contractor's Representative at site: _____

Subcontractor(s) working at site: _____

CONTRACTOR/SUB	TRADE OR CRAFT	Total	NUMBER OF WORKERS JG RESIDENTS							NON RESIDENTS		
			Black	Hisp.	Am. Ind.	Asian	T. Min. Res.	Fem res.	Tot. res	Min.	Fem	

Comments/Notes:

Signature of Contractor's Representative

Completed by

Appendix J

Example of Documentation of Hiring Plan

Division of Economic Opportunity
121-125 Newark Avenue
Jersey City, New Jersey 07302

Dear Project Employment & Contracting Monitor:

This letter serves as our general hiring plan for the permanent employment needs of (hotel, hospital, etc.)

The following numbers are estimates agreed to in our Pre-Hiring Meeting with the head of the Registry:

Occupation	Total Number	Est. J.C. Res./Overall %	Est. Local Minority/Overall%
Cooks	4	2/50%	1/25%
Waiters	6	2/33%	2/33%
Valets	3	2/67%	1/67%
Manager	1	1/100%	0/0%
Etc.	—	—	—

Our company plans to meet these goals by seeking referrals from the Registry and advertising in the Jersey Journal.

Sincerely,

(Your Project Employment & Contracting Officer)
(Permanent Job Site)

xc: Project Employment & Contracting Coordinator

Appendix K

Total No. of Employees _____

Total No. of Job Titles _____

Project Employment & Contracting Monitor

Division of Economic Opportunity
121-125 Newark Avenue
Jersey City, New Jersey 07302

Dear Project Employment & Contracting Monitor:

This report serves as our Semi-Annual Employment Report of (your company).

The following chart will describe the job and whether a City resident or a woman holds the job.

Job Title	Job Description	City Resident	Minority Resident	Woman Resident
Customer Service Representative	Responsible for providing guests with friendly service, quality food and an accurate order			
Laundry Attendant	To practice proper care and handling of linen and terry to enhance professional service			
Front Desk Clerk	Responsibilities include providing friendly professional service by anticipating guests needs while performing the function of the check-in/check-out process			

The following individuals referred by the Registry were not hired for the respective reasons:

The following individuals who responded to the advertisements were not hired for the respective reasons:

Yours truly,

Project Employment & Contracting Officer

APPENDIX L

Example of Semi-Annual Purchasing Report

Semi-Annual Purchasing Report

Name & Address of
Prime Contractor _____ Reporting Period _____

Contracts Awarded	Name of Business	Contract Number	Date of Contract Award	Dollar Amount of Contract
To Local Businesses				
Total # awarded to Local Businesses				
To Minority or Women Owned Local Businesses				
Total # awarded to Minority or Women Owned Local Businesses				

CONTRACTOR'S SUBCONTRACTING/SUPPLIER PLAN
[SUMMARY OF BID SOLICITATION ACTIVITY]

LIST THE SUBCONTRACT OPPORTUNITIES, SUPPLIER/VENDORS AND/OR PROFESSIONAL SERVICE(S). (USE ADDITIONAL SHEET(S) IF NECESSARY)

PLEASE TYPE OR PRINT	CONTRACT AMOUNT: \$	PROJECT:				
NAME OF CONTRACTOR:						
ADDRESS (STREET, CITY, STATE, ZIP):						
CONTACT PERSON (NAME & TITLE)					TELEPHONE #: ()	
SUBCONTRACTORS AND SUPPLIERS / VENDORS	INDICATE L, M OR W	ITEM OR TRADE	BIDS SUBMITTED		AWARD STATUS	DATE ELIMINATED
			AMOUNT	DATE		

AWARD STATUS - AFTER EACH SUBCONTRACTOR, SUPPLIER OR VENDOR'S NAME, PLACE AN "A" IF THE BID HAS BEEN AWARDED OR A "P" IF THE BID IS PENDING.

(USE ADDITIONAL PAPER IF NECESSARY.)

PLEASE ANSWER THE FOLLOWING QUESTIONS:

1. DO YOU INTEND TO SUBCONTRACT ANY WORK ON THIS PROJECT? YES NO
 WHAT IS THE TOTAL DOLLAR AMOUNT OR DOLLAR RANGE YOU INTEND TO SUBCONTRACT ON THIS PROJECT?
 AMOUNT \$ _____ OR RANGE: FROM \$ _____ TO \$ _____

2. DO YOU INTEND TO PURCHASE SUPPLIES, MATERIALS AND/OR VENDOR OR PROFESSIONAL SERVICES FOR THIS PROJECT? YES NO
 WHAT IS THE TOTAL AMOUNT OR DOLLAR RANGE OF YOUR INTENDED PURCHASES OF SUPPLIES, MATERIALS, VENDOR OR PROFESSIONAL SERVICES?
 AMOUNT \$ _____ OR RANGE: FROM \$ _____ TO \$ _____

INDICATE BY DOLLAR VALUE AND/OR PERCENTAGE OF CONTRACT, THE TOTAL OF YOUR GOALS FOR LOCAL (JERSEY CITY), MINORITY AND WOMEN SUBCONTRACTORS AND VENDORS. (THE PERCENTAGE GIVEN SHOULD BE A PERCENTAGE OF YOUR TOTAL CONTRACT AMOUNT)

LOCAL BUSINESSES - \$ AMOUNT _____ (%)
 MINORITY BUSINESSES - \$ AMOUNT _____ (%)
 WOMEN BUSINESSES - \$ AMOUNT _____ (%)

OFFICER OF FIRM (NAME AND TITLE)

SIGNATURE

DATE

9

EXHIBIT 9

CERTIFICATION OF ACTUAL CONSTRUCTION COST

I, Peter DeWitt, A.I.A. do certify to the following:

I am a principle in the architectural firm of DeWitt Tishman Architects, LLP. To the extent that our firm has been involved in the design and construction of the Land and Improvements, as more fully described in that certain Financial Agreement dated _____ as between Athena BLDG Urban Renewal, LLC, and the City of Jersey City, and based on those records and contracts that have been supplied to us by Athena BLDG Urban Renewal, LLC, we certify that the total construction cost for the above referenced project is \$ _____.

I hereby certify that the foregoing statements made by me are true to the best of my knowledge. I certify that the copies of the reports, records and statements annexed hereto are exact copies of the report or reports rendered. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

Peter DeWitt

DATED:

500272

EXHIBIT C

PREPAYMENT AGREEMENT

THIS AGREEMENT made this 17th day of June, 2008 and entered into between ATHENA BLDG 110 URBAN RENEWAL, LLC, an Entity formed under the provisions of the Long Term Tax Exemption Law of (the "Law"), having its principal office at 712 Fifth Avenue, Eighth Floor, New York, NY 10019, hereinafter referred to as [Entity] and the CITY OF JERSEY CITY, a municipal corporation of the State of New Jersey, having its principal office at 280 Grove Street, Jersey City, New Jersey 07302, hereinafter referred to as the [City].

WITNESSETH:

WHEREAS, Entity has been authorized by the City to construct a project under the Law with attendant tax exemption benefits as provided in the Law; and

WHEREAS, Entity recognizes that the Annual Service Charges payable under the Law with respect to its Project will not begin to accrue to the City until the Project is completed; and

WHEREAS, City is in immediate need of additional funds for use during this fiscal year; and

WHEREAS, Entity is willing to prepay certain of the Annual Service Charges that will accrue from the Project in exchange for the City's agreement to reimburse such payments through credits against future Annual Service Charges that will become due; and

NOW, THEREFORE, in consideration of these premises and other good and valuable consideration, Entity and City hereby agree as follows:

Section 1. Reliance/Interest

A. **Reliance.** The Entity acknowledges that the City relies on this payment and will enter into agreements in anticipation of receiving such funds in a timely manner.

