

24
EXECUTION VERSION

IN ESCROW

DEVELOPMENT AGREEMENT

by and among

NEW YORK STATE URBAN DEVELOPMENT CORPORATION
(d/b/a Empire State Development Corporation)

and

ATLANTIC YARDS DEVELOPMENT COMPANY, LLC

BROOKLYN ARENA, LLC

AYDC INTERIM DEVELOPER, LLC

Atlantic Yards Land Use Improvement and Civic Project

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DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "Agreement"), made and entered into on this _____ day of _____, 2010, is by and among **NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A EMPIRE STATE DEVELOPMENT CORPORATION**, a corporate governmental agency of the State of New York constituting a political subdivision and public benefit corporation, having an office at 633 Third Avenue, New York, New York 10017 ("**ESDC**"), **ATLANTIC YARDS DEVELOPMENT COMPANY, LLC**, a Delaware limited liability company ("**AYDC**"), **BROOKLYN ARENA, LLC**, a Delaware limited liability company ("**BALLC**"), **AYDC INTERIM DEVELOPER, LLC**, a Delaware limited liability company, each having an office at c/o Forest City Ratner Companies, LLC, 1 MetroTech Center, Brooklyn, New York 11201 ("**Interim Developer**", and collectively with AYDC and BALLC, the "**Developer**"). ESDC, AYDC, BALLC and Interim Developer are each hereinafter individually referred to as a "**Party**" and collectively as the "**Parties**".

RECITALS:

WHEREAS, on July 18, 2006, ESDC adopted that certain General Project Plan, and on December 8, 2006, and June 23, 2009, ESDC adopted those certain Modified General Project Plans (the "**MGPP**"), for the Atlantic Yards Land Use Improvement and Civic Project (the "**Project**"), each in accordance with the New York State Urban Development Corporation Act;

WHEREAS, the project site (the "**Project Site**") occupies an approximately 22-acre area generally bounded by Flatbush and 4th Avenues to the West, Vanderbilt Avenue to the East, Atlantic Avenue to the North, and Dean and Pacific Streets to the South and includes the approximately 9-acre (including the land under the 6th and Carlton Avenue Bridges) below-grade Long Island Rail Road Vanderbilt Storage Yard (the Project Site is more particularly described on Exhibit A);

WHEREAS, the Project comprises the development and construction of a major mixed-use development, including (i) a professional sports venue ("**Arena**") to serve as the home venue for the National Basketball Association professional basketball team currently known as the New Jersey Nets and as a venue for other entertainment, cultural, sporting and civic events, and (ii) up to sixteen (16) mixed-use buildings for rental housing, residential condominiums, first class office space, retail space and other permitted uses (each a "**Project Building**" and collectively the "**Project Buildings**");

WHEREAS, in accordance with that certain Land Acquisition Funding, Property Management and Relocation Agreement dated as of September 18, 2009 (the "**LAFPMRA**"), by and among ESDC and Developer, ESDC has agreed to, *inter alia*, acquire portions of the Project Site through the exercise of its condemnation powers;

WHEREAS, Brooklyn Arena Local Development Corporation, a local development corporation formed under Article 14 of the New York Not-for-Profit Corporation Law ("**LDC**"), was created at the direction of the New York Job Development Authority, a

public corporation of the State of New York, for the purpose of, among other things, facilitating the design, financing, construction and operation of the Project;

WHEREAS, ESDC, AYDC, BALLC and Interim Developer are parties to the Funding Agreement dated as of September 12, 2007, as amended (the "**State Funding Agreement**"), whereby ESDC agreed, subject to certain terms and conditions, to provide One Hundred Million Dollars (\$100,000,000) towards the costs incurred, and to be incurred, for the construction of Infrastructure (as defined in the Original State Agreement);

WHEREAS, subject to certain terms and conditions set forth in the Funding Agreement dated as of September 12, 2007 (the "**Original City Funding Agreement**"), NYCEDC and ESDC, NYCEDC agreed to disburse to ESDC One Hundred Million Dollars (\$100,000,000) towards costs incurred, and to be incurred, in connection with ESDC's acquisition of real property comprising a portion of the Project Site;

WHEREAS, the City has made available an additional Thirty-One Million Dollars (\$31,000,000) in its capital budget (the "**Additional City Funding**") for costs incurred and to be incurred in connection with ESDC's acquisition of the real property comprising a portion of the Project Site;

WHEREAS, NYCEDC and ESDC have entered into the First Amendment to the Original City Funding Agreement, which amends the Original City Funding Agreement (as so amended, the "**City Funding Agreement**") to, *inter alia*, reflect the City's appropriation of the Additional City Funding for costs incurred and to be incurred, in connection with ESDC's acquisition of the real property comprising a portion of the Project Site; and

WHEREAS, it is a requirement under the terms of the MGPP and City Funding Agreement that ESDC enter into one or more leases with Developer for the Phase I Site and Phase II Site (as defined therein) containing provisions that effectuate the applicable terms set forth in Exhibit K to the State Funding Agreement to the extent such terms are not inconsistent with the MGPP; and

WHEREAS, in furtherance of the foregoing, BALLC, AYDC and Interim Developer wish to undertake to cause the Project to be developed and constructed in accordance with the MGPP, this Agreement and all other Project Documentation (as defined herein).

NOW, THEREFORE, in consideration of the foregoing, the covenants contained herein, and for other and good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS; CONSTRUCTION OF TERMS

1.1 Definitions. All capitalized terms used but not otherwise defined in the body of this Agreement shall have the meanings given to such terms in Appendix A attached hereto and made a part hereof.

1.2 Rules of Construction. The following rules of construction shall be applicable to this Agreement, unless expressly provided otherwise or the context otherwise requires:

(a) The terms "hereby", "hereof", "hereto", "herein", "hereunder" and any similar terms shall refer to this Agreement, and "hereafter" shall mean after, and "heretofore" shall mean before, the date of this Agreement.

(b) Words of the masculine, feminine or neuter gender shall mean and include the correlative words of the other genders and words importing the singular number shall mean and include the plural number and vice versa.

(c) The terms "include", "including" and similar terms shall be construed as if followed by the phrase "without being limited to".

(d) Whenever a party hereto "shall" perform (or cause to be performed) any obligations hereunder, such performance shall, subject to Section 18.21 below, be at such party's sole cost and expense, unless otherwise expressly provided.

(e) Except as otherwise expressly provided herein, any reference in this Agreement to any document, instrument, certificate or agreement shall mean such document, instrument, certificate or agreement as amended, restated, supplemented or otherwise modified from time to time in accordance with the terms thereof.

1.3 Captions; Table of Contents. The captions under the article and section numbers and the table of contents of this Agreement are for convenience and reference only and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the interpretation or meaning of this Agreement.

ARTICLE II

ENGAGEMENT; PROJECT DESCRIPTION; TERM

2.1 Engagement. Subject to the terms, conditions and limitations set forth in this Agreement, the MGPP and the other Project Documentation, ESDC hereby engages (a) BALLC to develop and construct (or cause the development and construction of) the Arena, Subway Entrance and Urban Experience (as defined in the Arena Development Lease) ("**BALLC's Obligations**"); and (b) AYDC and Interim Developer to develop and construct (or cause the development and construction of) the Project (other than the Arena, Subway Entrance and Urban Experience) ("**AYDC's Obligations**"). The Initial Project Description is set forth in Section 2.3 below. BALLC, AYDC and Interim Developer shall each use Due Care in performing or causing to be performed by itself or others, such development and construction and the discharge of the duties and obligations of BALLC, AYDC and Interim Developer, respectively, as set forth in this Agreement, the MGPP and the other Project Documentation. BALLC, AYDC and Interim Developer each acknowledges that neither BALLC, AYDC or Interim Developer nor their respective successors or assigns nor any person claiming by or through BALLC, AYDC, Interim Developer or their respective successors or assigns shall have any authority to act on behalf of ESDC except as expressly provided in this Agreement or the

other Project Documentation. BALLC, AYDC and Interim Developer shall each apply (or caused to be applied) prudent and reasonable business practices in the performance of the BALLC Obligations and the AYDC Obligations, respectively, under this Agreement and the other Project Documentation, and shall devote sufficient time to cause the development and construction of the Project to proceed in accordance with the terms of this Agreement, the MGPP and the other Project Documentation (subject, to the extent provided in this Agreement or the applicable Project Documentation, to Unavoidable Delays). BALLC on the one hand and AYDC and Interim Developer on the other hand shall each be responsible for all costs and expenses incurred in the development and construction of BALLC's Obligations and AYDC's Obligations, respectively; provided that this sentence shall not limit or otherwise diminish BALLC's, AYDC's, Interim Developer's or their respective Affiliates' right to seek or receive reimbursement of development or construction costs and expenses pursuant to any existing or future written agreement with any Governmental Authority, including ESDC, NYCEDC and the City (including any as-of-right or discretionary incentive, tax abatement or credit or other governmental assistance program).

2.2 Acceptance of Engagement. Each of BALLC, AYDC and Interim Developer hereby accepts the engagement and agrees to use Due Care to perform or cause to be performed by itself or others, the development and construction of BALLC's Obligations (with respect to BALLC) and AYDC's Obligations (with respect to AYDC and Interim Developer) in accordance with the terms of this Agreement, the MGPP and the other Project Documentation (subject, to the extent provided in this Agreement or the applicable Project Documentation, to Unavoidable Delays or other conditions under the Project Documents). In developing and constructing the Project, BALLC, AYDC, Interim Developer and each of their respective successors and assigns and any person claiming through BALLC, AYDC, Interim Developer or their respective successors and assigns shall at all times comply with all applicable Requirements, the Design Guidelines and the DOB Agreement. BALLC, AYDC, Interim Developer and each of their respective successors and assigns and any Person claiming through BALLC, AYDC, Interim Developer or their respective successors and assigns shall keep ESDC regularly informed of the status of the development and construction of the Project, anticipated key milestones in the development and construction of the Project and such other matters as ESDC shall from time to time reasonably request. Except as expressly approved by ESDC in writing or otherwise agreed to in a written agreement signed by ESDC, neither BALLC, AYDC, Interim Developer nor their respective successors or assigns nor any Person claiming by or through BALLC, AYDC, Interim Developer or their respective successors or assigns shall, in connection with the development and construction of the Project, take any action, agree to take any action or omit to take any action which could cause ESDC to expend funds or incur liabilities or obligations in connection with the development and construction of the Project. BALLC, AYDC and Interim Developer agree to use commercially reasonable effort to cause the Substantial Completion of the Project to occur by December 31, 2019 (but in no event later than the Outside Phase II Substantial Completion Date), in each case as extended on a day-for-day basis for any Unavoidable Delays.

2.3 Project Description. The MGPP sets forth a description (the "**Initial Project Description**") of the Project to be developed and constructed at the Project Site. By the Outside Phase II Substantial Completion Date, the Project shall, at a minimum and without limitation to the requirements set forth in the MGPP or the other Project Documentation:

(a) have Improvements constructed at the Project Site containing at least Four Million Four Hundred Seventy Thousand (4,470,000) gross square feet (exclusive of the square footage of the Arena), of which (A) a minimum of One Million Five Hundred Thousand (1,500,000) gross square feet (exclusive of the square footage of the Arena) shall be constructed during Phase I on the Phase I Property, and (B) a minimum of Two Million Nine Hundred Seventy Thousand (2,970,000) gross square feet (exclusive of the square footage of the Arena) shall be constructed on the Phase II Property;

(b) have constructed the Project Site Affordable Housing Units. The number of Project Site Affordable Housing Units constructed on the Arena Block shall be no less than the greater of (i) an amount equal to thirty percent (30%) of all residential units constructed on the Arena Block, and (ii) three hundred (300) (the requirements of (i) and (ii) are hereinafter collectively, the "**Phase I Affordable Housing Commitment**" and the Affordable Housing Units actually constructed on the Arena Block are hereinafter, the "**Phase I Affordable Housing Units**"); provided that any Additional Affordable Housing Units (A) constructed on the Arena Block shall be included in determining compliance with the Phase I Affordable Housing Commitment, and (B) constructed on the Project Site shall not be included in determining compliance with the construction of all required Project Site Affordable Housing Units and **Section 8.8(f)** hereof;

(c) have a completed Arena with a minimum seating capacity of 18,000 seats;

(d) have at least eight (8) acres of completed Open Space on the Phase II Property;

(e) have the completed Urban Room on the Arena Block;

(f) have the completed Upgraded Yard, including the below-grade drill track;

(g) have the completed platform and foundations necessary to support the Phase II Improvements to be constructed in the air space above the Upgraded Yard (collectively, the "**Platform**");

(h) have the completed Subway Entrance;

(i) have the completed Carlton Avenue Bridge;

(j) have the completed Project Infrastructure; and

(k) have no less than 1,100 parking spaces to be made available for users of the Arena on a non-exclusive basis (the "**Arena Parking**"), and such other parking spaces as described in Section 8.11 below.

2.4 Term. The rights and obligations of AYDC, BALLC and Interim Developer under this Agreement shall commence on the date of this Agreement and shall terminate upon the earlier of (a) the completion of the entire Project in accordance with and

subject to the terms of this Agreement and the applicable Project Leases, and (b) ESDC's exercise of the Termination Option; provided that (i) all indemnification obligations of AYDC, BALLC and Interim Developer under this Agreement and the Project Leases, and (ii) any other obligations of AYDC, BALLC, Interim Developer and their respective successors and assigns, under this Agreement and Project Leases which expressly survive termination shall, in each case, survive such termination.

ARTICLE III

PROJECT SITE OWNERSHIP & LEASING; EASEMENTS

3.1 Site Ownership & Control.

(a) Attached as Exhibit C is a map identifying those parcels of land comprising the Project Site which are owned or controlled by Developer or its Affiliates as of the date of the LAFPMRA (the "**Developer Controlled Parcels**"). Attached as Exhibit D is a map identifying those parcels of land comprising the Project Site which are owned or controlled by the MTA, the City or other Governmental Authority as of the date of the LAFPMRA (the "**Public Controlled Parcels**")

(b) In accordance with the terms of the LAFPMRA, ESDC and Developer have agreed that ESDC shall acquire the Project Site through two or more proceedings instituted under the Eminent Domain Procedures Law and through the transactions with the MTA described in Article IV hereof. ESDC shall commence the eminent domain proceedings with respect to the First Taking Properties and Second Taking Properties in accordance with and subject to the terms of this Agreement (including this Section 3.1(b)) and the LAFPMRA; provided that a condition precedent to ESDC's obligation under the LAFPMRA and any other Project Documentation to commence any proceedings under the Eminent Domain Procedures Law for the Second Taking Properties shall, in addition to any requirements or conditions set forth in the LAFPMRA and such Project Documentation, be that:

(i) ESDC shall have first (or simultaneously) filed a petition for condemnation of the Second Taking Properties located on Block 1128 prior to filing a petition for condemnation of any Second Taking Properties located on Site 5;

(ii) AYDC, Interim Developer or any of their respective Affiliates shall have delivered to the MTA, LIRR or their respective designees the completion guaranty required by the Yard Relocation and Construction Agreement, such completion guaranty is effective and unconditional, and no Event of Default (as defined in the Yard Relocation and Construction Agreement) shall have then occurred and be continuing; and

(iii) all of the documentation (including leases, licenses, guaranties, easements, opinions of counsel, etc.) deemed reasonably necessary by ESDC for the implementation, development or construction of the Project on all or any portion of the Second Taking Properties and MTA Air Space Parcels are, in each case, fully executed and effective or fully executed and in escrow subject only to release conditions

that are reasonably satisfactory to ESDC, and otherwise satisfy, in ESDC's reasonable opinion, the requirements of the MGPP, MEC, this Agreement, all applicable Requirements, the DOB Agreement and the Design Guidelines.

3.2 Project Site Leasing.

(a) Simultaneously with the execution and delivery of this Agreement into escrow, ESDC, BALLC, AYDC and Interim Developer, as applicable, are delivering into escrow in accordance with the Commencement Agreement the following lease agreements with respect to the First Taking Properties:

(i) the interim lease with respect to the Arena Parcel (the "**Arena Parcel Interim Lease**") between ESDC and BALLC;

(ii) the interim lease with respect to those portions of the Arena Block other than the Arena Parcel (the "**Arena Block (Non-Arena Parcel) Interim Lease**") between ESDC and Interim Developer;

(iii) the interim lease with respect to Block 1129 and the southern half of Pacific Street between Carlton Avenue and Vanderbilt Avenue ("**Block 1129 Interim Lease**") between ESDC and Interim Developer; and

(iv) an interim lease with respect to the northern half of Pacific Street between Carlton Avenue and Vanderbilt Avenue and the above grade fee and air rights associated with Block 1121, Lots 42 and 47 and Block 1120, Lot 35 (the "**Block 1121 Interim Lease**") between ESDC and AYDC.

(b) Simultaneously with the execution and delivery of this Agreement into escrow, ESDC, LDC and Brooklyn Events Center, LLC, a Delaware limited liability company and wholly-owned subsidiary of BALLC, are delivering into escrow in accordance with the Commencement Agreement the following lease agreements with respect to the Arena Parcel: (i) a ground lease between ESDC and LDC; and (ii) a lease between LDC and Brooklyn Events Center, LLC (the "**Arena Development Lease**").

(c) Promptly following the occurrence of the Second Taking, ESDC will enter into one or more Interim Leases or Development Leases for the Second Taking Properties with AYDC or Interim Developer (or one or more of their respective Affiliates, successors or assigns). Upon the transfer in one or more installments of all or a portion of the air space in a fee above a plane in Block 1120, Lot 1 and Block 1121, Lot 1 by the MTA or LIRR to ESDC and upon the making of release payments by AYDC or its Affiliate in accordance with the terms of the MTA Air Space Parcel Purchase and Sale Agreement, ESDC will enter into with AYDC (or one or more of its Affiliates or successors or assigns) one or more Interim Leases or Development Leases for such air space and fee above a plane (any such Interim Leases, collectively, the "**Phase II Interim Leases**").

(d) Sections 3.3(a), (b) and (c) above notwithstanding, BALLC, AYDC and Interim Developer each acknowledges and agrees that the demise of the portion of the Project Site included in the Arena Parcel Interim Lease, the Arena Block (Non-Arena Parcel)

Interim Lease, Block 1129 Interim Lease, Block 1121 Interim Lease and any Phase II Interim Leases does not include, and shall not effectuate or constitute, any transfer or assignment to the tenant under such lease of ESDC's (or the landlord under such lease) privity of estate with, or ESDC's (or the landlord under such lease) obligations with respect to the removal of, Persons occupying the portion of the Project Site demised under such lease.

(e) Subject to the satisfaction of all of the conditions and other requirements of this Agreement and the applicable Interim Lease, upon request of each Tenant under an Interim Lease, ESDC will (or will endeavor to cause) the applicable Landlord to execute and deliver a Development Lease with respect to the applicable Development Parcel.

3.3 Creation and Severance of Development Parcels; Project Requirement Allocation.

(a) The Improvements to be constructed under the Project Leases shall be constructed on distinct parcels together with any easements benefiting such parcels (each a "Development Parcel" and collectively, the "Development Parcels"). Each Development Parcel shall be created by subdividing and/or combining one or more parcels comprising that portion of the Project Site that has been leased to a Tenant under an Interim Lease; provided that for the avoidance of any doubt and anything in any Interim Lease or other Project Documentation to the contrary notwithstanding, no Development Parcel may be severed from an Interim Lease until such time as ESDC shall have Vacant Possession of the entire proposed Development Parcel. Notwithstanding the preceding sentence, with respect to the Second Taking Properties only, ESDC and a Tenant may enter into a Development Lease with respect to a Development Parcel immediately upon vesting title in such Development Parcel, provided that Development Work may not commence under such Development Lease with respect to any portions of such Development Parcel for which ESDC has not yet obtained Vacant Possession. AYDC, Interim Developer or the applicable Tenant under the applicable Project Lease, at its sole cost and expense, shall cause the creation of each Development Parcel prior to the severance of such Development Parcel from the applicable Interim Lease (or, with respect to the Second Taking Properties only, upon ESDC obtaining Vacant Possession of such proposed Development Parcel). Each Development Parcel shall be severed from the applicable Interim Lease in accordance with and subject to the conditions set forth in the applicable Interim Lease.

(b) For each Development Parcel, BALLC, AYDC, Interim Developer or the applicable Tenant under a Project Lease shall *inter alia*

(i) obtain an individual tentative tax lot identification number for such Development Parcel; provided that if any portion of such Development Parcel will become Open Space then BALLC, AYDC, Interim Developer or the Tenant under the Interim Lease, as applicable, shall obtain two separate individual tentative tax lot identification numbers for such Development Parcel (one tentative tax lot identification number shall be for the portion of the Development Parcel that will become Open Space and the second shall be for the portion of the Development Parcel upon which the Improvements are to be constructed);

(ii) provide to ESDC all information and documentation reasonably requested by ESDC in connection with the creation of such Development Parcel, including, without limitation, a metes and bounds legal description and survey of such Development Parcel as well as the configuration for the tentative tax lot(s) comprising such Development Parcel. BALLC, AYDC, Interim Developer or the applicable Tenant under a Project Lease may amend such legal descriptions to change the boundaries of any Development Parcel or its tax lots; provided that such amendments shall be submitted to ESDC along with supporting documentation on the same basis as set forth in clause (i) above; and

(iii) promptly upon obtaining final tax lot identification numbers, BALLC and AYDC (or the applicable Tenant under a Project Lease) shall provide the same to ESDC. ESDC's review of any Development Parcels under this Section 3.3 shall not diminish BALLC's, AYDC's or Interim Developer's obligation to ensure compliance with the MGPP, this Agreement, the Interim Leases, the Design Guidelines, the Requirements, and the DOB Agreement.

3.4 Easements. In addition to the easements that ESDC shall grant in accordance with the terms of the Project Leases, BALLC, AYDC and Interim Developer have requested, and ESDC has agreed, to execute, acknowledge, deliver into escrow in accordance with and subject to the terms of the Commencement Agreement the following easements, each of which shall, following release from escrow, be recorded in the City Register at BALLC's, AYDC's and Interim Developer's sole cost and expense:

(a) the Arena Block declaration of easements (the "**Declaration**"), in form and substance acceptable to ESDC;

(b) the declaration of easements (the "**DEP Easement**"), in form and substance acceptable to ESDC;

(c) the Transit Improvement Easement (the "**Transit Improvement Easement**"), in form and substance acceptable to ESDC;

(d) the declaration of easements (the "**Block 1129 Easement**"), in form and substance acceptable to ESDC;

(e) the declaration of easements (the "**Lot 35 Easement**"), in form and substance acceptable to ESDC;

(f) the arena parking declaration (the "**Parking Easement**"), in form and substance acceptable to ESDC; and

(g) the MG set/substation easement (the "**Substation Easement**"), in form and substance acceptable to ESDC;

3.5 Allocation of Project Requirements. Attached as Exhibit M is a schedule, initialed by each of BALLC, AYDC and Interim Developer, allocating the Project's development and construction obligations set forth in Section 2.3 above (the "**Project Requirements**") among the parcels constituting the Project Site. Promptly following the severance of any Development

Parcel from the Project Site, Developer shall deliver an updated **Exhibit M** reflecting the allocation of the Project Requirements among (i) such Development Parcel and all prior Development Parcels severed from the Project Site, and (ii) the remainder of the Project Site. ESDC shall be entitled to conclusively rely, without any requirement of inquiry or investigation, upon the last **Exhibit M** delivered to ESDC in accordance with and subject to the terms and conditions of this **Section 3.5**. **Exhibit M** shall at all times demonstrate to ESDC's satisfaction that upon completion of the Project, the Project Requirements and the requirements of the MGPP and MEC have been or will be satisfied; any **Exhibit M** which ESDC reasonably determines does not demonstrate such compliance shall be revised by BALLC, AYDC and Interim Developer until such time as such **Exhibit M** is acceptable to ESDC.

3.6 **Subdivision of Block 1121, Lots 42 & 47.** AYDC covenants and agrees that prior to, or promptly following, ESDC's delivery of Vacant Possession to AYDC of Block 1121, Lots 42 and 47, AYDC shall cause, at its sole cost and expense, Lots 42 and 47 to be subdivided as provided in the MTA Transfer Agreements such that the parcels above and below the subdividing plane on Lots 42 and 47 comprises separate tax lots (a "**Subdivision**"). AYDC acknowledges that this undertaking is independent and separate of the obligation of AYDC's Affiliate under the MTA Transfer Agreements, and shall represent a separate and distinct obligation of AYDC. ESDC shall, at AYDC's sole cost and expense, reasonably cooperate in effecting the Subdivision. The provisions of this **Section 3.6** shall survive the expiration or termination of this Agreement or the MTA Transfer Agreements.

ARTICLE IV

MTA TRANSACTION

4.1 **MTA Agreements.**

(a) BALLC, AYDC and Interim Developer shall deliver to ESDC, within thirty (30) days after request or execution and delivery by any of BALLC, AYDC or Interim Developer, true, correct, complete and unredacted copies of all agreements, documents, instruments, easements, memorandums of understanding, side letters, plans, drawings or other documents delivered or entered into between BALLC, AYDC Interim Developer or any of their respective Affiliates on the one hand and the MTA, LIRR, Transit Authority or their respective Affiliates on the other hand with respect to or otherwise relating to the Project, the Project Site, the development or construction of the Platform, Subway Entrance or the Upgraded Yard.

(b) BALLC, AYDC and Interim Developer each agree that under no circumstances, whether express, implied, as a matter of law or otherwise, shall ESDC, LDC, the City, NYCEDC or any of their respective successors or assigns (i) be bound by or have any personal liability to any Person, including the MTA, LIRR, Transit Authority or their respective Affiliates or any Person claiming by, through or under any of them pursuant to the terms or as a result of the Declaration, DEP Easement, Transit Improvement Easement, Block 1129 Easement, Lot 35 Easement, Parking Easement, Substation Easement, Drill Track Easement, MTA Transfer Agreement, MTA Sale Agreement, MTA Air Space Parcel Purchase and Sale Agreement, Transit Improvement Agreement, MTA Air Rights Development Agreement, Yard Relocation and Construction Agreement, Air Rights Easements or any other agreements, documents,

instruments, easements, memorandums of understanding, side letters, plans, drawings or other documents among BALLC, AYDC, Interim Developer and their respective Affiliates on the one hand and the MTA, LIRR, Transit Authority or their respective Affiliates on the other hand with respect to or otherwise relating to the Project, the Project Site, the development or construction of the Platform, Subway Entrance or the Upgraded Yard or (ii) have any obligation of any nature except solely to the extent any of them shall have expressly and in writing acknowledged and agreed to such obligation. BALLC, AYDC and Interim Developer each acknowledges that the foregoing limitation of liability shall not be affected, diminished or otherwise modified by reason or result of any review by ESDC, the LDC, the City, and NYCEDC. BALLC, AYDC and Interim Developer shall, subject to Article XV below, indemnify and hold each of ESDC, the LDC, the City, NYCEDC and any of their respective Affiliates, successors or assigns harmless from and against all such Liabilities and obligations, including Legal Costs, arising out of or resulting from the foregoing except to the extent such Liabilities arise solely out of the gross negligence or willful misconduct of such Indemnitee. The provisions of this Section 4.1(b) shall survive the expiration or termination of this Agreement. Each of the LDC, the City and NYCEDC shall be an express third party beneficiary of this Section 4.1(b).

4.2 MTA Transfer Site. ESDC shall convey fee title to the below-grade portions of Block 1121, Lots 42 and 47 (collectively, the "**MTA Transfer Property**") to the MTA in accordance with and subject to the terms of the Transfer Agreements among ESDC, the MTA and an Affiliate of AYDC (collectively, the "**MTA Transfer Agreements**"). True, correct, complete and unredacted copies of the MTA Transfer Agreements (and all side letters pertaining thereto), in form and substance acceptable to ESDC. The MTA Transfer Agreements will be delivered into escrow and shall be released in accordance with the terms of the Commencement Agreement.

4.3 MTA Parcel. The MTA shall convey to ESDC fee title to Block 1119, Lot 7 ("**MTA Arena Block Parcel**"), subject to certain permanent and temporary rights and restrictions reserved by the MTA, in accordance with and subject to the terms of the Sale-Purchase Agreement between the MTA and BALLC (the "**MTA Sale Agreement**"). A true, correct, complete and unredacted copy of the MTA Sale Agreement (and all side letters pertaining thereto), in form and substance acceptable to ESDC. The MTA Sale Agreement, together with the deed for the MTA Parcel and other documents necessary to close title thereto, will be delivered into escrow and shall be released in accordance with the terms of the Commencement Agreement.

4.4 Air Rights. The MTA and/or LIRR shall convey to ESDC fee title to the air space and fee above a plane in Block 1120, Lot 1 and Block 1121, Lot 1 ("**MTA Air Space Parcel**"), in accordance with and subject to the terms of the Air Space Parcel Purchase and Sale Agreement (the "**MTA Air Space Parcel Purchase and Sale Agreement**") between the MTA and LIRR and AYDC. A true, correct, complete and unredacted copy of the MTA Air Space Parcel Purchase and Sale Agreement (and all side letters pertaining thereto), in form and substance acceptable to ESDC. The MTA Air Space Parcel Purchase and Sale Agreement will be delivered into escrow and shall be released in accordance with the terms of the Commencement Agreement.

4.5 Transit Improvement Agreement. An Affiliate of BALLC and the Transit Authority have entered into an agreement (the "**Transit Improvement Agreement**") for the development and construction of the Subway Entrance, in accordance with and subject to the terms of the Transit Improvement Agreement. A true, correct, complete and unredacted copy of the Transit Improvement Agreement (and all side letters pertaining thereto), in form and substance acceptable to ESDC. The Transit Improvement Agreement will be delivered into escrow and shall be released in accordance with the terms of the Commencement Agreement.

4.6 Air Rights Development Agreement. MTA and LIRR have entered into an agreement with AYDC (the "**MTA Air Rights Development Agreement**") with respect to the planned construction of the Platform and other structures within and over the Upgraded Yard. A true, correct, complete and unredacted copy of the MTA Air Rights Development Agreement (and all side letters pertaining thereto), in form and substance acceptable to ESDC. The MTA Air Rights Development Agreement will be delivered into escrow and shall be released in accordance with the terms of the Commencement Agreement.

4.7 Yard Relocation and Construction Agreement. MTA and LIRR have entered into an agreement with an Affiliate of AYDC (the "**Yard Relocation and Construction Agreement**") with respect to the construction of the Upgraded Yard, in accordance with and subject to the terms of the Yard Relocation and Construction Agreement. A true, correct, complete and unredacted copy of the Yard Relocation and Construction Agreement (and all side letters pertaining thereto), in form and substance acceptable to ESDC. The Yard Relocation and Construction Agreement will be delivered into escrow and shall be released in accordance with the terms of the Commencement Agreement.

4.8 Air Rights Parcel Declaration of Easements. MTA and ESDC have entered into and recorded the declaration of easements (the "**Air Rights Easement**") encumbering all or a portion of the MTA Air Space Parcel. A true, correct, complete and unredacted copy of the Air Rights Easement (and all side letters pertaining thereto), in form and substance acceptable to ESDC.

4.9 Drill Track Easement. MTA has entered into and recorded the declaration of easements (the "**Drill Track Easement**") encumbering a portion of the Arena Block described therein. A true, corrected and complete copy of the Drill Track Easement (and all side letters pertaining thereto), in form and substance acceptable to ESDC.

ARTICLE V

ASBESTOS AND DEMOLITION WORK

5.1 Generally. AYDC and Interim Developer (with respect to the Project Site other than the Arena Parcel) and BALLC (with respect to the Arena Parcel only) shall (and each Project Lease shall require the Tenant thereunder to), at its sole cost and expense, cause (a) the removal of all asbestos, asbestos-related material, and if applicable, other Contaminants in the existing buildings and improvements on the Project Site and (b) the demolition of existing buildings and improvements on the Project Site (collectively, the "**Asbestos and Demolition Work**"), in each case in accordance with the Requirements, the DOB Agreement and all other

permits, if any, required to be obtained in connection therewith (collectively, the "Permits"). The Asbestos and Demolition Work shall be performed in accordance with and subject to the terms of the applicable Project Lease.

5.2 Reporting. With respect to the Asbestos and Demolition Work, BALLC, AYDC and Interim Developer shall (and each Project Lease shall require the Tenant thereunder to) (a) make available to ESDC copies of all agreements with all Persons or Governmental Authorities, and manifests or other information, evidencing the completion of any Asbestos and Demolition Work and (b) comply in all respects with the Project Documentation, the DOB Agreement and any applicable Requirements.

ARTICLE VI

ENVIRONMENTAL REMEDIATION

6.1 Remediation Work.

(a) With respect to that portion of the Project Site which is owned in fee by ESDC or otherwise subject to a Project Lease, AYDC (with respect to the Project Site other than the Arena Parcel) and BALLC (with respect to the Arena Parcel only) shall (and each Project Lease shall require the Tenant thereunder to), at its sole cost and expense, perform or cause the performance of such investigation, clean up or remediation of any Environmental Condition at, on, under or migrating from such portion of the Project Site as is required under applicable Environmental Laws (the "**Remediation Work**"), subject to the right of AYDC, BALLC, Interim Developer and the Tenant under the applicable Project Lease to contest the validity or applicability of such Remediation Work in accordance with the terms of the applicable Project Lease.

(b) Subject to Section 15.1(c) and (d), AYDC and Interim Developer (with respect to the Project Site other than the Arena Parcel) and BALLC (with respect to the Arena Parcel only) hereby indemnify and hold harmless the Indemnitees from and against any and all Environmental Damages arising from their respective portions of the Project Site. This obligation shall include the burden and expense of defending all claims, suits and administrative proceedings (with counsel reasonably satisfactory to ESDC) even if such claims, suits or proceedings are groundless, false or fraudulent, and conducting all negotiations of any description, and paying and discharging, when and as the same become due, any and all judgments, penalties or other sums due from the Indemnitees. Without limiting the foregoing, AYDC, BALLC and Interim Developer shall promptly take (or shall cause each Tenant under a Project Lease promptly to take) all actions at its sole cost and expense, to the extent necessary to comply with Environmental Laws applicable to their respective portions of the Project Site, subject to the right of AYDC, BALLC, Interim Developer and the Tenant under the applicable Project Lease to contest the validity or applicability of such Environmental Law in accordance with the terms of the applicable Project Lease.

(c) The provisions of this Article VI shall survive the termination of this Agreement and any of the Project Leases with respect to acts and omissions occurring during the term of this Agreement or such Project Lease; provided that the indemnification provisions of

this Article VI shall survive the termination of this Agreement and the applicable Project Lease regardless of whether the claims relating to such acts or omissions occurring during the term of this Agreement or Project Lease are made before or after the termination of this Agreement or such Project Lease, but in any event subject to the applicable statute of limitations.

6.2 Reporting. With respect to the Remediation Work, BALLC, AYDC and Interim Developer shall (and each Project Lease shall require the Tenant thereunder to) (a) make available to ESDC copies of all agreements with all Persons or Governmental Authorities, and manifests or other information, evidencing the completion of any Remediation Work and (b) comply in all respects with the Project Documentation, the DOB Agreement and any applicable Requirements.

ARTICLE VII

MEC COMPLIANCE; HISTORIC PRESERVATION

7.1 Memorandum of Environmental Commitments. In conjunction with any activities on the Project Site, AYDC and Interim Developer (with respect to the Project Site other than the Arena Parcel) and BALLC (with respect to the Arena Parcel only) shall (and each Project Lease shall require the Tenant thereunder to) comply with the requirements set forth in the Memorandum of Environmental Commitments for the Atlantic Yards Project (the "MEC") attached hereto as Exhibit U. On the first anniversary of this Agreement and every anniversary thereafter, BALLC, AYDC and Interim Developer shall (or shall cause each Tenant under a Project Lease to) provide an Officer's Certificate to ESDC certifying that all of the requirements set forth in the MEC have to the actual knowledge of such officer been, or to the extent not yet required or applicable, will be complied with in all material respects. In the case of an Officer's Certificate provided by a Tenant under a Project Lease, such Officer's Certificate shall be with respect to the premises demised under such Project Lease only.

7.2 Historic Preservation. BALLC, AYDC and Interim Developer have developed a Construction Protection Plan approved by the New York State Office of Parks, Recreation and Historic Preservation Office with respect to the protection of historic resources within ninety (90) feet of the Project Site during the performance of construction activities at the Project Site. ESDC acknowledges the receipt of a copy of such Construction Protection Plan.

ARTICLE VIII

CONSTRUCTION ACTIVITIES

8.1 Construction Generally; Lien Law Compliance.

(a) Prior to commencement of work under any Project Lease (including any Development Work under a Development Lease) and in addition to all requirements set forth in the applicable Project Lease, BALLC, AYDC and Interim Developer shall comply (and shall ensure compliance by its Affiliates) with the Project Design Review Procedures (including the submission of all required plans and specifications or other information) set forth in this Agreement and in the applicable Project Lease. BALLC, AYDC

and Interim Developer shall make available (or shall ensure such availability from its Affiliates) to ESDC copies of all Approvals obtained in anticipation of commencing (or are otherwise required for the performance of) such work or Development Work. AYDC and Interim Developer (with respect to the Project Site other than the Arena Parcel) and BALLC (with respect to the Arena Parcel only) shall (and each Project Lease shall require the Tenant thereunder to) (i) perform all work or Development Work, as applicable, pursuant to the terms of the applicable Project Lease, and (ii) comply in all respects with this Agreement, the applicable Project Lease, the Project Documentation, the DOB Agreement, all Requirements, MEC, Guidelines and Requirements and good engineering practices.

(b) AYDC and Interim Developer (with respect to the Project Site other than the Arena Parcel) shall (and each Project Lease (other than the Arena Development Lease) shall require the Tenant thereunder to) satisfy all requirements of Section 5 of the New York State Lien Law (or any successor thereto) as such requirements and law are interpreted from time to time by ESDC.

(c) BALLC (with respect to the Arena Parcel only) shall (and the Arena Development Lease shall require that Brooklyn Events Center, LLC, a Delaware limited liability company and wholly owned subsidiary of BALLC to) satisfy all requirements of Section 5 of the New York State Lien Law (or any successor thereto) as such requirements and law are interpreted from time to time by ESDC; provided that until such time a contrary determination has been made by ESDC, ESDC shall deem BALLC and Brooklyn Events Center, LLC to be in compliance with Section 5 of the Lien Law so long as the amount of the proceeds from the sale of Bonds (as such term is defined in the Arena Development Lease) and any other funds on deposit with the PILOT Bond Trustee (as such term is defined in the Arena Development Lease) equals or exceeds the then reasonably anticipated cost to complete the development and construction of the Arena, the Subway Entrance and the Urban Experience.

(d) For the avoidance of doubt, any deadlines or periods set forth in this Article VIII for the performance of work under any Project Lease shall not modify, limit or otherwise impair the obligation of BALLC, AYDC or Interim Developer under the last sentence of Section 2.2 hereof.

8.2 Construction of Project Infrastructure. In addition to the requirements set forth in Section 8.1 above, with respect to the construction of the Project Infrastructure, AYDC and Interim Developer (with respect to the Project Site other than the Arena Parcel) and BALLC (with respect to the Arena Parcel only) shall (and each Project Lease shall require the Tenant thereunder to) perform all such work and associated activities in accordance with, and subject to the terms of this Agreement, the applicable Project Lease, the Project Documentation, the DOB Agreement, all Requirements, MEC, Guidelines and Requirements and good engineering practices.

8.3 Site Development Sequence. BALLC and AYDC shall designate the construction sequence on the Project Site, provided that such sequence (a) satisfies all of the requirements set forth in this Agreement, the MGPP and the Project Documentation, and (b) results in the Arena being either the first or second building for which construction commences; provided that for the purpose of this clause (b), construction of the Arena shall not be deemed to

have commenced until the later of the date (i) the Arena Completion Guaranty has been executed and delivered to the LDC; (ii) the tenant under the Arena Development Lease shall have paid the Completion Amount (as defined in the Arena Development Lease) required to be paid in accordance with Section 3.3(c) thereof; (iii) the proceeds of the Bonds are available for disbursement in connection with the performance of the Arena Work; and (iv) commencement of the excavation of the foundations for the Arena has occurred on the Arena Parcel.

8.4 Arena Development and Construction. Prior to the Outside Arena Commencement Date, BALLC shall, or it shall cause Events Center, to have commenced construction of the Arena pursuant to and in accordance with the terms of the Arena Development Lease. The Arena shall be the first or second building in the Project for which construction shall be commenced. Once construction is commenced, BALLC shall cause Events Center to continue the Arena Work with diligence. BALLC shall cause the Substantial Completion (for this purpose only, as defined in the Arena Development Lease), of the Arena to occur on or prior to the Outside Arena Substantial Completion Date. BALLC acknowledges and understands the meaning and effect of the Arena Opening Conditions, and hereby agrees to cause Events Center to acknowledge the Arena Opening Conditions in accordance with the Arena Development Lease.

8.5 Platform Construction and Commencement. AYDC shall Commence Construction (or cause the Commencement of Construction) of the Platform no later than the fifteenth (15th) anniversary of the Project Effective Date, subject to Unavoidable Delays. For the purposes of this Section 8.5 only, "Commence Construction" and "Commencement of Construction" shall mean (i) the delivery of the completion guaranty required by the applicable Development Lease (accompanied by such opinions of counsel as ESDC or the applicable landlord shall then reasonably require) and (ii) the execution and delivery by AYDC or Interim Developer, of true, correct, complete and unredacted copies of all agreements, documents, instruments, easements, memorandums of understanding, side letters, plans, drawings or other documents delivered or entered into between AYDC, Interim Developer or any of their respective Affiliates on the one hand and the MTA, LIRR, Transit Authority or their respective Affiliates on the other hand with respect to the development or construction of the Platform or any portion thereof that is sufficient in size and scope to support the construction of a building thereon in accordance with a Development Lease.

