STADIUM LEASE AGREEMENT between

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, Landlord

and

QUEENS BALLPARK COMPANY, L.L.C., Tenant

Dated as of August 1, 2006

For Premises to be initially known as Mets Stadium

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STADIUM LEASE AGREEMENT

This Stadium Lease Agreement (this "Lease Agreement")* dated as of August 1, 2006, is made by and between New York City Industrial Development Agency, having an address at 110 William Street, New York, New York 10038 ("Landlord" or the "Agency" or "IDA"), and Queens Ballpark Company, L.L.C., having an address at Shea Stadium, Flushing, New York 11368 ("Tenant" or the "Company").

RECITALS

The New York State Industrial Development Agency Act, being Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of the State of New York, as amended (hereinafter referred to as the "Enabling Act"), authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State of New York (the "State") and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and furnish real and personal property, whether or not now in existence or under construction, which shall be, among others, commercial or industrial facilities, recreation facilities and educational or cultural facilities, in order to advance the job opportunities, health, general prosperity and economic welfare of the people of the State and to improve their recreational opportunities, prosperity and standard of living.

The Enabling Act further authorizes each such agency to lease and to sell its facilities, to charge and collect rent therefor, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, such bonds, to pledge the revenues and receipts from its facilities to the payment of such bonds.

Pursuant to and in accordance with the provisions of the Enabling Act, Chapter 1082 of the 1974 Laws of the State, as amended (said Chapter and the Enabling Act being hereinafter collectively referred to as the "<u>Act</u>"), created the New York City Industrial Development Agency, a public benefit corporation (the "<u>Agency</u>"), for the benefit of The City of New York, a municipal corporation (the "<u>City</u>"), and the inhabitants thereof.

The Company, a New York limited liability company, as the agent of the Agency, intends to undertake a project (the "<u>Project</u>"), consisting of (a) the design, development, acquisition, construction and equipping of a Major League Baseball stadium having a seating and standing-room capacity for approximately 45,000 persons, together with related concession areas, ancillary structures and other improvements (collectively, the "<u>Stadium</u>"), to be located

^{*}All capitalized terms (other than certain insurance terms which have the meanings described in Section 14.10 or unless expressly set forth to the contrary in this Lease) have the meaning ascribed to them either in Article 1 "Definitions" or in the parenthetical expression immediately following their first usage in this Lease Agreement.

on a certain parcel of land in the Borough and County of Queens and the City and State of New York which is bounded on the north by the south side of Northern Boulevard, on the east by the west side of 126th Street, on the south by the north side of Roosevelt Avenue and on the west by the east side of Grand Central Parkway which is more particularly described on Schedule A attached hereto (the "Primary Site") at the location which is more particularly described on Schedule B attached hereto (the "Stadium Site"), (b) the construction and/or improvement of certain parking facilities on the Primary Site to be used in connection with the Stadium (the "North Site Parking Facilities") at the location shown on Schedule C attached hereto (the "North Parking Site"), and the construction and/or improvement of certain additional parking facilities to be used in connection with the Stadium (the "South Site Parking Facilities" and, together with the North Site Parking Facilities, the "On-Site Parking Facilities") to be located on a parcel of land in the Borough and County of Queens and the City and State of New York which is bounded on the north by the south side of Roosevelt Avenue, on the east by the west side of 126th Street, on the south by lands of the City occupied by the New York City Transit Authority and on the west by the east side of the Grand Central Parkway, but excepting from such parcel the portion thereof fronting on Roosevelt Avenue occupied by the New York City Transit Authority as a substation, and which is more particularly described on Schedule D attached hereto (the "South Parking Site" and, together with the North Parking Site Facilities, the "On-Site Parking Sites"), and (c) the demolition of the existing baseball stadium on the Primary Site known as Shea Stadium (the "Existing Stadium").

The City is the fee owner of the Primary Site and the South Parking Site.

The City will lease the Primary Site to the Agency for the purposes of the Project for a term of 99 years pursuant to the terms of a certain Primary Site Ground Lease Agreement between the City, as landlord, and the Agency, as tenant, dated as of August 1, 2006, as the same may be amended (the "<u>Primary Site Ground Lease</u>"), which is intended to be recorded in the Office of the City Register, Queens County.

The City will lease the South Parking Site to the Agency for the purposes of the Project for a term of 99 years pursuant to the terms of a certain South Parking Site Ground Lease Agreement between the City, as landlord, and the Agency, as tenant, dated as of August 1, 2006, as the same may be amended (the "South Parking Site Ground Lease"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the Primary Site Ground Lease.

The Agency will be the owner of the Stadium and the On-Site Parking Facilities.

The Agency will sublease the Stadium Site and lease the Stadium to the Company for an initial term of up to thirty-seven and one-half years from and after Substantial Completion, and the Company will agree, as the agent of the Agency, to operate and maintain the Stadium pursuant to the terms of this Stadium Lease Agreement between the Agency, as landlord, and the Company, as tenant, dated as of August 1, 2006, as the same may be amended (this "Lease Agreement"), a memorandum of which, dated as of August 1, 2006, as the same may be amended (the "Memo of Stadium Lease"), is intended to be recorded in the Office of the City Register, Queens County, after the recording of the South Parking Site Ground Lease.

The Agency and the Company will enter into a certain Parking Lease Agreement for the North Parking Site, dated as of August 1, 2006, as the same may be amended (the "North Parking Site Lease Agreement"), and a certain Parking Lease Agreement for the South Parking Site, dated as of August 1, 2006, as the same may be amended (the "South Parking Site Lease Agreement" and, together with the North Parking Site Lease Agreement, the "On-Site Parking Agreements"), and the Agency, the Company and the City will enter into a certain binding letter agreement, dated as of August 1, 2006, as the same may be amended (the "Parking Facilities Letter Agreement"). A memorandum of each of the On-Site Parking Agreements, each dated as of August 1, 2006, as the same may be amended (the "Memos of On-Site Parking Agreements"), will be recorded in the Office of the City Register, Queens County, after the recording of the Memo of Stadium Lease. The On-Site Parking Agreements will be amended prior to the first anniversary thereof in accordance with the terms of the Parking Facilities Letter Agreement.

The North Parking Site Lease Agreement will provide for the subleasing of the North Parking Site and the leasing of the North Site Parking Facilities by the Agency to the Company for a term coterminous with the initial term of the Stadium Lease and the management, operation and maintenance of the North Site Parking Facilities by the Company, as the agent of the Agency.

The South Parking Site Lease Agreement will provide for the subleasing of the South Parking Site and the leasing of the South Site Parking Facilities by the Agency to the Company for a term coterminous with the initial term of the Stadium Lease and the management, operation and maintenance of the South Parking Site Facilities by the Company, as the agent of the Agency.

The City and the Company will enter into a certain Recognition, Non-Disturbance and Attornment Agreement, dated as of August 1, 2006, as the same may be amended (the "Recognition Agreement"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the Recognition Agreement, pursuant to which, inter alia, the City will agree to recognize the Company as the tenant under the terms of the Stadium Lease, and the On-Site Parking Agreements, and the Company will agree to attorn to the City as its landlord thereunder, if, by operation of law or otherwise, the Primary Site Ground Lease and/or the South Parking Site Ground Lease are terminated, and no Event of Default (as such term is defined in the Stadium Lease) has occurred and is continuing.

Sterling Mets, L.P., a Delaware limited partnership (the "Partnership"), is the owner of the franchise for the New York Mets Major League Baseball Team (the "Team").

The Company will sub-sublease the Stadium Site and sublease the Stadium to the Partnership for an initial term ending one day prior to the expiration date of the initial term of the Stadium Lease pursuant to the terms of a certain Stadium Use Agreement between the Company, as sublandlord, and the Partnership, as subtenant, dated as of August 1, 2006, as the same may be amended (the "Stadium Use Agreement"), a memorandum of which, dated as of August 1, 2006, as the same may be amended (the "Memo of Stadium Use Agreement"), is intended to be recorded in the Office of the City Register, Queens County, after the recording of the Recognition Agreement.

The City, the New York State Urban Development Corporation, doing business as Empire State Development Corporation, a public benefit corporation of the State of New York ("ESDC"), the Agency, the Partnership, and, for the limited purpose set forth therein, Mets Partners, Inc., a New York Corporation, Mets Limited Partnership, a Delaware limited partnership, and Ambac Assurance Corporation, a Wisconsin stock insurance corporation, as bond insurer (the "Bond Insurer"), will enter into a certain Non-Relocation Agreement, dated as of August 1, 2006, as the same may be amended (the "Non-Relocation Agreement"), pursuant to which the Partnership will agree to cause the Team to play, subject to the terms of the Non-Relocation Agreement, substantially all of its Home Games (as such term is defined in the Non-Relocation Agreement) at the Stadium for the same period as the initial term of the Stadium Lease, unless sooner terminated pursuant to the terms thereof.

Pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes and assessments imposed upon real property owned or controlled by it, other than special ad valorem levies, special assessments and service charges which are or may be imposed for special improvements or special district improvements.

The Agency, the Company and the City will enter into a certain Payment-in-Lieu-of-Tax Agreement, dated as of August 1, 2006, as the same may be amended (the "<u>PILOT Agreement</u>"), to make provision for certain payments by the Company in lieu of such taxes and assessments (the "<u>PILOTs</u>"), as further described in the PILOT Agreement.

By Resolution No. 1214 (2005) duly adopted by the City Council on October 27, 2005 and Resolution No. 260 (2006) duly adopted by the City Council on April 26, 2006, the City has determined that, rather than receive and deposit all of the PILOTs into its general fund, it is appropriate to direct the Agency to apply certain of the PILOTs to the financing and operation of the Project, as permitted under the New York City Charter and the Enabling Act.

By a resolution duly adopted by its members on July 11, 2006 (the "Authorizing Resolution"), the Agency has authorized the undertaking of the Project, including (a) the issuance by the Agency of (i) a series of federally tax-exempt bonds (the "PILOT Bonds") payable out of and secured by (1) revenues of the Agency derived and to be derived from the PILOTs to be made by the Company under the PILOT Agreement, (2) certain funds and accounts held by The Bank of New York, a New York banking corporation, as trustee (the "Independent Trustee"), under a certain PILOT Assignment and Escrow Agreement among the Agency, the Independent Trustee, The Bank of New York, a New York banking corporation, as trustee (the "PILOT Bonds Trustee"), and the City, dated as of August 1, 2006, as the same may be amended (the "PILOT Assignment"), and (3) certain funds and accounts held by the PILOT Bonds Trustee under a certain PILOT Bonds Indenture of Trust between the Agency and the PILOT Bonds Trustee, dated as of August 1, 2009, as the same may be amended (the "PILOT Bonds Master Indenture"), and a certain PILOT Bonds First Supplemental Indenture of Trust between the Agency and the PILOT Bonds Trustee, dated as of August 1, 2006, as the same may be amended (the "PILOT Bonds Supplemental Indenture" and, together with the PILOT Bonds Master Indenture, the "PILOT Bonds Indenture"), (ii) a series of federally taxable bonds (the "Installment Purchase Bonds") payable out of and secured by (1) revenues of the Agency derived and to be derived from certain installment purchase payments (the "Installment Purchase Payments") to be made by the Company under a certain Installment Sale Agreement between the Agency, as vendor, and the Company, as vendee, dated as of August 1, 2006, as the same may be amended (the "Installment Sale Agreement"), and (2) certain funds and accounts held by The Bank of New York, a New York banking corporation, as trustee (the "Installment Purchase Bonds Trustee"), under a certain Installment Purchase Bonds Indenture of Trust between the Agency and the Installment Purchase Bonds Trustee, dated as of August 1, 2006, as the same may be amended (the "Installment Purchase Bonds Master Indenture"), and a certain Installment Purchase Bonds First Supplemental Indenture of Trust between the Agency and the Installment Purchase Bonds Trustee, dated as of August 1, 2006, as the same may be amended (the "Installment Purchase Bonds Supplemental Indenture" and, together with the Installment Purchase Bonds Master Indenture, the "Installment Purchase Bonds Indenture"), and (iii) a series of federally taxable bonds (the "Lease Revenue Bonds" and, together with the Installment Purchase Bonds, the "Taxable Bonds"), payable out of and secured by (1) the Initial Term Base Rent to be paid by the Company under the Stadium Lease and (2) certain funds and accounts held by The Bank of New York, a New York banking corporation, as trustee (the "Lease Revenue Bonds Trustee"), under a certain Lease Revenue Bonds Indenture of Trust between the Agency and the Lease Revenue Bonds Trustee, dated as of August 1, 2006, as the same may be amended (the "Lease Revenue Bonds Master **Indenture**"), and a certain Lease Revenue Bonds First Supplemental Indenture of Trust between the Agency and the Lease Revenue Bonds Trustee, dated as of August 1, 2006, as the same may be amended (the "Lease Revenue Bonds Supplemental Indenture" and, together with the Lease Revenue Bonds Master Indenture, the "Lease Revenue Bonds Indenture"); (b) the application of the proceeds of the PILOT Bonds as provided in the PILOT Bonds Indenture; (c) the application of the proceeds of the Installment Purchase Bonds as provided in the Installment Purchase Bonds Indenture; (d) the application of the proceeds of the Lease Revenue Bonds as provided in the Lease Revenue Bonds Indenture; and (e) the granting of certain exemptions from sales and use taxes, mortgage recording taxes and real property taxes.

Each annual obligation of the Company to make the PILOTs to the Agency under the PILOT Agreement will be secured by a separate Leasehold PILOT Mortgage made by the Agency and the Company, as mortgagors, to the Agency, as mortgagee, each dated as of August 1, 2006, as the same may be amended (collectively, the "PILOT Mortgages"), covering the Agency's leasehold estate in and to the Primary Site created by the Primary Site Ground Lease and the Company's leasehold and subleasehold estates in and to the Stadium Site and the Stadium created by the Stadium Lease and in and to the North Parking Site and the North Site Parking Facilities created by the North Site Parking Lease Agreement, which are intended to be recorded in the Office of the City Register, Queens County, after the recording of the Memo of Stadium Use Agreement.

The Agency will assign to the Independent Trustee all of the Agency's right, title and interest in and to (a) the PILOT Agreement (other than the Unassigned PILOT Rights (as such term is defined in the Master Glossary)) pursuant to the PILOT Assignment and (b) the PILOT Mortgages pursuant to a certain Assignment of PILOT Mortgages, dated as of August 1, 2006, as the same may be amended (the "PILOT Mortgages Assignment"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the PILOT Mortgages, and will assign to the PILOT Bonds Trustee all of the Agency's right, title and interest in and to the representations, warranties and covenants of the Company contained in Sections 19.06 and 19.07 of the Stadium Lease pursuant to a certain PILOT Bonds Partial Lease

Assignment, dated as of August 1, 2006, as the same may be amended (the "PILOT Bonds Partial Lease Assignment"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the PILOT Mortgages Assignment.

The Partnership and the Independent Trustee will enter into a certain Subordination, Non-Disturbance and Attornment Agreement, dated as of August 1, 2006, as the same may be amended (the "PILOT Mortgages SNDA"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the PILOT Bonds Partial Lease Assignment, pursuant to which the Partnership will agree that the Stadium Use Agreement is subordinate to the PILOT Mortgages, and the Independent Trustee will agree not to disturb the Partnership's right of possession of the Stadium and the Team Parking Spaces (as such term is defined in the Stadium Use Agreement) under the terms of the Stadium Use Agreement in the event that a foreclosure action is commenced with respect to any of the PILOT Mortgages; provided that the Partnership is not then in default under the terms of the Stadium Use Agreement.

The Agency will pledge to the Installment Purchase Bonds Trustee all of the Agency's right, title and interest in and to the Installment Sale Agreement, including the right to receive the Installment Sale Payments due or to become due thereunder, pursuant to a certain Pledge and Assignment Agreement (Installment Sale Agreement), dated as of August 1, 2006, as the same may be amended (the "Pledge and Assignment (Installment Sale Agreement)") and will assign to the Installment Purchase Bonds Trustee all of the Agency's right, title and interest in and to the representations, warranties and covenants of the Company under Sections 19.06 and 19.07 of the Stadium Lease pursuant to a certain Installment Purchase Bonds Partial Lease Assignment, dated as of August 1, 2006, as the same may be amended (the "Installment Purchase Bonds Partial Lease Assignment"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the PILOT Mortgages SNDA.

The obligation of the Company to pay the Initial Term Base Rent under the Stadium Lease will be secured by a certain Leasehold Rental Mortgage made by the Agency and the Company, as mortgagors, to the Agency, as mortgagee, dated as of August 1, 2006, as the same may be amended (the "Leasehold Rental Mortgage"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the Installment Purchase Bonds Partial Lease Assignment, covering the Agency's leasehold estate in and to the Primary Site created by the Primary Site Ground Lease, the Agency's leasehold estate in and to the South Parking Site created by the South Parking Site Ground Lease and the Company's leasehold and subleasehold estates in and to the Stadium Site and the Stadium created by the Stadium Lease and in and to the On-Site Parking Sites and the On-Site Parking Facilities created by the On-Site Parking Leases.

The Leasehold Rental Mortgage will be subordinate to the PILOT Mortgages pursuant to the terms of a certain Mortgage Subordination, Standstill and Recognition Agreement between the Independent Trustee and the Lease Revenue Bonds Trustee, dated as of August 1, 2006, as the same may be amended (the "Leasehold Rental Mortgage Subordination Agreement"), which is intended to be recorded in the Office of City Register, Queens County, after the recording of the Leasehold Rental Mortgage.

The Agency will assign to the Lease Revenue Bonds Trustee all of the Agency's right, title and interest in and to (a) the Leasehold Rental Mortgage pursuant to a certain Assignment of Leasehold Rental Mortgage, dated as of August 1, 2006, as the same may be amended (the "Leasehold Rental Mortgage Assignment"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the Leasehold Rental Mortgage Subordination Agreement, (b) so much of the Initial Term Base Rent under the Stadium Lease as is necessary to pay the debt service on the Lease Revenue Bonds and its right to terminate the Stadium Lease pursuant to Section 24.03(2) thereof pursuant to a certain Lease Revenue Bonds Partial Rent Assignment, dated as of August 1, 2006, as the same may be amended (the "Lease Revenue Bonds Partial Rent Assignment"), which is intended to be recorded in the Office of the City Register, Queens County, after the recording of the Leasehold Rental Mortgage Assignment, and (c) all of the Agency's right, title and interest in and to the representations, warranties and covenants of the Company under Sections 19.06 and 19.07 of the Stadium Lease pursuant to a certain Lease Revenue Bonds Partial Lease Agreement, dated as of August 1, 2006, as the same may be amended (the "Lease Revenue Bonds Partial Lease Assignment"), which is intended to be recorded in the Offices of the City Register, Queens County, after the recording of the Lease Revenue Bonds Partial Rent Assignment.

The Partnership and the Lease Revenue Bonds Trustee will enter into a certain Subordination, Non-Disturbance and Attornment Agreement, dated as of August 1, 2006, as the same may be amended (the "Leasehold Rental Mortgage SNDA"), which is intended to be recorded in the office of the City Register, Queens County, after the recording of the Lease Revenue Bonds Partial Lease Assignment, pursuant to which the Partnership will agree that the Stadium Use Agreement is subordinate to the Leasehold Rental Mortgage, and the Lease Revenue Bonds Trustee will agree not to disturb the Partnership's right of possession of the Stadium and the Team Parking Spaces under the terms of the Stadium Use Agreement in the event that a foreclosure action is commenced with respect to the Leasehold Rental Mortgage; provided that the Partnership is not then in default under the terms of the Stadium Use Agreement.

The proceeds of the PILOT Bonds and the Lease Revenue Bonds will be disbursed to the Company, as the agent of the Agency, pursuant to the terms of the PILOT Bonds Indenture and the Lease Revenue Bonds Indenture and applied by the Company for the purposes set forth in a certain Development Agreement between the Agency and the Company, dated as of August 1, 2006, as the same may be amended (the "Development Agreement"), and applied to pay certain costs and items of expense paid or incurred by the Company on behalf of the Agency in connection with the design, development, acquisition, construction and equipping of the Stadium and the construction and/or improvement of the On-Site Parking Facilities. The Agency will assign all of its right, title and interest in and to the Development Agreement to the Lease Revenue Bonds Trustee pursuant to a certain Pledge and Assignment (Development Agreement), dated as of August 1, 2006, as the same may be amended (the "Pledge and Assignment (Development Agreement")).

The proceeds of the Installment Purchase Bonds will be disbursed to the Company, as the agent of the Agency, pursuant to the terms of the Installment Purchase Bonds Indenture and applied by the Company to acquire certain equipment, fixtures and severable

tenant improvements to be installed in the Stadium (the "Stadium Equipment"), which will be sold by the Agency to the Company pursuant to the terms of the Installment Sale Agreement.

Under the terms of the Stadium Use Agreement, the Partnership will be entitled to collect and receive all revenues from any and all sources (other than the Retained Rights Revenue, as defined therein), and the Company will have the right to collect and receive the Retained Rights Revenue (as defined therein). The Company will use the Retained Rights Revenue to make the PILOTs and perform all of its other obligations under the PILOT Agreement, to make the Installment Purchase Payments and perform all of its other obligations under the Installment Sale Agreement and to pay the Initial Term Base Rent and perform all of its other obligations under the Stadium Lease and the On-Site Parking Agreements.

The PILOT Bonds Trustee, the Installment Purchase Bonds Trustee and the Lease Revenue Bonds Trustee will enter into a certain Intercreditor Agreement, dated as of August 1, 2006, as the same may be amended (the "Intercreditor Agreement"), pursuant to which the PILOT Bonds Trustee and the Lease Revenue Bonds Trustee will permit the Installment Purchase Bonds Trustee to perfect a security interest in and lien upon the Stadium Equipment and each party will agree to cooperate with each other in the exercise of their remedies under the agreements to which each is a party and otherwise share in the net proceeds they may realize from certain sources of funds.

The Primary Site Ground Lease, the South Parking Site Ground Lease, the Stadium Lease, the Memo of Stadium Lease, the Recognition Agreement, the On-Site Parking Agreements, the Parking Facilities Letter Agreement, the Memos of On-Site Parking Agreements, the Stadium Use Agreement, the Memo of Stadium Use Agreement, the PILOT Mortgages SNDA and the Leasehold Rental Mortgage SNDA are hereinafter collectively referred to as the "Lease Documents," the PILOT Bonds and the Taxable Bonds are hereinafter collectively referred to as the "Bonds," the PILOT Bonds Indenture, the Installment Purchase Bonds Indenture and the Lease Revenue Bonds Indenture are hereinafter collectively referred to as the "Indentures", and the Non-Relocation Agreement, the Bonds, the Indentures, the PILOT Agreement, the PILOT Assignment, the Installment Sale Agreement, the PILOT Mortgages, the PILOT Mortgages Assignment, the PILOT Bonds Partial Lease Assignment, the PILOT Mortgages SNDA, the Pledge and Assignment (Installment Sale Agreement), the Installment Purchase Bonds Partial Lease Assignment, the Leasehold Rental Mortgage, the Leasehold Rental Mortgage Subordination Agreement, the Leasehold Rental Mortgage Assignment, the Lease Revenue Bonds Partial Rent Assignment, the Lease Revenue Bonds Partial Lease Assignment, the Leasehold Rental Mortgage SNDA, the Development Agreement, the Pledge and Assignment (Development Agreement) and the Intercreditor Agreement are hereinafter collectively referred to as the "Bond Documents."

NOW, THEREFORE, in consideration of the covenants, obligations and provisions hereinafter contained, Landlord and Tenant hereby agree as follows:

ARTICLE 1

DEFINITIONS

Capitalized terms not otherwise defined in the Recitals shall have the respective meanings set forth below:

"AAA" shall have the meaning set forth in Section 35.01(c).

"Act" shall have the meaning set forth in the Recitals.

"Additional Rent" means Rental payable pursuant to Section 3.02, if any.

"Advertising Signage" means and includes any and all advertising signs, including without limitation names, logos and corporate identifiers, that may be located at the Premises at any time, including, without limitation, any and all such signs in or affixed to the Stadium or any part thereof, including billboards, scoreboards, large screen video displays, electronic visual displays, clocks, concourses, seats, fences, or grandstands.

"Affiliate" or "Affiliates" means (A) any Person that has, directly or indirectly, a ten percent (10%) or greater ownership interest in Tenant or the Partnership, or any Person in which Tenant, the Partnership, any partner, member or shareholder of Tenant or the Partnership, or any partner, member or shareholder of any Person that is a partner, member or shareholder of Tenant or the Partnership, has a ten percent (10%) or greater ownership interest, or (B) any individual who is a member of the immediate family (whether by birth or marriage) of an individual who is an Affiliate, which includes for purposes of this definition a spouse, a brother or sister of the whole or half blood (including an individual related by or through legal adoption) of such individual or his/her spouse, a lineal descendant or ancestor (including an individual related by or through legal adoption) of any of the foregoing, or a trust for the benefit of any of the foregoing. Ownership of or by Tenant or the Partnership referred to in this definition includes beneficial ownership effected by ownership of intermediate entities. The foregoing notwithstanding, "Affiliate" solely for purposes of Section 19.06(y) and the definition of Independent Manager, shall mean, as to any Person, any other Person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" of a Person means the power, directly or indirectly, either to (a) vote 50% or more of the securities having ordinary voting power for the election of directors of such Person or (b) direct or cause the direction of the management and policies of such Person, whether by contract or otherwise.