B. **Interest.** Any late payment of the Prepayment in whole or in part shall bear an 8% rate of interest until paid. Interest will be charged commencing on the 20th day following adoption of the ordinance that authorized the execution of the tax exemption financial agreement. Interest will accrue on the unpaid balance commencing on June 2, 2009.

Section 2. Prepayment/Credits

A. **Prepayment.** The Entity agrees to make a payment in the amount of \$1,000,000, representing a Prepayment of a portion of one full years estimated Annual Service Charge. The Prepayment shall be made on or before June 1, 2009, and credited against future Annual Service Charges in the manner described below.

B. **Security.** The Entity agrees to post a letter of credit or bond or other security, satisfactory to the City's Business Administrator to secure the timely payment of this obligation.

C. **Credit.** City agrees to give Entity a credit without interest against the Annual Service Charges otherwise due under the Financial Agreement in the following manner:

(i) For each of the first four years that the Entity is obligated under the Financial Agreement to pay Annual Service Charges, the Entity shall be entitled to a credit against such charges in the amount of \$250,000 in year one; \$250,000 in year two; \$250,000 in year three; and \$250,000 in year four, with the credit prorated for the first year and last year if such years are less than full calendar years;

(ii) The Annual Service Charges are to be paid quarterly under the Financial Agreement. The credits hereunder are to be taken against the earliest quarterly payments in each year until the annual amount of the credit, or appropriate pro rata portion for less than a full year, has been recouped in full by the Entity;

(iii) The aggregate amount of the credits hereunder shall be \$1,000,000;

(iv) Notwithstanding, under no circumstances shall the Entity be entitled to a credit in excess of the amount of the actual annual service charges (that is, excluding any credit for land taxes) actually paid by the Entity.

D. **Additional Credit.** In the event the Entity is unable to fully recover its Prepayment against the Annual Service Charge for any reason, then the Entity shall be entitled to a credit against any conventional taxes assessed on the Improvements until the Prepayment is recouped. At no time shall any interest accrue on the credit.

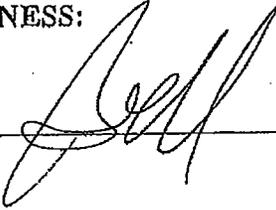
E. **Coordination of Credit.** The Office of Tax Abatement shall notify the appropriate taxing authorities of this credit arrangement so that bills for Annual Service Charges when issued will reflect the credit.

Section 3. Payments

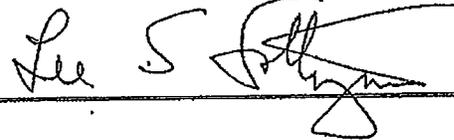
All payments due hereunder shall be sent to the Director of the Office of Tax Abatement, with a copy to the Business Administrator.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

WITNESS:



ATHENA BLDG 110 URBAN RENEWAL, LLC

BY: 

ATTEST:



ROBERT BYRNE
CITY CLERK

CITY OF JERSEY CITY



BRIAN O'REILLY
BUSINESS ADMINISTRATOR

Resolution of the City of Jersey City, N.J.

City Clerk File No. Res. 08-363
 Agenda No. 10.A
 Approved: MAY 28 2008
 TITLE: _____



RESOLUTION AUTHORIZING A PREPAYMENT AGREEMENT OF A SERVICE CHARGE FROM ATHENA BLDG 110 URBAN RENEWAL, LLC

COUNCIL OFFERED AND MOVED ADOPTION OF THE FOLLOWING RESOLUTION:

WHEREAS, Athena BLDG 110 Urban Renewal, LLC, has offered to make a prepayment of the Annual Service Charge in the sum of \$1,000,000, to be reimbursed against its tax exemption Annual Service Charge over the next four fiscal years; and

WHEREAS, it is in the best interests of the City of Jersey City to accept the prepayment of the service charge; and

WHEREAS, in order to allow the City to anticipate and rely on the funds and properly account for the funds, the City of Jersey City should approve the prepayment of the Annual Service Charge and authorize the execution of an agreement.

NOW, THEREFORE, BE IT RESOLVED by the Municipal Council of the City of Jersey City that:

1. The Mayor or Business Administrator is hereby authorized to execute a Prepayment Agreement with Athena BLDG 110 Urban Renewal Company, LLC, to prepay its Annual Service Charge in the amount of \$1,000,000, on or before June 1, 2009, to be credited over the ensuing four fiscal years; and

2. The Agreement shall be in substantially the form attached, subject to such modification as the Corporation Counsel or Business Administrator deems appropriate or necessary.

JM/he
5/05/08

APPROVED: _____ APPROVED AS TO LEGAL FORM

APPROVED: *[Signature]*
Business Administrator

[Signature]
Corporation Counsel

Certification Required

Not Required

APPROVED 8-0

RECORD OF COUNCIL VOTE ON FINAL PASSAGE								5/28/08			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
SOTTOLANO	✓			GAUGHAN	✓			BRENNAN	✓		
SPINELLO	✓			FULOP	✓			FLOOD	✓		
LIPSKI	ABSENT			RICHARDSON	✓			VEGA, PRES.	✓		

✓ Indicates Vote

N.V.-Not Voting (Abstain)

Adopted at a meeting of the Municipal Council of the City of Jersey City, N.J.

[Signature]
Mariano Vega, Jr., President of Council

[Signature]
Robert Byrne, City Clerk

EXHIBIT D

ORIGINAL CERTIFICATE OF FORMATION



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS
101 SOUTH BRIDGE STREET
PO BOX 810
TRENTON, NJ 08625-0104

JON S. CORZINE
GOVERNOR

CHARLES A. RICHMAN
ACTING COMMISSIONER

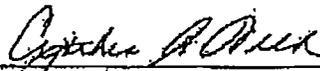
DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer
RE: ATHENA BLDG 110 URBAN RENEWAL, LLC
File # 825
An Urban Renewal Entity

This is to certify that the attached CERTIFICATE OF FORMATION OF AN URBAN RENEWAL ENTITY has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c.431.

Done this *21st* day of *SEPTEMBER* 2007 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

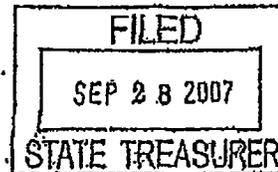
BY 
Cynthia A. Wilk, Director
Division of Codes and Standards



CERTIFICATE OF FORMATION

OF

Athena BLDG 110 Urban Renewal, LLC



To: *Department of the Treasury
State of New Jersey*

THE UNDERSIGNED, for the purpose of forming a Limited Liability Company pursuant to the provisions of N.J.S.A. 42:2B-1 et seq., the New Jersey Limited Liability Company Act, hereby executes the following Certificate of Formation:

1. *The name of the Limited Liability Company is*

Athena BLDG 110 Urban Renewal, LLC.

2. *The address of the initial registered office of the company in the State of New Jersey is*

*c/o Kraemer, Burns, Mytelka, Lovell & Kulka, P.A.
675 Morris Avenue, Springfield, New Jersey 07081*

and the name of the initial registered agent for service of process at that address is

Athena BLDG 110 Urban Renewal, LLC

3. *The company has one or more members.*

4. *Duration: perpetual*

5. *The limited liability company has been organized to serve a public purpose; its operations shall be directed toward providing for and making possible the clearance, re-planning, development, or redevelopment of blighted areas or the acquisition, management and operation of a project under the Comprehensive Housing and Redevelopment "Long Term Tax Exemption Law" P.L. 1991, c. 431 (N.J.S.A. 40A:20-1, et seq.)*

The purpose for which it is formed shall be to operate under P.L. 1991, c. 431 (C. 40A:20-1 et seq.) and to initiate and conduct projects for the redevelopment of a redevelopment area pursuant to a redevelopment plan, or projects necessary, useful, or convenient for the relocation of residents displaced or to be displaced by the redevelopment of all or part of one or more redevelopment areas, or low and moderate income housing projects, and, when authorized by financial agreement with the municipality, to acquire, plan, develop, construct, alter, maintain or operate housing, senior citizen housing, business, industrial, commercial, administrative, community, health, recreational, educational or welfare projects, or any combination of two or more of these types of improvement in a single project, under such conditions as to use, ownership, management and control as regulated pursuant to P.L. 1991, c. 431 (C. 40A:20-1 et seq.)

