

26. **SECTION HEADINGS**

The headings of the various sections of this Agreement have been inserted only for the purposes of convenience, and are not part of this Agreement and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. The provisions of this Section 26 shall survive the Closing or the termination hereof.

27. **GOVERNING LAW**

This Agreement shall be governed by the laws of the State of New York without giving effect to conflict of laws principles thereof. The provisions of this Section 27 shall survive the Closing or the termination hereof.

28. **PARTIES; ASSIGNMENT AND RECORDING.**

(a) This Agreement and the various rights and obligations arising hereunder shall inure to the benefit of and be binding upon Sellers and Purchaser and their respective successors and permitted assigns.

(b) Purchaser may not assign or otherwise transfer this Agreement or any of its rights or obligations hereunder or any of the direct or indirect ownership interests in Purchaser, except to NYCEDC in accordance with the City/ESDC Funding Agreement, which assignment shall not be effective unless and until Sellers receive notice thereof, accompanied by a copy of an instrument of assignment executed by ESDC. Simultaneously with the execution of this Agreement, NYCEDC delivered to Sellers a written instrument substantially in form and substance as that set forth on Exhibit 4. Notwithstanding anything contained in this Agreement to the contrary, upon making an assignment to NYCEDC in accordance with this Section 28 and delivery of a copy of the same to Sellers, ESDC shall have no further liabilities or obligations under this Agreement.

(c) Neither this Agreement nor any memorandum hereof may be recorded without first obtaining Sellers' consent thereto.

(d) The provisions of this Section 28 shall survive the Closing or the termination hereof.

29. **EXCULPATION**

(a) Purchaser agrees that it does not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, principal, parent, subsidiary or other affiliate of Sellers, including, without limitation, or any officer, director, employee, trustee, shareholder, partner or principal of any such parent, subsidiary or other affiliate (collectively, "Sellers' Affiliates"), arising out of or in connection with this Agreement or the transactions contemplated hereby. Purchaser agrees to look solely to Sellers and their assets for the satisfaction of any liability or obligation arising under this Agreement or the transactions contemplated hereby, or for the performance of any of the covenants, warranties or other agreements contained herein, and further agrees not to sue or

otherwise seek to enforce any personal obligation against any of Sellers' Affiliates with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing provisions of this Section 29, Purchaser hereby unconditionally and irrevocably waives any and all claims and causes of action of any nature whatsoever it may now or hereafter have against Sellers' Affiliates, and hereby unconditionally and irrevocably releases and discharges Sellers' Affiliates from any and all liability whatsoever which may now or hereafter accrue in favor of Purchaser against Seller's Affiliates, in connection with or arising out of this Agreement or the transactions contemplated hereby.

(b) Sellers agree that they do not have and will not have any claims or causes of action against any disclosed or undisclosed officer, director, employee, trustee, shareholder, partner, principal, parent, subsidiary or other affiliate of Purchaser, or any officer, director, employee, trustee, shareholder, partner or principal of any such parent, subsidiary or other affiliate (collectively, "Purchaser's Affiliates"), arising out of or in connection with this Agreement or the transactions contemplated hereby. Sellers agree to look solely to Purchaser and its assets for the satisfaction of any liability or obligation arising under this Agreement or the transactions contemplated hereby, or for the performance of any of the covenants, warranties or other agreements contained herein, and further agrees not to sue or otherwise seek to enforce any personal obligation against any of Purchaser's Affiliates with respect to any matters arising out of or in connection with this Agreement or the transactions contemplated hereby. Without limiting the generality of the foregoing provisions of this Section 29, Sellers hereby unconditionally and irrevocably waive any and all claims and causes of action of any nature whatsoever it may now or hereafter have against Purchaser's Affiliates, and hereby unconditionally and irrevocably release and discharge Purchaser's Affiliates from any and all liability whatsoever which may now or hereafter accrue in favor of Sellers against Purchaser's Affiliates, in connection with or arising out of this Agreement or the transactions contemplated hereby.

(c) The provisions of this Section 29 shall not affect the rights of the beneficiaries under any Guaranty given to assure Sellers' performance under the Funding Agreement or any separate written agreement to between NYCEDC and Sellers.

(d) The provisions of this Section 29 shall survive the termination of this Agreement and the Closing.

30. FURTHER ASSURANCES

Sellers and Purchaser will do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, assignments, notices, transfers and assurances as may be reasonably required by the other party, for the better assuring, conveying, assigning, transferring and confirming unto Purchaser the Property and for carrying out the intentions or facilitating the consummation of this Agreement. The provisions of this Section 30 shall survive the Closing.