8.6 Phase I Construction. AYDC and Interim Developer shall Substantially Complete (or shall cause to be Substantially Completed) Improvements (consisting primarily of commercial, office, retail, residential and/or hotel uses) on the Phase I Property encompassing a minimum of One Million Five Hundred Thousand (1,500,000) gross square feet (excluding the Arena but including the Improvements to be completed on Site 5), the health care clinic described in the MGPP and the Affordable Housing Units satisfying the Phase I Affordable Housing Commitment (collectively with the Improvements described in (a) through (f) below, the "**Phase I Improvements**") within twelve (12) years from the Project Effective Date (the "**Outside Phase I Substantial Completion Date**"), subject to Unavoidable Delay and with respect to the Phase I Affordable Housing Commitment, subject to Sections 8.6(d) and 8.8 below. Any residential rental buildings constructed on the Arena Block as part of the Phase I Improvements will contain low-, moderate-, and/or middle-income units and/or market rate units, and/or any combination thereof; provided, however, that ESDC agrees that the particular

distribution of income bands and which income bands are included may vary from time to time or building to building and shall be governed by the requirements of the applicable affordable housing program.

(a) Subway Entrance. BALLC shall construct or cause to be constructed a new subway entrance (the "**Subway Entrance**") to the Atlantic Terminal on the Arena Block in accordance with the terms of the Arena Development Lease and Transit Improvement Agreement. The Subway Entrance shall comply in all respects with the requirements set forth in the Transit Improvement Agreement, the DOB Agreement and applicable Requirements, including providing sufficient capacity so as to adequately accommodate fans entering and leaving an event at the Arena. BALLC acknowledges that the Substantial Completion (as defined in the Arena Development Lease) of the Subway Entrance is an Arena Opening Condition.

(b) Carlton Avenue Bridge. AYDC shall construct or cause to be constructed a replacement Carlton Avenue Bridge in accordance with the terms of the Carlton Avenue Bridge Construction Agreement dated December 17, 2007 between the City and Atlantic Rail Yards, LLC, a Delaware limited liability company and Affiliate of AYDC. The Carlton Avenue Bridge shall comply in all respects with the Carlton Avenue Bridge Construction Agreement, the DOB Agreement and applicable Requirements. BALLC acknowledges, and shall cause Events Center to acknowledge, that the Substantial Completion (as defined in the Arena Development Lease) of the Carlton Avenue Bridge is an Arena Opening Condition.

(c) Construction of the Upgraded Yard. AYDC or its Affiliates shall commence and complete construction of a new rail yard (the "**Upgraded Yard**") in accordance with the terms of the Yard Relocation and Construction Agreement. If construction of the Upgraded Yard is not commenced or completed in accordance with the terms of the Yard Relocation and Construction Agreement, then in addition to the consequences provided in such Yard Relocation and Construction Agreement and Section 3.1(b) above, the landlord under the Block 1121 Interim Lease shall have the rights and remedies granted to it under the Block 1121 Interim Lease on account of such failure.

(d) Timing of Phase I Buildings.

(i) Interim Developer shall be required to Commence Construction (or cause the Commencement of Construction) of Project Buildings on the Arena Block in accordance with the terms of this Section 8.6(d)(i).

(I) Commencement of Construction of the first Project Building on the Arena Block (the "**First Required Building**") shall occur within three (3) years following the Project Effective Date, except in the event of a City Excuse, in which event Commencement of Construction of the First Required Building shall occur within four (4) years following the Project Effective Date (the date by which the first building is required to be commenced, either by the 3rd or 4th anniversary of the Project Effective Date, the "**First Commencement Deadline**"). The First Required Building shall be required (the "**First Required Building Affordability Requirement**") to contain Affordable Housing Units with the percentages of Affordable Housing Units at the

income levels specified in one of the six scenarios of Interim Developer's choosing described on Exhibit V unless Interim Developer shall have applied for Combination Housing Subsidies in accordance with the Affordable Housing Application Requirements and been denied such Combination Housing Subsidies (such denial the "**City Excuse**"). In the event Commencement of Construction of the First Required Building has not occurred by the First Commencement Deadline (subject to Unavoidable Delays and Sections 8.6(d)(i)(IV), (V) and (VI) hereof), Interim Developer shall pay the Liquidated Damages due to ESDC on account of the failure to Commence Construction of the First Required Building (the "**3-4 Year Liquidated Damages**") by the First Commencement Deadline. Once Commencement of Construction has occurred, Interim Developer shall, or shall cause the applicable Tenant to, diligently prosecute construction of the First Required Building until Substantial Completion.

(II) In addition to the requirements set forth in Section 8.6(d)(i)(I), Interim Developer shall be required to Commence Construction of a second Project Building (the "**First Flexible Building**") on the Arena Block by no later than the second anniversary of the First Commencement Deadline (the "**Second Commencement Deadline**"). In the event the Commencement of Construction of the First Flexible Building has not occurred by the Second Commencement Deadline (subject to Unavoidable Delays and Sections 8.6(d)(i)(IV), (V) and (VI) hereof), Interim Developer shall pay the Liquidated Damages due to ESDC on account of the failure to Commence Construction of the First Flexible Building by the Second Commencement Deadline (the "**5-6 Year Liquidated Damages**"). The parties hereby acknowledge that in the event Interim Developer has paid the 3-4 Year Liquidated Damages, the reference to the "**second Project Building**" in this Section 8.6(d)(i)(II) shall actually refer to the construction of the first Project Building on the Arena Block which, because it will not be being constructed pursuant to Section 8.6(d)(i)(I) hereof, will not be required to comply with the First Required Building Affordability Requirement. Once Commencement of Construction has occurred, Interim Developer shall, or shall cause the applicable Tenant to, diligently prosecute construction of the First Flexible Building until Substantial Completion.

(III) In addition to the requirements set forth in Sections 8.6(d)(i)(I) and 8.6(d)(i)(II), Interim Developer shall Commence Construction on the third Project Building (the "**Second Flexible Building**") on the Arena Block by no later than (x) the second anniversary of the Second Commencement Deadline, and (y) the tenth (10th) anniversary of the Project Effective Date (the "**Third Commencement Deadline**"). In the event the Commencement of Construction of the Second Flexible Building has not occurred by the Third Commencement Deadline (subject to Unavoidable Delays and Sections 8.6(d)(i)(IV), (V) and (VI) hereof), Interim Developer shall pay the Liquidated Damages due to ESDC on account of the failure to Commence Construction of the Second Flexible Building by the Third Commencement Deadline (the "**10 Year Liquidated Damages**"). The parties hereby acknowledge that (1) in the event Interim Developer has paid the 3-4 Year Liquidated Damages or the 5-6 Year Liquidated Damages, the reference to the "**third Project Building**" in this Section 8.6(d)(i)(III) shall actually refer to the construction of the second Project Building on the Arena Block, and (2) in the event Interim Developer has paid both the 3-4 Year Liquidated Damages and

the 5-6 Year Liquidated Damages, the reference to the "**third Project Building**" in this Section 8.6(d)(i)(III) shall actually refer to the construction of the first Project Building on the Arena Block (but shall not be subject to the First Required Building Affordable Housing Requirement). Once Commencement of Construction has occurred, Interim Developer shall, or shall cause the applicable Tenant to, diligently prosecute construction of the Second Flexible Building until Substantial Completion.

(IV) To the extent Interim Developer, or the applicable Tenant, is ready to Commence Construction of a Project Building and (1) such Project Building is required to contain Affordable Housing, either because it is being built as required by Section 8.6(d)(i)(I) or because failure to include Affordable Housing in such Project Building would prevent Interim Developer or an applicable Tenant from being able to satisfy the Phase I Affordable Housing Commitment, and (2) Interim Developer (or the applicable Tenant) substantiates per the written notification identified in Section 8.8(d)(ii) hereof an Affordable Housing Subsidy Unavailability, the then applicable Deadline shall be extended by one (1) year; provided, however, that once Interim Developer (or the applicable Tenant) has utilized an Affordable Housing Subsidy Unavailability to extend a Deadline, such an extension shall not be available again with respect to such Deadline unless another Affordable Housing Subsidy Unavailability can be substantiated after the date which is one (1) year after the prior Affordable Housing Subsidy Unavailability was evidenced.

(V) To the extent Interim Developer, or the applicable Tenant, is ready to Commence Construction of a Project Building and (1) such Project Building is not required to contain Affordable Housing, (2) the Phase I Affordable Housing Commitment has been satisfied, and (3) Interim Developer (or the applicable Tenant) substantiates a Market Financing Unavailability, the then applicable Deadline shall be extended on a month-to-month basis for so long as Interim Developer (or the applicable Tenant) substantiates the continuation of such Market Financing Unavailability on a monthly basis.

(VI) To the extent Interim Developer, or the applicable Tenant, is ready to Commence Construction of a Project Building and (1) such Project Building is not required to contain Affordable Housing, (2) the Phase I Affordable Housing Commitment has not been satisfied, (3) Interim Developer (or the applicable Tenant) substantiates per the written notification identified in Section 8.8(d)(ii) hereof an Affordable Housing Subsidy Unavailability, and (4) Interim Developer (or the applicable Tenant) substantiates a Market Financing Unavailability, the then applicable Deadline shall be extended up to a maximum of one year, on a month-to-month basis, for so long as Interim Developer (or the applicable Tenant) substantiates the continuation of such Market Financing Unavailability on a monthly basis; provided, however, that after becoming entitled to the then maximum extension, in the event Interim Developer (or the applicable Tenant) again substantiates both clause (3) and (4) of this Section 8.8(d)(i)(VI), such maximum extension shall be increased by another year and Interim Developer (or the applicable Tenant) shall be entitled to month-to-month extensions to the extent provided for herein.

(ii) For the avoidance of doubt, the terms of this Section 8.6(d) apply only with respect to the Phase I Affordable Housing Commitment and shall not affect or otherwise alter any obligation to construct the Urban Room or, subject to Section 8.8(g) hereof to Substantially Complete the Phase I Improvements by the Outside Phase I Substantial Completion Date, subject only to Unavoidable Delays.

(e) Urban Room. Interim Developer shall Substantially Complete, or cause to be Substantially Completed, the Urban Room on the Arena Block on or prior to the Outside Phase I Substantial Completion Date, subject to Unavoidable Delays.

8.7 Phase II Construction. AYDC or Interim Developer shall, or shall cause their respective Affiliates to, Substantially Complete (or shall cause to be Substantially Completed) Improvements (primarily of a residential, retail and community facility use) on the Phase II Property encompassing a minimum of Two Million Nine Hundred Seventy Thousand (2,970,000) gross square feet, the School (if applicable), an intergenerational community center with space for at least 100 children for publicly funded day care, no less than eight (8) acres of Open Space as detailed in Section 8.7(b), the Phase II Affordable Housing, the Platform (collectively, "**Phase II Improvements**") and all Phase I Improvements, within twenty-five (25) years following the Project Effective Date (the "**Outside Phase II Substantial Completion Date**"), subject to Unavoidable Delays. For purposes of this Section 8.7 only, the term "Unavoidable Delay" shall include any delays in the performance of the Development Work resulting because of the terms of Section 8.8(a)(iii) below and the continuation of an Affordable Housing Subsidy Unavailability.

(a) School. At the option of the New York School Construction Authority, the New York City Department of Education or other appropriate agency (collectively, the "DOE"), AYDC and Interim Developer will be obligated to construct, on Phase II Property, at the expense of DOE, a public school (the "**School**") comprised of approximately 100,000 square feet in the base (starting on the ground floor and located on contiguous floors) for such grades as determined by DOE based on need. The exact configuration of the School will be determined by mutual agreement of DOE and Interim Developer. It is expected that construction of the School, if elected by DOE, will commence within the first building to be constructed on Phase II Property or by a date mutually agreed to by DOE and Interim Developer. In the event the School is constructed, Interim Developer shall be permitted to (without duplication) increase the total floor area of the Phase II Improvements by an amount equal to the lesser of (i) the gross square footage used solely by the School, and (ii) one hundred thousand (100,000) square feet; it being the intent of this sentence to solely allow Interim Developer to construct the School without loss of gross square footage within the building in which the School is constructed. In addition, a portion of the Open Space may be reserved for use by the School during school hours, but would be available for public use outside of School hours, and a smaller portion of which may be reserved for exclusive use by the School, subject to the reasonable approval of ESDC (following consultation with the City).

(b) Publicly Accessible Open Space. The publicly accessible open spaces (the "**Open Space**") as described in the MGPP, Design Guidelines and MEC shall be constructed on each Development Parcel in accordance with the Design Guidelines and Substantially Completed as Phase II Improvements are constructed on the Phase II Property. As

soon as reasonably practicable after the Substantial Completion of any Open Space, ESDC shall transfer, on an "AS IS, WHERE IS" basis and without any representation or warranty, fee title to such Open Space to a conservancy or other not-for-profit organizations (collectively, the "**Conservancy**") established by AYDC, Interim Developer or their respective Affiliates, which shall be responsible for maintenance, operation and security of the Open Space. The Conservancy shall be funded in the first instance by AYDC, Interim Developer, their respective Affiliates or one or more Tenants under a Development Lease in an annual amount, and pursuant to a budget, reasonably acceptable to ESDC. As construction is Substantially Completed on a Development Parcel adjacent to a portion of Open Space, the Conservancy shall be funded as provided in this Section 8.7(b) and as provided in an Open Space restrictive declaration in a form reasonably satisfactory to ESDC and recorded against such Development Parcel; provided that under no circumstances shall ESDC, the City, NYCEDC or any of their respective Affiliates be required or otherwise obligated to fund or otherwise provide credit support for any obligations or liabilities of the Conservancy. Such declaration shall oblige the owners of the Development Parcels to (i) perform maintenance and operation functions in the event the Conservancy defaults on its obligation to maintain and operate the Open Space, (ii) adequately fund their share of the maintenance and operation costs of the adjacent Open Space, and (iii) provide adequate assurances (reasonably satisfactory to ESDC and the City) that the Open Space will be sufficiently maintained and operated. The Conservancy shall be created prior to the Substantial Completion of any Open Space and shall be governed by a board, which will include representatives of AYDC (or its designees), civic group(s) active in park matters, the owners of surrounding buildings and, on an *ex officio* basis, the local community boards and the New York City Department of Parks and Recreation.

(c) Block 1129 Construction. Subject to Section 8.8 below, Interim Developer shall Commence Construction (or cause the Commencement of Construction) on Block 1129 of at least one residential building constituting a portion of the Phase II Improvements within ten (10) years of the Project Effective Date, subject to Unavoidable Delays. Once commenced, Interim Developer shall, or shall cause the applicable Tenant to, diligently prosecute construction of such building until Substantial Completion. For purposes of this Section 8.7(c) only, the term "Unavoidable Delays" shall include Market Financing Unavailability.

8.8 Affordable Housing.

(a) The Project shall have not less than the required Project Site Affordable Housing Units for low-, moderate- and middle-income individuals and families and such Affordable Housing Units shall be built in accordance with the following requirements: (i) in satisfaction of the Phase I Affordable Housing Commitment, (ii) so long as the Combination Housing Subsidies are made available by the City in accordance with this Agreement, assuming Interim Developer's satisfaction of the Affordable Housing Application Requirements, the first building (other than the Arena) constructed on the Phase I Property shall have such number of Project Site Affordable Housing Units as is required by the Combination Housing Subsidy used to finance the development and construction of such building, (iii) subject to Section 8.8(d) hereof, not more than fifty percent (50%) of the number of residential units to be constructed as part of Phase II shall be completed without the completion of fifty percent (50%) of the Project Site Affordable Housing Units, and (iv) if applicable, the requirements of Section 8.8(f) below

(the requirements of sub-clauses (i), (ii), (iii) and (iv) are collectively hereinafter referred to as the "**Housing Criteria**"). Any Additional Affordable Housing Units built by or at the direction of AYDC or Interim Developer **shall be excluded** for purposes of determining compliance with Sections 8.8(a)(i) (other than as expressly provided in Section 2.3(b) hereof), 8.8(a)(iii) and 8.8(f).

(b) Prior to commencing any Development Work on each residential building on the Project Site, AYDC and Interim Developer shall, or shall cause the Tenant under the applicable Development Lease to, deliver to ESDC an Officer's Certificate setting forth the number of Affordable Housing Units, if any, to be contained within the applicable building and demonstrating that upon Substantial Completion of such building, the Housing Criteria shall be satisfied as of such date, and capable of being satisfied throughout the Project Site. The foregoing shall not be deemed to alleviate any additional requirements imposed by Governmental Authorities upon the development by any subsidies provided to the developer of the applicable buildings.

(c) In addition to the Project Site Affordable Housing Units, AYDC and Interim Developer shall build or shall cause the construction of at least six hundred (600) affordable homeownership housing units ("**Additional Affordable Housing Units**") on the Project Site or as close to the Project Site as reasonably practicable, including but not limited to the following neighborhoods: Prospect Heights, Fort Greene, Bedford Stuyvesant, Crown Heights, Clinton Hill and Park Slope, subject to Governmental Authorities making available to AYDC, Interim Developer or their respective successors or assigns affordable housing subsidies in accordance with and subject to the terms of Section 8.8(d) below. AYDC and Interim Developer shall seek to build or cause the construction of at least two hundred (200) of the Additional Affordable Housing Units within the Project Site, subject to the density levels approved in the MGPP being maintained. Additional Affordable Housing Units constructed at a location other than on the Project Site shall be constructed in accordance with all applicable Requirements. AYDC and Interim Developer shall seek to (i) cause the Additional Affordable Housing Units to be affordable to families with income up to 150% of AMI and (ii) make homeownership opportunities to be made available to families with incomes below 100% AMI. AYDC and Interim Developer shall document or cause the documentation of the construction of Additional Affordable Housing Units by providing a written notice to ESDC, together with evidence reasonably satisfactory to ESDC, of the same. Any Additional Affordable Housing Units built by or at the direction of AYDC or Interim Developer **shall be excluded** for purposes of determining compliance with Sections 8.8(a)(i) (other than as expressly provided in Section 2.3(b) hereof), 8.8(a)(iii) and 8.8(f).

(d) AYDC, Interim Developer, their respective Affiliates and Tenants under the applicable Development Leases may apply for financing then generally available to developers of Affordable Housing Units for the construction of Project Site Affordable Housing Units, provided that the lack of such financing shall not diminish any of AYDC's, Interim Developer's or their respective Affiliates' obligation to provide the Project Site Affordable Housing Units or the Additional Affordable Housing Units. AYDC's, Interim Developer's, their respective Affiliates' and Tenants' under the applicable Development Leases failure to (i) apply or otherwise seek approval for (A) the Combination Housing Subsidies or (B) any financing then generally available to developers of Affordable Housing Units or (ii) accept the Combination

Housing Subsidies or financing should such amounts be made available to any of AYDC, Interim Developer, their respective Affiliates and Tenants under the applicable Development Leases, shall not, in either case, relieve or otherwise diminish (or be deemed to relieve or otherwise diminish) the obligations set forth in Section 8.6(d) above or this Section 8.8. If AYDC, Interim Developer or their respective Affiliates applies for tax abatements under the City's Section 421a program, AYDC, Interim Developer and their respective Affiliates shall be required to abide by the definition of affordable housing as may be in effect under such program at such time. The following procedures shall be utilized by AYDC, Interim Developer and their respective Affiliates for financing generally available to developers of Affordable Housing Unites (the "**Affordable Housing Application Requirements**")

(i) To obtain financing for Affordable Housing Units under programs then generally available to developers of Affordable Housing Units, AYDC, Interim Developer, their respective Affiliates and Tenants under the applicable Development Leases shall be required to (I) make a complete application and submission to the applicable administering agency, (II) provide written notification of such applicant's intention to close and to be ready, willing and able to close within 12 months of complete application and submission, and (III) if such complete application and submission is approved by the administering agency, comply with and satisfy all applicable preconditions for closing required by the applicable administering agency under its standards, terms, conditions and criteria for the applicable affordable housing program. For purposes hereof, "**complete application and submission**" shall mean an application for affordable housing financing of a type that such administering agency generally makes available to developers for the development of affordable housing (or, if required by this Agreement, an application for a program as described on Exhibit V), including a preliminary term sheet or other plan of credit enhancement, as is considered acceptable by the applicable administering agency under its standards, terms, conditions and criteria for the applicable affordable housing program, and other information and disclosures required by the applicable administering agency from developers as a condition for providing financing for Affordable Housing Units.

(ii) It is the understanding of the parties that the applicable administering agency shall review any such complete application and submission in good faith for consistency with then applicable program rules, standards and criteria, and respond within 45 days with either (I) a letter of intent to provide the applicable financing with respect to an approved complete application and submission or (II) written notification of the inability to provide applicable financing within the 12 months of the complete application submission. The failure of the applicable administering agency to comply with the foregoing shall be deemed a denial of the application and an Affordable Housing Subsidy Unavailability.

(e) On each anniversary of the date of this Agreement, and also upon the Substantial Completion of each of Phase I and Phase II, AYDC shall deliver (or shall cause to be delivered) to ESDC an Officer's Certificate certifying that all of the requirements for the construction of Project Site Affordable Housing Units during the applicable phase of the Project have been satisfied.

(f) Until the date that each of the following are satisfied: (i) AYDC or its Affiliates shall have delivered to the MTA, LIRR or their respective designees the completion guaranty required by the Yard Relocation and Construction Agreement, (ii) such completion guaranty is effective and unconditional, and (iii) no Event of Default (as defined in the Yard Relocation and Construction Agreement) shall have occurred and be continuing, Interim Developer agrees that (i) at least eight hundred (800) Affordable Housing Units shall be Substantially Completed on Block 1129 prior to the Outside Phase II Substantial Completion Date; provided that such number shall be reduced on a unit for unit basis for each Phase I Affordable Housing Unit completed on the Arena Block, and (ii) for purposes of determining compliance with Section 8.8(a)(iii) above, not more than fifty percent (50%) of the number of residential units to be constructed on Block 1129 shall be completed without the completion of fifty percent (50%) of the Project Site Affordable Housing Units to be constructed on Block 1129 (it being agreed that for purposes of calculating the number of Project Site Affordable Housing Units to be constructed on Block 1129 only, such amount shall not exceed five hundred (500)).

(g) Notwithstanding AYDC's and Interim Developer's obligations to Substantially Complete (or cause to be Substantially Completed) the Phase I Improvements by the Outside Phase I Substantial Completion Date, so long as the Affordable Housing Application Requirements have been satisfied in each case, any Affordable Housing Subsidy Unavailability with respect to a proposed residential building shall result in a one-year extension of the Outside Phase I Substantial Completion Date solely with respect to the gross square feet proposed for Affordable Housing Units in such building in the application for financing such Affordable Housing Units, up to an aggregate of eight (8) one-year extensions of such Outside Phase I Substantial Completion Date; provided, however the aggregate gross square feet eligible for such extension for Affordable Subsidy Unavailability shall in no event exceed 450,000 gross square feet in any year. By way of example, if the Affordable Housing Application Requirements are satisfied with respect to a 300,000 gross square feet building of which 50% is intended to be Affordable Housing Units in such application and there is an Affordable Housing Subsidy Unavailability with respect to such application, then the obligation to satisfy the Phase I Affordable Housing Commitment by the Outside Phase I Substantial Completion Date shall be extended by one year solely with respect to 150,000 gross square feet of Affordable Housing Units.

8.9 Temporary Open Space. To the maximum extent practicable the Tenant under the applicable Interim Lease shall cause that portion of the Project Site which such Tenant does not reasonably expect to be utilized for construction work, support of construction or other permitted uses under such Interim Lease, or to become part of a Development Parcel upon which Development Work will occur, in the twelve (12) month period following the relevant date of determination, to be converted to temporary open spaces usable by the general public. Each Tenant under an Interim Lease shall make such determination on the first anniversary of the Project Effective Date and on each anniversary thereafter.

8.10 Existing Parks Investment. In addition to its obligations with respect to the Open Space, prior to the Substantial Completion of Phase II, AYDC and/or its Affiliates shall collectively invest (or shall cause to be invested) a total of Three Million Dollars (\$3,000,000) in the aggregate for the improvement of existing parks near and around, but not within, the Project

Site (the "Existing Parks Investment"); provided, however, that One Million Dollars (\$1,000,000) of the Existing Parks Investment (but not in addition to such Existing Parks Investment) (the "Phase I Existing Parks Investment") shall be invested in existing parks near and around, but not within, the Project Site, prior to the expiration of the Outside Phase I Substantial Completion Date. Prior to, or upon the date of Substantial Completion of Phase I, and again upon the date of Substantial Completion of Phase II, AYDC shall deliver (or shall cause to be delivered) to ESDC an Officer's Certificate certifying that the Existing Parks Investment has been made (or, with respect to Phase I, the Phase I Existing Parks Investment has been made).

8.11 Parking. Interim Developer and the Tenants under the Project Leases shall construct or cause the construction of no less than 1,100 parking spaces to be made available to users of the Arena on a non-exclusive basis at the opening of the Arena, and additional parking spaces at the time each residential building is constructed in accordance with the Project Design Review Procedures.

8.12 Occupancy of Improvements; Certificate of Occupancy. Within five (5) Business Days of receipt of the certificate of occupancy (whether permanent, temporary or otherwise) for each building on the Project Site, BALLC, AYDC, Interim Developer and the Tenant under the applicable Development Lease shall deliver to ESDC, the City and NYCEDC a copy of such certificate of occupancy, as well as a detailed report of the composition of such building, specifically with respect to the number and location of Project Site Affordable Housing Units and parking spaces that have been created within or accessory to such building.

8.13 Energy Discounts. ESDC shall use good faith efforts to endeavor to obtain the approvals and/or authorizations required to obtain energy cost savings for the Arena through either the Con-Ed Business Incentive Rate Program and Rider J applicable to Service Classification Nos. 4 and 9, as amended, or the New York Power Authority, the New York State Economic Development Board, the New York Public Utility Service and the Energy Cost Savings Program, if applicable.

ARTICLE IX

FUNDING AGREEMENT OBLIGATIONS

9.1 Abandonment. If prior to the Substantial Completion (as defined in the Arena Development Lease) of the Arena the Project is abandoned by BALLC, AYDC or Interim Developer or terminated or permanently enjoined beyond all right to appeal, for any reason whatsoever, including, without limitation, BALLC's, AYDC's or Interim Developer's voluntary decision to abandon the Project, then BALLC, AYDC and Interim Developer shall be obligated to pay to ESDC, within five (5) Business Days of receipt of a written determination from ESDC that an abandonment has occurred and detailing the basis therefor, Liquidated Damages.

9.2 No Prohibited Interests. Each of BALLC, AYDC and Interim Developer hereby represents and warrants that no member, officer, director, official or agent or employee of ESDC or the City, NYCEDC or their designees, consultants or agents, no member of the governing body of the City or NYCEDC and no public official of the City who exercises or

exercised any functions or responsibilities with respect to the subject matter of this Agreement during his or her tenure, if known to BALLC, AYDC, Interim Developer or its Affiliates, has or shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity or benefit arising out of or in connection with the performance of the Project. Upon receiving notice or knowledge of any of the circumstances specified in the preceding sentence, BALLC, AYDC and Interim Developer shall deliver written notice to ESDC and the City of the circumstances and immediately use its best efforts to cause the Persons affected to terminate their interest in the prohibited contract or property. BALLC, AYDC, Interim Developer and their Affiliates shall require their respective contractors and subcontractors to make appropriate representation in writing that they, their employees and principals do not have any conflict of interest prohibited under this Section 9.2, and to covenant to cause the prohibited persons to terminate their interest in the relevant contract or property upon demand by BALLC, AYDC, Interim Developer or the applicable Affiliate.

ARTICLE X

TRANSFERS

10.1 Reliance.

(a) BALLC, AYDC and Interim Developer acknowledge that ESDC has agreed to enter into this Agreement, in material part, in reliance upon the business expertise of FCE and its principals in the development of major mixed-use projects such as the Project. BALLC, AYDC and Interim Developer each acknowledge that ESDC has a valid interest in ensuring the continued interest of FCE and its principals in the Project.

(b) As of the date of this Agreement

(i) (A) FCE owns and controls, through one or more wholly-owned subsidiaries, 58.24% of the membership interests in AYDC, (B) AYDC owns and controls 100% of the membership interests in Interim Developer, (C) various Persons who are not Affiliates of AYDC or FCE own the remaining 41.76% of the membership interests in AYDC (the "**AYDC Third Party Owners**"), and (D) none of the AYDC Third Party Owners Control AYDC other than through any major decision or similar consent rights such AYDC Third Party Owners may have under the Constitutive Documents of AYDC.

(ii) (A) FCE owns and controls, or through one or more wholly-owned subsidiaries, 23.00% of the membership interests in NSE, (B) various Persons who are not Affiliates of BALLC, NSE or FCE own the remaining 77.00% of the membership interests in NSE (the "**NSE Third Party Owners**"), (C) NSE owns 100% of the membership interests BALLC, (D) BALLC owns 100% of the membership interests in Holding, (E) Holding owns 100% of the membership interests in Events Center, the Tenant under the Arena Development Lease, and (F) none of the NSE Third Party Owners Control NSE other than through any major decision or similar consent rights such NSE Third Party Owners may have under the Constitutive Documents of NSE.

(c) Section 10.1(b) above, notwithstanding, and provided Events Center shall have delivered the Non-Relocation Affirmation (as defined in the Arena Development Lease) to LDC, ESDC approves NSE's consummation of a series of transactions with Onexim Sports and Entertainment Holding USA, Inc., a Delaware corporation ("**Onexim**"), following which (i) NSE will own and control 55.00% of the membership interests in BALLC, (ii) one or more Affiliates of Onexim will own and control 45.00% of the membership interests in BALLC (the "**BALLC Third Party Owners**", together with the NSE Third Party Owners, the "**Third Party Owners**"), (iii) there will be no change in the ownership or Control of Holding or Events Center, (iv) NSE will control BALLC, and (v) none of the Third Party Owners will Control BALLC other than through any major decision or similar consent rights such Third Party Owners may have under the Constitutive Documents of BALLC or NSE, as applicable.

10.2 No Transfers. No Transfer (whether voluntary, involuntary, by operation of law or otherwise) of AYDC's, BALLC's or Interim Developer's right, title or interest in this Agreement, whether in whole or in part, or any Equity Interest Disposition in AYDC, BALLC, Holding, Events Center or Interim Developer shall be permitted without the prior written consent of ESDC (which consent shall be in ESDC's reasonable discretion); provided, that nothing contained in this Article X shall be deemed to restrict or prohibit (a) any Equity Interest Disposition in FCE or any other Person whose common stock is quoted on a recognized securities exchange such as the New York Stock Exchange or NASDAQ, (b) any Equity Interest Disposition by a Third Party Owner of its interest in BALLC, AYDC or NSE to a Person who, immediately following the effective date of such Equity Interest Disposition, is not a Prohibited Person; it being agreed that any Equity Interest Disposition, Assignment or Transfer in contravention of this Article X shall be void *ab initio* or (c) any Transfer of an interest in this Agreement made in connection with a Transfer consummated in accordance with the terms of the applicable Project Lease.

10.3 Transfers Under Project Leases. Notwithstanding the foregoing, nothing in this Article X shall be construed to limit or otherwise affect the right of (i) a Tenant under a Project Lease to Transfer its interest under such Project Lease or to effect an Equity Interest Disposition of such Tenant or (ii) AYDC, BALLC or Interim Developer to effect an Equity Interest Disposition of its interest in a Project Lease, in each case, in accordance with the terms of such Project Lease. All such Transfers or Equity Interest Dispositions, and the validity of the same, shall be governed by the terms of the applicable Project Lease. Upon any permitted Transfer to a Person that is not an Affiliate of BALLC, AYDC and Interim Developer in accordance with the terms of a Project Lease and the delivery to ESDC of evidence documenting the permitted transferee's assumption of its obligations under such Project Lease in a form and substance reasonably acceptable to ESDC, BALLC, AYDC or Interim Developer (as applicable) shall be released from the applicable BALLC's Obligations or AYDC's Obligations and shall have no further obligation to perform such BALLC's Obligations or AYDC's Obligations (or liability for the failure to perform or cause the performance of the same) under this Agreement. Notwithstanding the foregoing, regardless of any such permitted Transfer, (a) BALLC, AYDC and Interim Developer shall not be released from its obligations to pay any Liquidated Damages; and (b) AYDC and Interim Developer shall not be released from the obligation to cause the performance of the Programmatic Obligations (as defined in the applicable Project Lease). Promptly after request by BALLC, AYDC or Interim Developer, ESDC shall confirm the foregoing in a writing if then applicable, provided that no such writing is required to effectuate

such release, if such release shall have occurred in strict compliance with the requirements of this Section 10.3.

10.4 Additional Restrictions on Transfers. If Interim Developer defaults in its obligation under Section 8.6(d)(i)(I) hereof to either (i) comply with the Affordable Housing Application Requirements relating to Combination Housing Subsidies or (b) construct the first building to be constructed on the Arena Block (other than the Arena) utilizing the Combination Housing Subsidies awarded to Interim Developer, then in addition to any other remedies available to ESDC under this Agreement or any other Project Documentation, until 300 Affordable Housing Units are Substantially Completed on the Arena Block, Interim Developer may not Transfer or commence Development Work on at least one Development Parcel upon which at least 79% of all units to be built within a Project Building could be market rate units pursuant to the MGPP and the Housing Criteria. Interim Developer will, at the time any Development Lease is severed from an Interim Lease, be required to evidence to ESDC that the requirements of this Section 10.4 could be met after taking into account the requirements of the MGPP, the Housing Criteria and the allocations of Project Site Affordable Housing Units to previously severed Development Leases.

ARTICLE XI

GUARANTIES

11.1 Guaranty. BALLC, AYDC and Interim Developer shall cause Forest City Enterprises, Inc., an Ohio corporation, to execute and deliver the guaranty attached hereto as Exhibit W.

ARTICLE XII

REPRESENTATIONS AND WARRANTIES

12.1 Developer Representations. Each of BALLC, AYDC and Interim Developer represent and warrant as of the date hereof that:

(a) Organization. BALLC is a limited liability company, and has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own properties and transact the businesses in which it is now engaged. AYDC is a limited liability company, and has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own properties and transact the businesses in which it is now engaged. Interim Developer is a limited liability company, and has been duly organized and is validly existing and in good standing pursuant to the laws of the State of Delaware with requisite power and authority to own properties and transact the businesses in which it is now engaged. Each of BALLC, AYDC and Interim Developer has duly qualified to do business and is in good standing in the State of New York.

(b) Proceedings. Each of BALLC, AYDC and Interim Developer has full power to and has taken all necessary action to authorize the execution, delivery and

performance of this Agreement. This Agreement has been duly executed and delivered by, or on behalf of, BALLC, AYDC and Interim Developer and constitutes legal, valid and binding obligations of BALLC, AYDC and Interim Developer, enforceable against BALLC, AYDC and Interim Developer, as applicable, in accordance with its respective terms.

(c) No Bankruptcy Filing. Neither BALLC nor AYDC nor Interim Developer is contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency laws or the liquidation of all or a major portion of such entity's assets or property, and neither BALLC nor AYDC nor Interim Developer has knowledge of any Person contemplating the filing of any such petition against it.

(d) Full and Accurate Disclosure. No statement of fact made by BALLC, AYDC or Interim Developer in this Agreement contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained herein or therein not misleading.

(e) No Illegal Payments. Neither BALLC nor AYDC nor Interim Developer has been asked to pay, and neither has offered to pay or paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of the State Funding, City Funding or the execution and delivery by ESDC of this Agreement.

12.2 ESDC Representation. ESDC represents and warrants that as of the date of the Agreement and subject to the favorable resolution of any litigation regarding the Project to which ESDC is a party, ESDC has full power to and has taken all necessary action to authorize the execution, delivery and performance of this Agreement. This Agreement has been duly executed and delivered by, or on behalf of ESDC and subject to the favorable resolution of any litigation regarding the Project to which ESDC is a party, constitutes legal, valid and binding obligations of ESDC, enforceable against ESDC, in accordance with its respective terms.

12.3 Survival of Representations. BALLC, AYDC and Interim Developer agree that all of the representations and warranties of BALLC, AYDC and Interim Developer set forth in this Agreement shall be deemed given and made as of the date hereof and shall survive until BALLC's Obligations with respect to BALLC, and AYDC's Obligations, with respect to AYDC and Interim Developer have been fully paid or performed.

ARTICLE XIII

AFFIRMATIVE ACTION

13.1 Policy. It is the policy of the State of New York and ESDC to comply with all Requirements which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that New York State Business Enterprises, Minority and Women-owned Business Enterprises, Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds. ESDC's non-discrimination and affirmative action policy will apply to the Project. BALLC, AYDC and Interim Developer have established a goal for the Project of

minority-owned firm participation of not less than 20%, and women owned firm participation of not less than 10% of the total dollar value of the work performed on the Project, and an overall goal of 35% minority and 10% female workforce participation. BALLC, AYDC and Interim Developer shall endeavor to cause the work with respect to the Project Infrastructure to achieve this goal to the degree practicable. BALLC, AYDC and Interim Developer shall be required to comply with ESDC's non-discrimination and affirmative action provisions, attached as Exhibit X. In the event of any inconsistency between such Exhibit X and this Section 13.1, the requirements of Exhibit X shall control.

ARTICLE XIV

CERTAIN COVENANTS

14.1 Prohibited Vendors. Neither BALLC, AYDC, Interim Developer or their respective Affiliates nor any Person under contract with BALLC, AYDC, Interim Developer or their respective Affiliates in connection with the Project shall contract with, or except as otherwise set forth herein, permit the performance of any work or service by a Prohibited Person or any Person who shall become a Prohibited Person on any portion of the Project Site, so long as such portion of the Project Site is owned by ESDC. The determination of whether a Person is a Prohibited Person as of a specific date shall be made by ESDC in accordance with the State Funding Agreement and the Project Leases (as applicable).

14.2 Books and Records. BALLC, AYDC and Interim Developer shall keep and maintain at an address within the City complete and accurate books and records and make the same available for inspection as may be required pursuant to the State Funding Agreement or a Project Lease.

14.3 Freedom of Information Law Covenants. BALLC, AYDC and Interim Developer hereby advise ESDC that certain information furnished by BALLC, AYDC, Interim Developer and their Affiliates in accordance with the terms of this Agreement may contain trade secrets, the disclosure of which could cause harm to BALLC, AYDC, Interim Developer or their respective Affiliates' competitive position. Subject to all Requirements, including the Freedom of Information Law (Article 6 of the New York State Public Officers Law) ("**FOIL**"), ESDC will use reasonable efforts to maintain the confidentiality of all information provided by BALLC, AYDC, Interim Developer and their respective Affiliates pursuant to the terms of this Agreement and which are not, to ESDC's knowledge, otherwise in the public domain or obtained from third party sources on a non-confidential basis; provided, however that the foregoing shall not restrict ESDC from making any disclosure of such information as ESDC deems necessary or desirable to any other agency or instrumentality of the State of New York, and/or to the respective board of directors of each, the staff members of such directors, and/or to ESDC's employees, legal, financial and other professional advisors and/or to comply with any applicable Requirements, provided that ESDC shall in each case inform the party to which such disclosure is made that such information is confidential and shall inform such party of the confidentiality provisions of this Agreement. In the event that ESDC is required by subpoena, court order or other similar process to disclose such information or if ESDC receives any written FOIL request seeking disclosure of the materials described in this Section 14.3, ESDC shall, prior to complying with such subpoena, court order or similar process or FOIL request, provide BALLC, AYDC and

Interim Developer with written notice so that BALLC, AYDC and Interim Developer shall have an opportunity to seek, at BALLC's, AYDC's and Interim Developer's sole cost and expense, a protective order or other appropriate remedy. If BALLC, AYDC or Interim Developer does not obtain a protective order or other remedy to preclude the disclosure the requested materials, BALLC, AYDC and Interim Developer acknowledge that ESDC may disclose such requested materials, but shall comply with such subpoena, court order, similar process or FOIL request by providing the minimum of such requested materials being sought as advised by ESDC's legal counsel and the governmental or judicial authority requiring such compliance. ESDC shall not have any liability of any nature for a breach or failure to comply with this Section 14.3.

14.4 Owner's Representative. During the construction of the Project, BALLC, AYDC and Interim Developer shall cooperate with an owner's representative retained by ESDC in accordance with the scope of work attached hereto as Exhibit Y. All costs and expenses of such owner's representative shall be paid by BALLC, AYDC and Interim Developer.

14.5 Environmental Monitor Office. At all times that construction activity (including any Development Work) is taking place on any portion of the Project Site as part of the Project, BALLC, AYDC and Interim Developer shall make available or cause to be made available non-exclusive office space on the Project Site for the reasonable use of the environmental monitor and its officers, employees, agents and consultant, ESDC's owner's representative and its officers, employees, agents and consultant and ESDC's officers, employees, agents and consultants. Such office space shall be available during the hours of construction and shall accommodate up to three (3) of such personnel at any given time.

14.6 Community Affairs Office. BALLC, AYDC and Interim Developer shall maintain or cause to be maintained a community affairs office on or within two (2) blocks of the Project Site that will be operated and staffed by BALLC, AYDC and Interim Developer during the construction of the Project. Such office will be open to the public for the purpose of allowing community residents to raise and expeditiously communicate any construction related concerns (traffic, noise, environmental, etc.) to an appropriate representative of BALLC, AYDC and Interim Developer and to obtain remedies and answers to questions. The community affairs office shall be managed by a knowledgeable and accessible representative of BALLC, AYDC and Interim Developer. The community affairs office shall be open during reasonable times and when construction is taking place. ESDC shall have the right, but not the obligation, to have a representative present in such office.