"Agency" shall have the meaning set forth at the beginning of this Lease Agreement.

"Agreement" shall have the meaning set forth in Section 22.01(a)(v).

"Approval Standard" shall have the meaning set forth in Section 14.03(e).

"Architect" means HOK Sports Facilities Architects, P.C. d.b.a. HOK Sport + Venue + Event (HOK Sport) and Jack L. Gordon Architects, P.C., or another architect or

engineer or firm of architects or engineers, selected by Tenant and approved by Landlord (not to be unreasonably withheld, conditioned or delayed), licensed in the State of New York to undertake design work (including structural design work, if such work is to be performed) and having not less than ten (10) years experience (individually or as a firm) in major commercial projects.

- "Assignee" shall have the meaning set forth in Section 17.01(c)(ii).
- "Assignment" shall have the meaning set forth in Section 17.01(c)(i).
- "Assignment Trustee" shall have the meaning set forth in the Recitals.
- "Attendance" shall have the meaning set forth in Section 3.01(a).
- "Authorizing Resolution" shall have the meaning set forth in the Recitals.
- "Base Index" means the Price Index for the month in which the Commencement Date shall occur.
 - "Base Rent" shall have the meaning set forth in Section 3.01.
- "<u>Baseball Season</u>" means the professional baseball season fixed by Major League Baseball.
 - "Bond Documents" shall have the meaning set forth in the Recitals.
 - "Bondholder" means a holder of a Bond or Bonds.
 - "Bond" or "Bonds" shall have the meaning set forth in the Recitals.
 - "Bond Insurer" means Ambac Assurance Corporation.
 - "Bundled Agreements" shall have the meaning set forth in Section 19.06(t).
 - "Bureau" shall have the meaning set forth in Section 22.01(a).
- "Business Day" means any day other than a Saturday or Sunday or a legal holiday on which national banking associations in New York, New York are authorized or delegated, by law, governmental decree or executive order, to be closed.
- "Capital Improvement" means a change, alteration or addition to or replacement of all or any structural component or building or mechanical systems of the Stadium, or any Construction Work in excess of One Million Dollars (\$1,000,000), subject to CPI Adjustment, other than the initial construction of the Stadium, decorative changes, non-structural minor alterations or a Restoration (Capital Improvements shall not be artificially divided into components in order to avoid the One Million Dollar (\$1,000,000) threshold).
 - "Capital Transaction" shall have the meaning set forth in Section 17.01(c)(iii).

"Casualty Restoration" shall have the meaning set forth in Section 15.02(a).

"Certificate" shall have the meaning set forth in Section 34.01(c).

"Certificate of Occupancy" means the earlier to be issued of a temporary or permanent certificate of occupancy, or its functional equivalent, with respect to the Stadium, issued by the City's Department of Buildings, or other City agency having jurisdiction over the Premises.

"City" means the City of New York, acting, unless expressly stated to the contrary, in its proprietary capacity, as opposed to its lawmaking, regulatory and police power capacity. No specific provision in this Lease Agreement that the City is acting in its proprietary capacity shall in any way impair or diminish the general applicability of the preceding sentence with respect to any reference to the City which does not contain such a specific provision.

"Commencement Date" shall mean August 22, 2006.

"Commissioner" shall have the meaning set forth in Section 38.23(a)(iv).

"Company" shall have the meaning set forth in the beginning of this Agreement.

"Comptroller" means the Comptroller of the City of New York.

"Concession Facilities" means any and all facilities and areas at the Premises that are used for the storage, preparation, display, distribution and sale of food, beverages, souvenirs, scorecards, programs, publications, merchandise, apparel and/or other customary goods and services.

"Condemnation Restoration" shall have the meaning set forth in Section 16.03(a).

"Construction Agreement" mean an agreement for Construction Work.

"Construction Work" means any construction performed by Tenant, as agent of Landlord, with respect to any Restoration or any Capital Improvement after Substantial Completion.

"Conviction" shall have the meaning set forth in Section 33.07(c)(ii).

"CPI Adjustment" means, with respect to the adjustment of any amount pursuant to this Lease by reference to "CPI Adjustment" or "adjusted by CPI" or the like (unless expressly set forth to the contrary), the amount set forth in this Lease increased in each instance by the product derived from multiplying such amount by a fraction, the numerator of which shall be the Price Index for the full calendar month immediately preceding the date as of which such amount is to be adjusted under this Lease Agreement, and the denominator of which shall be the Base Index.

"Date of Taking" shall have the meaning set forth in Section 16.01(c).

"<u>Default</u>" 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.

"Development Agreement" shall have the meaning set forth in the Recitals.

"Director" shall have the meaning set forth in Section 22.01(a).

"DOF" shall have the meaning set forth in Section 32.01.

"EDC" means New York City Economic Development Corporation, a local development corporation pursuant to Section 1411 of the New York State Not-for-Profit Corporation Law, having an office at 110 William Street, New York, New York 10038.

"Eligible Materials" shall have the meaning set forth in Section 38.21(b).

"Enabling Act" shall have the meaning set forth in the Recitals.

"Equipment" means all fixtures and equipment incorporated in, or attached to, and used or usable in the operation of the Stadium 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; doors, hardware; floor, wall and ceiling coverings; wash room, toilet and lavatory equipment; lockers; windows, window washing hoists and equipment; communication equipment; and all additions or replacements thereof, in each case as incorporated in, or permanently attached to, the Stadium by Tenant as agent of Landlord, but excluding, however, from the definition of "Equipment" the Stadium Equipment and any personalty or trade fixtures not incorporated into or permanently attached to the Premises.

"Equity Interest" shall have the meaning set forth in Section 17.01(c)(iv).

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any Person that for purposes of Title IV of ERISA is a member of the Tenant's controlled group, or under common control with Tenant, or is otherwise required to be treated with Tenant as a single employee, within the meaning of Section 414 of the Internal Revenue Code.

"ERISA Event" means (a) (i) the occurrence of a Reportable Event, with respect to any Plan, or (ii) the requirements of subsection (1) of Section 4043(b) of ERISA are met with a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following thirty (30) days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in

Section 4041(e) of ERISA); (d) the cessation of operations at a facility of Tenant or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the withdrawal by Tenant or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the withdrawal by Tenant or any ERISA Affiliate from a Multiemployer Plan which is reasonably expected to have a material adverse effect on Tenant; (g) the conditions for the imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; (h) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA; or (i) the institution by the PBGC of proceedings to terminate a Plan or the appointment of a trustee to administer a Plan pursuant to Section 4042 of ERISA.

"ESDC" shall have the meaning set forth in the Recitals.

"Event of Default" shall have the meaning set forth in Section 24.01.

"Existing Mortgages" shall have the meaning set forth in Section 19.07(c).

"Existing Stadium Lease" means the Restated Agreement between the City and Doubleday Sports, Inc., dated as of January 1, 1985 for the stadium currently being used by the Team to play its Team Home Games, which is located on Roosevelt Avenue in Flushing, Queens, New York and is known as Shea Stadium, as amended by First Amendment of Lease dated as of December 28, 2001, Third Amendment of Lease dated as of December 2, 2003, Fourth Amendment of Lease dated as of December ____, 2003, Fifth Amendment of Lease dated as of February 27, 2004, Sixth Amendment of Lease dated as of September 1, 2004, Seventh Amendment of Lease dated as of June 29, 2005, Eighth Amendment of Lease dated as of September 14, 2005, Ninth Amendment of Lease dated as of October 28, 2005, Tenth Amendment of Lease dated as of November 29, 2005, Eleventh Amendment of Lease dated as of December 15, 2005, Twelfth Amendment of Lease dated as of July 17, 2006, and Thirteenth Amendment of Lease, dated of even date with the Commencement Date and as may hereafter be amended.

"Expiration Date" shall have the meaning set forth in Section 2.01(b).

"Extended Term" shall have the meaning set forth in Section 2.02.

"Fair Market Rental Value" shall have the meaning set forth in Section 3.01(c)

hereof.

"Family Member" shall have the meaning set forth in Section 17.01(c)(v) hereof.

"Fee Owner" means the City, or any successor-in-interest in fee title to the Land.

"Fixed Expiration Date" shall have the meaning set forth in Section 2.01(b).

"Governmental Authority" or "Authorities" means the United States of America, the State, the City and any agency, department, legislative body, commission, board, bureau, instrumentality or political subdivision of any of the foregoing, now existing or hereafter created,

having jurisdiction over the Premises or any portion thereof or any street, road, avenue, sidewalk or water immediately adjacent to the Premises, or any vault in or under the Premises.

"Guidelines" shall have the meaning set forth in Section 38.23(a)(ii).

"Hazardous Materials" shall have the meaning set forth in Section 21.01(h).

"<u>Hazardous Materials Claims</u>" shall have the meaning set forth in <u>Section</u> 18.01(c).

"<u>Hazardous Materials Laws</u>" shall have the meaning set forth in <u>Section</u> 18.01(b)(v).

"<u>Hazardous Materials Notice</u>" shall have the meaning set forth in <u>Section</u> 38.22(a).

"Hearing" shall have the meaning set forth in Section 33.07(a).

"Hearing Officers" shall have the meaning set forth in Section 33.07(a).

"Home Stand" shall mean a series of successive games played by the Team at the Stadium against a Major League Baseball Club.

"IDA" shall have the meaning set forth at the beginning of this Lease Agreement.

"Impositions" shall have the meaning set forth in Section 6.01(b).

"Improvements" means the Stadium and any and all structures or other improvements and Equipment or other appurtenances of every kind and description now existing on the Land or hereafter erected, constructed, or placed upon the Land or any portion thereof, including, but not limited to, landscaping and any and all alterations thereto, replacements thereof, and substitutions therefor.

"Indemnitees" shall have the meaning set forth in Section 21.01.

"Independent Manager" shall mean an individual, appointed by the sole member of Tenant in such sole member's sole and absolute discretion, who shall not be at the time of his or her appointment, or during the term of his or her appointment or at any time during the five years preceding his or her appointment (i) a member, stockholder, partner, director, officer, manager or employee of the Tenant or any of its Affiliates (other than his or her service as "Independent Manager" of the Tenant); (ii) a Person affiliated with a customer, creditor, contractor or supplier of the Tenant or any of its Affiliates; (iii) any other Person receiving a material portion of his or her compensation or other financial remuneration from or who is otherwise financially dependent on, Tenant, an officer, director or employee of the Tenant or any of its Affiliates or a family member by blood or marriage of any officer, director, or employee of Tenant or a business entity owned or controlled by any of the foregoing; (iv) a Person who controls (whether directly, indirectly or otherwise) Tenant or any of its Affiliates or any creditor,

supplier, employee, officer, director, manager or contractor of Tenant or any of its Affiliates; or (v) a spouse, parent, sibling or child of any person described in clauses (i), (ii), (iii) or (iv).

"Incidental Private Payments" shall have the meaning set forth in Section 12.01(c).

"Indicted Party" shall have the meaning set forth in Section 33.07(a).

"Initial Term" shall have the meaning set forth in Section 2.01(b).

"Initial Term Base Rent" shall have the meaning set forth Section 3.01(a).

"Initial Term Base Rent Expiration Date" shall have the meaning set forth Section 3.01(a).

"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), an insurance company organized and existing under the laws of the United States or any state thereof, a not-for-profit 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, investment bank or company, trust or endowment fund or any combination of Institutional Lenders. Institutional Lenders shall also include any other Person approved by Landlord, such approval not to be unreasonably withheld. In all of the above cases, any Person shall qualify as an Institutional Lender only if it shall (a) be subject (by law or by consent) 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 (except that (b) shall not apply in the case of a governmental agency). "Institutional Lender" shall also mean any subsidiary of any of the foregoing, 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" shall have the meaning set forth in Section 14.07(c).

"Interest Rate" means the rate of interest paid on City twenty (20) year general obligation bonds at the time the amount is due, which the Interest Rate is to be calculated under this Lease Agreement, plus 100 basis points (one (1%) percent).

"Land" means the Stadium Site described in Schedule B attached hereto.

"<u>Landlord</u>" shall mean, initially, the Agency, and any successor to the landlord's interest in this Lease Agreement.

"Landlord's Suite" shall have the meaning set forth in Section 4.04(a).

"Landlord's Tickets" shall have the meaning set forth in Section 4.04(b).

"Late Charge Rate" shall have the meaning set forth in Article 13.

"<u>League Schedule</u>" means the schedule of Major League Baseball games issued by Major League Baseball each year.

"Lease Administrator" shall mean the New York City Department of Parks and Recreation or its successor-in-function, or any other Person designated by Landlord by written notice to Tenant (provided, that any Lease Administrator that is not an agency or instrumentality of the City shall be subject to the prior written approval of Tenant, not to be unreasonably withheld, conditioned or delayed).

"<u>Lease Agreement</u>" means this Lease Agreement and all exhibits hereto and all amendments, modifications and supplements hereof and thereof.

"Lease Revenue Completion Bonds" shall mean a series of federally taxable bonds issued pursuant to the Lease Revenue Bond Indenture in order to provide additional funds, if necessary, for the completion of the construction of the Stadium in accordance with the Development Agreement and the Plans and Specifications.

"Lease Year" means the twelve-month period beginning on January 1, 2007 and each succeeding twelve-month period during the Term (as hereinafter defined), except that the first Lease Year shall mean the period from the Commencement Date hereof to December 31, 2006 and the last Lease Year shall be the period between the Expiration Date and the immediately preceding January 1.

"Major League Baseball" means Major League Baseball and any successor to substantially all of its operations.

"MDC Funding Agreement" shall have the meaning set forth in Section 38.22(b)(ii).

"Major League Baseball Club" means any baseball team that is a member of Major League Baseball or its successor thereto.

"MLB Documents" shall have the meaning set forth in Section 38.23(a)(i).

"MLB Governing Documents" means the constitution, bylaws, rules, regulations and practices of Major League Baseball in effect from time to time, including without limitation, the following documents, including any successor documents, revised versions, replacements or amendments thereof: (a) the Major League Constitution; (b) the MLB Rules and Regulations, including all attachments thereto; (c) the Professional Baseball Agreement between Office of the Commissioner, on behalf of itself and the Major League Baseball Clubs and the National Association of Professional Baseball Leagues; (d) the Basic Agreement effective as of September 30, 2002 by and between the Major League Clubs and the Major League Baseball Players Association; (e) the Amended and Restated Agency Agreement effective as of November 1, 2003 by and between Major League Baseball Properties, Inc. and the various Major League Baseball Clubs, the American and National Leagues of Professional Baseball Clubs and the Office of the Commissioner (and related Operating Guidelines); (f) the Interactive Media Rights Agreement; and (g) any amendments and any interpretations to items (a)-(f) above issued from time to time by the Commissioner.

"MLB Entities" means the Office of the Commissioner, American League of Professional Baseball Clubs (to the extent of any continuing applicability), National League of Professional Baseball Clubs (to the extent of any continuing applicability), Major League Baseball Enterprises, Inc., Major League Baseball Properties, Inc., MLB Advanced Media, L.P., MLB Advanced Media, Inc., MLB Media Holdings, Inc., MLB Media Holdings, L.P., MLB Online Services, Inc., and/or any of their respective present or future affiliates or successors.

"MLB Rules and Regulations" means (a) any present or future agreements or arrangements regarding the telecast, cablecast (including pay, basic, expanded basic, pay-perview and video on demand), broadcast, recording (audio or visual), or other transmission or retransmission (including, but not limited to, transmission via the Internet or any other medium of interactive communication, now known or hereafter developed) of Major League Baseball games and/or other MLB Entities; (b) any other present or future agreements or arrangements entered into by Major League Baseball or any MLB Entity with third parties by, or on behalf of, any commerce, and/or the exploitation of intellectual property rights in any medium, including the Internet or any other medium of interactive communication; (c) any present or future agreements or arrangements entered into by the Major League Baseball clubs and/or one or more of the MLB Entities (including, without limitation, the MLB Documents); and (d) the applicable rules, regulations, policies, bulletins or directives issued or adopted on a league-wide basis either by the Commissioner or otherwise pursuant to the Major League Constitution or any MLB Document.

"Mortgage" shall have the meaning set forth in Section 17.02(b).

"Mortgagee" means the holder of a Mortgage.

"Multiple Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of Tenant or any ERISA Affiliate and for the employees of other Persons or (b) was so maintained and in respect of which Tenant or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"Naming Rights" shall have the meaning set forth in Section 7.01(a).

"Nationally Recognized Bond Counsel" means Nixon Peabody LLC, 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 in representing public instrumentalities and municipalities in the issuance of bonds and notes in at least 3 states.

"New York State Courts" shall have the meaning set forth in Section 38.13.

"Non-Completion Termination Date" shall mean (i) March 1, 2013, if (x) the first such Unavoidable Delay having a direct result on Tenant's ability to Substantially Complete the Stadium shall occur prior to January 1, 2008, and (y) the provisions of clause (iii) shall not apply, (ii) March 1, 2014, if (x) the first such Unavoidable Delay having a direct result on Tenant's ability to Substantially Complete the Stadium pursuant to the Development Agreement shall not occur until January 1, 2008 or later, and (y) the provisions of clause (iii) shall not apply, and (iii) March 1, 2015, if (x) following an Unavoidable Delay that has a direct result on Tenant's ability

to Substantially Complete the Stadium pursuant to the Development Agreement, Landlord and Tenant agree upon a revised plan of finance and a revised schedule for Substantial Completion which anticipates Substantial Completion occurring after March 1, 2009, and (y) following the agreement described in the foregoing clause (x) an Unavoidable Delay shall occur that has a direct result on Tenant's ability to Substantially Complete the Stadium pursuant to the Development Agreement.

"Non-Relocation Agreement" shall have the meaning set forth in the Recitals.

"O&M Fund" means the fund so designated under the PILOT Assignment.

"Operating Agreement" means that certain Amended and Restated Limited Liability Company Agreement of Queens Ballpark Company, L.L.C. dated as of August 22, 2006, as the same may be amended from time to time.

"Other Entities" shall have the meaning set forth in Section 19.07(1)(B).

"Partnership" shall have the meaning set forth in the Recitals.

"PBGC" shall have the meaning set forth in Section 19.06(w)(1).

"Permitted Encumbrances" means, as of any particular time, (i) the Mortgages (including, without limitation, the Existing Mortgages), (ii) the Stadium Use Agreement, (iii) the On-Site Parking Agreements, (iv) easements, licenses or rights-of-way, over, under or upon the real property on which the Stadium is located, so long as such easements, licenses or rights-of-way do not diminish or destroy the value or usefulness of the Stadium, and any lien, encumbrance or restriction permitted in accordance with the Mortgages; (v) liens for Impositions not then delinquent; (vi) any subleases, concessions, occupancy agreements and licenses consistent with the rights and obligations of Tenant under this Lease Agreement; (vii) such minor defects, irregularities, encumbrances, easements, rights-of-way, covenants running with the land and clouds on title as normally exist with respect to properties similarly used and which do not materially impair the Premises or the use of the Premises for the purpose for which it is held, (viii) liens securing Bonds issued under the Bond Documents, and (ix) Title Matters.

"Permitted Person" shall have the meaning set forth in Section 17.01(c)(vi).

"Permitted Transaction" shall have the meaning set forth in Section 17.01(b).

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

"PILOT Documents" means the PILOT Agreement, the PILOT Assignment, the PILOT Mortgages and the PILOT Mortgages Assignment.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"Plans and Specifications" shall have the meaning set forth in 12.01(d)(i).

"<u>Police Substation</u>" means a police facility at the Stadium having not less than 4,000 square feet of space (but excluded from the Premises), the terms and conditions regarding the construction of which shall be governed by an amendment to this Lease Agreement.

"Premises" means the Land and the Improvements.

"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-Northern New Jersey Area-Long Island, NY-NJ-CT-PA, 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 amount during the relevant calendar year 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 pursuant to Section 35.02(b).

"Primary Site Ground Lease" shall have the meaning set forth in the Recitals.

"Prime Rate" means the rate announced as such from time to time by JPMorgan Chase Bank, or its successors, at its principal office. Any interest payable under this Lease Agreement 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.

"Prohibited Person" shall have the meaning set forth in Section 17.01(d).

"Project" shall have the meaning set forth in the Recitals.

"Project Budget" means the then current draft of a budget prepared by Tenant which identifies all estimated costs of the Project.

"Project Documents" means the PILOT Documents, this Lease Agreement, the Stadium Use Agreement and the Rental Mortgage.

"Purchasing Rep" shall have the meaning set forth in Section 4.04(b)(i).

"QBC Funding Ageement" shall have the meaning set forth in Section 38.22(b)(ii).

"Rebate Obligations" shall have the meaning set forth in Section 19.06(h).

"Recognized Mortgage" shall have the meaning set forth in Section 17.03(b).

"Recognized Mortgagee" shall mean the holder of a Recognized Mortgage.

"Reimbursement Rate" means, at any particular time, the yield to maturity at issuance of the then most recently issued thirteen (13) week U.S. Treasury bills or, if the same are not then issued, the yield to maturity at issuance of the then most recently issued thirteen (13) week or three (3) month U.S. Treasury notes or bonds.

"Rental" means all of the amounts payable by Tenant pursuant to this Lease Agreement, including, without limitation, Base Rent, Additional Rent and any other sums, costs, expenses or deposits which Tenant is obligated, pursuant to any of the provisions of this Lease Agreement, to pay and/or deposit, but excluding PILOTs.

"Rental Payments" shall have the meaning set forth in the Recitals.

"Replacement Value" shall have the meaning set forth in Section 14.01(d)(i).

"Reportable Event" means any event described in Section 4043(b) of ERISA, other than an event (excluding an event described in Section 4043(b)(I) relating to tax disqualification) with respect to which the thirty (30) day notice requirement has been waived.

"Requirements" shall have the meaning set forth in Section 18.01(b).

"Restoration" means a Casualty Restoration or a Condemnation Restoration.

"Restoration Funds" shall have the meaning set forth in Section 15.03(a).

"Retained Rights Agreements" shall have the meaning ascribed to such term in the Stadium Use Agreement.

"Reviewable Features" shall have the meaning set forth in Section 12.01(d)(ii).

"Sales Taxes" shall have the meaning set forth in Section 38.21.

"Sales Tax Letter" shall have the meaning set forth in Section 38.21.

"Single Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, subject to Title IV of ERISA, that (a) is maintained for employees of the Tenant or any ERISA Affiliate and no Person other than Tenant and the ERISA Affiliates or (b) was so maintained and in respect of which Tenant or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"South Parking Site Ground Lease" shall have the meaning set forth in the Recitals.

"Stadium" shall have the meaning set forth in the Recitals.

"Stadium Equipment" shall have the meaning set forth in the Recitals.

"Stadium Events" means Team Events and all other events (such as performances, rallies, exhibitions and conventions) held at the Stadium.

"Stadium Project" shall have the meaning set forth in Section 8.01.

"Stadium Site" shall have the meaning set forth in the Recitals.

"Stadium Use Agreement" shall have the meaning set forth in the Recitals.

"State" shall have the meaning set forth in the Recitals.

"Sublease" shall have the meaning set forth in Section 17.01(c)(vii).

"Substantial Completion", "Substantially Completed" or "Substantially Complete Construction of the Stadium" or similar terms used with respect to the construction of the Stadium Project means the condition of construction of the Stadium Project that is substantially in accordance with the plans and specifications therefor and in accordance with all Requirements, for which a Certificate of Occupancy has been issued, and which is ready for the Team to play its Team Home Games.

"Substantial Taking" shall have the meaning set forth in Section 16.01(b).

"Substantially Equivalent Facility" shall have the meaning set forth in the Non-Relocation Agreement.

"Subtenant" means any occupant pursuant to a Sublease of all or any part of the Premises.

"Taking" shall have the meaning set forth in Section 16.01(a).

"<u>Taxable Bond Insurer</u>" shall have the meaning set forth in the Non-Relocation Agreement.

"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 assessed and which would be levied if not for such exemption), pursuant to the provisions of Chapter 58 of the Charter of New York City and Title 11, Chapter 2 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.

"Team" shall have the meaning set forth in the Recitals.

"Team Events" means (1) Team Home Games; (2) the Team's practice and training activities; (3) Team pre-season games and exhibition games, which may occur during pre-season, post-season or in-season; (4) promotional or community outreach activities involving baseball or baseball related-events, such as youth baseball clinics and autograph sessions; (5)

entertainment programs or activities relating to Team Home Games; and (6) any Partnership or Team sponsor/advertiser-related activities, any baseball-related activities, including any "all-star" games or similar games or tournaments, whether or not the Partnership, the Team or any Partnership or Team members are participating, and baseball-related community or promotional events of any kind.

"<u>Team Games</u>" means all exhibition, regular-season and post-season games played or to be played by the Team as a member of the League and all games between the Team and a minor league affiliate or a foreign baseball team.

"Team Home Games" means each Team Game played at the Stadium.

"<u>Team Season</u>" means that part of the Baseball Season starting on the date of the first scheduled Team Home Game and ending on the date of the last Team Home Game in each Lease Year.

"Temporary Taking" shall have the meaning set forth in Section 16.04.

"Tenant" shall mean (i) initially, Queens Ballpark Company, L.L.C., and (ii) following any permitted transfer or assignment of the tenant's interest in this Lease Agreement, any permitted successor to the tenant's interest in this Lease Agreement.

