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**Negotiating for Social Justice and the Promise of  
Community Benefits Agreements:  
Case Studies of Current and Developing  
Agreements**

**April 2008**



**ALBANY LAW SCHOOL**

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**April 2008**

**Patricia E. Salkin  
and  
Amy Lavine**

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# Negotiating for Social Justice and the Promise of Community Benefits Agreements: Case Studies of Current and Developing Agreements

*Patricia E. Salkin and Amy Lavine*

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### I. Community Benefits Agreement Basics

A community benefits agreement (CBA) is a private contract negotiated between a prospective developer and community representatives. In essence, the CBA specifies the benefits that the developer will provide to the community in exchange for the community's support, or quiet acquiescence, of its proposed development. The promise of community support may be especially useful to a developer seeking government subsidies or timely project approvals.<sup>1</sup> The CBA is a relative newcomer to the toolbox of strategies that communities may utilize to ensure that development occurs consistent with the sometimes more narrow goals and desires of neighborhood residents, as opposed to the sometimes broader goals and desires of municipal and regional governing bodies. The CBA concept is still in its infancy. However, with only about ten years of experience with CBAs, a number of differences and similarities are emerging as case studies are developed and reviewed across the country. This article is intended to document a comprehensive review of major CBA processes in cities across the United States—some successful, some not so successful, and some still in the development stages—to gain better insights into the legal, social, and political aspects of negotiating for social justice as part of the land development process.

CBAs are generally negotiated between coalitions of community groups that often include labor, environmental, and religious organizations. Many CBA provisions are inspired by social justice issues and may sometimes be viewed in context of community advocacy in support of environmental justice principles. Common CBA benefits provisions include living wage requirements, first source (i.e., local) hiring and job training programs, minority hiring minimums, guarantees that developments will include low-income and affordable housing, environmental remediation requirements, and funding for community services and programs.<sup>2</sup> Since these agreements are negotiated between community coalitions and interested developers on a case-by-case basis, the benefits are typically tailored to provide specific desired community amenities such as parks, day care centers, youth facilities, and job training facilities.<sup>3</sup>

The flexibility of the CBA begins with the process by which these agreements are negotiated. CBA discussions may be initiated by a project developer or by a community coalition, or in some cases they may be encouraged by city officials. The community is often represented by a coalition of community groups or organizations, and in some cases local government officials may be involved.<sup>4</sup> Public input should play an important role in determining community goals and desires. The gathering of this input is a

critical function of the community coalition so that the community is unified when negotiating with the project developer, and so that the developer can feel comfortable that the coalition is a legitimate community representative for purposes of negotiations.

Following the successful negotiation of a CBA, in states that authorize development agreements, it may be incorporated into this agreement made between the developer and the municipality as part of the planning process.<sup>5</sup> Although this ensures a certain measure of transparency and also permits the government, as well as coalition members, to enforce the agreement, most states do not authorize local governments to enter into development agreements, many CBAs will be enforceable only by the contracting community groups.<sup>6</sup> This reality raises a number of yet tested legal issues, including who will have standing to challenge and enforce privately negotiated CBAs, and whether these voluntary agreements, regardless of their terms, will be enforceable in a court of law.<sup>7</sup>

Many advocates view CBAs as powerful tools for assuring that community needs and desires will not be neglected by large developers. Many developers support the voluntary negotiating process as a method by which to obtain community support and thereby avoid long government delays and perhaps ultimate denial of their project proposals. Although CBAs have been negotiated in relation to nearly fifty development projects in cities across the country,<sup>8</sup> it is important to note that there is no specific statutory authority or regulatory for these agreements and there are dozens of potential legal issues that might arise in litigation should these agreements be challenged in court. However, assuming there is equal bargaining power among the parties to a CBA negotiation, that there is full support of the community coalition from community members, and that the developer's assumptions about government approvals and project design are accurate enough to enable full compliance with the agreed to terms, CBAs can be an empowering social justice tool.<sup>9</sup>

## II. Negotiating Community Benefits and the Land Development Process: CBA Case Studies

The following review of existing CBAs exposes the benefits and challenges in negotiating, implementing, and enforcing these agreements. It also reveals the similarities and differences inherent in the community-based approaches that are as diverse as the neighborhoods where these agreements are negotiated.

### A. California

There are more CBAs in various stages of development and implementation in California than in any other state. Possible reasons for this phenomenon may include the fact that development agreements are authorized by state statute,<sup>10</sup> and the existence of a high intensity of progressive activism and advocacy by community organizers in the state.

### 1. Hollywood and Highland Center (Los Angeles, 1998)

The first CBA was negotiated in 1998 in relation to the development of the Hollywood and Highland Center, home to the theater that now hosts the annual Oscar ceremonies.<sup>11</sup> The development, which includes more than 4,000 theater seats, several parking lots and hotels, and 1.2 million square feet of retail space, was projected to cost \$388 million.<sup>12</sup> The project sparked concerns among Hollywood residents and business owners that traffic and congestion would be increased, that there might be environmental and aesthetic effects, and that crime rates might go up.<sup>13</sup> With the help of Los Angeles Councilwoman Jackie Goldberg and the Los Angeles Alliance for a New Economy (LAANE), the developer agreed to a deal with community groups. In exchange for the groups' support, the developer offered to finance traffic improvements, ensure that workers at the center would be paid a living-wage, implement a first-source hiring plan, and enact a policy of union neutrality.<sup>14</sup> The deal, though, was not one-sided; community support of the development helped the developer to obtain \$90 million in subsidies from the city.<sup>15</sup>

By most accounts the project has been a success. In addition to revitalizing Hollywood Boulevard, nearly 70 percent of the initial employees hired at the complex were recruited from the immediate area and about half of the permanent positions provide living-wages.<sup>16</sup> In 2004, LAANE reached another CBA for a development just down the street from Hollywood and Highland. The benefits package for the Hollywood and Vine mixed-use, transit-oriented development included similar living wage, affordable housing, and job training provisions.<sup>17</sup> As of early 2008, Hollywood and Vine's affordable housing was under construction and the developer had taken steps to implement other aspects of the CBA.<sup>18</sup>

### 2. Staples Center (Los Angeles, 2001)

The success of the Hollywood and Highland CBA was followed in 2001 by the completion of what is sometimes referred to as the "first full-fledged" CBA. This CBA was negotiated during the development of the Staples Center, a sports arena that is home to the Los Angeles Lakers.<sup>19</sup> Community residents suffered a blow when the developer failed to provide orally promised benefits after the completion of the project's first phase.<sup>20</sup> The community hoped that a CBA would ensure that the developer would follow through with promises made in relation to the project's second phase—the construction of L.A. Live, a sports and entertainment complex on a twenty-seven acre parcel including two hotels, a theater, apartment buildings, and a retail complex. Negotiations were held between the developer and the Figueroa Corridor Coalition for Economic Justice, which represented more than thirty community organizations, including environmental groups, church groups, health organizations, and immigrants' and tenants' rights supporters. Strategic Action for a Just Economy (SAJE) and LAANE were also involved in the negotiating process, providing organizational and political support to the coalition and community members.<sup>21</sup>

The specter of broad community opposition to the project, which required significant land use variances and city subsidies, provided the community with the necessary leverage to negotiate one of the most comprehensive CBAs made to date. The completed agreement states that its purposes are to “provide publicly accessible park space, open space, and recreational facilities; target employment opportunities to residents in the vicinity of the Figueroa Corridor; provide permanent affordable housing; provide basic services needed by the Figueroa Corridor community; and address issues of traffic, parking, and public safety.”<sup>22</sup> The CBA included reporting requirements and established a committee to monitor and enforce the agreement and to maintain a dialogue between the developer and the coalition.<sup>23</sup> The CBA was also incorporated into the development agreement between the developer and the city’s redevelopment agency, making it enforceable by the city as well as by the contracting community groups.<sup>24</sup>

Several aspects of the Staples Center CBA were implemented shortly after its completion, including the establishment of a residential parking permit program and the distribution of seed money for the construction of affordable housing.<sup>25</sup> Since then, the developer has carried through with its obligations in a timely manner and with few problems.<sup>26</sup> One million dollars has been spent on parks, with priorities for the funding being determined through a series of community meetings and workshops.<sup>27</sup> About 300 units of inclusionary affordable housing have been financed, and a revolving loan fund for local businesses has revolved several times.<sup>28</sup> The coalition and city have also been able to assess the developer’s compliance with the CBA’s living wage requirements through annual reports detailing the proportion of living wage jobs created by the project.<sup>29</sup> SAJE has continued to be intimately involved with the project, and meetings between the coalition and the developer have been held quarterly to monitor the implementation of the CBA. Additionally, SAJE has developed a jobs program for local residents and businesses.

The Staples Center CBA has also shown that the flexibility of CBAs may extend beyond their initial negotiation. The CBA included provisions for assessment of the agreement’s implementation at five and ten years after its completion; if it is found that the developer’s performance of its obligations falls below 80 percent of the CBA’s goals for two consecutive years, then the developer must meet with the coalition to formulate a mutually accepted plan to reach those goals.<sup>30</sup> The parties have also modified the CBA at their own instance to respond to the changing needs of both the developer and the community.<sup>31</sup>

### 3. LAX Expansion (Los Angeles, 2004)

Another Los Angeles CBA demonstrates the flexibility and adaptability of this method of negotiating. In December 2004, the Los Angeles City Council approved the agreement reached between Los Angeles World Airports (LAWA), the public administrator of LAX airport, and a coalition of

twenty-two community groups concerning an \$11 billion airport expansion.<sup>32</sup> Among the coalition members were two local school districts and organizations representing community, religious, environmental, and labor interests.<sup>33</sup> In addition to provisions covering job training, first-source hiring, and living-wage requirements,<sup>34</sup> the CBA also devoted substantial resources toward mitigating the environmental impacts of the airport. As a result, the airport provided more than \$8.5 million annually for the soundproofing of local schools, city buildings, places of worship, and homes,<sup>35</sup> and it agreed to fund studies on air quality and community health.<sup>36</sup> Further, the CBA requires LAX to implement a number of environmental controls, including the electrification of passenger gates and cargo areas (to reduce the need for engine idling), emissions reductions, and the conversion of airport vehicles to alternative fuels.<sup>37</sup> The CBA also clearly requires LAWA to incorporate CBA provisions into all airport contracts, lease agreements, and licensing or permitting agreements, thus ensuring the translation of the requirements to the airport's contractors and tenants.<sup>38</sup>

#### 4. Ballpark Village (San Diego, 2005)

In September 2005, a broad coalition of twenty-seven housing, labor, community, environmental, and religious groups negotiated San Diego's first CBA with developer JMI/Lennar in relation to Ballpark Village, a seven-acre project with 3.2 million square feet of offices, residences, and retail space. The CBA negotiations were held in private and were not made public until just before the city council was to vote on the project's master plan.<sup>39</sup> By this time, the developer had been working on a deal with the local redevelopment agency for nearly two years, and the last minute change in plans provoked some criticism that it had "circumvented the process."<sup>40</sup> Moreover, the new agreement called for significant changes to be made to the project's affordable housing component. Although it called for more units, none of them were to be inclusionary units located onsite, as the agreement with the redevelopment agency required. Despite this negative publicity surrounding the CBA, a revised version that incorporated some aspects of the original affordable housing plan was eventually approved,<sup>41</sup> and the CBA, as a whole, has been viewed positively.<sup>42</sup> The agreement set out a range of community benefits, including:

- requirements that the developer meet LEED green building standards for the development and use environmentally-friendly construction practices;
- a requirement to include "bird-friendly" structural elements, such as non-reflective windows;
- mitigation, monitoring and reporting programs to reduce pollution during construction;
- a living wage requirement for the developer's employees and the employees of its service contractors;
- a local hiring program;