ARTICLE XV

INDEMNIFICATION AND INSURANCE

15.1 Indemnity.

(a) General. Subject to Section 15.1(c) and (d), each of AYDC and Interim Developer (with respect to the Project Site other than the Arena Parcel and the performance of AYDC's Obligations) and BALLC (with respect to the Arena Parcel and the performance of BALLC's Obligations only) covenants to indemnify and hold harmless the Indemnitees, with regard to any and all loss, liability, cost or damage arising from or related to

their respective portion of the Project Site, including, but not limited to, the acquisition and remediation of such portion of the Project Site, any construction activity on or near the Project Site performed or caused to be performed by BALLC or its Affiliates (with respect to BALLC's Obligations only) or AYDC, Interim Developer or their respective Affiliates (with respect to AYDC's Obligations only), the use or operation of their respective portion of the Project Site, the execution and delivery by ESDC of any Easement Agreement at the request of BALLC, AYDC and Interim Developer or their respective successors or assigns related to their respective portion of the Project Site, the relocation of occupants from their respective portions of the Project Site and the development of their respective portions of the Project.

(b) Indemnification. Without limiting the generality of the indemnity contained in Section 15.1(a) hereof and subject to Section 15.1(c) and (d), AYDC and Interim Developer (with respect to the performance of AYDC's Obligations and the Project Site other than the Arena Parcel) and BALLC (with respect to the performance of BALLC's Obligations and the Arena Parcel) shall defend, indemnify and save the Indemnitees harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses (collectively, "**Liabilities**"), including, without limitation, court costs and reasonable attorneys' fees and disbursements, that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of any of the following, except that no Indemnitee shall be so indemnified and saved harmless to the extent that such Liabilities are caused by the gross negligence or willful misconduct of such Indemnitee:

(i) *Construction Work*. Any construction work or act done in, on, or about their respective portion of the Project Site or any part thereof by or on behalf of BALLC or its Affiliates (with respect to BALLC's Obligations) or AYDC, Interim Developer and their respective Affiliates (with respect to AYDC's Obligations);

(ii) *Control*. The control or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of their respective portion of the Project Site, or any part thereof, or of any street, plaza, sidewalk, curb, vault, body of water, or space comprising a part thereof or adjacent thereto, including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing;

(iii) *Acts or Failure to Act of BALLC, AYDC and Interim Developer*. Any act or failure to act on the part of BALLC, AYDC and Interim Developer, respectively, or any of their respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees.

(iv) *Accidents, Injury to Person or Property*. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about their respective portion of the Project Site;

(v) *Lien, Encumbrance or Claim*. Any lien, encumbrance, claim, expense, obligation or liability (A) that may be alleged to have been imposed or arisen against or on their respective portion of the Project Site, (B) created or permitted to be created by ESDC or BALLC or AYDC or Interim Developer, respectively, or any of

their respective partners, joint venturers, officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, ESDC, the City or NYCEDC, or any liability that may be asserted against ESDC, the City or NYCEDC with respect thereto and (C) existing or otherwise affecting any portion of the Project Site at the time ESDC acquires title thereto, including, any liens, claims or encumbrances referenced in the MTA Transfer Agreements or MTA Sale Agreement;

(vi) *Contaminants.* Any claim, expense, obligation or liability arising out of or in any way related to Contaminants at or affecting their respective portion of the Project Site or any part thereof or the soil, water, vegetation, buildings, personal property, individuals, animals or otherwise and any personal injury (including wrongful death) or property damage arising out of or related to any Contaminants;

(vii) *Condemnation.* Any claim, expense, obligation or liability arising out of or related to ESDC's condemnation of any portion of their respective Project Site; and/or

(viii) *Easement Agreements.* Any claim, expense, obligation or liability arising out of or related to ESDC's execution and delivery of any Easement Agreement at the request of BALLC, AYDC, Interim Developer, or their respective Affiliates, successors or assigns.

(c) Release Upon Transfer. Each of AYDC, BALLC and Interim Developer shall be released from its indemnification obligations under this Section 15.1 and Section 6.1(b) with respect to any claims arising wholly from facts first occurring following the date of a Transfer to a Person other than an Affiliate of Forest City Enterprises, Inc., AYDC, BALLC and Interim Developer permitted under Article X hereof or under an applicable Project Lease (with respect to the portion of the Project Site demised by such Project Lease), provided that ESDC receives evidence documenting the permitted transferee's assumption of its obligations under this Agreement or the applicable Project Lease in a form and substance reasonably acceptable to ESDC.

(d) Separate Liability. Notwithstanding anything in this Agreement, BALLC shall have no liability for any acts or omissions by AYDC or Interim Developer with respect to AYDC's Obligations or the performance or failure to perform any indemnification or other obligations of AYDC or Interim Developer under this Agreement.

15.2 No Liability. AYDC and Interim Developer (with respect to the Project Site other than the Arena Parcel) and BALLC (with respect to the Arena Parcel only) shall assume sole responsibility for the work and personal conduct of all Persons employed or engaged by AYDC, BALLC, Interim Developer or their respective Affiliates in connection with the construction of the Project and the performance of BALLC's, AYDC's and Interim Developer's obligations under this Agreement as well as for their direction and compensation. Nothing in this Agreement shall impose any liability or duty upon ESDC to any Person employed or engaged by BALLC, AYDC, Interim Developer or their respective Affiliates as coordinator, consultant, or contractor or in any other capacity, or as employee, servant or agent of BALLC,

AYDC, Interim Developer or their respective Affiliates, or shall make ESDC liable to any Person for the acts, omissions, liabilities, obligations, taxes and benefits of whatever nature, including but not limited to unemployment insurance, incurred or payable by BALLC, AYDC, Interim Developer or their respective Affiliates, or any of their respective coordinators, consultants, contractors, employees, servants or agents.

15.3 Insurance. BALLC, AYDC, Interim Developer and their respective Affiliates, successors and assigns shall, until Substantial Completion of the Project, maintain (or cause to be maintained) the following insurance coverage:

(a) Commercial General Liability and Excess Liability. Commercial General Liability and Excess Liability insurance with limits of liability for bodily injury and property damage of not less than \$5,000,000 per occurrence and aggregate. This insurance shall provide coverage for the contractual liability assumed under this Agreement, products and completed operations liability, personal and advertising injury liability, and fire legal liability. This insurance may contain a self-insured retention or deductible of up to \$10,000 per occurrence, provided BALLC, AYDC and Interim Developer shall remain responsible for the payment of all claim expenses within the amount of the self-insured retention or deductible. BALLC, AYDC and Interim Developer shall name under these policies and shall cause all contractors performing construction work to name ESDC, NYCEDC, LDC and the City as additional insureds on commercial general liability and excess liability policies required for such contractors with respect to the construction of the Project.

(b) Environmental Insurance. Pollution Legal Liability Insurance, naming ESDC, LDC, NYCEDC and the City as additional named insureds with coverage for bodily injury, property damage and clean-up costs arising from (A) Contaminants on the Project Site, whether presently known or subsequently discovered, (B) the subsequent Release of Contaminants on the Project Site; (C) the transportation, disposal or Release of Contaminants originating at the Project Site or at a third-party site and migrating to or otherwise affecting the Project Site; and (D) third-party claims with respect to any of the foregoing, in each case, with limits of liability of not less than \$5,000,000 per occurrence and in the aggregate; provided that such insurance may contain a self-insured retention or deductible of not more than \$250,000 per occurrence; provided further that BALLC, AYDC and Interim Developer shall remain responsible for the payment of all claim expenses within the amount of the self-insured retention or deductible.

(c) Additional Requirements Under Project Leases. In addition to the insurance coverage required under Section 15.3(a) hereof, each Tenant under a Project Lease shall maintain the insurance coverage in accordance with the terms of such Project Lease and BALLC, AYDC and Interim Developer shall maintain the insurance coverage in accordance with the terms of the State Funding Agreement (so long as the State Funding Agreement is effective).

15.4 Certificates. Before commencing construction, BALLC, AYDC and Interim Developer shall, and shall cause each Tenant under a Project Lease (as applicable) to, provide certificates of insurance evidencing the insurance coverage required by this Agreement and such Project Lease. In addition, BALLC, AYDC, Interim Developer and each Tenant under

a Project Lease shall provide ESDC with copies of the insurance policies required by this Agreement or such Project Lease within a commercially reasonable time after ESDC's written request therefor.

15.5 Additional Requirements. All insurance policies required by this Agreement or a Project Lease shall be:

(a) written by insurers with A.M. Best Company ratings of A-/VII or better;

(b) provide that they will not be canceled or not renewed without thirty (30) days' prior written notice to ESDC, except for termination due to non-payment, for which ten (10) days' advance written notice will be provided; and

(c) written on an "occurrence" basis (except for Environmental Liability, which is "claims made").

15.6 Waiver of Subrogation. Each of BALLC, AYDC and Interim Developer covenant, and BALLC, AYDC and Interim Developer shall cause each Tenant under a Project Lease to covenant, that it will, if generally available in the insurance industry, obtain for the benefit of ESDC, the City, NYCEDC and the other Governmental Entities a waiver of any right of subrogation which an insurer may acquire against ESDC, the City, NYCEDC and the other Governmental Entities by virtue of the payment of any such loss covered by such insurance.

15.7 Additional Insureds/Requirements. Each of BALLC, AYDC and Interim Developer shall, and BALLC, AYDC and Interim Developer shall cause each Tenant under a Project Lease to, name (and shall direct its contractors to name) ESDC, the City, NYCEDC and the other Governmental Entities (a) as additional insureds on commercial general liability insurance policies required to be maintained under this Agreement and any Project Lease and (b) as an indemnitee under any indemnity clause in BALLC's, AYDC's, Interim Developer's or such Tenant's contractors' commercial general liability insurance policies. Each of BALLC, AYDC and Interim Developer shall, and BALLC, AYDC and Interim Developer shall cause each Tenant under a Project Lease to, upon the written request of ESDC, the City, NYCEDC and the other Governmental Entities, except to the extent such Person is entitled to receive copies of the same directly from the insurer pursuant to the terms of the policy, provide such requesting party with a copy of the insurance certificates evidencing the insurance required to be maintained by BALLC, AYDC, Interim Developer or such Tenant under this Agreement or a Project Lease. Each policy of insurance required to be obtained by BALLC, AYDC, Interim Developer or such Tenant as provided in this Agreement or a Project Lease, including the Environmental Insurance, shall contain (i) a provision that no act or omission of BALLC, AYDC, Interim Developer or such Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by ESDC, the City, NYCEDC or any other Governmental Entities, (ii) an agreement by the insurer that such policy shall not be reduced, cancelled or allowed to lapse without at least thirty (30) days' (ten (10) in the case of non payment of premium) prior written notice to ESDC, the City, NYCEDC or any other Governmental Entities, (iii) an agreement by the insurer that BALLC, AYDC, Interim Developer or such Tenant shall be solely responsible for the payment of premiums therefor notwithstanding that ESDC, the City, NYCEDC or any

other Governmental Entities is or may be named as an additional insured, and (iv) an agreement by the insurer that such insurance with respect to all additional insureds shall be primary for all purposes with respect to all matters arising under this Agreement or any Project Lease.

ARTICLE XVI

NOTICES

16.1 General Requirements. All notices and communications to the Parties hereunder will be delivered by hand or sent by registered or certified mail, return receipt requested, or by Federal Express or other overnight mail service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is transmitted will be deemed to have occurred upon receipt, if hand delivered; five days from the date of mailing, if mailed; or the next Business Day after transmittal by Federal Express or other overnight delivery service that provides a receipt to the sender. Notices shall be effective upon receipt (as set forth in the preceding sentence), notwithstanding the refusal to accept receipt or the inability to deliver on account of a change of address with respect to which no notice was given.

(a) All notices and correspondence to ESDC will be delivered to the following address(es) and addressee(s) or to such other or additional address(es) or addressee(s) of which ESDC may notify Developer from time to time:

Address: New York State Urban Development Corporation
633 Third Avenue
New York, NY 10017
Attention: General Counsel

with copies (other than with respect to any plans or specifications delivered hereunder to ESDC) to:

Address: Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Neil L. Rock, Esq.

and

Address: New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attention: President

and

Address: New York City Economic Development Corporation
110 William Street
New York, New York 10038
Attention: General Counsel

and

Address: New York City Law Department
100 Church Street
New York, New York 10007
Attention: Chief, Economic Development Division

(b) All notices and correspondence to BALLC, AYDC and Interim Developer will be delivered to the following address(es) and addressee(s) or to such other or additional address(es) or addressee(s) of which BALLC, AYDC or Interim Developer may notify ESDC from time to time:

Address: c/o Forest City Ratner Companies, LLC
1 MetroTech Center
Brooklyn, New York 11201
Attention: General Counsel

with copies to:

Address: Forest City Enterprises, Inc.
50 Public Square, Suite 1360, Terminal Tower
Cleveland, Ohio 44113
Attention: General Counsel

and

Address: Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

16.2 Electronic Delivery. Notwithstanding anything contained in Section 16.1, hereof to the contrary, BALLC, AYDC, Interim Developer or their respective Affiliates shall have the right to deliver any plans, reports or other deliveries required or permitted to be delivered hereunder by reasonable electronic means in lieu of the methods provided by said Section 16.1, provided that BALLC, AYDC, Interim Developer or their respective Affiliates delivers written notice in accordance with the terms of Section 16.1 that such deliveries shall be delivered by electronic means.

ARTICLE XVII

EVENTS OF DEFAULT; REMEDIES

17.1 Events of Default. Each of the following events shall be an "Event of Default" hereunder:

(a) if BALLC, AYDC or Interim Developer shall Default in (i) the payment of Liquidated Damages when due, or (ii) any other amount due pursuant to this Agreement and any such Default shall continue for a period of ten (10) Business Days after delivery of written notice to BALLC or AYDC that such amount is past due;

(b) if prior to the Outside Arena Commencement Date, construction of the Arena shall not have commenced pursuant to and in accordance with the terms of the Arena Development Lease;

(c) if the Arena is not the first or second building in the Project for which construction is commenced in accordance with the terms of Section 8.4 above;

(d) if the Arena is not Substantially Complete (for this purpose only, as defined in the Arena Development Lease) on or prior to the Outside Arena Substantial Completion Date;

(e) if the Arena Work, once commenced, is not continued with diligence;

(f) the hosting of the first event at the Arena open to the general public prior to the satisfaction of the Arena Opening Conditions;

(g) if AYDC shall fail to Commence Construction (as defined in Section 8.5 above) or cause the Commencement of Construction (as defined in Section 8.5 above) of the Platform in accordance with the terms of Section 8.5 above;

(h) Intentionally omitted;

(i) if Interim Developer shall fail to Commence Construction or cause Commencement of Construction in accordance with the terms of Section 8.6(d) above;

(j) if Interim Developer shall fail to Commence Construction or cause Commencement of Construction in accordance with the terms of Section 8.6(e) above;

(k) if AYDC shall fail to cause the Substantial Completion of the Urban Room on or prior to the Outside Phase I Substantial Completion Date, subject to Unavoidable Delays;

(l) if Phase I of the Project, including the Phase I Improvements, Arena, Subway Entrance, Affordable Housing Units satisfying the Phase I Affordable Housing Commitment, Carlton Avenue Bridge and Arena Parking are not Substantially Completed in accordance with this Agreement and the applicable Project Lease on or prior to the Outside Phase I Substantial Completion Date, subject to Unavoidable Delays and Article VIII above;

(m) if the entire Project, including the Phase I Improvements, Phase II Improvements, Arena, Platform, Urban Room, Subway Entrance, Open Spaces, Project Site Affordable Housing Units, Additional Affordable Housing Units, Upgraded Yard, School (if requested by DOE), Existing Parks Investment, Carlton Avenue Bridge, Arena Parking and Project Infrastructure is not Substantially Completed in accordance with this Agreement and the applicable Project Lease on or prior to the Outside Phase II Substantial Completion Date, subject to Unavoidable Delays and, if applicable, Section 8.8 above;

(n) if the Project Effective Date does not occur prior to March 31, 2011 and if at any time thereafter (but prior to the Project Effective Date), BALLC, AYDC, Interim Developer and their respective Affiliates fail to (i) pursue the Site Litigation with due diligence and to cooperate in all Site Litigation as reasonably requested with all government parties involved therein, or (ii) take reasonable steps in furtherance of the Project;

(o) if the Project Effective Date does not occur prior to September 12, 2017;

(p) if ESDC delivers the written determination that abandonment has occurred in accordance with Section 9.1 above;

(q) Intentionally Omitted;

(r) if BALLC, AYDC or Interim Developer shall Default in the observance or performance of any term, covenant or condition of this Agreement on BALLC's, AYDC's or Interim Developer's part to be observed or performed (other than as enumerated in Sections 17.1(a) through (q)) and BALLC, AYDC or Interim Developer shall fail to remedy such Default within thirty (30) days after delivery of notice by ESDC to BALLC, AYDC or Interim Developer, as applicable, of such Default, or if such Default is of such a nature that it cannot be remedied within said period of thirty (30) days, and BALLC, AYDC or Interim Developer shall not commence within said period of thirty (30) days, or shall not thereafter diligently prosecute to completion, all steps necessary to remedy such Default (but in no event within a period of no more than one hundred twenty (120) additional days);

(s) if any representation or warranty made by BALLC, AYDC or Interim Developer in this Agreement shall be false, incomplete or misleading in any material respect when made; provided that if such misrepresentation can be, and is in fact, cured within thirty (30) days after written notice to BALLC, AYDC or Interim Developer specifying such Default, the same shall not be an Event of Default;

(t) if an "Event of Default" (as such term is defined in the applicable agreement) shall have occurred and is continuing under the State Funding Agreement, LAFPMRA, any Project Lease (only to the extent that BALLC, AYDC, Interim Developer or an Affiliate thereof is a party to such Project Lease) or any other Project Documentation (only to the extent that such Project Documentation is: (i) an agreement between BALLC, AYDC or Interim Developer or an Affiliate thereof, on the one hand, and the ESDC, City, MTA, LIRR, Transit Authority or an Affiliate thereof, on the other hand, (ii) the ESDC, City, MTA, LIRR, Transit Authority or an Affiliate thereof is pursuing remedies under such agreement; and (iii) such "Event of Default" is reasonably expected to have a material adverse effect on the Project);

(u) if BALLC, AYDC or Interim Developer Transfers or permits the Transfer of any interest in this Agreement in violation of Article X hereof;

(v) if AYDC (with respect solely to AYDC), BALLC (with respect solely to BALLC), Interim Developer (with respect solely to Interim Developer) or Tenant (as long as Tenant is an Affiliate of AYDC, BALLC, or Interim Developer) (with respect solely to such Tenant) or any Guarantor (for the purposes of this clause (v) only, Guarantor shall mean the

guarantor of the guaranties described in Article XI hereof) shall commence or institute any case, proceeding or other action (x) seeking relief on its behalf as debtor, or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, or (y) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property;

(i) if AYDC (with respect solely to AYDC), BALLC (with respect solely to BALLC), Interim Developer (with respect solely to Interim Developer) or any Tenant (as long as Tenant is an Affiliate of AYDC, BALLC or Interim Developer) (with respect solely to such Tenant) or any Guarantor shall make a general assignment for the benefit of creditors; or

(ii) if any case, proceeding or other action shall be commenced or instituted against AYDC (with respect solely to AYDC), BALLC (with respect solely to BALLC), Interim Developer (with respect solely to Interim Developer) or any Tenant (as long as Tenant is an Affiliate of AYDC, BALLC or Interim Developer) (with respect solely to such Tenant) or any Guarantor (A) seeking to have an order for relief entered against it as debtor or to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition or other relief with respect to it or its debts under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, and such case, proceeding or other action is not vacated, discharged or stayed within ninety (90) days, or (B) seeking appointment of a receiver, trustee, custodian or other similar official for it or for all or any substantial part of its property, which either (A) results in any such entry of an order for relief, adjudication of bankruptcy or insolvency or such an appointment or the issuance or entry of any other order having a similar effect or (B) remains undismissed for a period of ninety (90) days; or

(iii) if any case, proceeding or other action shall be commenced or instituted against AYDC (with respect solely to AYDC), BALLC (with respect solely to BALLC), Interim Developer (with respect solely to Interim Developer) or any Tenant (as long as Tenant is an Affiliate of AYDC, BALLC or Interim Developer) (with respect solely to such Tenant) or any Guarantor seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its property which results in the entry of an order for any such relief affecting this Agreement which shall not have been vacated, discharged, or stayed or bonded pending appeal within ninety (90) days from the entry thereof; or

(iv) if a trustee, receiver or other custodian is appointed for any substantial part of the assets of AYDC (with respect solely to AYDC), BALLC (with respect solely to BALLC), Interim Developer (with respect solely to Interim Developer) or any Tenant (as long as Tenant is an Affiliate of AYDC, BALLC or Interim Developer) (with respect solely to such Tenant) or any Guarantor which appointment is not vacated or effectively stayed within thirty (30) days; or

(v) if AYDC (with respect solely to AYDC), BALLC (with respect solely to BALLC), Interim Developer (with respect solely to Interim Developer) or any Tenant (as long as Tenant is an Affiliate of AYDC, BALLC, or Interim Developer) (with respect solely to such Tenant) or any Guarantor shall take any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in subclauses (i), (ii), (iii) or (iv) above;

(w) if any Governmental Authority or other Person asserts or creates a lien which is not permitted by this Agreement or the applicable Project Documentation (whenever ESDC is the fee owner of the applicable portion of the Project Site) or asserts a claim against AYDC, BALLC, Interim Developer, the Project Site, the City, NYCEDC or ESDC, which arises from or is the result of an Environmental Condition, a Release, an Environmental Complaint, or the violation of any Environmental Law on or pertaining to the Project Site; provided, however, such lien or claim shall not constitute an Event of Default if, within forty five (45) days after AYDC, BALLC or Interim Developer has actual notice of the assertion or creation of such lien or claim, AYDC, BALLC, Interim Developer or their respective Affiliates (or their insurer) has commenced and is diligently pursuing (subject to Unavoidable Delay) either: (i) the cure or correction of the event which constitutes the basis for the lien or claim and continues diligently to pursue the cure or correction to completion and obtains the discharge of any lien or claim, or (ii) a defense of the claim which defense is reasonably satisfactory to ESDC, or (iii) legal proceedings for an injunction, restraining order or other appropriate relief pursuant to available proceedings under applicable laws preventing the Governmental Authority or Person from proceeding with such claim or asserting such lien; or

(x) if BALLC, AYDC or Interim Developer shall fail in any respect to maintain the insurance coverage required by this Agreement; provided that if such Default is cured within fifteen (15) days after written notice to BALLC, AYDC or Interim Developer specifying such Default, the same shall not be an Event of Default.

17.2 ESDC's Remedies and Damages.

(a) If an Event of Default shall occur then, at any time thereafter so long as such Event of Default is continuing, ESDC at its option may, upon written notice to AYDC, BALLC or Interim Developer, as applicable, do any of the following, subject to Section 17.2(b) and (c) hereof:

(i) upon an Event of Default described in Section 17.1(a), ESDC shall have the right to terminate any Project Lease (other than as set forth in Sections 17.2(b) and (c)) or any two or more of them; provided ESDC shall give AYDC, BALLC or Interim Developer, as applicable, prior written notice of such termination (which shall not be effective for at least thirty (30) days following receipt of such notice by AYDC and BALLC pursuant to Article XVII), which termination AYDC, BALLC or Interim Developer, as applicable, may dispute in good faith if the amounts giving rise to such termination are not paid prior to the termination date specified in such written notice. For the avoidance of any doubt, if it is determined that the amounts giving rise to such termination are in fact due to ESDC, then if such amounts are not promptly paid to ESDC, ESDC shall have the right to terminate any Project Lease (other than as set forth in

Section 17.2(b)) or any one or more of them without any additional notice to AYDC, BALLC or Interim Developer, as applicable.

(ii) upon an Event of Default described in Section 17.1(b), (d), (i), (j), (k), (l), (n), (o) and (p) AYDC, BALLC or Interim Developer, as applicable, shall pay liquidated damages ("**Liquidated Damages**") to ESDC in the amount shown on Schedule 3 attached hereto.

BALLC, AYDC AND INTERIM DEVELOPER EACH AGREE THAT (I) THE AMOUNT OF ACTUAL DAMAGES TO BE SUSTAINED BY ESDC AND THE CITY UPON THE OCCURRENCE OF ANY EVENT OF DEFAULT DESCRIBED IN THIS SECTION 17.2(a)(ii) WOULD BE MATERIAL, BUT INCAPABLE OF PRECISE CALCULATION AND NOT READILY ASCERTAINABLE, (II) THE AMOUNTS SET FORTH IN SCHEDULE 3 ARE REASONABLE IN PROPORTION TO THE PROBABLE DAMAGES LIKELY TO BE SUSTAINED BY ESDC AND/OR THE CITY, (III) BALLC, AYDC AND INTERIM DEVELOPER EACH HAVE HAD THE ADVICE OF COUNSEL OF ITS OWN SELECTION WHO REVIEWED THE PROVISION FOR THE PAYMENT OF THE AMOUNTS SET FORTH IN SCHEDULE 3 IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THIS AGREEMENT, (IV) THE TERMS OF THIS AGREEMENT WERE NEGOTIATED AT ARMS LENGTH, AND (V) THE AMOUNTS SET FORTH IN SCHEDULE 3 ARE NOT INTENDED TO, AND DO NOT, CONSTITUTE A PENALTY OR PUNITIVE DAMAGES FOR ANY PURPOSES. THE OBLIGATION TO PAY THE LIQUIDATED DAMAGES PROVIDED IN THIS SECTION 17.2(a)(ii) SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

If: (i) BALLC, AYDC or Interim Developer is obligated to pay Liquidated Damages hereunder; and (ii) BALLC, AYDC or Interim Developer (as applicable) is current in the payments of any Liquidated Damages then due and payable (including the posting of any required letters of credits), then so long as sub-clause (ii) is satisfied (A) the Event of Default giving rise to the obligation to pay Liquidated Damages shall be deemed not to be continuing under this Agreement; (B) AYDC, Interim Developer and their respective successors and assigns shall, subject to any applicable requirements under this Agreement and the Project Leases, be entitled to sever and create Development Parcels, enter into Development Leases and commence the construction of Development Work, and (C) upon the indefeasible payment in full of the applicable amount of Liquidated Damages, AYDC and Interim Developer (as applicable) shall be relieved of its obligation to Commence Construction of the applicable Project Building as provided in Section 8.6(d)(i) hereof or the Urban Room. For clarity, nothing herein shall diminish the obligation of AYDC and Interim Developer to construct or cause the construction of Project Site Affordable Housing Units, nor reduce any rights and remedies of ESDC with respect to the failure of AYDC or Interim Developer to construct or cause the construction of Project Site Affordable Housing Units.

(iii) upon an Event of Default described in Section 17.1(c), (e), (f) or (g) neither AYDC nor Interim Developer nor their respective successors or assigns nor any Person claiming through AYDC, Interim Developer or their respective successors

or assigns (other than, with respect to an Event of Default under Section 17.1(e), a Recognized Mortgagee or Successor Leasehold Owner in accordance with the terms of the applicable Project Lease) may request the creation or severance of any Development Parcels under this Agreement or any Interim Lease, request the execution and delivery by ESDC of any Development Lease or commence the performance of any Development Work under the applicable Development Lease.

(iv) Intentionally Omitted.

(v) upon an Event of Default described in Section 17.1(l), unless Liquidated Damages are owed on account of such Event of Default and in accordance with Section 17.2(a)(ii) such Liquidated Damages are being paid to ESDC, neither Interim Developer nor its successors or assigns nor any Person claiming through Interim Developer or its successors or assigns (other than a Recognized Mortgagee or Successor Leasehold Owner in accordance with the terms of the applicable Project Lease) may request the creation or severance of any Development Parcels under this Agreement or any Interim Lease, request the execution and delivery by ESDC of any Development Lease or commence the construction of any Development Work under the applicable Development Lease.

(vi) upon an Event of Default described in Section 17.1(m), ESDC or its designee shall have the right to terminate (the "**Termination Option**") the applicable Project Lease as to any portion of the Project Site which construction of Improvements has not commenced in accordance with this Agreement and the applicable Project Lease as of the date the Termination Option Notice is given by ESDC (the "**Unimproved Parcels**"). The Termination Option will be exercised by ESDC in accordance with Section 17.5.

(vii) Upon an Event of Default described in Sections 17.1(n), (o), and (p), (A) ESDC shall have the right to (I) terminate any Project Lease (other than as set forth in Section 17.2(b) and (c)), and (II) decline or otherwise reject any request by AYDC and its successors and assigns, and all Persons claiming through AYDC and its successors and assigns for the creation or severance of a Development Parcel under this Agreement or any Interim Lease (other than a Recognized Mortgagee or Successor Leasehold Owner in accordance with the terms of the applicable Project Lease), and (B) AYDC and any Tenant under a Development Lease that is an Affiliate of AYDC shall not thereafter have the right to commence any Development Work under any Development Lease.

(viii) upon an Event of Default described in Section 17.1(u), a Transfer in violation of Article X or the transfer restrictions contained in the applicable Project Lease shall, at ESDC's election (exercised in its sole discretion), be void *ab initio* and in connection therewith BALLC, AYDC and Interim Developer shall be obligated to pay \$10,000 per day to ESDC until such time as BALLC, AYDC and Interim Developer deliver an Officer's Certificate to ESDC confirming that such Transfer has been voided; provided that amount payable pursuant to this subsection shall be reduced to \$1,000 per day unless such Event of Default could, in ESDC's reasonable determination, be expected

to (A) have a material adverse effect on the value of or the use of the Project Site (individually or as a collective whole), (B) result in a condition hazardous to human life or health, (C) put the Project Site, or any portion thereof, in danger of being forfeited or lost, or (D) subject ESDC to criminal and/or civil liability or penalty; provided further that to the extent that an Affiliate of BALLC, AYDC and Interim Developer is paying ESDC a per diem liquidated damages amount for the same action or occurrence causing such Event of Default pursuant to another Project Document, then BALLC, AYDC and Interim Developer shall, without duplication, receive a credit (but not below zero) for the amount actually and indefeasibly received by ESDC from such Affiliate for such action or occurrence. It being agreed, however, for the avoidance of any doubt, that no credit shall be given for any liquidated damages that are payable in a lump sum or pursuant to an agreed to payment schedule.

(ix) Upon an Event of Default described in Section 17.1(v), (other than a Recognized Mortgagee or Successor Leasehold Owner in accordance with the terms of the applicable Project Lease) neither BALLC nor AYDC nor Interim Developer nor any Tenant under a Interim Lease nor any of their respective Affiliates, may request the creation or severance of any Development Parcels under this Agreement or any Interim Lease, request the execution and delivery by ESDC of any Development Lease or commence the performance of any Development Work under the applicable Development Lease.

(x) for all other Events of Default, BALLC, AYDC and Interim Developer shall be obligated to pay \$10,000 per day to ESDC until the applicable Event of Default is cured, and neither BALLC, AYDC or Interim Developer nor any Tenant under an Interim Lease that is an Affiliate of BALLC, AYDC and Interim Developer shall have the right to request the severance of any Development Parcels, the execution and delivery by ESDC of any Development Lease or the right to commence any Development Work on all or any portion of the Project Site; provided that with respect to any non-monetary Event of Default, the amount payable pursuant to this subsection shall be reduced to \$1,000 per day unless such Event of Default could, in ESDC's reasonable determination, be expected to (A) have a material adverse effect on the value of or the use of the Project Site (individually or as a collective whole), (B) result in a condition hazardous to human life or health, (C) put the Project Site, or any portion thereof, in danger of being forfeited or lost, or (D) subject ESDC to criminal and/or civil liability or penalty; provided further that to the extent that an Affiliate of BALLC, AYDC and Interim Developer is paying ESDC a per diem liquidated damages amount for the same action or occurrence causing such Event of Default pursuant to another Project Document, then BALLC, AYDC and Interim Developer shall, without duplication, receive a credit (but not below zero) for the amount actually and indefeasibly received by ESDC from such Affiliate for such action or occurrence. It being agreed, however, for the avoidance of any doubt, that no credit shall be given for any liquidated damages that are payable in a lump sum or pursuant to an agreed to payment schedule.

(b) Notwithstanding anything in Section 17.2(a) hereof, in no event shall any Event of Default under this Agreement affect in any respect ESDC's, LDC's, BALLC's and Events Center's rights and obligations under the ground lease with respect to the Arena

Parcel and the Arena Development Lease. Nothing in Section 17.2(a) shall be construed as allowing ESDC or LDC to decline to execute and deliver or otherwise terminate the ground lease with respect to the Arena Parcel and the Arena Development Lease. In addition, notwithstanding anything in Section 17.2(a) hereof, in no event shall any Event of Default under this Agreement affect in any respect ESDC's or the Tenant's rights and obligations under a Development Lease after the posting of the required completion guaranty in accordance with the terms of such Development Lease. Nothing in Section 17.2(a) shall be construed as allowing ESDC to terminate a Development Lease after the commencement of Development Work under and in accordance with the terms of such Development Lease.

(c) Notwithstanding anything in Section 17.2(a) hereof, from and after the date that a Recognized Mortgagee shall have foreclosed on its Recognized Mortgage or otherwise succeeded to the leasehold interest under the applicable Project Lease, other than during the period where the Event of Default described in Section 17.1(c) is continuing, ESDC shall permit such Recognized Mortgagee or a Successor Leasehold Owner to, in accordance with and subject to the terms and conditions of the applicable Project Lease, request the creation or severance of any Development Parcels, request the execution and delivery of any Development Lease, and permit the Recognized Mortgagee or a Successor Leasehold Owner to commence any Development Work under the applicable Development Lease. Nothing in Section 17.2(a) shall be construed as limiting or expanding any rights or obligations of a Recognized Mortgagee, Mezzanine Lender or Successor Leasehold Owner as set forth in a Project Lease (including, without limitation, the right to cure any Defaults of BALLC, AYDC and Interim Developer hereunder and/or request a "new lease" in accordance with the terms of the applicable Project Lease).

(d) In addition to the remedies set forth in Section 17.2(a), ESDC shall be entitled to any and all remedies available to ESDC at law or in equity under or in connection with this Agreement, any Project Lease, and/or any other Project Documentation, including without limitation, specific performance, injunctive relief, and the recovery by ESDC from BALLC, AYDC or Interim Developer (as applicable) of any and all damages, sums, costs, and expenses incurred by ESDC as a result of or in connection with BALLC's, AYDC's or Interim Developer's respective Default under this Agreement.

(e) The foregoing remedies of ESDC are in addition to and not in lieu of ESDC's remedies under the Arena Completion Guaranty or any guaranty required by this Agreement, a Development Lease or any other Project Documentation, and BALLC, AYDC and Interim Developer hereby expressly acknowledges that no remedy or recovery hereunder shall in any way affect ESDC's rights under the Arena Completion Guaranty or any completion guaranty required pursuant to a Development Lease or this Agreement.

17.3 Right To Refrain. ESDC shall have the right, in its sole discretion, to refrain from exercising any of its rights under this Agreement at any time or from time to time.

17.4 No Waivers; Remedies Not Exclusive; Etc. No course of dealing on the part of ESDC or any failure or delay on the part of ESDC to exercise any right shall operate as a waiver of such right or otherwise prejudice ESDC's powers and remedies. No right, power or remedy conferred upon or reserved to ESDC is intended to be exclusive of any other right, power

or remedy. Every right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy contained in this Agreement or existing at any time at law or in equity, or otherwise, and may be exercised from time to time and as often and in such order as ESDC may deem appropriate. The exercise of any right, power or remedy shall not be construed as an election or a waiver of any other right, power or remedy.

17.5 Termination Option.

(a) If ESDC elects to exercise the Termination Option, ESDC may deliver a revocable written notice ("**Termination Option Notice**") to AYDC, Interim Developer and each Tenant under a Project Lease, as applicable, within two (2) years following the Event of Default giving rise to the Termination Option. ESDC may exercise the Termination Option with respect to all or a portion of the Unimproved Parcels, and any partial exercise shall not waive or otherwise invalidate ESDC's right to exercise the Termination Option with respect to any remaining Unimproved Parcels. In the event ESDC does not deliver a Termination Option Notice with respect to all or any Unimproved Parcels within such two (2) year period, the term of the Project Lease demising such Unimproved Parcels shall be extended for an additional five (5) years. Within one (1) year following the expiration of such five (5) year period, ESDC shall again have the right to deliver a Termination Option Notice with respect to any then Unimproved Parcels. The preceding cycle of five (5) year extension terms of Project Leases and one (1) year periods for ESDC to deliver a Termination Option Notice shall continue until the earlier of (i) the commencement of Development Work on all Unimproved Parcels pursuant and subject to the terms and conditions of one or more Development Leases; or (ii) the occurrence of a Conveyance Date with respect to any remaining Unimproved Parcels.

(b) The closing of the Termination Option shall occur on the date fixed in the Termination Option Notice (but in no event sooner than sixty (60) days following the date of the Termination Option Notice nor later than six (6) months days following such date) (the "**Conveyance Date**"). The Conveyance Price shall be paid (i) first to any Recognized Mortgagee under the applicable Project Lease, in an amount equal to the indebtedness secured by the Recognized Mortgage of such Recognized Mortgagee and (ii) the balance, if any, to AYDC, Interim Developer or the Tenant under the applicable Project Lease or their designee, as applicable, by wire transfer of immediately available funds on the Conveyance Date. All closing costs and expenses of such transaction (other than the Conveyance Price) shall be borne exclusively by AYDC or Interim Developer (or the Tenant under the applicable Project Lease), including all title insurance premiums, recording fees, legal fees and expenses, and all other customary closing costs. AYDC or Interim Developer shall (and AYDC or Interim Developer shall cause each Tenant under a Project Lease to) cause to be executed and delivered to ESDC, notarized and in proper form for recording where applicable, all mortgage releases, documents, affidavits, certifications, indemnities, instruments or agreements deemed reasonably necessary by ESDC or any title company selected by ESDC to cause the consummation of the Termination Option on the Conveyance Date.

ARTICLE XVIII

MISCELLANEOUS

18.1 Breach Shall Not Permit Termination. No breach of this Agreement by ESDC shall entitle BALLC, AYDC or Interim Developer to cancel, rescind or otherwise terminate this Agreement.

18.2 State Funding Agreement. Nothing contained herein shall be construed to terminate or otherwise affect in any way the rights and obligations granted to the Parties under the State Funding Agreement; provided that nothing herein shall limit Section 17.19 of the State Funding Agreement.

18.3 Interpretation. Any uncertainty or ambiguity regarding the provisions of this Agreement shall not be interpreted against any Party as the draftsman of the document, but shall be resolved by application of all other principles of law regarding interpretation of contracts.

18.4 Governing Laws and Forum. This Agreement shall be governed by, interpreted under, and construed in accordance with the laws of the State of New York. The Parties intend and agree that the proper forum for the litigation of any and all disputes or controversies arising out of or related to this Agreement is any court of the State of New York, Kings County. Each of the Parties agrees that it will not commence any action or proceeding arising out of or relating to this Agreement in any court other than as specified in the preceding sentence and that it shall not challenge on grounds of forum *non conveniens* or any other similar grounds any action or proceeding so commenced, and hereby stipulates and irrevocably agrees that said courts have *in personam* jurisdiction over each of them for such litigation of any dispute or controversy arising out of or in any way related to this Agreement. The parties hereto waive a trial by jury of any and all issues arising in any action or proceeding between them or their successors or assigns under or connected with this Agreement or any of its provisions or any negotiations in connection therewith.

18.5 No Partnership. Neither this Agreement nor any acts of the Parties shall be deemed or construed by the Parties to constitute an agreement to create the relationships of principal agent, partnership, joint venture, or any association whatsoever between the Parties.

18.6 Severability. If any term, covenant, restriction or condition contained in this Agreement shall, to any extent, be invalid or unenforceable, the remainder of this Agreement (or the application of such term, covenant, restriction or condition to Persons or circumstances other than those with respect to which it is invalid or unenforceable) shall not be affected thereby and each term, covenant, restriction and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

18.7 Successors. The provisions of this Agreement shall, except as otherwise provided herein, run to the benefit of and be binding upon the Parties hereto and their respective successors and permitted assigns.

18.8 Waiver of Default. A Party's waiver of another Party's Default shall be made in writing, and no such waiver shall be implied from a Party's failure to take any action in

respect of such Default if such Default continues or is repeated. No express waiver of any Default shall affect any Default, or cover any period of time, other than the precise Default and period of time specified in such express waiver. One or more waivers of any Default in the performance of any term, covenant, restriction or condition of this Agreement shall not be deemed to waive any subsequent Default. A Party's giving of its consent or approval to any act or request of another Party shall not be deemed to waive or render unnecessary the consenting/approving Party's consent to or approval of any subsequent similar acts or requests.

18.9 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all such counterparts taken together shall constitute one and the same instrument.

18.10 Estoppel Certificates.

(a) Each Party hereby covenants that upon at least twenty (20) days' prior notice from the other Party (or a Recognized Mortgagee), it shall issue to the requesting Party an estoppel certificate stating: (i) whether the Party to whom the request has been directed knows of any Default by the other Party under this Agreement, and if there are known Defaults, specifying the nature thereof, (ii) whether all payments that are required to be made hereunder have so been paid; and (iii) whether to its knowledge this Agreement has been assigned, modified or amended in any way by such Party (and if it has, then stating the nature thereof).

(b) In addition to the foregoing, upon the satisfaction by BALLC of any BALLC's Obligations or by AYDC or Interim Developer of any AYDC's Obligations under this Agreement, including without limitation, the commencement of the Arena, the Substantial Completion of the Arena, the satisfaction of the Arena Opening Conditions, the commencement of a building as set forth in Section 8.6(d), the commencement of the Upgraded Yard, the Substantial Completion of the Programmatic Obligations, the Substantial Completion of the Phase I Improvements, the commencement of the building on Block 1129, the commencement of the Platform, the Substantial Completion of the Phase II Improvements (including the Substantial Completion of all or a portion of the Project Site Affordable Housing, the Urban Room, the Subway Entrance, the Open Space and the Platform), ESDC agrees that so long as no Event of Default under this Agreement or any under the applicable Project Lease shall have occurred and be continuing, that upon at least twenty (20) days' prior notice from BALLC, AYDC or Interim Developer to issue a certificate stating whether BALLC, AYDC or Interim Developer has, to ESDC's knowledge, satisfied its applicable obligations under this Agreement.