"Term" means the Initial Term, as extended by any Extended Term.

"Termination Payment" shall have the meaning set forth in Section 38.22(b) hereof.

"Ticket Availability" shall have the meaning set forth in Section 4.04(b)(vii).

"Title Matters" shall have the meaning set forth in Section 2.01(a).

"<u>Transaction Documents</u>" shall mean any documents executed and delivered by the Tenant in connection with the financing, development and leasing of the Stadium and the Parking Facilities.

"Transfer" shall have the meaning set forth in Section 17.01(c)(viii).

"Transferee" shall have the meaning set forth in Section 17.01(c)(ix).

"Unavoidable Delays" means delays beyond the reasonable control of one party, despite such party's taking reasonable steps to mitigate such delays, which have the effect of delaying such party's performance of its obligations hereunder or under the Development Agreement and which are due to, as applicable, strikes, slowdowns, walkouts, lockouts, acts of God, catastrophic weather conditions (such as floods, extraordinary high water conditions, unusually high tides, unusual and prolonged cold conditions, hurricanes or other extraordinary wind conditions, or extraordinary rain, snow, or sleet), court orders enjoining commencement or continuation of the performance of such party's obligations, (unless such results from disputes between or among present or former members, shareholders, officers, directors, principals or

Affiliates of Tenant), extraordinary delays in insurance adjustment or collection, enemy action (including both declared and undeclared wars), civil commotion, riot, terrorism, extraordinary public security measures such as martial law or quarantine of an area in which the Premises are located, fire, casualty, unavailability of materials notwithstanding such party's commercially reasonable efforts to obtain such materials, or other cause not within such party's reasonable control that is causing a delay in such party's performance of its obligations hereunder, of which the obligated party shall have notified the other party and the Bond Insurer in writing, stating when such delay commenced, not later than thirty (30) days after the obligated party has first received knowledge of the occurrence of any of the foregoing conditions, provided that no notice shall be required if an employee or representative of the other such party having direct involvement in the Stadium Project knew about the events causing such Unavoidable Delay. Notwithstanding the preceding, it is understood and agreed that in no event shall Tenant's financial condition or inability to obtain financing (unless financing is unobtainable due to an Unavoidable Delay) constitute an Unavoidable Delay.

"Withdrawal Liability" has the meaning specified in Part 1 of Subtitle E of Title IV of ERISA.

"Zoning Resolution" shall have the meaning set forth in Section 18.01(b)(i).

ARTICLE 2

DEMISE OF PREMISES AND TERM OF LEASE

Section 2.01. Demise of Premises and Term of Lease.

- (a) Landlord does hereby demise and lease to Tenant, and Tenant does hereby hire and take from Landlord, on the terms and conditions set forth herein, the Premises, in its "as is" condition as of the date hereof, as may be improved pursuant to the Development Agreement (it being acknowledged that Tenant will build the Stadium and improve the On-Site Parking Facilities pursuant to the Development Agreement), and Landlord shall not be required to perform any work or contribute any monies to Tenant except as otherwise expressly provided herein, subject to the terms and conditions hereof and any and all encumbrances, exceptions, reservations, conditions of title and other matters affecting Landlord's interest in the Premises and liens and encumbrances created or suffered by Tenant, and those title matters set forth on Schedule E (collectively, "Title Matters").
- (b) TO HAVE AND TO HOLD unto Tenant, its permitted successors and assigns, for a term commencing on the Commencement Date and terminating on the earliest to occur of (i) the day immediately preceding the day which is six (6) months following the thirty-seventh (37th) anniversary of Substantial Completion, and (ii) if the date referred to in the preceding clause (i) occurs during a Baseball Season, the day immediately preceding the commencement of such Baseball Season (the earlier of (i) or (ii) being the "Fixed Expiration Date"), or (iii) such earlier date upon which this Lease Agreement may be terminated as hereafter provided (the "Expiration Date") (such term, the "Initial Term").



The foregoing paragraph (b) above notwithstanding, if this Lease (c) Agreement is in full force and effect, and Tenant is not in default of its obligations under this Lease Agreement (of which Landlord has previously provided written notice hereunder), for each Team Season in which at least fifty percent (50%) of the regular number of regular season Team Home Games (it being agreed that as of the date of execution of this Lease Agreement, such regular number for the 2006 regular Baseball Season Team Home Games is 81) is cancelled or not scheduled through no fault or default of Tenant or the Partnership (including without limitation, because of a labor strike, Team owner's lockout of players during a labor dispute, casualty or condemnation), and provided that Team is not playing elsewhere during such Baseball Season and therefore at least fifty percent (50%) of the regular season Team Home Games played during such Baseball Season takes place at neither the Stadium nor elsewhere, Tenant shall have the option by written notice of extending the Initial Term to and through the conclusion of one additional Team Season plus an additional thirty (30) days; provided, that in no event shall the Term, as extended by this paragraph (c), together with any Extended Term(s) pursuant to Section 2.02 below, extend past the date that is one day prior to the expiration date of the Primary Site Ground Lease. Any extension of the Initial Term shall be on the same terms and conditions of this Lease Agreement, except there shall be no right or any further extension of the Initial Term (unless and to the extent a Team Season is cancelled as aforesaid during the Initial Term), and shall be conditional upon (i) the written acknowledgement and stipulation of the extension of the Stadium Use Agreement for a period commensurate with (but one day less than) the extension of the Initial Term, executed and delivered by Tenant and the Partnership and delivered to Landlord, (ii) receipt of certificate executed and delivered by the Tenant and the Partnership and delivered to Landlord confirming that the Non-Relocation Agreement has been extended for a period of time commensurate with the extension of the Initial Term, signed by the Partnership, all such written instruments to be in form reasonably acceptable to Landlord, and (iii) Tenant's timely exercise of the option to extend the Initial Term. Such extension of the Initial Term option may be exercised by Tenant's delivering written notice to Landlord of the exercise of such option, including an explanation of the basis for such extension (i.e., the reason for which the regular season Team Home Games were canceled and the calculation of the percentage of regular season Team Home Games canceled), such written notice to be delivered on or before ninety (90) days following the termination of the Team Season which has been 'cancelled' (as described above), together with the proposed written instruments to be provided as set forth above. Provided that such notice sets forth an express reference to the turnaround time set forth herein, Landlord shall (conditional upon Landlord's receipt of the executed instruments set forth above in this paragraph) approve or disapprove such proposed extension within twenty (20) Business Days of delivery of same, and if not disapproved within such period shall (conditional upon Landlord's receipt of the executed instruments set forth above in this paragraph) be deemed approved, and if disapproved, shall state the reasons for disapproval. Landlord shall not unreasonably withhold or delay its consent to any request regarding the foregoing. Any disputes between Landlord and Tenant regarding a request for an extended Initial Term as aforesaid and not resolved within sixty (60) days of Landlord's disapproval shall be subject to arbitration pursuant to Section 35.02(b), provided such proceeding is commenced within one (1) year after Landlord's disapproval. A Recognized Mortgagee shall on behalf of Tenant have the right to exercise the options for an extension of the Initial Term set forth in this Section 2.01(c).

Section 2.02. Extension Options. If this Lease Agreement is in full force and effect, and Tenant is not in default of its obligations under this Lease Agreement (of which Landlord has previously provided written notice hereunder), Tenant shall have the option to extend the Term of this Lease Agreement for up to the following terms (each, an "Extended <u>Term</u>"): (i) one (1) extension option for the period from the Fixed Expiration Date (subject to extension of the Initial Term as provided in <u>Section 2.01(c)</u>) until the fortieth (40th) anniversary of the date of Substantial Completion, (ii) two (2) extension options thereafter each having a term of five (5) years, (iii) four (4) extension options thereafter each having a term of ten (10) years, and (iv) one (1) immediately succeeding extended term of nine (9) years (all of the foregoing subject to extension of the Initial Term as provided in Section 2.01(c)). The foregoing notwithstanding, in no event shall the Term of this Lease Agreement, inclusive of all Extended Terms (and inclusive of any extension of the Initial Term pursuant to Section 2.01(c) above), extend beyond the date that is one day prior to the expiration of the Primary Site Ground Lease (i.e., one day less than ninety-nine (99) years from the Commencement Date); notwithstanding any option for an Extended Term, any Extended Term which commences after one day prior to the expiration of the Primary Site Ground Lease shall be null and void and there shall be no option for such Extended Term, and any option for an Extended Term which would otherwise terminate after the date that is one day prior to the expiration of the Primary Site Ground Lease shall be deemed to be an Extended Term only up to the date that is one day prior to the expiration of the Primary Site Ground Lease and shall terminate on the date that is one day prior to the expiration of the Primary Site Ground Lease. Any Extended Term shall be on the same terms and conditions of this Lease Agreement, except (a) there shall be no right to any Extended Term other than up to the eight (8) consecutive Extended Terms as set forth above in this paragraph, subject to extension of the Initial Term as provided in Section 2.01(c), and (b) the Base Rent shall be as set forth in Section 3.01(b) for each Extended Term, respectively. An Extended Term shall commence upon the expiration of the Initial Term (as extended pursuant to Section 2.01(c)) or immediately preceding Extended Term, as the case may be. Such Extended Term option shall be conditional upon (i) Tenant's timely exercise of such option to extend for the Extended Term and may be exercised by Tenant's delivering written notice to Landlord of the exercise of one or more (consecutive) Extended Term options, such written notice to be delivered on or before the later of (x) one (1) year prior to the date on which the Term, but for the exercise of such Extended Term option, would otherwise expire and (y) the thirtieth (30th) day after Landlord delivers to Tenant a notice that if Tenant does not exercise its Extended Term option, the Term shall expire on the date that shall be thirty (30) days from delivery of such notice and (ii) the written acknowledgement and stipulation of the extension of the Stadium Use Agreement for a period commensurate with (but one day less than) the extension of the Initial Term, executed and delivered by Tenant and the Partnership. A Recognized Mortgagee shall on behalf of Tenant have the right to exercise the options for an Extended Term set forth in this Section 2.02. Notwithstanding anything set forth to the contrary herein, for so long as Bonds are outstanding, Tenant's exercise of any option to extend this Lease Agreement for an Extended Term shall be conditioned upon there having been issued an opinion of Nationally Recognized Bond Counsel that such Extended Term shall not cause the interest on the tax-exempt Bonds to be includable in gross income for Federal income taxes. 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. Landlord shall cause such bond counsel to issue such opinion or inform Tenant of the reasons for which such opinion cannot be issued

within twenty (20) Business Days of such request. In the event that such opinion from Nationally Recognized Bond Counsel cannot at the time be delivered under the circumstances then prevailing, Landlord and Tenant agree to take such reasonable steps as are mutually acceptable to each to allow Tenant to exercise its options for the Extended Term (e.g., refund then outstanding tax-exempt Bonds with taxable Bonds).

ARTICLE 3

RENT

All amounts due Landlord under this Lease Agreement shall constitute Rental.

Section 3.01. <u>Base Rent</u>. During the Term, Tenant shall pay annual rent ("<u>Base Rent</u>") to Landlord as follows:

- (a) Commencing on December 1, 2009, and on each December 1 thereafter through and including December 1, 2038, One Million Dollars (\$1,000,000), payable as follows: (i) Five Hundred Thousand Dollars (\$500,000) shall be payable on each such December 1, and (ii) an additional Five Hundred Thousand Dollars (\$500,000) shall be paid within one hundred fifty (150) days following the date (if any) on which Attendance for the next succeeding Baseball Season reaches 2,000,000 tickets (provided that no such additional payment shall be due unless and until such Attendance threshold is met during such season); and commencing on December 1, 2039 and on each December 1 thereafter up to and including December 1, 2045 (the "Initial Term Base Rent Expiration Date"), the annual sum of Five Hundred Thousand Dollars (\$500,000) (any and all such amounts are hereinafter referred to as "Initial Term Base Rent"); paid in a single lump sum on each applicable payment date. For the purpose of Section 3.01, "Attendance" means the aggregate number of tickets sold for Team Home Games, and in determining whether Attendance has reached the 2,000,000 tickets threshold, tickets sold shall be deemed to be sold once the respective game has been played.
- (b) From and after the commencement date of each Extended Term, and continuing through and including the termination date of each such Extended Term, the Fair Market Rental Value with respect to such Extended Term, which Fair Market Rental Value shall be determined in the manner set forth below in paragraph (d) of this Section 3.01.
- (c) Whenever pursuant to this Section 3.01 the Base Rent is to be determined based upon Fair Market Rental Value, Fair Market Rental Value shall be determined in the following manner: not more than four (4) years and at least six (6) months prior to the date on which the Base Rent is to be adjusted based on Fair Market Rental Value, Tenant shall submit to Landlord an appraisal, setting forth the Fair Market Rental Value together with a letter making express reference to this Section 3.01(c) and stating that Landlord has forty-five (45) days in which to accept or dispute Tenant's determination of Fair Market Rental Value. Landlord shall have forty-five (45) days within which to accept or dispute Tenant's determination, and if not disputed within such period, such Fair Market Rental Value shall be deemed accepted by Landlord. If Landlord disputes Tenant's determination of Fair Market Rental Value for the Stadium, then Landlord shall engage an appraiser and shall deliver its appraisal to Tenant within thirty (30) days of the date Landlord sends notice to Tenant that it disputes Tenant's

determination of Fair Market Rental Value. If the determination of Fair Market Rental Value by Landlord does not agree with Tenant's determination of Fair Market Rental Value, then Landlord and Tenant shall attempt to resolve such disagreement, and if such agreement is not resolved and reduced to a written stipulation within thirty (30) days from the date Tenant received Landlord's determination of Fair Market Rental Value of the Premises, then each of Landlord's and Tenant's appraisers so chosen shall meet within ten (10) days after the expiration of such thirty (30) day period to attempt to agree on the Fair Market Rental Value, and if, within ten (10) days after such 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 person. Within a period of thirty (30) days after the appointment of such third appraiser, the third appraiser shall choose one of the determinations of the two appraisers originally selected by the parties, such choice being final and decisive (unless, prior to the appraiser informing Landlord and Tenant of such determination, Landlord and Tenant shall agree in a writing executed by Landlord and Tenant upon the Fair Market Rental Value). In the event the first two appraisers are unable to agree upon the appointment of a third appraiser within ten (10) 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 ten (10) days. If the parties do not so agree, then either party, on behalf of both, may apply to the Supreme Court of Queens 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 3.01 shall be a member of the American Institute of Real Estate Appraisers (or a successor organization), shall be an appraiser, and, to the extent such expertise is available, shall be experienced in the appraisal of sports arenas, but in any event shall have been doing business as an appraiser of commercial property in New York City for a period of at least ten (10) years before the date of such appointment. All appraisers chosen or appointed pursuant to this Section 3.01 shall be sworn fairly and impartially to perform their duties as such appraiser. Each party shall pay the fees and expenses of its respective appraiser and both shall share the fees and expenses of the third appraiser, if any. Each party shall be responsible for the fees and expenses of its own attorney and other representatives in connection with such appraisal. The term "Fair Market Rental Value" shall mean the annual fair market rental value of the Premises as of the date that such valuation is agreed to or made by the appraiser(s); provided, that for any appraisal which is agreed to by the parties or becomes binding upon the parties pursuant to this Section 3.01(c) more than one (1) year prior to the date on which Base Rent is to be adjusted based upon such appraisal, the Fair Market Rental Value shall be subject to CPI Adjustment through the Base Rent adjustment date, provided that the determination of Fair Market Rental Value did not expressly take into account that the valuation was more than one (1) year prior to the date on which Base Rent is to be adjusted. The appraisal shall assume the availability of, and take into account the revenue and expenses associated with, parking under the Parking Facilities Agreements and any parking concession agreements for the Off-Site Parking Facilities to which Tenant or an affiliate thereof is a party. The Fair Market Rental Value appraisal shall be made considering, without limitation, all burdens, costs and expenses borne by Tenant in connection with the Premises and Tenant's use thereof, including, without limitation, the Premises in its then "as-is" condition, all necessary or desirable improvements and replacements (which consideration shall take account of the quality of and amenities existing at professional Major League Baseball stadiums at the time) and the cost of financing such improvements and replacements, the Premises as encumbered by this Lease Agreement in its

then-existing state of title, that Tenant is responsible for all maintenance, repair, improvement, replacement, taxes, Impositions and operating costs of the Stadium as set forth in this Lease and any other factors relevant to such determination.

(d) In the event that Fair Market Rental Value has not been determined on the date on which Base Rent is to be paid based upon such Fair Market Rental Value, then Base Rent shall be paid in the amount paid immediately prior to such adjusted Base Rent period; provided that for the first Extended Term, Base Rent shall be paid according to the Fair Market Rental Value set forth in Tenant's appraisal for such period (subject to CPI Adjustment) until Base Rent for such period is finally determined. Upon such determination adjustment for overpayment or underpayment shall be made within sixty (60) days following such determination of Fair Market Rental Value.

Section 3.02. <u>Additional Rent</u>. Tenant shall make payments of Additional Rent in the amounts required for the Agency to make debt service payments on the Additional Lease Revenue Bonds, as amended from time to time; provided, however, that in no event shall Landlord issue Additional Lease Revenue Bonds without Tenant's prior written consent. Upon request of either Landlord or Tenant, both parties shall promptly negotiate, execute and deliver an amendment to confirm, clarify or otherwise effectuate the foregoing.

Section 3.03. <u>Method and Place of Payment</u>. Except as otherwise specifically provided herein, all Initial Term Base Rent, and any Additional Rent unless otherwise instructed by Landlord in writing to Tenant, shall be paid by wire transfer to the Lease Revenue Bond Trustee without setoff or deduction in accordance with the Lease Revenue Bonds First Supplemental Indenture. Base Rent other than Initial Term Base Rent shall be paid as directed in writing by the Lease Administrator.

Section 3.04. No Initial Term Base Rent Prepayment. No Initial Term Base Rent shall be paid in advance of the date on which it is due, and Landlord shall not accept such advance payment. Any purported payment or tender of payment of Base Rent or any installment of Base Rent during the Initial Term more than one year prior to the date such Rental or installment of Rental becomes due and payable hereunder shall be ineffective to discharge the obligation to pay such Base Rent or installment of Base Rent. The Bond Insurer shall be a third party beneficiary of the covenants set forth in this Section 3.04.

ARTICLE 4

USE OF PREMISES

Section 4.01. <u>Tenant's Use of Premises</u>. Tenant may use the Premises for the purposes described in this Article 4 and for no other uses or purposes. Tenant hereby warrants and represents that all approvals and consents required pursuant to the MLB Governing Documents to allow and authorize (i) Tenant to enter into this Lease Agreement and the Stadium Use Agreement, and (ii) the Team to use the Stadium as its home stadium, in each case, have been obtained.

Section 4.02. <u>Required Use by Tenant</u>. Tenant agrees to compel the compliance by the Partnership with the terms, covenants and conditions of the Stadium Use Agreement, including, without limitation, the Partnership's obligations under Section 2.1.1 of the Non-Relocation Agreement.

Section 4.03. Tenant's Right to Use the Premises.

- (a) Upon Substantial Completion, Tenant shall have the exclusive right to use and permit the use of the Premises during the entire Term, for (i) Team Events, (ii) to the extent not inconsistent with Section 4.02, any and all other lawful purposes and events, including but not limited to other entertainment, sporting, cultural, recreational, promotional, community and civic events, (iii) film and other motion picture production, (iv) restaurant, souvenir shop, sporting goods and other retail use ancillary to the operation of a major league professional sports stadium, all subject to Requirements and Section 4.08 and no other use or purpose.
- (b) Tenant shall have the exclusive right to charge and permit the charging of admission or usage fees for all Stadium Events and other activities at the Premises, and to determine (or allow others to determine), at its sole and absolute discretion, the prices and terms of tickets and other admission or other privileges to all Stadium Events and other activities taking place at the Premises.
- (c) Tenant shall have the exclusive right to use and permit the use of the Premises and all areas therein for television and radio broadcasting, media coverage, and all other means of transmission, whether currently existing or hereinafter developed, in any and all media, including without limitation with respect to Stadium Events.
- (d) Tenant shall have the right to use and permit the use of the Premises for all purposes incidental to the uses permitted pursuant to this <u>Section 4.03</u>, not inconsistent with Sections 4.02 and 4.08.

Section 4.04. Landlord's Luxury Suite and Priority Tickets.

(a) Landlord shall be entitled to use one (1) luxury suite (including a 12 seat box) (hereinafter, "Landlord's Suite") (i) during all Team Home Games during the Team Season, including not in excess of twelve (12) tickets at no admission or other charge by Tenant or any of its Subtenants (provided, that Landlord shall have the opportunity to purchase additional tickets at regular price, but not in excess of the capacity allowed under Tenant's policy for maximum luxury suite capacity, consistently applied); provided, that in the event of a Team Home Game that is an MLB "jewel event", in which MLB takes control of the sale of tickets for such jewel event, Tenant shall obtain not more than twelve (12) tickets for Landlord at no admission or other charge to Landlord for such tickets, unless such tickets are unavailable from MLB without regard to price, and (ii) during all other Stadium Events, upon payment of a face value admission charge for any such Stadium Events to the vendor of such tickets. Landlord's Suite shall be large enough to accommodate no less than twelve (12) persons and shall be of an interior design and have furnishings and physical accommodations as are available at other "base model" luxury suites, and shall enjoy such services and amenities as are available to other "base model" luxury suites, for the same charges as other "base model" luxury suites. Use of Landlord's Suite may be

conditioned upon Landlord signing the same agreement (except with respect to payment of any admission fee or charge) that is required to be signed by all other licensees or users of a luxury suite, which Tenant shall furnish to Landlord (same may be furnished at the time of entry upon and use of Landlord's Suite by such persons). Landlord shall be required to notify Tenant not less than twenty (20) days in advance of the date on which it intends to use Landlord's Suite, or with respect to Stadium Events other than Team Home Games which are scheduled less than twenty (20) days in advance of such Stadium Event, such notice shall be provided within five (5) days after the public announcement of the scheduling of such Stadium Event and tickets thereafter going on sale for the general public. The notice to be provided herein shall be made in the same manner as is set forth in the first sentence of Section 4.03(b)(ii) for the purchase of tickets. Landlord hereby assigns its right to such use of the Landlord's Suite to the City for its use and the use of its guests and invitees, and Tenant hereby consents thereto.

- (b) Subject at all times to Ticket Availability, Landlord shall have the option to purchase up to one hundred forty five (145) tickets ("Landlord's Tickets") for each Team Home Game during each Team Season on the following terms and conditions:
- (i) Not later than ten (10) days prior to the first Team Home Game of the upcoming Team Season, Landlord shall designate one (1) individual (the "Purchasing Rep") to act as Landlord's representative for all purchases to be made pursuant to this <u>Section</u>, which designation shall be made in writing and delivered to Bill Ianniciello, Vice President of Ticketing, by fax to No. 718-565-5330 or by e-mail to <u>biann@nymets.com</u>, (or in the alternative may be provided in accordance with <u>Section 25.01</u>) or such other contact designated by Tenant. Landlord may designate an alternate Purchasing Rep at any time which shall be effective upon ten (10) days prior written notice to Tenant of such change made in the foregoing manner. Tenant may designate one or more individuals to act at Tenant's representative for all notices pursuant to this Section.
- (ii) No later than three (3) days prior to the first game of each Home Stand of the regular season portion of the Team Season, the Purchasing Rep shall notify Tenant's representative (which notice may be given telephonically or by fax or e-mail to a contact which Tenant shall provide) of Landlord's election to purchase the Landlord's Tickets, which tickets shall be for the best seats available to the general public at the time of Landlord's election to purchase such tickets.
- (iii) No later than three (3) days prior to the first Team Home Game for each post-season series (i.e., play-offs and Word Series), Tenant shall notify the Purchasing Rep of the date upon which tickets for such series shall be offered for purchase by the general public. The Purchasing Rep shall have no more than two (2) days from the date of such notice by Tenant to elect whether to purchase Landlord's Tickets; provided, however, that Tenant in no way guarantees Ticket Availability during the post-season.
- (iv) Tenant shall have no obligation to reserve Landlord's Tickets for any Team Home Game and Landlord acknowledges that ticket sales shall be ongoing by Tenant during the course of the Team Season. The determination of the "best seats available to the general public" shall be made by Tenant in Tenant's sole and absolute discretion.

- (v) Landlord acknowledges that there shall be no discount applied to the price of Landlord's Tickets. Payment for Landlord's Tickets shall be made by check or credit card to the Partnership or such other entity as may be designated by the Partnership, with such payment to be made in full before Landlord's Tickets are released to Landlord.
- (vi) Landlord may not use any of Landlord's Tickets for any ticket giveaway or promotion or other commercial purpose without the prior written consent of Tenant and the Partnership.
- (vii) The term "Ticket Availability" as used herein shall mean the availability of tickets for the Team Home Game in question for the general public and excluding those tickets held for business uses or purposes of Tenant or the Partnership, including, without limitation, for potential use by or at the request of any of the following: employees, present or potential sponsors, advertisers or business partners, dignitaries, personalities, umpires, Team and visiting players and teams, Major League Baseball or MLB Entities or as required by MLB Rules and Regulations.

