

Simultaneously with the execution of this Agreement, Developer shall be required to deliver each of the following documents to ESDC:

(a) Closing Statements. Copies of closing statements, transfer taxes or purchase contracts for all parcels Developer or its Affiliates has acquired, comprising all or any portion of the Project Site. Copies of closing statements, transfer taxes or purchase contracts for all parcels acquired by Developer or its Affiliates after the date hereof, comprising all or any portion of the Project Site, shall be provided with the subsequent Requisition.

(b) Guaranty. A Guaranty (the "**Guaranty**") in the form of **Exhibit H** attached hereto and made a part hereof, executed by Guarantor.

(c) Opinions of Counsel. An opinion of counsel to Developer and Guarantor issued to both EDC and ESDC as to the due authorization, enforceability and non-contravention of this Agreement and the Guaranty in a form reasonably acceptable to ESDC.

(d) Restrictive Covenant. The Restrictive Covenant executed by Developer and/or its applicable Affiliates for immediate recordation against all real property comprising a portion of the Project Site owned by Developer or its Affiliates. In addition, to the extent Developer or its Affiliates acquires any additional parcel of land comprising a portion of the Project Site during the Term, Developer shall record or deliver an executed Restrictive Covenant to ESDC for recordation against such additional parcel of land.

(e) Insurance Policies. Certificates, in form and substance reasonably satisfactory to ESDC, evidencing the insurance policies described in **Exhibit I**.

(f) Purchase Agreement. The Purchase Agreement executed by Developer and ESDC.

(g) Agreement and Acknowledgement. Agreement and Acknowledgement executed by EDC pursuant to the Purchase Agreement.

### ARTICLE III

#### THE FUNDING

Section 3.01 Agreement to Fund Eligible State Project Costs. Subject to the terms, covenants and conditions of this Agreement and the performance by Developer or its Affiliates, as applicable, of its Obligations hereunder, ESDC agrees to disburse the State Funding to Developer to reimburse Developer for Eligible State Project Costs in the manner and to the extent provided in Section 3.02 hereof. In no event shall ESDC be obligated to disburse any portion of the State Funding during the continuance of a Default hereunder.

#### Section 3.02 State Funding.

(a) Prior to the end of the **Second Contribution Period** and subject to the requirements of this Article III and the requirements of Article IV hereof, ESDC shall make one

or more payments comprising not more than Fifty-Five Million Dollars (\$55,000,000) of the State Contribution to Developer within thirty (30) days after Developer's written request therefor pursuant to Article IV, provided, however, that in no event shall Developer be entitled to request, or ESDC be obligated to advance, State Funding Payments pursuant to this Section 3.02(a) which (1) would reimburse Soft Costs other than Approved Soft Costs, (2) aggregate more than the Eligible State Project Costs as of the date of such request, (3) would result in the aggregate State Funding Payments disbursed pursuant to this Section 3.02 exceeding the aggregate City Funding Payments disbursed by ESDC pursuant to Section 3.04 hereof or (4) would result in the sum of (x) the aggregate State Funding Payments disbursed pursuant to this Section 3.02 and (y) the aggregate City Funding Payments disbursed pursuant to Section 3.04 hereof, exceeding fifty percent (50%) of the Eligible Project Costs incurred as of the date of such request.

(b) During the Third Contribution Period and subject to the requirements of this Article III and the requirements of Article IV hereof, ESDC shall make one or more payments comprising the balance of the State Contribution, which shall equal the difference between (i) One Hundred Million Dollars (\$100,000,000), and (ii) the aggregate State Funding Payments made pursuant to Section 3.02(a) hereof, to Developer within thirty (30) days after Developer's written request therefor pursuant to Article IV hereof, provided that (i) in no event shall Developer be entitled to request, or ESDC be obligated to advance, State Funding Payments pursuant to this Section 3.02 which (1) would reimburse Soft Costs, (2) aggregate more than the Eligible State Project Costs actually incurred as of the date of such request, (3) would result in the aggregate State Funding Payments disbursed pursuant to this Section 3.02 exceeding the aggregate City Funding Payments disbursed by ESDC pursuant to Section 3.04 hereof, (4) would result in the sum of (x) the aggregate State Funding Payments disbursed pursuant to this Section 3.02 and (y) the aggregate City Funding Payments disbursed pursuant to Section 3.04 hereof, exceeding fifty percent (50%) of the Eligible Project Costs actually incurred as of the date of such request.

