

THIS FUNDING AGREEMENT ("**Agreement**") dated as of September 12, 2007 is entered into by and between New York State Urban Development Corporation d/b/a The Empire State Development Corporation ("**ESDC**") and Brooklyn Arena, LLC and Atlantic Yards Development Company LLC (collectively, "**Developer**").

#### PREAMBLE

**WHEREAS**, on December 8, 2006, ESDC adopted that certain Modified General Project Plan (the "**GPP**") for the Atlantic Yards Land Use Improvement and Civic Project (the "**Project**") in accordance with the New York State Urban Development Corporation Act;

**WHEREAS**, the Project comprises the construction of a major mixed-use development in the Atlantic Terminal area of Brooklyn, occupying an approximately 22-acre area (the "**Project Site**") generally bounded by Flatbush and 4<sup>th</sup> 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 6<sup>th</sup> and Carlton Avenue Bridges), below-grade Long Island Rail Road Vanderbilt Storage Yard, Metropolitan Transportation Authority ("**MTA**") storage yard for inactive New York City Transit buses and an arena (the "**Arena**") to host the professional basketball team currently known as the New Jersey Nets and other entertainment, cultural, sporting and civic events;

**WHEREAS**, ESDC has agreed to contribute One Hundred Million (\$100,000,000) Dollars (the "**State Contribution**") towards the costs incurred, and to be incurred, for the construction of the Infrastructure (as hereinafter defined) subject to the terms of all of the Project Documentation (as hereinafter defined);

**WHEREAS**, in accordance with the GPP, the Arena will be owned by ESDC and ESDC has made findings and determinations pursuant to the Eminent Domain Procedure Law to acquire the Arena Site (as hereinafter defined);

**WHEREAS**, the City has agreed to contribute One Hundred Million (\$100,000,000) Dollars (the "**City Contribution**", together with the State Contribution, the "**Public Contributions**") towards the costs incurred, and to be incurred, for the acquisition by ESDC of the real property comprising all or a portion of the Arena Site, subject to the terms of all of the Project Documentation; and

**WHEREAS**, ESDC and the City have agreed to fund all or a portion of their respective Public Contributions prior to the negotiation and entering into of the Project Documentation, and Developer has agreed to accept the Public Contributions in accordance with the terms hereinafter set forth.

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged the parties hereto hereby agree as follows:

## ARTICLE I

### DEFINITIONS

As used in this Funding Agreement the following terms shall have the following meanings:

“**Affiliate**” means with respect to any Person, (a) any other Person that is a member, director, officer or employee of such Person, and (b) any other Person that controls, is controlled by, or is under common control with, such Person.

“**Agreement**” has the meaning provided in the Preamble hereof.

“**Approvals**” has the meaning provided in Section 6.01(b) hereof.

“**Approved Soft Costs**” means the actual, out-of-pocket costs incurred in connection with the design and planning of the Infrastructure which are usually and customarily considered to be "soft costs", to the extent such costs (a) are on the list attached as **Exhibit A**, which has been approved by ESDC, and (b) do not exceed Fifteen Million Dollars (\$15,000,000) in the aggregate.

“**Arena Site**” means parcels of land on which the Arena and its accessory facilities are to be constructed.

“**Business Day**” means any day other than a Saturday, Sunday, legal holiday, a day on which ESDC or the City is closed for business, or a day on which banking institutions in New York City are authorized by law or executive order to close.

“**City**” has the meaning provided in the Preamble hereof.

“**City Contribution**” has the meaning provided in the Preamble hereof.

“**City Funding**” means the funding by ESDC to Developer of all or any portion of the contract deposits under the Purchase Agreement.

“**City Funding Agreement**” means that certain Funding Agreement, dated the date hereof, by and between ESDC and EDC pursuant to which EDC shall fund the City Contribution to ESDC, which ESDC shall utilize solely to fund the City Funding.

“**City Funding Payment**” means each payment comprising the City Funding made by ESDC pursuant to Section 3.04 hereof.

“**City Payment Amount**” shall have the meaning set forth in Section 3.09(d).

“**Commencement Date**” has the meaning provided in Section 2.01 hereof.

“**Cost Agreement**” means that certain letter agreement, dated as of February 18, 2004, by and between Forest City Ratner Companies and ESDC pursuant to which Forest City

Ratner Companies agreed to reimburse ESDC for certain costs incurred by ESDC in connection with the Project.

**"Default"** means any specified condition or event, or failure of any specified condition or event to occur, which constitutes or would, after any required notice or lapse of time, or both, constitute an Event of Default.