Section 4.05. <u>US Open</u>. There shall be no Stadium Events during the "US Open" conducted by the United States Tennis Association (or its successor-in-interest) at Flushing-Meadow Corona Park, other than baseball games. Tenant shall cooperate and provide reasonable support to the City in the City's efforts to cause MLB to limit scheduling Team Games at the Stadium during the US Open. The City shall be a third party beneficiary of this covenant.

Section 4.06. <u>Tenant's Right to Collect and Retain Revenues from Premises</u> <u>Events</u>. Subject to the Bond Documents, Tenant shall have the right to collect and retain for its own account all revenues derived from all events and activities of any kind and manner at the Premises including but not limited to those derived from all uses permitted under this Article 4.

Section 4.07. Intentionally omitted.

Section 4.08. No Unlawful Use. Tenant shall not use or occupy the Premises, or knowingly permit or suffer the Premises or any part thereof to be used or occupied, for any unlawful, illegal, or hazardous business, use or purpose or in any way in violation of any of the Requirements or in such manner as may make void or voidable any insurance then in force with respect to the Premises of any part thereof, or for any lewd or obscene "adult" entertainment which is characterized by an emphasis on "specified anatomical areas" or "specified sexual activities", as such terms are defined in Section 12-10 of the Zoning Resolution under the definition of "Adult establishment"; provided, however, that, unless Tenant shall authorize same, in no event shall Tenant be in breach of the covenants set forth above in this Section 4.08 on account of the unlawful, illegal or hazardous business, use or purpose of any Person not affiliated with Tenant, including without limitation, visitors to or patrons of the Premises, conditional upon Tenant's, promptly upon the discovery of any such unlawful, illegal or hazardous business, use or purpose, taking all reasonably necessary steps, legal and equitable, to compel the discontinuance thereof, including without limitation notification to the New York City Police Department (unless the same shall have occurred as a result of any act by Landlord or any Person claiming by, through or under Landlord, in which case Landlord shall take all necessary steps,

legal and equitable, to compel the discontinuance thereof). Neither Tenant nor Landlord shall keep, or permit to be kept, anything on the Premises as now or hereafter prohibited by the Fire Department of the City of New York, Board of Fire Underwriters, Fire Insurance Rating Organization and other authority having jurisdiction.

ARTICLE 5

CONCESSIONS

Section 5.01. Stadium Concessions.

- (a) Tenant shall have the exclusive right, but not the obligation, to provide and operate concessions at the Premises for the sale of food, beverages, souvenirs, scorecards, programs, publications, merchandise, apparel, internet service and/or other goods and services.
- (b) Without limiting the foregoing, Tenant may sell or authorize the sale of alcoholic beverages at the Premises, provided that Tenant complies with all Requirements concerning the sale of alcoholic beverages at the Premises, including, but not limited to, age restrictions, identification requirements, and restrictions on sales to inebriated persons.
- (c) Tenant shall have the right to charge for all items sold at concessions at the Premises, and to determine, in its sole and absolute discretion, the prices thereof.
- (d) Tenant shall have the right to collect and retain all revenues derived from concessions operated at the Premises during the Term and the right to assign collection of such revenues.
- (e) The foregoing notwithstanding, no tobacco products may be sold at the Premises. No "Adult establishment", as such term is defined in the Zoning Resolution, shall be permitted at the Stadium.

ARTICLE 6

IMPOSITIONS

Section 6.01. Payment of Impositions.

(a) Obligation to Pay Impositions. Tenant, as agent for Landlord, shall pay, in the manner provided in Section 6.01(c) hereof, all Impositions that, with respect to any period occurring during the Term, are, or would be, if the Premises or any part thereof or the owner thereof were not exempt therefrom, assessed, levied, confirmed, imposed upon, or would be charged to the owner of the Premises 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, or (v) any personal property or other facility used in the operation thereof, or (vi) other Rental (or any portion thereof) or any other amount payable by Tenant hereunder, or (vii) the use and occupancy of the Premises, or (viii) this Lease Agreement or the leasehold estate created thereby; provided that in no event shall Tenant be obligated to pay any Impositions attributable

to activities of Landlord, EDC, ESDC, the City and/or the State ("activities" of any of the foregoing parties shall not include any such parties entering into the any of the Lease Documents or any of the Bond Documents).

- (b) <u>Definition</u>. "<u>Imposition</u>" or "<u>Impositions</u>" means the following governmental exactions of general applicability or of general applicability to Persons or property or to classes of Persons or property within the City similarly situated to Tenant such that, if imposed by the City, the Imposition is not invidiously and arbitrarily discriminatory against Tenant or so narrowly drawn as to apply only to professional sports facilities of similar seating capacity situated on public property (it is hereby stipulated that the existing Yankee Stadium and the proposed new Yankee Stadium at John Mullaly Park and McComb's Dam Park in the Bronx, New York, has similar seating capacity with the Stadium):
 - (i) real property special assessments (including, without limitation, any special assessments for or imposed by any business improvement district or by any special assessment district);
 - (ii) personal property taxes,
 - (iii) water, water meter and sewer rents, rates and charges,
 - (iv) excise taxes, license and permit fees, excluding sales and compensating use taxes for which exemption is available pursuant to Section 38.21,
 - (v) except for Taxes, and unless in lieu of Taxes, any other governmental fees, rents, assessments or taxes and charges, general and special, ordinary and extraordinary, foreseen and unforeseen, now or hereafter enacted, of any kind whatsoever, and
 - (vi) any fines, penalties and other similar governmental charges applicable to the foregoing, together with any interest or costs with respect to the foregoing, excluding therefrom any such fines, penalties or charges which may be imposed solely as a result of Landlord's acts or omissions in its proprietary capacity only.

"Impositions" shall not include mortgage recording tax on mortgages authorized by the Agency in connection with the Project.

(c) Payments of Impositions.

(i) Subject to the provisions of <u>Section 6.04</u>, Tenant shall pay each Imposition or installment thereof not later than the date the same may be paid without interest or penalty. However, if by law, at Tenant'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 when due with such interest as may be required by law. Impositions shall be payable in the form and to the location provided by the rules and regulations of the City governing such payments.

(ii) If Tenant fails to make any payment of an Imposition (or installment thereof) on or before the date due as required in the preceding subsection, Tenant shall, at Landlord's request, and notwithstanding (i) above, pay all Impositions or installments thereof thereafter payable by Tenant not later than ten (10) days before the due date thereof. Nothing in this paragraph shall be construed to limit Landlord's default remedies as set forth elsewhere in this Lease Agreement after failure by Tenant to timely pay any Imposition.

Section 6.02. <u>Evidence of Payment</u>. Tenant shall furnish Landlord, within thirty (30) days after the date when an Imposition is due and payable and a request is made by Landlord, official receipts of the appropriate taxing authority or other proof reasonably satisfactory to Landlord, evidencing the payment thereof.

Section 6.03. <u>Evidence of Non-Payment</u>. 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 non-payment of such Imposition shall be rebuttable 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 therein.

Section 6.04. <u>Apportionment of Imposition</u>. 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 Date, shall be apportioned pro rata between Landlord and Tenant as of the Commencement Date or the Expiration Date.

Section 6.05. Article 6 Costs. Tenant's cost and expense of performing its obligations under this Article 6 may be paid for or reimbursed out of funds available therefore in the Operating and Maintenance Fund under the PILOT Assignment. However, Tenant's obligations under this Article 6 shall not be limited by the availability of funds in the Operating and Maintenance Fund under the PILOT Assignment for such purpose, and to the extent such funds are not available Tenant shall perform the obligations under this Article 6 at its sole cost and expense.

Section 6.06. Taxes.

- (a) At all times during the Term of this Lease Agreement, no Taxes or general assessments shall be levied against the Premises.
- (b) During any part of the Term that the Agency is Landlord under this Lease, Landlord shall avail itself of its statutory exemption from Taxes and general assessments. If notwithstanding Landlord's statutory exemption from Taxes during the Term, Taxes or general

assessments are nevertheless levied against the Premises, Landlord shall cause the City to cancel or discharge or otherwise satisfy such Taxes or general assessments on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by the City).

- (c) At any time during the Term that the Agency is not the Landlord under this Lease, the then-Landlord shall or shall cause the City to discharge or cancel or otherwise satisfy and cause to be discharged of record all Taxes and general assessments on or before the due date thereof (which may be by bookkeeping entry, interdepartmental direction or other manner or procedure selected by the City).
- (d) If any Landlord shall fail to pay, exempt, cancel, discharge or cause to be paid, exempted, canceled or discharged any Taxes and/or such general assessments as required hereunder and (i) shall not have timely commenced a proceeding to contest the same, or (ii) shall have timely commenced such a proceeding but any failure to pay the Taxes and/or such general assessments during the pendency of such proceeding would result in the imminent loss or forfeiture of the Premises and termination of this Lease Agreement or Tenant's leasehold estate hereunder or any other material adverse consequence to Tenant's rights under this Lease Agreement, Tenant shall have the right (a) to pay, but shall not be required to pay, such unpaid Taxes and/or such general assessments together with any interest or penalties due in respect thereof and (b) to require Landlord to cause the City to reimburse Tenant for such payment, together with interest at the Interest Rate. Tenant's election to pay or not to pay unpaid Taxes and or such general assessments pursuant to the foregoing shall not preclude Tenant from pursuing (x) any and all remedies it may have against Landlord under this Lease Agreement or otherwise in respect of any Landlord's failure to pay, exempt, discharge, cancel or otherwise satisfy any Taxes and/or such general assessments, or (y) any and all remedies it may have against the City under the Primary Site Ground Lease and the South Parking Site Ground Lease.

ARTICLE 7

NAMING RIGHTS, ADVERTISING AND SIGNAGE

Section 7.01. Naming Rights to Stadium.

(a) Tenant shall have the exclusive right to designate the name of the Stadium and to grant one or more third parties (i) the right to include such party's name, product name and/or logo and/or corporate identifiers in the name of the Stadium, (ii) the right to have such name and/or logo and/or corporate identifiers prominently displayed on the interior of and, subject to Sections 7.02(c) below, on the exterior of, and on and around the entrances to the Stadium, and on the Stadium apron, as part of the name of the Stadium, and (iii) such other non-exclusive rights which are customarily included in the grant of the rights in clause (i) and (ii) above (such rights are hereinafter referred to as the "Naming Rights"), and provided that such name and/or logo and/or corporate identifiers shall not be obscene nor shall it be unlawful to use the same, nor shall it be antithetical to the character of the Stadium as a prominent symbol of the City. There shall be a rebuttable presumption that a proposed Stadium name and logo and corporate identifier is compliant with the condition that the use of the Stadium name and/or logo and/or corporate identifiers not be antithetical to the character of the Stadium as a prominent

symbol of the City; provided, that any name which the general public clearly associates with tobacco products shall be presumed to be so antithetical. The use of a name and/or logo and/or corporate identifier shall not be considered antithetical to the character of the Stadium as a prominent symbol of the City on account of its being associated with alcoholic beverages per se. The names "Mets Stadium" and "Shea Stadium" are hereby approved by Landlord. Tenant may, but shall not be required to, obtain Landlord's prior written consent to any name and/or logo and/or corporate identifier of the Stadium (solely for purposes of determining whether the proposed name and/or logo and/or corporate identifier is antithetical to the character of the Stadium as a prominent symbol of the City, including, without limitation, by reason of such proposed name and/or logo and/or corporate identifier being clearly associated by the general public with tobacco products), and, provided such request is in writing and contains an express reference to this Section 7.01 and the turnaround time set forth herein, Landlord, acting reasonably (which shall take into consideration the names and/or logos and/or corporate identifier of other professional sports stadiums and major college stadiums of comparable or greater capacity around the United States) shall grant or withhold such consent within ten (10) Business Days of the delivery of such written request, and if not disapproved within such period shall be deemed approved. In the event that there is any disagreement over whether a Stadium name and/or logo and/or corporate identifier complies with Section 7.01, either party may seek expedited arbitration of such dispute pursuant to Section 35.02(b) hereof.

The parties acknowledge that any name given to the Stadium by virtue of the granting of a Naming Rights license shall not eliminate the City's official designation of the real property comprising the Premises as "Flushing Meadow Park" or successor name, except that the Stadium name chosen pursuant to subparagraph (a) above shall be used by the City when referring to the Stadium in any extra-agency correspondence, press releases, promotional materials, advertisements, municipal publications, and directional traffic and pedestrian signs; provided, that the City may use appropriate abbreviations of the Stadium's name on directional traffic and pedestrian signs. The foregoing notwithstanding, the City shall not be liable for damages (including without limitation consequential damages) lost revenues or other pecuniary loss to the extent of any inadvertent or unintentional failure to comply with the foregoing. The City may continue for a reasonable period of time to distribute any materials published prior to the designation of a Stadium name and maintain existing traffic and pedestrian signs. The City shall consult with and reasonably cooperate with Tenant with respect to any abbreviation of the Stadium name on directional signage; provided, that the obligation on the part of the City to so cooperate shall be subject to (i) applicable provisions of the Federal Manual for Uniform Traffic Control Devices (or any successor manual that may set such standards from time to time), and (ii) traffic engineering and safety standards and requirements.

Section 7.02. <u>Tenant's Right to Display Advertising Signage at the Premises</u>.

- (a) Subject to <u>Section 7.02(e)</u> below and compliance with applicable laws, rules, regulations and governmental approvals, Tenant shall have the exclusive right to display and permit others to display Advertising Signage throughout the interior of Stadium at all times during the Term.
- (b) No Advertising Signage shall be permitted on the exterior of the Stadium other than as permitted in <u>Section 7.01(a)</u> and this <u>Section 7.02(b)</u>. Subject to <u>Section 7.02(c)</u>

- and (e), Tenant shall have the right to place Advertising Signage on and around the entrances to the Stadium, and Tenant shall have the right to locate upon the Stadium apron Advertising Signage of the scale appropriate to booths, concession stands, kiosks, directional finders and otherwise of a scale and dimension to be viewed by pedestrians approaching such area of the Stadium apron.
- (c) Exterior Advertising Signage referred to in 7.01(a) and 7.02(b) shall be subject to the following conditions: (a) Tenant shall provide the design, dimension and locations of such Advertising Signage to Landlord prior to installation and Landlord shall have a reasonable opportunity to provide comments and suggested modifications thereto; (b) such design, dimensions and locations shall generally be consistent with other Major League Baseball stadiums around the United States, and (c) such Advertising Signage shall be subject to and comply with Art Commission approval, and (d) such Advertising Signage shall be subject to and comply with applicable laws, rules, regulations and governmental approvals.
- (d) Advertising Signage on the back of the main Stadium scoreboard shall be subject to Section 7.02(e) below and comply with the applicable laws, rules, regulations and governmental approvals.
- (e) Notwithstanding anything to the contrary set forth is this Article 7, Landlord shall have the right to prevent Tenant from displaying and may require Tenant to remove 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 Stadium shall be similarly curtailed or abrogated.
- (f) Subject to MLB Rules and Regulations, Tenant shall endeavor to accommodate reasonable requests from Landlord for the same opportunity as that available to other providers of public services to make public service announcements, over the Stadium's public address system during Team Games at the Stadium free of charge, taking into account the frequency and timing of the public service announcements of other providers of public services. Landlord hereby assigns these rights to the City, and Tenant consents hereto, and the City may further assign any of its rights under this paragraph (f) to the State of New York, ESDC or any agency or instrumentality of either, provided that the cumulative number of public service announcements requested under this Section 7.02 shall be aggregated for the purpose of determining whether such requests are reasonable.

Section 7.03. <u>Intellectual Property Rights</u>. All intellectual property rights to the Stadium, it name, image and elements shall belong to Tenant and, to the extent such rights belong to Landlord, Landlord hereby assigns all such rights to Tenant. Notwithstanding the foregoing, Landlord, the City, the State, ESDC and any agency or instrumentality of either the City or the State (including without limitation, EDC and ESDC) (all of whom are hereby made third party beneficiaries of this <u>Section 7.03</u>), shall have the non-exclusive right to use the name of the Stadium, and to broadcast, display, publish, or otherwise disseminate photographs or other

pictorial images of the Stadium in each case solely for non-commercial public informational purposes; provided that in no event shall such use, broadcast, display, publication or other dissemination disparage the image of the Stadium or the Mets. There shall be a rebuttable presumption that any use, broadcast, display, publication or other dissemination of the name and/or image of the Stadium solely for non-commercial public informational purposes by Landlord, the City, the State, and any agency or instrumentality of either the City or the State (including, without limitation EDC and ESDC) does not disparage the image of the Stadium, the Mets or any grantee of any Naming Rights. Any dispute with respect to the foregoing shall be subject to the expedited arbitration procedures set forth in Section 35.02.

ARTICLE 8

STADIUM PROJECT

Section 8.01. <u>Stadium Project</u>. "<u>Stadium Project</u>" shall mean the construction by Tenant, as agent for Landlord pursuant to the Development Agreement, of (i) a first class Major League Baseball stadium having a seating and standing room capacity of approximately 45,000 (and which may include without limitation suites, food and beverage service facilities, retail space, corporate business space, function space, facilities for the media and other functions and amenities appropriate thereto) in accordance with the Development Agreement, and (ii) the improvement of the On-Site Parking Facilities in connection therewith.

Section 8.02. <u>Title to Improvements; Demolition of the Stadium</u>. Title to the Stadium and all materials and Equipment to be incorporated into the Stadium shall immediately vest in Landlord. Except as hereinafter provided, Tenant shall not demolish the Stadium during the Term.

Section 8.03. Opening Ceremonies. Tenant shall extend to Landlord, the City, EDC, ESDC and any of their designee(s) the privilege of being featured participants in opening ceremonies to be held at such time and in such manner as Tenant shall determine and Landlord, the City, EDC and ESDC shall approve, such approval not to be unreasonably withheld. The City, EDC and ESDC are hereby made third party beneficiaries of this Section 8.03.

Section 8.04. <u>Furnishing and Fit-Out of Stadium Project</u>. Landlord shall have no obligation to furnish, finish, or fit-out the Stadium Project, or to provide furnishings or equipment.

ARTICLE 9

OPERATION OF THE PREMISES

Section 9.01. Tenant's Operation of the Premises.

(a) Generally. From and after the date of Substantial Completion and during the Term, Tenant, as agent for Landlord, shall be responsible for operating and maintaining the Premises. During all Team Events and all other Stadium Events, Tenant shall operate the Premises as a (subject to ordinary wear and tear) first class state-of-the-art professional sports facility and in a safe, clean and reputable manner, and in compliance with this Lease Agreement,

and with all Requirements. Tenant shall be responsible for providing each of the following on a year-round basis throughout the Term for and in connection with the operation of the Premises, and shall be responsible for all costs thereof or associated therewith (including supplies and personnel costs).

- (b) <u>Cleaning and Janitor Services</u>. From and after the date of Substantial Completion and during the Term, Tenant, as agent for Landlord, shall keep the Premises clean and free from dirt, rubbish and obstructions, and the sidewalks and those public walkways then in use by the general public, free from snow and ice. From and after the date of Substantial Completion and during the Term, Tenant shall obtain all cleaning and janitorial services and supplies for the Premises.
 - (i) <u>Trash Collection and Disposal</u>. From and after the date of Substantial Completion and during the Term, Tenant shall collect and dispose of all garbage and other waste from all areas of the Premises in a prompt and sanitary manner and otherwise in compliance with all Requirements, including, without limitation, City recycling regulations. From and after the date of Substantial Completion and during the Term, Tenant shall engage a private carter to remove all such waste from the Premises.
 - (ii) <u>Utilities</u>. From and after the date of Substantial Completion and during the Term, Tenant shall pay and be responsible for all utilities for the Premises, including gas, water, electricity, HVAC, telephone and sanitary and storm services.
 - (iii) <u>Insurance</u>. From and after the date of Substantial Completion and during the Term, Tenant shall be required to maintain the property and liability insurance described in Article 14 on a year-round basis.
 - (iv) <u>Graffiti Removal</u>. From and after the date of Substantial Completion and during the Term, Tenant shall (x) use commercially reasonable efforts to keep the Premises free of graffiti, and (y) undertake to remove any graffiti that may appear at the Premises as soon as practicable, and repair any other vandalism.
 - (v) <u>Winterizing</u>. From and after the date of Substantial Completion and during the Term, Tenant shall winterize the irrigation system for the playing field of the Stadium annually and take such other seasonal precautions as are reasonable and/or customary to protect the weather-sensitive components of the Stadium from the elements.

(vi) <u>Field Care</u>. From and after the date of Substantial Completion and during the Term, Tenant shall be responsible for all Stadium field care.

Section 9.02. <u>Scope of Operation Obligations</u>. Without limitation of Tenant's obligations under <u>Section 9.01</u>, from and after the date of Substantial Completion and during the Term, Tenant, as agent for Landlord, shall have the right to operate and perform or cause to be operated and performed, and shall be responsible for providing and/or performing or causing to be provided and/or performed each of the following.

- (a) <u>Concessions</u>. The operation of any and all Concession Facilities, if any.
- (b) <u>Ticketing Services</u>. The operation of any and all ticket offices and booths at the Premises, if any.
- (c) <u>Medical Services</u>. The provision of first aid facilities and medical personnel as required by the Requirements, including the Sanitary Code.
- (d) Security. The provision of security services and personnel reasonably necessary to ensure the safety and security of the Premises and all participants and spectators at each and every Stadium Event during the Term and, without limitation, during each Stadium Event. Unless otherwise directed by the New York City Police Department, from and after the date of Substantial Completion and during the Term, Tenant shall be responsible for all security inside the Stadium. Outside the Stadium, if so directed by the New York City Police Department, from and after the date of Substantial Completion and during the Term, Tenant shall fully cooperate with the New York City Police Department in connection with security, crowd control, traffic measures and ejectment of patrons. Nothing herein shall be construed as constituting a limitation, modification or waiver of any of the New York City Police Department's law enforcement powers.
- (e) <u>Event Personnel</u>. All other event personnel (in addition to the personnel identified in <u>Section 9.01</u> and the other subsections of this <u>Section 9.02</u>) reasonably necessary to conduct the event in a safe, clean and reputable manner.

Section 9.03. The City's Right to Comment on Operations. The City, acting in its proprietary capacity, shall have the right to make comments and suggestions about any operational aspects of the Stadium presenting any reasonably avoidable threat to health or safety or reasonable abatement of any legal nuisance, and any such issues which are identified by the City and of which Tenant is notified, shall, to the extent commercially reasonable, be promptly addressed by Tenant.

Section 9.04. Expenses of Operation of the Premises. Tenant's cost and expense of performing its obligations under this Article 9 may be paid for or reimbursed out of funds available therefor in the O&M Fund and/or the Operating and Maintenance Account (Lease Revenue) of the Lease Revenue Surplus Fund under the Lease Revenue Bond Indenture. However, Tenant's obligations under this Article 9 shall not be limited by the availability of such funds, and to the extent such funds are not available Tenant shall perform the obligations under this Article 9 at its sole cost and expense. Except to the extent that Tenant is unable to perform

its obligations under this Article 9 because of Landlord's (or the City's) failure to perform Landlord's obligations under this Lease Agreement or under the Primary Site Ground Lease, Tenant shall be solely responsible for all costs incurred for, in connection with, or associated with the operation of the Premises.

Section 9.05. <u>Energy Discounts</u>. Landlord shall cooperate with Tenant in Tenant's applying for energy discount programs that may be available to Tenant for the use and operation of the Stadium.

Section 9.06. <u>No Landlord Obligation</u>. Any and all reference in this Article 9 to Tenant's obligations commencing from or after the Substantial Completion Date shall not in any way be construed to create or imply any obligation on the part of Landlord to pay for or perform any such obligations.

ARTICLE 10

ORDINARY REPAIR AND MAINTENANCE

Section 10.01. Tenant's Maintenance and Repair Obligations.

- (a) From and after the date of Substantial Completion and during the Term, Tenant, as agent for Landlord, shall be solely responsible for all maintenance and repair of the Premises, and shall have the right to perform such maintenance and repair, including, without limitation, all interior and exterior structures, areas (including the playing field), building systems, utility systems, sewer systems, equipment, and fixtures existing at the Premises as of the execution date of this Lease Agreement or at any other time during the Term. From and after the date of Substantial Completion and during the Term, Tenant, as agent for Landlord, shall perform all maintenance and repair that is reasonably necessary to cause the Premises to be in compliance with all Requirements, to keep and maintain the Premises in good working order, and operating as a first class state-of-the-art professional sports facility (subject to ordinary wear and tear).
- (b) Tenant, as agent for Landlord, shall be responsible for all costs and expenses incurred for or in connection with its maintenance and repair obligations hereunder, and for providing all personnel, supplies, materials, parts, labor and equipment therefor. Landlord shall reasonably cooperate with Tenant in Tenant's performance of the maintenance and repair obligations required under this <u>Section 10.01</u> (without Landlord assuming any obligations for such maintenance or repair), provided Tenant shall advance to Landlord any reasonable out-of-pocket costs or expenses to be actually paid by Landlord in cooperating with Tenant in performance of the maintenance and repair obligations required under this <u>Section 10.01</u>.
- (c) Removal of all personal property by Tenant that causes structural damage to the Stadium shall be promptly repaired by Tenant to Landlord's reasonable satisfaction.
- (d) Tenant shall buy or lease machinery, equipment and tools for the maintenance and repair of the Premises as Landlord's agent, and Landlord hereby leases such machinery, equipment and tools to Tenant for the purposes of this Article 10 and Article 9.