(c) Except as provided in Section 3.02(d), no portion of the State Funding shall be disbursed for materials not incorporated into the Project Site except materials (i) as to which Developer or its Affiliates has acquired, or upon payment of the State Funding Payment will acquire title; (ii) which are properly stored on the Project Site; and (iii) which are secured against theft and damage to the reasonable satisfaction of ESDC. In the event of any insured loss of such materials, Developer covenants to use (or cause its Affiliates to use) the insurance proceeds related thereto exclusively as a trust fund to replace the insured materials.

(d) Upon delivery of the appropriate Requisition and related documentation required hereunder, State Funding shall be disbursed to the Developer for staged payments required by the Developer's or its Affiliate's vendors for the fabrication of specialty equipment and supplies to be utilized for the temporary and permanent rail yard, including electrical switch gears, transformers, special cable, track panels, switches and related equipment, signal equipment, temporary trestle and, as approved by ESDC, other items of Infrastructure required for the rail yard, provided that (i) the payment schedule for such equipment and supplies is reasonable and appropriate and (ii) the final payment is at least 10% of the payments due thereunder. Developer shall provide ESDC with copies of any contracts providing for such staged payments with an explanation of the payment schedule thereunder. State Funding shall be disbursed for the final payment under such contracts only upon delivery of such equipment or supplies to the Project Site and subject to the conditions described in Section 3.02(c). Each

contract that contains staged payments shall contain a provision allowing ESDC or its representatives to inspect the specialty equipment and supplies that are being fabricated off-site and observe any testing of such equipment at all reasonable times. Developer shall be obligated to reimburse ESDC for all reasonable costs incurred to inspect such fabrication and testing, including, without limitation, travel and lodging expenses.

Section 3.03 Agreement to Fund Eligible City Project Costs. Subject to the terms, covenants and conditions of this Agreement and the performance by Developer or its Affiliates, as applicable, of its Obligations hereunder, ESDC agrees to disburse the City Funding to Developer to reimburse Developer for Eligible City Project Costs incurred by Developer or its Affiliates in connection with the Project in the manner and to the extent provided in this Section 3.03 and in Section 3.04 hereof. In no event shall ESDC be obligated to disburse any portion of the City Funding during the continuance of a Default hereunder. The City Funding Payments shall be made by ESDC advancing the Deposit to the Seller, as such term is defined in and in accordance with the terms of the Purchase Agreement and pursuant to Article IV hereof.

Section 3.04 City Funding.

(a) Prior to the end of the Second Contribution Period and subject to the requirements of this Article III and the requirements of Article IV hereof, ESDC shall make one or more payments comprising the first Fifty-Five Million Dollars (\$55,000,000) of the City Contribution to Developer within thirty (30) days after Developer's written request therefor pursuant to Article IV hereof, payable as set forth below:

(i) Forty Million Dollars (\$40,000,000), provided that a State Funding Payment of at least Fifteen Million Dollars (\$15,000,000) is made simultaneously therewith.

(ii) Fifteen Million Dollars (\$15,000,000), for an aggregate City Funding of Fifty-Five Million Dollars (\$55,000,000), provided that aggregate State Funding Payments of at least Forty Million Dollars (\$40,000,000) have been made prior to such City Funding Payment or will be made simultaneously therewith.

(b) During the Third Contribution Period and subject to the requirements of this Article III and the requirements of Article IV hereof, ESDC shall make one or more payments comprising the balance of the City Contribution, which shall equal the difference between (i) One Hundred Million Dollars (\$100,000,000), and (ii) the aggregate City Funding Payments made pursuant to Section 3.04(a) hereof, to Developer within thirty (30) days after Developer's written request therefor pursuant to Article IV hereof, payable as set forth below:

(i) If the Fifteen Million Dollars (\$15,000,000), for an aggregate City Funding of Fifty-Five Million Dollars (\$55,000,000), set forth in Section 3.04(a)(ii) was not disbursed to Developer in the Second Contribution Period, such payment shall be made in the Third Contribution Period, ), provided that aggregate State Funding Payments of at least Forty Million Dollars (\$40,000,000) have been made prior to such City Funding Payment or will be made simultaneously therewith.

(ii) Thirty Million Dollars (\$30,000,000), for an aggregate City Funding of Eighty-Five Million Dollars (\$85,000,000), provided that aggregate State Funding Payments of at least Fifty-Five Million Dollars (\$55,000,000) have been made prior to such City Funding Payment or will be made simultaneously therewith.

(iii) Ten Million Dollars (\$10,000,000), for an aggregate City Funding of Ninety-Five Million Dollars (\$95,000,000), provided that aggregate State Funding Payments of at least Eighty-Five Million Dollars (\$85,000,000) have been made prior to such City Funding Payment or will be made simultaneously therewith.

