

(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.

15. Service of Process. Guarantor irrevocably consents to the service of any and all process in any judicial action or proceeding described in Section 14 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 10 hereof. Nothing in this Section shall affect the right of ESDC to serve legal process in any other manner permitted by law.

16. 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.

17. 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.

18. 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.

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

GUARANTOR:

FOREST CITY ENTERPRISES, INC.

By: _____

Name:

Title:

EXHIBIT I

INSURANCE

A) Developer shall, throughout the Term of this Agreement (or as otherwise specified), maintain the following insurance coverage with the liability limits specified (which limits may be met through a combination of primary and excess/umbrella policies):

1) *Commercial General Liability and Excess Liability* insurance with limits of liability for bodily injury and property damage of not less than \$50,000,000 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 \$1,000,000 per occurrence, provided Developer remains responsible for the payment of all claim expenses within the amount of the self-insured retention or deductible. Developer shall name under these policies and shall cause all contractors performing Infrastructure work to name ESDC, EDC and the City as additional insureds on commercial general liability and excess liability policies required for such contractors with respect to the Infrastructure work;

2) *Workers' Compensation* insurance with coverage and limits required by statute, and *Employer's Liability* insurance with limits of liability of not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 each employee for bodily injury by disease, and \$1,000,000 policy limit for bodily injury by disease;

3) *Business Automobile Liability* insurance with limits of liability for bodily injury and property damage of \$1,000,000 per accident and aggregate;

4) *Environmental Liability* insurance for the five (5) year period beginning August 18, 2004 and ending August 18, 2009, with limits of liability of not less than \$5,000,000 per occurrence and aggregate. This insurance may contain a self-insured retention or deductible of \$250,000 per occurrence, provided Developer remains responsible for the payment of all claim expenses within the amount of the self-insured retention or deductible;

5) *Builder's Risk* insurance for the period between the commencement and substantial completion of the Infrastructure work, in the amount of the Hard Costs for such work on a replacement cost basis. This coverage may be provided under more than one insurance policy and may be maintained by Developer, Developer's construction manager or general contractor, in Developer's sole discretion. In any event ESDC, EDC and the City shall be additional insured under each *Builder's Risk* policy covering the Infrastructure work. This insurance may contain a self-insured retention or deductible of up to \$500,000 per occurrence, provided Developer (or its construction manager or general contractor) remains responsible for the payment of all claim expenses within the amount of the self insured retention or deductible.

6) *Professional Liability* insurance to be maintained by contractors performing approved *Soft Costs*, with limits of liability of not less than \$1,000,000 per claim.

B) Before commencing Infrastructure work, Developer shall provide certificates of insurance evidencing the insurance coverage required by this Agreement. Within a commercially reasonable time after ESDC's written request, Developer shall provide ESDC the opportunity to review (but not copy or possess) copies of the insurance policies required by this Agreement.

C) All insurance policies required by this Agreement shall be:

- 1) written by insurers with A.M. Best Company ratings of A- or better;
- 2) 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
- 3) written on an "occurrence" basis (except for *Environmental Liability*, which is "claims made").

EXHIBIT J

FORM OF REQUISITION

(see attached)

Exhibit J
[Forest City Letterhead]

Atlantic Yards Land Use Improvement and Civic Project
Project Number: _____

Funding Agreement Dated as of _____, among Brooklyn Arena LLC, Atlantic Yards
Development Company LLC and the New York State Urban Development Corporation d/b/a
Empire State Development Corporation ("Funding Agreement")

Requisition # _____
Date of Requisition _____

- I.** Eligible Project Costs Incurred as of _____
(insert date)
- (a) Eligible Developer Project Costs _____
- (b) Eligible State Project Costs _____
- Total (a) + (b) _____

- II.** (a) State Funding Payment Requested Pursuant to This Requisition \$ _____
- (b) Total State Funding Payments Requested pursuant to Prior Requisitions \$ _____
- III.** (a) City Funding Payment Requested Pursuant to This Requisition \$ _____
- (b) Total City Funding Payments Requested Pursuant to Prior Requisitions \$ _____
- IV.** Total Project Costs (if applicable) ¹ \$ _____
- V.** (a) Total Amount requisitioned payable to Brooklyn Arena, LLC \$ _____
- (b) Total Amount requisitioned payable to Atlantic Yards
Development Company, LLC \$ _____
- (c) Total - equals II(a) + III(a) \$ _____

¹ Applicable only for (i) the initial requisition after City Funding [III(a) + III(b)] exceed \$55 million; and (ii) the initial requisition after City Funding [III(a) + III(b)] exceeds \$95 million.

