Lease Agreement

AGREEMENT OF LEASE

between

THE CITY OF NEW YORK, acting through its Department of Parks and Recreation and its

Deputy Mayor for Economic Development and Rebuilding, Landlord

and

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION, Tenant

Premises: Certain parcels of land and improvements thereon in the vicinity of Yankee Stadium, in the Borough of the Bronx, City of New York and State of New York

Dated as of December 1, 2007

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AGREEMENT OF LEASE (the "Lease"), made as of the 1st day of December, 2007, between THE CITY OF NEW YORK, a municipal corporation of the State of New York, acting through its Department of Parks and Recreation, having an address at The Arsenal, Central Park, New York, New York 10021, and its Deputy Mayor for Economic Development and Rebuilding, as landlord, and NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION ("NYCEDC"), a local development corporation formed pursuant to Section 1411 of the Not-for-Profit Corporation Law of the State of New York, having an office at 110 William Street, New York, New York 10038, as tenant.

W I T N E S S E T H:

WHEREAS, the City is the owner of the "Land" (as hereinafter defined), and any other buildings and other improvements situated thereon; and

WHEREAS, the City desires to develop said premises and promote recreational and tourism activities at and around the Existing Stadium and New Stadium (each as hereinafter defined), including providing public parking to relieve traffic congestion and parking demand on neighborhood streets resulting from patrons of Yankee Stadium events, as well as to provide parking for commuters, park users, shoppers and others, and to preserve and enhance public space and the well-being and quality of life of the City's citizenry and to create employment opportunities and generate new revenues to the City;

NOW, THEREFORE, it is hereby mutually covenanted and agreed by and between the parties hereto that this Lease is made upon the terms, covenants and conditions hereinafter set forth.

ARTICLE 1

DEFINITIONS

For all purposes of this Lease and all agreements supplemental hereto the terms defined in this Article 1 shall have the following meanings:

"Accounting Principles" means the then current generally accepted accounting principles.

"Act" means the New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of Consolidated Laws of the State of New York, as amended, as supplemented by Chapter 1082 of 1974 of the Laws of the State of New York, as amended.

"Additional Cash Flow Rent" means the payments described in Section 3.5 hereof.

"All Risk" has the meaning provided in Section 7.1(b) hereof.

"Architect" means Clarke Caton Hintz, a registered architect or structural engineer or architectural or structural engineering firm, with experience in projects comparable to or of greater magnitude than the Project, selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

"Assignee" has the meaning provided in Section 10.1(b) hereof.

"Assignee Reasonably Satisfactory to Landlord" has the meaning provided in Section 41.17(b) hereof.

"Assignment" has the meaning provided in Section 10.1(b) hereof.

"Ballpark Company" means Yankee Stadium LLC.

"Baseball Season" means the New York Yankees' Major League Baseball season, including exhibition games, regular season games and post-regular season games.

"Base Index" means the Price Index for the month in which the Commencement Date shall occur.

"Base Rent" has the meaning provided in Section 3.2(a) hereof.

"Base Rent Adjustment Date" has the meaning provided in Section 3.2(b) hereof.

"Bond Trustee" means the trustee under the IDA Bond Documents.

"BPDC" has the definition set forth in the definition of Tenant.

"Building" or "Buildings" means, the Garages (including footings, foundations

and vehicular and pedestrian ramps and viaducts), retail space on Site D or in any Garages or elsewhere on the Land, Equipment and other improvements and appurtenances of every kind and description hereafter erected, constructed, or placed upon the Land, including, without limitation, Capital Improvements, and any and all alterations and replacements thereof, additions thereto and substitutions therefor; but excluding any Park Improvements and State Highway Improvements.

"Capital Improvement" has the meaning provided in Section 15.1(c) hereof.

"Casualty Restoration" has the meaning provided in Section 8.2(a) hereof.

"Certificate" has the meaning provided in Section 39.8(d) hereof.

"Certified Public Accountant" means any independent certified public accountant or accounting firm selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

"City" means The City of New York, a municipal corporation organized under the Laws of the State of New York.

"Commence Construction of the Garages, Parking Lots and/or Park Improvements" or "Commencement of Construction of the Garages, Parking Lots and/or Park Improvements" and phrases of similar effect have the meaning provided in Section 13.1(b) hereof.

"Commencement Date" has the meaning provided in Section 2.1 hereof.

"Comptroller" has the meaning provided in Section 36.3(a) hereof.

"Condemnation Restoration" has the meaning provided in Section 9.2(b) hereof.

"Construction Agreement(s)" has the meaning provided in Section 13.9(b) hereof.

"Construction Commencement Date" has the meaning provided in Section 13.1(b) hereof.

"Construction of the Garages, Parking Lots and/or Park Improvements" and phrases of similar effect have the meaning provided in Section 13.1(b) hereof.

"Construction Work" means any work performed by or on behalf of Tenant under this Lease or under the Funding Agreement including, without limitation, Construction of the Garages, Parking Lots and/or Park Improvements, a repair, a Restoration (as hereinafter defined), a Capital Improvement, or improvement work performed in connection with the use, maintenance or operation of the Premises (as hereinafter defined).

"Control Affiliate" means any Person (as hereinafter defined) controlling, controlled by or under common control with Tenant.

"Control", "Controls" or "Controlling Interest" means the power to direct the management and policies of a Person (x) through the ownership of not less than a majority of its voting securities, (y) through the right to designate or elect not less than a majority of the members of its Governing Body, or (z) by contract or otherwise.

"Conviction" has the meaning provided in Section 41.17(b) hereof.

"Date of Taking" has the meaning provided in Section 9.1(c) hereof.

"Default" means any condition or event, or failure of any condition or event to occur, which constitutes or would, after notice, or the lapse of time, or both, constitute an Event of Default (as hereinafter defined).

"Depositary" means an Institutional Lender (as hereinafter defined) selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld, except that any Recognized Mortgagee which is an Institutional Lender shall be deemed approved by Landlord; provided, that if Tenant has not designated an Institutional Lender ready, willing and able to be Depositary within ten (10) business days of demand for Tenant to do same, Landlord may designate such Depositary in lieu thereof. Except for purposes of Article 5 and Section 24.11 hereof, for as long as IDA Bonds are outstanding the Depositary shall be the Bond Trustee.

"ESDC" means New York State Urban Development Corporation, doing business as Empire State Development Corporation.

"Engineer" means an engineer, if any, licensed in the State of New York, retained by Tenant, subject to the prior written approval of Landlord (not to be unreasonably withheld) in connection with the preparation of plans and specifications for the Construction of the Garages, Parking Lots and/or Park Improvements.

"Equipment" means all fixtures and personal property incorporated in, or attached to, and used or usable in the operation of the Premises and shall include, but shall not be limited to, all machinery, apparatus, devices, motors, engines, dynamos, compressors, pumps, boilers and burners, heating, lighting, plumbing, ventilating, air cooling and air conditioning equipment; chutes, ducts, pipes, tanks, fittings, conduits and wiring; incinerating equipment; elevators, escalators and hoists; partitions, doors, cabinets, hardware; books and stacks and shelving therefor; floor, wall and ceiling coverings; wash room, toilet and lavatory equipment; lobby decorations; windows, window washing hoists and equipment; communication equipment; and all additions or replacements thereof, excluding, however, any personal property and trade fixtures; provided, however, that with respect to trade fixtures, the removal thereof will not cause structural damage to the Building in which such is located unless promptly repaired to Landlord's reasonable satisfaction, but excluding Park Improvements and State Highway Improvements.

"Equity Interest" has the meaning provided in Section 10.(b) hereof.

"Equivalent Protection" has the meaning provided in Section 7.3 hereof.

"Event of Default" has the meaning provided in Section 24.1 hereof.

"Existing Marquee" means that certain marquee signage located on Site 13B maintained by The New York Yankees, Inc. pursuant to the Existing Stadium Lease, located as depicted on Exhibit A-3.

"Existing Stadium" means the Yankee Stadium existing on the date first above written, located in the area depicted in Exhibit M.

"Existing Stadium Lease" means that certain lease made as of August 8, 1972 for the Existing Stadium between the City, as landlord, and The New York Yankees, Inc., as tenant, as amended and as may be amended.

"Expiration Date" has the meaning provided in Section 2.1 hereof.

"Expiration of the Term" means either the Expiration Date or the Fixed Expiration Date (as hereinafter defined), whichever shall be applicable.

"Federal Courts" has the meaning provided in Section 41.18(a) hereof.

"Ferry Landing" means the area indicated on Exhibit A-1 hereto anticipated to be used for access to and egress from a ferry terminal to be constructed on the Harlem River.

"Fixed Expiration Date" has the meaning provided in Section 2.1 hereof.

"Floor Area" means floor area as defined in Section 12-10 of the Zoning Resolution.

"Foreclosure Notice" has the meaning provided in Section 11.3(b) hereof.

"Funding Agreement" means that certain funding agreement among NYCEDC, ESDC and BPDC dated as of October 19, 2007.

"GAL" has the meaning provided in Section 23.1 hereof.

"Game Days" mean days on which Major League Baseball games (other than preseason and exhibition games) take place in Yankee Stadium.

"Garage A Easterly Side Appurtenances" means the ramps, staircases, ventilation moat, translucent tube, architectural scrims attached to Garage A, and other appurtenances attached or connected to the easterly side of Garage A, as generally indicated on the schematics attached hereto as Exhibit S.

"Garages" means the existing and planned garages (including without limitation any retail space within a Garage, and the Retaining Wall and the Garage A Easterly Side Appurtenances, notwithstanding that the Retaining Wall and the Garage A Easterly Side Appurtenances are not included within the demised Premises)as generally indicated on Exhibit C.

"Governing Body" means, when used with respect to any Person, its board of directors, board of trustees or individual or group of individuals by, or under the authority of which, the powers of such Person are exercised.

"Governmental Authority or Authorities" means the United States of America, the State of New York, New York City (as hereinafter defined), and any agency, department, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created, having jurisdiction over the Premises or any portion thereof or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises, or any vault in or under the Premises.

"Hazardous Substances" means any hazardous or toxic waste or substances or petroleum products which must be removed or abated from the Premises and disposed of under applicable state and federal laws and regulations.

"Hearing" has the meaning provided in Section 41.17(a) hereof.

"Hearing Officers" has the meaning provided in Section 41.17(a) hereof.

"IDA" means New York City Industrial Development Agency.

"IDA Bond Documents" means the IDA Indenture and any lease, installment sale agreement, assignment, mortgage, or other instrument executed and delivered in connection with the issuance of the IDA Bonds.

"IDA Bonds" means the bonds issued by IDA for the development of the Project and which are secured in whole or in part by a mortgage by BPDC of its interest in this Lease.

"IDA Financed Facilities" means the Garages constructed or improved with IDA Bond proceeds, which as of the date hereof are contemplated to be Garages on Sites A, C, 3 and 8, and Site 13A.

"IDA Indenture" means that certain Indenture of Trust dated of even date herewith between IDA and The Bank of New York, as Trustee, relating to the IDA Bonds.

"Imposition" or "Impositions" has the meaning provided in Section 4.1(b) hereof.

"Improvement Award" has the meaning provided in Section 9.1(b) hereof.

"Indemnitees" has the meaning provided in Section 20.1 hereof.

"Index" has the meaning provided in Section 7.1(b) hereof.

"Indicted Party" has the meaning provided in Section 41.17(a).

"Installment Sale Agreement" means that Installment Sale Agreement and Assignment of Lease between IDA and each of BPDC and Community Initiatives Development Corporation, dated of even date herewith.

"IDA Mortgage" has the meaning ascribed to Mortgage in Appendix A of the Installment Sale Agreement.

"Institutional Lender" means any savings bank, a savings and loan association, a commercial bank or trust company (whether acting individually or in a fiduciary capacity), a broker/dealer, an investment bank, a mutual fund, a real estate investment trust, an insurance company organized and existing under the laws of the United States or any state thereof, a religious, educational or eleemosynary institution, a federal, state or municipal employee's welfare, benefit, pension or retirement fund, any governmental agency or entity insured by a governmental agency, a credit union, trust or endowment fund or any combination of Institutional Lenders, or any conduit lender of any of the foregoing, and any other Person approved by Landlord, such approval not to be unreasonably withheld; provided, that each of the above entities shall qualify as an Institutional Lender only if it shall (a) be subject to service of process within the State of New York and (b) have a net worth of not less than $50,000,000 and net assets of not less than $250,000,000. "Institutional Lender" shall also mean the Bond Trustee and any trustee or fiduciary for the holders of bonds, notes, commercial paper or other evidence of indebtedness approved by Landlord, which approval shall not be unreasonably withheld.

"Insured Persons" has the meaning provided in Section 7.5(b) hereof.

"Joint Venture Contract(s)" has the meaning set forth in Section 13.1(a) hereof.

"Joint Venture Contractor" means Prismatic Development Corp. and Hunter Roberts Construction Group, L.L.C., jointly and severally, as constituent partners of Prismatic/Hunter Roberts A Joint Venture.

"Land" means the parcels of land as bounded and described in the legal descriptions attached as Exhibit A hereto.

"Landlord" means The City of New York, acting in its proprietary capacity, through its Deputy Mayor and its Department of Parks and Recreation, provided, however, that if New York City or any successor to its interest hereunder transfers or assigns its interest in the Premises or its interest under this Lease, subject to Section 12.1 hereof, then, from and after the date of such assignment or transfer, the term Landlord shall mean the assignee or transferee and the assignor or transferor shall be, and hereby is, entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed on or after the date of such transfer or assignment and it shall be deemed and construed without further agreement between the parties or their successors in interest that the transferee or assignee under such transfer or assignment has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder occurring from and after the date of such assignment or transfer.

"Late Charge Rate" means (i) in the case of Tenant's failure to pay PILOT (as hereinafter defined), the rate of interest charged from time to time by New York City for delinquent Taxes (as hereinafter defined), and (ii) in all other cases, the Prime Rate (as hereinafter defined) plus three percent (3%) per annum; provided, however, that the Late Charge

Rate shall not exceed the maximum annual rate of interest which then lawfully may be charged to Tenant or by Landlord, as the case may be.

"Lease" means this Agreement of Lease, all exhibits hereto and all amendments, modifications and supplements thereof.

"Lease Administrator" means a City agency or instrumentality or other entity that is designated by the City to administer this Lease, in whole or in part, on behalf of the City. Unless and until Tenant is notified to the contrary, for purposes of the Construction of the Garages, Parking Lots and/or Park Improvements, and development of Site D pursuant to Section 10.7 hereof, the Lease Administrator shall be NYCEDC. For all other purposes, until Tenant is notified to the contrary, Lease Administrator shall be the Department of Parks and Recreation.

"Lease Year" means the twelve-month period beginning on January 1 and each succeeding twelve-month period during the Term (as hereinafter defined), or such other twelve-month period as Tenant may select, subject to Landlord's reasonable approval; provided, that if the first year of the Term begins on a date other than January 1, such Lease Year shall be deemed to be the period from the Commencement Date to the December 31 immediately following such Commencement Date, and if the last Lease Year of the Term ends on a date other than December 31, then the last year of the Term shall be deemed to be the period from the January 1 immediately preceding the Expiration Date to the Expiration Date.

"Liabilities" has the meaning provided in Section 20.1 hereof.

"Logistics Plan" means the plan attached hereto as Exhibit L.

"Major Sublease" has the meaning provided in Section 10.1(b).

"Major Subtenant" means a Subtenant under a Major Sublease.

"Mortgage" has the meaning provided in Section 11.1(b) hereof.

"Mortgagee" means the holder of a Mortgage.

"Nationally Recognized Bond Counsel" means Hawkins Delafield & Wood LLP, or other law firm having at least three (3) attorneys specializing in public finance and whose public financing attorneys cumulatively have at least 15 years experience in representing public instrumentalities and municipalities in the issuance of bonds and notes in at least 3 states.

"New Stadium" means the new stadium to be constructed for the New York Yankees to use as their home stadium, to be constructed in the area depicted in Exhibit N.

"New York City" or the "City" means The City of New York, a municipal corporation of the State of New York.

"NYCEDC" has the meaning first set forth above in this Lease.

"New York State Courts" has the meaning provided in Section 41.18(a) hereof.

"New York Yankees" means the New York Yankees Major League Baseball Team.

"Operations and Maintenance Expenses" has the meaning set forth in Section 40.2 hereof.

"Park Improvements" means the surface above the Waterproof Membrane of Garage A and the park improvements to be constructed thereon pursuant to the Joint Venture Contract (including without limitation the Retaining Wall), as generally depicted in Exhibit D attached hereto.

"Park Premises" has the meaning set forth in Section 2.1 hereof.

"Parking Lots" means the parking lots indicated on Exhibit G.

"Partnership" means the New York Yankees Partnership.

"Person" means an individual, corporation, limited liability company, limited liability partnership, general partnership, joint venture, estate, trust, stock company, unincorporated association, business association, tribe, firm, governmental authority, governmental agency, or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"PILOST" has the meaning provided in Section 35.4 hereof.

"PILOT" has the meaning provided in Section 3.3(a) hereof.

"Plans and Specifications" has the meaning provided in Section 13.1(b) hereof.

"Premises" means the Land and the Buildings.

"Price Index" means the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United State Department of Labor for the New York-Northeastern New Jersey Area, all items (1982-1984=100), or any successor index thereto. In the event the Price Index is converted to a different standard reference base or otherwise revised, the determination of the Base Rent during the relevant Lease Years shall be made with the use of such conversion factor, formula or table for converting the Price Index as may be published by the Bureau of Labor Statistics or, if said Bureau shall not publish the same, then with the use of such conversion factor, formula or table as may be published by Prentice-Hall, Inc. or any other nationally recognized publisher of similar statistical information. If the Price Index ceases to be published on a monthly basis, then the shortest period for which the Price Index is published which includes the relevant months hereinafter specified shall be used in lieu of such specified months. If the Price Index ceases to be published, and there is no successor thereto, such other index as Landlord and Tenant shall agree upon in writing shall be substituted for the Price Index; and if Landlord and Tenant shall be unable to agree thereon within ninety (90) days after the Price Index ceases to be published, such matter shall be submitted to

arbitration in New York City before the American Arbitration Association, whose determination shall be final and conclusive upon the parties.

"Prime Directive" has the meaning provided in Section 23.1 hereof.

"Prime Rate" means the rate announced as such from time to time by JPMorgan Chase Bank, National Association, or its successors, at its principal office. Any interest payable under this Lease with reference to the Prime Rate shall be adjusted on a daily basis, based upon the Prime Rate in effect at the time in question, and shall be calculated on the basis of a 365-day year.

"Principal(s) of Tenant" means an officer, director, member, managing partner or a stockholder owning twenty percent (20%) or more of the voting interest of Tenant, or any other Person possessing, directly or indirectly, the power to direct or cause the direction of the management policies of Tenant, whether through the ownership of voting securities, partnership interests, or by contract or otherwise; provided, that such officer, director, managing partner, stockholder or other Person is actively involved in the operation of the Premises.

"Prohibited Distinctions" has the meaning provided in Section 39.9 hereof.

"Project" means the leasing, financing, development, operation and management of the Premises for public parking facilities and retail space, generally comprised of the improvement of two existing parking garages, the construction of three new parking garages, the improvement of six (6) existing Parking Lots, totaling approximately 9127 spaces, and retail space on Site D, the development of the Park Improvements, and all infrastructure related to all of the foregoing, all as more particularly described in the Joint Venture Contracts.

"Project Cash Flow" has the meaning provided in Section 3.5(b)(iii) hereof.

"Project Costs" means all costs incurred by Tenant in connection with the financing, acquisition, design and construction of the Project, in connection with any Capital Improvements, and in connection with a Restoration.

"Project Expenses" has the meaning provided in Section 3.5(b)(ii) hereof.

"Questionnaire" has the meaning provided in Section 39.8(a) hereof.

"Recognized Mortgage" has the meaning provided in Section 11.2(b) hereof.

"Recognized Mortgagee" means the holder of a Recognized Mortgage.

"Renewal Term" has the meaning provided in Section 2.1 hereof.

"Rent Commencement Date" has the meaning provided in Section 3.2(a) hereof.

"Rental" means all of the amounts payable by Tenant pursuant to this Lease, including, without limitation, Base Rent (including interest accrued thereon pursuant to Section 3.4(b) hereof), PILOT (including interest accrued thereon pursuant to Section 3.4(b) hereof),

Additional Cash Flow Rent, PILOST, Impositions, the amounts payable pursuant to Article 20 hereof and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any of the provisions of this Lease, to pay and/or deposit.

"Replacement Value" has the meaning provided in Section 7.1(b) hereof.

"Requirements" has the meaning provided in Section 16.1(b) hereof.

"Restoration" means either a Casualty Restoration or a Condemnation Restoration, or both.

"Restoration Funds" means (a) any moneys that may be received by Depositary pursuant to the provisions of Section 7.4(a) or 9.2(c) hereof, together with the interest, if any, earned thereon, and (b) the proceeds of any security deposited with Depositary pursuant to Section 8.5 hereof, together with the interest, if any, earned thereon.

"Retaining Wall" means that certain retaining wall along a part of 161st Street adjacent to Garage A, and fill placed or to be placed between the retaining wall and Garage A, as generally indicated in the schematic attached hereto as Exhibit T, and which, for purposes of this Lease and the Funding Agreement, constitutes part of the Park Improvements.

"Revenues" has the meaning provided in Section 40.2 hereof.

"Scheduled Completion Date(s)" has the (respective) meaning provided in Section 13.1(b) hereof.

"Schematics" has the meaning provided in Section 13.1(b) hereof.

"State" means the State of New York.

"State Highway Improvements" means viaducts, roadways and other highway improvements owned by the State (i.e., the Major Deegan Expressway and its entrance and exit ramps, support columns, conduit and other appurtenances).

"Sublease(s)" has the meaning provided in Section 10.1(b) hereof.

"Substantial Completion" or "Substantially Complete(d)" has the meaning provided in Section 13.1(b) hereof.

"Substantial Completion Date" means the date on which all the Garages, the Parking Lots and/or the Park Improvements shall have been Substantially Completed.

"Substantially All of the Premises" has the meaning provided in Section 9.1(c) hereof.

"Subtenant(s)" has the meaning provided in Section 10.1(b) hereof.

"Successor Tenant" has the meaning provided in Section 11.3(b) hereof.

"Taxes" has the meaning provided in Section 3.3(d) hereof.

"Tax Year" means each tax fiscal year of New York City.

"Tenant", on the Commencement Date, means NYCEDC, provided, however, that whenever this Lease and the leasehold estate hereby created shall be assigned by Tenant to Bronx Parking Development Company, LLC, a limited liability company organized under the Laws of the State of New York, having an office at 18 Aitken Avenue, Hudson, New York 12534 ("BPDC"), then from and after the date of such assignment or transfer the term "Tenant" shall mean BPDC, and its successors and assigns, and NYCEDC shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed on or after the date of such assignment and it shall be deemed and construed without further agreement between the parties or their successors in interest that the assignee under such assignment has assumed and agreed to carry out any and all agreements, covenants and obligations of Tenant hereunder occurring from and after the date of such assignment, and after any subsequent transfer or assignment, Tenant shall mean the holder from time to time of the leasehold interest created by this Lease. "Tenant" shall include any Successor Tenant.

"Term" has the meaning provided in Section 2.1 hereof.

"Threshold Amount" means (i) prior to Substantial Completion, $250,000 and (ii) subsequent to Substantial Completion, one percent (1%) of the Replacement Value.

"Title Matters" has the meaning provided in Section 2.1 hereof.

"Transfer" has the meaning provided in Section 10.1(b) hereof.

"ULURP" means the procedure set forth in Section 197-c of the New York City Charter.

"Unavoidable Delays" means delays from any and all causes beyond Tenant's reasonable control, including, without limitation, delays resulting from actions of Landlord (provided such are not themselves the result of actions by Tenant), governmental restrictions, failure of government authorities to act on pending applications for licenses and permits, notwithstanding timely, proper and complete submission of such applications, orders of any court of competent jurisdiction, labor disputes (including strikes, slowdowns and similar labor problems), accident, mechanical breakdown, shortages or inability to obtain labor, fuel, steam, water, electricity or materials (for which no substitute is readily available at a comparable price), acts of God (including inordinately severe weather conditions), removal of Hazardous Substances, enemy action, civil commotion, fire or other casualty, court orders enjoining commencement or continuation of the Project or pendency of litigation seeking such court orders, of which Tenant has given Landlord notice within ten (10) days after Tenant knows of same, or failure of Landlord to deliver vacant possession of any parcel of Land or any Building comprising a part of the Premises (but only with respect to such parcel or building), failure of the City to make the funds under the Funding Agreement available to EDC (for no fault or default of Tenant or any contractor under a Construction Agreement), failure of any licensee or permittee pursuant to Section 23.1(f) to timely vacate at the termination or expiration of its permit or license, or the failure of ESDC or EDC to disburse funding under the Funding Agreement on a

timely basis in accordance with the terms and provisions of this Agreement, or failure of EDC, ESDC, Yankee Partnership or Ballpark Company to grant or deny an approval within the time period required for same. With respect to the Construction of the Garages, Parking Lots and/or Park Improvements, any event which constitutes an "Unavoidable Delay" under the Funding Agreement shall be deemed to constitute an Unavoidable Delay under this Lease.

"Waterproof Membrane" means the subsurface waterproof membrane above Garage A installed pursuant to the Joint Venture Contract.

"Yankees" means The New York Yankees, Inc., Yankee Partnership, Ballpark Company, and other team-related affiliates.

"Yankee Indemnitees" has the meaning provided in Section 20.5 hereof.

"Yankee Partnership" means New York Yankee Partnership, which holds the Major League Baseball New York Yankees franchise.

"Zoning Resolution" means the zoning resolution of New York City, as amended, modified or supplemented from time to time.

ARTICLE 2

DEMISE OF PREMISES AND TERM OF LEASE

Section 2.1. Demise and Term. Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, the Land, and all Buildings thereon, together with all easements, appurtenances and other rights and privileges now or hereafter belonging or appertaining to the Premises, subject to those matters affecting title set forth in Exhibit B hereto (the "Title Matters"), and those reservations, rights and encumbrances set forth in this Article 2.

TO HAVE AND TO HOLD unto Tenant, its successors and assigns, for a term of years (the "Term") commencing on December 13, 2007 (the "Commencement Date") and expiring on the sooner to occur of (i) December 12, 2056 (the "Initial Term"), as such date may be extended (a "Renewal Term") as set forth below in this Section 2.1 (the "Fixed Expiration Date"), or (ii) such earlier date upon which this Lease may be terminated as hereinafter provided (the "Expiration Date").

Tenant shall have the option to renew this Lease for up to five (5) consecutive ten-year (10) Renewal Terms, each to commence immediately upon the expiration of the immediately preceding Initial Term or Renewal Term (as applicable) and to expire upon the day immediately preceding the tenth (10th) anniversary of such Renewal Term commencement date, this Lease to expire in any and all events not later than December 12, 2106.

Tenant shall be deemed to have exercised its right to renew this Lease for each Renewal Term unless Tenant delivers written notice to Landlord to the contrary at least sixty (60) days prior to the date the Term of this Lease would otherwise expire that it shall not exercise its right to renew the Term of this Lease. This Lease, subject to the provisions of this Article, shall be deemed to be renewed and the Term extended for the period of the relevant Renewal Term without the execution of any further instrument. Any Renewal Term shall be on the same terms and conditions of this Lease, except that Base Rent shall continue to be adjusted and payable pursuant to Section 3.2 hereof, and there shall be no right to renew or extend the Term of this Lease except for the five (5) ten-year (10) Renewal Terms as set forth above. The foregoing notwithstanding, if Landlord requests in writing that Tenant confirm that it is exercising its right to renew the Term, then Tenant shall confirm such renewal in writing within thirty (30) days of Tenant's receipt of such written request, and failure to respond shall result in the expiration of the Term on the later of the then applicable Fixed Expiration Date or the expiration of such thirty (30) day notice period.

There is hereby reserved to Landlord the title, possession and use of the Premises lying above that certain vertical plane over the Waterproof Membrane on Garage A, as indicated on the diagram attached hereto as Exhibit F (the "Park Premises"), for improvement, operation, maintenance and repair, including without limitation the granting of licenses and concessions for use thereof and use by the general public, of a public park and public recreational space and facilities and improvements necessary thereto, which may include but is not limited to athletic, cultural, entertainment and educational uses and facilities. Tenant is hereby granted a right to enter upon the Park Premises in order to construct Garage A and the Park Improvements.

Landlord hereby grants to Tenant a license, revocable by Landlord at will, in order for Tenant to perform its obligations under Article 14 hereof with respect to the Retaining Wall.

Landlord hereby grants to Tenant a license, revocable by Landlord at will, in order for Tenant to perform its obligations under Article 14 hereof with respect to the Garage A Easterly Side Appurtenances.

Landlord hereby reserves to itself, for the benefit of itself, and the right of Landlord to grant to Yankee Partnership and/or Ballpark Company, or their respective affiliates, successors and assigns, the right and the obligation to maintain, repair, improve, construct, reconstruct, replace, operate and service (i) the Existing Marquee pursuant to the Existing Stadium Lease, and pursuant to any future agreement which the City in its sole discretion may enter into for the Existing Marquee, and (ii) marquee signs in two (2) other locations and, on the condition that the Existing Marquee be removed, a third location to be determined by Landlord, in consultation with Tenant. Yankee Partnership and/or Ballpark Company or an affiliate thereof shall be solely responsible for maintenance and repair of the Existing Marquee under the Existing Stadium Lease and any other marquee signs with respect to which the City may award such rights to Yankee Partnership and/or Ballpark Company or an affiliate thereof, and Yankee Partnership and/or Ballpark Company or an affiliate thereof shall maintain such signs in strict compliance with all applicable laws rules or regulations and any future agreement which the City awards for such marquees shall so state. Any agreement which the City awards for such marquees to Yankee Partnership and/or Ballpark Company or an affiliate thereof (i) shall require the entity under agreement with the City, and such entity's contractors, to defend, hold harmless and indemnify Tenant and any parking operator with whom Tenant has contracted, any Recognized Mortgagee, Landlord, and during the term of the Bonds, IDA and the Bond Trustee, against all claims and judgments arising out of the construction, reconstruction, replacement, improvement, repair, maintenance, operation and servicing of the marquee signage, except to the extent of any such indemnitee's or its contractor's or agent's respective negligence or intentional misconduct, and (ii) shall require that such entity and/or its contractors name Tenant and any parking operator with whom Tenant has contracted and IDA and the Bond Trustee as additional insureds on any liability insurance policies which the City requires such entity to carry for the benefit of the City, as an additional insured. The foregoing notwithstanding, for as long as the IDA Bonds are outstanding, Landlord shall not enter into any agreement for marquee signage to be located on any of the IDA Financed Facilities unless there shall have been issued an opinion of Nationally Recognized Bond Counsel that such agreement shall not cause the interest on the tax-exempt IDA Bonds to be includable in gross income for federal income tax purposes. Landlord and Tenant shall furnish to one another such information as either shall request in order for Nationally Recognized Bond Counsel to deliver such opinion.

Tenant takes the Premises subject to the Macombs Dam Bridge Approach generally situated between Garages A and C over tax lot 104, and Landlord hereby reserves, for the benefit of itself and its contractors, upon reasonable advance written notice, the right of reentry by Landlord to maintain, repair, replace, improve, construct and reconstruct such approach and any and all foundations, footings, columns, supports, conduit and other fixtures located upon or traversing the Premises in connection therewith. Landlord agrees to use commercially reasonable efforts to minimize interference with parking operations in connection

with any of same, and, except in cases of emergencies, to avoid conducting any maintenance, repair or significant construction or replacement work which requires access through Garage A or Garage C during, or four hours before or 2 hours after, any Major League Baseball game or other significant event at the Existing Stadium or the New Stadium. The City agrees to defend, hold harmless and indemnify Tenant and any parking operator with whom Tenant has contracted, any Recognized Mortgagee and during the term of the Bonds, IDA and the Bond Trustee, against all claims and judgments arising out of the construction, reconstruction, replacement, improvement, repair, maintenance, operation and servicing of such bridge approach or related infrastructure.

Landlord hereby reserves, for the benefit of itself and its contractors, upon reasonable advance written notice, the right to re-enter the Premises for the construction, improvement, maintenance, replacement, reconstruction, repair and public use of the Ferry Landing, and installation of a pedestrian gate, available for GAL employees, on "Site 10" along 153rd Street at a location that Landlord shall determine. Landlord hereby further reserves to itself and its contractors the right to re-enter the Premises for the construction, improvement, maintenance, replacement, reconstruction, repair and use, and reserves for public pedestrian use, the esplanade indicated on Exhibit A-1 attached hereto. Landlord hereby further reserves to itself and its contractors the right to re-enter the Premises for the construction, improvement, maintenance, replacement, reconstruction, repair and use, and reserves for public pedestrian access and egress to and from the Ferry Terminal and points inland, one of the four alternative pedestrian routing paths depicted in Exhibit A-2 attached hereto, as Landlord may select in its sole and absolute discretion. Landlord shall inform Tenant in writing of Landlord's selection, and Tenant shall not interfere nor permit its operator or manager to interfere with such use of the Ferry Landing or the selected alternative pedestrian path, subject to Section 6.4 of the Installment Sale Agreement and Section 16 of the IDA Mortgage. Landlord reserves the right to install fencing on the Premises separating the esplanade from the remainder of the Premises. Landlord reserves the right to install fencing on Site 13A separating that portion of the selected alternative routing path located thereon from the remainder of the Premises. The City agrees to defend, hold harmless and indemnify Tenant and any parking operator with whom Tenant has contracted, any Recognized Mortgagee and during the term of the Bonds, IDA and the Bond Trustee, against all claims and judgments arising out of the construction, reconstruction, replacement, improvement, repair, maintenance, operation and servicing of such esplanade, Ferry Landing, selected alternate pedestrian routing path or pedestrian gate, except to the extent of such indemnittee's respective negligence or willful misconduct. Landlord and Tenant each agree to, upon request of the other, to execute a modification of this Lease to stipulate the routing path chosen by Landlord. For purposes of this paragraph, 'pedestrian' shall not be limited to foot travel but may include non-motorized means of travel such as bicycles, skateboards, roller skates, scooters and the like (motorized means of travel by disabled persons using motorized means related to their disability shall be permitted hereunder).

Section 2.2 Landlord's operation of the Park Improvements not to interfere with the parking facilities. Landlord agrees that it shall not unreasonably impair Tenant's use of the Premises in order to obtain access to, or maintain or repair the Park Improvements. Except in the case of an emergency, Landlord shall not impair the flow of cars through Garage A on Major League Baseball game days at the Existing Stadium or the New Stadium, and to the extent commercially reasonable shall otherwise perform repairs and access the Park Improvements

from Garage A on days and times which are not in conflict with the peak operations of Garage A.

ARTICLE 3

RENT

Section 3.1. Time and Place of Payment. Except as otherwise specifically provided herein, all Rental shall be paid to Landlord, without notice or demand, by federal funds transfer, good checks drawn on an account at a bank that is a member of the New York Clearing House Association (or any successor body of similar function) or in currency that at the time of payment is legal tender for public and private debts in the United States of America, at the office of Landlord set forth above or at such other place as Landlord shall direct by notice to Tenant (with a copy concurrently sent to any Recognized Mortgagee). Landlord will designate an account for Tenant to make electronic funds transfers and will supply the requisite information for Tenant to make such transfers. The foregoing requirement to pay Rental without notice or demand shall not limit Tenant's rights to cure a failure to pay Rental as provided in Section 24.1(a) hereof.

Section 3.2. Base Rent.

(a) Commencing as of January 1, 2008 (the "Rent Commencement Date"), Tenant shall pay Landlord, subject to escalation as provided in paragraph (b) below, an annual rent ("Base Rent") of Three Million Two Hundred Thousand Dollars ($3,200,000), which Base Rent shall be due and payable, subject to Section 3.4 hereof, in twelve (12) equal monthly installments on the first day of each calendar month.

(b) (i) As of January 1, 2009, and as of each January 1 thereafter (each such January 1, a "Base Rent Adjustment Date"), Base Rent shall be increased by an amount equal to the product obtained by multiplying the percentage increase, if any, in the Price Index for the month immediately preceding the applicable Base Rent Adjustment Date over the Base Index, by Three Million Two Hundred Thousand Dollars ($3,200,000)

(ii) However, in no event shall the Base Rent for any Lease Year be reduced below the Base Rent payable during the immediately preceding Lease Year as a result of the Price Index adjustments set forth or referred to in (b)(i) preceding.

If the rate of Base Rent shall be required to be adjusted on the basis of an increase in the Price Index pursuant to this Section 3.2(b), then Landlord shall furnish to Tenant as soon as practicable after the publication of the relevant Price Index a written statement setting forth the adjustment in the Base Rent and the manner in which the same was calculated. However, if the Price Index for the month relevant to the adjustment of the Base Rent shall not have been published at any applicable Base Rent Adjustment Date, or if the Price Index ceases to be published without a successor thereto and the parties shall elect to arbitrate the issue of the substitute index to be employed, then in either of such events, pending the publication of the relevant Price Index or the final determination in such arbitration, Tenant shall pay Base Rent at the rate in effect immediately prior to the applicable Base Rent Adjustment Date, without prejudice to the rights of Landlord to claim a deficiency in the Base Rent paid, following the

publication of the relevant Price Index or the final determination in such arbitration, and such deficiency shall be paid by Tenant to Landlord on the date when the next succeeding installment of Base Rent shall become due following the rendition by Landlord to Tenant of a written statement setting forth such deficiency.

(c) To the extent that Landlord has failed to deliver vacant possession of Site 15 by January 2, 2008 payment of Base Rent shall be abated in the amount of four and twenty-four hundredths percent (4.24%) of total Base Rent due until the date on which vacant possession of Site 15 has been delivered to Tenant. If Site 15 is delivered after January 2, 2008 on a day other than the first day of a calendar month, Base Rent shall be pro rated based on the actual number of days in a calendar month. In the event of any holdover occupancy on the part of any prior tenant at Site 15 Landlord shall proceed to bring proceedings and prosecute same with due diligence to remove and dispossess such holdover occupant from Site 15.

Section 3.3. Payments in Lieu of Taxes.

(a) Tenant's Obligation to Pay PILOT. For each Tax Year or portion thereof within the Term, commencing on the Rent Commencement Date, Tenant shall pay to Landlord, within thirty (30) days after notice to Tenant of the amount due, an annual sum (each such sum being hereinafter referred to as "PILOT") in the amounts provided in Section 3.3(b) hereof, which amounts shall be due and payable, subject to Section 3.4 hereof, on the Rent Commencement Date and thereafter in two equal installments on each July 1 and January 1. PILOT due for any period of less than a Lease Year shall be appropriately apportioned. During the period that the City shall be Landlord, such payment shall be made to the City's Department of Parks and Recreation at the address first set forth above in this Lease, or such other agency and/or address as Landlord shall designate with a copy of Tenant's check in respect thereof to Landlord at the address to which Tenant shall then be making payments of Base Rent. Tenant shall pay PILOT notwithstanding any exemption from Taxes which Tenant or any constituent entity of Tenant may enjoy as of a not-for-profit organization.

(b) Amount of PILOT. During the term PILOT shall be in an amount equal to Taxes on the Premises, pro rated for any period in which the Term occurs for only a partial Tax Year (on the basis of 365 days), and subject to such exemptions and abatements from Taxes for which the Land and Buildings may qualify as-of-right under the City Industrial and Commercial Incentive Program, or other applicable tax exemption and abatement programs. The Landlord agrees that Tenant shall be entitled to apply for and qualify for ICIP, notwithstanding the exemption of the Premises from real estate taxes. Landlord agrees to cooperate with Tenant in executing and delivering any Landlord's consent, or other similar documents required by Tenant for all or any portion of the premises to qualify for ICIP or any successor or similar program providing for real estate tax exemption applicable to the Premises or which would have been applicable if the Premises were owned by a Person other than the Landlord. If the New York City Department of Finance refuses to grant eligibility to the Project for ICIP based upon the fact that the Premises are subject to PILOT, Landlord agrees that PILOT shall be reduced by the amount which would have been available as-of-right under the applicable ICIP Program. If, subject to Article 12 hereof, Landlord sells the Premises, or if for any other reason, the Premises, in whole or in part are subject to Taxes, the amount of PILOT payments shall be offset to the extent that Tenant pays the Taxes.

(c) Tax Contest. Tenant shall continue to pay the full amount of PILOT required under this Section 3.3, notwithstanding that Tenant may have instituted tax assessment reduction or other actions or proceedings pursuant to Section 34.1 hereof to reduce the assessed valuation of the Premises or any portion thereof. If any such tax reduction or other action or proceeding shall result in a final determination in Tenant's favor, (i) Tenant shall be entitled to a credit against future PILOT and/or any other Rental to the extent, if any, that the PILOT previously paid for the Tax Year for which such final determination was made exceeds the PILOT as so determined, and (ii) if such final determination is made for the then current Tax Year, future payments of PILOT for such Tax Year shall be based on the PILOT as so determined. If at the time Tenant is entitled to receive such a credit New York City is paying interest on refunds of Taxes, Tenant's credit shall include interest at the rate then being paid by New York City. In no event, however, shall Tenant be entitled to any cash refund of any such excess from Landlord.

(d) Taxes defined. "Taxes" means the real property taxes assessed and levied against the Premises or any part thereof (or, if the Premises or any part thereof or the owner or occupant thereof is exempt from such real property taxes then the real property taxes which would be so assessed and levied if not for such exemption) pursuant to the provisions of Chapter 58 of the Charter of New York City and Title 11, Chapter 7 of the Administrative Code of New York City, as the same may now or hereafter be amended, or any statute or ordinance in lieu thereof in whole or in part.

(e) Commercial Rent Tax. If at any time during the Term, Tenant is required to pay commercial rent tax under Title L of Chapter 46 of the Administrative Code of New York City (or any successor provision thereof) on PILOT under this Section 3.3, then the amount of such commercial rent tax actually paid by Tenant shall be a credit against the next PILOT due and any remaining balance shall be a credit against the next Rental due.

(f) Failure to Deliver Vacant Possession. To the extent that Landlord has failed to deliver vacant possession of Site 15 by January 2, 2008, PILOT shall be abated until the date on which vacant possession of such parcel of Land or Building has been delivered to Tenant. If vacant possession of Site 15 is delivered after January 2, 2008 on a day other than the first day of the City's fiscal year (July 1), PILOT shall be pro rated based on the actual number of days in the City's fiscal year.

(g) Park Improvements. No PILOT payment shall be due with respect to that portion of the assessed value of Site A that is attributable to the Park Improvements thereon. It is hereby agreed that for purposes of determining PILOT payable for Site A, 16.75% of the assessed value of Site A is attributable to the Park Improvements, as are currently contemplated in the Joint Venture Contract. In the event that during the Term the nature or extent of the Park Improvements changes so as to have a substantially different impact on the assessed value of Site A from that currently contemplated, then Landlord and Tenant shall in good faith negotiate and agree upon an appropriate adjustment to the 16.75% of assessed value of Site A attributable to the Park Improvements, and shall execute a written stipulation to such effect, to be effective as of the Tax Year following the date on which such altered Park Improvements were completed (and the PILOT due following such adjustment shall be increased or decreased to adjust for any PILOT overpayment or underpayment on account of such change in the percentage of unused

value attributable to a change in Park Improvements). If Landlord or Tenant fail to agree upon such adjustment of the assessed value attributable to the Park Improvements within a reasonable time after either party has requested an adjustment, or if the parties fail to agree on whether Park Improvements changes have a substantially different impact on such assessed value than the previously existing Park Improvements, then either party may at any time during negotiations seek resolution of same by arbitration pursuant to Article 33 hereof. Any such adjustment shall be made within two (2) years of the later of completion of such altered Park Improvements or the assessment date on which Taxes on the Site A are increased due to changes in Park Improvements (which in either case shall be extended for any period of arbitration relating to such adjustment should Landlord and Tenant fail to agree on such adjustment), or such right of adjustment of unused value attributable to the Park Improvements by either party shall be terminated. The foregoing notwithstanding, Tenant may make application to the New York City Department of Finance and other applicable City agencies for separate tax lots, one for the Land and Improvements above the Waterproof Membrane and another for the Waterproof Membrane and the Land and Improvements below the Waterproof Membrane.

Section 3.4. Payment of Base Rent and PILOT.

(a) Tenant shall pay to Landlord all Base Rent and PILOT due and owing pursuant to Sections 3.2 and 3.3 hereof and any interest accrued thereon pursuant to Section 3.4(b) hereof, provided that (i) if IDA Bonds remain outstanding, such payments shall only be made to the extent that moneys are available to Tenant pursuant to the IDA Indenture for such purposes, and (ii) if Tenant's right of possession to the Premises has been transferred at a foreclosure sale or assigned in lieu of foreclosure by a Recognized Mortgagee, or Landlord and the Trustee under the IDA Indenture acting as the Recognized Mortgagee or its nominee or designee have executed a lease pursuant to Section 11.4 hereof, which, in either such case, has triggered the effectiveness of Section 40.1 hereof or Section 40.1 of a successor lease pursuant to Section 11.4 hereof, and indebtedness under a Recognized Mortgage under either such Section 40.1 is outstanding, such payments shall only be made to the extent that moneys are available to Tenant pursuant to the provisions of Article 40 hereof or thereof.

(b) Any Base Rent and/or PILOT not paid when due by Tenant shall bear interest at an annual rate of six and twenty-five hundredths percent (6.25%) from the due date thereof until paid.

(c) All payments made by Tenant pursuant to this Section 3.4 shall be applied, first, to PILOT due and owing, second, to interest accrued on PILOT not paid when due, third, to Base Rent due and owing, and fourth, to interest accrued on Base Rent not paid when due.

Section 3.5. Additional Cash Flow Rent.

(a) Not later than April 1 of each Lease Year following the Substantial Completion Date of all Garages and Parking Lots, Tenant shall pay to Landlord as "Additional Cash Flow Rent" for the immediately preceding Lease Year fifty percent (50%) of Project Cash Flow for such immediately preceding Lease Year. To the extent that there is Project Cash Flow available to Tenant after payment of the amounts specified in Sections 3.2, 3.3, 3.4 and 3.5 hereof, Tenant shall use such amounts to maintain, repair, replace or improve the Park

Improvements, or for such other community development purpose approved by Landlord, in its sole discretion. All Additional Cash Flow Rent shall be due and payable (i) if the IDA Bonds are outstanding, solely to the extent funds on deposit in the Surplus Fund are available therefore pursuant to the provisions of the IDA Indenture, and (ii) if the provisions of Article 40 shall be in effect, solely to the extent available pursuant to Article 40 hereof.

(b) Definitions. For purposes of this Section 3.5:

(i) "Revenues" shall have the meaning set forth in Section 40.2 hereof.

(ii) "Project Expenses" shall mean the sum of the following (without duplication), to the extent actually incurred and paid by or on behalf of Tenant in connection with the Project, and to the extent paid out of Revenues (but excluding Additional Cash Flow Rent): (a) Operations and Maintenance Expenses, as defined in Section 40.2 hereof, (b) Rental (but excluding Additional Cash Flow Rent), (c) Project Costs, including without limitation debt service incurred for the Project and all expenses of the Agency, the Bond Trustee, and costs of compliance with any obligations of the Tenant under any of the Bond Documents, including without limitation the funding of any reserves, (d) final punch list and other post-Substantial Completion costs, (e) all actual and commercially reasonable costs and expenses in connection with the operation, use, maintenance, repair, replacement and management of the Premises, including without limitation legal accounting and auditing costs (including without limitation tax certiorari legal expenses), reasonable reserves, insurance premiums, license and permit costs, utility charges, management fees (with no additional allowances for items such as travel, meals and lodging), provided, that the annual management fee shall not to exceed $25,000 annually, such amount to be increased annually as of each January 1 during the Term by an amount equal to the product obtained by multiplying the percentage increase, if any, in the Price Index for each December immediately preceding the January 1 as of which date annual management fee is to be adjusted over the Base Index, by $25,000, and costs of Restoration; and (f) Tenant's reasonable overhead, including without limitation reasonable salaries for employees.

(iii) "Project Cash Flow" means, with respect to each Lease Year, the amount, if any, by which Revenues for such Lease Year exceeds Project Expenses for such Lease Year.

Section 3.6. Abatement, Deduction, Counterclaim and Offsets. It is the intention of Landlord and Tenant that except as provided in Sections 3.2, 3.3, 3.4, 4.5, and 35.1 of this Lease (a) Rental be absolutely net to Landlord without any abatement, diminution, reduction, deduction, counterclaim, setoff or offset whatsoever, so that each Lease Year of the Term shall yield, net to Landlord, all Rental, and (b) Tenant pay all costs, expenses and charges of every kind relating to the Premises (except Taxes) that may arise or become due or payable during or after (but attributable to a period falling within) the Term, except, however, that Tenant shall not be responsible for payment of Taxes.

Section 3.7. Survival. The obligation to pay Base Rent, PILOT and Additional Cash Flow Rent which has accrued during the Term but is not payable until after the Expiration Date shall survive the termination of this Lease.

ARTICLE 4

IMPOSITIONS

Section 4.1. Payment of Impositions.

(a) Obligation to Pay Impositions. Tenant shall pay, in the manner provided in Section 4.1(c) hereof, all Impositions that at any time thereafter during the Term are, or, if the Premises or any part thereof were not owned by the City, would be assessed, levied, confirmed, imposed upon, or would grow out of, become due and payable out of, or with respect to, or would be charged with respect to (i) the Premises, or (ii) the sidewalks or streets in front of or adjoining the Premises, or (iii) any vault, passageway or space in, over or under such sidewalk or street, or (iv) any other appurtenances of the Premises.

(b) Definition. "Imposition" or "Impositions" means:

(i) real property general and special assessments (including, without limitation, any special assessments for or imposed by any business improvement district or by any special assessment district) other than Taxes;

(ii) personal property taxes;

(iii) occupancy and rent taxes assessed against Tenant;

(iv) water, water meter and sewer rents, rates and charges;

(v) license and permit fees;

(vi) service charges with respect to police protection, fire protection, street and highway construction, maintenance and lighting, sanitation and water supply which affect the Premises and are generally applicable to commercial buildings in the area surrounding the Premises;

(vii) except for Taxes, any other governmental levies, fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind whatsoever; and

(viii) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, incurred by reason of Tenant's failure to make any payments as herein provided.

(c) Payments of Impositions. Subject to the provisions of Section 34.2 hereof, each Imposition or installment thereof shall be paid not later than the due date thereof. However, if by law, at the taxpayer's option, any Imposition may be paid in installments (whether or not

interest shall accrue on the unpaid balance of such Imposition), Tenant may exercise the option to pay the Imposition in such installments and shall be responsible for the payment of such installments with interest. If Tenant fails twice to make any payment of an Imposition (or installment thereof) on or before the due date thereof, Tenant shall, at Landlord's request, be required for a period of two (2) years following the second such failure to pay all Impositions or installments thereof thereafter payable by Tenant not later than ten (10) days before the due date thereof.

(d) Income or Franchise Tax of Landlord. Tenant shall not be required to pay any municipal, state or federal corporate income or franchise tax imposed upon Landlord, whether based upon the income or capital of Landlord, or any municipal, state or federal inheritance, estate, succession, transfer or gift taxes of Landlord or Tenant.

Section 4.2. Evidence of Payment. Tenant shall furnish Landlord, within forty-five (45) days after the date when an Imposition is due and payable under this Lease, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 4.3. Evidence of Nonpayment. Any certificate, advice or bill of the appropriate official designated by law to make or issue the same or to receive payment of any Imposition asserting nonpayment of such Imposition shall be prima facie evidence that such Imposition is due and unpaid at the time of the making or issuance of such certificate, advice or bill, at the time or date stated herein. Notices given by Landlord under this Lease shall not be deemed to be such certificate, advice or bill.

Section 4.4. Apportionment of Imposition. Any Imposition relating to a fiscal period of the taxing authority, a part of which is included within the Term and a part of which is included in a period of time before the Commencement Date or after the Expiration of the Term, shall be apportioned between Landlord and Tenant as of the Commencement Date or the Expiration of the Term (unless the Expiration Date has occurred as a result of an Event of Default, in which case Tenant shall not be entitled to an apportionment) so that Tenant shall pay that portion of such Imposition which that part of such fiscal period included in the Term bears to the fiscal period of the taxing authority.

Section 4.5. Taxes. Provided New York City shall be Landlord, Landlord shall pay on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by Landlord), cancel or otherwise satisfy and discharge of record any and all Taxes. If New York City shall cease to be Landlord, Landlord shall pay the Taxes on or before the due date thereof. If Landlord shall have failed to pay the Taxes as required hereunder, then Tenant may, but shall not be obliged to, pay such unpaid Taxes together with any interest or penalties thereon and credit such payment against the next installment(s) of PILOT and Rental together with interest thereon at the Late Charge Rate. Landlord, from time to time, upon request of Tenant, shall furnish to Tenant and any Recognized Mortgagee designated in writing by Tenant, within forty-five (45) days of such request, official receipts of the appropriate taxing authority or other proof, reasonably satisfactory to Tenant, evidencing the cancellation, satisfaction or discharge of record of the Taxes in lieu of which the PILOT payments are being made. Tenant shall make prompt application for a discrete tax lot(s)

with the City's Department of Finance and other applicable City agencies for any site constituting a part of the Premises which does not have its own discrete tax lot (with the exception of Site A with respect to the areas above the Waterproof Membrane and the area which includes the Waterproof Membrane and beneath the Waterproof Membrane, which application shall be in Tenant's discretion), and Landlord shall cooperate with Tenant in such application(s).

ARTICLE 5

DEPOSITS FOR IMPOSITIONS AND INSURANCE PREMIUMS

Section 5.1. Deposits.

(a) Tenant's Obligations to Make Deposits. Unless Tenant is already making such deposits with a Depositary in conformance with the requirements of a Recognized Mortgage, upon Landlord's demand made at any time after the occurrence of two Events of Default with respect to a monetary obligation under this Lease within a twelve (12) month period, Tenant shall deposit with Depositary on the first day of each of the months from and including May through October during the remainder of the Term an amount equal to (i) in the case of Impositions, one-sixth (1/6) of the amount of annual Impositions as reasonably estimated by Landlord, and (ii) in the case of insurance premiums, one- sixth (1/ 6) of the annual premiums for the insurance coverage required to be carried or caused to be carried by Tenant pursuant to the provisions of Article 7 hereof. If, at any time, the moneys so deposited by Tenant shall be insufficient to pay in full the next installment of Impositions or insurance premiums, Tenant shall, not later than the date which is ten (10) days prior to the due date of the Imposition or thirty (30) days prior to the due date of the insurance premium, as the case may be, deposit the amount of the insufficiency with Depositary.

(b) Depositary's Obligations. Depositary shall place all moneys deposited pursuant to the provisions of this Section 5.1 in a special interest-bearing account in the name of Landlord in a savings or commercial bank or in city, state or federal government obligations to be used by Depositary to pay the Impositions and insurance premiums for which such amounts were deposited. Depositary shall apply the amounts deposited and the interest earned thereon to any (i) such Impositions not later than the last day on which any such Imposition may be paid without penalty or interest, and (ii) such premiums not later than the last day on which such premiums may be paid without penalty, interest or cancellation of the subject policies. Upon the occurrence of an Event of Default, Depositary shall apply such deposits to the payment of the Impositions or premiums next due, unless this Lease has been terminated and a new lease has not been entered into with a Recognized Mortgagee, in which event Depositary shall apply such deposits at the direction of Landlord to any of Tenant's obligations under this Lease. Interest earned on such deposits shall be applied to the next required deposit.

(c) Increase of Deposits. If the amount of any Imposition or insurance premium is increased, Tenant shall, within ten (10) days of receipt of notice of such increase, increase the amount of such monthly deposits so that sufficient moneys for the payment of such Imposition or insurance premium shall always be available to pay such Imposition or insurance premium at least ten (10) days before the Imposition becomes due and payable and at least thirty (30) days before the insurance premium becomes due and payable, as the case may be.

(d) Determination of Sufficiency of Deposits. For the purpose of determining whether Depositary has on hand sufficient moneys to pay an Imposition or insurance premium, deposits for each category of Imposition or insurance premium shall be treated separately. Depositary shall not be obligated to use moneys deposited for the payment of an Imposition or an insurance premium not yet due and payable.

(e) Return of Deposits. If the Event of Default that gave rise to Landlord's demand for Tenant to make deposits for Impositions or insurance premiums under the provisions of Section 5.1(a) hereof has been cured by Tenant and, for a period of twelve (12) consecutive months following such cure, no Default with respect to any monetary obligation of Tenant under this Lease has occurred that has not been cured within the applicable grace period, then, at any time after the expiration of such twelve (12) month period, upon demand by Tenant and provided no Default or Event of Default with respect to any monetary obligation of Tenant under this Lease then exists, Landlord shall cause Depositary to return to Tenant all unexpended moneys then held by Depositary pursuant to the provisions of Sections 5.1(a) and (c) hereof, with accrued interest thereon which shall not have been applied by Depositary pursuant to the provisions of this Article 5. Thereafter, Tenant shall not be required to make any deposits required by this Article 5 unless and until there shall occur within a twelve (12) month period two (2) subsequent Events of Default with respect to any monetary obligation of Tenant under this Lease and Landlord has demanded of Tenant to make such deposits.

(f) Deposits with Recognized Mortgagee. In the event that a Recognized Mortgagee shall require Tenant to deposit funds to insure payment of Impositions or insurance premiums, the same shall be credited against any amounts required to be deposited under this Article for so long as such funds are used solely to pay Impositions or insurance premiums. The disposition of such amounts shall be governed by the Recognized Mortgage pursuant to which the same are deposited with such Recognized Mortgagee, provided that Tenant shall notify Landlord, or cause the Recognized Mortgagee to immediately notify Landlord, of any disbursement of deposited funds, and, to the extent such funds are applied by the Recognized Mortgagee to payments other than Impositions or insurance premiums, within five (5) Business Days after demand by Landlord, Tenant shall restore sufficient funds to the account of Recognized Mortgagee to satisfy the requirements of Sections 5.1(a) and (c) hereof.

Section 5.2. Effect of Sale or Transfer of Premises By Landlord. In the event of Landlord's sale or transfer of the Premises (subject to Section 12.1 hereof), Depositary shall continue to hold any moneys deposited with it pursuant to the provisions of Sections 5.1(a) and (c) hereof and shall transfer such deposits to a special account with such Depositary established in the name of the Person who acquires the Premises and becomes Landlord for the purposes provided in the applicable provisions of this Lease. Upon such sale or transfer, the transfer of such deposits and notice thereof by Depositary to Tenant, Landlord shall be deemed to be released to the extent of the deposits so transferred from all liability with respect thereto and Tenant shall look solely to the Depositary and the new Landlord with respect thereto. Landlord shall promptly deliver to Tenant a copy of the instrument of transfer to the new Landlord. The provisions of this Section shall apply to each successive transfer of such deposits.

Section 5.3. Effect of Termination. If this Lease shall terminate, or the Term shall terminate or expire and a new lease shall not be entered into with a Recognized Mortgagee, all deposits then held by the Depositary, together with the interest, if any, earned thereon shall be applied by Landlord on account of any and all sums and deficiencies due under this Lease and the balance, if any, remaining thereafter with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant.

ARTICLE 6

LATE CHARGES

If any payment of Rental is not paid within ten (10) business days after the day on which it first becomes due, a late charge on the sum so overdue, calculated at the Late Charge Rate from the date such Rental first becomes due to the date on which actual payment of the sum is received by Landlord, shall become due and payable to Landlord as liquidated damages for the administrative costs and expenses incurred by Landlord by reason of Tenant's failure to make prompt payment. Tenant shall pay Landlord, within ten (10) days after demand, which may be made from time to time, all late charges. No failure by Landlord to insist upon the strict performance by Tenant of its obligations to pay late charges shall constitute a waiver by Landlord of its right to enforce the provisions of this Article 6 in any instance thereafter occurring. The provisions of this Article 6 shall not be construed in any way to extend the grace periods or notice periods provided for in Article 24 hereof. Late charges do not apply to Base Rent or PILOT which is deferred pursuant to the terms and conditions of Section 3.4 hereof because Project Cash Flow is not available under the IDA Indenture to make such payments.

ARTICLE 7

INSURANCE

Section 7.1. Requirements. From and after the Commencement Date (unless otherwise provided below), Tenant, at its sole cost and expense, shall carry or cause to be carried insurance coverage of the following types and limits:

(a) Property, Liability and Statutory Coverage During Construction. In addition to the amounts of coverage specified in Section 7.1(c) hereof, from the time of the commencement of any construction on the Premises which construction has a cost in excess of one hundred thousand ($100,000) dollars, and until the Architect has certified to Landlord, pursuant to the provisions of Section 13.6 hereof, that the construction has been Substantially Completed, or upon Substantial Completion of any other Construction Work which does not require the supervision of the Architect, Tenant at its sole cost and expense shall carry or cause to be carried:

(i) Property. Builder's Risk Insurance (standard "All Risk" or equivalent coverage), in the amount of not less than one hundred percent (100%) of the replacement cost of any Building and Park Improvements which is to be constructed (which shall be deemed to be equal to the stipulated sum set forth in the construction contract), written on a completed value (non-reporting) basis, naming Tenant as an insured; Landlord as additional named insureds, as their respective interests may appear; each holder of a Recognized Mortgage as mortgagee under a standard New York form of mortgagee endorsement or its equivalent, if required by the terms of any such Recognized Mortgage; and the Depositary as loss payee. In addition, such insurance policy (A) shall contain a written acknowledgement (annexed to the policy) by the insurance company that its right of subrogation has been waived with respect to all of the insureds and any holders of Recognized Mortgages named in such policy and, if required by Landlord, an endorsement stating that "permission is granted to complete and occupy," and (B) if any off-site storage location is used, shall cover, for full insurable value, all materials and equipment on or about any such off-site storage location intended for use with respect to any Building and Park Improvements.

(ii) Liability and Statutory. (A) Commercial General Liability Insurance, including all applicable coverages enumerated in Section 7.1(c) hereof, written for a combined single limit of not less than Fifty Million Dollars ($50,000,000) per occurrence and endorsed to name Tenant as named insured, Landlord as additional insured-landlord, Lease Administrator, if any, as additional insured-agent Ballpark Company and Yankee Partnership as additional insureds; (B) Commercial General Liability insurance insuring all contractors, subcontractors and construction managers in amounts comparable with amounts carried by persons undertaking similar work in the New York area, naming Tenant, Landlord and Landlord's agent, if any, as an additional insured; any contractor or subcontractor undertaking foundation, excavation or demolition work shall secure an endorsement on its policy to the effect that such operations are covered and that the "XCU Exclusions" have been deleted; and (C) Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance in statutory amounts covering all contractors and subcontractors with respect to all of their employees.

The foregoing notwithstanding, with respect to any Construction Work governed by the Funding Agreement, the terms and provisions of this Section 7.1(a) shall be superceded by Exhibit C to the Funding Agreement.

(b) Property Insurance After Substantial Completion.

(i) Coverage. After Substantial Completion of each Building (but not any Park Improvements), Tenant shall maintain insurance on all of the Premises under an "All Risk" policy or its equivalent with replacement cost valuation and a stipulated (agreed) value endorsement (hereinafter referred to as "All Risk") in an amount equal to not less than one hundred percent (100%) of Replacement Value (as defined below), as determined from time to time in accordance with the provisions of Section 7.1(b)(ii) below. If Tenant elects to insure Tenant's personal property used in connection with the Premises, the Replacement Value of such personal property shall be added to the amount of insurance required by this subparagraph with respect to the Premises. Tenant and Landlord shall be named as their interests may appear; each holder of a Recognized Mortgage as mortgagee under a standard New York form of mortgagee endorsement or its equivalent, if required by the terms of any such Recognized Mortgage; and the Depositary shall be designated loss payee on such All Risk policy, provided that payments on Tenant's claims for loss of personal property may be paid to Tenant after notice to Landlord. In addition, such insurance policy shall contain a written acknowledgement (annexed to the policy) by the insurance company that its right of subrogation has been waived with respect to all of the insureds and any holders of Recognized Mortgages named in such policy. If not included within the All Risk coverage above, Tenant shall also carry or cause to be carried coverage against damage due to terrorism, water and sprinkler leakage, if applicable, collapse, flood (whether driven by wind or not, and including coverage for backup of sewers and drains and underground seepage) and, to the extent obtainable at a reasonable cost, earthquake (including earth movement and subsidence). Such coverage shall include reasonable limits for business interruption insurance (including off-premises utility interruption, closure due to civil authority and contingent business interruption) and extra expense coverage. Such policies shall be written with limits of coverage for property damage of not less than the then Replacement Value per occurrence. Tenant shall have no obligation to maintain any insurance on the Park Improvements or streetscape improvements after completion of construction.

(ii) Replacement Value. As used herein, "Replacement Value" shall mean the amount determined and redetermined as described herein and adjusted from time to time as described in clause (iii) below. From the time of Substantial Completion of each Building until the tenth (10th) anniversary of Substantial Completion, "Replacement Value" shall be deemed to be an amount equal to the costs actually incurred or expended in connection with the construction of the Building, to the extent that such costs can be covered by a standard fire insurance policy, adjusted annually as provided below. Within ten days after Substantial Completion upon request from the Landlord, Tenant shall deliver a certificate to Landlord subscribed by a member or officer of Tenant and by the Architect setting forth the amount of such Replacement Value. Sixty days prior to the tenth anniversary of the date of Substantial Completion and each subsequent tenth anniversary thereafter for the Term of this Lease, upon written request of the Landlord, Tenant shall cause a construction cost survey of the Building to be conducted at Tenant's expense by a disinterested general contractor or construction manager located in New York City who shall be satisfactory to Landlord. Such construction cost survey

shall determine the current cost (including all hard and soft costs) of rebuilding the entire Building, without regard to depreciation of the Building, which amount shall then be deemed to be Replacement Value. Replacement Value shall be determined exclusive of foundations and footings.

(iii) Adjustment. The amount of Replacement Value shall be adjusted on each anniversary of the initial determination of Replacement Value and of each subsequent decennial redetermination of Replacement Value throughout the Term by a percentage equal to the percentage change in the Index (as defined below) in effect on such anniversary date as compared to the Index in effect on the date of Substantial Completion or prior redetermination, whichever is latest.

(iv) Index. As used herein, the "Index" shall mean the Dodge Building Cost Index or such other published index of construction costs which shall be selected from time to time by Landlord, but not more often than once every three years, provided that such Index shall be a widely recognized measure of construction costs in the insurance industry and appropriate to the type and location of each Building.

(c) Liability Insurance.

(i) Coverage. Tenant shall maintain Commercial General Liability Insurance protecting against liability for personal injury, including bodily injury, death, and property damage, written on an occurrence basis with respect to the Premises and all operations related thereto, whether conducted on or off the Premises and covering without limitation: elevators, escalators, independent contractors, Sprinkler Leakage Legal Liability, if applicable, Contractual Liability (covering, to the maximum extent permitted by law and to the extent obtainable at a reasonable cost, Tenant's obligation to indemnify Landlord as required under Article 20 hereof and also insuring Landlord against any liability, suit, obligation, fine, damage, penalty, claim, cost, charge or expense that becomes effective or due after the Expiration Date if such arises out of, or in connection with, any action or failure to take action or any other matter occurring prior to the Expiration Date), terrorism coverage, Water Damage Legal Liability, Products Liability, Garage Keeper's Legal Liability and Motor Vehicle Liability coverage for all owned, hired and non-owned vehicles, excluding losses, to the extent resulting from the negligence of Landlord, its agents and employees. Tenant shall be named insured and Landlord, NYCEDC, IDA, Ballpark Company and Yankee Partnership shall be named as "additional insureds". Such insurance shall be written for a combined single limit of not less than Fifty Million Dollars ($50,000,000) per occurrence.

(ii) Required Sublease Clauses. All Subleases affecting the Premises entered into by Tenant, as landlord, must require the Subtenant to carry liability insurance naming Tenant, Landlord and Landlord's agent, if any, the City, NYCEDC, IDA, Ballpark Company and Yankee Partnership as additional insureds with limits reasonably prudent under the circumstances. Tenant shall increase the limits of its Commercial General Liability Insurance to an amount reasonably required by Landlord if the requirement of Subleases contained in the preceding sentence is not satisfied or if Tenant fails to enforce the insurance provisions contained in the Subleases affecting its Subtenants. To effectuate this provision, Tenant shall deliver to Landlord upon demand, true copies of executed Subleases and evidence

of insurance supplied by the respective Subtenants.

(iii) Additional Interests. All liability policies shall contain a provision substantially to the effect that the insurance provided under the policy is extended to apply to Landlord, NYCEDC, IDA, Ballpark Company and Yankee Partnership. Any holder of any Recognized Mortgage which, pursuant to the Recognized Mortgage, is required to be named under any of the insurance carried hereunder shall be named as an additional insured.

(d) Statutory Coverages. Tenant shall maintain Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance in statutorily required amounts covering Tenant with respect to all persons employed by Tenant and all of Tenant's uninsured contractors and subcontractors in connection with the operations of Tenant conducted at, or in connection with, any portion of the Premises, or by Tenant or others in connection with construction thereon.

(e) Errors and Omissions. In connection with a Capital Improvement or a Restoration in excess of $500,000, Errors and Omissions insurance with respect to services rendered by the Architect, in an amount not less than One Million Dollars ($1,000,000).

(f) Boiler and Machinery Insurance. Tenant shall maintain Boiler and Machinery Insurance, if applicable and obtainable through conventional commercial lines of insurance, for the equipment contained on the Premises at standard rates covering the entire heating, ventilating and air-conditioning systems, and in all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the replacement cost of the heating, ventilating and air-conditioning systems, which shall name Landlord and Tenant as insureds and any Recognized Mortgagee and the Depositary as loss payee. If the insurer for a boiler and machinery policy is not the insurer for the property insurance required under this Lease, both policies shall have a joint loss agreement endorsement.

(g) Demolition Coverage. Tenant shall maintain insurance (which may be provided by endorsement or through increased costs of construction coverage) in an amount (x) prior to Substantial Completion of each Garage, Parking Lot and/or Park Improvements, of not less than 10% of the amount of Builder's Risk Insurance required to be obtained pursuant to Section 7.1(a)(i) hereof, and (y) after Substantial Completion of each Garage and/or Parking Lot (but not the Park Improvements), of not less than 10% of the amount of All Risk insurance required to be obtained pursuant to Section 7.1(b) hereof, against subsequent costs of demolition and against increased costs of construction in the event that any insured hazard results in a loss, which shall name Landlord and Tenant as insureds and any Recognized Mortgagee and the Depositary as loss payee.

(h) Flood Insurance. Tenant shall maintain insurance against loss or damage by flood, whether or not wind driven, and including coverage for backupof sewers and drains and underground seepage, naming Landlord and Tenant as insureds and any Recognized Mortgagee and the Depositary as loss payee, if the Premises, or any part thereof, are located in an area identified by the Secretary of Housing and Urban Development, or any successor thereto, as an area having special flood hazards and in which flood insurance has been made available

and to the maximum extent available under the national Flood Insurance Act of 1968, as amended.

(i) Miscellaneous Coverages. Tenant shall maintain such other insurance in such amounts as from time to time reasonably may be required by Landlord against such other insurable hazards as at the time are commonly insured against in the case of premises similarly situated to the Premises or business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted at the Premises.

Section 7.2. Adjustment of Limits. All of the limits of insurance required pursuant to Section 7.1 shall be subject to review by Landlord and, in connection therewith, Tenant shall carry or cause to be carried such additional amounts as Landlord may reasonably require from time to time, if and to the extent commercially available at a reasonable cost. Any request by Landlord that Tenant carry or cause to be carried additional amounts of insurance shall not be deemed reasonable unless such additional amounts are commonly carried in the case of premises similarly situated to the Premises, operations of a size, nature or character similar to the size, nature and character of the operations being conducted at the Premises; provided, however, that in no event shall the provisions of this Section 7.2 relieve Tenant of its obligation to carry or to cause to be carried All Risk insurance in an amount not less than the Replacement Value as provided in Section 7.1(b) hereof; and provided further, however, that in no event shall Tenant be required to carry or to cause to be carried All Risk insurance in an amount which is greater than the Replacement Value. Landlord shall also have the right, from time to time, to approve the amount of any loss deductible contained in any insurance policy required pursuant to the provisions hereof, which approval Landlord shall not unreasonably withhold. A request by Landlord that Tenant reduce or cause to be reduced the amount of any such loss deductible shall not be deemed reasonable unless loss deductibles of such lower amounts are commonly included in policies insuring premises similarly situated to the Premises, or operations of a size, nature and character similar to the size, nature and character of the operations being conducted at the Premises.

Section 7.3. Equivalent Protection. The parties acknowledge that over the Term of this Lease, further changes in the forms of insurance policies and in insurance practices are likely to occur. In such event, Landlord shall have the right to require Tenant to furnish, or cause to be furnished, at Tenant's sole expense, such additional coverages, policy terms and conditions, or limits of liability, as may be reasonably necessary or prudent to assure to Landlord a degree of insurance protection practically equivalent to that provided by Tenant prior to the advent of the change, provided such coverage is commercially available and customarily required by owners of similar properties ("Equivalent Protection").

Section 7.4. Proceeds.

(a) Payment.

Subject to the IDA Bond Documents,

(i) the loss under all policies required by any provision of this Lease insuring against damage to tangible property located at the

Premises by an insured hazard, and

(ii) the proceeds of all judgments, settlements and claims, whether uninsured or insured by third parties, provided such proceeds arise out of damage to tangible property located at the Premises (excluding, if Landlord is so notified, proceeds arising directly from loss to Tenant's personal property),

shall be payable to the Depositary and shall be deposited by the Depositary in an interest bearing account or investment. The Depositary shall hold all proceeds with respect to any such loss in trust in accordance with the other provisions of this Lease.

(b) Collection of Proceeds. Tenant and Landlord shall cooperate in connection with the collection of any insurance moneys that may be due in the event of loss and Tenant and Landlord shall execute and deliver such proofs of loss and other instruments which may be required of Tenant and Landlord, respectively, for the purpose of obtaining the recovery of any such insurance moneys.

(c) Adjustment for Claims. Subject to the IDA Bond Documents, all property insurance policies required by this Lease shall provide that all adjustments for claims with the insurers of the Threshold Amount or more shall be made with Landlord, Tenant, and, if required by the terms of any Recognized Mortgage, the holder of such Recognized Mortgage. Subject to the IDA Bond Documents, all adjustments for claims with the insurers involving an aggregate loss of less than the Threshold Amount, or relating solely to the loss of Tenant's personal property shall be made with Tenant only. If the parties shall be unable to determine in advance of an adjustment whether or not the loss shall be less than the Threshold Amount, then the estimated cost of the Restoration shall be conclusive for purposes of determining with whom the adjustments shall be made. All loss proceeds, however, shall be payable to the Depositary as provided in Section 7.4(a) hereof based upon the actual amount of the loss, as such amount shall have been determined by adjustment with the insurer. To effectuate this provision, Landlord, Tenant and any holder of a Recognized Mortgage respectively and irrevocably appoint the Depositary as attorney-in-fact with the power to endorse any instrument respecting loss proceeds to the order of Depositary for deposit in accordance with the provisions of this Section 7.4. Upon demand of Landlord or Tenant, Landlord, Tenant and all holders of Recognized Mortgages shall confirm in writing to each property insurer that all insurance proceeds shall be made payable to the Depositary, as their trustee, but failure to so confirm shall not vitiate the power of attorney created under this Section 7.4(c).

Section 7.5. General Policy Requirements.

(a) Insurers; Term. All insurance required by any provision of this Lease shall be in such form and shall be issued by such insurance companies licensed or authorized to do business in the State of New York and are reasonably acceptable to Landlord. Any insurance company rated by Bests Insurance Reports (or any successor publication of comparable standing) as "A-VII" or better (or the then equivalent of such rating) shall be deemed a responsible company and acceptable to Landlord. All policies referred to in this Lease shall be obtained by Tenant for periods of not less than one (1) year.

(b) Certificates and Copies; Payment of Premiums. As of the first time that Tenant is obligated to effect any applicable insurance coverage under this Lease, Tenant shall deliver to Landlord proof of payment of (i) the premium in full in advance for a period of one year or (ii) any premium installment for a shorter period then due and payable for the policy, and a properly authorized certificate giving to Landlord, NYCEDC, IDA, Yankee Partnership, and Ballpark Company and any Recognized Mortgagee thirty (30) days' advance notice of cancellation. A certified copy, signed by an authorized representative of the insurer, of each policy shall be delivered to all persons required to be insured thereby hereunder (the "Insured Persons"), immediately upon its receipt by Tenant from the insurance company or companies, except that if any insurance carried by Tenant is effected by one or more blanket policies, then, with respect to such insurance, certified abstracted policies relating to the Premises shall be delivered to the Insured Persons. Tenant shall use best efforts to provide certified copies of new or renewal policies replacing any policies expiring during the Term within ninety (90) days following the expiration of expired policies; provided, however, that Tenant shall use best efforts to cause evidence of renewal policies, in binder form, to be delivered to the Insured Persons not less than thirty (30) days prior to the expiration dates of any expiring policies (but in any event shall deliver such binder not later than such expiration date), together with proof that the premiums for at least the first year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid. In any event, such items shall be delivered to Landlord no later than five (5) days prior to such expiration date(s). Tenant may pay the premiums for any of the insurance required hereunder to the carrier in installments in accordance with the provisions of the applicable policies, or finance payment of premiums, provided that Tenant pays all such installments or cause all such installments to be paid (including financing charges) in full not later than ten (10) days prior to the respective due dates for such installments and provides proof to the Insured Persons of payment of such installments (including financing charges) by such dates.

(c) Multiple Property Policies. Tenant shall not carry separate property insurance, concurrent in form, or contributing in the event of loss, with that required by this Lease unless Landlord is named as an insured party and, if required by the terms of any Recognized Mortgage, the holder of such Recognized Mortgage is named under a standard New York form of mortgagee endorsement or its equivalent, with loss payable as provided in this Lease. Tenant shall promptly notify the Insured Persons of the carrying of such separate insurance and shall use best efforts to cause certified copies of such policies or certified copies of abstracts of such policies, as the case may be, together with proof of payment of all premiums (or required installment payments on account of such premiums) to be delivered to the Insured Persons in accordance with the provisions of Section 7.5(b) hereof.

(d) Compliance with Policies. Tenant shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required hereunder and Tenant shall perform and satisfy or cause to be performed and satisfied the conditions, provisions and requirements of the policies so that, at all times, companies acceptable to Landlord shall be providing the insurance required by this Article. Notwithstanding the foregoing, Tenant shall be entitled at its sole cost and expense to contest the conditions, provisions and requirements of any insurance company providing the insurance carried or caused to be carried by Tenant hereunder, provided that, at all times during the Term, the insurance required by this Article shall be in full force and effect in accordance with the provisions of this

Article despite Tenant's contesting of any such conditions, provisions or requirements and, in such event, Tenant shall not be in default hereunder by reason of its failure to comply with such contested conditions, provisions or requirements.

(e) Required Endorsements. Each policy of insurance required to be carried pursuant to the provisions of this Lease shall contain (i) a provision that no act or omission of Tenant shall affect or limit the obligation of the insurance company to pay the amount of any loss sustained by Landlord (or Lease Administrator, if any) or the holder of any Recognized Mortgage named therein, as their respective interests may appear, (ii) an agreement by the insurer that such policy shall not be canceled, modified or denied renewal without at least thirty (30) days' prior written notice (10 days for non-payment of premiums) to Landlord and Lease Administrator (if any) and the holder of each Recognized Mortgage named under a standard New York form of mortgagee endorsement or its equivalent, and (iii) a waiver of subrogation by the insurer of any right to recover the amount of any loss resulting from the negligence (except for gross negligence or intentional misconduct) of Lease Administrator (if any) or Landlord and its designees or their respective agents or employees. Any holder of any Recognized Mortgage which, pursuant to such Recognized Mortgage, is required to be named under any of the insurance carried hereunder shall be named as an additional insured.

Section 7.6. Blanket or Umbrella Policies. The All Risk policies of insurance required to be carried by Tenant pursuant to the provisions of this Lease may, at the option of Tenant, be effected by blanket and/or umbrella policies issued to Tenant covering each of the Buildings on the Premises owned or leased by Tenant, provided, such policies otherwise comply with the provisions of this Lease, including, without limitation, the specified coverage for all insureds required to be named as insured hereunder, without possibility of reduction or co-insurance by reason of, or damage to, any other premises named therein. The liability insurance policies required to be carried by Tenant pursuant to the provisions of this Lease may, at the option of Tenant, also be effected by blanket and/or umbrella policies issued to Tenant, provided, such policies otherwise comply with the provisions of this Lease. I If the insurance required by this Lease shall be effected by any such blanket or umbrella policies, Tenant shall furnish to Landlord and the Insured Persons certified copies of such policies as provided in Section 7.5(b) hereof, together with proof reasonably satisfactory to Landlord that the premiums for at least the first (1st) year of the term of each of such policies (or installment payments then required to have been paid on account of such premiums) shall have been paid.

Section 7.7. Unavailability. If any of the insurance required to be carried under this Lease shall not, after diligent efforts by Tenant, and through no act or omission on the part of Tenant, be obtainable from domestic carriers customarily insuring premises similar to the Premises and operations of a size, nature and character similar to the size, nature and character of the operations being conducted by Tenant at the Premises, then Tenant shall promptly notify Landlord of Tenant's inability to obtain such insurance and Landlord shall have the right, but not the obligation, to arrange for Tenant to obtain such insurance at a reasonable cost. If Landlord shall be able to arrange for Tenant to obtain such insurance, Tenant shall obtain the same up to the maximum limits provided for herein. If Landlord shall be unable to arrange for Tenant to obtain the insurance required hereunder, Tenant shall promptly obtain the maximum insurance obtainable, and in such case, the failure of Tenant to carry the insurance which is unobtainable shall not be a Default hereunder for as long as such insurance shall remain unobtainable. Types

or amounts of insurance shall be deemed unobtainable if such types or amounts of insurance are (a) actually unobtainable, or (b) virtually unobtainable as a result of exorbitant premiums which have made such insurance effectively unobtainable with respect to premises similar to the Premises, located in New York City and used for purposes similar to those for which the Premises are used.

Section 7.8. Interpretation. All insurance terms used in this Article 7 shall have the meanings ascribed by the Insurance Services Offices.

ARTICLE 8

DAMAGE, DESTRUCTION AND RESTORATION

Section 8.1. Notice to Landlord. Tenant shall notify Landlord immediately if any Building or Parking Lot is damaged or destroyed in whole or in part by fire or other casualty if the reasonably estimated cost of repairing or restoring such damage or destruction is in excess of the Threshold Amount, as adjusted as provided in Section 41.19 hereof.

Section 8.2. Casualty Restoration.

(a) Obligation to Restore. If all or any portion of any Building or Parking Lot is damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall, in accordance with the provisions of this Article and Article 13 hereof, restore the Building or Parking Lot to the extent of the value and as nearly as possible to the character of the Building or Parking Lot as it existed immediately before such casualty and otherwise in substantial conformity with the Plans and Specifications (a "Casualty Restoration"). If any Park Improvements are damaged or destroyed as part of a casualty to Garage A, then, provided that Landlord or Lease Administrator (if any) has funds available to pay the costs of Casualty Restoration of the Park Improvements (including any incremental costs of a Casualty Restoration of Garage A attributable to a Casualty Restoration of the Park Improvements), then Landlord may require Tenant to perform same in connection with a Casualty Restoration of Garage A, and funding for the Park Improvements portion of the Casualty Restoration shall be disbursed by Landlord to Tenant in the same manner as is described in Section 8.3(b) hereof.

(b) Estimate of Construction Work Cost. Before commencing any Construction Work in connection with a Casualty Restoration costing in excess of $500,000 in the aggregate and as soon as reasonably practicable (and in any event, within ninety (90) days) after the damage or destruction, Tenant shall furnish Landlord with an estimate, prepared by the Architect or a licensed professional engineer reasonably acceptable to Landlord, of the cost of such Construction Work. Landlord, at its election and at Tenant's cost, which cost shall be reasonable, may engage a licensed professional engineer or registered architect to prepare its own estimate of the cost of such Construction Work. If Landlord shall fail to disapprove Tenant's estimate of such cost within thirty (30) days of receipt of such estimate, Tenant's estimate shall be deemed approved. If Landlord shall dispute the estimated cost of such Construction Work, the dispute shall be resolved by a licensed professional engineer, chosen by agreement of Landlord and Tenant, which engineer shall resolve the dispute by choosing either Landlord's or Tenant's estimate, which choice shall be binding on the parties.

(c) Commencement of Construction Work. Subject to Unavoidable Delays relating to the Construction Work in connection with a Casualty Restoration, Tenant shall, subject to any consent of a Recognized Mortgagee required of Tenant under the Recognized Mortgage documents, commence the Construction Work in connection with a Casualty Restoration promptly after settlement of the insurance claim, if any, relating to the damages or destruction (which settlement will be diligently prosecuted), but in any event within sixty (60) days after settlement of insurance claims.

(d) Exceptions to Restoration. Notwithstanding anything set forth to the contrary in this Article 8, if any casualty occurs (A) during the last five (5) years of the Term (i) while the IDA Bonds are outstanding or (ii) if Tenant's right of possession to the Premises has been transferred at a foreclosure sale or assigned in lieu of foreclosure by the Trustee under the IDA Indenture acting as the Recognized Mortgagee, or Landlord and the Trustee under the IDA Indenture acting as the Recognized Mortgagee or its nominee or designee have executed a new lease pursuant to Section 11.4 hereof, which, in either such case, has triggered the effectiveness of Section 40.1 hereof or Section 40.1 of a successor lease pursuant to Section 11.4 hereof, and indebtedness under a Recognized Mortgage under either such Section 40.1 is outstanding, or (B) at any other time, only during the 98th or 99th year of the Term (as an Extended Term), Tenant may, in lieu of performing a Casualty Restoration, surrender this Lease to Landlord, which shall be upon ten (10) Business Days written notice delivered within sixty (60) days of the date of casualty; provided, that in either event of (A)(i) or (ii) above in this Section 8.2(d), Tenant shall not terminate this Lease unless the IDA Bonds or any indebtedness contemplated in Section 40.1 hereof (as applicable) have been discharged in full. In such event, all casualty proceeds shall be paid to Landlord. Such termination shall comply with the provisions of Article 30 hereof..

Section 8.3. Restoration Funds.

(a) Reimbursement of Depositary's and Landlord's Expenses. Before paying the Restoration Funds to Tenant, Depositary shall reimburse itself, Landlord and Tenant therefrom to the extent of the necessary and proper expenses (including, without limitation, reasonable attorneys' fees and disbursements) paid or incurred by Depositary, Landlord or Tenant in the collection of such Restoration Funds.

(b) Disbursement of Restoration Funds.

(i) Application for Disbursement. In connection with any Construction Work in connection with a Casualty Restoration costing in excess of $500,000 in the aggregate and subject to Section 8.2(a) and Section 8.8 hereof, subject to the IDA Bond Documents, Landlord shall direct Depositary to pay to Tenant the Restoration Funds from time to time in installments as the Restoration progresses, in the manner and at the times as required by the first Recognized Mortgagee (if there is any conflict between the provisions of this Lease and the provisions of the first Recognized Mortgage regarding the procedures by which Restoration Funds are disbursed for a Casualty Restoration, the provisions of the Recognized Mortgage shall control). If there is no Recognized Mortgagee or the Recognized Mortgage has no provision substantially similar to those herein for the disbursement of the Restoration Funds, then, subject to the provisions of Sections 8.3(a), 8.3(b)(ii), 8.4, and 8.5 hereof, and subject to the IDA Bond Documents, the Restoration Funds shall be paid to Tenant in installments as the Restoration progresses, upon application to be submitted by Tenant to Depositary and Landlord showing the cost of labor and the cost of materials, fixtures and equipment that either have (A) been incorporated in the Building or the Parking Lot since the last previous application and paid for by Tenant (or payments that are then due and owing), or (B) not been incorporated in the Building or the Parking Lot but have been purchased since the last previous application and paid for by Tenant (or payments that are then due and owing) and insured by Tenant for one hundred percent (100%) of the cost thereof and stored at a secure and safe location on the Premises or at such other location as shall be reasonably satisfactory to Landlord. The Depositary shall not

make any installment payment to Tenant for materials, fixtures and equipment, purchased but not yet incorporated in the Building or the Parking Lot, until Tenant shall have delivered to Landlord certificates of insurance evidencing that such materials, fixtures and equipment are insured for one hundred percent (100%) of the cost thereof.

(ii) Holdback of Restoration Funds. Subject to the IDA Bond Documents, the amount of any installment of the Restoration Funds to be paid to Tenant for labor, the cost of materials, fixtures and equipment (but exclusive of architects' fees, insurance and other professional fees and "soft" construction costs, called herein "soft costs," for which no holdback shall be required) shall be equal to ninety-five percent (95%) of the amount by which (A) the product derived by multiplying the Restoration Funds by a fraction, the numerator of which shall be the total cost (including any amounts that may have been retained by Tenant from any contractors) of all labor, and the cost of materials, fixtures and equipment incorporated in the Building or the Parking Lot or purchased, insured and stored as provided in Section 8.3(b)(i) hereof, excluding soft costs, and the denominator of which shall be the total estimated cost of the Construction Work in connection with such Restoration, exceeds (B) all prior installments of Restoration Funds paid to Tenant excluding soft costs. Upon completion of any contract, Depositary shall disburse that portion of the retainage which is applicable to that contract. Upon completion of the Restoration, and upon application for final payment submitted by Tenant to Depositary and Landlord and compliance with the conditions set forth in Section 8.4 hereof, the remaining portions of the Restoration Funds shall be first paid to each of Tenant's contractors in payment of the amounts due and remaining unpaid on account of work performed in connection with the Restoration and not disputed by Tenant and any amounts retained under such contracts, and the balance of the Restoration Funds shall be paid to Tenant, subject to the rights of the holders of any Recognized Mortgages.

(c) Disbursement of Remaining Restoration Funds. Subject to the provisions of any Recognized Mortgage (including without limitation the IDA Bond Documents), any Restoration Funds remaining after the completion of a Casualty Restoration in accordance with the provisions of Sections 13.3 and 13.6 hereof shall be paid to Landlord.

Section 8.4. Conditions Precedent to Disbursement of Restoration Funds. The following are conditions precedent to each payment of Restoration Funds to be made to Tenant pursuant to Section 8.3(b) hereof.

(a) Certificate of Architect. A certificate of the Architect or the inspecting licensed, professional engineer selected by Tenant and reasonably approved by Landlord for such Construction Work shall be submitted to Depositary and Landlord stating that:

(i) The sum then requested to be withdrawn either has been paid by Tenant or is justly due to contractors, subcontractors, materialmen, engineers, architects or other Persons (whose names and addresses shall be stated), who have rendered or furnished services or materials for the work and, giving a brief description of such services and materials and the principal subdivisions or categories thereof and the several amounts so paid or due to each of such Persons with respect thereto, and stating, in reasonable detail, the progress of the Construction Work in connection with the Restoration up to the date of the certificate;

(ii) No part of such expenditures has been or is being made the basis, in any previous or then pending request, for the withdrawal of Restoration Funds or has been paid out of any of the Restoration Funds received by Tenant;

(iii) The sum then requested does not exceed the cost of the services and materials described in the certificate;

(iv) The materials, fixtures and equipment, for which payment is being requested pursuant to Section 8.3(b)(i)(B) hereof, to the extent applicable, are equal in quality to the items being restored or replaced and in substantial accordance with the Plans and Specifications;

(v) Except in the case of the final request for payment by Tenant, the balance of the Restoration Funds held by Depositary (including any bond, cash or other security provided by Tenant in accordance with Section 8.5 hereof) shall be sufficient, upon completion of the Construction Work in connection with the Restoration, to pay for the Construction Work in full, and estimating, in reasonable detail, the total and remaining costs to complete such Construction Work, and

(vi) In the case of the final request for payment by Tenant, the Construction Work in connection with a Restoration shall have been completed, except for punch list items, in accordance with the provisions of Sections 13.3 and 13.6 hereof.

(b) Certificate of Title Insurance. There shall be furnished to Landlord a report or a certificate of a title insurance company reasonably satisfactory to Landlord, or other evidence reasonably satisfactory to Landlord showing that there are no (i) vendor's, mechanic's, laborer's or materialman's statutory or other similar liens filed against the Premises or any part thereof, or (ii) public improvement liens created or caused to be created by Tenant affecting Landlord or the assets of, or any funds appropriated to Landlord, except those as will be discharged upon payment of the amount then requested to be withdrawn.

(c) Defaults. No Event of Default shall exist.

Section 8.5. Restoration Fund Deficiency. If the estimated cost (determined as provided in Section 8.2(b) hereof) of any Construction Work in connection with any Restoration (a) exceeds the Threshold Amount, and (b) exceeds the net Restoration Funds received by Depositary pursuant to Section 7.4(a) hereof, then, before the commencement of such Construction Work, or, at any time after commencement of such Construction Work if it is reasonably determined by Landlord that the cost to complete such Construction Work exceeds the unapplied portion of the Restoration Funds, Tenant shall, within sixty (60) days of Landlord's request, furnish to Landlord evidence reasonably satisfactory to Landlord of the financial ability of Tenant to pay the amount of such excess, which evidence may, at Tenant's election, consist of a letter of credit, loan commitment, surety bond or any combination of the foregoing or such other security as may be reasonably satisfactory to Landlord, in the amount of such excess. Any security or deposit made with a Depositary pursuant to a requirement of a Recognized Mortgage shall be deemed to satisfy the requirements of this Section, provided, that in the case of a failure by Tenant to pay the cost of the Casualty Restoration, the Recognized

Mortgagee shall be obligated to apply such security or deposit to the Casualty Restoration in accordance with the terms of this Lease, whether or not a default exists under such Recognized Mortgage. The foregoing shall not apply to a Casualty Restoration of Park Improvements, unless such Restoration Fund deficiency results from the fault or default of Tenant or any of its consultants, contractors or subcontractors thereof.

Section 8.6. Effect of Casualty on This Lease. This Lease shall neither terminate, be forfeited nor be affected in any manner, nor shall there be a reduction or abatement of Rental by reason of damage to, or total, substantial or partial destruction of, a Building or Parking Lot, or by reason of the untenantability of a Building or Parking Lot or any part of any thereof, nor for any reason or cause whatsoever, including without limitation Tenant's failure to furnish evidence of ability to pay amounts required pursuant to Section 8.5 hereof. Tenant's obligations hereunder, including the payment of Rental, shall continue as though such Building or Parking Lot had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction whatsoever.

Section 8.7. Arbitration. Disputes between Landlord and Tenant shall be subject to arbitration in the manner provided in Article 33 hereof.

Section 8.8. Waiver of Rights under Statute. The existence of any present or future law or statute notwithstanding, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any casualty to any Building or Parking Lot. It is the intention of Landlord and Tenant that the foregoing is an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

ARTICLE 9

CONDEMNATION

Section 9.1. Substantial Taking.

(a) Termination of Lease for Substantial Taking. If all or Substantially All of the Premises is taken (excluding a taking of the fee interest in the Land if, after such taking, Tenant's rights under this Lease and the leasehold interest created thereby are not affected) for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease shall terminate on the Date of Taking and the Rental payable by Tenant hereunder shall be apportioned and paid to the Date of Taking.

(b) Disbursement of Award. If all or Substantially All of the Premises is taken or condemned as provided in Section 9.1(a) hereof, the entire award paid in connection with such taking or condemnation shall be apportioned as follows: (i) subject to the IDA Bond Documents, there shall first be paid to Landlord so much of the award which is for or attributable to the value of the Land and the Park Improvements, considered as encumbered by this Lease, provided, that notwithstanding any separate award therein for the value of the Land and the Park Improvements, such amount shall be determined by agreement among Landlord, Tenant and the holder of the first Recognized Mortgage or, if they are unable to agree within thirty (30) days, by submission of the matter to arbitration pursuant to Section 33.1 hereof; (ii) there shall next be paid (A) to the Recognized Mortgagees in the order of the priority of their liens so much of the award attributable to the value of the affected Building (the "Improvement Award") as shall equal the unpaid principal indebtednesses secured by such Recognized Mortgages with interest thereon at the rate specified therein to the date of payment (plus prepayment fees or similar charges thereon, if any) and (B) to Landlord the remainder of the Improvement Award as is for or attributable to the value of the affected Building, and (iii) subject to the rights of any Recognized Mortgagees, Landlord shall be paid any balance of any remaining award. Tenant shall have the right to claim separately its personal property, trade fixtures, and moving and relocation costs for itself and any Subtenants.

(c) Definitions.

(i) "Date of Taking" means the earlier of (A) the date on which actual possession of all or Substantially All of the Premises, or any part thereof, as the case may be, is acquired by any lawful power or authority pursuant to the provisions of applicable law or (B) the date on which title to all or Substantially All of the Premises, or any part thereof, as the case may be, has vested in any lawful power or authority pursuant to the provisions of applicable law.