Section 10.02. No Landlord Obligations.

- (a) Landlord shall not be responsible for any maintenance or repair of the Premises or any structures, areas (including the playing field), utilities, building systems, equipment, or fixtures existing thereat at any time during the Term. This exculpation shall not apply to the extent that the City's employees, agents or contractors while on the Premises acting on behalf of the City, have caused any damage to or destruction of any Stadium property. Nothing herein shall impair the availability to Tenant of funds in the O&M Fund.
- (b) Landlord agrees to apply PILOTs in accordance with the PILOT Assignment as it exists on the Commencement Date and in accordance with the definition of PILOT Bonds Requirement as it exists on the Commencement Date.
- (c) Any and all reference in this Article 10 to Tenant's obligations commencing from or after the Substantial Completion Date shall not in any way be construed to create or imply any obligation on the part of Landlord to pay for or perform any such obligations.

Section 10.03. <u>Inspection Relating to Maintenance and Repair and the Condition of the Premises</u>.

- (a) Upon learning of the same, Tenant shall give Landlord, the City and Bond Insurer prompt notice of any fire or other casualty event causing material loss, material damage or dangerous or defective condition at the Premises.
- (b) From and after the date of Substantial Completion and during the Term, Landlord and Bond Insurer shall have the right to inspect the Premises and any and all maintenance and repair work performed by Tenant at the Premises on reasonable notice and at reasonable times for the purpose of ensuring that Tenant is complying with its maintenance and repair obligations under this Lease Agreement. However, no such inspection or any failure to do so by Landlord shall relieve Tenant of any of its obligations hereunder, or impose upon Landlord any obligations or responsibilities in respect of Tenant's maintenance and repair obligations. While on the Premises, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's business operations. Any conditions presenting any reasonably avoidable threat to public health or safety, or any legal nuisance, or which are inconsistent with the good and proper operation of the Stadium as a (subject to ordinary wear and tear) first class state-of-the-art professional sports facility which are identified by Landlord or the City from and after Substantial Completion, and of which Tenant is notified, shall be promptly remedied by Tenant.

Section 10.04. Expenses of Operation of the Premises. Tenant's cost and expense of performing its obligations under this Article 10 may be paid for or reimbursed out of funds available therefor in the O&M Fund and/or the Operating and Maintenance Account (Lease Revenue) of the Lease Revenue Surplus Fund under the Lease Revenue Bonds Indenture. However, Tenant's obligations under this Article 10 shall not be limited by the availability of such funds, and to the extent such funds are not available Tenant shall perform the obligations under this Article 10 at its sole cost and expense. Except to the extent that Tenant is unable to perform its obligations under this Article 10 because of Landlord's (or the City's) failure to

perform Landlord's obligations under this Lease Agreement or under the Primary Site Ground Lease, Tenant shall be solely responsible for all costs incurred for, in connection with, or associated with the operation of the Premises.

ARTICLE 11

(intentionally omitted)

ARTICLE 12

CAPITAL IMPROVEMENTS BY TENANT

Section 12.01. Approval of Tenant Improvements.

- (a) <u>Prerequisites</u>. If Tenant, as agent for Landlord, desires to construct any Capital Improvements at the Premises whether in or as part of the Stadium or in connection with On-Site Parking Facilities, Tenant may do so, provided that Tenant shall submit (without duplication of any requirements under any agreement between Tenant and either City, EDC, and/or Landlord to fund any Capital Improvements), each of the following to Landlord:
 - (i) Plans and Specifications in accordance with <u>Section 12.01(d)</u> and <u>Section 12.01(e)</u> below;
 - (ii) A schedule for the construction of such Capital Improvements;
 - (iii) To the extent reasonable to request such assurance, taking into account the cost, nature and extent of the proposal Capital Improvements, assurance of the ability to complete the proposed Capital Improvement, such as available cash, a letter of credit, loan commitment, or surety bond or other guaranty of completion by a reputable third party willing and financially able to satisfy such guaranty; and
 - (iv) Any other information related to such construction (but not, in any event, relating to Tenant's finances, as long as item (iii) immediately preceding is satisfied) that Landlord may reasonably request.
- (b) <u>Landlord Review</u>. Each proposed Capital Improvement affecting a Reviewable Feature shall be subject to the prior written approval of Landlord, to be given or withheld in accordance with <u>Sections 12.01(c)</u>, <u>12.01(d)</u>, <u>12.01(e)</u> and <u>12.01(f)</u> below. Capital Improvements (and the Plans and Specifications therefor) not affecting a Reviewable Feature or compliance with Requirements shall not be subject to Landlord's prior written approval. Tenant shall notify Bond Insurer of any proposed Capital Improvement not less than ten (10) days prior to the commencement thereof.
- (c) <u>Capital Expenditures</u>. Notwithstanding anything set forth to the contrary herein, for as long as Bonds are outstanding, Tenant agrees not to incur any capital expenditures,

whether or not qualifying as a Capital Improvement, unless (1) it represents to Landlord that (i) the expected useful life of the improvement to which such capital expenditures relate does not extend beyond the Initial Term of this Lease Agreement or (ii) the cost of the improvement to which such capital expenditures relate for a given Lease Year, when added to the amounts of all other improvements made during such Lease Year and the amounts paid by Tenant to Landlord and the City under the On-Site Parking Agreements and any agreements for the Off-Site Parking Facilities and any other amounts required to be treated as private payments for federal tax purposes (other than the Incidental Private Payments), does not exceed the amount deposited into the O&M Fund for such Lease Year pursuant to the PILOT Assignment, (2) such costs are funded with taxable bonds issued by Landlord, (3) it delivers to Landlord an approving opinion of Nationally Recognized Bond Counsel that such capital expenditure shall not cause the interest on the tax-exempt Bonds to be includable in gross income for Federal income taxes or (4) such costs are funded from the Capital Improvement Fund created under the PILOT Bonds Indenture. Tenant shall furnish or cause to be furnished to Landlord such certifications and information as Landlord shall request in order for Nationally Recognized Bond Counsel to make such determination. Landlord shall cause such bond counsel to issue such opinion or inform Tenant of the reasons for which such opinion cannot be issued within thirty (30) Business Days of such request. For purposes hereof, "Incidental Private Payments" means the private payments treated as occurring for federal income tax purposes as a result of the provision of nonmonetary benefits to Landlord such as the right to make public service announcements and the right to purchase tickets to stadium events. In addition, capital expenditures made using funds of the City or the State of New York shall not be taken into account. In the event that such opinion from Nationally Recognized Bond Counsel cannot at the time be delivered under circumstances then prevailing, Landlord and Tenant agree to take such reasonable steps as are mutually acceptable to each to allow Tenant to undertake the work for which capital expenditures would be incurred (e.g., refunding tax-exempt Bonds with taxable Bonds).

Submission and Review of Plans and Specifications. Prior to making any Capital Improvements Tenant shall submit preliminary Plans and Specifications to Landlord for its review and approval with respect to the Reviewable Features and the Requirements. If Landlord reasonably determines that the Plans and Specifications are inconsistent or noncompliant with the Requirements, or has reasonable objections insofar as they relate to the Reviewable Features, Landlord shall so notify Tenant, specifying the objection, and, subject to the balance of this Section 12.01(d), Tenant shall revise them to so conform and shall resubmit the Plans and Specifications to Landlord for review. Notwithstanding the foregoing and anything herein contained to the contrary, Landlord's review of the Plans and Specifications and right to object thereto shall be limited to the Reviewable Features and compliance with the Requirements. Each review by Landlord shall be carried out within twenty (20) Business 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, provided that Tenant's submission contains a letter making express reference to this Section 12.01(d) and the twenty (20) Business Day turnaround time set forth herein, Landlord shall be deemed to have waived any objection to the Plans and Specifications. Tenant shall use commercially reasonable efforts to cause each resubmission by Tenant to be made within thirty (30) Business Days of the date of Landlord's notice to Tenant stating that the Plans and Specifications do not comply with Requirements or the terms and conditions of this Lease Agreement. Landlord's review and approval or disapproval of the Plans and Specifications shall be limited to compliance with Requirements and the Reviewable Features. Landlord shall not raise any objection to any aspect of the Plans and Specifications which has already been submitted to Landlord and either approved or objections waived or deemed approved or objections deemed waived by Landlord, unless such aspect is objectionable because of subsequent changes made by Tenant to the Plans and Specifications (in which case if such submission contains a notice making express reference to this Section 12.01(d) and the ten (10) Business Day turnaround time set forth herein, Landlord shall notify Tenant of such objections within ten (10) Business Days after Landlord shall have been notified of such subsequent change(s)).

- (i) "Plans and Specifications" means the progress or completed final drawings and plans and specifications, as the case may be, prepared by the Architect approved by Landlord with respect to the Reviewable Features, and as such drawing Plans and Specifications may be modified from time to time in accordance with the provisions of this Article 12.
- (ii) "Reviewable Features" means all Stadium exterior features and facilities, including without limitation those exterior features relating to the surrounding streets and park, such as exits, entrances, traffic and pedestrian control improvements in parking areas, walkways, apron, illumination, landscaping and signage and, to the extent not expressly governed by Art Commission approvals, architectural style, finishes, and color.
- Modification of Approved Plans and Specifications. If Tenant desires to materially modify any Reviewable Features set forth in any Plans and Specifications after they have been approved by Landlord, Tenant shall submit the proposed modifications to Landlord. Landlord shall review the proposed changes to determine whether they materially conform to Requirements, or if there are any objectionable changes insofar as they relate to the Reviewable Features. If Landlord reasonably determines that they are not objectionable, Landlord shall so notify Tenant. If Landlord reasonably determines that the Plans and Specifications, as so revised, do not materially comply with Requirements, or if there are any reasonable objectionable changes insofar as they relate to the Reviewable Features, Landlord shall so notify Tenant, specifying in what respects they do not so conform. Tenant shall either (i) withdraw the proposed modifications, in which case the Construction Work shall proceed on the basis of the Plans and Specifications previously approved by Landlord insofar as they relate to Reviewable Features, or (ii) revise the proposed modifications to so comply and resubmit them to Landlord for review. Each review by Landlord shall be carried out within twenty (20) Business 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) Business Day period, provided that Tenant's submission contains a letter making specific reference to this Section 12.01(e) and the ten (10) Business Day turnaround time set forth herein, Landlord shall be deemed to have waived any objection to the Plans and Specifications submitted. Tenant shall use commercially reasonable efforts to cause each resubmission by Tenant shall be made within thirty (30) Business Days of the date of Landlord's notice to Tenant that they do not so conform. Notwithstanding the foregoing, Tenant may, without Landlord's consent, modify the Plans and Specifications to the extent reasonably necessary as a result of field conditions or to comply with the Requirements, provided such modifications do not materially adversely affect the

Reviewable Features, provided that Tenant shall with reasonable promptness inform Landlord of such changes to the extent such changes relate to the Reviewable Features, and that such modified Plans and Specifications shall in all cases comply with all Requirements and previously approved Plans and Specifications insofar as they relate to the Reviewable Features. Landlord shall not raise any objection to any aspect of the Plans and Specifications which has already been submitted to Landlord and either approved or objections waived or deemed approved or objections deemed waived by Landlord, unless such aspect is objectionable because of subsequent changes made by Tenant to the Plans and Specifications (in which case if such submission contains a notice making express reference to this Section 12.01(e) and the ten (10) Business Days turnaround time set forth herein, Landlord shall notify Tenant of such objections within ten (10) Business Days after Landlord shall have been notified of such subsequent change(s)).

- (f) <u>Compliance with Requirements, Etc.</u> The Plans and Specifications shall comply with the Requirements. It is Tenant's responsibility to assure such compliance on behalf of Landlord. 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.
- (g) <u>Commencement and Completion of All Construction Work.</u> 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 and/or modified Plans and Specifications therefor (to the extent approval may be required), of quality that is generally consistent with the quality of the Stadium as a first class Major League Baseball Stadium and in good and workmanlike manner, and in accordance with all applicable Requirements.
- (h) <u>Supervision of Architect</u>. All Construction Work involving structural or building systems work or work having a total cost in access of One Million Dollars (\$1,000,000), (subject to CPI Adjustment) performed by Tenant shall be carried out under the supervision of the Architect.

Section 12.02. <u>Conditions Precedent to Tenant's Commencement of All</u> Construction Work.

- (a) <u>Permits and Insurance</u>. Tenant shall not commence any Construction Work unless and until (i) Tenant shall have obtained and delivered to Landlord and Bond Insurer 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 the Architect and (ii) Tenant shall have delivered to Landlord certified copies, certificates or memoranda of the policies of insurance required to be carried pursuant to the provisions of Article 14.
- (b) <u>Cooperation of Landlord in Obtaining Permits</u>. Landlord shall cooperate with Tenant in obtaining the permits, consents, certificates and approvals required by <u>Section 12.02(a)</u>, and shall sign any application made by Tenant required to obtain such permits, consents, certificates and approvals. Tenant shall reimburse Landlord within thirty (30) days after Landlord's demand for any reasonable out-of-pocket cost or expense paid by Landlord in cooperating with Tenant in obtaining the permits, consents, certificates and approvals required by <u>Section 12.02(a)</u>.

- (c) <u>Approval of Plans and Specifications</u>. Tenant shall not commence any phase of Construction Work unless and until Landlord shall, if required hereunder, have approved or be deemed to have approved the proposed Plans and Specifications for such phase of Construction Work in the manner provided herein, in each case as provided in <u>Section 12.01</u>. Landlord's review and approval is limited to compliance with Requirements and the Reviewable Features.
- (d) Substantial Completion of Construction Work. Upon substantial completion of any Construction Work which required Landlord's consent and supervision of the Architect, Tenant shall furnish Landlord with (a) a certification of the Architect to Landlord) that it has examined the applicable Plans and Specifications and that, in its best professional judgment, after diligent inquiry, to its best knowledge and belief, the Construction Work has been completed substantially in accordance with the Plans and Specifications applicable thereto and that, as constructed, the Capital Improvements comply with the Building Code of New York City and all other Requirements, (b) if required by Requirements and available at the stage of completion of construction, a copy or copies of a new or amended temporary or permanent certificate(s) of occupancy for the Stadium issued by the New York City Department of Buildings, and (c) two complete sets (hard copies) of the "as built" drawings and specifications, and two (2) complete sets of the as-built drawings and specifications. Landlord shall have an unrestricted non-exclusive license to retain such "as built" drawings and specifications for any purpose related to the Stadium without paying any additional cost or compensation therefor, which license shall be subject to the rights of the parties preparing such drawings and specifications under copyright and other applicable laws.
- Title to Materials and Equipment. Title to all materials incorporated or to be incorporated in the Stadium, including Equipment shall vest in Landlord immediately upon Tenant's obtaining an interest in or to such materials and Equipment. Tenant shall execute, deliver and record or file all instruments necessary or appropriate to so vest title to Landlord and shall take all action necessary or appropriate to protect such title against claims of any third persons. Materials incorporated or to be incorporated in the Stadium and/or Equipment shall, effective upon their purchase and all times thereafter but, in all event, subject to this Lease Agreement, constitute the property of Landlord, and upon Substantial Completion or the incorporation of such materials and/or Equipment, title thereto shall continue in Landlord. However, (a) neither Fee Owner nor Landlord shall be liable in any manner for payment or for damage or risk of loss or otherwise to any contractor, subcontractor, laborer or supplier of such materials and/or Equipment in connection with the purchase or installation of any such materials and/or Equipment, and (b) neither Fee Owner nor Landlord shall have any obligation to pay any compensation to Tenant by reason of its acquisition of title to any such materials and/or Equipment. Title to and tax ownership of all Improvements shall be and vest in Landlord. Upon the termination of this Lease Agreement, title to all Improvements shall be conveyed by Landlord to Fee Owner.
- (f) Names of Contractors, Materialmen, Etc. Tenant shall furnish Landlord, within thirty (30) days of Landlord's demand, a list of all Contractors performing any labor, or supplying any materials, in connection with any Construction Work costing in excess of 10% of the Replacement Value. Such list shall state the name and address of each Contractor and in what capacity each Contractor is performing work at the Premises. All persons employed by Tenant with respect to Construction Work shall be paid, without subsequent deduction or rebate unless expressly authorized by law not less than the minimum hourly rate required by law.

- (g) <u>Construction Agreements Required Clauses</u>. So long as (x) the IDA is Landlord, or (y) the City is the Fee Owner, all Construction Agreements shall include the following provisions:
 - (i) "["Contractor"]/["Subcontractor"]/["Materialman"] hereby agrees that immediately upon the incorporation by ["contractor"]/["subcontractor"]/["materialman"] of any building materials in the Stadium [(as defined in the lease pursuant to which the owner acquired a leasehold interest in the property] (the "Lease")), such materials shall become the sole property of Landlord, notwithstanding that such materials have not been incorporated in, or made a part of, such Stadium at the time of such purchase; provided, however, that neither the City nor Landlord (as defined in the Lease) shall be liable in any manner for payment or otherwise to ["contractor"]/["subcontractor"]/["materialman"] in connection with the purchase of any such materials and neither the City nor Landlord shall have any obligation to pay any compensation to ["contractor"]/["subcontractor"]/["materialman"] by reason of such materials becoming the sole property of Landlord.
 - (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, neither the City nor Landlord shall 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 Stadium.
 - (iv) "All covenants, representations, guarantees and warranties of ["contractor"]/["subcontractor"]/materialman"] hereunder shall be deemed to be made for the benefit of Landlord under the Lease and the City and shall be enforceable against ["contractor"]/["subcontractor"]/["materialman"] by said Landlord and the City.
 - (v) Neither the City nor Landlord is a party to this ["agreement"]/["contract"] nor will the City or 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"].

If exemption for Sales Tax is to be taken by Tenant, the Construction Agreement shall set forth the provisions required under <u>Section 38.21(b)</u>.

Section 12.03. Dispute Resolution.

- (a) 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 12 comply with the terms and conditions of this Lease Agreement, including, without limitation, this Article 12; or
 - (ii) whether any consent or approval was unreasonably withheld pursuant to this Article 12; or
 - (iii) whether any Construction Work is in substantial conformity with the applicable Plans and Specifications insofar as they relate to Reviewable Features:

the matter shall be settled in accordance with the expedited arbitration procedures set forth in Section 35.02(a) hereof.

(b) Any Recognized Mortgagee(s) shall have the right, at their sole option, to participate in any arbitration as contemplated hereby and, to effect the same, any notice of dispute shall simultaneously be given to all Recognized Mortgagee(s). Any Recognized Mortgagee shall be a third party beneficiary of the foregoing covenant.

Section 12.04. <u>Conditions and Requirements Concerning the Performance of Capital Improvements.</u>

- (a) The construction of all Capital Improvements shall be performed and completed in a good and workmanlike manner and in accordance with all Requirements.
- (b) Landlord shall have the right to observe the construction means, methods, procedures and techniques of the performance of Capital Improvements, the costs of which exceed One Million Dollars (\$1,000,000), subject to CPI Adjustment for the purpose of ensuring that the same is being performed substantially in accordance with the Plans and Specifications, and all Requirements, and Landlord shall be entitled to have its field personnel or other designees receive reasonable prior notice of and attend Tenant's job and/or safety meetings, if any. No such observation or attendance by Landlord'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 Requirements or the provisions of this Lease Agreement. While on the Premises, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's operations.
- (c) Tenant shall keep Landlord periodically informed of Tenant's progress in the performance of each Capital Improvement the costs of which exceed One Million Dollars \$1,000,000, subject to CPI Adjustment. With respect to Capital Improvements the costs of

which exceed One Million Dollars (\$1,000,000), subject to CPI Adjustment, upon request of Landlord, Tenant shall promptly provide Landlord with copies of all materials normally or actually provided to a construction lender, including, but not limited to, scheduling of payments, projections and certifications of construction costs on a monthly basis, and all construction documents and all plans and specifications reasonably specified by Landlord to assist Landlord in monitoring said progress by Tenant.

(d) Tenant shall comply with the terms and provisions of Article 12; provided, that if the proposed Capital Improvement affects something other than the Reviewable Features, Landlord's rights of consent, approval and inspection shall be limited to the Reviewable Features and compliance with Requirements.

Section 12.05. <u>Development Risks</u>. Landlord shall have no obligation whatsoever to make or pay for any Capital Improvements, capital repairs, replacements or any other improvements to the Premises. All Capital Improvements shall be undertaken by or on behalf Tenant as agent for Landlord. Landlord shall have no design, development or construction risks associated with any Capital Improvement.

Section 12.06. Conditional Assignment. Upon the occurrence and during the continuance of any Event of Default for failure to complete any Capital Improvement, irrespective of whether Landlord has exercised its right to terminate this Agreement, Landlord shall have the right (but not the obligation), in Landlord's sole discretion, to assume any and all professional design contracts, any Construction Agreements and agreements (such as, without limitation, owner's representative, expediters and consultants) made by or on behalf of Tenant relating to the Capital Improvement and to take over and use all or any part or parts of the labor, materials, supplies and equipment contracted for, by, or on behalf of Tenant, whether or not previously incorporated into the Premises. For this purpose, subject to any rights of Recognized Mortgagees, Tenant hereby collaterally assigns to Landlord all professional design contracts, Construction Agreements and other agreements relating to Capital Improvements and the work product of all professional design contracts, whether presently existing or hereafter created, and agrees, irrespective of whether Landlord has exercised its right to terminate this Lease to execute any additional documents that may be reasonably requested by Landlord to evidence or effectuate the foregoing.

Section 12.07. <u>City to Perform Landlord Obligations Hereunder</u>. It is agreed that the City, acting in its proprietary capacity, shall perform and exercise all obligations, reviews, consents, waivers and rights to be performed by Landlord, and Tenant shall look solely to the City and accept the City's exercise and performance of any of same. All submissions, notices, requests and demands by Tenants shall be delivered to Lease Administrator.

ARTICLE 13

LATE CHARGES

Section 13.01. <u>Late Charges</u>. If any payment of Rental, or any other payment due hereunder, is not received by Landlord within thirty (30) days after receipt by Tenant from Landlord of notice that such payment has become due, and (a) is not received by Landlord within

thirty (30) days after receipt by Tenant from Landlord of a further notice that such payment is overdue by more than thirty (30) days, or (b) Landlord has made a payment (after required notice and the expiration of applicable cure periods), required to be made by Tenant hereunder, then a late charge on the sums so overdue or paid by Landlord, calculated at the rate of 200 basis points (2%) above the Prime Rate; provided, however, that such charge shall not exceed the maximum amount permitted by law (the "Late Charge Rate"), compounded from the date such Rental or other payment first became due or the date of payment by Landlord, as the case may be, to the date on which actual payment or reimbursement of such sums 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 payment on or before the dates such payments are due. Subject to all other provisions of this Lease Agreement, Tenant shall pay Landlord all late charges, on demand, which may be made from time to time. 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 in any instance thereafter occurring. The provisions of this Article shall not be construed in any way to extend the grace periods or notice periods provided for in this Lease Agreement.

ARTICLE 14

INSURANCE

Section 14.01. Property Insurance Requirements.

(a) At all times from and after the date of Substantial Completion and during the Term, Tenant shall maintain or cause to be maintained at its sole cost and expense, on behalf of Landlord and City as named insureds, property insurance upon (i) the Improvements, including without limitation, all buildings, building improvements and other improvements to the Premises and (ii) trade fixtures, equipment and any other personal property owned at or about the Premises with coverage for perils as set forth under an industry standard all risk property form (with coverage extended for the perils of flood, earthquake and wind/hurricane), in an amount equal to full Replacement Value, subject to reasonable sublimits in accordance with the Approval Standard (as that term is defined below in Section 14.03(e)), including as set forth in the following schedule of sublimits which shall be subject to the Approval Standard except as set forth below in Section 14.01(a)(i):

Windstorm/Hurricane	No sublimit
Earthquake	200,000,000
Flood	200,000,000
Terrorism	No sublimit
Contingent Time Element	25,000,000
Expediting Expense	5,000,000
Service Interruption	20,000,000
Transit	5,000,000
Unnamed Locations	10,000,000
Debris Removal	25% / 10,000,000
Demolition & Increased Cost Construction	10,000,000
Pollutant Cleanup	500,000

Accounts Receivable Valuable Records

10,000,000 10,000,000

- (i) Where the phrase "No sublimit" is used above in this <u>Section</u> 14.01(a), such phrase shall refer to full Replacement Value, to the extent available at commercially reasonable rates; and
- (ii) It is acknowledged that, with respect to sublimits other than where "No sublimit" is indicated, such sublimits are in accordance with the Approval Standard as of the date hereof.
- (b) Such insurance shall contain: (A) an agreed valuation provision or no coinsurance equivalent; (B) an ordinance and law endorsement; (C) demolition, debris removal and increased cost of construction coverage endorsement and (D) a waiver of subrogation endorsement in favor of Tenant. In addition, Tenant shall maintain (x) insurance with coverage for terrorism to the extent available at commercially reasonable rates either as part of the policy that includes the coverages described in the foregoing Section 14.01(a) or by means of a separate policy, and (y) business interruption coverage in an amount not less than twenty-four (24) months of payments due to be paid by Tenant under this Lease Agreement with respect to Base Rent, Additional Rent, amounts due under the Installment Sale Agreement and PILOTs due under the PILOT Agreement, and with respect to operating and maintenance expenses.
- (c) The property insurance required by <u>Section 14.01(a)</u> shall contain no exclusions (other than those exclusions that are in accordance with the Approval Standard) unless approved in writing by Landlord, and no deductibles in excess of \$1,000,000 or, in the case of coverages for the perils of flood, wind/hurricane and terrorism, in excess of the lesser of the deductibles for such coverages under the MLB program or \$5,000,000, other than deductibles that are in accordance with the Approval Standard unless such deductibles are approved in writing by Landlord, and shall include the following additional clauses:
 - (i) The City shall be a named insured under this policy.
- (ii) The property insurance policy shall provide that no unintentional act or omission of Tenant shall affect the rights of Landlord to collect on such policy as named insured.
- (iii) The component of the policy that covers business income or loss of rent shall contain a 180 days extended period of indemnity coverage endorsement.
- (d) During the portion of the Term following the date of Substantial Completion that Tenant shall be performing Construction Work, Tenant shall provide Builder's Risk Coverage for all risk of loss during construction by Tenant which risk is not fully covered by the property insurance that Tenant is required to provide pursuant to this <u>Section 14.01</u>.
- (i) <u>Replacement Value</u>. "<u>Replacement Value</u>" shall be deemed to be an amount equal to the full cost of replacing all Improvements at the Premises, including, without limitation, architect's and development fees, but exclusive of the cost of foundations and excavation, to the extent that such costs can be covered under an industry standard all risk

builders risk insurance policy, adjusted annually as provided below. Within ten days after Substantial Completion, Landlord shall deliver a certificate to Tenant setting forth the amount of such Replacement Value for the first Lease Year (or stub period) after Substantial Completion. In no event shall such Replacement Value be reduced by depreciation or obsolescence of the Improvements. Any dispute with respect to the amount of Replacement Value set forth in such certificate, including without limitation a dispute caused by Tenant's insurer, shall be determined by arbitration pursuant to Section 35.02.