18.11 Maximum Interest Rate. In the event that any interest payable under this Agreement shall be deemed to exceed the maximum rate permitted by law, then the amount of interest to be paid shall be the maximum rate so permitted.

18.12 Effect of Granting or Failure To Grant Approvals or Consents. All consents and approvals that may be given under this Agreement shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a Party to perform any act requiring consent or approval under the terms of this Agreement, or the failure on the part of a Party to object to any such action taken without the required consent or approval, shall not, except where expressly stated otherwise, be deemed a waiver by the Party whose consent was

required of its right to require such consent or approval for any further similar act. The foregoing shall not limit the effect of any provision of this Agreement by which consent is deemed granted, if objection is not made within a specified period.

18.13 Limitation of Liability of Governmental Entities. In no event shall any of the Governmental Entities have any liability or obligation whatsoever under this Agreement; provided, however, that this Section 18.13 shall not operate to relieve ESDC, or any successor thereof, of any of its obligations hereunder.

18.14 Survival. The obligations of BALLC, AYDC and Interim Developer hereunder, including all indemnification obligations, shall survive the termination or expiration of this Agreement with respect to acts and omissions occurring prior to such termination or expiration, regardless of whether the claims relating to such acts or omissions are made before or after such termination or expiration.

18.15 Liens. In the event any mechanic's lien is filed against the Project Site (whenever ESDC is the fee owner of such portion of the Project Site) or any public improvement lien is filed against ESDC with respect to work ordered or contracted for or for materials ordered by or on behalf of BALLC, AYDC or Interim Developer, BALLC, AYDC and Interim Developer hereby covenants for the benefit of ESDC either to pay the same and have it discharged of record, or to take such action as may be legally required (including bonding) to have such lien removed, released and discharged of record, in each case within sixty (60) days of BALLC's, AYDC's or Interim Developer's knowledge thereof, but in all events to have such lien discharged prior to its foreclosure. BALLC, AYDC and Interim Developer hereby indemnify and holds harmless ESDC from and against any and all loss, cost, liability or damage relating to any such mechanic's lien.

18.16 No Responsibility of ESDC. ESDC shall have no responsibility to BALLC, AYDC or Interim Developer or to any architect, engineer, contractor, subcontractor, supplier, materialman, workman or other Person who shall engage in or participate in any work at or with respect to the Project Site. Notice is hereby given that ESDC shall not be liable for any labor or materials furnished or to be furnished to BALLC, AYDC or Interim Developer upon credit, and that no mechanic's or other lien for any such labor or materials shall attach to or affect in any way the estate or interest of ESDC in and to the Project.

18.17 Method and Effect of Amendment. The Parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, only by an instrument in writing, executed by the parties hereto.

18.18 Transfer Taxes. BALLC, AYDC, Interim Developer and their respective Affiliates shall timely pay any and all transfer taxes owed by BALLC, AYDC, Interim Developer or their respective Affiliates in connection with the acquisition, leasing, transfers and disposition of each portion of the Project Site, other than as expressly provided in any other Project Documentation.

18.19 Entire Agreement. This Agreement and the other Project Documentation, including the Exhibits hereto and thereto, contain all of the promises, agreements, conditions,

inducements and understandings between ESDC, BALLC, AYDC and Interim Developer concerning the Project and the other matters contemplated by this Agreement, and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them concerning the matters contemplated by this Agreement other than as expressly set forth herein or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith or hereafter by the Parties hereto. Notwithstanding the foregoing, nothing contained in this Section 18.19 is intended to terminate, modify or otherwise limit the applicability of the MGPP and such other Project Documentation entered into by the Parties relating to the Project unless expressly so stated. In the event of any conflict between the terms of this Agreement and the other Project Documentation, the terms of this Agreement shall control.

18.20 No Personal Liability. No official, member, director, officer, employee, agent or servant of ESDC shall be liable (personally or otherwise) to BALLC, AYDC, Interim Developer or any other Person under or by reason of this Agreement or any of the matters contemplated by this Agreement. No shareholder, director, partner, member, officer, employee, agent or servant of BALLC, AYDC, Interim Developer or Tenants under the Project Leases shall be liable (personally or otherwise) to ESDC or any other Person under or by reason of this Agreement or any of the matters contemplated by this Agreement. Nothing contained in this Section 18.20 shall limit the liability of a guarantor under a guaranty required pursuant to this Agreement or a Project Lease pursuant to the terms of such guaranty.

18.21 ESDC Fees and Costs. BALLC, AYDC and Interim Developer acknowledge and agree, for itself, its Affiliates, each Tenant under a Project Lease, any present or future Recognized Mortgagees and each of their permitted successors and assigns that all costs and expenses incurred by ESDC under this Agreement or the Project Documentation shall be for the account of, and shall be payable upon demand, by BALLC, AYDC and Interim Developer.

18.22 Notice of Default. BALLC, AYDC and Interim Developer, on behalf of themselves and their respective successors and assigns, hereby each covenants and agrees that to the extent any of them becomes aware of the occurrence and continuation of a Default, or of facts or circumstances which, with the passage of time, the giving of notice or both, would result in a Default under this Agreement, any Project Documentation or any Project Lease, then such Person shall give ESDC prompt written notice thereof, setting forth in reasonable detail, such Default, facts or circumstances.

18.23 Separate Obligations. Notwithstanding anything to the contrary herein, whenever it is provided in this Agreement that BALLC, AYDC or Interim Developer shall take certain actions, fulfill certain obligations or incur certain liabilities, ESDC, BALLC, AYDC and Interim Developer each acknowledges and agrees that (i) BALLC's obligations and liabilities shall be limited to those obligations and liabilities allocable to the portion of the Project Site to be demised under the Arena Parcel Interim Lease and Arena Development Lease and shall not extend to any other portion of the Project Site or the Development Project; (ii) AYDC's obligations and liabilities shall be limited to those obligations and liabilities allocable to the remainder of the Project Site (other than the portion of the Project Site to be demised under the Arena Parcel Interim Lease); and (iii) Interim Developer's obligations and liabilities shall be limited to those obligations and liabilities allocable to the portions of the Project Site demised to

Interim Developer. BALLC shall have no liability for any acts or omissions by AYDC or Interim Developer with respect to the remainder of the Project Site leased to either of them under the Arena Block (Non-Arena Parcel) Interim Lease, the Block 1129 Interim Lease, the Block 1121 Interim Lease or any Phase II Interim Leases. Conversely, neither AYDC nor Interim Developer shall be liable for any liabilities or matters arising from the Project Site to be demised under the Arena Parcel Interim Lease or Arena Development Lease. In addition, Interim Developer shall only be liable for any liabilities or matters arising from the portion of the Project Site demised to Interim Developer. Accordingly, the obligations and liabilities of BALLC, AYDC and Interim Developer under this Agreement are several and not joint; provided that AYDC shall be jointly and severally liable for any obligations and liabilities of Interim Developer.

* * * *

Appendix A

Defined Terms

Unless otherwise defined in the Agreement to which this Appendix A is attached, capitalized terms used in the Agreement shall have the meanings set forth in this Appendix A, the Schedules and the Exhibits attached to the Agreement, as applicable.

3-4 Year Liquidated Damages shall have the meaning set forth in Section 8.6(d)(i)(I) hereof.

5-6 Year Liquidated Damages shall have the meaning set forth in Section 8.6(d)(i)(II) hereof.

10 Year Liquidated Damages shall have the meaning set forth in Section 8.6(d)(i)(III) hereof.

Additional Affordable Housing Units shall have the meaning set forth in Section 8.8(c) hereof.

Additional City Funding shall have the meaning set forth in the recitals.

Affiliate shall mean, with respect to any Person, any other Person that, directly or indirectly, Controls, is Controlled by or is under common ownership or Control with such Person or is a director, officer, general partner, member or manager of such Person or, with respect to an individual, has a relationship with such individual by blood, adoption or marriage not more remote than first cousin.

Affordable Housing Application Requirements shall have the meaning set forth in Section 8.8(d) hereof.

Affordable Housing Subsidy Unavailability shall mean the inability of AYDC, Interim Developer or their respective Affiliates, successors or assigns, as applicable, to obtain (a) the Combination Housing Subsidies from the City for the first building (other than the Arena) constructed on the Phase I Property or (b) with respect to any building other than the Arena or the first building constructed on the Phase I Property, financing under such programs for Affordable Housing Units then generally available to developers of Affordable Housing Units, if AYDC, Interim Developer or their respective Affiliates, as applicable, satisfied the applicable Affordable Housing Application Requirements and such application is deemed by the applicable administering agency after good faith review to be consistent with then applicable program rules and standards; provided in each case such inability is not the result of (i) a Developer Specific Condition or (ii) with respect to the Combination Housing Subsidies, the failure of AYDC, Interim Developer or their respective Affiliates, as applicable, to satisfy any Affordable Housing Application Requirements specific to Combination Subsidies set forth on Exhibit V; provided, however, that if, in each case, financing for Affordable Housing Units are being made available but AYDC, Interim Developer or their respective Affiliates are unable to obtain any required matching debt financing from a Lending Institution (as defined in the applicable Project Lease) on then current market customary terms and conditions (including then market customary loan-

to-value and other similar underwriting criteria) to construct the applicable building for reasons other than due to a Developer Specific Condition, then in such case a Market Financing Unavailability shall be deemed to exist. The period of delay caused by any occurrence of any Affordable Housing Subsidy Unavailability shall not be deemed to commence any earlier than ten (10) days before the date ESDC receives notification from AYDC or Interim Developer of such occurrence; provided, however, that no such notification shall be valid unless AYDC or Interim Developer shall substantiate the basis for the claim of Affordable Housing Subsidy Unavailability made therein per the written notification identified in Section 8.8(d)(ii) hereof within twenty (20) days thereafter. AYDC and Interim Developer shall advise ESDC in such notice as to the measures taken or proposed to be taken by AYDC or Interim Developer to mitigate the delay caused by such occurrence of Affordable Housing Subsidy Unavailability and thereafter to keep ESDC reasonably informed as to the status of such measures, and notify ESDC as to the termination of the occurrence of Affordable Housing Subsidy Unavailability within ten (10) days thereafter.

Affordable Housing Units shall mean residential rental units that are subject to income and rent restrictions contained in either an HDC, HFA or HPD regulatory agreement providing that (a) such units will be affordable to individuals or families earning no more than 160% of AMI or, if higher, the highest percentage of AMI used at the applicable time under any HPD, HDC, HFA or other City or State housing initiative intended to provide housing opportunities for low, moderate or middle income individuals, as approved by the City or State (as applicable) and (b) rents for units shall be no more than 30% of 160% of AMI or, if higher, 30% of the highest percentage of AMI used at the applicable time under any HPD, HDC, HFA or other City or State housing initiative intended to provide housing opportunities for low, moderate or middle income, as approved by the City or State (as applicable).

Air Rights Easement shall have the meaning set forth in Section 4.8 hereof.

AMI shall mean the area median income within the New York, NY HUD Metro FMR Area as published by the Department of Housing and Urban Development (or such other commonly utilized metric by Governmental Authorities in determining affordable housing subsidies).

Approvals shall mean any and all licenses, permits (including building, demolition, alteration, use, and special permits), approvals, consents, certificates, rulings, variances, authorizations, or amendments to any of the foregoing as shall be necessary or appropriate under any Requirements to commence, perform, or complete any work or take any action that is in furtherance of the Project.

Arena shall have the meaning set forth in the Recitals.

Arena Block shall mean the assemblage on the western portion of the Project Site by joining Blocks 1118, 1119, and 1127 and closing portions of Pacific Street and 5th Avenue, including the traffic island at Pacific Street and 5th Avenue.

Arena Completion Guaranty shall mean the completion guaranty delivered by FCE (or another Person satisfactory to ESDC and LDC) to ESDC and the LDC in accordance with the requirements of the Arena Development Lease.

Arena Development Lease shall have the meaning set forth in Section 3.2(b) hereof.

Arena Block (Non-Arena Parcel) Interim Lease shall have the meaning set forth in Section 3.2(a)(ii) hereof.

Arena Opening Conditions shall mean the Substantial Completion (as defined in the Arena Development Lease) of the following: (i) the Urban Experience (or, in lieu thereof, the Urban Room); (ii) the Subway Entrance; (iii) the Carlton Avenue Bridge; and (iv) the Arena Parking.

Arena Parcel shall mean the Development Parcel on which the Arena shall be constructed as more specifically described in the Arena Development Lease.

Arena Parcel Interim Lease shall have the meaning set forth in Section 3.2(a)(i) hereof.

Arena Parking shall have the meaning set forth in Section 2.3(k) hereof.

Arena Work shall mean all construction work associated with the Arena including (a) the installation of foundations and footings or other construction work below grade for the Arena, (b) the construction of the Project Infrastructure, and (c) any work in connection with ingress to or egress from transit improvements or other work performed in accordance with agreements with the MTA, LIRR and Transit Authority.

Asbestos and Demolition Work shall have the meaning set forth in Section 5.1 hereof.

AYDC shall have the meaning set forth in the introductory paragraph.

AYDC's Obligations shall have the meaning set forth in Section 2.1 hereof.

AYDC Third Party Owners shall have the meaning set forth in Section 10.1(b)(i) hereof.

BALLC shall have the meaning set forth in the introductory paragraph.

BALLC's Obligations shall have the meaning set forth in Section 2.1(a) hereof.

BALLC Third Party Owners shall have the meaning set forth in Section 10.1(c) hereof.

Block 1129 shall mean Block 1129 on the tax map of the Borough of Brooklyn.

Block 1129 Easement shall have the meaning set forth in Section 3.4(d) hereof.

hereof. **Block 1121 Interim Lease** shall have the meaning set forth in Section 3.2(a)(iv)

hereof. **Block 1129 Interim Lease** shall have the meaning set forth in Section 3.2(a)

Lease. **Bonds** shall have the meaning given to such term in the Arena Development

Business Day shall mean any day other than a Saturday or Sunday or any other day on which commercial banks in New York, New York are authorized or required by law to close.

Carlton Avenue Bridge shall mean a bridge situated at Carlton Avenue between Pacific Street and Atlantic Avenue, Borough of Brooklyn, City of New York, County of Kings, State of New York, having Bridge Identification Number (BIN) 2243290.

City shall mean The City of New York, a municipal corporation, together with its successors and assigns.

City Excuse shall have the meaning set forth in Section 8.6(d)(i)(I) hereof.

City Funding shall mean the amount funded by the City pursuant to the City Funding Agreement.

City Funding Agreement shall mean that funding agreement between NYCEDC and ESDC dated as of September 12, 2007, as may be amended from time to time.

City Register shall mean the Office of the City Register, Kings County, State of New York (or any successor in function thereto).

Combination Housing Subsidies shall mean one of the six (6) housing mix scenarios described on Exhibit V attached hereto. The Combination Housing Subsidies shall only be available for the first building (other than the Arena) constructed as part of the Phase I Improvements. Neither the ESDC, the LDC, the City, HPD, HDC, HFA nor any of their respective Affiliates, successors or assigns shall have any obligation to discuss, provide or otherwise make available the Combination Housing Subsidies to AYDC, Interim Developer, or their respective Affiliates, any Tenant under any Development Lease or their respective successors or assigns for any building constructed on the Project Site other than, as expressly provided in this Agreement, for the first building (other than the Arena) constructed as part of the Phase I Improvements.

Commence Construction and **Commencement of Construction** shall mean (a) the delivery of the completion guaranty required by the applicable Development Lease (accompanied by such opinions of counsel as ESDC or the applicable landlord shall then require), (b) proceeds from one or more debt financings provided by one or more Lending Institutions for the construction of the applicable Improvement shall be available for disbursement, and (c)

commencement of the excavation of the foundations for the subject Improvement shall have occurred.

Commencement Agreement shall mean the Commencement Agreement dated as of December 23, 2009 among LDC, ESDC, the City, AYDC, BALLC, Interim Developer, Brooklyn Events Center, LLC, a Delaware limited liability company, Atlantic Rail Yards, LLC, a New York limited liability company, Bank of New York Mellon, New Jersey Basketball, LLC, a New Jersey limited liability company, the MTA, the LIRR, Transit Authority, and Commonwealth Land Title Insurance Company.

Conservancy shall have the meaning set forth in Section 8.7(b) hereof.

Constitutive Documents shall mean, with respect to each BALLC, AYDC and Interim Developer, its respective constitutive documents, including (a) its limited liability company agreement (or its equivalent), (b) the limited liability company agreement (or its equivalent) of any member or manager of BALLC, AYDC and Interim Developer and (c) the certificate of formation (or its equivalent) of BALLC, AYDC and Interim Developer and any member or manager of BALLC, AYDC and Interim Developer.

Contaminants shall mean (a) any toxic substance or hazardous waste, substance or related material, or any pollutant or contaminant defined as such under any Environmental Law; (b) petroleum, radon gas, asbestos in any form which is or could become friable, urea formaldehyde foam insulation, transformers or equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of any standard or criteria established under any applicable Environmental Law; (c) any substance, gas, material or chemical which is or hereafter is defined as or included in the definition of a "hazardous substance," "toxic substance," "hazardous material," "hazardous waste" or words of similar import under any Environmental Law; and (d) any other chemical, material, gas, vapor, energy, radiation or substance, the exposure to or Release of which is or hereafter is prohibited, limited or regulated by any Governmental Authority having jurisdiction over the Project Site or the operations or activity at the Project Site under any applicable Environmental Law.

Control and **Controlled** shall mean any one or more of the economic, equitable or beneficial ownership of 50% or more of a Person or the power, exercisable jointly or severally, to manage and direct a Person through the direct, indirect, or beneficial ownership of partnership interests, membership interests, stock, trust powers, or other beneficial interests and/or management or voting rights.

Conveyance Date shall have the meaning set forth in Section 17.5(b) hereof.

Conveyance Price shall mean the purchase price set forth in Schedule 1 that is payable in connection with the exercise of the Termination Option.

Deadline shall mean (i) if the First Commencement Deadline shall not have passed, the First Commencement Deadline, (ii) if the First Commencement Deadline has passed and the Second Commencement Deadline has not passed, the Second Commencement Deadline, and (iii) if the First Commencement Deadline and Second Commencement Deadline has passed, the Third Commencement Deadline.

Declaration shall have the meaning set forth in Section 3.4(a) hereof.

Default shall mean a party's breach of any of its covenants or obligations set forth in this Agreement.

DEP Easement shall have the meaning set forth in Section 3.4(b) hereof.

Design Guidelines shall mean those design guidelines attached as Exhibit B to the MGPP.

Developer shall have the meaning set forth in the introductory paragraph.

Developer Controlled Parcels shall have the meaning set forth in Section 3.1(a) hereof.

Developer Specific Condition shall mean than the financial condition of AYDC, Interim Developer, Forest City Enterprises, Inc. or their respective Affiliates (as distinct from general market conditions).

Development Lease shall mean the agreement of lease of a Development Parcel between ESDC (or its successors in interest), as lessor, and BALLC, AYDC, Interim Developer and/or its respective Affiliates (or their respective permitted successors or assigns), as lessee; provided that the Arena Development Lease shall not be a "Development Lease".

Development Parcel(s) shall have the meaning set forth in Section 3.3(a) hereof.

Development Work shall have the meaning prescribed in the applicable Development Lease.

DOB shall mean the New York City Department of Buildings (or any other Governmental Authority succeeding to its responsibilities).

DOB Agreement shall mean the agreement between ESDC and the DOB attached hereto as Exhibit Z.

DOE shall have the meaning set forth in Section 8.7(a).

Due Care shall mean, with respect to each of BALLC, AYDC and Interim Developer, to act in good faith, in the best interests, and for the benefit, of the Project, within the scope of one's authority, with the care, skill, prudence and diligence (including diligent inquiry) under the circumstances then prevailing that a prudent development manager of a multi-use property experienced in such matters would use in the development of a similar property for its own account.

Drill Track Easement shall have the meaning set forth in Section 4.9 hereof.

Easement Agreement shall mean any easement, declaration or similar instrument or agreement (a) benefiting or burdening all or a portion of the Project Site, or (b) required by

any agreement between BALLC, AYDC, Interim Developer or their respective Affiliates on the one hand and any Governmental Authority (including the MTA, LIRR and the Transit Authority) or any other Person on the other hand, in each case which ESDC executes and delivers at the request of BALLC, AYDC, Interim Developer or their respective Affiliates made in accordance with the applicable Project Lease.

Eminent Domain Procedures Law shall mean the New York State Eminent Domain Procedures Law, as may be amended from time to time.

Environment shall mean soil, surface waters, groundwaters, land, stream sediments, surface or subsurface strata and ambient air.

Environmental Condition shall mean any condition with respect to the Environment, whether or not yet discovered, which (a) affects the Project Site or (b) affects other property and results from the past, present or future occupancy of the Project Site and which, in either case, is required to be addressed under Environmental Laws by a Governmental Authority having jurisdiction.

Environmental Damages shall mean all claims, judgments, damages (including punitive damages), losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of remediation, cleanups, investigation and/or defense of any claim, whether or not such is ultimately defeated, and of any settlement or judgment, of whatever kind or nature, foreseeable or unforeseeable, any of which are incurred at any time as a result of (a) an Environmental Condition, (b) the existence of Contaminants on, about or beneath the Project Site or which have migrated to or from the Project Site regardless of whether the existence of such Contaminants arose prior to, on or after the date hereof, (c) the Release or Threatened Release of Contaminants into the Environment on or off the Project Site arising from or related to the Project Site and/or activities or operations on or respecting the Project Site, or (d) the violation or threatened violation of any Environmental Law pertaining to the Project Site, regardless of whether the violation or threatened violation of an Environmental Law arose prior to, on or after the date of this Agreement, and including:

(i) damages for personal injury, disease or death or injury to property or natural resources occurring on or off the Project Site arising from or related to the Project Site and/or activities or operations on or respecting the Project Site including, without limitation, the cost of demolition and rebuilding of any improvements but excluding consequential damages; and

(iii) reasonable fees incurred for the services of attorneys, consultants, contractors, experts, laboratories and all other reasonable costs incurred in connection with the investigation, cleanup or remediation, including the preparation of any feasibility studies or reports and the performance of any cleanup, remedial, removal, abatement, containment, closure, restoration or monitoring work on or off the Project Site arising from or related to the Project Site and/or activities or operations respecting the Project Site, in each case required under an applicable Environmental Law. ESDC's cleanup costs shall not include costs, charges and expenses incurred by ESDC for the design, engineering or mobilization respecting infrastructure and capital improvements due to the

presence of Contaminants existing at or migrating to or from the Project Site as of the date hereof.

Environmental Insurance shall mean the environmental insurance described in Section 15.3(b) hereof, which insurance shall be in the form of the policies, in the amounts, and issued by the insurers, all as meeting the requirements set forth in this Agreement and/or each applicable Project Lease.

Environmental Laws shall mean any and all Requirements relating to the protection of the Environment, including, without limitation:

(a) all Requirements relating to reporting, licensing, permitting, investigation or remediation of emissions, discharges, releases, threatened releases or the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Contaminants, including the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.; the Hazardous Materials Transportation Act, as amended 49 U.S.C. § 1801, et seq.; the Resource Conservation and Recovery Act, as amended 42 U.S.C. § 6901, et seq.; the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251, et seq.; analogous state environmental statutes and local ordinances including the New York State Environmental Conservation Law and the New York State Navigation Law; and any regulations promulgated under any of the foregoing; and

(b) all Requirements pertaining to the protection of the health and safety of employees or the public.

Equity Interest Disposition shall mean any merger, consolidation, sale of equity interests, recapitalization or other similar transaction involving a Person or any direct or indirect constituent entity of such Person. The term "**Equity Interest Disposition**" shall also include any (a) transaction or series of transactions (including, without limitation, the issuance of additional equity interests in such Person), or (b) direct or indirect revision of the beneficial ownership structure or Control of such Person or any direct or indirect constituent entity of such Person.

ESDC shall have the meaning set forth in the introductory paragraph.

Event of Default shall have the meaning set forth in Section 17.1 hereof.

Events Center shall mean Brooklyn Events Center, LLC, a Delaware limited liability company.

Existing Parks Investment shall have the meaning set forth in Section 8.10 hereof.

FCE shall mean Forest City Enterprises, Inc., an Ohio corporation.

First Commencement Deadline shall have the meaning set forth in Section 8.6(d)(i)(I) hereof.

First Flexible Building shall have the meaning set forth in Section 8.6(d)(i)(II) hereof.

First Required Building shall have the meaning set forth in Section 8.6(d)(i)(I) hereof.

First Required Building Affordability Requirement shall have the meaning set forth in Section 8.6(d)(i)(I) hereof.

First Taking Properties shall mean the real property and improvement thereon comprised of Blocks 1118, 1119, 1127, 1129, Lots 42 and 47 on Block 1121, and Lot 35 on Block 1120, Fifth Avenue between Atlantic and Flatbush Avenues, Pacific Street between Flatbush and Sixth Avenues, the traffic island at Fifth Avenue and Pacific Street, and Pacific Street between Carlton and Vanderbilt Avenues, each in the Borough of Brooklyn, Kings County, State of New York.

FOIL shall have the meaning set forth in Section 14.3 hereof.

Governmental Authority shall mean the United States of America, the State of New York, the City and any agency, department, corporation, commission, board, bureau, instrumentality or political subdivision of any of the foregoing (with the exception of ESDC to the extent ESDC is acting in its capacity as a party to this Agreement or another agreement related to the Project), now existing or hereafter created, having or exercising jurisdiction over the Project Site or any portion of any of the foregoing including, without limitation, jurisdiction over the administration or enforcement of any Environmental Laws.

Governmental Entities shall mean the City, the State of New York, the NYCEDC and ESDC, and each of their successors and assigns.

Guarantor shall mean FCE, or any other Person reasonably acceptable to ESDC as a "guarantor" under this Agreement or any other Project Documentation.

HDC shall mean the New York City Housing Development Corporation (or its successor in function).

HFA shall mean the New York State Housing Finance Agency (or its successor in function).

Holding shall mean Brooklyn Arena Holding Company, LLC, a Delaware limited liability company.

Housing Criteria shall have the meaning set forth in Section 8.8(a) hereof.

HPD shall mean the New York City Department of Housing Preservation and Development (or its successor in function).

Improvements shall mean all new buildings or other permanent structures constructed on the Project Site pursuant to this Agreement and other Project Documentation.

Indemnitees shall mean the Governmental Entities and each of their respective designees, successors and assigns, and their respective directors, officers, board members, commissioners employees, advisers, attorneys, partners, members, agents and servants.

Initial Project Description shall have the meaning set forth in Section 2.3 hereof.

Interim Developer shall have the meaning set forth in the introductory paragraph.

Interim Lease shall mean, individually or collectively, as the context shall so require, each of the Arena Parcel Interim Lease, the Arena Block (Non-Arena Parcel) Interim Lease, the Block 1121 Interim Lease, the Block 1129 Interim Lease, and any Phase II Interim Lease.

LAFPMRA shall have the meaning set forth in the Recitals.

Land Assemblage Purchase Agreement shall mean the Purchase and Sale Agreement, dated as of September 12, 2007, between AYDC and BALLC, as seller, and ESDC, as purchaser, covering the Arena Parcel (as the same may be amended or supplemented to account for additional parcels in accordance with the terms thereof and any adjustment to the purchase price pursuant thereto).

LDC shall have the meaning set forth in the Recitals.

Legal Costs of any Person shall mean all reasonable costs and expenses such Person incurs in any legal proceeding, arbitration or other matter, including in-house and reasonable external attorneys' fees, court costs and expenses.

Lending Institution shall have the meaning given to such term in the applicable Project Lease.

Liabilities shall have the meaning set forth in Section 15.1(b) hereof.

Liquidated Damages shall have the meaning set forth in Section 17.2(a)(ii) hereof.

LIRR shall mean the Long Island Railroad Company, a body corporate and politic constituting a public benefit corporation of the State of New York, and its successors and assigns.

Lot 35 Easement shall have the meaning set forth in Section 3.4(e) hereof.

Market Financing Unavailability shall mean the inability of AYDC, Interim Developer or their respective Affiliates, successors or assigns, as applicable, to obtain debt financing from a Lending Institution (as defined in the applicable Project Lease) on then current market customary terms and conditions (including then market customary loan-to-value and other similar underwriting criteria) for the construction of the applicable building for reasons other than due to a Developer Specific Condition. The period of delay caused by any occurrence of any Market Financing Unavailability shall not be deemed to commence any earlier than ten

(10) days before the date ESDC receives notification from AYDC or Interim Developer of such occurrence; provided, however, that no such notification shall be valid unless AYDC or Interim Developer shall substantiate the basis for the claim of Market Financing Unavailability made therein within twenty (20) days thereafter. AYDC and Interim Developer shall advise ESDC in such notice as to the measures taken or proposed to be taken by AYDC or Interim Developer to mitigate the delay caused by such occurrence of Market Financing Unavailability and thereafter to keep ESDC reasonably informed as to the status of such measures, and notify ESDC as to the termination of the occurrence of Market Financing Unavailability within ten (10) days thereafter.

MEC shall have the meaning set forth in Section 7.1 hereof.

Mezzanine Lender shall have the meaning provided in the applicable Project Lease.

MGPP shall have the meaning set forth in the Recitals.

MTA shall mean the Metropolitan Transportation Authority, together with its Affiliates (and any agencies successor in function).

MTA Air Space Parcel shall have the meaning set forth in Section 4.4 hereof.

MTA Air Space Parcel Purchase and Sale Agreement shall have the meaning set forth in Section 4.4 hereof.

MTA Air Rights Development Agreement shall have the meaning set forth in Section 4.6 hereof.

MTA Arena Block Parcel shall have the meaning set forth in Section 4.3 hereof.

MTA Sale Agreement shall have the meaning set forth in Section 4.3 hereof.

MTA Transfer Agreements shall have the meaning set forth in Section 4.2 hereof.

MTA Transfer Property shall have the meaning set forth in Section 4.2 hereof.

NYCEDC shall mean the New York City Economic Development Corporation, a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York.

Non-Relocation Agreement shall mean the Non-Relocation Agreement by and among the City, ESDC, LDC and New Jersey Basketball, LLC, a New Jersey limited liability company.

NSE shall mean Nets Sports and Entertainment, LLC, a Delaware limited liability company.

NSE Third Party Owners shall have the meaning set forth in Section 10.1(ii) hereof.

Officer's Certificate shall mean a certificate executed by an authorized signatory of BALLC, AYDC or Tenant that is familiar with the business and affairs of BALLC, AYDC or Tenant, including, the Project, Project Site, and, if applicable, the Development Parcels.

Open Space shall have the meaning set forth in Section 8.7(b) hereof.

Original City Funding Agreement shall have the meaning set forth in the recitals.

Outside Arena Commencement Date shall mean the first (1st) anniversary of the Project Effective Date, as such date shall be extended (i) for events of Unavoidable Delay (as such term is defined in the Arena Development Lease) and (ii) in the event that the Bonds are redeemed as a result of the inability of ESDC to deliver Vacant Possession of the Arena Block, then such date shall be extended for so long as BALLC is unable to obtain financing to construct the Arena on then commercially reasonable terms; provided, however, that in no event shall the Outside Arena Commencement Date be extended beyond the fifth (5th) anniversary of the Project Effective Date.

Outside Arena Substantial Completion Date shall mean the sixth (6th) anniversary of the Project Effective Date, as such date shall be extended for events of Unavoidable Delay (as such term is defined in the Arena Development Lease).

Outside Phase I Substantial Completion Date shall have the meaning set forth in Section 6 hereof.

Outside Phase II Substantial Completion Date shall have the meaning set forth in Section 8.7 hereof.

Overridden Provisions shall mean all the provisions of the zoning resolution of City or any successor statute, as the same may be amended or otherwise modified, and other local laws overridden by ESDC pursuant to Section J of the MGPP.

Parking Easement shall have the meaning set forth in Section 3.4(f) hereof.

Party and **Parties** shall have the meaning set forth in the introductory paragraph.

Permits shall have the meaning set forth in Section 5.1 hereof.

Person shall mean an individual, fiduciary, partnership, limited liability company, firm, association, or corporation, or any other form of business or Governmental Authority.

Phase I shall mean the development of the Phase I Property, including construction of the Phase I Improvements.

Phase I Affordable Housing Commitment shall have the meaning set forth in Section 2.3(b) hereof.

Phase I Affordable Housing Units shall have the meaning set forth in Section 2.3(b) hereof.

Phase I Existing Parks Investment shall have the meaning set forth in Section 8.10 hereof.

Phase I Improvements shall have the meaning set forth in Section 8.6 hereof.

Phase I Property shall mean the portion of the Project Site west of 6th Avenue, including Blocks 1118, 1119, 1127 and the intervening beds of 5th Avenue and Pacific Streets (inclusive of the small traffic island), and a portion of the LIRR Vanderbilt Storage Yard located underneath 6th Avenue between Atlantic Avenue and Dean Street, as well as Block 927, other than tax lot 26.

Phase II shall mean the development of the Phase II Property, including construction of the Phase II Improvements.

Phase II Affordable Housing shall mean the difference between (i) the number of required Project Site Affordable Housing Units (i.e., 2,250) and (ii) the number of units of Phase I Affordable Housing Units actually constructed on the Arena Block.

Phase II Improvements shall have the meaning set forth in Section 8.7 hereof.

Phase II Interim Leases shall have the meaning set forth in Section 3.2(c) hereof.

Phase II Property shall mean the portion of the Project Site to the east of 6th Avenue.

Platform shall have the meaning set forth in Section 2.3(g) hereof.

Prohibited Person shall mean:

(a) Any Person (A) that is in monetary default or in breach of any nonmonetary obligation under any material written agreement with the State of New York (including ESDC) or the City of New York after notice and beyond any applicable cure periods, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a Person that is the subject of any of the matters set forth in clause (A), unless, in each instance, such monetary default or breach either (x) has been waived in writing by the State or City of New York or (y) is being disputed in a court of law, administrative proceeding, arbitration or other forum, or (z) is cured within thirty (30) days after a determination and notice to BALLC or AYDC from ESDC that such Person is a Prohibited Person as a result of such default or breach;

(b) Any Person (A) who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or

is reputed to have substantial business or other affiliations with an organized crime figure or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction, or (B) who, directly or indirectly controls, is controlled by, or is under common control with a Person who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure for purposes of this paragraph (ii) shall be within the sole discretion of ESDC, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the State of New York, having actual knowledge that such Person meets the criteria set forth in clauses (A) or (B) of this paragraph (ii), entered into a contract and is then doing business with such Person;

(c) Any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, which is finally determined, beyond right to appeal, by the Federal Government of the United States or any agency, branch or department thereof to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or any government which is, or any Person which, directly or indirectly, is controlled (rather than only regulated) by a government which is subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court or by the Federal Government of the United States or any agency, branch or department thereof;

(d) Any government or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended;

(e) Any Person that has received written notice of default in the payment to the City of any real property taxes, sewer rents or water charges, in an amount greater than ten thousand dollars (\$10,000), unless such default is then being contested in good faith in accordance with applicable legal requirements with due diligence in proceedings in a court or other appropriate forum or unless such default is cured within thirty (30) days after a determination and notice to BALLC and AYDC from ESDC that such Person is a Prohibited Person as a result of such default; and

(f) Any Person (A) that has owned any property at any time in the five (5) years immediately preceding a determination of whether such Person is a Prohibited Person, which such property both (x) was acquired by such Person following an *in rem* foreclosure of such property and (y) was reacquired during such five (5) year period from such Person by the City in an *in rem* foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administrative

Code of the City, or (B) that directly or indirectly controls the management of property, or is controlled by or is under common control with a Person that has controlled the management of property at any time in the five (5) years preceding such determination of a Prohibited Person status, which such property (x) was acquired by such Person following an *in rem* foreclosure of such property and (y) was reacquired during such five (5) year period from such Person by the City in an *in rem* foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administrative Code of the City.

Project shall have the meaning set forth in the Recitals.

Project Building or **Project Buildings** shall have the meaning set forth in the Recitals; **provided** that for the avoidance of doubt, a "Project Building" and the "Project Buildings" shall not include the Arena.

Project Design Review Procedures shall mean the procedures and requirements set forth on **Exhibit AA** attached hereto.

Project Documentation shall mean this Agreement, the State Funding Agreement, each Project Lease, the LAFPMRA, each guaranty made by any guarantor that is an Affiliate of BALLC, AYDC or Interim Developer in connection with the Project, any agreement with the MTA (including the LIRR and Transit Authority) and all other agreements entered into by ESDC and BALLC, AYDC, Interim Developer or any of their respective Affiliates relating to the Project.

Project Effective Date shall mean the earlier of (a) the date on which ESDC has acquired and delivered Vacant Possession of the First Taking Properties BALLC, AYDC, Interim Developer or their Affiliates pursuant to the terms of the LAFPMRA, and (b) the date on which BALLC, AYDC, Interim Developer or their Affiliates delivers notice to ESDC or any other Person that BALLC, AYDC, Interim Developer or their Affiliates is waiving the requirement that ESDC deliver Vacant Possession of all or any portion of the First Taking Properties.

Project Infrastructure shall mean those infrastructure-related improvements to be installed, made and constructed by BALLC, AYDC, Interim Developer or their respective Affiliates on the Project Site in accordance with the State Funding Agreement and applicable Project Lease.

Project Lease shall mean, collectively or individually as the context so requires, (a) each Interim Lease; (b) each Development Lease; and (c) the Arena Development Lease.

Project Requirements shall have the meaning set forth in **Section 3.5** hereof.

Project Site shall have the meaning set forth in the Recitals hereof.

Project Site Affordable Housing Units shall mean not less than 2,250 Affordable Housing Units (not including the Additional Affordable Housing Units) constructed on the Project Site.

Public Controlled Parcels shall have the meaning set forth in Section 3.1(a) above.

Recognized Mortgage shall mean the Recognized Mortgage (as defined in the applicable Project Lease) held by a Recognized Mortgagee.

Recognized Mortgagee shall mean a Lending Institution (as defined in the applicable Project Lease) that is a "Recognized Mortgagee" under the applicable Project Lease.

Release shall mean any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping of any Contaminant into the Environment.

Remediation Work shall have the meaning set forth in Section 6.1(a) hereof.

Requirements shall mean all applicable present and future, foreseen and unforeseen, laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders of any Governmental Authority now existing or hereafter created, and of any and all of their departments and bureaus, including, without limitation, the Green Buildings Standards (New York City Charter Section 224.1 and Title 43, Chapter 10 of the Rules of the City of New York) (to the extent applicable), all Environmental Laws affecting the Project Site and, in each case, without regard to the nature or cost of the work required to be done, extraordinary, as well as ordinary, and without regard to any exemption by reason of ESDC's interest in the Project Site other than the Overridden Provisions, of all Governmental Authorities now existing or hereafter created.

Second Commencement Deadline shall have the meaning set forth in Section 8.6(d)(i)(II) hereof.

Second Flexible Building shall have the meaning set forth in Section 8.6(d)(i)(III) hereof.

Second Taking shall mean the acquisition of fee title, in accordance with and subject to the terms of this Agreement and the LAFPMRA, through proceedings under the Eminent Domain Procedures Law by ESDC of the Second Taking Properties.

Second Taking Properties shall mean the real property and improvement thereon comprised of Block 927 – Lots 1 and 16 (including the "air rights" for such lots), Block 1120 – Lots 19 and 28, and Block 1128 – Lots 1, 2, 4, 85 and 89, in each case, in the Borough of Brooklyn, Kings County, State of New York.

School shall have the meaning set forth in Section 8.7(a) hereof.

Site 5 shall mean Block 927, Lots 1 and 16 on the tax map of the Borough of Brooklyn.

Site Litigation shall mean the matters set forth on Schedule 2, which are pending as of the date hereof before the Governmental Authority identified on such schedule.

State Funding shall mean the funding of up to, but in no event more than, One Hundred Million Dollars (\$100,000,000) by ESDC to Developer of State Funding Payments.

State Funding Payments shall mean the payments comprising State Funding made by ESDC to Developer pursuant to Sections 3.02(a) and 3.02(b) of the State Funding Agreement.

State Funding Agreement shall mean that certain funding agreement between the ESDC, AYDC and BALLC, dated as of September 12, 2007, as may be amended from time to time.

Subdivision shall have the meaning set forth in Section 3.6 hereof.

Substantially Complete, Substantially Completed, or Substantial Completion shall mean or shall occur (a) with respect to the Project Infrastructure, the meaning given to such term in the applicable Interim Lease, (b) with respect to the Arena, the meaning given to such term in the Arena Development Lease, (c) with respect to Phase I, when the construction of the Phase I Improvements or applicable portion thereof has been substantially completed in accordance with the applicable Project Lease, (d) with respect to Phase II, when the construction of the Phase II Improvements or applicable portion thereof has been substantially completed in accordance with the applicable Project Lease, (e) with respect to the Open Space, when the construction of the Open Space or applicable portion thereof has been substantially completed in accordance with the applicable Project Lease, and (f) with respect to the Project, when all the requirements for Substantial Completion set forth in (a) through (f) herein have been met.

Substation Easement shall have the meaning set forth Section 3.4(g) hereof.

Subway Entrance shall have the meaning set forth in Section 8.6(a) hereof.

Successor Leasehold Owner shall have the meaning ascribed to such term in the applicable Project Lease.

Tenant shall mean, for each Project Lease, the Person (other than any Prohibited Person) who holds the tenant's interest under such Project Lease, which may be AYDC, BALLC, Interim Developer, their respective Affiliates or a permitted successor or assign of AYDC, BALLC, Interim Developer, their respective Affiliate (or their permitted successors or assigns).

Termination Option shall have the meaning set forth in Section 17.2(a)(v) hereof.

Termination Option Notice shall have the meaning set forth in Section 17.5 hereof.