(ii) "Substantially All of the Premises" means such portion of the Premises as, when so taken, in the judgment of the parties or if the parties cannot agree within thirty (30) days, then in the judgment of arbitrators selected as provided in Section 33.1 hereof, would leave a balance of the Premises that, due either to the area so taken or the location of the part so taken in relation to the part not so taken, would not, under economic conditions, zoning laws and building regulations then existing, and after performance by Tenant of all covenants,

agreements, terms and provisions contained herein or by law required to be observed by Tenant, readily accommodate a new or reconstructed building or buildings of a type and size generally similar to the affected Building existing at the Date of Taking and capable of producing Revenues sufficient to pay Project Expenses, Base Rent and PILOT.

Section 9.2. Less Than A Substantial Taking.

(a) Taking of Less Than Substantially All of the Premises. If less than Substantially All of the Premises is taken for any public or quasi-public purpose by any lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right, this Lease shall continue for the remainder of the Term without diminution of any of Tenant's obligations hereunder, except that Base Rent, as the case may be, shall be reduced in proportion to the percentage of the Premises which is so taken.

(b) Obligation to Restore the Premises. If less than Substantially All of the Premises is taken as provided in Section 9.2(a) hereof, Tenant shall, as required by Section 9.2(d) hereof, after settlement of the award, restore the remaining portion of the affected Building not so taken so that such Building shall be a complete building, consisting of rentable, self-contained architectural units in good condition and repair and, to the extent practicable, of a size and condition substantially similar to the size and condition of, and of character similar to the character of, such Building as it existed immediately before such taking (a "Condemnation Restoration") whether or not the award or awards received by Tenant for such taking are sufficient to pay in full the Construction Work in connection with such Condemnation Restoration, and Landlord shall not be obligated to restore any remaining portion of the Premises not so taken or to pay any costs or expenses thereof. If any Park Improvements are taken as a result of a taking described in Section 9.2(a), then Landlord may require Tenant to perform a Condemnation Restoration of the Park Improvements in connection with a Condemnation Restoration of Garage A, and in such case Landlord or Lease Administrator (if any) shall make available from condemnation proceeds or other source funds sufficient for such Condemnation Restoration of the Park Improvements, and same shall be disbursed in the same manner as is described in Section 9.2(d) hereof.

(c) Payment of Award. In the event of any taking pursuant to Section 9.2(a), the entire award (including any separate award for or attributable to the Land) shall be paid to Depositary and, subject to the rights of any Recognized Mortgagee, applied first to Restoration and thereafter as provided in Section 9.2(d) hereof. However, if this Lease is terminated as provided in Section 9.2(b) hereof, then the award shall, subject to the IDA Bond Documents, first be distributed to Landlord in an amount equal to the Fair Market Value of the Land so taken, then, to any Recognized Mortgagee in the amount outstanding under the Recognized Mortgage, and the balance to Landlord.

(d) Performance of Condemnation Restoration. The Construction Work in connection with a Condemnation Restoration, submission of the estimated cost thereof by Tenant and approval thereof by Landlord, Tenant's obligation to provide additional security, and disbursement of the condemnation award by Depositary shall be done, determined, made and governed in accordance with the provisions of Article 13 and Sections 8.2(b), 8.3 (except Section

8.3(c) hereof), 8.4 and 8.5 hereof. If the portion of the award made available by Depositary is insufficient for the purpose of paying for the cost of the Construction Work in connection with the Condemnation Restoration, Tenant shall, subject to the terms and conditions of Section 9.2(b) hereof, nevertheless be required to perform such Construction Work as required hereby and pay any additional sums required for such Construction Work. Any additional balance of the award held by Depositary and any cash and the proceeds of any security deposited with Depositary pursuant to Section 8.5 remaining after completion of such Construction Work shall be paid to Landlord, subject to the rights of Recognized Mortgagees. Base Rent shall thereafter be reduced, with reference to the Base Rent allocations set forth in Section 3.2(a) above, by a ratio equal to the ratio of the square footage of any Land or Building taken to the original square footage of the Land or Building before the taking.

Section 9.3. Temporary Taking.

(a) Notice of Temporary Taking. If the temporary use of the whole or any portion of the Premises is taken for a public or quasi-public purpose by a lawful power or authority by the exercise of the right of condemnation or eminent domain or by agreement between Tenant and those authorized to exercise such right, Tenant shall give Landlord prompt notice thereof. The Term shall not be reduced or affected in any way by reason of such temporary taking and Tenant shall continue to pay Landlord Rental to the extent required under this Lease for the period in question without reduction or abatement.

(b) Obligation to Restore for Temporary Taking Not Extending Beyond the Term. If the temporary taking is for a period not extending beyond the term, and (i) if the award by reason of the temporary taking is paid less frequently than in monthly installments, such award shall be paid to, and held by, Depositary as a fund that Depositary shall apply from time to time, first, subject to the IDA Bond Documents, to the payment of Rental for the period in question, second, amounts due to the Recognized Mortgagee for the period in question, third, for deferred PILOT and deferred Base Rent (including interest), and fourth, any remaining balance to be paid to Landlord, or (ii) if such award is paid in monthly installments, such award shall be paid to Tenant. Notwithstanding the foregoing, if the taking results in changes or alterations in any Building that would necessitate an expenditure to restore the Building to its former condition then Tenant shall restore such Building in the same manner, and subject to the same terms and conditions, as if such restoration were a Condemnation Restoration. If the cost of such restoration is in excess of one percent (1%) of the Replacement Value, a portion of such award equal to the estimated cost of Restoration shall be paid to and held by Depositary and applied to the Restoration of such Building as provided in Section 9.2 hereof.

(c) Temporary Taking Extended Beyond the Expiration of the Term. If the temporary taking is for a period extending beyond the Expiration of the Term, such award or payment shall be apportioned as of the Expiration of the Term (after all options to extend for the Renewal Terms have been exercised) and the portion thereof paid for the period up to the Expiration of the Term (after all options to extend the Renewal Terms have been exercised) shall be paid and applied in accordance with the provisions of Section 9.3(b) hereof. If this Lease shall terminate for any reason before completion of the Construction Work related to such taking, Depositary shall pay Landlord the remaining Restoration Funds retained by Depositary for that purpose.

Section 9.4. Governmental Action Not Resulting in a Taking. In case of any governmental action not resulting in the taking or condemnation of any portion of the Premises but creating a right to compensation therefor, such as the changing of the grade of any street upon which the Premises abut, then this Lease shall continue in full force and effect without reduction or abatement of Rental. Any award payable thereunder shall, subject to the paramount rights of the Recognized Mortgagee, be paid to Landlord.

Section 9.5. Collection of Awards. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation proceeding referred to in this Article.

Section 9.6. Tenant's Approval of Settlements. Landlord shall not settle or compromise any taking or other governmental action creating a right to compensation in Tenant as provided in this Article or enter into a sale of all or a portion of the Premises in lieu of condemnation without the consent of Tenant, which consent shall not be unreasonably withheld, if the settlement, compromise or sale may adversely affect or prejudice Tenant's right to compensation for the taking or the amount of such compensation.

Section 9.7. Negotiated Sale. In the event of a negotiated sale of all or a portion of the Premises in lieu of condemnation, the proceeds shall be distributed as provided in cases of condemnation.

Section 9.8. Arbitration. Disputes regarding the disbursement of Restoration Funds pursuant to Section 9.2(d) hereof shall be subject to arbitration in the manner provided in Article 33 hereof.

Section 9.9. Exception to Restoration. Notwithstanding anything set forth to the contrary in this Article 9, if any taking occurs (A) during the last five (5) years of the Term (i) while the IDA Bonds are outstanding or (ii) if Tenant's right of possession to the Premises has been transferred at a foreclosure sale or assigned in lieu of foreclosure by the Trustee under the IDA Indenture acting as the Recognized Mortgagee, or Landlord and the Trustee under the IDA Indenture acting as the Recognized Mortgagee or its nominee or designee have executed a new lease pursuant to Section 11.4 hereof, which, in either such case, has triggered the effectiveness of Section 40.1 hereof or Section 40.1 of a successor lease pursuant to Section 11.4 hereof, and indebtedness under a Recognized Mortgage under either such Section 40.1 is outstanding, or (B) at any other time, only during the 98th or 99th year of the Term (as an Extended Term), Tenant may, in lieu of performing a Condemnation Restoration, surrender this Lease to Landlord, which shall be upon ten (10) Business Days written notice delivered within sixty (60) days of the Date of Taking; provided, that in either event of (A)(i) or (ii) above in this Section 9.9, Tenant shall not terminate this Lease unless the IDA Bonds or any indebtedness contemplated in Section 40.1 hereof (as applicable) has been discharged in full. In such event, all condemnation awards shall be paid to Landlord. Such termination shall comply with the provisions of Article 30 hereof.

Section 9.10. Intention of Parties. It is the intention of Landlord and Tenant that the provisions of this Article 9 shall constitute an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York and shall govern and control in lieu thereof.

ARTICLE 10

ASSIGNMENT AND SUBLETTING

Section 10.1. Tenant's Right to Assign, Enter into a Sublease.

(a) Assignment/Subletting: General. Tenant shall not, without the prior written consent of Landlord (to be provided in Landlord's sole and absolute discretion, except where expressly indicated to the contrary in this Article 10), enter into (i) an Assignment, or (ii) a Major Sublease. Notwithstanding the foregoing, Tenant may assign its interest in this Lease in whole or in part or may enter into a Sublease (other than a Major Sublease, except as provided in clause (v) below of this paragraph (a)) without such consent (i) to a Recognized Mortgagee as collateral security, (ii) pursuant to bona fide judicial or non-judicial foreclosure proceeding, a bona fide assignment in lieu of foreclosure, or a transfer by the Recognized Mortgagee or its affiliate or designee, or (iii) under daily, weekly, monthly or annual licenses and contracts for parking privileges, or (iv) to a parking operations and management provider under a parking operations management or service agreements, or construction staging pursuant to Section 23.1(f) hereof, or (v) subject to Section 10.7 and Section 13.14 below, under a Major Sublease for retail development on Site D, provided, however, that any such Subtenant (including without limitation a Major Subtenant) or Assignee (including without limitation a Recognized Mortgagee) shall not be a Prohibited Person, or (vi) to IDA or to an affiliate of Tenant wholly owned and controlled by or under common ownership and control with Tenant in connection with securing financial assistance. All Subleases (other than agreements described in (iii) above or agreements with the IDA) shall conform to the requirements set forth in Section 10.5 hereof. Prior to entering into any Sublease described in clauses (iv) and (v) above, the proposed Subtenant under such Sublease shall be subject to City background investigation (including the submission of completed background investigation forms), and Tenant's entering into such Sublease shall be conditional upon there being no information discovered which would reveal the proposed Subtenant to be in violation of the terms of paragraph (d) of this Section 10.1. For as long as the IDA Bonds are outstanding, Tenant shall not Sublease or Assign any interest in the IDA Financed Facilities pursuant to clauses (iii) or (iv) above, and Landlord shall not consent to any Assignment or Sublease not otherwise permitted under this paragraph (a), unless there shall have been issued an opinion of Nationally Recognized Bond Counsel that such conveyance shall not cause the interest on the tax-exempt IDA Bonds to be includable in gross income for federal income tax purposes. Landlord and Tenant shall furnish to one another such information as either shall request in order for Nationally Recognized Bond Counsel to deliver such opinion.

(b) Definitions.

(i) "Assignment" means the sale, exchange, assignment or other disposition of all or any portion of Tenant's interest in this Lease or the leasehold estate created hereby whether by operation of law or otherwise, including a foreclosure sale or an assignment in lieu of foreclosure or a Transfer of an Equity Interest.

(ii) "Assignee" means an assignee under an Assignment.

(iii) "Equity Interest" means with respect to any entity, (A) the beneficial ownership of (1) outstanding stock, or the right to buy outstanding stock, of such entity if such entity is a corporation, a real estate investment trust or a similar entity, a capital, profits, membership, or partnership interest in such entity, or (2) the right to buy such an interest, if such entity is a limited liability company, partnership or joint venture or (3) interest in a trust, or the right to buy such an interest, if such entity is a trust, or (B) the right to appoint members or directors of such entity, or (C) any other beneficial interest that is the functional equivalent of any of the foregoing.

(iv) "Major Sublease" means a Sublease for all or substantially all of the Premises demised hereunder, or all or substantially all of any Garage or any discrete, self-contained parcel of land comprising a part of the Premises as listed in Section 3.2(a) hereof.

(v) "Sublease(s)" means all subleases (including sub-subleases and any further level of subletting), Major Sublease, and any occupancy, management, service, license or concession agreements, but shall not include licenses to park vehicles at the Garages or the Parking Lots for members of the general public or to the New York Yankees or team members, employees, guests and invitees thereof.

(vi) "Subtenant(s)" means all subtenants, operators, licensees, franchisees, concessionaires and other occupants of the Premises or any portion thereof.

(vii) "Transfer" means any disposition of an Equity Interest in Tenant or in any direct or indirect constituent entity of Tenant, where such disposition directly or indirectly produces any change in control of Tenant. The term "Transfer" also includes any transaction or series of transactions, including, without limitation, the issuance of additional Equity Interests, or direct or indirect revision of the control of Tenant or any direct or indirect constituent entity of Tenant, which, in either case, produces any change in ownership or control of Tenant.

(c) NYCEDC Assignment. The foregoing notwithstanding, NYCEDC may assign its interest as Tenant under this Lease, without recourse, to BPDC, and all the terms and conditions under this Article 10 shall be binding upon NYCEDC's assignee.

(d) Non-Permissible Assignees or Subtenants. No proposed Subtenant, the Principals of the proposed Subtenant, or any Person that directly or indirectly Controls, is Controlled by, or is under common Control with the proposed Subtenant:

(i) shall be in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with NYCEDC or the City, unless such default or breach has been waived in writing by NYCEDC or the City, as the case may be;

(ii) shall have been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) years;

(iii) shall have been convicted of a felony in the past ten (10) years;

(iv) shall have received formal written notice form a federal, state or local governmental agency or body that such Person is currently under investigation for a felony criminal offense; or

(v) shall have received written notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such defaults is currently being contested with due diligence in proceedings in court or other appropriate forum.

Section 10.2. Subtenant Violation. A violation or breach of any of the terms, provisions or conditions of this Lease that results from, or is caused by, an act or omission by a Subtenant shall not relieve Tenant of Tenant's obligation to cure such violation or breach.

Section 10.3. Collection of Subrent by Landlord. After an Event of Default, Landlord may, subject to the rights of any Recognized Mortgagee, collect rent and all other sums due under any Subleases and apply the net amount collected to the Rental payable by Tenant hereunder. No such collection shall be, or shall be deemed to be, a waiver of any agreement, term, covenant or condition of this Lease nor the recognition by Landlord of any Subtenant as a direct tenant of Landlord nor a release of Tenant from performance by Tenant of its obligations under this Lease.

Section 10.4. Sublease Assignment.

(a) Assignment of Subleases to Landlord. As security for Tenant's obligations hereunder, Tenant hereby assigns, transfers and sets over unto Landlord, subject to any assignment of Subleases and/or rents made in connection with any Recognized Mortgage, all of Tenant's right, title and interest in and to all Subleases and hereby confers upon Landlord, its agents and representatives, a right of entry in, and sufficient possession of, the Premises to permit and ensure the collection by Landlord of all sums payable under the Subleases. The exercise of such right of entry and qualified possession by Landlord shall not constitute an eviction of Tenant from the Premises or any portion thereof. If such right of entry and possession is denied to Landlord, its agents or representatives, Landlord, in the exercise of this right, may use all legal means to recover possession of the Premises. This assignment, although presently effective, shall be operative only upon the occurrence and during the continuance of an Event of Default and not before.

(b) Schedule of Subleases. At any time upon Landlord's demand, but no more often than twice in any Lease Year, Tenant shall deliver to Landlord, within fifteen (15) days of such demand, (i) a schedule of all Subleases, giving the names of all Subtenants, a description of the space that has been sublet, expiration dates, rentals and such other information

as Landlord reasonably may request, and (ii) a photostatic copy of each of the Subleases to the extent not previously delivered. Upon reasonable request of Landlord, Tenant shall permit Landlord and its agents and representatives to inspect original counterparts of all Subleases.

Section 10.5. Required Sublease Clauses. Each Sublease, other than Subleases which are terminable at will by landlord thereunder on not more than thirty (30) days written notice, shall provide that:

(a) It is subordinate and subject to this Lease and any Recognized Mortgage.

(b) Except for security deposits and any other amounts deposited with Tenant or with any Recognized Mortgagee in connection with the payment of insurance premiums, real property taxes and assessments and other similar charges or expenses, and subject to the terms of Section 3.4(a) hereof, Subtenant shall not pay rent or other sums payable under the Sublease to Tenant for more than one (1) month in advance.

(c) At Landlord's option, on the termination of this Lease pursuant to Article 24 hereof, the Subtenant shall attorn to, or shall enter into a direct lease on terms identical to its Sublease with, Landlord for the balance of the unexpired term of the Sublease.

Section 10.6. Advertising. No agreement for advertising shall be entered into by Tenant or any Subtenant that is described in Section 10.1(d) hereof, nor violate any term or condition set forth in Section 23.3 hereof.

Section 10.7. Site D Major Sublease. Within nine (9) months of the Commencement Date, Tenant shall furnish to Landlord and NYCEDC (as Lease Administrator for the purposes of this Section 10.7 and Section 13.14 hereof), for Landlord's review and approval (in consultation with the Department of City Planning and the office of the Bronx Borough President) a proposal for either a retail/parking development or a retail development for Site D. Tenant shall provide to the office of the Bronx Borough President such analyses, narratives and other information as Tenant may possess and as the office of the Bronx Borough President may reasonably request relating to preliminary, progress or final proposals presented to the Bronx Borough President's office in accordance with this Section 10.7. The proposed development shall include a preliminary schematic drawing and a program which includes a detailed descriptive narrative, the square footage of development (total and by retail unit), projected retail uses, number and size retail units, parking availability, 20-year cash flow analysis, a sources and uses statement and a detailed construction budget. Tenant may propose residential and retail mixed use development, but Tenant acknowledges that such proposal may require approval under ULURP, which Tenant shall undertake at its own cost and expense. The proposal may include development of a single project on both Site D and the adjacent parcel (currently identified as Block 2354, Lot 1). For any proposed development, Lease Administrator shall conduct a fair market value appraisal, using sales comparison and income approaches, to determine basic ground rent under such Major Sublease, and the basic ground rent, pass-through rent or direct payment by Major Subtenant to cover all common area charges, tax increases over the tax year in which the Major Sublease commences, utilities, impositions and other out-of-pocket costs related to Site D, shall be not less than the fair market basic ground rent as determined in such appraisal, subject to the further appraisal process set forth below in this

Section 10.7 if Major Subtenant or Tenant disputes the determination reached by Lease Administrator's appraiser. If Tenant or Major Subtenant disputes the determination made by Lease Administrator's appraiser for the proposed development, then either one, as applicable, shall give notice to Landlord, within twenty (20) days of receiving a copy of the appraisal performed by Lease Administrator's appraiser, that it disputes such appraisal and identifying an appraiser to act on Tenant's or Major Subtenant's behalf. Lease Administrator's appraiser and Tenant's or Major Subtenant's appraiser shall meet within ten (10) days after the second appraiser is appointed and if, within forty-five (45) days after such first meeting, the said two appraisers shall be unable to agree upon the valuation, they themselves shall appoint a third appraiser who shall be a competent and impartial appraiser. Within a period of forty-five (45) days after the appointment of such third appraiser, the three appraisers shall agree upon the valuation, the vote of two of such appraisers being decisive. In the event the first two appraisers are unable to agree upon the appointment of a third appraiser within fifteen (15) days after the time aforesaid, such third appraiser shall be selected by the parties themselves if they can agree thereon within a further period of fifteen (15) days. If the parties do not so agree, then either party, on behalf of both, may apply to the Supreme Court of Bronx County for the appointment of such third appraiser, and the other party shall not raise any question as to the court's full power and jurisdiction to entertain the application and make the appointment. Any appraiser selected or appointed pursuant to this Section 10.7 shall be a member of the American Institute of Real Estate Appraisers (or a successor organization), shall be an appraiser, and shall have been doing business as such in New York City for a period of at least five (5) years before the date of this appointment. All appraisers chosen or appointed pursuant to this Section 10.7 shall be sworn fairly and impartially to perform their duties as such appraiser. In the event of the failure, refusal or inability of any appraiser to act, his successor shall be appointed within ten (10) days by the party who originally appointed him or in the event such party shall fail so to appoint such successor, or in case of the third appraiser, his successor shall be appointed as hereinabove provided. Tenant shall pay the fees and expenses of all appraisers. Each party shall be responsible for the fees and expenses of its own attorney and other representatives (except the appraiser(s), which Tenant shall pay for) in connection with such appraisal. All appraisals shall be based upon Site D in its "as-is" condition, unencumbered except subject to the use and development restrictions and rental requirements set forth in this Lease, and the use of Site D for the proposed development.

The basic ground rental payable to Tenant under the Site D Major Sublease and all other rental terms under the Site D Major Sublease shall be not less than that determined by the appraisal process set forth above in this Section 10.7 to be fair market value (and shall include escalations consistent with fair market value at such time), and the Site D Major Sublease shall also provide that Major Subtenant shall pay pass-through rent to Tenant or direct payment by the Site D Major Subtenant to cover all common area charges, tax increases over the tax year in which the Site D Major Sublease commences, utilities, impositions and other out-of-pocket costs related to Site D. In addition, rental shall be adjusted for any construction or other substantial expense which the Site D Major Subtenant may be required to undertake or incur under the terms of the Site D Major Sublease such that Tenant's return under the Major Sublease is consistent with the final and controlling appraisal described in the immediately preceding paragraph. No development of Site D shall be permitted except pursuant to a development plan approved by Landlord (and in consultation with the office of the Bronx Borough President) as set forth above. The Site D development shall be constructed substantially as set forth in the

schematics delivered to Landlord, except to the extent required in order to obtain or comply with discretionary land use approvals. If Tenant or Major Subtenant makes any change to the proposed development which materially differs from that set forth in the proposal furnished to Landlord and upon which the appraisal or appraisals are based, then the appraisal process described above shall be repeated for the changed proposed development. Tenant shall furnish a true, complete and correct copy of the executed Site D Major Sublease to Landlord promptly upon execution and delivery of same by Tenant and Subtenant. If the Site D Major Sublease violates any term or condition of this Section 10.7, such Sublease shall be void. Upon twenty (20) business days written request by Tenant for an estoppel certificate, Landlord shall deliver to Tenant within such twenty (20) day period either a certificate that the Site D Major Sublease complies with this Section 10.7, or a written statement that if does not so comply and the reasons for such noncompliance.

The Site D Major Sublease shall state that it is subject to the terms and conditions set forth in this Section 10.7 and in Section 10.5 and Section 13.14 of this Lease.

Unless Tenant is notified by Landlord in writing to the contrary, NYCEDC shall be a Lease Administrator solely for purposes of conducting a fair market appraisal and appointing an appraiser on behalf of Landlord pursuant to this Section 10.7.

Upon approval by Lease Administrator of Tenant's or a Site D Major Subtenant's proposed development, Tenant, or a Site D Major Subtenant, shall pursue at its or their own expense, all approvals necessary for the proposed development. If such approvals are not received within two (2) years of Lease Administrator's approval of the proposed development, or if Tenant fails to submit a proposal within the time period set forth above, enter into a Site D Major Sublease, obtain financing sufficient to undertake the entire proposed development, obtain a building permit for the construction of the proposed development, or commence construction of the proposed development within three (3) years if no further ULURP approval is required, and within five (5) years if further ULURP approval is required, of Lease Administrator's approval of the proposed development, then Landlord shall have the right to terminate this Lease with respect to Site D upon Landlord giving Tenant not less than sixty (60) days written notice of termination, identifying that part of the Premises with respect to which this Lease is being terminated (Site D) and the effective date of such termination. Effective upon such termination, Base Rent shall be reduced in accordance with the Base Rent percentage allocations set forth in Section 3.2(a) below. Tenant shall comply with Article 30 hereof with respect to Site D and termination of this Lease with respect to Site D as herein provided. Commencement of construction for purposes of this Section 10.7 shall mean obtaining of all excavation and building permits for the proposed development, the execution of complete contract documents for the proposed development, and the commencement of excavation and foundation work for same.

Section 10.8. Subtenant/Sublease Mortgagee Non-Disturbance.

(a) Landlord, for the benefit of any Subtenant whose Sublease was made in accordance with the applicable provisions of this Article, and whose Sublease is not terminable at will by Landlord or sublessor thereunder on ninety (90) days written notice or less, shall recognize such Subtenant as the direct tenant of Landlord upon the termination of this Lease pursuant to the provisions of Article 24 hereof, provided at the time of the termination of this

Lease (x) no default exists under such Sublease beyond the expiration of any applicable cure period, which at such time would permit the landlord thereunder to terminate the Sublease or to exercise any remedy for dispossession provided for therein, (y) Subtenant submits to Landlord complete background investigation forms supplied by Landlord, and no information is revealed which would generally prevent Landlord from doing business with Subtenant under the applicable City policies and (z) such Subtenant delivers to Landlord an instrument in the form attached hereto as Exhibit I, and further containing such substitutions for and modifications of the foregoing and such additional provisions as the City and a Subtenant may request of the other and as the other may agree to, each acting in their reasonable discretion.

(b) If Landlord recognizes a Subtenant as a direct tenant as provided in the preceding paragraph (a), and if said Subtenant's Sublease provided for payments by Subtenant of a portion of the payments in lieu of taxes payable by Tenant under Section 3.3 hereof, then said Sublease, having become a direct lease from Landlord to Subtenant, shall be construed to continue to provide for said payment of such portion and the amount of payments in lieu of taxes on which such proportional payment is based shall continue to be calculated as provided in Section 3.3 hereof notwithstanding that this Lease shall have terminated.

(c) Landlord agrees to deliver to a mortgagee of a Sublease for Site D a subordination, nondisturbance and attornment agreement as may be reasonably acceptable to Landlord and such Site D Sublease mortgagee, provided that such mortgagee holds a mortgage satisfying the criteria established for a Recognized Mortgage set forth in Section 11.2(b) hereof (for purposes of this paragraph (c) "Substantial Completion" set forth in Section 11.2(b) shall refer to the development of Site D as contemplated in Section 10.7 hereof).

ARTICLE 11

MORTGAGES

Section 11.1. Effect of Mortgages.

(a) No Effect on Landlord's Interest in Premises. No Mortgage shall extend to, affect or be a lien or encumbrance upon, the estate and interest of Landlord in the Premises or any part thereof.

(b) Definition. "Mortgage" means any mortgage or deed of trust that constitutes a lien on all or any portion of Tenant's interest in this Lease and the leasehold estate created hereby.

Section 11.2. Mortgagee's Rights.

(a) Mortgagee's Rights Not Greater than Tenant's. Except as otherwise expressly set forth in this Lease, the execution and delivery of a Mortgage or a Recognized Mortgage shall not give nor shall be deemed to give a Mortgagee or a Recognized Mortgagee any greater rights against Landlord than those granted to Tenant hereunder.

(b) Definition. "Recognized Mortgage" means a Mortgage (i) that, (x) prior to Substantial Completion, is held by an Institutional Lender (or a designee or nominee wholly owned or wholly controlled or wholly under common control by an Institutional Lender), or (y) after Substantial Completion, is held by any Person other than a Person described in Section 10.1(d) hereof; (ii) which shall comply with the provisions of this Article; (iii) a photostatic copy of which has been delivered to Landlord, together with a certification by Tenant and the Recognized Mortgagee confirming that the photostatic copy is a true copy of the Recognized Mortgage and giving the name and address of the holder thereof; and (iv) which is recorded in the Office of the City Register, Bronx County.

Section 11.3. Notice and Right to Cure Tenant's Defaults.

(a) Notice to Recognized Mortgagee. Landlord shall give to each Recognized Mortgagee, at the address of the Recognized Mortgagee stated in the certification referred to in Section 11.2(b) hereof, or in any subsequent notice given by the Recognized Mortgagee to Landlord, and otherwise in the manner pursuant to the provisions of Article 25 hereof, a copy of each notice of Default at the same time as it gives notice of Default to Tenant, and no such notice of Default shall be deemed effective unless and until a copy thereof shall have been so given to each Recognized Mortgagee.

(b) Rights of Recognized Mortgagee. Within sixty (60) days after the date Landlord shall have given a Recognized Mortgagee a copy of any notice of Default pursuant to subsection (a) of this Section 11.3, such Recognized Mortgagee shall notify Landlord whether it intends to institute foreclosure proceedings (the "Foreclosure Notice"). If a Recognized Mortgagee shall have given a Foreclosure Notice to Landlord within such sixty (60)-day period, such Recognized Mortgagee shall thereafter proceed expeditiously to institute foreclosure

proceedings, and shall continuously prosecute the foreclosure proceedings with reasonable diligence and continuity (subject to Unavoidable Delays) to obtain possession of the Premises. Such Recognized Mortgagee shall have no obligation to cure or remedy any Default in the payment of Rental or any other Default for so long as such Recognized Mortgagee shall be continuously prosecuting the foreclosure proceeding with reasonable diligence and continuity, until the earlier of (i) twenty-four (24) months from the date Recognized Mortgagee has received a copy of a notice of Default, or (ii) the date that Recognized Mortgagee, its designee or any other Person shall acquire possession of the Premises at a foreclosure sale or by assignment in lieu of foreclosure (such Recognized Mortgagee, its designee or other Person so acquiring such possession, a "Successor Tenant"), and upon or after which earlier date Recognized Mortgagee or Successor Tenant shall cure such Default within the time period provided for curing such Default pursuant to Section 24.1 hereof (calculated from such earlier date). Successor Tenant shall not have any obligation to cure any Default or Event of Default of any prior Tenant that is not reasonably susceptible of cure.

(c) Failure of Recognized Mortgagee. In the event that a Recognized Mortgagee (a) shall not have given a Foreclosure Notice to Landlord within the time period specified in paragraph (b) above, (b) shall have withdrawn any previous Foreclosure Notice by written notice to Landlord before such Recognized Mortgagee or a Successor Tenant shall have taken possession of the Premises, (c) shall have failed expeditiously to institute foreclosure proceedings or continuously to prosecute the foreclosure proceedings with diligence and continuity, or (d) twenty-four (24) months have passed since the delivery of a notice of Default to Recognized Mortgagee and failed to cure outstanding Defaults (other than Defaults not reasonably susceptible of cure) after such date within the time period provided for such cure under Section 24.1 hereof (calculated from the last day of such twenty-four (24) month period), then, in any of such events, Landlord shall have the unrestricted right to exercise any of its rights and remedies available under Article 24 hereof upon the occurrence of an Event of Default.

(d) Acceptance of Recognized Mortgagee's Performance. Notwithstanding anything to the contrary set forth in this Section 11.3 to the contrary, a Recognized Mortgagee may perform any covenant, condition or agreement on Tenant's part to be performed hereunder. Subject to the provisions of Section 11.5 hereof, Landlord shall accept performance by a Recognized Mortgagee of any covenant, condition or agreement on Tenant's part to be performed hereunder with the same force and effect as though performed by Tenant.

(e) No Merger. So long as any Recognized Mortgage is in existence, unless all holders of Recognized Mortgages shall otherwise express their consent in writing, the fee title to the Premises and the leasehold estate of Tenant created by this Lease shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of both fee title to the Premises and the leasehold estate by Landlord, or by Tenant, or by any Recognized Mortgagee or by any other party.

(f) No Termination of Lease by Tenant. Landlord and Tenant agree that unless expressly waived in writing by all Recognized Mortgagees, Tenant shall not be entitled to terminate this Lease, and Landlord shall not accept such termination, unless same has been consented to by all Recognized Mortgagees. The foregoing shall not impair or diminish Landlord's right to terminate this Lease pursuant and subject to Article 24 hereof on account of

an Event of Default by Tenant.

Section 11.4. Execution of New Lease.

(a) Notice of Termination. If this Lease is terminated by reason of an Event of Default or otherwise, Landlord shall give prompt notice thereof to each Recognized Mortgagee.

(b) Request for and Execution of New Lease. If, within ninety (90) days of the receipt (as shown on proof of service or return receipt) of the notice referred to in Section 11.4(a) hereof, a Recognized Mortgagee shall request a new lease, then subject to the provisions of Sections 11.4(c) and 11.5 hereof, within thirty (30) days after Landlord shall have received such request, Landlord shall execute and deliver a new lease of the Premises for the remainder of the Term to the Recognized Mortgagee (or any designee or nominee of the Recognized Mortgagee) which complies with the criteria set forth in Section 10.1(d) hereof. The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease, provided however, that Landlord shall not be deemed to have represented or covenanted that such new lease shall be superior to claims of Tenant, its other creditors or a judicially appointed receiver or trustee for Tenant.

(c) Conditions Precedent to Landlord's Execution of New Lease. The provisions of Section 11.4(b) hereof notwithstanding, Landlord shall not be obligated to enter into a new lease with a Recognized Mortgagee unless the Recognized Mortgagee (i) shall pay to Landlord, concurrently with the execution and delivery of the new lease, all Rental due under this Lease up to and including the date of the commencement of the term of the new lease (excluding penalties and interest thereon) and all expenses, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, the termination of this Lease and the preparation of such new lease, if and to the extent such expenses would be collectible under this Lease from Tenant, (ii) except in the case of an Event of Default described in Sections 24.1(d) and (f) through (j) hereof, shall promptly after receipt from Landlord of a statement of the Default required to be cured, cure all Defaults reasonably susceptible of cure then existing under this Lease (as though the Term had not been terminated), and (iii) shall deliver to Landlord a statement, in writing, acknowledging that Landlord, by entering into such new lease with such Recognized Mortgagee or such designee or nominee, shall not have or be deemed to have waived any Defaults or Events of Default reasonably susceptible of cure then existing under this Lease (other than the Defaults or Events of Default mentioned in Sections 24.1(d) and (f) through (j) hereof which Landlord shall be deemed to have waived as against Tenant) notwithstanding that any such Defaults or Event of Default existed prior to the execution of such new lease and that the breached obligations which gave rise to the Defaults or Event of Default are also obligations under such new lease. The foregoing notwithstanding, at any time during which (i) the IDA Bonds are outstanding, or (ii) Tenant's right of possession to the Premises has been transferred at a foreclosure sale or assigned in lieu of foreclosure by the Trustee under the IDA Indenture acting as the Recognized Mortgagee, or Landlord and the Trustee under the IDA Indenture acting as the Recognized Mortgagee or its nominee or designee have executed a new lease pursuant to Section 11.4 hereof, which, in either such case, has triggered the effectiveness of Section 40.1 hereof or Section 40.1 of a successor lease pursuant to Section 11.4 hereof, and indebtedness under a Recognized

Mortgage under either such Section 40.1 is outstanding, Rental shall be payable only from amount available under the IDA Bond Documents or Section 40.1 hereof or Section 40.1 of a successor lease entered into pursuant to Section 11.4 hereof.

(d) No Waiver of Default. The execution of a new lease shall not constitute a waiver of any Default as against Tenant existing immediately before termination of this Lease and, except for a Default which is not reasonably susceptible of being cured, the tenant under the new lease shall cure, within the applicable periods set forth in Section 24.1 hereof as extended by Section 11.3(b) hereof, all Defaults (except those described in Sections 24.1(d) and (f) through (j) hereof) specified in Landlord's statement of Defaults referred to in Section 11.4(c)(ii) hereof existing under this Lease immediately before its termination.

(e) Assignment of Depositary Proceeds. Concurrently with the execution and delivery of a new lease pursuant to the provisions of Section 11.4(b) hereof, Landlord shall assign to the tenant named therein all of its right, title in and interest to moneys (including insurance proceeds and condemnation awards), if any, then held by, or payable to, Landlord or Depositary that Tenant would have been entitled to receive but for the termination of this Lease. Any sums then held by, or payable to, Depositary, shall be deemed to be held by, or payable to, Depositary as depositary under the new lease.

(f) Assignment of Subleases. Upon the execution and delivery of a new lease pursuant to the provisions of Section 11.4(b) hereof, all Subleases that have been assigned to Landlord shall be assigned and transferred, together with any security or other deposits received by Landlord and not applied under such Subleases, without recourse, by Landlord to the tenant named in the new lease. Between the date of termination of this Lease and the date of the execution and delivery of the new lease, if a Recognized Mortgagee has requested a new lease as provided in Section 11.4(b) hereof, Landlord shall not materially modify or amend, or cancel any Sublease or accept any cancellation, termination or surrender thereof (unless such termination is effected as a matter of law upon the termination of this Lease or terminated by the terms of the Sublease) or enter into any new Sublease without the consent of the Recognized Mortgagee.

Section 11.5. Recognition by Landlord of Recognized Mortgagee Most Senior in Lien. If more than one Recognized Mortgagee has exercised any of the rights afforded by Sections 11.3 or 11.4 hereof, only that Recognized Mortgagee, to the exclusion of all other Recognized Mortgagees, whose Recognized Mortgage is most senior in lien shall be recognized by Landlord as having exercised such right, for so long as such Recognized Mortgagee shall be diligently exercising its rights under this Lease with respect thereto, and thereafter only the Recognized Mortgagee whose Recognized Mortgage is next most senior in lien shall be recognized by Landlord, unless such Recognized Mortgagee has designated a Recognized Mortgagee whose Mortgage is junior in lien to exercise such right. If the parties shall not agree on which Recognized Mortgage is prior in lien, such dispute shall be determined by a title insurance company chosen by Landlord, and such determination shall bind the parties.

Section 11.6. Application of Proceeds from Insurance or Condemnation Awards. Subject to the IDA Bond Documents, if and to the extent that this Lease requires that insurance proceeds paid in connection with any damage or destruction to any Building or Parking Lot, or the proceeds of an award paid in connection with a taking referred to in Article 9 hereof, be

applied to restore any portion of such Building or Parking Lot, no Mortgagee shall have the right to apply the proceeds of insurance or awards toward the payment of the sum secured by its Mortgage until the Restoration requirements of this Lease have been satisfied.

Section 11.7. Appearance at Condemnation Proceedings. A Recognized Mortgagee shall have the right to appear in any condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

Section 11.8. Rights of Recognized Mortgagees. The rights granted to a Recognized Mortgagee under the provisions of Sections 11.3, 11.4 and 11.7 hereof shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

Section 11.9. Landlord's Right to Mortgage its Interest. Landlord shall have the right to mortgage its fee interest in the Premises, as long as such mortgage is subject to this Lease and any new lease executed pursuant to the provisions of Section 11.4 hereof. Anything in this Lease to the contrary notwithstanding, Landlord covenants and agrees that neither Tenant's interest in this Lease, Tenant's interest in any Sublease nor any Mortgagee's interest in this Lease or a new lease obtained pursuant to Section 11.4 hereof, shall be subordinate to any mortgage on Landlord's fee interest in the Premises. Landlord agrees to include in such fee mortgage a subordination clause reasonably satisfactory to Tenant and to the Recognized Mortgagee most senior in lien in order to accomplish such subordination. Such fee mortgage shall also include a waiver and release by the fee mortgagee of any claims to any insurance proceeds or condemnation awards properly applicable to a Condemnation Restoration or a Casualty Restoration. If the fee mortgagee refuses to include such provisions, Landlord shall not enter into the fee mortgage and to do so shall constitute a material default by Landlord under the terms of this Lease. For the purposes of this provision, it is understood and agreed that the lien of any such fee mortgage shall be subordinate not only to the lien of this Lease, and to Tenant's interest in this Lease and Tenant's leasehold estate, but also to the lien of any new lease granted pursuant to Section 11.4, notwithstanding that as a technical legal matter the leasehold estate created pursuant to this Lease may have terminated prior to the execution, delivery and recordation of a memorandum of such new lease. Any such fee mortgage shall, upon foreclosure under such mortgage, be entitled to succeed only to the interest of Landlord.

ARTICLE 12

SALE OR TRANSFER OF PREMISE BY LANDLORD

Section 12.1. Conditions to Fee Conveyance. For as long as IDA Bonds or any indebtedness contemplated in Section 40.1 hereof, the interest on which is not includable in gross income for federal income tax purposes, are outstanding, Landlord shall not convey or mortgage its fee interest in the Premises or any portion thereof except in compliance with the following conditions:

(i) The Premises or any part thereof may be conveyed only to an entity by which fee ownership the Premises would continue to enjoy exemption of the Premises from Taxes, and

(ii) There shall have been issued an opinion of Nationally Recognized Bond Counsel that such conveyance shall not cause the interest on the tax-exempt IDA Bonds to be includable in gross income for Federal income tax purposes. Tenant shall furnish or cause to be furnished to Landlord such information as Landlord shall request in order for Nationally Recognized Bond Counsel to make such determination.

ARTICLE 13

CONSTRUCTION WORK

Section 13.1. Construction of the Buildings.

(a) Commencement and Completion of Work. Tenant shall cause the Joint Venture Contractor to (i) Commence Construction of the Garages, Parking Lots and Park Improvements on or before each Construction Commencement Date (subject to Unavoidable Delays) set forth in Exhibit J attached hereto, (ii) thereafter continue to prosecute Construction of the Garages, Parking Lots and Park Improvements with diligence and continuity (subject to Unavoidable Delays) in accordance with the lump sum construction contract and the cost plus construction contract between Tenant and Joint Venture Contractor attached hereto as Exhibit K (collectively, the "Joint Venture Contract(s)") and in accordance with a development and construction schedule set forth in such Joint Venture Contract(s), and (iii) Substantially Complete the Garages, Parking Lots and Park Improvements on or before the respective Scheduled Completion Dates (subject to Unavoidable Delays) set forth in the schedule attached hereto as Exhibit J. Tenant shall comply and shall cause the Joint Venture Contractor to comply with the "Logistics Plan" attached hereto as Exhibit L in order to avoid, to the maximum extent practical, interference with the construction of the New Stadium, the Bronx Terminal Market retail project, the Metro North Commuter Rail station, Major Deegan Expressway construction, and the operation of the Existing Stadium, it being understood and agreed that the Logistics Plan may have to be changed, or that deviations from the Logistics Plan may be necessary, as circumstances with respect to all construction and operations in the Project area evolve. In furtherance of and not in limitation of the foregoing, Tenant shall not permit any Construction Work to be undertaken either two (2) hours before or two (2) hours after or during any regular or post season Major League Baseball game, or any non-Major League Baseball event, at Yankee Stadium, except as Lease Administrator may permit in its sole and absolute discretion.

(b) Definitions.

(i) "Commence Construction of the Garages, Parking Lots and/or Park Improvements" or "Commencement of Construction of the Garages, Parking Lots and/or Park Improvements" means each respective date on which Tenant shall commence excavation work on the Land for a foundation for Garages A, B and C, shall have commenced rehabilitation work for Garages 3 and 8, and shall have commenced grading or paving for each of the Parking Lots.

(ii) "Construction Commencement Date" means each of the respective dates set forth in Exhibit J.

(iii) "Construction of the Garages, Parking Lots and/or Park Improvements" means the construction on the Land of the new Garages, the rehabilitation of existing Garages, the improvement of the Parking Lots, and the construction of the Park Improvements, inclusive of all infrastructure for all of the foregoing, in accordance

with the provisions of this Lease, for the uses and purposes set forth in this Lease; the Garages and the Parking Lots shall contain upon Substantial Completion a total of 9,127 parking spaces (which total may include painted spaces and valet parking).

(iv) "Plans and Specifications" means the completed signed and sealed final drawings and plans and specifications prepared by the Architect or the Engineer, as applicable, that shall, subject to the provisions of subparagraph (d) below, conform to the Schematics approved by Landlord, as the same may be modified from time to time in accordance with the provisions of this Article 13.

(v) "Scheduled Completion Date" means each respective date set forth in Exhibit J.

(vi) "Schematics" means the schematic drawings and preliminary plans and specifications approved by Landlord prior to the date hereof.

(vii) "Substantial Completion" or "Substantially Complete(d)" means, respectively, that (A) each Garage, Parking Lot and the Park Improvements shall have been sufficiently completed in accordance with the applicable final Plans and Specifications and all Requirements, such that such Garage or Parking Lot is ready for use for the purposes set forth in the Lease and the Park Improvements are ready for use by the general public for their intended purposes, and (B) a Certificate of Occupancy shall have been issued (only with respect to a New Parking Facility).

(c) Submission and Review of Plans and Specifications. As soon as practicable after the Commencement Date, but in no event later than sixty (60) days thereafter prior to the date Tenant plans to Commence Construction of any Garage, Parking Lot, or the Park Improvements, Tenant shall submit the Plans and Specifications to Landlord and, for informational purposes only, Ballpark Company. If Landlord reasonably determines that the Plans and Specifications do not conform in any material respect to the Schematics or the terms of this Lease, Landlord shall so notify Tenant, specifying in what respects the Plans and Specifications do not so conform, and Tenant shall revise them to so conform and shall resubmit the Plans and Specifications to Landlord and (for informational purposes only) Ballpark Company for review. Each review by Landlord shall be carried out within twenty (20) days of the date of submission of the Plans and Specifications by Tenant or any revisions thereof, whichever is applicable. If Landlord has not notified Tenant of its determination within the twenty (20) business day period, Landlord shall be deemed to have determined that the Plans and Specifications conform to the Schematics, provided that such submission contains a notice making reference to this Section 13.1(c) and the applicable turnaround time herein. Each resubmission by Tenant shall be made within thirty (30) days of the date of Landlord's notice to Tenant stating that the Plans and Specifications do not conform to the Schematics. The foregoing notwithstanding, Plans and Specifications for the Park Improvements shall not be submitted to Ballpark Company. The foregoing notwithstanding, to the extent that any

Construction Work is governed by the Funding Agreement, the terms and provisions of this paragraph shall not apply, and the terms and provisions of the Funding Agreement shall govern.

(d) Modification of Approved Plans and Specifications. If Tenant desires to modify the Plans and Specifications after they have been approved by Landlord in any way which will materially affect the structure, exit/entrance points or number of spaces in the Garages, Parking Lots and/or Park Improvements, and Tenant agrees in lieu thereof to comply with the corresponding terms and provisions of the Funding Agreement. Tenant shall submit the proposed modifications to Landlord and (for informational purposes only) Ballpark Company. Landlord shall review the proposed changes to determine whether they materially conform to the Schematics and the terms of this Lease. If Landlord determines that they do so conform, Landlord shall so notify Tenant. If Landlord reasonably determines that the Plans and Specifications, as so revised, do not materially conform to the Schematics, Landlord shall so notify Tenant, in writing, specifying in what respects they do not so conform. Tenant shall either (i) withdraw the proposed modifications, in which case Construction of the Garages, Parking Lots and/or Park Improvements shall proceed on the basis of the Plans and Specifications previously approved by Landlord, or (ii) revise the proposed modifications to so conform and resubmit them to Landlord for review and (for informational purposes only) Ballpark Company. Each review by Landlord shall be carried out within twenty (20) days of the date of submission of the proposed modifications to the Plans and Specifications. If Landlord has not notified Tenant of its determination within the twenty (20) day period, Landlord shall be deemed to have determined that they materially conform to the Schematics, provided that such submission contains a notice making reference to this Section 13.1(d) and the applicable turnaround time herein. Each resubmission by Tenant shall be made within thirty (30) days of the date of Landlord's notice to Tenant that they do not so conform. The foregoing notwithstanding, modification of Plans and Specifications for the Park Improvements shall not be submitted to Ballpark Company. The foregoing notwithstanding, to the extent that any Construction Work is governed by the Funding Agreement, the terms and provisions of this paragraph shall not apply, and the terms and provisions of the Funding Agreement shall govern, and Tenant agrees in lieu thereof to comply with the corresponding terms and provisions of the Funding Agreement.

(e) Compliance with Requirements, Etc. The Plans and Specifications shall comply with the Requirements. It is Tenant's responsibility to assure such compliance. Landlord's approval of the Plans and Specifications shall not be, nor shall be construed as being, or relied upon as, a determination that the Plans and Specifications comply with the Requirements.

(f) Landlord's Right to Use Field Personnel. Landlord reserves the right to maintain its field personnel at the Premises to observe Tenant's construction methods and techniques and Landlord shall be entitled to have its field personnel or other designees attend Tenant's job and/or safety meetings. Tenant shall notify for invitation Landlord and Ballpark Company of each job meeting (which may be by telephone, fax or email provided for such party) in connection with the Construction of any Garage, Parking Lot and/or Park Improvement (such notification may be by telephone call to a person designated for such purpose by Landlord). No such observation or attendance by Landlord's or Ballpark Company's personnel or designees shall impose upon Landlord responsibility for any failure by Tenant to observe any

Requirements or safety practices in connection with such construction, or constitute an acceptance of any work which does not comply in all respects with the provisions of this Lease.

(g) No modification of Joint Venture Contract. Tenant shall not modify any Joint Venture Contract (including without limitation with respect to the construction schedule) or waive or release Joint Venture Contractor of any covenant or condition therein without the prior written consent of Landlord, to be provided or withheld in Landlord's sole and absolute discretion.

(h) Special Requirements. Tenant shall ensure that current cable plant for the Yankees and Major League Baseball television rights holder located within the footprint of Garage A will have continued service until December 1, 2008.

Tenant shall and shall cause its contractors under Construction Agreement to protect and not disturb the 48" sewer presently located on Site A.

(i) Green Building Standards. Tenant agrees that it shall or shall cause the Joint Venture Constructor to use diligent good faith efforts to include in the Plans and Specifications for Garages A, B and C the following: storm water reduction technologies, low flow plumbing fixtures, recycled concrete aggregate, low or no volatile organic compound (VOC) paint, energy efficient lighting that responds to day lighting and/or occupant levels, building automation systems that monitor/control HVAC, and oil separators. In addition, Tenant shall cause the Joint Venture Contractor to agree to attempt to use materials manufactured within a 500-mile radius of the Premises.

Section 13.2. Certain Construction Work. If the estimated cost (determined as provided in Section 8.2(b) hereof) of Construction Work to be performed in accordance with the provisions of this Lease, other than the initial construction of the Project, is ten (10%) percent (10%) of the Replacement Value or more either individually and/or in the aggregate with other Construction Work which is a related portion of a program or project of Construction Work in any Lease Year, or if the Construction Work involves work that would materially change (building size, footprint or structure, number of parking spaces, ramp and exiting dimensions, quantity or quality of lighting, or exit/entrance points, or affecting Park Improvements), Tenant shall obtain the consent of Landlord for such Construction Work (which consent shall be given or withheld in Landlord's sole discretion) and at least thirty (30) business days before Tenant's commencement of any such Construction Work, Tenant shall provide Landlord with:

(a) complete plans and specifications for the proposed Construction Work prepared by the Architect or the Engineer, as applicable. All signed and sealed plans and specifications submitted pursuant to this Section shall be reviewed by Landlord in accordance with the provisions of Section 13.1(d) hereof as if such plans and specifications were a modification of the Plans and Specifications;

(b) a copy of a contract made with a reputable and responsible contractor, including a project schedule, providing for the completion of the Construction Work in accordance with the plans and specifications reviewed by Landlord pursuant to Section 13.2(a) hereof;

(c) evidence reasonably satisfactory to Landlord of Tenant's ability to pay for such Construction Work which evidence may, at Tenant's election, consist of a letter of credit, surety bond, loan commitment or any combination thereof or other security reasonably satisfactory to Landlord, in an amount equal to the estimated cost of such Construction Work; and

(d) funds sufficient to reimburse Landlord for the reasonable fees and expenses of any registered architect or licensed professional engineer selected by Landlord to review the plans and specifications therefor and to inspect the Construction Work on behalf of Landlord; provided, that if such review is also required by a Recognized Mortgagee, Landlord shall use the architect or engineer selected by the Recognized Mortgagee.

Section 13.3. Commencement and Completion of All Construction Work. All Construction Work, once commenced, shall be completed promptly (subject to Unavoidable Delay), in a good and workmanlike manner and, if applicable, substantially in accordance with the approved Plans and Specifications therefore, the terms and provisions of this Lease and all applicable Requirements. Tenant shall obtain reasonable and customary warranties and guarantees on all Construction Work; the foregoing notwithstanding, Tenant shall obtain a 10 year warranty on the Waterproof Membrane.

Section 13.4. Supervision of Architect. All Construction Work other than the initial Construction of the Garages, Parking Lots and/or Park Improvements, (b) the estimated cost of which (determined as provided in Section 8.2(b) hereof) is ten percent (10%) of the Replacement Value or more either individually or in the aggregate (determined as provided in Section 13.2 hereof) in any Lease Year or (c) that involves work that would materially change building size, footprint or structure, number of parking spaces, ramp and exiting dimensions, quantity or quality of lighting, or exit/entrance points, or affect Park Improvements, shall be carried out under the supervision of the Architect.

Section 13.5. Conditions Precedent to Tenant's Commencement of All Construction Work.

(a) Permits and Insurance. Tenant shall not commence any Construction Work unless and until (i) Tenant shall have obtained and delivered to Landlord copies of all necessary permits, consents, certificates and approvals of all Governmental Authorities with regard to the particular phase of the work to be performed, certified by Tenant or Tenant's Architect and (ii) Tenant shall have delivered to Landlord certified copies, certificates or memoranda of the policies of insurance required to be carried with respect to the initial construction of the Project, under the Funding Agreement, and thereafter, pursuant to the provisions of Article 7.

(b) Cooperation of Landlord in Obtaining Permits. Landlord shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by Section 13.5(a) hereof, and shall sign any application made by Tenant required to obtain such permits, consents, certificates and approvals. Tenant shall reimburse Landlord within ten (10) days after Landlord's demand for any reasonable cost or expense incurred by Landlord in obtaining the permits, consents, certificates and approvals required by Section 13.5(a) hereof.

(c) Approval of Plans and Specifications. Tenant shall not (i) commence Construction of any Garage, Parking Lot and/or Park Improvements unless and until Landlord shall have approved the Plans and Specifications, or (ii) if applicable to the Construction Work being performed, commence any other Construction Work unless and until Landlord shall, if required hereunder, have approved the proposed plans and specifications in the manner provided in the Funding Agreement (with respect to the initial construction of the Project) and herein (with respect to any other Construction Work).

Section 13.6. Completion of Construction Work. Upon substantial completion of any Construction Work which required Landlord's consent and supervision of the Architect or engineer, Tenant shall furnish Landlord with (a) a certification of the Architect or, if in connection with a Casualty Restoration, such inspecting engineer (certified to Landlord) that it has examined the applicable plans and specifications (that shall include the Plans and Specifications in the case of Construction Work done in connection with the Construction of the Garages, Parking Lots and/or Parks Improvements or a Casualty Restoration) and that, in its best professional judgment, after diligent inquiry, to its best knowledge and belief, the Construction Work has been substantially completed in accordance with the plans and specifications applicable thereto and, as constructed, the Garage, Parking Lot and/or Parks Improvements complies with the Building Code of New York City and all other Requirements, (b) if required, a copy or copies of the temporary or permanent certificate(s) of occupancy for the Garage, Parking Lot and/or Parks Improvements issued by the New York City Department of Buildings, and (c) with respect to Construction of the Garage, Parking Lot and/or Parks Improvements, two complete sets of "as built" plans and a survey showing the Garage, Parking Lot and/or Parks Improvements. The Architect shall also certify the Floor Area of each Garage. Landlord shall have an unrestricted non-exclusive license to use such "as built" plans and survey for any purpose without paying any additional cost or compensation therefor, which license shall be subject to the rights of the parties preparing such plans and survey under copyright and other applicable laws.

The foregoing notwithstanding, the provisions of this Section 13.6 shall not apply to any Construction Work governed by the Funding Agreement, and Tenant agrees to comply with the corresponding terms and provisions of the Funding Agreement.

Section 13.7. Title to Garage, Parking Lot and/or Parks Improvements Materials. Materials incorporated into the Garage, Parking Lot and/or Parks Improvements (but not including any trade fixtures of Tenant or any Subtenant) shall, during and after Construction of the Garage, Parking Lot and/or Parks Improvements, and effective upon payment therefor and all times thereafter but, in all events, subject to this Lease, constitute the property of Landlord. However, (a) Landlord shall not be liable in any manner for payment or for damage or risk of loss or otherwise to any contractor, subcontractor, laborer or supplier of materials in connection with the purchase or installation of any such materials and (b) Landlord shall have no obligation to pay any compensation to Tenant by reason of its acquisition of title to the materials. Title to the Garage, Parking Lot and/or Parks Improvements shall be and vest in Landlord. The foregoing notwithstanding, for purposes of allocating depreciation under Federal, State and City income tax laws between Landlord and Tenant, ownership of any Buildings on the Premises shall be in Tenant.

Section 13.8. Names of Contractors, Materialmen, Etc. From and after Substantial Completion of each Garage, Tenant shall furnish Landlord, within thirty (30) days of Landlord's demand, with a list of all Persons performing any labor, or supplying any materials, in connection with any Construction Work costing in excess of 10% of the Replacement Value. The list shall state the name and address of each Person and an emergency contact number and in what capacity each Person is performing work at the Premises. All persons employed by Tenant with respect to Construction of the Garage, Parking Lot and/or Park Improvements shall be paid, without subsequent deduction or rebate unless expressly authorized by law not less than the minimum hourly rate required by law.

Section 13.9. Construction Agreements.

(a) Required Clauses. All Construction Agreements shall include the following provisions:

(i) "["Contractor"]/["Subcontractor"]/Materialman"] hereby agrees that immediately upon the purchase by ["contractor"]/["subcontractor"]/"materialman"] of any building materials to be incorporated in the [Premises] (as defined in the lease pursuant to which the owner acquired a leasehold interest in the property (the "Lease")) and the incorporation of such materials into the [Premises] and payment therefor, such materials shall become the sole property of Landlord (as defined in the Lease); provided, however, that Landlord shall not be liable in any manner for payment or otherwise to ["contractor"]/["subcontractor"]/["materialman"] in connection with the purchase of any such materials or their incorporation into the [Premises] and Landlord shall have no obligation to pay any compensation to ["contractor"]/["subcontractor"]/["materialman"] by reason of such purchase or incorporation of such materials into the [Building] [Park Improvement].

(ii) ["Contractor"]/["Subcontractor"]/[Materialman"] hereby agrees that notwithstanding that ["contractor"]/["subcontractor"]/["materialman"] performed work at the Premises (as such term is defined in the Lease) or any part thereof, Landlord shall not be liable in any manner for payment or otherwise to ["contractor"]/["subcontractor"]/["materialman"] in connection with the work performed at the Premises.

(iii) ["Contractor"]/["Subcontractor"]/["Materialman"] hereby agrees to make available for inspection by Landlord, during reasonable business hours, ["contractor's"]/[subcontractor's"]/["materialman's"] books and records relating to Construction work (as defined in the Lease) being performed or the acquisition of any material or Equipment (as such term is defined in the Lease) to be incorporated into the Premises.

(iv) "All covenants, representations, guarantees and warranties of ["contractor"]/["subcontractor"]/materialman"] hereunder shall be deemed to be made for the benefit of the Landlord under the Lease and shall be enforceable against ["contractor"]/["subcontractor"]/["materialman"] by said Landlord.

(v) Landlord is not a party to this ["agreement"]/["contract"] nor will Landlord in any way be responsible to any party for any and or all claims of any nature whatsoever arising or which may arise from such ["contract"]/["agreement"].

The foregoing notwithstanding, with respect to any Construction Work that is governed by the Funding Agreement, the provisions of Exhibit D attached to the Funding Agreement shall supercede the provisions of this Section 13.9.

(b) Definition. "Construction Agreement(s)" means an agreement to do any Construction Work.

Section 13.10. No Demolition. Except as hereinafter provided, Tenant shall not demolish any Garage during the Term. If any Garage is substantially destroyed as a result of a fire or other casualty and it is necessary in connection with a Casualty Restoration to demolish the remainder of the Garage, Tenant shall have the right, subject to compliance with the terms of Articles 8 and 13, to demolish the remainder of the Garage.

Section 13.11. Park Improvements. Upon assignment of EDC's interest as Tenant under this Lease, Tenant shall have no responsibility under this Lease to pay for any costs of the Park Improvements, the streetscape improvements (other than that which may be required pursuant to a builder's pavement plan in connection with the Construction of the Garages or Parking Lots) or relocation of the 48" combined sewer on Site A. If the costs of the Park Improvements, streetscape improvments (other than those required under a builder's pavement plan as aforesaid) and relocation of the 48" combined sewer increases such that the amount available under the Funding Agreement is insufficient to complete the Park Improvements and relocation of the 48" combined sewer then, unless the Joint Venture Contractor is responsible for such costs pursuant to the terms and conditions of any Joint Venture Contract, or unless the amount of funds available under the Funding Agreement is increased by amendment thereto, then Landlord shall cooperate with NYCEDC in NYCEDC's issuance of change orders, identification of alternate deducts and value engineering, or making other changes in design and construction such that the funds available from NYCEDC under the Funding Agreement are sufficient to complete the Park Improvements and relocation of the 48" combined sewer.

Section 13.12. Development Sign. Within thirty (30) days after request of Landlord, Tenant shall furnish and install a project sign during Construction of any Garage, Parking Lot and/or Park Improvements, the design and location of which shall be reasonably satisfactory to Landlord. Tenant shall extend to Landlord, Lease Administrator (if any), ESDC and any of their designee(s) the privilege of being featured participants in ground-breaking and opening ceremonies to be held at such time and in such manner as Landlord shall approve, such approval not to be unreasonably withheld.

Section 13.13. Dispute Resolution.

If a dispute arises between Landlord and Tenant over:

(i) whether or not any Plans and Specifications or modifications thereof submitted to Landlord in accordance with this Article 13 substantially conform to the Schematics; or

(ii) whether any Construction Work is in substantial conformity with the applicable Plans and Specifications; or

(iii) whether or not Tenant (or any contractor under Construction Agreement) is in compliance with Section 13.1 hereof with respect to scheduling, staging and coordination of Construction Work, and cooperation and hours of operation with respect thereto.

Tenant may, by notice to Landlord ("Tenant's Dispute Notice") require that the dispute in question be presented for resolution in accordance with the provisions of Article 33 hereof. If arbitration is elected, such arbitration procedure shall be the exclusive remedy as to items described in clauses (i) and (ii) above of this Section 13.13.

Section 13.14. Site D. Tenant shall furnish Landlord with a development proposal for, and to obtain public approvals for (if applicable) and for Landlord to consult with the office of the Bronx Borough President and the Department of City Planning, and to start construction on, Site D in the manner and within the time periods set forth in Section 10. 7 hereof. Construction on Site D shall be subject to the same terms and conditions of Section 10.7 of this Lease, and also the terms and conditions of this Lease that apply to Garages construction as set forth in Sections 13.1(c) through (e) (inclusive), 13.3, 13.4, 13.5, 13.6, 13.7, 13.8 and 13.9. In no event shall the seeking of any public approvals for Site D development in any way delay or impair the Substantial Completion of the Garages, the Parking Lots or the Park Improvements.

ARTICLE 14

REPAIRS, SIDEWALKS, UTILITIES AND WINDOW CLEANING

Section 14.1. Maintenance of the Premises, Etc. Tenant shall take good care of the Premises, the alleys, driveways, sidewalks, walkways, and curbs in front of or adjacent to the Premises, water, sewer and gas connections, pipes and mains, and the Retaining Wall and the Garage A Easterly Side Appurtenances, and shall keep and maintain and operate the Garages and Parking Lots in a manner consistent with the highest and best industry standards, and shall maintain and operate and maintain the Premises, the Retaining Wall and the Garage A Easterly Side Appurtenances, in good, safe and fully operational order and condition, ordinary wear and tear excepted, and shall make all repairs therein and thereon, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises, the Retaining Wall and the Garage A Easterly Side Appurtenances in good and safe order and condition, however the necessity or desirability therefor may occur. Tenant shall neither commit nor suffer, and shall use all reasonable precaution to prevent waste, damage or injury to the Premises, the Retaining Wall or the Garage A Easterly Side Appurtenances. All repairs made by Tenant shall be equal in quality and class to the original work and shall be made in compliance with the Requirements. As used in this Section, the term "repairs" shall include all necessary (a) replacements, (b) removals, (c) alterations, and (d) additions. The operating plan submitted to Tenant by the parking operator or manager pursuant to Section 23.4(f) hereof shall set forth standards and practices for the maintenance and repair of the Premises and Tenant shall use diligent efforts to cause such operator or manager to comply with same. In the absence of any specific standards of maintenance, repair and operation otherwise agreed to in a management or operating agreement approved by Landlord, Tenant shall comply or shall cause the operator or manager to comply with the Parking Garage Maintenance Manual, 4th Edition (or then-current edition, if a subsequent edition is published), issued by the National Parking Association.

Tenant shall cause an architect or an engineer to conduct a conditions survey of the Premises, Retaining Wall and the Garage A Easterly Side Appurtenances on a biennial basis and shall submit to Landlord a report, by December 31 of each biennial period, based upon such survey, indicating the state of the condition of Garage structures, facilities, equipment and appurtenances, and identifying anticipated long-term, short-term and imminently needed repairs, replacements, upgrades and Capital Improvements. Tenant shall give Landlord thirty (30) days prior written notice as to the date(s) and time(s) such surveys are to be undertaken and Landlord shall have the right to accompany the architect(s) and engineer(s) on such surveys.

Except in cases of emergency, and except for Site D, Tenant shall not undertake any repair work on days during which there are New York Yankees home baseball games (regular and post-season) at either the Existing Yankee Stadium or the New Yankee Stadium, and, except in cases of emergency or a Restoration, shall not perform any Capital Improvements during the Baseball Season. To the extent any repair work cannot be avoided during a Baseball Season game day at Yankee Stadium, or a Capital Improvement avoided during the Baseball Season, Tenant shall to the maximum extent feasible avoid any reduction in parking spaces or minimize the number of parking spaces unavailable as a result of such work. Provided that Tenant has at least thirty (30) days prior written notice of any other Existing Yankee Stadium or

New Yankee Stadium event, Tenant shall to the maximum extent feasible avoid any reduction in parking spaces or minimize the number of parking spaces unavailable as a result of such work.

The foregoing notwithstanding, if Landlord expressly revokes the license set forth in Article 2 hereof for Tenant to perform its obligations hereunder with respect to the Retaining Wall or the Garage A Easterly Side Appurtenances, then from and after the effective date of revocation Tenant shall have no further obligation or liability with respect to the Retaining Wall or the Garage A Easterly Side Appurtenances, as applicable.

Furthermore, notwithstanding anything to the contrary set forth above, Tenant shall have no obligation to perform any repairs or replacements to the esplanade or to a pedestrian pathway selected by Landlord and improved for such purposes, as described in Section 2.1, except to the extent of any damage to same by Tenant, its agents, contractors, patrons or invitees.

Section 14.2. Removal of Equipment. Tenant shall not, without the prior consent of Landlord, which consent shall not be unreasonably withheld, remove or dispose of any Equipment unless such Equipment (a) is promptly replaced by Equipment of at least equal utility and quality, or (b) is removed for repairs, cleaning or other servicing, provided Tenant reinstalls such Equipment on the Premises with reasonable diligence; except, however, Tenant shall not be required to replace any Equipment that has become obsolete or that performed a function that has become obsolete, unnecessary (including by reason of the changed requirements of Subtenants) or undesirable in connection with the operation of the Premises.

Section 14.3. Free of Dirt, Snow, Etc. Tenant shall keep clean and free from dirt, snow, ice, rubbish, obstructions and encumbrances the sidewalks, grounds, parking facilities, plazas, common areas, vaults, chutes, sidewalk hoists, railings, gutters, alleys, curbs or any other space, in front of, or adjacent to, the Premises. The foregoing notwithstanding, Tenant shall not have any obligation to clean, maintain or keep free of dirt, snow, ice, and the like to the extent that all or any portion of the esplanade or pedestrian pathway selected and improved for such purposes as described in Section 2.1 to the extent that either such esplanade or selected and improved pedestrian pathway has been fenced off by Landlord from the remainder of the Premises so as to prevent direct access to such part of the esplanade or pedestrian pathway from that portion of the remainder of the Premises directly adjacent to such portion of the esplanade or pedestrian pathway.

Section 14.4. No Obligation to Supply Utilities. Landlord shall not be required to supply any facilities, services or utilities whatsoever to the Premises and shall not have any duty or obligation to make any alteration, change, improvement, replacement, Restoration or repair to any Building, and Tenant assumes the full and sole responsibility for the condition, operation, alteration, change, improvement, replacement, Restoration, repair, maintenance and management of the Premises.

Section 14.5. Window Cleaning. Tenant shall not clean nor require, permit, suffer nor allow any window in any Building to be cleaned from the outside in violation of Section 202 of the Labor Law or of the rules of the Industrial Board or any other Governmental Authority.

Section 14.6. Park Improvements. Notwithstanding anything to the contrary set forth herein, Tenant shall have no obligations under this Article 14 with respect to the Park Improvements, other than to maintain and keep in good condition and repair structural components and infrastructure (such as supporting walls, columns, and drainage and utility conduits and lines) located at or below the level of the Waterproof Membrane shared by Garage A and the Park Improvements. Landlord shall maintain all Park Improvements at the level above (but excluding) the Waterproof Membrane to insure the safety of the patrons of Garage A.

Section 14.7. Repair and Maintenance Easements.

(a) Landlord shall have the right to enter upon the Premises and make such repairs, replacements and Capital Improvements, at Tenant's expense, unless (or at Landlord's expense if such repair was made necessary by damage created by the Park Improvements or as a result thereof), as may be necessary in order to maintain the Park Improvements and the use and operation thereof. Landlord shall not undertake any such work unless and until Landlord has provided written notice to Tenant of any defective condition so impairing the Park Improvements or the use or operation thereof, and a period of ten (10) Business Days has expired and Tenant has not begun work necessary to remedy such condition. If Tenant begins such work but at any time fails to diligently and expeditiously prosecute such work to completion, then Landlord may exercise its right to enter upon the Premises and perform such work without any further notice or the passing of any Tenant cure period.

(b) Tenant shall have the right to enter upon the Park Improvements and make such repairs, replacements and Capital Improvements, at Landlord's expense, as may be necessary in order to maintain Garage A and the use and operation thereof. Tenant shall not undertake any such work unless and until Tenant has provided written notice to Landlord of any defective condition so impairing Garage A or the use or operation thereof, and a period of ten (10) Business Days has expired and Landlord has not begun work necessary to remedy such condition. If Landlord begins such work but at any time fails to diligently and expeditiously prosecute such work to completion, then Tenant may exercise its right to enter upon the Park Improvements and perform such work without any further notice or the passing of any Landlord cure periods. Tenant may deduct the cost of any such repairs, replacements and Capital Improvements from any amounts next due Landlord as deferred Base Rent, as the case may be.

ARTICLE 15

CAPITAL IMPROVEMENTS

Section 15.1. Capital Improvements.

(a) Tenant's Right to Make Capital Improvements. Effective upon the Substantial Completion Date, Tenant shall have the right to make a Capital Improvement as long as Tenant shall comply with the following requirements:

(i) If the estimated cost of a Capital Improvement (determined in the manner provided in Section 8.2(b) hereof), excluding any interior alteration made in connection with the initial occupancy under any Sublease, is the greater of Two Hundred Fifty Thousand Dollars ($250,000) or one percent (1%) or more of the Replacement Value, individually or in the aggregate with other Capital Improvements which are a related portion of a program or project of Capital Improvements constructed in any Lease Year, for any Building, Tenant shall obtain the prior consent of Landlord with respect to such Capital Improvement, which consent shall not be unreasonably withheld or delayed (except for structural work, Garage size or footprint, any change in number of parking spaces, entrance/exit locations, quality or quantity of lighting, or, with respect to Landlord only, changes affecting the Park Improvements, approvals for which Landlord may grant or withhold in its sole discretion), and shall furnish to Landlord evidence reasonably satisfactory to Landlord of the financial ability of Tenant to pay for the proposed Capital Improvement, which evidence may, at Tenant's election, consist of a letter of credit, surety bond, loan commitment or any combination thereof or other security reasonably satisfactory to Landlord, in an amount equal to the estimated cost of the Capital Improvement; and

(ii) All Capital Improvements shall be consistent with a first class parking facility; and

(iii) The applicable provisions of Article 13 hereof.

(b) Completed Capital Improvements Shall Not Reduce Value of Premises. All Capital Improvements, when completed, shall be of a character that will not materially reduce the value of the Premises below its value immediately before commencement of such Capital Improvement.

(c) Definition. "Capital Improvement" means a change, alteration or addition to a Building other than a Restoration or initial Construction of the Garages, Parking Lots and/or Park Improvements.

(d) No Major League Baseball Season Capital Improvements. Except in case of emergency, Tenant shall not undertake any Capital Improvements on any day during which there is a Major League Baseball game (regular and post-season) or other significant event at the Existing Stadium or the New Stadium, nor undertake any Capital Improvements during the Baseball Season (regular an post-season) which would result in a loss of parking spaces on Major League Baseball game days (regular or post season), or other than in the case of an emergency or a Restoration. In the event that performance of Capital Improvements during

Baseball Season which would result in a loss of parking spaces on Major League Baseball game days at the New Stadium or the Existing Stadium is unavoidable, Tenant shall to the maximum extent reasonably feasible avoid performing same during any Baseball Season game day at the ExistingStadium or the New Stadium, and, to the extent any such work cannot be avoided during a Baseball Season game day at the Existing Stadium or the New Stadium, Tenant shall to the maximum extent reasonably feasible avoid or minimize the loss of the available number of parking spaces as a result of such work.

ARTICLE 16

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 16.1. Requirements.

(a) Obligation to Comply. Subject to the provisions of Article 34 hereof, in connection with any Construction Work, or any maintenance, management, use and operation of the Premises (including without limitation advertising and signage) other than the Park Improvements (for which Tenant shall not be responsible under this Article 16), and Tenant's performance of its obligations hereunder, Tenant shall comply promptly with all Requirements, without regard to the nature of the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, use or occupancy of the Premises, or involving or requiring any structural changes or additions in or to the Premises, and regardless of whether such changes or additions are required by reason of any particular use to which the Premises, or any part thereof, may be put.

(b) Definition. "Requirements" means:

(i) any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders and requirements of all Governmental Authorities applicable to the Premises or any street, road, avenue or sidewalk comprising a part of, or in front of, the Premises or any vault in, or under the Premises (including, without limitation, the Building Code of New York City, the laws, rules, regulations, orders, ordinances, statutes, codes and requirements of any applicable Fire Rating Bureau or other body exercising similar functions, and necessary approvals by the New York City Art Commission),

(ii) the certificate or certificates of occupancy or regulatory licenses issued for each Building or Parking Lot as then in force,

(iii) approvals pursuant to Section 197-c of the City Charter for the Project, including without limitation environmental impact determinations and findings set forth in the Environmental Impact Statement adopted in connection therewith to the extent required by applicable law.

(iv) all provisions of the Labor Law of the State applicable to the construction and equipping of the Project and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions, and

(v) the Act.

ARTICLE 17

DISCHARGE OF LIENS; BONDS

Section 17.1. Creation of Liens. Tenant shall neither create nor cause to be created (a) any lien, encumbrance or charge upon this Lease, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof, (b) any lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord, or (c) any other matter or thing whereby the estate, rights or interest of Landlord in and to the Premises or any part thereof might be impaired. Notwithstanding the above, Tenant shall have the right to execute Recognized Mortgages, related security documents and Subleases as provided by, and in accordance with, the provisions of this Lease.

Section 17.2. Discharge of Liens. If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien is filed against the Premises or any part thereof, or if any public improvement lien created, or caused or suffered to be created by Tenant shall be filed against any assets of, or funds appropriated to, Landlord, Tenant shall, within thirty (30) days after Tenant receives notice of the filing of such mechanic's, laborer's, vendor's, materialman's or similar statutory lien or public improvement lien, cause it to be discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, Tenant shall not be required to discharge any such lien if Tenant shall have (a) furnished Landlord with a letter of credit, cash deposit, bond or other security reasonably satisfactory to Landlord, in an amount sufficient to pay the lien with interest and penalties and (b) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding in good faith and with due diligence.

Section 17.3. No Authority to Contract in Name of Landlord. Nothing contained in this Lease shall be deemed or construed to constitute the consent or request of Landlord, express or implied, by implication or otherwise, to any contractor, subcontractor, laborer or materialman for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving Tenant any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Premises or any part thereof or against any assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all agreements to provide, that to the extent enforceable under New York law, Landlord shall not be liable for any work performed or to be performed at the Premises or any part thereof for Tenant or any Subtenant or for any materials furnished or to be furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialman's or other similar statutory lien for such work or materials shall attach to or affect the Premises or any part thereof or any assets of, or funds appropriated to, the City.

ARTICLE 18

REPRESENTATIONS; POSSESSION

Section 18.1. Representations of Landlord. (i) Landlord represents that it has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby.

(ii) Landlord represents that this Lease has been duly and validly authorized and is a legal and binding obligation of Landlord in accordance with its terms.

Section 18.2. Tenant's Acknowledgment of No Other Representations. Tenant confirms that, except for the representations contained in Section 18.1 hereof, (a) no representations, statements, or warranties, express or implied, have been made by, or on behalf of, Landlord or NYCEDC with respect to the Premises or the transaction contemplated by this Lease, the status of title thereto, the physical condition thereof, the zoning or other laws, regulations, rules and orders applicable thereto of the use that may be made of the Premises, (b) Tenant has relied on no such representations, statements or warranties, and (c) Landlord shall not be liable in any event whatsoever for any latent or patent defects in the Premises.

Section 18.3. Tenant's Representations, Warranties and Covenants. Tenant represents, warrants and covenants that:

(a) The Tenant's Articles of Organization and Operating Agreement are attached hereto as Exhibit O and Exhibit P, respectively. Tenant covenants and agrees that its Articles of Organization and Operating Agreement shall not be modified or amended without the prior written consent of Landlord.

(b) None of the sole member of Tenant, the managers or officers of Tenant or any other entity having any control over Tenant or in any such other entity are Prohibited Persons.

(c) It has not dealt with any broker, finder or like entity in connection with this Lease or the transactions contemplated hereby.

(d) No officer, agent, employee or representative of The City of New York has received or will receive any payment or other consideration for the making of this Lease and no officer, agent, employee or representative of The City of New York has any interest or will have any direct interest in this Lease or any proceeds thereof.

Section 18.4. Possession. Landlord shall deliver possession of the Premises to Tenant in accordance with the provisions of this Lease.

ARTICLE 19

LANDLORD/TENANT NOT LIABLE FOR INJURY OR DAMAGE, ETC.

(a) Landlord Liability. Except to the extent expressly set forth in this Lease to the contrary, Landlord, subject to Section 20.4 hereof, shall not be liable for any injury or damage to Tenant or to any Person happening on, in or about the Premises or its appurtenances, nor for any injury or damage to the Premises or to any property belonging to Tenant or to any other Person that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of the Premises (including, but not limited to, any of the common areas within any Garage or Parking Lot, hatches, openings, installations, driveways, stairways or hallways or other common facilities, and the streets or sidewalk areas within the Premises) or that may arise from any other cause whatsoever, unless caused by the negligence or intentionally tortious acts of Landlord, its agents or employees.

(b) Tenant Liability. Except to the extent expressly set forth in this Lease to the contrary, Tenant shall not be liable for any injury or damage to Landlord or to any Person happening on, in or about the Park Improvements, nor for any injury or damage to the Park Improvements or to any property belonging to Landlord or to any other Person thereon that may be caused by fire, by breakage, or by the use, misuse or abuse of any portion of any Park Improvements or that may arise from any other cause whatsoever, unless caused by the negligence or intentionally tortious acts of Tenant, its agents or employees.

(c) Utility Supply, etc. Landlord shall not be liable to Tenant or to any Person for any failure of water supply, gas or electric current, nor for any injury or damage to any property of Tenant or of any Person or to the Premises caused by or resulting from gasoline, oil, steam, gas, electricity or hurricane, tornado, flood, wind or similar storm or disturbance or by or from water, rain or snow which may leak or flow from the street, sewer, gas mains or subsurface area or from any part of the Premises or by or from leakage of gasoline or oil from pipes, appliances, sewer or plumbing works therein or from any other place, nor for interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless caused by it, or its agents' or employees', respective negligence or intentionally tortious acts.

ARTICLE 20

INDEMNIFICATION OF LANDLORD, TENANT AND OTHERS

Section 20.1. Obligation to Indemnify. Tenant shall not do or permit any act or thing to be done upon the Premises, or any portion thereof, which subjects Landlord to any liability or responsibility for injury, damage to Persons or property or to any liability by reason of any violation of law or of any legal Requirement of any Governmental Authority but shall exercise such control over the Premises so as to fully protect Landlord against any such liability. The foregoing provisions of this Section shall not modify Tenant's right to contest the validity of any Requirements in accordance with the provisions of Section 34.3 hereof. To the fullest extent permitted by law, Tenant shall indemnify and save and Landlord, Lease Administrator (which for this purpose shall include NYCEDC) and their officers, directors, 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 (collectively, the "Liabilities"), including, without limitation, architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Indemnitees by reason of any of the following occurring during the Term (unless, as to any Indemnitee, caused by the negligence or intentionally tortious acts of such Indemnitee):

(a) Construction Work. Construction Work or any other work or act done in, on or about the Premises, the Retaining Wall, the Garage A Easterly Side Appurtenances or Park Improvements or any part thereof;

(b) Ownership. The ownership or use, non-use, possession, occupation, alteration, condition, operation, maintenance or management of the Premises, the Retaining Wall the Garage A Easterly Side Appurtenances or any part thereof or of any street, alley, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto;

(c) Acts or Failure to Act of Tenant/Subtenant. Any act or failure to act on the part of Tenant or any Subtenant or any of its or their respective officers, shareholders, directors, agents, contractors, servants, employees, licensees or invitees;

(d) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about the Premises, the Retaining Wall or the Garage A Easterly Side Appurtenances or any part thereof, or in, on or about any street, alley, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto;

(e) Rental Obligations. With respect to any Liabilities of Landlord in its capacity as landlord under this Lease and not in its governmental capacity, Tenant's failure to pay Rental or to perform or comply with any of the covenants, agreements, terms or conditions contained in this Lease on Tenant's part to be kept, observed, performed or complied with and the proper exercise by Landlord of any remedy provided in this Lease with respect thereto;

(f) Liens, Encumbrance or Claim Against Premises. Any lien or claim created or permitted to be created by Tenant or any Subtenant or any of its or their officers,

agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, Landlord or any liability that may be asserted against Landlord with respect thereto;

(g) Default of Tenant. Any failure on the part of Tenant to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in the Construction Agreements, the Subleases or other contracts and agreements affecting the Premises, on Tenant's part to be kept, observed or performed;

(h) Recording Fees. Any recording or transfer tax attributable to and required to be paid by Landlord with respect to the execution, delivery or recording of this Lease or a memorandum thereof;

(i) Contest and Proceedings. Any contest or proceeding brought or permitted to be brought pursuant to the provisions of Article 34 hereof; or

(j) Brokerage. Any claim for brokerage commissions, fees or other compensation by any Person who alleges to have acted or dealt with Tenant in connection with this Lease or the transactions contemplated by this Lease unless such person was a broker, finder or the like who alleges to have been retained by or to have acted for Landlord.

Section 20.2. Contractual Liability. The obligations of Tenant under this Article shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part under insurance policies affecting the Premises.

Section 20.3. Defense of Claim, Etc. If any claim, action or proceeding is made or brought against any of the Indemnitees by reason of any event to which reference is made in Section 20.1 hereof, then upon demand by Landlord, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Landlord shall approve, such approval not to be unreasonably withheld. The foregoing notwithstanding, such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, the costs and expenses of which shall be paid by such Indemnitee.

Section 20.4. Landlord Indemnification of Tenant; Defense of Claim, etc. Landlord agrees to indemnify and save Tenant and its officers, directors, employees, agents and servants ("Tenant Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges, and expenses ("Tenant Liabilities") that may be imposed upon or incurred by or asserted against any of the Tenant Indemnitees in connection with the use or operation of the Park Improvements from and after the final completion of construction of the Park Improvements, except with respect to Tenant Liabilities arising out of the construction of the Park Improvements or unless caused by the negligence or intentionally tortious acts of any of the Tenant Indemnitees. If any claim, action or proceeding is made or brought against any of the Tenant Indemnitees by reason of any event to which

reference is made in this Section 20.4, then upon demand by Tenant, Landlord shall either resist, defend or satisfy such claim, action or proceeding in such Tenant Indemnitee's name, by the attorneys for, or approved by, Landlord's insurance carrier (if any, and if such claim, action or proceeding is covered by insurance), or by the office of Corporation Counsel, or by such other attorneys as Tenant shall approve, such approval not to be unreasonably withheld. The foregoing notwithstanding, such Tenant Indemnitee may engage its own attorneys to defend such Tenant Indemnitee, or to assist such Tenant Indemnitee in such Tenant Indemnitee's defense of such claim, action or proceeding, as the case may be, the costs and expenses of which shall be paid by such Tenant Indemnitee.

Section 20.5. Ballpark Company and Yankee Partnership. To the fullest extent permitted by law, Tenant shall indemnify and save Ballpark Company and Yankee Partnership and their officers, directors, employees, agents and servants (collectively, the "Yankee Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation, architects' and attorneys' fees and disbursements, that may be imposed upon or incurred by or asserted against any of the Yankee Indemnitees by reason of any accident, injury (including death at any time resulting therefrom) or damage to any Person or property occurring in, on, or about the Premises or any part thereof, or in, on or about any street, alley, sidewalk, curb, vault, passageway or space comprising a part thereof or adjacent thereto, unless caused by the negligence or intentionally tortious acts of any of the Yankee Indemnitees. Tenant's duty to indemnify shall not extend to actions or claims against patrons of Yankee Stadium events, including without limitation Yankees Major League Baseball games. If any claim, action or proceeding is made or brought against any of the Yankee Indemnitees by reason of any event to which reference is made in this Section 20.5, then upon demand by Ballpark Company or Yankee Partnership, Tenant shall either resist, defend or satisfy such claim, action or proceeding in such Yankee Indemnitee's name, by the attorneys for, or approved by, Tenant's insurance carrier (if such claim, action or proceeding is covered by insurance) or by such other attorneys as Ballpark Company or Yankee Partnership shall approve, such approval not to be unreasonably withheld. The foregoing notwithstanding, such Yankee Indemnitee may engage its own attorneys to defend such Yankee Indemnitee, or to assist such Yankee Indemnitee in such Yankee Indemnitee's defense of such claim, action or proceeding, as the case may be, the costs and expenses of which shall be paid by such Yankee Indemnitee. Such Indemnity shall exclude the Existing Marquee or any other marquees constructed on the Premises pursuant to Section 2.1 hereof and any activities relating thereto.

Section 20.6. Survival Clause. The provisions of this Article shall survive the Expiration of the Term.

ARTICLE 21

INTENTIONALLY OMITTED

ARTICLE 22

LANDLORD'S RIGHT TO DISCHARGE LIENS

Section 22.1. Discharge of Liens. If Tenant shall fail to cause any mechanic's, laborer's, vendor's, materialman's or similar statutory lien or any public improvement lien to be discharged in accordance with the provisions of Article 17 hereof, and if such lien shall continue for an additional forty-five (45) days after notice by Landlord to Tenant, then, subject to any rights granted to a Recognized Mortgagee under this Lease, Landlord may, but shall not be obligated to, discharge such lien of record either by paying the amount claimed to be due or by procuring the discharge of such lien by deposit or by bonding proceedings. Landlord may also compel the prosecution of an action for the foreclosure of such lien by the lienor and to pay the amount of the judgment in favor of the lienor with interest, costs and allowances.

Section 22.2. Reimbursement for Amounts Paid by Landlord Pursuant to this Article. Any amounts paid by Landlord pursuant to Section 22.1 hereof, including all costs and expenses incurred by Landlord in connection therewith, shall be paid by Tenant to Landlord on Landlord's demand, together with a late charge on the amounts so paid by Landlord, calculated at the Late Charge Rate from the date of any such payment by Landlord to the date on which payment of such amounts is received by Landlord.

Section 22.3. Waiver, Release and Assumption of Obligations. Landlord's payment or performance pursuant to the provisions of this Article shall not be, nor be deemed to be (a) a waiver or release of the Default or Event of Default with respect thereto (or any past or future Default or Event of Default) or of Landlord's right to terminate this Lease and/or to take such other action as may be permissible hereunder, or (b) Landlord's assumption of Tenant's obligations to pay or perform any of Tenant's past, present or future obligations hereunder.

Section 22.4. Proof of Damages. Landlord shall not be limited in the proof of any damages that it may claim against Tenant arising out of, or by reason of, Tenant's failure to provide and keep insurance in force in accordance with the provisions of this Lease to the amount of the insurance premium or premiums not paid. Landlord shall be entitled to seek, and if successful, to recover, as damages for such Default or Event of Default, the uninsured amount of any loss and damage sustained or incurred by it and the costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 23

PERMITTED USE; NO UNLAWFUL OCCUPANCY, OPERATING COVENANTS

Section 23.1. (a) Type of Use. Effective upon the Substantial Completion Date, Tenant shall use and operate the Premises for (i) first class public parking operations, advertising (to the extent permitted under this Lease) and other uses ancillary to public parking operations, and retail or retail/parking mixed use on Site D pursuant to a development plan approved in accordance with Section 10.7 hereof (and for parking purposes until the commencement of construction of such retail or retail/parking development), and all uses incidental thereto in accordance with the certificate(s) of occupancy therefor and the Requirements, (ii) temporary uses approved by Landlord consistent with the Requirements that do not interfere with parking operations during the Baseball Season, and (iii) uses required by Landlord pursuant to Section 23.1(f) hereof, and for no use or purpose inconsistent with any of the foregoing. Tenant acknowledges and agrees that, pursuant to that certain Environmental Impact Statement adopted by the City Planning Commission pursuant to resolutions Cal. Nos. 13 and 14 dated February 22, 2006, as may be modified, amended or superseded, and further approved and the findings therein adopted by the City Council, the Project is being undertaken in order to alleviate traffic congestion and street parking demand during events at the New Stadium and the attendant burdens and detriments which such conditions place upon the community around the New Stadium. Accordingly, Tenant acknowledges and agrees that it is the City's priority that, except to the extent expressly provided to the contrary in this Lease, substantially all of the Garages and Parking Lots (other than "Lot D") be available for public parking for events at the New Stadium (the "Prime Directive"). Tenant shall or shall cause its parking manager or operator to submit to Landlord, for Landlord's approval, a parking facilities operations plan (as referenced in Section 23.4(c) hereof) directed at, inter alia, facilitating the Prime Directive. No temporary uses shall be made of the IDA Financed Facilities for as long as IDA Bonds are outstanding unless there shall have been issued an opinion of Nationally Recognized Bond Counsel that such temporary use shall not cause the interest on the tax-exempt IDA Bonds to be includable in gross income for federal income tax purposes. Landlord and Tenant shall furnish to one another such information as either shall request in order for Nationally Recognized Bond Counsel to deliver such opinion.

(b) G.A.L. Parking. Tenant agrees to reserve, and to cause any operator or manager to reserve, at Site 10, 100 free spaces, between the hours of 6:00 a.m. and 6:00 p.m. (inclusive), to employees of G.A.L. Manufacturing Corporation, or affiliates thereof ("GAL") (GAL's place of business being located at the 50 East 153rd Street), from the Commencement Date until December 31, 2009 (i) on Yankees non-game days: from 6:00 a.m. to 6:00 p.m.; (ii) on Yankees night-game days: from 6:00 a.m. to 5:00 p.m.; and (iii) on Yankees day-game days (including double-headers) or Existing Stadium or New Stadium special event days (e.g., All-Star games, concerts, rallies): not available. During the periods such parking is provided, such lot will be attended and operated by the Tenant or its operator, and GAL employees' rights and obligations with respect to any loss or damage, or any other matter, shall be no different than in the case of any other licensee of such operator.. The foregoing notwithstanding, no employee parking shall be required to be provided during or 2 hours prior to or 2 hours after any regular season or post season Major League Baseball game at the Existing Stadium or the New Stadium (however, any GAL employee parking remaining at Lot 10 at such game times may remain there

and such vehicles shall not be towed or the drivers charged).

(c) Garage B and Other Parking for Yankees. Notwithstanding anything to the contrary set forth in this Lease, Tenant agrees that it shall reserve, and shall cause any operator or manager of Garage B to reserve, at Garage B (upon completion thereof) 600 parking spaces, at no charge, to Yankee Partnership and Ballpark Company and affiliates and their officers, employees, visitors, ticket holders, agents, concessionaires and players, and visiting teams, and employees of the press, radio, television and other media, on a 24 hour, 7 days-a-week, 365 days-a-year basis. All parking in Garage B may be valet or self-park, at Tenant's option. Tenant shall not use or operate Garage B or permit Garage B to be used or operated in any manner inconsistent with the requirements of this paragraph. Tenant shall provide, and shall cause its parking manager or operator to provide, to Yankee Partnership or Ballpark Company or any affiliates an option, for the Baseball Season next succeeding the option exercise dates set forth below, commencing with the 2009 Baseball Season, and for each Baseball Season thereafter, for use on home game days, by Yankee Partnership and Ballpark Company and their affiliates and their invitees, customers, employees, visitors, agents, concessionaires, ticket-holders, for up to 900 additional parking spaces at certain Parking Lots as set forth below in this paragraph (c). The options shall be exercisable (a) on or before December 15, 2008 and on each December 15 thereafter with respect to the use of 300 parking spaces and (b) on or before March 15, 2009 and on each March 15 thereafter with respect to an additional 600 parking spaces. The Parking Lots and parking spaces to which the options shall apply shall be limited to: (i) 220 valet parking spaces in Site 7; (ii) 172 valet parking spaces in Site 10; (iii) 190 valet-assisted parking spaces in Garage B (in addition to the 600 free Garage B spaces); and (iv) and 318 self-service striped parking spaces in Garage 3 (such number to be increased, with respect to Garage 3, by any corresponding reduction to the 190 spaces that the Yankees elect to reserve in Garage B). On the date of exercise of any such option, the purchasing entity thereof shall pay in advance, the prevailing game day parking rates, subject to any group-volume discount and/or prepaid parking discount then available, if any, for each space so reserved for all game days during the applicable Baseball Season, as such rates shall be determined by Tenant in accordance with the requirements of the Installment Sale Agreement and this Lease. Without limiting the foregoing, the Option Agreement shall also provide that Yankee Partnership or Ballpark Company or any affiliates shall have the option, exercisable not later than the last day of the regular Baseball Season, to reserve up to 900 spaces as described above for post-Baseball Season home games at prevailing parking rates, subject to any group-volume discount and/or prepaid parking discounts as such rates shall be determined by Tenant in accordance with the requirements of the Installment Sale Agreement and this Lease. Yankee Partnership, Ballpark Company and any affiliates thereof shall not market or sell any privilege for the use of any parking spaces obtained pursuant to any Option Agreement except in connection with New Stadium and Existing Stadium events. Parking space privileges so obtained for such events may be marketed and sold by Yankee Partnership, Ballpark Company or any affiliate thereof on a stand-alone basis or as part of a one-price event admission ticket/parking space package; provided, that if any parking space is not marketed and sold as a one-price event admission ticket/parking space package, the amount charged for such parking space shall not exceed the prevailing parking rates charged for such event at the parking facility in which such parking spaces are located.

(d) City Parking. Tenant shall make available at the Garages and/or the Parking Lots, in areas to be designated by Tenant (but as contiguous as commercially and operationally practicable, in each case of (i) and (ii) as follows):

(i) on days of events at the New Stadium, parking for the private automobiles of New York Police Department personnel, but not to exceed 120 vehicles, and

(ii) on all other days, space for 132 City-owned or leased vehicles.

(e) Interim Yankee Parking. Tenant further agrees that it shall reserve, and cause any operator or manager of the Garages and Parking Lots to reserve, without charge, until such date that the Yankees or their officers, employees, visitors, agents, concessionaires, ticket holders or players or players of visiting teams or employees of the press, radio, television or other media commence using the free parking spaces contemplated in paragraph (c) above in this Section 23.1, (i) on days of Yankee home games and other major events at the Existing Stadium or the New Stadium, 200 spaces on "Site 14" (Block 2499, Lot 1) for use without charge by the Yankees and their officers, employees, visitors, agents, concessionaires, ticket holders and players and players of visiting teams and employees of the press, radio, television and other media of communication covering a home game, (ii) on all days other than Yankee home games and major events at the Existing Stadium or the New Stadium, 150 spaces on Site 14 for use without charge by the Yankee Partnership, Ballpark Company, and their affiliates and their officers, employees, visitors, agents and concessionaires, and (iii) on days of play-off games, interdivisional championship games, world series games and all-star games, 300 spaces for use without charge by any of the persons mentioned in clause (i) above of this paragraph (e); provided that, at any time on or after December 1, 2008, upon direction by Landlord, in order to commence construction of parking facilities on Lot 14, Tenant shall provide such spaces as are required pursuant to clauses (i), (ii) and (iii) above in this paragraph (e) at Site 7, Site 10, Site 15 and/or Garage 3, as Landlord shall direct (after consultation with Yankee Partnership), unless otherwise directed by Landlord in its sole and absolute discretion, but not at any IDA Financed Facilities unless in connection with which there shall have been issued an opinion of Nationally Recognized Bond Counsel that such free parking shall not cause the interest on the tax-exempt IDA Bonds to be includable in gross income for federal income tax purposes. At no time will Tenant be obligated to make available, at the same time, any such free parking in both (y) Garage B and (z) Sites 7, 10, 15 and/or Garage 3 as set forth in clauses (i), (ii) and (iii) above in this paragraph (e). Tenant acknowledges and agrees that in the event that 600 parking spaces are not completed and available for use in Garage B as aforesaid at the time the New Stadium commences operations for stadium events, Landlord will consult with Yankee Partnership on the formulation of a traffic management plan for the area around the New Stadium with respect to safety and security concerns of persons using such parking and the general public, and Tenant shall cooperate and cause its parking manager or operator to cooperate with same.