31. THIRD PARTY BENEFICIARY

This Agreement is an agreement solely for the benefit of Sellers and Purchaser (and their permitted successors and/or assigns). No other person, party or entity shall have any rights hereunder nor shall any other person, party or entity be entitled to rely upon the terms, covenants and provisions contained herein. Notwithstanding the foregoing, the City and NYCEDC shall each be a third-party beneficiary of this Agreement. The provisions of this Section 31 shall survive the Closing or the termination hereof.

32. JURISDICTION AND SERVICE OF PROCESS

(a) Purchaser and Sellers hereby waive trial by jury in any action, proceeding or counterclaim brought by any of the foregoing against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the Project, the relationship of Purchaser and Seller and/or any claim for injury or damages.

(b) Any and all claims asserted by or against Purchaser arising under this Agreement or related thereto 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, Sellers agree as follows:

(i) With respect to any action between Purchaser and Sellers in a New York State Court located in New York County, each party hereby waives and relinquishes any rights it might otherwise have (x) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (y) to move for a change of venue to a New York State Court outside New York County.

(ii) With respect to any action between Purchaser and Sellers in Federal Court located in New York City, each party hereby waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside New York City.

(iii) If a party commences any action against the other party in a court located other than in the City, County and State of New York, upon request of the such other party, the party commencing such action 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, the party commencing such action 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.

(iv) 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.

(c) Sellers irrevocably consent to the service of any and all process in any judicial action or proceeding either in person, wherever Sellers may be found, or by registered mail addressed to Sellers to its address, and in the manner, set forth in Section 19

hereof. Nothing in this Section 32 shall affect the right of Purchaser to serve legal process in any other manner permitted by law.

(d) The provisions of the Section 32 shall survive the Closing or the termination hereof.

33. WAIVER OF TRIAL BY JURY

Sellers and Purchaser hereby irrevocably and unconditionally waive any and all right to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to this agreement. The provisions of this Section 33 shall survive the Closing or the termination hereof.

34. MISCELLANEOUS

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

(b) Any consent or approval to be given hereunder (whether by Seller or Purchaser) shall not be effective unless the same shall be given in advance of the taking of the action for which consent or approval is requested and shall be in writing. Except as otherwise expressly provided herein, any consent or approval requested of Sellers or Purchaser may be withheld by Seller or Purchaser in its sole and absolute discretion.

(c) Sellers are hereby designated the "real estate reporting person" for purposes of Section 6045 of the Code and Treasury Regulation 1.6045-4 and any instructions or settlement statement prepared by Sellers shall so provide. Upon the consummation of the transaction contemplated by this Agreement, Sellers shall file Form 1099 information return and send the statement to Sellers as required under the aforementioned statute and regulation. Purchaser shall reasonably cooperate with Sellers in connection with Sellers' duties as real estate reporting person.

(d) The provisions of this Section 34 shall survive the Closing or the termination hereof.

[No further text on this page; signature page follows]

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

SELLERS:

Brooklyn Arena, LLC

By: _____
Name:
Title:

Atlantic Yards Development Company, LLC

By: _____
Name:
Title:

PURCHASER:

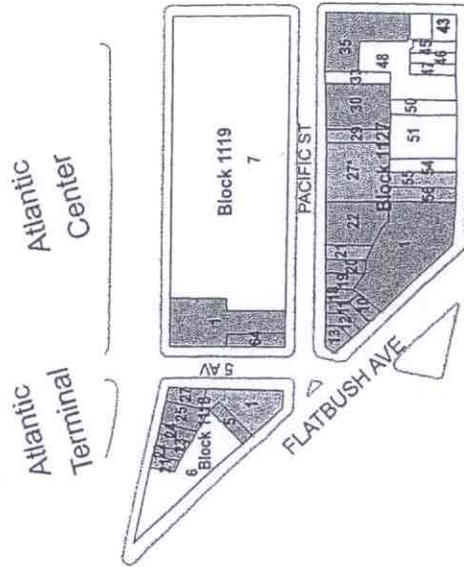
New York State Urban Development Corporation
d/b/a Empire State Development Corporation