Third Commencement Deadline shall have the meaning set forth in Section 8.6(d)(i)(III) hereof.

Third Party Owners shall mean, individually or collectively, as the context shall so require, the AYDC Third Party Owners, BALLC Third Party Owners and NSE Third Party Owners.

Threatened Release shall mean a substantial likelihood of a Release which requires action to prevent or mitigate damage to the Environment which may result from such Release.

Transfer shall mean any direct or indirect assignment, mortgage, encumbrance, pledge, hypothecation, leasing, subleasing, licensing, grant of a franchise, concession or other occupancy rights, or other transfer, whether voluntary, involuntarily, by operation of law or otherwise.

Transit Authority shall mean the New York City Transit Authority, together with its Affiliates (and any agencies successor in function).

Transit Improvement Agreement shall have the meaning set forth in Section 4.5 hereof.

Transit Improvement Easement shall have the meaning set forth in Section 3.4(c) hereof.

Unavoidable Delay(s) shall mean actual delays affecting the Project (after taking into account all reasonable measures that are taken or should reasonably have been taken by AYDC or BALLC to mitigate the effect of the following) caused by (a) acts of God, war, sabotage, hostilities, invasion, insurrection, riot, terrorism, mob violence, malicious mischief, embargo, enemy action, civil commotion, earthquake, flood, fire, explosion or other casualty, unusually severe weather conditions, governmental action or restriction, unknown physical conditions which differ materially from those ordinarily found to exist and generally recognized as inherent in the construction of large mixed use projects in Brooklyn, failure of transportation, public utilities or public infrastructure, lockouts, strikes, labor troubles, or the inability to procure labor, equipment, materials or supplies (exclusive of customary delays inherent in the ordering of long lead time items), which are not, in each case, attributable to the improper acts or omissions of BALLC, AYDC, Interim Developer or their respective Affiliate and (b) any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the continuation of such construction or other acts, provided such litigation was not instituted, financed or supported by BALLC, AYDC, Interim Developer or their respective Affiliate. Inability to (i) pay a sum of money, (ii) obtain or timely obtain (A) any Approvals (other than as a result of any failure of ESDC to cooperate as required by the terms of this Agreement or the Project Documentation) or (B) financing, (iii) resulting from any Stop Work Order (as defined in any Project Lease) or (iv) to obtain or timely obtain any approval or cooperation of a Recognized Mortgagee required by any Project Lease or any agreement among Landlord, such Recognized Mortgagee and any Affiliate of BALLC, AYDC, or Interim Developer, shall not, in each case, constitute Unavoidable Delay. The period of delay caused by any occurrence of Unavoidable Delay shall not be deemed to commence any earlier than ten (10) days before the date ESDC receives notification from BALLC, AYDC or Interim Developer of such occurrence; provided, however, that no such notification shall be valid unless BALLC, AYDC or Interim Developer shall substantiate the basis for any claim of Unavoidable Delay made therein within twenty (20) days thereafter. BALLC, AYDC or Interim Developer shall advise ESDC in such notice as to the measures taken or proposed to be taken by BALLC, AYDC or Interim Developer to mitigate the delay caused by such occurrence of Unavoidable Delay and thereafter to keep ESDC

reasonably informed as to the status of such measures, and notify ESDC as to the termination of the occurrence of Unavoidable Delay within ten (10) days thereafter.

Unimproved Parcels shall have the meaning set forth in Section 17.2(a)(v) hereof.

Upgraded Yard shall have the meaning set forth in Section 8.6(c) hereof.

Urban Room shall mean the significant public amenity comprised of a large, glass-enclosed public space, providing access to the Subway Entrance, the Arena and Atlantic and Flatbush Avenues, as described in the Design Guidelines.

Vacant Possession shall mean actual vacant occupancy and possession of the applicable parcel, or applicable portion thereof, free and clear of all leases, tenancies, occupancies, liens, encumbrances, licenses or any other matters except "Permitted Encumbrances" (as such term is defined in the LAFPMRA).

Yard Relocation and Construction Agreement shall have the meaning provided in Section 4.7 hereof.

Exhibit A

Project Site Legal Description

SURVEY LEGAL DESCRIPTION – ATLANTIC YARDS PROJECT

TAX LOTS 1 & 16 IN TAX BLOCK 927

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Pacific Street (60 feet wide) with the easterly side of Fourth Avenue (120 feet wide)

RUNNING THENCE northerly along the westerly side of Fourth Avenue, a distance of 180.15 feet to the corner formed by the intersection of the southerly side of Atlantic Avenue (100 feet wide) with the westerly side of Fourth Avenue, said westerly side of Fourth Avenue forming an interior angle of 89 degrees 47 minutes 45 seconds with the northerly side of Pacific Street;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, a distance of 193.65 feet to the corner formed by the intersection of the southerly side of Atlantic Avenue with the southwesterly side of Flatbush Avenue (100 feet wide), said southerly side of Atlantic Avenue forming an interior angle of 90 degrees 12 minutes 15 seconds with the westerly side of Fourth Avenue;

RUNNING THENCE southeasterly along the southwesterly side of Flatbush Avenue, a distance of 175.17 feet to a point, said southwesterly side of Flatbush Avenue forming an interior angle of 146 degrees 01 minutes 00 seconds with the southerly side of Atlantic Avenue;

RUNNING THENCE southerly through Tax Block 927, as shown on the Tax Map of the City of New York for the Borough of Brooklyn, as said Tax Map existed on November 17, 2009, and along the division line between Tax Lots 16 and 26 in Tax Block 927, a distance of 82.24 feet to a point on the northerly side of Pacific Street, said division line forming an interior angle of 123 degrees 59 minutes 00 seconds with the southwesterly side of Flatbush Avenue;

RUNNING THENCE westerly along the northerly side of Pacific Street, a distance of 339.54 feet to the place and point of BEGINNING, said northerly side of Pacific Street forming an interior angle of 90 degrees 00 minutes 00 seconds with the last mentioned course.

The above-described parcel contains Tax Lots 1 and 16 in Tax Block 927.

The parcel contains 54000.04 square feet or 1.2397 Acres

ARENA BLOCK

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue (120 feet wide) with the westerly side of Sixth Avenue (70 feet wide);

RUNNING THENCE southerly along the westerly side of Sixth Avenue, a distance of 490 feet to the corner formed by the intersection of the northerly side of Dean Street (70 feet wide) with the westerly side of Sixth Avenue, said westerly side of Sixth Avenue forming an interior angle of 90 degrees 00 minutes 00 seconds with the southerly side of Atlantic Avenue;

RUNNING THENCE westerly along the northerly side of Dean Street, a distance of 393.50 feet to the corner formed by the intersection of the northerly side of Dean Street with the easterly side of Flatbush Avenue (100 feet wide), said northerly side of Dean Street forming an interior angle of 90 degrees 00 minutes 00 seconds with the westerly side of Sixth Avenue;

RUNNING THENCE northwesterly along the easterly side of Flatbush Avenue, a distance of 760.23 feet to the corner formed by the intersection of the easterly side of Flatbush Avenue with the southerly side of Atlantic Avenue, said easterly side of Flatbush Avenue forming an interior angle of 134 degrees 19 minutes 38 seconds with the northerly side of Dean Street;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, a distance of 265.35 feet to a point, said southerly side of Atlantic Avenue forming an interior angle of 33 degrees 58 minutes 00 seconds with the easterly side of Flatbush Avenue;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, a distance of 664.88 feet to the place and point of BEGINNING, said line forming an interior angle of 191 degrees 42 minutes 22 seconds with the last-mentioned course.

EXCEPTING THEREFROM a volume of space designated as MTA-LIRR Drill Track Fee Parcel, consisting of all that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, lying at and above a horizontal plane drawn at elevation 31.00 feet; and lying at and below a horizontal plane drawn at elevation 46.50 feet, bounded and described as follows;

BEGINNING at a point on the westerly side of Sixth Avenue (70 feet wide), said point being distant 8.3 feet, southerly from the corner formed by the intersection of the southerly side of Atlantic Avenue (120 feet wide) with the westerly side of Sixth Avenue;

RUNNING THENCE southerly along the westerly side of Sixth Avenue, a distance of 19.00 feet to a point, said point line forming an angle of 90 degrees 00 minutes 00 seconds with the last course of this parcel;

RUNNING THENCE westerly through the Arena Block, a distance of 15 feet to a point, said line forming an interior angle of 90 degrees 00 minutes 00 seconds with the last-mentioned course;

RUNNING THENCE northerly through the Arena Block, a distance of 19 feet to a point, said line forming an interior angle of 90 degrees 00 minutes 00 seconds with the last-mentioned course;

RUNNING THENCE easterly through the Arena Block, a distance of 15.00 feet to the place and point of BEGINNING, said line forming an interior angle of 90 degrees 00 minutes 00 seconds with the last-mentioned course;

The above-described MTA-LIRR Drill Track (Volume of Space) Fee Parcel contains 4417.5 cubic feet.

Elevations used herein are actual and refer to the datum used by the Borough President of Brooklyn – Highways, which is 2.560 feet above the U.S.C. & G. Survey Mean Sea Level at Sandy Hook, New Jersey (1929) (NGVD29).

The above-described Arena Block parcel being (a) Tax Blocks 1118, 1119 and 1127, (b) the portion of Pacific Street between Flatbush Avenue and Sixth Avenue and (c) the portion of Fifth Avenue between Atlantic Avenue and Flatbush Avenue as all are shown on the Tax Map of the City of New York for the Borough of Brooklyn, as said Tax Map existed on November 17, 2009.

TAX BLOCK 1120

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue (120 feet wide) with the westerly side of Carlton Avenue (70 feet wide),

RUNNING THENCE southerly along the westerly side of Carlton Avenue, a distance of 200.00 feet to the corner formed by the intersection of the westerly side of Carlton Avenue with the northerly side of Pacific Street (70 feet wide), said westerly side of Carlton Avenue forming an interior angle of 90 degrees 00 minutes 00 seconds with the southerly side of Atlantic Avenue;

RUNNING THENCE westerly along the northerly side of Pacific Street, a distance of

825.00 feet to the corner formed by the intersection of the northerly side of Pacific Street with the easterly side of Sixth (6th) Avenue, said northerly side of Pacific Street forming an interior angle of 90 degrees 00 minutes 00 seconds with the westerly side of Carlton Avenue;

RUNNING THENCE northerly along the easterly side of Sixth (6th) Avenue, a distance of 200.00 feet to the corner formed by the intersection of the easterly side of Sixth (6th) Avenue with the southerly side of Atlantic Avenue, said easterly side of Sixth (6th) Avenue forming an interior angle of 90 degrees 00 minutes 00 seconds with the northerly side of Pacific Street;

RUNNING THENCE easterly along the southerly side of Atlantic Avenue, a distance of 825.00 feet to the place and point of BEGINNING, said southerly side of Atlantic Avenue forming an interior angle of 90 degrees 00 minutes 00 seconds with the easterly side of Sixth (6th) Avenue.

The above-described parcel contains Tax Lots 1, 19, 28, and 35 in Tax Block 1120, as shown on the Tax Map of the City of New York for the Borough of Brooklyn, as said Tax Map existed on November 17, 2009.

The parcel contains 165,000 square feet or 3.7879 Acres.

TAX BLOCKS 1121 AND 1129; AND A PORTION OF PACIFIC STREET

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Atlantic Avenue (120 feet wide) with the easterly side of Carlton Avenue (70 feet wide);

RUNNING THENCE easterly along southerly side of Atlantic Avenue, a distance of 825 feet to the corner formed by the intersection of the southerly side of Atlantic Avenue with the westerly side of Vanderbilt Avenue (100 feet wide), said southerly side of Atlantic Avenue forming an interior angle of 90 degrees 00 minutes 00 seconds with the easterly side of Carlton Avenue;

RUNNING THENCE southerly along westerly side of Vanderbilt Avenue and partially through a portion of the bed of Pacific Street, a distance of 490.00 feet to the corner formed by the intersection of the westerly side of Vanderbilt Avenue with the northerly side of Dean Street (70 feet wide), said westerly side of Vanderbilt Avenue forming an interior angle of 90 degrees 00 minutes 00 seconds with the southerly side of Atlantic Avenue;

RUNNING THENCE westerly along northerly side of Dean Street, a distance of 825.00 feet to the corner formed by the intersection of the northerly side of Dean Street with the

easterly side of Carlton Avenue, said northerly side of Dean Street forming an interior angle of 90 degrees 00 minutes 00 seconds with the westerly side of Vanderbilt Avenue;

RUNNING THENCE northerly along the easterly side of Carlton Avenue and partially through a portion of the bed of Pacific Street, a distance of 490.00 feet to the place and point of BEGINNING, said easterly side of Carlton Avenue forming an interior angle of 90 degrees 00 minutes 00 seconds with the northerly side of Dean Street.

The above-described parcel contains Tax Blocks 1121 and 1129, as shown on the Tax Map of the City of New York for the Borough of Brooklyn, Kings County, New York, as said Tax Map existed on November 17, 2009; and a portion of Pacific Street.

Containing 404,250 square feet or 9.2803 acres.

TAX LOTS 1, 2, 4, 85-89 IN TAX BLOCK 1128

ALL that certain plot, piece or parcel of land, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the northerly side of Dean Street (70 feet wide) with the easterly side of Sixth (6th) Avenue (70 feet wide),

RUNNING THENCE northerly along the easterly side of Sixth (6th) Avenue, a distance of 220.00 feet to the corner formed by the intersection of the southerly side of Pacific Street (70 feet wide) with the easterly side of Sixth (6th) Avenue, said easterly side of Sixth (6th) Avenue forming an interior angle of 90 degrees 00 minutes 00 seconds with the northerly side of Dean Street;

RUNNING THENCE easterly along the southerly side of Pacific Street, a distance of 90.00 feet to a point, said southerly side of Pacific Street forming an interior angle of 90 degrees 00 minutes 00 seconds with the westerly side of Sixth (6th) Avenue;

RUNNING THENCE southerly along the division line between Tax Lots 4 and 9 in Tax Block 1128, as shown on the Tax Map of the City of New York for the Borough of Brooklyn, as said Tax Map existed on November 17, 2009, a distance of 106.33 feet to a point, said division line forming an interior angle of 90 degrees 00 minutes 00 seconds with the southerly side of Pacific Street;

RUNNING THENCE southeasterly along the division line between Tax Lots 4, 9 and 84 in Tax Block 1128, as shown on the Tax Map of the City of New York for the Borough of Brooklyn, as said Tax Map existed on November 17, 2009, a distance of 27.37 feet to a point, said division line forming an interior angle of 237 degrees 22 minutes 04 seconds with the last-mentioned course;

RUNNING THENCE southwesterly along the division line between Tax Lots 4 and 84 in Tax Block 1128, a distance of 32.92 feet to a point, said division line forming an interior angle of 89 degrees 11 minutes 49 seconds with the last-mentioned course;

RUNNING THENCE southeasterly along the division line between Tax Lots 85 and 84 in Tax Block 1128, as shown on the Tax Map of the City of New York for the Borough of Brooklyn, as said Tax Map existed on November 17, 2009, a distance of 6.00 feet to a point, said division line forming an interior angle of 271 degrees 20 minutes 31 seconds with the last-mentioned course;

RUNNING THENCE southerly along the division line between Tax Lots 85 and 84 in Tax Block 1128, as shown on the Tax Map of the City of New York for the Borough of Brooklyn, as said Tax Map existed on November 17, 2009, a distance of 68.25 feet to a point on the northerly side of Dean Street, said division line forming an interior angle of 122 degrees 05 minutes 36 seconds with the last-mentioned course;

RUNNING THENCE westerly along the northerly side of Dean Street, a distance of 100.00 feet to the place and point of BEGINNING, said northerly side of Dean Street forming an interior angle of 90 degrees 00 minutes 00 seconds with the last-mentioned course.

The above-described parcel contains Tax Lots 1, 2, 4, 85-89 in Tax Block 1128.

The parcel contains 21,060.58 square feet or 0.4835 Acre.

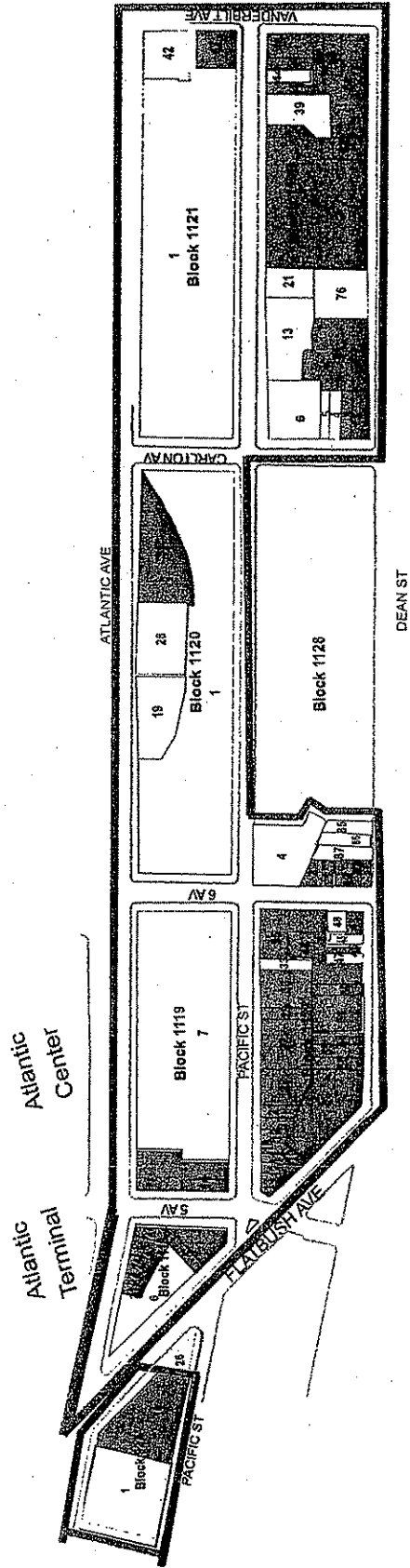
Exhibit B

Intentionally Omitted

Exhibit C

Developer Controlled Parcels

Developer Owned Parcels

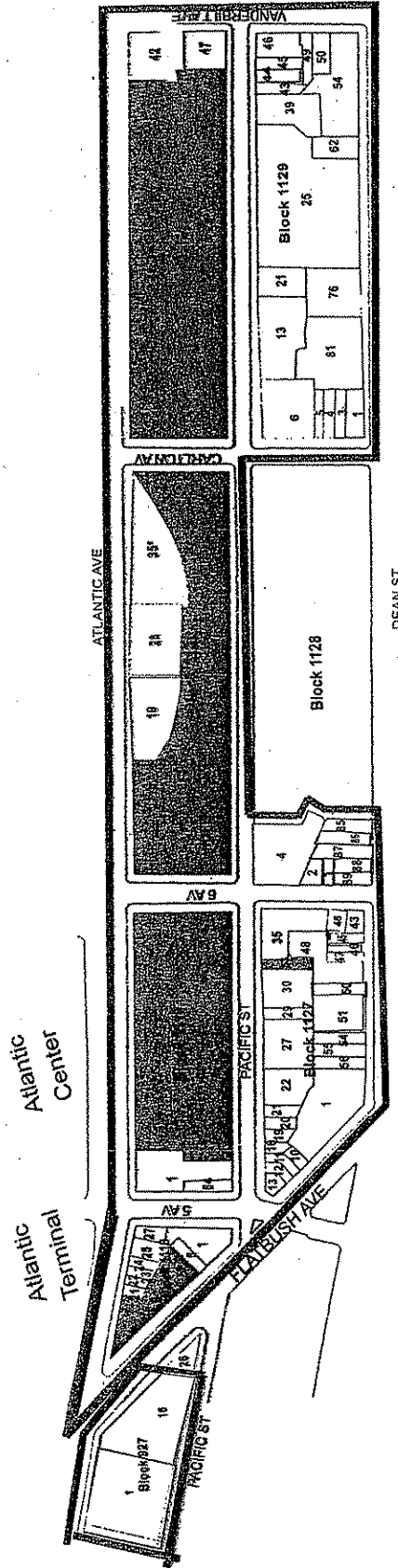


Developer Owned Parcels

Exhibit D

Public Controlled Parcels

Publicly Controlled Parcels




 Publicly Controlled Parcels

Exhibit E

Intentionally Omitted

Exhibit F

Intentionally Omitted

Exhibit G

Intentionally Omitted

Exhibit H

Intentionally Omitted

Exhibit I

Intentionally Omitted

Exhibit J

Intentionally Omitted

Exhibit K

Intentionally Omitted

Exhibit L

Intentionally Omitted

Exhibit M

Project Requirement Allocation

EXHIBIT M

Project Requirements Allocation Schedule

Project Requirement	Remainder of Project Site	Arena Parcel	[Parcel X]¹
No less than 1,500,000 gsf of Improvements on the Phase I Property (excluding the Arena)	No less than 1,500,000 gsf on the Phase I Property.		
No less than 2,970,000 gsf on the Phase II Property	No less than 2,970,000 gsf on the Phase II Property.		
No less than 2,250 Project Site Affordable Housing Units according to the Housing Criteria	No less than 2,250 Project Site Affordable Housing Units according to the Housing Criteria		
Arena		Arena	
8 acres of Open Space	8 acres of Open Space		
Urban Room	Urban Room		
Upgraded Yard	Upgraded Yard		
Platform	Platform		
Subway Entrance		Subway Entrance	
Carlton Avenue Bridge	Carlton Avenue Bridge		
Arena Parking (1,100 non-exclusive spaces)	Arena Parking		
School (if applicable)	School (if applicable)		
Intergenerational Community Center	Intergenerational Community Center		
Health Care Clinic	Health Care Clinic		

¹ To be updated as Development Parcels are created.

Exhibit N

Intentionally Omitted

Exhibit O

Intentionally Omitted

Exhibit P

Intentionally Omitted

Exhibit Q

Intentionally Omitted

Exhibit R

Intentionally Omitted

Exhibit S

Intentionally Omitted

Exhibit T

Intentionally Omitted

Exhibit U

Memorandum of Environmental Commitments

**AMENDED MEMORANDUM OF ENVIRONMENTAL COMMITMENTS
FOR THE ATLANTIC YARDS PROJECT**

A. PURPOSE OF MEMORANDUM

This amended memorandum dated as of December 21, 2009 documents the commitments made by Forest City Ratner Companies and its affiliates including Atlantic Yards Development Company, LLC and Brooklyn Arena, LLC (collectively, "FCRC") to: (i) incorporate measures into the Atlantic Yards Project (the "Project") to avoid adverse environmental impacts, as described in the Final Environmental Impact Statement issued by the Empire State Development Corporation ("ESDC") on November 27, 2006 (the "FEIS") and in the Technical Memorandum prepared with respect to the Project in June 2009 (the "Technical Memorandum"); and (ii) implement measures to mitigate, to the maximum extent practicable, the significant adverse impacts identified in the FEIS. ESDC and FCRC anticipate that the measures set forth in this memorandum will be included in appropriate Project documentation, with measures associated with, or the responsibility of, individual buildings or building parcels included in the applicable ground leases, and measures associated with the Project site as a whole or not specific to any one building parcel included in other Project documentation (any such lease or other Project documentation, a "Project Document" and such documentation collectively, the "Project Documentation"). Modifications to the obligations herein described may be granted by ESDC (not to be unreasonably withheld) or as otherwise provided for in this memorandum, and in the event of any such modification, the Project Document imposing the affected obligation shall be deemed to be revised to incorporate such modification. The Project Documentation shall provide that the commitments set forth herein shall run with the land and be binding upon FCRC's successors and assigns for the period of time any such party holds a property interest in the relevant portion of the Project or the Project site or until such earlier time as the relevant obligation is satisfied or fully discharged, with respect to those obligations that do not exist in perpetuity.

B. SOCIOECONOMICS

The Project (including Phase I and Phase II) shall generate at least 2,250 units of affordable housing on site for low-, moderate-, and middle-income persons and families. At least 30% of the units built on the arena block in Phase I (but no less than 300 units) shall be affordable to such households. The remainder of the affordable units shall be built in Phase II or on Site 5; however, not more than 50% of the Phase II units shall be built without completion of at least 50% of the Phase II affordable units. The affordable units are anticipated to be built as part of the Mayor's New Housing Marketplace Plan and are expected to be financed through tax-exempt bonds provided under existing and proposed City of New York ("City") and State of New York ("State") housing programs such as the City's 50-30-20 program. Based on currently available information, the parties anticipate that the affordable housing units will be made available to households

with incomes falling within the income bands set forth in the FEIS. However, the income bands may be adjusted to accommodate the requirements of any City, State or federal housing program utilized for the construction of the affordable housing, subject to City approval.

C. COMMUNITY FACILITIES

1. FCRC shall provide parking spaces for police vehicles assigned to the 78th Precinct House in a number equal to the spaces lost as a result of the elimination of angled parking for police vehicles on 6th Avenue, but in any event not to exceed 24 parking spaces. Such parking shall be provided without charge prior to the elimination of such parking and shall be provided at a location that is proximate and convenient to the Precinct House. FCRC shall have the right to modify the location of such spaces from time to time in order to address construction logistics and operational matters, provided that the location remains proximate and convenient to the Precinct House.
2. As mitigation for the projected significant adverse impact to the supply of elementary and intermediate school seats within ½ mile of the Project, FCRC shall, if requested by the New York City Department of Education (“DOE”) prior to the later of (i) January 1, 2013 or (ii) the date that is 18-months prior to the anticipated commencement of construction of the first Phase II residential building constructed after completion or substantial completion of each of the Phase I residential buildings (or such other date agreed to in writing by FCRC, DOE and ESDC), convey or lease to DOE, space within a development parcel sufficient in size to allow for the development of an approximately 100,000 gross square foot elementary and intermediate public school of contiguous space, a portion of which shall be located on the ground floor of the building (the “School”). FCRC shall also provide to DOE, by lease, easement or other conveyance acceptable to DOE, access to suitable outdoor space for use as a playground for the School’s students. It is likely that the School will be located in the lower floors of Building 5 or the first building constructed as part of Phase II. In the event that an alternative location is selected, the School site shall be one of the other residential parcels located east of 6th Avenue as determined by FCRC and DOE. If leased to DOE, such lease shall be on a triple net basis and with a rent of \$1.00, and if conveyed, shall be conveyed for consideration of \$1.00. DOE shall be responsible for all costs of constructing, fitting out, and operating the School (excluding the cost of land, infrastructure, site remediation and the platform over the rail yard), and FCRC shall undertake the construction of the School on DOE’s behalf and at DOE’s expense. The space provided for the School shall be in addition to the Atlantic Yards program described in Table S-1 of the FEIS and shall not replace or result in a reduction of any part thereof. Unless otherwise agreed between DOE and FCRC, the school shall be built at the beginning of Phase II. In the event that DOE

elects to locate the School on the Project site, DOE and FCRC shall enter into appropriate arrangements providing for the construction and operation of the School, which agreements shall among other things provide FCRC with the right to locate residential units and other compatible uses within the same building as the School, and to coordinate the construction of the School with FCRC's construction of the remainder of the building in which the School is to be located. The School shall be constructed to provide adequate noise attenuation so that noise in the vicinity of the School (including Project-related traffic, general construction and the School playground) will not result in interior noise levels within the School in excess of 45 dBa L₁₀.

3. In order to avoid a significant adverse impact to day care services as a result of the Project, FCRC shall: (i) construct on the Project site and arrange for the long-term operation of a duly licensed day care center that shall accommodate at least 100 children with publicly funded vouchers available to income-eligible households (or with some alternate form of publicly funded day care for income-eligible households); and (ii) assess day care enrollment and capacity in the study area identified in the FEIS as construction of the Project progresses, and, as and to the extent necessary to avoid a significant adverse impact (following the methodology of the CEQR technical manual, as of the date of the Technical Memorandum), make arrangements with one or more duly licensed day care providers for the long-term operation of a duly licensed day care center (or centers) that shall accommodate approximately 250 additional children, either on or in the vicinity of the Project site. FCRC shall place into operation the day care center specified in clause (C)(3)(i) above by the date of occupancy of the first Phase II residential building not containing a school; provided, however, that the operation of the day care center may be delayed to a later point in the Project as determined by ESDC based on information provided by FCRC and the City of New York that there are adequate day care facilities in the area to accommodate children requiring subsidized day care services from the existing and immediately anticipated Project buildings.

D. OPEN SPACE AND RECREATIONAL FACILITIES

1. FCRC shall design and construct the Open Space as described in the FEIS and Technical Memorandum and in accordance with the Design Guidelines. Such Open Space shall be placed into operation pursuant to a phased schedule (which schedule shall call for the construction of a portion of such Open Space as each building in Phase II is constructed) as specified in the Design Guidelines.
2. The permanent Open Space shall be owned by a Conservancy or other not-for-profit entity established by FCRC, which shall be responsible for the maintenance, operation, and security of this public amenity. The

Conservancy or other not-for-profit entity shall be funded in the first instance by FCRC, and when the surrounding parcels are developed, by the owners of the surrounding buildings pursuant to restrictive declarations recorded against the surrounding Project properties. The Conservancy or other not-for-profit entity shall be governed by a board, which shall include representatives of FCRC, civic group(s) active in park matters, representatives of surrounding properties on the project site, and, on an *ex officio* basis, Brooklyn Community Boards 2, 6 and 8, and the New York City Department of Parks and Recreation (the "Parks Department"). The initial program and plans for the permanent Open Space and any material modifications shall be subject to the reasonable approval of the Parks Department. The permanent Open Space shall be, at a minimum, accessible to the public as specified in the Design Guidelines.

E. CULTURAL RESOURCES

1. FCRC shall comply with the requirements of the Letter of Resolution ("LOR") dated November 9, 2006 among Atlantic Yards Development Company, LLC, ESDC and the Office of Parks, Recreation and Historic Preservation. The LOR is included in Appendix B to the FEIS and requires certain mitigation or other measures to be taken with respect to architectural and archeological resources.
2. If the LOR is duly amended, FCRC shall comply with the terms of such amended LOR.

F. SHADOWS

1. As set forth in the FEIS and LOR, prior to the time when the Project casts shadows on the stained glass windows of the Church of the Redeemer (the "Church"), FCRC shall develop and implement measures to offset the impacts of the shadows comprised of: (i) removing the existing protective coverings from all of the stained glass windows, including any patching and repair associated with the removal; (ii) cleaning both the interior and exterior of the windows; and (iii) installation of new transparent protective coverings of similar or greater durability, or other measures agreed to by FCRC and the Church pursuant to the letter between FCRC and the Bishop of Long Island dated October 31, 2006 included in Appendix I to the FEIS.
2. Prior to the time when the Project casts shadows on the Atlantic Terminal Houses open space, FCRC, in consultation with the New York City Housing Authority ("NYCHA"), shall develop and implement measures to ameliorate the significant adverse shadow impacts, comprised of one or more amenities from the following list: (i) new landscaping and shade resistant plantings within the Atlantic Avenue open space; (ii) additional play equipment within the Atlantic Avenue or Carlton Avenue open

spaces; (iii) upgrade of the Carlton Avenue children's play area, including possible spray shower; and (iv) replacement of benches and other fixtures in the Atlantic Avenue or Carlton Avenue open spaces, subject to and in accordance with a letter dated October 23, 2006 from FCRC to Douglas Apple of NYCHA, and accepted on November 3, 2006 by NYCHA included in Appendix I of the FEIS.

G. HAZARDOUS MATERIALS

1. FCRC shall design and construct the Project so as to prevent volatile organic compounds ("VOCs") from infiltrating the interior of the Project buildings. To address this concern, residential and community facility uses shall be located either above ventilated underground parking or other facilities or above the platform over the ventilated rail yard. FCRC shall submit engineering plans demonstrating compliance with the requirements of this paragraph to ESDC with respect to each of the Project buildings prior to the commencement of construction thereof.
2. FCRC shall implement the investigation and remediation measures specified in the FEIS to protect workers and the general public from adverse impacts associated with environmental conditions at the Project site during the period of construction. In particular:
 - (a) FCRC shall develop and implement procedures for pre-demolition removal of asbestos in accordance with applicable federal, State and City regulations which shall be monitored by an independent contractor as required by such regulations.
 - (b) FCRC shall develop and implement procedures for pre-demolition removal of PCB-containing equipment in accordance with applicable federal, State and City laws and regulations.
 - (c) FCRC shall implement dust suppression techniques reflecting best construction practices during the demolition of Project buildings and any excavation, grading or earth-moving activities at the Project site in connection with the construction of the Project or any related excavation or remediation.
 - (d) FCRC shall conduct additional subsurface investigations as needed to refine and supplement data presented in the Phase 1 and Phase 2 reports heretofore prepared by Roux Associates, and shall provide the results of such investigations to ESDC; upon review of such Phase 2 reports, ESDC may require additional sampling as necessary to determine whether remediation is appropriate. Remediation Plans, which shall include protocols for any remedial activities (and associated additional sampling and investigation), and Health and Safety Plans, shall be prepared with respect to any

remedial activities to be undertaken by FCRC, and shall be submitted to ESDC for review and approval prior to the commencement of such activities.

- (e) In the event that the New York City Department of Environmental Protection ("NYCDEP") exercises jurisdiction over any portion of the environmental remediation at the Project site, FCRC shall (in lieu of the remedial plan called for under Subparagraph G.2(d) above) submit to NYCDEP a remedial action plan with respect to such portion of the environmental remediation, for review and approval in accordance with NYCDEP requirements, prior to or in connection with excavation activities at the Project site. FCRC shall simultaneously submit such remedial action plan to ESDC for its review and consultation with NYCDEP.
- (f) Prior to remediation and excavation at the site, FCRC shall develop a Construction Health and Safety Plan ("CHASP") which shall be approved by ESDC (or, for any portion of the environmental remediation under the supervision of NYCDEP, approved by NYCDEP) and implemented by FCRC in connection with the remediation or excavation work at the Project site. The CHASP shall include a Community Air Monitoring Plan for PM₁₀ and VOCs conforming to guidance published by the New York State Department of Health to be implemented during the excavation of site soils (or other activities that involve moving existing site soils around or off the site) in connection with the construction of the Project or any related excavation or remediation. If the CHASP is modified, such modifications shall be submitted for approval to ESDC or, for any portion of the site subject to supervision of NYCDEP or the State Department of Environmental Conservation ("NYSDEC"), approval by such agency. FCRC shall implement the CHASP during all remediation or excavation work at the site.
- (g) FCRC shall remediate or cause the remediation of the spills to the extent required by NYSDEC and close the spill numbers at the gasoline station on Block 1127, Lot 1, and the U-Haul facility on Block 1119, Lots 1 and 64, both of which have active petroleum spill numbers on file with the NYSDEC. Remediation of these spills shall be completed under the direction of NYSDEC.

H. INFRASTRUCTURE

1. FCRC shall construct new water mains in and around the Project site in accordance with a water main plan to be approved by NYCDEP, as same may be modified and/or approved by NYCDEP.

2. FCRC shall construct new sewer improvements in and around the Project site as specified in an amended drainage plan RH-103 prepared by Vollmuth and Brush Environmental Engineers dated October 26, 2006, as same may be modified and/or approved by NYCDEP.

I. STORMWATER AND SEWAGE MINIMIZATION MEASURES

1. As part of the Project, FCRC shall implement the stormwater management measures set forth in the FEIS as designed by Judith Nitsch Engineering and the Olin Partnership, which formed one basis of a report prepared by HydroQual Environmental Engineers and Scientists, P.C. ("HydroQual") entitled "Impact of the Atlantic Yards Project on Local Sewer Infrastructure" dated November 8, 2006 (the "HydroQual Report") and included as Appendix H to the FEIS, as modified by the measures described in the Technical Memorandum, which modifications were analyzed in supplemental reports by HydroQual dated October 17, 2007 and June 25, 2008. (These three HydroQual reports are referred to collectively as the "HydroQual Reports"). Such measures shall include installation or implementation of the following facilities or alternative detention/retention facilities providing the same or greater combined retention and detention capacity:
 - (a) Two 100,000 gallon tanks in the Project site (one for the runoff from Buildings 5, 6 and 7 and one for the runoff from Buildings 8, 9, and 14);
 - (b) Two storage tanks in the area of the Long Island Rail Road yard, with an aggregate capacity of 124,000 gallons;
 - (c) Storage tanks within the Arena Block having an aggregate capacity of 388,568 gallons upon completion of the Arena and a total of 636,000 gallons upon the build out of the Arena and Buildings 2, 3 and 4 on the Arena Block; and
 - (d) Two 12,000 gallon storage tanks at Site 5.
2. The stormwater storage tanks set forth above (and any tanks installed in lieu of such tanks as allowed by subparagraph I.8) shall be designed and built to have two outlets, with a smaller outlet at the base and another larger outlet at a higher elevation in the tank wall.
3. FCRC shall landscape the Open Space at the Project in accordance with the landscaping plan developed by Olin Partnership (the "Landscaping Plan"), in a manner that accommodates the use of recycled stormwater for irrigation and the cultivation of native plants that have minimal irrigation needs.

4. The Project shall be designed to utilize recycled stormwater in the cooling towers of the Project buildings for make-up water, and also for cultivation of vegetation planted pursuant to the Landscaping Plan.
5. The Open Space shall include a surface water feature with a capacity of at least 279,000 gallons in the area identified in the Open Space Design Guidelines.
6. FCRC shall equip sinks, toilets and showers in the Project buildings with high-efficiency, low-flow fixtures. All leases and condominium documents shall require the continued maintenance and use of these fixtures.
7. FCRC shall equip the arena with waterless urinals.
8. FCRC (and FCRC's successors and assigns) shall have the right to modify any and all of the measures set forth in subparagraphs I.1 through I.7 above, provided that FCRC demonstrates to ESDC through appropriate analysis that such modification results in a level of stormwater management equivalent or superior to that described in the FEIS, the Technical Memorandum and the HydroQual Reports.
9. FCRC and its successors in interest shall maintain the equipment and fixtures described in this section of the memorandum in a proper and well functioning condition.

J. SUSTAINABLE DESIGN AND MINIMIZATION OF AIR EMISSIONS

1. FCRC shall design and construct the Project so that each building meets, at a minimum, the requirements for Leadership in Energy and Environmental Design ("LEED") certification, as established by the non-profit U.S. Green Building Council, with the goal of attaining a silver rating where feasible and practicable. LEED certification provides independent, third-party verification that a project meets advanced performance standards relating to environmental stewardship, including the conservation of energy and water, the reduction of waste sent to landfills, and protection of the health of building occupants and neighbors.
2. All Project boilers shall operate exclusively on natural gas and shall be equipped with low nitrogen oxide burners, provided that FCRC may substitute an alternative fuel or technology upon a demonstration to ESDC through appropriate analysis that such alternative fuel and/or technology would achieve equivalent or superior emission levels. The previous sentence does not preclude the use of standby or emergency generators, as set forth in the FEIS.

3. The Project boilers shall have emission rate specifications that do not exceed the emission rates specified in Table 14-3 and pages 14-16 and 14-17 of the FEIS.
4. The HVAC intake vents for the Project buildings shall not be located in areas that have a modeled aggregate impact from Project buildings that would exceed 0.3 micrograms per cubic meter (annual average) using the dispersion modeling assumptions (including boiler load) used for the FEIS. Based on the design of the buildings used to prepare the air dispersion modeling for the FEIS, such locations are identified in the memorandum from Henry M. Kearney, P.E. of AKRF dated November 30, 2006.
5. FCRC and its successors in interest shall maintain the equipment and fixtures described in this section of the memorandum (or installed in obtaining LEED certification) in a proper and well functioning condition.

K. PHYSICAL ROADWAY AND TRANSIT IMPROVEMENTS

1. FCRC shall fund the New York City Department of Transportation ("NYCDOT") in completing the roadway modifications and installation of traffic signals set forth in the conceptual design set forth in Figure 19-1 of the FEIS and shall cooperate in implementing the operational changes (including street closures, changes in street direction, signal timing modifications, restriping, and parking regulation modifications) described in the FEIS; however, it is understood that actions such as signal timing modifications at existing traffic signals, changes to travel direction, and changing parking regulation signs will be implemented by NYCDOT staff. The roadway modifications, signal installations and operational changes and the timing thereof shall be subject to the approval of the NYCDOT. FCRC shall prepare and submit all drawings and designs (which shall meet AASHTO and NYCDOT specifications) required for implementation of such measures identified in the FEIS to NYCDOT for review and approval.
2. Among the roadway improvements FCRC shall fund and/or implement are the following:
 - (a) Reconfiguration of the Atlantic Avenue/Flatbush Avenue/4th Avenue intersection and complementary operational changes to the adjacent streets, including physical changes relating to the following:
 - (i) elimination of northbound traffic operations on 4th Avenue between Atlantic and Flatbush Avenues;
 - (ii) modifications to 4th Avenue lane designations between Dean Street and Atlantic Avenue;

- (iii) construction of expanded pedestrian spaces at Times Plaza along with crosswalk changes; and
 - (iv) re-striping at various locations to accommodate new lane configurations as indicated in Table 19-1 of the FEIS, except as such re-striping is undertaken directly by NYCDOT.
- (b) widening of portions of Pacific Street adjacent to the project site and related re-striping, except as such re-striping is undertaken by NYCDOT;
 - (c) installation of a new traffic signal and crosswalk (south approach) at the intersection of Pacific Street and Flatbush Avenue;
 - (d) physical changes associated with the introduction of an eastbound left-turn lane on Atlantic Avenue at Fort Greene Place;
 - (e) re-striping a westbound right-turn lane on Atlantic Avenue for 100 feet approaching 3rd Avenue and re-striping and physical modifications at various other locations in the street network adjacent to the Project site as shown in Figure 19-1 and Tables 19-1 and 19-2 of the FEIS, except as such re-striping is undertaken directly by NYCDOT;
 - (f) physical improvements to enhance vehicle flow and pedestrian safety at the intersection of Atlantic and Vanderbilt Avenues, including:
 - (i) elimination of the eastbound Atlantic Avenue left-turn movement to Vanderbilt Avenue;
 - (ii) widening of the existing median on this approach to 15 feet to provide additional pedestrian refuge space;
 - (iii) re-striping the approach to accommodate an exclusive right-turn-only lane, except as such re-striping is undertaken directly by NYCDOT;
 - (iv) re-striping Vanderbilt Avenue between Atlantic Avenue and Pacific Street to provide for four northbound travel lanes and two southbound travel lanes, except as such re-striping is undertaken directly by NYCDOT; and
 - (v) reconfiguration of the west sidewalk along Vanderbilt Avenue between Atlantic Avenue and Pacific Street from 20 feet to 12.5 feet in width to accommodate a new lay-by lane along the west curb.