(f) Temporary Uses. Tenant agrees that, upon direction by Landlord, it shall make available at any time so directed by Landlord, other than during a Baseball Season, upon ten (10) days notice, such parking lots that are not being used at such time for public parking, for purposes of construction staging, pursuant to licenses or permits issued by Tenant in form and substance that Landlord shall reasonably prescribe, and for such fees or charges, or without fee

or charge, to the licensee or permittee thereof, as Landlord shall direct. Any such licenses and permits to be issued by Tenant shall provide that the licensee or permittee thereunder shall defend, hold harmless and indemnify Tenant and any parking operator or manager (and Landlord) against claims for personal injury (including death) and property damage in connection with such use, except to the extent of Tenant's or its parking operator's or manager's negligence or willful misconduct in connection with the operations of such licensee or permittee on such parking lot, and shall name Tenant and any parking manager or operator as additional insured on any liability insurance policy which Landlord requires that such licensee or permittee obtain for the protection of Landlord. Tenant further agrees that at any time so directed by Landlord, it shall make available, upon not less than ten (10) days notice to Tenant, other than on a day in which there is an event at the Existing Stadium or the New Stadium, such parking lots that are not being used at such time for public parking on such day for performances, festivals, displays, community events, and other public events, and Landlord, or any licensee or permittee of Landlord, shall defend, hold harmless and indemnify Tenant and any parking operator or manager against claims for personal injury (including death) and property damage in connection with such use, except to the extent of Tenant's or its parking operator's or manager's negligence or willful misconduct, and Tenant shall be named as additional insured on any liability insurance policy which Landlord requires that any licensee or permittee obtain for the protection of Landlord.

Section 23.2. Prohibited Uses. Tenant shall not use or occupy the Premises, and neither permit nor suffer the Premises or any part thereof to be used or occupied for any unlawful or illegal business, use or purpose or for any purpose, or in any way in violation of the provisions of Section 23.1 or Article 16 hereof or the certificate(s) of occupancy for the Premises, or in such manner as may make void or voidable any insurance then in force with respect to the Premises. Immediately upon its discovery of any such unlawful or illegal business, use or purpose, or use or occupation in violation of Section 23.1 or Article 16 hereof, Tenant shall take all necessary steps, legal and equitable, to compel the discontinuance of such business or use, including, if necessary, the removal from the Premises of any Subtenants using a portion of the Premises for an unlawful or illegal business, use or purpose or in violation of Section 23.1 or Article 16 hereof. The provisions of this Section shall not restrict Tenant's rights under Article 34 hereof to contest any Requirements.

Section 23.3. Advertising. With the exception of the marquee signage referred to in Section 2.1 hereof, no advertising shall be permitted on any parkland comprising a part of the Premises or on the exterior of any Garage or other Building located on parkland (as of the date hereof, only that portion of the Land identified as the Garage A, B and C sites constitute "parkland"). Advertising on the interior of any Garage or other Building located on parkland and vacant parcels of land comprising the Premises that are not parkland shall not be permitted except to the extent that such advertising complies with the conditions set forth in Exhibit Q attached hereto (the "Advertising Plan"). In addition, Landlord shall have the right to prevent Tenant from displaying any Advertising Signage the content of which depicts "specified anatomical areas" or "specific sexual activities" as those terms are defined in Section 12-10 of the Zoning Resolution under the definition of "Adult establishment." Furthermore, no advertising for tobacco or tobacco related products shall be permitted; provided, that if the prevailing City policy of prohibiting tobacco advertising in City-owned facilities is curtailed or abrogated, then to the same extent the prohibition on tobacco advertising at the Premises shall be

similarly curtailed or abrogated.

Section 23.4. Operating Covenants.

(a) Tenant shall operate and maintain the Premises in a safe, secure, clean, and reputable manner, and staffed in a manner, generally consistent with the standards of first class parking facilities and in accordance with the standards set forth in Article 14 hereof. The Premises shall be fully operational during Baseball Season.

(b) Parking rates and charges for use of the Garages and Parking Lots by the general public shall be submitted to the City annually by October 1 of each year, and shall take effect on January 1 of the following year, subject to prior written approval of the City. Subject to Section 4.8 of the Installment Sale Agreement, Landlord shall approve or state its objection to such proposed rates and charges within thirty (30) days of Tenant's proposing same in writing to Landlord. If Landlord fails to respond within said thirty (30) day period, then, provided such written proposal makes express reference to this paragraph and the thirty (30) day turnaround time set forth herein, such proposed rates and charges shall be deemed approved. The foregoing notwithstanding, Tenant may change parking rates and charges provided that the same percentage of payment differential between rates and charges on New Stadium Game Days and rates and charges on other days is maintained.

(c) Tenant shall diligently enforce the terms and provisions of that certain "Management Agreement", of even date herewith, between Tenant and Standard Parking Corporation, as may be amended, and any substitute or successor management agreement, relating to any and all parking operations of Tenant. If, upon or after the expiration or earlier termination of such parking management agreement, Tenant enters into another parking operation and management agreement, any changes in terms with respect to the upkeep or operation of the Garages or Parking Lots shall either be substantially the same as said parking management agreement or shall be subject to prior written consent of Landlord, such consent not to be unreasonably withheld, delayed or denied. No parking management agreement shall be altered, amended or modified without Landlord's prior express written consent, not to be unreasonably withheld or delayed, except that any alteration of a parking operations plan to be set forth therein effectuating or affecting compliance with the Prime Directive, the quality of operation, maintenance and repair of the Garages and Parking Lots, and the establishment or parking rates and charges, shall be subject to Landlord's approval in its sole and absolute discretion (except that general annual escalation of parking rates sufficient to comply with the covenant set forth in Section 23.4(f) hereof shall not be subject to Landlord's approval). All such parking management agreements shall be subject in all respects to the terms and conditions of this Lease. Tenant shall, or shall cause its parking operator or manager to submit from time to time for Landlord's approval, and as Landlord may direct (but not less than every five (5) years nor more than annually), a revised parking facilities operations plan, responsive, without limitation, to then-current parking facilities physical conditions, on-going or persistent problems in parking operations or management (including but not limited to security), changes in parking demand and pedestrian and travel patterns (including without limitation traffic patterns), and availability of new technology. Tenant shall, upon direction of Landlord, terminate any parking management agreement then if effect, subject to and in accordance with the provisions of such parking management agreement, and shall enter into a new parking management agreement with

a new parking manager or operator in substitution therefore as Landlord may approve, such approval not to be unreasonably withheld.

(d) Not later than May 1 of each calendar year, Tenant shall submit to Landlord annually, for Landlord's review and comment, a budget for the maintenance and operation of the Garages and Parking Lots (and any other parking operated by Tenant, if applicable) showing all sources and uses of funds and reserves for the then-immediately following calendar year, in such detail as Landlord may reasonably require. Tenant agrees to meet, and to cause its parking operator to meet, with Landlord to discuss the budget upon Landlord's request.

(e) Attached hereto as Exhibit P is a copy of Tenant's Operating Agreement and attached hereto as Exhibit O is a copy of Tenant's Articles of Organization, pursuant to the New York Limited Liability Company Law. Tenant covenants that it shall not in any way modify or amend either the Operating Agreement or the Articles of Organization without the prior written consent of Landlord in each instance.

(f) Notwithstanding anything to the contrary set forth in Section 23.1(a) or (d) or Section 23.4(b) or (c) hereof (including any approval or disapproval by the City of parking rates and charges pursuant to Section 23.4(b) hereof), Tenant shall or shall cause its parking manager or operator to set rates and charges in compliance with (i) Section 6.24 of the Installment Sale Agreement while the IDA Bonds are outstanding, and (ii) if Tenant's right of possession to the Premises has been transferred at a foreclosure sale or assigned in lieu of foreclosure by the Trustee under the IDA Indenture acting as the Recognized Mortgagee, or Landlord and the Trustee under the IDA Indenture acting as the Recognized Mortgagee or its nominee or designee have executed a new lease pursuant to Section 11.4 hereof, which, in either such case, has triggered the effectiveness of Section 40.1 hereof or Section 40.1 of a successor lease pursuant to Section 11.4 hereof, and a Recognized Mortgage under either such Section 40.1 is outstanding, the Rate Covenant set forth in Section 40.3 hereof.

(g) Tenant shall and shall cause its parking operator or manager to cooperate and coordinate with New York City traffic direction and enforcement personnel (including without limitation the New York City Police Department) with respect to Garage and Parking Lot operations.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.1. Definition. Each of the following events shall be an "Event of Default" hereunder:

(a) if Tenant shall fail to make any payment (or any part thereof) of Rental required to be paid by Tenant hereunder and such failure shall continue for a period of ten (10) days after notice thereof from Landlord to Tenant;

(b) if Tenant shall fail to Commence Construction of (any) Garage, Parking Lot and/or Park Improvements on or before the respective Construction Commencement Date (subject to Unavoidable Delays) and such failure shall continue for a period of thirty (30) days (subject to Unavoidable Delays) after notice thereof from Landlord specifying such failure;

(c) if, after notice to Tenant, Tenant shall fail to Substantially Complete the Construction of (any) Garage, Parking Lot and/or Park Improvements on or before the respective Scheduled Completion Date (subject to Unavoidable Delays) unless Tenant is as of such date diligently prosecuting such construction toward prompt Substantial Completion and continues to do so without interruption except for Unavoidable Delays;

(d) if Tenant shall enter into an Assignment or Sublease without compliance with the provisions of this Lease and such Assignment or Sublease shall not be made to comply with the provisions of this Lease or canceled within thirty (30) days after Landlord's notice thereof to Tenant;

(e) if Tenant shall fail to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease and such failure shall continue for a period of thirty (30) days after Landlord's notice thereof to Tenant specifying such failure (unless such failure requires work to be performed, acts to be done, or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed within such thirty (30) day period, in which case no Event of Default shall be deemed to exist as long as Tenant shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion);

(f) to the extent permitted by law, if Tenant shall admit, in writing, that it is unable to pay its debts as such become due;

(g) to the extent permitted by law, if Tenant shall make an assignment for the benefit of creditors;

(h) to the extent permitted by law, if Tenant shall file a voluntary petition under Title 11 of the United States Code or if such petition shall be filed against Tenant and an order for relief shall be entered, or if Tenant shall file a petition or an answer seeking, consenting to, or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, or

shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, or if Tenant shall take any partnership or corporate action in furtherance of any action described in Sections 24.1(f), 24.1(g) or 24.1(h) hereof;

(i) to the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Tenant seeking any reorganization, arrangement, composition readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, State or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred twenty (120) days after the appointment, without the consent or acquiescence of Tenant, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Tenant, or of all or any substantial part of its properties, or of the Premises or any interest of Tenant therein, such appointment shall notes be vacated or stayed on appeal or otherwise, or if, within one hundred twenty (120) days after the expiration of any such stay, such appointment shall not be vacated;

(j) if any of the representations made by Tenant in Article 18 hereof shall be proved to be or shall become false or incorrect when made in any material respect and such is not cured thereafter, or if the misrepresentation has frustrated the Landlord's purposes;

(k) (i) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease or the leasehold estate created hereby and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of one hundred twenty (120) days, or (ii) if a levy under execution or attachment in an amount equal to or greater than two hundred fifty thousand ($250,000) dollars shall be made against Tenant or any of its properties other than the Premises or any part thereof, the income therefrom or the leasehold estate created thereby and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of one hundred twenty (120) days; or

(l) if Tenant shall be in default, after notice and the expiration of any applicable cure period, under any of the IDA Bond Documents, the Funding Agreement or any Joint Venture Contract.

Section 24.2. Enforcement of Performance.

(a) If an Event of Default occurs, subject to the rights of a Recognized Mortgagee pursuant to Article 11, Landlord may elect to proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Tenant of the applicable provisions of this Lease and/or to recover damages for breach thereof.

(b) If Landlord shall claim that a Default has occurred but such claim shall be contested by Tenant by arbitration or legal proceeding, the time in which Tenant must cure such Default shall not commence until a final determination has been made with respect to such contested claim. However, if the Default claimed by Landlord creates, in Landlord's reasonable

judgment, a condition dangerous to public health or safety, then notwithstanding the fact that Tenant may contest the Default claim, Landlord shall, after providing notice to Tenant that is reasonable under the circumstances (but which in any event need not be more than 48 hours notice, and may be provided by fax or by telephone), have the right to enter the Premises and cure the dangerous condition. Such cure shall be at Landlord's expense if it is ultimately resolved that no Default hereunder existed, or at Tenant's expense if it is ultimately resolved that a Default hereunder existed. Upon such ultimate resolution, if such is that a Default existed, Tenant shall immediately reimburse Landlord for Landlord's cost of curing the dangerous condition, with interest thereon at the Late Charge Rate accruing from Landlord's incurring of such costs.

Section 24.3. Expiration and Termination of Lease.

(a) Subject to Article 11 hereof, if an Event of Default occurs and Landlord, at any time thereafter, at its option, gives Tenant notice specifying the Event of Default and stating that this Lease and the Term shall be subject to expiration and termination if the Default which is the basis for the Event of Default is not cured within ten (10) days after the giving of such notice (or, if such cure cannot by its nature reasonably be cured within such ten day period, then within such additional period as may be required, provided, however that Tenant shall commence curing the Default within such ten day period and thereafter diligently pursue same to completion, subject to Unavoidable Delays) and if, after such period has expired, Tenant shall have failed to cure the Default which was the basis for the Event of Default, then Landlord, at any time thereafter, may at its option give a second notice to Tenant stating that this Lease and the Term shall expire and terminate on the date specified in such notice, which date shall not be less than five (5) days after the giving of such second notice, then this Lease and the Term and all rights of Tenant under this Lease shall expire and terminate as if the date specified in the notice were the Fixed Expiration Date, and Tenant shall quit and surrender the Premises forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Section 24.1(h) or (i) hereof or by federal or state statute then following the expiration of any such stay, or if the trustee appointed in any such case, Tenant or Tenant as debtor-in-possession fails to assume Tenant's obligations under this Lease within the period prescribed therefor by law or within one hundred twenty (120) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Tenant or Tenant as debtor-in-possession fails to provide adequate protection of Landlord's right, title and interest in and to the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease as provided in Section 24.10 hereof, Landlord, to the extent permitted by law, or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this Lease on five (5) days notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the five (5) day period, this Lease shall cease and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

(b) If this Lease is terminated as provided in Section 24.3(a) hereof, Landlord may, without notice, re-enter and repossess the Premises and may dispossess Tenant by summary proceedings or otherwise.

(c) If this Lease shall be terminated as provided in Section 24.3(a) hereof:

(i) Tenant shall pay to Landlord all Rental payable under this Lease by Tenant to Landlord to the date upon which the Term shall have expired and come to an end and Tenant shall remain liable for Rental thereafter falling due on the respective dates when such Rental would have been payable but for the termination of this Lease;

(ii) Landlord may complete all Construction Work required to be performed by Tenant hereunder and may repair and alter any portion(s) of the Premises in such manner as Landlord may deem necessary or advisable without relieving Tenant of any liability under this Lease or otherwise affecting any such liability, and/or let or relet the Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period, in Landlord's name or as agent of Tenant, and out of any rent and other sums collected or received as a result of such reletting Landlord shall (A) first, pay to itself the cost and expense of terminating what would otherwise have constituted the unexpired portion of the Term, re-entering, retaking, repossessing, repairing, altering and/or entering, completing construction of any portion(s) of the Premises and the cost and expense of removing all Persons and property therefrom, including in such costs, brokerage commissions, legal expenses and reasonable attorneys, fees and disbursements; (B) second, pay to itself the cost and expense sustained in securing any new tenants and other occupants, including in such costs, brokerage commissions, legal expenses and reasonable attorneys' fees and disbursements and other expenses of preparing any portion(s) of the Premises and, to the extent that Landlord shall maintain and operate any portion(s) of the Premises, the cost and expense of operating and maintaining same, (C) third, pay all amounts due the Trustee under the IDA Indenture acting as the Recognized Mortgagee, or, if Landlord and the Trustee under the IDA Indenture acting as the Recognized Mortgagee or its nominee or designee have executed a new lease pursuant to Section 11.4 hereof, which, in either case, has triggered the effectiveness of Section 40.1 hereof or Section 40.1 of a successor lease pursuant to Section 11.4 hereof, due under a Recognized Mortgage under either such Section 40.1, and (D) fourth, pay to itself any balance remaining on account of the liability of Tenant to Landlord. Landlord in no way shall be responsible or liable for any failure to relet any portion(s) of the Premises or for any failure to collect any rent due on any such reletting, and no such failure to relet or to collect rent shall operate to relieve Tenant of any liability under this Lease or to otherwise affect any such liability.

Section 24.4. Waiver of Rights of Tenant. To the extent not prohibited by law, Tenant hereby waives and releases all rights now or hereafter conferred by statute to redemption, re-entry, repossession or restoration if Tenant is dispossessed by a judgment or order of any court or judge. Tenant shall execute, acknowledge and deliver within ten (10) days after request by Landlord any instrument that Landlord may request, evidencing such waiver or release.

Section 24.5. Receipt of Moneys After Notice or Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease, or after the giving of any notice of the termination of this Lease, shall reinstate, continue or extend the Term or affect any notice theretofore given to Tenant, or operate as a waiver of the right of Landlord to enforce the payment of Rental payable by Tenant hereunder or thereafter falling due, or operate as a waiver of the right of Landlord to recover possession of the Premises by proper remedy. After the service of notice to terminate this Lease or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Premises, Landlord may

demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Premises or, at the election of Landlord, on account of Tenant's liability hereunder.

Section 24.6. Waiver of Service. If an Event of Default has occurred and Landlord has provided Tenant with the notice described in Section 24.3(a) hereof, Tenant hereby expressly waives the service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings in connection therewith and Tenant, for and on behalf of itself and all Persons claiming through or under Tenant, also waives any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession or (d) to restore the operation of this Lease, if Tenant is dispossessed by a final, non-appealable judgment or by warrant of a court or judge or in case of re-entry or repossession by Landlord or in case of any expiration or termination of this Lease. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease, are not restricted to their technical legal meanings.

Section 24.7. Strict Performance. No failure by Landlord to insist upon Tenant's strict performance of any covenant, agreement, term or condition of this Lease or to exercise any right or remedy available to Landlord by reason of a Default or Event of Default, and no payment or acceptance of full or partial Rental during the continuance of any Default or Event of Default, shall constitute a waiver of any such Default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default by Tenant shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default.

Section 24.8. Landlord's Right to Enjoin Defaults or Threatened Defaults. In the event of Tenant's Default or threatened Default, Landlord shall be entitled to enjoin the Default or threatened Default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or otherwise, other remedies that may be available to Landlord notwithstanding. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord or Tenant of any one or more of the rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord or Tenant of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 24.9. Tenant's Payment of All Costs and Expenses. Tenant shall pay Landlord all costs and expenses, including, without limitation, reasonable attorneys' fees and disbursements, incurred by Landlord in any action or proceeding to which Landlord may be made a party by reason of any act or omission of Tenant. Tenant shall also pay Landlord all costs and expenses, including, without imitation, reasonable attorneys fees and disbursements

incurred by Landlord in successfully enforcing any of the covenants and provisions of this Lease. All of the sums paid or obligations incurred by Landlord, with interest and costs, shall be paid by Tenant to Landlord within ten (10) days after demand.

Section 24.10. Remedies Under Bankruptcy and Insolvency Codes. If an order for relief is entered or if any proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease in any proceeding which is commenced by or against Tenant under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Tenant seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, Landlord shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this Lease, including, without limitation, such rights and remedies as may be necessary to adequately protect Landlord's right, title and interest in and to the Premises or any part thereof and adequately assure the complete and continuous future performance of Tenant's obligations under this Lease. Adequate protection of Landlord's right, title and interest in and to the Premises, and adequate assurance of the complete and continuous future performance of Tenant's obligations under the Lease, shall include, without limitation, all of the following requirements:

(a) that Tenant shall comply with all of its obligations under this Lease;

(b) that Tenant shall pay Landlord, on the first day of each month occurring after the entry of such order, or on the effective date of such stay, a sum equal to the amount by which the Premises diminished in value during the immediately preceding monthly period, but, in no event an amount which is less than the aggregate Rental payable for such monthly period;

(c) that Tenant shall continue to use the Premises in the manner required by this Lease;

(d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease;

(e) that Tenant shall hire such security personnel as may be necessary to insure the adequate protection and security of the Premises;

(f) that Tenant shall pay Landlord, within thirty (30) days after entry of such order or the effective date of such stay, as partial adequate protection against future diminution in value of the Premises and adequate assurance of the complete and continuous future performance of Tenant's obligations under this Lease, a security deposit in an amount acceptable to Landlord, but in no event less than the Base Rent payable hereunder, for the then current Lease Year;

(g) that Tenant shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Landlord that sufficient funds will be available to fulfill the obligations of Tenant under this Lease;

(h) that Landlord shall be granted a security interest acceptable to it in property of Tenant to secure the performance of Tenant's obligations under this Lease; and

(i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease and propose to assign it (pursuant to Title 11 U.S.C. § 365, as it may be amended) to any Person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such Person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Landlord to assure such Person's future performance under the Lease, including, without limitation, the assurances referred to in Title 11 U.S.C. § 365(b), as it may be amended, shall be given to Landlord by the trustee, Tenant or Tenant as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Tenant or Tenant as debtor-in-possession of such offer, but in any event no later than ten (10) days before the date that the trustee, Tenant or Tenant as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Landlord shall thereupon have the prior right and option, to be exercised by notice to the trustee, Tenant or Tenant as debtor-in-possession, given at any time before the effective date of such proposed assignment, to accept an assignment of this Lease upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such Person, less any brokerage commissions which may be payable by Tenant out of the consideration to be paid by such Person for the assignment of this Lease.

Section 24.11. Funds Held by Depositary. If this Lease shall terminate as a result of an Event of Default, any funds held by Depositary shall be paid to Tenant, or any Person claiming through Tenant, unless a Recognized Mortgagee has entered into a new lease pursuant to Section 11.4 hereof, in which case such funds shall continue to be held by Depositary pursuant to the terms of such new lease.

Section 24.12. Funds Held by Tenant. From and after the date, if any, on which Tenant receives notice from Landlord that an Event of Default shall have occurred hereunder, Tenant shall not pay, disburse or distribute any rents, issues or profits of the Premises, or portion thereof, the proceeds of any insurance policies covering or relating to the Premises or any portion thereof, or any awards payable in connection with the condemnation of the Premises or any portion thereof (except to the extent such insurance proceeds or condemnation awards are required in connection with any Restoration to be performed pursuant to Article 8 or 9), except to (i) creditors which are not Affiliates, in payment of amounts then due and owing by Tenant to such creditors, (ii) Affiliates, in payment of amounts then due and owing by Tenant to such Affiliates for items and services provided to Tenant in connection with its operations conducted at the Premises or any portion thereof to the extent such amounts do not exceed those that are customarily and reasonably paid in arm's length transactions to Persons who are not Affiliates for comparable items and services, (iii) the holders of Recognized Mortgages, in payment of the principal amount of, all unpaid and accrued interest and other sums then outstanding under such Recognized Mortgages and any other amounts payable pursuant to such Recognized Mortgages, (iv) in the case of insurance proceeds or condemnation awards, to the parties performing any Restoration and (v) to satisfy Requirements.

Section 24.13. No Termination While IDA Bonds Are Outstanding. Notwithstanding anything set forth to the contrary in this Lease, including without limitation Article 11 and every other provision under this Lease that contemplates or provides for a right of termination of this Lease by Landlord, Landlord shall not terminate this Lease (i) for as long as IDA Bonds are outstanding and (ii) if Tenant's right of possession to the Premises has been

transferred at a foreclosure sale or assigned in lieu of foreclosure by the Trustee under the IDA Indenture acting as the Recognized Mortgagee, or Landlord and the Trustee under the IDA Indenture acting as the Recognized Mortgagee or its nominee or designee have executed a new lease pursuant to Section 11.4 hereof, which, in either such case, has triggered the effectiveness of Section 40.1 hereof or Section 40.1 of a successor lease pursuant to Section 11.4 hereof, and debt service under a Recognized Mortgage as contemplated under either such Section 40.1 is outstanding.

ARTICLE 25

NOTICES

Section 25.1. All Notices, Communications, Etc. in Writing. Whenever it is provided herein that notice, demand, request, consent, approval or other communication may be given to, or served upon, either of the other, or whenever either of the parties desires to give or serve upon the other any notice, demand, request, consent, approval or other communication with respect hereto or to the Premises, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose if given or served as follows:

(a) If to Tenant, by personal delivery with receipt acknowledged or by mailing the same to Tenant by certified mail, postage prepaid, return receipt requested, addressed to Tenant, c/o Community Initiatives Development Corp., 18 Aiken Avenue, Hudson, New York 12534, with copies thereof to, Akerman Senterfitt Stadtmauer Bailkin LLP, 850 Third Avenue, New York, New York , Attn: Steven P. Polivy and to Anthony Marshall, Esq., Harris Beach LLP, 300 South State, 1 Park Place, Syracuse, New York 13202, or to such other address(es) and attorneys as Tenant may from time to time designate by notice given to Landlord by certified mail. For so long as the parking management agreement between Tenant and Standard Parking Corporation of even date herewith is in full force and effect, a copy of any such notice shall be sent to said parking facilities manager at the address provided therein.

(b) If to Landlord, by personal delivery with receipt acknowledged or by mailing the same to Landlord by certified mail, postage prepaid, return receipt requested, addressed to Landlord, c/o New York City Department of Parks and Recreation, The Arsenal, Central Park, New York, New York 10021, Attention: Lease Administrator, with copies thereof to New York City Economic Development Corporation, 110 William Street, New York, New York 10038; New York City Law Department, 100 Church Street, New York, New York, 10007, Attention: Chief, Economic Development Division, or to such other address(es) and attorneys as Landlord may from time to time designate by notice given to Tenant by certified mail.

(c) If to Yankee Partnership or Ballpark Company, by personal delivery with receipt acknowledged or by mailing the same to Landlord by certified mail, postage prepaid, return receipt requested, addressed to:

Title: Randy Levine, Esq.
President
Address Yankee Stadium
1 East 161st Street
Bronx, New York 10451

Or to an equivalent officer at:

Address: Yankee Stadium
1 East 161st Street
Bronx, New York 10451

and to:

Lonn A. Trost, Esq.
Chief Operating Officer
General Consel
Yankee Stadium
1 East 161st Street
Bronx, New York 10451

or to an equivalent officer at:

Address: Yankee Stadium
1 East 161st Street
Bronx, New York 10451

and to:

Address: Yankee Stadium LLC
Yankee Stadium
1 East 161st Street
Bronx, New York 10451
Attention: President or Managing Member
And Market "URGENT" on the envelope

With a copy to:

Title: Fried, Frank, Harris, Shriver & Jacobson LLP
Address: One New York Plaza
New York, New York 10004
Attention: Stephen Leftkowitz, Esq.

With a copy at:

Title: Herrick, Feinstein LLP
2 Park Avenue
New York, New York 10016
Attention: Carl F. Schwartz, Esq.

Section 25.2. Service. Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served at the time that the same shall have been actually received at the addressee's office in New York City as evidenced by a

signed receipt given upon personal delivery or by postal return receipt deposited in the United States mails, postage prepaid, as aforesaid.

ARTICLE 26

STREET WIDENING

Section 26.1. Proceedings for Widening Street. If any proceedings are instituted or orders made for the widening or other enlargement of any street contiguous to the Premises requiring removal of any projection or encroachment on, under or above any such street, or any changes or alteration upon the Premises, or in the sidewalks, grounds, parking facilities, plazas, areas, vaults, gutters, alleys, curbs or appurtenances, Tenant shall comply promptly with such requirements, at its sole cost and expense, and if Tenant shall fail to comply with such requirements within thirty (30) days after notice thereof by Landlord to Tenant specifying such failure (or if compliance with such requirements requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed, done or removed, as the case may be, within such thirty (30) day period, if, within such thirty (30) day period, Tenant shall fail to commence to remedy such failure or shall fail to diligently and continuously, subject to Unavoidable Delays, prosecute the same to completion), then, Landlord, upon notice to Tenant may comply with the same, and the amount expended therefor, together with any interest, fines, penalties, reasonable architects' and attorneys' fees and disbursements or other costs and expenses incurred by Landlord in effecting such compliance or as a result of Tenant's failure to so comply, shall constitute Rental hereunder and shall be payable by Tenant to Landlord on demand.

Section 26.2. Contest of Proceedings. Tenant shall be permitted to contest in good faith any proceedings or orders for street widening or any changes or alterations resulting therefrom or necessitated thereby, provided that such contest shall be brought in accordance with the provisions of Section 34.3 hereof as though Tenant were contesting a Requirement thereunder.

Section 26.3. Distribution of Award. Any award made in connection with such proceedings shall be deemed to be an award made in connection with a taking of less than all or Substantially All of the Premises and shall be paid, distributed and applied in accordance with the provisions of Section 9.2 hereof.

ARTICLE 27

EXCAVATIONS AND SHORING

If any excavation is contemplated for construction or other purposes upon property adjacent to the Premises, Tenant, at its option, shall either:

(a) afford to Landlord, or, at Landlord's option, to the Person or Persons causing or authorized to cause such excavation the right to enter upon the Premises in a reasonable manner for the purpose of doing such work as may be necessary to preserve any of the walls of any buildings or other structures on the Premises from injury or damage and to support them by proper foundations. If so requested by Tenant, such entry and work shall be done in the presence of a representative of Tenant, provided that such representative is available when the entry and work are scheduled to be done, and in all events such work shall be performed with reasonable diligence, subject to Unavoidable Delays, in accordance with, and subject to, any applicable Requirements, or

(b) perform or cause to be performed, at Landlord's or such other Person's expense, all such work as may be necessary to preserve any of the walls of any buildings or other structures on the Premises from injury or damage and to support them by proper foundations.

Tenant shall not, by reason of any such excavation or work, have any claim against Landlord for damages or for indemnity or for suspension, diminution, abatement or reduction of the Rental payable by Tenant hereunder.

ARTICLE 28

CERTIFICATES BY LANDLORD AND TENANT

Section 28.1. Certificate of Tenant. Tenant shall, within thirty (30) days after notice by Landlord, execute, acknowledge and deliver to Landlord or any other Person specified by Landlord, a statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or, if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications), (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, and (iii) not more than one months' rent has been paid in advance, (b) stating (i) whether Tenant has given Landlord notice of any event that, with the giving of notice or the passage of time, or both, would constitute a default by Landlord in the performance of any covenant, agreement, obligation or condition contained in this Lease, and (ii) whether, to the best knowledge of Tenant, Landlord is in default in performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying in detail each such default and (c) stating such other information as Landlord may reasonably request.

Section 28.2. Certificate of Landlord. Landlord shall, within thirty (30) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or such other Person specified by Tenant, a statement (which may be relied upon by such Person) (a) certifying (i) that this Lease is unmodified and in full force and effect (or if there are modifications, that this Lease, as modified, is in full force and effect and stating such modifications), and (ii) the date to which each item of Rental payable by Tenant hereunder has been paid, (b) stating (i) whether an Event of Default has occurred or whether Landlord has given Tenant notice of any event that, with the giving of notice or the passage of time, or both, would constitute an Event of Default, and (ii) whether, to the best knowledge of Landlord, Tenant is in Default in the performance of any covenant, agreement, obligation or condition contained in this Lease, and, if so, specifying, in detail, each such Default or Event of Default and (c) stating such other information as Tenant may reasonably request.

Section 28.3. Substantial Completion Certificate. Upon Tenant's satisfaction of the conditions required with respect to Substantial Completion of any Garage, Parking Lot and/or Park Improvements, Landlord, upon request of Tenant, shall deliver a certificate in recordable form confirming that and setting forth the date on which the Garage, Parking Lot and/or Park Improvements has been Substantially Completed.

Section 28.4. Failure to Deliver Certificate. Provided express reference to Section 28.1 and the thirty (30) day turnaround time set forth therein is made in the notice delivered pursuant to Section 28.1, Tenant's failure to deliver the certificate required by Section 28.1 hereof within such thirty (30) day period shall be conclusive upon Tenant that (a) this Lease is in full force and effect, without modification except as may be represented by Landlord, (b) there are no uncured defaults on the part of Landlord, (c) not more than one (1) month's rent has been paid in advance, and (d) no notice has been sent to Landlord of any default by Landlord which has not been cured. Provided express reference to Section 28.2 and the thirty (30) day turnaround time set forth therein is made in the notice delivered pursuant to Section 28.2, Landlord's failure to deliver the certificate required by Section 28.2 hereof within such thirty

(30) day period shall be conclusive upon Landlord that (a) this Lease is in full force and effect, without modification except as may be represented by Tenant, (b) there are no uncured Defaults on the part of Tenant hereunder, (c) Rental has been paid to date, and (d) no notice has been sent to Tenant of any Default by Tenant which has not been cured.

Section 28.5. Authority of Party Executing Certificate. If the party delivering a certificate described in this Article 28 shall be other than an individual, the instrument shall be signed by a person authorized to execute on behalf of said party and the delivery of such instrument shall be a representation to such effect by such person. Any such certificate may be relied upon by any prospective purchaser of the interest of Landlord or Tenant hereunder or by any prospective Recognized Mortgagee.

ARTICLE 29

CONSENTS AND APPROVALS

Section 29.1. Effect of Granting or Failure to Grant Approvals or Consents. All consents and approvals which may be given under this Lease shall, as a condition of their effectiveness, be in writing. The granting of any consent or approval by a party to perform any act requiring consent or approval under the terms of this Lease, or the failure on the part of a party to object to any such action taken without the required consent or approval, shall not be deemed a waiver by the party whose consent was required of its right to require such consent or approval for any further similar act.

Section 29.2. Remedy for Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then in the event there shall be a final determination that the consent or approval was unreasonably withheld or that such specified standard has been met so that the consent or approval should have been granted, the consent or approval shall be deemed granted and such granting of the consent or approval shall be the only remedy to the party requesting or requiring the consent or approval.

Section 29.3. No Unreasonable Delay; Reasonable Satisfaction. If it is provided that a particular consent or approval by Landlord or Tenant is not to be unreasonably withheld, such consent or approval also shall not be unreasonably delayed and any matter required to be done satisfactorily or to the satisfaction of a party need only be done reasonably satisfactorily or to the reasonable satisfaction of that party.

Section 29.4. No Fees, Etc. Except as specifically provided herein, no fees or charges of any kind or amount shall be required by either party hereto as a condition of the grant of any consent or approval which may be required under this Lease.

ARTICLE 30

SURRENDER AT END OF TERM

Section 30.1. Surrender of Premises. Upon the Expiration of the Term (or upon a termination and re-entry by Landlord upon the Premises pursuant to Article 24 hereof), Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises to Landlord, in good order, condition and repair, reasonable wear and tear excepted, free and clear of all Subleases, liens and encumbrances other than Subleases to which Landlord has given recognition pursuant to the provisions of Section 10.8 hereof and those liens and encumbrances which extend beyond the Expiration Date and to which Landlord shall have consented and agreed in writing. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration of the Term.

Section 30.2. Delivery of Subleases, Etc. Upon the Expiration of the Term (or upon a termination and re-entry by Landlord upon the Premises pursuant to Article 24 hereof), Tenant shall deliver to Landlord executed counterparts of (to the extent within its possession or control) all Subleases and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original (or, if unavailable, copies of) licenses and permits then pertaining to the Premises, permanent or temporary certificates of occupancy then in effect for each Building, and all warranties and guarantees then in effect which Tenant has received in connection with any work or services performed or Equipment installed in each Building, together with a duly executed assignment thereof to Landlord, all financial reports, books and records required by Article 36 hereof and any and all other documents of every kind and nature whatsoever in Tenant's possession relating to the operation of the Premises.

Section 30.3. Personal Property. Any personal property of Tenant or of any Subtenant which shall remain on the Premises for ten (10) days after the termination of this Lease and after the removal of Tenant or such Subtenant from the Premises, may, at the option of Landlord, be deemed to have been abandoned by Tenant or such Subtenant, and either may be retained by Landlord as its property or be disposed of, without accountability in such manner as Landlord may see fit, subject to the rights of any Recognized Mortgagee if a new lease has not been entered into pursuant to Section 11.4 hereof. Landlord shall not be responsible or any loss or damage occurring to any such property owned by Tenant or any Subtenant after the expiration of such ten (10) day period.

Section 30.4. Survival Clause. The provisions of this Article shall survive the Expiration of the Term.

ARTICLE 31

ENTIRE AGREEMENT

This Lease, together with the Exhibits hereto contain all of the promises, agreements, conditions, inducements and understandings between Landlord and Tenant concerning the Premises and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them other than as expressly set forth herein and therein.

ARTICLE 32

QUIET ENJOYMENT

Landlord covenants that, as long as no Event of Default has occurred and has not been remedied, Tenant shall and may (subject to the terms and conditions of this Lease) peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming through Landlord and free of any encumbrances except for reservations set forth in Article 2 hereof, Title Matters and those encumbrances created or suffered by Tenant.

ARTICLE 33

ARBITRATION

Section 33.1. Procedure for Arbitrations. In such cases where this Lease expressly provides for the settlement of a dispute or question by arbitration, and only in such cases, the party desiring arbitration shall appoint a disinterested person as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second disinterested person as arbitrator on its behalf and give notice thereof to the first party. The two (2) arbitrators thus appointed shall together appoint a third disinterested person within fifteen (15) days after the appointment of the second arbitrator, and said three (3) arbitrators shall, as promptly as possible, determine the matter which is the subject of the arbitration and the decision of the majority of them shall be conclusive and binding on all parties and judgment upon the award may be entered in any court having jurisdiction. If a party who shall have the right pursuant to the foregoing to appoint an arbitrator fails or neglects to do so, then and in such event, the other party (or if the two (2) arbitrators appointed by the parties shall fail to appoint a third arbitrator when required hereunder, then either party) may apply to the American Arbitration Association (or any organization successor thereto), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator. The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Section 33.2, shall be in accordance with the commercial Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function. Each party shall have the right to present evidence in the arbitration. The expenses of arbitration shall be shared equally by Landlord and Tenant but each party shall be responsible for the fees and disbursements of its own attorneys and the expenses of its own proof. Landlord and Tenant shall sign all documents and do all other things necessary to submit any such matter to arbitration and further shall, and hereby do, waive any and all rights they or either of them may at any time have to revoke their agreement hereunder to submit to arbitration and to abide by the decision rendered thereunder. The arbitrators shall have no power to vary or modify any of the provisions of this Lease and their jurisdiction is limited accordingly. If the arbitration takes place pursuant to Article 13 hereof or concerns any Capital Improvement or Restoration, then each of the arbitrators shall be a licensed professional engineer or registered architect having at least ten (10) years' experience in the design of retail buildings, and, to the extent applicable and consistent with this Section 33.1, such arbitration shall be conducted in accordance with the Construction Arbitration Rules then obtaining of the American Arbitration Association or any successor body of similar function.

ARTICLE 34

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 34.1. Tax Contest Proceedings. Tenant shall have the exclusive right to seek reductions in the valuation of the Premises assessed for real property tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith, in accordance with the Charter and Administrative Code of New York City. If the attribution by the City's Department of Finance provided for in Section 3.3 hereof is not contestable by the standard legal procedures for contesting or seeking reductions in assessment valuation, Tenant shall have the right to contest or dispute with Landlord whether, for the purpose of determining the PILOT due under this Lease, said attribution by the Department of Finance is correct and reasonable in the context of normal assessment practice in New York City, said contest to be resolved by an appropriate court. Tenant shall, during the pendency of such proceeding, comply with the provisions of Section 34.2(b) below.

Section 34.2. Imposition Contest Proceedings. Tenant shall have the right to contest, at its own cost and expenses, the amount or validity, in whole or in part, of any Imposition by appropriate proceedings diligently conducted in good faith, in which event, notwithstanding the provisions of Section 4.1 hereof, payment of such Imposition may be postponed if, and only as long as:

(a) neither the Premises nor any part thereof, could be, by reason of such postponement or deferment, in the reasonable judgment of the Landlord, in danger of being forfeited and if Landlord is not in danger of being subjected to criminal liability or penalty or civil liability or penalty in excess of the amount for which Tenant has furnished security as provided in Section 34.2(b) hereof by reason of nonpayment thereof, and

(b) Tenant has deposited with Depositary cash or other security reasonably satisfactory to Landlord in the amount so contested and unpaid, together with all interest and penalties in connection therewith and all charges relating to such contested Imposition that may or might be assessed against, or become a charge on the Premises or any part thereof in or during the pendency of such proceedings. Such deposit shall be held in an interest-bearing account or in negotiable city, state or federal government obligations held by Depositary. The provisions of this subsection (b) shall be deemed waived if a deposit or other security is maintained for the same purpose with a Recognized Mortgagee that is an Institutional Lender. Upon the termination of such proceedings, Tenant shall pay the amount of such Imposition or part thereof as finally determined in such proceedings, the payment of which was deferred during the prosecution of such proceedings, together with any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements), interest, penalties or other liabilities in connection therewith, and upon such payment, Depositary shall return to Tenant any amount or other security deposited with it with respect to such Imposition, together with the interest, if any, earned thereon. However, if Depositary is so requested by Tenant, Depositary shall disburse said moneys on deposit with it directly to the Person to whom or to which such Imposition is payable and, except as otherwise specifically provided herein, return any balance to Tenant. Except as provided above, if, at any time during the continuance of such proceedings, Landlord, in its reasonable judgment, shall deem insufficient the amount or nature of the security deposited,

Tenant, within ten (10) days after Landlord's demand, shall make an additional deposit of such additional sums or other acceptable security as Landlord reasonably may request, and upon failure of Tenant to so do, the amount theretofore deposited, together with the interest, if any, earned thereon, may, after not less than three (3) business days notice to Tenant, be applied by Landlord to the payment, removal and discharge of such Imposition and the interest and penalties in connection therewith and any costs, fees (including, without limitation, reasonable attorneys' fees and disbursements) or other liability accruing in any such proceedings and the balance, if any, remaining thereafter, together with the interest, if any, earned thereon and remaining after application by Landlord as aforesaid, shall be returned to Tenant or to the Person entitled to receive it. If there is a deficiency, Tenant shall pay the deficiency to Landlord or the Person entitled to receive it, within ten (10) days after Landlord's demand. Nothing contained in this shall be deemed to limit Tenant's obligation to make deposits provided for in Article 5 hereof.

Section 34.3. Requirement Contest. Tenant shall have the right to contest the validity of any Requirement or the application thereof. During such contest, compliance with any such contested Requirement may be deferred by Tenant, provided that Tenant shall comply with any such Requirement in accordance with the provisions of Section 16.1(a) hereof if the Premises, or any part thereof, are in danger of being forfeited or if Landlord is in danger of being subjected to criminal liability or penalty, or civil liability in excess of the amount for which Tenant shall have furnished security as hereinabove provided by reason of noncompliance therewith.. Any such Proceeding instituted by Tenant shall be commenced promptly after Tenant makes its election to contest such Requirement and shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested.

ARTICLE 35

PAYMENTS IN LIEU OF SALES TAXES

Section 35.1. PILOST. Notwithstanding anything to the contrary set forth herein, to the extent permitted by law, no sales or compensating use tax shall be payable with respect to the initial Construction of the Garages and/or Parking Lots and the Park Improvements with respect to materials incorporated into and becoming a permanent part of the Premises and exempt from sales and compensating use tax based upon the City's fee ownership of the Land, the Garages and the Park Improvements (nothing herein shall prevent Tenant from employing any exemption from sales and compensating use taxes which Tenant may enjoy). Landlord shall furnish Tenant with such letter or certificate as may be reasonably required for Tenant and its contractors to avail themselves of such tax exemption. With respect to any Construction Work undertaken thereafter, and with respect to any Construction Work on Site D, Tenant shall pay Landlord PILOST derived from any Construction Work, each such payment to be made within ninety (90) days after substantial completion of such Construction Work, and each such payment to be accompanied by a statement, certified by the chief operating officer or managing general partner of Tenant or a designee thereof, documenting the calculation of such payment. The foregoing notwithstanding, no PILOST shall be payable by Tenant to the extent that sales or compensating use tax would not be payable if Tenant were fee owner of the Premises, on account of Tenant's own exemption therefrom based on its not-for-profit status.

Section 35.2. Offset Against Rental. If it is determined by the appropriate taxing authority that any sales, compensating use or other similar taxes, the anticipated or assumed non-payment of which generated PILOST are payable by Tenant, or if any commercial rent or occupancy taxes are charged on any PILOST, then the amount of such taxes (including interest and penalties if not due to Tenant's fault) which Tenant has been compelled to pay may be deducted by Tenant from the Rental and any other sums payable hereunder by Tenant to Landlord until Tenant has recovered the full amount of such, provided that Tenant has notified Landlord in writing prior to payment of such taxes that a claim has been made therefor and will be diligently prosecuted by Tenant for the return thereof. If permitted by applicable law, Landlord has the right to contest the imposition of such taxes provided that neither Tenant's interest in the Premises nor any income derived by Tenant therefrom would, by reason of such contest, be forfeited or lost, or subject to any lien, encumbrance or charge, and Tenant would not by reason thereof be subject to any civil or criminal liability. In no event shall any payment to be made to Tenant hereunder by reason of sales, compensating use or similar taxes being charged to Tenant, exceed the PILOST paid to Landlord in lieu of such taxes pursuant to this Article.

Section 35.3. Application of PILOST. The proceeds of all PILOST shall be spent for purposes to be determined by Landlord, in its sole discretion, after consultation with Tenant.

Section 35.4. Definition. "PILOST" means an amount equal to the amount of the sales, compensating use and other similar tax savings realized by Tenant in connection with any Construction Work or purchase of Equipment by reason of Landlord's ownership of all or any part of the Premises.

Section 35.5. No As-of-Right Exemption for Subtenants. Notwithstanding the foregoing provisions of this Article, no Subtenant or any contractor or subcontractor or any Subtenant shall claim any sales tax exemption solely by virtue of the City's ownership of or Tenant's (as an organization exempt from local sales and use taxes) leasehold interest in the Premises, and Tenant shall either include such restriction in all direct Subleases, or give such Subtenants specific notice of this Article by registered or certified mail, return receipt requested.

ARTICLE 36

FINANCIAL REPORTS

Section 36.1. Statement. With respect to any period during the Term with respect to which Tenant derives any Revenue, Tenant shall furnish to Landlord the following:

(a) As soon as practicable after the end of each calendar quarter, and, in any event, within forty-five (45) days after the close of each calendar quarter, financial statements of the operations of the Premises (including, without limitation, balance sheets and income statements), indicating, without limitation (as applicable) Revenues, Project Expenses, Operations and Maintenance Expenses, Project Cash Flow, Additional Cash Flow Rent, deferred Base Rent (and interest thereon), deferred PILOT (and interest thereon), PILOST, and funds statements showing changes in financial position, and, in detail reasonably satisfactory to Landlord, the amount of, and components of, for such calendar quarter, setting forth, in accordance with Accounting Principles, in each case, in comparative form, the corresponding figures for the calendar quarter of the previous Lease Year, all in reasonable detail and certified by the chief financial officer of Tenant;

(b) as soon as practicable after the end of each Lease Year, and, in any event, by May 1 of each Lease Year, financial statements of the operations of the Premises (including, without limitation, balance sheets and income statements), indicating, without limitation (as applicable), Revenues, Project Expenses, Operations and Maintenance Expenses, Project Cash Flow, Additional Cash Flow Rent, deferred Base Rent (and interest thereon), deferred PILOT (and interest thereon), PILOST, and funds statements showing changes in financial position, and, in detail reasonably satisfactory to Landlord, the amount of, and components of, for the Lease Year, setting forth, in accordance with Accounting Principles, in each case, in comparative form, the corresponding figures for the previous Lease Year, all in reasonable detail and certified by the chief financial officer of Tenant;

(c) for as long as the City is Landlord and to the extent that the Administrative Code of the City of New York Section 11-208.1 (or successor thereto) is then in force and effect, income and expense statements of the type required by such code section (or successor thereto), or, an affidavit in lieu thereof as permitted under such statute for property which is not "income producing property", as if Tenant were the "owner" of the Premises as such term is used in said Section 11-208.1, such statements to be submitted within the time periods and to the address provided for in said Section 11-208.1 and shall be submitted notwithstanding that the City holds fee title to the Premises; and

(d) promptly after the receipt of any financial report or statement from any parking manager or operator pursuant to an agreement contemplated in Section 23.4(c) hereof, Tenant shall forward a copy of same to Landlord, or shall cause such manager or operator to deliver a copy of same directly to Landlord at the same time such report or statement is delivered to Tenant.

Section 36.2. Maintenance of Books and Records. Tenant shall keep and maintain at an office in New York City complete and accurate books and records of accounts of the operations of the Premises from which Landlord may determine for each Lease Year the items to be shown or set forth on the statements to be delivered to Landlord pursuant to Section 36.1 hereof and shall preserve, for a period of at least six (6) years after the end of each applicable period of time, the records of its operations of the Premises. However, if, at the expiration of such six (6) year period, Landlord is seeking to contest or is contesting any matter relating to such records or any matter to which such records may be relevant, Tenant shall preserve such records until one (1) year after the final adjudication, settlement or other disposition of any such contest. Tenant shall also promptly furnish to Landlord copies of all operating statements and financial reports from time to time furnished to each Recognized Mortgagee. In addition, Tenant shall keep, or cause any manager or operator of the Premises to keep, the books and records described in any parking management agreement contemplated in Section 23.4(c) hereof.

Section 36.3. Audit.

(a) Inspection and Audits of Books and Records. Landlord, the Comptroller of New York City (the "Comptroller") and/or Landlord's agents or representatives shall have the right from time to time during regular business hours, upon two (2) business days' notice, to inspect, audit and, at its option, duplicate, at Landlord's expense, all of Tenant's books and records and all other papers and files of Tenant relating in any manner to the Premises or to this Lease for the period for which Tenant is required to maintain its records as provided in Section 36.2. If the Comptroller establishes a policy allowing the City to provide in future leases similar to this Lease for a right to audit that extends less than the six (6) year period provided in Section 36.2 hereof, then such shorter period shall be applicable hereunder, but in no event shall such period be less than one (1) year. Tenant shall produce such books, records, papers and files upon request of Landlord, the Comptroller and/or Landlord's agents or representatives. Subject to applicable law, Landlord and the Comptroller shall hold in confidence, and shall cause Landlord's agents an representatives to hold in confidence, all information obtained from Tenant's books, records, papers and files, except as may be necessary for the enforcement of Landlord's rights under this Lease.

(b) Notice to Tenant of Contests. As soon as practicable after receipt of financial statements of Tenant pursuant to Section 36.1(b) hereof, Landlord shall respond by notifying Tenant (with a copy to any Recognized Mortgagee) whether it (i) accepts the contents therein or (ii) contests the contents therein. If Landlord fails to provide the Tenant with either such response within one hundred-twenty (120) days from receipt of Tenant's financial statements, Tenant may request such response by notice to Landlord. Upon receipt of such request, Landlord shall respond in writing within thirty (30) days. Landlord's failure to respond within said thirty (30) day period shall be deemed approval of the financial statements in question, subject, however, to further audit by the Comptroller. Provided that Landlord timely notifies Tenant, if audit of Tenant's financial statements performed by Landlord and/or Landlord's agents or representatives has disclosed that any Rental was underpaid or otherwise has information that shows an underpayment of (or on account of) Rental, such underpayment shall be paid (or become obligated to be paid in the case of deferred Rental) to Landlord within ten (10) days after Tenant has received notice of such underpayment from Landlord, together

with interest thereon at the Late Charge Rate.

(c) Tenant's Payment of Audit Costs. If an audit of Tenant's financial statements reveals that a Rental payment was understated by more than ten percent (10%) of the amount originally claimed by Tenant with respect to such payment, Tenant shall pay, within (10) days after demand, subject to the payment limitation contained in Exhibit H, the reasonable cost of such audit.

(d) Limitation of Damages. Landlord's right to collect damages for the underpayment of any of the foregoing payments shall be limited to the amounts provided in this Section 36.3; provided, that the foregoing shall not limit Landlord's rights with respect to an Event of Default.

Section 36.4. Survival Clause. The obligations of Tenant under this Article shall survive the Expiration of the Term.

ARTICLE 37

RECORDING OF LEASE

Landlord and Tenant shall promptly execute a memorandum of this Lease and of any amendments hereto and Tenant shall cause such memoranda to be recorded in the Office of the Register of The City of New York (Bronx County) promptly after the execution and delivery of this Lease or any such amendments and shall pay and discharge all costs, fees and taxes in connection therewith.

ARTICLE 38

NO SUBORDINATION

Except as otherwise specifically provided herein, Landlord's fee interest in the Premises and in this Lease, as the same may be modified, amended or supplemented, shall not be subject or subordinate to (a) any Mortgage now or hereafter existing, (b) any other liens or encumbrances hereafter affecting Tenant's interest in this Lease and the leasehold estate created hereby or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises. This Lease and the leasehold estate of Tenant created thereby and all rights of Tenant hereunder are and shall be subject to the reservations set forth in Article 2 hereof and the Title Matters.

ARTICLE 39

NONDISCRIMINATION AND AFFIRMATIVE ACTION

Section 39.1. Nondiscrimination and Affirmative Action.

(a) Obligations. So long as New York City shall be Landlord, Tenant shall be bound by the following requirements:

1. Tenant will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, lay-off and termination and all other terms and conditions of employment;

2. Tenant will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

3. Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (ii) that Tenant is an equal opportunity employer;

4. Tenant will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment," and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write the Division of Labor Services of the Department of Business Services, General Counsel's Office, 110 William Street, New York, New York 10038 (212-513-6300)";

5. Tenant, as "Owner" (as such term is used in AIA Form 201), will include, or cause to be included, the following provisions in every construction contract of $1,000,000 or more or subcontract of $750,000 or more in such a manner that the provision will be binding upon all contractors and subcontractors, and will cause each contractor or subcontractor engaged in Construction Work to comply with the following provisions. Landlord reserves the right to inspect all contracts and subcontracts prior to execution to ensure that the required language is included:

By signing this contract, contractor agrees that it:

(1) Will not engage in any unlawful discrimination against any employee or job applicant because of race, creed, color, national

origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but to limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprentice-ship, layoff and termination and all other terms and conditions of employment;

(2) will not engage in any unlawful discrimination in the selection of contractors on the basis of the owner's, partner's or shareholder's race, creed, color, national origin, sex, age, disability, marital status or sexual orientation;

(3) will state in all solicitations or advertisements for employees placed by or on behalf of contractor (i) that all qualified job applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or (ii) that contractor is an equal opportunity employer;

(4) will inform its employees in writing that it "treats all employees and job applicants without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, transfer, lay-off and termination and all other terms and conditions of employment, "and that "[i]f you feel that you have been unlawfully discriminated against, you may call or write Division of Labor Services of the Department of Business Services, General Counsel's Office, 110 William Street, New York, New York 10038 (212-513-6300)".

Section 39.2. Cooperation by Tenant. Tenant shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by any Governmental Authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a Governmental Authority that is

a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry. If:

(a) any Person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with New York City, the State of New York or any political subdivision or public authority thereof, or The Port Authority of New York and New Jersey, NYCEDC or any local development corporation, or any public benefit corporation organized under the laws of the State of New York, or

(b) any Person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a Governmental Authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of a Governmental Authority that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with New York City, the State of New York, or any political subdivision thereof, NYCEDC or any local development corporation within New York City,

then the commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

Section 39.3. Adjournments of Hearing, Etc. If Tenant or any agent, employee or associate of Tenant requests an adjournment in any proceeding investigating the events surrounding the negotiation and consummation of this Lease of up to thirty (30) days, such adjournment shall be granted. If a further adjournment is sought it must be done by a written request to the agency head or commissioner who convened the hearing, at least three (3) Business Days prior to the scheduled hearing date, setting forth the reasons for the request. If the commissioner or agency head denies the request for an additional adjournment, then Tenant, its agent, employee or associate must appear at the scheduled hearing or commence an action to obtain a court order, pursuant to Article 78 of the Civil Practice Laws and Rules, substantiating a claim that the denial of the adjournment was capricious or arbitrary. If Tenant, its agent, employee or associate fails to appear at the rescheduled hearing or to diligently pursue such judicial relief, as the case may be, then, if in the sole judgment of the commissioner or agency head the failure to appear would have a material adverse effect on the investigation, the commissioner or agency head who convened the hearing may suspend this Lease pending the final determination pursuant to Section 39.4 below without the City incurring any penalty or damages for delay or otherwise; provided, that the right to suspend this Lease shall not be invoked if Tenant shall have discharged or disassociated itself from such agent, employee or associate and said agent, employee or associate is not reemployed either directly or indirectly or otherwise compensated by Tenant.

Section 39.4. Penalties. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(a) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any Person, or any entity of which such Person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from New York City or NYCEDC, and/or

(b) The cancellation or termination of any and all such existing New York City or NYCEDC contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease, nor the proceeds of which pledged, to an unaffiliated and unrelated Recognized Mortgagee for fair value prior to the issuance of the notice scheduling the hearing, without New York City or NYCEDC incurring any penalty or damages on account of such cancellation or termination. Monies due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the City.

Section 39.5. Criteria for Determination. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subsections (a) and (b) below. He or she may also consider, if relevant and appropriate, the criteria established in subsections (c) and (d) below in addition to any other information which may be relevant and appropriate;

(a) the entity's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge or disassociation of any Person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought;

(b) the relationship of the Person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the Person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the Person has within the entity;

(c) the nexus of the testimony sought to the subject entity and its contract, leases, permits or license with New York City and/or NYCEDC;

(d) the effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 39.3 above, provided, that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 39.2 above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

Section 39.6. Solicitation. In addition to, and notwithstanding any other provision of this Lease, the commissioner or other agency head whose agency is a party in interest to this Lease may declare a Default under this Lease in the event Tenant fails to promptly

report in writing to the Commissioner of Investigation of The City of New York, any solicitation from Tenant or Principals of Tenant of money, goods, requests or future employment or other benefit or thing of value, which request is made by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Lease by Tenant or affecting the performances of Tenant's obligations under this Lease. Tenant may cure such Default by removing such Principal of Tenant and causing him to divest himself from any interest in this Lease or the Premises.

Section 39.7. Definitions. As used in this Article:

The term "license" or "permit" shall mean a license, permit, franchise or concession not granted as matter of right.

The term "entity" shall mean any firm, partnership, corporation, association or Person that receives moneys, benefits, licenses, leases or permits from or through New York City or otherwise transacts business with New York City.

The term "member" shall mean any Person associated with another Person or entity as a partner, director, officer, principal or employee.

Section 39.8. Employment Reporting and Requirements.

(a) Within seven (7) days after execution of this Lease, Tenant, if it has not already done so, shall complete and deliver to NYCEDC a questionnaire, on the form prescribed by NYCEDC, setting forth, in substance, how many and what types of jobs it in good faith estimates will be created or retained at the Premises when the Construction of each Garage, Parking Lot and/or Park Improvements is complete and ready for occupancy, and such supplementary documentation as may be required by the form (the "Questionnaire").

(b) Tenant shall cause each Sublease entered into before the fifth (5th) anniversary of the Substantial Completion Date (x) to provide either that the Subtenant under such Sublease shall furnish employment reports (in the form attached hereto as Exhibit R) to NYCEDC or that said Subtenant shall furnish such reports to Tenant, and (y) to provide that said Subtenant shall cooperate with City employment opportunity programs, in the manner more particularly set forth below. Tenant shall include (or, in the case of Subtenants who are governmental entities, use reasonable efforts to include) in each Sublease entered into before the fifth (5th) anniversary of the Substantial Completion Date a covenant by the Subtenant, for itself, its Subtenants and any assignee, to do each of the following:

(i) in good faith to consider such proposals as the City or City-related entities may make with regard to filling employment opportunities created at the Premises;

(ii) to provide the City and such entities with the opportunity (A) to refer candidates who are City residents having the requisite experience for positions at the Premises, and (B) to create a program to train City residents for those jobs; and

(iii) for each July 1 - June 30 period included in whole or in part in the period ending on the seventh (7th) anniversary of the commencement of this Sublease, to report to Tenant or NYCEDC (the Sublease to provide which), by October 1 of the following year, the gross number of jobs at the demised premises at the end of the prior calendar year and the number of employees at the demised premises at the end of the prior calendar year who were New York City residents (if the Sublease provides that the reports are to be submitted to NYCEDC, said reports shall be on a form to be provided by NYCEDC).

(c) (Intentionally omitted)

(d) Tenant, by October 1 of each year, for each prior July 1 - June 30 period included in whole in part in the period from the Substantial Completion Date until the seventh (7th) anniversary of the commencement of the last Sublease entered into prior to the fifth (5th) anniversary of the Substantial Completion Date shall submit to NYCEDC a certificate (the "Certificate"), certified by its managing general partner (or, if a corporation, its president), setting forth as of the end of the prior calendar year (1) the names, addresses and contact persons of all Subtenants, (2) the number of square feet of space leased by each Subtenant, and (3) with regard to Subtenants required at any time during the prior calendar year to submit information to Tenant as provided above, the number of employees of each Subtenant at the Premises and the number of such employees who were New York City residents, to the extent such information has been supplied to Tenant, and if not supplied to Tenant, then Tenant's own best estimate of such numbers. Each such Certificate must be accompanied by a certificate of an officer or managing partner, or president of Tenant stating that the Certificate is a correct summation of reports received from Subtenants and identifying which Subtenants did not submit reports and the number of square feet of space Subleased by such Subtenants. Tenant must retain all backup documents relating to any Certificate in its office until at least one year after submittal of such Certificate to NYCEDC. NYCEDC and its agents and employees shall be permitted to inspect and copy such documents during normal business hours.

(e) Tenant shall also comply with the Sublease notification provisions contained in Article 10 hereof.

(f) The above obligations of Tenant are for the benefit of NYCEDC and the City and may be enforced at the expense of the Tenant by NYCEDC or the City (or the designee of either).

(g) Tenant agrees to cooperate fully with the City and NYCEDC and their designees in enforcing against Subtenants the covenants and requirements referred to in paragraphs (b) and (d) of this Section 39.8; provided, however, that the City shall reimburse Tenant for any out-of-pocket litigation costs resulting from such cooperation and that a failure by a Subtenant to meet its obligations under its Subleases as described in paragraphs (b) and (d) of this Section 39.8 shall not constitute a Default under this Lease, although it shall create a right in the City and NYCEDC, and their designees, to pursue equitable enforcement of such obligations against such Subtenants. Upon demand made by NYCEDC or the City or their designees, as the

case may be, Tenant shall assign to NYCEDC or the City or their designees, Tenant's cause of action and legal rights to enforce such covenants and requirements or otherwise permit Landlord or the City or their designees to enforce such covenants and requirements.

(h) The City and NYCEDC and their designees shall be entitled to seek equitable relief in the event that Tenant or any Subtenant should fail to fulfill any of its obligations contained in this Section 39.8.

(i) Tenant agrees to submit to NYCEDC on August 1st of each Lease Year a completed Employment and Benefits Report in the form attached hereto as Exhibit R attached hereto.

(j) References to the City and NYCEDC in this Article 39 shall be construed to include their respective designees.

Section 39.9. Tenant Covenants. Tenant covenants and agrees, for and on behalf of itself, its successors and assigns, and every successor in interest to the Premises, or any part thereof, to be bound by the following covenants, which shall be binding for the benefit of Landlord and enforceable by Landlord against Tenant and its successors and assigns to the fullest extent permitted by law and equity:

(a) Tenant, its successors and assigns, and any lessees of the Premises, or any part thereof, shall comply with all applicable federal, state, and local laws in effect from time to time prohibiting discrimination or segregation by reason of age, race, creed, religion, sex, color, national origin, ancestry, sexual orientation or affectional preference, disability, or marital status (collectively, "Prohibited Distinctions") in the sale, lease, or occupancy of the Premises.

(b) Tenant, its successors and assigns, shall not effect or execute any agreement, lease, conveyance, or other instrument whereby the sale, lease or occupancy of the Premises, or any part thereof, is restricted upon the basis of any Prohibited Distinction.

(c) Tenant, its successors and assigns, and any lessees of the Premises, or any part thereof, shall include the covenants of (a) and (b) in any agreement, lease, conveyance, or other instrument with respect to the sale, lease or occupancy of the Premises entered into after the date hereof.

ARTICLE 40

COVERAGE RATION AND AVAILABILITY OF MONEYS

Section 40.1. Effective Period. The provisions of this Article 40 shall only become effective upon (x) a transfer by foreclosure sale of Tenant's right of possession to the Premises or an assignment in lieu of foreclosure of Tenant's right of possession to the Premises by the Trustee under the IDA Indenture acting as the Recognized Mortgagee or (y) the execution of a new lease between Landlord and the Trustee under the IDA Indenture acting as the Recognized Mortgagee or its nominee or designee pursuant to Section 11.4 hereof. The provisions of this Article 40 shall cease to be effective upon the first date upon which there is no debt (as such debt may have been modified, assigned or refinanced) outstanding which was incurred to refinance or replace the IDA Bonds or to finance the purchase of Tenant's right of possession to the Premises at a foreclosure sale or by assignment in lieu of foreclosure by the Trustee under the IDA Indenture acting as the Recognized Mortgagee, provided that the principal amount of any such debt shall not exceed the principal amount of the IDA Bonds outstanding at the time of such action (the "Obligations").

Section 40.2. Definitions. For all purposes of this Article 40, the following terms shall have the following meanings:

Annual Debt Service Requirements shall mean, for any Fiscal Year of Tenant for which such determination is made, the aggregate of the payments to be made in respect of the principal of and interest on the Obligations outstanding during such Fiscal Year of Tenant.

Coverage Ratio shall mean, for any Fiscal Year of Tenant commencing with the Fiscal Year of Tenant ending December 31, 2010, the ratio of

(i) the Net Operating Revenues for and attributable to such Fiscal Year of Tenant, to

(ii) the Annual Debt Service Requirements for such Fiscal Year of Tenant.

Fiscal Year of Tenant shall mean a calendar year or such other year of similar length as to which Tenant shall have given prior written notice thereof to Landlord at least ninety (90) days prior to the commencement thereof; provided that in no event shall there be any period not a part of the Fiscal Year of Tenant in the event of a change in the commencement or ending of such period.

Independent Parking Consultant shall mean any of (i) DESMAN Associates, a Division of DESMAN, Inc., (ii) Urbitran, Inc., or (iii) Rich & Associates, Inc., or such other person of recognized standing, experienced in reviewing and assessing parking facilities comparable to the Parking Facilities, selected by the Tenant and approved in writing by the Recognized Mortgagee.

Management Agreement shall mean that certain Management Agreement, of event date herewith,, between Tenant and the Operator, and shall include any and all amendments thereof and supplements thereto and substitute agreements therefor hereafter made.

Maximum Reserve Amount shall mean an amount equal to 125% of the amount required to be on deposit in the Renewal and Replacement Fund, the Debt Service Reserve Fund and the Operations Reserve Fund (as such Operations Reserve Fund may escalate at the same rate as the Final Budget escalates) established under the IDA Indenture at the time that Article 40 of this Lease first becomes effective. For purposes of this Article 40, the Operating Reserve Account established under the Management Agreement shall not be deemed to be a reserve or escrow account, and any replenishment thereof shall be an Operations and Maintenance Expense.

Net Operating Revenues shall mean, for any period, the Revenues for such period, less

(i) Operations and Maintenance Expenses, capital costs and repair and replacement costs paid or incurred during the period;

(ii) all amounts required to be deposited in any reserve or escrow account, pursuant to the terms of the documents evidencing, securing or otherwise relating to the Obligations, but only to the extent necessary to fund a deficiency in such reserve or escrow account existing as of the start of the period; provided that in no event shall the aggregate amounts on deposit in all such reserve and escrow accounts exceed the Maximum Reserve Amount; and

(iii) Revenues resulting from investment earnings on any amounts held in any reserve or escrow account, pursuant to the terms of the documents evidencing, securing or otherwise relating to the Obligations; Revenues as shall derive from any condemnation awards, casualty insurance proceeds or other insurance proceeds (except business interruption insurance or extra expense insurance), and any and all other unearned Revenues.

Operations and Maintenance Expenses shall mean Tenant's expenses incurred for operation, maintenance and repairs and recurring and ordinary renewal, replacement and reconstruction of the Premises, including, without limitation, the cash expenses of operating the Premises, all amounts paid to Landlord under this Lease (excluding Base Rent, PILOT, together with all interest accruing on any such amounts as provided in this Lease, and Additional Cash Flow Rent), all amounts paid to the Operator under the Management Agreement (including any amounts required to replenish any operating reserves held by the Operator, all as permitted by the Management Agreement), amounts due with respect to the Start-Up Working Capital Loan, all costs, charges and administrative expenses for: salaries and wages and associated payroll burden (including, without limitation, payroll taxes, fringe benefits, and payroll processing charges); license and permit fees; compliance with governmental laws and regulations; uniforms, supplies, tools and cleaning; maintenance and repair; telephone; elevator contract charges; utility charges; bookkeeping and administrative services; automobile allowances; employee recruitment, training and ongoing employee relations; computerized accounts receivable service; banking and credit card system services; manual bank reconciliation charges; annual audit charges; postage and freight; radios; tickets, paper, stationary and reporting forms; accounts payable and insurance claims processing; health insurance, workers' compensation insurance, automobile insurance (where applicable), garagekeeper's legal liability insurance, general public liability insurance and comprehensive crime insurance charges and deductibles (plus attorney's fees and court costs to defend Tenant and/or the Operator in actions brought to recover damages

for such losses) and losses due to theft or robbery, and any other insurance costs required by this Lease; general and commercial expenses, fuel, insurance, water, property taxes, costs of obtaining and maintaining exemption from property taxes pursuant to the Industrial and Commercial Incentive Program and otherwise, Sales Tax Expenses, if any, taxes, Impositions, sewage and other expenses appropriate and necessary to the continued operation, maintenance, repair, replacement and management of the Premises, all to the extent properly and directly attributable to the Premises, and all as determined in accordance with GAAP, and the expenses, liabilities and compensation of the Independent Parking Consultant, and the expenses, liabilities and compensation of the Depositary required to be paid for services rendered pursuant to the provisions of this Lease, but not including (x) reserves for operation, maintenance or repair (other than reserves for such purpose to the extent permitted under the Management Agreement) or any allowance for depreciation, amortization, principal of and interest on indebtedness (other than amounts due with respect to the Start-Up Working Capital Loan), or similar charges, or (y) amounts due under or with respect to the Obligations.

Operator shall mean Standard Parking Corporation, a corporation organized and existing under the laws of the State of Delaware, and its permitted successors and assigns and replacements under the Management Agreement.

Revenues shall mean any and all gross rentals, revenues, income, receipts, fees, charges, proceeds and amounts of any kind (and anything else of value) actually received by Tenant or any affiliate of Tenant from any source or otherwise from or in connection with, or directly or indirectly arising out of the Premises or any part thereof, including, without duplication, (w) amounts received from or in respect of fixed rental, minimum rental, rental computed on the basis of sales or other criteria, additional rental, escalation rental, tenant security deposits applied in payment of any rental, proceeds of insurance paid in lieu of rental and proceeds of insurance pertaining to the Premises or any portion thereof, Restoration Funds, parking revenues, fees and charges of every kind and nature, revenues, fees and charges under any and all management, service and license agreements, payments for electricity, air conditioning and cleaning, payments providing goods or services of any kind to any subtenants or patrons in connection with the use, occupation or operation of the Premises or any portion thereof, even if such goods or services are provided from a location off-site from the Premises, parking revenues, fees and charges of every kind and nature, and revenues, fees and charges under any and all management, service and license agreements, (x) payment received by Tenant or the Operator, or an affiliate of Tenant or of the Operator, for concessions, licenses or agreements granted to third parties or affiliates in connection with the providing of any such goods or service, (y) revenues, fees and charges from advertising, concessions, vending machines, public telephones, internet access, services and vendors, and (z) the proceeds of business interruption insurance and extra expense insurance, condemnation awards, casualty insurance proceeds and rental insurance attributable to the Premises or any portion thereof, as well as any liquidation, damage or other like payments made to Tenant pursuant to any agreement relating to the operation, management or maintenance of the Premises, but excluding (i) any funds received in connection with the construction of the property constituting the Park Premises or the Park Improvements, and (ii) any net proceeds derived from damage or destruction or a taking of all or Substantially All of the Premises.

Sales Tax Expenses shall mean any sales, use, excise, occupancy, gross receipts, parking or other tax or charge imposed by governmental authorities with respect to the Garages and/or the Parking Lots including the operations thereof and the Revenue therefrom.

Start-Up Working Capital Loan shall mean that certain unsecured loan in the principal amount of $500,000 made by Prismatic Development Corporation to Tenant on the Closing Date for the purposes of providing start-up working capital to the Tenant.

Section 40.3. Coverage Ratio. Tenant covenants to prepare and deliver a Final Budget (as hereinafter defined) for each Fiscal Year of Tenant. In consultation with the Operator, Tenant shall deliver to an Independent Parking Consultant a preliminary budget (the "Preliminary Budget") showing the rates, fees, charges and other amounts to constitute Revenues for the use of and for the goods and services furnished or to be furnished at the Premises such that the Coverage Ratio for the next succeeding Fiscal Year of Tenant shall be at least 1.15x (or 1.25x if such ratio was in effect as of the prior Fiscal Year), such covenant of Tenant being referred to as the "Rate Covenant". If the Annual Debt Service Requirements on the Obligations for any Fiscal Year of Tenant exceed an amount equal to 125% of the amount set forth in Exhibit H hereto for such Fiscal Year of Tenant, or, if such Fiscal Year of Tenant is later than the last calendar year set forth in Exhibit H hereto, 125% of the amount set forth for the last calendar year included in Exhibit H hereto, then the Rate Covenant for such Fiscal Year of Tenant shall be calculated based on Annual Debt Service Requirements equal to 125% of the amount set forth in Exhibit H hereto for such Fiscal Year of Tenant and not on any greater Annual Debt Service Requirements. For purposes of this definition, the amounts set forth on Exhibit H shall be deemed to include any debt service payments due on any additional bonds or other debt obligations relating to the Premises. In the event the Independent Parking Consultant shall object to the Preliminary Budget in any material respect, Tenant shall have the opportunity to present alternatives to the Independent Parking Consultant or to seek the opinion of a different Independent Parking Consultant that the Preliminary Budget is reasonable. The governing body of Tenant shall approve a final budget which complies with the Rate Covenant (the "Final Budget") by such date as shall enable Tenant to implement the rates, fees, charges and other amounts to constitute Revenues as of the commencement of the immediately succeeding Fiscal Year of Tenant. The Tenant shall obtain a written opinion of an Independent Parking Consultant to the effect that the Final Budget is reasonable.

Section 40.4. Availability of Moneys.

(a) For purposes of Section 3.4(a)(ii) hereof, moneys shall be deemed to be available to Tenant for the payment of Base Rent and PILOT due and owing pursuant to Sections 3.2 and 3.3 hereof and any interest accrued thereon pursuant to Section 3.4(b) hereof (i) only if Tenant shall have adopted a Final Budget that complies with the Rate Covenant and (ii) only to the extent that, for the Fiscal Year of Tenant next preceding the date any payment of Base Rent, PILOT or any interest accrued thereon is due and payable pursuant to Section 3.2 or 3.3 hereof, the Revenues for such Fiscal Year of Tenant exceeded the sum of (x) the Operations and Maintenance Expenses, (y) the Annual Debt Service Requirements for such Fiscal Year of Tenant and (z) the sum of all other amounts required to be deposited in any reserve or escrow account in such Fiscal Year of the Tenant pursuant to the terms of the documents evidencing, securing or otherwise relating to the Obligations; provided that in no

event shall the aggregate amount on deposit in all such reserve or escrow accounts exceed the Maximum Reserve Amount.

(b) For purposes of Section 3.5 hereof, moneys shall be deemed to be available to Tenant for the payment of Additional Cash Flow Rent (i) only if Tenant shall have adopted a Final Budget that complies with the Rate Covenant and (ii) only to the extent that, for the Fiscal Year of Tenant next preceding the date any payment of Additional Cash Flow Rent is due and payable pursuant to Section 3.5 hereof, surplus funds are available to the Tenant after (A) the payment of all other amounts otherwise due and payable under this Lease and (B) the payment of all other amounts required to be paid, and the deposit of all other amounts required to be deposited in any reserve or escrow account (provided that in no event shall the aggregate amount on deposit in all such reserve or escrow accounts exceed the Maximum Reserve Amount), pursuant to the terms of the documents evidencing, securing or otherwise relating to the Obligations.

ARTICLE 41

MISCELLANEOUS

Section 41.1. Captions. The captions of this Lease are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease or in any way affect this Lease.

Section 41.2. Table of Contents. The Table of Contents is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Lease.

Section 41.3. Reference to Landlord and Tenant. The use herein of the neuter pronoun in any reference to Landlord and Tenant shall be deemed to include any individual Landlord or Tenant, respectively, and the use herein of the words "successors and assigns" or "successors or assigns" of Landlord or Tenant shall be deemed to include the heirs, legal representatives and assigns of any individual Landlord or Tenant, respectively.

Section 41.4. Relationship of Landlord and Tenant. This Lease is not to be construed to create a partnership or joint venture between the parties, it being the intention of the parties hereto only to create a landlord and tenant relationship.

Section 41.5. Person Acting on Behalf of a Party Hereunder. If more than one Person is named as, or becomes a party hereunder, the other party may require the signatures of all such Persons in connection with any notice to be given or action to be taken hereunder by the party acting through such Persons. Each Person acting through or named as a party shall be fully liable for all of such party's obligations hereunder, subject to Section 41.8 hereof. Any notice by a party to any named as the other party shall be sufficient and shall have the same force and effect as though given to all Persons acting through or named as such other party.

Section 41.6. Limited Liability. (a) Landlord. The liability of Landlord hereunder for damages or otherwise shall be limited to Landlord's interest in the Premises, the proceeds of any insurance policies relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof. Neither Landlord nor any of the directors, officers, employees, shareholders, agents or servants of Landlord shall have any liability (personal or otherwise) hereunder beyond Landlord's interest in the Premises and this Lease. No other property or assets of Landlord or any property of the directors, officers, employees, shareholders, agents or servants of Landlord shall be subject to levy, execution or other enforcement procedure for the satisfaction of Tenant's remedies hereunder. Notwithstanding anything herein contained to the contrary, Landlord's interest in the Premises and this Lease shall not be deemed to include (i) any rights, claims or interests of New York City that may arise at any time from, or be a result of, its acting in its governmental capacity, or (ii) any rents, issues or proceeds from, or in connection with, the Premises which have been distributed by New York City. The provisions of this Section 41.6(a) shall survive the Expiration of the Term.

(b) Tenant. The liability of Tenant hereunder for damages or otherwise shall be limited to Tenant's interest in this Lease and the Premises, the proceeds of any insurance policies relating to the Premises, any awards payable in connection with any condemnation of the Premises or any part thereof, and all income, revenues and earnings derived or to be derived from the Premises. Neither Tenant nor any of the directors, officers, employees, shareholders, agents or servants of Tenant shall have any liability (personal or otherwise) hereunder beyond Tenant's interest in the Premises and this Lease as aforesaid. No other property or assets of Tenant or any property of the directors, officers, employees, shareholders, agents or servants of Tenant shall be subject to levy, execution or other enforcement procedure for the satisfaction of Landlord's remedies hereunder. Notwithstanding anything herein contained to the contrary, Tenant's interest in the Premises and this Lease shall not be deemed to include any income, revenue and earnings from, or in connection with, the Premises which have been distributed by Tenant. The provisions of this Section 41.6(b) shall survive the Expiration of the Term.

Section 41.7. Landlord's Remedies Cumulative. Each right and remedy of Landlord provided for in this Lease shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by Landlord of any one or more of the rights or remedies provided for in this Lease, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

Section 41.8. Lease Administrator. Tenant understands that, until Tenant is notified to the contrary by Landlord or Lease Administrator, Lease Administrator will administer this Lease on behalf of Landlord, and unless and until such notice is received, Tenant agrees to accept from Lease Administrator any notices of default, notices of termination, bills, invoices and any other notices and demands executed and/or delivered by Lease Administrator (or any entity designated by Lease Administrator to act on its behalf) as having been fully authorized by Landlord and having the same force, effect and validity as if executed and/or delivered by Landlord.

Section 41.9. Merger. There shall be no merger of this Lease or the leasehold estate created hereby with the fee estate in the Premises or any part thereof by reason of the same Person acquiring or holding, directly or indirectly, this Lease and the leasehold estate created hereby or any interest in this Lease or in such leasehold estate as well as the fee estate in the Premises.

Section 41.10. Performance at Tenant's Sole Cost and Expense. Except as otherwise specifically provided herein, when Tenant exercises any of its rights, or renders or performs any of its obligations hereunder, Tenant hereby acknowledges that it shall so do at Tenant's sole cost and expense.

Section 41.11. Waiver, Modification, Etc. No covenant, agreement, term or condition of this Lease to be performed or complied with by either party, and no Default thereof by Tenant or Landlord's failure to perform them shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or

termination executed by the other party. No waiver of any Default shall affect or alter this Lease, but each and every covenant, agreement, term and condition of this Lease shall continue in full force and effect with respect to any other then existing or subsequent Default thereof.

Section 41.12. Depositary Charges and Fees. Tenant shall pay any and all fees, charges and expenses owing to Depositary in connection with any services rendered by Depositary pursuant to the provisions of this Lease.

Section 41.13. Ownership of Deposited Funds. Subject to application in accordance with the terms of this Lease, all funds held by Depositary pursuant to this Lease, while held by Depositary, shall be and shall be deemed to be the property of Landlord.

Section 41.14. Governing Law. This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York.

Section 41.15. Successors and Assigns. The agreements, terms, covenants and conditions herein shall be binding upon Landlord and Tenant, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 41.16. Change in Policy. If at any time, Landlord shall cease to require provisions similar to the provisions of Sections 39.1, Section 39.9 or Section 41.17 hereof in its ground leases with developers, or if such provisions in such other ground leases with Tenant or an Affiliate of Tenant are less restrictive than the provisions of Section 39.1, Section 39.9 or Section 41.17 hereof, then the provisions of such Section shall be deemed modified to conform to such less restrictive provisions, or if such other ground leases with Tenant or an Affiliate of Tenant omit provisions dealing with the subject matter described in such Section altogether, then such Section shall be deemed terminated and of no further force or effect.

Section 41.17. Indictment.

(a) If any grand jury impaneled by any Federal or State court files an indictment with such court charging Tenant or any Principal of Tenant (such indicted Person, the "Indicted Party") with having committed an intentional felony in connection with the Project or any other matter , then Landlord shall convene a hearing (the "Hearing") before a panel of three persons consisting of (x) the City's Deputy Mayor for Economic Development and Rebuilding, (y) the President of NYCEDC, and (z) the Corporation Counsel of the City, or a duly authorized designee of any of them, or such substitute persons as the City's Mayor may designate (the "Hearing Officers"). Such hearing shall be held upon not less than forty-five (45) days' written notice to the Indicted Party and Tenant for the purpose of determining whether it is in the best interest of the City to require the Indicted Party to assign its interest in this Lease or in Tenant, to an Assignee reasonably acceptable to Landlord, or to reassign its office, as the case may be. At the Hearing, Tenant and the Indicted Party shall have the opportunity to be represented by counsel and to make a presentation to the Hearing Officers orally and in writing. The Hearing Officers shall consider and address in reaching their determination (x) the nexus of the conduct charged in the indictment to this Lease, (y) the deleterious effect which an assignment of the Indicted Party's interest in this Lease or in Tenant, as the case may be, would have on the

economic development interests of the City which this Lease is intended to promote, and (z) any other relevant matters. The Hearing Officers shall render a decision in writing within twenty (20) days of the last day of the Hearing. If the Hearing Officers decide by a majority vote that it is in the best interest of the City to require an assignment or resignation by the Indicted Party, as applicable, then Landlord shall notify the Indicted Party and Tenant of the Hearing Officers' decision within five (5) days of the date thereof. The Indicted Party shall assign its interest, to an Assignee Reasonably Satisfactory to Landlord, within six (6) months, or resign its office, within thirty (30) days as applicable, of the date of the notice of such decision by the Hearing officers. The Indicted Party may receive the consideration for such assignment in installment payments, provided that such consideration shall be for a sum certain (if paid in money) and that following such assignment the Indicted Party shall have no further interest in the Project or in any profits therefrom.

(b) Any failure of (i) the Indicted Party to assign its interest in this Lease or in Tenant, as applicable, to an Assignee Reasonably Satisfactory to Landlord, or resign its office, as the case may be, following a Conviction within the time and in the manner provided hereunder, shall be deemed to be a Default by Tenant hereunder. Upon the occurrence of such Default, Landlord and the Recognized Mortgagee shall have all of the rights and remedies provided hereunder in the case of a Default by Tenant.

"Assignee Reasonably Satisfactory to Landlord" means any Person who is (x) a Recognized Mortgagee or (y) neither (i) a Prohibited Person nor (ii) controlled by, controlling, or under common control with an Indicted Party and who is either (A) a Person (including an Affiliate of the Indicted Party) who is satisfactory to the Recognized Mortgagee and who is financially capable of performing the Indicted Party's obligations as set forth hereunder or (B) a Person (other than an Affiliate of the Indicted Party) who is acting in a fiduciary capacity as an independent trustee for the benefit of the Indicted Party for the purpose of actively managing this Lease or the Indicted Party's Interest in Tenant, as the case may be. The trust agreement between the Indicted Party and the trustee shall be reasonably satisfactory to Landlord and the Recognized Mortgagee. The trust agreement shall provide in substance, inter alia, as follows:

(i) If (x) the Indicted Party is found not guilty of the felony for which it is indicted by a court of competent jurisdiction or (y) the felony charges against such Indicted Party are dismissed, then the trustee shall reassign the Indicted Party's interest in Tenant or in this Lease, as the case may be, to the Indicted Party.

(ii) If (x) the Indicted Party is found guilty of the felony for which it is indicted by a court of competent jurisdiction and such verdict is affirmed by the court having ultimate jurisdiction to hear an appeal of such conviction or the period of appeal expires or the Indicted Party waives any right to appeal such determination or (y) the Indicted Party pleads guilty to the felony for which it is indicted (either (x) or (y) above, a "Conviction"), then the trustee shall assign this Lease or the Indicted Party's interest in Tenant, as the case may be, within six months of the date of the Conviction to an Assignee Reasonably Satisfactory to Landlord pursuant to subsection (a) above.

(iii) During the pendency of any such trust, the Indicted Party shall exercise no control over the Project, but may make contributions to the Project and receive distributions therefrom.

(c) This Section 41.17 shall apply only for so long as the City or an agency or instrumentality thereof shall be Landlord hereunder.

Section 41.18. Claims.

(a) Any and all claims asserted by or against Landlord arising under this Lease or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in The City of New York or in the courts of the State of New York ("New York State Courts") located in The City of New York. To effect this agreement and intent, Landlord and Tenant agree and, where appropriate, shall require each consultant to agree, as follows:

(b) If Landlord initiates any action against Tenant in Federal Court or in New York State Court, service of process may be made on Tenant either in person, wherever Tenant may be found, or by registered mail (return receipt requested) addressed to Tenant at its address as set forth in this Agreement, or to such other address as Tenant may provide to Landlord in writing.

(c) With respect to any action between Landlord and Tenant in New York State Court, Tenant hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court outside New York City, and (iii) to move for a change of venue to New York State Court outside New York City.

(d) With respect to any action between Landlord and Tenant in Federal court located in New York City, Tenant expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal court outside The City of New York.

(e) If Tenant commences any action against Landlord in a court located other than in the City and State of New York, then, upon request of Landlord, Tenant shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, then Tenant shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

Section 41.19. CPI Adjustment. Whenever any provision hereof provides that an amount shall be adjusted as provided in this Section 41.19, then such amount shall be multiplied by a fraction, the numerator of which shall be the Price Index for the calendar month immediately preceding Tenant's initially incurring or receiving, as the case may be, an amount which this Lease provides is to be adjusted pursuant to this Section and the denominator of which shall be the Base Index.

Section 41.20. Invalidity of Certain Provisions. If any term or provision of this Lease or the application thereof to any Person or circumstances shall, to any extent, be invalid

and unenforceable, the remainder of this Lease, and the application of such term or provision to Persons or circumstances other than those as to which it is held invalid and unenforceable, shall not be affected thereby and each term and provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 41.21. No Third Party Beneficiaries. No Person claiming by, through or under Tenant or Landlord shall be deemed to be a third party beneficiary of this Lease or entitled to enforce any provision of this Lease. The foregoing notwithstanding, Ballpark Company, Yankee Partnership, and the New York Yankees Inc. shall be deemed third party beneficiaries, as applicable, of the terms and provisions of Sections 7.1(c) 7.5(b), 20.5, 23.1(c), 23.1(e) and this Section 41.21, and for no other term or provision. Tenant agrees that such entities shall not be required to provide repeated notices for recidivist violations by Tenant of the aforementioned terms and provisions in order to seek judicial remedies for such violations, provided that Tenant has received actual notice of such violations.

Section 41.22. Counterparts. This Lease may be executed simultaneously in two or more counterparts, each of which will be deemed an original, and it shall not be necessary in making proof of this Lease to produce or account for more than one such counterpart.

(remainder of page intentionally left blank; signature pages follow)

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

THE CITY OF NEW YORK, acting through the Department of Parks and Recreation

By: ______________________
Name: Liam Kavanagh
Title: First Deputy Commissioner

THE CITY OF NEW YORK, acting through its Deputy Mayor for Economic Development and Rebuilding

By: ______________________
Name: Daniel L. Doctoroff

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

By: ______________________
Name:
Title:

Approved as to Form:

By: ______________________
Acting Corporation Counsel

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease as of the day and year first above written.

THE CITY OF NEW YORK, acting through the Department of Parks and Recreation

By: ______________________
Name:
Title:

THE CITY OF NEW YORK, acting through its Deputy Mayor for Economic Development and Rebuilding

By: [signature]
Name: Daniel L. Doctoroff

NEW YORK CITY ECONOMIC DEVELOPMENT CORPORATION

By: [signature]
Name: Seth Pinsky
Title: Executive Vice President

Approved as to Form:

By: [signature]
Acting Corporation Counsel

State of New York)
) ss.:
County of New York)

On the ____ day of _________ in the year 2007 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared ________________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
(Notary Public)(Commissioner of Deeds)

State of New York)
) ss.:
County of New York)

On the 3rd day of December in the year 2007 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared Liam Kavanagh, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
(Notary Public)(Commissioner of Deeds)

AMY FRANCES KLEITMAN
Notary Public, State of New York
No. 02KL6082177
Qualified in Kings County
Commission Expires Oct. 21, 2010

State of New York)
) ss.:
County of New York)

On the 4th day of December in the year 2007 before me, the undersigned, a Notary Public/~~Commissioner of Deeds~~ in and for said State/the City of New York, personally appeared Daniel L. Doctoroff, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Carol M. Hyde

(Notary Public)~~(Commissioner of Deeds)~~

CAROL M. HYDE
Notary Public, State of New York
No. 4977270
Qualified in Queens County
Commission Expires Jan. 23, 2011

State of New York)
) ss.:
County of New York)

On the 4th day of December in the year 2007 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared Seth Pinsky, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Judith A. Capolongo

(Notary Public)(Commissioner of Deeds)

JUDITH A. CAPOLONGO
Commissioner of Deeds, City of New York
No. 5-1425
Cert. Filed in New York County
Commission Expires October 1, 2009

EXHIBIT A

<u>LAND</u>

(on pages following)

Site 7

DESCRIPTION OF LOT 6 IN BLOCK 2482 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a point in the westerly sideline of Gerard Avenue (sixty feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 7" (latest revision October 1, 1998), said point being distant four hundred eighty-eight and forty-four hundredths feet (488.44') along said sideline in a southerly direction from the intersection of said sideline with the southerly sideline of East 157th Street (sixty feet wide), as shown on said map, said point also being in the dividing line between Lot 6 and Lot 64 in Block 2482, and running; thence

1.) Along said dividing line between Lots 6 and 64, and continuing along the dividing line between Lot 6 and Lot 1 in Block 2482, South seventy-eight degrees, thirty-eight minutes, fifty-four seconds West (S 78° 38′ 54″ W), a distance of two hundred thirty-one and forty-five hundredths feet (231.45') to a point in the easterly sideline of River Avenue (seventy-five feet wide); thence

2.) Along said River Avenue easterly sideline, North four degrees, fifty-six minutes, forty-seven seconds West (N 04° 56′ 47″ W), a distance of three hundred thirty-one and eighty-four hundredths feet (331.84') to a point in the dividing line between said Lot 6 and Lot 20 in Block 2482; thence

3.) Along said dividing line, North eighty-five degrees, three minutes, thirteen seconds East (N 85° 03′ 13″ E), a distance of ten and zero hundredths feet (10.00') feet to an angle point in same; thence

4.) Sill along same, South twenty-eight degrees, zero minutes, forty-five seconds East (S 28° 00′ 45″ E), a distance of nineteen and fifty hundredths feet (19.50') to an angle point in same; thence

5.) Still along same, South thirty-four degrees, forty minutes, fifty-nine seconds East (S 34° 40′ 59″ E), a distance of one hundred and forty hundredths feet (100.40') to an angle point in same; thence

6.) Still along same, South forty-three degrees, fifteen minutes, thirty-six seconds East (S 43° 15′ 36″ E), a distance of one hundred thirty-six and eight hundredths feet (136.08′) to an angle point in same; thence

7.) Still along same, South forty-six degrees, forty four minutes, twenty-four seconds West (S 46° 44′ 24″ W), a distance of five and zero hundredths feet (5.00′) to an angle point in same; thence

8.) Still along same, South forty-three degrees, fifteen minutes, thirty-six seconds East (S 43° 15′ 36″ E), a distance of seventeen and zero hundredths feet (17.00′) to an angle point in same; thence

9.) Still along same, North forty-six degrees, forty-four minutes, twenty-four seconds East (N 46° 44′ 24″ E), a distance of eight and zero hundredths feet (8.00′) to an angle point in same; thence

10.) Still along same, South forty-three degrees, fifteen minutes, thirty-six seconds East (S 43° 15′ 36″ E), a distance of forty-two and zero hundredths feet (42.00′) to an angle point in same; thence

11.) Still along same, North forty-six degrees, twenty-nine minutes, seventeen seconds East (N 46° 29′ 17″ E), a distance of fifty and twenty-two hundredths feet (50.22′) to a point in the aforesaid westerly sideline of Gerard Avenue; thence

12.) Along said westerly sideline, South four degrees, fifty-six minutes, forty-seven seconds East (S 04° 56′ 47″ E), a distance of eighty-one and zero hundredths feet (81.00′) to the Point and Place of **BEGINNING.**

Said Lot 6 in Block 2482 containing 38,237 square feet or 0.878 acres of land, more or less.

Subject to all existing easements and restrictions of record.

Being also known as Parcel "7", as shown on a certain map entitled "Boundary Survey, Block 2486 Lot 1, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007, and revised to November 30, 2007. This description being prepared in accordance with said map.

DESCRIPTION OF LOT 100 IN BLOCK 2357 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the southwesterly sideline of East 153rd Street (sixty feet wide) with the westerly sideline of River Avenue (seventy-five feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 7" (latest revision October 1, 1998), and running; thence

1.) Along said westerly sideline of River Avenue, South four degrees, fifty-six minutes, forty-seven seconds East (S 04° 56′ 47″ E), a distance of one hundred seventy-three and six hundredths feet (173.06′) to a point in the dividing line between Lot 100 and Lot 92 in Block 2357; thence

2.) Along said dividing line North fifty-eight degrees, seventeen minutes, twenty seconds West (N 58° 17′ 20″ W), a distance of three hundred sixty-seven and seventy-three hundredths feet (367.73′) to a point in the easterly line of lands of G.A.L. Manufacturing Corp. (reputed owner); thence

3.) Along said line, North four degrees, fifty-six minutes, forty-eight seconds West (N 04° 56′ 48″ W), a distance of forty-four and twenty-one hundredths feet (44.21′) to a point in the southeasterly sideline of the Major Deegan Expressway Ramp "A" (fifty-two and ninety-two hundredths feet wide); thence

4.) Along said southeasterly sideline, North seventy-four degrees, forty-six minutes, forty-five seconds East (N 74° 46′ 45″ E), a distance of one hundred five and sixty-five hundredths feet (105.65′) to a point of curvature leading into the aforementioned southwesterly sideline of East 153rd Street; thence

5.) Along a curve to the right having a radius of one hundred thirteen and fifty-four hundredths feet (113.54′), an arc length of eighty-one and twenty-two hundredths feet (81.22′), a central angle of forty degrees, fifty-nine minutes, eleven seconds (40° 59′ 11″), and a chord bearing South eighty-four degrees, forty-three minutes, forty seconds East (S 84° 43′ 40″ E), a chord distance of

seventy-nine and fifty hundredths feet (79.50') to a point in the southwesterly sideline of said East 153rd Street; thence

6.) Along said southwesterly sideline, South fifty-four degrees, forty-two minutes, fifty-four seconds East (S 54° 42′ 54″ E), a distance of one hundred forty-seven and seventy-six hundredths feet (147.76') to the Point and Place of **BEGINNING**.