- \$1.5 million in funds set aside for job training programs for community residents;
- plans for on and off-site affordable housing, with the total number of units exceeding the city's minimum affordable housing requirement;
- a commitment to attract a grocery store to the community that would offer living wages and provide benefits; and
- funding for a gentrification study and for community arts, youth, and cultural programs.<sup>43</sup>

#### 5. SunQuest Industrial Park (Los Angeles, 2001)

In 2001, an agreement was reached for the redevelopment of an environmentally contaminated industrial site in Los Angeles. The city agreed to provide environmental remediation, and the developer committed to paying living wages, hiring local residents, and setting up a neighborhood improvement fund.<sup>44</sup> Unfortunately, plans for the SunQuest industrial park project were tabled after the developer went bankrupt, and the foreclosure cancelled the CBA. The SunQuest site was bought by another developer and it is now unclear whether the CBA will apply.<sup>45</sup>

#### 6. NoHo Commons (Los Angeles, 2001)

Another 2001 deal in relation to a large mixed-use development in North Hollywood secured affordable housing, living wage, and first source hiring promises for the community.<sup>46</sup> The developer in return got about \$44 million in city subsidies, a figure that was increased from the city's original plan to award \$31 million in funds.<sup>47</sup> The CBA may also have helped to secure the unanimous approval the project received from the city council.<sup>48</sup>

The NoHo Commons project includes residential, retail, and office space, as well as a food market, a school, and a child care center. LAANE, which also helped to negotiate the Staples Center CBA, organized a coalition to work with the developer, J.H. Snyder Co., on a CBA. The end result seems to have been positive for everyone. LAANE has reported that 80 percent of the tenants have chosen to use the first source hiring system set up by the developer, and tenants willing to pay living wages have been found.<sup>49</sup> The NoHo Commons developer has been cooperative and implementation of the CBA has progressed smoothly.<sup>50</sup> If anything, the project may have been too successful, with developments popping up all over North Hollywood and threatening gentrification.<sup>51</sup>

#### 7. Marlton Square (Los Angeles, 2002)

The Los Angeles developer of Marlton Square, a retail and housing redevelopment project, also entered into a CBA. The deal in that case included provisions relating to the creation of community spaces, a first source hiring policy and a commitment to reaching a 70 percent living wage goal.<sup>52</sup> Although the project was approved and received subsidies in 2002, it has had a number of false starts and has had difficulty attracting retail tenants.<sup>53</sup> Some housing has been built, but as of late 2007, the bulk of the project was

still delayed and the community benefits that were to be provided by the developer pursuant to the agreement have yet to be realized.<sup>54</sup>

#### 8. CIM Project (San Jose, 2003)

San Jose's first CBA was completed in relation to the downtown development of a residential retail and entertainment complex. The negotiations were led primarily by labor groups, and the coalition, which also included housing, small business, and neighborhood groups, gained leverage in negotiations because of the \$40 million in subsidies being sought by the developer.<sup>55</sup> The CBA was completed and incorporated into a development agreement in 2003. Included among its provisions were a living wage requirement for the developer's employees, a project labor agreement (i.e., an agreement to use unionized labor during construction), affordable housing requirements, a plan to help establish small businesses, a commitment to help set up a day care facility, and a promise to seek business tenants that would provide living wages.<sup>56</sup>

As of early 2008, the CIM project is still under construction. Working Partnerships USA reports that all of the developer's commitments have been fulfilled to date, and they will continue monitoring the CBA's implementation when the project is completed in 2009.<sup>57</sup>

#### 9. Oak to 9th (Oakland, 2006)

Oakland's first CBA was finalized in 2006 in relation to the controversial redevelopment of sixty-four acres of waterfront property. Planned for the site are more than 3,000 residential units and a retail complex. The agreement, entered into by the coalition members and the redevelopment agency and incorporated into the development agreement, focuses primarily on affordable housing, and it authorizes injunctive relief to be awarded for noncompliance.<sup>58</sup> While the CBA has not been especially criticized, other community groups have separately fought to prevent the development. Environmental advocates who opposed building up the estuarine waterfront collected thousands of signatures for a referendum to stop the development,<sup>59</sup> and another group has fought to prevent the development from destroying a historic warehouse on the site.<sup>60</sup> These groups have also initiated litigation to prevent the project.<sup>61</sup> Why the community groups supporting increased environmental and historical preservation controls were not part of the CBA negotiations is unclear, but it does seem that the CBA did not adequately address all of the community's concerns. The Oak to 9th CBA has not been implemented to date, due to the ongoing litigation concerning the development.<sup>62</sup> Meanwhile, Oakland residents are pressing for another CBA to cover a condominium development in the Fruitvale neighborhood.<sup>63</sup>

#### *B. New York*

Unlike California, localities in New York are not authorized to enter into development agreements as part of the land development approval

process. This has not deterred recent interest in the use of CBAs as a means of securing community support for what appear to be controversial projects. The East Coast CBAs have been heavily influenced by their West Coast predecessors.

### 1. Atlantic Yards

The first New York CBA<sup>64</sup> was completed in 2005 in relation to the multi-billion dollar Atlantic Yards arena project, future home to the New Jersey Nets. In addition to the basketball arena, the proposal includes an attached residential and office complex to be made up of several high-rise buildings, a development that will radically alter Brooklyn's skyline.<sup>65</sup> Since its inception, the project has faced broad opposition from Brooklyn residents, primarily because the project is to involve the use eminent domain.<sup>66</sup>

The Atlantic Yards CBA was negotiated by eight community groups<sup>67</sup> and was purportedly based on the Staples Center agreement. It includes affordable housing, living wage, first source and minority hiring provisions, a commitment to build a day care center, and the perk of free basketball tickets for neighborhood residents.<sup>68</sup>

The CBA includes a number of important benefits, but actual and perceived improprieties in the negotiating process have spurred negative reactions to the agreement.<sup>69</sup> Critics have pointed out that several of the coalition's member groups were created expressly for the purpose of the negotiating the agreement.<sup>70</sup> Numerous other community groups expressed opposition to the development and to the CBA, claiming that the developer never had any intention of bargaining in good faith.<sup>71</sup> One of the coalition's member groups also reported receiving \$5 million from the developer, creating a conflict of interest that has clearly tarnished the CBA's integrity.<sup>72</sup> Additionally, several chairpersons from local community boards protested statements made by the developer that they had played an advisory role in the negotiations. The chairpersons contended, to the contrary, that their involvement with the CBA ended very early in the process and well before a final draft was prepared.<sup>73</sup> A representative of Good Jobs New York also expressed serious misgivings about the CBA, claiming that the negotiations were "marked by secrecy" and that they "contributed to a fragmentation of community responses."<sup>74</sup>

It seems that a fundamental problem with the Atlantic Yards CBA is that the coalition has been perceived by many people as not truly representative of the community. A significant portion of Brooklyn residents are opposed to the project due to the extensive impacts that it will have on their neighborhoods,<sup>75</sup> and because they were not invited to participate in negotiations. Rather, the talks were led by community members who are believed to be already on the developer's side.<sup>76</sup> Without input from the stakeholders who have the most concerns about the project's effects on the community, the CBA is likely weaker than it otherwise might have been. Interestingly, another Brooklyn community group lobbied the developer to reopen the CBA for further negotiations in 2006. The developer refused, but offered

instead to consider a second agreement to be called a "Neighborhood Benefits Agreement." Little seems to have come of this initiative.<sup>77</sup>

Construction of the Atlantic Yards arena has been significantly delayed by litigation over the proposed condemnations needed to enable the project to continue,<sup>78</sup> and the major provisions of the CBA have thus yet to be implemented.<sup>79</sup> The developer did advertise that it was seeking an independent compliance monitor in 2007, as required by the CBA, but some have questioned just how independent the monitor will be.<sup>80</sup>

Recent news that the Atlantic Yards project may be facing serious financial difficulties has also raised questions about whether "it was reasonable to expect the benefits from the Community Benefits Agreement when it was signed[.]"<sup>81</sup> Forest City Ratner has indicated that it will continue construction work on the arena, but plans for many of the project's other buildings appear to have been indefinitely delayed—including the affordable housing, retail and office space that were key components of public and governmental support for the project.<sup>82</sup> The CBA does not require any minimum amount of affordable housing to be built,<sup>83</sup> and the possibility that very little will be built in the near future has made apparent a significant shortcoming of the agreement.

One upside of the Atlantic Yards situation is that with so many people opposed to the project and the manner in which the CBA was made, there will likely be some heightened public scrutiny of the developer's compliance with its agreements.<sup>84</sup> Moreover, fears that the Atlantic Yards CBA will establish "bad precedent" for future CBAs have died down somewhat. The Atlantic Yards CBA process has been criticized so much<sup>85</sup> that other New York CBA negotiators have expressly chosen to "avoid[] the Brooklyn model[.]"<sup>86</sup>

## 2. Gateway Center/Bronx Terminal Market

The 2006 CBA concerning the Bronx Terminal Market mall development<sup>87</sup> has been criticized nearly as much as the Atlantic Yards agreement. The negotiation process of this CBA has been faulted for not truly involving any grassroots community organizations.<sup>88</sup> While the agreement does include a number of valuable community benefits, the developer may only be held liable for a maximum of \$600,000 for failing to comply with the CBA,<sup>89</sup> weakening the value of the CBA in the eyes of many stakeholders. Critics have also drawn attention to the subtleties of some of the contract's provisions: the amount of retail space reserved for local retailers makes up only a minimal portion of the mall's square footage; and the living wage and minority hiring provisions are not expressly enforceable as to the developer's tenants. Finally, community groups have criticized the negotiation process for being neither transparent nor inclusive. Although eighteen groups representing various interests were selected by the borough president to participate in the process, they were given only about a month to prepare a draft CBA and were not given any assistance in the process. Evidently, this resulted in many of the community groups having little influence in the actual

negotiations. When the organizations received copies of the completed CBA the morning of the council vote to approve the development plans, only three of them signed the agreement, while at least seven refused to do so.<sup>90</sup>

While the Bronx Terminal Market CBA may not have been completed in a manner satisfactory to CBA proponents, it is being implemented. The City University of New York reported in 2007 that it had received \$175,000 from the developer to provide pre-apprenticeship training to Bronx residents.<sup>91</sup> Elsewhere in the borough, residents are actively campaigning for a CBA relating to the Bronx armory.<sup>92</sup>

### 3. Yankee Stadium

The Yankee Stadium CBA, completed in 2006, has also faced stiff criticism. The agreement, made among the Yankees, the Bronx borough president, and the Bronx delegation of the New York City Council, was not negotiated or signed by any community groups. Therefore, arguably it is not even a legitimate CBA. One of the agreement's most controversial provisions is the trust fund that it created to be administered by "an individual of prominence" through distributions to local nonprofit groups.<sup>93</sup> Because the fund's trustee will be appointed by the same elected officials responsible for the CBA, it has been referred to as a slush fund by critics who fear that funding will not be distributed impartially.<sup>94</sup> The Yankee Stadium CBA has also been criticized because the development will eliminate more than twenty acres of parks, leaving the city to pay for their replacement in addition to the subsidies already being given to the project.<sup>95</sup>

As of early 2008, nearly seventeen months after construction began, none of the money set aside by the Yankees had been distributed. Apparently, the funding was being held up because the advisory panel that is responsible for administering the fund had yet to choose a chairman, register as a charity, or select any grant recipients. Elected officials frustrated with the situation "complained that they [were] in the dark" about the CBA.<sup>96</sup> A few weeks after the *New York Times* published the news about the fund's delays, a spokesman and legal advisor for the community fund announced that Bronx Little League teams and the City University of New York (CUNY) would be the first recipients of funding. The spokesman also denied claims that the distribution of funds under the CBA has been delayed. He attributed the problems to getting charitable tax status and finding suitable candidates for the fund's committee.<sup>97</sup> This example demonstrates that negotiating a CBA may be only the first of many battles in ensuring that community benefits are actually received.