3. It is expected that NYCDOT will implement areawide signal coordination, timing changes, curbside parking regulation changes, changes in travel direction and other operational changes, as described in the FEIS. FCRC shall cooperate with NYCDOT in the implementation of such changes including keeping NYCDOT apprised of the progress of the Project's construction.
4. FCRC shall construct a new entrance to the Atlantic Avenue/Pacific Street subway station complex on Block 1118 at the southeast corner of Atlantic and Flatbush Avenues consistent with the conceptual drawings included in the FEIS or Technical Memorandum, and pursuant to a final design approved by New York City Transit ("NYCT"). FCRC's construction contract schedules shall require substantial completion of the new subway entrance prior to or simultaneously with the opening of the arena. For purposes of the foregoing, substantial completion shall mean that construction of the new subway entrance is sufficiently complete to be operational.
5. FCRC shall undertake the traffic monitoring following completion of Phase I and Phase II of the project as described in the FEIS and the letter from NYCDOT to ESDC dated November 22, 2006 (the "DOT letter") and comply with all other requirements of the DOT letter, including those pertaining to the funding of mitigation measures.
6. FCRC shall enter into discussions with NYCDOT to determine the extent of FCRC's financial responsibility for the traffic enforcement agents ("TEAs") required to manage traffic flow for major arena events and shall comply with the terms of any such agreement with NYCDOT as required by the DOT letter. If necessary to ensure that the TEAs are deployed for major arena events as described in the FEIS, and only in the event that FCRC and NYCDOT do not reach a funding agreement, FCRC shall provide such funding for TEAs as ESDC shall reasonably direct, considering funding arrangements at other sports and entertainment venues in New York City.
7. FCRC shall reconstruct the Carlton Avenue Bridge so as to be functional as of the opening date of the arena.

L. DEMAND MANAGEMENT

1. As described in the FEIS, prior to the opening of the arena, FCRC shall implement incentives to reduce traffic demand associated with the operation of the Project to reduce the overall number of vehicles coming to the arena for a Nets game within one-half mile of the arena by 30% of the initially projected demand. In connection with this requirement FCRC shall:

- (a) provide remote parking facilities (e.g., facilities located at MetroTech, Long Island Hospital or other appropriate facilities at the western end of Atlantic Avenue near the Brooklyn-Queens Expressway) containing an aggregate of at least 500 spaces at a 50 percent discount from rates for FCRC-controlled parking at or near the arena;
 - (b) arrange for free shuttle bus service between the remote parking facilities described above and the arena;
 - (c) impose high-occupancy-vehicle ("HOV") parking requirements for at least 600 arena parking spaces at the Project site, requiring vehicles utilizing such HOV spaces to be occupied by three or more persons after 5 PM on Nets game days;
 - (d) provide a free round-trip subway fare to Nets basketball game ticketholders who would otherwise drive. The final design of this fare-incentive program shall be developed with and subject to the review and approval of NYCT.
 - (e) provide free round-trip charter bus service between two Staten Island park-and-ride facilities (Outerbridge Park & Ride and Father Capodanno Park & Ride) providing an aggregate capacity accommodating approximately 264 persons. The park-and-ride facilities selected for this service may be modified after implementation, upon the approval of NYCDOT, to maximize the effectiveness of this measure.
 - (f) cross-market with area businesses to encourage ticketholders to patronize local restaurants and stores before and after games;
 - (g) provide any ticketholder traveling to the arena by bicycle with free indoor bicycle storage in a secure, manned facility designed to accommodate at least 400 bicycles on the arena block; and
 - (h) provide expected attendance data to, and otherwise cooperate with, NYCT as necessary to assist NYCT in determining the appropriate increase in subway service to the Atlantic Avenue/Pacific Street subway station on selected subway lines immediately following basketball games and other major arena events as necessary to alleviate potential platform crowding at that subway station.
2. FCRC shall collect data midway through the first basketball season from Nets patrons documenting the travel mode of such patrons to evaluate the effectiveness of the demand management program, and shall provide such data to NYCT and ESDC. Subject to ESDC approval, which approval shall not be unreasonably withheld, FCRC may adjust the elements of the program to achieve the goal of reducing the auto share by a minimum of

30% of the number of vehicle trips projected for the Build Condition in the FEIS (i.e., to approximately 800 arena inbound auto trips during the pre-game peak hour) within one-half mile of the arena, provided that all practicable and effective demand management measures are maintained.

3. For major arena events other than Nets games, FCRC shall make available to event promoters practicable demand management measures (such as the reduced rate remote parking and shuttle bus mitigation described above) and encourage such promoters to implement such measures.

M. PEDESTRIAN IMPROVEMENTS

FCRC shall fund and cooperate with NYCDOT in the design and construction of the following crosswalk and sidewalk improvements to improve pedestrian circulation in the vicinity of the arena:

1. Widening of the north crosswalk on Carlton Avenue at Dean Street from 16 feet in width to 21 feet in width;
2. Widening of the north crosswalk on 6th Avenue at Dean Street from 16 feet in width to 18 feet in width;
3. Provision of a new sidewalk extension at the northeast corner of Atlantic Avenue at Fort Greene Place;
4. Provision of a new crosswalk on the south leg of the intersection of Flatbush Avenue and Pacific Street where the new traffic signal is to be installed;
5. Installation of fencing (consistent in design with NYCDOT-installed fencing throughout the City or as otherwise proposed by FCRC and approved by NYCDOT) on the northwest corner of the Flatbush Avenue/Pacific Street intersection to discourage pedestrians from crossing on the north side of the intersection where no crosswalk exists;
6. Installation of fencing (consistent in design with NYCDOT-installed fencing throughout the City or as otherwise proposed by FCRC and approved by NYCDOT) at the northwest and southwest corners of the Atlantic Avenue/Flatbush Avenue/4th Avenue intersection; and
7. Extension of the sidewalk at the northeast corner of Atlantic and Flatbush Avenues.

N. CONSTRUCTION

1. During the construction of the Project, FCRC shall undertake, fund and/or cooperate in the undertaking of the measures set forth below in order to minimize, avoid and/or mitigate, as applicable, the effects of Project

construction on traffic conditions, noise and air quality in the surrounding area. FCRC shall require its contractors to adhere to these construction measures (to the extent such measures are relevant to the contractor's activities) by including appropriate provisions in its contractor agreements and enforcing such provisions as necessary to assure compliance. FCRC shall provide ESDC documentation demonstrating same.

2. Traffic

- (a) FCRC shall coordinate with the NYCDOT Office of Construction and Mitigation Coordination ("OCMC") to develop, implement and fund the implementation of maintenance and protection of traffic ("MPT") plans developed by OCMC. Construction shall proceed in accordance with the requirements set forth in such MPT plans.
- (b) As set forth at pages 19-78 and 19-79 of the FEIS, certain of the roadway modifications, traffic installations and operational improvements shall be put into place at or about the time that significant construction activity begins at the Project site in order to minimize construction-related traffic impacts, or as otherwise directed by NYCDOT. FCRC shall fund and cooperate with NYCDOT to implement these measures; however, it is understood that changes in signal timing at existing traffic signals, installation of signage, implementation of parking regulations, and changes in traffic direction will be implemented by NYCDOT staff.
- (c) FCRC shall make arrangements for security guards and flaggers to be deployed to manage vehicle access to the construction site. To the extent feasible, curbside deliveries shall occur within delineated closed-off areas.
- (d) Truck deliveries shall be scheduled, and untimely deliveries shall, in general, be turned away or reassigned with different delivery times. Trucks shall be required to use NYCDOT-designated truck routes for traveling to and from the construction site, which include primarily Atlantic Avenue, Flatbush Avenue, 4th Avenue, and the Brooklyn-Queens Expressway except as required for movement between staging and construction areas.
- (e) On-site designated staging areas shall be maintained throughout the construction period to store materials and to accommodate construction vehicles that require early arrival and marshalling for immediate material delivery to high-demand construction areas.
- (f) FCRC shall provide on-site parking for construction workers at levels appropriate in light of the number of workers employed at

the site during different stages of construction, to a maximum of 800 spaces. FCRC shall monitor the work force levels throughout the construction period and shall report to ESDC on a quarterly basis as to the number of on-site spaces and the utilization of such spaces. The parking facilities shall have perimeter fencing and shall be accessible only during work hours. Parking fees at rates comparable to commercial off-street facilities in the surrounding area shall be imposed for these spaces. FCRC shall consult with and obtain the approval of ESDC, such approval not to be unreasonably withheld, prior to reducing the number of construction worker parking spaces at the Project site as the number of workers changes and permanent parking locations within the Project site become available for construction worker parking. Any lighting on any interim construction staging and parking area shall be equipped with directional lighting angled to limit light intrusion beyond the site, and shall employ controls to reduce lighting during periods when the facility is not in active use, consistent with site security. The screening measures required herein shall be properly maintained so long as such facility remains in operation. No more than 1100 vehicles, in the aggregate, shall be parked in any surface parking lot(s) on Block 1129 at any one time.

- (g) NYCT shall be given at least four weeks notice prior to the date on which a bus stop is to be relocated. Any change in a temporary location from that identified in the MPT plans shall be subject to the reasonable approval of NYCT.
- (h) FCRC shall fund physical improvements associated with and cooperate with NYCDOT in the early implementation of certain of the roadway modifications and mitigation measures specified in Sections K.1 and K.2 above, and in the further implementation of temporary construction measures pursuant to the MPT. Unless otherwise directed by NYCDOT, after consultation with ESDC, such additional construction period traffic measures shall include the following:
 - (i) converting 6th Avenue to two-way operation during the period that Carlton Avenue bridge is closed for reconstruction;
 - (ii) prohibiting left turns along Atlantic Avenue at locations where roadways are expected to be narrowed during the Carlton Avenue bridge reconstruction work, the LIRR West Portal reconfiguration, and utility relocation;

- (iii) providing temporary left-turn bays or channelized lanes for traffic detours and added capacity;
- (iv) reconfiguring the Flatbush/Atlantic/4th Avenue intersection complex, entailing terminating northbound 4th Avenue traffic at Atlantic Avenue, converting Pacific Street between Flatbush Avenue and 4th Avenue to one-way eastbound, and creating a new eastbound left-turn bay at Fort Greene Place, to optimize traffic movements;
- (v) prohibiting parking during peak periods or at all times, where needed, to provide added lane capacity; and,
- (vi) changing signal phasing and/or timing.

3. Noise and Vibration

- (a) Prior to commencement of construction, FCRC shall develop a construction noise mitigation plan in accordance with the New York City Noise Control Code (Chapter 2 of Title 24 of the New York City Administrative Code) (the "Noise Code") which shall be subject to NYCDEP review and approval procedures. The construction noise mitigation plan shall include the noise reduction measures described in the FEIS and assumed in the construction noise modeling set forth in the FEIS. During construction, FCRC shall implement the construction noise mitigation plan.
- (b) FCRC shall employ the following measures in the construction of the Project:
 - (i) Using equipment that meets the sound level standards specified in the Noise Code;
 - (ii) Using construction equipment that meets the noise emission levels specified in Table 17c-3 of the FEIS, "Construction Equipment Noise Emission Levels," where such levels are more stringent than those imposed by the Noise Code;
 - (iii) Scheduling work that would generate high noise levels during weekday daytime hours to extent feasible, rather than during weekday nighttime or weekend hours, unless required as a result of safety or other agency requirements;
 - (iv) To the extent feasible, scheduling equipment and material deliveries during weekday daytime hours, rather than during weekday nighttime or weekend hours;

- (v) As early as practicable in the construction period and wherever feasible, using electrical-powered equipment, such as electric scissor lifts and electric articulating boom lifts, rather than diesel-powered equipment for construction activities;
 - (vi) Situating noisier equipment, such as generators, cranes, tractor trailers, concrete pumps, concrete trucks and dump trucks at locations that are removed from sensitive receptor locations and are shielded from sensitive receptor locations wherever feasible. For example, during the early construction phases of the Project, delivery trucks and dump trucks are to be located approximately 20 feet below grade to take advantage of the shielding benefits of grade differences. Once building foundations are completed, delivery trucks are to be located adjacent to noisy streets (i.e., Atlantic Avenue, Flatbush Avenue and 6th Avenue) rather than at quieter streets, such as Dean Street and Pacific Street, where there are residences;
 - (vii) A minimum 8 foot high perimeter barrier (constructed of 3/4" thick plywood), with a 16 foot high barrier (of 3/4" thick plywood) adjacent to sensitive locations, including locations along Pacific Street, Dean Street, and Flatbush Avenue opposite residences and the Brooklyn Bear's Pacific Street Community Garden, and, where practicable, truck deliveries shall take place behind these barriers. Noisy delivery trucks, such as concrete trucks, are to be operated behind the barriers;
 - (viii) Where practicable, use of quiet construction procedures;
 - (ix) Requiring all contractors and subcontractors to properly maintain their equipment and have quality mufflers installed; and
 - (x) Where practicable, noise curtains and equipment enclosures shall be utilized to provide shielding from significant noise-generating equipment to sensitive receptor locations.
- (c) FCRC shall make available double-glazed or storm windows and alternative ventilation (e.g., air conditioning) for those residential locations where the FEIS identified significant noise impacts and such windows and air conditioning are not currently installed, subject to the consent of the owners and tenants of such residences, and subject to applicable laws, rules and regulations. All such

windows and alternative ventilation shall be provided without charge and with free installation.

- (d) As described in the FEIS, and subject to the consent of the respective property owners, FCRC shall make available and install, free of charge (i) interior-fitted storm windows (or suitable alternative windows) for the Pacific Street side of the Pacific Branch of the Brooklyn Public Library and (ii) storm windows for the second floor of the Temple of Restoration windows facing Dean Street (if such windows do not already have storm windows).
- (e) FCRC shall work with the Parks Department to supplement its planned improvements to the Dean Playground with a comfort station open to the general public.
- (f) Noise mitigation measures shall be implemented – where such measures have been accepted by building owners and their tenants – in a timely manner so as to avoid the significant adverse noise impacts identified in the FEIS where practicable.
- (g) FCRC shall implement a monitoring program to ensure that vibration levels at the Swedish Baptist Church and the town houses along Dean Street immediately adjacent to the Project's Building 15 site are kept below 0.50 inches/second.

4. Air Quality

- (a) FCRC shall require its contractors to implement dust suppression measures, including the following:
 - (i) Limiting on-site speed to five miles per hour. Signage of the 5-mile per hour limit shall be posted at all site entrances and along routes within the sites.
 - (ii) Using sleeves and wetting during demolition activities, and wetting equipment. All demolition activities, including but not limited to building, roadway, and pavement demolition, shall utilize dust suppression. All drop transfer operations shall be via closed sleeves and into sealed bins. Sleeves shall have no openings other than the loading chute. During all breaking up of material such as concrete, an employee shall be assigned to wet the surface while the activity is taking place.
 - (iii) Watering unpaved surfaces, including haul roads and excavation faces. All unpaved haul roads and excavation surfaces shall be continuously watered by watering trucks or constant misting, so that surfaces remain damp at all

times when in use during construction. Gravel cover shall be applied to unpaved surfaces which are regularly traveled.

- (iv) Covering or water-misting of stockpiled materials. All stockpiled dry materials (e.g., sand, aggregate) shall be water-misted; sprayed with non-hazardous, biodegradable suppressing agent; covered; or otherwise enclosed.
 - (v) Loading of any dry material which may release dust from trucks shall be accompanied by manual water spraying of the material.
 - (vi) Covering all trucks carrying loose material such as debris, excavate or fill, and verifying that covers on all such trucks have been properly sealed. Outgoing trucks shall be inspected at the gate, and not allowed to exit if covers are not properly sealed.
 - (vii) Washing the wheels of all trucks as they exit from the site. A washing station shall be constructed at each truck exit, whereby truck wheels shall be washed, and the water shall be contained and recycled to avoid tracking mud out of the site.
- (b) FCRC shall implement a diesel emissions reduction program, which shall include minimizing the use of diesel engines and maximizing the use of electric engines in lieu of diesel. In particular, FCRC shall:
- (i) ensure sufficient grid power is available to each site as early as practicable and commission permanent grid power service for Buildings 2 and 3 prior to the peak period of construction (currently scheduled for the third quarter of 2007);
 - (ii) ensure the distribution of power throughout the Project at all locations where electric engines are to be used, in order to avoid the use of portable or stationary generators where practicable;
 - (iii) use only electric engines where practicable (e.g., welders, compressors, electric saws, forklifts, etc.);
 - (iv) ensure that all contractors plug into the grid where available and do not use portable generators (diesel or gasoline, small or large); and

- (v) ensure that generators will not be used for tasks where grid power is available, and that diesel engines will not be used for tasks that can be performed with electric engines.
 - (c) FCRC shall require its contractors to limit all unnecessary idling of vehicles and non-road engines, ensure that engines are shut off when not in use, and enforce idling limits on queuing trucks.
 - (d) FCRC shall require the use of ultra-low sulfur diesel ("ULSD") fuel (i.e., fuel having less than 15 parts per million (15 ppm) sulfur content) for all equipment having diesel engines.
 - (e) FCRC shall employ best available tailpipe emissions reduction technologies, including utilization of diesel particulate filters ("DPF") (or, subject to ESDC approval, improved technologies verified by EPA or the California Air Resources Board to reduce particle emissions by at least 85%) on all nonroad engines of 50 hp or greater and on all concrete trucks and concrete pump trucks. All nonroad engines used for the construction work shall be inspected and labeled where practicable to confirm that DPF is installed and functioning and that the engine is to be fueled only with ULSD. FCRC shall bar any non-complying equipment from the work site or expeditiously bring into compliance any equipment found to not be in compliance. Notwithstanding the foregoing, if with respect to a specific nonroad engine of 50 hp or greater, FCRC determines that it would not be practicable to equip the engine with a DPF and that use of the engine is required for the construction to proceed, FCRC shall use a substitute particulate control technology such as a diesel oxidation catalyst instead of a DPF upon the concurrence of ESDC that the DPF is impracticable for the type of equipment needed for the construction work.
 - (f) To the extent practicable, FCRC shall require that all stationary engines be located at least 50 feet from locations such as sidewalks, residential or school windows, and building air intakes.
5. FCRC shall submit to ESDC for review and approval, not to be unreasonably withheld, a written plan to adequately and reasonably demonstrate compliance with the foregoing construction air quality measures (the "CAQM Compliance Plan") during construction. The CAQM Plan shall be submitted before intensive construction work at the project site begins and, if not approved by ESDC as submitted, there shall be a consultation between FCRC and ESDC with respect to the submission and, after such consultation, the CAQM Plan shall be revised as required to conform to reasonable ESDC revisions. Elements of the CAQM Compliance Plan shall include: (i) incorporation into construction contracts appropriate terms requiring the contractors to implement the air

quality measures contemplated by the FEIS; (ii) periodic meetings between FCRC's construction manager and the relevant contractors to discuss implementation of the air quality measures; (iii) practicable documentation requirements; (iv) recordkeeping with respect to the equipment and vehicles used during construction; and (v) compliance monitoring by a field engineer (to be employed by FCRC's construction manager) whose principal responsibility would be to monitor compliance. If deemed appropriate as construction proceeds, the CAQM Compliance Plan may be revised from time-to-time with the written approval of FCRC and ESDC.

6. FCRC shall implement a rodent control program approved by the New York City Department of Buildings.
7. Prior to and during the course of remediation or excavation, FCRC shall implement a CHASP and, during excavation, shall implement a Community Air Monitoring Plan.
8. FCRC shall maintain an on-site construction coordinator to function as a liaison between FCRC and the community with respect to construction-related issues. The coordinator shall be available to consider specific concerns raised by the community with respect to the construction issues and seek to resolve such concerns.
9. In the event FCRC does not expect to commence construction of a particular portion of the Project site or to use such portion of the Project site for interim parking facilities or construction-related activities, including staging, in each case for a period of time to be set forth in the Project Documentation, then such portion of the project site shall be used as publicly accessible temporary open space, subject to safety and security requirements. FCRC shall improve and develop areas to be used as publicly accessible interim open space in accordance with a design and program subject to the approval of ESDC (which is not to be unreasonably withheld), and such open space on the Arena Block shall include amenities such as kiosks, seating areas and landscaping. FCRC shall thereafter operate and maintain such interim public open space in good and clean condition until the property is needed for construction of the Project.
10. In the event that construction of Building 1 is delayed so that the Urban Room will not be completed by the date the arena commences operation, FCRC shall construct an urban plaza at the southeast corner of Flatbush and Atlantic Avenues, in substantially the same location as the location where the Urban Room is to be constructed. The design and program for the urban plaza shall follow the basic use and design principles of the Urban Room as set forth in the Design Guidelines, creating a significant public amenity. The urban plaza shall be a minimum of 10,000 square feet and shall include the following elements: landscaping, retail, seating,

the subway entrance and space to allow for formal and informal public uses, such as outdoor performances, temporary markets, art installations and seating. In addition, the plaza may include public art or a prominent sculptural element (such as a canopy or other architectural feature that could be part of the arena and/or the subway entrance). The urban plaza shall be completed and available for public use upon the date of the opening of the arena. Thereafter, FCRC shall operate and maintain the urban plaza in good and clean condition, until such time as the area occupied by the urban plaza is required for construction of Building 1 or the Urban Room.

11. In the event development of Building 1 is delayed so that it will be constructed after the arena commences operation, FCRC shall, for the period of construction of Building 1: (i) relocate the main arena entrances to the north and east side of the arena; (ii) provide directional signage at various point on the arena block, indicating routes to the arena's entrances and amenities; and (iii) erect pedestrian construction sheds protecting, among other areas, the subway entrance and pedestrian walkways and sidewalks on the arena block.
12. FCRC shall screen the construction staging area and interim parking areas on Blocks 1120 and 1129 with fencing and landscaping installed in accordance with a plan subject to the approval of ESDC, which is not to be unreasonably withheld. If an interim construction staging or parking facility is equipped with lighting, it shall be directional lighting angled to limit light intrusion beyond the site and shall employ controls to reduce lighting during periods when the facility is not in active use, consistent with site security. The screening measures required herein shall be properly maintained so long as such facilities remains in operation.
13. Should there be periods in which there are temporary cessations of site construction, there shall be no major equipment stored on the site; however, the project sites would be maintained and secured.
14. Temporary parking and construction staging areas, if paved or otherwise required by law, shall have on-site detention systems equipped with standard NYCDEP Type 2 catch basins with oil water separators, as required by NYCDEP.

O. ENFORCEMENT

1. The Project Documentation shall provide that ESDC shall have the right to enforce FCRC's compliance with the commitments set forth above.
2. ESDC shall have the right to enter the Project site at all reasonable times, subject to safety and operational constraints, to monitor FCRC's and FCRC's contractors' compliance with the terms of such commitments.

3. FCRC and FCRC's general contractor shall meet with ESDC, at ESDC's request, to discuss the compliance and implementation of the obligations and measures set forth in this memorandum.
4. During the period in which the Project buildings, or any one of them, are being constructed, FCRC shall provide funding for the reasonable costs of an environmental monitor (which shall be a qualified consulting firm with subconsultants, as appropriate) to be selected by and retained by ESDC to:
(i) monitor FCRC's compliance with certain provisions of this memorandum; (ii) review any submittals made by FCRC pursuant to such provisions and advise ESDC with respect thereto; and (iii) provide ESDC with periodic written reports concerning FCRC's implementation of such provisions. The certain provisions referred to in the preceding sentence are paragraphs: C.3 (pertaining to Day Care); E (with respect to protection of cultural resources near the project site from being impacted by construction on the project site); G.2 (pertaining to Hazardous Materials); I.9 (pertaining to reviewing the effectiveness of any modified design for stormwater management facilities); J.2 (pertaining to reviewing alternative fuels or boiler technologies); J.4 (pertaining to reviewing the location of HVAC intakes in the event that the design of the relevant Project buildings changes from the design subject to air dispersion modeling in the FEIS); K.6 (pertaining to decisionmaking with respect to the funding of TEAs in the event that FCRC and NYCDOT do not reach agreement on this issue); L.2 (pertaining to the adjustment of demand management measures); and N.1, N.2.d, N.2.e, N.2.f, N.3.b, N.3.c, N.3.d, N.3.f, N.3.g, N.4, N.5, N.6, N.7, N.9, N.10, N.11, N.12, N.13 and N.14 (pertaining to construction). The obligation set forth in this paragraph shall cease upon completion of the Phase II buildings. This memorandum shall not make FCRC responsible for the cost or time expended by any ESDC personnel or consultant otherwise hired by or in the employment of ESDC. This memorandum is without prejudice to other funding discussions that may occur between ESDC and FCRC.
5. Where ESDC review and approval is required under this memorandum, ESDC shall review, comment and make its determination on an expedited basis where practicable but in any event within twenty (20) days of the date a request for ESDC approval is made. In the event ESDC has not acted on any request within such twenty (20) day period, such request shall be deemed approved by ESDC.

Exhibit V

Combination Housing Subsidies

Combination Housing Subsidies

First Building Combination Subsidy Scenarios
 For example, if the first building on the Arena Block contains 400 residential units under Scenario #1, where 50% of the units (200 units) would have rents set at market rate, 10% (40 units) at 50% AMI, 10% (40 units) at 120% AMI, 10% at 80% AMI (40 units), 10% at 48% AMI (28 units) and 3% at 38% AMI (12 units), and the associated subsidy would be \$12,854,000 in HDC/HPD 2nd mortgage subsidy (\$65,000 x 40 units at 120% AMI, \$85,000 x 120 units at or below 80% AMI).

		Percentage of Dwelling Units (DU) at each AMI Level					
		Scenario #1	Scenario #2 (50/1c3)	Scenario #3 (50/1c3)	Scenario #4 (50/1c3)	Scenario #5	Scenario #6
AMI Levels	Subsidy/DU						
Market Rate	\$ -	50%	0%	0%	0%	0%	0%
165%	\$ -	0%	80%	70%	60%	75%	65%
150%	\$ -	0%	10%	0%	0%	0%	0%
130%	\$ 65,000	0%	0%	0%	10%	0%	10%
120%	\$ 65,000	10%	0%	0%	0%	0%	0%
100%	\$ 75,000	0%	0%	10%	10%	0%	0%
80%	\$ 85,000	10%	20%	10%	10%	0%	0%
60%	\$ 85,000	0%	0%	10%	10%	25%	25%
50%	\$ 85,000	17%	0%	0%	0%	0%	0%
40%	\$ 85,000	3%	0%	0%	0%	0%	0%
Total Subsidy/DU Less than 130% AMI		\$80,000	\$85,000	\$81,667	\$77,500	\$85,000	\$79,286

*** QUALIFICATIONS TO SCENARIOS DEPICTED ABOVE**

The maximum aggregate subsidy for the building shall be \$14.275mm (or prorated by total units if first residential building is smaller than 402 units). Rents for each targeted AMI level shall be set according to HDC/HPD rent setting guidelines, including taking into account any utility allowance as required. All underwriting must conform to HPD/HDC standards and criteria to be eligible for subsidies. HDC agrees to provide 2nd mortgage subsidy outlined in Scenario 2 on the condition that the complete application and submission is with respect to Scenarios 1, 5 or 6, and HDC provides notification that it is unable to provide new and/or recycled private activity tax exempt bonds to FCRC due to a lack of availability. In Scenarios 3 & 4, units at 60% AMI may use underwritten rents at 60% of AMI (if permitted by the IRS), yet may only be rented to households whose incomes do not exceed 80% AMI (if permitted by the IRS). Scenarios 1, 5 & 6 assume 60/50/40% AMI units underwritten at 58%/48%/38%, respectively. Scenarios 1, 5 & 6 assume that HDC will provide recycled private activity tax exempt bonds. Scenarios 1, 5 & 6 assume provision of new private activity bond cap to generate as-of-right 4% Federal Low Income Housing Tax Credits on qualifying units.

APPLICATION REQUIREMENTS: To be eligible for Combination Housing Subsidies AYDC, Interim Developer or their respective Affiliates, as applicable, shall be required to (1) make a complete application and submission to HDC, (2) provide written notification of such applicant's intention to close and to be ready, willing and able to close within 12 months of complete application and submission, and (3) if such complete application and submission is approved by HDC, comply with and satisfy all applicable preconditions for closing required by HDC under its standard, terms, conditions and criteria for the applicable Combination Housing Subsidy scenario. For purposes hereof, "complete application and submission" shall mean an application for Combination Housing Subsidies including a preliminary term sheet or other plan of credit enhancement, as considered acceptable by HDC under its standards, terms, conditions and criteria, and other information and disclosures required by HDC from developers as a condition for providing financing for Affordable Housing Units.

Exhibit W

Development Agreement Guaranty

EXECUTION VERSION

**GUARANTY
(Development Agreement)**

THIS GUARANTY (this "**Guaranty**"), made as of the _____, 2010, is by **FOREST CITY ENTERPRISES, INC.**, a corporation organized under the laws of the State of Ohio, having an address at 50 Public Square, Suite 1360, Terminal Tower, Cleveland, Ohio 44113 ("**Guarantor**"), in favor of the **NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A THE EMPIRE STATE DEVELOPMENT CORPORATION**, a corporate governmental agency of the State of New York, having an address at 633 Third Avenue, 36th floor, New York, New York 10017 ("**ESDC**").

WITNESSETH:

WHEREAS, on July 18, 2006, ESDC adopted that certain General Project Plan, and on December 8, 2006, and June 23, 2009, ESDC adopted those certain Modified General Project Plans (the "**MGPP**"), for the Atlantic Yards Land Use Improvement and Civic Project (the "**Project**"), each in accordance with the New York State Urban Development Corporation Act;

WHEREAS, the Project comprises the development and construction of a major mixed-use development, including (i) a professional sports venue ("**Arena**") to serve as the home venue for the National Basketball Association professional basketball team currently known as the New Jersey Nets (the "**Team**") and as a venue for other entertainment, cultural, sporting and civic events, and (ii) a mixed-use buildings for rental housing, residential condominiums, first class office space, retail space and other permitted;

WHEREAS, the project site (the "**Project Site**") occupies an approximately 22-acre area generally bounded by Flatbush and 4th Avenues to the West, Vanderbilt Avenue to the East, Atlantic Avenue to the North, and Dean and Pacific Streets to the South and includes the approximately 9-acre (including the land under the 6th and Carlton Avenue Bridges) below-grade Long Island Rail Road Vanderbilt Storage Yard;

WHEREAS, ESDC, Atlantic Yards Development Company, LLC, a Delaware limited liability company and affiliate of Guarantor ("**AYDC**"), AYDC Interim Developer, LLC, a Delaware limited liability company and affiliate of Guarantor ("**Interim Developer**"), and Brooklyn Arena, LLC, a Delaware limited liability company and affiliate of Guarantor ("**BALLC**") are parties to the Development Agreement, dated as of even date herewith (the "**Development Agreement**"), pursuant to which ESDC has retained AYDC, Interim Developer and BALLC to finance, develop and construct (or to cause the financing, development and construction of) the Project all in accordance with and subject to the terms of the Development Agreement and other Project Documentation (as defined in the Development Agreement);

WHEREAS, ESDC, AYDC, BALLC and Interim Developer are parties to the Funding Agreement dated as of September 12, 2007, as amended (the "**State Funding Agreement**"), whereby ESDC agreed, subject to certain terms and conditions, to provide One

Hundred Million Dollars (\$100,000,000) towards the costs incurred, and to be incurred, for the construction of Infrastructure (as defined in the Original State Agreement);

WHEREAS, subject to certain terms and conditions set forth in the Funding Agreement dated as of September 12, 2007 (the "**Original City Funding Agreement**"), between the New York City Economic Development Corporation ("NYCEDC") and ESDC, NYCEDC agreed to disburse to ESDC One Hundred Million Dollars (\$100,000,000) towards costs incurred, and to be incurred, in connection with ESDC's acquisition of real property comprising a portion of the Project Site; and

WHEREAS, the City has made available an additional Thirty-One Million Dollars (\$31,000,000) in its capital budget (the "**Additional City Funding**") for costs incurred and to be incurred in connection with ESDC's acquisition of the real property comprising a portion of the Project Site; and

WHEREAS, in connection with the execution and delivery of the State Funding Agreement and Original City Funding Agreement, Guarantor delivered to each of ESDC and NYCEDC separate guaranties, each dated as of September 12, 2007, which City Guaranty and State Guaranty each secured the performance of certain obligations by BALLC and AYDC; and

WHEREAS, NYCEDC and ESDC have entered into the First Amendment to the Original City Funding Agreement dated as of October 20, 2009, which amends the Original City Funding Agreement (as so amended, the "**City Funding Agreement**") to, *inter alia*, reflect the City's appropriation of the Additional City Funding for costs incurred and to be incurred, in connection with ESDC's acquisition of the real property comprising a portion of the Project Site; and

WHEREAS, as a material inducement to ESDC's retention of AYDC, Interim Developer and BALLC to finance, develop and construct (or to cause the financing, development and construction of) the Project, Guarantor has agreed to execute and deliver this Guaranty in order to assure the payment and performance of the Guaranteed Obligations (as hereinafter defined); and

WHEREAS, in order to coordinate Guarantor's obligations under the City Guaranty, the State Guaranty and this Guaranty, Guarantor has requested NYCEDC and ESDC to accept terminations of the City Guaranty and the State Guaranty, and with respect to NYCEDC, as material inducement to NYCEDC to accept a termination of the City Guaranty, The City of New York and NYCEDC shall be express third party beneficiaries of this Guaranty; and

WHEREAS, Guarantor will derive substantial direct and indirect benefit from the transactions contemplated by the Development Agreement and other Project Documentation.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Guarantor, intending to be legally bound, hereby covenants and agrees as follows:

1. Defined Terms: Interpretation.

(a) All capitalized terms used but not otherwise defined in this Guaranty shall have the meaning given to such terms in the Development Agreement, to the extent defined therein. All references herein to the Development Agreement shall mean the Development Agreement as modified by any amendments, restatements, supplements or other modifications thereto. References in this Guaranty to any other document, instrument, certificate or agreement shall mean such document, instrument, certificate or agreement as amended, restated, supplemented or otherwise modified from time to time.

(b) The following terms shall have the meanings ascribed below:

"BALLC Work" means (i) causing the Commencement of Construction (as hereinafter defined) of the Arena by the Outside Arena Commencement Date and (ii) causing the Substantial Completion (as defined in the Arena Development Lease) of the Arena to occur by the Outside Arena Substantial Completion Date, in each case, in accordance with and subject to the terms of the Arena Development Lease. For purposes of this definition only, the term **"Commencement of Construction"** shall require the satisfaction of each of the following: (A) the Arena Completion Guaranty has been executed and delivered to the LDC; (B) the tenant under the Arena Development Lease shall have paid the Completion Amount (as defined in the Arena Development Lease) required to be paid in accordance with Sections 3.3(c) thereof; (C) the proceeds of the Bonds are available for disbursement in connection with the performance of the Arena Work; and (D) commencement of the excavation of the foundations for the Arena has occurred on the Arena Parcel.

"City Funding Agreement Work" means the following, all as may be further described or defined in the Development Agreement: (i) the Arena shall be the first or second building in the Project on which construction begins; (ii) causing the Commencement of Construction (as hereinafter defined) on the Arena within one year after Project Effective Date, subject to up to four (4) years of delay resulting from Unavoidable Delays or material adverse changes affecting the financing of the Arena; (iii) BALLC shall, once construction on the Arena commences, (A) diligently pursue completion of the Arena, (B) achieve Substantial Completion (as defined in the City Funding Agreement) of the Arena within six (6) years of the Project Effective Date, subject to Unavoidable Delays (as defined in the City Funding Agreement); and (C) achieve Substantial Completion (as defined in the City Funding Agreement) of Phase I (as defined in the City Funding Agreement) within twelve (12) years of the Project Effective Date, subject to Unavoidable Delays (as defined in the City Funding Agreement). For purposes of this definition only, the term **"Commencement of Construction"** shall require the satisfaction of each of the following: (I) the Arena Completion Guaranty has been executed and delivered to the LDC; (II) the tenant under the Arena Development Lease shall have paid the Completion Amount (as defined in the Arena Development Lease) required to be paid in accordance with Section 3.3(c) thereof; (III) the proceeds of the Bonds are available for disbursement in connection with the

performance of the Arena Work; and (IV) commencement of the excavation of the foundations for the Arena has occurred on the Arena Parcel.

"Developer Work" means (i) to Commence Construction (or cause the Commencement of Construction) of buildings on the Arena Block in accordance with and subject to the terms and conditions of Section 8.6(d) of the Development Agreement, and (ii) on or prior to the Outside Phase I Substantial Completion Date, causing the Substantial Completion of (A) the Urban Room in accordance with and subject to the terms and conditions of Section 8.6(f) of the Development Agreement, and (B) the Phase I Improvements in accordance with the Development Agreement and other Project Documentation.

"Foreclosure Event" means any transfer of title to the portion of the Project Site necessary for the performance of the applicable Guaranteed Work through any (i) judicial or non-judicial foreclosure; (ii) trustee's sale; (iii) deed, transfer, assignment or other conveyance in lieu of foreclosure; or (iv) other similar exercise of rights or remedies under any Recognized Mortgage.

"Legal Requirements" means all present and future, foreseen and unforeseen, laws, rules, orders, ordinances, regulations, statutes, requirements, permits, consents, certificates, approvals, codes and executive orders of any Governmental Authority now existing or hereafter created, and of any and all of their departments and bureaus.

"Qualified Certifying Party" means, with respect to any Person that is a partnership or limited liability company, a member or general partner thereof, or with respect to a Person that is a corporation or limited liability company that has officers, the President, Vice President (whether Senior, Executive or otherwise), Chief Executive Officer, Chief Operating Officer, Chief Financial Officer or Treasurer of such Person.

2. Guaranteed Obligations. Guarantor hereby unconditionally and irrevocably guarantees to ESDC that (the obligations set forth in the following clauses (a) through (d) being herein collectively referred to as the "**Guaranteed Obligations**"):

(a)(i) BALLC shall construct and complete the BALLC Work; (ii) that AYDC and Interim Developer (as applicable) shall construct and complete the Developer Work; and (iii) that BALLC, AYDC and Interim Developer (as applicable) shall construct and complete the City Funding Agreement Work (the work described in (i), (ii) and (iii) collectively, the "**Guaranteed Work**");

(b) each of BALLC, AYDC, Interim Developer or any other Person shall fully and punctually pay and discharge any and all costs, expenses and liabilities for or in connection with the Guaranteed Work, including, but not limited to, the costs of causing the construction, equipping and furnishing the Guaranteed Work, as the same become due and payable;

(c) without regard to any exemptions, waivers or other override of Legal Requirements provided by virtue of ESDC's ownership of the Project, the Guaranteed Work shall

be and remain free and clear of all liens, encumbrances, claims, chattel mortgages, conditional bills of sale and other charges of any and all persons, firms, corporations or other entities furnishing materials, labor or services in constructing or completing the Guaranteed Work; and

(d) Guarantor shall indemnify and hold harmless ESDC from and against any and all claims, losses, suits, costs and expenses, including without limitation, reasonable attorneys' fees and expenses incurred by ESDC in enforcing or collecting any or all of the Guaranteed Obligations required to be paid or performed under this Guaranty.

3. Guaranty Absolute.

(a) Guarantor guarantees that the Guaranteed Obligations will be paid or performed strictly in accordance with the Development Agreement, other Project Documentation and this Guaranty, regardless of any Legal Requirements now or hereafter in effect in any jurisdiction affecting or purporting to affect in any manner any of such terms or the rights or remedies of ESDC with respect thereto.

(b) Any payment or payments made by BALLC, AYDC, Interim Developer or any other Person received or collected by ESDC from BALLC, AYDC, Interim Developer or any other Person by virtue of any action or proceeding or any other set-off or appropriation or application at any time or from time to time in respect of any obligations or liabilities of BALLC, AYDC, Interim Developer or any other Person under the Development Agreement or other Project Documentation may be applied by ESDC in satisfaction of such obligations and liabilities in such order as ESDC may determine in its sole and absolute discretion, and no application of such payment or payments to the satisfaction of indebtedness, obligations or liabilities other than the Guaranteed Obligations shall discharge in any manner any obligations of Guarantor hereunder.

(c) Guarantor agrees that in performing the Guaranteed Work Guarantor shall be obligated to expend or otherwise satisfy all Completion Costs (hereinafter defined) incurred in connection with satisfying such obligation, and Guarantor's obligation to perform the Guaranteed Work to completion shall not be determined by reference to or otherwise limited by a determination of the increase in the value of the Project that would occur by virtue of the completion of the Guaranteed Work. "**Completion Costs**" means the excess, if any, of all direct and indirect costs incurred and to be incurred in connection with the construction and completion of any of the BALLC Work, Developer Work or City Funding Agreement Work, including, without being limited to, interest, reasonable fees, reasonable consultant fees and charges, sewer and water charges, and operating expenses incurred through the Substantial Completion of the BALLC Work, Developer Work and Funding Agreement Work.