Said Lot 100 in Block 2357 containing 42,862 square feet or 0.984 acres of land, more or less.

Subject to all existing easements and restrictions of record.

Being also known as Parcel "10", as shown on a certain map entitled "Boundary Survey, Block 2357 Lot 100, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007. This description being prepared in accordance with said map.

Site 13A

DESCRIPTION OF A PROPOSED LEASE WITHIN YANKEE STADIUM PARKING LOT 13A, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the westerly line of Ramp "C" connecting to the Major Deegan Expressway, as shown on a certain map entitled "City Planning Commission, Office of Technical Controls, Borough of The Bronx, Map Establishing The Lines And Grades Of A System Of Ramps Connecting To The Major Deegan Expressway In The Vicinity Of The Macomb's Dam Bridge Approach And Yankee Stadium And Establishing The Lines And Grades Of New Streets Connecting The Present Street System To The New Ramps Hereby Established And Establishing Permanent Easements To Be Acquired From The Penn. Central Railroad, Plan No. 11923, Date: July 19, 1974", said map known as Reference Map 337-5, with the northerly line of lands described in a Memorandum of Memorandum of Agreement of Understanding between the City of New York, New York City Economic Development Corporation, BTM Development Partners, LLC and BTM Merger Partners, Inc., said line being designated as Course Number Twenty-Eight (28) of a tract known as Parcel "D" of said Memorandum, Part of Lot 2, Block 2539, recorded in the office of the City Register of the City of New York in CRFN 2004000307218, and running; thence

1.) Along said Twenty-Eighth (28th) Course, reversed, South fifty-seven degrees, seventeen minutes, fifty-six seconds West (S 57° 17′ 56″ W), a distance of one hundred fifty-two and sixty-three hundredths feet (152.63′)to a point; thence

2.) Along the Twenty-Seventh (27th) Course of said Parcel "D", reversed, South thirty-two degrees, forty-two minutes, four seconds East (S 32° 42′ 04″ E), a distance of one hundred fifty-one and sixteen hundredths feet (151.16′) to a point; thence

3.) Along the line of lands appropriated by the State of New York, as shown on NYSDOT Map 24 Parcel 50, South fifty-seven degrees, sixteen minutes, fifty seconds West (S 57° 16′ 50″ W), a distance of one hundred fifty-eight and twenty-nine hundredths feet (158.29′) to a point; thence

4.) Still along said Parcel 50, North thirty-two degrees, thirty-two minutes, forty-three seconds West (N 32° 32′ 43″ W), a distance of two hundred five and three hundredths feet (205.03′) to a point in the existing fence line; thence along said existing fence line the following fifteen (15) courses

5.) North fifty-seven degrees, thirty-nine minutes, nine seconds East (N 57° 39′ 09″ E), a distance of seventy-seven and twelve hundredths feet (77.12′) to an angle point in same; thence

6.) North twenty-nine degrees, twenty-four minutes, twenty-seven seconds West (N 29° 24′ 27″ W), a distance of seven and twenty-nine hundredths feet (7.29′) to an angle point in same; thence

7.) North fifty-seven degrees, twenty-seven minutes, forty-two seconds East (N 57° 27′ 42″ E), a distance of one hundred twenty-four and eighty-five hundredths feet (124.85′) to an angle point in same; thence

8.) North thirty-two degrees, fifty minutes, twenty-eight seconds West (N 32° 50′ 28″ W), a distance of one hundred thirty-three and sixty-nine hundredths feet (133.69′) to an angle point in same; thence

9.) South fifty-seven degrees, four minutes, seven seconds West (S 57° 04′ 07″ W), a distance of one hundred forty and ninety-five hundredths feet (140.95′) to an angle point in same; thence

10.) North fifty-seven degrees, zero minutes, twenty-eight seconds West (N 57° 00′ 28″ W), a distance of three and forty hundredths feet (3.40′) to an angle point in same; thence

11.) North thirty-four degrees, eighteen minutes, four seconds West (N 34° 18′ 04″ W), a distance of forty-eight and fourteen hundredths feet (48.14′) to an angle point in same; thence

12.) South fifty-five degrees, forty-one minutes, fifty-six seconds West (S 55° 41′ 56″ W), a distance of four and seventy-five hundredths feet (4.75′) to an angle point in same; thence

13.) North thirty-four degrees, eighteen minutes, four seconds West (N 34° 18′ 04″ W), a distance of six and fifty hundredths feet (6.50′) to an angle point in same; thence

14.) North fifty-nine degrees, twenty-one minutes, forty-eight seconds East (N 59° 21′ 48″ E), a distance of four and seventy-two hundredths feet (4.72′) to an angle point in same; thence

15.) North thirty-four degrees, eighteen minutes, fourteen seconds West (N 34° 18′ 14″ W), a distance of fifty-five and eighty-

three hundredths feet (55.83') to an angle point in same; thence

16.) North fifty-three degrees, fifty-five minutes, four seconds East (N 53° 55' 04" E), a distance of fifteen and sixty-one hundredths feet (15.61') to an angle point in same; thence

17.) North thirty-two degrees, eleven minutes, thirty-eight seconds West (N 32° 11' 38" W), a distance of ten and five hundredths feet (10.05') to an angle point in same; thence

18.) South fifty-six degrees, twenty-six minutes, twenty-nine seconds West (S 56° 26' 29" W), a distance of sixteen and forty-six hundredths feet (16.46') to an angle point in same; thence

19.) North thirty-four degrees, eleven minutes, three seconds West (N 34° 11' 03" W), a distance of sixty-three and seventeen hundredths feet (63.17') to a point; thence

20.) Along the southerly line of a ramp connecting Ramp "A" to Ramp "C", as shown on the aforementioned Borough Reference Map Number 337-5 and its extension to the West, North fifty-five degrees, twenty-one minutes, fifty-seven seconds East (N 55° 21' 57" E), a distance of two hundred thirty-nine and seventy-five hundredths feet (239.75') to a point of curvature connecting said Ramp to Ramp "C" as shown on said map; thence

21.) Along a curve to the right having a radius of ten and zero hundredths feet (10.00'), an arc length of sixteen and three hundredths feet (16.03'), a delta of ninety-one degrees, forty-nine minutes, seven seconds (91° 49' 07"), and a chord bearing South seventy-eight degrees, forty-six minutes, thirteen seconds East (S 78° 46' 13" E), a chord distance of fourteen and thirty-six hundredths feet (14.36') to a point in the line of said Ramp "C"; thence

22.) Along the line of said Ramp "C", South thirty-two degrees, fifty-one minutes, forty seconds East (S 32° 51' 40" E), a distance of three hundred thirty-nine and fifty-four hundredths feet (339.54') to a point of curvature in same; thence

23.) Still along said line, on a curve to the left having a radius of one hundred forty-two and zero hundredths feet (142.00'), an arc length of thirty-nine and fifty-six hundredths feet (39.56'), a delta of fifteen degrees, fifty-seven minutes, thirty-seven seconds (15° 57' 37"), and a chord bearing South forty degrees, twenty-four minutes, four seconds East (S 40°

24′ 04″ E), a chord distance of thirty-nine and forty-three hundredths feet (39.43′) to the Point and Place of **BEGINNING**.

Said proposed lease within Yankee Stadium Parking Lot 13A containing 102,659 square feet or 2.3567 acres of land, more or less.

SUBJECT TO all existing easements and restrictions of record.

EXCEPTING THEREFROM any portions of same within land and improvements owned by the State of New York, identified as part of Parcel 5, as shown on a certain map entitled "Map No. 3, Dec. 20, 1973, Parcel Nos. 4, 5, Bronx County New York State Department Of Transportation, Description And Map For The Acquisition Of Property, Reconstruction Of The Interchange Of The Major Deegan Expressway, I-87, With Macombs Dam Bridge Approach, Bronx County, City of New York, Reputed Owner", the appropriation of said lands recorded in Reel 253, Page 1919, but retaining any rights reserved in said document within said areas.

BEING a portion of Lot 2 in Block 2539 as shown on a certain map entitled "Map Showing Proposed Lease Lines, Yankee Stadium, Parking Lots 13A, 13B & 13C, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York dated April 15, 2007, and revised to November 9, 2007. This description being prepared in accordance with said map.

Site 13B

DESCRIPTION OF A PROPOSED LEASE WITHIN YANKEE STADIUM PARKING LOT 13B, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the most southerly corner of Ramp "C", said corner designated C140+76.00/32.46' as shown on a certain map entitled "Map No. 3, Dec. 20, 1973, Parcel Nos. 4, 5, Bronx County New York State Department Of Transportation, Description And Map For The Acquisition Of Property, Reconstruction Of The Interchange Of The Major Deegan Expressway, I-87, With Macombs Dam Bridge Approach, Bronx County, City of New York, Reputed Owner", the appropriation of said lands recorded in Reel 253, Page 1919, and running; thence

1.) Along the southeasterly line of NYSDOT Map 3 Parcel 5, North thirty-two degrees, five minutes, fourteen seconds East (N 32° 05' 14" E), a distance of zero and ninety-two hundredths feet (0.92') to a point in the line of Ramp "C" as shown on a map entitled "City Planning Commission, Office of Technical Controls, Borough of The Bronx, Map Establishing The Lines And Grades Of A System Of Ramps Connecting To The Major Deegan Expressway In The Vicinity Of The Macomb's Dam Bridge Approach And Yankee Stadium And Establishing The Lines And Grades Of New Streets Connecting The Present Street System To The New Ramps Hereby Established And Establishing Permanent Easements To Be Acquired From The Penn. Central Railroad, Plan No. 11923, Date: July 19, 1974", said map known as Reference Map 337-5; thence

2.) Along the line of said Ramp "C" as shown on Map 337-5, on a curve to the right having a radius of four hundred twenty-eight and zero hundredths feet (428.00'), an arc length of one hundred thirty-two and seventy-nine hundredths feet (132.79'), a delta of seventeen degrees, forty-six minutes, thirty-six seconds (17° 46' 36"), and a chord bearing South forty-one degrees, forty-two minutes, twenty-three seconds East (S 41° 42' 23" E), a chord distance of one hundred thirty-two and twenty-six hundredths feet (132.26') to a point in Ramp "C as shown on Map 337-5; thence

3.) Still along said Ramp "C", as shown on Map 337-5, South thirty-two degrees, forty-five minutes, sixteen seconds East (S 32° 45' 16" E), a distance of two hundred ten and forty-six hundredths feet (210.46') to a point in the existing fence line; thence

4.) Along said existing fence line, South fifty-seven degrees, nineteen minutes, fifty-three seconds West (S 57° 19′ 53″ W), a distance of ten and twelve hundredths feet (10.12′) to an angle point in same; thence

5.) Still along same, South thirty-two degrees, thirty-seven minutes, forty-four seconds East (S 32° 37′ 44″ E), a distance of thirteen and sixteen hundredths feet (13.16′) to a point in the line of a Ramp connecting Ramp "C" to Ramp "A", as shown on Map 337-5; thence

6.) Along said Ramp, South fifty-five degrees, twenty-five minutes, thirty-seven seconds West (S 55° 25′ 37″ W), a distance of one hundred sixty-five and ten hundredths feet (165.10′) to a point in the existing fence line; thence along said existing fence line the following seven (7) courses

7.) South seventy-five degrees, fifty minutes, twenty-one seconds West (S 75° 50′ 21″ W), a distance of forty-two and twenty-five hundredths feet (42.25′) to an angle point in same; thence

8.) South fifty-five degrees, forty-seven minutes, thirteen seconds West (S 55° 47′ 13″ W), a distance of seven and forty-two hundredths feet (7.42′) to an angle point in same; thence

9.) North thirty-four degrees, forty-three minutes, fifteen seconds West (N 34° 43′ 15″ W), a distance of twenty-nine and nineteen hundredths feet (29.19′) to an angle point in same; thence

10.) North fifty-four degrees, twenty-five minutes, forty-three seconds East (N 54° 25′ 43″ E), a distance of fourteen and forty-nine hundredths feet (14.49′) to an angle point in same; thence

11.) North thirty-eight degrees, twenty-nine minutes, thirty-two seconds West (N 38° 29′ 32″ W), a distance of seven and sixty-three hundredths feet (7.63′) to an angle point in same; thence

12.) South fifty-four degrees, twenty-five minutes, fifty-two seconds West (S 54° 25′ 52″ W), a distance of twenty-two and twenty hundredths feet (22.20′) to an angle point in same; thence

13.) North thirty-three degrees, thirty-one minutes, fifty seconds West (N 33° 31′ 50″ W), a distance of eight and sixty-nine

hundredths feet (8.69′) to a point in the line of Ramp "A", part of NYSDOT Map 3 Parcel 5; thence

14.) Along said NYSDOT Map 3 Parcel 5, North thirty-six degrees, sixteen minutes, thirty-seven seconds West (N 36° 16′ 37″ W), a distance of ninety-seven and eighty-four hundredths feet (97.84′) to a point in the existing fence line; thence

15.) Along said existing fence line, North twenty-one degrees, forty-nine minutes, twenty-nine seconds West (N 21° 49′ 29″ W), a distance of one hundred fifty-five and eighty-two hundredths feet (155.82′) to an angle point in same; thence

16.) Still along same, South sixty-eight degrees, seven minutes, fifty seconds West (S 68° 07′ 50″ W), a distance of forty and fifteen hundredths feet (40.15′) to a point in the line of Ramp "A, part of NYSDOT Map 3 Parcel 5; thence

17.) Along said NYSDOT Map 3 Parcel 5, North thirty-six degrees, sixteen minutes, thirty-seven seconds West (N 36° 16′ 37″ W), a distance of sixty and thirty-five hundredths feet (60.35′) to a point in the existing fence line; thence

18.) Along said existing fence line, North twenty-one degrees, forty-one minutes, twenty-six seconds West (N 21° 41′ 26″ W), a distance of two hundred twenty-one and forty-nine hundredths feet (221.49′) to an angle point in same; thence

19.) Still along same, South sixty-six degrees, fifty minutes, forty-seven seconds West (S 66° 50′ 47″ W), a distance of fifty-seven and sixty-three hundredths feet (57.63′) to a point in the northerly line of Ramp "B", part of NYSDOT Map 3 Parcel 5; thence

20.) Along said line of Map 3, Parcel 5, also being the dividing line between Lot 20 and Lots 29 and 191 in Block 2539, on a curve to the right having a radius of two hundred fifty-nine and twenty-one hundredths feet (259.21′), an arc length of one hundred twenty-eight and forty-seven hundredths feet (128.47′), a delta of twenty-eight degrees, twenty-three minutes, fifty-two seconds (28° 23′ 52″), and a chord bearing North nine degrees, thirty-four minutes, fifty-one seconds East (N 09° 34′ 51″ E), a chord distance of one hundred twenty-seven and sixteen hundredths feet (127.16′) to a point in the line of Ramp "C", as shown on NYSDOT Map 3 Parcel 5; thence

21.) Along same, South fifty-seven degrees, fifty-four minutes, forty-six seconds East (S 57° 54′ 46″ E), a distance of

thirty-nine and forty-one hundredths feet (39.41') to a point of in the southerly line of Ramp "B", as shown on NYSDOT Map 3 Parcel 5, said point also being in the dividing line between Lots 20 and 175 in Block 2539; thence

22.) Along said line, on a curve to the left having a radius of two hundred twenty and twenty-nine hundredths feet (220.29'), an arc length of eight and thirty-five hundredths feet (8.35'), a delta of two degrees, ten minutes, seventeen seconds (02° 10' 17"), and a chord bearing South twenty-one degrees, twelve minutes, forty-six seconds West (S 21° 12' 46" W), a chord distance of eight and thirty-five hundredths feet (8.35') to a point in the dividing line between Lot 175 and Lot 2 in Block 2539; thence

23.) Along said dividing line, North fifty-six degrees, forty-six minutes, twelve seconds East (N 56° 46' 12" E), a distance of nine and two hundredths feet (9.02') to a point in the line of Ramp "C", as shown on NYSDOT Map 3 Parcel 5; thence

24.) Along said NYSDOT Map 3 Parcel 5, South fifty-seven degrees, fifty-four minutes, forty-six seconds East (S 57° 54' 46" E), a distance of three hundred twenty-nine and forty-five hundredths feet (329.45') to the Point and Place of **BEGINNING**.

Said proposed lease within Yankee Stadium Parking Lot 13B containing 124,912 square feet or 2.8676 acres of land, more or less.

SUBJECT TO all existing easements and restrictions of record.

EXCEPTING THEREFROM any portions of same within land and improvements owned by the State of New York, identified as part of Parcel 5, as shown on the above referenced NYSDOT Map 3, but retaining any rights reserved in said document within said areas.

BEING part of Lot 2 in Block 2539, as shown on a certain map entitled "Map Showing Proposed Lease Lines, Yankee Stadium, Parking Lots 13A, 13B & 13C, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007, and revised to November 9, 2007. This description being prepared in accordance with said map.

Site 13C

DESCRIPTION OF A PROPOSED LEASE WITHIN YANKEE STADIUM PARKING LOT 13C, PART OF LOT 2 IN BLOCK 2539 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the most easterly corner of Ramp "C", said corner designated C140+76.00/6.46' as shown on a certain map entitled "Map No. 3, Dec. 20, 1973, Parcel Nos. 4, 5, Bronx County New York State Department Of Transportation, Description And Map For The Acquisition Of Property, Reconstruction Of The Interchange Of The Major Deegan Expressway, I-87, With Macombs Dam Bridge Approach, Bronx County, City of New York, Reputed Owner", the appropriation of said lands recorded in Reel 253, Page 1919, and running; thence

1.) Along the northeasterly line of NYSDOT Map 3 Parcel 5, North fifty-seven degrees, fifty-four minutes, forty-six seconds West (N 57° 54' 46" W), a distance of one hundred twenty-three and sixty-five hundredths feet (123.65') to a point in the existing fence line; thence

2.) Along said existing fence line, North thirty-six degrees, forty-nine minutes, thirty-two seconds East (N 36° 49' 32" E), a distance of twenty-seven and twenty-one hundredths feet (27.21')to a point in the southwesterly line of a permanent easement granted by the City of New York to the Triborough Bridge and Tunnel Authority (TBTA) for the use of the Metropolitan Transportation Authority (MTA) and its subsidiary, Metro North Commuter Railroad Company (MNCRR), designated as Parcel 6, recorded in the office of the City Register of the City of New York as CRFN 2007000392715; thence

3.) Along the Second (2nd) Course of said permanent easement line reversed, South fifty-three degrees, twelve minutes, fifty-six seconds East (S 53° 12' 56" E), a distance of one hundred four and thirty-two hundredths feet (104.32') to an angle point in same; thence

4.) Along the First (1st) Course of said permanent easement line reversed, South fifty-eight degrees, seventeen minutes, thirty-four seconds East (S 58° 17' 34" E), a distance of one hundred thirty-one and eight hundredths feet (131.08') to the westerly line of Major Deegan Boulevard as shown on the Bronx County Tax Map; thence

5.) Along said line of Major Deegan Boulevard, also being the easterly line of Lot 2 in Block 2539, South zero degrees, fifty-nine minutes, forty seconds East (S 00° 59' 40" E), a distance of thirty-four and thirty-two hundredths feet (34.32') to an angle point in same; thence

6.) Still along said line of Major Deegan Boulevard and Lot 2 in Block 2539, South thirty-two degrees, forty-seven minutes, forty-seven seconds East (S 32° 47' 47" E), a distance of one hundred twenty-five and two hundredths feet (125.02') to a point in the northerly line of an existing concrete ramp; thence

7.) Along said existing line, South sixty degrees, forty-five minutes, four seconds West (S 60°

45′ 04″ W), a distance of four and fifty-three hundredths feet (4.53′) to a point in the existing fence line; thence

8.) Along said existing fence line, North twenty-nine degrees, forty-eight minutes, forty-nine seconds West (N 29° 48′ 49″ W), a distance of ten and nine hundredths feet (10.09′) to a point in same; thence

9.) Still along same, South sixty-five degrees, forty-four minutes, twenty-seven seconds West (S 65° 44′ 27″ W), a distance of thirty-one and eighty-six hundredths feet (31.86′) to a point in Ramp "C" as shown on a certain map entitled "City Planning Commission, Office of Technical Controls, Borough of The Bronx, Map Establishing The Lines And Grades Of A System Of Ramps Connecting To The Major Deegan Expressway In The Vicinity Of The Macomb's Dam Bridge Approach And Yankee Stadium And Establishing The Lines And Grades Of New Streets Connecting The Present Street System To The New Ramps Hereby Established And Establishing Permanent Easements To Be Acquired From The Penn. Central Railroad, Plan No. 11923, Date: July 19, 1974", said map known as Reference Map 337-5; thence

10.) Along said Ramp "C", as shown on Map 337-5, North thirty-two degrees, fifty minutes, twelve seconds West (N 32° 50′ 12″ W), a distance of ninety-four and forty-two hundredths feet (94.42′) to a point of curvature in same; thence

11.) Still along said Ramp "C", as shown on Map 337-5, on a curve to the left having a radius of four hundred sixty-two and zero hundredths feet (462.00′), an arc length of one hundred thirty-seven and fifty-two hundredths feet (137.52′), a delta of seventeen degrees, three minutes, seventeen seconds (17° 03′ 17″), and a chord bearing North forty-one degrees, twenty-one minutes, twenty-three seconds West (N 41° 21′ 23″ W), a chord distance of one hundred thirty-seven and one hundredth feet (137.01′) to a point in the southeasterly line of Ramp "C" as shown on NYSDOT Map 3 Parcel 5; thence

19.) Along said line of Ramp "C", North thirty-two degrees, five minutes, fourteen seconds East (N 32° 05′ 14″ E), a distance of nine and six hundredths feet (9.06′) to the Point and Place of **BEGINNING.**

Said proposed lease within Yankee Stadium Parking Lot 13C containing 12,078 square feet or 0.2773 acres of land, more or less.

SUBJECT TO all existing easements and restrictions of record.

BEING as shown on a certain map entitled "Map Showing Proposed Lease Lines, Yankee Stadium, Parking Lots 13A, 13B & 13C, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York, dated April 15, 2007, and revised to November 9, 2007. This description being prepared in accordance with said map.

Site 15

DESCRIPTION OF LOT 1 IN BLOCK 2486 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the easterly sideline of River Avenue (seventy-five feet wide) with the northerly sideline of East 164th Street (sixty feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 8" (last revision August 2, 2001), and running; thence

1.) Along said easterly sideline, North four degrees, fifty-six minutes, forty-nine seconds West (N 04° 56′ 49″ W), a distance of four hundred fifty-two and thirty-five hundredths feet (452.35′) to a point in the southerly sideline of East 165th Street (seventy feet wide); thence

2.) Along said southerly sideline of East 165th Street, North eighty-five degrees, thirty-eight minutes, twenty-three seconds East (N 85° 38′ 23″ E), a distance of two hundred thirty and one hundredth feet (230.01′) to a point in the westerly sideline of Gerard Avenue (sixty feet wide); thence

3.) Along said westerly sideline of Gerard Avenue, South four degrees, fifty-six minutes, forty-nine seconds East (S 04° 56′ 49″ E), a distance of one hundred and zero hundredths feet (100.00′) to a point in the dividing line between Lot 1 and Lot 25 in Block 2486; thence

4.) Along said dividing line, South eighty-five degrees, three minutes, eleven seconds West (S 85° 03′ 11″ W), a distance of one hundred fifteen and zero hundredths feet (115.00′) to an angle point in same; thence

5.) Still along same, and continuing along the dividing line between said Lot 1 and Lot 30 in Block 2486, South four degrees, fifty-six minutes, forty-nine seconds East (S 04° 56′ 49″ E), a distance of two hundred fifty and zero hundredths feet to an angle point in same; thence

6.) Along said dividing line between Lots 1 and 30, North eighty-five degrees, three minutes, eleven seconds East (S 85° 03′ 11″ E), a distance of one hundred fifteen and zero hundredths feet (115.00′) to a point in the aforementioned westerly sideline of Gerard Avenue; thence

7.) Along said westerly sideline, South four degrees, fifty-six minutes, forty-nine seconds East (S 04° 56′ 49″ E), a distance of one hundred and zero hundredths feet (100.00′) to a point in the aforementioned northerly sideline of East 164th Street; thence

8.) Along said northerly sideline, South eighty-five degrees, three minutes, eleven seconds West (S 85° 03′ 11″ W), a distance of two hundred thirty and zero hundredths feet (230.00′) to the Point and Place of **BEGINNING**.

Said Lot 1 in Block 2486 containing 75,020 square feet or 1.722 acres of land, more or less.

Subject to all existing easements and restrictions of record.

Being also known as Parcel "15", as shown on a certain map entitled "Boundary Survey, Block 2486 Lot 1, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007. This description being prepared in accordance with said map.

Garage 3 Site

DESCRIPTION OF LOT 1 IN BLOCK 2485 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the easterly sideline of River Avenue (seventy-five feet wide) with the southerly sideline of East 164th Street (sixty feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 8", (latest revision August 2, 2001), and running; thence

1.) Along said southerly sideline of East 164th Street, North eighty-five degrees, three minutes, thirteen seconds East (N 85° 03′ 13″ E), a distance of two hundred thirty and zero hundredths feet (230.00′) to the westerly sideline of Gerard Avenue (sixty feet wide); thence

2.) Along said Gerard Avenue westerly sideline, South four degrees, fifty-six minutes, forty-seven seconds East (S 04° 56′ 47″ E), a distance of six hundred eighty-two and seventy-six hundredths feet (682.76′) to the northeasterly sideline of East 162nd Street (seventy feet wide); thence

3.) Along said northeasterly sideline, on a curve to the right, having a radius of forty and zero hundredths feet (40.00′), an arc length of thirty-four and seventy-three hundredths feet (34.73′), a central angle of forty-nine degrees, forty-four minutes, forty-four seconds (49° 44′ 44″), and a chord bearing North seventy degrees, four minutes, nineteen seconds West (N 70° 04′ 19″ W), a chord distance of thirty-three and sixty-five hundredths feet (33.65′) to a point of tangency in same; thence

4.) Sill along said northeasterly sideline, North forty-five degrees, eleven minutes, fifty-seven seconds West (N 45° 11′ 57″ W), a distance of three hundred eight and seventy hundredths feet (308.70′) to the aforementioned easterly sideline of River Avenue; thence

5.) Along said easterly sideline of River Avenue, North four degrees, fifty-six minutes, forty-seven seconds West (N 04° 56′ 47″ W), a distance of four hundred thirty-three and zero hundredths feet (433.00′) to the Point and Place of **BEGINNING.**

Said Lot 1 in Block 2485 containing 130,581 square feet or 2.998 acres of land, more or less.

Subject to all existing easements and restrictions of record.

Being also known as "Parcel 3", as shown on a certain map entitled "Boundary Survey, **Block 2485** Lot 1, Borough and County of the Bronx, City and State of New York, prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007. This description prepared in accordance with said map.

Garage 8 Site

DESCRIPTION OF EXISTING LEASED PREMISES WITHIN LOT 1 IN BLOCK 2490 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the southerly sideline of East 157th Street (sixty feet wide) with the westerly sideline of River Avenue (seventy-five feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 7" (latest revision October 1, 1998), and running; thence

1.) Along said westerly sideline of River Avenue, South four degrees, fifty-six minutes, forty-seven seconds East (S 04° 56′ 47″ E), a distance of five hundred sixty-seven and eighty-two hundredths feet (567.82′) to the northeasterly sideline of East 153rd Street; thence

2.) Along said northeasterly sideline of East 153rd Street, North fifty-four degrees, forty-two minutes, fifty-three seconds West (N 54° 42′ 53″ W), a distance of eight hundred one and thirty-six hundredths feet (801.36′) to a point; thence

3.) Along a line through Lot 1 in Block 2490, North two degrees, nineteen minutes, six seconds West (N 02° 19′ 06″ W), a distance of sixty-seven and thirteen hundredths feet (67.13′) to a point in the aforementioned southerly sideline of East 157th Street; thence

4.) Along said southerly sideline, North eighty-seven degrees, forty minutes, twenty-nine seconds East (N 87° 40′ 29″ E), a distance three hundred sixty-seven and eighty-five hundredths feet (367.85′) to an angle point in same; thence

5.) Still along said southerly sideline, North eighty-five degrees, three minutes, thirteen seconds East (N 85° 03′ 13″ E), a distance of two hundred forty-one and twenty-five hundredths feet (241.25′) to the Point and Place of **BEGINNING.**

Said existing leased premises within Lot 1 in Block 2490 containing 192,099 square feet or 4.410 acres of land, more or less.

SUBJECT TO all existing easements and restrictions of record.

BEING the same leased premises recorded in Exhibit "A", Reel 261 Page 1289.

BEING also known as "Existing Leased Premises" as shown on a certain map entitled "Survey of Leased Premises, Part of Block 2490 Lot 1, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated December 4, 2007. This description being prepared in accordance with said map.

Garage A Site
(2499, Lots 1 and 100)

DESCRIPTION OF LOTS 1 AND 100 IN BLOCK 2499 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the southerly sideline of East 161st Street (also known as Babe Ruth Plaza) (width varies) with the northwesterly sideline of Ruppert Place (sixty feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 8" (latest revision August 2, 2001), and running; thence

1.) Along said northwesterly sideline of Ruppert Place, South thirty degrees, forty-four minutes, eight seconds West (S 30° 44′ 08″ W), a distance of five hundred fifty-seven and twenty-nine hundredths feet (557.29′) to an angle point in same; thence

2.) Still along same, South four degrees, fifty-six minutes, forty-seven seconds East (S 04° 56′ 47″ E), a distance of two hundred seventy-two and eighty-three hundredths feet (272.83′) to a point in the northerly sideline of East 157th Street (width varies); thence

3.) Along said northerly sideline, South eighty-seven degrees, forty minutes, thirty seconds West (S 87° 40′ 30″ W), a distance of two hundred seventy-one and ninety-three hundredths feet (271.93′) to a point in the northeasterly sideline of Major Deegan Boulevard (width varies); thence along said sideline the following four (4) courses

4.) Along said northeasterly sideline, on a curve to the left having a radius of seven hundred ninety-one and fifty-seven hundredths feet (791.57′), an arc length of one hundred eighty-one and forty-five hundredths feet (181.45′), a central angle of thirteen degrees, eight minutes, two seconds (13° 08′ 02″), and a chord bearing North thirty-one degrees, thirty-three minutes, twenty-seven seconds West (N 31° 33′ 27″ W), a chord distance of one hundred eighty-one and five hundredths feet (181.05′) to a point in same; thence

5.) Still along same, North one degree, four minutes, twenty-two seconds East (N 01° 04′ 22″ E), a distance of forty-eight and fifty-one hundredths feet (48.51′) to a point in same; thence

6.) Along a curve to the left having a radius of one hundred seventeen and zero hundredths feet (117.00′), an arc length of two hundred fifty-three and thirteen hundredths feet (253.13′), a central angle of one hundred twenty-three degrees, fifty-seven minutes, thirty-seven seconds (123° 57′ 37″), and a chord bearing North four degrees, three minutes, five seconds East (N 04° 03′ 05″ E), a chord distance of two hundred six and fifty-seven hundredths feet (206.57′) to a point of compound curvature in same; thence

7.) Still along same, on a curve to the left having a radius of one hundred sixty-five and zero hundredths feet (165.00′), an arc length of one hundred three and seventy-two hundredths feet (103.72′), a central angle of thirty-six degrees, zero minutes, fifty-eight seconds (36° 00′ 58″), and a chord bearing North seventy-five degrees, fifty-six minutes, ten seconds West (N 75° 56′ 10″ W), a chord distance of one hundred two and two hundredths feet (102.02′) to a point in the southeasterly sideline of Macombs Lane (eighty feet wide); thence

8.) Along said southeasterly sideline, on a curve to the left having a radius of one thousand five hundred forty and zero hundredths feet (1,540.00′), an arc length of four hundred seventy-three and eighteen hundredths feet (473.18′), a central angle of seventeen degrees, thirty-six minutes, seventeen seconds (17° 36′ 17″), and a chord bearing North thirty-three degrees, four minutes, forty-four seconds (N 33° 04′ 44″ E), a chord distance of four hundred seventy-one and thirty-three hundredths feet (471.33′) to a point of curvature leading into the aforementioned southerly sideline of East 161st Street (also known as Babe Ruth Plaza); thence

9.) Along a curve to the right having a radius of eighteen and two hundredths feet (18.02′), an arc length of twenty-three and eighty-four hundredths feet (23.84′), a central angle of seventy-five degrees, forty-six minutes, forty-eight seconds (75° 46′ 48″), and a chord bearing North sixty-two degrees, nine minutes, fifty-one seconds East (N 62° 09′ 51″ E), a chord distance of twenty-two and fourteen hundredths feet (22.14′) to a point in the aforementioned southerly sideline of East 161st Street; thence

10.) Along said southerly sideline, South seventy-nine degrees, fifty-six minutes, thirty-seven seconds East (S 79° 56′ 37″ E), a distance of four hundred forty-one and seventeen hundredths feet (441.17′) to the Point and Place of **BEGINNING**.

Said Lots 1 and 100 in Block 2499 containing 319,199 square feet or 7.328 acres of land, more or less.

Subject to all existing easements and restrictions of record.

Being also known as Parcel "A", as shown on a certain map entitled "Boundary Survey, Block 2499 Lots 1 & 100, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007, and revised to October 22, 2007. This description being prepared in accordance with said map.

Garage A Site

(Tax lot 104)

DESCRIPTION OF LOT 104 IN BLOCK 2499 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the northwesterly sideline of Lot 104 in Block 2499 (also known as Macombs Lane), with the southwesterly sideline of East 161st Street (also known as Babe Ruth Plaza), (width varies), said point also being in the dividing line between Lots 104 and 108 in Block 2499 as shown on the Bronx County Tax Map, and running; thence

1.) Along said southwesterly sideline of East 161st Street, South sixty-six degrees, six minutes, one second East (S 66° 06′ 01″ E), a distance of eighty and zero hundredths feet (80.00′) to a point in the dividing line between said Lot 104 and Lot 100 in Block 2499, also being the southeasterly sideline of Macombs Lane; thence

2.) Along said line, on a curve to the right having a radius of one thousand five hundred forty and zero hundredths feet (1,540.00′), an arc length of five hundred seventeen and two hundredths feet (517.02′), a central angle of nineteen degrees, fourteen minutes, nine seconds (19° 14′ 09″), and a chord bearing South thirty-three degrees, fifty-three minutes, forty seconds West (S 33° 53′ 40″ W), a chord distance of five hundred fourteen and sixty hundredths feet (514.60′) to a point in the northeasterly sideline of Major Deegan Boulevard (width varies), as shown on the Bronx County Tax Map; thence

3.) Along said northeasterly sideline, North forty-three degrees, twenty-six minutes, four seconds West (N 43° 26′ 04″ W), a distance of eighty and twelve hundredths feet (80.12′) to a point in the dividing line between Lots 104 and 108 in Block 2499, as shown on the Bronx County Tax Map; thence

4.) Along said dividing line, on a curve to the left having a radius of one thousand four hundred sixty and zero hundredths feet (1,460.00′), an arc length of four hundred eighty-five and thirty-seven hundredths feet (485.37′), a central angle of nineteen degrees, two minutes, fifty-one seconds (19° 02′ 51″), and a chord bearing North thirty-three degrees, forty-nine minutes, sixteen seconds East (N 33° 49′ 16″ E), a chord

distance of four hundred eighty-three and fourteen hundredths feet (483.14') to the Point and Place of **BEGINNING**.

Said Lot 104 in Block 2499 containing 40,096 square feet or 0.921 acres of land, more or less.

SUCH PREMISES BEING LIMITED, HOWEVER, to that area lying beneath a vertical plane located ten (10) feet below the lower surface of the Macombs Dam Bridge Approach, and excluding all space lying at and above said vertical plane.

As shown on a certain map entitled "Boundary Survey, Block 2499 Lot 104, Borough and County of the Bronx, City and State of New York, prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated November 5, 2007. This description prepared in accordance with said map.

Subject to all existing easements and restrictions of record.

Garage B Site

DESCRIPTION OF LOT 9 IN BLOCK 2493 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection in the southerly sideline of East 164th Street (sixty feet wide), with the westerly sideline of River Avenue (seventy-five feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 8", (latest revision August 2, 2001)and running; thence

1.) Along said River Avenue westerly sideline, South four degrees, fifty-six minutes, forty-seven seconds East (S 04° 56′ 47″ E), a distance of one hundred fifteen and thirty-seven hundredths feet (115.37′) to a point in the dividing line between Lot 9 and Lot 1 in Block 2493; thence

2.) Along said dividing line, South eighty-four degrees, fifty-seven minutes, twenty-three seconds West (S 84° 57′ 23″ W), a distance of six hundred eleven and sixty-three hundredths feet (611.63′) to a point in the easterly sideline of Jerome Avenue (width varies); thence

3.) Along easterly sideline, North seven degrees, seven minutes, thirty-eight seconds East (N 07° 07′ 38″ E), a distance of one hundred nineteen and four hundredths feet (119.04′) to the aforementioned southerly sideline of East 164th Street; thence

4.) Along said southerly sideline, North eighty-five degrees, three minutes, thirteen seconds East (N 85° 03′ 13″ E), a distance of five hundred eighty-six and seventy-three hundredths feet (586.73′) to the Point and Place of **BEGINNING**.

Said 9 in Block 2493 containing 69,430 square feet or 1.594 acres of land, more or less.

Subject to all existing easements and restrictions of record.

Being also known as Parcel "B", as shown on a certain map entitled "Boundary Survey, Block 2493 Lot 9, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007. This description being prepared in accordance with said map.

Garage C Site

DESCRIPTION OF LOT 108 IN BLOCK 2499 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the northwesterly sideline of Lot 104 in Block 2499 (also known as Macombs Lane) with the southwesterly sideline of East 161st Street (also known as Babe Ruth Plaza)(width varies), also being the dividing line between Lots 104 and 108 in Block 2499 as shown on the Bronx County Tax Map, and running; thence

1.) Along said northwesterly sideline, on a curve to the right having a radius of one thousand four hundred sixty and zero hundredths feet (1,460.00'), an arc length of four hundred sixty-five and two hundredths feet (465.02'), a central angle of eighteen degrees, fourteen minutes, fifty-seven seconds (18° 14' 57"), and a chord bearing South thirty-three degrees, twenty-five minutes, eighteen seconds West (S 33° 25' 18" W), a chord distance of four hundred sixty-three and six hundredths feet (463.06') to a point in the northeasterly sideline of Major Deegan Boulevard (width varies); thence along said sideline the following five (5) courses

2.) Along a curve to the right having a radius of two hundred ninety-four and zero hundredths feet (294.00'), an arc length of fifty-five and thirty-three hundredths feet (55.33'), a central angle of ten degrees, forty-six minutes, fifty-five seconds (10° 46' 55"), and a chord bearing North twenty-three degrees, twelve minutes, twenty-four seconds West (N 23° 12' 24" W), a chord distance of fifty-five and twenty-four hundredths feet (55.24') to a point in same; thence

3.) South seventy-two degrees, eleven minutes, five seconds West (S 72° 11' 05" W), a distance of six and zero hundredths feet (6.00') to a point in same; thence

4.) Along a curve to the left having a radius of one hundred sixty-nine and zero hundredths feet (169.00'), an arc length of twenty-two and forty-seven hundredths feet (22.47'), a central angle of seven degrees, thirty-seven minutes, four seconds (07° 37' 04"), and a chord bearing North twenty-one degrees, thirty-seven minutes, twenty-eight seconds West (N 21° 37' 28" W), a chord distance of twenty-two and forty-five hundredths feet (22.45') to a point of compound curvature in same; thence

5.) Along a curve to the left having a radius of four hundred seventy-nine and zero hundredths feet (479.00'), an arc length of two hundred twenty-three and thirty-six hundredths feet (223.36'), a central angle of twenty-six degrees, forty-three minutes, zero seconds (26° 43' 00"), and a chord bearing North thirty-eight degrees, forty-seven minutes, thirty seconds West (N 38° 47' 30" W), a chord distance of two hundred twenty-one and thirty-four hundredths feet (221.34') to a point of compound curvature in same; thence

6.) Along a curve to the left having a radius of one hundred nineteen and zero hundredths feet (119.00'), an arc length of eighty-nine and fifty-four hundredths feet (89.54'), a central angle of forty-three degrees, six minutes, thirty-three seconds (43° 06' 33"), and a chord bearing North seventy-three degrees, forty-two minutes, sixteen seconds West (N 73° 42' 16" W), a chord distance of eighty-seven and forty-four hundredths feet (87.44') to a point in the southeasterly sideline of Jerome Avenue (one hundred feet wide); thence

7.) Along said southeasterly sideline, North twenty-eight degrees, eight minutes, fifty-six seconds East (N 28° 08' 56" E), a distance of sixty-five and two hundredths feet (65.02') to a point of curvature in same; thence

8.) Still along same, on a curve to the right having a radius of three hundred seventy and seven hundredths feet (370.07'), an arc length of one hundred fifty-five and thirteen hundredths feet (155.13'), a central angle of twenty-four degrees, one minute, three seconds (24° 01' 03"), and a chord bearing North forty degrees, nine minutes, twenty-nine seconds East (N 40° 09' 29" E), a chord distance of one hundred fifty-three and ninety-nine hundredths feet (153.99') to a point of compound curvature leading into the aforementioned southeasterly sideline of East 161st Street (also known as Babe Ruth Plaza), thence

9.) Along the same, on a curve to the right having a radius of one hundred ten and thirty-eight hundredths feet (110.38'), an arc length of ninety-two and twenty-six hundredths feet (92.26'), a central angle of forty-seven degrees, fifty-three minutes, twenty-three seconds (47° 53' 23"), and a chord bearing North seventy-six degrees, six minutes, forty-two seconds East (N 76° 06' 42" E), a chord distance of eighty-nine and sixty hundredths feet (89.60') to a point in said southeasterly sideline of East 161st Street; thence

10.) Along said southeasterly sideline, South seventy-nine degrees, fifty-six minutes, thirty-seven seconds East (S 79° 56' 37"

E), a distance of two hundred eight and eleven hundredths feet (208.11') to an angle point in same; thence

11.) Still along same, South sixty-six degrees, six minutes, one second East (S 66° 06' 01" E), a distance of one hundred and twelve hundredths feet (100.12') to the Point and Place of **BEGINNING**.

Said Lot 108 in Block 2499 containing 126,061 square feet or 2.894 acres of land, more or less.

Subject to all existing easements and restrictions of record.

Being also known as Parcel "C", as shown on a certain map entitled "Boundary Survey, Block 2499 Lot 108, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007. This description being prepared in accordance with said map.

Site D

DESCRIPTION OF LOT 65 IN BLOCK 2354 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at a point at the intersection of the westerly sideline of Gerard Avenue (sixty feet wide) with the northeasterly sideline of East 151st Street (sixty feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 7" (latest revision October 1, 1998), and running; thence

1.) Along the northeasterly sideline of East 151st Street, North fifty-eight degrees, seventeen minutes, nineteen seconds West (N 58° 17′ 19″ W), a distance of two hundred seventy-nine and fifty-four hundredths feet (279.54′) to the easterly sideline of River Avenue (seventy-five feet wide); thence

2.) Along said River Avenue easterly sideline, North twelve degrees, thirty-six minutes, twenty-five seconds West (N 12° 36′ 25″ W), a distance of one hundred twenty-five and seventy-nine hundredths feet (125.79′) to a point in the dividing line between Lot 65 and Lot 70 in Block 2354; thence

3.) Along said dividing line, South fifty-eight degrees, seventeen minutes, nineteen seconds East (S 58° 17′ 19″ E), a distance of two hundred seventy-nine and fifty-four hundredths feet (279.54′) to a point in the aforementioned westerly sideline of Gerard Avenue; thence

4.) Along said westerly sideline South twelve degrees, thirty-six minutes, twenty-five seconds East (S 12° 36′ 25″ E), a distance of one hundred twenty-five and seventy-nine hundredths feet (125.79′) to the Point and Place of **BEGINNING.**

Said Lot 65 in Block 2354 containing 25,158 square feet or 0.578 acres of land, more or less.

Subject to all existing easements and restrictions of record.

Being also known as Parcel "9(D)", as shown on a certain map entitled "Boundary Survey, Block 2354 Lots 20 and 65, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007. This description being prepared in accordance with said map.

DESCRIPTION OF LOT 20 IN BLOCK 2354 ON THE BRONX COUNTY TAX MAP, SITUATED IN THE BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING at the intersection of the westerly sideline of Gerard Avenue (sixty feet wide) with the southwesterly sideline of East 151st Street (sixty feet wide), as shown on "The Borough President of the Bronx, Final Section Map Number 7 (latest revision October 1, 1998), and running; thence

1.) Along the southwesterly sideline of Gerard Avenue, South twelve degrees, thirty-six minutes, twenty-five seconds East (S 12° 36′ 25″ E), a distance of one hundred ninety-five and eighty-five hundredths feet (195.85′) to a point in the dividing line between Lot 20 and Lot 1 in Block 2354; thence

2.) Along said dividing line, South eighty degrees, one minute, forty-four seconds West (S 80° 01′ 44″ W), a distance of two hundred and twenty-one hundredths feet (200.21′) to a point in the easterly sideline of River Avenue (seventy-five feet wide); thence

3.) Along said River Avenue easterly sideline, North twelve degrees, thirty-six minutes, twenty-five seconds West (N 12° 36′ 25″ W), a distance o6hf three hundred eighty-one and ninety-four hundredths feet (381.94′) to the aforementioned southwesterly sideline of East 151st Street; thence

4.) Along said southwesterly sideline of East 151st Street, South fifty-eight degrees, seventeen minutes, nineteen seconds East (S 58° 17′ 19″ E), a distance of two hundred seventy-nine and fifty-four hundredths feet (279.54′) to the Point and Place of **BEGINNING**.

Said Lot 20 in Block 2354 (Parcel 11(D)) containing 57,779 square feet or 1.326 acres of land, more or less.

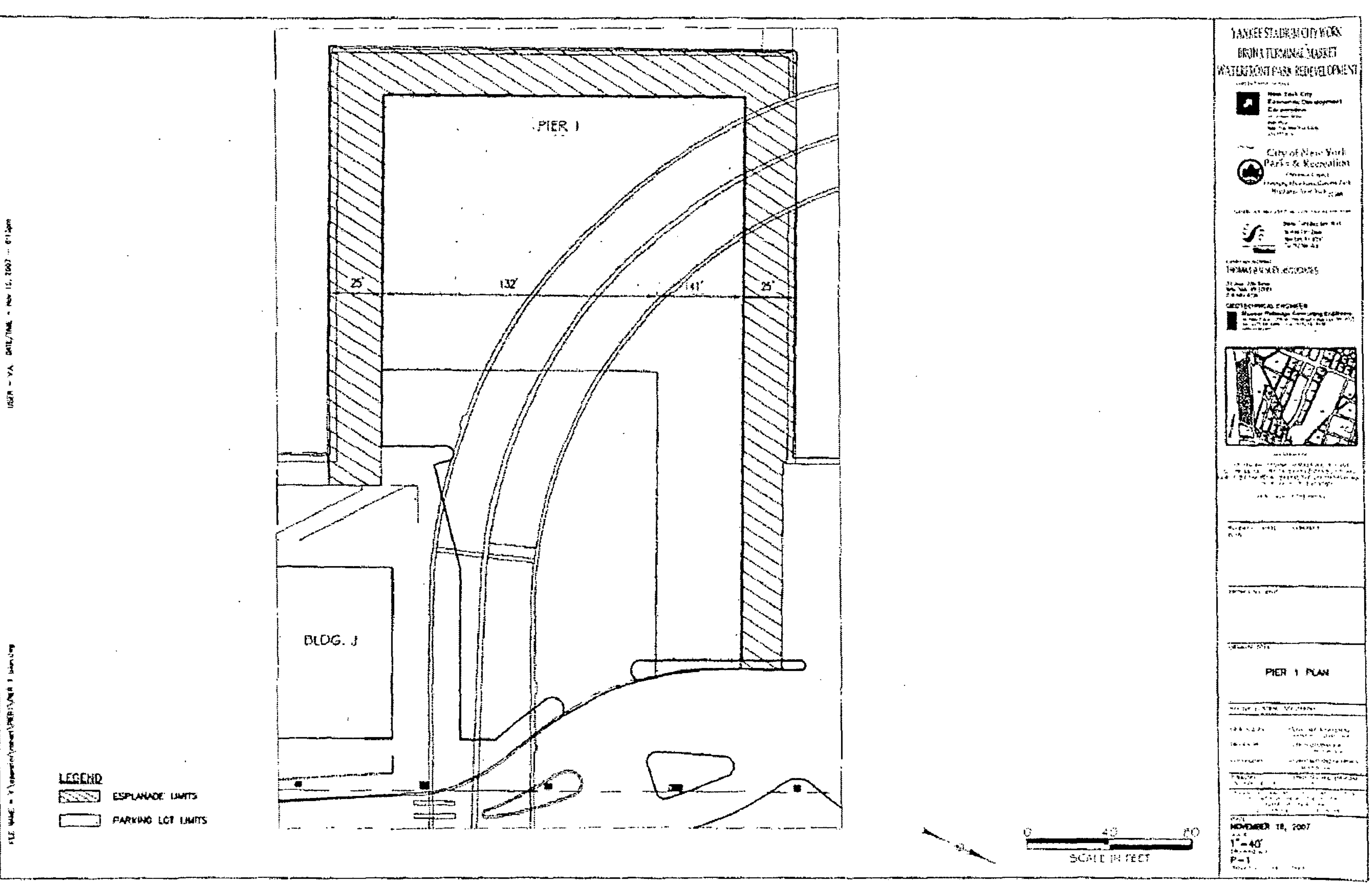
Subject to all existing easements and restrictions of record.

Being also known as Parcel "11(D)", as shown on a certain map entitled "Boundary Survey, Block 2354 Lots 20 and 65, Borough and County of The Bronx, City and State of New York", prepared by GPI Engineering & Surveying, LLP, Babylon, New York and dated April 15, 2007. This description being prepared in accordance with said map.

EXHIBIT A-1

ESPLANADE AND FERRY LANDING SITE

(on page following)



YANKEE STADIUM CITY WORK
BRONX TERMINAL MARKET
WATERFRONT PARK REDEVELOPMENT
City of New York
Parks & Recreation
GEOTECHNICAL ENGINEER
PIER 1
25'
132'
141'
25'
BLDG. J
LEGEND
ESPLANADE LIMITS
PARKING LOT LIMITS
0
40
80
SCALE IN FEET
PIER 1 PLAN
NOVEMBER 18, 2007
1" = 40'
P-1

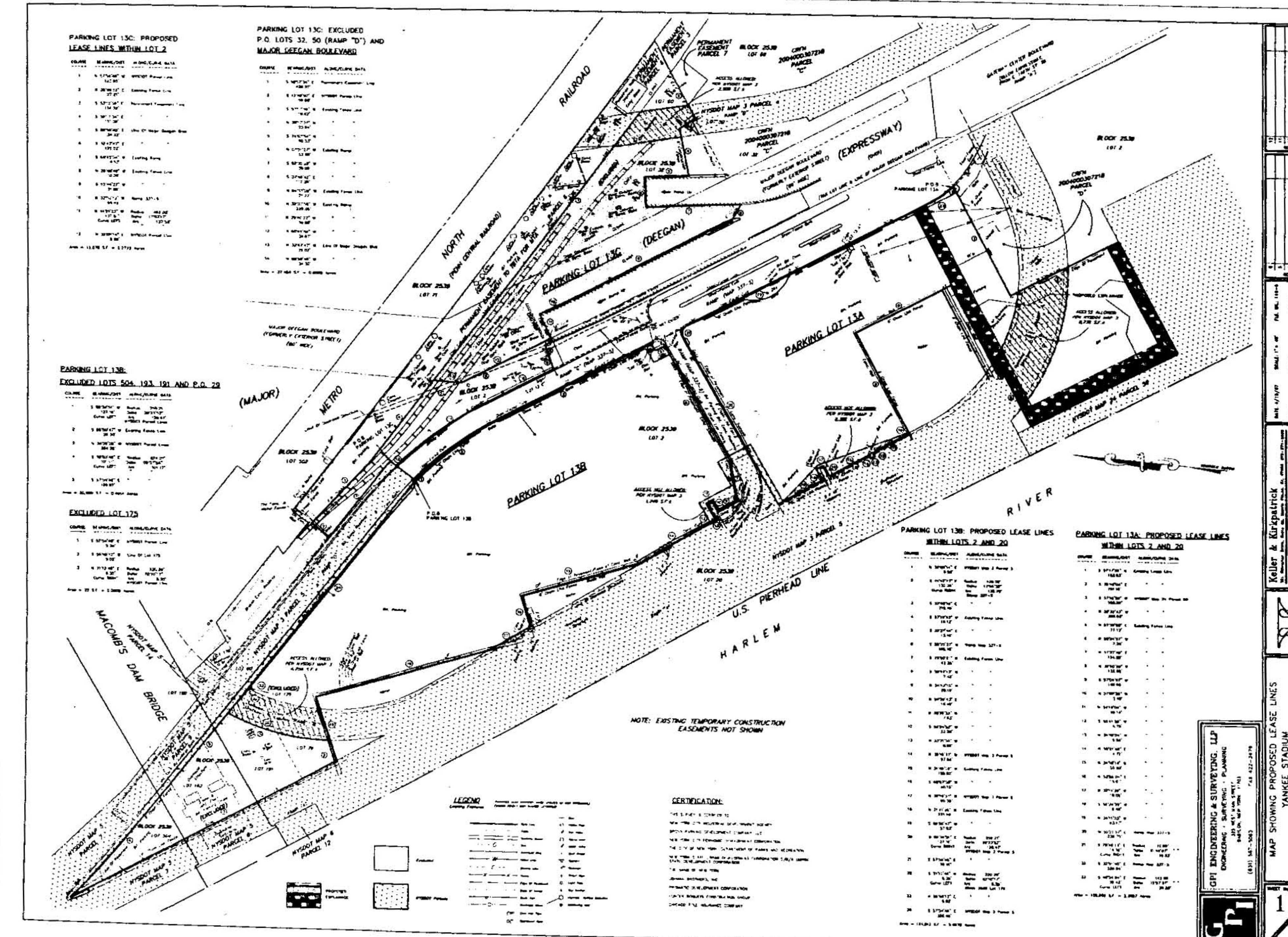
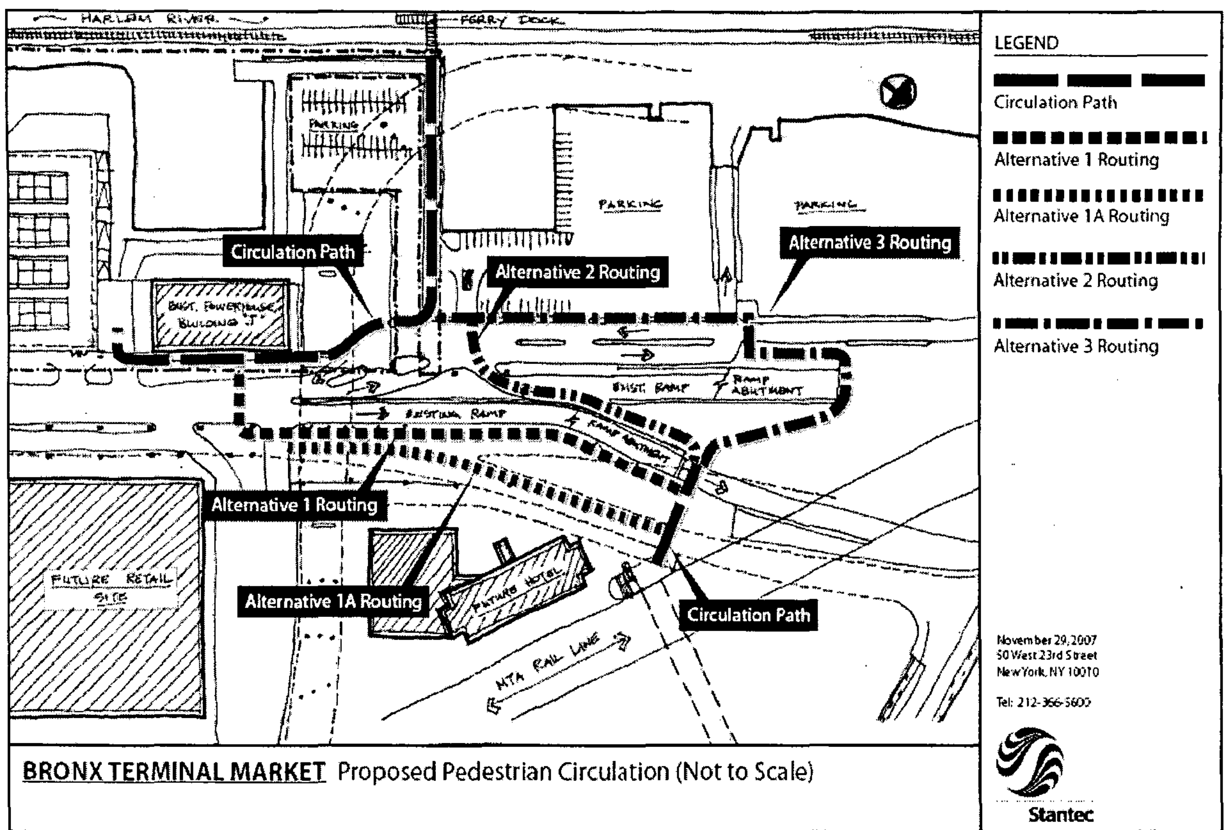

PARKING LOT 13C: PROPOSED LEASE LINES WITHIN LOT 2
PARKING LOT 13C: EXCLUDED P.O. LOTS 32, 50 (RAMP "D") AND MAJOR DEEGAN BOULEVARD
PARKING LOT 13B: EXCLUDED LOTS 504, 193, 191 AND P.O. 29
EXCLUDED LOT 175
RAILROAD
NORTH
(NEW YORK CENTRAL RAILROAD)
METRO
(MAJOR)
(EXPRESSWAY)
(DEEGAN)
PARKING LOT 13C
PARKING LOT 13A
PARKING LOT 13B
MACOMB'S DAM BRIDGE
RIVER
U.S. PIERHEAD LINE
HARLEM
NOTE: EXISTING TEMPORARY CONSTRUCTION EASEMENTS NOT SHOWN
LEGEND
CERTIFICATION:
PARKING LOT 13B: PROPOSED LEASE LINES WITHIN LOTS 2 AND 20
PARKING LOT 13A: PROPOSED LEASE LINES WITHIN LOTS 2 AND 20
Keller & Kirkpatrick
Preliminary
MAP SHOWING PROPOSED LEASE LINES
YANKEE STADIUM
PARKING LOTS 13A, 13B & 13C
BOROUGH AND COUNTY OF THE BRONX, CITY AND STATE OF NEW YORK
GPI ENGINEERING & SURVEYING, LLP
ENGINEERING · SURVEYING · PLANNING

EXHIBIT A-2

ALTERNATIVE PEDESTRIAN PATHWAYS

(on page following)

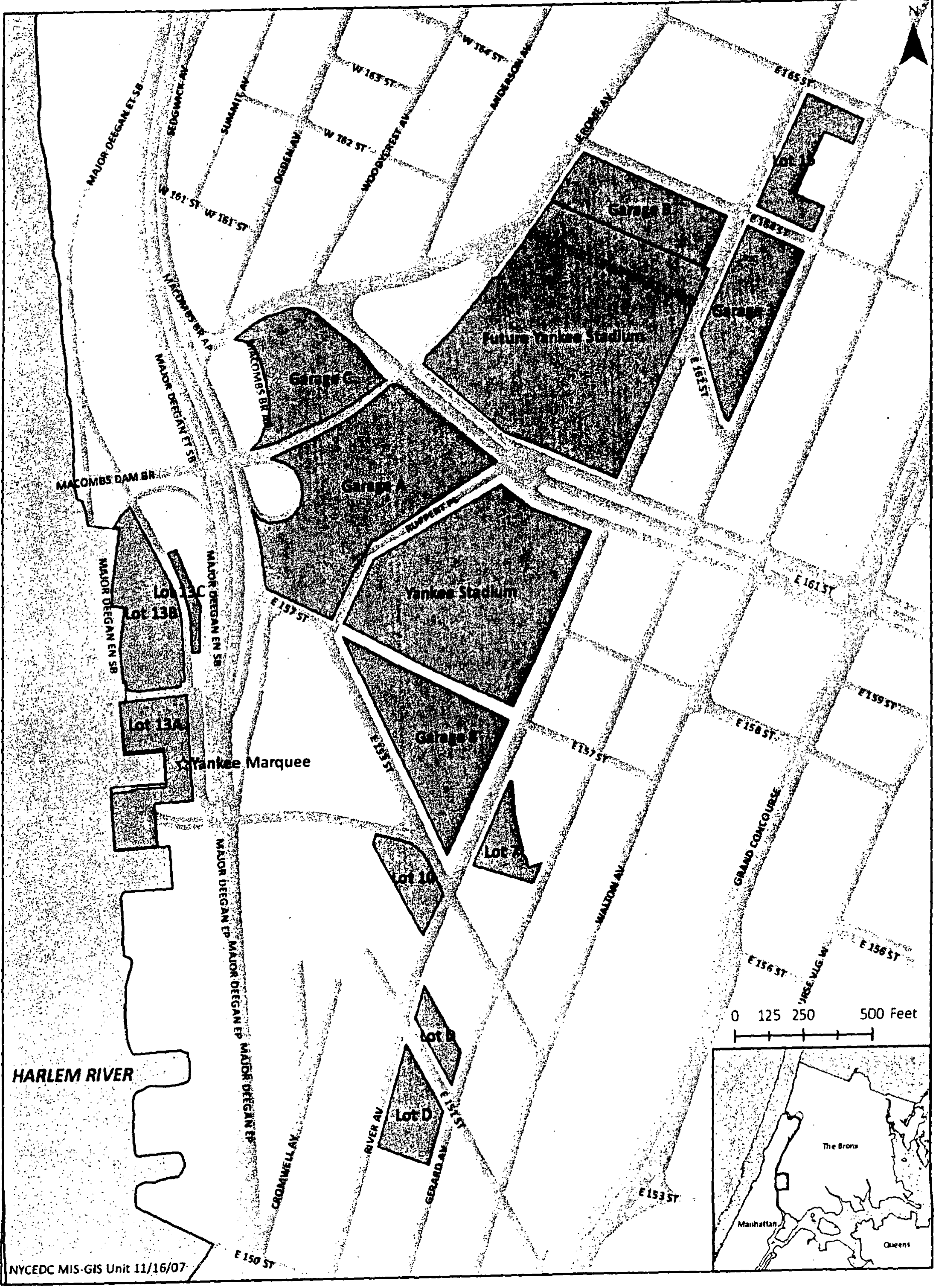


BRONX TERMINAL MARKET Proposed Pedestrian Circulation (Not to Scale)

EXHIBIT A-3

EXISTING MARQUEE

(on page following)



Future Yankee Stadium
Garage B
Garage C
Garage A
Yankee Stadium
Garage 8
Lot 13C
Lot 13B
Lot 13A
Yankee Marquee
Lot 7
Lot 10
Lot D
HARLEM RIVER
MACOMBS DAM BR
MAJOR DEEGAN EN SB
MAJOR DEEGAN EP
E 161 ST
E 157 ST
E 158 ST
E 156 ST
E 153 ST
E 150 ST
E 165 ST
W 163 ST
W 162 ST
W 161 ST
JEROME AV
WALTON AV
GRAND CONCOURSE
RIVER AV
GERARD AV
CROMWELL AV
0 125 250 500 Feet
The Bronx
Manhattan
Queens
NYCEDC MIS-GIS Unit 11/16/07

EXHIBIT B

TITLE MATTERS

1. Any state of facts which an accurate survey of the Premises would show.

2. Any variations between Tax Lots for the Premises as indicated on the Tax Map for the Borough of the Bronx and what would be shown on an accurate metes and bounds description of the Premises.

3. All agreements, reservations and claims of record.

4. All matters described or mentioned in Certificate of Title No. 3207-00043, issued by Chicago Title Insurance Company dated December 13, 2007, except that the Premises will be conveyed free and clear of taxes, assessments, water and water meter charges, sewer rents, pest control liens and vault charges, applicable to the period up to and including the Commencement Date.

5. Subject to Sections 3.2(c) and 3.3(f), any occupancy or holdover tenancy by Central Parking Systems, Kinney Systems, Inc., or any affiliate thereof on Site 15.

6. Easements attached hereto conveyed to Triborough Bridge and Tunnel Authority, attached hereto as Exhibit E.

7. Rights of the New York Yankees, Inc. with respect to the Existing Marquee pursuant to the Existing Stadium Lease.

8. Any and all elevated highways and any and all related ramps, trestles, columns, footings, foundations, supports, conduit and other fixtures, traversing or located upon the Premises (including without limitation the Major Deegan Expressway) and rights of access by the State and its agencies, instrumentalities and contractors for reconstruction, replacement, repair, maintenance, and the like in connection therewith.

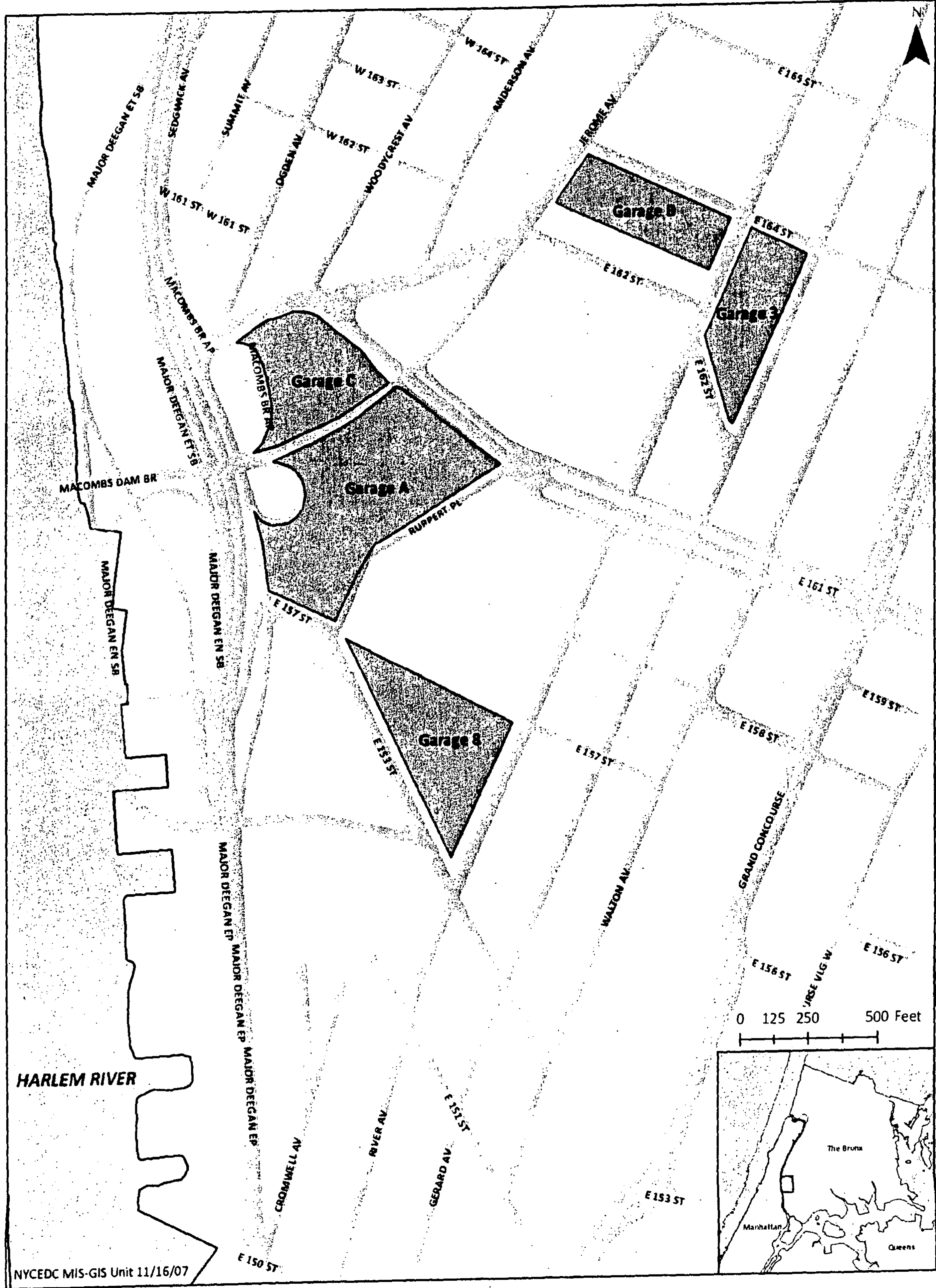
9. Such portions of Lot 13C that may lie within the bed of a mapped street.

10. Occupancy by Turner Construction Company (or affiliates thereof) on Garage B site in connection with staging for New Stadium construction work.

EXHIBIT C

GARAGES

(on page following)



W 164 ST
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E 153 ST
E 151 ST
E 150 ST
SEDGWICK AV
SUMMIT AV
OGDEN AV
WOODYCREST AV
ANDERSON AV
JEROME AV
MAJOR DEEGAN ET SB
MAJOR DEEGAN EN SB
MAJOR DEEGAN EP
MACOMBS BR AP
MACOMBS DAM BR
RUPPERT PL
WALTON AV
GRAND CONCOURSE
CROMWELL AV
RIVER AV
GERARD AV
Garage A
Garage B
Garage C
Garage 3
Garage 8
HARLEM RIVER
0 125 250 500 Feet
N
The Bronx
Manhattan
Queens
NYCEDC MIS-GIS Unit 11/16/07

EXHIBIT D

PARK IMPROVEMENTS

(on page following)

City of New York
Parks & Recreation

GARAGE A -- Ruppert Place Transition

Bronx, New York
July 18, 2007

Master Plan

EXHIBIT E

TBTA EASEMENTS

(on pages following)

INDENTURE

THIS INDENTURE, made as of the 24th day of MAY, 2007, by and between THE CITY OF NEW YORK, a New York municipal corporation having an office at City Hall, New York, New York 10007 (hereinafter referred to as the "City"), and TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, a New York public benefit corporation having an office at Randall's Island, New York, New York 10035 (hereinafter referred to as "TBTA").

WHEREAS, TBTA is authorized, pursuant of Section 553(9)(r) of the Public Authorities Law, to acquire any capital asset, whether in the nature of personal or real property, or any interest therein, which is used or useful for a transit or transportation purpose of the METROPOLITAN TRANSPORTATION AUTHORITY, hereinafter referred to as "MTA" or its designated subsidiary; and

WHEREAS, MTA is the lessee of a certain parcel of land and/or railroad rights-of-way in the Borough of the Bronx, City and State of New York, which parcel is identified on as Block 2357, Lot 2, on the Tax Map for the Borough of the Bronx (the "MTA Property") and is operated by MTA's subsidiary, METRO-NORTH COMMUTER RAILROAD COMPANY (hereinafter referred to as "MNCRR"); and

WHEREAS, TBTA has been requested by MTA to acquire a permanent easement as hereinafter described on the land described on Exhibit A attached hereto, located on a parcel of City-owned land adjacent to the MTA Property, and which is identified as, Block 2539, p/o Lots 32 and 60 on the Tax Map for the Borough of the Bronx (the "Permanent Easement Area") for the purposes hereinafter set forth, and a temporary easement as hereinafter described on the land described on Exhibit B attached hereto (the "Temporary Easement Area") for the purposes hereinafter set forth, located on a parcel of City-owned land adjacent to the MTA Property, and which is identified as, Block 2539, p/o Lots 32 and 60 on the Tax Map for the Borough of the Bronx (the Permanent Easement Area and the Temporary Easement Area are sometimes hereinafter referred to as the "Combined Easement Area"); and

WHEREAS, MTA requires said easements in the Permanent Easement Area for the maintenance and use of commuter rail facilities, being a project known as Yankee Stadium Metro-North Station (the "Project") and MTA requires said easements in the Temporary Easement Area for the construction of the Project; and

WHEREAS, the easements to be acquired by TBTA, as described herein, are compatible with public purposes of the City, and the City is willing to convey said easements to TBTA subject to the terms and conditions stated herein; and

WHEREAS, such easements are an insubstantial addition to MTA transportation property contiguous thereto; and

WHEREAS, Section 553-e(3) of the Public Authorities Law authorizes the City, by action of its Mayor alone, to transfer to TBTA such property as it desires to acquire; and

WHEREAS, pursuant to Section 553(9)(r) of the Public Authorities Law, TBTA intends to transfer the easements acquired from the City pursuant to this Indenture to MTA for the above-described purposes of the Project; and

WHEREAS, pursuant to Section 553-e(7) of the Public Authorities Law, MNCRR is empowered to request TBTA to acquire the Combined Easement Area for the Project through condemnation; and

WHEREAS, the parties hereto each deem it to be in their interests to avoid the expense and delay of condemnation procedures and to set forth their mutual agreements herein with respect to the matters hereinafter set forth; and

NOW, THEREFORE, THIS INDENTURE

WITNESSETH:

1. Pursuant to the aforesaid statutes, the City, in consideration of the premises set forth herein, and other valuable consideration paid and provided to it by TBTA, and upon the covenants and conditions hereinafter set forth, does hereby grant and release unto TBTA, its successors and assigns, the following easements:

(a) Entryway Easements. Permanent easements in, through, over and upon the Permanent Easement Area to construct, install, test, inspect, improve, alter, repair, replace, operate, and maintain the new commuter rail station on the Permanent Easement Area, including without limitation platforms, tracks, signals, station houses, commuter shelters, and other railroad appurtenances and facilities.

(b) Negative Easements. Negative easements in, through, over, and upon those portions of the Permanent Easement Area to permit removal of existing fences, signs, and other obstructions that will interfere with MTA's construction and maintenance of the Project, and also to preclude adjacent owners and tenants from installing future obstructions within the Permanent Easement Area without MTA's prior consent.

(c) Temporary Construction Easements. Until the completion of the Project and the restoration of the Temporary Easement Area as required in the paragraph (c), temporary construction easements in, through, over, and upon the Temporary Easement Area for the purpose of staging the construction of the Project. Access to the Temporary Easement Area and the Permanent Easement Area. Access to the Combined Easement Area over the servient estate shall be through such areas as are from time to time designated by the City, and shall be reasonably sufficient for the purposes of such easements as set forth herein. TBTA covenants and agrees that, within sixty (60) days of completion of the Project, it shall remove all equipment and materials and restore to the condition which existed prior to the date hereof the Temporary Easement Area and any and all portions of the Temporary Easement Area that may be affected by the Project or the acts or omissions of TBTA, MTA, MNCRR, and/or their respective employees, agents, contractors, passengers, customers, and their respective successors, assigns and transferees. The parties hereto agree, promptly upon the request of the other, to provide (at no out-of-pocket expense to the party of which such request is being made), after the termination

of the temporary easement, in recordable form, further reasonable written assurances of the termination of the temporary easement.

2. TBTA covenants and agrees (i) to obligate its transferee, if any, by provision in its conveyance of the easements conveyed to it by the City pursuant to this Indenture, and (ii) to continue to be obligated notwithstanding any such conveyance to a transferee, to:

(a) Bear the cost of all said work and of construction, maintenance and repair of said easement areas and access thereto and of the restoration and other obligations set forth in this Indenture including, without limitation, in Section 1(c) hereof;

(b) If necessary in connection with TBTA's construction, maintenance, use, operation and repair of and on said easement areas, relocate any sewers, water mains or utilities whether owned or maintained by the City or by any public or private utility company that may be located below or within the boundaries of permanent easement;

(c) Comply with all "Environmental Laws" regarding the discovery, reporting, removal, release, disposal, containment, storage, use, processing, transportation, remediation and/or mitigation of "Solid Waste" and "Hazardous Substances" in connection with (A) the Project, (B) the use and occupation of the Combined Easement Area by TBTA, MTA, MNCRR, their respective transferees, successors and assigns, if any, and their respective agents, employees, contractors, subcontractors, passengers, customers, invitees and licensees, (C) all matters arising from or in any way connected with the use and occupation of the MTA Property, and (D) all matters arising from or in any way connected with the use and occupation from and after the date of this Indenture of the Permanent Easement Area. TBTA and MTA represent and warrant that they have inspected the Combined Easement Area, are fully familiar with the condition thereof, and agree to accept the same in said condition, "as is" on the date of this Indenture. The City shall have no obligation or liability with respect to the foregoing. "Solid Waste" shall mean any substance or material defined as such under any applicable federal, state or local law, regulation, rule, published governmental policy or guidance, ordinance, or decree. "Hazardous Substances" shall mean (A) gasoline, petroleum and other petroleum-related compounds and by-products, asbestos (including asbestos containing material), explosives, PCBs, radioactive materials, lead, mercury, pesticides, or any other "hazardous" or "toxic" material, substance or waste which is defined by those or similar terms or is regulated as such under any Environmental Laws, including but not limited to any (i) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq., or any applicable so-called "superfund" or "superlien" law and the judicial interpretations thereof; or (ii) "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq.; or (iii) "hazardous materials" as defined under the Hazardous Materials Transportation Authorization Act, 49 U.S.C. Section 5101 et seq.; or (iv) "hazardous waste" as defined under New York Environmental Conservation Law, Section 27-0901 et seq.; or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq.; or (vi) "pollutant" or "contaminant" as defined under 42 U.S.C.A. § 9601(33); or (vii) "hazardous chemical" as defined under 29 C.F.R. Part 1910; or (viii) "contaminant" as defined under New York Environmental Conservation Law S 27-1405; and such substances as defined under the regulations adopted and governmental policies or

guidance published pursuant to all of the above statutes, and all other applicable laws, rules or regulations of all Federal, State and local authorities having jurisdiction over the Premises, as well as the judicial interpretations thereof; or (B) mold, mildew and similar substances. "Environmental Laws" shall mean, collectively, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., the Hazardous Materials Transportation Authorization Act, 49 U.S.C. Section 5101 et seq., the New York Environmental Conservation Law, Article 27, the Clean Water Act, 33 U.S.C. Section 1321 et seq., the Toxic Substances Control Act, 15 U.S.C. § 2601-2629, the Clean Air Act, 42 U.S.C. § 7401, et seq., the Emergency Planning and Community Right-To-Know Act, 42 U.S.C. § 11001, et seq., any so-called "superfund" or "superlien" law, and any Federal, State, or local statute, law, ordinance, code, rule, regulation, order, rule of common law, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, radioactive, biohazardous or dangerous waste, substance or materials, including any regulations adopted and governmental policies or guidance published with respect thereto; and

(d) Defend, indemnify and save harmless the City and its agents, employees or representatives from and against any and all claims, suits, loss, costs, liabilities, damages, injuries to person, property or natural resources, fines, penalties, fees, costs, charges, expenses (including, without limitation, attorneys' fees), and demands of whatsoever kind and nature ("Liabilities") arising or growing out of, in whole or in part, directly or indirectly, without regard to fault, the use or occupation of the Combined Easement Area and/or the performance of the Project and/or the construction, maintenance, repair, occupation and use of said commuter rail station by the TBTA, MTA, MNCRR, or their respective transferees, successors and assigns, and their respective agents, employees, contractors, subcontractors, passengers, customers, invitees and licensees, and for such persons' failure to comply with any applicable laws, regulations, orders, rules, ordinances, or rules of common law, or with any of the covenants, terms or conditions of this Indenture. Such indemnity shall include, but is not limited to, Liabilities arising from the release, discharge, deposit, transportation or presence, or alleged release, alleged discharge, alleged deposit, alleged transportation or alleged presence, of any Solid Waste or Hazardous Substances at, on, over, under or from the Combined Easement Area, including, but not limited to, all costs of investigation, clean-up, removal, containment, treatment, remediation and restoration of any kind, and proper disposal of any Solid Waste or Hazardous Substances. It shall also include, but is not limited to, Liabilities associated with the determination of whether the Combined Easement Area is in compliance with applicable Environmental Laws and efforts to bring the Premises in compliance with same. It is expressly acknowledged and agreed that the City shall have no liability of any kind or nature whatsoever for any matter or thing that occurs on the Temporary Easement Area (during the term of the easement with respect thereto) or the Permanent Easement Area (without limit as to time) other than to the extent arising from the active negligence of the City. The foregoing notwithstanding, TBTA shall not be obligated to indemnify the City for any Liabilities arising out of any presence, release or discharge of Hazardous Substances prior to the date first above written which are neither discovered nor reasonably discoverable as of the date first above written, nor are discharged or released on account of any act of TBTA, MTA, MNCRR or any of their transferees, successors or assigns, or any of their agents, employees, contractors, subcontractors, invitees, licensees, or other party acting on behalf of TBTA, MTA or MNCRR. The foregoing is not intended to and shall not create any obligations on the part of the City or relieve TBTA of its

obligations under paragraph (c) above of this Section 2 with respect to compliance with Environmental Laws, nor be deemed to constitute an indemnification by the City of TBTA, MTA or MNCRR with respect to the presence, release or discharge of any Hazardous Substances.

3. TBTA hereby acknowledges that the City is using the lands and improvements thereon adjacent to the Combined Easement Area to stage the construction of public parks and public parking facilities at the same time that TBTA anticipates constructing the Project, and will use such lands and improvements for such purposes. TBTA and the City agree to use good faith and commercially reasonable efforts to coordinate and cooperate with one another, including without limitation with respect to such matters as site access and egress, deliveries, and street closures, so as to reasonably minimize interference with one another's undertakings on their respective sites.

4. TBTA further covenants and agrees (i) to install and maintain appropriate fencing and other protective measures separating the Temporary Easement Area and the Permanent Easement Area, respectively, from the remainder of the City's properties, and (ii) to deliver to the City, not less than ten (10) days prior to the commencement of any work, (A) certificates evidencing that, during performance of the Project and/or any other repairs, maintenance, replacements or other construction work, TBTA shall maintain and shall cause its contractors to maintain insurance in amounts reasonably satisfactory to the City and naming as additional insureds the City and such other entities of which the City notifies TBTA, and (B) a schedule setting forth the components of the work to be performed and the timing of performance thereof. TBTA may either insure or self-insure the risks that it is required to insure pursuant to this Indenture; provided, however, that contractors shall not be permitted to self-insure. Notwithstanding any plan of self insurance, TBTA shall deliver to the City insurance certificate(s) which comply with the provisions of this Indenture with respect to any insurance actually purchased by TBTA. In the event TBTA elects to self-insure as provided herein, it shall so notify the City. Any self-insured exposure shall be deemed to be an insured risk under this Indenture. The beneficiaries of such insurance shall be afforded no less insurance protection than if such self-insured portion was fully insured by an insurance company of the quality and caliber required hereunder (including, without limitation, the protection of a legal defense, by attorneys reasonably acceptable to beneficiaries, and the payment of claims within the same time period that a third party insurance carrier of the quality and caliber otherwise required hereunder would have paid such claims). Waiver of subrogation shall be applicable to any self-insured exposure.

5. TBTA shall keep the Premises free from any mechanic's, materialman's or similar liens or encumbrances, and any claims therefor, in connection with the Project and any work performed by or for TBTA or at the Combined Easement Area. TBTA shall remove any such claim, lien or encumbrance by bond or otherwise within sixty (60) days after notice by the City. If TBTA fails to do so, the City may pay the amount or take such other action as may be necessary to remove such claim, lien or encumbrance, without being responsible for investigating the validity thereof. The amount so paid and costs incurred by the City shall be immediately paid by TBTA to the City. Nothing contained in this Indenture shall authorize TBTA to do any act which shall subject title to the Premises to any such notices, liens or encumbrances whether claimed by operation of statute or other law or express or implied

contract. Any claim to a lien or encumbrance upon the Premises arising in connection with any work shall be null and void, or at the City's option shall attach only against TBTA's interest in the Permanent Easement Area and shall in all respects be subordinate to the City's title to the Premises.

6. Whenever it is provided herein that notice, demand, request, consent, approval or other communication may be given to, or served upon, any of the parties hereby by any other party, or whenever any of the parties desires to give or serve upon any other party any notice, demand, request, consent, approval or other communication with respect hereto, each such notice, demand, request, consent, approval or other communication shall be in writing and shall be effective for any purpose if given or served as follows:

(a) If to the City, by personal delivery or overnight courier service with receipt acknowledged or by mailing the same to the City by certified mail, postage prepaid, return receipt requested, addressed to the City, c/o New York City Economic Development Corporation, 110 William Street, New York, New York 10038, Attn.: Lease Administrator, with copies thereof to New York City Law Department, 100 Church Street, New York, New York, 10007, Attn.: Chief, Economic Development Division, or to such other address(es) and attorneys as the City may from time to time designate by notice given to the parties hereto by certified mail or overnight courier.

(b) If to the TBTA, by personal delivery or overnight courier service with receipt acknowledged or by mailing the same by certified mail, postage prepaid, return receipt requested, addressed to Director of Real Estate, Metropolitan Transportation Authority, 347 Madison Avenue, New York, New York 10017-3739, with copies thereof to General Counsel, Metro-North Commuter Railroad Company, 347 Madison Avenue, 19th floor, New York, New York 10017, or to such other address(es) and attorneys as TBTA may from time to time designate by notice given to the parties hereto by certified mail or overnight courier.

Every notice, demand, request, consent, approval or other communication hereunder shall be deemed to have been given or served at the time that the same shall have been actually received at the addressee's office as herein provided as evidenced by a signed receipt given upon personal delivery or reputable overnight courier, or by postal return receipt deposited in the United States mails, postage prepaid, as aforesaid.

7. The conveyances, covenants, rights and restrictions set forth in this Indenture shall run with the land and bind and benefit the City and TBTA, and the City's and TBTA's respective successors-in-interest and/or assigns.

8. TBTA may take any action required or permitted to be taken by TBTA hereunder acting by and through MNCRR, its successors and assigns, and any action so taken shall have the same force and effect as if taken by TBTA.

IN WITNESS WHEREOF, the parties have caused these presents to be executed as of the day and year first above written.

THE CITY OF NEW YORK

By: ______________________
Deputy Mayor

Approved as to Form:

____
Acting Corporation Counsel
The City of New York

TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY

By: ______________________
Director of Real Estate

____
General Counsel
Metro-North Commuter Railroad Company

State of New York)
) ss.:
County of New York)

On the 22nd day of May in the year 2007 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared Daniel L. Doctoroff, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)(Commissioner of Deeds)

JEAN A. ROSS
Notary Public, State of New York
No. 31-5007029
Qualified in New York County
Commission Expires May 10, 2011

SEAL

State of New York)
) ss.:
County of New York)

On the 24th day of MAY in the year 2007 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared ROCCO KRSULIC, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

(Notary Public)(Commissioner of Deeds)

RICHARD K. BERNARD
NOTARY PUBLIC, STATE OF NEW YORK
NO. 4968446
QUALIFIED IN WESTCHESTER COUNTY
COMMISSION EXPIRES 6/25/2010

SEAL

EXHIBIT A

Permanent Easement Area

METES AND BOUNDS DESCRIPTION
PARCEL 4
REMAINDER OF LOT 60/BLOCK 2539

BEGINNING AT THE POINT OF INTERSECTION OF THE PROPOSED WESTERLY RIGHT-OF-WAY LINE OF THE METRO-NORTH/MTA, (F.K.A. NEW YORK CENTRAL RAILROAD) WITH THE EXISTING EASTERLY LINE OF RAMP "D"; RUNNING THENCE

1. ALONG SAID EASTERLY LINE OF RAMP "D" N14°56'03"E, A DISTANCE OF 7.16 FEET TO A POINT OF CURVATURE, THENCE
2. STILL ALONG SAID EASTERLY LINE ON A CURVE TO THE LEFT, HAVING A RADIUS OF 906.46 FEET, AN ARC LENGTH OF 49.61 FEET TO A POINT IN THE EXISTING WESTERLY RIGHT-OF-WAY LINE OF THE METRO-NORTH/MTA, THENCE
3. ALONG SAID EXISTING WESTERLY RIGHT-OF-WAY LINE S29°33'23"E, A DISTANCE OF 122.81 FEET TO A POINT, SAID POINT BEING ALSO CORNER OF PARCEL "C", THENCE
4. ALONG THE AFOREMENTIONED NORTHERLY LINE OF PARCEL "C" S86°12'55"W, A DISTANCE OF 43.30 FEET TO A POINT IN THE AFOREMENTIONED PROPOSED WESTERLY RIGHT-OF-WAY LINE, THENCE
5. ALONG SAID PROPOSED WESTERLY RIGHT-OF-WAY LINE N29°22'35"W, A DISTANCE OF 62.56 FEET TO THE PLACE AND POINT OF BEGINNING.

CONTAINING AN AREA OF 3,587 SQ. FT. (0.082 Acre) MORE OR LESS.

METES AND BOUNDS DESCRIPTION
PARCEL 6
LOT 32/BLOCK 2539

BEGINNING AT THE POINT OF INTERSECTION OF THE PROPOSED WESTERLY RIGHT-OF-WAY LINE OF THE METRO-NORTH/MTA, (F.K.A. NEW YORK CENTRAL RAILROAD) WITH THE EXISTING WESTERLY LINE OF RAMP "D"; RUNNING THENCE

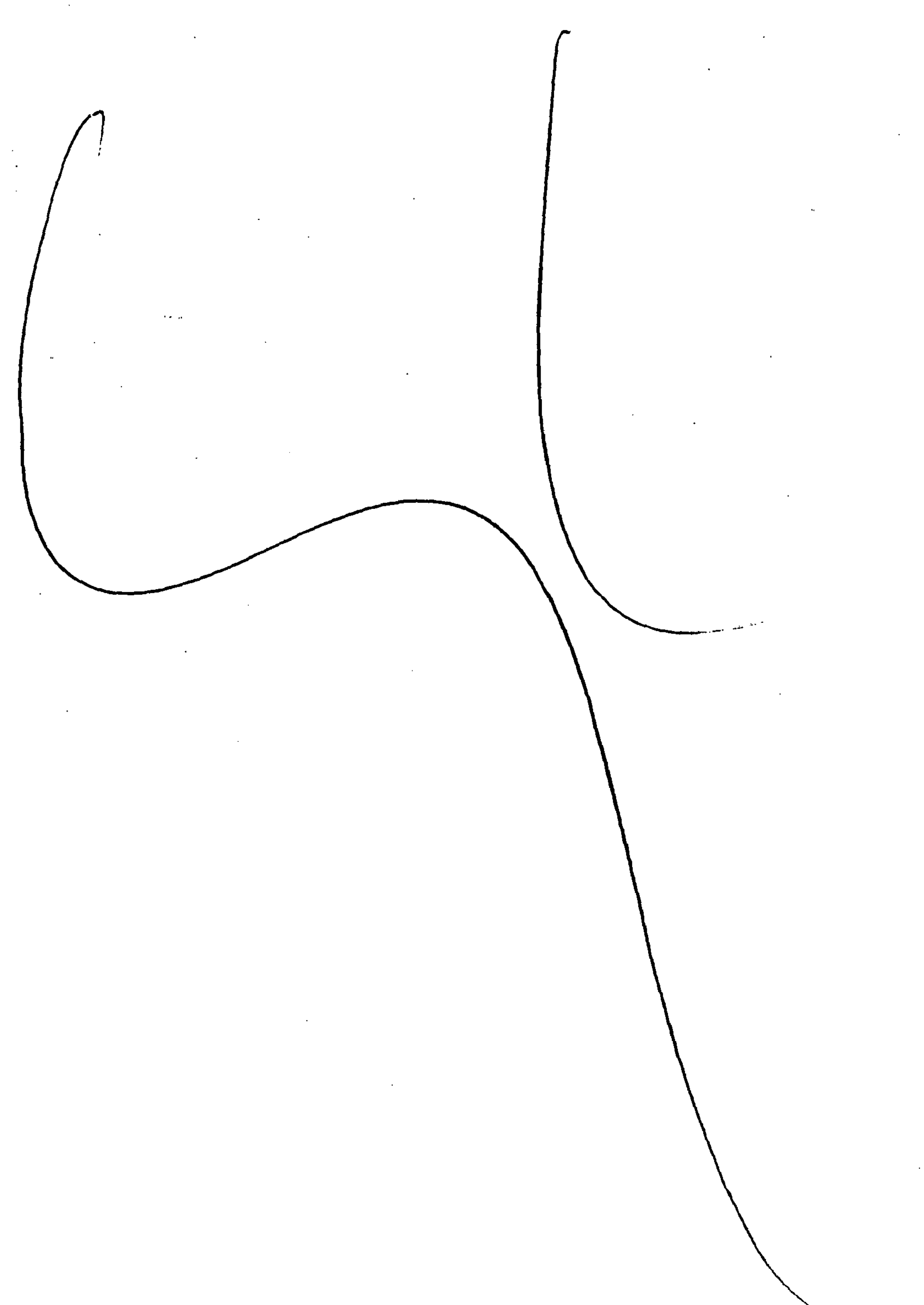
1. ALONG SAID PROPOSED WESTERLY RIGHT-OF-WAY LINE N29°22'35"W, A DISTANCE OF 505.61 FEET TO A POINT, THENCE
2. STILL ALONG SAID PROPOSED WESTERLY RIGHT-OF-WAY LINE N24°17'55"W, A DISTANCE OF 131.35 FEET TO A POINT IN THE EXISTING WESTERLY RIGHT-OF-WAY LINE OF THE METRO-NORTH/MTA, THENCE
3. ALONG SAID EXISTING WESTERLY RIGHT-OF-WAY LINE S29°33'23"E, A DISTANCE OF 29.56 FEET TO A POINT, THENCE
4. STILL ALONG SAID EXISTING WESTERLY RIGHT-OF-WAY LINE PERPENDICULAR TO THE LAST COURSE N60° 26'37"E, A DISTANCE OF 25.00 FEET TO A POINT, THENCE
5. STILL ALONG SAID EXISTING WESTERLY RIGHT-OF-WAY LINE PERPENDICULAR TO THE LAST COURSE AND PARALLEL TO COURSE NO. 3, S29°33'23"E, A DISTANCE OF 567.52 FEET TO A POINT, THENCE
6. ALONG THE AFOREMENTIONED WESTERLY LINE OF RAMP "D" S14°56'03"W, A DISTANCE OF 55.11 FEET TO THE PLACE AND POINT OF BEGINNING.

CONTAINING AN AREA OF 21,684 SQ. FT. (0.498 Acre) MORE OR LESS.