(iv) Five Million Dollars (\$5,000,000), for an aggregate City Funding of One Hundred Million Dollars (\$100,000,000), provided that (A) aggregate State Funding Payments of at least One Hundred Million Dollars (\$100,000,000) have been made prior to such City Funding Payment or will be made simultaneously therewith and (B) Total Project Costs aggregating not less than One Hundred Million Dollars (\$100,000,000) have been paid or incurred by Developer in the Third Contribution Period, which have not been and shall not be reimbursed by ESDC.

(c) Developer understands that ESDC's obligation to make any City Funding Payment is conditioned upon, and subject to, ESDC receiving the amount of such City Funding Payment from EDC pursuant to the City Funding Agreement. Accordingly, notwithstanding any provision to the contrary in this Agreement, ESDC shall be under no obligation to pay any portion of the City Funding to Developer except when, and to the extent, funds for such payment are released and made available to ESDC by EDC. Developer agrees to reasonably cooperate with ESDC in satisfying the terms and conditions of the City Funding Agreement and further agrees that ESDC may modify the procedures described in this Agreement (so long as Developer's rights, liabilities and obligations under this Agreement are not adversely affected, increased or modified in any material respect) to permit ESDC to comply with the terms and conditions of the City Funding Agreement. Developer shall be a third party beneficiary of the City's obligation to fund the Project pursuant to the City Funding Agreement.

(d) Developer covenants and agrees that ESDC has hereby contractually required Developer or its Affiliates, as applicable, to comply with obligations set forth for Developer or its Affiliates in Article I, definition of Unavoidable Delay and Sections 3.02, 3.05, 4.01, 4.03, 4.09, 4.10(b), 4.10(c), 6.04, 6.05, 6.11, 7.01, 7.02, 9.01, 9.02, 9.03, 9.04 and 9.05 of the City Funding Agreement and that Developer or its Affiliates shall satisfy such obligations. Developer covenants and agrees to comply, and cause its Affiliates to comply, with the terms of any other agreements Developer and/or its Affiliates enter into with EDC and the City with respect to the Project.

#### ARTICLE IV

##### CERTAIN CONDITIONS FOR DISBURSEMENT

Section 4.01 Documents Required for All Disbursals. Developer shall be permitted to submit a request to ESDC requesting State Funding Payments and City Funding

Payments once during each calendar month occurring during the Term; such request may be made by either entity collectively defined as Developer for the purposes of this Agreement and, shall be deemed binding on such entities, (the entity making such requisition, the “**Requisitioning Entity**”). Each request made by Developer for ESDC to make a State Funding Payment and/or City Funding Payment shall be made in writing and shall be delivered together with each of the following:

(a) Cover Sheet. A cover sheet listing the items submitted together with the Requisition.

(b) Requisition. A requisition (the “**Requisition**”), in the form attached to this Agreement as **Exhibit J**, executed and certified by an authorized representative of a Requisitioning Entity.

(c) Additional Documents and Information. Such additional documents and information as may be reasonably requested by ESDC with respect to the Project Site and/or the Project or in support of the Requisition, including, without limitation, documents required pursuant to the City Funding Agreement and documents set forth in **Exhibit F** as documents required for Requisition.

Section 4.02 Requisitions Update Developer's Representations. Developer agrees that each Requisition submitted to ESDC shall constitute a representation, warranty and agreement that: (a) in all material respects, all of the representations and warranties of Developer made in this Agreement remain true, complete and correct and shall remain true, complete and correct on the date of disbursement and (b) no Default in any of the terms, covenants or conditions on the part of Developer to be performed or observed under this Agreement has occurred and is continuing.

## ARTICLE V

### CONTRACT PROCUREMENT

Section 5.01 In connection with the construction of the Infrastructure, Developer or its Affiliates (as applicable) shall be required to competitively bid each contract for Hard Costs pursuant to guidelines reasonably established by Developer to obtain the lowest bids from qualified contractors and to comply with Article XVI hereof. A copy of such guidelines shall be provided to ESDC within thirty (30) days after the date hereof. At least ten (10) days prior to bidding any contract for the construction of the Infrastructure, Developer shall submit the proposed list of bidders for such contract to ESDC. Although ESDC shall have no right to approve the bid list, ESDC shall have the right to comment upon the same and Developer or its Affiliates shall consider such comments; provided, however, in no event shall the foregoing permit the use of any Prohibited Vendor. To the extent any contract for the Hard Costs of construction of the Infrastructure is not competitively bid, the costs incurred pursuant to such contract shall not comprise Eligible State Project Costs unless prior to awarding such contract (i) Developer provides ESDC with a written explanation as to why the same should not be competitively bid, (ii) ESDC approves in writing the awarding of such contract, which approval shall not be

unreasonably withheld or delayed. Prior to the date hereof Developer or its Affiliates have entered into certain contracts with the vendors listed on **Exhibit D** hereof, which contracts, as the same may be reasonably amended, ESDC has previously approved for the purpose of this Section 5.01.