So long as the entity is obligated under financial agreement with a municipality made pursuant to P.L. 1991, c. 431 (C. 40A:20-1 et seq.), it shall engage in no business other than the ownership, operation and management of the project.

The entity has been organized to serve a public purpose; its operations shall be directed toward (1) the redevelopment of redevelopment areas, the facilitation of the relocation of residents displaced or to be displaced by redevelopment, or the conduct of low and moderate income housing projects; (2) the acquisition, management and operation of a project, redevelopment relocation housing project, or low and moderate income housing project under P.L. 1991, c. 431 (C. 40A:20-1 et seq.); and (3) it shall be subject to regulation by the municipality in which its project is situated, and to a limitation or prohibition, as appropriate, on profits or dividends for so long as it remains the owner of a project subject to P.L. 1991, c. 431 (C. 40A:20-1 et seq.)

The entity shall not voluntarily transfer more than 10% of the ownership of the project or any portion thereof undertaken by it under P.L. 1991, c. 431 (C. 40A:20-1 et seq.), until it has first removed both itself and the project from all restrictions of P.L. 1991, c. 431 (C. 40A:20-1 et seq.) in the manner required by P.L. 1991, c. 431 (C. 40A:20-1 et seq.) and, if the project includes housing units, has obtained the consent of the Commissioner of Community Affairs to such transfer; with the exception of transfer to another urban renewal entity, as approved by the municipality in which the project is situated, which other urban renewal entity shall assume all contractual obligations of the transferor entity under the financial agreement with the municipality. The entity shall file annually with the municipal governing body a disclosure of the persons having an ownership interest in the project, and of the extent of the ownership interest of each. Nothing herein shall prohibit any transfer of the ownership interest in the urban renewal entity itself provided that the transfer, if greater than 10 percent, is disclosed to the municipal governing body in the annual disclosure statement or in correspondence sent to the municipality in advance of the annual disclosure statement referred to above.

The entity is subject to the provisions of Section 18 of P.L.1991, c.431, (C.40A:20-18) respecting the powers of the municipality to alleviate financial difficulties of the urban renewal entity or to perform actions on behalf of the entity upon a determination of financial emergency.

Any housing units constructed or acquired by the entity shall be managed subject to the supervision of, and rules adopted by, the Commissioner of Community Affairs.

The undersigned represents that this filing complies with State law as detailed in NWSA 42 and that she is authorized to sign this form on behalf of the Limited Liability Company.

Dated: 8/1/07

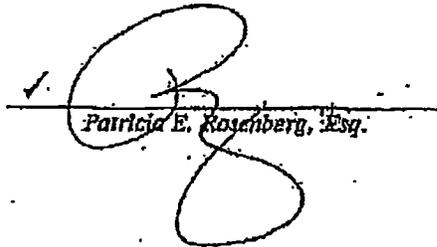

Patricia E. Rosenberg, Esq.

EXHIBIT E

CERTIFICATE OF AMENDMENT



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer
RE: 110 FIRST STREET URBAN RENEWAL ASSOCIATES, LLC
(formerly Athena Bldg 110 Urban Renewal, LLC)
File # 825
An Urban Renewal Entity

This is to certify that the attached CERTIFICATE OF AMENDMENT has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c. 431.

Done this *9th* day of *SEPTEMBER* 2008 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

BY *Cynthia A. Willk*
Cynthia A. Willk, Director
Division of Codes and Standards



New Jersey Division of Revenue

Certificate of Amendment

Limited Liability Company

This form may be used to amend a Certificate of Formation of a Limited Liability Company on file with the Department of the Treasury. Applicants must insure strict compliance with NJSA 42, the New Jersey Limited Liability Act, and insure that all applicable filing requirements are met.

1. Name of Limited Liability Company: **Athena BLDG 110 Urban Renewal, LLC**
2. Identification Number: **0600310063**
3. New LLC Name (if applicable): **110 First Street Urban Renewal Associates, LLC**
4. Effective Date: **As of filing.**
5. The Certificate of Formation is amended as follows (provide attachments if needed):
Name Change only.

The undersigned represent(s) that this filing complies with State law as detailed in NJSA 42 and that they are authorized to sign this form on behalf of the Limited Liability Company.

Signature:

Name:

Date:



Lloyd Goldman, Authorized Signatory

08/25/08

NJ Division of Revenue, PO Box 308, Trenton, NJ 08646

503022



PATRICIA L. MORSELLA
Notary Public, State of New Jersey
My Commission Expires Jan. 11, 2010

EXHIBIT F

LETTER NOTICE

WATERS, MCPHERSON, MCNEILL

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

SECAUCUS - TRENTON - NEW YORK

MEADOWLANDS OFFICE

300 LIGHTING WAY

P.O. BOX 1560

SECAUCUS, NEW JERSEY 07096

201-863-4400

www.lawwmm.com

June 15, 2009

JOSEPH G. RAGNO

DIRECT DIAL

201-330-7465

City Council
City of Jersey City
280 Grove Street
Jersey City, NJ 07302

E-MAIL

Jragno@lawwmm.com

TELECOPIER

201-863-2866

Attention: Robert Byrne, Clerk

Re: Athena BLDG 110 Urban Renewal, LLC
110 First Street
Jersey City, New Jersey
Our File No.: 10640-1

Dear Mr. Byrne:

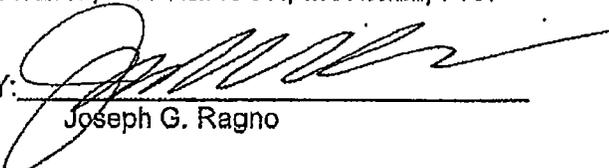
Pursuant to NJSA 40A: 20-5e, on behalf of 110 First Street Urban Renewal Associates, LLC, the owner of the property known as 110 First Street, Jersey City, NJ, we hereby notify the City Council as follows:

1. Effective September 18, 2008, the name of the urban renewal entity formerly known as Athena BLDG 110 Urban Renewal, LLC (the "URE") was changed to 110 First Street Urban Renewal Associates, LLC. See filed Certificate of Name Change attached as Exhibit A.
2. Effective September 4, 2008, the name of the sole member of the URE, Athena BLDG 110, LLC, a Delaware limited liability company was changed to 110 First Street Associates, LLC. See filed Certificate of Name Change attached as Exhibit B.
3. Effective July 30, 2008, the 50% membership interest of Athena Jersey City 110 First Street, L.L.C. in 110 First Street Associates, LLC was transferred to New Gold Equities Corp. (15%) and BLDG 110 Associates, LLC (85%). See Assignment and Assumption of Membership Interest attached as Exhibit C.

Very truly yours,

WATERS, MCPHERSON, MCNEILL, P.C.

BY:


Joseph G. Ragno

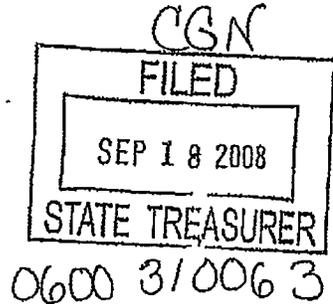
cc: Brian O'Reilly, Business Administrator
Joanne Monahan, Assistant Corporation Counsel
Donald Olenick, Esq.

