EXHIBIT E

RESTRICTIVE COVENANT

(see attached)

DECLARATION OF RESTRICTIVE COVENANT

Dated as of _____

By

Brooklyn Arena, LLC and Atlantic Yards Development Company LLC together with their Affiliates listed on Schedule 1 hereto (collectively, the "Declarant")

Location of Premises

Street Addresses:
City or Town:
County: Kings
Block:
Lots:

_____

After Recording, Return to:

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

DECLARATION OF RESTRICTIVE COVENANT

THIS DECLARATION OF RESTRICTIVE COVENANT ("**Declaration**") is made as of the ___ day of _____ 200_ by Brooklyn Arena, LLC and Atlantic Yards Development Company LLC, each a limited liability company organized under the laws of the State of Delaware having an office at 1 Metrotech Center North, Brooklyn, New York 11201, together with their Affiliates listed on Schedule 1 attached hereto (collectively, the "**Declarant**") in favor of The City of New York, a municipal corporation of the State of New York, acting by and through its Office of Management and Budget (the "**City**"), having an office at 75 Park Place, New York, New York 10007 and New York City Economic Development Corporation, a local development corporation organized under Section 1411 of the Not-for-Profit Corporation Law of the State of New York ("**NYCEDC**") having an office at 110 William Street, 6th Floor, New York, New York 10038.

W I T N E S S E T H

WHEREAS, on December 8, 2006, ESDC adopted that certain Modified General Project Plan (as so adopted, 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; and

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 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 and Metropolitan Transportation Authority storage yard for inactive New York City Transit buses; and

WHEREAS, the City intends to contribute One Hundred Million ($100,000,000) Dollars (the "**City Contribution**"), towards the costs incurred, and to be incurred, for ESDC's acquisition of the real property comprising all or a portion of the Project Site (the "**Land Acquisition Cost**"); and

WHEREAS, pursuant to a Funding Agreement ("**State Funding Agreement**") dated as of the date hereof by and between ESDC and Declarant, ESDC has agreed to contribute up to One Hundred Million ($100,000,000) Dollars (the "**State Contribution**") towards the costs incurred, and to be incurred, for the construction of certain Infrastructure, as defined in the State Funding Agreement; and

WHEREAS, pursuant to a Funding Agreement ("**City Funding Agreement**") dated as of the date hereof entered into by and between ESDC and NYCEDC, NYCEDC has agreed to contribute the City Contribution toward the Land Acquisition Cost (the State Contribution, together with the City Contribution, the "**Public Contributions**"); and

WHEREAS, Declarant is the fee owner of certain real property located within the Project Site, all as more particularly described in Exhibit A attached hereto (such real property

together with all improvements now or hereafter erected thereon, being hereinafter referred to as the "**Premises**"); and

WHEREAS, pursuant to the State Funding Agreement, Declarant and ESDC have entered in to that certain Arena Land Purchase and Sale Agreement, dated as of the date hereof, between Declarant, as seller, and ESDC, as purchaser, covering the parcels of land described in **Exhibit B** attached hereto and made a part hereof ("**Arena Land**").

NOW, THEREFORE, Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises does hereby declare and agree that the Premises shall be hereinafter held, sold, transferred, conveyed and occupied subject to the restrictions, covenants, obligations and agreements set forth in this Declaration which shall run with the Premises and shall be binding upon Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises, except as otherwise provided herein.

1. **CITY PURPOSE COVENANT.** For the period set forth below, (the "**Performance Term**") Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises agrees as follows ("**City Purpose Covenant**"):

The Premises shall be used for the benefit of the people of the City in the following order of priority:

(a) for the Project, as set forth in the GPP, as it may be amended from time to time, for a Performance Term commencing on the date of this Declaration and concluding thirty (30) years from the Substantial Completion of the Arena (as "**Substantial Completion**" and "**Arena**" are defined in the City Funding Agreement) or such other development of the Arena Land as may be permitted pursuant to the GPP, as it may be amended; or,

(b) if the GPP is abandoned, for not less than 1,845 units of housing, of which 35 percent shall be Affordable Housing (defined in **Exhibit C** annexed hereto), and not less than 1.98 acres of environmentally sustainable, publicly accessible open space ("**Open Space**"), the design and operation of which shall be subject to the reasonable approval of the New York City Parks Department, for a Performance Term commencing on the date of this Declaration and concluding thirty (30) years after Substantial Completion of the applicable portion of the Affordable Housing and the Open Space, as the case may be; or

(c) if the uses set forth in (b) above are not permitted by the City's Zoning Resolution, then Declarant shall file an application with the City's Planning Commission to amend the City's Zoning Resolution so as to render the uses set forth in (b) above lawful under the City's Zoning Resolution and shall promptly take all actions necessary to enable the City's Board of Standards and Appeals or the City's Planning Commission and other required governmental officials and entities, to grant a variance, amendment to the City's Zoning Resolution or any other action rendering Declarant's said use of and/or improvements to the Premises lawful under the City's Zoning Resolution (a "**Zoning Approval**"), for so much of

the uses set forth in (b) above, as may be permitted pursuant to such Zoning Approval for a Performance Term commencing on the date of this Declaration and concluding thirty (30) years after Substantial Completion of the permitted Affordable Housing and the Open Space; or,