(e) <u>Liability Insurance During Construction</u>. At all times during Construction of the Stadium, Tenant shall maintain the insurance required under the Development Agreement.

Section 14.02. Liability Insurance.

- (a) <u>Commercial General Liability Insurance</u>. During the portion of the Term following the date of Substantial Completion, Tenant shall maintain Commercial General Liability Insurance coverage protecting against liability for personal injury, including bodily injury and death, and property damage, written on an occurrence policy form with respect to the Premises and all operations related thereto, whether conducted on or off the Premises. The coverage shall be provided through the following policies: a primary coverage policy with combined single limits of not less than \$1,000,000 per occurrence and a \$2,000,000 annual aggregate limit and an umbrella or excess policy in accordance with <u>Section 14.02(e)</u> below. Such liability insurance policies required by this Section shall include the following coverages, provisions and clauses:
- (i) a broad form property damage liability endorsement with fire legal liability limit of not less than \$50,000;
 - (ii) premises operation liability coverage;
- (iii) blanket contractual liability insurance covering written contractual liability;
- (iv) contractual liability insurance specifically covering Tenant's indemnification obligations under <u>Section 21.01</u> to the extent covered under the Commercial General Liability Insurance policy required to be maintained by Tenant under this <u>Section 14.02</u>;
 - (v) products/completed operations coverage;
 - (vi) personal injury liability coverage;
 - (vii) independent contractors liability coverage;
 - (viii) a notice of occurrence clause;
 - (ix) a knowledge of occurrence clause;
 - (x) an unintentional errors and omissions clause;

- (xi) coverage for suits arising from the use of reasonable force to protect persons and property;
- (xii) a cross liability endorsement, excluding claims by one professional baseball player against another professional baseball player;
- (xiii) coverage for explosion, collapse and underground property damage (XCU);
- (xiv) liquor liability coverage, if Tenant is in the business of serving, selling or distributing liquor;
 - (xv) contingent fireworks liability (excess basis);
 - (xvi) incidental medical malpractice; and
- (xvii) terrorism coverage, subject to availability at commercially reasonable rates;

with no exclusions or deductibles other than such exclusions and deductibles as are in accordance with the Approval Standard unless specifically provided for in this Lease Agreement or approved in each instance by Landlord.

- (b) <u>Additional Insureds</u>. All liability policies required to be maintained under this <u>Section 14.02</u> shall name the Bond Insurer, the PILOT Bonds Trustee, the Installment Purchase Bonds Trustee, the Lease Revenue Bonds Trustee, Landlord and the City as additional insureds.
- (c) Motor Vehicle Liability Insurance. At all times during the Term and from and after the date of Substantial Completion, Tenant shall maintain Motor Vehicle Liability Insurance with coverage for all owned, non-owned and hired vehicles written on an occurrence basis and such policy shall include garage keepers legal liability. The coverage shall be provided through the following policies: a primary coverage policy with combined single limits of not less than \$1,000,000 primary coverage per occurrence and a \$2,000,000 annual aggregate limit and an umbrella policy containing \$10,000,000 excess coverage above the primary Motor Vehicle Liability coverage (which umbrella policy's limits may also include the Commercial General Liability excess coverage), except that the garage keepers legal liability coverage shall have combined single limits of not less than \$1,000,000 per occurrence only. Such coverage shall cover injury or death and property damage arising out of ownership maintenance or use of any private passenger or commercial vehicles required to be licensed for road use.
- (d) <u>Pollution Liability</u>. Tenant shall continue to maintain or cause to be maintained insurance against damage from pollution in accordance with the provisions of <u>Section 5.03(f)</u> of the Development Agreement at least until the date (in the year 2016) that is ten (10) years from the date such insurance was bound.
- (e) Excess Liability. At all times during the Term and from and after the date of Substantial Completion, Tenant shall maintain excess or umbrella liability insurance with

limits of not less than \$200,000,000 per occurrence and in the aggregate. Such coverage shall be written on a per occurrence policy form, subject to the Approval Standard.

- (f) <u>Watercraft Liability</u>. If applicable, at all times during the Term and from and after the date of Substantial Completion, Tenant shall maintain watercraft liability in an amount not less than \$25,000,000 for all owned, non-owned and hired watercraft used by Tenant in connection with the operation of the Premises.
- (g) <u>Aircraft Liability</u>. If applicable, at all times during the Term and from and after the date of Substantial Completion, Tenant shall maintain watercraft liability in an amount not less than \$50,000,000 for all owned, non-owned and hired aircraft used by Tenant in connection with the operation of the Premises.
- Liability and Statutory Coverage During Construction. In addition to the (h) amounts of coverage specified in Section 14.02(a) to be carried after the date of Substantial Completion, from and after the date of Substantial Completion but only during the period of any construction activity by Tenant on the Premises for a Capital Improvement, a Restoration, or otherwise, Tenant at its sole cost and expense shall carry or cause to be carried (i) provided that such coverage is not already provided by other policies (including policies provided under programs offered through MLB), Commercial General Liability Insurance, including all applicable coverages enumerated in Section 14.02(a) hereof, written for a combined single limit of not less than One Hundred Million Dollars (\$100,000,000) and endorsed to name Tenant as named insured, with the Agency and the City, as additional insureds; (ii) 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 with Tenant as an additional insured (and Tenant or any contractor or subcontractor furnishing the insurance required hereunder for the undertaking of 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," if any, have been deleted); and (iii) Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance in statutorily required amounts, and Employer's Liability Insurance with limits of not less than \$1,000,000 per accident or disease and \$5,000,000 aggregate by disease covering Tenant's employees, and Tenant shall cause all contractors and subcontractors with respect to all of their employees to obtain such insurance with respect to such contractors and subcontractor's employees.

Section 14.03. Other Types of Required Insurance.

- (a) <u>Workers Compensation and Disability</u>. At all times during the Term Tenant shall maintain Statutory Workers' Compensation Insurance and New York State Disability Benefits Insurance in statutorily required amounts with a waiver of subrogation in favor of Landlord and Employer's Liability Insurance with limits of not less than \$1,000,000 per accident or disease and \$5,000,000 aggregate by disease, covering Tenant with respect to all persons employed by Tenant.
- (b) <u>Boiler and Machinery Insurance</u>. At all times during the Term and from and after the date of Substantial Completion, Tenant shall maintain comprehensive Boiler and Machinery Insurance, applying to the entire heating, ventilating and air-conditioning systems, in

all its applicable forms, including Broad Form, boiler explosion, extra expense and loss of use in an amount not less than the Replacement Value of such heating, ventilating and air conditioning systems, located on any portion of the Premises and other machinery located on such portion of the Premises, which shall name Landlord as an additional insured. Such boiler and machinery insurance can be included in the all risk property policy described under Section 14.01(a) above or the builders risk policy described under Section 14.01(c) above. In the event that the boiler and machinery is not included in the all risk property policy described under Section 14.01(a) above, then both the all risk property policy described under Section 14.01(a) above and the builders risk policy described under Section 14.01(c) above shall contain a joint loss agreement, if applicable.

- (c) <u>Subtenant Liability Insurance</u>. At all times during the Term and from and after the date of Substantial Completion, all Subleases shall require the Subtenant thereunder to carry liability insurance naming Tenant, Landlord and the City as additional insureds with limits reasonably prudent in the context of the Subtenant's contemplated use of the Premises. Tenant shall enforce such requirement and shall deliver to Landlord, promptly after Landlord's demand therefor, evidence of each such Subtenant's liability insurance coverage.
- (d) <u>Miscellaneous Coverages</u>. At all times during the Term and from and after the date of Substantial Completion, Tenant shall maintain such other insurance in such amounts as from time to time reasonably may be required by Landlord, in accordance with the Approval Standard, against such other insurable hazards.
- (e) Approval Standard. The term "Approval Standard" as used in this Article 14 shall mean and refer, at the time in question and with respect to the matter at issue, to (i) what is commonly found in the case of insurance policies held with respect to premises in the Northeast and Mid-Atlantic regions of the United States generally comparable (in general size and function) to the Premises by owners and operators conducting business and activities of a nature generally similar to those conducted by Tenant at the Premises, or (ii) for risks that are of a site specific nature, including but not limited to earthquake and flood, what is reasonable to include in insurance policies taking into account the specific location of the Premises or its location within the Borough of Queens or New York City, if and to the extent available at a reasonable cost (in the case of either clause (i) or clause (ii) above).
- (f) <u>League-Wide Insurance</u>. Any insurance provided by Tenant under this Article 14 may be provided under programs offered through MLB, provided that (i) such coverage shall not result in less insurance than is required under <u>Sections 14.01</u> through <u>14.03</u> of this Lease Agreement or reduce Tenant's obligations to Landlord in any fashion, and (ii) Landlord and the City are named as insureds, additional insureds, or loss payees, as the case may be, on such policies. Tenant shall promptly notify Landlord of the carrying of such insurance and shall 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) by Tenant to the insurance company(ies) or to Major League Baseball, as the case may be, to be delivered to Landlord and the Bond Insurer in accordance with the provisions of <u>Section 14.07(c)</u>.

Section 14.04. <u>Adjustment of Limits</u>. All of the limits of insurance required hereunder pursuant to Article 14 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. Notwithstanding the foregoing, 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 in accordance with the Approval Standard; provided, however, that in no event shall the provisions of this Section relieve Tenant of its obligation to carry or to cause to be carried property insurance as provided herein; and provided further, however, that in no event shall Tenant be required to carry or to cause to be carried property insurance in an amount which is greater than the Replacement Value.

Section 14.05. <u>Equivalent Protection</u>. The parties acknowledge that over the Term of this Lease Agreement, further changes in the forms of insurance policies and in insurance practices are likely to occur. In such event, including, without limitation, the event that any types of coverage or any coverage amounts required hereunder (including such additional types or limits of insurance as Tenant is carrying from time to time as reasonably required by Landlord in accordance with the terms hereof) become unavailable or cease to be commonly carried in accordance with the Approval Standard, then Landlord shall have the right to require Tenant to furnish, 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 or occurrence of any change in insurance practices referred to in this paragraph, provided that the additional coverage requested by Landlord is available in accordance with the Approval Standard.

Section 14.06. Treatment of Proceeds.

- (a) Payment. All insurance proceeds paid pursuant to any property insurance required to be carried pursuant to this Lease Agreement or carried in connection with this Lease Agreement, excluding only proceeds paid in respect of any loss of the personal property of Tenant or its Subtenants, (i) during such time as the Bonds shall be outstanding, shall be paid in accordance with Section 15.03, to the PILOT Bonds Trustee as loss payee on property and business interruption policies hereunder, or to an Institutional Lender, as the case may be, and (ii) from and after the repayment in full of the Bonds, subject to the rights of any Recognized Mortgagee, shall be paid to Tenant to be held for purposes of a Casualty Restoration. If and to the extent any such proceeds shall be received by Landlord, Landlord shall deposit same in an interest-bearing account and pay over such proceeds in accordance with the provisions of this Section 14.06 and Article 15 of this Lease Agreement. To the extent of any proceeds remaining after a Restoration, such proceeds shall be paid to Tenant, subject to the Bond Documents and the rights of any Recognized Mortgagee.
- (b) <u>Cooperation in Collection of Proceeds</u>. 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 promptly 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.

Section 14.07. General Provisions Applicable to All Policy Requirements.

- (a) <u>Insurance Companies</u>. All of the insurance required by any provision of this Lease Agreement 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 as are reasonably acceptable to Landlord. Any insurance company rated by Bests Insurance Reports (or any successor publication of comparable standing) as "A-X" 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 Agreement shall be obtained by Tenant for periods of not less than one (1) year.
- (b) <u>Waiver of Subrogation</u>. All casualty policies required hereunder by any provision of this Lease Agreement shall permit Tenant to waive subrogation rights against Landlord and the City, and Tenant hereby waives any claims against Landlord it may otherwise have under any and all casualty policies required hereunder by any provision of this Lease Agreement.
- Certificates and Copies; Payment of Premiums. As of the first time that (c) Tenant is obligated to effect any applicable insurance coverage under this Lease Agreement, Tenant shall deliver to Landlord and the Bond Insurer 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 thirty (30) days' advance notice of cancellation (except for non-payment of premiums, for which ten (10) days' prior written notice shall be required). 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"), including the Bond Insurer, promptly following its receipt by Tenant from the insurance company or companies. Certified copies of new or renewal policies replacing any policies expiring during the Term shall be delivered within thirty (30) days following the receipt of such renewal policies, but certificates of insurance shall be supplied prior to the expiration date of any policy, together with proof that the premiums for at least the first year of the term of each of such new or renewal policies or such premium installments for shorter periods then due and payable for such policies shall have been paid. 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, provided that Tenant pays all such installments in full not later than ten (10) days prior to the respective due dates for such installments and provides proof of payment of such installments by such dates. Tenant shall deliver to Landlord (with a copy to Bond Insurer) upon renewal of, and with respect to, an insurance policy required hereunder and, in any event, no less frequently than once every three years, a certificate confirming that all premiums due and payable on insurance policies to be provided by Tenant under this Lease Agreement have been paid and that all such policies are in effect and in compliance with the provisions hereof. In the event of a request in accordance with the previous sentence, Tenant shall use reasonable efforts to cause an insurance broker(s) to issue such a certificate(s) and, if such a certificate(s) is not provided by an insurance broker(s), Tenant shall provide such a certificate from an officer of Tenant, provided that such officer shall have no liability to Landlord or otherwise relating to any such certificate.
- (d) <u>Multiple Property Policies</u>. Tenant shall not carry separate property insurance, concurrent in form, or contributing in the event of loss, with that required by this

Lease Agreement unless Landlord is named as an insured party with loss payable as provided in this Lease Agreement. Tenant shall promptly notify Landlord of the carrying of such separate insurance and shall 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 Landlord in accordance with the provisions of Section 14.07(c).

- (e) <u>Compliance with Policies</u>. 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 14. 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 14 shall be in full force and effect in accordance with the provisions of this Article 14 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.
- (f) Required Endorsements. Each policy of insurance required to be carried pursuant to the provisions of this Lease Agreement shall contain (i) a provision that no unintentional 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, as its interest may appear, (ii) an agreement by the insurer that such policy shall not be canceled or denied renewal without at least thirty (30) days' prior written notice to Landlord (except for non-payment of premiums, for which ten (10) days' prior written notice shall be required), and (iii) other than with respect to liability policies, 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 Landlord or its designees, agents or employees.

Section 14.08. <u>Unavailability</u>. If any of the insurance required to be carried under this Lease Agreement shall not, after diligent efforts by Tenant, and through no act or omission on the part of Tenant, be obtainable in accordance with the Approval Standard from domestic carriers licensed or authorized to do business in New York and customarily insuring premises similar to the Premises and business operations of a size, nature and character similar to the size, nature and character of the business operations being conducted by Tenant at the Premises, then Tenant shall promptly notify Landlord and the Bond Insurer 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 in accordance with the Approval Standard. If Landlord shall be able to arrange for Tenant to obtain such insurance in accordance with the Approval Standard, Tenant shall obtain the same up to the maximum limits provided for herein in accordance with the Approval Standard. If Landlord shall be unable to arrange for Tenant to obtain such insurance in accordance with the Approval Standard, Tenant shall promptly obtain the maximum insurance obtainable in accordance with the Approval Standard, and in such case, the failure of Tenant to carry the insurance which is unobtainable in accordance with the Approval Standard shall not be a Default for as long as such insurance shall remain unobtainable in accordance with the Approval Standard. Types or amounts of insurance shall be deemed unobtainable in accordance with the Approval Standard if such types or amounts of insurance are (a) actually unobtainable, or (b) not obtainable in accordance with the Approval Standard.

Section 14.09. <u>Modification By Insurer</u>. Without limiting any of Tenant's obligations or Landlord's rights under this Article 14, upon an insurer's modification, in any material respect, of any insurance policy that is required to be carried by Tenant according to the provisions of this Lease Agreement, Tenant shall give notice to Landlord of such modification within thirty (30) days after Tenant's receipt of notice of such modification.

Section 14.10. <u>Interpretation</u>. With respect to policies written on ISO forms, all insurance terms used in this Article 14 shall have the meanings ascribed by the Insurance Services Offices of New York

Section 14.11. Consultant Review Process. Landlord has the right to have Tenant's insurance consultant review the adequacy of Tenant's insurance program in the context of this Lease Agreement no more frequently than once every three years. Landlord shall provide Tenant with not less than thirty (30) days' prior written notice of any such review. In the event such a review is to occur, Tenant will have its consultant review such program at Tenant's expense and advise Landlord of its conclusions. Landlord may then engage its own consultant at its expense to review the conclusions of Tenant's consultant. If Tenant's consultant and Landlord's consultant disagree with respect to the adequacy of Tenant's insurance program in the context of this Lease Agreement, the two consultants shall appoint a third to perform in its own review and Tenant and Consultant shall share the cost of such consultant equally.

ARTICLE 15

DAMAGE, DESTRUCTION AND RESTORATION

Section 15.01. <u>Notice to Landlord</u>. Tenant shall promptly notify Landlord and Bond Insurer if the Improvements are damaged or destroyed in whole or in part by fire or other casualty.

Section 15.02. Casualty Restoration.

(a) Obligation to Restore. Subject to the provisions of Section 38.22, if, from and after the date of Substantial Completion and during the Term, all or any portion of the Improvements are damaged or destroyed by fire or other casualty, ordinary or extraordinary, foreseen or unforeseen, Tenant shall, as agent for Landlord, restore the Premises to the condition in which it existed immediately before such casualty (a "Casualty Restoration"). Prior to commencement of a Casualty Restoration, plans and specifications shall be submitted to Landlord for its prior written approval, in accordance with the procedures and requirements set forth in Article 12, and for compliance with the first sentence of this Section 15.02(a), not to be unreasonably withheld, delayed or conditioned. Notwithstanding the foregoing, if all or substantially all of the Improvements are damaged or destroyed at any time during the last three (3) Lease Years of the Term, then Tenant shall have no obligation to perform a Casualty Restoration, and in lieu thereof shall comply with the terms of Section 15.05.

(b) <u>Commencement of Construction Work</u>. If Tenant is obligated to perform a Casualty Restoration pursuant to subsection (a) above, Tenant shall commence the Casualty Restoration within sixty (60) days after adjustment of the insurance claim relating to the damages or destruction, subject to Unavoidable Delays, and, thereafter, shall perform the Casualty Restoration as continuously and diligently as possible.

Section 15.03. Application of Restoration Funds.

- (a) All insurance proceeds (excluding "contents" insurance policies carried by Tenant separate and apart from the policies required under this Lease) with respect to any casualty occurring from and after the date of Substantial Completion during the Term (such insurance proceeds, together with any and all funds available to Tenant from any source, including without limitation additional Bonds, the "Restoration Funds") shall be paid to the PILOT Bonds Trustee, or, if none exists, to an Institutional Lender, to be held in trust in an interest-bearing account for application in accordance with the terms of this Article 15 and Section 38.22, and other applicable provisions of this Lease Agreement.
- (b) If Tenant is required to perform a Casualty Restoration pursuant to Section 15.02(a) above, Tenant shall cause the Restoration Funds to be applied toward the cost of the Casualty Restoration, provided that any Restoration Funds, together with any interest earned thereon, remaining after the completion of a Casualty Restoration may, subject to the Bond Documents and the rights of any Recognized Mortgagee, be retained by Tenant for its own account. The foregoing notwithstanding, for as long as Bonds are outstanding, disbursement of Restoration Funds from insurance proceeds for a Casualty Restoration shall be subject to and governed by the provisions of Section 5.03(d) of the PILOT Indenture.

Section 15.04. <u>Restoration Fund Deficiency</u>. Subject to the provisions of <u>Section 38.22</u>, if the estimated cost of any Casualty Restoration exceeds the aggregate amount of the Restoration Funds available to pay for such Casualty Restoration, then Tenant shall have the obligation to furnish its own funds for the difference.

Section 15.05. Tenant's Right to Terminate. If all or substantially all of the Improvements are damaged or destroyed by fire or other casualty, ordinary or extraordinary, seen or unforeseen, during the last three (3) Lease Years of the Term, Tenant, by notice to Landlord, shall have the right to terminate this Lease Agreement within ninety (90) days after such casualty by notice to Landlord, in which case all Restoration Funds shall be paid to Tenant; provided, however, that in the event Tenant shall exercise such termination right, then, at Landlord's election, Tenant shall first demolish the Stadium and clear and level the Stadium site in accordance with plans and specifications prepared by Tenant and reasonably approved by Landlord, using the proceeds of Restoration Funds, and the Restoration Funds shall be first received and applied to such purpose. This Lease Agreement shall terminate on the later of thirty (30) days after the date of such notice or ten (10) days after the completion of demolition of the Stadium and related work as aforesaid. The foregoing notwithstanding, any Restoration Funds remaining after such demolition and related work may be retained by Tenant, subject to the rights of any Recognized Mortgagee and the Bond Documents.

Section 15.06. <u>Effect of Casualty on This Lease Agreement</u>. Unless Tenant elects to terminate this Lease Agreement pursuant to <u>Section 15.05</u>, this Lease Agreement shall neither terminate, be forfeited nor be affected in any manner, by reason of damage to, or total, substantial or partial destruction of, the Improvements, or by reason of the unlicensability of the Improvements or any part thereof, or for any reason or cause whatsoever. Tenant's obligation hereunder shall continue as though the Improvements had not been damaged or destroyed and shall continue without abatement, suspension, diminution or reduction unless and until Tenant exercises its right to terminate pursuant to <u>Section 15.05</u> above.

Section 15.07. <u>Subordination</u>. Subject to <u>Section 38.22</u>, to the extent that Restoration Funds are payable to Landlord and are not required to be applied to (a) the Restoration of the Premises or (b) the redemption of the Bonds, Landlord has assigned its right to receive the proceeds thereof to Fee Owner pursuant to <u>Section 14.1</u> of the Primary Site Ground Lease and <u>Section 14.1</u> of the South Parking Site Ground Lease. Fee Owner shall be a third party beneficiary of this <u>Section 15.07</u>.

Section 15.08. <u>Intentionally omitted</u>.

Section 15.09. Waiver of Rights Under Statute. The existence of any present or future law or statute notwithstanding, and except as provided in Section 15.05, Tenant waives all rights to quit or surrender the Premises or any part thereof by reason of any casualty to the Improvements. It is the intention of Landlord and Tenant that the provisions of this Article are an "express agreement to the contrary" as provided in Section 227 of the Real Property Law of the State of New York.

ARTICLE 16

CONDEMNATION

Section 16.01. Certain Definitions.

- (a) "Taking" shall mean a taking of the Premises, or any part thereof occurring from and after the date of Substantial Completion and during the Term for any public or quasi-public purpose by any lawful power or authority, acting in its sovereign capacity by the exercise of the right of condemnation or eminent domain or by agreement among Landlord, Tenant and those authorized to exercise such right irrespective of whether the same affects the whole or substantially all of the Premises, or a lesser portion thereof but shall not include a taking of the fee interest in the Premises, or any portion thereof if, after such taking, Tenant's and any rights under this Lease Agreement are not affected.
- (b) "<u>Substantial Taking</u>" shall mean a Taking where the portion of the Premises remaining after the Taking in the reasonable determination of Tenant would not readily and appropriately accommodate a modern, state of the art, first class major league baseball stadium.
- (c) "<u>Date of Taking</u>" shall be deemed to be the date on which, following a Taking, title to the whole or any part of the Premises shall have vested in any lawful power or authority pursuant to the provisions of applicable federal, state, or local condemnation law or the

date on which the right to the temporary use of the same has so vested in any lawful power or authority as aforesaid.