### 4. Columbia Expansion

With New York City's bleak track record in fostering CBAs as compared to the successes of their Californian counterparts, CBA supporters were hoping that an agreement concerning Columbia University's expansion into West Harlem would provide a better model for the future of CBAs in New York.

The project, in which Columbia will put up sixteen to eighteen new buildings, is estimated to cost about \$6 billion and is likely to span about twenty years. The project is also expected to create about 6,000 jobs and “transform a shabby enclave of auto-repair shops, warehouses and small manufacturing plants into a pedestrian-friendly environment with more open space, restaurants and shops.” Columbia also argues that the expansion is necessary to its educational mission, as it is now cramped and its spread-out facilities do not allow it to be as competitive as universities such as Harvard and Princeton.<sup>98</sup>

The city and Mayor Bloomberg have been especially supportive of Columbia’s interest in creating a CBA, providing funds and technical assistance for the negotiating process.<sup>99</sup> The process, in this case, was also markedly different than the other New York CBAs from the start.<sup>100</sup> Rather than being driven primarily by the developers or elected officials, County Board 9 authorized the creation of a local development corporation (LDC) to be composed of appointed community leaders representing a broad range of constituents.<sup>101</sup> Public meetings began in September 2006 and continued on a weekly basis with working groups devoted to housing, business, and economic development, employment, education, historic preservation, community facilities, and social services, arts and culture, environmental stewardship, transportation, research and laboratory activities, and green spaces.<sup>102</sup>

Although the community board originally intended that the LDC would not include any elected officials, after the LDC’s first meeting it reconsidered this decision.<sup>103</sup> However, including elected officials proved detrimental to the process, as perceptions arose that these individuals were not representing the true interests of the community and that they were inappropriately controlling negotiations. Moreover, Columbia did not have any representatives on the LDC and was not very involved with the negotiations.<sup>104</sup>

The situation took a turn for the worse in November 2007 when three members of the LDC resigned, citing conflicts of interest among the elected officials on the board and a lack of transparency in the negotiations.<sup>105</sup> Two other members resigned shortly thereafter, claiming that there had been misrepresentations and secrecy.<sup>106</sup> These resignations left the LDC with fifteen members, of which seven were being elected officials.<sup>107</sup>

Despite these troubles, a memorandum of understanding<sup>108</sup> was completed in December 2007 just in time for the City Council to approve of the expansion plan and Columbia’s request for rezoning.<sup>109</sup> The agreement commits Columbia to providing \$150 million in benefits, including \$30 million for a university-run public school, \$20 million of in-kind services, and \$24 million for an affordable housing trust fund. But the bulk of the money, \$76 million, was set aside for as-yet undetermined community programs to be implemented over the next twelve years. The agreement has been described as “one-and-a-half non-legally binding pages,” and criticism has been directed at the LDC for rushing the CBA process and punting the specifics of the agreement to a later date.<sup>110</sup>

It seems that the Columbia CBA negotiations began in good faith with intentions to include as many divergent community interests as possible. Regardless of the LDC's continuing pledges of support for community interests, it has not succeeded in instilling much faith in its efforts among Harlem residents by some accounts. The resignations and hastily drawn up agreement have not helped. Nor has the controversy about the use of eminent domain and the possibility of gentrification in the area.<sup>111</sup> Even though Columbia did agree last fall that it would not seek to evict any residents through the use of eminent domain, some residents have expressed displeasure with the relocation provisions and it is still unknown what will happen to local businesses. The prospect that eminent domain will be used at all has been viewed negatively by many in the neighborhood, including some who support the expansion, creating tension over the CBA.

Nevertheless, Columbia may still resolve the eminent domain issue with the few remaining business owners in the expansion area,<sup>112</sup> and the finalized CBA may still deal with the as yet uncommitted \$76 million in a manner that is satisfactory to most of the community. The difficulties surrounding the CBA, moreover, should not eclipse the fact that the agreement does commit Columbia to providing extensive benefits to the community.

### C. Other Notable CBAs

Although the volume of existing CBAs and current negotiations over new CBAs are most prevalent in California and New York, the interest in CBAs is spreading throughout the country. Proposed expansion projects for institutions of higher education, the creation of municipal-wide wireless Internet access programs, brownfields remediation projects, stadiums, and housing initiatives have all provided the impetus for CBA negotiations. Some of the states where these CBAs are developing do authorize development agreements, but most do not.<sup>113</sup> What follows are highlights of select CBA processes occurring in other states.

#### 1. Yale Expansion (New Haven)

In Connecticut, a CBA concerning Yale University's construction of new cancer center was reached in 2006. The community was represented by CORD (Community Organized for Responsible Development), a coalition of twenty-two community groups, faith-based organizations, and local unions.<sup>114</sup> The CBA also received support from the city, which used the California CBAs as a model.<sup>115</sup> Provisions included in the CBA relate to affordable housing, job training and local hiring, traffic and parking, union organizing rights, and environmental issues.<sup>116</sup> One of the more unique aspects of this CBA is that the hospital also agreed to fund outreach programs that will provide medical care to uninsured children and children suffering from asthma.<sup>117</sup>

News reports indicate that the CBA is being implemented, although not without a few rough spots. Money pledged to a community college, for example, was nine months late. The city and the hospital have also disagreed about the fulfillment of the local hiring provision.<sup>118</sup>

## 2. Park East Redevelopment (Milwaukee)

A 2005 Milwaukee CBA known as the Park East Redevelopment Compact (PERC) was the first CBA to be implemented through legislation rather than through negotiations between the community and individual developers.<sup>119</sup> The agreement was precipitated by plans to demolish a section of freeway in downtown Milwaukee, which opened up prime land for development. Since no unified development plan for the area was contemplated, the coalition could not undertake negotiations with a single prospective developer. For this reason, the coalition pushed to have its CBA incorporated into the redevelopment plan.<sup>120</sup> While the city did not approve of including the CBA in its plan, the county eventually did, and the resulting PERC applies to sixteen acres of county lands and requires developers to provide living wages for construction jobs, to incorporate green design elements into their buildings, and to implement job training programs.<sup>121</sup> The plan also requires the county to provide for affordable housing and to contribute to various community programs, such as those to train and find placements for minority workers. Additionally, the agreement set up a community and economic development fund to be financed by land sales. The fund is to support the community advisory board, which will oversee and monitor the implementation of the Park East Redevelopment Compact.<sup>122</sup>

## 3. Minneapolis Wi-Fi Plan

In Minneapolis, a 2006 CBA has demonstrated that CBAs need not be limited to physical developments. The agreement, developed in relation to the creation of a citywide Wi-Fi network, is designed to minimize the digital divide by making the city's Internet service more accessible to low income and other "digitally disenfranchised" residents.<sup>123</sup> This CBA combines elements of traditional CBAs and municipal cable franchise agreements.<sup>124</sup> After a coalition was formed and presented its case to the city council, the city amended its request for vendor proposals to require Internet providers to address the problem. The city council also authorized the formation of a digital inclusion task force to work with the community coalition to assess the community's digital needs and develop a CBA proposal.<sup>125</sup> The task force and coalition worked extensively with the community to develop the CBA,<sup>126</sup> and the vendor contract ultimately included a \$500,000 fund for digital inclusion and provisions for advertising revenues to be added to the upfront amount, subsidized internet services for more than 100 community groups and nonprofits, and a guarantee of network neutrality.<sup>127</sup> Organizers in Chicago are working on negotiating a similar digital access CBA,<sup>128</sup> and Microsoft has voiced its support for the Minneapolis plan.<sup>129</sup>

## 4. Gates Rubber Company (Denver)

The Gates Rubber Company redevelopment project in Denver was the subject of a CBA finalized in 2006.<sup>130</sup> The developer plans to demolish the abandoned rubber plant, which is located on a fifty-acre brownfield

in downtown Denver, and clean up the site. In its place, an eight million square foot residential and retail center will be built.<sup>131</sup> A coalition of community and labor groups was organized by the Front Range Economic Strategy Center (FRESC) to participate in the negotiations, which lasted for more than three years.<sup>132</sup> Among the provisions of the agreement are benefits related to affordable housing, living wages for construction jobs, first-source hiring, and continued communication between the developer and the community concerning the site's clean-up. The developer also agreed not to allow any big-box stores to be included in the redevelopment. In exchange for these benefits, the developer was supported by the community in seeking \$126 million in city subsidies.<sup>133</sup> During the negotiation process, it became clear that contaminants from the site had leached into neighboring areas. Because of this, members of the coalition formed the Voluntary Cleanup Advisory Board, and with the developer's help, they tested neighborhoods adjacent to the factory for environmental contamination. The developer has agreed to make documents related to clean-up of the site available to residents at a local library.<sup>134</sup>

#### 5. Penguins Arena (Pittsburgh)

CBA negotiations for the Penguins' new hockey arena are currently under way in Pittsburgh between city and county officials and the One Hill Coalition, which is made up of about 130 community groups—possibly the largest and most diverse CBA coalition to date. The coalition has profited from strong community organizing and cohesiveness, much of it due to the neighborhood's experience when the existing arena was built in the 1950s.<sup>135</sup> At that time, ninety acres in the Hill district were cleared and 1,600 families were displaced to make way for the development.<sup>136</sup> Today, the residents expect promises that they will be treated better.

Beginning in the spring and summer of 2007, One Hill began holding public meetings and canvassing the community to determine the CBA's priorities.<sup>137</sup> It took the results of its community outreach work to the negotiating table in the fall, and made clear that it would not support the development unless community impacts were addressed.<sup>138</sup> In early 2008, officials offered One Hill a three-page CBA that included few specifics and mostly vague terms.<sup>139</sup> The agreement was resoundingly rejected with a copy being burned publicly. Although the planning commission approved the arena's master plan despite the CBA's rejection,<sup>140</sup> elected officials and Penguins representatives have stayed at the negotiating table—likely because of the flurry of negative publicity following the CBA's rejection, and possibly in response to One Hill's statements that it has prepared for "rolling protests" and "behind-the-scenes arm-twisting."<sup>141</sup> At the time of this writing, One Hill continues to push for its "Blue Print for a Livable Hill," which includes provisions relating to a master plan for the district, a community fund, the establishment of a grocery store and community center, and improvement of the neighborhood through historic preservation and green space creation. One Hill is also asking for policy commitments from

the city that the CBA will be implemented and enforced with community input.<sup>142</sup>

Pittsburgh has also seen the proposal of CBA legislation. The first bill introduced before the Allegheny County Council would create a community benefits program that would require developers of subsidized projects to meet with community representatives at least three times prior to receiving any approvals. The bill would not, however, actually require that a CBA be completed.<sup>143</sup> A second bill, favored by CBA supporters, would require economic and social impact analysis reviews for any development over 50,000 square feet that receives subsidies or needs government approval. Completed reports would be made available to the public at least 90 days before any county approval. After the report is issued, a public hearing would then be held at which the county council would review the report.<sup>144</sup>

#### 6. Shaw District (Washington, D.C.)

The Shaw District in Washington, D.C., is a neighborhood steeped in history. In the early part of the twentieth century, it was home to a vibrant African American community, but it suffered from misguided redevelopment policies and civil rights riots in the 1960s, leaving it in a blighted condition for decades. In 2005, the city created the Duke Plan (named after Duke Ellington) to attract new business to the economically depressed district and to spur revitalization. With bustling neighborhoods surrounding the Shaw District and threatening gentrification, the community group One DC began to plan ways of ensuring that the coming revitalization would be equitable and accountable. One DC won an agreement from the redevelopment corporation in 2003 to subsidize an affordable housing development, and, in 2005, it concluded the city's first CBA with the redevelopment corporation and a private developer. The agreement included many CBA staples, including terms dealing with affordable housing, first source hiring, job training, and a community development fund.<sup>145</sup> While the CBA has been described as a poorly drawn contract, lacking clearly defined obligations, procedures, and monitoring provisions, it still has been viewed as a watershed.<sup>146</sup>

The Equitable Development Initiative, a community coalition and an off-shoot of One DC, has continued to focus on ensuring community benefits for the Shaw District.<sup>147</sup> The group has recently completed a CBA for a proposed \$250 million renovation of the O Street Market.<sup>148</sup>

#### 7. Community Benefits for Cramer Hill (New Jersey)

Plans have been under way for the redevelopment of the Cramer Hill area of Camden, New Jersey, for several years.<sup>149</sup> At the same time, the Cramer Hill Community Development Corporation (CHCDC), a nonprofit organization created to advocate for the community's residents, has been working to ensure that the redevelopment plan takes community interests into account.<sup>150</sup> The CHCDC has sought to create a CBA with the Camden Redevelopment Agency and the designated developer, Cherokee LLC;

once completed, the CBA would be incorporated into the redevelopment plan for the neighborhood.<sup>151</sup> As part of this effort, the CHCDC undertook a comprehensive survey of 245 area residents in order to determine the community's priorities. The survey was distributed by coalition groups in English and Spanish, and the results were then analyzed by a local non-profit.<sup>152</sup> Although such information gathering may be financially prohibitive to many CBA coalitions, it provides a good way for coalitions to show that they have been inclusive and attempted to prioritize CBA provisions based on representative public input.