Certification

Each of the undersigned, respectively an officer of Brooklyn Arena, LLC and Atlantic Yards Development Co., LLC, hereby certifies that the request hereinabove complies, in all respects, with the requirements of the Funding Agreement, including but not limited to Section 3.02 and Section 3.04. All capitalized term herein shall have the meaning set forth in the Funding Agreement.

Brooklyn Arena, LLC
By: Nets Sports and Entertainment, LLC

Name: _____
Title:
Date:

Atlantic Yards Development Co., LLC
By: FCR Land, LLC

Name: _____
Title:
Date:

Attachments

- Copies of executed contracts for Eligible State Project Costs and invoices (including certifications from engineers, contractors or construction managers, as appropriate) or other evidence of incurred Eligible State Project Costs, as required by ESDC
- If applicable (see footnote on page 1) (i) Total Project Cost Itemization (per Exhibit G of the Funding Agreement) & (ii) Certification from Independent CPA as to Total Project Cost
- Documents required pursuant to Exhibit F of the Funding Agreement

EXHIBIT K

PROJECT DOCUMENTATION TERMS

Site Acquisition	Prior to, or simultaneously with, ESDC acquiring title to any portion of the Project Site by condemnation, Developer or its Affiliates shall (i) provide a financing plan, subject to the reasonable approval of ESDC, for the financing of the Arena, and (ii) cause the closing to occur under the acquisition contract for the LIRR Vanderbilt Yard. The cost of condemnation and the conveyance of the MTA rail yard shall be borne by Developer or its Affiliates.
Subway Station Access	Developer shall be required to provide reasonable assurances, on terms acceptable to ESDC, Developer and MTA, that the new subway station access that will adjoin the Arena will be completed and operational at the time the Arena is opened for operation. It is expected that the MTA would provide reasonable approvals, access and track outages as necessary to meet this goal.
Guaranty of Completion	Prior to the commencement of construction of the Arena or any of the sixteen other buildings to be constructed, the Forest City Enterprises or another entity reasonably satisfactory to ESDC shall provide ESDC a guaranty of completion for the respective building, in a form acceptable to ESDC, with respect to the applicable building.
Bonds	Developer or its Affiliates shall be required to obtain any and all bonds required to comply with the Lien Law.
Affordable Home Ownership	Developer shall provide 600-1,000 units of affordable home ownership units as close to the Atlantic Yards project site as possible, including but not limited to the following neighborhoods: Prospect Heights, Fort Greene, Bedford Stuyvesant, Crown Heights, Clinton Hill and Park Slope. Developer shall seek to build 200 of these affordable home ownership units directly on the Atlantic Yards project site (assuming the appropriate subsidy required to fund these affordable home ownership units is available and the density levels approved in the ESDC GPP are maintained). Developer shall seek to make the affordable home ownership units affordable to families with income up to 150% of AMI and to make homeownership opportunities available to families with incomes below 100% AMI.
Affordable Rental Housing	Affordable Housing shall comprise 2,250 rental units in the entire project affordable to low-, moderate-, and middle-income families. Affordable Housing shall comprise at least thirty percent (30%) of the residential units on the Arena Block. "Affordable Housing" shall mean, with respect to Phase I, residential units subject to income and rent restrictions contained in either an HDC, HFA or

HPD Regulatory Agreement providing that (x) such units will be affordable to persons or families earning no more than 160% of Area Median Income or, if higher, the highest percentage of Area Median Income used at the applicable time under any New York City Department of Housing Preservation and Development (or its successor in function) ("HPD"), New York City Housing Development Corporation (or its successor in function) ("HDC") or other City housing initiative intended to provide housing opportunities for low, moderate or middle income persons, as approved by the City and (y) rents for units shall be no more than 30% of 160% of Area Median Income or, if higher, 30% of the highest percentage of Area Median Income used at the applicable time under any HPD, HDC or other City housing initiative intended to provide housing opportunities for low, moderate or middle income, as approved by the City.

It is the expectation of the parties that Developer or its Affiliates will apply for financing and other incentive programs then generally available to developers of Affordable Housing (as defined herein) and that, if such application is deemed by the applicable administering agency after good faith review to be consistent with then-applicable program rules and standards, then Developer or its Affiliates will receive incentives under such programs consistent with what developers of such Affordable Housing are receiving at that time.