By: _____
Name: Anita W. Laremont
Title: Senior Vice President & General Counsel

Schedule A - Property & Recognized Costs

Fee Owned by Arena LLC and/or its Subsidiaries			
Brooklyn Tax Block	Lot(s)	Address(es)	Recognized Costs
1118	1	179-183 Flatbush Avenue	
1127	21	624 Pacific Street	
1127	1101-1131 (Formerly 27)	636 Pacific Street (Unit #'s MEWS E-W, 101-103, 201-204, 301-304, 401-404, 501-504, 601-604, 701-702, 801-803)	
1127	29	640 Pacific Street	
1127	55	463 Dean Street	
1127	56	461 Dean Street	
Fee Owned by AY Development LLC and/or its Subsidiaries			
Brooklyn Tax Block	Lot(s)	Address(es)	Recognized Costs
1118	5	177 Flatbush Avenue	
1118	21	608 Atlantic Avenue	
1118	22	610 Atlantic Avenue	
1118	23	612 Atlantic Avenue	
1118	24	614 Atlantic Avenue	
1118	25	616 Atlantic Avenue	
1118	27	620 Atlantic Avenue	
1119	1, 64	622 Atlantic Avenue, 623 Pacific Street	
1127	1	195 Flatbush Avenue	
1127	10	193 Flatbush Avenue	
1127	11	191 Flatbush Avenue	
1127	12	189 Flatbush Avenue	
1127	13	185 Flatbush Avenue	
1127	18	618 Pacific Street	
1127	19	620 Pacific Street	
1127	20	622 Pacific Street	
1127	22	626 Pacific Street	
1127	30	642-646 Pacific Street	
1127	1001-1021 (Formerly 35)	24 6th Avenue (Unit #'s B1, 101-105, 201-205, 301-305, 401-405)	
TOTAL RECOGNIZED ARENA LAND COST			\$ 100,000,010.00

Schedule A - Arena Land



Fee Owned by Arena LLC and/or its subsidiaries

Fee Owned by AY Development LLC and/or its subsidiaries
(Beneficially Owned Land)

*Property Owned by Arena, LLC except 1 Condo Unit

SCHEDULE B

Litigation

Pending Litigation Challenging ESDC's Atlantic Yards Land Use Improvement and Civic Project
(as of August 15, 2007)

1. Two consolidated lawsuits in the U.S. District Court for the Eastern District of New York primarily challenge the use of eminent domain in furtherance of the Atlantic Yards Project (Goldstein v. Pataki, et al., No. 06 CV 5827, and Piller v. Pataki, et al., No. 07 CV 152). These lawsuits were dismissed by U. S. District Judge Nicholas G. Garaufis in Goldstein v. Pataki, et al., No. 06 CV 5827 (E.D.N.Y. June 6, 2007). Judge Garaufis, in his decision, specifically permits plaintiff to re-file their supplemental EDPL § 207 claim in state court. Plaintiffs filed a notice of appeal on June 13, 2007.

2. A lawsuit in the New York County Supreme Court seeks to annul the final environmental impact statement and approval of the Atlantic Yards Project by ESDC, MTA and PACB. Develop Don't Destroy Brooklyn, Inc. v. Urban Development Corporation, et al., Index No. 104597/07. This case was argued before Justice Joan A. Madden on May 3, 2007, and a decision is expected soon.

3. A lawsuit in the New York County Supreme Court raises issues under the New York State Constitution, the Highways Law and the Rent Stabilization Law. The complaint in this action was dismissed by Justice Walter B. Tolub in Anderson v. Empire State Development Corp., Index No. 118212/06, decision dated May 17, 2007. Plaintiffs have advised of their intention to appeal.

4. A proceeding commenced in the Appellate Division, Second Department, under EDPL § 207 challenges the use of eminent domain in connection with the Atlantic Yards Project (Anderson v. Empire State Development Corp., Index No. 372/2007). This proceeding has been briefed and will be argued before the Appellate Division in Fall 2007.

5. A lawsuit in Kings County Supreme Court seeks to set aside the conveyances of 620 and 622 Pacific Street to subsidiaries of Atlantic Yards Development Company, LLC, as well as monetary and punitive damages and litigation costs. The complaint was dated August 14, 2007. The plaintiff in this case, Flatbush Pacific Development Corp. v. TJAW Realty Corp., Mark Scheiner, AY 620 Pacific, LLC, AY 622 Pacific, LLC, Elliot Leffel and and (sic) John Does 1-10 (Index No. 29972-07), has filed similar claims in three prior actions involving 620 Pacific Street, all of which claims have been dismissed.