(d) The liability of Guarantor under this Guaranty shall be absolute and unconditional, and shall not be affected, released, terminated, discharged or impaired, in whole or in part, by, and ESDC may proceed to exercise any right or remedy hereunder irrespective of, any or all of the following:

(i) any lack of genuineness, regularity, validity, legality or enforceability, or the voidability of, the Development Agreement, any other Project Documentation or any other agreement or instrument relating thereto;

(ii) the failure of ESDC to exercise or to exhaust any right or remedy or take any action against BALLC, AYDC, Interim Developer or any other Person or any other security available to ESDC;

(iii) any amendment or modification of the terms of the Development Agreement or other Project Documentation, so long as BALLC, AYDC, Interim Developer, Guarantor or an Affiliate of BALLC, AYDC, Interim Developer or Guarantor remains a party thereto;

(iv) any change in the time, manner or place of payment or performance, of all or any of the Guaranteed Obligations or any extensions of time for payment, performance or observance, whether in whole or in part, of the terms of the Development Agreement or other Project Documentation on the part of BALLC, AYDC, Interim Developer or any other Person to be paid, performed or observed, as applicable;

(v) any amendment or waiver of, or any assertion or enforcement or failure or refusal to assert or enforce, or any consent or indulgence granted by ESDC with respect to a departure from, any term of the Development Agreement or any other Project Documentation, including, without limiting the generality of the foregoing, the waiver by ESDC of any default of BALLC, AYDC, Interim Developer or any other Person, or the making of any other arrangement with, or the accepting of any compensation or settlement from, BALLC, AYDC, Interim Developer or any other Person;

(vi) any failure or delay of ESDC to exercise, or any lack of diligence in exercising, any right or remedy with respect to the Development Agreement, any other Project Documentation or this Guaranty;

(vii) any dealings or transactions among ESDC, BALLC, AYDC, Interim Developer or any other Person, whether or not Guarantor shall be a party to or cognizant of the same;

(viii) any bankruptcy, insolvency, assignment for the benefit of creditors, receivership, trusteeship or dissolution of or affecting BALLC, AYDC, Interim Developer or any other Person;

(ix) any exchange, surrender or release, in whole or in part, of any security which may be held by ESDC at any time for or under the Development Agreement or any other Project Documentation or in respect of the Guaranteed Obligations;

(x) any other guaranty now or hereafter executed by Guarantor or any other Person or the release of any other Person from liability for the payment, performance or observance of any of the Guaranteed Obligations or any of the terms of

the Development Agreement or other Project Documentation on the part of BALLC, AYDC, Interim Developer or any other Person to be paid, performed or observed, as applicable, whether by operation of law or otherwise;

(xi) any rights, powers or privileges ESDC may now or hereafter have against any Person or collateral in respect of the Guaranteed Obligations;

(xiii) any other circumstance which might in any manner or to any extent constitute a defense available to BALLC, AYDC, Interim Developer or any other Person, or vary the risk of Guarantor, or might otherwise constitute a legal or equitable discharge or defense available to a surety or guarantor, whether similar or dissimilar to the foregoing;

(xiv) any notice of the creation, renewal or extension of the Guaranteed Obligations and notice of or proof of reliance by ESDC upon this Guaranty or acceptance of the Guaranty;

(xv) any change, restructuring or termination of the structure or existence of BALLC, AYDC, Interim Developer or any other Person;

(xvi) any assignment, transfer, conveyance, sale or other disposition (whether voluntary, involuntarily, as a matter of law or otherwise) by BALLC, AYDC, Interim Developer or any other Person of their respective interests in the Project, whether occurring before or after any default by BALLC, AYDC, Interim Developer or any other Person under the Development Agreement or other Project Documentation, and with or without further notice to or assent from Guarantor; or

(xvii) any creation and severance of any Development Parcels under the Development Agreement or any other Project Documentation and any execution and delivery by ESDC of a Development Lease with BALLC, AYDC, Interim Developer or any other Person.

(e) Notwithstanding anything to the contrary contained in Section 12 hereof, this Guaranty shall continue to be effective or be reinstated, as the case may be, and the rights of ESDC hereunder shall continue with respect to, any Guaranteed Obligation (or portion thereof) at any time paid by BALLC, AYDC, Interim Developer or any other Person which shall thereafter be required to be restored or returned by ESDC upon the insolvency, bankruptcy or reorganization of BALLC, AYDC, Interim Developer or any other Person, or for any other reason, all as though such Guaranteed Obligation (or portion thereof) had not been so paid or applied.

4. Representations and Warranties. Guarantor represents and warrants to ESDC as follows:

(a) Guarantor is a duly organized, validly existing corporation and in good standing under the laws of the State of Ohio and has full power, authority and legal right to

execute and deliver this Guaranty and to perform fully and completely all of its obligations hereunder.

(b) The execution, delivery and performance of this Guaranty by Guarantor has been duly authorized by all necessary corporate action, and will not violate any provision of any law, regulation, order or decree of any governmental authority, bureau or agency or of any court binding on Guarantor, or of any contract, undertaking or agreement to which Guarantor is a party or which is binding upon Guarantor or any of its property or assets, and will not result in the imposition or creation of any lien, charge or encumbrance on, or security interest in, any of its property or assets pursuant to the provisions of any of the foregoing.

(c) This Guaranty has been duly executed and delivered by a duly authorized officer of Guarantor and constitutes a legal, valid and binding obligation of Guarantor, enforceable against it in accordance with its terms, subject as to enforcement of remedies to any applicable bankruptcy, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally and doctrines of equity affecting the availability of specific enforcement as a remedy.

(d) All necessary corporate resolutions, consents, licenses, approvals and authorizations of any person or entity required in connection with the execution, delivery and performance of this Guaranty have been duly obtained and are in full force and effect.

(e) There are no conditions precedent to the effectiveness of this Guaranty that have not been either satisfied or waived.

(f) Guarantor has, independently and without reliance upon ESDC and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Guaranty.

(g) As of the date hereof, (i) Guarantor is the holder of (A) 100% percent of the direct or indirect membership interests of BALLC, and (B) 58% of the direct or indirect membership interests of AYDC, and (ii) AYDC is the holder of 100% of the membership interests of Interim Developer.

(h) Guarantor will derive substantial direct and indirect benefit from the transactions contemplated by the Development Agreement and other Project Documentation.

(i) Guarantor has read and understands the terms of the Arena Development Lease, including the terms thereof which permit Onexim (as defined in the Arena Development Lease) to obtain Control (as defined in the Arena Development Lease) of and over the tenant under the Arena Development Lease, whether through a BALLC Control Shift (as defined in the Arena Development Lease), a dilution of Guarantor's direct or indirect interest in the tenant under the Arena Development Lease or otherwise. Guarantor warrants that Guarantor's obligations under this Guaranty shall not in any way be affected or diminished by a BALLC Control Shift (as defined in the Arena Development Lease) or other loss of Control (as defined in the Arena Development Lease) by Guarantor over the business or affairs of tenant under the Arena Development Lease. Guarantor represents, warrants and understands that the foregoing is

a material inducement to ESDC's pre-approval of a BALLC Control Shift in the Arena Development Lease, and absent this representation and warranty by Guarantor ESDC would not have agreed to such pre-approval.

5. Waivers. Guarantor expressly waives, to the fullest extent permitted by applicable law, the following:

(a) notice of acceptance of this Guaranty and of any change in the financial condition of BALLC, AYDC, Interim Developer or any other Person;

(b) promptness, diligence, presentment and demand for payment or performance of any of the Guaranteed Obligations;

(c) protest, notice of dishonor, notice of default and any other notice with respect to any of the Guaranteed Obligations and/or this Guaranty;

(d) any demand for payment under this Guaranty;

(e) the right to interpose all substantive and procedural defenses of the law of guaranty, indemnification and suretyship, except the defenses of prior payment or performance by BALLC, AYDC, Interim Developer or any other Person of the Guaranteed Obligations which Guarantor is called upon to pay or perform under this Guaranty;

(f) all rights and remedies accorded by applicable law to guarantors, or sureties, including, without being limited to, any extension of time conferred by any law now or hereafter in effect;

(g) the right to trial by jury in any action or proceeding of any kind arising on, under, out of, or by reason of or relating, in any way, to this Guaranty or the interpretation, breach or enforcement hereof;

(h) the right to interpose any set-off or counterclaim of any nature or description in any action or proceeding arising hereunder or with respect to this Guaranty;

(i) any right or claim of right to cause a marshalling of the assets of BALLC, AYDC, Interim Developer or any other Person or to cause ESDC to proceed against BALLC, AYDC, Interim Developer or any other Person and/or any collateral or security held by ESDC at any time or in any particular order;

(j) the right to interpose all substantive and procedural defenses relating to or arising out of ESDC's engagement of one or more third party consultants or advisors to provide input and assistance with respect to matters relating to or otherwise involving any of the Guaranteed Obligations, including, without limitation, Merritt & Harris, Inc.; and

(k) any right to interpose all substantive and procedural defenses relating to or arising out of any Equity Interest Disposition or other Transfer or Assignment of any Project Documentation (including, without limitation, the Project Leases), whether in whole or in part,

made, consummated, permitted or otherwise acquiesced to, at any time or from time to time, by Guarantor or any Affiliate of Guarantor, whether or not such Equity Interest Disposition, Assignment or Transfer results in a change of Control (however defined). Guarantor acknowledges that this waiver is a material inducement to ESDC's acceptance of this Guaranty and ESDC's agreement to the Equity Interest Disposition terms included in the Project Documentation. Without this waiver, ESDC would not have accepted this Guaranty or agreed to the Equity Interest Disposition terms included in the Project Documentation.

6. Bankruptcy. Notwithstanding anything to the contrary contained herein, Guarantor's liability shall extend to all amounts or other obligations which constitute part of the Guaranteed Obligations and would be owed by, or required to be performed by, BALLC, AYDC, Interim Developer or any other Person under the Development Agreement or other Project Documentation but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving BALLC, AYDC, Interim Developer or any other Person. Without limiting the foregoing, neither Guarantor's obligation to make payment or otherwise perform in accordance with this Guaranty nor any remedy for the enforcement thereof shall be impaired, modified, changed, stayed, released or limited in any manner by any impairment, modification, change, release, limitation or stay of the liability of BALLC, AYDC, Interim Developer or any other Person or its estate in bankruptcy or any remedy for the enforcement thereof, resulting from the operation of any present or future provision of the Bankruptcy Code or other statute or from the decision of any court interpreting any of the same.

7. Currency of Payments. Any and all amounts required to be paid by Guarantor hereunder shall be paid to ESDC in lawful money of the United States of America and in immediately available funds to ESDC. Guarantor agrees that whenever, at any time, or from time to time, it shall make any payment to ESDC on account of its liability hereunder, it will notify ESDC in writing that such payment is made under this Guaranty for that purpose.

8. Amendments. No amendment or waiver of any provision of this Guaranty nor consent to any departure by Guarantor therefrom shall in any event be effective unless the same shall be in writing and signed by ESDC, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

9. Liquidated Damages; Acceleration Upon a Foreclosure Event.

(a) If BALLC shall fail to construct and complete the BALLC Work, then Section 2 above notwithstanding, Guarantor shall pay to ESDC as liquidated damages an amount equal to the sum of (i) the Liquidated Damages required to be paid on account of such failure, as set forth in the Development Agreement, plus (ii) any costs and expenses, including without limitation, reasonable attorneys' fees and expenses, incurred in enforcing or collecting any or all of the Guaranteed Obligations required to be paid under this Guaranty.

(b) If AYDC or Interim Developer (as applicable) shall fail to construct and complete the Developer Work, then Section 2 above notwithstanding, Guarantor shall pay to ESDC as liquidated damages an amount equal to the sum of (i) the Liquidated Damages required

to be paid on account of such failure, as set forth in the Development Agreement, plus (ii) any costs and expenses, including without limitation, reasonable attorneys' fees and expenses, incurred in enforcing or collecting any or all of the Guaranteed Obligations required to be paid under this Guaranty.

(c) If BALLC, AYDC or Interim Developer (as applicable) shall fail to construct and complete the City Funding Agreement Work, then Section 2 above notwithstanding, Guarantor shall pay to ESDC as liquidated damages an amount equal to the sum of (i) the Liquidated Damages required to be paid on account of such failure, as set forth in the Development Agreement, plus (ii) any costs and expenses, including without limitation, reasonable attorneys' fees and expenses, incurred in enforcing or collecting any or all of the Guaranteed Obligations required to be paid under this Guaranty.

(d) Intentionally omitted

(e) If BALLC, AYDC or Interim Developer shall abandon the Project (as determined in accordance with Section 9.1 of the Development Agreement), then Section 2 above notwithstanding, Guarantor shall pay to ESDC as liquidated damages an amount equal to the sum of (i) the Liquidated Damages required to be paid on account of such failure, as set forth in the Development Agreement, plus (ii) any costs and expenses, including without limitation, reasonable attorneys' fees and expenses, incurred in enforcing or collecting any or all of the Guaranteed Obligations required to be paid under this Guaranty. Upon the indefeasible payment in full of the liquidated damages as a result of such abandonment, the Guarantor's obligations under Sections 2(a) and (b) above shall terminate.

(f) GUARANTOR AGREES THAT (I) THE AMOUNT OF ACTUAL DAMAGES TO BE SUSTAINED BY ESDC UPON THE OCCURRENCE OF ANY OF THE EVENTS DESCRIBED IN SECTIONS 9(A) THROUGH 9(E) ABOVE WOULD BE MATERIAL, BUT INCAPABLE OF PRECISE CALCULATION AND NOT READILY ASCERTAINABLE, (II) THE AMOUNTS SET FORTH IN SECTIONS 9(A) THROUGH 9(E) ARE REASONABLE IN PROPORTION TO THE PROBABLE DAMAGES LIKELY TO BE SUSTAINED BY ESDC, (III) GUARANTOR HAS HAD THE ADVICE OF COUNSEL OF ITS OWN SELECTION WHO REVIEWED THE PROVISION FOR THE PAYMENT OF THE AMOUNTS SET FORTH IN SECTIONS 9(A) THROUGH 9(E) IN CONNECTION WITH THE EXECUTION AND DELIVERY OF THIS GUARANTY, (IV) THE TERMS OF THIS GUARANTY WERE NEGOTIATED AT ARMS LENGTH, AND (V) THE AMOUNTS SET FORTH IN SECTIONS 9(A) THROUGH 9(E) ARE NOT INTENDED TO, AND DO NOT, CONSTITUTE A PENALTY OR PUNITIVE DAMAGES FOR ANY PURPOSES. GUARANTOR'S OBLIGATIONS UNDER SECTIONS 9(A) THROUGH 9(E) CONSTITUTE INDEPENDENT OBLIGATIONS, AND GUARANTOR'S PAYMENT OR OTHER SATISFACTION OF ITS OBLIGATION UNDER ANY OF SECTIONS 9(A) THROUGH 9(E) SHALL NOT AFFECT, SATISFY OR OTHERWISE DIMINISH GUARANTOR'S OBLIGATION WITH RESPECT TO ANY OTHER OBLIGATIONS REMAINING UNDER SECTIONS 9(A) THROUGH 9(E).

(g) If following the occurrence of a Foreclosure Event neither BALLC nor AYDC nor Interim Developer nor any Affiliate of BALLC, AYDC, Interim Developer or Guarantor shall have a leasehold interest in the portion of the Project Site needed to complete the applicable Guaranteed Work (the "**Frustrated Work**"), then from and after the date such Foreclosure Event is consummated the Liquidated Damages payable with respect to the Frustrated Work shall, as between Guarantor and ESDC, automatically and without any notice, presentment, demand, protest or otherwise by ESDC become automatically due and owing in full (the "**Accelerated Damages**") by Guarantor to ESDC. Notwithstanding the foregoing, such Accelerated Damages shall be payable to ESDC by Guarantor if, as and when such amounts would have been payable by BALLC, AYDC, Interim Developer, Guarantor or any of their Affiliates or other Person under the Development Agreement and applicable Project Lease had the applicable Foreclosure Event not occurred and had they failed to perform such Frustrated Work as required by the Development Agreement and applicable Project Lease; provided that the amount payable to ESDC shall, subject to the conditions set forth in this Section 9(g), be reduced (the "**Damages Credit**") to the extent the Frustrated Work is commenced, completed or Substantially Completed by a Person other than BALLC, AYDC, Interim Developer, Guarantor or any of their Affiliates on or prior to the date such Frustrated Work was to have been performed by BALLC, AYDC, Interim Developer, Guarantor or any of their Affiliates under the applicable Project Documentation. The Damages Credit shall be applied against the Accelerated Damages for so long as neither Guarantor nor any Person claiming by or through BALLC, AYDC, Interim Developer, Guarantor or any of their Affiliates at any time challenges or otherwise disputes the validity of the acceleration of the Liquidated Damages as provided in this Section 9(g) or otherwise challenges or disputes the enforceability or collectability of such Accelerated Damages. In the event of any such challenge or other dispute the Damages Credit shall become void *ab initio*.

In connection therewith, Guarantor (A) expressly waives, to the fullest extent permitted by applicable law, any and all waivers, defenses, counter-claims, rights of off-set or other remedies accorded by applicable law to guarantors or sureties with respect to the Accelerated Damages and Frustrated Work, (B) agrees that ESDC (and, to the extent applicable, the City and NYCEDC) shall have no obligation to (I) act or refrain from acting (whether affirmatively or otherwise, whether in good faith or otherwise) with respect to the Frustrated Work or to cause another Person to undertake, commence, complete or Substantially Complete the Foreclosure Work, whether in accordance with the Project Documentation or otherwise, (II) mitigate its damages, (III) provide any assistance (whether monetary or otherwise) to any Person to cause the performance of all or any portion of the Frustrated Work, and (C) agrees that the inability or other unwillingness of ESDC (and, to the extent applicable, the City and NYCEDC) to participate or otherwise cooperate in performing or causing the performance of the Frustrated Work shall not constitute a defense to Guarantor's obligations under this Guaranty.

10. Certified Statement: Financial Statements.

(a) Guarantor agrees that it will, at any time and from time to time, within ten (10) days following request by ESDC, execute and deliver to ESDC a statement certifying that this Guaranty is unmodified and, subject to the provisions in Section 12 hereof, in full force and

effect (or if modified, that the same is in full force and effect as modified and stating such modifications).

(b) From and after the date Guarantor no longer is filing annual and quarterly financial and other required reports and notices pursuant to the Securities Exchange Act of 1934, as amended, Guarantor agrees to furnish ESDC (i) annually, within one hundred twenty (120) days following the end of each fiscal year for the Guarantor, a complete copy of Guarantor's annual audited financial statements prepared in accordance with sound accounting principals by an accounting firm of national standing, and (ii) a certificate signed by a Qualified Certifying Party stating that such annual financial statement presents fairly the financial condition and results of operation of Guarantor.

11. Notices. All notices and other communications which may be or are desired to be given hereunder shall be in writing, mailed via certified mail, sent via overnight courier or personally delivered, and addressed to the following addresses:

If to Guarantor:

Forest City Enterprises, Inc.
50 Public Square, Suite 1360, Terminal Tower
Cleveland, Ohio 44113
Attention: General Counsel

With copies to:

Forest City Ratner Companies, LLC
1 MetroTech Center
Brooklyn, New York 11201
Attn: General Counsel

And:

Fried Frank Harris Shriver & Jacobson LLP
One New York Plaza
New York, NY 10004
Attn: Stephen Lefkowitz, Esq.

If to ESDC:

Empire State Development Corporation
633 Third Avenue
New York, NY 10017-6754
Attn: General Counsel

With a copy to:

Skadden Arps Slate Meagher & Flom LLP
Four Times Square
New York, NY 10036
Attn: Neil L. Rock, Esq.

And:

New York City Economic Development Corporation
110 Williams Street
New York, NY 10038
Attn: President

And:

New York City Economic Development Corporation
110 Williams Street
New York, NY 10038
Attn: General Counsel

And:

New York City Office of Management & Budget
75 Park Place
New York, NY 10007
Attn: General Counsel

And:

New York City Law Department
100 Church Street
New York, NY 10007
Attn: Chief, Economic Development Division

or as to each party at such other address as shall be designated by such party in a written notice to each other party complying as to delivery with the terms of this Section 11. All such notices and other communications shall be effective two (2) business days following the date deposited in the mails if sent by certified mail, or the day following the date sent delivered via overnight courier, or the date personally delivered, addressed as aforesaid.

12. Termination of Guaranty: Successors and Assigns. This Guaranty shall remain in full force and effect until the earliest to occur of (a) the indefeasible payment or performance in full of the Guaranteed Obligations; and (b) the indefeasible payment in full of the Liquidated Damages. Following the occurrence of either event set forth in (a) or (b) in the immediately preceding sentence, upon request by BALLC, AYDC or Interim Developer, ESDC shall promptly provide written confirmation that this Guaranty has been terminated and is of no further force and effect. This Guaranty shall be binding upon Guarantor, its successors and permitted assigns, and shall inure to the benefit of and be enforceable by ESDC and its

successors, transferees and assigns. Wherever in this Guaranty reference is made to ESDC or BALLC, AYDC or Interim Developer, the same shall be deemed to refer also to the then successor or permitted assign of ESDC BALLC, AYDC or Interim Developer. Notwithstanding anything herein to the contrary, Guarantor shall not have the right to assign (whether voluntarily, involuntarily, by operation of law or otherwise) this Guaranty or delegate its obligations under this Guaranty without the prior written consent of ESDC, which may be withheld in ESDC's sole and absolute discretion, and any purported assignment in violation of the foregoing clause shall be null and void *ab initio*.

13. Guarantor's Right to Cure Defaults. Notwithstanding any other provision of this Guaranty, the Development Agreement or other Project Documentation, in the event that an Event of Default occurs and is continuing under the Development Agreement, then ESDC shall give prompt notice of same to Guarantor, which notice shall include a copy of the notice of Default delivered to BALLC, AYDC or Interim Developer. Guarantor shall have the right (but not the obligation) to cure the condition specified in such notice within thirty (30) days receipt of such notice. In the event that Guarantor cures the condition specified in such notice within such period, ESDC shall accept such cure by Guarantor as if BALLC, AYDC or Interim Developer shall have performed same.

14. Governing Law. This Guaranty shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, without reference to any conflicts of laws provisions thereof and without the aid of any rule, canon or custom requiring construction against the draftsman.

15. Jurisdiction. Any and all claims asserted by ESDC against Guarantor arising on, under, out of, or by reason of or relating, in any way, to this Guaranty shall be heard and determined either in the courts of the United States located in New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To this effect, Guarantor agrees as follows:

(a) With respect to any action brought by ESDC against Guarantor in a New York State Court located in New York County, Guarantor waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of *forum non conveniens*; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(b) With respect to any action brought by ESDC against Guarantor in Federal Court located in New York City, Guarantor waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside New York City.

(c) If Guarantor commences any action against ESDC in a court located other than in the City, County and State of New York, upon request of ESDC, Guarantor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, Guarantor shall consent to dismiss such action without prejudice and may

thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

(d) Nothing herein shall limit the right of ESDC to seek recovery against any assets of Guarantor wherever located.

(e) A final judgment in any action or proceeding hereunder shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(f) GUARANTOR HEREBY WAIVES A TRIAL BY JURY OF ANY AND ALL ISSUES ARISING IN ANY ACTION OR PROCEEDING UNDER OR IN CONNECTION WITH THIS GUARANTY, ANY PROVISION THEREOF OR ANY NEGOTIATION THEREWITH.

16. Service of Process. Guarantor irrevocably consents to the service of any and all process in any judicial action or proceeding described in Section 15 either in person, wherever Guarantor may be found, or by registered mail addressed to Guarantor to its address, and in the manner, set forth in Section 11 hereof. Nothing in this Section shall affect the right of ESDC to serve legal process in any other manner permitted by law.

17. Immunities. To the extent that Guarantor has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Guarantor hereby waives such immunity in respect of its obligations under this Guaranty and the matters contemplated herein.

18. Severability. If any term, covenant, condition or provision of this Guaranty or the application thereof to any circumstance or to Guarantor shall be invalid or unenforceable to any extent, the remaining terms, covenants, conditions and provisions of this Guaranty or the application thereof to any circumstances or to Guarantor other than those as to which any term, covenant, condition or provision is held invalid or unenforceable, shall not be affected thereby and each remaining term, covenant, condition and provision of this Guaranty shall be valid and shall be enforceable to the fullest extent permitted by law.

19. Headings. The headings used in this Guaranty are for convenience only and are not to be considered in connection with the interpretation or construction of this Guaranty.

20. Third Party Beneficiaries. Each of the City and NYCEDC shall be express third party beneficiaries of this Guaranty. The City and NYCEDC shall each be entitled to initiate and pursue a claim, action or other proceeding in the City's and NYCEDC's own name (at their sole cost and expense) to enforce and/or collect liquidated damages payable to the City or NYCEDC pursuant to Article 9 hereof. ESDC shall be deemed to have assigned to the City and NYCEDC whatever rights ESDC may have to liquidated damages to the extent payable to the City or NYCEDC under the Development Agreement and this Guaranty; provided that (a) such assignment shall not in any way affect or limit ESDC's right to pursue a claim, action,

proceeding, arbitration, for injunction, damages, or other remedy in respect of any other aspect of this Guaranty and (b) in the event the assignment of rights by ESDC would have the effect of creating any defenses to this Guaranty or otherwise limit its enforceability, such assignment shall be void and of no force and effect. Except for ESDC, the City, NYCEDC and their respective successors and assigns, nothing contained in this Guaranty is intended to be for, or to inure to, the benefit of any Person. No Person other than ESDC, the City and NYCEDC is entitled, as a consequence of any term, condition, covenant or agreement contained in this Guaranty or Guarantor's failure to observe or perform the same, to seek, claim or recover damages or any other legal or equitable remedy against Guarantor.

* * * *

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty as of the date first above written.

GUARANTOR:

FOREST CITY ENTERPRISES, INC., an Ohio corporation

By: Charles A. Ratner

Name: Charles A. Ratner

Title: Chief Executive Officer and President

Exhibit X

Affirmative Action Policy

NON-DISCRIMINATION AND AFFIRMATIVE ACTION REQUIREMENTS

I. Policy

It is the policy of the State of New York and ESDC, to comply with all federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action to ensure that Minority and Women-owned Business Enterprises (M/WBEs), Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds.

- (1) The Developer represents that its equal employment opportunity policy statement incorporates, at a minimum, the policies and practices set forth below:
 - (a) The Developer shall (i) not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, (ii) undertake or continue existing programs of affirmative action to insure that Minority Group Members and women are afforded equal employment opportunities without discrimination, and (iii) make and document its conscientious and active efforts to employ and utilize Minority Group Members and women in its workforce on Contracts. Such action shall be taken with reference to, but not limited to, recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
 - (b) At the request of the AAO, the Developer shall request each employment agency, labor union, or authorized representative of workers with whom it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union, or representative does not unlawfully discriminate, and that such union or representative will affirmatively cooperate in the implementation of the Developer's obligations herein.
- (2) Commencing not more than 30 days after the later of (i) execution of a Contract, or (ii) start of construction work related to that Contract, the Developer shall cause the Contracting Party to submit to the AAO a Monthly Employment Utilization Report (Schedule A-1) of the workforce actually utilized on the Contract, itemized by ethnic background, gender, and Federal Occupational Categories or other appropriate categories specified by the AAO.

The Developer shall include, or cause to be included, the provisions of clauses (1) through (2) in every Contract or purchase order that it enters into in order to fulfill its obligations under this Agreement, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

II. Goals for Minority and Women-Owned Business Enterprise Participation

- (a) The Developer is required to use its best efforts to achieve an MBE participation goal of 20% and a WBE participation goal of 10% of the total dollar value of construction work ("Hard Costs") including demolition performed in furtherance of the Atlantic Yards Land Use Improvement and Civic Project (the "Project"). Hard Costs shall exclude architectural, engineering, legal, design and other consultant costs that are typically not considered to be hard costs as well as permit fees, survey costs and inspection costs (collectively referred to as "Soft Costs"). The Developer shall make a good faith effort to retain MBE's and WBE's for work that constitute Soft Costs.
- (b) The goal for M/WBE participation in the performance of the work is expressed as a percentage of the aggregate Contract price.
- (c) The total dollar value of the work performed by M/WBEs will be determined as: (i) the dollar value of the work subcontracted to M/WBEs; (ii) where the Contracting Party is a joint venture, association, partnership or other similar entity including one or more M/WBEs -- the contract price multiplied by the percentage of the entity's profits/losses which are to accrue to the

M/WBE(s) under the Contracting Party's agreement; or (iii) where the M/WBE is the Contracting Party -- the contract price.

- (d) The Developer shall include, or cause to be included, the provisions of clauses (a) through (c) in every Contract or purchase order that it enters into in order to fulfill its obligations under this Agreement, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

III. Goals for Minority and Female Workforce Participation

- (a) Developer is required to use its best efforts to achieve the overall goal of 35% minority and 10% female workforce (M/FWF) participation in the work performed in furtherance of the construction of the Project, including demolition.
- (b) The M/FWF participation goals are expressed as a percentage equal to the person hours of training and employment of minority or female workers, as the case may be, used by any Contracting Party, divided by the total person hours of training and employment of all workers (including supervisory personnel).
- (c) The required participation for minority and female employment and training must be substantially uniform throughout the work.
- (d) The Developer shall not participate in, nor allow, the transfer of minority or female employees or trainees from employer-to-employer or from project-to-project for the sole purpose of meeting the obligations herein.
- (e) In striving to achieve the goals for M/FWF participation, Developer shall use its best efforts to identify and employ qualified minority and female supervisory personnel and journey persons.
- (f) The non-working hours of trainees or apprentices may not be considered in meeting the goals for M/FWF participation contained herein unless: (i) such trainees or apprentices are employed by Contracting Party during the training period; (ii) the Contracting Party has made a commitment to employ the trainees or apprentices at the completion of their training, subject to the availability of employment opportunities; and (iii) the trainees are trained pursuant to an approved training program.
- (g) The Developer shall include, or cause to be included, the provisions of clauses (a) through (f) in every Contract or purchase order that it enters into in order to fulfill its obligations under the Contract, in such a manner that such provisions will be binding upon each and every Contracting Party with respect to any Contract or Subcontract.

IV. Reporting Requirements

The Developer will permit access to its relevant books, records and accounts, and require access to the relevant books, records and accounts of each Contracting Party, with respect to this Agreement, by the AAO solely for purposes of investigation to ascertain compliance with the provisions herein. The Developer shall periodically file, or cause to be filed, reports, substantially in the format attached hereto as Schedule A-1 and A-2 (MBE/WBE Compliance Report to be filed monthly), with the AAO detailing compliance with the provisions of these non-discrimination and affirmative action clauses. Accuracy of the information contained in the reporting documentation shall be certified, to the best of his or her knowledge, by an appropriate owner or officer of the Contracting Party.

V. Non-Compliance and Sanctions

In the event that the Developer or a Contracting Party violates any of the provisions herein, ESDC may require that the following sanctions and remedies for non-compliance be imposed:

- (a) Within twenty (20) days after the end of each calendar month, the AAO will review the Monthly Employment Utilization Report and the MBE/WBE Compliance Report filed with the AAO to

assess compliance with the established program. If the Contracting Party has failed to file the required monthly reports and/or if in the reasonable judgment of the AAO, an analysis of the reports reveals apparent underutilization as a result of a failure to use best efforts, the AAO may notify the Developer and Contracting Party in writing (the "First Notice"), which notice shall describe the nature and extent of the apparent failure to use best efforts.

- (b) If the AAO's review and analysis of the Contracting Party's reports filed in the month next following the month in which the Contracting Party received the First Notice reveals that there continues to be apparent underutilization as a failure to use best efforts, then the AAO may notify the Contracting Party and Developer in writing (the "Second Notice") which notice shall describe the nature and extent of the continuing failure to use best efforts and will arrange a conference (on ten business days advance notice) which the Contracting Party and Developer must attend, at which the AAO will identify in consultation with the Developer, specific reasonable and practicable corrective measures from among those available to demonstrate best efforts which the Contracting Party will undertake.
- (c) If the AAO's review and analysis of the Contracting Party's reports filed in the month next following the month in which the Contracting Party received the Second Notice reveals continuing apparent underutilization as a result of a failure to use best efforts and if the Contracting Party has not already undertaken the specific corrective measures agreed upon to demonstrate its best efforts, the AAO may notify the Contracting Party and Developer in writing (the "Final Notice"), which notice shall describe the nature and extent of the continuing failure to use best efforts. Upon receipt of the Final Notice, the Contracting Party and Developer shall be required to comply with the following sanctions and remedies for compliance:
- (1) The Contracting Party and Developer shall attend a hearing with the AAO.
 - (2) After any such hearing, and a determination by the AAO that the Contracting Party has failed to comply with any of these provisions (i.e. use best efforts to comply with the provisions herein), and the passage of time in which to remedy such failure has transpired, then ESDC, in its sole discretion, with notice to the Developer, may declare an Event of Default.

ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Affirmative Action

Shall mean the actions to be undertaken by the Developer and any Contracting Party in connection with the construction of the Project to ensure non-discrimination and Minority/Women-owned Business Enterprise and minority/female workforce participation, as set forth in Sections II and III herein, and developed by ESDC.

Affirmative Action Officer ("AAO")

Shall mean ESDC's Affirmative Action Officer or his/her designee, managing the affirmative action program for ESDC.

Contract

Shall mean a written agreement or purchase order instrument, or amendment thereto, executed by or on behalf of a Contracting Party, providing for a total expenditure in excess of \$10,000 for labor, services, supplies, equipment, materials or any combination of the foregoing funded in furtherance of construction of the Project.

Contracting Party

Shall mean (i) if applicable the Developer, or (ii) any contractor, subcontractor, consultant, subconsultant or vendor supplying goods or services, pursuant to a contract or purchase order in excess of \$1,500, in furtherance of the construction of the Project.

Subcontract

Shall mean an agreement providing for a total expenditure in excess of \$1,500 between a **Contracting Party** and any individual or business enterprise, for goods or services rendered in connection with any project or initiative funded in whole or in part with ESDC funds.

Minority Business Enterprise ("MBE")

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more Minority Group Members; (ii) an enterprise in which such minority ownership is real, substantial and continuing; (iii) an enterprise in which such minority ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as a minority business.

Minority Group Member

Shall mean a United States citizen or permanent resident alien who is and can demonstrate membership in one of the following groups: (i) Black persons having origins in any of the Black African racial groups; (ii) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin, regardless of race; (iii) Asian and Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands; and (iv) Native American or Alaskan native persons having origins in any of the original peoples of North America.

Women-owned Business Enterprise ("WBE")

Shall mean a business enterprise, including a sole proprietorship, partnership or corporation that is: (i) at least fifty-one percent (51%) owned by one or more citizens or permanent resident aliens who are women; (ii) an enterprise in which the ownership interest of such women is real, substantial and continuing; (iii) an enterprise in which such women ownership has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; (iv) an enterprise authorized to do business in the State of New York and is independently owned and operated; and (v) an enterprise certified by New York State as woman-owned.

ESDC NON-DISCRIMINATION AND AFFIRMATIVE ACTION DEFINITIONS

Best Efforts - Minority and Women-owned Business Enterprise Participation

Best efforts are not limited to the efforts specified herein, and the role of M/WBE firms are not restricted to that of a subcontractor/subconsultant. Where applicable, M/WBE firms should be considered for roles as prime contractors. Such best efforts shall include at least the following:

- (a) Dividing the contract work into smaller portions in such a manner as to permit subcontracting to the extent that it is economically and technically feasible to do so;
- (b) Actively and affirmatively soliciting bids from qualified M/WBEs, including circulation of solicitations to minority and women's trade associations. The Developer and each Contracting Party shall maintain records detailing the efforts made to provide for meaningful M/WBE participation in the work. Such record keeping must include the names and addresses of all M/WBEs contacted and, if an M/WBE is the low bidder and is not selected for such work or portion thereof, the reasons for such decision;
- (c) Making plans and specifications for prospective work available to M/WBEs in sufficient time for review;
- (d) Utilizing the services and cooperating with those organizations providing technical assistance to the Developer and Contracting Party in connection with potential M/WBE participation on the Contract;
- (e) Utilizing the resources of the AAO to identify New York State certified M/WBE firms for the purpose of soliciting bids and subcontracts; and

- (f) Encouraging the formation of joint ventures, associations, partnerships, or other similar entities, where appropriate, to ensure that the Developer will meet its obligations herein.
- (g) Requiring the Contracting Party to remit payments to M/WBE's in a timely fashion.

Best Efforts - Minority Group Member and Female Workforce Participation

Best efforts to provide for meaningful Minority Group Member and female workforce participation shall include at least the following in connection with the work:

- (a) Ensure and maintain a working environment free of harassment, intimidation, and coercion at the premises. The Developer and Contracting Party shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the obligation to maintain such a working environment, with specific attention to Minority Group Member or female individuals working at the premises;
- (b) State in all solicitations or advertisement for employees that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, sexual orientation, age disability or marital status;
- (c) Send to each labor union or representative of workers with which a collective bargaining agreement or understanding is in place, a notice advising the said labor union or workers representative of commitments under this Section, and post copies of the notice in conspicuous places available to employees and applicants for employment;
- (d) Establish and maintain a current list of Minority Group Member and female recruitment sources and community organizations, and provide written notification to them when employment opportunities are available. Maintain a record of the organizations' responses;
- (e) Maintain a current file of the name, address and telephone number of each Minority Group Member and female applicant and any referrals from a union, recruitment source or community organization, and of the action taken with respect to each individual. If such individual was sent to the union hiring hall for referral and was not referred back by the union or, if referred, was not employed, this shall be documented in writing in the file with the reasons therefor; along with whatever additional actions the Contracting Party may have taken;
- (f) Disseminate the Developer's equal employment opportunity policy by providing notice of the policy to unions and training programs and requesting their cooperation in meeting its Equal Employment Opportunity obligations, by including it in any policy manual and collective bargaining agreement, by publicizing it in the company newspaper, annual report, and other similar items, by specific review of the policy with all management personnel and with all Minority Group Member and female employees at least once a year, and by posting the company Equal Employment Opportunity policy on bulletin boards accessible to all employees at each location where work is performed under this Contract;
- (g) Disseminate the Developer's Equal Employment Opportunity policy externally by including it in any advertising in the news media, specifically including Minority Group Member and female news media, and providing written notification to and discussing the Equal Employment Opportunity policy with any contractor with whom the Developer does or anticipates doing business; and,
- (h) Ensure that all facilities and company activities are non-segregated except that separate or single-user toilets and necessary changing facilities shall be provided to assure privacy between the sexes.

COMPANY NAME: _____
 ADDRESS: _____
 TELEPHONE NUMBER: _____
 FEDERAL ID NO: _____
 CHECK IF NOT FOR PROFIT: _____

PROJECT NAME: _____
 PROJECT LOCATION: _____
 COUNTY: _____ ZIP: _____
 REPORTING PERIOD: Month _____ Year _____

CONTRACTOR START DATE: _____
 ESTIMATED COMPLETION DATE: _____
 PERCENT OF JOB COMPLETED: _____
 (for reporting period)
 CONTRACT N.O.: _____
 CONTRACT AMOUNT: _____

CLASSIFICATION	1. WORKER HOURS OF EMPLOYMENT										2. NUMBER OF WORKERS		3. CONSTRUCTION TRADES					
	1a. ALL WORKER HOURS		1b. BLACK (Not of Hispanic Origin)		1c. HISPANIC		1d. ASIAN or PACIFIC ISLANDER		1e. NATIVE AMERICAN/ALASKAN NATIVE		2a. ALL			2b. MINORITY				
	MALE	FEMALE	TOTAL	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE	FEMALE	MALE		FEMALE	MALE	FEMALE		
Supervisory																		
Journey Worker																		
Apprentice																		
Trainee																		
Subtotal																		
Journey Worker																		
Apprentice																		
Trainee																		
Subtotal																		
Journey Worker																		
Apprentice																		
Trainee																		
Subtotal																		
TOTAL SUPERVISORS																		
TOTAL JOURNEY WORKERS																		
TOTAL APPRENTICES																		
TOTAL TRAINEES																		
GRAND TOTAL																		

CERTIFICATION: I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Monthly Employment Utilization Report and (ii) to the best of my knowledge, information and belief the information contained herein is complete and accurate.

SIGNATURE _____ DATE _____

MONTHLY EMPLOYMENT UTILIZATION REPORT
Instructions for Completion

The Monthly Employment Utilization Report ("MEUR") is to be completed by each subject contractor (both Prime and Sub) and signed by a responsible official of the company. The reports are to be filed by the 5th day of each month during the term of the project, and they shall include the total work-hours for each employee classification in each trade in the covered area for the monthly reporting period. The prime contractor is responsible for submitting its subcontractors report, along with its own. Additional copies of this form may be obtained from Empire State Development ("ESD").

Minority: Includes Blacks, Hispanics, Native Americans, Alaskan Natives, and Asian and Pacific Islanders, both men and women.

1. Worker Hours of Employment (a-e):
 - a) All Worker Hours: The total number of male hours, the total number of female hours, and the total of both male and female hours worked under each classification.
 - b) through e) Minority Worker Hours: The total number of male hours and the total number of female hours worked by each specified group of minority worker in each classification.
2. Number of Workers (a-b):
 - a) All Workers: Total number of males and total number of females working in each classification of each trade in the contractor's aggregate workforce during reporting period.
 - b) Minority Workers: Total number of male minorities and total number of female minorities working in each classification, in each trade in the contractor's aggregate workforce during reporting period.
3. Construction Trade: Only those construction crafts which contractor employs in the covered area.
Construction Trades include: Field Office Staff (Professionals and Office/Clerical), Laborers, Equipment Operators, Surveyors, Truck Drivers, Iron Workers, Carpenters, Cement Masons, Painters, Electricians, Plumbers and Other.

Note: ESD may demand payroll records to substantiate work hours listed on the Monthly Employment Utilization Report, if discrepancies should arise.