Notwithstanding the above, if the Developer applies for tax abatements under the 421a program, Developer will be required to abide by the definitions of affordable housing under the 421a program, the current proposed legislation for which requires that for each 1,500 residential units, 20% of those units must be affordable to persons or families whose incomes at the time of initial occupancy do not exceed 120% of Area Median Income adjusted for family size, and do not exceed an average of 90% of Area Median Income adjusted for family size.

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| Open Space and Park Improvements | In addition to its obligations with respect to the dedicated 8 acres of open space within the Project Site, Developer or its Affiliates shall invest \$3 million dedicated solely for the improvement of local existing parks near and around the Atlantic Yards development. |
| Community Affairs Office | Unless otherwise agreed to by Developer and ESDC, Developer shall be required to maintain a community affairs office on the Project Site that will be operated and staffed by Developer during the construction phases of the Project, for the purpose of allowing community residents to expeditiously raise and communicate any construction related concerns (traffic, noise, environmental, etc.) to an appropriate official and to obtain remedies and answers to questions. The community affairs office shall be managed by a knowledgeable and accessible Developer representative. |
| Building | Developer agrees that each building, including Building 1, constructed in |

Heights connection with the Atlantic Yards Project shall be less than 512 feet tall or the height of the Williamsburg Savings Bank.

Brooklyn Tech High School Developer shall agree to work with the City, State and the United Federation of Teachers on the creation of a brand new 21st Century Brooklyn Tech High School, to the extent the City and the Department of Education elect to build such a school.

Arena Commitment & Remedies Developer or its Affiliates shall commence construction on the Arena within one year after the Effective Date Subject to up to four years of delay resulting from Force Majeure events or material adverse changes affecting the financing of the Arena. If Developer or its Affiliates fail to commence construction of the Arena within this time period, Developer will repay to ESDC State Funding Payments previously paid to Developer by ESDC with Interest. In addition, the Arena shall be either the first or second building on which construction begins, and once begun, Developer or its Affiliates will diligently pursue completion of the Arena.

Developer or its Affiliates shall complete construction of the Arena within six years of the Effective Date, subject to Force Majeure.

If Developer or its Affiliates fails to complete construction of the Arena within six years of the Effective Date, subject to Force Majeure, Developer shall be obligated to (i) repay each year a portion, to be established in the Project Documentation, of State Funding Payments previously paid to Developer by ESDC with Interest and (ii) pay Liquidated Damages as set forth in the City Funding Agreement, until the Arena is complete for beneficial use. The State Funding repayment amount for each year shall be a portion of the 75% of State Funds assumed, for the purpose of remedies, to be allocated to the Arena. Payment of the Liquidated Damages will be effected through an additional rent to be paid to ESDC under the Arena lease and remitted by ESDC to the City.

Phase 1 Commitment & Remedies Developer or its Affiliates shall complete the construction of Buildings 1-4 and Site 5, and related affordable housing and infrastructure, (collectively, "Phase 1") within twelve years of the Effective Date, subject to Force Majeure.

If Developer or its Affiliates fails to complete the balance of Phase 1 as described above, subject to Force Majeure, Developer shall be obligated to (i) repay each year until the balance of Phase I is complete for beneficial use a portion, to be established in the Project Documentation, of State Funding Payments previously paid to Developer by ESDC with Interest and (ii) pay Liquidated Damages as set forth in the City Funding Agreement, until the balance of Phase 1 is complete for beneficial use. The State Funding repayment amount for each year shall be a portion of the 25% of State Funds

assumed, for the purpose of remedies, to be allocated to Phase 1, excluding the Arena. Payment to EDC shall be made through additional rent under an ESDC lease and remitted by ESDC to EDC and shall be guaranteed by Guarantor.

Phase 2
Commitment
& Remedies

Developer or its Affiliates shall complete the construction of Buildings 5-15 on the blocks east of 6th Avenue, and related affordable housing and infrastructure, (collectively, "Phase 2"), subject to Force Majeure, by a date to be established in the Project Documentation, which date will take into account the need for satisfaction of Governmental Authorities' obligations to the Project, (the "Final Deadline").

If Developer or its Affiliates fails to complete the balance of Phase 2 by the Final Deadline, subject to Force Majeure and subject to Governmental Authorities making available to the Project affordable housing subsidies then customarily available to developers of such housing, ESDC shall have an option to purchase Developer's or its Affiliates' interest in the parcels not yet developed pursuant to the GPP, as it may be amended. Such option to purchase shall be pursuant to terms negotiated in the Project Documentation and shall provide for a purchase price equal to the Developer's or its Affiliates' cost and land carrying cost, adjusted for inflation.

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