Despite the CHCDC's extensive community organizing, the community benefits coalition has not gained the support of numerous community stakeholders and groups. As in the Atlantic Yards and Columbia cases, the Cramer Hill redevelopment plan is expected to include the use of eminent domain, and this has caused some community members to reject negotiations and opt to oppose the development instead. Several lawsuits have been filed to prevent the plans from proceeding as they are currently formulated.<sup>153</sup> The plaintiffs indicated that the coalition was not representative of the community and that they wanted no part in negotiations.<sup>154</sup>

#### 8. Lincoln Beach (New Orleans)

All Congregations Together (ACT), a coalition of about forty faith-based organizations in the New Orleans region, has been discussing CBAs since Hurricane Katrina struck the Gulf Coast. ACT believes that CBAs can play an important role in ensuring that the rebuilding of the Gulf Coast provides concrete benefits to residents of New Orleans and other Gulf Coast communities, including affordable housing, living wage jobs, job training programs, and first source hiring requirements.<sup>155</sup> Recently, developers of a proposed recreation and entertainment complex announced that they had signed a CBA with ACT, and they have cited the agreement as evidence of community involvement, likely in order to influence the plans' approval.<sup>156</sup>

#### 9. Tesco Fresh & Easy and the Changing Nature of CBAs

Recent developments on the West Coast indicate that the CBA concept may be changing. In 2007, Tesco, a British grocery chain and the world's third largest retailer, announced plans to open hundreds of neighborhood markets in California and other western states. A coalition was quickly formed to demand a CBA, primarily because Tesco does not have a unionized workforce. Tesco has shown no interest in negotiating, despite media pressure and threats of a boycott from community and labor groups.<sup>157</sup> Tesco has argued that a CBA is unnecessary because it already provides well-paying jobs, has environmentally friendly policies, and has pledged to locate stores in underserved areas. It has asked the public to allow it "to begin a relationship based on [its] deeds[,]” implying that pressuring it to sign a CBA would be “no way to build trust between neighbors.”<sup>158</sup> The situation is notable because the coalition has relied for leverage primarily on

its ability to influence consumers and not on its ability to provide support in the land development approval process. Tesco does not seem to believe that refusing to negotiate a CBA will interfere with its business, which underscores a fundamental weakness of CBAs—they may not work when the developer does not believe that it needs them.<sup>159</sup>

### III. Conclusion

Community groups around the country are beginning to experiment with CBAs. In addition to the case studies highlighted above, stakeholders in Albany (New York),<sup>160</sup> Atlanta,<sup>161</sup> Charleston (South Carolina),<sup>162</sup> Miami,<sup>163</sup> San Francisco,<sup>164</sup> Santa Rosa (California),<sup>165</sup> Seattle,<sup>166</sup> Syracuse,<sup>167</sup> the Twin Cities,<sup>168</sup> and Wilmington (Delaware),<sup>169</sup> for example, have completed CBAs or are currently trying to initiate negotiations. CBAs are also appearing outside of the United States in places including Toronto and Dublin.<sup>170</sup> While CBAs have the promise of providing otherwise unattainable community amenities and the realization of social justice goals, the legal environment surrounding CBAs is yet untested and with CBAs still in their infancy, best practices for process and substance are just beginning to emerge.

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1. JULIAN GROSS WITH GREG LEROY & MADELINE JANIS-APARICIO, COMMUNITY BENEFIT AGREEMENTS: MAKING DEVELOPMENT PROJECTS ACCOUNTABLE 9-10 (2005), <http://goodjobsfirst.org/pdf/cba2005final.pdf>. In addition to making the development approval process easier, bargaining for community support may save the developer substantial sums of money in project financing costs as well as in potential legal fees resulting from proactive or defensive actions regarding the proposed development.

2. *Id.* at 10-11.

3. *Id.* This flexibility allows communities to address very specific needs, whether pre-existing or attributable to the proposed development. In Pittsburgh, for example, one of the primary benefits sought by the community in relation to the new Penguins hockey stadium is help in attracting a grocery store to the neighborhood. Residents have not had convenient access to a supermarket since the early 1980s. See Jeremy Boren, *Grocers may not desire Hill District site*, PITTSBURGH TRIBUNE-REV., Jan. 14, 2008, available at [http://www.pittsburghlive.com/x/pittsburghtrib/news/cityregion/s\\_547352.html](http://www.pittsburghlive.com/x/pittsburghtrib/news/cityregion/s_547352.html). Another example in which a CBA was specialized to unique local needs involved an expansion of Los Angeles' LAX airport. The parties agreed that LAX would fund sound-proofing in nearby schools and residences. See Gross, *supra* note 1, at 15-16.

4. The involvement of public officials in this stage of negotiations does raise potential legal issues that should be carefully considered. The role of the elected or appointed official must be clear from the outset. For example, it should be determined whether officials are participating in their individual capacities to advocate for their constituents, or whether they are acting in government capacities where representations may be made, intended or unintended, that lead participating parties to believe that the individual is representing the government as a whole. This can be a critical threshold legal issue since individual

elected officials are not vested with authority to bind the legislative body as a whole. In addition, if multiple elected officials participate as part of the process in their official capacity, what might have otherwise been private negotiation sessions may be subject to open meetings laws inviting the media and others into the process.

5. A development agreement is a contract negotiated between a local government planning agency and a developer. In these agreements, the developer agrees to provide certain benefits to the public or to restrict the use of the land. In exchange, the local government promises to freeze the current zoning and land use laws for a certain period of time, assuring that the development's construction will not be interrupted or stopped. See generally Michael H. Crew, *Development Agreements after Nollan v. California Coastal Commission*, 22 URB. LAW 23, 27-31 (1990). For more information on development agreements, see DAVID CALLIES, DANIEL J. CURTIN & JULIE A. TAPPENDORF, *BARGAINING FOR DEVELOPMENT: A HANDBOOK ON DEVELOPMENT AGREEMENTS, ANNEXATION AGREEMENTS, LAND DEVELOPMENT CONDITIONS, VESTED RIGHTS, AND THE PROVISION OF PUBLIC FACILITIES* (2003); David L. Callies & Julie A. Tappendorf, *Unconstitutional Land Development Conditions and the Development Agreement Solution: Bargaining for Public Facilities After Nollan and Dolan*, 51 CASE W. RES. L. REV. 663 (2001). Development agreements have been authorized in about a dozen states, including: Arizona, ARIZ. REV. STAT. ANN. § 9-500.50 (2007); California, CAL. GOV'T CODE § 65864 (Deering 2008); Colorado, COLO. REV. STAT. § 24-68-101-106 (2007); Florida, FLA. STAT. ANN. 163.3220 (2007); Hawaii, HAW. REV. STAT. § 46-123; Idaho, IDAHO CODE § 67-6511A; Louisiana, LA. REV. STAT. ANN. § 33:4780.22 (2008); Nevada, NEV. REV. STAT. § 278.0201 (2007); New Jersey, N.J. STAT. ANN. § 40:55D-45.2 (2007); Oregon, OR. REV. STAT. § 94.504 (2005); South Carolina, S.C. CODE ANN. § 6-31-10; Virginia, VA. CODE ANN. § 15.2-2303.1 (2007); Washington, WASH. REV. CODE ANN. § 36.70B.170 (2008). Callies & Tappendorf, *supra*, at 671, note 32.

6. Gross, *supra* note 1, at 11.

7. To date there are no reported cases litigating any of these issues. Community coalitions and developers are advised to follow general contract law in the development and execution of these agreements. Furthermore, while parties are always free to agree to do more than what they might be legally required to do, parties should be mindful of the constitutional constraints on exactions that municipalities must abide by, particularly if the municipality is a party to the agreement or agrees to make a privately negotiated agreement a condition of project approval. See *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). See Patricia Salkin and Amy Lavine, *Understanding Community Benefits Agreements: Equitable Development, Social Justice and Other Considerations for Developers, Municipalities and Community Organizations*, UCLA J. ENVTL. L. & POL'Y, at pt. VI (forthcoming Spring 2008).

8. Harold Meyerson, *No Justice, No Growth; How Los Angeles is making big-time developers create decent jobs*, AM. PROSPECT, Nov. 2006, at 39.

9. See Salkin & Lavine, *supra* note 7, at pt. III.

10. CAL. GOV'T CODE § 65864 (West 1997).

11. Gilda Hass, *Strategic Actions for a Just Economy, Community Benefits or Community Control? What We Really Want*, Feb. 21, 2007, [www.saje.net/site/c.hkLQJcMUKrH/b.2615505/k.13C4/Community\\_Benefits\\_or\\_Community\\_Control.htm](http://www.saje.net/site/c.hkLQJcMUKrH/b.2615505/k.13C4/Community_Benefits_or_Community_Control.htm) (last visited Mar. 6, 2008). The Hollywood and Highland

agreement was not the first fully-fledged CBA. Rather than existing as a stand alone contract, the CBA was incorporated in the development agreement. For this reason, some people credit the Staples Center agreement as the first CBA (see part II.A.2).

12. Greg Goldin, *Mall-ywood*, L.A. WKLY., Dec. 18, 1998, at 30.

13. *Id.* See also Jonathan Darr, Letter to the Editor, *Proposed Complex in Hollywood*, L.A. TIMES, Apr. 12, 1998, at M-4.

14. Goldin, *supra* note 12; LAURA WOLF-POWERS, BUILDING IN GOOD JOBS: LINKING ECONOMIC AND WORKFORCE DEVELOPMENT WITH REAL ESTATE-LED ECONOMIC DEVELOPMENT 18 (2006), available at [www.nycetc.org/pdf/Building\\_in\\_Good\\_Jobs\\_Report\\_12\\_06.pdf](http://www.nycetc.org/pdf/Building_in_Good_Jobs_Report_12_06.pdf).

15. Wolf-Powers, *supra* note 14, at 18.

16. *Id.* See also SARAH GRADY WITH GREG LEROY, GOOD JOBS FIRST, MAKING THE CONNECTION: TRANSIT-ORIENTED DEVELOPMENT AND JOBS 17-18 (2006), [www.goodjobsfirst.org/pdf/makingtheconnection.pdf](http://www.goodjobsfirst.org/pdf/makingtheconnection.pdf).

17. *Community Praises Hollywood & Vine Developers for Community Benefits Package*, BUS. WIRE, June 17, 2004, [http://findarticles.com/p/articles/mi\\_m0EIN/is\\_2004\\_June\\_17/ai\\_n6083769](http://findarticles.com/p/articles/mi_m0EIN/is_2004_June_17/ai_n6083769).