(d) if Declarant shall have made diligent good faith efforts to obtain Zoning Approvals as forth in (c) above and the City's Planning Commission and other required governmental officials and entities shall have declined to grant such Zoning Approval, for such other economic development purpose, including commercial, residential, retail, and recreational uses for the benefit of the people of the City as the City shall approve through the Director of the City's Office of Management and Budget ("**OMB**") and the Mayor of the City of New York or the Mayor's designee (the "**Mayor**"), for a Performance Term commencing on the date of this Declaration and concluding thirty (30) years after Substantial Completion of applicable improvements then approved by the Mayor and OMB; provided, however, that the City will require OMB to use its best efforts to respond expeditiously to any request to use the Premises for purposes other than those provided in (a), (b) and (c) above, and OMB's determination, to be made in OMB's sole discretion, shall be based solely on ensuring that the proposed use (1) serves a City purpose that would have provided sufficient basis for the issuance of the City bonds that financed the land acquisition and (2) will not cause the interest on the bonds issued to finance the land acquisition to become subject to federal, state or local tax and provided further, that within sixty (60) days after notice to the Mayor containing specific reference to this paragraph (d) and the time frame set forth herein, the Mayor shall by notice to Declarant approve or disapprove Declarant's proposed use and the Mayor shall be deemed to have approved the proposed use if the Mayor shall fail to so notify Declarant as provided in this Section; and

(e) for purposes ancillary and incidental to the foregoing uses provided that such ancillary and incidental purposes relate to, promote, and do not derogate from, use of the Premises for the purposes authorized by Section 1(a)-(d) hereof.

2. **ADDITIONAL AGREEMENTS**. Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises further covenants and agrees as follows:

(a) On the second anniversary of the date of this Declaration and on each second anniversary thereafter Declarant (or the owner of the Premises at such time) shall issue a certification to the City of New York certifying that the Premises are held, occupied and used in compliance with the requirements of this Declaration. The certification required by this Section shall be signed by the Chief Executive Officer of Declarant or that of the owner of the Premises at such time.

(b) At any time and from time to time upon reasonable prior notice, the City and NYCEDC and their respective officers, employees, servants, consultants and agents shall be permitted to enter the Premises to confirm that the Premises are being used in compliance with the requirements of this Declaration.

(c) The Premises shall not be used to unlawfully discriminate against any Person on the basis of race, religion, creed, color, national origin, sex, age, disability, marital status, sexual orientation, or political affiliation. Any portion of the Premises the acquisition,

construction or improvement of which shall have been paid for with the City Contribution shall not be used to advance religion or support sectarian activity, including religious worship, instruction or proselytization. Notwithstanding the preceding, subject to the requirements of the City Purpose Covenant, such portion of the Premises may be made available to any Person, including Declarant itself, on a neutral, non-discriminatory basis for any religious or nonreligious purposes or activities, provided that such portion of the Premises is generally made available to the general public for such purposes or activities on substantially similar terms and conditions, the availability of such portion of the Premises for such purposes or activities on such terms and conditions is made known to the general public, and the use of such portion of the Premises for any such purposes or activities is occasional and temporary.

3. **REPRESENTATIONS AND WARRRANTIES.** Declarant represents and warrants that:

(a) except as permitted by Section 8, there are no restrictions of record on the use of the Premises, nor any present or presently existing future estate or interest in and to the Premises, nor any Lien (as defined below), obligation, covenant, easement, limitation, lease or other encumbrance of any kind, on or with respect to the Premises, which prevent, preclude or delay, or may prevent, preclude or delay, the imposition of the restrictions, covenants, obligations and agreements of this Declaration which have not been extinguished or subordinated to this Declaration; and

(b) the execution, delivery, performance and recordation of this Declaration by Declarant has been authorized by all necessary corporate action of Declarant and does not and will not: (i) require any consent or approval by any Person (as defined below), (ii) contravene the charter or by-laws of Declarant, (iii) violate any provision of, or require any filing, registration, consent or approval under, any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Declarant or its affiliates, (iv) result in a breach of, or constitute a default or require any consent under, any indenture or agreement, lease or instrument to which Declarant is a party or its properties may be bound or affected, or (v) cause Declarant to be in violation of any law, rule, regulation, order, writ, judgment, injunction, decree, determination or award, or in default under any such indenture, agreement, lease or instrument.

For the purposes of this Declaration, the term "**Lien**" means any lien (statutory or otherwise), 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 encumbrance or similar right of others, or any other agreement to give any of the foregoing; and "**Person**" means an individual, corporation, partnership, 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.