**"Design Guidelines"** shall have the meaning set forth in the GPP, as it may be amended.

**"Developer"** has the meaning set forth in the Preamble hereof.

**"EDC"** means the New York City Economic Development Corporation.

**"Effective Date"** means the date on which:

(i) All litigation, the continuance of which would reasonably prevent Developer or its Affiliates from financing, and commencing construction of the Arena (the **"Site Litigation"**), shall have been sufficiently concluded so as to permit such financing and construction to proceed regardless of whether Developer or its Affiliates is otherwise able to, or does actually, commence such financing and/or construction (it is understood and agreed that this condition shall conclusively be deemed satisfied if Developer or any of its Affiliates closes on financing for construction of the Arena); and

(ii) ESDC has acquired and delivered vacant possession of the Project Site, as required, to Developer or its Affiliates.

**"Eligible City Project Costs"** means the Purchase Price for parcels of land as defined in the Purchase Agreement.

**"Eligible Developer Project Costs"** means the sum of Eligible City Project Costs and the aggregate costs incurred or paid for by Developer or its Affiliates for the acquisition of the real property comprising all or a portion of the Project Site and related closing costs plus demolition costs. Eligible Developer Project Costs shall not include (i) any return on equity invested in the Project by Developer or its Affiliates, (ii) any fee to Developer or its Affiliates or an employee of Developer or its Affiliates, (iii) any overhead of Developer or its Affiliates, or (iv) the salary or expenses related to any officer or employee of Developer or its Affiliates. Notwithstanding the above, fees, overhead, salary or expenses due to FCR Construction Services, LLC ("**FCCS**") for the construction of the Infrastructure may be Eligible Developer Project Costs subject to ESDC's reasonable approval, provided the work has been competitively bid and the costs due to FCCS do not exceed the lowest qualified bid.

**"Eligible Project Costs"** means the Eligible State Project Costs and the Eligible Developer Project Costs.

**"Eligible State Project Costs"** means the aggregate **Hard Costs** and **Soft Costs** incurred or paid for by Developer or its Affiliates for the design and construction of the

Infrastructure. Eligible State Project Costs shall not include any of the following: (i) any return on equity invested in the Project by Developer or its Affiliates, (ii) any fee to Developer or its Affiliates or employee of Developer or its Affiliates, (iii) any interest or fee in connection with any loan used to pay any costs of the Project, (iv) any overhead of Developer or its Affiliates, (v) the salary or expenses related to any officer or employee of Developer or its Affiliates, (vi) costs other than Hard Costs and Soft Costs, (vii) costs incurred with Prohibited Vendors and (viii) Hard Costs of Infrastructure not incurred in accordance with Article V, taking into the account requirements imposed by any Governmental Authorities. Notwithstanding the above, fees, overhead, salary or expenses due to FCCS for the construction of the Infrastructure may be Eligible State Project Costs subject to ESDC's reasonable approval, provided the work has been competitively bid and the costs due to FCCS do not exceed the lowest qualified bid.

**"Environmental Commitment Memo"** means the Memorandum of Environmental Commitments for the Atlantic Yards Project, a copy of which is attached hereto as **Exhibit L**.

**"ESDC"** has the meaning set forth at the beginning of this Agreement.

**"ESDC Withdrawal Notice"** shall mean a termination notice delivered by ESDC as a result of ESDC's decision not to proceed with the Project notwithstanding (i) Developer's willingness to proceed with the transaction upon terms which are (a) consistent with the GPP, as it may be amended, and (b) acceptable to ESDC in its sole discretion, and (ii) a reasonable likelihood that the Project can be completed in accordance with the terms of the GPP, as it may be amended.

It is the intention of ESDC and Developer that an ESDC Withdrawal Notice will exist only when ESDC has arbitrarily decided not to proceed with the Project. ESDC shall be deemed to have issued an ESDC Withdrawal Notice if, without Developer's prior written consent, ESDC makes a modification of the GPP that materially, adversely affects Developer's interests, including, without limitation, impairing Developer's ability to fulfill its obligations to EDC and the City as set forth in the City Funding Agreement.

**"Event of Default"** has the meaning provided in Section 13.01 hereof.

**"Expiration Date"** has the meaning provided in Section 2.01 hereof.

**"FCCS"** has the meaning provided in the definition of Eligible Developer Project Costs.

**"Funding"** means, individually or collectively, as the context requires, the State Funding and the City Funding.

**"GPP"** has the meaning provided in the Preamble hereof.

**"Governmental Authorities"** means the United States of America, the State of New York, MTA, the Long Island Rail Road Company, the New York City Transit Authority, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having or claiming jurisdiction over the Project Site or any portion thereof or any street, road, avenue, sidewalk or

water comprising a part of or immediately adjacent to the Project Site, or any vault in or under the Project Site.