607423

EXHIBIT A

L-102 NJSA 42 (2/94)

New Jersey Division of Revenue
Certificate of Amendment
Limited Liability Company



This form may be used to amend a Certificate of Formation of a Limited Liability Company on file with the Department of the Treasury. Applicants must insure strict compliance with NJSA 42, the New Jersey Limited Liability Act, and insure that all applicable filing requirements are met.

1. Name of Limited Liability Company: Athena BLDG 110 Urban Renewal, LLC
2. Identification Number: 0600310063
3. New LLC Name (if applicable): 110 First Street Urban Renewal Associates, LLC
4. Effective Date: As of filing.
5. The Certificate of Formation is amended as follows (provide attachments if needed):
Name Change only.

The undersigned represent(s) that this filing complies with State law as detailed in NJSA 42 and that they are authorized to sign this form on behalf of the Limited Liability Company.

Signature:

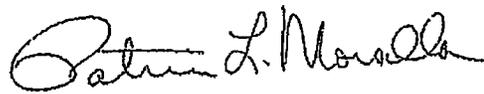


Name: Lloyd Goldman, Authorized Signatory

Date: 08/25/08

NJ Division of Revenue, PO Box 308, Trenton, NJ 08646

503022



PATRICIA L. MORSELLA
Notary Public, State of New Jersey
My Commission Expires Jan. 11, 2010



State of New Jersey
DEPARTMENT OF COMMUNITY AFFAIRS

JON S. CORZINE
Governor

JOSEPH V. DORIA, JR.
Commissioner

DEPARTMENT OF COMMUNITY AFFAIRS

TO: State Treasurer
RE: 110 FIRST STREET URBAN RENEWAL ASSOCIATES, LLC
(formerly Athena Bldg 110 Urban Renewal, LLC)
File # 825
An Urban Renewal Entity

This is to certify that the attached CERTIFICATE OF AMENDMENT has been examined and approved by the Department of Community Affairs, pursuant to the power vested in it under the "Long Term Tax Exemption Law," P.L. 1991, c. 431.

Done this 9TH day of SEPTEMBER 2008 at Trenton, New Jersey.

DEPARTMENT OF COMMUNITY AFFAIRS

BY Cynthia A. Wilk
Cynthia A. Wilk, Director
Division of Codes and Standards



EXHIBIT B

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF AMENDMENT OF "ATHENA BLDG 110 LLC", CHANGING ITS NAME FROM "ATHENA BLDG 110 LLC" TO "110 FIRST STREET ASSOCIATES LLC", FILED IN THIS OFFICE ON THE FOURTH DAY OF SEPTEMBER, A.D. 2008, AT 3:57 O'CLOCK P.M.

4340078 8100

080927027

You may verify this certificate online
at corp.delaware.gov/authver.shtml



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6832748

DATE: 09-05-08

STATE OF DELAWARE
CERTIFICATE OF AMENDMENT

1. Name of Limited Liability Company: Athena BLDG 110 LLC
2. The Certificate of Formation of the limited liability company is hereby amended as follows:

The name of the entity above shall be changed to:
110 First Street Associates LLC

IN WITNESS WHEREOF, the undersigned have executed this Certificate on the 21st day of August, A.D. 2008.

By: 
Authorized Person(s)

Name: Lloyd Goldman, Authorized
Print or Type Signatory

EXHIBIT C

ORIGINAL

ASSIGNMENT AND ASSUMPTION OF MEMBERSHIP INTEREST

Assignment and Assumption of Membership Interest dated as of July 30th 2008 ("Assignment") by and between Athena Jersey City 110 First Street LLC, a Delaware limited liability company with an address c/o The Athena Group, L.L.C., 712 Fifth Avenue, 8th Floor, New York, NY 10019 ("Assignor"), and New Gold Equities Corp., a New Jersey Corporation, and BLDG 110 Associates, LLC, a New Jersey limited liability company, each with an address c/o BLDG Management Co, Inc, 417 Fifth Avenue, 4th Floor, New York, NY 10016 (collectively, "Assignee").

WITNESSETH:

WHEREAS, Assignor and Assignee are the sole Members in Athena BLDG 110 LLC, (the "Company"), a New Jersey limited liability company which was formed pursuant to that Certificate of Formation dated 04/24/07 filed with the Secretary of State of the State of New Jersey and that Operating Agreement dated as of September 24, 2007 (the "Operating Agreement").

WHEREAS, the Assignor holds Fifty Percent (50%) of the Percentage Interests therein;

WHEREAS, Assignor desires to assign, transfer and convey to Assignee all of its right, title and interest in and to its Member Interest in the Company pursuant to that Member Interest Transfer Agreement of even date herewith (the "Transfer Agreement") between Assignor and Assignee;

WHEREAS, Assignee wishes to accept the assignment of the Member Interest, upon the terms and subject to the conditions set forth herein;

WHEREAS, capitalized terms used herein shall have the meanings ascribed to them respectively by the Transfer Agreement, unless otherwise defined herein.

NOW, THEREFORE, in consideration of the foregoing premises and the agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee, intending to be legally bound, hereby agree as follows:

1. Assignment and Assumption. Assignor hereby assigns and transfers to Assignee all of the right, title and interest of Assignor in and to the Member Interest and Assignee hereby assumes all of the obligations arising on account of the Member Interest subject to and except as otherwise set forth in the Transfer Agreement. Assignor's Member Interest shall deemed to be assigned in the following proportions: Fifteen (15%) percent of its Member Interest shall be deemed assigned to New Gold Equities Corp. and Eighty-Five (85%) of its Member Interest shall be deemed assigned to BLDG 110 Associates LLC.

2. Further Assurances. Assignor hereby covenants and agrees to execute and deliver all such further instruments and other documents, and to take all such further actions, as shall be necessary to accomplish or confirm the transactions covered hereby.

3. Binding Effect. This Assignment shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective personal representatives, heirs, successors and permitted assigns; provided, that this Assignment cannot be amended without the express written consent of each party hereto.

4. Governing Law. This Assignment shall be governed by, and construed and interpreted in accordance with, the laws and decisions of the State of New York and has been executed and delivered in the State of New York.

5. Counterparts. This Assignment may be executed in one or more counterparts, any one of which shall be deemed an original, and all of which shall be deemed to constitute one and the same agreement.

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

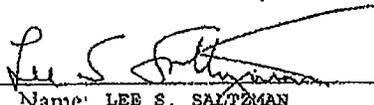
IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered, or caused the execution and delivery of, this Assignment as of the date first written above.

ASSIGNOR

Athena Jersey City 110 First Street LLC

By: AREP Master Partnership II LP, its sole member

By: ATHENA REALTY II, LLC, General Partner

By: 

Name: LEE S. SALTZMAN

Title: Authorized Signatory

ASSIGNEE

NEW GOLD EQUITIES CORP.

By: _____

BLDG 110 ASSOCIATES, LLC

By: BLDG Associates, Inc.

By: _____

Name: Lloyd Goldman

Title: President

IN WITNESS WHEREOF, Assignor and Assignee have executed and delivered, or caused the execution and delivery of, this Assignment as of the date first written above.

ASSIGNOR

Athena Jersey City 110 First Street LLC

By: AREP Master Partnership II LP, its sole member

By: _____, General Partner

By: _____

Name:

Title:

ASSIGNEE

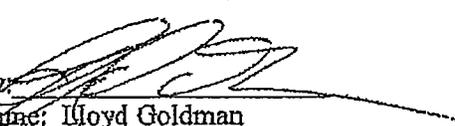
NEW GOLD EQUITIES CORP.

By: 

Lloyd Goldman, President

BLDG 110 ASSOCIATES, LLC

By: BLDG Associates, Inc.