EXHIBIT B

Temporary Easement Area

Sections 1B and 1D on attachment following this page



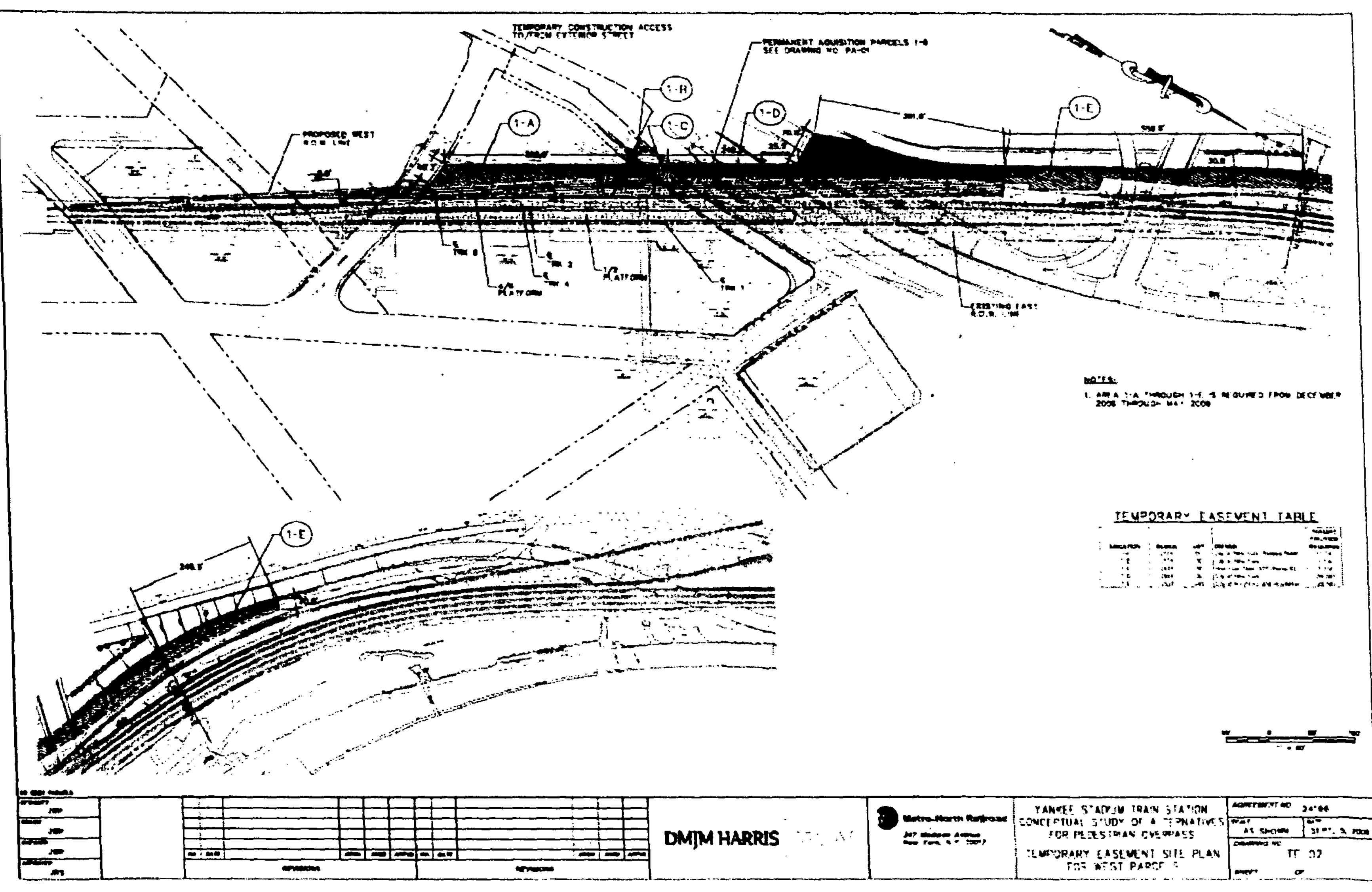

TEMPORARY CONSTRUCTION ACCESS TO/FROM EXTERIOR STREET
PERMANENT ACQUISITION PARCELS 1-6 SEE DRAWING NO. PA-01
PROPOSED WEST R.O.W. LINE
EXISTING EAST R.O.W. LINE
1-A
1-B
1-C
1-D
1-E
NOTES:
1. AREA 1-A THROUGH 1-E IS REQUIRED FROM DECEMBER 2006 THROUGH MAY 2009
TEMPORARY EASEMENT TABLE
DMJM HARRIS
Metro-North Railroad
347 Madison Avenue
New York, N.Y. 10017
YANKEE STADIUM TRAIN STATION
CONCEPTUAL STUDY OF ALTERNATIVES
FOR PEDESTRIAN OVERPASS
TEMPORARY EASEMENT SITE PLAN
FOR WEST PARCEL
AS SHOWN
TT 02

EXHIBIT F

PARK PREMISES

(on page following)

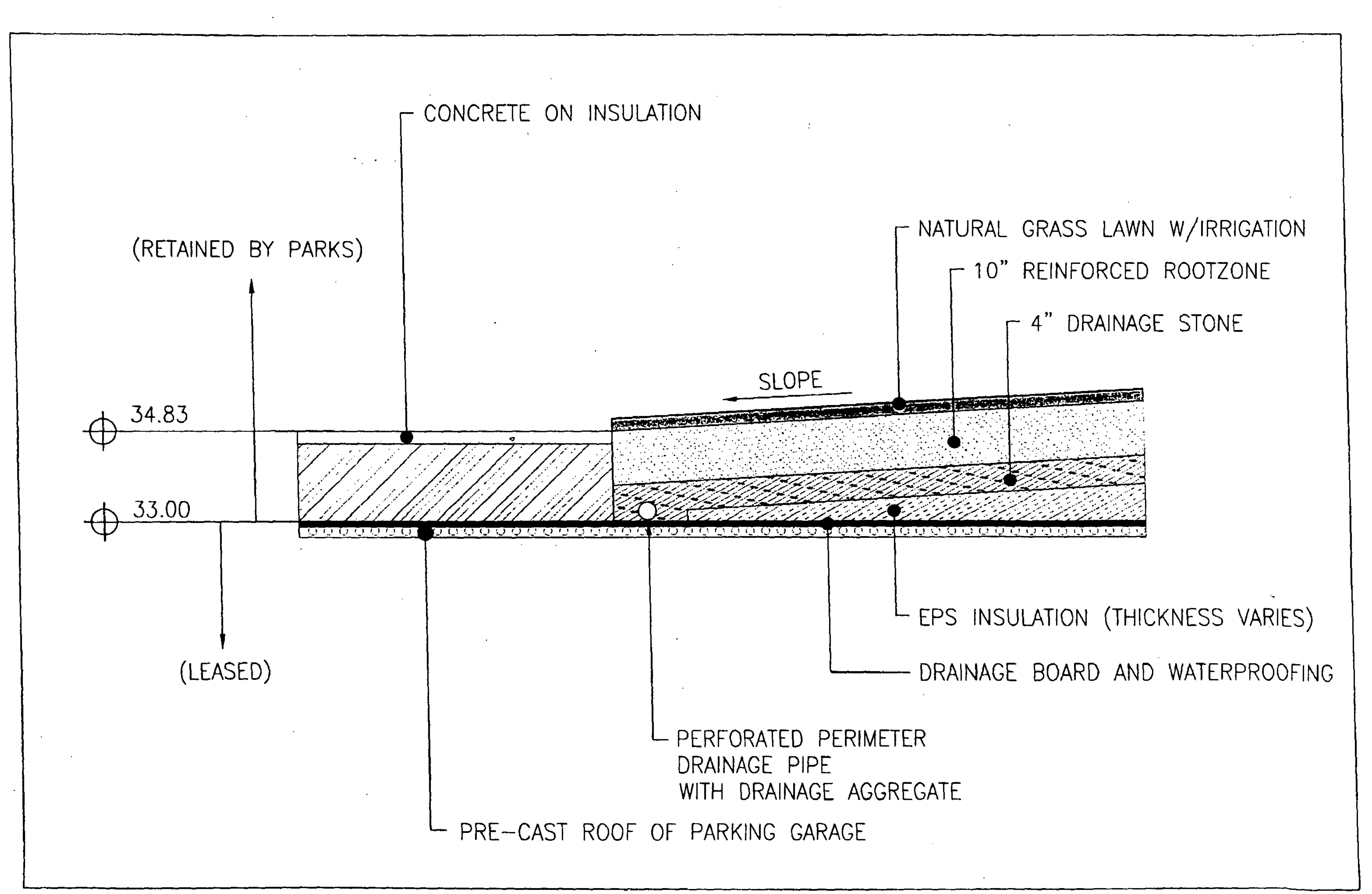
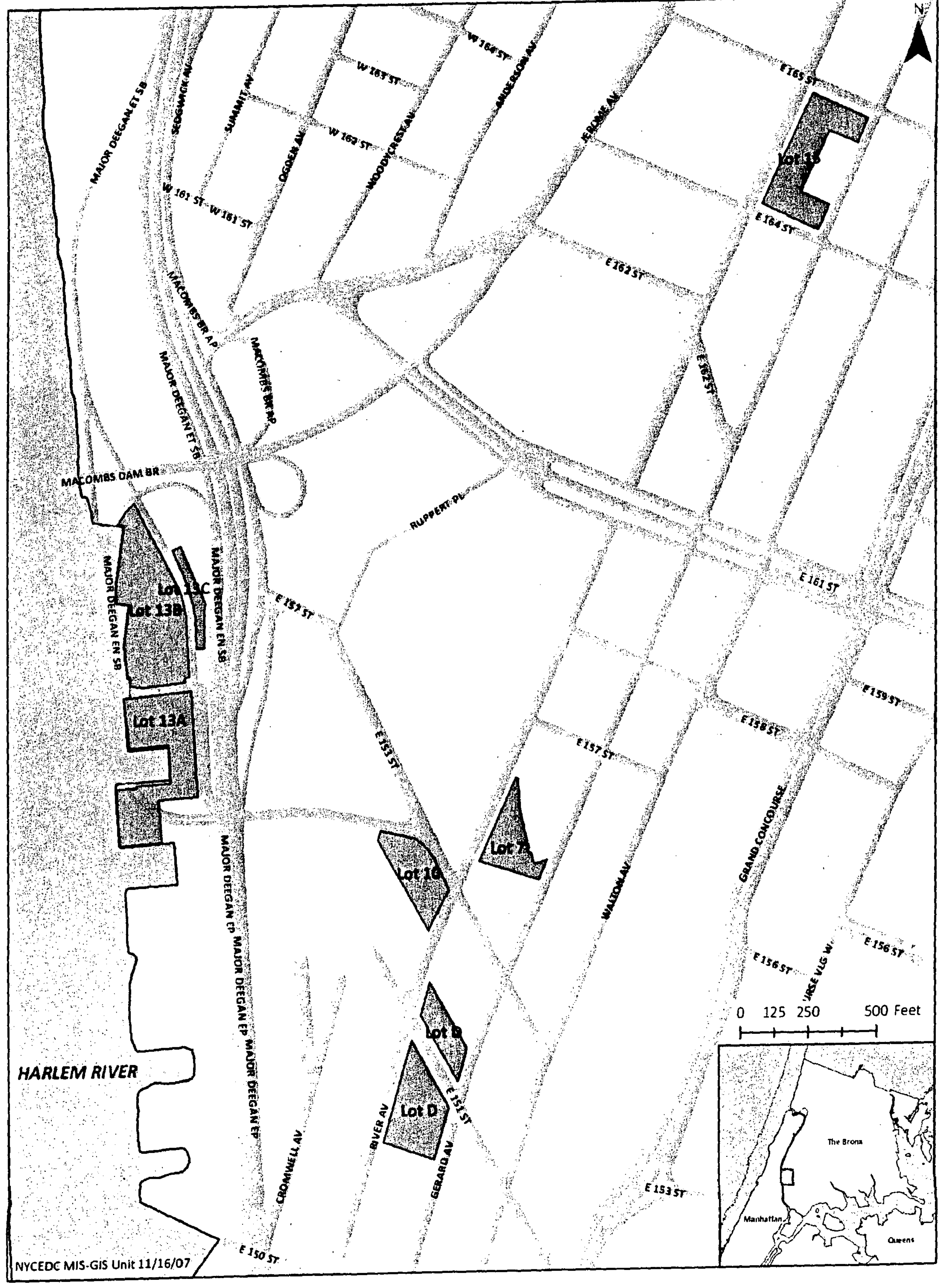

CONCRETE ON INSULATION
(RETAINED BY PARKS)
NATURAL GRASS LAWN W/IRRIGATION
10" REINFORCED ROOTZONE
4" DRAINAGE STONE
SLOPE
34.83
33.00
EPS INSULATION (THICKNESS VARIES)
(LEASED)
DRAINAGE BOARD AND WATERPROOFING
PERFORATED PERIMETER
DRAINAGE PIPE
WITH DRAINAGE AGGREGATE
PRE-CAST ROOF OF PARKING GARAGE

EXHIBIT G

PARKING LOTS

(on page following)



N
E 165 ST
W 164 ST
W 163 ST
W 162 ST
W 161 ST
E 164 ST
E 162 ST
MAJOR DEEGAN ET SB
SEDGWICK AV
SUMMIT AV
OGDEN AV
WOODYCREST AV
ANDERSON AV
JEROME AV
MACOMBS BR AP
MAJOR DEEGAN ET SB
MACOMBS DAM BR
RUPPERT PL
E 161 ST
Lot 13C
Lot 13B
Lot 13A
MAJOR DEEGAN EN SB
E 157 ST
E 153 ST
E 159 ST
E 158 ST
GRAND CONCOURSE
WALTON AV
Lot 7
Lot 16
MAJOR DEEGAN EP
E 156 ST
0 125 250 500 Feet
HARLEM RIVER
Lot D
E 151 ST
RIVER AV
CROMWELL AV
GERARD AV
E 153 ST
E 150 ST
The Bronx
Manhattan
Queens
NYCEDC MIS-GIS Unit 11/16/07

BOND DEBT SERVICE

BRONX PARKING DEVELOPMENT COMPANY, LLC
Civic Facility Revenue Bonds, Series 2007

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
12/06/2007					
04/01/2008			4,406,658.25	4,406,658.25	
10/01/2008			6,897,378.13	6,897,378.13	11,304,036.38
04/01/2009			6,897,378.13	6,897,378.13	
10/01/2009			6,897,378.13	6,897,378.13	13,794,756.26
04/01/2010			6,897,378.13	6,897,378.13	
10/01/2010			6,897,378.13	6,897,378.13	13,794,756.26
04/01/2011			6,897,378.13	6,897,378.13	
10/01/2011			6,897,378.13	6,897,378.13	13,794,756.26
04/01/2012			6,897,378.13	6,897,378.13	
10/01/2012			6,897,378.13	6,897,378.13	13,794,756.26
04/01/2013			6,897,378.13	6,897,378.13	
10/01/2013	1,200,000	5.625%	6,897,378.13	8,097,378.13	14,994,756.26
04/01/2014			6,863,628.13	6,863,628.13	
10/01/2014	1,725,000	5.625%	6,863,628.13	8,588,628.13	15,452,256.26
04/01/2015			6,815,112.50	6,815,112.50	
10/01/2015	1,850,000	5.625%	6,815,112.50	8,665,112.50	15,480,225.00
04/01/2016			6,763,081.25	6,763,081.25	
10/01/2016	1,990,000	5.625%	6,763,081.25	8,753,081.25	15,516,162.50
04/01/2017			6,707,112.50	6,707,112.50	
10/01/2017	2,060,000	5.625%	6,707,112.50	8,767,112.50	15,474,225.00
04/01/2018			6,649,175.00	6,649,175.00	
10/01/2018	2,950,000	5.750%	6,649,175.00	9,599,175.00	16,248,350.00
04/01/2019			6,564,362.50	6,564,362.50	
10/01/2019	3,385,000	5.750%	6,564,362.50	9,949,362.50	16,513,725.00
04/01/2020			6,467,043.75	6,467,043.75	
10/01/2020	3,615,000	5.750%	6,467,043.75	10,082,043.75	16,549,087.50
04/01/2021			6,363,112.50	6,363,112.50	
10/01/2021	3,820,000	5.750%	6,363,112.50	10,183,112.50	16,546,225.00
04/01/2022			6,253,287.50	6,253,287.50	
10/01/2022	4,040,000	5.750%	6,253,287.50	10,293,287.50	16,546,575.00
04/01/2023			6,137,137.50	6,137,137.50	
10/01/2023	4,270,000	5.750%	6,137,137.50	10,407,137.50	16,544,275.00
04/01/2024			6,014,375.00	6,014,375.00	
10/01/2024	4,515,000	5.750%	6,014,375.00	10,529,375.00	16,543,750.00
04/01/2025			5,884,568.75	5,884,568.75	
10/01/2025	4,775,000	5.750%	5,884,568.75	10,659,568.75	16,544,137.50
04/01/2026			5,747,287.50	5,747,287.50	
10/01/2026	5,050,000	5.750%	5,747,287.50	10,797,287.50	16,544,575.00
04/01/2027			5,602,100.00	5,602,100.00	
10/01/2027	5,340,000	5.750%	5,602,100.00	10,942,100.00	16,544,200.00
04/01/2028			5,448,575.00	5,448,575.00	
10/01/2028	5,650,000	5.750%	5,448,575.00	11,098,575.00	16,547,150.00
04/01/2029			5,286,137.50	5,286,137.50	
10/01/2029	5,975,000	5.750%	5,286,137.50	11,261,137.50	16,547,275.00
04/01/2030			5,114,356.25	5,114,356.25	
10/01/2030	6,315,000	5.750%	5,114,356.25	11,429,356.25	16,543,712.50
04/01/2031			4,932,800.00	4,932,800.00	
10/01/2031	6,680,000	5.750%	4,932,800.00	11,612,800.00	16,545,600.00
04/01/2032			4,740,750.00	4,740,750.00	
10/01/2032	7,065,000	5.750%	4,740,750.00	11,805,750.00	16,546,500.00
04/01/2033			4,537,631.25	4,537,631.25	
10/01/2033	7,470,000	5.750%	4,537,631.25	12,007,631.25	16,545,262.50
04/01/2034			4,322,868.75	4,322,868.75	

BOND DEBT SERVICE

BRONX PARKING DEVELOPMENT COMPANY, LLC
Civic Facility Revenue Bonds, Series 2007

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
10/01/2034	7,910,000	5.750%	4,322,868.75	12,232,868.75	16,555,737.50
04/01/2035			4,095,456.25	4,095,456.25	
10/01/2035	8,345,000	5.750%	4,095,456.25	12,440,456.25	16,535,912.50
04/01/2036			3,855,537.50	3,855,537.50	
10/01/2036	8,845,000	5.750%	3,855,537.50	12,700,537.50	16,556,075.00
04/01/2037			3,601,243.75	3,601,243.75	
10/01/2037	9,375,000	5.750%	3,601,243.75	12,976,243.75	16,577,487.50
04/01/2038			3,331,712.50	3,331,712.50	
10/01/2038	9,915,000	5.875%	3,331,712.50	13,246,712.50	16,578,425.00
04/01/2039			3,040,459.38	3,040,459.38	
10/01/2039	10,510,000	5.875%	3,040,459.38	13,550,459.38	16,590,918.76
04/01/2040			2,731,728.13	2,731,728.13	
10/01/2040	11,125,000	5.875%	2,731,728.13	13,856,728.13	16,588,456.26
04/01/2041			2,404,931.25	2,404,931.25	
10/01/2041	11,775,000	5.875%	2,404,931.25	14,179,931.25	16,584,862.50
04/01/2042			2,059,040.63	2,059,040.63	
10/01/2042	12,465,000	5.875%	2,059,040.63	14,524,040.63	16,583,081.26
04/01/2043			1,692,881.25	1,692,881.25	
10/01/2043	13,195,000	5.875%	1,692,881.25	14,887,881.25	16,580,762.50
04/01/2044			1,305,278.13	1,305,278.13	
10/01/2044	13,975,000	5.875%	1,305,278.13	15,280,278.13	16,585,556.26
04/01/2045			894,762.50	894,762.50	
10/01/2045	14,795,000	5.875%	894,762.50	15,689,762.50	16,584,525.00
04/01/2046			460,159.38	460,159.38	
10/01/2046	15,665,000	5.875%	460,159.38	16,125,159.38	16,585,318.76
	237,635,000		385,653,205.24	623,288,205.24	623,288,205.24

EXHIBIT I

FORM OF
RECOGNITION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

This Recognition, Non-Disturbance and Attornment Agreement, dated as of this ___ day of _____________, 200__ between THE CITY OF NEW YORK, a municipal corporation of the State of New York, acting by its Mayor or his designee, with offices located at City Hall, New York, New York 10007 ("Fee Owner"), and ___________________, a [type of entity], with its principal offices located at __________________________________ ("Subtenant").

WITNESSETH:

WHEREAS, Fee Owner is the owner of certain real property located in the City of New York, County of the Bronx, State of New York, which real property is more particularly described on Exhibit "A" attached hereto ("Property").

WHEREAS, by lease dated as of _____________, 2007 ("Lease"), between Fee Owner, as landlord and New York City Economic Development Corporation ("EDC"), as tenant, which Lease was simultaneously assigned by EDC to Bronx Parking Development Company, LLC (hereinafter referred to as "Tenant") pursuant to the Assignment and Assumption of Lease Agreement dated as of _______________, 2007, Fee Owner leased to Tenant the Property.

WHEREAS, by sublease dated as of ______________, 20__ ("Sublease"), Tenant subleased to Subtenant a portion of the Property as more particularly set forth in the Sublease ("Premises"), together with certain non-exclusive rights with respect to the other portions of the Property.

WHEREAS, Subtenant wishes to protect its interest in the Premises in the event of the termination of the Lease prior to the Fixed Expiration Date (as defined in the Lease).

NOW THEREFORE, in consideration of the mutual covenants contained below, the parties covenant and agree as follows:

1.a. In the event of a termination or expiration of the Lease prior to the Fixed Expiration Date thereof, the Sublease shall thereafter continue in full force and effect as a direct lease between Subtenant and Fee Owner, upon all the terms and conditions of the Sublease, and the Sublease shall not be deemed terminated or expired for any purpose, provided that (i) at the

time of such termination or expiration of the Lease, no default exists under the Sublease on the part of Subtenant which would permit Tenant, as landlord thereunder, to terminate the Sublease or to exercise any dispossess remedy provided for therein of at law or in equity, and (ii) subtenant shall not have made an intentional misrepresentation under Section 1.b hereof (the "Nondisturb Conditions") in which event, Fee Owner agrees, subject to the satisfaction of the Nondisturb Conditions, to recognize the Sublease and the rights of Subtenant thereunder and not to disturb the possession of Subtenant in and to the Premises, all in accordance with the terms and conditions of the Sublease, and Fee Owner agrees not to join Subtenant as a party defendant in any action or proceeding to terminate the Lease or to recover possession of the Property. Such recognition by the Fee Owner shall be effective and self-operative as of the date of termination of the Lease without the execution of any further instrument, subject to the Nondisburb Conditions.

b. Subtenant represents and warrants to Fee Owner that Subtenant is not on the date hereof an entity described in Section 10.1(d) of the Lease, and covenants that it shall not be a such an entity on the date (if any) that Subtenant (i) exercises any renewal or extension option for the Sublease or (ii) otherwise enters into any agreement to renew or extend the term thereof.

2. In the event that Fee Owner shall enter into and become possessed of the Property by reason of a termination or expiration of the Lease as described in Section 1 hereof, then Subtenant shall attorn to Fee Owner and recognize Fee Owner as its landlord, and Fee Owner shall accept such attornment, and the Sublease shall continue as a direct lease between Fee Owner and Subtenant in accordance with its terms. Such attornment shall provide Fee Owner with all rights of Tenant under the Sublease, and Subtenant shall be obligated to Fee Owner to perform all of the obligations of Subtenant thereunder. Such attornment by Subtenant shall be effective and self-operative as of the date of the termination or expiration of the Lease as described in Section 1 hereof without the execution of any further instrument.

3. Upon recognition and attornment by Fee Owner and Subtenant, respectively, as provided herein, neither Fee Owner, nor anyone claiming by, through, or under Fee Owner shall be:

(A) liable for any act or omission of any prior landlord (including, without limitation, the then defaulting landlord) other than those of a continuing or on-going nature;

(B) subject to any counterclaims, offsets or defenses that such Subtenant may have against any prior landlord (including, without limitation, the then defaulting landlord) other than those of a continuing or on-going nature;

(C) bound by any payment of rent that such Subtenant might have paid for more than the

current month to any prior landlord (including, without limitation, the then defaulting landlord) other than security deposits and any other amounts deposited with any prior landlord (including, without limitation, the then defaulting landlord) in connection with the payment of insurance premiums, real property taxes and assessments and other similar charges or expenses;

(D) bound by any covenant to undertake or complete any construction of the Premises or any portion thereof demised by the Sublease (other than normal maintenance and repair or in connection with a casualty or condemnation, subject to clauses (I) and (J) below);

(E) bound by any obligation to make any payment to the Subtenant except with respect to (i) any amount payable from a fund, reserve, deposit, credit, receipt or other amount if actually held or received by Fee Owner for such purpose, or (ii) any obligation which arises after attornment; or

(F) bound by any amendment thereto or modification thereof which reduces the basic rent, additional rent, supplemental rent or other charges payable under the Sublease (except to the extent equitably reflecting a reduction in the space covered by the Sublease), or changes the term thereof, or otherwise materially affects the rights of the landlord thereunder, made without the prior consent of Fee Owner; or

(G) liable for any asbestos or other hazardous or toxic substance present either at the Premises or at any other structure constructed by or on behalf of any prior landlord; or

(H) if the Fee Owner is the City of New York, obligated to procure any insurance covering any risk for which the City of New York generally self-insures; or

(I) in the event of a casualty, obligated to repair or restore the Premises or any portion thereof beyond such repair or restoration as may be reasonably accomplished from the net insurance proceeds actually made available to Fee Owner (or, in the case of self-insurance by The City of New York, in excess of the amount of casualty insurance required to be carried by landlord under the Sublease); or

(J) in the event of a partial condemnation, obligated to repair or restore the Premises or any part thereof beyond such repair or restoration as may be reasonably accomplished from the net proceeds of any award actually made available to Fee Owner; or

(K) subject to any right of cancellation or termination which requires payment by the landlord thereunder of a charge, fee or penalty for such cancellation or termination, except if landlord thereunder voluntarily exercises such right or cancellation or termination other than as a result of a casualty or condemnation; or

(L) be obligated to give Subtenant all or any portion of any insurance proceeds or condemnation awards payable to Landlord as a result of a casualty or condemnation other than for trade fixtures and personalty (such as inventory) of Subtenant or capital improvements constructed by or on behalf of Subtenant.

[insert other conditions as may be appropriate to address particular terms of the Sublease,

such as a non-competition covenant against sublandlord]

Upon the request of either Subtenant or Fee Owner, Subtenant or Fee Owner, as the case may be, shall promptly execute and deliver to the other an agreement or other instrument in recordable form which may be necessary or appropriate to evidence such attornment.

4. This agreement shall inure to the benefit of and be binding upon the successor in interest of the parties hereto and their permitted assigns.

IN WITNESS WHEREOF, the parties have executed this agreement as of the date first written above.

THE CITY OF NEW YORK

Approved as to Form:

By: ______________________________
Name:
Title: Deputy Mayor

____
Acting Corporation Counsel

{name of entity

By:

By: ______________________________
Name:
Title:

ACKNOWLEDGEMENT PAGE FOR FEE OWNER

State of New York)
) ss.:
County of New York)

On the ____ day of _____________ in the year 20__ before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared ________________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
(Notary Public)(Commissioner of Deeds)

ACKNOWLEDGEMENT PAGE FOR SUBTENANT

State of __________)
) ss.:
County of _________)

On the ____ day of ______________ in the year 20__ before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State and County, personally appeared ________________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
(Notary Public)(Commissioner of Deeds)

EXHIBIT J

CONSTRUCTION SCHEDULE

Milestone Activity	Start Work	Substantial Completion
Construct Garage A – phase 1	November 14, 2007	April 1, 2009
Construct Garage A – phase 2	December 1, 2008	April 1, 2010
Construct Garage B	March 1, 2008	April 1, 2009
Construct Garage C	January 1, 2009	April 1, 2010
Improvements at Garage 3, 8 & Lots	January 1, 2008	April 1, 2008
Construct Park– phase 1	September 1, 2008	May 1, 2009
Construct Park– phase 2	July 1, 2009	April 1, 2010

EXHIBIT K

JOINT VENTURE CONTRACTS

(on pages following)

AIA Document A141™ – 2004

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 8th day of November in the year of Two Thousand Seven

BETWEEN the Owner:
(Paragraphs deleted)
BRONX PARKING DEVELOPMENT COMPANY, LLC
18 Aitken Avenue
Hudson, New York 12534

and the Design-Builder:
(Paragraphs deleted)
PRISMATIC HUNTER ROBERTS A JOINT VENTURE
2 World Financial Center, 6th Floor
New York, New York 10281

For the following Project:
(Paragraph deleted)
Yankee Stadium Parking Facilities

The Owner and Design-Builder agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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User Notes: (2668124182)

TABLE OF ARTICLES

1 THE DESIGN-BUILD DOCUMENTS

2 WORK OF THIS AGREEMENT

3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

4 CONTRACT SUM

5 PAYMENTS

6 DISPUTE RESOLUTION

7 MISCELLANEOUS PROVISIONS

8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS

TABLE OF SCHEDULES

A OWNER SCOPE DOCUMENT

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TABLE OF EXHIBITS

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ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Schedules and Exhibits; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and a Contractor or Subcontractor, or (2) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. The Owner, the City, NYCEDC, ESDC and the Trustee (as hereinafter defined) shall be third-party beneficiaries of the Design-Builder's agreements with the Architect and other design professionals and design consultants for the Project. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8. The Trustee shall be the trustee pursuant to an Indenture of Trust between the New York City IDA and The Bank of New York, as trustee, pursuant to which Bonds are issued for the purpose of financing costs of the Parking Facilities.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. References to the Contract shall

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mean the Design-Build Contract. References to the Agreement shall mean the Design-Build Contract where the context requires.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. Modifications are subject to approval by New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC") and the City of New York (the "City"), which shall be third party beneficiaries of this Agreement, with the City acting through New York City Economic Development Corporation ("NYCEDC"), the City's Representative under the Lease Agreement between the City and the Owner referenced in Section 2.4 hereof, to the extent that such approval is required under the Lease Agreement or under the Funding Agreement referenced in Section 2.4 hereof. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

§ 1.4 The parties are simultaneously entering into a Design-Build Contract for design and construction of a public park on the rooftop surface of Garage A (the "Park Improvements Contract") and agree that a default by either party under the Park Improvements Contract shall not constitute a default under this Contract.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others. The Work is comprised of design and construction of new parking facilities (Garage A, Garage B and Garage C) and improvements to existing parking lots and parking garages, as set forth in the Owner Scope Document attached hereto as Schedule A. The Work is further described in the documents referenced in the List of Preliminary Plans and Specifications for the Parking Facilities Work attached hereto as Schedule B.

§ 2.2 Design and construction of the Project shall adhere to all ADA, ADAAG and Local Law 58 rules and regulations. In case of differing interpretations of any such rules and regulations, the more stringent interpretation shall be followed.

§ 2.3 The Design-Builder shall complete the design of the Project in accordance with the Project Criteria and the other Design-Build Documents.

§ 2.4 The Design-Builder shall comply with and be bound by the provisions applicable to design and construction of the Parking Facilities contained in the Lease Agreement dated as of November __, 2007, between the City as Landlord and NYCEDC as Tenant, which is being assigned by NYCEDC to the Owner, and in the Funding Agreement dated as of October 19, 2007, among NYCEDC, ESDC and the Owner, including, without limitation, the provisions referenced in Section 9.07 of the Funding Agreement; provided, however, that under no circumstances shall the Design-Builder be responsible for failure of the Owner to comply with the Owner's obligations under this Agreement or for failure of the City, NYCEDC or ESDC to comply with their respective obligations under the Lease Agreement or the Funding Agreement. In the event of a conflict between the Contract term "delay" and the term "Unavoidable Delay" as used in the Funding Agreement, the Contract term shall govern.

§ 2.5 The Design-Builder shall comply with the requirements of (1) Labor Law Section 220-e; and (2) Executive Order No. 50, as long as Executive Order No. 50 or any successor thereto is in force and effect, in whole or in part, and the regulations promulgated thereunder applicable to construction contractors and non-construction contractors, certain of which are annexed to and made a part of the Funding Agreement as Exhibit G and Exhibit H including the filing of reports with the Division of Labor Services for New York City Department of Small Business Service on the forms prescribed by the City.

§ 2.6 All persons employed by the Design-Builder or by any Contractor in the furnishing of work, labor or services in connection with the Project shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the current schedule of prevailing wages and supplemental benefits promulgated pursuant to Labor Law Section 220(3), as amended from time to time, without regard to whether or not any such employee's wages are required to be fixed pursuant to Section 220(3) of the New York State Labor Law.

§ 2.7 The Design-Builder acknowledges that the Owner is applying for real estate tax abatement pursuant to the Industrial and Commercial Incentive Abatement Program administered by the New York City Department of

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Finance and the Division of Labor Services of the Department of Small Business Services of the City of New York. The Design-Builder shall cooperate with the Owner, providing such information and assistance as is necessary for compliance with the requirements of the program for the Design-Builder and all Contractors and subcontractors.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date to be fixed in a notice issued by the Owner.
(Paragraphs deleted)

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.

§ 3.3.1 The Design-Builder shall achieve Substantial Completion of Garages A, B and C by the dates therefor set forth in Exhibit D hereto. If the Design-Builder does not achieve Substantial Completion of Garage A - phase 1 or Garage B by April 1, 2009, subject to extension as provided in Article A.8 of Exhibit A hereto, the Design-Builder shall pay to the Owner liquidated damages for delay in Substantial Completion of such facility in the amount of $2,000.00 per day for the first thirty (30) calendar days of delay, which amount shall double every thirty (30) days thereafter, until Substantial Completion of the facility. If the Design-Builder does not achieve Substantial Completion of Garage A - phase 2 or Garage C by April 1, 2010, subject to extension as provided in Article A.8 of Exhibit A hereto, the Design-Builder shall pay to the Owner liquidated damages for delay in Substantial Completion of such facility of $2,000.00 per day for the first thirty (30) calendar days of delay, $4,000.00 per day for the next fourteen (14) calendar days of delay and thereafter (and instead of daily liquidated damages) $20,000.00 for each Yankees home game, until Substantial Completion of the facility; provided, however, that if the date for Substantial Completion is extended beyond May 14, 2010, the liquidated damages shall be $20,000.00 for each Yankee home game for delay after the extended date until Substantial Completion of the facility. By way of example: (a) if the date for Substantial Completion is extended to April 10, 2010, the liquidated damages will be $2,000.00 per day for the period April 11, 2010, through May 10, 2010, $4,000.00 per day for the period May 11, 2010, through May 14, 2010, and $20,000.00 per Yankees home game for the period from May 15, 2010, until Substantial Completion; (b) if the date for Substantial Completion is extended to April 20, 2010, the liquidated damages will be $2,000.00 per day for the period April 21, 2010 through May 14, 2010, and $20,000.00 per Yankees home game for the period from May 15, 2010, until Substantial Completion; and (c) if the date for Substantial Completion is extended to June 1, 2010, the liquidated damages will be $20,000.00 per Yankees home game from June 2, 2010. The liquidated damages stated in this Section 3.3 shall apply on a per-facility basis to delay in Substantial Completion of each facility referenced above. Substantial Completion for purposes of this Section 3.3.1 shall mean that a temporary certificate of occupancy has been issued. The Design-Builder shall not be liable to the Owner or to any third party for delay in Substantial Completion of Garage A - phase 1, Garage B, Garage A - phase 2 or Garage C except as provided in this Section 3.3.1.

§ 3.3.2 A preliminary date for Substantial Completion of the remaining Work (improvements at Garage 3, Garage 8 and lots) is set forth in Exhibit D hereto, contingent upon final determination of the scope of such Work.

(Table deleted)
(Paragraphs deleted)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[X] Stipulated Sum in accordance with Section 4.2 below.

[ ] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;

(Paragraphs deleted)
A breakdown of the Contract Sum (the Schedule of Values) is attached hereto as Schedule C.

§ 4.2 STIPULATED SUM

§ 4.2.1 The Stipulated Sum shall be Two Hundred Forty-Five Million Eight Hundred Fifty-Seven Thousand Five Hundred Sixty-Four Dollars ($245,857,564.00), subject to additions and deductions as provided in the

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Design-Build Documents. If the Owner elects by the date of final Art Commission approval to switch Garage C stair wells B and C from interior to exterior stair wells, this Stipulated Sum shall be increased by $1,400,000.00, and there will be no impact to the Substantial Completion Date of Garage C. If the Owner elects by February 1, 2008, to add one elevator in Garage C, this Stipulated Sum shall be increased by $445,000.00, and there will be no impact to the Substantial Completion Date of Garage C. This Stipulated Sum does not include compensation for scrim panels on Garage A, which will be included in the Work by Change Order if the Owner obtains sufficient additional funding, provided that this change can be made without time impact only if (1) location of the scrim panels is finalized by December 10, 2007, and (2) all necessary detailing is completed by the Owner's consultant for this work provides all necessary structural detailing by April 1, 2008, and if overall approval of the change is given by the date of final Art Commission approval.

§ 4.2.2
(Paragraphs deleted)
Allowances, if any, are as follows:
(Identify and state the amounts of any allowances, and state whether they include labor, materials, or both)

Allowance	Amount ($ 0.00)	Included Items
Improvement of existing Garages 3 and 8 and parking lots	$4,000,000.00	Labor, materials and all other costs including design

The estimated trade costs for each allowance are set forth in Schedule C. If the actual trade costs for the Work covered by an allowance (determined after competitive pricing) differ from this estimated cost, the Stipulated Sum shall be adjusted by an amount equal to the difference in trade costs, plus (a) percentages for general conditions and design costs (12% of direct work costs), Subcontractor Default Insurance (1.255% of direct work costs), CCIP Insurance (6.7% of direct work costs and general conditions/design mark-up), Builder's Risk Insurance (.15% of the overall adjustment), Pollution/Railroad/Professional Liability Insurance (1% of direct work costs) and Design-Builder Bond (1.39% of the overall adjustment); and (b) four percent (4%) of all direct work costs for fee if the adjustment otherwise is $1,000,000.00 or less or nine percent (9%) of all direct work costs for fee if the adjustment otherwise is greater than $1,000,000.00.

§ 4.2.3 Assumptions or qualifications, if any, on which the Stipulated Sum is based, are as follows:

See Schedule A hereto.
(Table deleted)
§ 4.2.4
(Paragraphs deleted)
The Stipulated Sum is subject to adjustment by Change Order on account of design changes to Garage B (if any) due to Art Commission requirements.
(Table deleted)
(Paragraphs deleted)

§ 4.3 CHANGES IN THE WORK

§ 4.3.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions.

(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS

§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

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§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

(Paragraphs deleted)
§ 5.1.3 The Owner shall make monthly payments to the Design-Builder not later than thirty(30) days after the Owner receives the Application for Payment (approved pursuant to Exhibit A to the Funding Agreement).

§ 5.1.4 The schedule of values (Schedule C) allocates the entire Contract Sum among the various portions of the Work. The schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. The Design-Builder shall track the amounts funded for each facility (i.e., each building and parking lot) from the proceeds of the tax exempt bonds issued by the New York City Industrial Development Agency and shall provide such accounting to the Owner upon reasonable request.

§ 5.1.5 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 5.1.4, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ 5.1.6 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

(Paragraphs deleted)
§ 5.2 PROGRESS PAYMENTS - STIPULATED SUM
§ 5.2.1 Applications for Payment shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ 5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- **.1** Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less Retainage as provided in Section 3.10 of the Funding Agreement. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section A.7.3.8 of Exhibit A, Terms and Conditions;
- **.2** Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of as provided in Section 5.2.2.1;
- **.3** Subtract the aggregate of previous payments made by the Owner; and
- **.4** Subtract amounts, if any, for which the Owner has withheld payment from or nullified an Application for Payment as provided in Section A.9.5 of Exhibit A, Terms and Conditions.

§ 5.2.3 The progress payment amount determined in accordance with Section 5.2.2 shall be further modified under the following circumstances:

- **.1** add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and

(Paragraph deleted)

- **.2** add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section A.9.10.3 of Exhibit A, Terms and Conditions.

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§ 5.2.4 Reduction or limitation of retainage under Section 5.2.2 shall be as follows: upon fifty percent (50%) completion of each parking facility (or phase) thereof, no further retainage shall be withheld from payment for that facility or phase (provided that retainage equals no less than five percent (5%) of the portion of the Contract Sum attributable to that facility or phase); upon Substantial Completion of the facility or phase, retainage shall be reduced to the greater of (i) one percent (1%) or (ii) three (3) times the estimated cost of completing the punch list items for the facility or phase as determined by NYCEDC's consultant.

§ 5.3 FINAL PAYMENT
(Paragraph deleted)
§ 5.3.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

(Paragraphs deleted)
ARTICLE 6 DISPUTE RESOLUTION
§ 6.1 The method of binding dispute resolution shall be the following:
(Check one.)

[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

(Paragraphs deleted)
ARTICLE 7 MISCELLANEOUS PROVISIONS
§ 7.1 The Architect and other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:
(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	Relationship to Design-Builder
Clarke Caton Hintz 400 Sullivan Way Trenton, NJ 08628	Independent professional design and consulting firm engaged by the Design-Builder as Architect for the Project
Fay Spofford & Thorndike, LLC 155 Passaic Avenue Fairfield, NJ 07004	Independent professional design and consulting firm engaged by the Design-Builder to provide structural engineering services for the Project
Yu & Associates, Inc. 611 River Drive Elmwood Park, NJ 07407	Independent professional design and consulting firm engaged by the Design-Builder to provide civil engineering and geotechnical services for the Project

Copies of the Design-Builder's agreements with the Architect and other design professionals and consultants will be provided to the Owner.

§ 7.1.1 The Design-Builder shall include the following provisions, in substance, in its agreements with the Architect and other design professionals:

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Owner and Lender Rights: (A) Architect shall, upon giving Design-Builder any notice of default with respect to this Agreement, at the same time give a copy of such notice to Owner and the Trustee (as defined in the Design-Build Agreement), and no notice by Architect to Design-Builder shall be deemed to be duly given unless and until a copy thereof shall have been so given to the Owner and the Trustee. (B) If a notice of the existence of a default by Architect hereunder shall be given to Owner and the Trustee, then Owner, Trustee and/or either of their respective designees shall have the right (but, not the obligations) to cure such default within thirty (30) days after receipt of such notice or within such longer period of time as is reasonably necessary to accomplish such cure, and Architect shall accept such performance by Owner, Trustee or their respective designees as if same were done by Design-Builder. This Agreement shall not be terminated by Architect during any period set forth in this Section __ in which Owner, Trustee and/or their respective designees is entitled to attempt, and is attempting to cure a default.

Assignment: This Agreement shall not be assignable by either party without the prior written consent of the other party hereto and the consent of Owner, which consent shall not be unreasonably withheld, except that without such consent this Agreement may be assigned as security by Design-Builder to Owner and from Owner to the Trustee. Architect agrees to execute any documents in connection with any assignment to Owner and Trustee as may be reasonably requested by Owner or Trustee. Architect acknowledges that upon default by Design-Builder under the Design Build Agreement, Owner and/or the Trustee may (but shall not be obligated to) assume, or cause a designee to assume, all of the interests, rights and obligations of Design-Builder hereafter arising under this Agreement. If the rights and interests of Design-Builder in this Agreement shall be assumed, sold or transferred pursuant to the exercise of remedies by Owner or Trustee and the assuming party shall agree in writing to be bound by and to assume the terms and conditions of this Agreement and any and all obligations to Architect arising or accruing hereunder from and after the date of such assumption, Architect shall continue this Agreement with the assuming party as if such person had been named as the Design-Builder under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of successors and permitted assigns of the parties. Any assignment which does not comply with the provisions of this Section __ shall be null and void. The Owner and Trustee shall be deemed to be third-party beneficiaries of this Agreement.

§ 7.2 The Owner's Designated Representatives are: Joseph J. Seymour and William Loewenstein. The Design Builder acknowledges and agrees that Owner shall not have the authority to grant any approval or authorization under this Agreement without the express written approval of NYCEDC, the City's Representative under the Lease Agreement between the City and the Owner, acting in consultation with NYCEDC's consultant, Tishman-DMJM Harris Joint Venture (or other consultant selected by NYCEDC), to the extent that such approval of NYCEDC and/or ESDC is required under the Lease Agreement or the Funding Agreement.

(Table deleted)
§ 7.2.1 Each of the Owner's Designated Representatives identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.3
(Paragraphs deleted)
The Design-Builder's Designated Representative is:

Brian Aronne
Hunter Roberts Construction Group, LLC
2 World Financial Center, 6th Floor
New York, New York 10281

§ 7.3.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.
(Table deleted)
§ 7.4
(Paragraphs deleted)
Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

(Paragraphs deleted)
§ 7.5

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(Paragraphs deleted)
Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

(Paragraphs deleted)
ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS
§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004, as modified herein.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Paragraphs deleted)
None.
(Table deleted)
§ 8.1.3 The
(Paragraphs deleted)
Description of the Premises is contained in Schedule A hereto.
(Table deleted)
§ 8.1.4 The Project Criteria are incorporated in the Owner Scope Document (Schedule A hereto) and in the Preliminary Plans and Specifications listed in Schedule B hereto.
(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5
(Paragraphs deleted)
The Schedule of Values (Schedule C hereto).

§ 8.1.6
(Paragraphs deleted)
Exhibit A, Terms and Conditions.
(Table deleted)
§ 8.1.7 Exhibit
(Paragraphs deleted)
B (Not used).

§ 8.1.8 Exhibit C, Insurance and Bonds.

§ 8.1.9 Other documents, if any, forming part of the Design-Build Documents are as follows:

Exhibit D, Scheduled Completion Dates

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This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design-Builder and one to the Owner.

OWNER

By: ______________________________

Name: ______________________________

Title: ______________________________

DESIGN-BUILDER

By:

Prismatic Development Corp.

By: ______________________________

Name: ______________________________

Title: ______________________________

Hunter Roberts Construction Group, L.L.C.

By: ______________________________

Name: ______________________________

Title: ______________________________

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EXHIBIT D

SCHEDULED COMPLETION DATES

Activity	Start Work	Substantial Completion
Construct Garage A - phase 1	November __, 2007	April 1, 2009
Construct Garage A - phase 2	December 1, 2008	April 1, 2010
Construct Garage B	March 1, 2008	April 1, 2009
Construct Garage C*	January 1, 2009	April 1, 2010
Improvements at Garage 3, 8 & Lots	January 2, 2008	April 1, 2009

* Contingent upon achieving Substantial Completion of the Temporary Track & Field atop Garage A.

(Table deleted)(Paragraphs deleted)

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AIA® Document A141™ – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:
(Name and location or address)

Yankee Stadium Parking Facilities

THE OWNER:
(Name and location)

BRONX PARKING DEVELOPMENT COMPANY, LLC
18 Aitken Avenue
Hudson, New York 12534

THE DESIGN-BUILDER:
(Name and location)

PRISMATIC HUNTER ROBERTS A JOINT VENTURE
2 World Financial Center, 6th Floor
New York, New York 10281

ADDITIONS AND DELETIONS:
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Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.4 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

(Paragraphs deleted)

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall verify the completeness and accuracy of the information contained in the Project Criteria and determine that such information complies with applicable laws, regulations and codes. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder for any required change in the Work, without adjustment of the Contract Sum.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

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§ A.1.4 INTERPRETATION
§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS
§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents. The Design-Builder represents that it has reviewed the Phase I and Phase II environmental reports for the Project prepared by AKRF Environmental and Planning Consultants.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA
§ A.1.6.1 The Owner shall have ownership of drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder, and of surveys and as-built drawings furnished by the Design-Builder, subject to payment to the Design-Builder as provided in this Agreement. Subject to the IDA Bond Documents (as defined in the Funding Agreement), the Design-Builder agrees that NYCEDC, the City, ESDC and the State shall have an unrestricted right as provided in Section 7.03(f) of the Funding Agreement to use any and all drawings and specifications (including those produced in their original, editable digital form, such as CAD and Microsoft Word), reports, studies, "as built" drawings, surveys and other documents, materials, or work product prepared for or in connection with the Work, at any time and from time to time, in whole or in part. NYCEDC, the City, ESDC and the State shall be third-party beneficiaries of this Section A.1.6.1.

(Paragraphs deleted)
ARTICLE A.2 OWNER
§ A.2.1 GENERAL
§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner with respect to all obligations under this Agreement, provided that the Design Builder acknowledges and agrees that Owner shall not have the authority to grant any approval or authorization under this Agreement without the express written approval of NYCEDC, acting on behalf of the City of New York, to the extent that such approval or authorization requires approval of NYCEDC under the terms of the Lease Agreement or of NYCEDC or ESDC under the Funding Agreement. The Owner shall designate in writing a representative who shall have express authority to bind the Owner, subject to the prior written approval of NYCEDC or ESDC as required with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

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§ A.2.2.2 At the Owner's request, the Design Builder shall provide surveys describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Design-Builder under Section A.2.2, shall be furnished at the Design-Builder's expense.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Design-Builder shall furnish the services of geotechnical engineers or other consultants for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

(Paragraphs deleted)

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Design-Builder also shall permit review by Merritt & Harris or any successor consulting engineer hired by the Trustee for the Bonds of all submittals and shall permit inspection by such consulting engineer as requested.

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§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

.1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.

.2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.

.3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.

.4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.

.5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing. The Design Builder acknowledges and agrees that NYCEDC and its consultants shall have the right to observe the Work and take all such actions as are necessary pursuant to this Agreement. The Design-Builder also acknowledges that the Trustee and ESDC may appoint an on-site representative to inspect and observe the Work.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

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§ A.2.4 OWNER'S RIGHT TO STOP WORK
§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK
§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER
§ A.3.1 GENERAL
§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project. The Design-Builder is a joint venture of Prismatic Development Corp. and Hunter Roberts Construction Group, L.L.C., each of which is jointly and severally responsible for all obligations of the Joint Venture pursuant to this Agreement including performance of the Work.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES
§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.
§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and compensation, shall be subject to the Owner's prior written approval. The Owner, the City, NYCEDC, ESDC and the Trustee shall be third-party beneficiaries of such agreements.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction

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documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

.1 be consistent with the approved design documents;
.2 provide information for the use of those in the building trades; and
.3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically but not less than once a month to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all

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drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage, except to the extent caused by Design-Builder's negligence or willful misconduct.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents. The Design Builder also warrants, for a period of one year from the date of Substantial Completion of the Work or, for Work completed after such date, for one year from the date the Work is completed, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder's warranty under this Section A.3.5.1 shall be in addition to any extended vendor warranties, which the Design-Builder shall assign to the Owner.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely

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scheduled to go into effect. The Owner is exempt from sales tax pursuant to its status as an exempt entity and shall furnish the Design-Builder with documentation of such exemption. The Design-Builder shall not charge the Owner any sales tax covered by such exemption and shall advise all Contractors of such exemption.

§ A.3.7 PERMITS, FEES AND NOTICES
§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES
§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

(Paragraphs deleted)
§ A.3.9 DESIGN-BUILDER'S CONSTRUCTION SCHEDULE
§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract shall prepare and submit for the Owner's information the Design-Builder's construction schedule for the Work. The construction schedule shall not exceed the Contract Time and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE
§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

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§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE

§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING

§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP

§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK

§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS

§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

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§ A.3.17 INDEMNIFICATION

§ A.3.17.1 To the extent permitted under applicable law, the Design-Builder shall defend, indemnify and save each of the Owner, the City, NYCEDC, the State, ESDC, Tishman-DMJM Harris Joint Venture, Yankee Stadium LLC (and its affiliates), New York Yankee Partnership (and its affiliates) the New York City Industrial Development Agency and the Bank of New York as Trustee and their respective officials, officers, employees, agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damage, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and court costs and disbursements, arising from claims by third parties for personal injury (including death) and property damage that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of this Contract or arising out of the Work (except, as to any Indemnitee, to the extent that such liabilities, fines, damages, penalties, claims, costs, charges or expenses are caused by the affirmative acts, the negligence or intentional misconduct of such Indemnitee), including:

(a) **Acts or Failure to Act of Design-Builder.** Any act or failure to act on the part of the Design-Builder (or any Contractor or subcontractor) or any of their respective partners, joint venturers, officers, members, shareholders, directors, agents, servants, employees, contractors, licensees or invitees;

(b) **Work.** Any Work or act done in, on, or about the Project premises or any part thereof by or on behalf of the Design-Builder;

(c) **Control.** The control or use, possession, occupation, alteration, condition, operation, maintenance or management by the Design-Builder of the Project premises, or any part thereof, or of any street, plaza, sidewalk, curb, vault, or space comprising a part thereof, including, without limitation, any violations imposed by any governmental authorities in respect to any of the foregoing;

(d) **Accidents, Injury to Person or Property.** Any accident, injury (including death at any time resulting therefrom) or damage to any person or property occurring during performance of the Work in, on, or about the Project premises, or any part thereof, or in any sidewalk, comprising a part thereof or immediately adjacent thereto;

(e) **Lien, Encumbrance or Claim Against the Project Premises.** Any lien, encumbrance or claim that may be alleged to have been imposed or arisen against or on the Project premises during the period of the Work, or any lien encumbrance or claim created or permitted to be created by the Design-Builder or any of its partners, joint venturers, officers, members, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, the Owner, the City, EDC, the State or ESDC, or any liability that may be asserted against the Owner, the City, EDC, the State or ESDC with respect thereto, except to the extent such lien, encumbrance or claim arises out of failure to make payment to the Design-Builder as required under this Contract;

(f) **Default of Design-Builder Funding Recipient.** Any failure on the part of the Design-Builder to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Contract and/or any other contracts and agreements affecting the Project premises or the Project, on Design-Builder's part to be kept, observed or performed, including; and

(g) **Hazardous Substances.** The presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on, from or affecting the Project premises or any persons, real property, personal property, or natural substances thereon or affected thereby to the extent related to the Work Improvements or the activities of the Design-Builder, except that the Design Builder shall not indemnify and save harmless the Indemnitees to the extent of any liability, fire, damages, penalty, claim, cost, charge or expense arising from the presence, storage, disposal or release of Hazardous Materials at the Project premises prior to the date on which the Design-Builder first gains access to the Project premises for the purpose of performing the Work (but the foregoing shall not release the Design-Builder from its obligation to indemnify the Indemnitees for damages arising from any disposal or release occurring after such date with respect to any Hazardous Materials preexisting such date of the Design-Builder's physical possession). "Hazardous Materials" means (i) any "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (ii) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (iii) "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C.

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Section 1801 et seq., or (iv) "hazardous waste" as defined under New York Environmental Conservation Law Section 27-0901 et seq., or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq.

§ A.3.17.2 The obligations of the Design-Builder under this Section 3.17 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part to be performed under insurance policies affecting the Project premises.

§ A.3.17.3 If any claim, action or proceeding is made or brought against any of the Indemnitees in connection with any event referred to in Section 3.17.1 hereof, then upon demand of the indemnitee, the Design-Builder shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Design-Builder's insurance carrier (if such claim, action or proceeding is covered by insurance), or by such other attorneys as such Indemnitee shall reasonably approve. The foregoing notwithstanding, any such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, at such Indemnitee's sole cost and expense. The Design-Builder shall be responsible for administering (or arranging for the administration of) all claims, including but not limited to coordination with applicable insurance providers, and the Owner shall cooperate (and, to the extent possible, cause other Indemnitees to cooperate) with the Design-Builder in connection therewith.

§ A.3.17.4 Promptly, upon having actual knowledge thereof, an Indemnitee shall notify the Design-Builder of any cost, liability or expense incurred by, asserted against, or imposed on, such Indemnitee, as to which cost, liability or expense the Design-Builder has agreed to indemnify such Indemnitee pursuant to this Section. The Design-Builder agrees to pay such Indemnitee all amounts due under this Section within fifteen (15) business days after the request therefor delivered together with reasonably detailed back-up, if the Design-Builder is obligated to make such payment pursuant to the terms of this Contract, and any non-payment thereof by the Design-Builder shall constitute a default by the Design-Builder.

§ A.3.17.5 The provisions of this Section A.3.17 shall survive the expiration or earlier termination of this Contract.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ A.4.1.1 Definition. A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ A.4.1.2 Time Limits on Claims. Claims by either party must be initiated within 30 days after occurrence of the event giving rise to such Claim or within 30 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ A.4.1.3 Continuing Performance. Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ A.4.1.4 Claims for Concealed or Unknown Conditions. The Design-Builder shall be responsible for addressing (without increase in the Contract Sum) conditions encountered at the site which are (1) subsurface or otherwise concealed physical conditions which differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents.

§ A.4.1.5 Claims for Additional Cost. If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work.

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§ A.4.1.6 If the Design-Builder believes additional cost or delay is involved for reasons (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner within the 30-day period following submission of a requisition as specified in the Funding Agreement, provided that the Owner shall have seven (7) days to cure such failure to pay following written notice of such failure by the Design-Builder to the Owner, ESDC and NYCEDC, (4) termination of the Design-Build Contract by the Owner not due to the Design-Builder's fault or (5) Owner's suspension not due to the Design-Builder's default, Claim shall be filed in accordance with this Section A.4.1 and shall be limited to provable damages.

§ A.4.1.7 Claims for Additional Time
§ A.4.1.7.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.7.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction. No such adverse weather conditions shall affect the Contract Sum.

§ A.4.1.8 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 30 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ A.4.1.9 Not used.

§ A.4.1.10 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

.1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and

.2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.10 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents. The parties acknowledge that the liquidated damages specified in Section 3.3 are direct damages and are not consequential damages.

§ A.4.1.11 If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project (other than the Model Building Code) cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

(Paragraphs deleted)
§ A.4.2.2 Decision by Owner. If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

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§ **A.4.2.3** The initial decision pursuant to Section A.4.2.2 shall be in writing, shall state the reasons therefor and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

§ **A.4.2.4** In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ **A.4.2.5** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 ARBITRATION

§ **A.4.3.1** The parties mutually agree to arbitration of unresolved disputes in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration or such other rules as the parties mutually agree upon. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. Upon request of either party, arbitration shall be conducted on an expedited basis.

§ **A.4.3.2 Judgment on Final Award.** The award rendered by the arbitrator or arbitrators (if the parties have agreed on resolution by arbitrator) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

(Paragraphs deleted)

ARTICLE A.5 AWARD OF CONTRACTS

§ **A.5.1** Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has objection to any such proposed additional person or entity. The only ground for objection by the Owner shall be lack of City Vendex approval. Failure of the Owner to reply promptly shall constitute notice of no objection.

§ **A.5.2** The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ **A.5.3** If the Owner has objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no objection based on lack of Vendex approval.

§ **A.5.4** The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS

§ **A.5.5.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- **.1** assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- **.2** assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ **A.5.5.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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§ A.5.6 Notwithstanding any provision of the Design-Build Contract to the contrary, the Owner agrees that Ruttura and Sons Construction Co. ("Ruttura") is approved as a Contractor for the Work, subject to Ruttura's execution of an IPSIG monitoring agreement with the City and NYCEDC.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ A.6.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1. The Design-Builder acknowledges that throughout the Contract period, portions of the Project will be in operation and the Design-Builder shall cooperate with the Owner's designated operator. In no event shall the Design-Builder seek to increase the Contract Sum due to the operational activities of the Owner's designated operator. The Owner shall require the operator to cooperate with the Design-Builder's construction activities.

§ A.6.1.2 The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ A.6.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ A.6.2.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ A.6.2.2 If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ A.6.2.3 The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ A.6.2.4 The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ A.6.2.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ A.6.3.1 If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

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ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Methods used in determining adjustments to the Contract Sum may include those listed in Section A.7.3.3.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3 If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 as provided in Section A.7.3.6.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the method and the adjustment shall be determined by the Owner on the basis of reasonable

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expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, compensation for general conditions and design (12% of direct work costs), Subcontractor Default Insurance (1.255% of direct work costs), CCIP Insurance (6.7% of direct work costs and general conditions/design mark-up), Builder's Risk Insurance (.15% of the overall adjustment), Pollution/Railroad/Professional Liability Insurance (1% of direct work costs), Design-Builder Bond (1.39% of the overall adjustment) and fee; percentages determined and provided, however, that the percentage for fee shall be four percent (4%) of the overall adjustment if the adjustment otherwise is $1,000,000.00 or less (per change) and nine percent (9%) of the overall adjustment if the adjustment otherwise is greater than $1,000,000.00 (per change). In such case, and also under Section A.7.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section A.7.3.6 shall be limited to the following:

.1 additional costs of professional services;

.2 costs of labor, including social security, old age and unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

.3 costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;

.4 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;

.5 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and

.6 additional costs of supervision and field office personnel directly attributable to the change.

§ A.7.3.7 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ A.7.3.8 Pending final determination of the total cost of a Construction Change Directive to the Owner, amounts not in dispute for such changes in the Work shall be included in Applications for Payment accompanied by a Change Order indicating the parties' agreement with part or all of such costs. For any portion of such cost that remains in dispute, the Owner shall make an interim determination for purposes of monthly payment for those costs. That determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of the Design-Builder to disagree and assert a Claim in accordance with Article A.4.

§ A.7.3.9 When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

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§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or of an employee or other representative of the Owner or by changes ordered in the Work by the Owner, or by labor disputes, fire, unavoidable casualties, adverse weather conditions as provided in Section A.4.1.7.2, emergencies as provided in Section A.10.5.1 or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine; provided that the Contract Sum shall not change except as provided in Section A.8.3.3.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7..

§ A.8.3.3 In the event of extension of time due to any reason stated in Section A.4.1.6 or otherwise due to neglect of the Owner or other person or entity for whose conduct the Owner is responsible, the Design-Builder shall be entitled to increase in the Contract Sum in the amount of any demonstrable increase in general conditions and insurance costs attributable to such extension.

ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 The schedule of values is attached to the Agreement as Schedule C. Upon agreement of the Owner and the Design-Builder, the schedule of values may be updated periodically to reflect changes in the allocation of the Contract Sum.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 In accordance with the requisition review procedure set forth in Exhibit A to the Funding Agreement, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

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§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment (approved pursuant to Exhibit A to the Funding Agreement), issue to the Design-Builder a written acknowledgment of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part. Failure to issue such acknowledgment shall not prevent the Owner from subsequently withholding payment pursuant to Section A.9.5.1.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the

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Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 The Design-Builder shall provide the Owner with a payment bond in the full penal sum of the Contract Sum. Payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon fifteen additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (meaning each individual facility and, in the case of Garage A, phase 1 and phase 2) is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use and, a temporary certificate (for the new garages) has been issued therefor.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall

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establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion. In addition, the Design-Builder shall certify upon Substantial Completion of each garage or phase thereof and each other facility: the amount required for the payment of any remaining part of the Contract Sum attributable to such garage or phase thereof or other facility; the amount of Bond proceeds expended with respect to the facility; that attached to the certification is a temporary or permanent certificate of occupancy, and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the facility; that attached to the certification is a release of mechanics' liens by the Design-Builder relating to the facility for Work on the facility through Substantial Completion (excepting retainage and any disputed amounts and conditioned on payment through Substantial Completion); and that attached to the certification is a certificate of the Board of Fire Underwriters with respect to the facility (if applicable).

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any is required, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE
§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT
§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent

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and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

.1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;

.2 failure of the Work to comply with the requirements of the Design-Build Documents; or

.3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract. The Owner, NYCEDC, ESDC and Tishman-DMJM Harris Joint Venture shall have the right to inspect the Design-Builder's safety reports.

§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take all necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or

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omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.5 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.6 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

(Paragraphs deleted)

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If standard precautions will be inadequate to prevent foreseeable injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area, report the condition to the Owner and the Design-Builder shall take appropriate measures to render the material or substance harmless.

(Paragraphs deleted)

§ A.10.4 The Owner shall not be responsible for materials and substances brought to the site by the Design-Builder.

§ A.10.5 EMERGENCIES

§ A.10.5.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

(Paragraphs deleted)

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE

§ A.11.2.1 The Design-Builder shall

(Paragraphs deleted)

carry liability insurance as provided in Exhibit C hereto.

(Paragraphs deleted)

§ A.11.3 PROPERTY INSURANCE

§ A.11.3.1 The Design-Builder shall carry builder's risk insurance as provided in Exhibit C hereto.

§ A.11.4 PERFORMANCE BOND AND PAYMENT BOND

§ A.11.4.1 The Owner requires the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, as provided in Exhibit C hereto.

(Paragraphs deleted)

ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK

§ A.12.1 UNCOVERING OF WORK

§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

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§ A.12.2 CORRECTION OF WORK
§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.
§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION
§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.2.6 The Owner shall promptly remedy damage and loss to the Work of the Design-Builder arising in connection with the Project caused in whole or in part by the Owner, any consultant engaged by or on behalf of the Owner or any other contractor under contract with the Owner, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK
§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

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ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW

§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS

§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project (including the Trustee) or to NYCEDC. In such event, the lender or NYCEDC shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE

§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES

§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ A.13.5 TESTS AND INSPECTIONS

§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

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§ **A.13.5.6** Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

(Paragraphs deleted)

ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT

§ A.14.1 TERMINATION BY THE DESIGN-BUILDER

§ **A.14.1.1** The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

.1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;

.2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;

.3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or

.4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ **A.14.1.2** The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ **A.14.1.3** If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon thirty (30) days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit.

§ **A.14.1.4** If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon thirty (30) additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ **A.14.2.1** The Owner may terminate the Design-Build Contract if the Design-Builder:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;

.3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ **A.14.2.2** When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

.2 accept assignment of contracts pursuant to Section A.5.5.1; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

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§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE
§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
.2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE
§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

.1 cease operations as directed by the Owner in the notice;
.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination.

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AIA® Document A141™ – 2004 Exhibit C

Insurance and Bonds

for the following PROJECT:
(Name and location or address)

Yankee Stadium Park Improvements

THE OWNER:
(Name and address)

BRONX PARKING DEVELOPMENT COMPANY
18 Aitken Avenue
Hudson, New York 12534

THE DESIGN-BUILDER:
(Name and address)

PRISMATIC HUNTER ROBERTS A JOINT VENTURE
2 World Financial Center, 6th Floor
New York, New York 10281

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE C.1
(Paragraphs deleted)
DESIGN-BUILDER'S INSURANCE
During performance of the Work, the Design-Builder shall provide policies of insurance as follows:

§ C.1.1 General Liability Insurance. Liability insurance on ISO form CG 00 01 12 04 or its equivalent in an amount not less than Fifty Million Dollars ($50,000,000) with at least One Million Dollars ($1,000,000) in primary insurance coverage, combined single limit/per occurrence for bodily injury and property damage protecting the Design-Builder as named insured and the Owner, the New York City Industrial Development Agency ("IDA"), the Bank of New York, as Trustee, the City of New York (the "City"), NYCEDC, the State of New York (the "State"), ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture as additional insureds, against all insurable legal liability claims resulting from the Work being performed by the Design-Builder, the Contractors, subcontractors and others engaged to perform Work on a Project site. The policy shall have a general aggregate limit applicable specifically to this project (a project-specific aggregate). Without limiting the generality of the foregoing, such insurance shall include the following coverages and clause:

§ C.1.1.1 Products Liability/Completed Operations coverage with endorsement showing Completed Operations coverage for the Design-Builder applies for five (5) years following completion of the Project.

§ C.1.1.2 A broad form property damage endorsement.

§ C.1.1.3 Independent contractors coverage.

§ C.1.1.4 Blanket contractual liability coverage covering the Design-Builder's indemnification obligations under the Design-Build Contract.

§ C.1.1.5 An endorsement providing that excavation and foundation work are covered and that the "XCU exclusions" have been deleted.

§ C.1.1.6 Containing the "subcontractor exception" to the "your work" exclusion, and containing no other exclusions except those specifically authorized by NYCEDC and ESDC and such exclusions as may be reasonable and customary in liability insurance policies issued in connection with construction work similar in all respects to the Work. *Notwithstanding the foregoing, there shall be no exclusion for subcontractor's work.*

§ C.1.1.7 Defense Cost coverage in addition to the limits of liability.

§ C.1.1.8 Terrorism Coverage for both certified and non-certified acts.

§ C.1.1.9 The pollution exclusion should provide coverage for pollution arising from Hostile Fire, Heating Ventilation and Air Conditioning (HVAC) equipment, completed operations, accidental discharge of fuels, lubricants or other operating fluids that a contractor brings to the site that are essential to the operation of mobile equipment.

§ C.1.2 Automobile Liability Insurance. Automobile liability insurance in an amount not less than Five Million Dollars ($5,000,000), at least 1 million acting as primary insurance, covering any automobile or other motor vehicle used in connection with Work being performed on or for the Project premises.

§ C.1.2A Umbrella Liability Insurance coverage may be provided to attain the limits required in Sections C.1.1 and C.1.2 above, including excess coverage for the General Liability specified above (inclusive of Products Liability and Completed Operations), Auto Liability and Employers Liability (if applicable.) The Umbrella coverage shall be on an occurrence basis, provide a project-specific aggregate limit, and shall follow-form of the primary with respect to the named insured, additional insureds, terrorism and all of the other coverage specifications identified herein.

§ C.1.3 Builder's Risk Insurance. Standard all risk insurance written on a completed value (non-reporting) basis, insuring the Work and the interests therein of the Design-Builder, IDA, the City, NYCEDC, the State, ESDC and all Contractors and subcontractors employed in connection with the Work being performed, as their respective interests may appear. Such insurance policy (1) shall contain a written acknowledgment by the insurance company that its right of subrogation has been waived with respect to all of the insureds named in the policy and an endorsement

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stating that "permission is granted to complete and occupy;" (2) if any off-site storage location is used, shall cover, for full insurable value, all materials and equipment at any off-site storage location intended, or while in transit, for use with respect to the premises; (3) unless approved by NYCEDC and ESDC, shall contain no exclusions other than those that are reasonable and customary in Builder's Risk insurance policies issued in connection with construction work similar in all material respects to the Work being performed; and (4) shall name The Bank of New York, as Trustee, as loss payee. Coverage for Work at a site shall continue until final completion of Work at that site. This coverage shall include the following:

- Earth movement and earthquake
- Flood whether driven by wind or not; underground water seepage, back-up of sewers and drains.
- Terrorism coverage for certified and non-certified acts.
- Coverage for the so-called "soft costs" included within the Design-Builder's scope of Work in connection with construction or restoration following an insured event.
- Coverage for demolition, the loss of the value of the undamaged part of the building if demolition is required by operation of any laws regulating rebuilding, and increased cost of construction arising from the operation of such laws in an amount not less than 10% of the project value.

§ C.1.4 Statutory Coverages. Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance in statutorily required amounts covering the Design-Builder with respect to all persons employed by the Design-Builder, Contractors and subcontractors in connection with their operations conducted at, or in connection with, any portion of the Project premises.

§ C.1.5 Professional Liability Insurance. The Design-Builder shall maintain Contractors Professional Liability insurance in an amount not less than Ten Million Dollars ($10,000,000) (which limit may be combined with the Pollution Legal Liability limits for a combined limit of $10,000,000), with coverage continuing for four (4) years following completion of the Work. The Contractor's Professional Liability insurance shall be additional to the coverage provided by the Architect and other design consultants engaged by the Design-Builder. The Design-Builder shall cause the Architect to carry and maintain professional liability insurance in an amount not less than One Million Dollars ($1,000,000) and shall cause other consultants engaged for the performance of any design services in connection with the Work to carry and maintain professional liability insurance in like amount, but only if professional liability insurance for the type of services rendered by such consultant is available at commercially reasonable prices and is customarily provided for undertakings comparable in cost and/or scope as the design and construction of the Work.

§ C.1.6 Pollution Legal Liability.

§ C.1.6.1 If the Work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product or hazardous material or substance, pollution legal liability insurance with limits of not less than Ten Million Dollars ($10,000,000) (which may be combined with the Professional Liability Limit for a combined limit of $10,000,000), providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for a term of ten (10) years for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the Owner, the City, NYCEDC, the State or ESDC arising from the Work.

The "retro date" on the policy may not change during the 10-year term. Coverage shall be afforded for silica, asbestos, micro bacteria matter, and lead paint. The policy shall be written on a "pay on behalf of" basis. All of the additional insureds specified under the GL (and other) policies should be additional insureds on this insurance. Such policy shall be written protecting the Design-Builder as named insured and the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State of New York (the "State"), ESDC, Yankee Stadium LLC, New York

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Yankee Partnership and Tishman-DMJM Harris Joint Venture as additional insureds

§ C.1.6.2 If disposal of materials from the job site is undertaken: evidence of pollution legal liability insurance in the amount of Ten Million Dollars ($10,000,000) maintained by the disposal site operator from the disposal site accepting waste.

§ C.1.6.3 If vehicles are used for transporting hazardous materials: pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

ARTICLE C.2 GENERAL INSURANCE REQUIREMENTS

(Table deleted)

(Paragraphs deleted)

§ C.2.1 Insurance Companies. All of the insurance policies required by this Exhibit C shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of "A-:VII" or better with a policy holder surplus of Fifty Million Dollars ($50,000,000) or another comparable rating reasonably acceptable to NYCEDC or ESDC.

§ C.2.2 Term. The Design-Builder shall procure policies for all insurance required by this **Exhibit** C for periods of not less than one (1) year and shall procure renewals thereof from time to time at least thirty (30) days before the expiration thereof, except for the coverages stated above which are specifically required for longer terms..

§ C.2.3 Waiver of Subrogation. All policies of property insurance required under this **Exhibit C** shall include a waiver of the right of subrogation with respect to all the named insureds and additional insureds.

§ C.2.4 Required Insurance Policy Clauses. Each policy of insurance required to be carried and maintained or caused to be carried and maintained by the Design-Builder pursuant to this **Exhibit C** shall contain the following provisions and agreements, from and after the date each such insurance policy is required to be carried pursuant to this Exhibit: (1) a provision that no act or omission of the Design-Builder and/or of the named insured, including, without limitation, any use or occupancy of the Project premises for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained by the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture, (2) to the extent available on a commercially reasonable basis, an agreement by the insurer that such policy shall not be canceled, materially modified in a manner that would compromise the coverage theretofore provided under the policy, or denied renewal without at least thirty (30) days prior written notice to the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture, including, without limitation, cancellation or non-renewal for non-payment of premium and (3) a provision that notice of accident or claim to the insurer by the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership or Tishman-DMJM Harris Joint Venture shall be deemed notice by all insureds under the policy. Notices from the insurer to the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture shall be delivered by hand or sent by registered or certified mail, return receipt requested, or by nationally recognized overnight mail service that provides a receipt to the sender to such addresses as the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture shall provide.

§ C.2.5 Primary Protection. All insurance policies required by this **Exhibit C** shall be primary protection. Neither the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership nor Tishman-DMJM Harris Joint Venture shall be called upon to contribute to any loss covered under the insurance described in this Exhibit C.

§ C.2.6 Adjustments for Claims. The Design-Builder's Builder's Risk policy shall provide, from and after the date when the Owner, the City, NYCEDC, the State and/or ESDC became additional insured or loss payee thereunder as required by this **Exhibit** C, that the Owner, NYCEDC and/or ESDC, as applicable, shall be afforded the opportunity

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to participate in any negotiations regarding adjustments for claims with the insurers. All other insurance policies required by this **Exhibit C** shall provide that all adjustments for claims with the insurers be made with the Owner, NYCEDC, and ESDC, each of which shall act reasonably.

§ C.2.7 Evidence of Insurance. To the extent available on a commercially reasonable basis, prior to commencement of the Work and at least sixty (60) days prior to the expiration of any of the policies to be maintained or caused to be maintained by the Design-Builder, the Design-Builder shall deliver or cause to be delivered to the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture certificates of insurance, in form reasonably satisfactory to the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture, providing for thirty (30) days prior written notice to the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture by the insurance company of cancellation or non-renewal of a policy or replacement or renewal of any policies expiring during performance of the Work. Upon request by the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture, the Design-Builder shall deliver a copy of each entire original policy required hereby.

§ C.2.8 Compliance with Policy Requirements. The Design-Builder shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this **Exhibit C**. The Design-Builder shall perform, satisfy and comply with all conditions, provisions and requirements of all such insurance policies, and shall give and cause its contractors to give the insurer, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture notice of all claims, accidents and losses promptly, but in any event no later than five (5) business days after the Design-Builder acquires actual knowledge of the same.

§ C.2.9 No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by the Design-Builder hereunder shall not constitute a representation or warranty by the Design-Builder, the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture that such insurance is adequate or sufficient in any respect.

§ C.2.10 CCIP. The Design-Builder may comply with its obligation under this **Exhibit C** to carry general liability and workers' compensation insurance through a Contractor Controlled Insurance Program ("CCIP").

§ C.2.11 Primary and Excess Policies. The liability insurance required to be carried by the Design-Builder pursuant to this **Exhibit C** may, at the option of the Design-Builder, be effected through a combination of layers of primary and excess coverages, provided that such policies that otherwise comply with the provisions of this **Exhibit C** and afford the amounts of coverage required hereby for all insureds required to be named as insureds hereunder.

§ C.2.12 Modification By Insurer. Without limiting any of the obligations of the Design-Builder, or the rights of the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture under this **Exhibit C**, in the event that an insurer modifies, in any material respect, any insurance policy that the Design-Builder is required to carry and maintain under this **Exhibit C**, the Design-Builder shall give notice to the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture of such modification within thirty (30) days after the Design-Builder's receipt of notice thereof.

§ C.2.13 Interpretation. All insurance terms used in this **Exhibit C** shall have the meanings ascribed by the Insurance Services Offices.

ARTICLE C.3

§ C.3.1 The Design-Builder shall provide Owner with payment and performance bonds for the Parking Facilities Work issued by surety companies licensed or authorized to do business in New York that are satisfactory to

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NYCEDC and ESDC. Each bond shall be in an amount at least equal to the Contract Sum, and shall be in effect until Final Completion of the construction of the Work.

§ C.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE C.4

Deductibles and Self-Insured Retentions (SIRs) – if a deductible applies to any of the aforementioned policies, the Design-Builder will be solely responsible to satisfy the obligations of such deductible(s). Furthermore, no self insured retention (SIR) in excess of $10,000 is permitted under these policies unless expressly agreed by -- the Owner, the IDA, the Bank of New York, as Trustee, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture. The Design-Builder shall be solely responsible to satisfy the obligations under any SIR and agrees to indemnify, defend, and hold harmless all of the additional insureds under the aforementioned policies with respect to any financial obligation under any SIR(s).

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Bronx Parking Facilities
NEW YORK, NY

Revised Final Breakdowns
November 7, 2007

BP #	SUMMARY BID PACKAGE NAME	TOTAL CONSTRUCTION	GARAGE A PHASE 1	GARAGE A PHASE 2			
1	Utility Relocation / Service Work	4,820,112	2,239,490	559,872	897,661	1,123,089	0
2	Excavation / Foundation Concrete	41,455,534	21,301,651	5,320,413	6,691,784	9,141,686	0
3	Piles	31,427,792	16,988,852	4,196,313	4,020,007	6,223,620	0
4	Cast-In-Place Concrete / Repair Work	972,007	0	0	0	0	972,007
5	Precast	59,186,447	27,232,625	6,735,681	11,266,193	13,951,948	0
6	Masonry / Cast Stone	695,467	271,768	67,942	170,074	185,683	0
7	Miscellaneous Iron / Chain Link	5,726,917	978,846	201,586	2,532,130	2,014,355	0
8	Ramp Modifications / Steel Work	3,039,497	1,236,830	309,208	0	1,493,459	0
9	Roofing / Waterproofing / Standing Seam Roofing	4,165,706	2,714,000	678,500	53,436	119,768	600,000
10	Garage Coatings	1,192,777	500,000	125,000	265,163	302,614	0
11	Aluminum / Panels / Glass	3,601,242	377,030	102,620	1,411,203	1,710,389	0
12	Drywall / Ceilings / Rough Carpentry	363,027	58,992	17,248	183,289	93,498	0
13	Finishes / Painting / Flooring / Toilet Accessories & Partitions	682,103	176,573	44,143	151,618	149,769	160,000
14	Line Striping	83,595	13,280	3,320	7,004	9,991	50,000
15	Doors / Frames / Hardware	101,846	32,160	8,040	25,956	35,690	0
16	Overhead Coiling Doors	340,100	132,000	33,000	61,800	113,300	0
17	Signage	608,000	160,000	40,000	103,000	103,000	202,000
18	Elevators	2,138,380	964,000	0	757,050	417,330	0
19	Fire Protection - w/ Plumbing	4,039,000	2,305,440	576,360	0	1,157,200	0
20	Plumbing	5,175,000	2,080,000	520,000	1,236,000	1,339,000	0
21	HVAC	632,800	160,000	163,800	206,000	103,000	0
22	Electrical	14,900,897	5,818,725	1,444,681	3,782,193	3,855,298	0
23	Parks / Fencing / Sports Surfaces & Access / Bleachers / Landscaping / Furnishings	0	0	0	0	0	0
24	General Conditions	26,065,129	8,613,083	2,147,886	6,786,894	8,517,266	0
25	Designer Fees - w/ General Conditions	0	0	0	0	0	0
26	Building Demo / Abatement / Tank Removal	325,000	325,000	0	0	0	0
27	Revenue Control Equipment	1,768,142	321,441	80,360	238,239	312,502	815,600
	DIRECT WORK SUBTOTAL	$ 213,506,517	$ 95,011,786	$ 23,374,974	$ 39,846,693	$ 52,473,456	$ 2,799,607
	GENERAL CONDITIONS/DESIGNER'S COSTS	$ 565,000	incl. above	incl. above	incl. above	incl. above	$ 565,000
	SDI BOND	$ 1,776,294	$ 787,990	$ 194,126	$ 323,734	$ 436,149	$ 34,295
	CCIP INSURANCE	$ 6,664,715	$ 2,945,577	$ 725,407	$ 1,213,009	$ 1,593,148	$ 187,574
	TESTING & INSPECTIONS / VIBRATION MONITORING	$ 1,025,000	$ 425,431	$ 104,569	$ 200,000	$ 295,000	$ -
	BUILDER'S RISK	$ 395,346	$ 173,890	$ 42,642	$ 73,525	$ 98,567	$ 6,722
	POLLUTION / RAILROAD / PROFESSIONAL INSURANCE	$ 1,450,000	$ 401,350	$ 98,650	$ 550,000	$ 300,000	$ 100,000
	HRCG / PRISMATIC BOND	$ 3,365,201	$ 1,487,599	$ 366,038	$ 631,808	$ 824,919	$ 54,838
	OVERHEAD & PROFIT	$ 17,109,491	$ 7,576,892	$ 1,863,449	$ 3,203,946	$ 4,213,240	$ 251,965
	SUB TOTAL	$ 245,857,564	$ 108,810,516	$ 26,769,854	$ 46,042,716	$ 60,234,479	$ 4,000,000
	TOTAL CONSTRUCTION COST	$ 245,857,564	$ 108,810,516	$ 26,769,854	$ 46,042,716	$ 60,234,479	$ 4,000,000
		$ 245,857,564	$ 108,810,516	$ 26,769,854	$ 46,042,716	$ 60,234,479	$ 4,000,000

SCHEDULE A

YANKEE STADIUM PARKING IMPROVEMENTS

SCOPE OF WORK DOCUMENTS

A. SPECIFIC REQUIREMENTS

1. General Project Requirements
2. Submissions for Approval
3. Permits
4. Signage
5. Street and Sidewalk Closures
6. Lease Limits
7. Tree Removals
8. Garage B
9. Ruppert Place
10. Site for Garage A
11. 48" Sewer Relocation
12. As-Built Drawings
13. Operation and Maintenance Manuals
14. Requirements for Design-Builder's Progress Schedule – Detailed Schedule of Work (CPM)

B. GENERAL REQUIREMENTS

1. Article 1 – Inspection, Testing, Correction and Completion of Contract Work
2. Article 2 – Design-Builder's Responsibilities
3. Article 3 – Materials and Equipment and Labor
4. Article 4 – Safety and Protection of Persons and Property
5. Article 5 – Character of Work
6. Article 6 – Coordination with Other Contractors
7. Article 7 – Construction Meetings
8. Article 8 – Site Facilities and Services; Access to the Site
9. Article 9 – Records at the Site
10. Article 10 – Noise Control Provisions

C. SCOPE OF WORK

1. Introduction and Background
2. General Clarifications
3. Garage A
4. Garage B
5. Garage C
6. Garages 3 and 8
7. Surface Parking Lots

A. SPECIFIC REQUIREMENTS

1. GENERAL PROJECT REQUIREMENTS

1.1. ENVIRONMENTAL IMPACT STATEMENT: All design and construction, including manner of construction, must conform to the Yankee Stadium Final Environmental Impact Statement, except as permitted by a technical memorandum approved by the City's lead agency under the State Environmental Quality Review Act and the City Environmental Quality Review procedure for the project.

1.2. WORK SCHEDULE: The schedule of work shall be in accordance with Exhibit L – 'Project Milestone Dates' of the Funding Agreement.

1.3. DESIGN AND CONTRACT DOCUMENTS REVIEW: The Design-Builder shall retain or continue to employ architectural and engineering firms identified in Design-Builder's proposal to NYCEDC and NYCDPR, as necessary throughout the duration of the contract to prepare preliminary and subsequent final plans and specifications during construction. The Design-Builder shall submit such plans and specifications to ESDC, NYCEDC, NYCDOT and NYCDPR and shall make such changes as are reasonably requested by ESDC, NYCEDC and NYCDPR. NYCEDC and NYCDPR shall endeavor to respond within 10 business days of submission of such plans and specifications initially (provided that more time shall be afforded to NYCEDC and NYCDPR for a submission of a magnitude of work which reasonably requires such additional time), and within five business days with respect to any revisions requested. The 50% completion level design submittal has been reviewed by the City (NYCEDC, NYCDPR and others). Additional design submittals at the 90% and 100% levels of completion will be subject to the City's review and approval. It is understood that if any comments or changes are requested based on these reviews, in accordance with the attached scope document, the requested changes will be incorporated into the construction documents at no additional cost to the Owner.

1.4. LOT 14: Design-Builder will be granted access to the Lot 14 site on December 1, 2008.

1.5. EVENT DAY RESPONSIBILITIES: In addition to maintaining public access around the work site during the April through October timeframe during the Contract, certain work activity restrictions will apply to the Design-Builder's operations as follows:

The streets and sidewalks around the work site must be made available and safe for public use at least two (2) hours prior to, during, and two (2) hours after each Yankee home game, Yankee Stadium special event (defined as an event with a minimum of 10,000 people in attendance) and any Major League All-Star game (which shall be comprised of 3 days of events) - "the Restricted Game Day Period".

Game Day Parking/Traffic: All Design-Builder employees shall make reasonable efforts to rely on public transportation to get to the work site during the Restricted Game Day Period in order to mitigate the traffic congestions during the Restricted Game Day Period.

2. SUBMISSIONS FOR APPROVAL

2.1. Design-Builder shall provide copies of all approved submittals and permits to NYCEDC. This includes, but not limited to submittals to and permits from NYCDPR, NYC Department of Buildings, DEP (Drainage plans), NYCDOT, NYSDOT, NYPD, NYFD, and NYC Arts Commission. Design-Builder must provide a copy of the submission to the program manager, Tishman-DMJM Harris, upon submission to the respective agency.

3. PERMITS

3.1. While NYCEDC will cooperate with the Design-Builder in obtaining permits, the Owner is not responsible for cost impacts, and potential delay claims in the event that permits from any other agency are not expedited as NYCEDC has limited or no control of other agencies including but not limited to, the NYC Arts Commission and others that may be involved with granting permits for the work. The Design-Builder is responsible for the cost of any scope changes due to permitting requirements unless specifically excluded in the Lump Sum Contract or this section 3.1. The City and not the Design Builder, is responsible for all costs that are the result of changes to the design or cost of the project as a result of Art Commission Preliminary Approval.

4. SIGNAGE

4.1. The Design-Builder will be required to provide signage related to the project and the Maintenance and Protection of Traffic ("MPT") for construction in and around streets, including but not limited to Ruppert Place, 153rd and 157th streets, Macomb's Dam Bridge and others adjacent to the project work sites as required by NYSDOT and NYCDOT, and NYPD.

5. STREET AND SIDEWALK CLOSURES

5.1. All street and sidewalk closures will require permit approvals from the NYCDOT's Office of Construction Coordination. Any costs or schedule impacts associated with these closures will be the responsibility of the Design-Builder.

6. LEASE LIMITS

6.1. It is expected that some elements of the project (i.e., light well along Ruppert Place, and any others) may occur outside the project lease lines. Therefore it is expected that the Design-Builder will be responsible for coordination, submitting and acquiring all approvals and permits from respective agencies including but not limited to NYCDPR, and NYCDOT, that may hold leases or ownership in these areas.

7. TREE REMOVALS

7.1. Any tree removal or tree impact for the project must be coordinated with NYCDPR. Planned tree removals and tree impacts required for the construction of the garages, as shown on the 50% design submittal plans, have been reviewed by NYCDPR and NYCDPR will issue tree removal permits for each garage site based on the 50% design submittal plans. The schedule of tree removals for each garage site will be

based on the scheduled construction commencement dates for each garage. The Design-Builder is responsible for submitting the required application(s) to NYCDPR for tree removal permit(s) for any additional tree removals beyond those designated in the 50% design submittal plans, which is intended to ensure that trees that are not affected by the construction of the garages and that can be saved, are not damaged or removed unnecessarily. Furthermore, the Design-Builder shall submit a plan for approval to NYCDPR for the trimming of the trees along 164th Street for the construction of Garage B.

8. GARAGE B

8.1. The Design-Builder and NYCEDC have previously coordinated through submittals, meetings, and presentations, with the Yankees Organization on all matters including but not limited to the blast wall, operations, and site logistics for Garage B. The design plans developed to date reflect the results of these meetings and presentations. Any subsequent changes requested by the Yankees Organization will be coordinated through NYCEDC and provided to the Design-Builder for incorporation into the plans in accordance with the provisions of Article A.7 of the Design-Build Contract.

9. RUPPERT PLACE

9.1. Upon receiving authorization to begin work, the Design Builder will construct a jersey barrier site fence along the inside face of the eastern curb of the street on Ruppert Place. The construction barriers in Ruppert Place shall be located north of parking lot 14 to allow for unobstructed use of the full width of the roadway from 157th Street to the north side of Lot 14. Prior to the start of the 2008 baseball season, the Design-Builder must relocate the construction barrier westward to allow the opening of one lane of the Ruppert Place roadway, which shall be a minimum of 10 feet in width (for restricted vehicle access). It is expected that sidewalk along Yankee Stadium at Ruppert Place will be fully accessible for pedestrian use prior to the start of the 2009 baseball season. The Design-Builder shall cooperate with the City, NYCDPR and the Yankees Organization for the availability of Ruppert Place throughout the construction duration. There shall be no additional cost for any schedule impacts or logistic inefficiencies in connection therewith, assuming the City and or the Yankees Organization do not make additional requests relating to the logistics of the project for events at Yankee Stadium, including but not limited to the All-Star Game.

9.2. The Design-Builder shall submit all MPT plans to NYCDOT, NYCEDC and NYCDPR for review and approval.

9.3. Ruppert Place is under NYCDPR authority. Therefore, all permits will need to be submitted to and approved by NYCDPR to begin work in addition to the NYC Building Department and NYCDOT required permits.

10. SITE FOR GARAGE A

10.1. During the 2007 and 2008 baseball seasons, a portion of the Garage A site adjacent to the Major Deegan Expressway service road, north of Lot 14 (known as the "grassy knoll" area), will need to be accessed for Media Parking during Yankees home games

and other events at Yankee Stadium. The Design-Builder will make best efforts to accommodate the parking of media cars/vans, which will be coordinated with the NYPD. Design-Builder will maintain control (ingress / egress) of the Grassy Knoll area during the construction of the project.

11. 48" SEWER RELOCATION

11.1. It is understood that NYCEDC shall relocate the existing 48" sewer line and will require the close coordination and cooperation of the Design-Builder to ensure that the sewer is relocated along with Garage A (Phase II) construction. This work is currently scheduled to start December 1, 2008 and be completed April 1, 2009. NYCEDC will cooperate with the Design-Builder to maintain access to the Garage A site, including plating of excavations, temporary paving, jersey barriers or other reasonable methods to maintain the project schedule and a safe egress in the work areas. It is understood that the existing section of the sewer line through the Garage A site will be abandoned in place and any removal of the abandoned sewer line required for the construction of Garage A will be the responsibility of the Design-Builder.

12. AS-BUILT DRAWINGS

12.1. Design-Builder shall provide as-built drawings to the program manager, Tishman-DMJM Harris, for all work performed under the Contract in electronic format as well as hard copy.

13. OPERATION AND MAINTENANCE MANUALS

Design-Builder shall provide all required operations and maintenance manuals (including, but not limited to, all equipment items) as required by the design plans and specifications under this Contract to the Owner and Operator.

14. REQUIREMENTS FOR DESIGN-BUILDER'S PROGRESS SCHEDULE - DETAILED SCHEDULE OF WORK (CPM)

14.1. GENERAL

21.1.1. Work shall be monitored by a Critical Path Method Scheduling System (hereinafter "CPM Schedule"). The Design-Builder shall provide an updated CPM Schedule on a monthly basis that provides sufficient detail to understand the status of the project. The submittal of the CPM schedule shall accompany the monthly payment requisition.

14.2. SUBMITTALS

All CPM Schedules shall be submitted in electronic format.

For work within the project sites, the Design-Builder shall submit construction staging and phasing plans to NYCEDC for informational purposes. For any work affecting areas outside of the project sites, including, but not limited to, work affecting pedestrian and vehicular traffic on the surrounding streets and public areas

and other ongoing projects in the vicinity of the project site, the Design-Builder shall submit detailed construction staging and phasing plans to NYCEDC for review and approval prior to the start of such work activities.

B. GENERAL REQUIREMENTS

ARTICLE 1
INSPECTION, TESTING, CORRECTION AND COMPLETION OF THE CONTRACT WORK

1.1 Inspections in General. The Design-Builder is responsible for inspection and testing of all Contract work, in accordance with all requirements of the Contract and design plans and specifications. All Contract work, including all materials and equipment (whether incorporated in the Contract work or not) and all methods of construction, shall at all times be subject to review by the Owner, NYCEDC, and the program manager. In the event any of the Contract work fails to meet the approval of the Owner (based on the final design documents, and codes), the Design-Builder shall promptly notify the Owner of the methods by which such Contract work, material and equipment or method of construction shall be changed, corrected, replaced and made good in accordance with the final design documents and codes, at the Design-Builder's sole cost and expense. The Owner shall notify the Design-Builder within four (4) business days of an apparent non conformance regarding the quality and suitability of the Contract work, materials and equipment, and methods of construction. Acceptance of any Contract work, materials and equipment or method of construction shall not relieve the Design-Builder from any of its obligations under this Contract, including any independent inspections as required by NYCDOB.

1.2 Review and Correction of the Work. The Design-Builder shall:

1.2.1 provide, both in the shops and at the site, sufficient, safe and proper facilities for the review of the work as required by the design plans and specifications and by the Owner and all of the Owner's other consultants at all times;

1.2.2 promptly correct, reconstruct, make good or replace all work deemed as defective or as failing to conform to the Contract documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed; bear only those subcontractor hard costs in connection with the foregoing rejected work. Design-Builder shall not bear any costs incurred by Owner, Owner's consultants or the Owner's program manager in the discovery or remedy of the corrective work.

1.3 The Design-Builder shall remain liable for and shall not be relieved from its obligations to perform the work in accordance with the Contract documents either by the activities or duties of the Owner or the Owner's other consultants in their administration of the Contract.

1.3.1 In the event any portion of the work fails any inspection or test, the Owner may perform or may direct the Owner's other consultants to perform further inspections or tests of any or all of the other similar items of the work at the

Owner's sole cost and expense except that the Design-Builder shall bear all costs and expenses if:

1.3.1.1 such testing or inspection is specifically required by the other Contract documents;

1.3.1.2 the test failure prompting such additional testing or inspection was a result of the acts or omissions of the Design-Builder and the additional testing or inspection is reasonable under the circumstances; or

1.3.1.3 such additional testing or inspection results in a test failure which results from the acts or omissions of the Design-Builder.

1.3.2 In the event that any special inspections or tests shall necessarily result in a delay in the performance of the work, then the Completion Date shall be appropriately extended by a Change Order, unless such special inspections or tests:

1.3.2.1 are specifically required by the other Contract documents;

1.3.2.2 were required by the Owner, or the Owner's other consultants as a result of a test failure which was a result of the acts or omissions of the Design-Builder and such special inspections were reasonable under the circumstances; or

1.3.2.3 resulted in a test failure which was a result of the acts or omissions of the Design-Builder.

1.4 Safety Devices. The Design-Builder shall include, provide, erect, maintain and promptly and properly replace, as necessary, all reasonable, necessary or required safety devices for its employees and flagmen. Such devices shall include, without limitation, proper barricades and other safeguards around its work and danger signs and other warning devices where warranted by the nature of the existing condition of the work.

1.5 Loading. The Design-Builder shall not load or permit any part of the work or the project to be loaded so as to endanger its safety or the safety of any persons. The project is designed to support the loads of the finished project only. No provision is included for stresses or loads imposed by construction operations.

1.6 Emergencies. The Design-Builder shall immediately notify the program manager and the Owner of any emergency situation that threatens to or is already affecting the safety of persons or property and shall promptly act to prevent or mitigate such damage, injury or loss.

1.7 Subcontractors'/Suppliers' Compliance. The Design-Builder shall be responsible for seeing that its suppliers and subcontractors of all tiers comply with the requirements of this Article.

ARTICLE 2
DESIGN-BUILDER'S RESPONSIBILITIES

2.1 Labor.

2.1.1 The Design-Builder shall furnish and maintain an adequate staff and work force of skilled, competent, experienced, reliable and honest workers at the site to carry out the Contract work in an efficient and timely manner until Final Completion. The Design-Builder shall enforce strict discipline and order among Design-Builder's employees and shall not employ on the Contract work any unfit person or anyone not properly skilled or trained in the task to which he or she is assigned.

2.1.2 The manufacture, installation and delivery of all materials and equipment utilized in the Contract work shall be performed by workmen whose trade affiliations shall not cause strikes or work stoppages on the project. The Design-Builder shall employ the proper tradesmen per applicable union jurisdiction for all Contract work.

2.2 Permits and Legal Requirements.

2.2.1 The Design-Builder will secure and pay for the building permit for the project.

2.2.1.1 The Design-Builder, at its sole cost and expense, shall, as may be necessary for the proper execution and completion of the Contract work and for compliance with all applicable legal requirements, secure, maintain, renew and pay for:

2.2.1.1.1 all other permits, governmental fees, licenses and inspections; and

2.2.1.1.2 all affidavits, instruments or supporting data required in connection therewith including those required for the issuance of any Temporary or Permanent Certificate of Occupancy.

2.3 Cutting, Fitting, Patching and Protection of Contract Work. The Design-Builder shall do all cutting, fitting, patching and protection that may be required to the Contract work to make its several parts come together properly and to fit it to receive or be received by the work of other trades shown upon or reasonably implied by the Contract documents. The requirements to cut, fit, patch or protect shall be determined by the Design-Builder provided, however, that structural elements of the project shall not be cut, patched or otherwise altered or repaired without prior written authorization of both the program manager.