18. Telephone interview with Roxana Tynan, Deputy Director, LAANE (Mar. 6, 2008).

19. Goodjobsfirst.com, Community Benefits Agreement Victories, [www.goodjobsfirst.org/accountable\\_development/community\\_benefit\\_vic.cfm](http://www.goodjobsfirst.org/accountable_development/community_benefit_vic.cfm) (last visited Mar. 14, 2007) [hereinafter Community Benefits Agreements Victories].

20. Union groups had obtained promises of union-neutrality and living-wage benefits, but the developers refused to implement them after receiving the variances and subsidies from the city. The community had been further affected by the displacement of more than 250 mostly low-income residents, and by the increase in traffic, noise, and parking problems. *Id.*

21. *Id.*

22. *Id.*; Staples Center Community Benefits Agreement, at A-1, available at [www.saje.net/atf/cf/{493B2790-DD4E-4ED0-8F4E-C78E8F3A7561}/communitybenefits.pdf](http://www.saje.net/atf/cf/{493B2790-DD4E-4ED0-8F4E-C78E8F3A7561}/communitybenefits.pdf). More specifically, the developer agreed to the following provisions:

- To provide at least \$1,000,000 for the creation or improvement of parks and recreational facilities;
- To provide \$25,000 per year for a term of five years for the creation of a permit parking program;
- To comply with the city's living wage ordinance and to make all reasonable efforts to reach the goal of ensuring that 70% of the jobs created by the project pay a living wage;
- To give priority hiring to persons displaced by the project and to low income individuals residing within three miles of the project;
- To coordinate job training programs with community groups;
- To provide \$100,000 in seed money for the creation of the First Source Referral System;
- To set aside 20% of the residential units constructed within the project as affordable-housing and to provide \$650,000 in interest-free loans to

non-profit housing developers for the creation of additional affordable housing;

- To cooperate with the Coalition to establish an Advisory Committee to assist the implementation and enforcement of the agreement.

*Id.*

The developer also signed separate card check/ neutrality agreements with five union organizations. *See* Community Benefits Agreements Victories, *supra* note 19.

23. Staples Center Community Benefits Agreement, *supra* note 22, § XI.

24. Community Benefits Agreements Victories, *supra* note 19.

25. *Id.*

26. *See* LAURIE KAYE & JERILYN LOPEZ MENDOZA, ENVIRONMENTAL DEFENSE, EVERYBODY WINS: LESSONS FROM NEGOTIATING COMMUNITY BENEFITS AGREEMENTS IN LOS ANGELES 2.11 (2008), available at <http://www.environmentaldefense.org/everybodywins>.

27. *Id.*

28. Telephone interview with Gilda Haas, Executive Director, SAJE (Feb. 1, 2008). *See also* Kaye & Mendoza, *supra* note 26.

29. Kaye & Mendoza, *supra* note 26.

30. *Id.*

31. Telephone interview with Gilda Haas, *supra* note 28. The CBA was renegotiated at one point because the developer was having difficulty complying with a provision prohibiting construction of market-rate housing units until affordable units were built. SAJE was willing to renegotiate the provision because it was interested in setting up a community land trust in order to combat gentrification.

32. Sheila Muto, *Residents Have Their Say on LAX Expansion Plans*, WALL ST. J., Dec. 15, 2004. Although the Federal Aviation Administration initially expressed concern that the CBA might conflict with a federal law requiring the use of airport revenue to be aviation-related, it has recently abandoned its opposition to the program. Dan Laidman, *FAA Changes Course on Airport-Related Jobs*, COPLEY NEWS SERV., Dec. 13, 2006.

33. *The LAX Coalition and the CBA*, STAKEHOLDER CONNECTION (LAX/L.A. World Airports, Los Angeles), Vol. 1, Issue 2, [www.laxmasterplan.org/stakeholder/pdf/Newsletter\\_Vol1\\_Issues2\\_only.pdf](http://www.laxmasterplan.org/stakeholder/pdf/Newsletter_Vol1_Issues2_only.pdf) (providing a complete list of the CBA signatories).

34. LAX Community Benefits Agreement, §§ V-VI, IV, available at [www.laane.org/docs/policy/cbas/LAX\\_CBA.pdf](http://www.laane.org/docs/policy/cbas/LAX_CBA.pdf). The CBA also establishes a program to encourage the involvement of women and minority owned businesses. *Id.* § XIII.

35. *Id.* § III. The "Aircraft Noise Mitigation Program" also requires LAX to limit nighttime departures. The noise mitigation concessions were seen as an especially important aspect of the CBA to local schools, many of which had boarded up their windows in attempts to avoid the noise. As one community activist explained, "[g]enerations [of students] have come and gone through school here with rattling windows, teachers they couldn't hear, and no natural light in their classroom experience..." Daniel B. Wood, *In Los Angeles, a unique plan to dull the roar of jets*, CHRISTIAN SCI. MONITOR, Dec. 21, 2004.

36. LAX Community Benefits Agreement, *supra* note 34, §§ VII-VIII.

37. *Id.* § X.

38. *Id.* § V(A). For example, LAWA has recently required area hotels to reduce the number of airport shuttle trips made daily in order to comply with the CBA's air quality provisions. Thomas Winfrey, *LAX Requires Hotels to Consolidate Courtesy Shuttle Trips to Improve Air Quality, Reduce Traffic Congestion*, MARKET WIRE, Dec. 4, 2006.

39. Martin Stolz, *S.D. Council OKs Huge Ballpark Village Project; Compromise Ends Weeks of Rancor*, SAN DIEGO UNION-TRIB., Oct. 20, 2005, at B-12:6, B-4:1.

40. Martin Stolz, *New Ballpark Village Deal Rejected; CCDC Rips Developers of Downtown Project*, SAN DIEGO UNION-TRIB., Oct. 5, 2005, at B-1:1,7, B-4:6.

41. Stolz, *supra* note 39.

42. See, e.g., Center on Policy Initiatives, *Ballpark Village Project Sets New Standards for Affordable Housing and Jobs in San Diego*, [www.onlinecpi.org/article.php?list=type&type=131](http://www.onlinecpi.org/article.php?list=type&type=131) (last visited Mar. 7, 2008).

43. The Partnership for Working Families, *Ballpark Village CBA-San Diego 2005*, [www.communitybenefits.org/article.php?id=575](http://www.communitybenefits.org/article.php?id=575) (last visited Mar. 7, 2008).

44. Partnership for Working Families, *Sunquest CBA-Los Angeles 2001*, [www.communitybenefits.org/article.php?id=572](http://www.communitybenefits.org/article.php?id=572) (last visited Mar. 7, 2008).

45. Kerry Cavanaugh, *New Hope for Former Dumpsite; Sun Valley: Latest Owner Is Resurrecting Plans to Develop Landfill After False Starts*, DAILY NEWS, Jan. 2, 2008, at A1; Interview with Roxana Tynan, *supra* note 18.

46. Bobbi Murray, *L.A. Confident*, CITY LIMITS, Dec. 2003, available at [www.citylimits.org/content/articles/viewarticle.cfm?article\\_id=2997](http://www.citylimits.org/content/articles/viewarticle.cfm?article_id=2997).

47. Patrick McGreevy, *NoHo Project Backed for More Public Funding*, L.A. TIMES, Nov. 22, 2001.

48. Rick Orlov, *Los Angeles Council Approves \$219 Million North Hollywood Development*, DAILY NEWS, Dec. 12, 2001.

49. See GRADY & LEROY, *supra* note 16, at 17-18.

50. Interview with Roxana Tynan, *supra* note 18.

51. See Krista Walton, *Future Bohemia: North Hollywood's NoHo Commons may be a Model for a City Learning to Love the Subway*, L.A. CITY BEAT, Mar. 9, 2006, <http://69.94.104.186/article.php?IssueNum=144&id=3401>.

52. The Partnership for Working Families, *Marlton Square CBA-Los Angeles 2002*, [www.communitybenefits.org/article.php?id=569](http://www.communitybenefits.org/article.php?id=569) (last visited Mar. 7, 2008).

53. Patrick McGreevy, *Crenshaw District Project Hits New Pothole on Rocky Road*, L.A. TIMES, Oct. 8, 2006.

54. Patrick McGreevy, *Delinquent Taxes of the Rich, Famous*, L.A. TIMES, Oct. 18, 2007; Interview with Roxana Tynan, *supra* note 18.

55. Laura Kurtzman, *Council Approves \$189 Million Downtown Project*, SAN JOSE MERCURY NEWS, Dec. 11, 2002.

56. Partnership for Working Families, *CIM Project CBA-San Jose 2003*, [www.communitybenefits.org/article.php?id=568](http://www.communitybenefits.org/article.php?id=568) (last visited Mar. 7, 2008).

57. Telephone interview with Sarah Muller, Associate Policy Director, Working Partnerships USA, Jan. 28, 2008.

58. East Bay Alliance for a Sustainable Economy, *Oak to 9th Community Benefits Coalition*, [www.workingeastbay.org/article.php?list=type&type=51](http://www.workingeastbay.org/article.php?list=type&type=51) (last visited Mar. 10, 2008); Urban Strategies Council, *Oak to 9th Community Benefits Coalition*, [www.urbanstrategies.org/programs/econopp/oaktoninth.html](http://www.urbanstrategies.org/programs/econopp/oaktoninth.html) (last visited Mar. 10, 2008). See also Urban Strategies Council, *Cooperation*

Agreement (Oak to 9th Project), available at [www.urbanstrategies.org/programs/econopp/documents/FinalOaktoNinthCooperationAgreementwithCoalitionfinalexecution.pdf](http://www.urbanstrategies.org/programs/econopp/documents/FinalOaktoNinthCooperationAgreementwithCoalitionfinalexecution.pdf).

59. Christopher Heredia, *Oak to 9th Project Could Go to Voters*, S.F. CHRON., July 22, 2006, at B2. The referendum effort was ultimately thrown out by the court.

60. Christopher Heredia, *2 Groups Sue to Stop Waterfront Project*, S.F. CHRON., July 26, 2006, at B3.

61. J. Douglas Allen-Taylor, *Judge Throws Out Oak-to-9th Plan EIR*, BERKELEY DAILY PLANET, Nov. 23, 2007, available at [www.berkeleydailyplanet.com/article.cfm?issue=11-23-07&storyID=28538](http://www.berkeleydailyplanet.com/article.cfm?issue=11-23-07&storyID=28538).

62. E-mail from Andy Nelson, senior program associate, Urban Strategies (Jan. 28, 2008) (on file with author); see also J. Douglas Allen Taylor, *Oakland Development Issues Continue into 2008*, BERKELEY DAILY PLANET, Jan. 8, 2008, available at [www.berkeleydaily.org/text/article.cfm?issue=01-08-08&storyID=28880](http://www.berkeleydaily.org/text/article.cfm?issue=01-08-08&storyID=28880).

63. Kamika Dunlap, *Proposed Condos Dividing Fruitvale: Community group offers alternative*, OAKLAND TRIB., Nov. 21, 2007.

64. Atlantic Yards was at least the first New York CBA to be identified as such. In 2001, Donald Trump entered into a rather CBA-like agreement in order to get approval to develop Riverside Park South (located on the western side of Manhattan). The deal was made with six nonprofit civic groups and requires the developer to fund the creation and maintenance of a twenty-one acre park. See *Parks Reclaims Manhattan Waterfront Property*, DAILY PLANT, Apr. 11, 2001, available at [www.nycgovparks.org/sub\\_newsroom/daily\\_plants/daily\\_plant\\_main.php?id=9125](http://www.nycgovparks.org/sub_newsroom/daily_plants/daily_plant_main.php?id=9125).

65. See *Mayor Bloomberg, Forest City Ratner CEO, President Ratner, Civic Leaders Sign Community Benefits Agreement*, US STATE NEWS, June 27, 2005 [hereinafter *Mayor Bloomberg*].