"**Guarantor**" means Forest City Enterprises, Inc.

"**Guaranty**" shall have the meaning set forth in Section 2.02(b).

"**Hard Costs**" means the sum of (a) the actual, out-of-pocket costs of construction incurred by Developer or its Affiliates for the Infrastructure which are usually and customarily considered to be "hard costs", including site remediation and owner's testing, as set forth in a budget for Infrastructure prepared by Developer and approved by ESDC on or prior to the date hereof, as same may be amended from time to time, and (b) costs and expenses for labor, services, facilities or equipment customarily considered as "general conditions" items (including the premium paid for payment and performance bonds and/or insurance policies that may be required pursuant to this Agreement or by Governmental Authorities) in a commercially reasonable amount, not to exceed twenty-five percent (25%) of item (a) above.

"**Indemnitees**" has the meaning provided in Section 8.02 hereof.

"**Infrastructure**" means the scope of work set forth on **Exhibit C** attached hereto and made a part hereof, which work shall be consistent with the GPP and the Design Guidelines, as each may be amended.

"**Interest**" means five percent (5%) per annum.

"**Institutional Lender**" shall have the meaning set forth in the Purchase Agreement.

"**Lien**" means any lien (statutory or otherwise), encumbrance, lease, easement, option restriction, estate or other interest including, but not limited to, mechanic's, laborer's, materialman's and public improvement liens, security interest, mortgage, deed of trust, priority, pledge, charge, conditional sale, title retention agreement, financing lease or other similar right of others, or any other agreement to give any of the foregoing.

"**MTA**" shall have the meaning provided in the Preamble.

"**M/WBEs**" has the meaning provided in Section 16.01 hereof.

"**New York State Courts**" has the meaning provided in Section 14.02 hereof.

"**Obligations**" means the terms, covenants and conditions of this Agreement on the part of Developer or its Affiliates, as applicable, to be performed, observed and/or satisfied.

"**Off-Site Materials Conditions**" has the meaning provided in Section 3.02(c) hereof.

"**Parties**" means ESDC and Developer.

**"Person"** means an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association; any federal, state, county or municipal government or any bureau, department or agency thereof; and any fiduciary acting in such capacity on behalf of any of the foregoing.

**"Plans and Specifications"** means, collectively, schematic plans and specifications, design development drawings, final plans and specifications and construction documents, in each case to the extent the same comply in all material respects with the GPP, the Design Guidelines and the Environmental Commitment Memo, as each of the same may be amended. Except as provided in Section 6.02, nothing contained in this definition shall limit, or imply the agreement of ESDC to limit, ESDC's rights to approve the Plans and Specifications with respect to all or any portion of the construction and development of the Project pursuant to the Project Documentation.

**"Principal"** has the meaning provided in Section 17.03 hereof.

**"Prohibited Vendor"** has the meaning provided in Section 17.02.

**"Project"** has the meaning provided in the Preamble hereof.

**"Project Documentation"** shall mean the Arena lease, the form of lease for the other development parcels, the development agreement, the land acquisition and funding agreement with respect to the condemnation of properties within the Project Site and the non-relocation agreement, which shall each be in form and substance satisfactory to ESDC, the City and Developer or its Affiliates (as applicable) in their respective sole discretion.

**"Project Site"** has the meaning provided in the Preamble hereof.

**"Public Contributions"** has the meaning provided in the Preamble hereof.

**"Purchase Agreement"** shall mean the Purchase and Sale Agreement, dated as of the date hereof, between Developer, as seller, and ESDC, as purchaser, covering the Arena Site (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) attached hereto as **Exhibit B** and made a part hereof.

**"Required Amount"** means an amount equal to the sum of (i) the aggregate State Funding Payments actually distributed by ESDC to Developer, (ii) Interest on the aggregate State Funding Payments made by ESDC from the date each such State Funding Payment was made through the date the Required Amount is paid to ESDC and (iii) the applicable "Liquidated Damages" set forth on Exhibit I attached to the City Funding Agreement.

**"Requirements"** means (i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions and requirements of all Governmental Authorities applicable (now or at any time during the Term) to the Project Site and/or the Project, to any street, road, avenue or sidewalk comprising a part of the Project Site, or in front of or adjacent to the Project Site, to the extent the owner of the Project Site would have legal responsibility therefor, to any vault in or under the Project Site, and/or to the activities undertaken by any Person at the

Project Site or in connection with the Project (including, without limitation, the New York City Noise Control Code (N.Y.C. Admin. Code Sections 24-201, et seq.), as amended, the regulations of the Department of Environmental Protection (N.Y.C. Admin. Code Sections 24-230, 24-242) and the Building Code (Admin. Code Section 27-101 et seq.); (ii) the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions, as the same may be amended from time to time; (iii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Developer under this Agreement; and (iv) any permits or Approvals issued by any Governmental Authorities in connection with the Project.