2.4 Handling and Hoisting of Tools, Equipment and Materials.

2.4.1 The Design-Builder is responsible for the handling and distribution of its own materials and equipment. The Design-Builder shall confine its materials and equipment and its operations to areas permitted by all applicable legal requirements.

2.5 Layout of Work. All layout shall be performed by the Design-Builder. The Design-Builder shall be solely responsible for establishing and maintaining the layout, line and grade tolerances required for its work. The Design-Builder shall verify all established baselines prior to use and shall notify the program manager and the Owner of any discrepancies.

2.6 Temporary Facilities. The Design-Builder shall provide all necessary facilities for its workers. The Design-Builder shall be responsible for the acquisition, maintenance, relocation and subsequent removal of all utility, sprinkler and telephone services required for its field offices and shanties. Each structure Design-Builder maintains at the work site must be of fire-resistant construction and must contain a minimum of one (1) 20 lb. dry ABC Fire Extinguisher and shall otherwise comply with all applicable fire codes or other legal requirements related to such structures.

2.7 Substitutions.

2.7.1 The materials and equipment of manufacturers referred to in the Contract documents are intended to establish the standard of quality and design required by the Owner. Notwithstanding anything contained in the Contract documents to the contrary, materials and equipment of manufacturers other than those specified may be used only with the express prior written approval of the Owner.

2.7.2 When only one product is specified in the Contract documents for an item of work and the term "or equal" is used in connection with such product, the Owner will consider approval of a substitute product only after the Owner is

satisfied that the product offered as a substitute meets all of the requirements set forth in Paragraphs 2.7.3.1 through 2.7.3.5, inclusive, herein below.

2.7.3 The Design-Builder offering a substitution shall submit a written application to the Owner (through the program manager) in sufficient time (taking into account the progress of the work, the period of delivery of the goods concerned and adequate time for the Owner 's review), setting forth and fully identifying the proposed substitute, together with substantiating data, samples, brochures and other supporting documentation of the substitute item proposed, including without limitation, evidence that the proposed substitution:

2.7.3.1 is equal in quality and serviceability to the specified item;

2.7.3.2 will not entail changes in detail, schedule and construction or related work;

2.7.3.3 conforms with the design of the project and its artistic intent;

2.7.3.4 will not require changes in other parts of the work or the work of others; and

2.7.3.5 either will not result in an increase in the Contract price or will result in a decrease in the Contract price in the amount indicated.

2.7.4 Design-Builder shall support any request for a substitution with sufficient evidence to the Owner and the program manager on the merits of the Design-Builder's bid.

2.7.5 When only one product is specified in the Contract documents for an item of work and the term "or equal" is not used in connection with such product, the Owner, in its sole discretion, may reject any substitution proposed by the Design-Builder.

2.7.6 For the purposes of this Contract, any item having a manufacturer, brand name, or model number, size or generic species other than as cited in the Contract documents shall be considered a substitution.

2.8 Site Conditions. If its work is being performed adjacent to active facilities and existing buildings that are in service, the Design-Builder shall take all necessary steps to avoid damage to the existing structures and/or other improvements and/or interference with such services. Any damages caused by the Design-Builder will be repaired by the Design-Builder at its sole cost and expense. It is understood that the Design-Builder will be constructing a new retaining wall adjacent to the existing 161st Street Retaining wall, which will not require underpinning. It is assumed that the condition of this existing wall is sufficient to accept the construction process of the new wall adjacent to it.

2.9 On-Site Reports and Schedules.

2.9.1 The Design-Builder shall, within ten (10) Business days of a request from the program manager or the Owner, provide a proposed schedule for deliveries of materials and equipment to the site. The Design-Builder shall provide periodic status reports with respect to

materials and equipment within seven (7) days of a request by the program manager or the Owner for same.

2.9.2 **INTENTIONALLY DELETED**

2.9.3 The Design-Builder shall notify the Owner and the program manager immediately, and in writing, of any accidents, injury or other damages to persons or property at the work site or otherwise in any way related to the Design-Builder's work under this Contract.

2.9.4 The Design-Builder shall maintain the following at the site:

2.9.4.1 a current set of Contract documents;

2.9.4.2 record drawings updated on a current basis and as the work progresses showing "as-built" conditions of the work;

2.9.4.3 all permits, signs and other documents or data required by all applicable Agencies or pursuant to all legal requirements including, without limitation, DOB work permits.

2.10 Coordination With Other Trades.

2.10.1 The Design-Builder is responsible for the complete coordination of the work with the work of other contractors and of other trades.

2.10.2 **INTENTIONALLY DELETED**

2.11 Project Meetings. The Design-Builder shall, as directed by the program manager or the Owner, attend and participate in all regular, progress and special meetings called by the program manager or the Owner in connection with the work, the Contract or the project.

2.12 Means and Methods of Construction. Unless otherwise expressly provided in the Contract documents, the means and methods of construction shall be such as the Design-Builder may choose within trade and industry standards, subject, however, to the provisions of this Contract and subject to the right of the Owner to reject means and methods proposed by the Design-Builder that will, in the opinion of the Owner:

2.12.1 violate any legal requirements;

2.12.2 constitute or create a hazard to the Contract work, or to persons or property;

2.12.3 not produce finished Contract work in accordance with the terms of this Contract; or

2.12.4 be detrimental to the overall progress of the Contract work or the project.

2.12.5 The Owner's approval of the Design-Builder's means and methods of construction, or its failure to exercise its right to reject such means or methods, shall not relieve the Design-Builder of its obligation to complete performance in accordance with this Contract, nor shall the exercise of such right to reject create a cause of action for damages against the Owner, the City or their respective representatives.

ARTICLE 3
MATERIALS AND EQUIPMENT AND LABOR

3.1.1 Design-Builder shall not use, but shall replace, at its sole cost and expense, any materials and equipment or work that become damaged in any way during storage and delivery. Completed work shall be free of dents, tool marks, warpage, buckling, open joints and any and all other defects.

3.1.2 If the Owner determines that any materials and equipment, or any portion thereof, are faulty or defective in any respect, written notice shall be provided to the Design-Builder. Within five (5) days after receipt of written notice to such effect from the program manager or the Owner, the Design-Builder shall respond with an explanation or remedy for the material or work in question. The Design-Builder is responsible for all costs associated with the remedy for the material or work in question, including replacement if necessary.

ARTICLE 4
SAFETY AND PROTECTION OF PERSONS AND PROPERTY

4.1 Risk of Loss. The Design-Builder assumes the risk of loss or damage, whether direct or indirect and of whatever nature, to the work or to any materials and equipment furnished, used, installed or received by the Owner, the program manager, materialmen or workmen in preparation for and in performing the work. The Design-Builder shall bear such risk of loss or damage until receipt of a TCO and the facility becomes available for its intended use. The Design-Builder will not be responsible for damage or vandalism by the public after receipt of TCO, except that the Design-Builder will be responsible for risk of loss or damage in cases of damage or vandalism of uninstalled project materials or equipment. Notwithstanding the status of any actual or potential recovery or claim under any insurance policy, in the event of any loss or damage to the work, Design-Builder shall immediately repair, replace or make good any such loss or damage.

4.2 Protection Against Vandalism, Theft and Fire Damage. The Design-Builder shall take all necessary steps to protect and secure its work, including all materials, tools, scaffolding, buildings, trailers, work shacks and other materials and equipment from vandalism, theft and fire damage, and the Owner and the program manager shall not be responsible for losses or damages to such items. Design-Builder shall not be responsible for the vandalism/theft to any aspect of the Parking Garages, including but not limited to the Copper Scrim Panels, after receipt of TCO.

CHARACTER OF WORK

4.3 Materials and workmanship shall in every respect be in accordance with the Contract Documents. Whenever the Contract or directions of the program manager or Owner admit of a doubt as to what is permissible or fail to note the quality of any workmanship, materials or equipment, the interpretation which calls for the best quality of workmanship, materials or equipment is to be followed. All apparatus or materials furnished by the Design-Builder shall be the latest design of manufacturers regularly engaged in the production of such apparatus or materials. All items of the same type and rating shall be identical. The Design-Builder shall be responsible for all cutting, fittings or patching that may be required to complete the work or to make its several parts fit together properly.

ARTICLE 5
COORDINATION WITH OTHER CONTRACTORS

5.1 During the progress of the work, it may be necessary for other Design-Builders and other persons (including personnel of Owner) to do work in or about the site of the work. Owner reserves the right to permit and put such other Contractors and such persons to work and to afford them access to the work site at such time and under such conditions as does not unreasonably interfere with Design-Builder. The Design-Builder shall perform its work continuously and diligently and shall conduct its work so as to minimize interference with such other work.

5.2 In the event of an emergency creating danger to life or property at or near the site of the work, Owner may do anything necessary to alleviate such an emergency situation, including performing work, or directing another contractor to perform work.

ARTICLE 6
CONSTRUCTION MEETINGS

6.1 The program manager and Owner will conduct meetings, monthly or as required, at the site to review job progress, procurement, extra work claims, safety, fire prevention and detection, job cleanliness and housekeeping, coordination of work with others and other appropriate items. The Design-Builder shall be represented by his site superintendent or an officer of the Design-Builder at these meetings. Special meetings may be held at the request of Owner, program manager or the Design-Builder.

ARTICLE 7
SITE FACILITIES AND SERVICES; ACCESS TO SITE

7.1 Except as otherwise specified, the Design-Builder shall be responsible for obtaining at its own expense, from available sources the required electric power, water, telephone and other utilities and facilities required for the work.

7.2 Owner will provide to the Design-Builder, either by ownership, easement or permit the right of entry to the site of work. The Design-Builder shall at its own expense make any access improvements required for performance of the work.

ARTICLE 8
RECORDS AT SITE

8.1 Design-Builder shall maintain in a safe place at the site one record copy of drawings (including working drawings), specifications, addenda, change orders, field test records, correspondence, daily reports, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with approved samples and shop drawings will be available to the program manager for reference. Upon completion of the work, these record documents, sample and Shop Drawings will be delivered to the program manager.

8.2 Record documents shall be kept up to date. Design-Builder shall be required to review with the program manager the status of record documents in connection with the program manager's evaluation of each progress payment request. Failure to maintain current record documents shall be just cause to withhold payments for the undocumented work.

ARTICLE 10
NOISE CONTROL PROVISIONS

The Design-Builder shall comply with all of the applicable provisions of the City's Administrative Code regarding noise control including, without limitation, the following:

Section 24-216(b) which provides, in relevant part, that devices and activities which will be operated, conducted, constructed or manufactured pursuant to the Contract and which are subject to the provisions of the City's Administrative Code will be operated, conducted, constructed or manufactured without causing a violation of said code; and that such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of DEP; and

Section 24-219 of the City's Administrative Code and the rules implemented by DEP and codified at 15 Rules of the City of New York ("RCNY") Section 28-100, *et. seq.*, for Citywide Construction Noise Mitigation (the "DEP Rules"). The Design-Builder shall prepare and post at each work site a Construction Noise Mitigation Plan (as defined in the DEP Rules). The Construction Noise Mitigation Plan shall contain a certification by the Design-Builder that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Design-Builder cannot make this certification, it must have in place a DEP-approved Alternative Noise Mitigation Plan (as defined in the DEP Rules). The Design-Builder's certified Construction Noise Mitigation Plan is subject to inspection by DEP in accordance with 15 RCNY §28-101. No Contract work may take place at the project site unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Design-Builder shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

C. SCOPE OF WORK

INTRODUCTION AND BACKGROUND

The Scope of Work for the design and construction of Garages A, B and C, the restoration and improvements of Garages 3 and 8, and the rehabilitation of Lots 13A and 13C has been developed as a result of the culmination of many months of design, meetings, presentations, field investigation and other associated work to further the design from the original concept presented in the RFP documents to the current state. This Scope of Work has been prepared based upon the latest drawings that are available. Any reference to earlier RFP, Proposal or Design documents have either incorporated the design elements from these previous packages, or have either added, revised, modified, substituted or deleted various items as the design has progressed. This Scope of Work is the basis for not only the Contract, but also for the finalization of the design documents. The Scope of Work will include all items to design, construct and rehabilitate the various sites in accordance with all State and Local Codes. Any deviations from this Scope of Work due to incorrect code interpretations, except as clarified below, will be performed as part of this project. No provisions for Owner initiated changes have been included as part of this Scope of Work. However, the allowances may be "drawn down" at the owner's discretion to cover priority items and shall be, limited to repairs in existing garages 3 & 8 and the existing surface parking lots. If the allowance is not used due to value engineering or other cost saving measures, then the Owner may use the remaining funds for possible Owner initiated changes or as they wish.

The Scope of Work includes the design, construction and development of approximately 3124 painted parking spaces in three newly constructed garages on sites A (1560), B (628), and C (936). The total number of spaces in each garage, including valet parking space, shall be 1700 for Garage A, 790 for Garage B and 1120 for Garage C, for a total of 3610 spaces. In addition, the renovation and improvement of approximately 3,616 spaces in two existing garages on sites 3 & 8 and the renovation and improvement of approximately 1,953 parking spaces in surface lots on sites 7, 10, 13A, 13B, 13C and 15 are included in the project.
The following is a summary of the list of documents that were used and referred to in preparation of this Scope of Work:

- New York City Economic Development Corporation Request for Qualifications dated November 23, 2005.
- Prismatic Development Qualification Submission dated December 20, 2005.
- New York City Economic Development Corporation Request for Proposal dated June 5, 2006.
- Prismatic Development Proposal dated July 27, 2006 and associated subsequently submitted clarifications.
- Prismatic Development Addendum Response dated December 15, 2006 and associated subsequently submitted clarifications.
- Conditional Designation Letter dated March 6, 2007
- Fay Spofford and Thorndike Condition Assessment Report - Garages No. 3 and 8 – Yankee Stadium Bronx, NY dated April, 2007
- YU Yankee Stadium Parking Facilities Supplemental Environmental Assessment Report dated May 2007
- YU Geotechnical Boring Information – Draft Format
- PDC/HR 15% Design Submission dated May 29, 2007

- Clarke Caton Hintz Code Interpretation Letters for Garage A, B and C dated June 8, 2007 (included in this Section)
- PDC/HR 30% Design Submission dated June 22, 2007
- Clarke Caton Hintz Existing Parking Structures #3 and #8 Letter dated June 26, 2007
- Prismatic Development/Hunter Roberts JV Guaranteed Maximum Price Proposal dated June 29, 2007.
- PDC/HR 50% Design Submission dated August 23, 2007

GENERAL CLARIFICATIONS

The following general clarifications apply to the entire project and highlight the approach and assumptions that were made for various items.

- All garages must meet all State and Local Codes, including all ADA, ADAAG, and Local Law 58 rules and regulations, and are included as part of this Scope of Work. The Design-Builder shall be responsible for obtaining all permits for the project and for compliance with requirements of the NYC Department of Buildings including, but not limited to, the requirements of the attached letters (at the end of this Section C – Scope of Work) dated November 1, 2007 as amended by NYC Department of Buildings on November 2, 2007 and this Scope of Work.

- This Scope of Work does not anticipate any costs associated with pass through language from any contracts that the Design-Builder has not had the opportunity to evaluate.

- This Scope of Work assumes that the Design-Builder has exemption from City and State sales tax in accordance with the Funding Agreement.

- This Scope of Work includes a Contractors Controlled Insurance Policy (CCIP). However, Design-Builder reserve the right to utilize conventional insurance for any subcontractors as deemed necessary and assume all costs associated with such change.

- This Scope of Work includes railroad protective insurance for Garage B only. At this time, Design-Builder does not anticipate requiring the need for railroad protective insurance at Garages A and C. Should this insurance be required, it will be included at no cost to the Owner.

- All exported soil material, including material that is deemed a hazardous material classification, will be removed and disposed by the Design-Builder-at Design-Builder's cost.

- This Scope of Work includes best efforts to achieve EEO and other Minority Participation.

- This Scope of Work includes all required curb, sidewalk and street restoration caused by utility connections and curb cuts, including all CDOT requirements for pavement plans.

- The Design-Builder will endeavor to make every effort to maintain the viability of the trees lining 164th street at Garage B, however, do not take responsibility or guarantee full life expectancy. The Design-Builder will take reasonable precautions, including protecting the trees, trimming the trees and root balls under the direction of an approved certified arborist, throughout the construction period.

- Any lead paint removal at the existing Garages will be treated as part of the allowance established herein for the restoration work of the existing garages.

- This Scope of Work assumes the full and complete cooperation of all Agencies and Utilities, including but not limited to Con Edison, DEP, DOB, Landmarks, NYC Arts Commission, DOT, ESDC, Bronx NYCEDC, Community Boards, New York Yankees, the United Spinal Association, etc. to expedite the review and approval process, to meet the unusually aggressive schedule milestones required for this project. The ultimate schedule adherence is the responsibility of the Design-Builder.

- Work associated with the site D Parcel is not part of this Scope of Work.

- All manufacturers and/or products as defined in the Contract documents are intended to provide a level of quality for the Scope of Work. The NYCEDC, NYCDPR, and other interested parties will review and provide comments on the final project design documents. Materials and manufacturers will be developed throughout the design process. The NYCEDC, NYCDPR, and other interested parties will review and provide comments on the final project design documents. Final approval of materials and manufacturers will be the responsibility of the Design-Builder. If the Design-Builder proposes a substitution of any material that has been approved by the NYCEDC, NYCDPR, or other interested parties, it must be submitted in advance, explaining the benefits to the project, for NYCEDC and NYCDPR review and approval. In addition while every effort will be made to expedite a review and approval, any time associated with this particular approval process shall not constitute a delay, on the part of the owner, to the schedule. The design-builder shall clarify finishes and treatments to be used in the precast garages and any resulting delays to the project as a result of not submitting said finished in a timely manner shall be the responsibility of the Design-Builder. These items include all exposed surfaces such as traffic surfaces, columns, and wall finishes, including sealers on concrete surfaces to protect from leaks and cracks.

- Carbon monoxide detection – Design-Builder shall provide a carbon monoxide detection system as required by the NYC Department of Buildings.

- Lightning Protection – Design-Builder shall provide lightning protection for the park above Garage A as required by NYC Building code.

- Communication Systems – Design-Builder, as required by the Parking Garage Operator, shall provide various communications systems such as computer, LAN/WAN, data, and internal telephones. Variable message signage (i.e.: "Best place to park") shall also be part of this Scope of Work.

- Additional Security Criteria – Design-Builder shall provide Emergency CALL Boxes at all stairwells within the garage structures, fixed lens cameras, that are capable of recording the drivers face and license plate number, and 24/7 event recording, and provisions that prohibit access when the garage is closed by installing garage doors, fences, gates.

- Through ongoing discussions with the NYC Department of Buildings and the FDNY, certain elements of the garages will be modified from the design provided in the 50% Design Submission. The perimeter spandrels and internal stairs have been modified as outlined below and exhaust fans in Garage A and fire protection systems in Garages A and C have been added to the Scope of Work. The following is a description of the modifications to the 50% design based on the meetings with the NYC Department of Buildings and letters dated

November 1, 2007 as amended by NYC Department of Buildings on November 2, 2007 (attached at the end of this Section C – Scope of Work):

- **Perimeter Spandrel Changes:** In order to achieve the open air criteria for each garage, the previous spandrel design of precast, brick faced panels at two foot above slab, with an 18" pedestrian guardrail has been replaced with spandrels that finish flush to the slab level, and include a 42" vehicular and pedestrian guardrail for the affected areas. These areas include the two open second floor elevations at Garage A (Ruppert and Macombs Dam Bridge), all above grade elevations at Garage C except the 161st street (north) elevation, portions of the south elevation and all roof elevations, and all elevations at Garage B, except for the ground floor and the roof levels.

- **Additional Internal Stairs:** The design of the structures is based upon the submission of an "engineered equivalent" for pre-consideration based on the proposed NYC Bldg Code, Table 1015.1, which allows a maximum travel distance of 200'-0" to an exit. The design has been revised around the permitted distance from any point on a parking tier is to be 130'. Based upon this direction, five open stair towers in Garage A have been added (from the ground floor level up to the second level only), and one enclosed 2 hour rated stair tower in Garage C. These stairs will be consistent in construction to the other stairs already included in the project.

- **Carbon Monoxide Exhaust:** Due to the unique geometry of the structure in Garage A, there is the potential for air stagnation. This occurs at the ground tier, in the south-west corner. A supplemental mechanical ventilation system has been designed to provide active exhaust in this 30,000 sf area by utilizing fans that will be running continuously when the garage is open. There will be a manual fire department override control. These fans will exhaust through the roof level into the perimeter planter beds.

- **Fire Protection:** Automatic dry sprinkler system is included in the design to serve the ground floor levels of Garages A and C.

GARAGE A

The program and Scope of Work for Garage A has been developed pursuant to various meetings. The work at the Garage A site shall be defined as the entire effort required to design and construct the parking garage. The work shall include all site preparation, architectural, structural, civil, environmental, mechanical, electrical and plumbing improvements at the proposed location.

General Description

Parking Garage A will be three stories bounded by the Macomb's Dam Bridge viaduct on the west, Ruppert Place (a city street that has been demapped as a public thoroughfare and remapped as parkland) on the east, East 157th and the exit ramp from the Macomb's Dam Bridge on the south, and East 161st Street on the north. The garage will contain approximately 1,560 designated (painted) parking spaces including appropriately located handicapped spaces, with recreational facilities on the roof. Upon completion of the entire garage (Phase 1 and 2)

vehicular access will be available from East 153rd and East 157th Streets and at one location from Macomb's Dam Bridge viaduct. There will also be access from East 161st Street that will serve the lower levels of both Garage A and Garage C. Each of the two entrances at East 153rd Street and East 157th Street will be designed to provide direct access to one level of the garage in order to provide speed loading on game days; the directions will be reversed for post-game exiting. The ramp from the Macomb's Dam Bridge viaduct, which provides access to the first level, will only allow right-in, right-out movements, and will facilitate circulation to parking in Garage C to allow right-out access to Manhattan via the Macomb's Dam Bridge during post-game periods. This ramp will be structurally independent from the Macomb's Dam Bridge viaduct, as required by NYCDOT.

There will be a continuous floor plate at the lower level of Garage A and Garage C beneath the Macomb's Dam Bridge viaduct, allowing free-flowing circulation beneath the viaduct. Each garage structure shall be offset from the Macomb's Dam Bridge viaduct not less than twelve feet, as per NYCDOT's requirement, for required maintenance-of-way on and around the bridge structure. Elevators, stairs and ramps shall provide pedestrian access to and from the garage at locations along Ruppert Place and at East 161st Street. Other pedestrian access shall also be provided on the west side of the garage, to be open on game days and as emergency exits.

The Design-Builder understands that vehicular access into and egress from Garage A (Phase I) is important to the function of the Garage and surrounding streets into the Garage. There are currently two points of vehicular access into the garage, namely from Macombs Dam Bridge and one other to be determined. The one to be determined will either be at Garage C (lower level) or through Garage A (Phase II Area) from the 157th Street area based upon available site access. The Design-Builder shall submit these options to the NYCDOT for their timely review and approval. Any required revisions based on comments from the NYCDOT or owner shall be reviewed and incorporated as deemed appropriate by the Design-Builder, into the work at no additional cost or schedule impacts to the project and Owner.

Garage Layout and Structural Type

The structure will be supported by reinforced cast-in-place concrete pile caps set on concrete filled steel pipe piles. The precast concrete superstructure will be constructed on top of the pile caps and support two levels of the garage. The first level will be constructed of a reinforced cast-in-place concrete slab-on-grade. The roof deck will have a reinforced cast-in-place concrete topping overlain by a waterproofing membrane. The roof deck will support recreational/sport facilities, including large structural planters. All work above this waterproofing membrane, including the drainage mat, is not included and is assumed to be part of the Parkland Scope of Work. The elevations of the three levels of the garage shall be at 11, 22, and 33. Several expansion joints will be required in Garage A. The design builder shall provide a sufficient number of expansion joints throughout all garages to ensure that cracking of the slabs does not occur. In particular, Garage A has a unique shape and depending on the points of loading at the Parkland (i.e.: planters, berms, etc) it may require additional expansion joints which are part of the lump sum price Scope of Work.

The exterior of the garage will have thin brick installed on the precast concrete spandrel panels on all levels. All exterior exposed precast concrete on the spandrels will be constructed of a pigmented concrete and will receive a sandblast finish. The exterior stairwell located along Ruppert Place and at 161st Street will be constructed with precast concrete.

This garage will be designed to meet the requirements of an open air structure, as noted in the Code Interpretation letters. There will be a painted exposed sheet pile retaining wall constructed along Ruppert Place that allows the garage to meet the open air requirements. The structure will be designed for a 50 psf live load for vehicular loading inside the garage which will be in accordance with the applicable building codes. The dead load requirements will be as determined by the elements that will be installed at the associated locations. The garage will also be designed to meet the requirements of a 200 foot travel distance between stairs.

On the northern limit, a concrete retaining wall parallel to the 161st Street ramp about 4 feet from the face of existing retaining wall will be constructed. This new wall will support the existing retaining wall for the NYCDOT ramp, as requested by NYCDOT, The existing NYCDOT retaining wall encroaches over the property line, so no permanent or construction easements for the new wall will be required. It is assumed that the existing retaining wall can handle the construction activities being completed adjacent to it. No special underpinning or temporary support has been included.

On the southern end, a concrete retaining wall will be constructed to support the grade differential of 157th Street, the Major Deegan Service Road and the exit ramp from the Macomb's Dam Bridge.

Specific Scope of Work

The cost of the design and construction has been developed based upon the following Scope of Work summary, which includes, but is not limited to, the following technical specifications divisions (a complete list is included in the 50% project manual) and the 50% drawing submittal dated August 23, 2007:

Division 1 – General Conditions
01100 – General Conditions
01125 – Designer Fees
01450 – Quality Control and Inspection
01850 – Maintenance and Protection of Traffic

Division 2 – Site Work
02005 – Protection of Existing Utilities
02010 – Project Survey and Layout
02020 – Soil Erosion and Sediment Control
02075 – Site Demolition

- Demolition and removal of existing NYCDPR office building and underground storage tank.

02076 – Asbestos Containing Materials Removal

- Removal of asbestos containing material located in the existing NYCDPR office building.

02150 – Shoring, Bracing and Underpinning

- Installation and removal of temporary sheeting to support existing grade along 157th Street, Major Deegan Service Road, and Macombs Dam Bridge exit ramp to facilitate construction. Installation of permanent sheeting to support Ruppert Place to facilitate construction of the garage.

02230 – Site Clearing

- Removal of all vegetation, trees, topsoil stripping and stockpiling, capping and removal of site utilities, site amenities, and other site improvements.

02300 – Earthwork

- Excavating and backfilling for buildings and structures. Offsite removal of all exported material in accordance with our prior qualification.

02364 – Steel Pipe Piles

- 150 ton and/or the required capacity concrete filled pipe piles, and drilled piles along the 161st Street Ramp and along the Macombs Dam Viaduct.

02660 – Water Distribution System

- Installation of the water service from the street to the outside face of the building for distribution throughout the lower two floors of the garage only.

02720 – Stormwater Drainage System

- Stormwater detention piping and water quality units, manholes and associated hardware to connect the roof storm drainage piping installed by the plumbing subcontractor

02730 – Gravity Sanitary Sewer System

- Sanitary drainage piping connected to the outflow chamber of the Storm Detention System.

02740 – Bituminous Pavement

- Asphalt pavement installed on Ruppert Place between the existing west curb line and the rear side of the sheet pile retaining wall.

02750 – Concrete Walks and Curbs

- Concrete sidewalks and curbs will be installed along 157th Street and along the north face of the 161st Street retaining wall. A concrete apron will be installed at the 157th Street entrance.

02830 – Fencing and Gates

- Temporary vinyl coated chain link fence adjacent to the retaining wall on Ruppert Place and at the first level from the top of the first floor slab to the underside of the second floor spandrel panel and along the southeast corner between and under the Macombs Dam Viaduct.

02930 – Landscaping

- Topsoil and seeding restoration of disturbed areas from the building face to the property line.

Division 3 – Concrete

03300 – Cast in Place Concrete

- Cast-in-place concrete, reinforcing and associated work items for pile caps, retaining walls, slab on grade, structural slab and pier at the entry ramp for the Macombs Dam Viaduct, and washes and toppings on precast concrete members.

03450 –Precast Concrete

- Structural precast concrete double tee beams, inverted tee beams, columns, spandrel panels, shear walls, light walls, and the stair and elevator boxes for the garage superstructure. The thin brick will be installed on the face of the spandrels and on exposed exterior walls.

03452 – Precast Concrete Stairs

- Precast stairs in all interior pedestrian access stairwells and the monumental entry stairs at the Ruppert Place entry at 161st Street.

Division 4 – Masonry

04800 – Unit Masonry

- Concrete masonry units, ground face, at Facility Office, Electrical, Mechanical, Communication and Storage Rooms, front face of the elevator shafts and associated walls.

Division 5 – Metals

05120 – Structural Steel

- Structural steel beams, columns and miscellaneous members for bridge ramp construction.

- 05400 – Cold Metal Framing
- C shaped studs, anchors and accessories.

05500 – Metal Fabrications
- Vertical steel ladders, elevator sump pit covers, loose lintels, bollards, exterior metal access stairwells and other associated items.

05521 – Pipe and Tube Railings
- Painted steel metal and railing systems at all stairs and entry bridges, and cable rails on top of spandrel panels.

05810 – Expansion Joint Cover Assemblies
- Joint covers over the main stairwell joints

Division 6 – Wood and Plastics

06200 – Carpentry
- Blocking and miscellaneous wood.

Division 7 – Thermal and Moisture Protection

07180 – Traffic Coatings
- Coating to be applied over all occupied areas.

07190 – Water Repellents
- Silane sealer on top of all precast and cast in place concrete horizontal deck surfaces.

07212 –Insulation
- Fiberglass insulation installed above the acoustical ceiling in the Facility Office.

07530 – Membrane Roofing and Roof Insulation
- EPDM sheet membrane roofing, rigid iso roof insulation

07600 – Sheet Metal Work
- Metal flashing

07720 – Roof Accessories
- Roof drains, gutters, and leaders

07840 – Firestopping and Smokeseals
- Sealant joints in fire resistance-rated construction

07912 – Expansion Joints
- Elastomeric expansion joints at all precast concrete structural expansion joints.

07920 – Joint Sealants
- Non sag sealant colored to match adjacent surfaces.

Division 8 – Doors and Windows

08100 – Steel Doors and Frames
- Non rated hollow metal doors and frames at all rooms, two fire rated doors and frames at all interior stairwells

08330 – Overhead Coiling Grills
- Overhead coiling grills at each vehicular entrance.

08700 – Finish Hardware
- Latch sets, hinges, stops, closures and other associated items for all steel doors.

08800 – Glass and Glazing
- Clear tempered anodized aluminum glass curtain wall system around the roof level of all enclosed stairwells and storefront window in Facility Office.

08910 – Aluminum Assemblies
- Fixed frame aluminum assemblies. Aluminum and glass entry doors and frames.

Division 9 – Finishes

09100 – Ceramic Tile

- Ceramic tile floor and base will be provided in the Facility Office bathrooms and janitor's closet.

09250 – Gypsum Board

- Gypsum board walls in the Facility Office

09510 – Acoustical Panel Ceilings

- Exposed "T" suspension system and panel units.

09660 – Resilient Tile Flooring

- Vinyl composition tile and vinyl base in the Facility Offices. Epoxy terrazzo tile in elevators.

09800 – Line Striping

- Pavement markings including parking spaces, arrows, stop bars, and handicap spaces.

09900 – Painting and Finishing

- Painting of Facility Office, hollow metal doors, railings, bollards, fire standpipe, stairwell structural steel, and other associated items.

Division 10 – Specialties

10200 – Aluminum Louvers

10431 – Signage

- ADA, wayfinding, two variable message boards and room signage

10520 – Fire Protection Specialties

- Surface mounted portable fire extinguishers

10800 – Toilet Accessories

- Surface mounted accessories including soap dispensers, towel dispensers, waste receptacles, toilet paper holders, grab bars and framed mirrors located in the Facility Office.

Division 11 – Equipment

11150 – Parking Control Equipment

- Automatic barrier gates, vehicle loop detectors, ticket dispensers, exit ticket gobblers located at the entry/exit locations, central pay stations at pedestrian access locations, and associated access software and hardware for the parking control equipment.

Division 13 – Special Construction

13760 – Video Surveillance

- Fixed lens security cameras linked to DVRs and a monitor located in the Facility Office.

Division 14 – Conveying Systems

14210 – Traction Elevators

- Three Monospace Machine-roomless, 3500 pound capacity, 200 feet per minute elevators provided by Kone Elevator or similar.

Section 15 – Plumbing

15100 – General Provisions for Plumbing Work

15110 – Pipe, Tube and Fittings for Plumbing Work

15120 – Valves for Plumbing Work

15130 – Hangers and Supports for Plumbing Work

15150 – Insulation for Plumbing Work

15160 – Plumbing Equipment, Specialties and Accessories

15300 – Plumbing Fixtures and Trims
15380 – Testing and Adjustments
15390 – Approved Manufacturers for Plumbing Work

Section 15 – Fire Protection
15400 – General Provisions for Fire Protection Work
15410 – Pipe, Tube and Fittings for Fire Protection Work
15430 – Hangers and Supports for Fire Protection Work
15510 – Fire Protection System Equipment, Specialties and Accessories
15580 – Testing and Adjustments for Fire Protection Work
15590 – Approved Manufacturers for Fire Protection Work

The plumbing and fire protection work will include the items exhibited on the project drawings. The summary of these items are as follows:

- Deck drains will be galvanized and are to be supplied by plumber and cast in double T's by precast concrete manufacturer.
- All drainage layouts and pipe sizes are as shown on the project drawings.
- All exposed copper piping will be insulated with Armoflex or similar black foam insulation.
- Sump pumps will be installed in all elevator pits and discharge at grade.
- Furnish and install of oil/water interceptor and associated underground piping.
- Supply heat trace at any locations required in exterior environment that are maintained throughout the winter months.
- Exposed storm drain piping to be cast iron.
- Underground storm drain piping exceeding 15" to be ductile iron.
- Bathroom to receive a six gallon electric water heater.
- All mechanical rooms to receive a floor drain and hose bib.
- Facility offices to have a slop sink.
- Pipe hangers are not required for underslab piping.
- Cast iron drains and grates trench drains will be installed at the entrances of the garages.
- Standpipe system and FDNY Siamese connections as approved by FDNY and NYCDOB.
- Automatic dry sprinkler system to serve the ground floor.

Division 15 – Heating, Ventilation and Air Conditioning
Section 15600 – Codes and Standards
Section 15601 – General Provisions for HVAC Work
Section 15741 – Electrical Heating Equipment
Section 15754 – Air Outlets
Section 15765 – Room Terminal Units
Section 15810 – Vibration Isolation
Section 15840 – Ductwork
Section 15850 – Insulation
Section 15900 – Testing and Balancing
Section 15950 – Automatic Temperature Controls

All Facility Offices will have electrical powered HVAC units and associated amenities. Mechanical, Communication, Electrical Rooms will have through wall ventilation. A supplemental mechanical ventilation system will be included in the ground tier of the southwest corner of the garage to provide active exhaust in this 30,000 sf area by utilizing fans that will be

running continuously when the garage is open. There will be a manual fire department override control. These fans will exhaust through the roof level into the perimeter planter beds.

Division 16 – Electrical
Section 16000 – General Provisions for Electrical Work
Section 16110 – Raceways and Installation Components
Section 16120 – Wire and Cable over 600 Volts
Section 16140 – Wiring Devices and Installation Components
Section 16160 – Panelboards – Lighting and Distribution
Section 16400 – Electric Service System
Section 16420 – Distribution Equipment
Section 16460 – Dry Type Distribution Transformers
Section 16470 – Grounding
Section 16500 – Lighting Fixtures
Section 16612 – Emergency Generator
Section 16613 – Automatic Transfer Switch
Section 16720 – Fire Alarm System
Section 16741 – Telephone Data/Communication System
Section 16930 – Control Equipment
Section 16931 – Control and Alarm Wiring Requirements

The electrical work will include the items exhibited on the project drawings. The summary of these items are as follows:

- The number of light fixtures priced should approximate the quantities shown on the drawings, with allowances for minor modifications.
- All elevator pits require a light and power supply for a sump pump.
- The garage will be supplied with an emergency generator. Every fourth light fixture, the elevators, stairwell lighting, revenue control equipment, facility office lighting and power, exit signs and security system will run off the emergency generator. At this time it is assumed that 208V gear will be used and the service feed is approximately 250 linear feet from the vault into the garage electrical room. However, in the event that the electrical equipment and associated feeds, as required by Con Edison and Code are beyond the above assumption, to supply the necessary power and emergency power, the costs are included in the Scope of Work.
- All mechanical rooms are to receive chain hung industrial 1x4 light fixtures. The facility offices will have 2 x 4 light fixtures installed in the acoustical ceiling as shown on the plans.
- All facility offices are to receive 6 j-boxes in the walls at floor level for future communication lines (stub conduit for each j-box out of facility office wall above the acoustical ceilings).
- All facility offices and mechanical rooms will have convenience outlets.
- The top of all elevator shafts are to receive a light fixture.
- Each floor of the garage will have a contactor switch to turn off all lights on that level. All contactors shall be located in the main facility office for each garage.
- Provide a 4" conduit from the property line to the communication backboard in each garage for phone service.
- Emergency call boxes and fire pull stations at each stairwell.
- Fire alarm panel for pull stations and alarm devices in elevator shaft, Facility Office, Mechanical and Communication Rooms.
- Hookup overhead coiling grills at the main entrances.

- Power and final connections of all HVAC equipment and electric water heaters in Facility Office Bathroom.
- Electrical and data connections to revenue control equipment.
- All exposed conduit shall be rigid galvanized.
- Lightning protection will be provided as required by applicable codes.
- All stairwells shall have security type fixtures as shown on the drawings. One fixture shall be located above each stair landing.
- Code compliant illuminated exit signs shall be installed at all egress locations.
- Garage A will have a separate electrical service from Garage A Roof (Parkland).

GARAGE B

The program and Scope of Work for Garage B has been developed pursuant to our various meetings. The work at the Garage B site shall be defined as the entire effort required to design and construct the parking garage. The work shall include all site preparation, architectural, structural, civil, environmental, mechanical, electrical and plumbing improvements at the proposed location.

General Description

Parking Garage B will be a five story garage with rooftop parking located south of East 164th Street between Jerome Avenue, and River Avenue. The garage will contain approximately 628 designated (painted) parking spaces. Parking will be provided on all five levels. Garage B shall be offset from the 164th Street approximately 25 feet in order to minimize the disturbance to the row of mature trees along 164th Street. While the Design-Builder will be responsible for actual damage to the trees, the Design-Builder will not be responsible for the overall health of the trees. The Design-Builder shall endeavor to make every effort to maintain the viability of the trees lining 164th street at Garage B, however, the Design-Builder does not take responsibility or guarantee full life expectancy. The Design-Builder shall take reasonable precautions, including protecting the trees, trimming the trees and root balls under the direction of an approved certified arborist, throughout the construction period. The NYCDPR shall be responsible for assessing the health of the trees, maintaining the trees, watering the trees, etc.

Elevators and stairs will provide pedestrian access to and from the garage at 164th Street, River Avenue and Jerome Avenue.

Two-way access will be available from the first level of the garage at Jerome Avenue and River Avenue. There will be internal vehicular circulation ramps facilitating movement between all five levels at the southerly side of the garage. The structure will be a non-standard two bay width of approximately 96 feet and be approximately 532 feet long.

Garage Layout and Structural Type

The structure will be supported by reinforced cast-in-place concrete pile caps set on concrete filled steel pipe piles. The precast concrete superstructure will be constructed on top of the pile caps and support five levels of the garage. The first level will be constructed of a reinforced cast-in-place concrete slab-on-grade. The elevations of the five levels of the garage shall be at 22, 33, 44, 55 and 67. It is anticipated that only one expansion joint will be required in Garage B.

All exterior exposed precast concrete columns and spandrel panels will have be pigmented concrete and receive a sandblast finish. Mesh panels will be installed on painted steel supporting structures that will be attached to the north, east and west facades of the Garage. The exterior stairwells located along 164th Street will be constructed with a combination of aluminum and glass, and precast concrete. A solid 12 inch thick precast concrete wall designed to provide blast resistance will be constructed on the south face of the garage. Garage B will be designed and built to withstand a 2,000 pound explosion and prevent affects from affecting Yankee Stadium service driveway and Yankee Stadium. The blast design criteria and wall design has been approved by the NYPD Counter terrorism unit.

This garage will be designed to meet the requirements of an open air structure. The structure will be designed for a 50 psf live load for vehicular loading inside the garage which will be in accordance with the applicable building codes. The dead load requirements will be as determined by the elements that will be installed at the associated locations.

Specific Scope of Work

The cost of the design and construction has been developed based upon the following Scope of Work summary, which includes, but is not limited to, the following technical specifications divisions (a complete list is included in the 50% project manual) and the 50% drawing submittal dated August 23, 2007:

Division 1 – General Conditions
01100 – General Conditions
01125 – Designer Fees
01450 – Quality Control and Inspection
01850 – Maintenance and Protection of Traffic

Division 2 – Site Work
02005 – Protection of Existing Utilities
02010 – Project Survey and Layout
02020 – Soil Erosion and Sediment Control
02230 – Site Clearing
- Removal of all vegetation, trees, topsoil stripping and stockpiling, capping and removal of site utilities, site amenities, and other site improvements.

02300 – Earthwork
- Excavating and backfilling for buildings and structures. Offsite removal of all exported material in accordance with our prior qualification.

02364 – Steel Pipe Piles
- 150 ton and / or the required capacity concrete filled pipe piles and drilled piles along elevated NYTA train trestle structure on River Avenue, as required.

02660 – Water Distribution System
- Installation of the water service from the street through the MER of the building for all of the floors of the garage.

02720 – Stormwater Drainage System
- Stormwater detention piping and water quality units, manholes and associated hardware to connect the roof storm drainage piping installed by the plumbing subcontractor

02730 – Gravity Sanitary Sewer System
- Sanitary drainage piping to connected to the outlet chamber of the Storm Detention System.

02740 – Bituminous Pavement

- Asphalt pavement restoration for the installation of the utility connections in the street.

02750 – Concrete Walks and Curbs

- Concrete sidewalks and curbs that will be damaged due the utility connections will be replaced. A concrete apron will be installed at the River and Jerome Avenue entrances.

02930 – Landscaping

- Topsoil and seeding restoration of disturbed areas from the building face to the property line.

Division 3 – Concrete

03300 – Cast in Place Concrete

- Cast-in-place concrete, reinforcing and associated work items for pile caps, retaining walls, slab on grade, and washes and toppings on precast concrete members.

03450 –Precast Concrete

- Structural precast concrete double tee beams, inverted tee beams, columns, spandrel panels, shear walls, light walls, and the stair and elevator boxes for the garage superstructure.

03452 – Precast Concrete Stairs

- Precast stairs in all interior pedestrian access stairwells.

Division 4 – Masonry

04800 – Unit Masonry

- Concrete masonry units, ground face, at Facility Office, Electrical, Mechanical, Communication and Storage Rooms, front face of the elevator shafts and associated walls.

Division 5 – Metals

05120 – Structural Steel

- Structural steel beams, columns and miscellaneous members for stair towers.

05400 – Cold Metal Framing

- C shaped studs, anchors and accessories.

05500 – Metal Fabrications

- Decorative perforated metal panels and the associated supporting steel truss, vertical steel ladders, elevator sump pit covers, loose lintels, bollards, exterior metal access stairwells and other associated items.

05521 – Pipe and Tube Railings

- Painted steel metal and stainless steel railing systems at all stairs and cable rails on top of spandrel panels.

05810 – Expansion Joint Cover Assemblies

- Joint covers over the main stairwell joints

Division 6 – Wood and Plastics

06200 – Carpentry

- Blocking and miscellaneous wood.

Division 7 – Thermal and Moisture Protection

07180 – Traffic Coatings

- Coating to be applied over all occupied areas.

07190 – Water Repellents

- Silane sealer on top of all precast and cast in place concrete horizontal deck surfaces.

07212 –Insulation

- Fiberglass insulation installed above the acoustical ceiling in the Facility Office.

07530 – Membrane Roofing and Roof Insulation

- EPDM sheet membrane roofing, rigid iso roof insulation

07600 – Sheet Metal Work

- Metal flashing

07720 – Roof Accessories

- Roof drains, gutters, and leaders

07840 – Firestopping and Smokeseals

- Sealant joints in fire resistance-rated construction

07912 – Expansion Joints

- Elastomeric expansion joints at all precast concrete structural expansion joints.

07920 – Joint Sealants

- Non sag sealant colored to match adjacent surfaces.

Division 8 – Doors and Windows

08100 – Steel Doors and Frames

- Non rated hollow metal doors and frames at all rooms.

08330 – Overhead Coiling Grills

- Overhead coiling grills at each vehicular entrance.

08700 – Finish Hardware

- Latch sets, hinges, stops, closures and other associated items for all steel doors.

08800 – Glass and Glazing

- Clear tempered glass curtain wall systems around all stairwells, storefront window in Facility Office.

08910 – Aluminum Assemblies

- Fixed frame aluminum assemblies. Aluminum and glass entry doors and frames.

Division 9 – Finishes

09100 – Ceramic Tile

- Ceramic tile on the floor and walls in the Facility Office bathrooms and janitor's closet

09250 – Gypsum Board

- Gypsum board walls in the Facility Office

09510 – Acoustical Panel Ceilings

- Exposed "T" suspension system and panel units.

09660 – Resilient Tile Flooring

- Vinyl composition tile and vinyl base in the Facility Offices. Epoxy terrazzo tile in elevators.

09800 – Line Striping

- Pavement markings including parking spaces, arrows, stop bars, and handicap spaces.

09900 – Painting and Finishing

- Painting of Facility Office, hollow metal doors, railings, bollards, fire standpipe, stairwell structural steel, and other associated items.

Division 10 – Specialties

10200 – Aluminum Louvers

10431 – Signage

- ADA, wayfinding, two variable message boards and room signage

10520 – Fire Protection Specialties

- Surface mounted portable fire extinguishers

10605 – Wire Mesh Panels / Perforated Metal Panels

- Exterior stainless steel wire mesh screens

10800 – Toilet Accessories

- Surface mounted accessories including soap dispensers, towel dispensers, waste receptacles, toilet paper holders, grab bars and framed mirrors located in the Facility Office.

Division 11 – Equipment

11150 – Parking Control Equipment

- Automatic barrier gates, vehicle loop detectors, ticket dispensers, exit ticket gobblers located at the entry/exit locations, central pay stations at pedestrian access locations, and associated access software and hardware for the parking control equipment.

Division 13 – Special Construction

13760 – Video Surveillance

- Fixed lens security cameras linked to DVRs and a monitor located in the Facility Office.

Division 14 – Conveying Systems

14210 – Traction Elevators

- Monospace Machine-roomless 3500 pound capacity 200 feet per minute elevators provided by Kone Elevator or similar.

Section 15 – Plumbing

15100 – General Provisions for Plumbing Work
15110 – Pipe, Tube and Fittings for Plumbing Work
15120 – Valves for Plumbing Work
15130 – Hangers and Supports for Plumbing Work
15150 – Insulation for Plumbing Work
15160 – Plumbing Equipment, Specialties and Accessories
15300 – Plumbing Fixtures and Trims
15380 – Testing and Adjustments
15390 – Approved Manufacturers for Plumbing Work

Section 15 – Fire Protection

15400 – General Provisions for Fire Protection Work
15410 – Pipe, Tube and Fittings for Fire Protection Work
15430 – Hangers and Supports for Fire Protection Work
15510 – Fire Protection System Equipment, Specialties and Accessories
15580 – Testing and Adjustments for Fire Protection Work
15590 – Approved Manufacturers for Fire Protection Work

The plumbing and fire protection work will include the items exhibited on the project drawings. The summary of these items are as follows:

- Deck drains will be galvanized.
- All drainage layouts and pipe sizes are as shown on the project drawings.
- All exposed copper piping will be insulated with Armoflex or similar black foam insulation.
- Sump pumps will be installed in all elevator pits and discharge into the sanitary system.
- Furnish and install oil/water interceptor and sand interceptor and associated underground piping.
- Supply heat trace at any locations required in exterior environment that are maintained throughout the winter months.

- Exposed storm drain piping to be cast iron.
- Underground storm drain piping exceeding 15" to be ductile iron.
- Bathroom to receive a six gallon electric water heater.
- All mechanical rooms to receive a floor drain and hose bib.
- Facility offices to have a slop sink.
- Pipe hangers are not required for underslab piping
- Cast iron drains and grates trench drains will be installed at the entrances of the garages.
- The emergency generator, located on the ground floor under the ramp, will operate on natural gas. Work includes running the gas service line from property line to building, setting the gas meter, installing any regulators required, and the final hook up of gas line to the emergency generator. It is assumed Con Edison will deliver a service feed to the property line.

Division 15 – Heating, Ventilation and Air Conditioning
Section 15600 – Codes and Standards
Section 15601 – General Provisions for HVAC Work
Section 15741 – Electrical Heating Equipment
Section 15754 – Air Outlets
Section 15765 – Room Terminal Units
Section 15810 – Vibration Isolation
Section 15840 – Ductwork
Section 15850 – Insulation
Section 15900 – Testing and Balancing
Section 15950 – Automatic Temperature Controls

All Facility Offices will have electrical powered HVAC units and associated amenities. Mechanical, Communication, Electrical Rooms will have through wall ventilation.

Division 16 – Electrical
Section 16000 – General Provisions for Electrical Work
Section 16110 – Raceways and Installation Components
Section 16120 – Wire and Cable over 600 Volts
Section 16140 – Wiring Devices and Installation Components
Section 16160 – Panelboards – Lighting and Distribution
Section 16400 – Electric Service System
Section 16420 – Distribution Equipment
Section 16460 – Dry Type Distribution Transformers
Section 16470 – Grounding
Section 16500 – Lighting Fixtures
Section 16612 – Emergency Generator
Section 16613 – Automatic Transfer Switch
Section 16720 – Fire Alarm System
Section 16741 – Telephone Data/Communication System
Section 16930 – Control Equipment
Section 16931 – Control and Alarm Wiring Requirements

The electrical work will include the items exhibited on the project drawings. The summary of these items are as follows:

- The number of light fixtures priced should approximate the quantities shown on the drawings, with allowances for minor modifications.

- All elevator pits require a light and power supply for a sump pump.
- The garage will be supplied with an emergency generator. Every fourth light fixture, the elevators, stairwell lighting, revenue control equipment, facility office lighting and power, exit signs and security system will run off the emergency generator. It is assumed that 208V gear will be required and the service feed will be run approximately 250 linear feet from the vault into the garage electrical room.
- All mechanical rooms are to receive chain hung industrial 1x4 light fixtures. The facility offices will have 2 x 4 light fixtures installed in the acoustical ceiling as shown on the plans.
- All facility offices are to receive 6 j-boxes in the walls at floor level for future communication lines (stub conduit for each j-box out of facility office wall above the acoustical ceilings)
- All facility offices and mechanical rooms will have convenience outlets.
- The top of all elevator shafts are to receive a light fixture.
- Each floor of the garage will have a contactor switch to turn off all lights on that level. All contactors shall be located in the main facility office for each garage.
- A 4" conduit from the property line to the communication backboard in each garage for phone service will be provided.
- Emergency call boxes and fire pull stations at each stairwell.
- Fire alarm panel for pull stations and alarm devices in elevator shaft, Facility Office, Mechanical and Communication Rooms.
- Hookup overhead coiling grills at the main entrances.
- Power and final connections of all HVAC equipment and electric water heaters in Facility Office Bathroom.
- Electrical and data connections to revenue control equipment.
- All exposed conduit shall be rigid galvanized.
- Lightning protection will be provided as required by applicable codes.
- All stairwells shall have security type fixtures as shown on the drawings. One fixture shall be located above each stair landing.
- All code compliant illuminated exit signs shall be installed at all egress locations.
- All roof top lights will operate on a photocell and timer system.
- Exterior lighting: One up-down light at the second level centered on each column; one down light located at the roof level located on each column; two surface mounted up lights located between columns at the second level. These exterior lights will be for all exterior elevations of the garage B, similar to the NYC Art Commission renderings.

GARAGE C

The program and Scope of Work for Garage C has been developed pursuant to our various meetings. The work at the Garage C site shall be defined as the entire effort required to design and construct the parking garage. The work shall include all site preparation, architectural, structural, civil, environmental, mechanical, electrical and plumbing improvements at the proposed location.

General Description

Parking Garage C will be a four-story garage with rooftop parking located south of East 161st Street between Jerome Avenue, the Macomb's Dam Viaduct, and the Major Deegan Expressway. The Macomb's Dam Bridge approach is an elevated roadway approximately 16

feet higher in elevation than East 161st Street and 10 feet higher than Jerome Avenue. The garage will contain approximately 936 designated (painted) parking spaces. Parking will be provided on all four levels. The first level of Garage C has a continuous floor plate with the lower level of Garage A beneath the Macomb's Dam Bridge viaduct, allowing continuous circulation. Garage C shall be offset from the Macomb's Dam Bridge viaduct twelve feet so that NYCDOT can continue to perform maintenance on the bridge structure as required. There will be one vehicular ramp connection to the Macomb's Dam Bridge viaduct, which will be structurally independent from the Macomb's Dam Bridge. Elevators and stairs will provide pedestrian access to and from the garage at East 161st Street.

Two-way access will be available from the first level of the garage at East 161st Street. From the third level of the garage at Macomb's Dam Bridge viaduct, one entry will be provided for right-in, right-out vehicular access from the viaduct. There will be an external vehicular circulation ramp facilitating movement between all four levels at the southerly side of the garage.

Garage Layout and Structural Type

The structure will be supported by reinforced cast-in-place concrete pile caps set on concrete filled steel pipe piles. The precast concrete superstructure will be constructed on top of the pile caps and support three levels of the garage. The first level will be constructed of a reinforced cast-in-place concrete slab-on-grade. The elevations of the four levels of the garage shall be at 11, 22, 33, and 44. It is anticipated that only one expansion joint will be required in Garage C.

The exterior of the garage will have thin brick installed on the precast concrete spandrel panels and exposed exterior walls on all levels. Painted steel mesh will be installed in the opening between the top of the lowest open floor level spandrel and the underside of the spandrel panel of the floor above for security purposes. The space between spandrels at other levels shall remain open. The exterior stairwell located along 161st Street will be constructed with a combination of aluminum and glass, and precast concrete.

This garage will be designed to meet the requirements of an open air structure. There may be certain areas at the first level that will require ventilation due to the existing grade differential, particularly along the southern end of the garage. The structure will be designed for a 50 psf live load for vehicular loading inside the garage which will be in accordance with the applicable building codes. The dead load requirements will be as determined by the elements that will be installed at the associated locations.

Specific Scope of Work

The cost of the design and construction has been developed based upon the following scope of work summary, which includes, but is not limited to, the following technical specifications divisions (a complete list is included in the 50% project manual) and the 50% drawing submittal dated August 23, 2007:

<u>Division 1 – General Conditions</u>
01100 – General Conditions
01125 – Designer Fees
01450 – Quality Control and Inspection
01850 – Maintenance and Protection of Traffic

Division 2 – Site Work

02005 – Protection of Existing Utilities

02010 – Project Survey and Layout

02020 – Soil Erosion and Sediment Control

02075 – Site Demolition

- Demolition and removal of existing DOT trailer complex.

02150 – Shoring, Bracing and Underpinning

- Installation and removal of temporary sheeting to support existing grade along the Macombs Dam Bridge entry ramp to facilitate construction. Installation of permanent sheeting to support Jerome Avenue and 161st Street to facilitate construction of the garage.

02230 – Site Clearing

- Removal of all vegetation, trees, topsoil stripping and stockpiling, capping and removal of site utilities, site amenities, and other site improvements.

02300 – Earthwork

- Excavating and backfilling for buildings and structures. Offsite removal of all exported material in accordance with our prior qualification.

02364 – Steel Pipe Piles

- 120 ton or 150 ton capacity concrete filled pipe piles, and drilled piles along the Macombs Dam Viaduct.

02660 – Water Distribution System

- Installation of the water service from the street throughout the garage as required.

02720 – Stormwater Drainage System

- Stormwater detention piping and water quality units, manholes and associated hardware to connect the roof storm drainage piping installed by the plumbing subcontractor.

02730 – Gravity Sanitary Sewer System

- Sanitary drainage piping to connect the oil/water separator to the combined sewer system.

02740 – Bituminous Pavement

- Asphalt pavement restoration for the installation of the utility connections in the street.

02750 – Concrete Walks and Curbs

- Concrete sidewalks and curbs that will be damaged due the utility connections will be replaced. A concrete apron will be installed at the 161st Street entrance.

02830 – Fencing and Gates

- Vinyl coated chain link fence along the top of the retaining wall on Jerome Avenue and 161st Street and along the southeast corner between and under the Macombs Dam Viaduct.

02930 – Landscaping

- Topsoil and seeding restoration of disturbed areas from the building face to the property line.

Division 3 – Concrete

03300 – Cast in Place Concrete

- Cast-in-place concrete, reinforcing and associated work items for pile caps, retaining walls, slab on grade, monumental entry stairs, structural slab and pier at the entry ramp for the Macombs Dam Viaduct, and washes and toppings on precast concrete members.

03450 –Precast Concrete

- Structural precast concrete double tee beams, inverted tee beams, columns, spandrel panels, shear walls, light walls, and the stair and elevator boxes for the garage superstructure. The thin brick will be installed on the face of the spandrels and on exposed exterior walls.

03452 – Precast Concrete Stairs

- Precast stairs in all interior pedestrian access stairwells.

Division 4 – Masonry

04800 – Unit Masonry

- Concrete masonry units, ground face, at Facility Office, Electrical, Mechanical, Communication and Storage Rooms, front face of the elevator shafts and associated walls.

Division 5 – Metals

05120 – Structural Steel

- Structural steel beams, columns and miscellaneous members for stair towers and bridge ramp construction.
-

05400 – Cold Metal Framing

- C shaped studs, anchors and accessories.

05500 – Metal Fabrications

- Mesh fence panels, vertical steel ladders, elevator sump pit covers, loose lintels, bollards, exterior metal access stairwells and other associated items.

05521 – Pipe and Tube Railings

- Painted steel metal railing systems at all stairs and entry ramps and cable rails on top of spandrels.

05810 – Expansion Joint Cover Assemblies

- Joint covers over the main stairwell joints

Division 6 – Wood and Plastics

06200 – Carpentry

- Blocking and miscellaneous wood.

Division 7 – Thermal and Moisture Protection

07180 – Traffic Coatings

- Coating to be applied over all occupied areas.

07190 – Water Repellents

- Silane sealer on top of all precast and cast in place concrete horizontal deck surfaces.

07212 –Insulation

- Fiberglass insulation installed above the acoustical ceiling in the Facility Office.

07530 – Membrane Roofing and Roof Insulation

- EPDM sheet membrane roofing, rigid iso roof insulation

07600 – Sheet Metal Work

- Metal flashing

07720 – Roof Accessories

- Roof drains, gutters, and leaders

07840 – Firestopping and Smokeseals

- Sealant joints in fire resistance-rated construction

07912 – Expansion Joints

- Elastomeric expansion joints at all precast concrete structural expansion joints.

07920 – Joint Sealants

- Non sag sealant colored to match adjacent surfaces.

Division 8 – Doors and Windows

08100 – Steel Doors and Frames

- Non rated hollow metal doors and frames at all rooms.

08330 – Overhead Coiling Grills

- Overhead coiling grills at each vehicular entrance.

08700 – Finish Hardware

- Latch sets, hinges, stops, closures and other associated items for all steel doors.

08800 – Glass and Glazing

- Clear tempered glass curtain wall systems around all stairwells, storefront window in Facility Office.

08910 – Aluminum Assemblies

- Fixed frame anodized aluminum assemblies with clear glass infills. Aluminum and glass entry doors and frames.

Division 9 – Finishes

09100 – Ceramic Tile

- Ceramic tile floor and base in the Facility Office bathrooms and janitor's closet

09250 – Gypsum Board

- Gypsum board walls in the Facility Office

09510 – Acoustical Panel Ceilings

- Exposed "T" suspension system and panel units.

09660 – Resilient Tile Flooring

- Vinyl composition tile and vinyl base in the Facility Offices. Epoxy terrazzo tile in elevators.

09800 – Line Striping

- Pavement markings including parking spaces, arrows, stop bars, and handicap spaces.

09900 – Painting and Finishing

- Painting of Facility Office, hollow metal doors, railings, bollards, fire standpipe, stairwell structural steel, and other associated items.

Division 10 – Specialties

10200 – Aluminum Louvers

10431 – Signage

- ADA, wayfinding, two variable message boards and room signage

10520 – Fire Protection Specialties

- Surface mounted portable fire extinguishers

10605 – Wire Mesh Panels

- Exterior painted wire mesh screens

10800 – Toilet Accessories

- Surface mounted accessories including soap dispensers, towel dispensers, waste receptacles, toilet paper holders, grab bars and framed mirrors located in the Facility Office.

Division 11 – Equipment

11150 – Parking Control Equipment

- Automatic barrier gates, vehicle loop detectors, ticket dispensers, exit ticket gobblers located at the entry/exit locations, central pay stations at pedestrian access locations, and associated access software and hardware for the parking control equipment.

Division 13 – Special Construction

13760 – Video Surveillance

- Fixed lens security cameras linked to DVRs and a monitor located in the Facility Office.

Division 14 – Conveying Systems

14210 – Traction Elevators

- One Monospace Machine-roomless 3500 pound capacity 200 feet per minute elevator provided by Kone Elevator or similar.

Section 15 – Plumbing

15100 – General Provisions for Plumbing Work
15110 – Pipe, Tube and Fittings for Plumbing Work
15120 – Valves for Plumbing Work
15130 – Hangers and Supports for Plumbing Work
15150 – Insulation for Plumbing Work
15160 – Plumbing Equipment, Specialties and Accessories
15300 – Plumbing Fixtures and Trims
15380 – Testing and Adjustments
15390 – Approved Manufacturers for Plumbing Work

Section 15 – Fire Protection

15400 – General Provisions for Fire Protection Work
15410 – Pipe, Tube and Fittings for Fire Protection Work
15430 – Hangers and Supports for Fire Protection Work
15510 – Fire Protection System Equipment, Specialties and Accessories
15580 – Testing and Adjustments for Fire Protection Work
15590 – Approved Manufacturers for Fire Protection Work

The plumbing and fire protection work will include the items exhibited on the project drawings. The summary of these items are as follows:

- Deck drains will be galvanized.
- All drainage layouts and pipe sizes are as shown on the project drawings.
- All exposed copper piping will be insulated with Armoflex or similar black foam insulation.
- Sump pumps will be installed in all elevator pits and discharge into the sanitary system.
- Furnish and install of oil/water interceptor and associated underground piping.
- Exposed storm drain piping to be cast iron.
- Underground storm drain piping exceeding 15" to be ductile iron.
- Bathroom to receive a six gallon electric water heater.
- All mechanical rooms to receive a floor drain and hose bib.
- Facility offices to have a slop sink.
- Pipe hangers are not required for underslab piping.
- Cast iron drains and grates trench drains will be installed at the entrances of the garages.
- Standpipe system and FDNY Siamese connections as approved by FDNY and NYCDOB.
- Automatic dry sprinkler system to serve the ground floor.

Division 15 – Heating, Ventilation and Air Conditioning

Section 15600 – Codes and Standards
Section 15601 – General Provisions for HVAC Work
Section 15741 – Electrical Heating Equipment
Section 15754 – Air Outlets
Section 15765 – Room Terminal Units
Section 15810 – Vibration Isolation
Section 15840 – Ductwork
Section 15850 – Insulation

Section 15900 – Testing and Balancing
Section 15950 – Automatic Temperature Controls

All Facility Offices will have electrical powered HVAC units and associated amenities. Mechanical, Communication, Electrical Rooms will have through wall ventilation.

Division 16 – Electrical
Section 16000 – General Provisions for Electrical Work
Section 16110 – Raceways and Installation Components
Section 16120 – Wire and Cable over 600 Volts
Section 16140 – Wiring Devices and Installation Components
Section 16160 – Panelboards – Lighting and Distribution
Section 16400 – Electric Service System
Section 16420 – Distribution Equipment
Section 16460 – Dry Type Distribution Transformers
Section 16470 – Grounding
Section 16500 – Lighting Fixtures
Section 16612 – Emergency Generator
Section 16613 – Automatic Transfer Switch
Section 16720 – Fire Alarm System
Section 16741 – Telephone Data/Communication System
Section 16930 – Control Equipment
Section 16931 – Control and Alarm Wiring Requirements

The electrical work will include the items exhibited on the project drawings. The summary of these items are as follows:

- The number of light fixtures priced should approximate the quantities shown on the drawings, with allowances for minor modifications.
- All elevator pits require a light and power supply for a sump pump.
- The garage will be supplied with an emergency generator. Every fourth light fixture, the elevators, stairwell lighting, revenue control equipment, facility office lighting and power, exit signs and security system will run off the emergency generator. It is assumed that 208V gear will be required and the service feed will run approximately 250 linear feet from the vault into the garage electrical room.
- All mechanical rooms are to receive chain hung industrial 1x4 light fixtures. The facility offices will have 2 x 4 light fixtures installed in the acoustical ceiling as shown on the plans.
- All facility offices are to receive 6 j-boxes in the walls at floor level for future communication lines (stub conduit for each j-box out of facility office wall above the acoustical ceilings)
- All facility offices and mechanical rooms will have convenience outlets.
- The top of all elevator shafts are to receive a light fixture.
- Each floor of the garage will have a contactor switch to turn off all lights on that level. All contactors shall be located in the main facility office for each garage.
- Provide a 4" conduit from the property line to the communication backboard in each garage for phone service.
- Emergency call boxes and fire pull stations at each stairwell.
- Fire alarm panel for pull stations and alarm devices in elevator shaft, Facility Office, Mechanical and Communication Rooms.
- Hookup overhead coiling grills at the main entrances.

- Power and final connections of all HVAC equipment and electric water heaters in Facility Office Bathroom.
- Electrical and data connections to revenue control equipment.
- All exposed conduit shall be rigid galvanized.
- Lightning protection will be provided as required by applicable codes.
- All stairwells shall have security type fixtures as shown on the drawings. One fixture shall be located above each stair landing.
- All code compliant illuminated exit signs shall be installed at all egress locations.
- Exterior lighting: One up-down light at the second level centered on each column; one down light located at the roof level located on each column; two surface mounted up lights located between columns at the second level. These exterior lights will be for the Jerome Avenue and 161st Street exterior elevations of the garage.

GARAGES 3 AND 8

Based upon the Design-Builder's site visits and inspections of the two facilities, the program and Scope of Work for Garages 3 and 8 has been developed. The work at the Garages shall be defined as the entire effort required to design and construct the modifications and restoration of the existing parking garages. The work shall include all architectural, structural, mechanical and electrical improvements at the proposed locations. The Scope of Work includes an allowance of $5,000,000 to perform as many of the improvements as possible noted below. A prioritization program will be developed for these items as the project design develops further. The Scope of Work defined below is strictly a list of recommendations and not intended to be the final Scope of Work.

Garage 3

General Description

Garage 3 is located on River Avenue, between East 164th Street and East 162nd Street. The garage has three entrances located on River Avenue, Level 1, and two exits located on Level 2, discharging onto Gerard Avenue. Parking Garage 3 provides 1,205 parking spaces over three parking levels, covering a footprint of approximately 148,000 SF.

Specific Scope of Work

Garage No. 3 is generally in good condition considering its age and construction type (CIP concrete on steel deck). The supported floor decks appear to be in relatively good condition. The failure of the sealant at various construction joints and the delaminated overlay will continue to permit water penetration through the deck thereby increasing the rate of deterioration of the metal deck and supporting members. In addition, moisture penetration will significantly erode the finish on the metal pan deck and its supporting members.

Prioritization of repairs should address the detailing of the construction joints and cracking in the deck, followed by replacement of the areas of corroded metal pan and re-application of a compatible paint system. Placement of new sealant will be a significant step towards eliminating water penetration through the deck.

The amount of the delaminated overlay warrants complete removal of the existing system. Once the overlay is removed, the deck must be properly prepared and a penetrating sealer be applied.

A sealer will prevent 60%-65% of further moisture penetration and significantly reduce the current deterioration mechanisms. Once the deck is made waterproof and all repairs have been made, the corrosion on the supporting members must be entirely removed and the member coated with a rust inhibiting paint.

The existing facility needs to have various aesthetic improvements made to the exterior and interior components. All painting work does not include any lead paint removal. In addition, this facility will be equipped with revenue control equipment similar to the three new garages.

The following items of work will be required to bring this facility back to the required level of service.

1. Concrete Repair:

a. Partial Depth "Spot" Repair of Deck.
b. Full-Depth Deck Repair.
c. Vertical/Overhead Repair.

2. Waterproofing:

a. Epoxy Injection of Cracks.
b. Routing and Sealing of Cracks.
c. Detailing of Construction Joints.
d. Removal of Existing Overlay.
e. Shot blasting of Deck, for preparation of membrane application.
f. Installation of Elastomeric Traffic Bearing Membrane.
g. Replacement of Expansion Joints.

3. Painting

a. Scrape/Patch/Repair/Repaint concrete entire grade level spandrel
b. Powerwash and paint upper level spandrels.
c. Scrape/repaint perimeter fencing at all levels.
d. Scrape/paint all steel handrails.
e. Scrape/repaint all exposed structural steel.

4. Revenue Control

a. Parking Control Equipment
- Automatic barrier gates, vehicle loop detectors, ticket dispensers, exit ticket gobblers located at the entry/exit locations, central pay stations at pedestrian access locations, and associated access software and hardware for the parking control equipment.

Garage 8

General Description

Garage 8 is located on River Avenue, at 71 East 153rd Street and adjacent to Yankee Stadium. The garage has two vehicle entrances on East 153rd St. and two exits on River Avenue. In addition there are three pedestrian exits/entrances located on the north side of the garage. The garage provides 2,411 parking spaces over four parking levels, and covers a footprint of approximately 180,000 SF.

Specific Scope of Work

Garage 8 is generally in good condition. The concrete decks continue to perform acceptably for a facility of Garage age and configuration. The failure of the various construction joints and overlay will continue to provide significant moisture contamination, and therefore exponentially increase the rate of deterioration of other systems, such as the steel framing.

Prioritization of repairs should address the detailing of the construction joints and cracking in the deck, followed by repair of the areas of spalled and delaminated concrete. Placement of a new polyurethane sealant will be a significant step towards waterproofing the decks.

Following the installation of new urethane sealants, the application of an elastomeric traffic bearing membrane will be placed. Once the overlay is removed and the deck is properly prepared, removing all the pre-existing markings, a membrane can be applied. A membrane would prevent 85%-90% of further moisture penetration. Prior to application of the membrane, the decks will need to be shot blasted to provide the proper profiling of the surface; currently, the deck's surface is too smooth for proper bonding of the membrane.

The existing facility needs to have various aesthetic improvements made to the exterior and interior components. All painting work does not include any lead paint removal. In addition, this facility will be equipped with revenue control equipment similar to the three new garages.

The following items of work will be required to bring this facility back to the required level of service.

1. Concrete Repair:

a. Partial Depth "Spot" Repair of Deck.
b. Full-Depth Deck Repair.
c. Vertical/Overhead Repair.

2. Waterproofing:

a. Epoxy Injection of Cracks.
b. Routing and Sealing of Cracks.
c. Detailing of Construction Joints.
d. Removal of Existing Overlay.
e. Shot blasting of Deck, for preparation of membrane application.
f. Installation of Elastomeric Traffic Bearing Membrane.
g. Replacement of Expansion Joints.

3. Painting

a. Scrape/Patch/Repair/Repaint concrete entire grade level spandrel.
b. Powerwash and paint upper level spandrels.
c. Scrape/repaint perimeter fencing at all levels.
d. Scrape/paint all steel handrails.

4. Revenue Control

a. Parking Control Equipment
   - Automatic barrier gates, vehicle loop detectors, ticket dispensers, exit ticket gobblers located at the entry/exit locations, central pay stations at pedestrian access locations, and associated access software and hardware for the parking control equipment.

SURFACE PARKING LOTS

The existing surface lots have been resurfaced in recent years, with the exception of Lots 13A and 13C. The Scope of Work includes the resurfacing and re-striping of these two lots. Any modifications to Lot 13A, due to the ferry and esplanade improvements, and Lot 13C, due to the Metro North rail station, have not been included as part of this Scope of Work.

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Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 8th day of November in the year of Two Thousand Seven

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

BETWEEN the Owner:
(Paragraphs deleted)
BRONX PARKING DEVELOPMENT COMPANY, LLC
18 Aitken Avenue
Hudson, New York 12534

and the Design-Builder:
(Paragraphs deleted)
PRISMATIC HUNTER ROBERTS A JOINT VENTURE
2 World Financial Center, 6th Floor
New York, New York 10281

For the following Project:
(Paragraphs deleted)
Yankee Stadium Park Improvements

The Owner and Design-Builder agree as follows.

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ARTICLE 1 THE DESIGN-BUILD DOCUMENTS

§ 1.1 The Design-Build Documents form the Design-Build Contract. The Design-Build Documents consist of this Agreement between Owner and Design-Builder (hereinafter, the "Agreement") and its attached Schedules and Exhibits; the Project Criteria, including changes to the Project Criteria proposed by the Design-Builder and accepted by the Owner, if any; other documents listed in this Agreement; and Modifications issued after execution of this Agreement. The Design-Build Documents shall not be construed to create a contractual relationship of any kind (1) between the Owner and a Contractor or Subcontractor, or (2) between any persons or entities other than the Owner and Design-Builder, including but not limited to any consultant retained by the Owner to prepare or review the Project Criteria. The Owner, the City, NYCEDC and ESDC (as hereinafter defined) shall be third-party beneficiaries of the Design-Builder's agreements with the Architect and other design professionals and design consultants for the Project. An enumeration of the Design-Build Documents, other than Modifications, appears in Article 8.

§ 1.2 The Design-Build Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. References to the Contract shall mean the Design-Build Contract. References to the Agreement shall mean the Design-Build Contract where the context requires.

§ 1.3 The Design-Build Contract may be amended or modified only by a Modification. Modifications are subject to approval by New York State Urban Development Corporation d/b/a Empire State Development Corporation

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("ESDC") and the City of New York (the "City"), which shall be third party beneficiaries of this Agreement, with the City acting through New York City Economic Development Corporation ("NYCEDC"), the City's Representative under the Lease Agreement between the City and the Owner referenced in Section 2.4 hereof, to the extent that such approval of NYCEDC is required under the Lease Agreement or under the Funding Agreement referenced in Section 2.4 hereof. A Modification is (1) a written amendment to the Design-Build Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive or (4) a written order for a minor change in the Work issued by the Owner.

§ 1.4 The parties are simultaneously entering into a Design-Build Contract for design and construction of new parking facilities including Garage A (the "Parking Facilities Contract") and agree that a default by either party under the Parking Facilities Contract shall not constitute a default under this Contract.

ARTICLE 2 THE WORK OF THE DESIGN-BUILD CONTRACT

§ 2.1 The Design-Builder shall fully execute the Work described in the Design-Build Documents, except to the extent specifically indicated in the Design-Build Documents to be the responsibility of others. The Work is comprised of design and construction of a public park on the rooftop surface of Garage A as set forth in the Owner Scope Document attached hereto as Schedule A. The Work is further described in the documents referenced in the List of Preliminary Plans and Specifications for the Parking Facilities Work attached hereto as Schedule B.

§ 2.2 Design and construction of the Project shall adhere to all ADA, ADAAG and Local Law 58 rules and regulations. In case of differing interpretations of any such rules and regulations, the more stringent interpretation shall be followed.

§ 2.3 The Design-Builder shall complete the design of the Project in accordance with the Project Criteria and the other Design-Build Documents.

§ 2.4 The Design-Builder shall comply with and be bound by the provisions applicable to design and construction of the Parking Facilities contained in the Lease Agreement dated as of November ___, 2007, between the City as Landlord and NYCEDC as Tenant, which is being assigned by NYCEDC to the Owner, and in the Funding Agreement dated as of October 19, 2007, among NYCEDC, ESDC and the Owner, including, without limitation, the provisions referenced in Section 9.07 of the Funding Agreement; provided, however, that under no circumstances shall the Design-Builder be responsible for failure of the Owner to comply with the Owner's obligations under this Agreement or for failure of the City, NYCEDC or ESDC to comply with their respective obligations under the Lease Agreement or the Funding Agreement. In the event of a conflict between the Contract term "delay" and the term "Unavoidable Delay" as used in the Funding Agreement, the Contract term shall govern.

§ 2.5 The Design-Builder shall comply with the requirements of (1) Labor Law Section 220-e; and (2) Executive Order No. 50, as long as Executive Order No. 50 or any successor thereto is in force and effect, in whole or in part, and the regulations promulgated thereunder applicable to construction contractors and non-construction contractors, certain of which are annexed to and made a part of the Funding Agreement as Exhibit G and Exhibit H including the filing of reports with the Division of Labor Services for New York City Department of Small Business Service on the forms prescribed by the City.

§ 2.6 All persons employed by the Design-Builder or by any Contractor in the furnishing of work, labor or services in connection with the Project shall be paid, without subsequent deduction or rebate unless expressly authorized by law, not less than the current schedule of prevailing wages and supplemental benefits promulgated pursuant to Labor Law Section 220(3), as amended from time to time, without regard to whether or not any such employee's wages are required to be fixed pursuant to Section 220(3) of the New York State Labor Law.

§ 2.7 The Design-Builder acknowledges that the Owner is applying for real estate tax abatement pursuant to the Industrial and Commercial Incentive Abatement Program administered by the New York City Department of Finance and the Division of Labor Services of the Department of Small Business Services of the City of New York. The Design-Builder shall cooperate with the Owner, providing such information and assistance as is necessary for compliance with the requirements of the program for the Design-Builder and all Contractors and subcontractors.

ARTICLE 3 DATE OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

§ 3.1 The date of commencement of the Work shall be the date to be fixed in a notice issued by the Owner.

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User Notes:* (1607960100)

(Paragraphs deleted)

§ 3.2 The Contract Time shall be measured from the date of commencement, subject to adjustments of this Contract Time as provided in the Design-Build Documents.
(Paragraphs deleted)
§ 3.3
(Paragraphs deleted)
Preliminary dates for Substantial Completion of the Work are set forth in Exhibit D hereto, contingent upon final determination of the scope of the Work.
(Table deleted)

ARTICLE 4 CONTRACT SUM

§ 4.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Design-Build Contract. The Contract Sum shall be one of the following:
(Check the appropriate box.)

[] Stipulated Sum in accordance with Section 4.2 below.

[X] Cost of the Work Plus Design-Builder's Fee in accordance with Section 4.3 below;
(Paragraphs deleted)

§ 4.2 COST OF THE WORK PLUS DESIGN-BUILDER'S FEE
§ 4.2.1 The Cost of the Work for the Park Improvements Work is as defined in Exhibit B.

§ 4.2.2 The
(Paragraphs deleted)
Design-Builder's Fee for the Work is four percent (4%) of all direct work costs (i.e., Cost of the Work other than compensation for design services, general conditions, insurance and bond).

(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraph deleted)
§ 4.3 CHANGES IN THE WORK
§ 4.3.1 Adjustments of the Contract Sum on account of changes in the Work may be determined by any of the methods listed in Article A.7 of Exhibit A, Terms and Conditions. The Fee percentage set forth in Section 4.2.2 shall apply to changes.

(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)
(Table deleted)
(Paragraphs deleted)

ARTICLE 5 PAYMENTS

§ 5.1 PROGRESS PAYMENTS
§ 5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ 5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month.

(Paragraphs deleted)
§ 5.1.3 The Owner shall make monthly payments to the Design-Builder not later than thirty(30) days after the Owner receives the Application for Payment (approved pursuant to Exhibit A to the Funding Agreement).

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§ **5.1.4** With each Application for Payment, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ **5.1.5** In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Section 5.1.4, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid on account of the Agreement. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's accountants acting in the sole interest of the Owner.

§ **5.1.6** Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ 5.2 PROGRESS PAYMENTS - COST OF THE WORK PLUS A FEE

(Paragraphs deleted)

§ **5.2.1** Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ **5.2.2** Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- **.1** Take the Cost of the Work as described in Exhibit B;
- **.2** Add the Design-Builder's Fee. The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section 5.2.2.1 (except that there should be no Fee on compensation for design services) at the rate stated in Section 4.2.2;
- **.3** Subtract the aggregate of previous payments made by the Owner;
- **.4** Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section 5.1.4 or resulting from errors subsequently discovered by the Owner's accountants in such documentation; and
- **.5** Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate for Payment as provided in the Section A.9.5 of Exhibit A, Terms and Conditions.

§ **5.2.3** Payments shall be subject to Retainage as provided in Section 3.10 of the Funding Agreement. Reduction or limitation of retainage shall be as follows: upon fifty percent (50%) completion of each phase, no further retainage shall be withheld from payment for that phase (provided that retainage equals no less than five percent (5%) of costs for such phase subject to retainage); upon Substantial Completion of the phase, retainage shall be reduced to the greater of (i) one percent (1%) or (ii) three (3) times the estimated cost of completing the punch list items for the phase as determined by NYCEDC's consultant.

§ 5.3 FINAL PAYMENT

(Paragraphs deleted)

§ **5.3.1** Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder no later than 30 days after the Design-Builder has fully performed the Design-Build Contract, including the requirements in Section A.9.10 of Exhibit A, Terms and Conditions, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

(Paragraphs deleted)

ARTICLE 6 DISPUTE RESOLUTION

§ **6.1** If the parties do not resolve their dispute through mediation pursuant to Section A.4.3 of Exhibit A, Terms and Conditions, the method of binding dispute resolution shall be the following:

(Check one.)

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[X] Arbitration pursuant to Section A.4.4 of Exhibit A, Terms and Conditions

[ ] Litigation in a court of competent jurisdiction

[ ] Other *(Specify)*

(Paragraphs deleted)

ARTICLE 7 MISCELLANEOUS PROVISIONS

§ 7.1 The Architect and other design professionals and consultants engaged by the Design-Builder shall be persons or entities duly licensed to practice their professions in the jurisdiction where the Project is located and are listed as follows:

(Insert name, address, license number, relationship to Design-Builder and other information.)

Name and Address	Relationship to Design-Builder
Clarke Caton Hintz 400 Sullivan Way Trenton, NJ 08628	Independent professional design and consulting firm engaged by the Design-Builder as Architect for the Project
Fay Spofford & Thorndike, LLC 155 Passaic Avenue Fairfield, NJ 07004	Independent professional design and consulting firm engaged by the Design-Builder to provide structural engineering services for the Project
Yu & Associates, Inc. 611 River Drive Elmwood Park, NJ 07407	Independent professional design and consulting firm engaged by the Design-Builder to provide civil engineering and geotechnical services for the Project

Copies of the Design-Builder's agreements with the Architect and other design professionals and consultants will be provided to the Owner.

§ 7.1.1 The Design-Builder shall include the following provisions, in substance, in its agreements with the Architect and other design professionals:

Owner and Lender Rights: (A) Architect shall, upon giving Design-Builder any notice of default with respect to this Agreement, at the same time give a copy of such notice to Owner and the Trustee (as defined in the Design-Build Agreement), and no notice by Architect to Design-Builder shall be deemed to be duly given unless and until a copy thereof shall have been so given to the Owner and the Trustee. (B) If a notice of the existence of a default by Architect hereunder shall be given to Owner and the Trustee, then Owner, Trustee and/or either of their respective designees shall have the right (but, not the obligations) to cure such default within thirty (30) days after receipt of such notice or within such longer period of time as is reasonably necessary to accomplish such cure, and Architect shall accept such performance by Owner, Trustee or their respective designees as if same were done by Design-Builder. This Agreement shall not be terminated by Architect during any period set forth in this Section __ in which Owner, Trustee and/or their respective designees is entitled to attempt, and is attempting to cure a default.

Assignment: This Agreement shall not be assignable by either party without the prior written consent of the other party hereto and the consent of Owner, which consent shall not be unreasonably withheld, except that without such consent this Agreement may be assigned as security by Design-Builder to Owner and from Owner to the Trustee. Architect agrees to execute any documents in connection with any assignment to Owner and Trustee as may be reasonably requested by Owner or Trustee. Architect acknowledges that upon default by Design-Builder under the Design Build Agreement, Owner and/or the Trustee may (but shall not be obligated to) assume, or cause a designee to assume, all of the interests, rights and obligations of Design-Builder hereafter arising under this Agreement. If the rights and interests of Design-Builder in this Agreement shall be assumed, sold or transferred pursuant to the exercise of remedies by Owner or Trustee and the assuming party shall agree in writing to be bound by and to

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assume the terms and conditions of this Agreement and any and all obligations to Architect arising or accruing hereunder from and after the date of such assumption, Architect shall continue this Agreement with the assuming party as if such person had been named as the Design-Builder under this Agreement. This Agreement shall be binding upon and shall inure to the benefit of successors and permitted assigns of the parties. Any assignment which does not comply with the provisions of this Section __ shall be null and void. The Owner and Trustee shall be deemed to be third-party beneficiaries of this Agreement.

§ 7.2 The Owner's Designated Representatives are: Joseph J. Seymour and William Loewenstein. The Design Builder acknowledges and agrees that Owner shall not have the authority to grant any approval or authorization under this Agreement without the express written approval of NYCEDC, the City's Representative under the Lease Agreement between the City and the Owner, acting in consultation with NYCEDC's consultants, Tishman-DMJM Harris Joint Venture (or other consultant selected by NYCEDC, to the extent that such approval of NYCEDC and/or ESDC is required under the Lease Agreement or the Funding Agreement.

(Table deleted)
§ 7.2.1 Each of the Owner's Designated Representatives identified above shall be authorized to act on the Owner's behalf with respect to the Project.

§ 7.3
(Paragraphs deleted)
The Design-Builder's Designated Representative is:

Brian Aronne
Hunter Roberts Construction Group, LLC
2 World Financial Center, 6th Floor
New York, New York 10281

§ 7.3.1 The Design-Builder's Designated Representative identified above shall be authorized to act on the Design-Builder's behalf with respect to the Project.
(Table deleted)
§ 7.4
(Paragraphs deleted)
Neither the Owner's nor the Design-Builder's Designated Representative shall be changed without ten days written notice to the other party.

(Paragraphs deleted)
§ 7.5.1 Where reference is made in this Agreement to a provision of another Design-Build Document, the reference refers to that provision as amended or supplemented by other provisions of the Design-Build Documents.

(Paragraphs deleted)
ARTICLE 8 ENUMERATION OF THE DESIGN-BUILD DOCUMENTS
§ 8.1 The Design-Build Documents, except for Modifications issued after execution of this Agreement, are enumerated as follows:

§ 8.1.1 The Agreement is this executed edition of the Standard Form of Agreement Between Owner and Design-Builder, AIA Document A141-2004, as modified herein.

§ 8.1.2 The Supplementary and other Conditions of the Agreement, if any, are as follows:
(Paragraphs deleted)
None.
(Table deleted)
§ 8.1.3 The
(Paragraphs deleted)
Description of the Premises is contained in Schedule A hereto.
(Table deleted)
§ 8.1.4 The Project Criteria are incorporated in the Owner Scope Document (Schedule A hereto) and in the Preliminary Plans and Specifications listed in Schedule B hereto.

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(Either list applicable documents and their dates below or refer to an exhibit attached to this Agreement.)
(Either list applicable documents below or refer to an exhibit attached to this Agreement.)

§ 8.1.5
(Paragraphs deleted)
Exhibit A, Terms and Conditions.

§ 8.1.6
(Paragraphs deleted)
Exhibit B, Determination of the Cost of the Work.
(Table deleted)
§ 8.1.7 Exhibit
(Paragraphs deleted)
C, Insurance and Bonds.

§ 8.1.8 Other documents, if any, forming part of the Design-Build Documents are as follows:

Exhibit D, Scheduled Completion Dates

This Agreement is entered into as of the day and year first written above and is executed in at least three original copies, of which one is to be delivered to the Design-Builder and one to the Owner.

OWNER

By: ______________________________
Name: ______________________________
Title: ______________________________

DESIGN-BUILDER

By:

Prismatic Development Corp.

By: ______________________________
Name: ______________________________
Title: ______________________________

Hunter Roberts Construction Group, L.L.C.

By: ______________________________
Name: ______________________________
Title: ______________________________

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EXHIBIT D

SCHEDULED COMPLETION DATES

Activity	Start Work	Substantial Completion
Construct Park - phase 1	September 1, 2008	May 1, 2009
Construct Park - phase 2	July 2009	April 1, 2010

(Table deleted)(Paragraphs deleted)

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AIA® Document A141™ – 2004 Exhibit A

Terms and Conditions

for the following PROJECT:
(Name and location or address)

Yankee Stadium Park Improvements

THE OWNER:
(Name and location)

BRONX PARKING DEVELOPMENT COMPANY, LLC
18 Aitken Avenue
Hudson, New York 12534

THE DESIGN-BUILDER:
(Name and location)

PRISMATIC HUNTER ROBERTS A JOINT VENTURE
2 World Financial Center, 6th Floor
New York, New York 10281

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE A.1 GENERAL PROVISIONS

§ A.1.1 BASIC DEFINITIONS

§ A.1.1.1 THE DESIGN-BUILD DOCUMENTS

The Design-Build Documents are identified in Section 1.1 of the Agreement.

§ A.1.1.2 PROJECT CRITERIA

The Project Criteria are identified in Section 8.1.4 of the Agreement and may describe the character, scope, relationships, forms, size and appearance of the Project, materials and systems and, in general, their quality levels, performance standards, requirements or criteria, and major equipment layouts.

§ A.1.1.3 ARCHITECT

The Architect is the person lawfully licensed to practice architecture or an entity lawfully practicing architecture identified as such in the Agreement and having a direct contract with the Design-Builder to perform design services for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. The term "Architect" means the Architect or the Architect's authorized representative.

§ A.1.1.4 CONTRACTOR

A Contractor is a person or entity, other than the Architect, that has a direct contract with the Design-Builder to perform all or a portion of the construction required in connection with the Work. The term "Contractor" is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor. The term "Contractor" does not include a separate contractor, as defined in Section A.6.1.2, or subcontractors of a separate contractor.

§ A.1.1.5 SUBCONTRACTOR

A Subcontractor is a person or entity who has a direct contract with a Contractor to perform a portion of the construction required in connection with the Work at the site. The term "Subcontractor" is referred to throughout the Design-Build Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor.

§ A.1.1.6 THE WORK

The term "Work" means the design, construction and services required by the Design-Build Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Design-Builder to fulfill the Design-Builder's obligations. The Work may constitute the whole or a part of the Project.

§ A.1.1.7 THE PROJECT

The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and which may include design and construction by the Owner or by separate contractors.

(Paragraphs deleted)

§ A.1.2 COMPLIANCE WITH APPLICABLE LAWS

§ A.1.2.1 If the Design-Builder believes that implementation of any instruction received from the Owner would cause a violation of any applicable law, statute, ordinance, building code, rule or regulation, the Design-Builder shall notify the Owner in writing. Neither the Design-Builder nor any Contractor or Architect shall be obligated to perform any act which they believe will violate any applicable law, ordinance, rule or regulation.

§ A.1.2.2 The Design-Builder shall verify the completeness and accuracy of the information contained in the Project Criteria and determine that such information complies with applicable laws, regulations and codes. In the event that a specific requirement of the Project Criteria conflicts with applicable laws, regulations and codes, the Design-Builder shall furnish Work which complies with such laws, regulations and codes. In such case, the Owner shall issue a Change Order to the Design-Builder unless the Design-Builder for any required change in the Work.

§ A.1.3 CAPITALIZATION

§ A.1.3.1 Terms capitalized in these Terms and Conditions include those which are (1) specifically defined, (2) the titles of numbered articles and identified references to sections in the document, or (3) the titles of other documents published by the American Institute of Architects.

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§ A.1.4 INTERPRETATION
§ A.1.4.1 In the interest of brevity, the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ A.1.4.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

§ A.1.5 EXECUTION OF THE DESIGN-BUILD DOCUMENTS
§ A.1.5.1 The Design-Build Documents shall be signed by the Owner and Design-Builder.

§ A.1.5.2 Execution of the Design-Build Contract by the Design-Builder is a representation that the Design-Builder has visited the site, become generally familiar with local conditions under which the Work is to be performed and correlated personal observations with requirements of the Design-Build Documents. The Design-Builder represents that it has reviewed the Phase I and Phase II environmental reports for the Project prepared by AKRF Environmental and Planning Consultants.

§ A.1.6 OWNERSHIP AND USE OF DOCUMENTS AND ELECTRONIC DATA
§ A.1.6.1 The Owner shall have ownership of drawings, specifications, and other documents including those in electronic form, prepared by the Architect and furnished by the Design-Builder, and of surveys and as-built drawings furnished by the Design-Builder, subject to payment to the Design-Builder as provided in this Agreement. Subject to the IDA Bond Documents (as defined in the Funding Agreement), the Design-Builder agrees that NYCEDC, the City, ESDC and the State shall have an unrestricted right as provided in Section 7.03(f) of the Funding Agreement to use any and all drawings and specifications (including those produced in their original, editable digital form, such as CAD and Microsoft Word), reports, studies, "as built" drawings, surveys and other documents, materials, or work product prepared for or in connection with the Work, at any time and from time to time, in whole or in part. NYCEDC, the City, ESDC and the State shall be third-party beneficiaries of this Section A.1.6.1.

(Paragraphs deleted)
ARTICLE A.2 OWNER
§ A.2.1 GENERAL
§ A.2.1.1 The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Owner" means the Owner with respect to all obligations under this Agreement, provided that the Design Builder acknowledges and agrees that Owner shall not have the authority to grant any approval or authorization under this Agreement without the express written approval of NYCEDC, acting on behalf of the City of New York, to the extent that such approval or authorization requires approval of NYCEDC under the terms of the Lease Agreement or of NYCEDC or ESDC under the Funding Agreement. The Owner shall designate in writing a representative who shall have express authority to bind the Owner, subject to the prior written approval of NYCEDC or ESDC as required with respect to all Project matters requiring the Owner's approval or authorization. The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule submitted to the Owner.

§ A.2.1.2 The Owner shall furnish to the Design-Builder within 15 days after receipt of a written request information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ A.2.2 INFORMATION AND SERVICES REQUIRED OF THE OWNER
§ A.2.2.1 Information or services required of the Owner by the Design-Build Documents shall be furnished by the Owner with reasonable promptness. Any other information or services relevant to the Design-Builder's performance of the Work under the Owner's control shall be furnished by the Owner after receipt from the Design-Builder of a written request for such information or services.

§ A.2.2.2 At the Owner's request, the Design Builder shall provide surveys describing physical characteristics, legal limitations, and utility locations for the site of this Project, and a written legal description of the site. The surveys

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and legal information shall include, as applicable, grades and lines of streets, alleys, pavements, and adjoining property and structures; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restriction, boundaries, and contours of the site; locations, dimensions, and necessary data pertaining to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ A.2.2.3 The Owner shall provide, to the extent available to the Owner and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems, chemical, air and water pollution, hazardous materials or environmental and subsurface conditions and information regarding the presence of pollutants at the Project site.

§ A.2.2.4 The Owner may obtain independent review of the Design-Builder's design, construction and other documents by a separate architect, engineer, and contractor or cost estimator under contract to or employed by the Owner. Such independent review shall be undertaken at the Owner's expense in a timely manner and shall not delay the orderly progress of the Work.

§ A.2.2.5 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections. The Owner shall not be required to pay the fees for such permits, licenses and inspections unless the cost of such fees is excluded from the responsibility of the Design-Builder under the Design-Build Documents.

§ A.2.2.6 The services, information, surveys and reports required to be provided by the Design-Builder under Section A.2.2, shall be furnished at the Design-Builder's expense.

§ A.2.2.7 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ A.2.2.8 The Owner shall, at the request of the Design-Builder, prior to execution of the Design-Build Contract and promptly upon request thereafter, furnish to the Design-Builder reasonable evidence that financial arrangements have been made to fulfill the Owner's obligations under the Design-Build Documents.

§ A.2.2.9 The Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder, unless otherwise directed by the Design-Builder.

§ A.2.2.10 The Design-Builder shall furnish the services of geotechnical engineers or other consultants for subsoil, air and water conditions when such services are deemed reasonably necessary by the Design-Builder to properly carry out the design services provided by the Design-Builder and the Design-Builder's Architect. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

(Paragraphs deleted)

§ A.2.3 OWNER REVIEW AND INSPECTION

§ A.2.3.1 The Owner shall review and approve or take other appropriate action upon the Design-Builder's submittals, including but not limited to design and construction documents, required by the Design-Build Documents, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Design-Build Documents. The Owner's action shall be taken with such reasonable promptness as to cause no delay in the Work or in the activities of the Design-Builder or separate contractors. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents.

§ A.2.3.2 Upon review of the design documents, construction documents, or other submittals required by the Design-Build Documents, the Owner shall take one of the following actions:

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.1 Determine that the documents or submittals are in conformance with the Design-Build Documents and approve them.
.2 Determine that the documents or submittals are in conformance with the Design-Build Documents but request changes in the documents or submittals which shall be implemented by a Change in the Work.
.3 Determine that the documents or submittals are not in conformity with the Design-Build Documents and reject them.
.4 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them by implementing a Change in the Work.
.5 Determine that the documents or submittals are not in conformity with the Design-Build Documents, but accept them and request changes in the documents or submittals which shall be implemented by a Change in the Work.