4. **REAL COVENANTS.** Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises understands and agrees that the restrictions, covenants, obligations and agreements contained in this Declaration shall be real covenants

running with the land and shall inure to the benefit of the City and NYCEDC and their respective successors and assigns, and bind Declarant and its successors, heirs, assigns, legal representatives, lessees and transferees, including, without limitation, any owners and/or users of the Premises, provided however that if and for so long as ESDC is fee owner of all or a portion of the Premises for the purpose of implementing the GPP (as it may be amended), such portion(s) of the Premises owned by ESDC shall be exempt from restrictions, covenants, obligations and agreements contained herein and provided further however that said restrictions, covenants, obligations and agreements shall not apply, and this Declaration shall not be effective with respect to, any portion of the Premises which is being developed by Declarant or any affiliate of Declarant pursuant to lease from ESDC in accordance with the terms of the GPP as same may be amended from time to time. Promptly after written request therefor by Declarant from time to time, the City and NYCEDC shall execute, acknowledge and deliver an instrument in recordable form and otherwise in form and substance reasonably satisfactory to the City, NYCEDC and Declarant providing for the release of the applicable portion(s) of the Premises from this Declaration and the termination of this Declaration with respect thereto, provided the subject portion of the Premises shall have been developed in accordance with the GPP.

5. **RECORDING.** Declarant shall file and record, or shall cause to be filed and recorded, immediately upon execution hereof, this Declaration in the Office of the City Register of the City of the New York, County of Kings ("**Register's Office**") and shall cause the Register's Office to index this Declaration against the Premises. Promptly upon recordation hereof Declarant shall deliver to the City and NYCEDC true and complete copies of this Declaration bearing the recording information and certified by the Register. If Declarant fails to record this Declaration and/or deliver copies thereof to the City and NYCEDC as required hereby, the City or NYCEDC may record this Declaration, at the sole cost and expense of Declarant and all recording fees and other fees, costs and expenses including, without limitation, any and all expenses for the purchase of a reasonable number of certified copies of the recorded Declaration shall be immediately paid by Declarant to the City and/or NYCEDC, as the case may be.

6. **REMEDIES AND ENFORCEMENT.** Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises understands, acknowledges and agrees as follows:

(a) Each of the City and NYCEDC is an interested party to this Declaration and Declarant consents to enforcement by either the City or NYCEDC or both, administratively or at law or equity, of the restrictions, covenants, obligations and agreements contained herein.

(b) Monetary damages would not be adequate or sufficient to compensate the City and/or NYCEDC for a breach of any of the restrictions, covenants obligations and/or agreements of this Declaration. Accordingly, in addition to any other remedies available to the City and/or NYCEDC administratively, at law or equity, under this Declaration or otherwise, the City and/or NYCEDC may obtain a mandatory and/or prohibitory injunction compelling Declarant to specifically perform and observe the restrictions, covenants, obligations and agreements contained in this Declaration or to remedy any failure on the part of

Declarant or any of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises to perform or observe any such restriction, covenant, obligation or agreement.

(c) No right or remedy conferred upon the City or NYCEDC in this Declaration is intended to be exclusive of any other right or remedy contained in this Declaration or at law or equity. Every such right or remedy shall be cumulative and shall be in addition to each other right and remedy contained in this Declaration or now or hereafter available to the City and NYCEDC at law, in equity, by statute or otherwise.

(d) Notwithstanding anything to the contrary contained herein, the liability of Declarant hereunder shall be limited to Declarant's interest in the Premises, and the City and NYCEDC shall not look to any other assets or property of Declarant or to the assets or property of any of the directors, members, officers, partners, principals, shareholders, joint venturers, agents, employees, representatives or affiliates of Declarant, and no property or assets of any of the aforesaid persons shall be subject to levy, execution or other enforcement procedure for the satisfaction of the City's or NYCEDC's remedies or Declarant's liabilities hereunder, nor shall any of such persons have any liability (personal or otherwise) hereunder. The provisions of this section shall survive the expiration of the Performance Term.

7. **INDEMNIFICATION.** Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises agrees that it shall defend, indemnify and save the City and NYCEDC, and their respective directors, officers, employees, agents and servants (collectively, the "**Indemnitees**") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, 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 resulting from the execution and delivery of this Declaration, the recordation thereof or the failure of Declarant or any of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises to perform or observe any restriction, covenant, obligation or agreement of this Declaration on its or their part to be performed or observed.

8. **SUBORDINATION.** Any present or future estate in and to the Premises, any Lien, obligation, covenant, lease, limitation or other encumbrance of any kind at any time arising, claimed or asserted in and to or with respect to the Premises, shall be subject and subordinate to this Declaration, provided that space leases in effect at the Premises as of the date hereof and other permitted encumbrances listed on **Exhibit D** annexed hereto shall not be so subject and subordinate. Accordingly, except as noted above, Declarant for itself and on behalf of its successors, heirs, assigns, legal representatives, lessees and transferees including, without limitation, any owners and/or users of the Premises shall cause any Person that at any time asserts any right or claim in and to or with respect to the Premises to subordinate any such right or claim to the Premises to this Declaration.

9. **NOTICES.** 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