By: 

Name: Lloyd Goldman

Title: President

EXHIBIT G

OWNERSHIP DISCLOSURE STATEMENT

110 FIRST STREET URBAN RENEWAL ASSOCIATES, LLC

<u>NAME</u>	<u>ADDRESS</u>	<u>PERCENTAGE OWNED</u>
110 First Street Associates, LLC	c/o BLDG Management Co., Inc. 417 Fifth Avenue, 4 th Floor New York, New York 10016	100%

110 FIRST STREET ASSOCIATES, LLC

BLDG 110 Associates, LLC New Gold Equities Corporation	c/o BLDG Management Co., Inc. 417 Fifth Avenue, 4 th Floor New York, New York 10016	100%
---	--	------

I certify that the above represents the names and addresses of all entities who own a 10% or greater interest in 110 First Street Urban Renewal Associates, LLC.

I further certify that no officer or employee of the City of Jersey City has any interest, direct or indirect, in the above entity.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

110 FIRST STREET URBAN RENEWAL ASSOCIATES, LLC

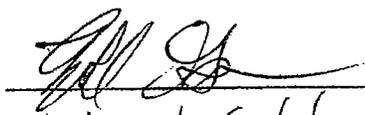
By: 
Name: Lloyd Goldman
Its: Authorized Signatory

EXHIBIT H

ESTIMATED CONSTRUCTION SCHEDULE

Construction will commence 180 days following approval of the Amended Financial Agreement and amendment of the SCO.

EXHIBIT I

GOOD FAITH LEASE ESTIMATES

The following is a good faith estimate of the initial rents to be achieved from the Project.

A. RESIDENTIAL

442 Market Rate Units (370,808 sf net rentable @ \$39/sf)	\$14,461,512/annum
10 ADUs (8,000 sf net rentable @ 15/sf)	\$120,000/annum

B. RETAIL

16,597 square feet @ \$30/square foot	\$497,910/annum
---------------------------------------	-----------------

C. PARKING

343 Spaces @ \$150/month	\$617,400/annum
--------------------------	-----------------

EXHIBIT J

ESTIMATED ANNUAL SERVICE CHARGE SCHEDULE

Based on good faith estimates of the rents to be achieved, the Annual Service Charge over the term of the exemption is estimated as follows:

YEAR 1 STABILIZED

A.	Apartment Rent	
	•Market* (442 units)	\$1,373,843
	•ADU (10 units)	\$12,000
B.	Affordable Dwelling Units *(10 units)	11,400
B.	Retail (16,597 square feet)	\$47,301
C.	Parking (343 spaces)	\$58,653
	Grand Total	<u>\$1,491,198</u>

698248

* *at 95% occupancy*

EXHIBIT K

ESTIMATE FINANCIAL PLAN

Cashflow and Real Estate Tax Analysis

	1	2	3	4	5	6	7	8	9	10	11	12	13
	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025
REVENUE													
Residential Income	165,785,028	0	0	14,461,512	14,895,357	15,342,218	15,802,485	16,276,559	16,764,856	17,267,802	17,785,836	18,319,411	18,868,993
ADU Income	1,375,666	0	0	120,000	123,600	127,308	131,127	135,061	139,113	143,286	147,585	152,012	156,573
Retail Income	5,707,980	0	0	497,910	512,847	528,233	544,080	560,402	577,214	594,531	612,366	630,737	649,660
Parking Income	7,077,799	0	0	617,400	635,922	655,000	674,650	694,889	715,736	737,208	759,324	782,104	805,567
Gross Income	179,946,473	0	0	15,696,822	16,167,727	16,652,758	17,152,341	17,666,911	18,196,919	18,742,826	19,305,111	19,884,264	20,480,792
Less Vacancy	(8,289,251)	0	0	(784,841)	(808,386)	(832,638)	(857,617)	(883,346)	(909,846)	(937,141)	(965,256)	(994,213)	(1,024,040)
EFFECTIVE GROSS REVENUE	171,657,222	0	0	14,911,981	15,359,340	15,820,121	16,294,724	16,783,566	17,287,073	17,805,685	18,339,856	18,890,051	19,456,753
EXPENSES													
Operating Expenses	33,160,135	0	0	3,028,400	3,088,968	3,150,747	3,213,762	3,278,038	3,343,598	3,410,470	3,478,680	3,548,253	3,619,218
Real Estate Taxes	17,094,915	0	0	1,491,198	1,535,934	1,582,012	1,629,472	1,678,357	1,728,707	1,780,569	1,833,986	1,889,005	1,945,675
TOTAL EXPENSES	50,255,050	0	0	4,519,598	4,624,902	4,732,759	4,843,235	4,956,394	5,072,306	5,191,039	5,312,665	5,437,258	5,564,894
NET OPERATING INCOME	121,402,172	0	0	10,392,383	10,734,438	11,087,361	11,451,489	11,827,172	12,214,767	12,614,646	13,027,190	13,452,793	13,891,859
Reserve	17,094,915	0	0	1,491,198	1,535,934	1,582,012	1,629,472	1,678,357	1,728,707	1,780,569	1,833,986	1,889,005	1,945,675
Amortization	89,464,060	0	0	8,946,406	8,946,406	8,946,406	8,946,406	8,946,406	8,946,406	8,946,406	8,946,406	8,946,406	8,946,406
NOI After Reserve & Amortization	14,843,197	0	0	(45,221)	252,098	558,943	875,611	1,202,409	1,539,654	1,887,672	2,246,799	2,617,382	2,999,778

Rev. 8-23-05
Long Term Tax Exemption
N.J.S.A. 40A:20-1, et seq.
(Market Rate Residential Rental)

Re: 110 First Street Urban Renewal Associates, LLC
Approximately .73 Acres
Block 11603, Lot 42
Powerhouse Arts Redevelopment Plan Area

PREAMBLE

THIS AMENDED FINANCIAL AGREEMENT, [Amended Agreement] is made the day of____, 2012 by and between **110 FIRST STREET URBAN RENEWAL ASSOCIATES, LLC**, an urban renewal entity formed and qualified to do business under the provisions of the Long Term Tax Exemption Law of 1992, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., having its principal office at c/o BLDG Management Co., Inc., 417 Fifth Avenue, 4th Floor, New York, NY 10016 [Entity], and the **CITY OF JERSEY CITY**, a Municipal Corporation of the State of New Jersey, having its principal office at 280 Grove Street, Jersey City, New Jersey 07302 [City].

RECITALS

WITNESSETH:

WHEREAS, the Entity is the Owner of certain property designated as Block 11603, Lot 42 (formerly Block 109, Lot WA), more commonly known by the street address of 110 First Street, and more particularly described by the metes and bounds description set forth as Exhibit____ to this Agreement; and

WHEREAS, this property is located within the boundaries of the Powerhouse Arts Redevelopment Plan Area; and

WHEREAS, the Entity plans to construct a 35 story building, containing approximately 452 residential rental units consisting of 442 market rate units and 10 Affordable Dwelling Units (ADUs), approximately 16,597 square feet of retail space and 343 parking spaces for the use of the residents and retail customers only, [Project]; and

WHEREAS, on March 14, 2008, the Entity filed an Application with the City for a long term tax exemption for the Project; and

WHEREAS, the City made the following findings:

A. Relative Benefits of the Project when compared to the costs:

1. the current real estate tax generates revenue of only \$87,674, whereas, the Annual Service charge as estimated, and will generate revenue to the City of approximately \$1,585,212;
2. the Entity has agreed, as part of its stipulation of settlement and consent order in the matter entitled New Gold Equities Corp., and BLDG Management Co., Inc., vs. City of Jersey City, et al, Docket No. 05-cv-03561-DRD-SDW [Consent Order], to set aside 25 units on-site as Affordable Dwelling Units and pay \$2,500,000 to subsidize 25 units of Choice Program off-site at the Summit Heights Project, which obligations were intended to subsume any other Affordable Housing obligations imposed by the City of Jersey City, specifically those set forth in Section 304-28 of the Jersey City Municipal Code;
3. in view of the uniqueness of the Project and the complex litigation and negotiated settlement, the City hereby agrees to waive payment of the \$665,396 to the City's Affordable Housing Trust Fund as required by Section 304-28 of the Jersey City Municipal Code;
4. it is expected that the Project will create approximately 300 jobs during construction and 15 new permanent jobs;
5. the Project should stabilize and contribute to the economic growth of existing local business and to the creation of new business, which cater to the new residents;
6. the Project will further the redevelopment objectives of the Powerhouse Arts Redevelopment Plan;
7. the City's impact analysis, on file with the Office of the City Clerk, indicates that the benefits of the Project outweigh the costs to the City; and