§ A.2.3.3 The Design-Builder shall submit to the Owner for the Owner's approval, pursuant to Section A.2.3.1, any proposed change or deviation to previously approved documents or submittals. The Owner shall review each proposed change or deviation to previously approved documents or submittals which the Design-Builder submits to the Owner for the Owner's approval with reasonable promptness in accordance with Section A.2.3.1 and shall make one of the determinations described in Section A.2.3.2.

§ A.2.3.4 Notwithstanding the Owner's responsibility under Section A.2.3.2, the Owner's review and approval of the Design-Builder's documents or submittals shall not relieve the Design-Builder of responsibility for compliance with the Design-Build Documents unless a) the Design-Builder has notified the Owner in writing of the deviation prior to approval by the Owner or, b) the Owner has approved a Change in the Work reflecting any deviations from the requirements of the Design-Build Documents.

§ A.2.3.5 The Owner may visit the site to keep informed about the progress and quality of the portion of the Work completed. However, the Owner shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. Visits by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quantity or quality of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents, except as provided in Section A.3.3.7.

§ A.2.3.6 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of and will not be responsible for acts or omissions of the Design-Builder, Architect, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ A.2.3.7 The Owner may reject Work that does not conform to the Design-Build Documents. Whenever the Owner considers it necessary or advisable, the Owner shall have authority to require inspection or testing of the Work in accordance with Section A.13.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ A.2.3.8 The Owner may appoint an on-site project representative to observe the Work and to have such other responsibilities as the Owner and the Design-Builder agree to in writing. The Design Builder acknowledges and agrees that NYCEDC and its consultants and ESDC shall have the right to observe the Work and take all such actions as are necessary pursuant to this Agreement.

§ A.2.3.9 The Owner shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion.

§ A.2.4 OWNER'S RIGHT TO STOP WORK
§ A.2.4.1 If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section A.12.2 or persistently fails to carry out Work in accordance with the

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Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section A.6.1.3.

§ A.2.5 OWNER'S RIGHT TO CARRY OUT THE WORK
§ A.2.5.1 If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a seven-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may after such seven-day period give the Design-Builder a second written notice to correct such deficiencies within a three-day period. If the Design-Builder within such three-day period after receipt of such second notice fails to commence and continue to correct any deficiencies, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE A.3 DESIGN-BUILDER

§ A.3.1 GENERAL
§ A.3.1.1 The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term "Design-Builder" means the Design-Builder or the Design-Builder's authorized representative. The Design-Builder's representative is authorized to act on the Design-Builder's behalf with respect to the Project. The Design-Builder is a joint venture of Prismatic Development Corp. and Hunter Roberts Construction Group, L.L.C., each of which is jointly and severally responsible for all obligations of the Joint Venture pursuant to this Agreement including performance of the Work.

§ A.3.1.2 The Design-Builder shall perform the Work in accordance with the Design-Build Documents.

§ A.3.2 DESIGN SERVICES AND RESPONSIBILITIES
§ A.3.2.1 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through the performance of qualified persons or entities duly licensed to practice their professions.

§ A.3.2.2 The agreements between the Design-Builder and Architect or other design professionals identified in the Agreement, and in any subsequent Modifications, shall be in writing. These agreements, including services and compensation, shall be subject to the Owner's prior written approval. The Owner, the City, NYCEDC and ESDC shall be third-party beneficiaries of such agreements.

§ A.3.2.3 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Contractors, Subcontractors and their agents and employees, and other persons or entities, including the Architect and other design professionals, performing any portion of the Design-Builder's obligations under the Design-Build Documents.

§ A.3.2.4 The Design-Builder shall carefully study and compare the Design-Build Documents, materials and other information provided by the Owner pursuant to Section A.2.2, shall take field measurements of any existing conditions related to the Work, shall observe any conditions at the site affecting the Work, and report promptly to the Owner any errors, inconsistencies or omissions discovered.

§ A.3.2.5 The Design-Builder shall provide to the Owner for Owner's written approval design documents sufficient to establish the size, quality and character of the Project; its architectural, structural, mechanical and electrical systems; and the materials and such other elements of the Project to the extent required by the Design-Build Documents. Deviations, if any, from the Design-Build Documents shall be disclosed in writing.

§ A.3.2.6 Upon the Owner's written approval of the design documents submitted by the Design-Builder, the Design-Builder shall provide construction documents for review and written approval by the Owner. The construction documents shall set forth in detail the requirements for construction of the Project. The construction documents shall include drawings and specifications that establish the quality levels of materials and systems required. Deviations, if any, from the Design-Build Documents shall be disclosed in writing. Construction documents may include

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drawings, specifications, and other documents and electronic data setting forth in detail the requirements for construction of the Work, and shall:

- .1 be consistent with the approved design documents;
- .2 provide information for the use of those in the building trades; and
- .3 include documents customarily required for regulatory agency approvals.

§ A.3.2.7 The Design-Builder shall meet with the Owner periodically but not less than once a month to review progress of the design and construction documents.

§ A.3.2.8 Upon the Owner's written approval of construction documents, the Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ A.3.2.9 The Design-Builder shall obtain from each of the Design-Builder's professionals and furnish to the Owner certifications with respect to the documents and services provided by such professionals (a) that, to the best of their knowledge, information and belief, the documents or services to which such certifications relate (i) are consistent with the Project Criteria set forth in the Design-Build Documents, except to the extent specifically identified in such certificate, (ii) comply with applicable professional practice standards, and (iii) comply with applicable laws, ordinances, codes, rules and regulations governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in such certifications.

§ A.3.2.10 If the Owner requests the Design-Builder, the Architect or the Design-Builder's other design professionals to execute certificates other than those required by Section A.3.2.9, the proposed language of such certificates shall be submitted to the Design-Builder, or the Architect and such design professionals through the Design-Builder, for review and negotiation at least 14 days prior to the requested dates of execution. Neither the Design-Builder, the Architect nor such other design professionals shall be required to execute certificates that would require knowledge, services or responsibilities beyond the scope of their respective agreements with the Owner or Design-Builder.

§ A.3.3 CONSTRUCTION

§ A.3.3.1 The Design-Builder shall perform no construction Work prior to the Owner's review and approval of the construction documents. The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require the Owner's review of submittals, such as Shop Drawings, Product Data and Samples, until the Owner has approved each submittal.

§ A.3.3.2 The construction Work shall be in accordance with approved submittals, except that the Design-Builder shall not be relieved of responsibility for deviations from requirements of the Design-Build Documents by the Owner's approval of design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals unless the Design-Builder has specifically informed the Owner in writing of such deviation at the time of submittal and (1) the Owner has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or other submittals by the Owner's approval thereof.

§ A.3.3.3 The Design-Builder shall direct specific attention, in writing or on resubmitted design and construction documents or other submittals such as Shop Drawings, Product Data, Samples or similar submittals, to revisions other than those requested by the Owner on previous submittals. In the absence of such written notice, the Owner's approval of a resubmission shall not apply to such revisions.

§ A.3.3.4 When the Design-Build Documents require that a Contractor provide professional design services or certifications related to systems, materials or equipment, or when the Design-Builder in its discretion provides such design services or certifications through a Contractor, the Design-Builder shall cause professional design services or certifications to be provided by a properly licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings and other submittals prepared by such professional. Shop Drawings and other submittals related to the Work designed or certified by such professionals, if prepared by others, shall bear such design professional's written approval. The Owner shall be entitled to rely upon

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the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ A.3.3.5 The Design-Builder shall be solely responsible for and have control over all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Design-Build Documents.

§ A.3.3.6 The Design-Builder shall keep the Owner informed of the progress and quality of the Work.

§ A.3.3.7 The Design-Builder shall be responsible for the supervision and direction of the Work, using the Design-Builder's best skill and attention. If the Design-Build Documents give specific instructions concerning construction means, methods, techniques, sequences or procedures, the Design-Builder shall evaluate the jobsite safety thereof and, except as stated below, shall be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences or procedures. If the Design-Builder determines that such means, methods, techniques, sequences or procedures may not be safe, the Design-Builder shall give timely written notice to the Owner and shall not proceed with that portion of the Work without further written instructions from the Owner. If the Design-Builder is then instructed to proceed with the required means, methods, techniques, sequences or procedures without acceptance of changes proposed by the Design-Builder, the Owner shall be solely responsible for any resulting loss or damage, except to the extent caused by Design-Builder's negligence or willful misconduct.

§ A.3.3.8 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ A.3.4 LABOR AND MATERIALS

§ A.3.4.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide or cause to be provided and shall pay for design services, labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

§ A.3.4.2 When a material is specified in the Design-Build Documents, the Design-Builder may make substitutions only with the consent of the Owner and, if appropriate, in accordance with a Change Order.

§ A.3.4.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Design-Build Contract. The Design-Builder shall not permit employment of unfit persons or persons not skilled in tasks assigned to them.

§ A.3.5 WARRANTY

§ A.3.5.1 The Design-Builder warrants to the Owner that materials and equipment furnished under the Design-Build Documents will be of good quality and new unless otherwise required or permitted by the Design-Build Documents. The Design Builder also warrants, for a period of one year from the date of Substantial Completion of the Work or, for Work completed after such date, for one year from the date the Work is completed, that the Work will be free from defects not inherent in the quality required or permitted by law or otherwise, and that the Work will conform to the requirements of the Design-Build Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment. The Design-Builder's warranty under this Section A.3.5.1 shall be in addition to any extended vendor warranties, which the Design-Builder shall assign to the Owner.

§ A.3.6 TAXES

§ A.3.6.1 The Design-Builder shall pay all sales, consumer, use and similar taxes for the Work provided by the Design-Builder which had been legally enacted on the date of the Agreement, whether or not yet effective or merely scheduled to go into effect. The Owner is exempt from sales tax pursuant to its status as an exempt entity and shall furnish the Design-Builder with documentation of such exemption. The Design-Builder shall not charge the Owner any sales tax covered by such exemption and shall advise all Contractors of such exemption.

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§ A.3.7 PERMITS, FEES AND NOTICES
§ A.3.7.1 The Design-Builder shall secure and pay for building and other permits and governmental fees, licenses and inspections necessary for the proper execution and completion of the Work which are customarily secured after execution of the Design-Build Contract and which were legally required on the date the Owner accepted the Design-Builder's proposal.

§ A.3.7.2 The Design-Builder shall comply with and give notices required by laws, ordinances, rules, regulations and lawful orders of public authorities relating to the Project.

§ A.3.7.3 It is the Design-Builder's responsibility to ascertain that the Work is in accordance with applicable laws, ordinances, codes, rules and regulations.

§ A.3.7.4 If the Design-Builder performs Work contrary to applicable laws, ordinances, codes, rules and regulations, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ A.3.8 ALLOWANCES
§ A.3.8.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to which the Design-Builder has reasonable objection.

(Paragraphs deleted)
§ A.3.9 DESIGN-BUILDER'S CONSTRUCTION SCHEDULE
§ A.3.9.1 The Design-Builder, promptly after execution of the Design-Build Contract shall prepare and submit for the Owner's information the Design-Builder's construction schedule for the Work. The construction schedule shall not exceed the Contract Time and shall be in such detail as required under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ A.3.9.2 The Design-Builder shall prepare and keep current a schedule of submittals required by the Design-Build Documents.

§ A.3.9.3 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ A.3.10 DOCUMENTS AND SAMPLES AT THE SITE
§ A.3.10.1 The Design-Builder shall maintain at the site for the Owner one record copy of the drawings, specifications, addenda, Change Orders and other Modifications, in good order and marked currently to record field changes and selections made during construction, and one record copy of approved Shop Drawings, Product Data, Samples and similar required submittals. These shall be delivered to the Owner upon completion of the Work.

§ A.3.11 SHOP DRAWINGS, PRODUCT DATA AND SAMPLES
§ A.3.11.1 Shop Drawings are drawings, diagrams, schedules and other data specially prepared for the Work by the Design-Builder or a Contractor, Subcontractor, manufacturer, supplier or distributor to illustrate some portion of the Work.

§ A.3.11.2 Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams and other information furnished by the Design-Builder to illustrate materials or equipment for some portion of the Work.

§ A.3.11.3 Samples are physical examples that illustrate materials, equipment or workmanship and establish standards by which the Work will be judged.

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§ A.3.11.4 Shop Drawings, Product Data, Samples and similar submittals are not Design-Build Documents. The purpose of their submittal is to demonstrate for those portions of the Work for which submittals are required by the Design-Build Documents the way by which the Design-Builder proposes to conform to the Design-Build Documents.

§ A.3.11.5 The Design-Builder shall review for compliance with the Design-Build Documents and approve and submit to the Owner only those Shop Drawings, Product Data, Samples and similar submittals required by the Design-Build Documents with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of separate contractors.

§ A.3.11.6 By approving and submitting Shop Drawings, Product Data, Samples and similar submittals, the Design-Builder represents that the Design-Builder has determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and has checked and coordinated the information contained within such submittals with the requirements of the Work and of the Design-Build Documents.

§ A.3.12 USE OF SITE
§ A.3.12.1 The Design-Builder shall confine operations at the site to areas permitted by law, ordinances, permits and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ A.3.13 CUTTING AND PATCHING
§ A.3.13.1 The Design-Builder shall be responsible for cutting, fitting or patching required to complete the Work or to make its parts fit together properly.

§ A.3.13.2 The Design-Builder shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or separate contractors by cutting, patching or otherwise altering such construction or by excavation. The Design-Builder shall not cut or otherwise alter such construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ A.3.14 CLEANING UP
§ A.3.14.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Design-Build Contract. At completion of the Work, the Design-Builder shall remove from and about the Project waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials.

§ A.3.14.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and the cost thereof shall be charged to the Design-Builder.

§ A.3.15 ACCESS TO WORK
§ A.3.15.1 The Design-Builder shall provide the Owner access to the Work in preparation and progress wherever located.

§ A.3.16 ROYALTIES, PATENTS AND COPYRIGHTS
§ A.3.16.1 The Design-Builder shall pay all royalties and license fees. The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required or where the copyright violations are contained in drawings, specifications or other documents prepared by or furnished to the Design-Builder by the Owner. However, if the Design-Builder has reason to believe that the required design, process or product is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner.

§ A.3.17 INDEMNIFICATION
§ A.3.17.1 To the extent permitted under applicable law, the Design-Builder shall defend, indemnify and save each of the Owner, the City, NYCEDC, the State, ESDC, Tishman-DMJM Harris Joint Venture, Yankee Stadium LLC (and its affiliates), New York Yankee Partnership (and its affiliates) and their respective officials, officers, employees,

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agents and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damage, penalties, claims, costs, charges and expenses, including, without limitation, reasonable attorneys' fees and court costs and disbursements, arising from claims by third parties for personal injury (including death) and property damage that may be imposed upon, or incurred by, or asserted against, any of the Indemnitees by reason of this Contract or arising out of the Work (except, as to any Indemnitee, to the extent that such liabilities, fines, damages, penalties, claims, costs, charges or expenses are caused by the affirmative acts, the negligence or intentional misconduct of such Indemnitee), including:

(a) **Acts or Failure to Act of Design-Builder.** Any act or failure to act on the part of the Design-Builder (or any Contractor or subcontractor) or any of their respective partners, joint venturers, officers, members, shareholders, directors, agents, servants, employees, contractors, licensees or invitees;

(b) **Work.** Any Work or act done in, on, or about the Project premises or any part thereof by or on behalf of the Design-Builder.

(c) **Control.** The control or use, possession, occupation, alteration, condition, operation, maintenance or management by the Design-Builder of the Project premises, or any part thereof, or of any street, plaza, sidewalk, curb, vault, or space comprising a part thereof, including, without limitation, any violations imposed by any governmental authorities in respect to any of the foregoing;

(d) **Accidents, Injury to Person or Property.** Any accident, injury (including death at any time resulting therefrom) or damage to any person or property occurring during performance of the Work in, on, or about the Project premises, or any part thereof, or in any sidewalk, comprising a part thereof or immediately adjacent thereto;

(e) **Lien, Encumbrance or Claim Against the Project Premises.** Any lien, encumbrance or claim that may be alleged to have been imposed or arisen against or on the Project premises during the period of the Work, or any lien encumbrance or claim created or permitted to be created by the Design-Builder or any of its partners, joint venturers, officers, members, shareholders, directors, agents, contractors, servants, employees, licensees or invitees against any assets of, or funds appropriated to, the Owner, the City, EDC, the State or ESDC, or any liability that may be asserted against the Owner, the City, EDC, the State or ESDC with respect thereto, except to the extent such lien, encumbrance or claim arises out of failure to make payment to the Design-Builder as required under this Contract.

(f) **Default of Design-Builder Funding Recipient.** Any failure on the part of the Design-Builder to keep, observe and perform any of the terms, covenants, agreements, provisions, conditions or limitations contained in this Contract and/or any other contracts and agreements affecting the Project premises or the Project, on Design-Builder's part to be kept, observed or performed, including; and

(g) **Hazardous Substances.** The presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on, from or affecting the Project premises or any persons, real property, personal property, or natural substances thereon or affected thereby to the extent related to the Work Improvements or the activities of the Design-Builder, except that the Design Builder shall not indemnify and save harmless the Indemnitees to the extent of any liability, fire, damages, penalty, claim, cost, charge or expense arising from the presence, storage, disposal or release of Hazardous Materials at the Project premises prior to the date on which the Design-Builder first gains access to the Project premises for the purpose of performing the Work (but the foregoing shall not release the Design-Builder from its obligation to indemnify the Indemnitees for damages arising from any disposal or release occurring after such date with respect to any Hazardous Materials preexisting such date of the Design-Builder's physical possession). "Hazardous Materials" means (i) any "hazardous waste" as defined under the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 et seq., or (ii) "hazardous substance" as defined under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601 et seq., or (iii) "hazardous materials" as defined under the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801 et seq., or (iv) "hazardous waste" as defined under New York Environmental Conservation Law Section 27-0901 et seq., or (v) "hazardous substance" as defined under the Clean Water Act, 33 U.S.C. Section 1321 et seq.

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§ **A.3.17.2** The obligations of the Design-Builder under this Section 3.17 shall not be affected in any way by the absence of insurance coverage, or by the failure or refusal of any insurance carrier to perform an obligation on its part to be performed under insurance policies affecting the Project premises.

§ **A.3.17.3** If any claim, action or proceeding is made or brought against any of the Indemnitees in connection with any event referred to in Section 3.17.1 hereof, then upon demand of the indemnitee, the Design-Builder shall either resist, defend or satisfy such claim, action or proceeding in such Indemnitee's name, by the attorneys for, or approved by, the Design-Builder's insurance carrier (if such claim, action or proceeding is covered by insurance), or by such other attorneys as such Indemnitee shall reasonably approve. The foregoing notwithstanding, any such Indemnitee may engage its own attorneys to defend such Indemnitee, or to assist such Indemnitee in such Indemnitee's defense of such claim, action or proceeding, as the case may be, at such Indemnitee's sole cost and expense. The Design-Builder shall be responsible for administering (or arranging for the administration of) all claims, including but not limited to coordination with applicable insurance providers, and the Owner shall cooperate (and, to the extent possible, cause other Indemnitees to cooperate) with the Design-Builder in connection therewith.

§ **A.3.17.4** Promptly, upon having actual knowledge thereof, an Indemnitee shall notify the Design-Builder of any cost, liability or expense incurred by, asserted against, or imposed on, such Indemnitee, as to which cost, liability or expense the Design-Builder has agreed to indemnify such Indemnitee pursuant to this Section. The Design-Builder agrees to pay such Indemnitee all amounts due under this Section within fifteen (15) business days after the request therefor delivered together with reasonably detailed back-up, if the Design-Builder is obligated to make such payment pursuant to the terms of this Contract, and any non-payment thereof by the Design-Builder shall constitute a default by the Design-Builder.

§ **A.3.17.5** The provisions of this Section A.3.17 shall survive the expiration or earlier termination of this Contract.

ARTICLE A.4 DISPUTE RESOLUTION

§ A.4.1 CLAIMS AND DISPUTES

§ **A.4.1.1 Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, adjustment or interpretation of Design-Build Contract terms, payment of money, extension of time or other relief with respect to the terms of the Design-Build Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Design-Build Contract. Claims must be initiated by written notice. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ **A.4.1.2 Time Limits on Claims.** Claims by either party must be initiated within 30 days after occurrence of the event giving rise to such Claim or within 30 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later. Claims must be initiated by written notice to the other party.

§ **A.4.1.3 Continuing Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section A.9.7.1 and Article A.14, the Design-Builder shall proceed diligently with performance of the Design-Build Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ **A.4.1.4 Claims for Additional Cost.** If the Design-Builder wishes to make Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the Work. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section A.10.6.

§ **A.4.1.5** If the Design-Builder believes additional cost or delay is involved for reasons (1) an order by the Owner to stop the Work where the Design-Builder was not at fault, (2) a written order for the Work issued by the Owner, (3) failure of payment by the Owner within the 30-day period following submission of a requisition as specified in the Funding Agreement, provided that the Owner shall have seven (7) days to cure such default following written notice of such failure by the Design-Builder to the Owner, ESDC and NYCEDC, (4) termination of the Design-Build Contract by the Owner not due to the Design-Builder's fault or (5) Owner's suspension not due to the Design-Builder's default, Claim shall be filed in accordance with this Section A.4.1 and shall be limited to provable damages.

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§ A.4.1.6 Claims for Additional Time
§ A.4.1.6.1 If the Design-Builder wishes to make Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of the time and its effect on the progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ A.4.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction.

§ A.4.1.7 Injury or Damage to Person or Property. If either party to the Design-Build Contract suffers injury or damage to person or property because of an act or omission of the other party or of others for whose acts such party is legally responsible, written notice of such injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 30 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

(Paragraphs deleted)
§ A.4.1.8 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Construction Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ A.4.1.9 Claims for Consequential Damages. Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to the Design-Build Contract. This mutual waiver includes:

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article A.14. Nothing contained in this Section A.4.1.9 shall be deemed to preclude an award of liquidated direct damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ A.4.1.10
(Paragraphs deleted)
If the enactment or revision of codes, laws or regulations or official interpretations which govern the Project (other than the Model Building Code) cause an increase or decrease of the Design-Builder's cost of, or time required for, performance of the Work, the Design-Builder shall be entitled to an equitable adjustment in Contract Sum or Contract Time. If the Owner and Design-Builder cannot agree upon an adjustment in the Contract Sum or Contract Time, the Design-Builder shall submit a Claim pursuant to Section A.4.1.

(Paragraphs deleted)
§ A.4.2 RESOLUTION OF CLAIMS AND DISPUTES

(Paragraphs deleted)
§ A.4.2.2 Decision by Owner. If the parties have not identified a Neutral in Section 6.1 of the Agreement or elsewhere in the Design-Build Documents then, except for those claims arising under Sections A.10.3 and A.10.5, the Owner shall provide an initial decision. An initial decision by the Owner shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder arising prior to the date final payment is due, unless 30 days have passed after the Claim has been referred to the Owner with no decision having been rendered by the Owner.

§ A.4.2.3 The initial decision pursuant to Section A.4.2.2 shall be in writing, shall state the reasons therefor and shall notify the parties of any change in the Contract Sum or Contract Time or both. The initial decision shall be subject first to mediation under Section A.4.3 and thereafter to such other dispute resolution methods as provided in Section 6.2 of the Agreement or elsewhere in the Design-Build Documents.

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§ **A.4.2.4** In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ **A.4.2.5** If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to initial resolution of the Claim.

§ A.4.3 ARBITRATION
§ **A.4.3.1** The parties mutually agree to arbitration of unresolved disputes in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect at the time of the arbitration or such other rules as the parties mutually agree upon. The demand for arbitration shall be filed in writing with the other party to the Design-Build Contract and with the American Arbitration Association. Upon request of either party, arbitration shall be conducted on an expedited basis.

(Paragraphs deleted)
§ **A.4.4.5 Judgment on Final Award.** The award rendered by the arbitrator or arbitrators (if the parties have agreed on resolution by arbitrator) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

ARTICLE A.5 AWARD OF CONTRACTS
§ **A.5.1** Unless otherwise stated in the Design-Build Documents or the bidding or proposal requirements, the Design-Builder, as soon as practicable after award of the Design-Build Contract, shall furnish in writing to the Owner the names of additional persons or entities not originally included in the Design-Builder's proposal or in substitution of a person or entity (including those who are to furnish design services or materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner will promptly reply to the Design-Builder in writing stating whether or not the Owner has reasonable objection to any such proposed additional person or entity. Failure of the Owner to reply promptly shall constitute notice of no reasonable objection.

§ **A.5.2** The Design-Builder shall not contract with a proposed person or entity to whom which the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable objection.

§ **A.5.3** If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the proposed but rejected additional person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person's or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ **A.5.4** The Design-Builder shall not change a person or entity previously selected if the Owner makes reasonable objection to such substitute.

§ A.5.5 CONTINGENT ASSIGNMENT OF CONTRACTS
§ **A.5.5.1** Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner provided that:

- .1 assignment is effective only after termination of the Design-Build Contract by the Owner for cause pursuant to Section A.14.2 and only for those agreements which the Owner accepts by notifying the contractor in writing; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Design-Build Contract.

§ **A.5.5.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Contractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

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§ **A.5.6** Notwithstanding any provision of the Design-Build Contract to the contrary, the Owner agrees that Ruttura and Sons Construction Co. ("Ruttura") is approved as a Contractor for the Work, subject to Ruttura's execution of an IPSIG monitoring agreement with the City and NYCEDC.

ARTICLE A.6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS

§ A.6.1 OWNER'S RIGHT TO PERFORM CONSTRUCTION AND TO AWARD SEPARATE CONTRACTS

§ **A.6.1.1** The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces and to award separate contracts in connection with other portions of the Project or other construction or operations on the site. The Design-Builder shall cooperate with the Owner and separate contractors whose work might interfere with the Design-Builder's Work. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make such Claim as provided in Section A.4.1. The Design-Builder acknowledges that throughout the Contract period, portions of the Project will be in operation and the Design-Builder shall cooperate with the Owner's designated operator. In no event shall the Design-Builder seek to increase the Contract Sum due to the operational activities of the Owner's designated operator. The Owner shall require the operator to cooperate with the Design-Builder's construction activities.

§ **A.6.1.2** The term "separate contractor" shall mean any contractor retained by the Owner pursuant to Section A.6.1.1.

§ **A.6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each separate contractor with the work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules when directed to do so. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ A.6.2 MUTUAL RESPONSIBILITY

§ **A.6.2.1** The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ **A.6.2.2** If part of the Design-Builder's Work depends for proper execution or results upon design, construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, promptly report to the Owner apparent discrepancies or defects in such other construction that would render it unsuitable for such proper execution and results. Failure of the Design-Builder so to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ **A.6.2.3** The Owner shall be reimbursed by the Design-Builder for costs incurred by the Owner which are payable to a separate contractor because of delays, improperly timed activities or defective construction of the Design-Builder. The Owner shall be responsible to the Design-Builder for costs incurred by the Design-Builder because of delays, improperly timed activities, damage to the Work or defective construction of a separate contractor.

§ **A.6.2.4** The Design-Builder shall promptly remedy damage wrongfully caused by the Design-Builder to completed or partially completed construction or to property of the Owner or separate contractors.

§ **A.6.2.5** The Owner and each separate contractor shall have the same responsibilities for cutting and patching as are described in Section A.3.13.

§ A.6.3 OWNER'S RIGHT TO CLEAN UP

§ **A.6.3.1** If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Owner shall allocate the cost among those responsible.

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ARTICLE A.7 CHANGES IN THE WORK

§ A.7.1 GENERAL

§ A.7.1.1 Changes in the Work may be accomplished after execution of the Design-Build Contract, and without invalidating the Design-Build Contract, by Change Order or Construction Change Directive, subject to the limitations stated in this Article A.7 and elsewhere in the Design-Build Documents.

§ A.7.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. A Construction Change Directive may be issued by the Owner with or without agreement by the Design-Builder.

§ A.7.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Construction Change Directive.

§ A.7.2 CHANGE ORDERS

§ A.7.2.1 A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 a change in the Work;
- .2 the amount of the estimated adjustment, if any, in the Contract Sum; and
- .3 the extent of the adjustment, if any, in the Contract Time.

§ A.7.2.2 If the Owner requests a proposal for a change in the Work from the Design-Builder and subsequently elects not to proceed with the change, a Change Order shall be issued to reimburse the Design-Builder for any costs incurred for estimating services, design services or preparation of proposed revisions to the Design-Build Documents.

§ A.7.2.3 Adjustments to the Contract Sum shall be based on the actual Cost of the Work attributable to the change plus the Design-Builder's Fee, as provided in Section 4.2 of the Agreement.

§ A.7.3 CONSTRUCTION CHANGE DIRECTIVES

§ A.7.3.1 A Construction Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Time. The Owner may by Construction Change Directive, without invalidating the Design-Build Contract, order changes in the Work within the general scope of the Design-Build Documents consisting of additions, deletions or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

§ A.7.3.2 A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ A.7.3.3

(Paragraphs deleted)

The Construction Change Directive may provide for an estimated adjustment to the Contract Sum. Notwithstanding this estimate, the Design-Builder shall be entitled to payment for the actual Cost of the Work attributable to the change plus the Design-Builder's Fee, as provided in Section 4.2 of the Agreement.

§ A.7.3.4 Upon receipt of a Construction Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the estimated adjustment to the Contract Sum and the proposed adjustment in the Contract Time.

§ A.7.3.5 A Construction Change Directive signed by the Design-Builder indicates the agreement of the Design-Builder therewith, including the estimated adjustment in Contract Sum (subject to final determination of the actual Cost of the Work and the Design-Builder's Fee) and Contract Time. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ A.7.3.6

(Paragraphs deleted)

When the Owner and Design-Builder reach agreement concerning the adjustments in the Contract Time, such agreement shall be effective immediately and shall be recorded by preparation and execution of an appropriate Change Order.

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(Paragraphs deleted)

§ A.7.4 MINOR CHANGES IN THE WORK

§ A.7.4.1 The Owner shall have authority to order minor changes in the Work not involving adjustment in the Contract Sum or extension of the Contract Time and not inconsistent with the intent of the Design-Build Documents. Such changes shall be effected by written order and shall be binding on the Design-Builder. The Design-Builder shall carry out such written orders promptly.

ARTICLE A.8 TIME

§ A.8.1 DEFINITIONS

§ A.8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Design-Build Documents for Substantial Completion of the Work.

§ A.8.1.2 The date of commencement of the Work shall be the date stated in the Agreement unless provision is made for the date to be fixed in a notice to proceed issued by the Owner.

§ A.8.1.3 The date of Substantial Completion is the date determined by the Owner in accordance with Section A.9.8.

§ A.8.1.4 The term "day" as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ A.8.2 PROGRESS AND COMPLETION

§ A.8.2.1 Time limits stated in the Design-Build Documents are of the essence of the Design-Build Contract. By executing the Design-Build Contract, the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ A.8.2.2 The Design-Builder shall not knowingly, except by agreement or instruction of the Owner in writing, prematurely commence construction operations on the site or elsewhere prior to the effective date of insurance required by Article A.11 to be furnished by the Design-Builder and Owner. The date of commencement of the Work shall not be changed by the effective date of such insurance. Unless the date of commencement is established by the Design-Build Documents or a notice to proceed given by the Owner, the Design-Builder shall notify the Owner in writing not less than five days or other agreed period before commencing the Work to permit the timely filing of mortgages, mechanic's liens and other security interests.

§ A.8.2.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ A.8.3 DELAYS AND EXTENSIONS OF TIME

§ A.8.3.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a separate contractor employed by the Owner, or of an employee or other representative of the Owner, or by changes ordered in the Work by the Owner, or by labor disputes, fire, unavoidable casualties, adverse weather conditions as provided in Section A.4.1.7.2, emergencies as provided in Section A.10.5.1 or other causes beyond the Design-Builder's control, or by delay authorized by the Owner pending resolution of disputes pursuant to the Design-Build Documents, or by other causes which the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ A.8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Section A.4.1.7.

§ A.8.3.3 In the event of extension of time due to any reason stated in Section A.4.1.6 or otherwise due to neglect of the Owner or other person or entity for whose conduct the Owner is responsible, the Design-Builder shall be entitled to increase in the Contract Sum in the amount of any demonstrable increase in general conditions and insurance costs attributable to such extension.

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ARTICLE A.9 PAYMENTS AND COMPLETION

§ A.9.1 CONTRACT SUM

§ A.9.1.1 The Contract Sum is stated in the Design-Build Documents and, including authorized adjustments, is the total amount payable by the Owner to the Design-Builder for performance of the Work under the Design-Build Documents.

§ A.9.2 SCHEDULE OF VALUES

§ A.9.2.1 Before the first Application for Payment, the Design-Builder shall submit to the Owner an initial estimated schedule of values allocated to various portions of the Work prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment. Upon agreement of the Owner and the Design-Builder, the schedule of values may be updated periodically to reflect final determination of the scope of the Work and actual Contract prices.

§ A.9.3 APPLICATIONS FOR PAYMENT

§ A.9.3.1 In accordance with the requisition review procedure set forth in Exhibit A to the Funding Agreement, the Design-Builder shall submit to the Owner an itemized Application for Payment for operations completed in accordance with the current schedule of values. Such application shall be notarized, if required, and supported by such data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from Contractors and material suppliers, and reflecting retainage if provided for in the Design-Build Documents:

§ A.9.3.1.1 As provided in Section A.7.3.8, such applications may include requests for payment on account of Changes in the Work which have been properly authorized by Construction Change Directives but are not yet included in Change Orders.

§ A.9.3.1.2 Such applications may not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay to a Contractor or material supplier or other parties providing services for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ A.9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ A.9.3.3 The Design-Builder warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, Claims, security interests or encumbrances in favor of the Design-Builder, Contractors, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

§ A.9.4 ACKNOWLEDGEMENT OF APPLICATION FOR PAYMENT

§ A.9.4.1 The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment (approved pursuant to Exhibit A to the Funding Agreement), issue to the Design-Builder a written acknowledgment of receipt of the Design-Builder's Application for Payment indicating the amount the Owner has determined to be properly due and, if applicable, the reasons for withholding payment in whole or in part. Failure to issue such acknowledgment shall not prevent the Owner from subsequently withholding payment pursuant to Section A.9.5.1.

§ A.9.5 DECISIONS TO WITHHOLD PAYMENT

§ A.9.5.1 The Owner may withhold a payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Application for Payment or that the quality of Work is not in accordance with the Design-Build Documents. The Owner may

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also withhold a payment or, because of subsequently discovered evidence, may nullify the whole or a part of an Application for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible, including loss resulting from acts and omissions, because of the following:

- .1 defective Work not remedied;
- .2 third-party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to Contractors or for design services labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 persistent failure to carry out the Work in accordance with the Design-Build Documents.

§ A.9.5.2 When the above reasons for withholding payment are removed, payment will be made for amounts previously withheld.

§ A.9.6 PROGRESS PAYMENTS

§ A.9.6.1 After the Owner has issued a written acknowledgement of receipt of the Design-Builder's Application for Payment, the Owner shall make payment of the amount, in the manner and within the time provided in the Design-Build Documents.

§ A.9.6.2 The Design-Builder shall promptly pay the Architect, each design professional and other consultants retained directly by the Design-Builder, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of each such party's respective portion of the Work, the amount to which each such party is entitled.

§ A.9.6.3 The Design-Builder shall promptly pay each Contractor, upon receipt of payment from the Owner, out of the amount paid to the Design-Builder on account of such Contractor's portion of the Work, the amount to which said Contractor is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the Contractor's portion of the Work. The Design-Builder shall, by appropriate agreement with each Contractor, require each Contractor to make payments to Subcontractors in a similar manner.

§ A.9.6.4 The Owner shall have no obligation to pay or to see to the payment of money to a Contractor except as may otherwise be required by law.

§ A.9.6.5 Payment to material suppliers shall be treated in a manner similar to that provided in Sections A.9.6.3 and A.9.6.4.

§ A.9.6.6 A progress payment, or partial or entire use or occupancy of the Project by the Owner, shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ A.9.6.7 The Design-Builder shall provide the Owner with a payment bond in the full penal sum of the Contract Sum. Payments received by the Design-Builder for Work properly performed by Contractors and suppliers shall be held by the Design-Builder for those Contractors or suppliers who performed Work or furnished materials, or both, under contract with the Design-Builder for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not be commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ A.9.7 FAILURE OF PAYMENT

§ A.9.7.1 If for reasons other than those enumerated in Section A.9.5.1, the Owner does not issue a payment within the time period required by Section 5.1.3 of the Agreement, then the Design-Builder may, upon fifteen (15) additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the

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Design-Builder's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ A.9.8 SUBSTANTIAL COMPLETION

§ A.9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof (meaning each phase) is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or use the Work or a portion thereof for its intended use and, if applicable, a temporary certificate of occupancy has been issued therefor.

§ A.9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ A.9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not substantially complete, the Design-Builder shall complete or correct such item. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine whether the Design-Builder's Work is substantially complete.

§ A.9.8.4 In the event of a dispute regarding whether the Design-Builder's Work is substantially complete, the dispute shall be resolved pursuant to Article A.4.

§ A.9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder shall prepare for the Owner's signature an Acknowledgement of Substantial Completion which, when signed by the Owner, shall establish (1) the date of Substantial Completion of the Work, (2) responsibilities between the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance, and (3) the time within which the Design-Builder shall finish all items on the list accompanying the Acknowledgement. When the Owner's inspection discloses that the Work or a designated portion thereof is substantially complete, the Owner shall sign the Acknowledgement of Substantial Completion. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Acknowledgement of Substantial Completion. In addition, the Design-Builder shall certify upon Substantial Completion of each phase: the amount required for the payment of any remaining part of the Contract Sum attributable to such phase; that attached to the certification is a temporary or permanent certificate of occupancy (if applicable), and any and all permissions, approvals, licenses or consents required of governmental authorities for the occupancy, operation and use of the facility; that attached to the certification is a release of mechanics' liens by the Design-Builder relating to the Work through Substantial Completion (excepting retainage and any disputed amounts and conditioned on payment through Substantial Completion); and that attached to the certification is a certificate of the Board of Fire Underwriters with respect to the facility (if applicable).

§ A.9.8.6 Upon execution of the Acknowledgement of Substantial Completion and consent of surety, if any is required, the Owner shall make payment of retainage applying to such Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ A.9.9 PARTIAL OCCUPANCY OR USE

§ A.9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to by the insurer, if so required by the insurer, and authorized by public authorities having jurisdiction over the Work. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for completion or correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section A.9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

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§ A.9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used to determine and record the condition of the Work.

§ A.9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ A.9.10 FINAL COMPLETION AND FINAL PAYMENT

§ A.9.10.1 Upon receipt of written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner shall promptly make such inspection and, when the Owner finds the Work acceptable under the Design-Build Documents and fully performed, the Owner shall, subject to Section A.9.10.2, promptly make final payment to the Design-Builder.

§ A.9.10.2 Neither final payment nor any remaining retained percentage will become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect and will not be cancelled or allowed to expire until at least 30 days' prior written notice has been given to the Owner, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, and (5) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, releases and waivers of liens, claims, security interests or encumbrances arising out of the Design-Build Contract, to the extent and in such form as may be designated by the Owner. If a Contractor refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien. If such lien remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be liable to pay in connection with the discharge of such lien, including all costs and reasonable attorneys' fees.

§ A.9.10.3 If, after the Owner determines that the Design-Builder's Work or designated portion thereof is substantially completed, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of a Change Order or a Construction Change Directive affecting final completion, the Owner shall, upon application by the Design-Builder, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ A.9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from:

- .1 liens, Claims, security interests or encumbrances arising out of the Design-Build Documents and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ A.9.10.5 Acceptance of final payment by the Design-Builder, a Contractor or material supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment. The Owner, NYCEDC, ESDC and Tishman-DMJM Harris Joint Venture shall have the right to inspect the Design-Builder's safety reports.

ARTICLE A.10 PROTECTION OF PERSONS AND PROPERTY

§ A.10.1 SAFETY PRECAUTIONS AND PROGRAMS

§ A.10.1.1 The Design-Builder shall be responsible for initiating and maintaining all safety precautions and programs in connection with the performance of the Design-Build Contract.

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§ A.10.2 SAFETY OF PERSONS AND PROPERTY

§ A.10.2.1 The Design-Builder shall take all necessary precautions for safety of, and shall provide reasonable protection to prevent damage, injury or loss to:

.1 employees on the Work and other persons who may be affected thereby;

.2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site or under the care, custody or control of the Design-Builder or the Design-Builder's Contractors or Subcontractors; and

.3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ A.10.2.2 The Design-Builder shall give notices and comply with applicable laws, ordinances, rules, regulations and lawful orders of public authorities bearing on safety of persons or property or their protection from damage, injury or loss.

§ A.10.2.3 The Design-Builder shall erect and maintain, as required by existing conditions and performance of the Design-Build Documents, all necessary safeguards for safety and protection, including posting danger signs and other warnings against hazards, promulgating safety regulations and notifying owners and users of adjacent sites and utilities.

§ A.10.2.4 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections A.10.2.1.2 and A.10.2.1.3 caused in whole or in part by the Design-Builder, the Architect, a Contractor, a Subcontractor, or anyone directly or indirectly employed by any of them or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections A.10.2.1.2 and A.10.2.1.3, except damage or loss attributable to acts or omissions of the Owner or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section A.3.17.

§ A.10.2.5 The Design-Builder shall designate in writing to the Owner a responsible individual whose duty shall be the prevention of accidents.

§ A.10.2.6 The Design-Builder shall not load or permit any part of the construction or site to be loaded so as to endanger its safety.

(Paragraphs deleted)

§ A.10.3 HAZARDOUS MATERIALS

§ A.10.3.1 If standard precautions will be inadequate to present foreseeable injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), is encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area, report the condition to the Owner and the Design-Builder shall take appropriate measures to render the material or substance harmless.

(Paragraphs deleted)

§ A.10.4 The Owner shall not be responsible for materials and substances brought to the site by the Design-Builder.

§ A.10.5 EMERGENCIES

§ A.10.5.1 In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss. Extension of time claimed by the Design-Builder on account of an emergency shall be determined as provided in Section A.4.1.7 and Article A.7.

(Paragraphs deleted)

ARTICLE A.11 INSURANCE AND BONDS

§ A.11.1 Except as may otherwise be set forth in the Agreement or elsewhere in the Design-Build Documents, the Owner and Design-Builder shall purchase and maintain the following types of insurance with limits of liability and deductible amounts and subject to such terms and conditions, as set forth in this Article A.11.

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§ A.11.2 DESIGN-BUILDER'S LIABILITY INSURANCE
§ A.11.2.1 The Design-Builder shall
(Paragraphs deleted)
carry liability insurance as provided in Exhibit C hereto.

(Paragraphs deleted)
§ A.11.3 PROPERTY INSURANCE
§ A.11.3.1 The Design-Builder shall carry builder's risk insurance as provided in Exhibit C hereto.

§ A.11.4 PERFORMANCE BOND AND PAYMENT BOND
§ A.11.4.1 The Owner requires the Design-Builder to furnish bonds covering faithful performance of the Design-Build Contract and payment of obligations arising thereunder, as provided in Exhibit C hereto.

(Paragraphs deleted)
ARTICLE A.12 UNCOVERING AND CORRECTION OF WORK
§ A.12.1 UNCOVERING OF WORK
§ A.12.1.1 If a portion of the Work is covered contrary to requirements specifically expressed in the Design-Build Documents, it must be uncovered for the Owner's examination and be replaced at the Design-Builder's expense without change in the Contract Time.

§ A.12.1.2 If a portion of the Work has been covered which the Owner has not specifically requested to examine prior to its being covered, the Owner may request to see such Work and it shall be uncovered by the Design-Builder. If such Work is in accordance with the Design-Build Documents, costs of uncovering and replacement shall, by appropriate Change Order, be at the Owner's expense. If such Work is not in accordance with the Design-Build Documents, correction shall be at the Design-Builder's expense unless the condition was caused by the Owner or a separate contractor, in which event the Owner shall be responsible for payment of such costs.

§ A.12.2 CORRECTION OF WORK
§ A.12.2.1 BEFORE OR AFTER SUBSTANTIAL COMPLETION.
§ A.12.2.1.1 The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing, shall be at the Design-Builder's expense.

§ A.12.2.2 AFTER SUBSTANTIAL COMPLETION
§ A.12.2.2.1 In addition to the Design-Builder's obligations under Section A.3.5, if, within one year after the date of Substantial Completion or after the date for commencement of warranties established under Section A.9.8.5 or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found to be not in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct non-conforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section A.2.5.

§ A.12.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual performance of the Work.

§ A.12.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section A.12.2.

§ A.12.2.3 The Design-Builder shall remove from the site portions of the Work which are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

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§ A.12.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction, whether completed or partially completed, of the Owner or separate contractors caused by the Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Design-Build Documents.

§ A.12.2.5 Nothing contained in this Section A.12.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder might have under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section A.12.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ A.12.2.6 The Owner shall promptly remedy damage and loss to the Work of the Design-Builder arising in connection with the Project caused in whole or in part by the Owner, any consultant engaged by or on behalf of the Owner or any other contractor under contract with the Owner, or anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable.

§ A.12.3 ACCEPTANCE OF NONCONFORMING WORK
§ A.12.3.1 If the Owner prefers to accept Work not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be equitably adjusted by Change Order. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE A.13 MISCELLANEOUS PROVISIONS

§ A.13.1 GOVERNING LAW
§ A.13.1.1 The Design-Build Contract shall be governed by the law of the place where the Project is located.

§ A.13.2 SUCCESSORS AND ASSIGNS
§ A.13.2.1 The Owner and Design-Builder respectively bind themselves, their partners, successors, assigns and legal representatives to the other party hereto and to partners, successors, assigns and legal representatives of such other party in respect to covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section A.13.2.2, neither party to the Design-Build Contract shall assign the Design-Build Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Design-Build Contract.

§ A.13.2.2 The Owner may, without consent of the Design-Builder, assign the Design-Build Contract to an institutional lender providing construction financing for the Project or to NYCEDC. In such event, the lender or NYCEDC shall assume the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ A.13.3 WRITTEN NOTICE
§ A.13.3.1 Written notice shall be deemed to have been duly served if delivered in person to the individual or a member of the firm or entity or to an officer of the corporation for which it was intended, or if sent by registered or certified mail to the last business address known to the party giving notice.

§ A.13.4 RIGHTS AND REMEDIES
§ A.13.4.1 Duties and obligations imposed by the Design-Build Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ A.13.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Design-Build Documents, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

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§ A.13.5 TESTS AND INSPECTIONS
§ A.13.5.1 Tests, inspections and approvals of portions of the Work required by the Design-Build Documents or by laws, ordinances, rules, regulations or orders of public authorities having jurisdiction shall be made at an appropriate time. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures.

§ A.13.5.2 If the Owner or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection or approval not included under Section A.13.5.1, the Owner shall in writing instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section A.13.5.3, shall be at the Owner's expense.

§ A.13.5.3 If such procedures for testing, inspection or approval under Sections A.13.5.1 and A.13.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure, including those of repeated procedures, shall be at the Design-Builder's expense.

§ A.13.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ A.13.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ A.13.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

(Paragraphs deleted)
ARTICLE A.14 TERMINATION OR SUSPENSION OF THE DESIGN/BUILD CONTRACT
§ A.14.1 TERMINATION BY THE DESIGN-BUILDER
§ A.14.1.1 The Design-Builder may terminate the Design-Build Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 issuance of an order of a court or other public authority having jurisdiction which requires all Work to be stopped;
- .2 an act of government, such as a declaration of national emergency which requires all Work to be stopped;
- .3 the Owner has failed to make payment to the Design-Builder in accordance with the Design-Build Documents; or
- .4 the Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section A.2.2.8.

§ A.14.1.2 The Design-Builder may terminate the Design-Build Contract if, through no act or fault of the Design-Builder or a Contractor, Subcontractor or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner, as described in Section A.14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ A.14.1.3 If one of the reasons described in Sections A.14.1.1 or A.14.1.2 exists, the Design-Builder may, upon thirty (30) days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner payment for Work executed and for proven loss with respect to materials, equipment, tools, and construction equipment and machinery, including reasonable overhead and profit.

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§ A.14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or a Contractor or their agents or employees or any other persons performing portions of the Work under a direct or indirect contract with the Design-Builder because the Owner has persistently failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon thirty (30) additional days' written notice to the Owner, terminate the Design-Build Contract and recover from the Owner as provided in Section A.14.1.3.

§ A.14.2 TERMINATION BY THE OWNER FOR CAUSE

§ A.14.2.1 The Owner may terminate the Design-Build Contract if the Design-Builder:

.1 persistently or repeatedly refuses or fails to supply enough properly skilled workers or proper materials;

.2 fails to make payment to Contractors for services, materials or labor in accordance with the respective agreements between the Design-Builder and the Architect and Contractors;

.3 persistently disregards laws, ordinances or rules, regulations or orders of a public authority having jurisdiction; or

.4 otherwise is guilty of substantial breach of a provision of the Design-Build Documents.

§ A.14.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

.1 take possession of the site and of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;

.2 accept assignment of contracts pursuant to Section A.5.5.1; and

.3 finish the Work by whatever reasonable method the Owner may deem expedient. Upon request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ A.14.2.3 When the Owner terminates the Design-Build Contract for one of the reasons stated in Section A.14.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ A.14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner.

§ A.14.3 SUSPENSION BY THE OWNER FOR CONVENIENCE

§ A.14.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ A.14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section A.14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent:

.1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or

.2 that an equitable adjustment is made or denied under another provision of the Design-Build Contract.

§ A.14.4 TERMINATION BY THE OWNER FOR CONVENIENCE

§ A.14.4.1 The Owner may, at any time, terminate the Design-Build Contract for the Owner's convenience and without cause.

§ A.14.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall:

.1 cease operations as directed by the Owner in the notice;

.2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and

.3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing contracts and purchase orders and enter into no further contracts and purchase orders.

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§ A.14.4.3 In the event of termination for the Owner's convenience prior to commencement of construction, the Design-Builder shall be entitled to receive payment for design services performed, costs incurred by reason of such termination and reasonable overhead and profit on design services not completed. In case of termination for the Owner's convenience after commencement of construction, the Design-Builder shall be entitled to receive payment for Work executed and costs incurred by reason of such termination.

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AIA® Document A141™ – 2004 Exhibit B

Determination of the Cost of the Work

for the following PROJECT:
(Name and location or address)

Yankee Stadium Park Improvements

THE OWNER:
(Name and address)

BRONX PARKING DEVELOPMENT COMPANY, LLC
18 Aitken Avenue
Hudson, New York 12534

THE DESIGN-BUILDER:
(Name and address)

PRISMATIC HUNTER ROBERTS A JOINT VENTURE
2 World Financial Center, 6th Floor
New York, New York 10281

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE B.1 CONTROL ESTIMATE

§ B.1.1 Where the Contract Sum is the Cost of the Work, plus the Design-Builder's Fee without a Guaranteed Maximum Price pursuant to Section 4.2 of the Agreement, the Design-Builder shall prepare and submit to the Owner prior to the Design-Builder's first Application for Payment, in writing, a Control Estimate. The Control Estimate shall include the estimated Cost of the Work plus the Design-Builder's Fee. The Control Estimate shall be used to monitor actual costs.

§ B.1.2 The Control Estimate shall include:

- .1 the documents enumerated in Article 8 of the Agreement, including all Addenda thereto and the Terms and Conditions of the Contract;
- .2 a statement of the estimated Cost of the Work showing separately the compensation for design services, construction costs organized by trade categories or systems and the Design-Builder's Fee; and
- .3 contingencies for further development of design and construction.

§ B.1.3 The Design-Builder shall meet with the Owner to review the Control Estimate. In the event that the Owner discovers any inconsistencies or inaccuracies in the information presented, it shall promptly notify the Design-Builder, who shall make appropriate adjustments to the Control Estimate. When the Control Estimate is acceptable to the Owner, the Owner shall acknowledge its acceptance in writing. The Owner's acceptance of the Control Estimate does not imply that the Control Estimate constitutes a Guaranteed Maximum Price.

§ B.1.4 The Design-Builder shall develop and implement a detailed system of cost control that will provide the Owner with timely information as to the anticipated total Cost of the Work. The cost control system shall compare the Control Estimate with the actual cost for activities in progress and estimates for uncompleted tasks and proposed changes. This information shall be reported to the Owner, in writing, no later than the Design-Builder's first Application for Payment and shall be revised monthly or at other intervals as mutually agreed.

ARTICLE B.2 COSTS TO BE REIMBURSED

§ B.2.1 COST OF THE WORK

The term Cost of the Work shall mean costs necessarily incurred by the Design-Builder in the proper performance of the Work. Such costs shall be at rates not higher than the standard paid at the place of the Project except with prior consent of the Owner. The Cost of the Work shall include only the items set forth in this Article B.2.

§ B.2.2 LABOR COSTS

§ B.2.2.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's approval, at off-site locations.

§ B.2.2.2 Wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site or (with the Owner's approval, not to be unreasonably withheld) at the Design-Builder's offices, but only for the time required for the Work.

§ B.2.2.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ B.2.2.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections B.2.2.1 through B.2.2.3.

§ B.2.3 CONTRACT COSTS

§ B.2.3.1 Payments made or incurred by the Design-Builder to Contractors in accordance with the requirements of their contracts.

§ B.2.4 COSTS OF MATERIALS AND EQUIPMENT INCORPORATED IN THE COMPLETED CONSTRUCTION

§ B.2.4.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

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§ B.2.4.2 Costs of materials described in the preceding Section B.2.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ B.2.5 COSTS OF OTHER MATERIALS AND EQUIPMENT, TEMPORARY FACILITIES AND RELATED ITEMS
§ B.2.5.1 Costs, including transportation and storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers, that are provided by the Design-Builder at the site and fully consumed in the performance of the Work; and cost (less salvage value) of such items if not fully consumed, whether sold to others or retained by the Design-Builder. The basis for the cost of items previously used by the Design-Builder shall mean the fair market value.

§ B.2.5.2 Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site, whether rented from the Design-Builder or others, and costs of transportation, installation, minor repairs and replacements, dismantling and removal thereof. Rates and quantities of equipment rented shall be subject to the Owner's prior approval.

§ B.2.5.3 Costs of removal of debris from the site.

§ B.2.5.4 Cost of document reproductions, facsimile transmissions and long-distance telephone calls, postage and parcel delivery charges related to the Work, telephone service at the site and reasonable petty cash expenses of the site office.

§ B.2.5.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, if approved in advance by the Owner.

(Paragraphs deleted)
§ B.2.6 DESIGN AND OTHER CONSULTING SERVICES
§ B.2.6.1 Compensation, including fees and reimbursable expenses, paid or incurred by the Design-Builder for design and other consulting services required by the Design-Build Documents .

§ B.2.7 MISCELLANEOUS COSTS
§ B.2.7.1 That portion of insurance and bond premiums that can be directly attributed to this Design-Build Contract. The premium cost for insurance and bond premium shall be determined in accordance with the following percentages: 1.225% for Subcontractor Default Insurance, 6.7% of direct work costs and general conditions and design costs for CCIP Insurance, .15% of all Cost of the Work and Fee for Builder's Risk Insurance, 1% of direct work costs for Pollution/Railroad/Professional Liability Insurance and 1.39% of all Cost of the Work and Fee for bond premium.

§ B.2.7.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work; provided, however, that the Owner is exempt from sales tax pursuant to its status as an exempt entity and shall furnish the Design-Builder with documentation of such exemption. The Design-Builder shall not charge the Owner any sales tax covered by such exemption and shall advise all Contractors of such exemption.

§ B.2.7.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ B.2.7.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or non-conforming Work for which reimbursement is excluded by Section A.13.5.3 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.13.5.3.

§ B.2.7.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the

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Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the last sentence of Section A.3.16.1 of Exhibit A, Terms and Conditions, or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ B.2.7.6 Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder in the performance of the Work and with the Owner's prior written approval, which approval shall not be unreasonably withheld.

(Paragraphs deleted)

§ B.2.8 OTHER COSTS AND EMERGENCIES

§ B.2.8.1 Other costs incurred in the performance of the Work if and to the extent approved in advance in writing by the Owner.

§ B.2.8.2 Costs due to emergencies incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property, as provided in Section A.10.6 of Exhibit A, Terms and Conditions.

§ B.2.8.3 Cost of repairing or correcting damaged Work executed by the Design-Builder, Contractors, Subcontractors or suppliers, provided that such damaged Work was not caused by the standard of care that may reasonably be expected of experienced contractors in the building construction industry or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, Subcontractors or suppliers.

ARTICLE B.3 COSTS NOT TO BE REIMBURSED

§ B.3.1 The Cost of the Work shall not include:

§ B.3.1.1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Sections B.2.2.2 and B.2.2.3.

§ B.3.1.2 Expenses of the Design-Builder's principal office and offices other than the site office.

§ B.3.1.3 Overhead and general expenses, except as may be expressly included in Article B.2 of this Exhibit.

§ B.3.1.4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work.

§ B.3.1.5 Rental costs of machinery and equipment, except as specifically provided in Section B.2.5.2.

§ B.3.1.6 Except as provided in Section B.2.8.3 of this Agreement, costs due to the negligence or failure of the Design-Builder to fulfill a specific responsibility of the Design-Builder, Contractors, Subcontractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable.

§ B.3.1.7 Any cost not specifically and expressly described in Article B.2, Costs to be Reimbursed.

(Paragraphs deleted)

ARTICLE B.4 DISCOUNTS, REBATES AND REFUNDS

§ B.4.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be secured.

§ B.4.2 Amounts that accrue to the Owner in accordance with the provisions of Section B.4.1 shall be credited to the Owner as a deduction from the Cost of Work.

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ARTICLE B.5 CONTRACTS AND OTHER AGREEMENTS OTHER THAN FOR DESIGN PROFESSIONALS HIRED BY THE DESIGN-BUILDER

§ B.5.1 Those portions of the Work that the Design-Builder does not customarily perform with the Design-Builder's own personnel shall be performed by others under contracts or by other appropriate agreements with the Design-Builder. The Owner, with the approval of the New York City Economic Development Corporation (NYCEDC), may designate specific persons or entities from whom the Design-Builder shall obtain bids. The Design-Builder shall obtain bids from Contractors and from suppliers of materials or equipment fabricated especially for the Work and shall deliver such bids to the Owner. The Owner shall then determine, subject to the approval of NYCEDC, which bids will be accepted. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has reasonable objection.

§ B.5.2 Contracts or other agreements shall conform to the applicable payment provisions of this Design-Build Contract, and shall not be awarded on the basis of cost plus a fee without the Owner's prior consent.

ARTICLE B.6 ACCOUNTING RECORDS

§ B.6.1 The Design-Builder or any affiliated person or entity which performs a portion of the Work shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management under this Agreement, and the accounting and control systems shall be satisfactory to the Owner and NYCEDC. The Owner, the Owner's accountants and NYCEDC shall be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records, books, correspondence, instructions, receipts, contracts, purchase orders, vouchers, memoranda and other data relating to this Agreement, and the Design-Builder shall preserve these for a period of three years after final payment, or for such longer period as may be required by law.

§ B.6.2 When the Design-Builder believes that all the Work required by the Agreement has been fully performed, the Design-Builder shall deliver to the Owner's accountant a final accounting of the Cost of the Work.

§ B.6.3 The Owner's accountants will review and report in writing on the Design-Builder's final accounting within 21 days after delivery of the final accounting. Based upon such Cost of the Work as the Owner's accountants report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section A.9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's accountants, notify the Design-Builder in writing of the Owner's intention to make final payment or to withhold final payment.

§ B.6.4

(Paragraphs deleted)

If, subsequent to final payment and at the Owner's request, the Design-Builder incurs costs in connection with the correction of defective or non-conforming work as described in Article B.2, Costs to be Reimbursed, and not excluded by Article B.3, Costs Not to be Reimbursed, the Owner shall reimburse the Design-Builder such costs and the Design-Builder's Fee applicable thereto on the same basis as if such costs had been incurred prior to final payment.

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Insurance and Bonds

for the following PROJECT:
(Name and location or address)

Yankee Stadium Park Improvements

THE OWNER:
(Name and address)

BRONX PARKING DEVELOPMENT COMPANY
18 Aitken Avenue
Hudson, New York 12534

THE DESIGN-BUILDER:
(Name and address)

PRISMATIC HUNTER ROBERTS A JOINT VENTURE
2 World Financial Center, 6th Floor
New York, New York 10281

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

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ARTICLE C.1
(Paragraphs deleted)
DESIGN-BUILDER'S INSURANCE
During performance of the Work, the Design-Builder shall provide policies of insurance as follows:

§ C.1.1 General Liability Insurance. Liability insurance on ISO form CG 00 01 12 04 or its equivalent in an amount not less than Fifty Million Dollars ($50,000,000) with at least One Million Dollars ($1,000,000) in primary insurance coverage, combined single limit/per occurrence for bodily injury and property damage protecting the Design-Builder as named insured and the Owner, the City of New York (the "City"), NYCEDC, the State of New York (the "State"), ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture as additional insureds, against all insurable legal liability claims resulting from the Work being performed by the Design-Builder, the Contractors, subcontractors and others engaged to perform Work on a Project site. The policy shall have a general aggregate limit applicable specifically to this project (a project-specific aggregate). Without limiting the generality of the foregoing, such insurance shall include the following coverages and clause:

§ C.1.1.1 Products Liability/Completed Operations coverage with endorsement showing Completed Operations coverage for the Design-Builder applies for five (5) years following completion of the Project.

§ C.1.1.2 A broad form property damage endorsement.

§ C.1.1.3 Independent contractors coverage.

§ C.1.1.4 Blanket contractual liability coverage covering the Design-Builder's indemnification obligations under the Design-Build Contract.

§ C.1.1.5 An endorsement providing that excavation and foundation work are covered and that the "XCU exclusions" have been deleted.

§ C.1.1.6 Containing the "subcontractor exception" to the "your work" exclusion, and containing no other exclusions except those specifically authorized by NYCEDC and ESDC and such exclusions as may be reasonable and customary in liability insurance policies issued in connection with construction work similar in all respects to the Work. Notwithstanding the foregoing, there shall be no exclusion for subcontractor's work.

§ C.1.1.7 Defense Cost coverage in addition to the limits of liability.

§ C.1.1.8 Terrorism Coverage for both certified and non-certified acts.

§ C.1.1.9 The pollution exclusion should provide coverage for pollution arising from Hostile Fire, Heating Ventilation and Air Conditioning (HVAC) equipment, completed operations, accidental discharge of fuels, lubricants or other operating fluids that a contractor brings to the site that are essential to the operation of mobile equipment.

§ C.1.2 Automobile Liability Insurance. Automobile liability insurance in an amount not less than Five Million Dollars ($5,000,000), at least 1 million acting as primary insurance, covering any automobile or other motor vehicle used in connection with Work being performed on or for the Project premises.

§ C.1.2A Umbrella Liability Insurance coverage may be provided to attain the limits required in Sections C.1.1 and C.1.2 above, including excess coverage for the General Liability specified above (inclusive of Products Liability and Completed Operations), Auto Liability and Employers Liability (if applicable.) The Umbrella coverage shall be on an occurrence basis, provide a project-specific aggregate limit, and shall follow-form of the primary with respect to the named insured, additional insureds, terrorism and all of the other coverage specifications identified herein.

§ C.1.3 Builder's Risk Insurance. Standard all risk insurance written on a completed value (non-reporting) basis, insuring the Work and the interests therein of the Design-Builder, the City, NYCEDC, the State, ESDC and all Contractors and subcontractors employed in connection with the Work being performed, as their respective interests may appear. Such insurance policy (1) shall contain a written acknowledgment by the insurance company that its right of subrogation has been waived with respect to all of the insureds named in the policy and an endorsement stating that "permission is granted to complete and occupy;" (2) if any off-site storage location is used, shall cover,

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for full insurable value, all materials and equipment at any off-site storage location intended, or while in transit, for use with respect to the premises; (3) unless approved by NYCEDC and ESDC, shall contain no exclusions other than those that are reasonable and customary in Builder's Risk insurance policies issued in connection with construction work similar in all material respects to the Work being performed; and (4) shall name the Design-Builder as loss payee. Coverage for Work at a site shall continue until final completion of Work at that site. This coverage shall include the following:

- Earth movement and earthquake
- Flood whether driven by wind or not; underground water seepage, back-up of sewers and drains.
- Terrorism coverage for certified and non-certified acts.
- Coverage for the so-called "soft costs" included within the Design-Builder's scope of Work in connection with construction or restoration following an insured event.
- Coverage for demolition, the loss of the value of the undamaged part of the building if demolition is required by operation of any laws regulating rebuilding, and increased cost of construction arising from the operation of such laws in an amount not less than 10% of the project value.

§ C.1.4 Statutory Coverages. Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance in statutorily required amounts covering the Design-Builder with respect to all persons employed by the Design-Builder, Contractors and subcontractors in connection with their operations conducted at, or in connection with, any portion of the Project premises.

§ C.1.5 Professional Liability Insurance. The Design-Builder shall maintain Contractors Professional Liability insurance in an amount not less than Ten Million Dollars ($10,000,000) (which limit may be combined with the Pollution Legal Liability limits for a combined limit of $10,000,000), with coverage continuing for four (4) years following completion of the Work. The Contractor's Professional Liability insurance shall be additional to the coverage provided by the Architect and other design consultants engaged by the Design-Builder. The Design-Builder shall cause the Architect to carry and maintain professional liability insurance in an amount not less than One Million Dollars ($1,000,000) and shall cause other consultants engaged for the performance of any design services in connection with the Work to carry and maintain professional liability insurance in like amount , but only if professional liability insurance for the type of services rendered by such consultant is available at commercially reasonable prices and is customarily provided for undertakings comparable in cost and/or scope as the design and construction of the Work.

§ C.1.6 Pollution Legal Liability.

§ C.1.6.1 If the Work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any petroleum, petroleum product or hazardous material or substance, pollution legal liability insurance with limits of not less than Ten Million Dollars ($10,000,000) (which may be combined with the Professional Liability Limit for a combined limit of $10,000,000), providing coverage for bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such policy shall provide coverage for a term of ten (10) years for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants, including any loss, cost or expense incurred as a result of any cleanup of pollutants or in the investigation, settlement or defense of any claim, suit or proceedings against the Owner, the City, NYCEDC, the State or ESDC arising from the Work.

The "retro date" on the policy may not change during the 10-year term. Coverage shall be afforded for silica, asbestos, micro bacteria matter, and lead paint. The policy shall be written on a "pay on behalf of" basis. All of the additional insureds specified under the GL (and other) policies should be additional insureds on this insurance. Such policy shall be written protecting the Design-Builder as named insured and the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture as additional insureds

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§ C.1.6.2 If disposal of materials from the job site is undertaken: evidence of pollution legal liability insurance in the amount of Ten Million Dollars ($10,000,000) maintained by the disposal site operator from the disposal site accepting waste.

§ C.1.6.3 If vehicles are used for transporting hazardous materials: pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

ARTICLE C.2 GENERAL INSURANCE REQUIREMENTS

(Table deleted)
(Paragraphs deleted)
§ C.2.1 **Insurance Companies.** All of the insurance policies required by this Exhibit C shall be procured from companies licensed or authorized to do business in the State of New York that have a rating in the latest edition of "Bests Key Rating Guide" of "A-:VII" or better with a policy holder surplus of Fifty Million Dollars ($50,000,000) or another comparable rating reasonably acceptable to NYCEDC or ESDC.

§ C.2.2 **Term.** The Design-Builder shall procure policies for all insurance required by this **Exhibit C** for periods of not less than one (1) year and shall procure renewals thereof from time to time at least thirty (30) days before the expiration thereof, except for the coverages stated above which are specifically required for longer terms..

§ C.2.3 **Waiver of Subrogation.** All policies of property insurance required under this **Exhibit C** shall include a waiver of the right of subrogation with respect to all the named insureds and additional insureds.

§ C.2.4 **Required Insurance Policy Clauses.** Each policy of insurance required to be carried and maintained or caused to be carried and maintained by the Design-Builder pursuant to this **Exhibit C** shall contain the following provisions and agreements, from and after the date each such insurance policy is required to be carried pursuant to this Exhibit: (1) a provision that no act or omission of the Design-Builder and/or of the named insured, including, without limitation, any use or occupancy of the Project premises for any purpose or purposes more hazardous than those permitted by the policy, shall invalidate the policy or affect or limit the obligation of the insurance company to pay the amount of any loss sustained by the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture, (2) to the extent available on a commercially reasonable basis, an agreement by the insurer that such policy shall not be canceled, materially modified in a manner that would compromise the coverage theretofore provided under the policy, or denied renewal without at least thirty (30) days prior written notice to the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture, including, without limitation, cancellation or non-renewal for non-payment of premium and (3) a provision that notice of accident or claim to the insurer by the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership or Tishman-DMJM Harris Joint Venture shall be deemed notice by all insureds under the policy. Notices from the insurer to the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture shall be delivered by hand or sent by registered or certified mail, return receipt requested, or by nationally recognized overnight mail service that provides a receipt to the sender to such addresses as the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture shall provide.

§ C.2.5 **Primary Protection.** All insurance policies required by this **Exhibit C** shall be primary protection. Neither the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership nor Tishman-DMJM Harris Joint Venture shall be called upon to contribute to any loss covered under the insurance described in this Exhibit C.

§ C.2.6 **Adjustments for Claims.** The Design-Builder's Builder's Risk policy shall provide, from and after the date when the Owner, the City, NYCEDC, the State and/or ESDC became additional insured or loss payee thereunder as required by this **Exhibit C**, that the Owner, NYCEDC and/or ESDC, as applicable, shall be afforded the opportunity to participate in any negotiations regarding adjustments for claims with the insurers. All other insurance policies required by this **Exhibit C** shall provide that all adjustments for claims with the insurers be made with the Owner, NYCEDC, and ESDC, each of which shall act reasonably.

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§ C.2.7 Evidence of Insurance. To the extent available on a commercially reasonable basis, prior to commencement of the Work and at least sixty (60) days prior to the expiration of any of the policies to be maintained or caused to be maintained by the Design-Builder, the Design-Builder shall deliver or cause to be delivered to the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture certificates of insurance, in form reasonably satisfactory to the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture, providing for thirty (30) days prior written notice to the Design-Builder, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture by the insurance company of cancellation or non-renewal of a policy or replacement or renewal of any policies expiring during performance of the Work. Upon request by the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture, the Design-Builder shall deliver a copy of each entire original policy required hereby.

§ C.2.8 Compliance with Policy Requirements. The Design-Builder shall not violate or permit to be violated any of the conditions, provisions or requirements of any insurance policy required by this **Exhibit C**. The Design-Builder shall perform, satisfy and comply with all conditions, provisions and requirements of all such insurance policies, and shall give and cause its contractors to give the insurer, the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture notice of all claims, accidents and losses promptly, but in any event no later than five (5) business days after the Design-Builder acquires actual knowledge of the same.

§ C.2.9 No Representation as to Adequacy of Coverage. The requirements set forth herein with respect to the nature and amount of insurance coverage to be maintained or caused to be maintained by the Design-Builder hereunder shall not constitute a representation or warranty by the Design-Builder, the Owner, , the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture that such insurance is adequate or sufficient in any respect.

§ C.2.10 CCIP. The Design-Builder may comply with its obligation under this **Exhibit C** to carry general liability and workers' compensation insurance through a Contractor Controlled Insurance Program ("CCIP").

§ C.2.11 Primary and Excess Policies. The liability insurance required to be carried by the Design-Builder pursuant to this **Exhibit C** may, at the option of the Design-Builder, be effected through a combination of layers of primary and excess coverages, provided that such policies that otherwise comply with the provisions of this **Exhibit C** and afford the amounts of coverage required hereby for all insureds required to be named as insureds hereunder.

§ C.2.12 Modification By Insurer. Without limiting any of the obligations of the Design-Builder, or the rights of the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture under this **Exhibit C**, in the event that an insurer modifies, in any material respect, any insurance policy that the Design-Builder is required to carry and maintain under this **Exhibit C**, the Design-Builder shall give notice to the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture of such modification within thirty (30) days after the Design-Builder's receipt of notice thereof.

§ C.2.13 Interpretation. All insurance terms used in this **Exhibit C** shall have the meanings ascribed by the Insurance Services Offices.

ARTICLE C.3

§ C.3.1 The Design-Builder shall provide Owner with payment and performance bonds for the Work issued by surety companies licensed or authorized to do business in New York that are satisfactory to NYCEDC and ESDC. Each bond shall be in an amount at least equal to the Contract Sum, and shall be in effect until Final Completion of the construction of the Work.

§ C.3.2 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

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ARTICLE C.4

Deductibles and Self-Insured Retentions (SIRs) – if a deductible applies to any of the aforementioned policies, the Design-Builder will be solely responsible to satisfy the obligations of such deductible(s). Furthermore, no self insured retention (SIR) in excess of $10,000 is permitted under these policies unless expressly agreed by -- the Owner, the City, NYCEDC, the State, ESDC, Yankee Stadium LLC, New York Yankee Partnership and Tishman-DMJM Harris Joint Venture. The Design-Builder shall be solely responsible to satisfy the obligations under any SIR and agrees to indemnify, defend, and hold harmless all of the additional insureds under the aforementioned policies with respect to any financial obligation under any SIR(s).

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SCHEDULE A

YANKEE STADIUM GARAGE A PARKLAND IMPROVEMENTS

SCOPE OF WORK DOCUMENTS

A. SPECIFIC REQUIREMENTS

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2. Submissions for Approval
3. Permits
4. Signage
5. Street and Sidewalk Closures
6. Lease Limits
7. Tree Removals
8. Garage B
9. Ruppert Place
10. Site for Garage A
11. 48" Sewer Relocation
12. As-Built Drawings
13. Operation and Maintenance Manuals Requirements for Design-Builder's Progress Schedule – Detailed Schedule of Work (CPM)
14.

B. GENERAL REQUIREMENTS

1. Article 1 – Inspection, Testing, Correction and Completion of Contract Work
2. Article 2 – Design-Builder's Responsibilities
3. Article 3 – Materials and Equipment and Labor
4. Article 4 – Safety and Protection of Persons and Property
5. Article 5 – Character of Work
6. Article 6 – Coordination with Other Contractors
7. Article 7 – Construction Meetings
8. Article 8 – Site Facilities and Services; Access to the Site
9. Article 9 – Records at the Site
10. Article 10 – Noise Control Provisions

C. SCOPE OF WORK

A. SPECIFIC REQUIREMENTS

1. GENERAL PROJECT REQUIREMENTS

1.1. ENVIRONMENTAL IMPACT STATEMENT: All design and construction, including manner of construction, must conform to the Yankee Stadium Final Environmental Impact Statement, except as permitted by a technical memorandum approved by the City's lead agency under the State Environmental Quality Review Act and the City Environmental Quality Review procedure for the project.

1.2. WORK SCHEDULE: The schedule of work shall be in accordance with Exhibit L – 'Project Milestone Dates' of the Funding Agreement.

1.3. DESIGN AND CONTRACT DOCUMENTS REVIEW: The Design-Builder shall retain or continue to employ architectural and engineering firms identified in Design-Builder's proposal to NYCEDC and NYCDPR, as necessary throughout the duration of the contract to prepare preliminary and subsequent final plans and specifications during construction. The Design-Builder shall submit such plans and specifications to ESDC, NYCEDC, NYCDOT and NYCDPR and shall make such changes as are reasonably requested by ESDC, NYCEDC and NYCDPR. NYCEDC and NYCDPR shall endeavor to respond within 10 business days of submission of such plans and specifications initially (provided that more time shall be afforded to NYCEDC and NYCDPR for a submission of a magnitude of work which reasonably requires such additional time), and within five business days with respect to any revisions requested. Conceptual level design submittal has been reviewed by the City (NYCEDC, NYCDPR and others). Additional design submittals at the 30%, 50%, 90% and 100% levels of completion will be subject to the City's review and approval. It is understood that if any comments or changes are requested based on these reviews, in accordance with the attached scope document, the requested changes will be incorporated into the construction documents at no additional cost to the Owner.

1.4. LOT 14: Design-Builder will be granted access to the Lot 14 site on December 1, 2008.

1.5. EVENT DAY RESPONSIBILITIES: In addition to maintaining public access around the work site during the April through October timeframe during the Contract, certain work activity restrictions will apply to the Design-Builder's operations as follows:

The streets and sidewalks around the work site must be made available and safe for public use at least two (2) hours prior to, during, and two (2) hours after each Yankee home game, Yankee Stadium special event (defined as an event with a minimum of 10,000 people in attendance) and any Major League All-Star game (which shall be comprised of 3 days of events) - "the Restricted Game Day Period".

Game Day Parking/Traffic: All Design-Builder employees shall make reasonable efforts to rely on public transportation to get to the work site during the Restricted Game Day Period in order to mitigate the traffic congestions during the Restricted Game Day Period.

2. SUBMISSIONS FOR APPROVAL

2.1. Design-Builder shall provide copies of all approved submittals and permits to NYCEDC. This includes, but not limited to submittals to and permits from NYCDPR, NYC Department of Buildings, DEP (Drainage plans), NYCDOT, NYSDOT, NYPD, NYFD, and NYC Arts Commission. Design-Builder must provide a copy of the submission to the program manager, Tishman-DMJM Harris, upon submission to the respective agency.

3. PERMITS

3.1. While NYCEDC will cooperate with the Design-Builder in obtaining permits, the Owner is not responsible for cost impacts, and potential delay claims in the event that permits from any other agency are not expedited as NYCEDC has limited or no control of other agencies including but not limited to, the NYC Arts Commission and others that may be involved with granting permits for the work. The Design-Builder is responsible for the cost of any scope changes due to permitting requirements unless specifically excluded in the Lump Sum Contract or this section 3.1. The City and not the Design Builder, is responsible for all costs that are the result of changes to the design or cost of the project as a result of Art Commission Preliminary Approval.

4. SIGNAGE

4.1. The Design-Builder will be required to provide signage related to the project and the Maintenance and Protection of Traffic ("MPT") for construction in and around streets, including but not limited to Ruppert Place, 153rd and 157th streets, Macomb's Dam Bridge and others adjacent to the project work sites as required by NYSDOT and NYCDOT, and NYPD.

5. STREET AND SIDEWALK CLOSURES

5.1. All street and sidewalk closures will require permit approvals from the NYCDOT's Office of Construction Coordination. Any costs or schedule impacts associated with these closures will be the responsibility of the Design-Builder.

6. LEASE LIMITS

6.1. It is expected that some elements of the project (i.e., light well along Ruppert Place, and any others) may occur outside the project lease lines. Therefore it is expected that the Design-Builder will be responsible for coordination, submitting and acquiring all approvals and permits from respective agencies including but not limited to NYCDPR, and NYCDOT, that may hold leases or ownership in these areas.

7. TREE REMOVALS

7.1. Any tree removal or tree impact for the project must be coordinated with NYCDPR. Planned tree removals and tree impacts required for the construction of the garages, as shown on the 50% design submittal plans, have been reviewed by NYCDPR and NYCDPR will issue tree removal permits for each garage site based on the 50%

design submittal plans. The schedule of tree removals for each garage site will be based on the scheduled construction commencement dates for each garage. The Design-Builder is responsible for submitting the required application(s) to NYCDPR for tree removal permit(s) for any additional tree removals beyond those designated in the 50% design submittal plans, which is intended to ensure that trees that are not affected by the construction of the garages and that can be saved, are not damaged or removed unnecessarily. Furthermore, the Design-Builder shall submit a plan for approval to NYCDPR for the trimming of the trees along 164th Street for the construction of Garage B.

8. GARAGE B

8.1. INTENTIONALLY DELETED

9. RUPPERT PLACE

9.1. Upon receiving authorization to begin work, the Design Builder will construct a jersey barrier site fence along the inside face of the eastern curb of the street on Ruppert Place. The construction barriers in Ruppert Place shall be located north of parking lot 14 to allow for unobstructed use of the full width of the roadway from 157th Street to the north side of Lot 14. Prior to the start of the 2008 baseball season, the Design-Builder must relocate the construction barrier westward to allow the opening of one lane of the Ruppert Place roadway, which shall be a minimum of 10 feet in width (for restricted vehicle access). It is expected that sidewalk along Yankee Stadium at Ruppert Place will be fully accessible for pedestrian use prior to the start of the 2009 baseball season. The Design-Builder shall cooperate with the City, NYCDPR and the Yankees Organization for the availability of Ruppert Place throughout the construction duration. There shall be no additional cost for any schedule impacts or logistic inefficiencies in connection therewith, assuming the City and or the Yankees Organization do not make additional requests relating to the logistics of the project for events at Yankee Stadium, including but not limited to the All-Star Game.

9.2. The Design-Builder shall submit all MPT plans to NYCDOT, NYCEDC and NYCDPR for review and approval.

9.3. Ruppert Place is under NYCDPR authority. Therefore, all permits will need to be submitted to and approved by NYCDPR to begin work in addition to the NYC Building Department and NYCDOT required permits.

10. SITE FOR GARAGE A

10.1. During the 2007 and 2008 baseball seasons, a portion of the Garage A site adjacent to the Major Deegan Expressway service road, north of Lot 14 (known as the "grassy knoll" area), will need to be accessed for Media Parking during Yankees home games and other events at Yankee Stadium. The Design-Builder will make best efforts to accommodate the parking of media cars/vans, which will be coordinated with the NYPD. Design-Builder will maintain control (ingress / egress) of the Grassy Knoll area during the construction of the project.

11. 48" SEWER RELOCATION

11.1. It is understood that NYCEDC shall relocate the existing 48" sewer line and will require the close coordination and cooperation of the Design-Builder to ensure that the sewer is relocated along with Garage A (Phase II) construction. This work is currently scheduled to start December 1, 2008 and be completed April 1, 2009. NYCEDC will cooperate with the Design-Builder to maintain access to the Garage A site, including plating of excavations, temporary paving, jersey barriers or other reasonable methods to maintain the project schedule and a safe egress in the work areas. It is understood that the existing section of the sewer line through the Garage A site will be abandoned in place and any removal of the abandoned sewer line required for the construction of Garage A will be the responsibility of the Design-Builder.

12. AS-BUILT DRAWINGS

12.1. Design-Builder shall provide as-built drawings to the program manager, Tishman-DMJM Harris, for all work performed under the Contract in electronic format as well as hard copy.

13. OPERATION AND MAINTENANCE MANUALS

Design-Builder shall provide all required operations and maintenance manuals (including, but not limited to, all equipment items) as required by the design plans and specifications under this Contract to the Owner and Operator.

14. REQUIREMENTS FOR DESIGN-BUILDER'S PROGRESS SCHEDULE - DETAILED SCHEDULE OF WORK (CPM)

14.1. GENERAL

21.1.1. Work shall be monitored by a Critical Path Method Scheduling System (hereinafter "CPM Schedule"). The Design-Builder shall provide an updated CPM Schedule on a monthly basis that provides sufficient detail to understand the status of the project. The submittal of the CPM schedule shall accompany the monthly payment requisition.

14.2. SUBMITTALS

All CPM Schedules shall be submitted in electronic format.

For work within the project sites, the Design-Builder shall submit construction staging and phasing plans to NYCEDC for informational purposes. For any work affecting areas outside of the project sites, including, but not limited to, work affecting pedestrian and vehicular traffic on the surrounding streets and public areas and other ongoing projects in the vicinity of the project site, the Design-Builder shall submit detailed construction staging and phasing plans to NYCEDC for review and approval prior to the start of such work activities.

B. GENERAL REQUIREMENTS

ARTICLE 1
INSPECTION, TESTING, CORRECTION AND COMPLETION OF THE CONTRACT WORK

1.1 Inspections in General. The Design-Builder is responsible for inspection and testing of all Contract work, in accordance with all requirements of the Contract and design plans and specifications. All Contract work, including all materials and equipment (whether incorporated in the Contract work or not) and all methods of construction, shall at all times be subject to review by the Owner, NYCEDC, and the program manager. In the event any of the Contract work fails to meet the approval of the Owner (based on the final design documents, and codes), the Design-Builder shall promptly notify the Owner of the methods by which such Contract work, material and equipment or method of construction shall be changed, corrected, replaced and made good in accordance with the final design documents and codes, at the Design-Builder's sole cost and expense. The Owner shall notify the Design-Builder within four (4) business days of an apparent non conformance regarding the quality and suitability of the Contract work, materials and equipment, and methods of construction. Acceptance of any Contract work, materials and equipment or method of construction shall not relieve the Design-Builder from any of its obligations under this Contract, including any independent inspections as required by NYCDOB.

1.2 Review and Correction of the Work. The Design-Builder shall:

1.2.1 provide, both in the shops and at the site, sufficient, safe and proper facilities for the review of the work as required by the design plans and specifications and by the Owner and all of the Owner's other consultants at all times;

1.2.2 promptly correct, reconstruct, make good or replace all work deemed as defective or as failing to conform to the Contract documents whether observed before or after Substantial Completion and whether or not fabricated, installed or completed; bear only those subcontractor hard costs in connection with the foregoing rejected work. Design-Builder shall not bear any costs incurred by Owner, Owner's consultants or the Owner's program manager in the discovery or remedy of the corrective work.

1.3 The Design-Builder shall remain liable for and shall not be relieved from its obligations to perform the work in accordance with the Contract documents either by the activities or duties of the Owner or the Owner's other consultants in their administration of the Contract.

1.3.1 In the event any portion of the work fails any inspection or test, the Owner may perform or may direct the Owner's other consultants to perform further inspections or tests of any or all of the other similar items of the work at the Owner's sole cost and expense except that the Design-Builder shall bear all costs and expenses if:

1.3.1.1 such testing or inspection is specifically required by the other Contract documents;

1.3.1.2 the test failure prompting such additional testing or inspection was a result of the acts or omissions of the Design-Builder and the additional testing or inspection is reasonable under the circumstances; or

1.3.1.3 such additional testing or inspection results in a test failure which results from the acts or omissions of the Design-Builder.

1.3.2 In the event that any special inspections or tests shall necessarily result in a delay in the performance of the work, then the Completion Date shall be appropriately extended by a Change Order, unless such special inspections or tests:

1.3.2.1 are specifically required by the other Contract documents;

1.3.2.2 were required by the Owner, or the Owner's other consultants as a result of a test failure which was a result of the acts or omissions of the Design-Builder and such special inspections were reasonable under the circumstances; or

1.3.2.3 resulted in a test failure which was a result of the acts or omissions of the Design-Builder.

1.4 Safety Devices. The Design-Builder shall include, provide, erect, maintain and promptly and properly replace, as necessary, all reasonable, necessary or required safety devices for its employees and flagmen. Such devices shall include, without limitation, proper barricades and other safeguards around its work and danger signs and other warning devices where warranted by the nature of the existing condition of the work.

1.5 Loading. The Design-Builder shall not load or permit any part of the work or the project to be loaded so as to endanger its safety or the safety of any persons. The project is designed to support the loads of the finished project only. No provision is included for stresses or loads imposed by construction operations.

1.6 Emergencies. The Design-Builder shall immediately notify the program manager and the Owner of any emergency situation that threatens to or is already affecting the safety of persons or property and shall promptly act to prevent or mitigate such damage, injury or loss.

1.7 Subcontractors'/Suppliers' Compliance. The Design-Builder shall be responsible for seeing that its suppliers and subcontractors of all tiers comply with the requirements of this Article.

ARTICLE 2
DESIGN-BUILDER'S RESPONSIBILITIES

2.1 Supervision. The Design-Builder shall use its best skill and attention for the proper administration, coordination and supervision of the Contract Work. In furtherance thereof, the Design-Builder shall:

2.1.1 keep on Site a competent representative acceptable to the Owner to receive Notices, orders and instructions;

2.1.2 report the general progress of the Contract Work at the Site when required by the Owner or the program manager;

2.1.3 cause a competent and responsible representative to attend such job meetings as are called by the program manager or the Owner;

2.1.4 employ an appropriate number of full-time foremen and assistants, as the Owner deems necessary, which foremen shall be:

2.1.4.1 in attendance at the Site during the progress of the Contract Work;

2.1.4.2 subject to the Owner 's reasonable approval; and

2.1.4.3 retained and not be changed without the prior consent of the Owner, unless the foreman proves to be unsatisfactory to the Design-Builder or ceases to be in its employ.

2.2 Labor.

2.2.1 The Design-Builder shall furnish and maintain an adequate staff and work force of skilled, competent, experienced, reliable and honest workers at the site to carry out the Contract work in an efficient and timely manner until Final Completion. The Design-Builder shall enforce strict discipline and order among Design-Builder's employees and shall not employ on the Contract work any unfit person or anyone not properly skilled or trained in the task to which he or she is assigned.

2.2.2 The manufacture, installation and delivery of all materials and equipment utilized in the Contract work shall be performed by workmen whose trade affiliations shall not cause strikes or work stoppages on the project. The Design-Builder shall employ the proper tradesmen per applicable union jurisdiction for all Contract work.

2.3 Permits and Legal Requirements.

2.3.1 The Design-Builder will secure and pay for the building permit for the project.

2.3.1.1 The Design-Builder, at its sole cost and expense, shall, as may be necessary for the proper execution and completion of the Contract work and for compliance with all applicable legal requirements, secure, maintain, renew and pay for:

2.3.1.1.1 all other permits, governmental fees, licenses and inspections; and

2.3.1.1.2 all affidavits, instruments or supporting data required in connection therewith including those required for the issuance of any Temporary or Permanent Certificate of Occupancy.

2.4 Cutting, Fitting, Patching and Protection of Contract Work. The Design-Builder shall do all cutting, fitting, patching and protection that may be required to the Contract work to make its several parts come together properly and to fit it to receive or be received by the work of other trades shown upon or reasonably implied by the Contract documents. The requirements to cut, fit, patch or protect shall be determined by the Design-Builder provided, however, that structural elements of the project shall not be cut, patched or otherwise altered or repaired without prior written authorization of both the program manager.

2.5 Handling and Hoisting of Tools, Equipment and Materials.

2.5.1 The Design-Builder is responsible for the handling and distribution of its own materials and equipment. The Design-Builder shall confine its materials and equipment and its operations to areas permitted by all applicable legal requirements.

2.6 Layout of Work. All layouts shall be performed by the Design-Builder. The Design-Builder shall be solely responsible for establishing and maintaining the layout, line and grade tolerances required for its work. The Design-Builder shall verify all established baselines prior to use and shall notify the program manager and the Owner of any discrepancies.

2.7 Temporary Facilities. The Design-Builder shall provide all necessary facilities for its workers. The Design-Builder shall be responsible for the acquisition, maintenance, relocation and subsequent removal of all utility, sprinkler and telephone services required for its field offices and shanties. Each structure Design-Builder maintains at the work site must be of fire-resistant construction and must contain a minimum of one (1) 20 lb. dry ABC Fire Extinguisher and shall otherwise comply with all applicable fire codes or other legal requirements related to such structures.

2.8 Substitutions.

2.8.1 The materials and equipment of manufacturers referred to in the Contract documents are intended to establish the standard of quality and design required by the Owner. Notwithstanding anything contained in the Contract documents to the contrary, materials and equipment of manufacturers other than those specified may be used only with the express prior written approval of the Owner.

2.8.2 When only one product is specified in the Contract documents for an item of work and the term "or equal" is used in connection with such product, the Owner will consider approval of a substitute product only after the Owner is satisfied that the product offered as a substitute meets all of the requirements set forth in Paragraphs 2.7.3.1 through 2.7.3.5, inclusive, herein below.

2.8.3 The Design-Builder offering a substitution shall submit a written application to the Owner (through the program manager) in sufficient time (taking into account the progress of the work, the period of delivery of the goods concerned and adequate time for the Owner 's review), setting forth and fully identifying the proposed substitute, together with substantiating data, samples, brochures and other supporting documentation of the substitute item proposed, including without limitation, evidence that the proposed substitution:

2.8.3.1 is equal in quality and serviceability to the specified item;

2.8.3.2 will not entail changes in detail, schedule and construction or related work;

2.8.3.3 conforms with the design of the project and its artistic intent;

2.8.3.4 will not require changes in other parts of the work or the work of others; and

2.8.3.5 either will not result in an increase in the Contract price or will result in a decrease in the Contract price in the amount indicated.

2.8.4 Design-Builder shall support any request for a substitution with sufficient evidence to the Owner and the program manager on the merits of the Design-Builder's bid.

2.8.5 When only one product is specified in the Contract documents for an item of work and the term "or equal" is not used in connection with such product, the Owner, in its sole discretion, may reject any substitution proposed by the Design-Builder.

2.8.6 For the purposes of this Contract, any item having a manufacturer, brand name, or model number, size or generic species other than as cited in the Contract documents shall be considered a substitution.

2.9 Site Conditions. If its work is being performed adjacent to active facilities and existing buildings that are in service, the Design-Builder shall take all necessary steps to avoid damage to the existing structures and/or other improvements and/or interference with such services. Any damages caused by the Design-Builder will be repaired by the Design-Builder at its sole cost and expense. It is understood that the Design-Builder will be constructing a new retaining wall adjacent to the existing 161st Street Retaining wall, which will not require underpinning. It is assumed that the condition of this existing wall is sufficient to accept the construction process of the new wall adjacent to it.

2.10 On-Site Reports and Schedules.

2.10.1 The Design-Builder shall, within ten (10) Business days of a request from the program manager or the Owner, provide a proposed schedule for deliveries of materials and equipment to the site. The Design-Builder shall provide periodic status reports with respect to materials and equipment within seven (7) days of a request by the program manager or the Owner for same.

2.10.2 **INTENTIONALLY DELETED**

2.10.3 The Design-Builder shall notify the Owner and the program manager immediately, and in writing, of any accidents, injury or other damages to persons or property at the work site or otherwise in any way related to the Design-Builder's work under this Contract.

2.10.4 The Design-Builder shall maintain the following at the site:

2.10.4.1 a current set of Contract documents;

2.10.4.2 record drawings updated on a current basis and as the work progresses showing "as-built" conditions of the work;

2.10.4.3 all permits, signs and other documents or data required by all applicable Agencies or pursuant to all legal requirements including, without limitation, DOB work permits.

2.11 Coordination With Other Trades.

2.11.1 The Design-Builder is responsible for the complete coordination of the work with the work of other contractors and of other trades.

2.11.2 **INTENTIONALLY DELETED**

2.12 Project Meetings. The Design-Builder shall, as directed by the program manager or the Owner, attend and participate in all regular, progress and special meetings called by the program manager or the Owner in connection with the work, the Contract or the project.

2.13 Means and Methods of Construction. Unless otherwise expressly provided in the Contract documents, the means and methods of construction shall be such as the Design-Builder may choose within trade and industry standards, subject, however, to the provisions of this Contract and subject to the right of the Owner to reject means and methods proposed by the Design-Builder that will, in the opinion of the Owner:

2.13.1 violate any legal requirements;

2.13.2 constitute or create a hazard to the Contract work, or to persons or property;

2.13.3 not produce finished Contract work in accordance with the terms of this Contract; or

2.13.4 be detrimental to the overall progress of the Contract work or the project.

2.13.5 The Owner's approval of the Design-Builder's means and methods of construction, or its failure to exercise its right to reject such means or methods, shall not relieve the Design-Builder of its obligation to complete performance in accordance with this Contract, nor shall the exercise of such right to reject create a cause of action for damages against the Owner, the City or their respective representatives.

ARTICLE 3
MATERIALS AND EQUIPMENT AND LABOR

3.1.1 Design-Builder shall not use, but shall replace, at its sole cost and expense, any materials and equipment or work that become damaged in any way during storage and delivery. Completed work shall be free of dents, tool marks, warpage, buckling, open joints and any and all other defects.

3.1.2 If the Owner determines that any materials and equipment, or any portion thereof, are faulty or defective in any respect, written notice shall be provided to the Design-Builder. Within five (5) days after receipt of written notice to such effect from the program manager or the Owner, the Design-Builder shall respond with an explanation or remedy for the material or work in question. The Design-Builder is responsible for all costs associated with the remedy for the material or work in question, including replacement if necessary.

ARTICLE 4
SAFETY AND PROTECTION OF PERSONS AND PROPERTY

4.1 Risk of Loss. The Design-Builder assumes the risk of loss or damage, whether direct or indirect and of whatever nature, to the work or to any materials and equipment furnished, used, installed or received by the Owner, the program manager, materialmen or workmen in preparation for and in performing the work. The Design-Builder shall bear such risk of loss or damage until receipt of a TCO and the facility becomes available for its intended use. The Design-Builder will not be responsible for damage or vandalism by the public after receipt of TCO, except that the Design-Builder will be responsible for risk of loss or damage in cases of

damage or vandalism of uninstalled project materials or equipment. Notwithstanding the status of any actual or potential recovery or claim under any insurance policy, in the event of any loss or damage to the work, Design-Builder shall immediately repair, replace or make good any such loss or damage.

4.2 Protection Against Vandalism, Theft and Fire Damage. The Design-Builder shall take all necessary steps to protect and secure its work, including all materials, tools, scaffolding, buildings, trailers, work shacks and other materials and equipment from vandalism, theft and fire damage, and the Owner and the program manager shall not be responsible for losses or damages to such items. Design-Builder shall not be responsible for the vandalism/theft to any aspect of the Parkland work after receipt of a TCO.