Tenant and Landlord shall promptly notify each other of any Taking.

Section 16.02. Permanent Taking.

- (a) If, from and after the date of Substantial Completion and during the Term, there shall be a Substantial Taking (other than a Temporary Taking), the following consequences shall result:
 - (i) this Lease Agreement and the Term shall terminate and expire on the Date of Taking and Rental paid and payable by Tenant hereunder shall be apportioned to the Date of Taking, and all such Rental shall be paid on the Date of Taking to the party in whose favor such apportionments result in a credit; and
 - subject and subordinate to the terms of the Primary Site Ground (ii) Lease and the South Parking Site Ground Lease regarding Fee Owner's rights to condemnation award proceeds for the value of the land so taken, condemnation award proceeds, for as long as Bonds are outstanding, shall be paid to the PILOT Bonds Trustee for the redemption of Bonds and the discharge of all amounts payable under the Bond Documents, and any excess shall be divided between Landlord and Tenant (subject to the rights of any Recognized Mortgagee) as follows: (1) to Landlord, so much of the balance of the award as is for or attributable to the value of Landlord's reversionary interest in the Stadium, which shall be deemed to be the amount of the award for the Stadium, multiplied by a fraction, the numerator of which is the number of full or partial Lease Years which have elapsed since the date of Substantial Completion Date to the Date of Taking (pro rated for a partial year) (assuming the exercise of all Extended Term Options), and the denominator of which is 99, as of the date of the award, (2) to Tenant, so much of the balance of the award for the Stadium that is attributable to Tenant's remaining interest in this Lease Agreement, which shall be deemed to be the amount of the award, multiplied by a fraction, the numerator of which is the number of full or partial Lease Years remaining in this Lease Agreement from the Date of Taking (pro rated for a partial year) (assuming the exercise of all Extended Term Options), and the denominator of which is 99 as of the date of the award.
- (b) Tenant shall be entitled to make a separate claim in the condemnation proceeding for the amount of the loss of value or utility of Tenant's personal property, including without limitation, office furniture and equipment, moveable partitions, communications

equipment and other articles of moveable equipment owned or leased by Tenant and located at the Premises.

Section 16.03. Partial Taking.

- (a) Restoration. If there shall be a Taking that is less than a Substantial Taking (other than a Temporary Taking), this Lease Agreement and the Term shall continue without diminution of any of Tenant's obligations hereunder, Tenant shall, as agent for Landlord, restore the Premises to the condition in which it existed immediately before the Taking as nearly as possible (a "Condemnation Restoration"), and all condemnation awards shall be paid and applied in the same manner as is set forth in Section 15.03 and Section 15.04 as if such Taking were a Casualty. Notwithstanding the foregoing, if such a Taking shall occur at any time during the last three (3) Lease Years of the Term, or any Extended Term, then Tenant shall have no obligation to perform a Condemnation Restoration, in which case the condemnation awards for the Land and Stadium shall be paid to Landlord, to be applied or paid by Landlord within ninety (90) days of receipt of such award either (a) towards a Condemnation Restoration, or (b) to the PILOT Trustee for deposit into the Renewal Fund. Tenant shall make its election within ninety (90) days of such Taking.
- (b) <u>Commencement of Construction Work</u>. If Tenant is obligated to perform a Condemnation Restoration pursuant to <u>Section 16.03(a)</u>, Tenant shall commence the Condemnation Restoration within sixty (60) days after payment by the authority exercising eminent domain of the condemnation award, subject to Unavoidable Delays, and, thereafter, shall perform the Condemnation Restoration as continuously and diligently as possible. Any proceeds remaining after Condemnation Restoration shall be proportionately divided between Landlord and Tenant in accordance with the formula set forth in <u>Section 16.02(a)(ii)</u>.
- (c) <u>Restoration Fund Deficiency</u>. If the estimated cost of any Condemnation Restoration exceeds the aggregate amount of the condemnation proceeds available to pay for such Restoration, then Tenant shall have the obligation to furnish its own funds for the difference, provided, that of the Bond Document provide for the furnishing of funds or other security for such a deficiency, then the terms of the Bond Documents shall govern over this <u>Section 16.03(c)</u>.

Section 16.04. <u>Temporary Taking</u>. If during the Term there shall be a Taking of the temporary use of the whole Premises whether a Substantial Taking or less than a Substantial Taking, for a temporary period of less than one (1) year (a "<u>Temporary Taking</u>"), this Lease Agreement and the Term shall continue, and Tenant shall receive the award of payment for such temporary use.

Section 16.05. <u>Collection of Awards</u>. Each of the parties shall execute documents that are reasonably required to facilitate collection of any awards made in connection with any condemnation referred to in this Article 16 and shall cooperate with each other to permit collection of the award.

Section 16.06. <u>Tenant's Appearance at Condemnation Proceedings</u>. Tenant 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 16.07. <u>Subordination</u>. To the extent that condemnation proceeds are payable to Landlord and are not required to be applied to (a) the Restoration of the Premises or (b) the redemption of the Bonds, Landlord has assigned its right to receive the proceeds thereof to Fee Owner pursuant to <u>Section 14.2</u> of the Primary Site Ground Lease and <u>Section 14.2</u> of the South Parking Site Ground Lease. Fee Owner shall be a third party beneficiary of this <u>Section 16.07</u>.

Section 16.08. <u>Intention of the Parties</u>. 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 Taking that is less than a Substantial Taking. It is the intention of Landlord and Tenant that the provisions of this Article 16 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 17

ASSIGNMENT, TRANSFER AND SUBLICENSING; MORTGAGES

Section 17.01. Limitations on Right to Enter Into Sublease or Capital Transaction.

- (a) Tenant shall not enter into any Capital Transaction or Sublease, except for Permitted Transactions, or otherwise only with the prior written consent of Landlord and the Taxable Bond Insurer in its sole discretion in each instance.
- (b) A Sublease or Capital Transaction shall be a "<u>Permitted Transaction</u>" if each of the following conditions are satisfied as applicable:
 - (i) On the effective date of such Sublease or Capital Transaction, there exists no uncured Default, notice of which has been given to Tenant, or Event of Default;
 - (ii) The proposed Assignee, Transferee or Subtenant (and its "Principals" (as defined in Section 19.02)) is a Permitted Person;
 - (iii) Tenant shall have complied in all material respects with any and all of the applicable provisions of this Article 17 set forth below;
 - (iv) In the case of an Assignment (other than an Assignment by operation of law, *i.e.*, a merger or sale of the business of Tenant), Tenant has obtained a written assumption by Assignee, in form and substance reasonably satisfactory to Landlord and the Bond Insurer and executed by the Assignee, of all of Tenant's obligations under this Lease Agreement and the assignable Retained Rights Agreements in effect at such time, if any (A) accruing after the

date of such Assignment, and (B) that accrued prior to the date of such Assignment, unless Tenant agrees in form and substance reasonably satisfactory to Landlord to remain liable for all such prior accrued obligations;

- (v) In the case of a Capital Transaction, prior to Substantial Completion, the proposed Assignee or Transferee shall directly or indirectly own and control, be owned and controlled by, or be under common ownership and control with, the Partnership (the foregoing shall not apply to a foreclosure by a Recognized Mortgage);
- (vi) In the case of a Capital Transaction, a Transfer which after the effectiveness of which Transfer (together with all other prior or simultaneous Transfers) Tenant and the Partnership have at least 50.1% common Equity Interests (the foregoing shall not apply to a foreclosure by a Recognized Mortgagee);
- (vii) any Assignee, Transferee or Subtenant shall use the Stadium or cause the Stadium to be used as a qualified "project" within the meaning of the Act and shall not (other than a Family Member by operation of law) constitute a Prohibited Person;
- (viii) the written consent and agreement of the Partnership that such Capital Transaction shall not in any way impair or diminish the Partnership's ability to play Home Games at the Stadium during the Initial Term or liability for liquidated damages under the Non-Relocation Agreement.

The foregoing notwithstanding, the Stadium Use Agreement is hereby deemed to be a Permitted Transaction.

Any consent by Landlord to any act of Assignment, Transfer or Sublease shall be held to apply only to the specific transaction thereby authorized. Landlord may condition its consent upon the delivery of documentation (including without limitation certifications and affidavits) reasonably requested by Landlord to substantiate any of the foregoing. Such consent shall not be construed as a waiver of the duty of Tenant, or the successors or assigns of Tenant, to obtain from Landlord consent to any other or subsequent assignment, transfer or sublease, or as modifying or limiting the rights of Landlord under the foregoing covenant by Tenant.

(c) <u>Definitions</u>.

(i) "Assignment" means the sale, exchange, assignment, or other disposition of all or any portion of Tenant's interest in this Lease Agreement, or a Sublease of substantially all of Tenant's interest in this Lease Agreement, whether by operation of law (i.e., a merger or sale of the business of Tenant), or otherwise.

- (ii) "Assignee" means an assignee under an Assignment.
- (iii) "<u>Capital Transaction</u>" means an Assignment, a Transfer or any other transaction which would constitute the functional equivalent of an Assignment or Transfer.
- (iv) "Equity Interest" means with respect to any entity, (A) the beneficial ownership of (1) outstanding stock of such entity if such entity is a corporation, a real estate investment trust or a similar entity, (2) a capital, profits, membership, or partnership interest in such entity if such entity is a limited liability company, partnership or joint venture or (3) interest in a trust, or (B) any other beneficial interest that is the functional equivalent of any of the foregoing.
- (v) "<u>Family Member</u>" means a parent, son, daughter, grandchild, grand parent, or sibling, and the descendants and spouses of each, and shall include a trust made exclusively for the benefit of any of the foregoing.
- (vi) "Permitted Person" shall mean any Person which meets all of the following conditions: (A) such Person and its "Principals" (as defined in Section 19.02) submit to the City's Vendex background investigation system or any successor system serving the same function ("Vendex") sixty days prior to the anticipated date of the proposed Capital Transaction; and (B) is not a Prohibited Person.
- (vii) "Sublease" means any sublease (including a sub-sublease or any further level of subleasing) applicable to the Premises or any part thereof, but shall not include any sublease for less than substantially all of the Premises and where the subtenant thereunder is the user/occupant of the space demised thereunder, including, without limitation, any lease, use or occupancy of any luxury box or suite.
- (viii) "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 control of Tenant, but shall exclude a transfer of any interest of a Family Member(s) to another Family Member(s). A "change in control" for purposes of determining whether a "Transfer" has occurred means a change in the day-to-day management and operation of Tenant or control of or a change in the power to appoint members

of the board of directors, managing general partners, or members or other governing body of Tenant or any entity controlling Tenant.

- (ix) "Transferee" means a Person to whom a Transfer is made.
- (d) <u>Definition of Prohibited Persons</u>. The term "<u>Prohibited Person</u>" as used in this Lease Agreement shall mean any one or more of the following:
 - (i) Any Person that is in material default or in material breach, beyond any applicable grace period, of its obligations under any written agreement with the City, or that directly or indirectly controls, is controlled by, or is under common control with a Person that is in default or in breach, beyond any applicable grace period, of its obligations, involving an amount of \$10,000 or more, under any written agreement with the City, unless such default or breach is then being contested with due diligence in proceedings in a court or other appropriate forum or has been waived in writing by the City, as the case may be.
 - (ii) Any Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure, or that directly or indirectly controls, is controlled by, or is under common control with a Person that has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure.
 - (iii) Any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participation in an international boycott in violation of) the Export Administration Act of 1979, or its successor, or the regulations issued pursuant thereto, or any government that is, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government that is, subject to the regulations or controls thereof.
 - (iv) Any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended.

- (v) Any Person that has received written notice of default in the payment to the City of any Taxes, sewer rents or water charges of \$10,000 or more, unless such default is then being contested with due diligence in proceedings in a court or other appropriate forum.
- (vi) Any Person that has owned at any time in the preceding three years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City, or that, directly or indirectly controls, is controlled by, or is under common control with a Person that has owned at any time in the preceding three years any property which, while in the ownership of such Person, was acquired by the City by in rem tax foreclosure, other than a property in which the City has released or is in the process of releasing its interest to such Person pursuant to the Administrative Code of the City.
- (e) <u>Determination of Organized Crime Figure</u>. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure or directly or indirectly controls, is controlled by, or is under common control with a Person that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the sole discretion of Landlord exercised in good faith.
- (f) <u>Notice to Landlord</u>. Tenant shall notify Landlord of its intention to enter into any Capital Transaction or Sublease not less than forty-five (45) days before the proposed effective date thereof, except in the case of any Capital Transaction resulting from death or incapacity.

(g) <u>Contents of Notice</u>.

- (i) The notice required by <u>Section 17.01(f)</u> hereof shall contain the name and address of the proposed Assignee or Transferee and the following information:
 - (A) in the case of a proposed corporate Assignee or Transferee, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed Assignee or Transferee (other than a corporation whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission or in the over-the-counter market), a certificate of an authorized officer of such corporation giving the names and addresses of all current directors and

- officers of the corporation and Persons having more than a five percent (5%) interest in such Assignee or Transferee;
- (B) in the case of a proposed corporate Assignee or Transferee, or in the case of a corporate general partner or joint venturer of a partnership or joint venture that is the proposed Assignee or Transferee whose common stock is traded over the New York Stock Exchange, the American Stock Exchange or any other exchange now or hereafter regulated by the Securities and Exchange Commission or in the over-the-counter market, all of the periodic reports required to be filed with the Securities and Exchange Commission by such corporation pursuant to the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder within the last twelve (12) months, including, without limitation, its most recently filed annual report on form 10-K and all reports required to be filed by any person owning stock of such corporation with the Securities and Exchange Commission pursuant to the reporting requirements of Sections 13(d), or 13(e), of the Securities Exchange Act of 1934, any amendments thereto, and the regulations promulgated thereunder;
- (C) in the case of a proposed limited liability company, partnership or joint venture Assignee or Transferee, a certificate of the managing member, managing general partner or other authorized general partner, manager or managing venturer of the proposed Assignee or Transferee giving the names and addresses of all current members, general and limited partners and joint venturers of the partnership, joint venture or limited liability company and describing their respective interests in said limited liability company, partnership or joint venture;
- (D) in all cases, a certification by an authorized officer, managing member, managing general partner, or other authorized manager, general partner or managing venturer, whichever shall be applicable, of the proposed Assignee or Transferee to the effect that to his or her knowledge the Capital Transaction will not, as of the date of closing, violate a condition of Section 17.01(b)(v), or involve a Prohibited Person (provided, that for purposes of clause (d)(i) above of this Section 17.01, a "Person" shall not be considered a "Prohibited Person" if such Person is bona fidely contesting the default or breach, and no final and binding judgment, after the exhaustion of all appeals, has been rendered holding such party in default of its

- obligations under any written agreement with the City, or if an unappealable judgment is rendered, the judgment is fully satisfied:
- (E) in the case of an Assignment (other than an Assignment by operation of law, *i.e.*, a merger or sale of the business of Tenant), a proposed form of assumption agreement from the Assignee to Landlord, which assumption agreement shall be reasonably satisfactory to Landlord;
- (F) in the case of a Transfer to a Family Member (other than by operation of law), a certification by such Family Member to the effect that to his or her knowledge he or she as of the closing date will not be a Prohibited Person; and
- (G) any other information or documents which Landlord may reasonably request.
- (ii) If any change in circumstances prior to the closing of the transaction renders the information provided pursuant to Section 17.01(f) above incomplete or incorrect, Tenant shall notify Landlord of the change, which notification, if relating to a change which is material in any respect in Landlord's reasonable judgment, shall recommence the period for Landlord's notification to Tenant under Section 17.01(h).
- (h) Objections and Waiver. Provided that Tenant has delivered to Landlord the documents and information required pursuant to this Lease Agreement in connection with any proposed Capital Transaction or Sublease, together with a notice making express reference to this Section 17.01(h) and the requirement that Landlord approve or disapprove such proposed Capital Transaction or Sublease within thirty (30) days or the proposed Capital Transaction shall be deemed approved, then Landlord shall notify Tenant, within thirty (30) days after receipt of notice from Tenant pursuant to the provisions of Section 17.01(f) and submission of all necessary information whether the Capital Transaction or Sublease would involve a Prohibited Person, and, if consent by Landlord to such Capital Transaction or Sublease is required under this Article, whether such consent is given or denied. Landlord shall be deemed to have consented to the proposed Capital Transaction or Sublease if it fails to respond to Tenant's notice within the time period referred to above.
- (i) <u>Capital Transaction Instruments</u>. Tenant shall deliver to Landlord, or shall cause to be delivered to Landlord, within fifteen (15) days after the execution of (X) other than with respect to an Assignment or Transfer by operation of law (i.e., a merger or sale of the business of Tenant) in the case of an Assignment, an executed counterpart of the instrument of assignment and an executed counterpart of the instrument of assumption by the Assignee of all of Tenant's obligations under this Lease Agreement and the assignable Retained Rights Agreements in effect at such time, if any (such assumption to be for the benefit of Landlord), in form and substance reasonably satisfactory to Landlord, and (Y) in the case of a Transfer, an

executed counterpart of the instrument of Transfer or merger or sale of the business, and if the Transfer is effected through admission of a new or substitute member, partner or joint venturer of Tenant all relevant amendments to the operating agreement, partnership agreement or the joint venture agreement and, if applicable, the certificate of limited partnership, provided that Landlord shall keep all information pertaining to the sale of Tenant's business (as opposed to the assumption of the Lease by the transferee) confidential, and upon request of Tenant and Tenant's providing Landlord with applicable MLB rules, in compliance with such MLB rules, subject in all cases to legally required disclosures, including without limitation the New York Freedom of Information Law.

(j) <u>Invalidity of Transactions</u>. Any Capital Transaction or Sublease entered into without Landlord's consent to the extent required in this Lease Agreement, or which in any other material respect fails to comply with the provisions of this Lease Agreement, shall have no validity and shall be null and void and without any effect.

Section 17.02. Effect of Mortgages.

- (a) <u>No Effect on Landlord's Interest in Premises</u>. No Mortgage shall extend to, affect or be a lien or encumbrance upon, the estate and interest of Fee Owner in the Premises or any part thereof.
- (b) <u>Definition</u>. "<u>Mortgage</u>" means any mortgage or deed of trust or pledge that constitutes a lien on all or any portion of Landlord's interest in the Primary Site Ground Lease or the South Parking Site Ground Lease and the Landlord's and/or Tenant's interest in this Lease Agreement and the leasehold estate or estates created thereby and hereby. Landlord shall not grant any Mortgage (other than the PILOT Mortgages and the Leasehold Rental Mortgage) unless each mortgagee executes, acknowledges and delivers to Tenant a subordination, non-disturbance, and attornment agreement in form and substance reasonably acceptable to the parties thereto.

Section 17.03. Mortgagee's Rights.

- (a) <u>Mortgagee's Rights Not Greater than Tenant's</u>. With the exception of the rights granted to Recognized Mortgagees pursuant to the express provisions of this Lease Agreement, the execution and delivery of a Mortgage or a Recognized Mortgage of Tenant's leasehold estate hereunder shall not give nor shall be deemed to give a Mortgagee or a Recognized Mortgagee of Tenant's leasehold estate hereunder any greater rights against Landlord than those granted to Tenant hereunder.
- (b) <u>Definition</u>. "<u>Recognized Mortgage</u>" means a Mortgage (or Mortgages) (i) that is (x) held by an Institutional Lender (or a corporation or other entity wholly owned by an Institutional Lender) or (y) after Substantial Completion is held by any Person other than a Prohibited Person; (ii) which shall comply with the provisions of this Article 17; (iii) with respect to a Mortgage of Tenant's leasehold estate hereunder, a photostatic copy of which has been delivered to Landlord, together with a certification by Tenant and the Mortgagee confirming that the photostatic copy is a true copy of the Mortgage and giving the name and post office address of the holder thereof; (iv) which is recorded or simultaneously being delivered for

recording in the Office of the City Register, Queens County; and (v) with respect to a Mortgage of Tenant's leasehold estate hereunder, the proceeds of which are applied exclusively to the improvement, maintenance, operation and repair of all or a portion of the Improvements, or reconstruction of the Stadium or construction of a new Stadium on the Premises after a casualty, or any take-out of a loan the proceeds of which were applied exclusively to such purposes. The PILOT Mortgage and the Leasehold Mortgage are hereby stipulated to be Recognized Mortgages.

Section 17.04. Notice and Right to Cure Tenant's Defaults.

- (a) Notice to Recognized Mortgagee. Landlord shall give to each Recognized Mortgagee, at the address(es) of the Recognized Mortgagee stated in the certification referred to in Section 17.03(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, 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 for any purpose under this Lease Agreement unless and until a copy thereof shall have been so given to each Recognized Mortgagee.
- (b) Right and Time to Cure. Subject to the provisions of Section 17.05 hereof, each Recognized Mortgagee shall have a period of (i) thirty (30) days more, in the case of a Default in the payment of Rental, and (ii) sixty (60) days more, in the case of any other Default, than is given Tenant under the provisions of this Lease Agreement to remedy the Default, to cause it to be remedied (or commenced to remedy and diligently pursuing), or cause action to remedy a Default mentioned in Section 24.01(d) to be commenced, provided that such Recognized Mortgagee delivers to Landlord, within ten (10) Business Days after the expiration of the time given to Tenant pursuant to the provisions of this Lease Agreement to remedy the event or condition which would otherwise constitute a Default hereunder, notice that the Recognized Mortgagee intends to take the action described in clauses (i) or (ii) herein, as applicable. At any time after the delivery of the aforementioned notice, the holder of such Recognized Mortgage may notify Landlord, in writing, that it has relinquished possession of the Premises or that it will not institute foreclosure proceedings or, if such proceedings shall have been commenced, that it has discontinued such proceedings, and, in any such event the liability of the holder of such Recognized Mortgage shall be limited to its interest in the Premises and shall have no further liability from and after the date on which it delivers notice to Landlord; provided, however, that, in no event shall a Recognized Mortgagee have any liability hereunder prior to taking possession of the Premises. Thereupon, Landlord shall have the unrestricted right to take any action it deems appropriate by reason of any Event of Default which occurred prior to Landlord's delivery to Tenant of notice of Default under this Lease Agreement.

Section 17.05. <u>Acceptance of Recognized Mortgagee's Performance</u>. Subject to the provisions of <u>Section 17.04</u>, 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.

(a) <u>Commencement of Performance by Recognized Mortgagee for Non-Rental Defaults</u>. No Event of Default referred to in <u>Section 17.04(b)(ii)</u> hereof shall be deemed to have

occurred if, within the applicable period set forth in <u>Section 17.04(b)(ii)</u>, a Recognized Mortgagee shall have:

- (i) In the case of a Default that is curable without possession of the Premises by the Recognized Mortgagee, commenced in good faith to cure the Default within the periods provided in Section 17.04(b)(ii) above and is prosecuting such cure to completion with reasonable diligence and continuity (subject to Unavoidable Delay); or
- (ii) In the case of a Default where possession of the Premises is required in order to cure the Default, or is a Default that is otherwise not susceptible of being cured by a Recognized Mortgagee, if a Recognized Mortgagee shall proceed expeditiously to institute foreclosure proceedings, and shall continuously prosecute the foreclosure proceedings with reasonable diligence and continuity (subject to Unavoidable Delay) to obtain possession of the Premises and, upon obtaining possession of the Premises, shall promptly commence to cure the Default (other than a Default which is not susceptible of being cured by a Recognized Mortgagee) and prosecute such cure to completion with reasonable diligence and continuity (subject to Unavoidable Delay).
- (b) So long as any Recognized Mortgage is in existence, unless all holders of Recognized Mortgages shall otherwise express their consent in writing, the leasehold estate of Landlord created under the Primary Site Ground Lease and the leasehold estate of Tenant created by this Lease Agreement shall not merge, but shall remain separate and distinct, notwithstanding the acquisition of both leasehold interests. To the extent that by operation of law or otherwise a merger of leasehold interests in this Lease Agreement, notwithstanding the immediately preceding sentence, is nevertheless effectuated, then all the covenants, representations, terms and conditions of this Lease Agreement shall be incorporated into the Primary Site Ground Lease as if fully set forth therein, and to the extent of any inconsistency between the covenants, representations, terms and conditions of the Primary Site Ground Lease and the covenants, representations, terms and conditions of this Lease Agreement, the covenants, representations, terms and conditions of this Lease Agreement, the covenants, representations, terms and conditions of this Lease Agreement, the covenants, representations, terms and conditions of this Lease Agreement shall control.

Section 17.06. Execution of New Lease.

- (a) <u>Notice of Termination</u>. If this Lease Agreement is terminated by reason of an Event of Default or otherwise, Landlord shall give prompt notice thereof to each Recognized Mortgagee. This obligation shall survive a termination of this Lease Agreement.
- (b) Request for and Execution of New Lease. If, within thirty (30) days of the receipt (as shown on proof of service or return receipt) of the notice referred to in Section 17.04(a) hereof, a Recognized Mortgagee shall request a new lease, then subject to the provisions of Sections 17.04(b) and 17.05 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 is not a

Prohibited Person. The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease Agreement, 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.