B. Assessment of the Importance of the Tax Exemption in obtaining development of the Project and influencing the locational decisions of probable occupants:

1. the relative stability and predictability of the annual service charges will make the Project more attractive to investors and lenders needed to finance the Project; and
2. the relative stability and predictability of the service charges will allow the owner to stabilize its operating budget, allowing a high level of maintenance to the building over the life of the Project, which will insure

the likelihood of the success of the Project and insure that it will have a positive impact on the surrounding area; and

WHEREAS, by the adoption of Ordinance 08-074 on May 28, 2008, the Municipal Council approved the above findings and the tax exemption Application and authorized the execution of this Agreement.

WHEREAS, as a consequence of the financial crisis the construction of the Project was never commenced; and

WHEREAS, in order to make the Project viable and facilitate construction, certain Amendments to the terms of the Financial Agreement are deemed to be reasonable and necessary and;

WHEREAS, by the adoption of Ordinance ____ on _____ the Municipal Council approved the above finding and authorized the execution of this Amended Agreement.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1.1 Governing Law

This Agreement shall be governed by the provisions of the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1 et seq., Executive Order of the Mayor, 02-003, Ordinance 02-075, and Ordinances 08- 074, which authorized the execution of this Agreement and 12-_____, which authorized the execution of this Amended Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application and the Application to Amend Financial Agreement, attached hereto as Exhibit ___, in granting this tax exemption.

Section 1.2 General Definitions

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms shall have the following meanings:

i. Allowable Net Profit- The amount arrived at by applying the Allowable Profit Rate to Total Project Cost pursuant to N.J.S.A. 40A:20-3(c).

ii. Allowable Profit Rate - The greater of 12% or the percentage per annum arrived at by adding 1.25% to the annual interest percentage rate payable on the Entity's initial permanent mortgage financing. If the initial permanent mortgage is insured or guaranteed by a governmental agency, the mortgage insurance premium or similar charge, if payable on a per annum basis, shall be considered as interest for this purpose. If there is no permanent mortgage financing, or if the financing is internal or undertaken by a related party, the Allowable Profit Rate shall be the greater of 12% or the percentage per annum arrived at by adding 1.25% per annum to the interest rate per annum which the municipality determines to be the prevailing rate on mortgage financing on comparable improvements in Hudson County. The provisions of N.J.S.A. 40A:20-3(b) are incorporated herein by reference.

iii. Gross Revenue - Any and all revenue collected from the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, health club user fees or other services (such as lease premiums for views, fireplaces, etc.). No deductions will be allowed for operating or maintenance costs, including, but not limited to gas, electric, water and sewer, other utilities, garbage removal and insurance charges, whether paid for by the landlord, tenant or a third party, except for customary operating expenses of commercial tenants such as utilities, insurance and taxes (including payments in lieu of taxes) which shall be deducted from Gross Revenue based on the actual amount of such costs incurred.

iv. Annual Service Charge - The amount the Entity has agreed to pay the City for municipal services supplied to the Project, which sum is in lieu of any taxes on the Improvements, pursuant to N.J.S.A. 40A:20-12.

v. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), which shall also include a certification of Total Project Cost and clear computation of Net Profit. The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholders' equity, a statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items required by Law. The Auditor's

Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

vi. Certificate of Occupancy - A document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

vii. Debt Service - The amount required to make annual payments of principal and interest or the equivalent thereof on any construction mortgage, permanent mortgage or other financing including returns on institutional equity financing and market rate related party debt for the project for a period equal to the term of this agreement.

viii. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

ix. Entity - The term Entity within this Agreement shall mean 110 First Street Urban Renewal Associates, LLC (the successor to Athena BLDG 110 Urban Renewal, LLC pursuant to Certificate of Name Change filed September 9, 2008, Exhibit E) which Entity is formed and qualified pursuant to N.J.S.A. 40A:20-5. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under the Law.

x. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

xi. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

xii. Land Taxes - The amount of taxes assessed on the value of land, on which the Project is located and, if applicable, taxes on any pre-existing improvements. Land Taxes are not exempt; however, Land Taxes are applied as a credit against the Annual Service Charge.

xiii. Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

xiv. Law - Law shall refer to the Long Term Tax Exemption Law, as amended and supplemented, N.J.S.A. 40A:20-1, et seq.; Executive Order of the Mayor 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance 02-075, and Ordinances 08-074 and 12-_____ which authorized the execution of the Agreement and the

Amended Agreement; and Ordinance 07-123, as may be amended or supplemented from time to time, which requires the execution of a Project Labor Agreement, and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and regulations.

xv. Lease Up Period - Shall begin on the date of the issuance of the first Certificate of Occupancy (whether permanent or temporary) for any floor or any portion thereof. During the Lease Up Period, the Entity shall pay the sum equal to the estimated Annual Service Charge divided by the number of Units divided by 12 for each Unit for each month after that Unit has received a Certificate of Occupancy, whether the floor is actually occupied or generated revenue. The payment shall begin on the 1st day of the month following the issuance of the Certificate of Occupancy for that Floor. The Lease Up Period for the Project expires twelve (12) months after the issuance of the first Certificate of Occupancy for any floor.

xvi. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the greater of:

(a) the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year in which the area was subject to taxation, or in the case of tax exempt property, the projected tax levy based upon the assessed value for the year in which the application is filed, which amount the parties agree is \$ 110,726.40; or

(b) the sum of \$1,200,000 per year, which sum will be prorated only in the years in which Substantial Completion occurs and this Agreement terminates.

The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to N.J.S.A. 40A:20-12 or this Agreement, would be less than the Minimum Annual Service Charge.

xvii. Net Profit - The Gross Revenues of the Entity less all operating and non-operating expenses of the Entity, all determined in accordance with generally accepted accounting principles, but:

(1) there shall be included in expenses: (a) all Annual Service charges paid pursuant to N.J.S.A. 40A:20-12; (b) all payments to the City of excess profits pursuant to N.J.S.A. 40A:20-15 or N.J.S.A. 40A:20-16; (c) an annual amount sufficient to amortize (utilizing the straight line method-equal annual amounts) the Total Project Cost and all capital costs determined in accordance with generally accepted accounting principles, of any other entity whose revenue is included in the computation of excess profits over the term of this agreement; (d) all reasonable

annual operating expenses of the Entity and any other entity whose revenue is included in the computation of excess profits including the cost of all management fees, brokerage commissions, insurance premiums, all taxes or service charges paid, legal, accounting, or other professional service fees, utilities, building maintenance costs, building and office supplies and payments into repair or maintenance reserve accounts; (e) all payments of rent including but not limited to ground rent by the Entity; (f) all debt service; and

(2) there shall not be included in expenses either depreciation or obsolescence, interest on debt, except interest which is part of debt service, income taxes or salaries, bonuses or other compensation paid, directly or indirectly to directors, officers and stockholders of the entity, or officers, partners or other persons holding a proprietary ownership interest in the entity.

xviii. Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

xix. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

xx. Termination - Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

xxi. Total Project Cost - The total cost of constructing the Project through the date a Certificate(s) of Occupancy is issued for the entire Project, which categories of cost are set forth in N.J.S.A. 40A:20-3(h). There shall be included in Total Project Cost the actual costs incurred by the Entity and certified by an independent and qualified architect or engineer, which are associated with site remediation and cleanup of environmentally hazardous materials or contaminants in accordance with State or Federal law and any extraordinary costs incurred including the cost of demolishing structures, relocation or removal of public utilities, cost of relocating displaced residents or buildings and the clearing of title. The Entity agrees that final Total Project Cost shall not be less than its estimated Total Project Cost.