CHARACTER OF WORK

4.3 Materials and workmanship shall in every respect be in accordance with the Contract Documents. Whenever the Contract or directions of the program manager or Owner admit of a doubt as to what is permissible or fail to note the quality of any workmanship, materials or equipment, the interpretation which calls for the best quality of workmanship, materials or equipment is to be followed. All apparatus or materials furnished by the Design-Builder shall be the latest design of manufacturers regularly engaged in the production of such apparatus or materials. All items of the same type and rating shall be identical. The Design-Builder shall be responsible for all cutting, fittings or patching that may be required to complete the work or to make its several parts fit together properly.

ARTICLE 5
COORDINATION WITH OTHER CONTRACTORS

5.1 During the progress of the work, it may be necessary for other Design-Builders and other persons (including personnel of Owner) to do work in or about the site of the work. Owner reserves the right to permit and put such other Contractors and such persons to work and to afford them access to the work site at such time and under such conditions as does not unreasonably interfere with Design-Builder. The Design-Builder shall perform its work continuously and diligently and shall conduct its work so as to minimize interference with such other work.

5.2 In the event of an emergency creating danger to life or property at or near the site of the work, Owner may do anything necessary to alleviate such an emergency situation, including performing work, or directing another contractor to perform work.

ARTICLE 6
CONSTRUCTION MEETINGS

6.1 The program manager and Owner will conduct meetings, monthly or as required, at the site to review job progress, procurement, extra work claims, safety, fire prevention and detection, job cleanliness and housekeeping, coordination of work with others and other appropriate items. The Design-Builder shall be represented by his site superintendent or an officer of the Design-Builder at these meetings. Special meetings may be held at the request of Owner, program manager or the Design-Builder.

ARTICLE 7
SITE FACILITIES AND SERVICES; ACCESS TO SITE

7.1 Except as otherwise specified, the Design-Builder shall be responsible for obtaining at its own expense, from available sources the required electric power, water, telephone and other utilities and facilities required for the work.

7.2 Owner will provide to the Design-Builder, either by ownership, easement or permit the right of entry to the site of work. The Design-Builder shall at its own expense make any access improvements required for performance of the work.

ARTICLE 8
RECORDS AT SITE

8.1 Design-Builder shall maintain in a safe place at the site one record copy of drawings (including working drawings), specifications, addenda, change orders, field test records, correspondence, daily reports, and written interpretations and clarifications in good order and annotated to show changes made during construction. These record documents together with approved samples and shop drawings will be available to the program manager for reference. Upon completion of the work, these record documents, sample and Shop Drawings will be delivered to the program manager.

8.2 Record documents shall be kept up to date. Design-Builder shall be required to review with the program manager the status of record documents in connection with the program manager's evaluation of each progress payment request. Failure to maintain current record documents shall be just cause to withhold payments for the undocumented work.

ARTICLE 10
NOISE CONTROL PROVISIONS

The Design-Builder shall comply with all of the applicable provisions of the City's Administrative Code regarding noise control including, without limitation, the following:

Section 24-216(b) which provides, in relevant part, that devices and activities which will be operated, conducted, constructed or manufactured pursuant to the Contract and which are subject to the provisions of the City's Administrative Code will be operated, conducted, constructed or manufactured without causing a violation of said code; and that such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the Commissioner of DEP; and

Section 24-219 of the City's Administrative Code and the rules implemented by DEP and codified at 15 Rules of the City of New York ("RCNY") Section 28-100, *et. seq.*, for Citywide Construction Noise Mitigation (the "DEP Rules"). The Design-Builder shall prepare and post at each work site a Construction Noise Mitigation Plan (as defined in the DEP Rules). The Construction Noise Mitigation Plan shall contain a certification by the Design-Builder that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Design-Builder cannot make this certification, it must have in place a DEP-approved Alternative Noise Mitigation Plan (as defined in the DEP Rules). The Design-Builder's certified Construction Noise Mitigation Plan is subject to

inspection by DEP in accordance with 15 RCNY §28-101. No Contract work may take place at the project site unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Design-Builder shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

C. SCOPE OF WORK

The Parkland Facilities for the Garage A Rooftop Park will be an approximately 300,000 square ft., state of the art facility, and shall include, without limitation, the following:

- 400-meter running track
- Regulation soccer/football field and associated field sports facilities
- 1,000-seat grandstand, including restrooms, maintenance and storage facility
- Ten handball courts
- Four basketball courts with auxiliary grandstand
- Entrance/gateway facilities
- A children's play area with play equipment
- Lawn areas and landscaping
- Fencing as required by NYCDPR

The Scope of Work for the Garage A Parkland has evolved from the Design Builder's RFP response through preliminary design progress and meetings with the City, NYCEDC and NYCDPR. Pursuant to discussions at a meeting held on October 2, 2007 with NYCDPR, the following revised scope of work for the Garage A Parkland has been developed:

- Running Track: An eight lane running track will be constructed with the track surface to be constructed with the Super X Performance manufactured by Mondo Corporation. The track will be designed to meet High School and NCAA standards. The track program will also include the construction of facilities for pole vault, high jump and long jump/triple jump events at either ends of the track. The high jump area will encompass the entire semi circle behind the end of the football/soccer field. The color of the surface will be red or mahogany and the transition (baton passing) zones on the track will be a different color, possibly dark grey. Since the synthetic field surface is not manufactured to withstand the effects of the throwing events, the shot put, discus and javelin will not be held at this facility and no provisions will be made for these events. A four foot high black vinyl chain link fence will be constructed around the perimeter of the track three feet from the outside lane of the track. Five 6 foot wide (minimum) entry gates at various locations in the perimeter fence. One or more of the gates may need to be wider than 6 feet in order to accommodate maintenance equipment needs (i.e. synthetic turf sweeper).

  Due to the limits of construction between Phases 1 and 2 of the Garage A, the entire track will not be able to be constructed entirely during the Phase 1. A shortened track will be constructed that can be used in the interim until both construction phases are complete. A portion of this shortened track will be removed and disposed of when the Phase II construction is performed. The Design Builder shall provide a safety plan for the truncated track and field to NYCDPR for approval while the remaining Phase 1 work is completed. The entire track surface will be initially ordered to insure the correct color match. The track surface manufacturer is to provide written guarantee of the color match to the City, NYCEDC and NYCDPR. The Design-Builder shall identify a storage location of the track material to be installed as part of the Phase II construction, subject to the approval of NYCDPR.

- Football/Soccer Field: A combination football/soccer field will be constructed. The field is to be constructed of a single color duraspine monofilament synthetic surface

manufactured by Field Turf. Permanent and matching the quality of the field viewed by NYCDPR and the Design-Builder at Hofstra University. Field striping will be installed for football and soccer only. No tick marks for other sports, i.e. lacrosse, will be installed. Combination field goal/soccer goals will be permanently installed. The field will be prepared to meet High School standards. NYCDPR logo will be permanently installed on the field.

As discussed above, the entire field can not be constructed due to the construction limits of the two construction phases. A shortened field that can be used in the interim will be installed until the garage construction is completed. As stated above, the entire field surface will be ordered at one to insure color match. The field surface manufacturer is to provide written guarantee of the color match to the City, NYCEDC and NYCDPR. The Design-Builder shall identify a storage location of the field material to be installed as part of the Phase II construction, subject to the approval of NYCDPR.

- Grandstand: A 1000 seat grandstand will be constructed on the west side of the running track. The stands will be constructed of a galvanized steel superstructure with steel seats that will receive a powercoated painted finish. A color scheme for the bleachers will be prepared for approval by the NYCDPR. No seat numbers will be installed. Two options to install a roof structure will be prepared to cover one half the bleachers and all of the bleachers. The NYCDPR will review these details and choose which option they prefer.

- Comfort Station: A facility that will house restroom facilities will be constructed to the west side of the grandstand. The men's area will include four toilets, three urinals and four sinks. The women's areas will include eight toilets and four sinks. All fixtures will be manufactured of stainless steel. Both the men's and women's areas shall include a changing area, of appropriate size subject to NYCDPR approval, adjacent to the toilet areas. No lockers or showers facilities will be required. The facility will also include a storage/janitor's closet area and an electrical room. The facility will be constructed of the green brick, to match the Garage A exterior precast concrete brick spandrels, with a CMU backup block and a standing seam roof structure. The facility will also be fully heated and ventilated. All doors shall be painted hollow metal with locking hardware. Two drinking fountains and a misting station will be installed adjacent to the field. The sanitary line for the comfort station will be tied into the garage system below grade or to the existing sewer line. NYCDPR specifications for the Bronx Terminal Market Waterfront Park bathrooms will be provided to the Design-Builder for use in the design of the comfort station.

- Maintenance and Storage Facilities: An approximate 1,000 square foot storage area will be constructed under the grandstand. A drawing of same shall be provided to the Bronx Borough Commissioner for approval that will indicate the extent and appearance of the storage space. The facility will be constructed of the green brick, to match the Garage A exterior precast concrete brick spandrels, with CMU backup block and a roof structure to match the comfort station. The building will not be heated but will be ventilated. Ventilation will be in the form of thermostatically controlled fans and open air louvers. The interior of the building will be illuminated with industrial style light fixtures. All doors shall be painted hollow metal with

locking hardware. The balance of the area under the bleachers will be enclosed with a chain link fence with access gates.

- Handball Courts: Ten handball courts will be constructed of colored concrete on the western end of the facility. The courts will have three 16 foot high reinforced concrete walls constructed on the east ends of the courts. Line striping will be painted on top of the playing surface. The courts will be separated with an eight foot high black vinyl coated chain link fence. Three foot gates will be installed to access the various courts. 16 foot high fencing shall be provided on all sides of handball court area, in accordance with NYCDPR details and specifications. NYCDPR logo shall be included on all walls.

- Basketball Courts: Four 50 foot by 84 foot regulation size basketball courts will be constructed of colored concrete at the west and south sides of the facility. The courts will be surrounded by an eight foot high black vinyl coated chain link fence. Gates will be installed to access the courts. Permanent basketball goals will be installed at each end of the court. Backboards shall be comprised of clear, shatter-proof plexiglass. The line stripes delineating the court area will be painted on top of the playing surface. NYCDPR logo shall be included on the center court of all courts. Bleacher facilities will be incorporated into the viewing mound on the south end of the facility.

- Children's Play Area: A children's play area will be constructed at the northeast corner of the facility. The play area will be designed to accommodate approximately 80 children (5 to 12 years old). The area shall have appropriate playground equipment with the required safety surfacing. The playground area will be surrounded by a four foot high black vinyl coated chain link fence. Three foot gates at locations to be determined in the final design will be installed to access the playground.

- Pedestrian Sidewalks: The sidewalks that surround the various the various athletic facilities will be constructed of standard DOT approved cast-in-place concrete. Score lines will be installed to provide an architectural pattern in the sidewalk areas.

- Pedestrian Access: Pedestrians will be able to gain access at all times of the year at each of the entrances. These entrances will be a stairwell at the northeast corner near the 161st Street and Rupert Place intersection, a stairwell from Rupert Place located at the south end of the track, and a sidewalk from Macombs Dam Viaduct. Gates will be installed at each entrance so the facility can be closed. Two elevators will be installed at the northwest corner and two elevators at the northeast corner of the facility allowing access from the second level of the parking garage to the roof level park. All elevators and stairs will be installed under a separate contract.

- Fencing: As discussed in various above sections, different chain link layouts will be constructed at various locations of the facilities. Different options will be prepared for NYCDPR' approval to show the layout of fences throughout the facility, including details of mounting fencing on parapets and raised planters. Particular attention will be paid to minimize different heights of fences, double lines of fencing, and the installation of fencing on top of the precast concrete spandrels in planter areas. To the greatest degree possible, perimeter fencing shall be located at the outside edge of the garage. In addition, two entrance portals constructed of

copper or approved equivalent panels will be installed at the northeast and northwest pedestrian entrances.

- Emergency Vehicle Access: Access for an ambulance type vehicle will be accommodated from the Macombs Dam Viaduct entrance. A 12 foot wide gate will be installed at the southern side of the entrance ramp to provide access to a 12 foot wide lane that will encircle the outside of track. The design loading for this vehicle will be equivalent to H-15 truck loading, a vehicle similar to a utility box truck, which will be included in the lump sum contract. No access will be provided onto the track or field for any vehicles.

- Landscaping: Cast-in-place concrete planter beds with brick veneers, to match the green Garage A exterior precast concrete brick spandrels, will be constructed at various locations throughout the facility. PDC will design a plan that will incorporate a varied mixture of shrubs, groundcover and trees throughout the facility. All plantings shall be hearty and shall be appropriate for this type of facility. The plans shall also include an irrigation system for the landscaping. There are also landscaped areas in the form of raised mounds, including irrigation, and grass pavers that will be installed. All raised mounded areas will be underlain with foam in order to reduce the weight of the mounded areas. An irrigation system (including appropriate drainage) shall be included with all landscaping areas. In addition, all grass berms edges shall contain a sufficient amount of soil to make a seamless transition between the berms and the surrounding surface.

- Lighting: There will be various types of lighting that will be installed at the facility. The sports field lighting will be designed as shown in the RFP documents to illuminate the various sports venues at the facility. Four 120 foot poles and pile supported foundations will be constructed for the football/soccer field illumination. Shorter 50 foot poles will be installed and anchored on top of the precast deck for lighting the basketball and handball courts. Site lighting for pedestrian access will be installed throughout the facility. Landscape and accent lighting will also be installed at various locations. The lighting will be designed with emergency fixtures which will provide adequate light levels in case of a power outage. No emergency generator will be installed to support the park level facilities. The park will have a separate electrical service. The Design-Builder will specify the types of fixtures that it plans to install for approval by the City, NYCEDC and NYCDPR. It is envisioned that the various NYCDPR facilities that are being constructed around this park, i.e. Bronx Terminal Market Park, will utilize the same types of fixtures, which will be coordinated to provide uniformity.

- Site Furnishings: Site furnishings in the form of benches, trash receptacles, drinking fountains, bike racks, tables, chairs, flagpoles will be provided throughout the facility. The Design-Builder will provide a design for approval. It is envisioned that the various NYCDPR facilities that are being constructed around this park, i.e. Bronx Terminal Market Park, will utilize the same types of furnishings, which will be coordinated to provide uniformity.

- Signage: Appropriate access and informational signage will be installed throughout the facility. The details for this signage will be determined at a later date.

- PA System: A public address system will be installed at the soccer/football field area for the various events that will take place for track meets, and football and soccer games.

- Public Phones: Other than one phone to be installed in the storage area, no public phones will be installed at the facility.

- Security Cameras: Fixed lens security cameras will be installed at the locations specified in the RFP documents. There will be no 24/7 monitoring of the cameras and no Central Monitoring Station service will be utilized for this security system. All cameras will be connected to DVR's, which will be located in the Facility Office of Garage A.

- Plumbing: A separate water and sanitary service will be installed for the rooftop park. In addition to the irrigation system mentioned above in the landscaping section and the fixtures in the comfort station, hose bibs will be installed at convenient locations around the facility. The fire standpipe from the parking garage levels below will be extended to the roof level.

- Roof Loading Requirements: The live load requirements will be accordance with the RFP documents with the exception of the emergency vehicle loading as explained above. The dead load requirements will be as determined by the facility that will be installed at the associated locations. The Design-Builder shall provide trees at locations shown on the conceptual plan prepared by Thomas Balsley Associates and shall submit a site plan to NYCDPR for review and approval for the final locations of trees, prior to final design.

- Park Elevation: The finished floor elevation of the park shall approximately match the existing elevation of the Macomb's Dam Viaduct at the location of the vehicular ramp on the north side of the garage.

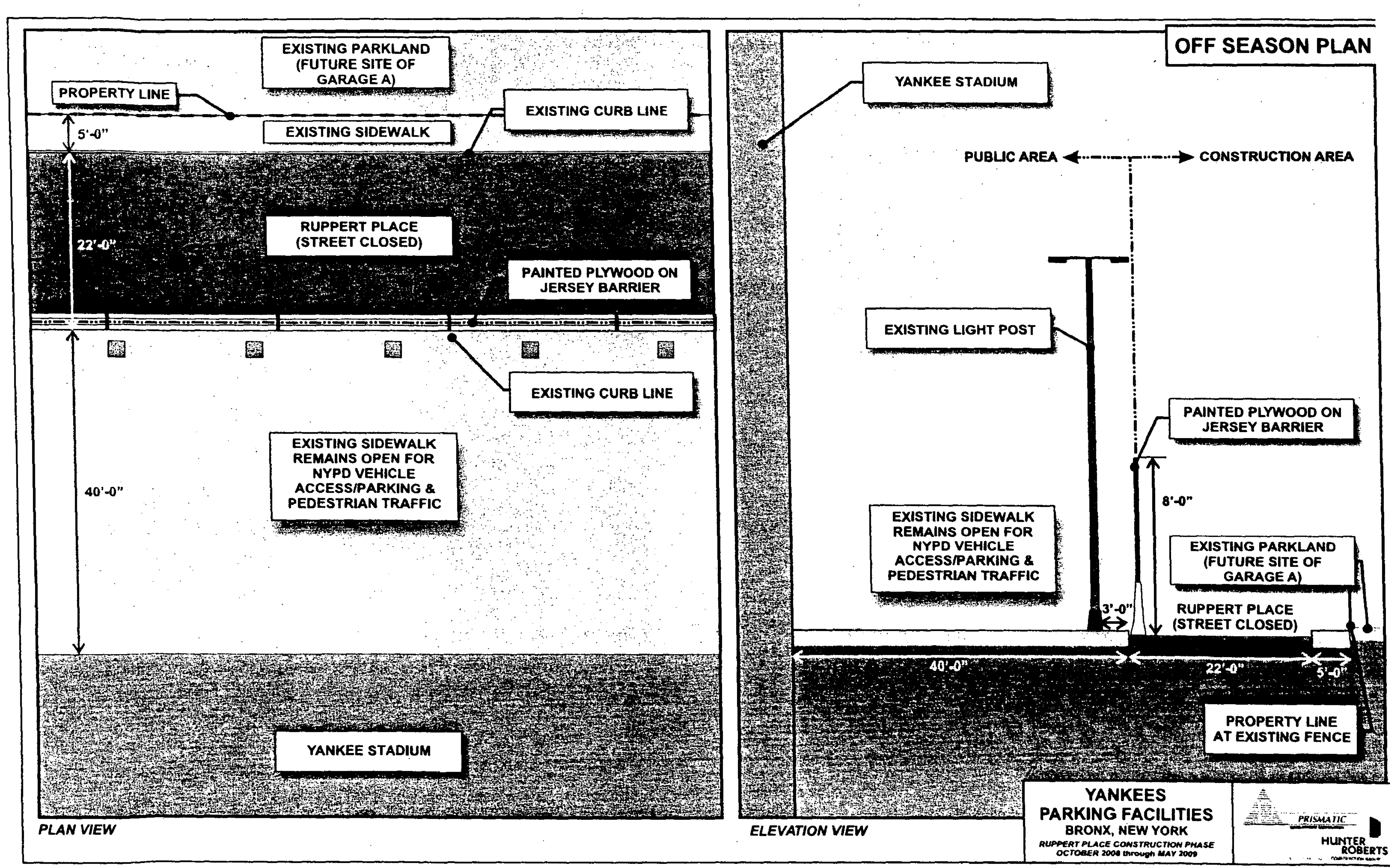
- Subcontractors: All subcontractors, suppliers and vendors for materials and work the will be performed at the park shall be purchased in accordance with the terms and conditions outlined in the Funding Agreement.

- Approval Process: The City, NYCEDC and NYCDPR will be kept abreast in the form of correspondence, design submittals, meetings, etc. as the design progresses. All shop drawings and submittals by the subcontractors and suppliers will be reviewed and approved by the Design-Builder. An approved copy of the shop drawings will be submitted to the City, NYCEDC and NYCDPR for their records.

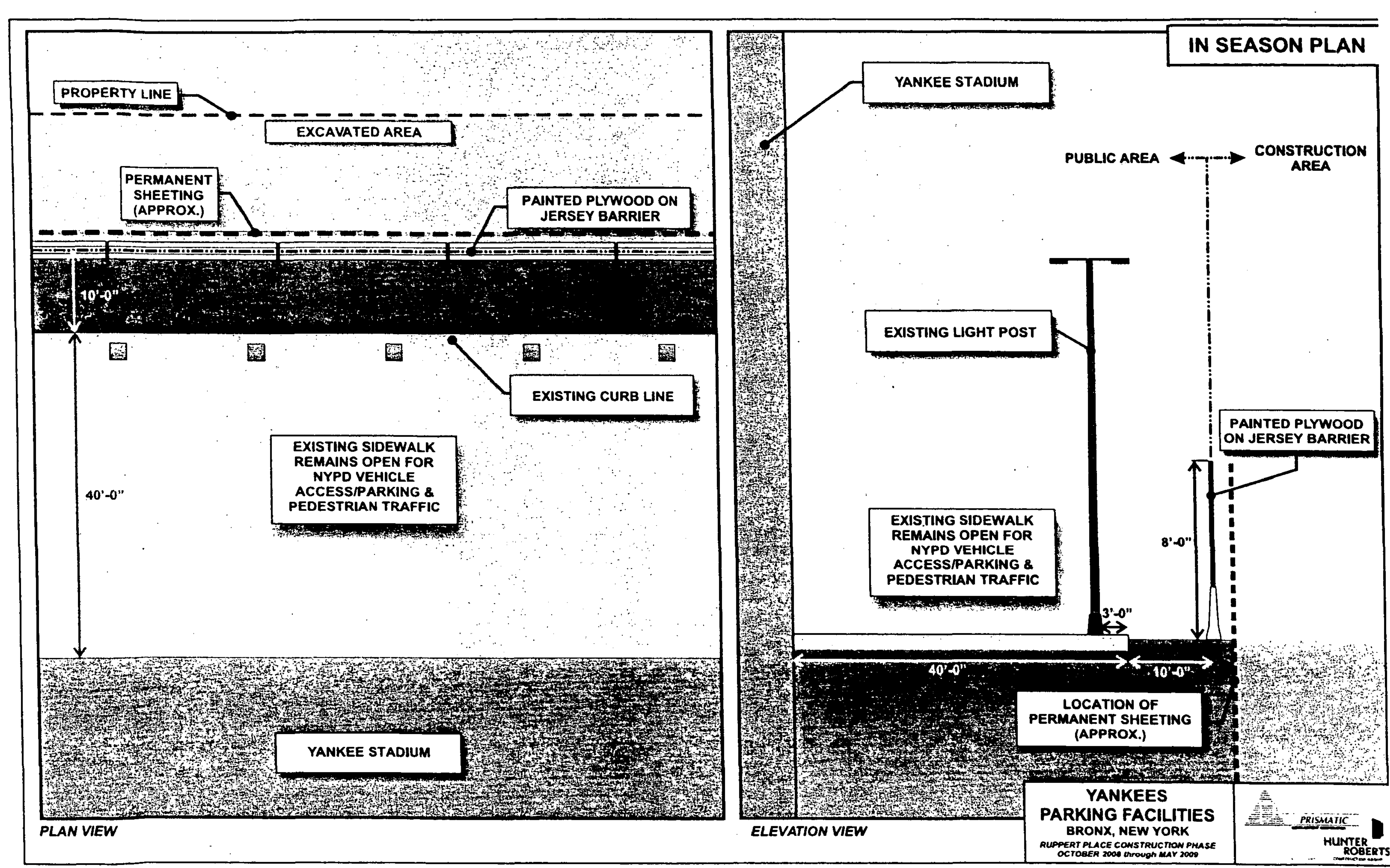
EXHIBIT L

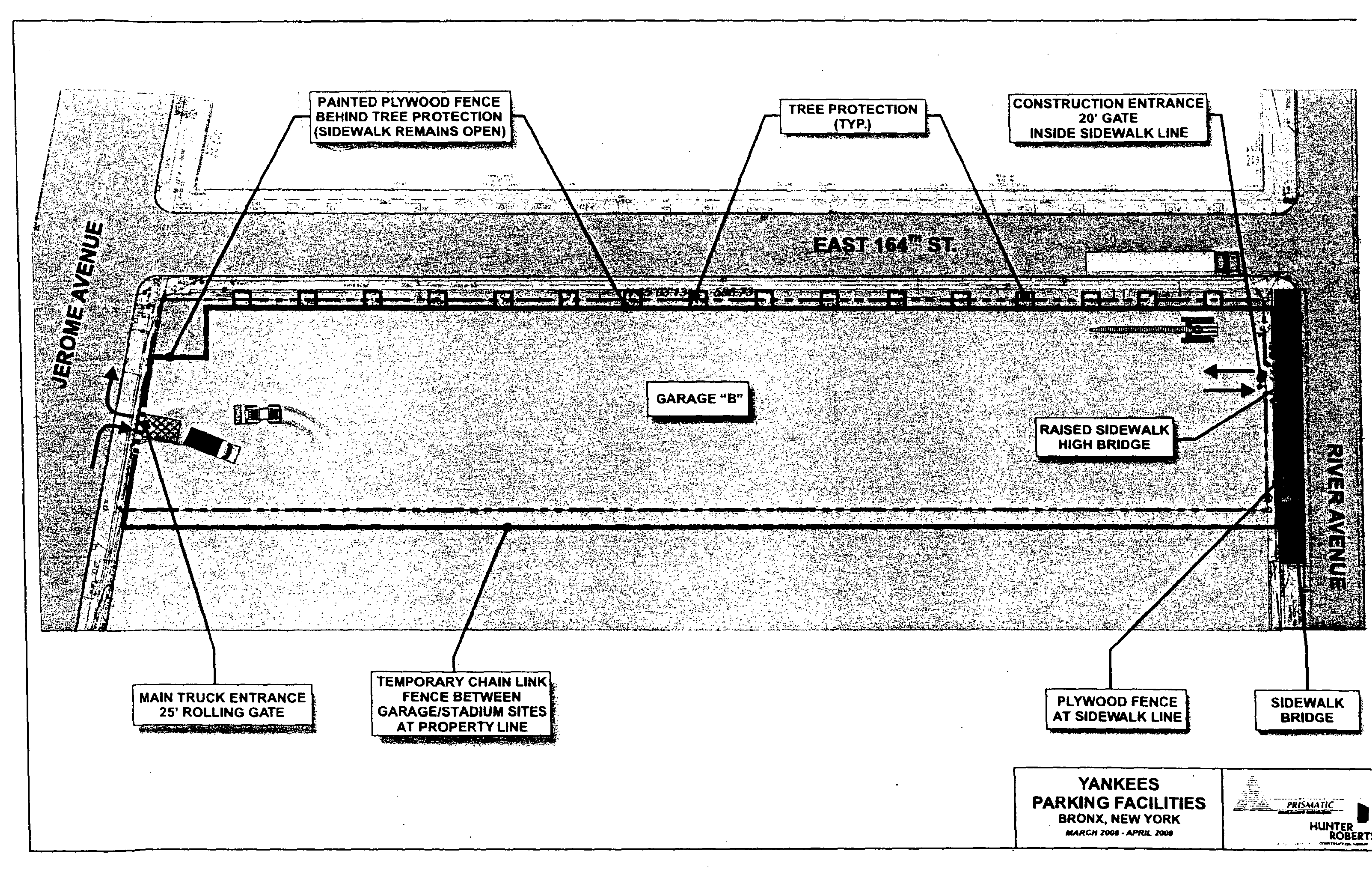
LOGISTICS PLAN

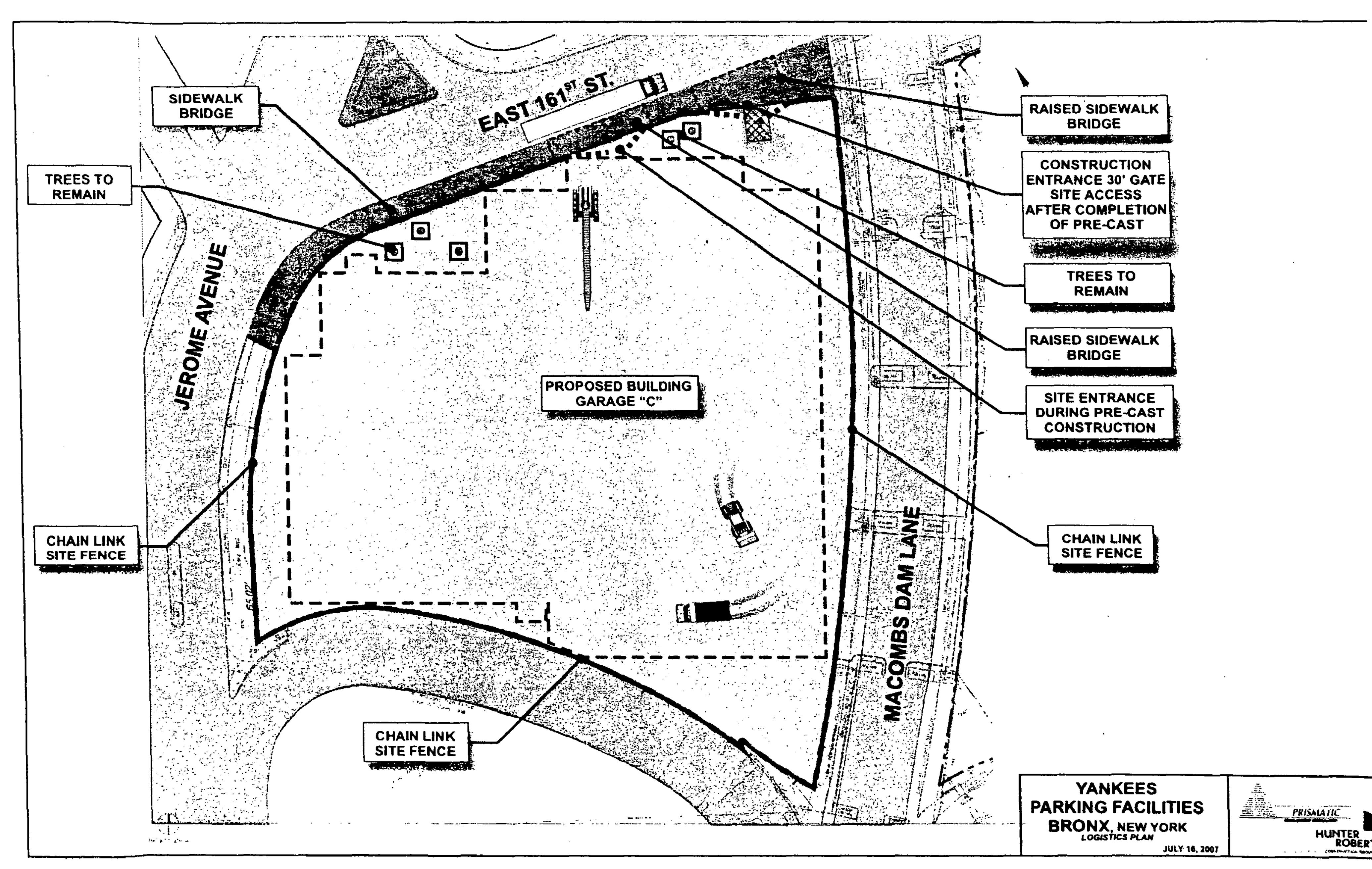
(on pages following)

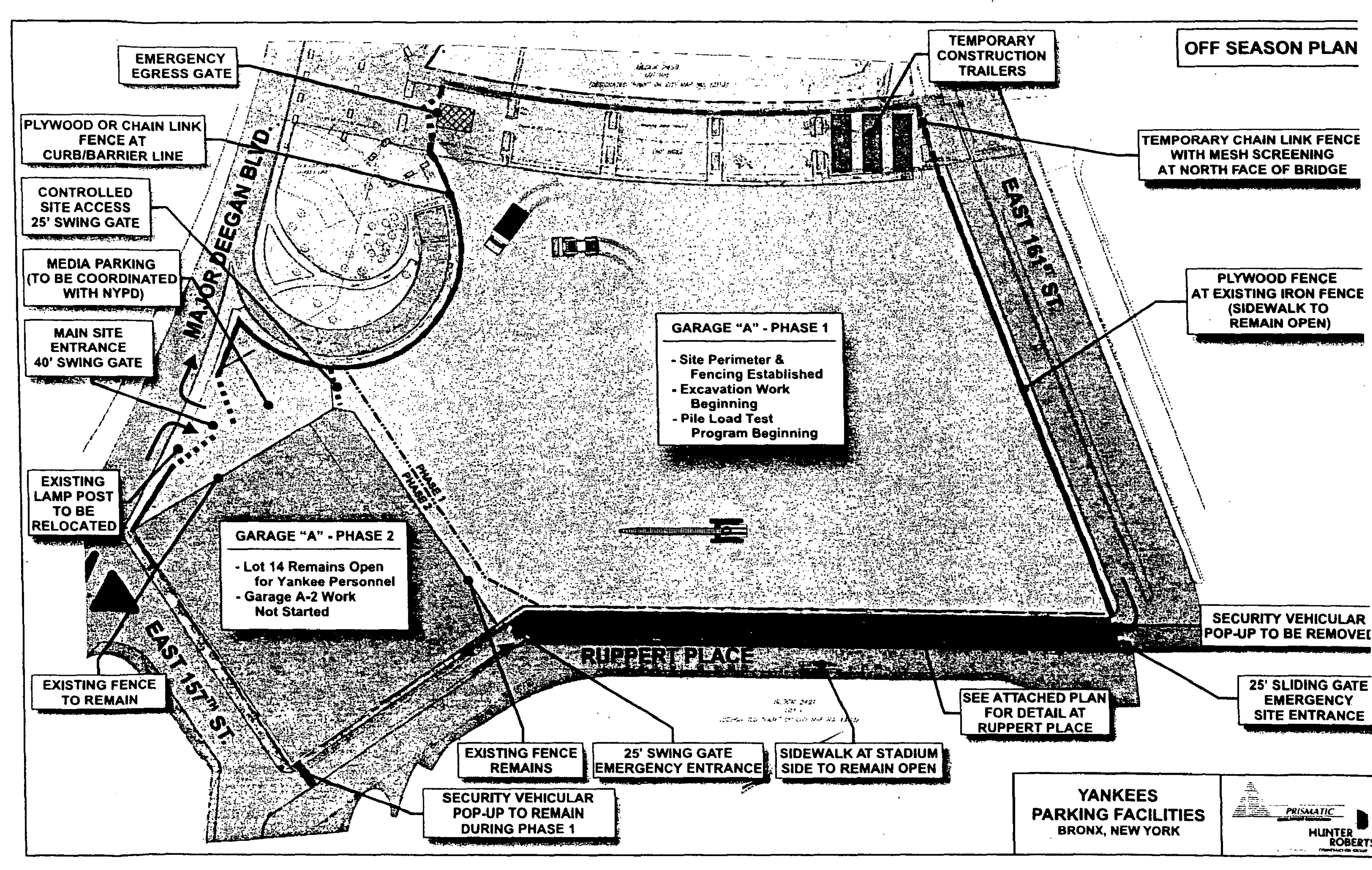


OFF SEASON PLAN
EXISTING PARKLAND (FUTURE SITE OF GARAGE A)
PROPERTY LINE
EXISTING CURB LINE
5'-0"
EXISTING SIDEWALK
22'-0"
RUPPERT PLACE (STREET CLOSED)
PAINTED PLYWOOD ON JERSEY BARRIER
EXISTING CURB LINE
EXISTING SIDEWALK REMAINS OPEN FOR NYPD VEHICLE ACCESS/PARKING & PEDESTRIAN TRAFFIC
40'-0"
YANKEE STADIUM
PLAN VIEW
YANKEE STADIUM
PUBLIC AREA
CONSTRUCTION AREA
EXISTING LIGHT POST
PAINTED PLYWOOD ON JERSEY BARRIER
8'-0"
EXISTING SIDEWALK REMAINS OPEN FOR NYPD VEHICLE ACCESS/PARKING & PEDESTRIAN TRAFFIC
EXISTING PARKLAND (FUTURE SITE OF GARAGE A)
3'-0"
RUPPERT PLACE (STREET CLOSED)
40'-0"
22'-0"
5'-0"
PROPERTY LINE AT EXISTING FENCE
ELEVATION VIEW
YANKEES PARKING FACILITIES
BRONX, NEW YORK
RUPPERT PLACE CONSTRUCTION PHASE
OCTOBER 2008 through MAY 2009
PRISMATIC
HUNTER ROBERTS

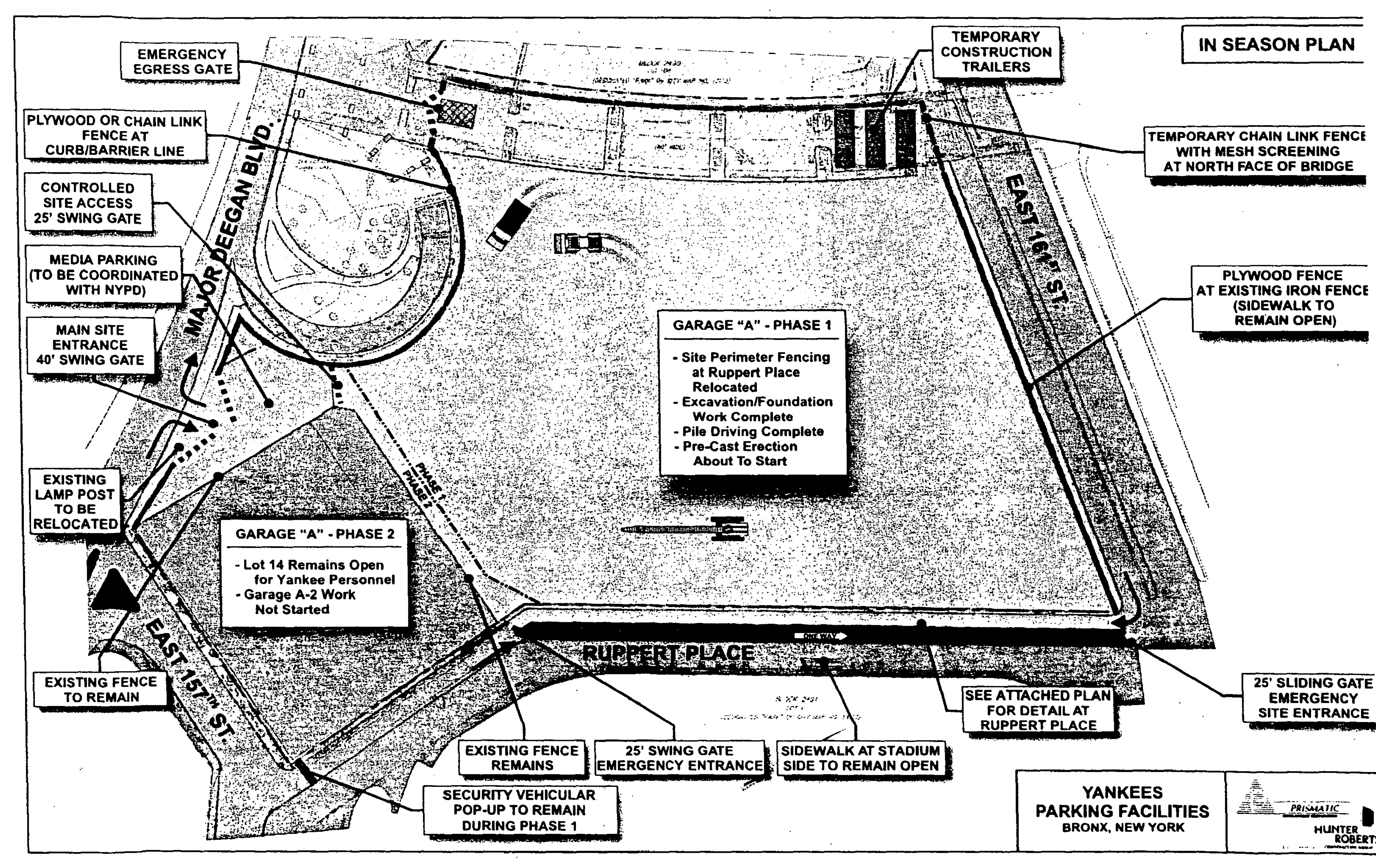

IN SEASON PLAN
PROPERTY LINE
EXCAVATED AREA
PERMANENT SHEETING (APPROX.)
PAINTED PLYWOOD ON JERSEY BARRIER
10'-0"
EXISTING CURB LINE
EXISTING SIDEWALK REMAINS OPEN FOR NYPD VEHICLE ACCESS/PARKING & PEDESTRIAN TRAFFIC
40'-0"
YANKEE STADIUM
PLAN VIEW
YANKEE STADIUM
PUBLIC AREA
CONSTRUCTION AREA
EXISTING LIGHT POST
PAINTED PLYWOOD ON JERSEY BARRIER
8'-0"
EXISTING SIDEWALK REMAINS OPEN FOR NYPD VEHICLE ACCESS/PARKING & PEDESTRIAN TRAFFIC
3'-0"
40'-0"
10'-0"
LOCATION OF PERMANENT SHEETING (APPROX.)
ELEVATION VIEW
YANKEES PARKING FACILITIES
BRONX, NEW YORK
RUPPERT PLACE CONSTRUCTION PHASE
OCTOBER 2008 through MAY 2009
PRISMATIC
HUNTER ROBERTS


PAINTED PLYWOOD FENCE
BEHIND TREE PROTECTION
(SIDEWALK REMAINS OPEN)
TREE PROTECTION
(TYP.)
CONSTRUCTION ENTRANCE
20' GATE
INSIDE SIDEWALK LINE
EAST 164TH ST.
JEROME AVENUE
GARAGE "B"
RAISED SIDEWALK
HIGH BRIDGE
RIVER AVENUE
MAIN TRUCK ENTRANCE
25' ROLLING GATE
TEMPORARY CHAIN LINK
FENCE BETWEEN
GARAGE/STADIUM SITES
AT PROPERTY LINE
PLYWOOD FENCE
AT SIDEWALK LINE
SIDEWALK
BRIDGE
YANKEES
PARKING FACILITIES
BRONX, NEW YORK
MARCH 2008 - APRIL 2009
PRISMATIC
HUNTER
ROBERTS


SIDEWALK BRIDGE
TREES TO REMAIN
EAST 161ST ST.
JEROME AVENUE
RAISED SIDEWALK BRIDGE
CONSTRUCTION ENTRANCE 30' GATE SITE ACCESS AFTER COMPLETION OF PRE-CAST
TREES TO REMAIN
RAISED SIDEWALK BRIDGE
SITE ENTRANCE DURING PRE-CAST CONSTRUCTION
PROPOSED BUILDING GARAGE "C"
CHAIN LINK SITE FENCE
CHAIN LINK SITE FENCE
CHAIN LINK SITE FENCE
MACOMBS DAM LANE
YANKEES PARKING FACILITIES
BRONX, NEW YORK
LOGISTICS PLAN
JULY 16, 2007
PRISMATIC
HUNTER ROBERTS



OFF SEASON PLAN
EMERGENCY EGRESS GATE
TEMPORARY CONSTRUCTION TRAILERS
PLYWOOD OR CHAIN LINK FENCE AT CURB/BARRIER LINE
TEMPORARY CHAIN LINK FENCE WITH MESH SCREENING AT NORTH FACE OF BRIDGE
CONTROLLED SITE ACCESS 25' SWING GATE
MAJOR DEEGAN BLVD.
EAST 161ST ST.
MEDIA PARKING (TO BE COORDINATED WITH NYPD)
PLYWOOD FENCE AT EXISTING IRON FENCE (SIDEWALK TO REMAIN OPEN)
MAIN SITE ENTRANCE 40' SWING GATE
GARAGE "A" - PHASE 1
- Site Perimeter & Fencing Established
- Excavation Work Beginning
- Pile Load Test Program Beginning
PHASE 1
PHASE 2
EXISTING LAMP POST TO BE RELOCATED
GARAGE "A" - PHASE 2
- Lot 14 Remains Open for Yankee Personnel
- Garage A-2 Work Not Started
SECURITY VEHICULAR POP-UP TO BE REMOVED
RUPPERT PLACE
EAST 157TH ST.
EXISTING FENCE TO REMAIN
25' SLIDING GATE EMERGENCY SITE ENTRANCE
SEE ATTACHED PLAN FOR DETAIL AT RUPPERT PLACE
EXISTING FENCE REMAINS
25' SWING GATE EMERGENCY ENTRANCE
SIDEWALK AT STADIUM SIDE TO REMAIN OPEN
SECURITY VEHICULAR POP-UP TO REMAIN DURING PHASE 1
YANKEES PARKING FACILITIES
BRONX, NEW YORK
PRISMATIC
HUNTER ROBERTS


IN SEASON PLAN
EMERGENCY EGRESS GATE
TEMPORARY CONSTRUCTION TRAILERS
PLYWOOD OR CHAIN LINK FENCE AT CURB/BARRIER LINE
TEMPORARY CHAIN LINK FENCE WITH MESH SCREENING AT NORTH FACE OF BRIDGE
CONTROLLED SITE ACCESS 25' SWING GATE
MEDIA PARKING (TO BE COORDINATED WITH NYPD)
MAJOR DEEGAN BLVD.
EAST 161ST ST.
PLYWOOD FENCE AT EXISTING IRON FENCE (SIDEWALK TO REMAIN OPEN)
MAIN SITE ENTRANCE 40' SWING GATE
GARAGE "A" - PHASE 1
- Site Perimeter Fencing at Ruppert Place Relocated
- Excavation/Foundation Work Complete
- Pile Driving Complete
- Pre-Cast Erection About To Start
PHASE 1
PHASE 2
EXISTING LAMP POST TO BE RELOCATED
GARAGE "A" - PHASE 2
- Lot 14 Remains Open for Yankee Personnel
- Garage A-2 Work Not Started
ONE WAY
RUPPERT PLACE
EAST 157TH ST.
EXISTING FENCE TO REMAIN
SEE ATTACHED PLAN FOR DETAIL AT RUPPERT PLACE
25' SLIDING GATE EMERGENCY SITE ENTRANCE
EXISTING FENCE REMAINS
25' SWING GATE EMERGENCY ENTRANCE
SIDEWALK AT STADIUM SIDE TO REMAIN OPEN
SECURITY VEHICULAR POP-UP TO REMAIN DURING PHASE 1
YANKEES PARKING FACILITIES
BRONX, NEW YORK
PRISMATIC
HUNTER ROBERTS

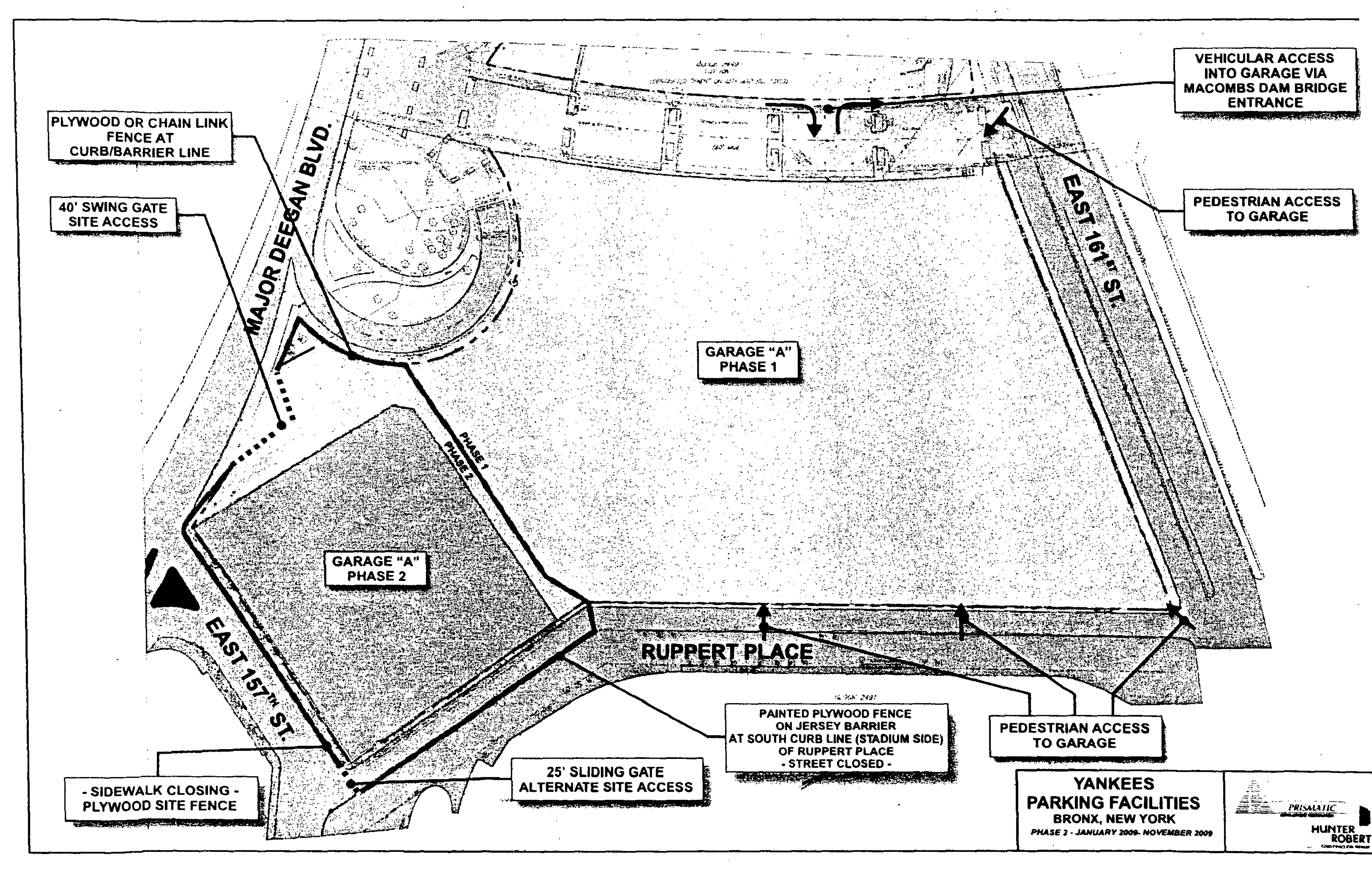
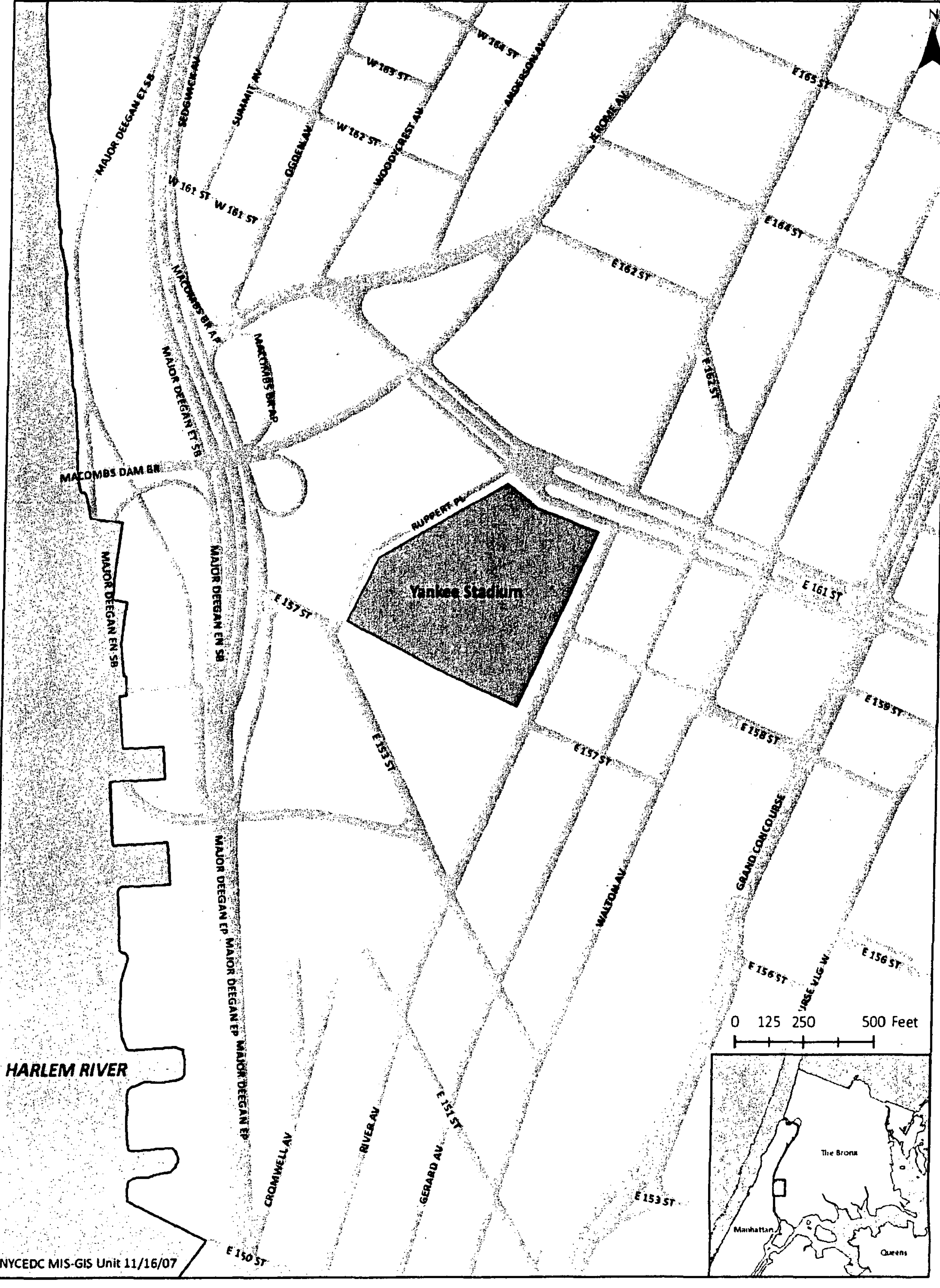

VEHICULAR ACCESS INTO GARAGE VIA MACOMBS DAM BRIDGE ENTRANCE
PLYWOOD OR CHAIN LINK FENCE AT CURB/BARRIER LINE
40' SWING GATE SITE ACCESS
MAJOR DEEGAN BLVD.
EAST 161ST ST.
PEDESTRIAN ACCESS TO GARAGE
GARAGE "A" PHASE 1
PHASE 1
PHASE 2
GARAGE "A" PHASE 2
EAST 157TH ST.
RUPPERT PLACE
PAINTED PLYWOOD FENCE ON JERSEY BARRIER AT SOUTH CURB LINE (STADIUM SIDE) OF RUPPERT PLACE - STREET CLOSED -
PEDESTRIAN ACCESS TO GARAGE
- SIDEWALK CLOSING - PLYWOOD SITE FENCE
25' SLIDING GATE ALTERNATE SITE ACCESS
YANKEES PARKING FACILITIES
BRONX, NEW YORK
PHASE 2 - JANUARY 2009- NOVEMBER 2009
PRISMATIC
HUNTER ROBERTS

EXHIBIT M

EXISTING STADIUM SITE

(on page following)



W 164 ST
W 163 ST
W 162 ST
W 161 ST
E 165 ST
E 164 ST
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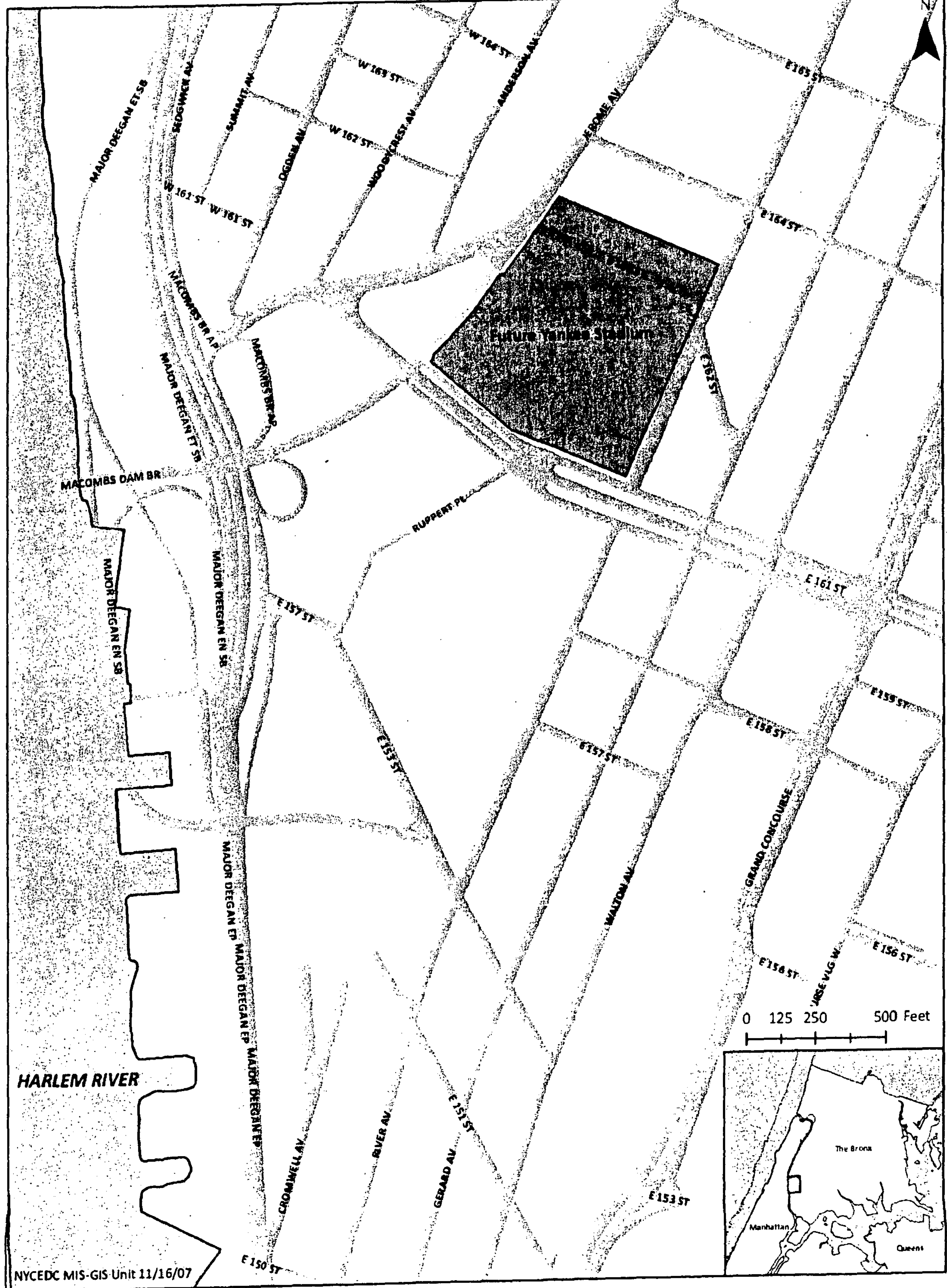
E 158 ST
E 157 ST
E 156 ST
E 153 ST
E 151 ST
E 150 ST
MAJOR DEEGAN ET SB
SEDGWICK AV
SUMMIT AV
OGDEN AV
WOODYCREST AV
ANDERSON AV
JEROME AV
MACOMBS BR AP
MACOMBS DAM BR
MAJOR DEEGAN EN SB
MAJOR DEEGAN EP
RUPPERT PL
Yankee Stadium
WALTON AV
GRAND CONCOURSE
CROMWELL AV
RIVER AV
GERARD AV
HARLEM RIVER
0 125 250 500 Feet
N
The Bronx
Manhattan
Queens
NYCEDC MIS-GIS Unit 11/16/07

EXHIBIT N

NEW STADIUM SITE

(on page following)



Future Yankee Stadium
HARLEM RIVER
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ANDERSON AV
JEROME AV
OGDEN AV
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GRAND CONCOURSE
CROMWELL AV
RIVER AV
GERARD AV
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The Bronx
Manhattan
Queens
NYCEDC MIS-GIS Unit 11/16/07

EXHIBIT O

TENANT'S ARTICLES OF ORGANIZATION

(on page following)

State of New York } ss:
Department of State }

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **March 9, 2007**

Special Deputy Secretary of State

DOS-1266 (Rev. 11/05)

E-12

0703010006638

ARTICLES OF ORGANIZATION
OF
BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC

Under Section 203 of the Limited Liability Law

The Undersigned, being authorized to execute and file these Articles, hereby certifies that:

FIRST: The name of the limited liability company (herein referred to as the "Company") is:

BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC

SECOND: The county within New York State in which the office of the Company is to be located is Columbia.

THIRD: The Company does not have a specific date of dissolution in addition to the events of dissolution set forth by law.

FOURTH: The Secretary of State is designated as agent of the Company upon whom process against the Company may be served. The Post Office address to which the Secretary of State shall mail a copy of any process against the Company is:

18 Aitken Avenue
Hudson, NY 12534

FIFTH: The Company is to be managed by its members.

SIXTH: (a) The sole Member of BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC (the "Company") is a Pennsylvania not-for-profit corporation, Community Initiatives Development Corporation (the "Corporation"), which filed its Articles of Incorporation with the Commonwealth on September 24, 1992 and was approved on October 26, 1992. The Corporation was formed exclusively for charitable, scientific and educational purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code").

(b) The Company was formed by the Corporation as an entity disregarded for income tax purposes. The purposes of the Company shall be the same purposes as the Corporation and the Company will not carry on any activities not permitted to be carried on by the Corporation;

(c) No part of the net earnings of the Company shall inure to the benefit of any member, trustee, officer, director of the Company, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Company), and no member, trustee, officer of the Company or any private

individual shall be entitled to share in the distribution of any of the Company's assets on dissolution of the Company;

(d) No substantial part of the activities of the Company shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by IRC Section 501(h)), and the Company shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office; and

(e) Upon dissolution, all of the remaining assets and property of the Company shall, after payment of necessary expenses thereof, be distributed to such organizations as shall qualify under IRC Section 501(c)(3).

IN WITNESS WHEREOF, these Articles of Organization have been subscribed this 27th day of February, 2007, by the undersigned who affirms that the statements made herein are true under penalty of perjury.

Heather M. Niland, Organizer

070301000038

ARTICLES OF ORGANIZATION
OF
BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC

Under Section 203 of the Limited Liability Law

Filer

HARRIS BEACH LLP
ATTORNEYS AT LAW
ONE PARK PLACE, 4TH FLOOR
SYRACUSE, NEW YORK 13202

E-12

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STATE OF NEW YORK
DEPARTMENT OF STATE

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CERTIFICATE OF AMENDMENT
OF THE
ARTICLES OF ORGANIZATION
OF
BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC

Under Section 211 of the Limited Liability Company Law

FIRST: The name of the limited liability company is BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC.

SECOND: The date of filing of the articles of organization is: March 1, 2007.

THIRD: The amendment effected by this certificate of amendment is as follows:

Paragraph "First" of the Articles of Organization relating to the name of the Company is hereby amended to read as follows:

"**FIRST:** The name of the Company is BRONX PARKING DEVELOPMENT COMPANY, LLC."

Heather M. Niland, Authorized Person

State of New York } ss:
Department of State }

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **June 18, 2007**

Deputy Secretary of State for Business and Licensing Services

DOS-1266 (Rev. 03/07)

070608000899

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF ORGANIZATION
OF
BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC

Under Section 211 of the Limited Liability Company Law

Filed by:

HARRIS BEACH PLLC
ATTORNEYS AT LAW
ONE PARK PLACE, 4TH FLOOR
300 SOUTH STATE STREET
SYRACUSE, N.Y. 13202

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STATE OF NEW YORK
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State of New York }
Department of State } *ss:*

I hereby certify that the annexed copy has been compared with the original document in the custody of the Secretary of State and that the same is a true copy of said original.

Witness my hand and seal of the Department of State on **March 20, 2007**

Special Deputy Secretary of State

DOS-1266 (Rev. 11/05)

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070313000 708

CERTIFICATE OF AMENDMENT
OF THE
ARTICLES OF ORGANIZATION
OF
BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC

Under Section 211 of the Limited Liability Company Law

FIRST: The name of the limited liability company is BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC

SECOND: The date of filing of the articles of organization is: March 1, 20007

THIRD: The amendment effected by this certificate of amendment is as follows:

Paragraph "Fifth" of the Articles of Organization relating to the management of the Company is hereby amended to read as follows:

"FIFTH: The Company shall be managed by a Board of Managers."

Heather M. Niland, Authorized Person

970313000118

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF ORGANIZATION
OF
BRONX COMMUNITY INITIATIVES DEVELOPMENT COMPANY, LLC

Under Section 211 of the Limited Liability Company Law

Filed by:

HARRIS BEACH
ATTORNEYS AT LAW
ONE PARK PLACE, 4TH FLOOR
SYRACUSE, NEW YORK 13202

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STATE OF NEW YORK
DEPARTMENT OF STATE
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EXHIBIT P

TENANT'S OPERATING AGREEMENT

(on pages following)

OPERATING AGREEMENT

This Agreement, dated so as to be effective as of March 1, 2007, is executed by its sole member (the "Member"), who desires to form a limited liability company known as BRONX PARKING DEVELOPMENT COMPANY, LLC pursuant to the New York Limited Liability Company Law.

NOW, THEREFORE, it is agreed as follows:

ARTICLE I
Definitions

1.1 Definitions. In this Agreement, the following terms shall have the meanings set forth below:

(a) "Articles of Organization" shall mean the Articles of Organization of the Company filed or to be filed with the New York Department of State, as they may from time to time be amended.

(b) "Company" shall refer to BRONX PARKING DEVELOPMENT COMPANY, LLC.

(c) "Fiscal Year" shall mean the fiscal year of the Company, which shall be the year ending December 31.

(d) "Member" shall mean Community Initiatives Development Corporation, a not-for profit corporation formed under the laws of the Commonwealth of Pennsylvania.

(e) "New York Act" shall mean the New York Limited Liability Company Act.

(f) "Person" shall mean any corporation, governmental authority, limited liability company, partnership, trust, unincorporated association or other entity.

ARTICLE II
Organization

2.1 Formation. One or more Persons has acted or will act as an organizer or organizers to form a limited liability company by preparing, executing and filing with the New York Department of State the Articles of Organization pursuant to the New York Act.

2.2 Name. The name of the Company is BRONX PARKING DEVELOPMENT COMPANY, LLC.

2.3 Term. The Company shall continue in existence following the date of filing of the Articles of Organization with the New York Department of State, until the Company is dissolved pursuant to this Agreement or the New York Act.

2.4 Purposes. The Company is formed as a disregarded, single purpose, single asset entity by its Member respecting its leasing, construction, renovation, maintenance and operation of parking lots and parking garages and facilities related thereto located or to be located in the vicinity of Yankee Stadium in the Bronx, New York (the "Parking Facilities" or the "Project"), in order to relieve the burdens of local government in the Bronx, New York, and to conduct business for any lawful purpose as allowed under the New York Act. The Company will benefit from approximately $225,000,000 civic facility revenue bond transaction ("Bond Transaction"); a funding agreement providing up to approximately $70,000,000 from New York State Urban Development Corporation, d/b/a Empire State Development Corporation for the construction of the Parking Facilities and related soft costs and providing up to approximately $32,000,000 in City capital budget funds to construct a City park on the roof of a parking garage to be constructed in connection with the Project, all in connection with the acquisition, construction, renovation, improving, equipping and furnishing of the Project.

ARTICLE III
Member

3.1 Names and Addresses. The name and address of the sole Member is as set forth in Exhibit A to this Agreement.

3.2 Additional Members. No other Person may be admitted as a member after the date of this Agreement.

3.3 Limitation of Liability. The Member's liability shall be limited to the greatest extent permitted under the New York Act. The Member shall not be liable for any indebtedness, liability or obligation of the Company.

ARTICLE IV
Management

4.1 Management. The Company shall be managed by a Board of Managers, whose membership shall be comprised of the persons listed on annexed Exhibit B. The Member agrees that each member of the Board of Managers shall be that person designated by the entity listed on annexed Exhibit B.

4.2 Powers.

(a) Except as otherwise expressly provided herein, the Board of Managers are hereby authorized and empowered, on behalf of and in the name of the Company, to carry out and implement, directly or through such agents as the Board of Managers may appoint, any and all of the objectives, purposes and powers of the Company set forth herein and to do such other acts as the Board of Managers may deem necessary or advisable, or as may be incidental to or necessary for the conduct of the business of the Company. Without limiting the foregoing, the Board of Managers shall have the sole and exclusive right, power and authority to operate and manage the business of the Company as the Board of Managers shall deem to be in the best interests of the Company. All determinations and judgments made by the Board of Managers in good faith and in accordance with the terms of the Agreement shall be conclusive and binding upon the Member.

(b) The Member shall have only the rights and powers specifically granted to them in this Agreement and by the New York Act, and shall not have any right to, and shall not, participate in, or interfere in any manner with, the management, conduct or control of the Company's business or act for or bind the Company in any manner whatsoever; PROVIDED, THAT the Member may intercede and veto any action taken or proposed to be taken by the Board of Managers which shall or could violate the tax exempt status or any requirement related thereto respecting the Member or the Company.

4.3 Resignation and Removal.

(a) Upon the resignation of any member of the Board of Managers, a successor member may be selected by the entity listed on annexed Exhibit B which originally designated the resigning member. In the event a successor member is not designated within sixty (60) days of such resignation in accordance with the foregoing, a majority of the remaining members of the Board of Managers shall name and appoint a successor member. Upon the resignation of a member of the Board of Managers, such member shall cease serve as a member of the Board of Managers as of the date his or her successor is appointed.

(b) Any member of the Board of Managers may be removed by the affirmative unanimous vote of the members of the Board of Managers, whether with or without cause and without regard to the vote of the subject member of the Board of Managers. Upon such removal, a successor member may be selected by the entity listed on annexed Exhibit B which originally designated the removed member. In the event a successor member is not designated within sixty (60) days of such removal in accordance with the foregoing, a majority of the remaining members of the Board of Managers shall name and appoint a successor member to the Board of Managers. Upon the removal of a member of the Board of Managers, such member shall cease serve as a member of the Board of Managers immediately upon removal.

4.4 Meetings and Manner of Voting by the Board of Managers.

(a) Meetings of the Board of Managers may be called at any time by any one member of the Board of Managers, and shall be held at least annually. Meetings of the Board of Managers shall be held at the offices of New York City Economic Development Corporation or at any other place within the City of New York designated by the Person calling the meeting. Not less than five (5) nor more than sixty (60) days before each meeting, the Person calling the meeting shall give written notice of the meeting to each member of the Board of Managers. The notice shall state the place, date, hour and purpose of the meeting. Notwithstanding the foregoing provisions, each member of the Board of Managers who is entitled to notice may waive notice by executing a waiver of notice which is filed with the records of Board of Manager's meetings, or is present at the meeting in person or by proxy without objecting to the lack of notice.

(b) Unless this Agreement provides otherwise, at any meeting of Board of Managers, the presence in person or by proxy of at least four (4) members of the Board of Managers shall constitute a quorum. Any member of the Board of Managers may vote either in person or by written proxy signed by such member or by such member's duly authorized attorney in fact.

(c) Except as otherwise provided in this Agreement, the affirmative vote of a majority of the members of the Board of Managers, a quorum being present, shall be required to approve any matter coming before the Board of Managers; PROVIDED, THAT such affirmative vote shall require the vote of the designee of New York City Department of Parks and Recreation ("City Parks") on all matters before the Board of Managers.

(d) In lieu of holding a meeting, the members of the Board of Managers may vote or otherwise take action by a written instrument indicating the consent of the members of the Board of Managers as would be required to take action under this Operating Agreement. No written consent shall be effective to take such action unless within sixty (60) days of the earliest dated consent delivered in accordance with law, signed consents sufficient to take such action have been likewise delivered. If such consent is not unanimous, prompt notice shall be given to those members of the Board of Managers who have not consented in writing but who would have been entitled to vote thereon had such action been taken at a meeting.

4.5 Personal Service. No member of the Board of Managers shall be required to perform services for or to the Company solely by virtue of being a member of the Board of Managers. Unless approved by the Board of Managers, no member of the Board of Managers shall be entitled to compensation for services performed for the Company.

4.6 Liability and Indemnification.

(a) No member of the Board of Managers shall be liable, responsible or accountable, in damages or otherwise, to any other member of the Board of Managers or to the

Company for any act performed by such member with respect to Company matters, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

(b) The Company shall indemnify each member of the Board of Managers for any act performed by such member with respect to Company matters, except for fraud, bad faith, gross negligence, or an intentional breach of this Agreement.

ARTICLE V
Charitable Provisions

5.1 Charitable Provisions. The sole Member of Company is Community Initiatives Development Corporation, a Pennsylvania not-for-profit corporation formed exclusively for charitable purposes within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986 (the "Code") and is exempt from income taxation thereunder. The Company was formed by its Member as an entity disregarded for income tax purposes. The Company was formed to lessen the burdens of government for the purposes set forth in Section 2.4 hereof consistent with the charitable purposes of its sole Member, and as such the Company will not carry on any activities not permitted to be carried on by its sole Member. In this regard, the Company shall operate so that:

(a) No part of the net earnings of the Company shall inure to the benefit of any member, manager, trustee, officer or director of the Company, or any private individual (except that reasonable compensation may be paid for services rendered to or for the Company), and no member, manager, trustee, officer or director of the Company or any private individual shall be entitled to share in the distribution of any of the Company's assets on dissolution of the Company;

(b) No substantial part of the activities of the Company shall be carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided by IRC Section 501(h)), and the Company shall not participate in, or intervene in (including the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office; and

(c) Upon dissolution, all of the remaining assets and property of the Company shall, after payment of necessary expenses thereof, be distributed to such organizations as shall qualify under IRC Section 501(c)(3) in accordance with Article VII below.

ARTICLE VI
Taxes and Accounting

6.1 Tax Returns. The Company shall cause to be prepared and filed all its necessary federal and state income tax returns.

6.2 Fiscal Year. The Company adopts the calendar year as its Fiscal Year.

6.3 Tax Matters Partners. The Company hereby designates William Loewenstein as its "tax matters partner" pursuant to Section 6231(a)(7) of the Code.

6.4 Books and Records. The Company shall keep books and records of accounts and minutes of all meetings of the Board of Managers. Each member of the Board of Managers may inspect during ordinary business hours and at the principal place of business of the Company the Articles of Organization, the Operating Agreement, the minutes of any meeting of the Board of Managers, the financial statements and tax returns of the Company.

ARTICLE VII
Dissolution

7.1 Dissolution. The Company shall be dissolved and its affairs shall be wound up upon the first to occur of the following:

(a) The latest date on which the Company is to dissolve, if any, as set forth in the Articles of Organization; or

(b) The vote or written consent of the Board of Managers.

7.2 Winding Up. Upon the dissolution of the Company, the Board of Managers shall distribute any remaining assets of the Company as follows:

(a) To creditors, in satisfaction of liabilities of the Company, whether by payment or by establishment of adequate reserves;

(b) All of the remaining assets and property of the Company shall, after payment of necessary expenses thereof, be distributed to such organizations as shall qualify under IRC Section 501(c)(3).

7.3 Articles of Dissolution. Within ninety (90) days following the dissolution and the winding up of the Company, articles of dissolution shall be filed with the New York Department of State pursuant to the New York Act.

7.4 Termination. Upon completion of the dissolution, winding up, liquidation, and distribution of the assets of the Company, the Company shall be deemed terminated.

ARTICLE VIII
General Provisions

8.1 Notices. Any notice, demand or other communication required or permitted to be given pursuant to this Agreement shall have been sufficiently given for all purposes if (a) delivered personally to the party to whom such notice, demand or other communication is directed, or (b) sent by registered or certified mail, postage prepaid, in either case as addressed to the Person at his or its last known address.

8.2 Amendments. This Agreement contains the entire agreement of the sole Member, and may not be amended except by authorization of the Board of Managers.

8.3 Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa.

8.4 Headings. The headings in this Agreement are for convenience only and shall not be used to interpret or construe any provision of this Agreement.

8.5 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. However, if any provision of this Agreement shall be prohibited by or invalid under such law, it shall be deemed modified to conform to the minimum requirements of such law or, if for any reason it is not deemed so modified, it shall be prohibited or invalid only to the extent of such prohibition or invalidity without the remainder thereof or any other such provision being prohibited or invalid.

8.6 Governing Law. This Agreement shall be governed by, and interpreted and construed in accordance with, the laws of New York, without regard to principles of conflict of laws.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the Member hereby conclusively evidences its agreement to the terms and conditions of this Agreement by so signing this Agreement.

COMMUNITY INITIATIVES
DEVELOPMENT CORPORATION

By: ______________________
William Loewenstein, President

EXHIBIT A

Sole Member

Community Initiatives Development Corporation
18 Aitken Avenue
Hudson, New York 12534

EXHIBIT B

Board of Managers

The Board of Managers shall be comprised of the following five (5) persons, as designated by the entity next to his or her name, to serve unless and until a successor may be appointed:

1. William Loewenstein, the President of Community Initiatives Development Corporation (the "CIDC President"), or any designee as is selected by the CIDC President, or any alternate as is selected by the CIDC President to act hereunder on behalf of either the CIDC President or designee of the CIDC President, as the case may be;

2. Joseph Seymour, the Vice President of Community Initiatives Development Corporation (the "CIDC Vice President"), or any designee as is selected by the CIDC Vice President, or any alternate as is selected by the CIDC Vice President to act hereunder on behalf of either the CIDC Vice President or designee of the CIDC Vice President, as the case may be;

3. The Commissioner of New York City Department of Parks and Recreation (the "Parks Commissioner"), or any designee as is selected by the Parks Commissioner, or any alternate as is selected by the Parks Commissioner to act hereunder on behalf of either the Parks Commissioner or designee of the Parks Commissioner, as the case may be;

4. The President of Bronx Overall Economic Development Corporation ("BOEDC") (the "BOEDC President"), or any designee as is selected by the BOEDC President, or any alternate as is selected by the BOEDC President to act hereunder on behalf of either the BOEDC President or designee of the BOEDC President, as the case may be; and

5. The President of New York City Economic Development Corporation ("NYCEDC") (the "NYCEDC President"), or any designee as is selected by the NYCEDC President, or any alternate as is selected by the NYCEDC President to act hereunder on behalf of either the NYCEDC President or designee of the NYCEDC President, as the case may be.

EXHIBIT Q

ADVERTISING PLAN

The planned advertising consists of interior only advertising.

All signage would be visible from the interior of the parking garages and would not be visible from the exterior of any garage. The signage would consist of surface mounted signage on lighted panels inside the garages near the entry and exit areas.

All advertising would be contracted through an outside vendor specializing in providing these facilities. Placement of the signs would be coordinated with the garage operator to ensure that the revenue capacity of the signage is maximized, without interfering with the ingress and egress to the Garages and without impairing vehicular traffic flow. All costs of installing the advertising panels would be borne by the outside vendor, based upon specifications approved by Tenant and Landlord prior to the installation of the panels.

EXHIBIT R

EMPLOYMENT AND BENEFITS REPORT

(on pages following)

EMPLOYMENT and BENEFITS REPORT

For the Fiscal Year July 1, 20 to June 30, 20 (the "Reporting Year")

In order to comply with State and Local Law reporting requirements, the Company is required to complete and return this form to NYCEDC, 110 William Street, Attention: Compliance, New York, NY 10038 no later than the next **August 1 following the Reporting Year**. **PLEASE SEE THE ATTACHED INSTRUCTIONS AND DEFINITIONS OF CAPITALIZED TERMS USED ON THIS PAGE.**

Please provide your NAICS Code (see http://www.census.gov.gov/epcd/www/naics.html): ______________

If you cannot determine your NAICS Code, please indicate your industry type: ______________

1. Number of permanent Full-Time Employees as of June 30 of the Reporting Year .... ______________

2. Number of non-permanent Full-Time Employees as of June 30 of the Reporting Year .... ______________

3. Number of permanent Part-Time Employees as of June 30 of the Reporting Year.............................. ______________

4. Number of non-permanent Part-Time Employees as of June 30 of the Reporting Year...................... ______________

5. Number of Contract Employees as of June 30 of the Reporting Year.. ______________

6. Total Number of employees of the Company and its Affiliates included in **Items 1, 2, 3 and 4** .... ______________

Please attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and Unemployment Insurance Return for the period including June 30 of the Reporting Year.

7. Number of employees included in item 6 above who reside in the City of New York.......................... ______________

8. Do the Company and its Affiliates offer health benefits to all Full-Time Employees? .... **Y** **N** (please circle **Y** or I

   Do the Company and its Affiliates offer health benefits to all Part-Time Employees?......................... **Y** **N** (please circle **Y** or

If the answer to item 6 above is 250 or more employees, please complete Item 9 through 13 below:

9. Number of employees in Item 6 who are "Exempt" .... ______________

10. Number of employees in Item 6 who are "Non-Exempt" .... ______________

11. Number of employees in item 10 that earn up to $25,000 annually .... ______________

12. Number of employees in item 10 that earn $25,001 - $40,000 annually .... ______________

13. Number of employees in item 10 that earn $40,001 - $50,000 annually .... ______________

4 through 16, indicate the value of the benefits realized at Project Locations during the Reporting Year:

14. Value of sales and use tax exemption benefits .... $________________

15. Value of Commercial Expansion Program ("CEP") benefits.. $________________

16. Value of Relocation and Employment Assistance Program ("REAP") benefits .... $________________

17. Were physical improvements made to any Project Location during the Reporting Year at a cost exceeding 10% of the current assessed value of the existing improvements at such Project Location? ... **Y** **N** (please circle **Y** or

If the Company and/or its Affiliates have applied for Industrial and Commercial Incentive Program ("ICIP") benefits for new physical improvements at Project Location(s), please provide the ICIP application number(s). #________________

Certification: I, the undersigned, an authorized officer or principal owner of the Company/Affiliate/Tenant, hereby certify to the best of my knowledge and belief, that all information contained in this report is true and complete. This form and information provided pursuant hereto may be disclosed to the New York City Economic Development Corporation ("NYCEDC") and may be disclosed by NYCEDC in connection with the administration of the programs of NYCEDC and/or the City of New York; and, without limiting the foregoing, such information may be included in (x) reports prepared by NYCEDC pursuant to New York City Charter Section 1301 et. seq., (y) other reports required of NYCEDC, and (z) any other reports or disclosure required by law.

Entity Name: ____

Signature By: ________________________ **Date:**__________________

Name (print): ________________________ **Title:**__________________

INSTRUCTIONS TO EMPLOYMENT AND BENEFITS REPORT

NITIONS:

"Affiliate" is (i) a business entity in which more than fifty percent is owned by, or is subject to a power or right of control of, or is managed by, an entity which is a party to a Project Agreement, or (ii) a business entity that owns more than fifty percent of an entity which is a party to a Project Agreement or that exercises a power or right of control of such entity.

"Company" includes any entity that is a party to a Project Agreement.

"Contract Employee" is a person who is an independent contractor (i.e., a person who is not an "employee"), or is employed by an independent contractor (an entity other than the Company, an Affiliate or a Tenant), who provides services at a Project Location.

"Full-Time Employee" is an employee who works at least 35 hours per week at a Project Location.

"Part-Time Employee" is an employee who works less than 35 hours per week at a Project Location.

"Project Agreement" is any agreement or instrument (such as a lease agreement or deed) pursuant to which an entity purchases or leases (directly or by assignment from NYCEDC) property from NYCEDC.

"Project Location" is any location that is leased (directly or by assignment from NYCEDC) or purchased by the Company from NYCEDC.

"Tenant" is a tenant or subtenant (excluding the Company and its Affiliates) that leases or subleases facilities from the Company or its Affiliates (or from tenants or subtenants of the Company or its Affiliates) at any Project Location.

1 INSTRUCTIONS For each Project Agreement, please submit one report that covers (i) the Company and its Affiliates and (ii) Tenants and subtenants of Tenants at all Project Locations covered by the Project Agreement. Each Tenant must complete items 1-5, 15 and 16 on this form with regard to itself and its subtenants and return it to the Company. The Company must include in its report information collected by the Company from its Affiliates and Tenants. The Company must retain for six (6) years all forms completed by its Affiliates and Tenants and at NYCEDC's request must permit NYCEDC upon reasonable notice to inspect such forms and provide NYCEDC with a copy of such forms. The Company must submit to NYCEDC copies of this form completed by each Tenant.

Items 1, 2, 3 and 4 must be determined as of June 30 of the Reporting Year and must include all permanent and non-permanent Full-Time Employees and Part-Time Employees at all Project Locations, including, without limitation, those employed by the Company or its Affiliates and by Tenants and subtenants of Tenants at the Project Locations. Do not include Contract Employees in Items 1, 2, 3 and 4.

Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.

Report information requested only with respect to the Company and its Affiliates at all Project Locations. For item 6, report only the permanent and non-permanent Full-Time Employees and Part-Time Employees of the Company and its Affiliates. Do not report employees of Tenants and subtenants of Tenants. Do not report Contract Employees.

Indicate the number of employees included in item 6 who are classified as "Exempt", as defined in the federal Fair Labor Standards Act. Generally, an Exempt employee is not eligible for overtime compensation.

Indicate the number of employees included in item 6 who are classified as "Non-Exempt", as defined in the federal Fair Labor Standards Act. Generally, a Non-Exempt employee is eligible for overtime compensation.

Report all sales and use tax exemption benefits realized at all Project Locations by the Company and its Affiliates and granted by virtue of the exemption authority of the City of New York. Do not include any sales and use tax savings realized under the NYS Empire Zone Program.

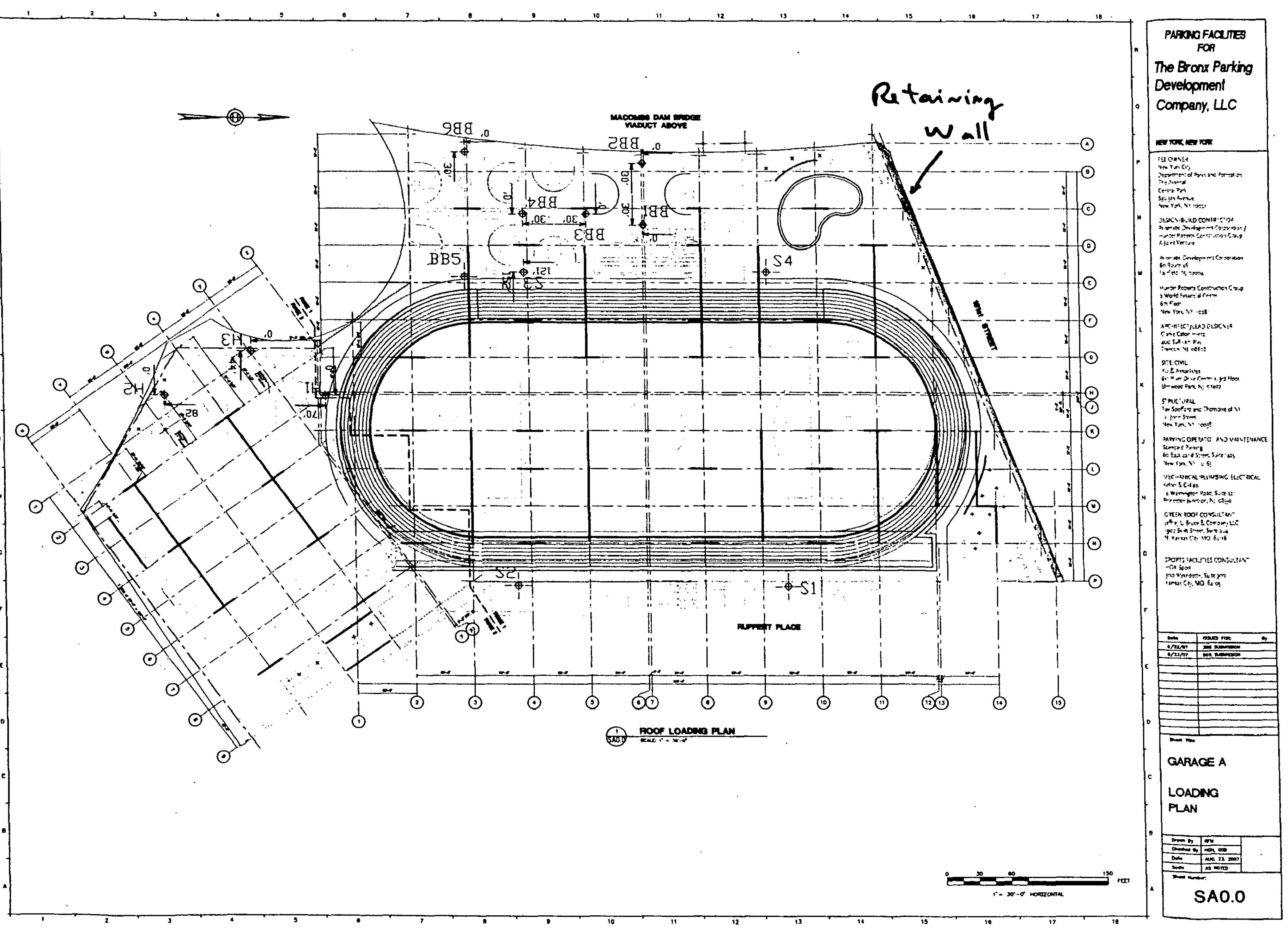
Report all CEP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. CEP is a package of tax benefits designed to help qualified businesses to relocate or expand in designated relocation areas in New York City. For more information regarding CEP, please visit http://www.nyc.gov/dof.

Report all REAP benefits received by the Company and its Affiliates and any Tenants and subtenants of Tenants at all Project Locations. REAP is designed to encourage qualified businesses to relocate employees to targeted areas within New York City. REAP provides business income tax credits based on the number of qualified jobs connected to the relocation of employees. For more information regarding REAP, please visit http://www.nyc.gov/dof.

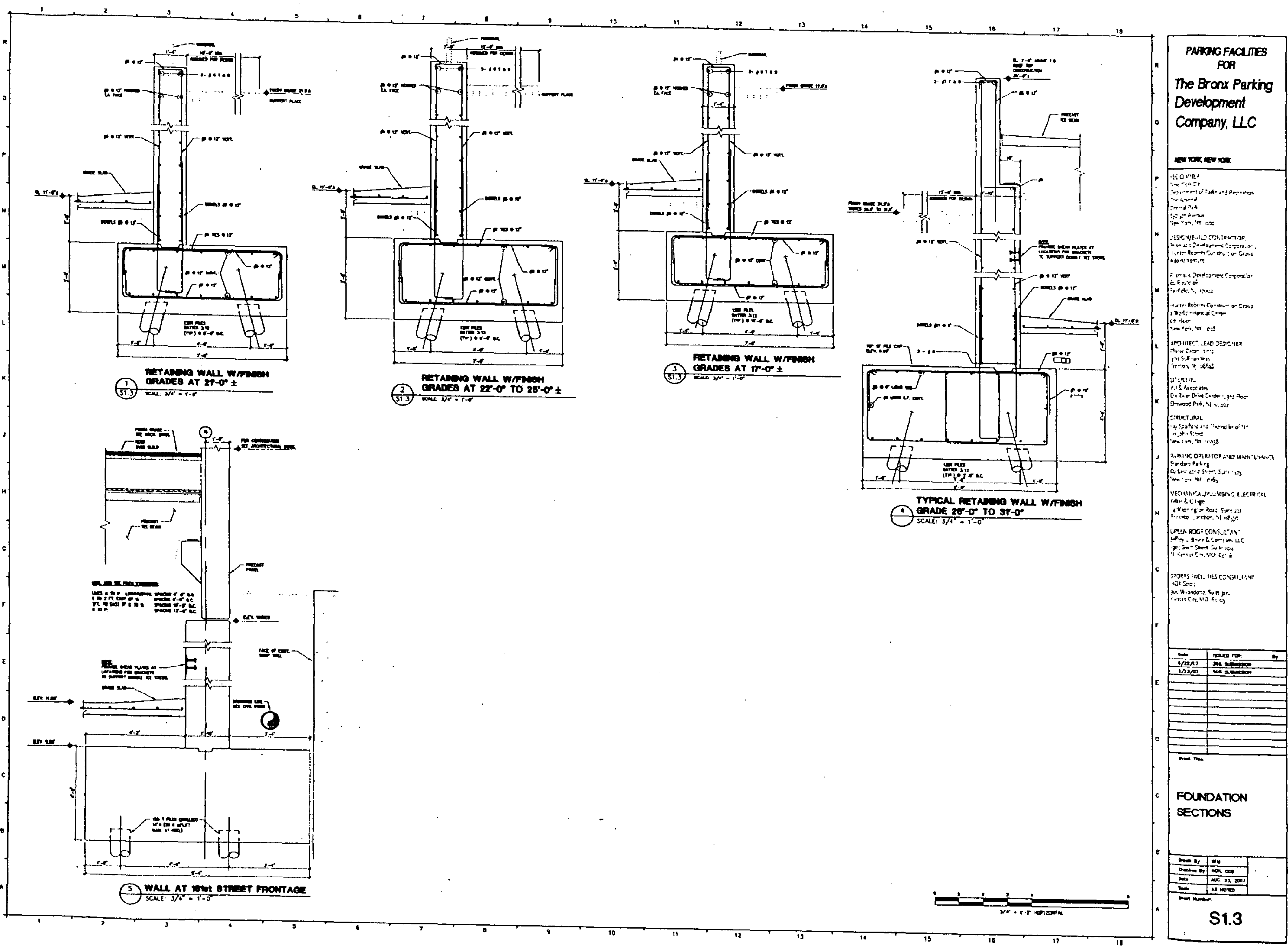
EXHIBIT S

RETAINING WALL

(on pages following)



PARKING FACILITIES FOR
The Bronx Parking Development Company, LLC
NEW YORK, NEW YORK
GARAGE A
LOADING PLAN
SA0.0
Retaining Wall
MACOMBS DAM BRIDGE VIADUCT ABOVE
RUPPERT PLACE
ROOF LOADING PLAN
BB1
BB2
BB3
BB4
BB5
BB6
S1
S2
S3
S4
H1
H2
H3
1" = 30'-0" HORIZONTAL
FEET



RETAINING WALL W/FINISH GRADES AT 21'-0" ±
1 S1.3
RETAINING WALL W/FINISH GRADES AT 22'-0" TO 25'-0" ±
2 S1.3
RETAINING WALL W/FINISH GRADES AT 17'-0" ±
3 S1.3
TYPICAL RETAINING WALL W/FINISH GRADE 26'-0" TO 31'-0"
4
SCALE: 3/4" = 1'-0"
WALL AT 161st STREET FRONTAGE
5
SCALE: 3/4" = 1'-0"
PARKING FACILITIES FOR
The Bronx Parking Development Company, LLC
NEW YORK, NEW YORK
FOUNDATION SECTIONS
S1.3

EXHIBIT T

GARAGE A EASTERLY SIDE APPURTENANCES

(on pages following)

+32

GARAGE

+22

+11

+20

LEGEND

- (A) HERITAGE FIELD
- (B) RUPPERT PLACE PROMENADE
- (C) LAWN TERRACE
- (D) PLANTED SLOPE
- (E) 2:1 GABION SLOPE
- (F) VENTILATION MOAT
- (G) SLOPING WALK ON GRADE
- (H) ARCHITECTURAL SCRIM
- (I) GARAGE ACCESS THROUGH TRANSLUCENT TUBE
- (J) ROOFTOP PARK

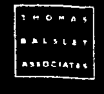
KEY PLAN

City of New York
Parks & Recreation

GARAGE A -- Ruppert Place Transition

Bronx, New York
July 18, 2007

Section B



(J)

(H)

+32

GARAGE

(G)

+22

(D)

(F)

(E)

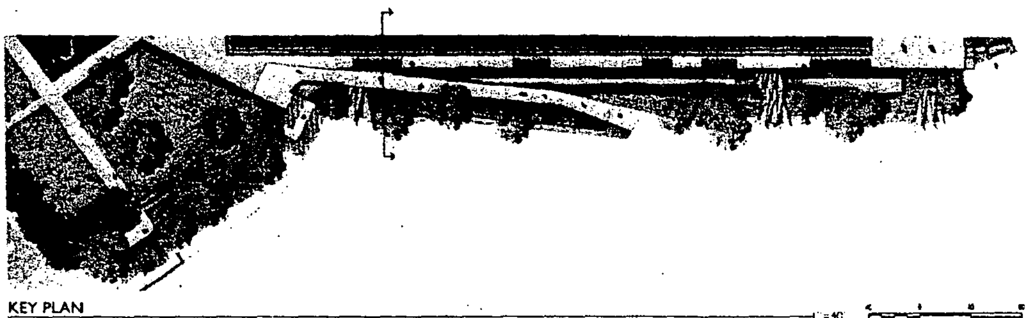
+11

(B)

(A)

LEGEND

- (A) HERITAGE FIELD
- (B) RUPPERT PLACE PROMENADE
- (C) LAWN TERRACE
- (D) PLANTED SLOPE
- (E) 2:1 STABILIZED GRASS SLOPE
- (F) VENTILATION MOAT
- (G) SLOPING WALK ON STRUCTURE
- (H) ARCHITECTURAL SCRIM
- (I) GARAGE ACCESS THROUGH TRANSLUCENT TUBE
- (J) ROOFTOP PARK



KEY PLAN

City of New York
Parks & Recreation

GARAGE A -- Ruppert Place Transition

Bronx, New York
July 18, 2007

Section A