Section 5.02 Each contract for construction of the Infrastructure shall be awarded to the bidder reasonably determined by Developer to be the lowest qualified bidder. Each such contract shall (i) comply with all applicable agreements between Developer or its Affiliates and the MTA or the City, if any (ii) provide that none of ESDC, the City, EDC and MTA shall have any responsibility for any obligations under such contract, and (iii) shall be with an entity that is not a Prohibited Vendor.

## ARTICLE VI

### INFRASTRUCTURE

#### Section 6.01 The Infrastructure.

(a) Developer and/or its Affiliates shall construct the Infrastructure with diligence, in a good and workmanlike manner and in accordance with applicable Requirements and the Plans and Specifications. All materials and equipment utilized or furnished in connection with the construction of the Infrastructure shall be in good condition, fully operational, without patent or latent defects and suitable for their intended use.

(b) Developer and/or its Affiliates shall obtain all approvals required for the construction of the Infrastructure, as and when required by the Governmental Authorities having jurisdiction over the Project (collectively, the "**Approvals**"). ESDC shall reasonably cooperate with Developer and its Affiliates in connection with their respective applications to obtain such Approvals.

(c) At all times during the performance of the Project, subject, however, to typical construction conditions, Developer or its Affiliates shall maintain the Project Site in a neat and orderly condition and shall protect the Project Site against deterioration, loss, damage and theft.

(d) Developer and its Affiliates shall comply in all respects with the Environmental Commitment Memo.

(e) Developer and its Affiliates shall otherwise carry out the Project in accordance with the GPP, as same may be amended from time to time.

(f) Developer and its Affiliates shall comply with the ESDC design and construction requirements set forth in **Exhibit F** attached hereto.

Section 6.02 Right to Proceed. Prior to commencing construction of any portion of the Infrastructure, Developer and/or its Affiliates shall obtain all necessary Approvals for such portion of the Infrastructure, and provide copies of the Plans and Specifications for such portion to ESDC.

Section 6.03 Inspections and Facilities.

(a) Upon reasonable prior notice and at reasonable times, Developer shall permit the Environmental Monitor (as defined in the Environmental Commitment Memo) and its officers, employees, agents and consultants and ESDC officers, employees, agents and consultants at any time and from time to time, during business hours and at any other time during the conduct of any Infrastructure work, to inspect the Project Site and review the progress of the work on the Project to determine compliance with this Agreement; provided that such Environmental Monitor shall have completed safety training required by Governmental Authorities. No such inspection and examination by ESDC's personnel or designees shall impose upon ESDC responsibility for any failure by Developer or its Affiliates to observe any Requirements or safety practices in connection with such construction, or constitute an acceptance of any work that does not comply in all respects with the provisions of this Agreement. ESDC, its agents and field personnel, shall (x) prior to entering the Project Site check in with the construction trailer maintained by Developer or its contractors, and (y) use commercially reasonable efforts to minimize interference with Developer's construction activities. Nothing herein shall be deemed to limit the right of the City in its governmental capacity to inspect the work performed in connection therewith from time to time as it may be permitted by applicable Requirements.

(b) Developer shall make available non-exclusive office space on the Project Site for the use of the Environmental Monitor and its officers, employees, agents and consultants and ESDC officers, employees, agents and consultants.

ARTICLE VII

CERTAIN REPRESENTATIONS AND WARRANTIES

Developer hereby represents and warrants to EDC and ESDC as follows:

Section 7.01 Incorporation, Good Standing and Due Qualification. Brooklyn Arena LLC is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the limited liability company power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified as a foreign limited liability company and in good standing under the laws of each other jurisdiction in which such qualification is required. Atlantic Yards Development Company LLC is a limited liability company duly incorporated, validly existing and in good standing under the laws of the State of Delaware and has the limited liability company power and authority to own its assets and to transact the business in which it is now engaged or proposed to be engaged, and is duly qualified as a foreign limited liability company and in good standing under the laws of each other jurisdiction in which such qualification is required.

Section 7.02 Corporate Power and Authority; No Conflicts. The execution, delivery and performance by Developer of this Agreement have been duly authorized by all necessary corporate action of Developer and do not and will not (a) require any consent or approval by any Person unless such consent or approval has been obtained, (b) contravene the charter or by-laws of Developer, (c) violate any provision of, or require any filing, registration,