66. Opposition to the project has spawned several lawsuits and attracted the help of hundreds of New Yorkers and a few local celebrities. See *Develop—Don't Destroy*, Brooklyn, [www.dddb.net](http://www.dddb.net) (last visited Mar. 10, 2008); *Goldstein v. Pataki*, 516 F.3d 50 (2d Cir. 2008) (dismissing the plaintiffs' eminent domain challenge). The project has also spurred the creation of several blogs devoted to dismantling the developer's claims and exposing a more realistic projection of the development's likely impacts. See, e.g., Nicholas Confessore, *A Blogfest over a Project in Brooklyn*, N.Y. TIMES, Apr. 16, 2006, available at [www.nytimes.com/2006/04/16/nyregion/16yards.html](http://www.nytimes.com/2006/04/16/nyregion/16yards.html); Atlantic Yards Report, [atlanticyards-report.blogspot.com](http://atlanticyards-report.blogspot.com) (last visited Mar. 10, 2008); NoLandGrab, [www.nolandgrab.org](http://www.nolandgrab.org) (last visited Mar. 10, 2008). Journalist and blogger Norman Oder of the Atlantic Yards Report has become a veritable expert on the project, often picking up details missed by the mainstream media.

67. The groups involved in the negotiations were the All-Faith Council of Brooklyn, Association of Community Organizations for Reform Now (ACORN), Brooklyn United for Innovative Local Development (BUILD), Downtown Brooklyn Educational Consortium, Downtown Brooklyn Neighborhood Alliance, First Atlantic Terminal Housing Committee, New York State Association of Minority Contractors, and Public Housing Communities. Atlantic Yards, *Community Benefits Agreement*, [www.atlanticyards.com/html/community/cba.html](http://www.atlanticyards.com/html/community/cba.html) (last visited Mar. 14, 2007).

68. See *Mayor Bloomberg*, *supra* note 65. Some of the promises made in the agreement include a provision to give hiring preference to low and moderate income area residents and a requirement that thirty-five percent of jobs go to minorities. Atlantic Yards Community Benefits Agreement § V, available at <http://www.atlanticyards.com/downloads/cba.pdf>. Fifty percent of the proposed rental units are to be affordable and the development will include a health and day care center. *Id.* at §§ VI-VII. More than fifty tickets will be donated to people in the community annually, with priority given to children and seniors. *Id.* at § VII (E). The project also includes eight acres of open space. *Id.* at § VII (D).

69. For praise, see, e.g., Nicholas Confessore, *To Build Arena in Brooklyn, Developers First Build Bridges*, N.Y. TIMES, Oct. 14, 2005, available at [www.nytimes.com/2005/10/14/nyregion/14yards.html?ex=1286942400&en=1d1165c2fb2c214f&ei=5090&partner=rssuserland&emc=rss%20target=](http://www.nytimes.com/2005/10/14/nyregion/14yards.html?ex=1286942400&en=1d1165c2fb2c214f&ei=5090&partner=rssuserland&emc=rss%20target=). For other articles that offer more mixed views, see, e.g., Chris Smith, *Mr. Ratner's Neighborhood*, N.Y. MAG., Aug. 7, 2006, available at <http://nymag.com/news/features/18862/>; Jennifer Egan, Op-Ed., *A Developing Story*, N.Y. TIMES, Feb. 24, 2007, at A15.

70. One news report indicates that only two of the eight signatory organizations were incorporated before the CBA negotiations began. Matthew Schuerman, *Ratner Sends Gehry to Drawing Board*, N.Y. OBSERVER, Dec. 4, 2006, at 13.

71. The Pratt Area Community Council, for example, "didn't believe that [the developer]...was willing to compromise" and the leader of a group of black ministers expressed a belief that the CBA was merely "meant to buy support with favors." *Id.*

72. If the conflict of interest was not bad enough, the same group, BUILD, was selected to operate the project's job referral program, but it has very little experience conducting similar services. See Matthew Schuerman, *A Cool \$5 Million*, N.Y. OBSERVER, Sept. 29, 2005, available at [www.observer.com/term/29768](http://www.observer.com/term/29768). See also Schuerman, *supra* note 70.

73. Norman Oder, Atlantic Yards Report, <http://atlanticyardsreport.blogspot.com/2006/05/cbs-say-ratner-overstates-our.html> (last visited Mar. 11, 2008).

74. Bettina Damiani, Project Director, Good Jobs New York, Comments at Public Hearing of the N.Y.C. Council Comm. on Econ. Dev. on the proposed Brooklyn Atlantic Yards project (May 26, 2005), available at [www.goodjobsny.org/testimony\\_bay\\_5\\_05.htm](http://www.goodjobsny.org/testimony_bay_5_05.htm). At least one community group has been particularly vehement in criticizing the Atlantic Yards CBA, calling it "a sham and a fraud that reaches new lows in killing community participation." Press Release, Develop-Don't Destroy. Brooklyn, Ratner Community Benefits Agreement (CBA) is DOA and Brooklyn Community Board Chairs Helped Kill It (Nov. 18, 2004), available at <http://dddb.net/php/press/pdfs/111804CBAdoa.pdf>.

75. See Develop-Don't Destroy. Brooklyn, [www.dddb.net](http://www.dddb.net) (last visited Mar. 12, 2008).

76. As was explained by Bettina Damiani, Project Director of Good Jobs New York (which is affiliated with Good Jobs First):

Perhaps the most striking [difference] is that elsewhere CBAs are negotiated by one broad coalition of groups that would otherwise oppose a project, a coalition that includes labor and community organizations representing a variety of interests. The coalition hammers out its points of unity in advance and then each member holds out on settling on its particular issue until the

issues of the other members are addressed. This way, the bargaining power of each group is used for the benefit of the coalition as a whole. In the BAY [Brooklyn Atlantic Yards] case, several groups, all of which have publicly supported the project already, have each engaged in what seem to be separate negotiations on particular issues.

Damiani, *supra* note 74.

In more colorful language, Jordi Reyes-Montblanc, a community board member involved with the Columbia CBA, has stated that "Ratner and the city got together with one big, national not-for-profit and a set of local sycophants and put something together which doesn't seem to have satisfied too many people, except for those who are benefiting directly from it." Matthew Schuerman, *Mr. Bollinger's Battle*, N.Y. OBSERVER, Feb. 18, 2007, at 48. It should also be noted that the developer was able to avoid New York City's comprehensive public review process because the project is being built on state-owned land. This has provided additional reason for project opponents to believe that the developer did not intend to engage in any meaningful dialogue with the community about the plans. See *Doctoroff's Disaster*, BROOKLYN PAPER, Dec. 15, 2007, available at [www.brooklynpaper.com/stories/30/49/30\\_49editorial.html](http://www.brooklynpaper.com/stories/30/49/30_49editorial.html).

77. Norman Oder, *Times Ratner Report, After the CBA, Will Ratner Negotiate a Neighborhood Benefits Agreement?*, <http://timesratnerreport.blogspot.com/2006/01/after-cba-will-ratner-negotiate.html> (Mar. 19, 2007); E-mail from Norman Oder, *Atlantic Yards Report & Times Ratner Report Websites* (Jan. 29, 2008) (on file with author).

78. However, on February 1, 2008, the Second Circuit appears to have paved the way for the project to continue in *Goldstein v. Pataki*, 516 F.3d 50 (2d Cir. Feb. 1, 2008) (upholding the district court's dismissal of a complaint filed by fifteen property owners whose homes and businesses are slated for condemnation and finding that the use of eminent domain by the Empire State Development Corp. for the proposed twenty-two acre Atlantic Yards and Redevelopment Project was a valid public use under the Fifth Amendment of the U.S. Constitution). The plaintiffs intend to appeal the case to the U.S. Supreme Court. Another case brought in relation to the project, *Develop Don't Destroy Brooklyn v. Urban Development Corp.*, 2008 N.Y.Misc. LEXIS 551 (2008), will be heard by a New York appellate court in the fall of 2008. Email communication with Daniel Goldstein, lead plaintiff, Mar. 20, 2008.

79. A recent flier circulated in Brooklyn by the developer describes how the coalition member groups are starting to implement the CBA, but the brochure does not provide particularly detailed information. See Norman Oder, *Atlantic Yards Report, In Seventh Slick brochure, Forest City Ratner Touts "Historic" CBA*, Atlantic Yards Report, <http://atlanticyardsreport.blogspot.com/2008/03/in-seventh-slick-brochure-forest-city.html> (Mar. 3, 2008, 06:03 EST). The flier notes, for example, that BUILD, one of the coalition groups, is "implementing initiatives to prepare adults and youth for and connecting them to construction and permanent employment opportunities created by Atlantic Yards... BUILD is also identifying and providing technical assistance to qualified business owners for contracting, retail, concession and other business opportunities created by Atlantic Yards and other development projects." Another coalition group is "working to help identify qualified contractors for business opportunities relating to the Atlantic Yards Projects."

80. Norman Oder, Atlantic Yards Report, CBA “watchdog” sought to ensure “history making” benefits “for local community,” <http://atlanticyardsreport.blogspot.com/2007/03/cba-watchdog-sought-to-ensure-history.html> (Mar. 19, 2007).

81. Norman Oder, Atlantic Yards Report, A (somewhat speculative) FAQ on the Atlantic Yards news, <http://atlanticyardsreport.blogspot.com/2008/03/speculative-faq-on-atlantic-yards-news.html>. It has also been pointed out that, regardless of poor economic conditions,

82. Charles v. Bagli, *Slow Economy Likely to Stall Atlantic Yards*, New York Times, Mar. 21, 2008, available at [http://www.nytimes.com/2008/03/21/nyregion/21yards.html?\\_r=1&oref=slogin](http://www.nytimes.com/2008/03/21/nyregion/21yards.html?_r=1&oref=slogin). The New York Times’ architecture critic made the point that building the arena without the rest of the development may be worse than building nothing at all: “Postpone the towers and expose the stadium, and it becomes a piece of urban blight—a black hole at a crucial crossroads of the city’s physical history. . . . Without the towers the arena is likely to become an enormous eyesore. . . . [I]ts looming presence will have a deadening impact of a lively area. . . . The atrium, once a vital public space, will be reduced to a barren strip of pavement. No development at all would be preferable to building the design that is now on the table.” Nicolai Ouroussoff, *What Will Be Left of Gehry’s Vision for Brooklyn?*, New York Times, Mar. 21, 2008, available at <http://www.nytimes.com/2008/03/21/arts/design/21atla.html?ref=nyregion>.

83. See Atlantic Yards Community Benefits Agreement, *supra* note 68; Memorandum of Understanding between Atlantic Yards Development Company, LLC and Association of Community Organizations for Reform Now, available at [http://www.atlanticyards.com/downloads/mou\\_acorn.pdf](http://www.atlanticyards.com/downloads/mou_acorn.pdf).

84. Norman Oder of the Atlantic Yards Report is more skeptical that implementation will be subject to heightened public scrutiny. He suggests that it will be difficult to measure compliance in many cases. For example, a press release issued by the developer stating that a certain number of people have received job training might be difficult to validate. E-mail communication, Jan. 29, 2008.

85. See, e.g., Damiani, *supra* note 74; Patrick Arden, *City’s Brand of CBA Bad for Rest of Nation?*, METRO N.Y., Jan. 14, 2008, available at [http://ny.metro.us/metro/local/article/Citys\\_brand\\_of\\_CBA\\_bad\\_for\\_rest\\_of\\_the\\_nation/11409.html](http://ny.metro.us/metro/local/article/Citys_brand_of_CBA_bad_for_rest_of_the_nation/11409.html).

86. Matthew Schuerman, *Ratner-Style Deal with Columbia University?*, N.Y. OBSERVER, Aug. 15, 2005. Whether other New York CBA models have proved much better than the Atlantic Yards approach is another matter.