ARTICLE II - APPROVAL

Section 2.1 Approval of Tax Exemption

The City hereby grants its approval for a tax exemption for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 11603, Lot 42 (formerly Block 109, Lot WA), more commonly known by the street address of 110 First Street, and described by metes and bounds in Exhibit ____ attached hereto.

Section 2.2 Approval of Entity

Approval is granted to the Entity whose Certificate of Formation is attached hereto as Exhibit _____. Entity represents that its Certificate contains all the requisite provisions of the Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Office of the State Treasurer or Office of the Hudson County Clerk, all in accordance with N.J.S.A. 40A:20-5.

Section 2.3 Improvements to be Constructed

Entity represents that it will construct a 35 story building, containing approximately 452 residential rental units 442 of which will be market rate units and 10 of which will be ADUs, approximately 16,597 square feet of retail space and 343 parking spaces for the use of the residents and retail customers only, all of which is specifically described in the Application attached hereto as Exhibit _____.

Section 2.4 Construction Schedule

The Entity agrees to diligently undertake to commence construction and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as Exhibit _____.

Section 2.5 Ownership, Management and Control

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

The Entity represents that it is the owner of the Land upon which the project is to be constructed and will manage and control the Project. The City acknowledges that the Entity may enter into a management agreement for the Project and will pay a management fee in accordance

with HUD regulations as provided in the Entity's agreement with HUD, which fee was disclosed in its tax exemption application. The City acknowledges that the Entity may enter into future management agreements so long as such agreements are not used to reduce the City's economic benefits under this Agreement and the management fees to be paid are comparable to those disclosed in the application.

Section 2.6 Financial Plan

The Entity represents that the Improvements shall be financed in accordance with the Financial Plan attached hereto as Exhibit _____. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

Section 2.7 Statement of Rental Schedules and Lease Terms

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit _____.

ARTICLE III - DURATION OF AGREEMENT

Section 3.1 Term

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of fourteen (14) years from the date of the adoption of Ordinance 12- on _____, 2012, which approved this Amended Agreement or ten (10) years from the date of Substantial Completion of the Project. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned by a corporation or association formed and operating under the Law.

ARTICLE IV - ANNUAL SERVICE CHARGE

Section 4.1 Annual Service Charge

In consideration of the tax exemption, the Entity shall make the following payments to the City:

- (i) City Service Charge: an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge for the first ten (10) years equal to 10% of the Annual Gross Revenue for the 452 rental units, parking and retail space. The Annual Service

Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue which shall not be less than the its estimate of Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit _____. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Agreement.

The Minimum Annual Service Charge or The Annual Service Charge as the case may be shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

Notwithstanding anything herein to the contrary, upon Substantial Completion, the Minimum Annual Service Charge shall be prorated in accordance with Section 1.2(xvi)(b) and the Lease Up Period.

- (ii) County Service Charge: an amount equal to 5% of the Annual Service Charge upon receipt of that charge, for remittance to the County by the City.

Section 4.2 Staged Adjustments

The Annual Service Charge shall be adjusted, in Stages over the term of the tax exemption in accordance with N.J.S.A. 40A:20-12(b) as follows:

- i. Stage One: From the 1st day of the month following Substantial Completion until the last day of the 6th year, the Annual Service Charge shall be 10% of Annual Gross Revenue;
- ii. Stage Two: Beginning on the 1st day of the 7th year following Substantial Completion, an amount equal to the greater of the Annual Service Charge or 20% of the amount of the taxes otherwise due on the value of the land and Improvements;
- iii. Stage Three: Beginning on the 1st day of the 8th year following the Substantial Completion, an amount equal to the greater of the Annual Service Charge or 40% of the amount of the taxes otherwise due on the value of the land and Improvements;
- iv. Stage Four: Beginning on the 1st day of the 9th year following Substantial Completion, an amount equal to the greater of the Annual Service Charge or 60% of the amount of the taxes otherwise due on the value of the land and Improvements.
- v. Final Stage: Beginning on the 1st day of the 10th year following Substantial Completion through the date the tax exemption expires, an amount equal to the greater of the

Annual Service Charge or 80% of the amount of the taxes otherwise due on the value of the land and Improvements.

Section 4.3 Credits

The Entity is required to pay both the Annual Service Charge and the Land Tax Payments. The Entity is obligated to make timely Land Tax Payments, including any tax on the pre-existing improvements, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any quarter that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that quarter. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

Section 4.4 Quarterly Installments

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the unpaid amount shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

Section 4.5 Administrative Fee

The Entity shall also pay an annual Administrative Fee to the City in addition to the Annual Service Charge and Land Tax levy. The Administrative Fee shall be calculated as two (2%) percent of each prior year's Annual Service Charge. This fee shall be payable and due on or before December 31st of each year, and collected in the same manner as the Annual Service Charge. In the event that the Entity fails to timely pay the Administrative Fee, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

Section 4.6 Affordable Housing Contribution and Set-Aside

The Entity, pursuant to the Financial Agreement and the Amended Settlement Consent Order, has paid \$2,500,000 to subsidize 25 units of Choice Program off-site at the Summit Heights Project. In addition, the Entity shall pay an additional \$750,000 into the Affordable Housing Trust Fund in the manner proscribed in Section 304-28 of the Jersey City Municipal Code. The Entity has also agreed to set aside 10 ADUs on-site as required to the Second Amendment to the Settlement Consent Order. The Entity acknowledges that the performance of the Affordable Housing obligations as set forth above is a material inducement to the City to enter into this Amended Agreement and a material breach of the obligation shall be considered a material breach of this Amended Agreement. In consideration of the Entity's contributions as set forth above, and consistent with the terms of the Second Amendment to the Settlement Consent Order, it shall be relieved of the obligation to set-aside Affordable Dwelling Units ("ADUs") on-site beyond the 10 units provided.

Section 4.7 Material Conditions

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative Fees, compliance with the Affordable Housing obligations imposed by the Amended Settlement Consent Order, and any interest thereon, are Material Conditions of this Agreement.

ARTICLE V - PROJECT EMPLOYMENT AND CONTRACTING AGREEMENT

Section 5.1 Project Employment and Contracting Agreement

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment and Contracting Agreement, attached hereto as Exhibit _____. In addition, the Entity shall execute a Project Labor Agreement as required by Ordinance 07-123 as it exists or as it may be amended from time to time.

ARTICLE VI - CERTIFICATE OF OCCUPANCY

Section 6.1 Certificate of Occupancy

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner so as to complete construction in accordance with the proposed construction schedule attached hereto as Exhibit _____. The failure to secure the Certificates of Occupancy shall subject the property to full taxation for the period between the date of Substantial Completion and the date the Certificate of Occupancy is obtained.

Section 6.2 Filing of Certificate of Occupancy

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not militate against any action or non-action, taken by the City, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

ARTICLE VII - ANNUAL REPORTS

Section 7.1 Accounting System

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

Section 7.2 Periodic Reports

A. An Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that the Agreement shall continue in effect, the Entity shall submit to the Mayor and Municipal Council and the NJ Division of Local Government Services in the Department of Community Affairs, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: condominium unit purchase price, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Disclosure Statement: On the anniversary date of the execution of this Agreement, and each and every year thereafter while this agreement is in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the City may request from time to time.