OCCUPATIONAL CODES

Officials/Administrators	100
Professionals	110
Technicians	120
Sales Workers	130
Office & Clerical	140
Craft Workers	750
Operatives	160
Laborers	170
Service Workers	780

FORWARD TO:

Empire State Development
Affirmative Action Unit - Laverne Poole
633 Third Avenue
New York, NY 10017 Office: (212) 803-3224 FAX: (212) 803-3223

SCHEDULE A-2

MBE/WBE COMPLIANCE REPORT
CONSTRUCTION
(to be filed monthly)

PROJECT SPONSOR/DEVELOPER: _____ ESD AA REPRESENTATIVE: LAVERNE POOLE

ADDRESS: _____ PROJECT NAME: _____ PERCENT COMPLETE: _____

TELEPHONE: _____ PROJECT START DATE: _____

CONTACT PERSON: _____ ACTUAL COMPLETION: _____

Attach M/WBE contract documentation, i.e. executed contracts, signed purchase orders or canceled checks. This report should be completed by an officer of the reporting company, and forwarded to the ESD AA Representative with the appropriate documentation.

PRIME CONTRACTOR (Name, Address, Contact Person and Phone)	TYPE OF CONTRACT (Trade/Service)	CONTRACT AMOUNT	MBE/WBE SUBCONTRACTOR (Name, Address, Contact Person and Phone)	SCOPE OF SERVICES	MBE/WBE CONTRACT AMOUNT	MBE/WBE AMOUNT PAID TO DATE

CERTIFICATION: I, _____ (Print Name), the _____ (Title), do certify that (i) I have read this Compliance Report and (ii) to the best of my knowledge, information and belief the information contained herein is complete and accurate.

SIGNATURE _____ DATE _____

FORWARD TO:
 Empire State Development
 Affirmative Action Unit
 633 Third Avenue
 New York, NY 10017-8754 Office: (212) 803-3224 FAX: (212) 803-3223

Exhibit Y

Owner's Representative Scope of Work

EXHIBIT Y
ESDC
OWNER'S REPRESENTATIVE CONSTRUCTION OVERSIGHT (ORCO)
SERVICES
FOR ATLANTIC YARDS

1. INTRODUCTION

The Empire State Development Corporation ("ESDC") may retain an owner's representative ("Consultant") to provide Owner's Representative Construction Oversight Services ("ORCO") during the construction of the Project. The Consultant shall oversee on behalf of ESDC construction activities associated with the Project in accordance with the general scope of work set forth below. The responsibilities of the Consultant will be to act as the "eyes and ears" on site during construction of the Project in order to facilitate ESDC's requirement to stay up-to-date on construction activities.

The Consultant shall provide qualified personnel to perform ORCO services as set forth in this Exhibit. Such qualified personnel will be under the direction of the ESDC Project Manager, to monitor and report on all construction activities for the Project to ESDC. The Consultant will provide personnel, in consultation with ESDC, to provide oversight of various construction activities being performed. Tenants under each Project Lease will retain consultants and contractors in connection with the development and construction of the Project, and will identify and introduce persons to Consultant to serve as a point person or persons to such consultants and contractors. It is understood that the Consultant is acting as agent for ESDC only in the capacity as an observer of construction activities, and its actions or statements to AYDC, BALLC and Tenant (as applicable) shall not be deemed as binding on ESDC.

2. CONSULTANT'S GENERAL SCOPE OF WORK

The work of the Consultant and staffing required will vary at different stages of the Project in response to activities and events that occur at any given time. The Consultant will have the ability to provide flexible staffing in response to ESDC requests. The Consultant will be on site as required in order to monitor construction activities and report any concerns to ESDC. The Consultant will become familiar with the requirements of the Project and construction documents and will interface regularly with AYDC, BALLC and Tenant (as applicable) construction personnel and ESDC staff. The Consultant will not guarantee conformance with laws and safety regulations, but will flag any on site conditions that may require attention and/or correction and point them out to ESDC and BALLC, AYDC and the Tenant (as applicable). If applicable, the Consultant will also review on behalf of ESDC all requisitions for State funding and make recommendations to ESDC as to their accuracy.

The Consultant will help ESDC identify, address and investigate risks for protection of the public and construction personnel associated with construction by looking at the following:

- i. Tenant's public safety plan for protection of the public during construction, including provisions for:
 - a. Sidewalk bridges
 - b. Construction fences
 - c. Site ingress and egress
 - d. Material storage
 - e. Truck marshalling
 - f. Protection of adjacent properties
 - g. Protection of streets and sidewalks
- ii. Tenant's site safety plan for job site protection of construction personnel during construction, including providing safe and adequate means and methods, for such items as:
 - h. Construction bridges
 - i. Scaffolding
 - j. Rigging
 - k. Crane locations and support
 - l. Storage and delivery of materials
 - m. Ingress and egress
 - n. Waste disposal
- iii. Conformance with all applicable regulations, including OSHA, Fire Dept, NYC Building Code, DEP, Labor Dept, etc.
- iv. Other risks on and off site in connection with work on the Project. The Consultant will monitor conformance with the MGPP and other Project Documentation. The Consultant will notify AYDC, BALLC, Tenant's supervisors, ESDC, and relevant governmental agencies if it becomes aware of a problem that is not being remedied in an expeditious fashion. Other specific duties in addition to those specified above include:
 - a. Become knowledgeable of the MGPP and assist in monitoring compliance with the requirements in the Development Agreement and other applicable Project Documentation.
 - b. If applicable, review and make recommendations to ESDC with respect to requisitions pursuant to the ESDC Funding Agreement, including participation in requisition meetings, and advise ESDC on the correctness of the draft and review the any final requisition.
 - c. Provide document control: All Project Documentation required to be maintained by or provided to ESDC shall be cataloged and filed by the Consultant.
 - d. Prepare and issue reports in formats acceptable to ESDC: Monthly reports confirming Tenant compliance with the public safety plan and site safety plan; weekly reports on Project activities; daily reports on situations deemed critical by ESDC or Consultant.
 - e. Attend and provide minutes at ESDC/Tenant Meetings.
 - f. Review and comment on the Tenant "Look Ahead Report".
 - g. Monitor construction schedule.

- h. Compile documentation provided by Tenant detailing employment at the site.
- i. Attend ESDC coordination meetings.
- j. Communicate and coordinate with the ORMM to avoid duplication of efforts and insure that all issues are addressed.
- k. Interface with ESDC's Ombudsman.
- l. Attend construction meetings on a regular basis and report to ESDC on important issues.

3. FIELD OFFICE

ESDC through Tenant (or related entity) will be provided a field office space, furniture, file cabinets, telephone and computer with appropriate access in an office located within 5 city blocks of the construction site.

Exhibit Z

DOB Agreement

MEMORANDUM OF UNDERSTANDING TO ESTABLISH A PROCEDURE FOR
OBTAINING BUILDING DEPARTMENT APPROVALS FOR PROJECTS
CONSTRUCTED BY THE NEW YORK STATE URBAN DEVELOPMENT
CORPORATION.

This Memorandum sets forth certain understandings between the New York City Department of Buildings ("DOB") and the New York State Urban Development Corporation ("UDC") (collectively, "the Parties"), with respect to the issuance of building permits and certificates of occupancy after the date of this memorandum and in relation to UDC authority to override the New York City Zoning Resolution.

The Parties hereto agree as follows:

1. The Parties hereby acknowledge that upon the filing of an application for a building permit in connection with a UDC project, the DOB will accept applications and review them for compliance with the New York City Building Code ("Building Code") and the folder will be clearly marked that the documents contained therein relate to a UDC project.
2. The Parties acknowledge that pursuant to Section 16 of the New York State Urban Development Corporation Act, UDC has the authority to override compliance with the New York City Zoning Resolution (the "Zoning Resolution") for projects for which the UDC Directors find that compliance with the Zoning Resolution is not feasible or practicable.

3. UDC hereby agrees that following the affirmation by the UDC Directors of a resolution overriding zoning in connection with a particular project, UDC shall furnish the Commissioner of DOB with a letter (the "Zoning Letter") confirming such affirmation, describing the nature of the zoning override and citing the provisions of the Zoning Resolution which are the subject of the zoning override. The Commissioner shall cause a copy of the Zoning Letter to be delivered to the appropriate borough office of DOB.
4. Upon its receipt of the Zoning Letter, DOB shall file such letter for the project described and shall retain the Zoning Letter therein, together with all further plans, applications, correspondence and documentation it receives in connection with such project.
5. With respect to any UDC project, DOB hereby agrees that it will examine the application for a building permit and accompanying plans submitted therewith in accordance with the Building Code. If such application meets all the requirements of the Building Code, DOB shall approve the issuance of a building permit.

6. In the event that only a portion of the project is the subject of a zoning override, as set forth in the Zoning Letter, then DOB hereby agrees that it will examine the application for a building permit and accompanying plans submitted therewith in accordance with the Zoning Resolution provisions applicable, if any, to the project.

7. DOB hereby agrees that it shall accept applications for certificates of occupancy for UDC projects, and if such project meets the requirements of the Building Code, except for any zoning overrides pursuant to this agreement, DOB shall issue a certificate of occupancy. The certificate of occupancy shall clearly state that the applicable zoning is that approved by UDC, note any provisions of the Zoning Resolution with which the project fails to conform as set forth in the Zoning Letter, and shall enumerate any restrictions or limitations that may arise as a result of any zoning override. A copy of the Zoning Letter shall be attached to the certificate of occupancy.

8. All filing, permit and other fees shall be paid to DOB notwithstanding that properties may be owned by UDC at the time of filing; unless said fees are exempt pursuant to Section 26-210 of the New York City Administrative Code.

The foregoing reflects the understanding of the parties with respect to the above described matter.

ACCEPTED AND AGREED:
7/15/92

NEW YORK CITY DEPARTMENT
OF BUILDINGS

By: 

NEW YORK STATE URBAN
DEVELOPMENT CORPORATION

By: 

Exhibit AA

Project Design Review Procedures

Exhibit AA
Design Guideline Review Procedures

Tenants under Development Leases shall provide the following submittals for Project Buildings to ESDC in accordance with the following procedures:

1. Tenant shall submit two sets of the following materials to ESDC Department of Design and Construction to confirm compliance with the Brooklyn Arena & Atlantic Yards Design Guidelines dated November, 2006 (the "Design Guidelines") annexed to the General Project Plan (GPP) (each such submission, a "Submittal") at the following design phases: Schematic; Design Development and Construction Documents.
 - Signed and sealed site survey showing existing conditions (at Schematic Phase only)
 - Plans, sections, and elevation drawings containing such information as may be necessary to (a) document how the applicable Design Guidelines requirements are achieved for the building being reviewed for Design Guideline Compliance, and (b) demonstrate that the compliance with the Design Guidelines applicable to the other buildings is not precluded by the building under review (the "Design Guideline Drawings"). Such information shall include, without limitation, spot elevations at the top of street walls and setbacks and curb elevations at building entrances as appropriate to demonstrate compliance.
 - Specific drawings and /or notations indicating areas, if any, where the plans for the Project Building deviate from the Design Guidelines
 - Details on plans for community facilities and open space, as applicable.
 - A signed and sealed letter of certification from the Architect of Record for a building stating that the Design Guideline Drawings are in compliance with the Design Guidelines.
 - Such additional information as is reasonably requested by ESDC.
2. The Construction Document Submittal for any building shall be delivered to ESDC for approval not less than thirty (30) days prior to the filing of an application for a permit at the New York City Department of Buildings (the "Buildings Department"), provided that this provision shall not be construed as preventing Tenant from opening files for new buildings or making other applications to the Buildings Department. One set of signed and sealed final drawings that have been approved for design compliance will be submitted to ESDC in a format to be determined by ESDC.

3. Within fifteen (15) business days of receipt of a Submittal, ESDC shall review same and request any additional information from Tenant as ESDC may reasonably require to confirm compliance with the Design Guidelines. Tenant and ESDC shall make diligent efforts, including scheduling such meetings as may be required, in order to promptly respond to any questions and address any outstanding issues. Upon the resolution of such issues, ESDC shall notify Tenant that the Submittal is approved as being in compliance with the Design Guidelines.
4. In the event that ESDC does not respond to a Submittal in accordance with the deadlines and procedures set forth in Paragraph 3 hereof, such Submittal shall be deemed approved, provided that the letter of certification from the Architect of Record has been received and the Tenant's transmittal of a Submittal shall contain the following notice in bold and capitalized type:

**ESDC'S CONSENT TO THIS SUBMITTAL SHALL BE DEEMED GIVEN
IF IT FAILS TO RESPOND WITHIN FIFTEEN (15) BUSINESS DAYS
FROM THE DATE OF RECEIPT OF SUBMITTAL.**

5. Any disputes with respect to the compliance of a Submittal with the Design Guidelines shall be subject to arbitration as provided in the applicable Development Lease.
6. ESDC shall cooperate in all respects with Tenant, and at Tenant's sole cost and expense shall execute and deliver such documents as may be required by DOB or other Governmental Authorities indicating ESDC's exercise of its authority to override the New York City Zoning Resolution and any other information required in connection with Tenant's applications for permits or other approvals from DOB or any other Governmental Authority.
7. In the event that after ESDC's approval of a Submittal, the Design Guideline Drawings or any other materials contained in such Submittal are altered in a manner that would cause the building, if built in accordance with such revisions, to no longer comply with the Design Guidelines or are materially different from the plans reviewed by ESDC as set forth herein, Tenant shall submit an updated Submittal for ESDC review in accordance with the procedures set forth in paragraphs (1), (3) and (4) hereof.
8. Nothing herein shall be construed as requiring the approval of ESDC for Tenant's performance of any Preparation Work as defined in a Development Lease or Interim Lease.
9. ESDC's review and approval of a Submittal shall not be construed as a representation by ESDC that any plans reviewed by ESDC comply with any applicable legal requirements.
10. Upon Substantial Completion of a Project Building, the Tenant shall submit a certificate by the Tenant or Tenant's Architect of Record certifying that the Project Building has been constructed in compliance with the Submittals previously approved by ESDC.

11. Notwithstanding anything to the contrary herein, to the extent there is a conflict between any of the terms in this Exhibit and the corresponding terms of a Project Lease, the applicable terms of the Project Lease shall govern.

Schedule 1

Conveyance Price

"Conveyance Price" means:

(a) if at the time ESDC exercises the Termination Option, the Unimproved Parcel or AYDC's, Interim Developer's or its respective successors' or assigns' leasehold interest therein is not encumbered by a Recognized Mortgage (as defined in the applicable Project Lease), then the Conveyance Price will be equal the sum of (i) actual cost paid by AYDC or Interim Developer (but not its successors, assigns or transferees) to purchase the land or air space comprising such Unimproved Parcel, plus (ii) the actual cost paid by AYDC or Interim Developer (but not its successors, assigns or transferees) for improvements made to or on such Unimproved Parcel (which costs shall, to the extent allocable to more than one parcel comprising the Project Site, be allocated in an equitable and non-discriminatory manner reasonably acceptable to ESDC) plus (iii) AYDC's, Interim Developer's or its respective successors and assigns actual and reasonable carrying costs (e.g., real estate taxes, maintenance costs, etc.) with respect such Unimproved Parcel (as such sum is, without duplication, Adjusted for Inflation (as defined in the applicable Project Lease), the "Net Property Cost"); provided that Net Property Cost shall not include any amounts paid or payable on account of debt service (including, payments of interest or principal) or any fees, costs and expenses associated with the general overhead of AYDC's, Interim Developer's, its respective Affiliates or their respective successors and assigns;

(b) if at the time ESDC exercises the Termination Option, the Unimproved Parcel or AYDC's Interim Developer's or its respective successors' or assigns' leasehold interest therein is encumbered by a Recognized Mortgage (as defined in the applicable Project Lease) having an aggregate principal balance equal to or less than the Net Property Cost, then the Conveyance Price would equal the Net Property Cost; and

(c) if at the time ESDC exercises the Termination Option, the Unimproved Parcel or AYDC's, Interim Developer's or its respective successors' or assigns' leasehold interest therein is encumbered by a Recognized Mortgage (as defined in the applicable Project Lease) having an aggregate principal balance which is greater than the Net Property Cost, then the Conveyance Price would equal the lesser of (i) the amount required to pay the principal balance of the Recognized Mortgage allocable to such Unimproved Parcel (which principal balance shall be allocated in an equitable and non-discriminatory manner reasonably acceptable to ESDC) with all accrued but unpaid interest on such allocable principal balance, together with all actual and reasonable costs related to defeasance or pre-payment of such principal balance; or (ii) 75% of the fair market value of the Unimproved Parcel (determined as of the Conveyance Date and as encumbered by the obligations and restrictions contained in, and the rights and benefits granted by, the MGPP).

Schedule 2

Site Litigation

Site litigation is set forth in the section titled "Litigation" on pages 115-117 of the Official Statement of the Brooklyn Arena Local Development Corporation PILOT Revenue Bonds, Series 2009 (Barclays Center Project), dated December __, 2009.

Schedule 3

Liquidated Damages Schedule

**SCHEDULE 3
LIQUIDATED DAMAGES**

When Liquidated Damages are payable under the Development Agreement to which this Schedule 3 is attached, then the aggregate amount payable shall be the sum of (a) the Liquidated Damages payable to ESDC under Section I of this Schedule 3, if any, and (b) the Liquidated Damages payable to the City under Section II of this Schedule 3, if any.

Unless the context clearly indicates to the contrary, all references to Sections in this Schedule 3 shall refer to the corresponding Sections in the Development Agreement to which this Schedule 3 is attached. All capitalized terms used but not otherwise defined in this Schedule 3 shall have the meaning given to such terms in the Development Agreement.

I. Liquidated Damages Payable To ESDC. All amounts payable under Sections I, Paragraphs 1, 2 4 and 6 shall, if payable, be paid with Interest (as defined in the State Funding Agreement) commencing as of December 23, 2009.

1. On account of an Event of Default under Sections 17.1(n), (o) or (p):
 - (a) BALLC shall pay Seventy Five Million Dollars (\$75,000,000.00); and
 - (b) Interim Developer shall pay Twenty Five Million Dollars (\$25,000,000.00).

2. On account of an Event of Default under Section 17.1(b):
 - (a) BALLC shall pay Seventy Five Million Dollars (\$75,000,000.00).

3. On account of an Event of Default under Section 17.1(d):
 - (a) If ESDC shall have indefeasibly received in full all Liquidated Damages payable as a result of an Event of Default under Section 17.1(b), then if following such payment an Event of Default under Section 17.1(d) occurs, **no additional Liquidated Damages** shall be payable by BALLC to ESDC on account of such Event of Default under Section 17.1(d).

 - (b) In all other cases, BALLC shall pay the following:

"Year 0" means February 28, 2008, with each anniversary of such date thereafter being the first day of the calendar year numbered accordingly (i.e., February 28, 2008 through March 1, 2009 shall be deemed to be "Year 0", etc.).

"Arena Multiplier" means (a) 2% as of the Outside Arena Substantial Completion Date, (b) 3% as of the first anniversary of the Outside Arena Substantial Completion Date, (c) 4% as of the second anniversary of the Outside Arena Substantial Completion Date, (d) 6% as of the third anniversary of the Outside Arena Substantial Completion Date, (e) 7% as

of the fourth anniversary of the Outside Arena Substantial Completion Date, (f) 8% as of the fifth anniversary of the Outside Arena Substantial Completion Date, (g) 16% as of the sixth anniversary of the Outside Arena Substantial Completion Date, (h) 17% as of the seventh anniversary of the Outside Arena Substantial Completion Date, (i) 18% as of the eighth anniversary, and (j) 19% as of the ninth anniversary of the Outside Arena Substantial Completion Date.

Commencing on the Outside Arena Substantial Completion Date and continuing until construction of the Arena has been Substantially Completed, Liquidated Damages shall be calculated and payable by BALLC on such Outside Arena Substantial Completion Date and on each of the subsequent nine (9) anniversaries of the Outside Arena Substantial Completion Date upon which construction of the Arena has not yet been Substantially Completed, in an amount equal to the product of (a) the Arena Multiplier, and (b) the amount applicable to the year of the Outside Arena Substantial Completion Date as set forth on Column B of Schedule A below (e.g., if Year 0 were to begin on August 1, 2007 and the Outside Arena Substantial Completion Date were to occur on September 1, 2013, then the Outside Arena Substantial Completion Date would occur in Year 6 and the applicable amount would be the amount in Schedule A corresponding to Years 4-6).

If the Substantial Completion of the Arena does not occur by the twenty-fifth (25th) anniversary of the Project Effective Date, Liquidated Damages due and payable by BALLC shall equal the Liquidated Damages applicable to Year 25 as set forth in Column B of Schedule A below. If the Arena is Substantially Completed between an anniversary of the Outside Arena Substantial Completion Date on which it was not Substantially Completed and the next anniversary (other than the anniversary in Year 25), the amount owed on such next anniversary in respect of the preceding year shall be adjusted pro rata (e.g., if the Arena is Substantially Completed six months after the previous anniversary, then Liquidated Damages due on the following anniversary shall equal 6/12 of the amount otherwise applicable to such following anniversary).

Schedule A – Liquidated Damages For Arena	
Year	Column B
Years 1-3	\$69,000,000
Years 4-6	\$96,000,000
Years 7-9	\$115,000,000
Years 10-12	\$137,000,000
Years 13-15	\$165,000,000

Schedule A – Liquidated Damages For Arena	
Years 16-18	\$198,000,000
Years 19-21	\$237,000,000
Years 22-24	\$285,000,000
Year 25	\$341,000,000

Example:

Assuming that Year 0 began on August 15, 2007 and the Project Effective Date occurs on November 10, 2014, then the Outside Arena Substantial Completion Date would occur on November 10, 2020 (subject to Unavoidable Delays), which would be during Year 13. If Substantial Completion of the Arena were then to occur on the day after the anniversary of the Outside Arena Substantial Completion Date in 2028 (e.g., November 11, 2028), then the Substantial Completion of the Arena would be deemed to be 8 years late. Upon the Outside Arena Substantial Completion Date and each of the first eight anniversaries thereof, Liquidated Damages would be payable, with the applicable Arena Multipliers to be applied to the amount in Column B of Schedule A corresponding to Year 13 (or the year in which the Outside Arena Commencement Date occurred), as follows:

Arena Late Example				
	Arena Multiplier	Column B Amount		Annual Amount Due
Year 13 (Outside Date)	2%	\$ 165,000,000	\$	3,300,000
Year 14 (1st anniversary)	3%	165,000,000		4,950,000
Year 15 (2nd anniversary)	4%	165,000,000		6,600,000
Year 16 (3rd anniversary)	6%	165,000,000		9,900,000
Year 17 (4th anniversary)	7%	165,000,000		11,550,000
Year 18 (5th anniversary)	8%	165,000,000		13,200,000
Year 19 (6th anniversary)	16%	165,000,000		26,400,000
Year 20 (7th anniversary)	17%	165,000,000		28,050,000
Year 21 (8th anniversary)	18%	165,000,000		29,700,000
Total Due upon Substantial Completion:				\$ 133,650,000

4. On account of an Event of Default under Section 17.1(i):

- (a) Interim Developer shall pay \$5,000,000 per Project Building over a twelve (12) month period as follows, with the first payment due thirty (30) days following the first monthly anniversary of the date on which the Commencement of Construction of such Project Building was required (and each subsequent payment shall be payable every thirty (30) days thereafter):

Month Late	Liquidated Damages Owed
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Month Late	Liquidated Damages Owed
1	\$100,000
2	\$100,000
3	\$200,000
4	\$200,000
5	\$300,000
6	\$300,000
7	\$400,000
8	\$400,000
9	\$500,000
10	\$500,000
11	\$1,000,000
12	\$1,000,000
Total	\$5,000,000

If Interim Developer causes the Commencement of Construction on a Project Building prior to the payment of the full \$5,000,000 Liquidated Damages, then the last monthly payment obligation shall be pro rated based on the percentage of days during such month that Interim Developer had failed to cause the Commencement of Construction. Upon indefeasible payment of such amounts, no further payments shall be due from Interim Developer.

5. On account of an Event of Default under Section 17.1(j):

- (a) Interim Developer shall pay \$10,000,000 over a twelve (12) month period as follows, with the first payment due thirty (30) days following the date on which such Project Building was required to be commenced (and each subsequent payment due thirty (30) days after the subsequent monthly anniversary such building continues to be late):

Month Late	Liquidated Damages Owed
1	\$200,000
2	\$200,000
3	\$400,000
4	\$400,000
5	\$600,000
6	\$600,000

Month Late	Liquidated Damages Owed
7	\$800,000
8	\$800,000
9	\$1,000,000
10	\$1,000,000
11	\$2,000,000
12	\$2,000,000
Total	\$10,000,000

If Interim Developer causes the Commencement of Construction on Project Buildings prior to the payment of the full \$10,000,000 Liquidated Damages, then the last monthly payment obligation shall be pro rated by the percentage of days during such month that Interim Developer had failed to cause the Commencement of Construction. Upon indefeasible payment of such amounts, no further payments shall be due from Interim Developer.

6. On account of an Event of Default under Section 17.1(k):

- (a) Interim Developer shall pay \$10,000,000 over a twelve (12) month period as follows, with the first payment due thirty (30) days following the date on which the Urban Room was required to be Substantially Completed (and each subsequent payment shall be due thirty (30) days thereafter):

Month Late	Liquidated Damages Owed
1	\$200,000
2	\$200,000
3	\$400,000
4	\$400,000
5	\$600,000
6	\$600,000
7	\$800,000
8	\$800,000
9	\$1,000,000
10	\$1,000,000
11	\$2,000,000
12	\$2,000,000
Total	\$10,000,000

In the event that Interim Developer causes the Urban Room to be completed on or prior to the payment of the full \$10,000,000 Liquidated Damages, the last monthly payment obligation shall be pro rated by the percentage of days during such month that Interim Developer had failed to cause the construction of the Urban Room. Upon indefeasible payment of such amounts, no further payments shall be due from Interim Developer.

II. Liquidated Damages Payable To NYCEDC/the City:

For purposes of the calculations set forth in Sections A and B below and Schedules A, B, C and D below, "Year 0" means February 22, 2008, with each anniversary of such date thereafter being the first day of a calendar year numbered accordingly (e.g., February 22, 2008 through February 21, 2009 shall be deemed to be "Year 1", etc.).

A. Liquidated Damages if Project is Not Abandoned but Substantial Completion Is Late

For purposes of the calculations set forth in this Section A, all Disbursements (as defined in the City Funding Agreement) are assumed to be made by September 12, 2007, regardless of when they are actually made, and Schedule A shall not be adjusted based on the actual date of Disbursement.

Arena Late: If the Arena is not Substantially Completed by the Arena Outside Date for any reason other than the occurrence of an Unavoidable Delay, then commencing on the Arena Outside Date and continuing until Substantial Completion of the Arena, Liquidated Damages shall be calculated on such anniversary and on each of the subsequent nine anniversaries of the Arena Outside Date upon which the Arena remains uncompleted, in an amount equal to the product of (a) 2% as of the Arena Outside Date, 3% as of the first anniversary of the Arena Outside Date, 4% as of the second anniversary of the Arena Outside Date, 6% as of the third anniversary, 7% as of the fourth anniversary, 8% as of the fifth anniversary, 16% as of the sixth anniversary, 17% as of the seventh anniversary, 18% as of the eighth anniversary, and 19% as of the ninth anniversary (each, an "Arena Multiplier"), and (b) the amount applicable to the year of such Arena Outside Date as set forth in Column B of Schedule A (i.e., if, for example, Year 0 were to begin on August 1, 2007 and the Arena Outside Date were to occur on September 1, 2013, then, the Arena Outside Date would occur in Year 6 and the applicable amount would be the amount in Column B of Schedule A corresponding to Years 4-6). If the Arena is not Substantially Completed by the Arena Outside Date for any reason other than the occurrence of an Unavoidable Delay, BALLC shall deliver an irrevocable letter of credit (the "Arena LOC"), providing for partial and multiple draws, to an escrow agent reasonably acceptable to NYCEDC and BALLC (the "Escrow Agent"), in an amount equal to Liquidated Damages calculated as if the Arena were Substantially Completed on the second anniversary of the Arena Outside Date (i.e., the cumulative sum of the Liquidated Damages owed on the Arena Outside Date (Arena Multiplier of 2%), the first anniversary thereof (Arena Multiplier of 3%), and the second anniversary thereof (Arena Multiplier of 4%)). Thereafter, if the Arena is Substantially Completed on or prior to the second anniversary of the Arena Outside Date, the Escrow Agent shall draw upon the Arena LOC for the Liquidated Damages due on such Substantial Completion

Date and disburse such Liquidated Damages to NYCEDC, and following such draw, the Arena LOC shall be canceled and returned to BALLC. If the Arena is Substantially Completed after the second anniversary of the Arena Outside Date and prior to the third anniversary of the Arena Outside Date, (a) the Escrow Agent shall draw the entire amount of the Arena LOC and disburse same to NYCEDC, and (b) all additional Liquidated Damages payable hereunder (*i.e.*, the cumulative amounts due and payable hereunder as of the Substantial Completion Date less the amount already paid to NYCEDC by the Escrow Agent pursuant to the Arena LOC) shall be paid by BALLC on such Substantial Completion Date. If the Arena is not Substantially Completed prior to the third anniversary of the Arena Outside Date, (a) the Escrow Agent shall draw the entire amount of the Arena LOC on such third anniversary and disburse same to NYCEDC and (b) the Liquidated Damages due for the third anniversary of the Arena Outside Date (the "**Arena Third Anniversary Payment**") shall be payable by BALLC on such third anniversary. Thereafter, Liquidated Damages payable upon Substantial Completion (*i.e.*, the cumulative amounts due and payable hereunder as of the Arena Outside Date and any applicable anniversary thereafter) shall be paid by BALLC upon the earlier of Arena Substantial Completion or ten years from the Arena Outside Date, after deducting any amounts already paid to NYCEDC pursuant to (i) the Arena LOC and (ii) the Arena Third Anniversary Payment. If the Substantial Completion of the Arena does not occur by the anniversary of the Arena Outside Date in Year 25, Liquidated Damages due and payable as of such anniversary shall equal the Liquidated Damages applicable to Year 25 as set forth in Column B of Schedule A, less the amount already paid to NYCEDC pursuant to (i) the Arena LOC and (ii) the Arena Third Anniversary Payment. Notwithstanding anything to the contrary contained herein, if the Arena is Substantially Completed between an anniversary of the Arena Outside Date on which it was not completed and the next anniversary (other than the anniversary in Year 25), the amount owed on such next anniversary in respect of the preceding year shall be adjusted pro rata (*e.g.*, if the Arena is Substantially Completed six months after the previous anniversary, then Liquidated Damages due on the following anniversary shall equal 6/12 of the amount otherwise applicable to such following anniversary).

Example:

Assuming that Year 0 begins on August 15, 2007 and the Effective Date occurs on November 10, 2014, then the Arena Outside Date would occur on November 10, 2020, which would be during Year 13. So, upon the Arena Outside Date, the Arena LOC equal to the first 3 payments of Liquidated Damages would be delivered with the applicable Arena Multipliers (*i.e.*, the cumulative sum of the Liquidated Damages owed on the Arena Outside Date (2%), the first anniversary (3%), and the second anniversary (4%)) to be applied to the amount in Column B of Schedule A corresponding to Year 13. If Substantial Completion has not yet occurred by the third anniversary of the Arena Outside Date, (i) the Arena LOC would be drawn down by Escrow Agent and paid to NYCEDC as Liquidated Damages, and (ii) the BALLC would make the Arena Third Anniversary Payment on the third anniversary of the Arena Outside Date, *i.e.* November 10, 2023, to NYCEDC. If Substantial Completion of the Arena were then to occur on the day after the anniversary of the Arena Outside Date in 2028 (*i.e.*, November 11, 2028), then the Arena would be deemed to be 8 years late. Upon the date of Substantial Completion, 8 years of Liquidated Damages, less the amount paid to NYCEDC pursuant to (i) the Arena LOC and (ii) the Arena Third Anniversary Payment, would be payable, with the applicable Arena Multipliers

to be applied to the amount in Column B of Schedule A corresponding to Year 13 (or the year in which the Arena Outside Date occurred), as follows:

Arena Late Example			
	Arena Multiplier	Column B Amount	Annual Amount Due
Year 13 (Outside Date)	2%	\$ 165,000,000	\$ 3,300,000
Year 14 (1st anniversary)	3%	165,000,000	4,950,000
Year 15 (2nd anniversary)	4%	165,000,000	6,600,000
ARENA LOC delivered on Arena Outside Date			14,850,000
Year 16 (3rd anniversary)	6%	165,000,000	9,900,000
ARENA THIRD ANNIVERSARY PAYMENT			9,900,000
Year 17 (4th anniversary)	7%	165,000,000	11,550,000
Year 18 (5th anniversary)	8%	165,000,000	13,200,000
Year 19 (6th anniversary)	16%	165,000,000	26,400,000
Year 20 (7th anniversary)	17%	165,000,000	28,050,000
Year 21 (8th anniversary)	18%	165,000,000	29,700,000
Total Due upon Substantial Completion			\$ 133,650,000
Total Less Arena LOC & Arena Third Anniversary Payment (if applicable)			\$ 108,900,000

Phase I Late: If Phase I is not Substantially Completed by the Phase I Outside Date for any reason other than the occurrence of an Unavoidable Delay, commencing on the Phase I Outside Date and continuing until Substantial Completion of Phase I, Liquidated Damages shall be calculated on such anniversary and on each of the subsequent nine anniversaries of the Phase I Outside Date upon which Phase I remains uncompleted, in an amount equal to the product of (a) 2% as of the Phase I Outside Date, 3% as of the first anniversary of the Phase I Outside Date, 4% as of the second anniversary of the Phase I Outside Date, 6% as of the third anniversary, 7% as of the fourth anniversary, 8% as of the fifth anniversary, 16% as of the sixth anniversary, 17% as of the seventh anniversary, 18% as of the eighth anniversary, 19% as of the ninth anniversary (each, a "Phase I Base Multiplier"), and (b) the Phase I Completion Multiplier as of the Phase I Outside Date and (c) the amount applicable to the year of such Phase I Outside Date as set forth in Column C of Schedule A (i.e., if, for example, Year 0 were to begin on September 1, 2007 and the Phase I Outside Date were to occur on December 20, 2020, then the Phase I Outside Date would occur in Year 13 and the applicable amount would be the amount in Column C of Schedule A corresponding to Years 13-15). If Phase I is not Substantially Completed by the Phase I Outside Date for any reason other than the failure of NYCEDC to disburse the City Funding as provided herein, or the occurrence of an Unavoidable Delay, AYDC shall deliver an irrevocable letter of credit (the "Phase I LOC"), providing for partial and multiple draws, to an escrow agent reasonably acceptable to NYCEDC and the AYDC (the "Escrow Agent"), in an amount equal to Liquidated Damages calculated as if Phase I were Substantially Completed on the second anniversary of the Phase I Outside Date (taking into account the applicable Phase I Completion Account Multiplier), i.e., the cumulative sum of the Liquidated Damages owed on the Phase I Outside Date (Phase I Base Multiplier of 2%), the first anniversary thereof (Phase I Base Multiplier of 3%), and the second anniversary thereof (Phase I Base Multiplier of 4%). Thereafter, if Phase I is Substantially Completed on or prior to the second anniversary of the Phase I Outside Date, the Escrow Agent shall draw upon the Phase I LOC for the Liquidated Damages due on such Substantial Completion Date and disburse such Liquidated Damages to NYCEDC, and following such draw, the Phase I LOC shall be canceled and returned to AYDC. If Phase I is Substantially Completed after the second anniversary of the Phase I Outside Date and prior to the third anniversary of the Phase I Outside Date, (a) the Escrow Agent shall draw the entire amount of the Phase I LOC and disburse same to NYCEDC, and (b) all additional

Liquidated Damages payable hereunder (i.e., the cumulative amounts due and payable hereunder as of the Substantial Completion Date less the amount already paid to NYCEDC by the Escrow Agent pursuant to the Phase I LOC) shall be paid by AYDC on such Substantial Completion Date. If Phase I is not Substantially Completed prior to the third anniversary of the Phase I Outside Date, (a) the Escrow Agent shall draw the entire amount of the Phase I LOC on such third anniversary and disburse same to NYCEDC and (b) the Liquidated Damages due for the third anniversary of the Phase I Outside Date (the "**Phase I Third Anniversary Payment**") shall be payable by AYDC on such third anniversary. Thereafter, Liquidated Damages payable upon Substantial Completion (i.e., the cumulative amounts due and payable hereunder as of the Phase I Outside Date and any applicable anniversary thereafter) shall be paid by AYDC upon the earlier of Phase I Substantial Completion or ten years from the Phase I Outside Date, after deducting any amounts already paid to NYCEDC pursuant to (i) the Phase I LOC and (ii) the Phase I Third Anniversary Payment. If the Substantial Completion of Phase I does not occur by the anniversary of the Phase I Outside Date in Year 25, Liquidated Damages due and payable as of such anniversary shall equal the Liquidated Damages applicable to Year 25 as set forth in Column C of Schedule A, less the amount paid to NYCEDC pursuant to (i) the Phase I LOC and (ii) the Phase I Third Anniversary Payment. Notwithstanding anything to the contrary contained herein, if Phase I is Substantially Completed between an anniversary of the Phase I Outside Date on which it was not completed and the next anniversary (other than the anniversary in Year 25), the amount owed on such next anniversary in respect of the preceding year shall be adjusted pro rata (e.g. if Phase I is Substantially Completed six months after the previous anniversary, then Liquidated Damages due on the following anniversary shall equal 6/12 of the amount otherwise applicable to such following anniversary).

As used herein, the "**Phase I Completion Multiplier**" applicable at any time shall equal (a) one, minus (b) a fraction, the numerator of which shall be the number of gross square feet in excess of 750,000 in Phase I that is, at such time, Substantially Completed (such numerator not to exceed 750,000), and the denominator of which shall be 750,000.

Example:

Assuming that Year 0 begins on September 25, 2007 and the Effective Date occurs on December 1, 2009, then the Phase I Outside Date would occur on December 1, 2021, which would be during Year 14. If, (a) as of the Phase I Outside Date, 1,100,000 square feet of Phase I is Substantially Completed, and (b) the remainder of Phase I is not Substantially Completed until the day after the ninth anniversary of the Phase I Outside Date (i.e., December 2, 2030), then 9 years of Liquidated Damages would be payable, with the amount in Column C corresponding to Year 14 (or the year in which the Phase I Outside Date occurred), to be multiplied by the applicable Phase I Base Multipliers, and the applicable Phase I Completion Multipliers, (i.e. one, minus (x) the excess of 1,100,000 over 750,000, divided by (y) 750,000, or 53.3%) as follows:

Phase I Late Example				
Phase I				
	Phase I Base Multiplier	Completion Multiplier	Column C Phase I	Annual Amount Due
Year 14 (Outside Date)	2%	53.3%	\$ 55,000,000	\$ 586,300
Year 15 (1st anniversary)	3%	53.3%	55,000,000	879,450
Year 16 (2nd anniversary)	4%	53.3%	55,000,000	1,172,600
PHASE I LOC (delivered on Phase I Outside Date)				2,638,350
Year 17 (3rd anniversary)	6%	53.3%	55,000,000	1,758,900
PHASE I THIRD ANNIVERSARY PAYMENT				1,758,900
Year 18 (4th anniversary)	7%	53.3%	55,000,000	2,052,050
Year 19 (5th anniversary)	8%	53.3%	55,000,000	2,345,200
Year 20 (6th anniversary)	16%	53.3%	55,000,000	4,690,400
Year 21 (7th anniversary)	17%	53.3%	55,000,000	4,983,550
Year 22 (8th anniversary)	18%	53.3%	55,000,000	5,276,700
Year 23 (9th anniversary)	19%	53.3%	55,000,000	5,569,850
Total Due upon Substantial Completion				\$ 29,315,000
Total Less Phase I LOC & Phase I Third Anniversary Payment (if applicable)				\$ 24,917,750

In this scenario, the amount of the Phase I LOC would equal to the first three payments of liquidated damages calculated in the manner provided above, with the full amount of such Phase I LOC to be drawn and disbursed upon the third anniversary of the Phase I Outside Date along with payment by AYDC of the Phase I Third Anniversary Payment (since, in this scenario, Substantial Completion will not have occurred by then) on such third anniversary. Upon Substantial Completion, the amount of such Phase I LOC and Phase I Third Anniversary Payment would be netted out of the total due upon Substantial Completion.

B. Liquidated Damages if the Project is Abandoned

In the event that the Project is abandoned or terminated before the Arena Outside Date for any reason other than the occurrence of an Unavoidable Delay, BALLC and AYDC will pay NYCEDC (on a 75%/25% basis) \$100,000,000 plus Liquidated Damages in the amount applicable to the year of such termination as set forth in Schedule B (i.e., if, for example, Year 0 were to commence on September 1, 2007 and the Project were to be abandoned or terminated on November 16, 2012, which would be during Year 5 (with such year being prior to the Arena Outside Date), then the amount owed to NYCEDC by AYDC and BALLC shall be \$100,000,000 plus the Liquidated Damages corresponding to Year 4-6 in Schedule B).

City Liquidated Damages Schedule if Project is Delayed - Schedule A			
Year		Column B Arena	Column C Phase I
Years 1-3	\$	69,000,000	\$ 23,000,000
Years 4-6	\$	96,000,000	\$ 32,000,000
Years 7-9	\$	115,000,000	\$ 38,000,000
Years 10-12	\$	137,000,000	\$ 46,000,000
Years 13-15	\$	165,000,000	\$ 55,000,000
Years 16-18	\$	198,000,000	\$ 66,000,000
Years 19-21	\$	237,000,000	\$ 79,000,000
Years 22-24	\$	285,000,000	\$ 95,000,000
Year 25	\$	341,000,000	\$ 114,000,000

City Liquidated Damages Schedule if Project is Abandoned - Schedule B

Schedule B	
Date of Project Abandonment Relative to First Disbursement	Liquidated Damages
Years 1-3	\$ 10,000,000
Years 4-6	\$ 32,000,000
Years 7-9	\$ 58,000,000
Years 10-12	\$ 90,000,000
Years 13-15	\$ 128,000,000