87. The Gateway Center at the Bronx Terminal Market is a retail development that will replace the old Bronx Terminal Market, which was located on city-owned land and housed a number of local retailers, many of whom were ethnic food vendors. In arranging to purchase the land from the city, the developer obtained tax exemptions and also benefited from the city’s agreement to pay for the demolition of the old market, guarantee loans, and help pay to relocate the market’s vendors. Matthew Schuerman, *Battle of the Bronx Looms For Mom-and-Pop Crusader*, N.Y. OBSERVER, Nov. 13, 2005, at 13. The developer, however, described the complex as “replac[ing] a dilapidated eyesore” and providing increased shopping opportunities for Bronx residents. Glenn Goldstein, Executive Vice President, Related Retail Corporation, Letter to the Editor,

N.Y. OBSERVER, Nov. 21, 2005. Most of the old market's merchants opposed the development, and after a heated controversy, including litigation, they were finally forced to accept aid provided by the city and the developer for their relocation.

88. See Jimmy Vielkind, *How to Mediate Manhattanville: A New Negotiating Partner Is Born*, CITY LIMITS WKLY., Dec. 4, 2006, available at [www.citylimits.org/content/articles/viewarticle.cfm?article\\_id=3223](http://www.citylimits.org/content/articles/viewarticle.cfm?article_id=3223).

89. Gateway Center and Bronx Terminal Market Community Benefits Agreement 8, available at [www.bronxgateway.com/documents/copy\\_of\\_community\\_benefits\\_agreement/Signed\\_CBA\\_2\\_1\\_06.pdf](http://www.bronxgateway.com/documents/copy_of_community_benefits_agreement/Signed_CBA_2_1_06.pdf)

90. Heather Haddon, *Terminal Market Deal Criticized*, NORWOOD NEWS, Feb. 23-Mar. 8, 2006, available at [www.bronxmall.com/norwoodnews/past/022306/news/N60223page1.html](http://www.bronxmall.com/norwoodnews/past/022306/news/N60223page1.html).

91. *Bronx Community College Project H.I.R.E. Receives \$175,000 for Gateway Mall Building Trades Training Program*, U.S. STATE NEWS, May 21, 2007.

92. 'It's Our Armory,' Declares Bronx Community; Elected Officials, Labor, Community and Religious Leaders Demand Armory Developer Sign Community Benefits Agreement, PR NEWSWIRE, Oct. 27, 2007.

93. Bronx County Participation and Labor Force Mitigation and Community Benefits Program Related to the Construction of the New Yankee Stadium, § VIII, available at [http://goodjobsny.org/Yankees\\_deal.htm](http://goodjobsny.org/Yankees_deal.htm). The Yankee Stadium CBA also contains provisions more common to CBAs, such as a twenty-five percent local hiring goal and funds for job training. See *id.*

94. Matthew Schuerman, *The Yankees' \$700,000 Play: 'It Is Not A Shakedown'*, N.Y. OBSERVER, Apr. 10, 2006, at 10.

95. *Id.*

96. Timothy Williams, *Yankee Stadium is Going Up, but Bronx Still Seeks Benefits*, N.Y. TIMES, Jan. 7, 2007, at B1.

97. Ben Simon and Francis Jacobo, *Yankees fund announces recipients*, THE BRONX BEAT, Feb. 29, 2008, available at [http://www.bronxbeat.org/cs/ContentServer?childpagename=Bronxbeat08%2FJRN\\_Content\\_C%2FFRW1StoryDetailLayout2&c=JRN\\_Content\\_C&p=1175373852248&pagename=JRN%2FFRW1W rapper&cid=1175374076898&site=Bronxbeat08](http://www.bronxbeat.org/cs/ContentServer?childpagename=Bronxbeat08%2FJRN_Content_C%2FFRW1StoryDetailLayout2&c=JRN_Content_C&p=1175373852248&pagename=JRN%2FFRW1W rapper&cid=1175374076898&site=Bronxbeat08); Matthew Schuerman, *Lack of Yankee Funds for South Bronx*, WNYC, available at <http://www.wnyc.org/news/articles/95347>.

98. Judith Messina, *Columbia Expansion Forges Ahead, Despite Opposition*, CRAIN'S N.Y. BUS.COM, Dec. 22, 2007, available at [www.craigslist.com/apps/pbcs.dll/article?AID=/20071223/FREE/303249700/1010/toc](http://www.craigslist.com/apps/pbcs.dll/article?AID=/20071223/FREE/303249700/1010/toc).

99. Schuerman, *supra* note 76. The city appointed attorney Jesse Masyr, who represented the developer in the Bronx Terminal Market CBA to work pro bono for the Columbia Local Development Corporation, and the city's Economic Development Corporation has contributed \$350,000 to pay for a mediator and other expenses. *Id.*

100. See generally Schuerman, *supra* note 76.

101. West Harlem Development Corporation, Community Forum 8 (Sept. 30, 2006) (transcript available at [www.westharlemldc.org/uploads/transcript\\_093006.pdf](http://www.westharlemldc.org/uploads/transcript_093006.pdf)). The LDC's mission was to "win support of and leverag[e] the community-based planning of Community Board 9, provide an organizational structure to focus community input in order to negotiate and monitor a community benefits agreement with developers of large scale developments in

Community District 9 in a manner that is both transparent and accountable to the West Harlem community.”

102. See West Harlem Local Development Corporation, Working Groups, [www.westharlemldc.org/Community\\_Benefits\\_Agreemen.html](http://www.westharlemldc.org/Community_Benefits_Agreemen.html) (last visited Mar. 14, 2007).

103. Schuerman, *supra* note 76. As one of the LDC’s board members explained, “[i]t was absolutely clear to us...that if we didn’t include [elected officials] on the board as voting members, that we would be doing so at our own peril[.]” *Id.*

104. Telephone interview with Nick Sprayregen, former member of the LDC (Jan. 31, 2008).

105. Daniel Amzallag, *Three Members Resign From LDC*, COLUMBIA SPECTATOR, Nov. 29, 2007, available at [www.columbiaspectator.com/?q=node/28368](http://www.columbiaspectator.com/?q=node/28368). Tom DeMott, one of the resigning members and a representative of tenants groups, stated that negotiating sessions were held without his being informed of them, and Nick Sprayregen, the largest property owner in the project’s footprint, complained that the CBA was a “sell-out of the community...that represents something that is not what the community wants.” Matthew Schuerman, *Resignations Over Columbia Harlem Expansion*, N.Y. OBSERVER, Nov. 29, 2007.

106. Daniel Amzallag, *Community Benefits Agreement Will Include School, Funds for Affordable Housing*, COLUMBIA SPECTATOR, Dec. 20, 2007, available at [www.columbiaspectator.com/node/28615](http://www.columbiaspectator.com/node/28615).

107. Arden, *supra* note 85.

108. Memorandum of Understanding between WHLDC and Columbia Univ. (Jan. 17, 2008), available at [www.amy.m.lavine.googlepages.com/MOU-12.19.07.pdf](http://www.amy.m.lavine.googlepages.com/MOU-12.19.07.pdf).

109. Daniel Amzallag, *Community Benefits Specifics Remain Up in the Air*, Columbia Spectator, Jan. 22, 2008, available at [www.columbiaspectator.com/node/28669](http://www.columbiaspectator.com/node/28669).

110. *Id.*; Timothy Williams & Ray Rivera, *Columbia Expansion Gets Green Light*, N.Y. TIMES, Dec. 20, 2007, at A1.

111. Daniel Amzallag, *In and Out of Expansion Zone, Development Booms in Harlem*, COLUMBIA SPECTATOR, Jan. 22, 2008, available at [www.columbiaspectator.com/node/28693](http://www.columbiaspectator.com/node/28693).

112. Daniel Amzallag, *Three Private Property Owners Hold Out in Negotiations*, COLUMBIA SPECTATOR, Jan. 22, 2008, available at [www.columbiaspectator.com/node/28671](http://www.columbiaspectator.com/node/28671).

113. See *infra* note 5 (noting that the states that currently authorize development agreements include Arizona, California, Colorado, Florida, Hawaii, Louisiana, Nevada, New Jersey, Oregon, South Carolina, Virginia, and Washington).

114. See generally Connecticut Center for a New Economy, *Our Community Benefits Agreement with Yale-New Haven Hospital*, [www.ctneweconomy.org/CORD.html](http://www.ctneweconomy.org/CORD.html) (last visited Mar. 14, 2007).

115. The Board of Aldermen passed a resolution in 2004 strongly encouraging developers to enter into CBAs and promising that the city of New Haven would take “such efforts into account when considering projects for approval.” Joel Lang, *The Fight to Cure a Community’s Ills; How an Innovative Alliance Forced Yale-New Haven Hospital to Help its Impoverished Neighborhood as Part of a Plan for*

a New Cancer Center, HARTFORD COURANT, May 21, 2006, at NE Mag. 4. See also Angela Carter, *Hill residents asked about needs*, NEW HAVEN REG., Aug. 6, 2004.

116. Connecticut Center for a New Economy, [www.ctneweconomy.org/cbavictorypdf.jpg](http://www.ctneweconomy.org/cbavictorypdf.jpg) (last visited Mar. 14, 2007). Specifically, the hospital agreed to provide \$1.2 million toward affordable housing, to hire five hundred local residents within a five year period and to establish a job training program for job advancement. A separate project labor agreement set local and minority hiring goals for the development's construction jobs. *Id.*

117. Lang, *supra* note 115.

118. Mary O'Leary, *Y-NH Catches Up with Payments to Nursing Program; City Says It's Still Owed Jobs*, NEW HAVEN REG., July 12, 2007.

119. BRENDA PARKER, UNIVERSITY OF WISCONSIN-MADISON, IN COLLABORATION WITH THE GOOD JOBS AND LIVABLE NEIGHBORHOODS COALITION, THIS LAND IS OUR LAND: THE BATTLE FOR A COMMUNITY BENEFITS AGREEMENT IN MILWAUKEE 1 (May 2005), [www.laborstudies.wayne.edu/power/downloads/Parkeast.pdf](http://www.laborstudies.wayne.edu/power/downloads/Parkeast.pdf). See also GOOD JOBS AND LIVABLE NEIGHBORHOODS COALITION, COMMUNITY BENEFITS IN THE PARK EAST CORRIDOR, available at [www.wisconsinfuture.org/workingfamilies/econdev/GJLNbrochure.pdf](http://www.wisconsinfuture.org/workingfamilies/econdev/GJLNbrochure.pdf).

120. Parker, *supra* note 119, at 1–3.

121. Institute for Wisconsin's Future, Community Benefits Agreement Outline Park East Redevelopment Area, [www.wisconsinfuture.org/workingfamilies/econdev/GJLNagreement.htm](http://www.wisconsinfuture.org/workingfamilies/econdev/GJLNagreement.htm) (last visited Mar. 14, 2008).

122. Parker, *supra* note 119. See also Good Jobs First, Community Benefits Agreement Victories, [www.goodjobsfirst.org/accountable\\_development/community\\_benefit\\_vic.cfm](http://www.goodjobsfirst.org/accountable_development/community_benefit_vic.cfm) (last visited Mar. 14, 2008).

123. Steve Alexander, *Minneapolis Council Oks Citywide Wi-Fi Plan*, STAR TRIB. (Minneapolis), Feb. 25, 2006, at 1D.

124. Catherine Settani, The Digital Access Project, From Conflict to Collaboration: The "Wireless Minneapolis" Community Benefits Agreement 3 (Dec. 14, 2007), available at [www.digitalaccess.org/pdf/Conflict\\_to\\_Collaboration.pdf](http://www.digitalaccess.org/pdf/Conflict_to_Collaboration.pdf).

125. *Id.*

126. See Digital Access Project, Timeline: Minneapolis Digital Inclusion Outreach Efforts, [www.digitalaccess.org/wirelessMpls.htm](http://www.digitalaccess.org/wirelessMpls.htm) (last visited Mar. 14, 2008).