Section 7.3 Inspection/Audit

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the NJ Division of Local Government Services in the Department of Community Affairs. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

All costs incurred by the City to conduct the audit, including reasonable attorneys' fees if appropriate, shall be billed to the Entity and paid to the City as part of the Entity's Annual Service Charge. Delinquent payments shall accrue interest at the same rate as for a delinquent service charge.

ARTICLE VIII- LIMITATION OF PROFITS AND RESERVES

Section 8.1 Limitation of Profits and Reserves

During the period of tax exemption as provided herein, the Entity shall be subject to a limitation of its profits pursuant to the provisions of N.J.S.A. 40A:20-15.

The Entity shall have the right to establish a reserve against vacancies, unpaid rentals, and reasonable contingencies in an amount equal to five (5%) percent of the Gross Revenue of the Entity for the last full fiscal year preceding the year and may retain such part of the excess Net Profits as is necessary to eliminate a deficiency in that reserve, as provided in N.J.S.A. 40A:20-15. The reserve is to be non-cumulative, it being intended that no further credits thereto shall be permitted after the reserve shall have attained the allowable level of five (5%) percent of the preceding year's Gross Revenue. Pursuant to N.J.S.A. 40A:20-14(b) there is expressly excluded from the calculation of Gross Revenue and Net Profit in the determination of Excess

Profit, any gain realized by the Entity on the sale of any condominium unit, whether or not taxable under federal or state law.

Section 8.2 Annual Payment of Excess Net Profit

In the event the Net Profits of the Entity, in any fiscal year, shall exceed the Allowable Net Profits for such period, then the Entity, within one hundred and twenty (120) days after the end of such fiscal year, shall pay such excess Net Profits to the City as an additional service charge; provided, however, that the Entity may maintain a reserve as determined pursuant to aforementioned paragraph 8.1. The calculation of the entity's excess net profits shall include those project costs directly attributable to site remediation and cleanup expenses and any other costs excluded in the definition of Total Project Cost in Section 1.2 (xx) of this agreement even though those costs may have been deducted from the project costs for purposes of calculating the annual service charge.

Section 8.3 Payment of Reserve/ Excess Net Profit Upon Termination, Expiration or Sale

The date of termination, expiration or sale shall be considered to be the close of the fiscal year of the Entity. Within ninety (90) days after such date, the Entity shall pay to the City the amount of the reserve, if any, maintained by it pursuant to this section and the excess Net Profit, if any.

ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION

Section 9.1 Approval

Subject to the provisions of N.J.S.A. 40A:20-5(e), any sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity does not own any other Project subject to long term tax exemption at the time of transfer; 2) the new Entity is formed and eligible to operate under the Law; 3) the Entity is not then in default of this Agreement or the Law; 4) the Entity's obligations under this Agreement is fully assumed by the new Entity, 5) the Entity shall pay the City a transfer fee equal to 2% of the then current Annual Service Charge as required by N.J.S.A. 40A:20-10d.

Section 9.2 Fee

Where the consent or approval of the City is sought for approval of a change in ownership or sale or transfer of the Project, the Entity shall be required to pay to the City a new tax exemption application fee for the legal and administrative services of the City, as it relates to the review, preparation and/or submission of documents to the Municipal Council for appropriate action on the requested assignment. The fee shall be non-refundable.

ARTICLE X - COMPLIANCE

Section 10.1 Operation

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of Project under this Agreement shall not only be terminable as provided by N.J.S.A. 40A:20-1, et seq., as currently amended and supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

Section 10.2 Disclosure of Lobbyist Representative

During the term of this Agreement, the Entity must comply with Executive Order 2002-005, and Ordinance 02-075, requiring Written Disclosure of Lobbyist Representative Status. The Entity's failure to comply with the Executive Order or the Ordinance shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

ARTICLE XI - DEFAULT

Section 11.1 Default

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

Section 11.2 Cure Upon Default

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure

any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default due to a failure to pay any charges defined as Material Conditions in Section 4.7, the Entity shall not be subject to the default procedural remedies as provided herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein.

Section 11.3 Remedies Upon Default

The City shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, or the Annual Service Charges or its failure to comply with the Affordable Housing obligations imposed by the Consent Order shall not be subject to the default procedural remedies as provided in Article XI herein, but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII. All of the remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No termination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge, Annual Service Charge, or Administrative Fees or its failure to comply with the Affordable Housing provisions of the Consent Order. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no termination. Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, Administrative Fees, or for breach of the Consent Order or of any covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land.

ARTICLE XII- TERMINATION

Section 12.1 Termination Upon Default of the Entity

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

Section 12.2 Voluntary Termination by the Entity

The Entity may after the expiration of one year from the Substantial Completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

Section 12.3 Final Accounting

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting and pay to the City the reserve, if any, pursuant to the provisions of N.J.S.A. 40A:20-13 and 15 as well as any excess Net Profits. For purposes of rendering a final accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

Section 12.4 Conventional Taxes

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

Section 12.5 Termination Payment

In addition to any other remedies available to the City upon termination whether voluntary or upon default, the Entity shall pay to the City an amount equal to the difference between the service charge actually paid and the service charge that would have been due had each adjustment period provided in Section 4.2 hereof, been of the shortest duration permitted by law, thereby generating the most accelerated increases, permitted by law.

ARTICLE XIII - DISPUTE RESOLUTION

Section 13.1 Arbitration

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article IV, Section 4.7 as Material Conditions.

ARTICLE XIV - WAIVER

Section 14.1 Waiver

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provision of this Agreement.

ARTICLE XV - INDEMNIFICATION

Section 15.1 Defined

It is understood and agreed that in the event the City shall be named as party defendant in any action alleging any breach, default or a violation of any of the provisions of this Agreement

and/or the provisions of N.J.S.A. 40A:20-1 et seq., the Entity shall indemnify and hold the City harmless against any and all liability, loss, cost, expense (including reasonable attorneys' fees and costs, through trial and all stages of any appeal, including the cost of enforcing this indemnity) arising out of Agreement. In addition, the Entity expressly waives all statutory or common law defenses or legal principles which would defeat the purposes of this indemnification. The Entity also agrees to defend the suit at its own expense, counsel to be selected by the City, subject to the reasonable consent of the Entity. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the City.

ARTICLE XVI- NOTICE

Section 16.1 Certified Mail

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

Section 16.2 Sent by City

When sent by the City to the Entity the notice shall be addressed to:

110 First Street Urban Renewal Associates, LLC
c/o BLDG Management Co., Inc.
417 Fifth Avenue, 4th Floor
New York, New York 10016

and

Joseph G. Ragno, Esq.
Waters, McPherson, McNeil, P.C.
300 Lighting Way
Seventh Floor
Secaucus, New Jersey 07096

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

In addition, provided the City is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the City agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

Section 16.3 Sent by Entity

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk
City Hall
280 Grove Street
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Urban Renewal Entity and the Property's Block and Lot number).

ARTICLE XVII-SEVERABILITY

Section 17.1 Severability

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties and the Law. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties and the Law. However, the City shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the City.

ARTICLE XVIII - MISCELLANEOUS

Section 18.1 Construction

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

Section 18.2 Conflicts

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

Section 18.3 Oral Representations

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

Section 18.4 Entire Document

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof.

Section 18.5 Good Faith

In their dealings with each other, utmost good faith is required from the Entity and the City.

ARTICLE XIX - EXHIBITS

Section 19 Exhibits

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds description of the Project;
2. Ordinance of the City authorizing the execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;
7. Good Faith Estimate of Initial Rental Schedule and Lease Terms;
8. Project Employment and Contracting Agreement;
9. Architect's Certification of Actual Construction Costs.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

WITNESS: 110 FIRST STREET URBAN RENEWAL ASSOCIATES, LLC

BY:

ATTEST: CITY OF JERSEY CITY

ROBERT BYRNE,
CITY CLERK

JOHN KELLY,
BUSINESS ADMINISTRATOR

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