“**Requisitioning Entity**” has the meaning provided in Section 4.01 hereof.

“**Requisition**” has the meaning provided in Section 4.01(b) hereof.

“**Restrictive Covenant**” means that certain Restrictive Covenant attached hereto as **Exhibit E**, which Restrictive Covenant shall not apply to all or any portion of the Project Site to the extent provided therein.

“**Second Contribution Period**” means the period commencing on December 8, 2006 and ending on the date upon which \$100,000,000 of Total Project Costs has been incurred by Developer or its Affiliates since December 8, 2006 for which Developer has not been, and will not seek to be, reimbursed for more than \$25,000,000 by ESDC or EDC in the aggregate.

“**Site Litigation**” has the meaning provided in the definition of Effective Date.

“**Soft Costs**” means the actual, out-of-pocket costs incurred in connection with the design and planning of the Infrastructure which are usually and customarily considered to be “soft costs.”

“**State**” means the State of New York.

“**State Contribution**” has the meaning provided in the Preamble hereof.

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

“**State Funding Payment**” means each payment comprising the State Funding made by ESDC pursuant to Section 3.02(a) and 3.02(b) hereof.

“**Term**” has the meaning provided in Section 2.01 hereof.

“**Termination Notice**” shall have the meaning set forth in Section 13.04 hereof.

“**Third Contribution Period**” means the period commencing on the day immediately following the Second Contribution Period and ending on the last day of the Term.

“**Total Project Costs**” means (a) costs and expenses paid or incurred by Developer or its Affiliates for the design, construction and implementation of the Project (including without

limitation (i) costs of land acquisition and closing costs and (ii) land carrying costs (i.e. third-party interest, real estate taxes, security, maintenance and other operating expenses) not to exceed in the aggregate an amount equal to 8.5% of the land acquisition costs) and (b) all other costs properly allocable to a category of cost set forth on **Exhibit G** attached hereto and made a part hereof whether or not such costs and expenses constitute Eligible Project Costs hereunder.

**"Unavoidable Delays"** means delays from any and all causes beyond Developer's or its Affiliates' reasonable control, including, without limitation, delays resulting from (i) actions or inaction of ESDC or any other Governmental Authority (provided that such are not themselves the result of actions by Developer or its Affiliates), (ii) governmental restrictions, limitations, regulations or controls other than (a) ordinary restrictions, limitations, regulations or controls, and (b) restrictions, limitations, regulations or controls agreed to by Developer or its Affiliates in connection with the Project, (iii) orders of any court of competent jurisdiction (including, without limitation, any litigation which results in an injunction or a restraining order prohibiting or otherwise delaying the continuation of construction of the Project), labor disputes (including strikes, lockouts not caused by Developer or its Affiliates, slowdowns and similar labor problems), (iv) accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity, equipment, supplies, or materials (for which no substitute is readily available at a comparable price), (v) acts of God (including inordinately severe weather conditions), (vi) war, sabotage, hostilities, invasion, insurrection, riot, acts of terrorism, mob violence, malicious mischief, embargo, quarantines, national, regional or local disasters, calamities or catastrophes, national emergencies, enemy or hostile governmental action, civil disturbance or commotion, earthquake, flood, fire, or other casualty of which Developer has given ESDC notice. Developer shall notify ESDC of an Unavoidable Delay promptly following the occurrence of the same, and in any event not later than ten (10) days following Developer's or its Affiliates' knowledge of the occurrence thereof. Developer's failure to timely notify ESDC of an Unavoidable Delay shall result in the same being deemed an "avoidable delay" and no longer qualifying as an "Unavoidable Delay".

## ARTICLE II

### TERM

Section 2.01 Term. The term of this Agreement (the "**Term**") shall commence on the Commencement Date as defined in the City Funding Agreement (the "**Commencement Date**") and, except as to those provisions that expressly survive the termination or expiration hereof, shall expire on the earlier to occur of (i) the date the Project Documentation takes effect, and (ii) the date that either ESDC or Developer gives written notice to the other of the termination of this Agreement (such earlier date, the "**Expiration Date**"). The parties acknowledge that the Project Documentation shall provide that to the extent the State and City Contributions are not fully contributed during the Term, such remaining State and City Contributions will be made available to Developer pursuant to the terms thereof.

Section 2.02 Documents Required To Be Delivered on the Commencement Date.