127. Settani, *supra* note 124, at 5.

128. See Chicago Digital Access Alliance, [www.digitalaccessalliance.org](http://www.digitalaccessalliance.org) (last visited Mar. 14, 2005).

129. MARIA E. WYNNE & LANE F. COOPER, POWER UP: THE CAMPAIGN FOR DIGITAL INCLUSION (2007), [www.digitalaccess.org/pdf/White\\_Paper.pdf](http://www.digitalaccess.org/pdf/White_Paper.pdf).

130. See generally Front Range Economic Strategy Center, The Campaign for Responsible Development, Cherokee-Gates Campaign, [www.fresc.org/article.php?id=59](http://www.fresc.org/article.php?id=59) (last visited Mar. 14, 2007). See also Tara McKelvey, *Downtown, Not Just for Yuppies*, AM. PROSPECT, July-Aug. 2007, at 42.

131. Tory Read, Front Range Economic Strategy Center, *The Gates Cherokee Redevelopment Project: "A huge step forward for low-income people in Denver"* 6, available at [www.fresc.org/downloads/Gates%20Report%20MCD.pdf](http://www.fresc.org/downloads/Gates%20Report%20MCD.pdf).

132. *Id.* at 2. The coalition is one of the most broad-based to have yet concluded a CBA; it included fifty-five community groups. *Id.* at 11.

133. *Id.* at 2–3.

134. *Id.* at 14.

135. The coalition has had its share of internal conflict to deal with, but unlike other CBAs (especially those in New York) it has remained the predominant voice of the community. Telephone interview with Tom Hoffman, Pittsburgh United (one of the coalition's member groups), Jan. 23, 2008. Whatever transpires of the CBA, One Hill deserves kudos for its ability to unite the community.

136. See Violet Law, *Mellon Arena Re-Imagined*, PITTSBURGH CITY PAPER, Jan. 11 2007, available at [www.pittsburghcitypaper.ws/gyrobase/Content?oid=oid%3A21060](http://www.pittsburghcitypaper.ws/gyrobase/Content?oid=oid%3A21060).

137. Ann Belser, *Coalition to Canvass Hill Residents Today About Neighborhood*, PITTSBURGH POST-GAZ., July 21, 2007, at B1; Ann Belser & Mark Belko, *New Arena Design Drawings Unveiled*, PITTSBURGH POST-GAZ., Aug. 29, 2007, at B1.

138. See Ann Belser, *Hill Group Outlines Benefits it Expects from New Arena*, PITTSBURGH POST-GAZ., Aug. 30, 2007, at B1.

139. On file with author. The Penguins have not played a significant role in the negotiations, preferring city and county officials to take the lead.

140. Jeremy Boren, *Commission Approves Arena, Casino Plans*, PITTSBURGH TRIB.-REV., Jan. 15, 2008.

141. Carl Prine & Jeremy Boren, *Deal for Hill Close After Pens Join Negotiations*, PITTSBURGH TRIB.-REV., Jan. 18, 2008.

142. Blueprint for a Livable Hill (on file with author).

143. Allegheny County Council, Legislative File Number 3656-08, available at <http://legistar.county.allegheny.pa.us/detailreport/Reports/Temp/3232008173811.pdf>.

144. Allegheny County Council, Legislative File Number 3657-08, available at <http://legistar.county.allegheny.pa.us/detailreport/Reports/Temp/3232008174943.pdf>. Contents of the report would include, in plain language, such information as the amount of projected financial costs to the local government, including subsidies and infrastructure improvements, the amount of anticipated tax revenue, the number, type and quality of jobs that would be generated by the project, the anticipated impacts on existing businesses and employment patterns, the number, type and affordability of housing units to be created, the intended timeline for construction, the estimated cost of construction, a visual depiction of the project, and a breakdown of the numbers of anticipated displacements of existing residents, businesses, or services.

145. OneDC, Community Benefits Agreements, [www.onedconline.org/index.php?option=com\\_content&task=blogcategory&id=68&Itemid=156](http://www.onedconline.org/index.php?option=com_content&task=blogcategory&id=68&Itemid=156) (last visited Mar. 14, 2008).

146. For example, "One DC and Shaw residents claimed these blighted lots as community assets and declared that even these properties, if jealously guarded, could be a source of neighborhood power and wealth. This is the revolutionary idea of community-benefits agreements: that the community members—even those without money or power, who are usually ignored in development plans or manipulated like chess pieces—can be an asset and a force with which to contend.... If the Shaw community benefits agreement can lead other groups to harness these and other under-appreciated assets throughout the city, then it must be counted a success." See Ryan Juskus & Elizabeth Elia, *Long Time Coming*, NHI SHELTERFORCE ONLINE, Summer 2007, [www.nhi.org/online/issues/150/longtimecoming.html](http://www.nhi.org/online/issues/150/longtimecoming.html).

147. OneDC, Equitable Development Initiative, <http://1dconline.org/EquitableDevelopmentInitiative.htm#About%20SEDI> (last visited Mar. 14, 2008).

148. Tom Ramstack, *Groups Enable Shaw's 'fruition,'* WASH. TIMES, Jan. 10, 2008, at C8.

149. Camden Reports, Cramer Hill Redevelopment, [www.camconnect.org/resources/CramerHillRedevelopmentPlan.htm](http://www.camconnect.org/resources/CramerHillRedevelopmentPlan.htm) (last visited Mar. 14, 2008).

150. Cramer Hill Redevelopment Corp., Mission of Cramer Hill, [www.cramerhillcdc.org/mission.htm](http://www.cramerhillcdc.org/mission.htm) (last visited Mar. 14, 2008); Cramer Hill Redevelopment Corp., History of Cramer Hill, [www.cramerhillcdc.org/history.htm](http://www.cramerhillcdc.org/history.htm) (last visited Mar. 14, 2008).

151. Luis Puga, *Cramer Hill Organization to Skip Benefits Meetings*, Courier-Post (Cherry Hill), Sept. 28, 2005, at 7G.

152. See Cramer Hill Community Benefits Survey (Apr. 2006), [www.cramerhillcdc.org/CHCDC\\_survey.pdf](http://www.cramerhillcdc.org/CHCDC_survey.pdf).

153. *Cramer Hill Residents Association v. Primas*, 395 N.J. Super. 1 (2007); *Huertas v. City of Camden*, 2006 U.S. Dist. Lexis 73157 (D.N.J. 2006)

154. Puga, *supra* note 151.

155. See Press Release, PICO National Network, Community Benefits in New Orleans (Oct. 21, 2006) (available at [www.piconetwork.org/news/page.jsp?itemID=30838581](http://www.piconetwork.org/news/page.jsp?itemID=30838581)). For more information about ACT, see All Congregations Together (ACT) New Orleans, [www.actnola.org/credentials.html](http://www.actnola.org/credentials.html) (last visited Mar. 14, 2008).

156. Jaime Guillet, *Historic Lincoln Beach Needs Approval from New Orleans for New Era*, NEW ORLEANS CITYBUS., Jan. 15, 2008.

157. See, e.g., Jerry Hirsch, *Activists Protest Tesco's Fresh & Easy*, L.A. TIMES, Nov. 27, 2007, at 3.

158. *Fresh & Easy Promises Accountability and Social Responsibility*, L.A. BUS. J., Nov. 26, 2007, [www.labusinessjournal.com](http://www.labusinessjournal.com).

159. A similar, less widely publicized campaign is being waged against Western Union. In opposition to practices that it believes to be harmful to immigrant communities that rely on money transferring services, the Transnational Institute for Grassroots Research and Action (TIGRA) sought to obtain an agreement from Western Union that it would reduce its fees, provide a fair exchange rate, commit a portion of its revenues to a community reinvestment fund and adopt human rights screens in its investment practices. After Western Union refused to negotiate such a "Transnational Community Benefits Agreement," TIGRA called for a worldwide boycott, which is currently ongoing. See TIGRA, *About the Campaign*, [www.boycottwesternunion.net/En/about.html](http://www.boycottwesternunion.net/En/about.html) (last visited Mar. 14, 2008); Andrea Chang, *Groups Boycott Western Union*, L.A. TIMES, Sept. 11, 2007, at C3. In January 2008, Western Union filed a challenge against a shareholder resolution calling for the agreement with the Securities and Exchange Commission, making it less likely that any agreement will be reached in the near future. See Timeline: TIGRA's Dealings with Western Union, [www.boycottwesternunion.net/En/index.html](http://www.boycottwesternunion.net/En/index.html) (last visited Mar. 20, 2008).

160. See A Regional Initiative Supporting Empowerment, Community Benefits Proposal, [www.ariseorg.net/cba10-15-05.html](http://www.ariseorg.net/cba10-15-05.html) (last visited Mar. 14, 2007); see also Michael DeMasi, *Neighborhood Groups Seek Benefit Package from Convention Center Developer*, BUS. REV. (Albany, N.Y.), Jan. 30, 2006, available at [www.bizjournals.com/albany/stories/2006/01/30/daily4.html](http://www.bizjournals.com/albany/stories/2006/01/30/daily4.html); Robert Gavin, *Jobs Plan Draws Praise*, TIMES UNION (Albany, N.Y.), Nov. 21, 2007, at D1.

161. See *Atlanta City Council Approves BeltLine Tax Allocation District*, CITY NEWSBYTES, Nov. 8, 2005, [www.atlantaga.gov/media/citynewsbytes\\_110805.aspx](http://www.atlantaga.gov/media/citynewsbytes_110805.aspx); Georgia Stand-Up, Community Benefits 101, [www.gastandup.org/community\\_benefits.html](http://www.gastandup.org/community_benefits.html) (last visited Mar. 14, 2008).

162. See *Community Benefits Agreements*, CHARLESTON BUS. J., Apr. 18, 2005, available at [www.charlestonbusiness.com/pub/11\\_8/news/4353-1.html](http://www.charlestonbusiness.com/pub/11_8/news/4353-1.html).

163. See Tides Foundation, Bridging the Economic Divide, [www.tidesfoundation.org/services-strategies/tides-initiatives/bridging-the-economic-divide/bed-strategies-in-action/index.html](http://www.tidesfoundation.org/services-strategies/tides-initiatives/bridging-the-economic-divide/bed-strategies-in-action/index.html) (last visited Mar. 14, 2007).

164. *Lennar Construction Workshops Providing Valuable Advice to Community, Construction Workers and Business*, BUS. WIRE, July 24, 2007.

165. See [www.neweconomynorthbay.org/programs.php#acco](http://www.neweconomynorthbay.org/programs.php#acco).

166. See Real Change News.org, Say Yes to Responsible Development, [www.realchangenews.org/2006/2006\\_11\\_29/firstthingsfirst.html](http://www.realchangenews.org/2006/2006_11_29/firstthingsfirst.html) (last visited Mar. 14, 2007); Sharon Pian Chen, *What's In It for the Community?*, SEATTLE TIMES, Dec. 6, 2006, at B1.

167. Mark Spadafore, SANE Executive Director, *Syracuse Alliance for a New Economy: A Year of Growth and Partnership for Central New York*, <http://communitybenefits.org/article.php?id=983>; Editorial, *Community Benefits: New Group Wants to be Ready when Developers Come Knocking*, POST STANDARD (Syracuse, N.Y.), Sept. 3, 2007, at A8.

168. See Amy Lavine, Longfellow CBA, <http://communitybenefits.blogspot.com/2008/03/longfellow-cba.html>; Amy Lavine, Harrison Neighborhood, Minneapolis CBA, <http://communitybenefits.blogspot.com/2008/02/harrison-neighborhood-minneapolis-cba.html>.

169. See Amy Lavine, Peninsula Compost Co. CBA, <http://communitybenefits.blogspot.com/2008/03/peninsula-compost-co-cba.html>.

170. *Advisor Warns Residents to Avoid 'Divide and Conquer' Tactics*, TORONTO STAR, May 10, 2007, at R4.