- Conditions Precedent to Landlord's Execution of New Lease. The provisions of Section 17.06(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 the appropriate party, concurrently with the execution and delivery of the new lease, all Rental due under this Lease Agreement up to and including the date of the commencement of the term of the new lease (excluding penalties and interest thereon) and all expenses of Landlord, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, and the termination of this Lease Agreement, if and to the extent such expenses would be collectible under this Lease Agreement from Tenant, and (ii) 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 then existing under this Lease Agreement (other than the Defaults or Events of Default mentioned in Section 24.01(g) through (i) which Landlord shall be deemed to have waived) 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.
- (d) No Waiver of Default. The execution of a new lease shall not constitute a waiver of any Default existing immediately before termination of this Lease Agreement and, except for a Default which is not susceptible of being cured by the Recognized Mortgagee, the tenant under the new lease shall cure, within the applicable periods set forth in Section 24.01 as extended by Section 17.04(b), all Defaults (except those described in Section 24.01(g) through (i)) existing under this Lease Agreement immediately before its termination.
- (e) <u>Assignment of Rent.</u> Concurrently with the execution and delivery of a new lease pursuant to the provisions of <u>Section 17.06(b)</u>, 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 that Tenant would have been entitled to receive but for the termination of this Lease Agreement.
- (f) Assignment of Subleases. Upon the execution and delivery of a new lease pursuant to the provisions of Section 17.06(b), all Subleases (and the Stadium Use Agreement) 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 Agreement 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 17.06(b), Landlord shall not modify or amend, or cancel any Sublease, or the Stadium Use Agreement, or accept any cancellation, termination or surrender thereof (unless such termination is effected as a matter of law upon the termination of this Lease Agreement or terminated by the terms of the Sublease) or enter into any new Sublease without the consent of the Recognized Mortgagee or such designee or nominee.

Section 17.07. 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 17.03, 17.04, 17.05 or 17.06, 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, 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 17.08. <u>Application of Proceeds from Insurance or Condemnation Awards</u>. A Recognized Mortgagee shall have the right to receive the proceeds of insurance or condemnation awards to which Tenant would be entitled in trust and apply same in the same manner that Tenant would be required to apply such proceeds under this Lease Agreement.

Section 17.09. <u>Appearance at Condemnation Proceedings</u>. A Recognized Mortgagee shall have the right to appear in any and all condemnation proceedings and to participate in any and all hearings, trials and appeals in connection therewith.

Section 17.10. <u>Rights of Recognized Mortgagees</u>. The rights granted to a Recognized Mortgagee under the provisions of <u>Sections 17.04</u>, <u>17.05</u> and <u>17.06</u> hereof shall not apply in the case of any Mortgagee that is not a Recognized Mortgagee.

ARTICLE 18

REQUIREMENTS OF GOVERNMENTAL AUTHORITIES

Section 18.01. Requirements.

(a) Obligation to Comply. From and after the date of Substantial Completion and during the Term, Tenant shall comply with all Requirements, without regard to the nature of the acts undertaken or the work required to be done, whether extraordinary or ordinary, and whether requiring the removal of any encroachment, or affecting the maintenance, operation, repair, improvement, 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 by Tenant. No actual or deemed consent to, approval of or acquiescence in any plans or actions of Tenant by Landlord, in its proprietary capacity as Landlord under this Lease Agreement, or Landlord's designee, shall be relied upon or construed as being a determination that such are in compliance with the Requirements, or, in the case of construction plans, are structurally sufficient.

(b) <u>Definition</u>. "Requirements" means:

(i) the Zoning Resolution of The City of New York (as the same may be amended and/or replaced) (the "Zoning Resolution"), to the extent applicable, and any and all laws, rules, regulations, orders, ordinances, statutes, codes, executive orders, resolutions, and requirements of all Governmental Authorities (currently in force or hereafter adopted) (including without limitation any Art Commission approval) applicable to the Premises or any sidewalk comprising a part of or lying adjacent to the Premises or any body of water below the Premises (including, without limitation, the federal Americans with Disabilities Act, the Building Code of New York City, and any applicable equivalent, and the laws, rules, regulations, orders, ordinances, statues, codes and requirements of any applicable fire rating bureau or other body exercising similar functions),

- (ii) any and all provisions and requirements of any property, casualty or other insurance policy required to be carried by Tenant under this Lease Agreement,
- (iii) the Certificate(s) of Occupancy issued for the Premises as then in force, and
- (iv) MLB Rules and Regulations, to the extent necessary to comply with the terms, covenants and conditions made under this Lease Agreement.
- (v) Federal, State or local laws, regulations, guidelines, codes, permits, rules, administrative and judicial decisions, orders and ordinances and any other Requirements (collectively, "Hazardous Materials Laws") applicable to (i) the use, generation, manufacture, handling, processing, distribution, emission, discharge, release, storage, treatment, transportation, recycling and/or disposal of any Hazardous Materials (as defined in Section 21.01(h) hereof), including without limitation any pollutant, contaminant or chemical, any toxic, explosive, corrosive, flammable, radioactive, caustic, or otherwise hazardous substance, waste or material or any substance, waste or material having any constituent elements displaying any of the foregoing characteristics, including, without limitation, any substances now or hereafter defined as or included in the definition of "hazardous substance," "hazardous waste," "hazardous material," "hazardous chemical," "pollutant or contaminant," or "toxic substance" under any applicable Federal, State or local laws or regulations, (ii) the clean up or other remediation of Hazardous Materials, or (iii) the effect of the environment or Hazardous Materials on human health or natural resources.
- (vi) all provisions of the Labor Law of the State applicable to any Construction Work and shall include in all construction contracts all provisions which may be required to be inserted therein by such provisions. The foregoing sentence is not intended to and does not

create any obligations or duties not created by applicable law outside of the terms of this Lease Agreement, and

(vii) the Act.

Landlord in writing of (i) any and all enforcement, cleanup, removal or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable Hazardous Materials Laws, (ii) all claims made or threatened in writing by any third party against Tenant or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials (the matters set forth in clauses (i) and (ii) above are hereinafter referred to as "Hazardous Materials Claims"), and (iii) Tenant's discovery of any occurrence or conditions on the Premises or any real property adjoining or in the vicinity of the Premises that is or are reasonable likely to cause the Premises or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use of the Premises under any Hazardous Materials Law. Tenant shall remediate any Hazardous Materials conditions on the Premises for which it is responsible under Section 21.01(h) in accordance with all applicable Requirements.

ARTICLE 19

REPRESENTATIONS AND COVENANTS

Section 19.01. <u>Brokers</u>. Landlord and Tenant each represents and warrants to the other that neither consulted nor negotiated with any broker or finder nor was any broker or finder involved in this transaction. Tenant agrees to indemnify and save Landlord harmless from and against any claims for fees or commissions (including reasonable legal fees and costs incurred in defending any action or claim) from any broker or finder claiming to have dealt with Tenant. Landlord agrees to indemnify and save Tenant harmless from and against any claims for fees or commissions (including reasonable legal fees and costs incurred in defending any action or claim) from any broker or finder claiming to have dealt with Landlord. This provision shall survive the expiration or sooner termination of this Lease Agreement.

Section 19.02. <u>Tenant's Representations</u>, <u>Warranties</u>, <u>and Covenants</u>. Tenant represents and warrants that no officer, agent, employee or representative of the City has received from Tenant or any of its members or will receive from Tenant or any of its members any payment or other consideration for the making of this Lease Agreement and that no officer, agent, employee or representative of the City has or will have any interest, directly or indirectly, in this Lease Agreement or the proceeds thereof. Tenant represents that it is not and that none of its Principals are Prohibited Persons.

Solely for the purposes of provisions of this Lease Agreement relating to Prohibited Persons, the following definitions shall apply:

1. "Control" – A Person controls another Person if the Person (i) has a ten percent (10%) or greater ownership interest in that other Person or (ii) directs or has the right to direct the daily operations of that other Person.

- 2. "Executive Officer" (i) Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of Tenant, by whatever titles known, and all other executive officers of Tenant, (ii) in the case of a limited liability company, the managing member of such company; and (iii) in the case of a partnership, the general partners and partners able to bind such partnership.
- 3. "Person" has the meaning provided in the "Definitions" section of this Lease Agreement.
- 4. "Principal" Means each of the following Persons:
 - (i) Executive Officers of Tenant; and
 - (ii) Persons that "Control" Tenant.

Section 19.03. <u>Partnership Control</u>. Tenant represents that at the time of execution of this Lease Agreement the Partnership is wholly owned by or under common control with an indirect parent of Tenant, and that the Partnership is a member in good standing of Major League Baseball.

Section 19.04. No Warranty of Condition or Suitability. LANDLORD HAS NOT MADE AND MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE MERCHANTABILITY, CONDITION, FITNESS, DESIGN, OPERATION OR WORKMANSHIP OF ANY PART OF THE PREMISES, ITS FITNESS FOR ANY PARTICULAR PURPOSE, THE QUALITY OR CAPACITY OF THE PREMISES, OR THE SUITABILITY OF THE PREMISES FOR THE PURPOSES OR NEEDS OF TENANT OR THE PARTNERSHIP OR THE TEAM, THE CONSTRUCTION OF THE STADIUM OR THE EXTENT TO WHICH PROCEEDS DERIVED FROM THE SALE OF THE BONDS WILL BE SUFFICIENT TO PAY THE COST OF COMPLETION OF THE STADIUM PROJECT. TENANT ACKNOWLEDGES THAT LANDLORD IS NOT THE MANUFACTURER OF THE STADIUM EQUIPMENT NOR THE MANUFACTURER'S AGENT NOR A DEALER THEREIN. LANDLORD SHALL NOT BE LIABLE IN ANY MANNER WHATSOEVER TO TENANT, THE COMPANY, THE PARTNERSHIP OR ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR EXPENSE OF ANY KIND OR NATURE CAUSED BY OR ARISING FROM, DIRECTLY OR INDIRECTLY, BY THE PREMISES OR THE STADIUM OR THE USE OR MAINTENANCE THEREOF OR THE FAILURE OF OPERATION THEREOF, OR THE REPAIR, SERVICE OR ADJUSTMENT THEREOF, OR BY ANY DELAY OR FAILURE TO PROVIDE ANY SUCH MAINTENANCE, REPAIRS, SERVICE OR ADJUSTMENT, OR BY ANY INTERRUPTION OF SERVICE OR LOSS OF USE THEREOF OR FOR ANY LOSS OF BUSINESS HOWSOEVER CAUSED, UNLESS, AND ONLY TO THE EXTENT BY WHICH, CAUSED BY THE NEGLIGENCE OR WRONGFUL CONDUCT OR OMISSIONS OF LANDLORD OR ITS DIRECTORS, OFFICIALS, EMPLOYEES, AGENTS (EXCLUDING TENANT, ITS PARTNERS, JOINT VENTURERS, DIRECTORS, SHAREHOLDERS, TRUSTEES, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, INVITEES, SERVANTS, LICENSEES, **CONTRACTORS** SUBCONTRACTORS), **AND INVITEES** OR CONTRACTORS ("CONTRACTORS" SHALL NOT INCLUDE TENANT OR ANY OF ITS CONTRACTORS OR SUBCONTRACTORS DOING ANY CONSTRUCTION-RELATED WORK), OR THE CITY OR ANY INSTRUMENTALITY OF THE CITY, OR THEIR RESPECTIVE OFFICIALS, EMPLOYEES, AGENTS (EXCLUDING TENANT, PARTNERS, JOINT VENTURERS, DIRECTORS, SHAREHOLDERS, TRUSTEES, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, INVITEES, SERVANTS, LICENSEES, AND SUBCONTRACTORS), CONTRACTORS INVITEES OR CONTRACTORS ("CONTRACTORS" SHALL NOT INCLUDE TENANT OR ANY OF ITS CONTRACTORS OR SUBCONTRACTORS DOING ANY CONSTRUCTION-RELATED WORK); AND PROVIDED, HOWEVER, THAT THE FOREGOING SHALL NOT APPLY TO ANY LOSS, INJURY OR DAMAGE ARISING OUT OF ANY ACTS OR OMISSIONS DONE BY OR AT THE DIRECTION OF LANDLORD, THE CITY OR ANY INSTRUMENTALITY OF THE CITY, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, MEMBERS, TRUSTEES, OFFICIALS, EMPLOYEES, AGENTS (EXCLUDING TENANT, ITS PARTNERS, JOINT VENTURERS, DIRECTORS, SHAREHOLDERS, TRUSTEES, OFFICERS, MEMBERS, EMPLOYEES, AGENTS, INVITEES, SERVANTS, LICENSEES, CONTRACTORS AND SUBCONTRACTORS), INVITEES OR CONTRACTORS ("CONTRACTORS" SHALL NOT INCLUDE TENANT OR ANY OF ITS CONTRACTORS OR SUBCONTRACTORS DOING ANY CONSTRUCTION-RELATED WORK).

Section 19.05. <u>Lawsuits</u>. If Landlord is named a party to any lawsuit or claim or knows of the commencement of any lawsuit or claim challenging any approvals for the transactions contemplated hereby or Landlord's or the City's entering into any of the documents effecting such transactions, or the right, power or authority of the City or Landlord with respect to any of same, or threatening the City's or Landlord's title to the Premises or Tenant's quiet enjoyment of the Premises, Landlord shall promptly inform Tenant of such lawsuit or claim

Section 19.06. <u>Additional Covenants</u>. Notwithstanding anything contained herein to the contrary, for so long as any obligations under the Bonds are outstanding, Tenant covenants and agrees with Landlord as follows:

- (a) Tenant shall pay all amounts due under the Installment Sale Agreement in accordance with the terms thereof;
- (b) Tenant shall pay all Impositions in accordance with the provisions of Article 6 above;
- (c) Tenant shall comply in all material respects with all Requirements, including, without limitation, Requirements relating to obtaining and maintaining licenses and permits necessary to operate and maintain the Stadium in accordance with the provisions of Article 18 above;
- (d) Tenant shall comply in all material respects with the provisions of Article 17 above in connection with any Sublease or Capital Transaction;
- (e) Tenant shall comply in all material respects with the provisions of <u>Article</u> 32 below;

- (f) No later than 30 days prior to the beginning of each fiscal year, Tenant shall deliver to Landlord an annual operating budget of Tenant, a schedule of planned Capital Improvements and a maintenance schedule with respect to such fiscal year, it being agreed and acknowledged that, during the existence of an Event of Default, Landlord shall have the right to approve any such annual operating budget, which approval shall not be unreasonably withheld, conditioned or delayed;
- (g) Tenant shall make no distribution to its members nor make payment upon Rebate Obligations, the effect of which would be that Tenant would have insufficient funds to allow it to make all payments with respect to (i) Tenant's reasonably anticipated payment obligations and (ii) those obligations under Section 3.01(a) above and required under the PILOT Agreement and the Installment Sale Agreement, in both cases, in the current or succeeding fiscal year and otherwise in accordance with the operating budgets delivered pursuant to Section 19.06(f) of this Agreement;
- (h) Tenant shall use commercially reasonable efforts: (1) to cause as many Retained Rights Agreements as are reasonably practicable to be for terms of one year or longer; (2) to cause as many Retained Rights Agreements as are reasonably practicable to provide that payments due to Tenant thereunder shall be payable regardless of a suspension of play at the Stadium due to a strike by or lockout of members of the Major League Baseball Players Association; and (3) to minimize, to the extent reasonably practicable, any rebate obligations of Tenant under any Retained Rights Agreements during any period in which play at the Stadium has been suspended due to a strike by or lockout of members of the Major League Baseball Players Association ("Rebate Obligations");
- (i) Tenant shall comply in all material respects with the provisions of <u>Section 9.01</u> above in connection with the operation of the Premises and with the provisions of Section 10.01 above in connection with maintenance of the Premises;
- (j) Tenant shall comply in all material respects with the provisions of <u>Article</u> <u>14</u> above in connection with the property, liability and other insurance to be obtained and maintained by Tenant;
- (k) No Capital Improvement shall be made by Tenant which would have a material adverse impact on (i) the Retained Rights (the foregoing covenant shall not apply in cases of any emergency or imminent threat to public safety) or (ii) the utility of the Stadium for its intended purpose as a first-class Major League Baseball Stadium;
- (1) Tenant shall provide Landlord with notice of all amendments to the MLB Governing Documents that would have a material adverse effect on Tenant's ability to comply with Tenant's obligations under this Lease Agreement or would have a material adverse effect on the Retained Rights. Nothing in this paragraph shall be construed to be or constitute a subordination of Landlord's rights and remedies under this Lease Agreement to enforce the covenants and obligations of Tenant hereunder to the MLB Documents;

- (m) From and after the Commencement Date, Tenant shall enforce the obligation of the Partnership under the Stadium Use Agreement to perform all obligations of the Partnership under the Non-Relocation Agreement;
- (n) From and after the date of Substantial Completion and during the Term, Tenant shall permit Landlord to inspect the Premises and any and all maintenance and repair work performed by Tenant at the Premises on reasonable notice and at reasonable times for the purpose of ensuring that Tenant is complying with its maintenance and repair obligations under this Lease Agreement, provided, that, while on the Premises, Landlord shall use commercially reasonable efforts to minimize interference with Tenant's business operations;
- (o) Tenant will not pay to itself a fee for the services it renders in connection with the maintenance and operation of the Stadium;
- (p) Tenant shall keep and maintain the Premises free from all mortgages, liens, security interests and encumbrances other than the liens created by the Mortgages and the other Permitted Encumbrances;
- (q) Tenant shall (i) maintain books and records of accounts using accounting practices in conformity with GAAP; (ii) within one hundred twenty (120) days after each fiscal year, deliver to Landlord annual audited financial statements (consisting of a balance sheet, income statement and statement of cash flows) and accompanied by a report of a nationally recognized firm of certified public accountants in a form reasonably acceptable to Landlord; (iii) within sixty (60) days after each fiscal quarter, deliver to Landlord an unaudited quarterly income statement and balance sheet; and (iv) within ninety (90) days after each fiscal year, deliver to Landlord a variance report on said income statement, comparing the annual operating budget to the actual operations;
- (r) Tenant shall establish and maintain internal financial control policies and practices which are in accordance with the usual and customary practices in the stadium and arena industry:
- (s) Tenant shall not enter into any contract with any Affiliate of Tenant, other than agreements in the ordinary course of business on terms no less favorable to either Landlord or Tenant than those generally available in the marketplace and which may involve intercompany payables and receivables that will not at any time aggregate more than \$1,000,000 and, except for the Stadium Use Agreement, other than agreements for the sale or other transfer of equipment to or from Tenant outside the ordinary course of business on terms no less favorable to Tenant than those generally available in the marketplace;
- (t) Tenant shall not enter into any agreement or series of related agreements among Tenant, any Affiliate of Tenant and a third party (with any such agreement or series of related agreements referred to as "Bundled Agreements") if pursuant to the terms of such Bundled Agreement or Bundled Agreements the economic benefits and burdens allocated to Tenant are, taken as a whole, less favorable to Tenant, and the economic benefits and burdens allocated to the applicable Affiliate are, taken as a whole, more favorable to the applicable Affiliate, than the relative allocation of benefits and burdens that would reasonably be expected

based on the relative fair market value of the economic benefits and burdens that would be available from a third party on an arm's-length basis, provided that at the request of Landlord, Tenant shall deliver a certificate of an Authorized Representative confirming that a particular Bundled Agreement or series of Bundled Agreements comply with the provisions of this Section 19.06(t);

- (u) Tenant shall not (A) enter into any merger or consolidation, or (B) liquidate, wind-up or dissolve (or suffer any liquidation or dissolution), (C) discontinue its business or (D) convey, sell, transfer or otherwise dispose of all or any part of its business or property, whether now owned or hereafter acquired (and which in any event shall not include the Stadium or any component thereof, which is the property of Landlord), if and to the extent, with respect to clause (D) only, any such conveyance, sale, transfer or other disposition is reasonably likely to affect the ability of Tenant to generate Retained Rights Revenue or perform its obligations hereunder, except (1) sales in the ordinary course of business, (2) sales of obsolete and/or replaced or surplus equipment or equipment of Tenant that in Tenant's reasonable judgment is not necessary for the operation of the Stadium, (3) sales of other property with an aggregate book value not in excess of \$1,000,000 during any twelve month period, and (4) any Permitted Transaction under Section 17.01 above;
- (v) Tenant shall not (1) acquire by purchase or otherwise any property or assets of, or equity interest in, any Person, except purchases of inventory, equipment, materials and supplies in the ordinary course of Tenant's business, (2) engage in any business other than (A) holding, leasing, operating and maintaining the Stadium under this Lease Agreement and the On-Site Parking Facilities under the On-Site Parking Agreements, (B) managing, operating and maintaining the Off-Site Parking Facilities, (C) designing, developing, constructing and equipping the Stadium and the Parking Facilities whether as agent or in its own capacity, (D) acquiring, managing, operating and installing the Stadium Equipment, (E) entering into documents in connection with the financing, development and leasing of the Stadium and the On-Site Parking Facilities, including, without limitation, the Project Documents, and (F) all other acts or activities that may be necessary or incidental to the foregoing, (3) create or acquire any Affiliate, or (4) enter into any partnership or joint venture (it being agreed that (i) a profit sharing arrangement between Tenant and a provider of Concessions or (ii) the Stadium Use Agreement shall not be deemed a partnership or joint venture for this purpose);

(w) Tenant shall furnish to Landlord:

- (1) Promptly after Tenant or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, a statement of an Authorized Representative of Tenant describing such ERISA Event and the action, if any, that Tenant or such ERISA Affiliate has taken and proposes to take with respect thereto and (B) on the date any records, documents or other information must be furnished to the Pension Benefit Guaranty Corporation ("PBGC") by Tenant or an ERISA Affiliate with respect to any Plan pursuant to Section 4010 of ERISA, a copy of such records, documents and information; and
- (2) Promptly upon receipt thereof by Tenant or any ERISA Affiliate, copies of each notice from the PBGC stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan; and

- (3) Promptly after the filing thereof, copies of each Schedule B (actuarial information) to the annual report (Form 5500 Series) with respect to each Plan maintained by Tenant or an ERISA Affiliate which have been filed with the U.S. Department of Labor; and
- (4) Promptly upon receipt thereof by Tenant or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (A) the imposition of Withdrawal Liability by any such Multiemployer Plan which could reasonably be expected to have a material adverse effect on Tenant, (B) the reorganization or termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan which could reasonably be expected to have a material adverse effect on Tenant or (C) the amount of liability incurred, or that may be incurred, by Tenant or any ERISA Affiliate in connection with any event described in clause (1) or (2);
- (x) Tenant shall not engage in any "prohibited transaction," as such term is defined in Section 4975 of the Code or Section 406 of ERISA (other than transactions that are exempt by ERISA, its regulations or its administrative exemptions), with respect to any Plan, or incur any accumulated funding deficiency, or terminate, or permit any ERISA Affiliate to terminate, any Plan which would reasonably likely result in any liability of Tenant to the PBGC, or permit the occurrence of any Reportable Event or any other event or condition which presents a risk of such a termination by the PBGC of any Plan, or withdraw or effect a partial withdrawal from a Multiemployer Plan, or permit any ERISA Affiliate which is an employer under such a Multiemployer Plan so to do, in each case if Tenant's liability for such event would have a material adverse effect on Tenant's financial condition;

(y) Tenant shall not:

- (1) engage in any business or activity, other than as specified in Section 19.06(v);
- (2) incur any debt, secured or unsecured, direct or contingent, other than the Tenant's obligations in connection with the Transaction Documents and customary unsecured trade payables normal and incidental to its business as specified in Section 19.06(v), provided the unsecured trade payables are not evidenced by a promissory note;
- (3) guaranty or otherwise hold itself out to be responsible for the debts or obligations of any Affiliate or other Person or for the decisions or actions respecting the daily business affairs of any Affiliate or other Person;
- (4) Have its obligations guaranteed by any Affiliate or any other Person;
- (5) Acquire obligations or securities of its members, managers or any Affiliate;
- (6) (i) Pledge its assets for the benefit of any Affiliate or other Person other than as permitted by the Transaction Documents, or (ii) hold out its credit as being available to satisfy the obligations of any Affiliate or other Person;

- (7) List its assets as assets on the financial statement of any other Person, provided however, that its assets may be included in a consolidated financial statement of its Affiliates, provided that (i) appropriate notation shall be made on such consolidated financial statements to indicate the separateness of it and its assets and such Affiliates and their assets and to indicate that its assets and credit are not available to satisfy the debts and other obligations of such Affiliates or any other Person, (ii) such assets shall be listed on its own separate balance sheet, and (iii) Tenant complies with Section 19.07(y)(16)(D) below;
- (8) Enter into or be a party to any transaction, contract or agreement with any of its Affiliates, any of its constituent parties or any Affiliate of any constituent party, except upon terms and conditions which are substantially similar to those that would be available on an arm's length basis with an unrelated third party; it being acknowledged, for the purposes of this Section 19.06(y)(8), that the terms and conditions of the Stadium Use Agreement are substantially similar to those that would be available on an arm's length basis with an unrelated third party;
- (9) Commingle its funds and other assets with those of any other Person;
- (10) Amend, modify or otherwise change or suffer any Affiliate or other Person to amend, modify or otherwise change the provisions of Tenant's Articles of Organization or Operating Agreement if such amendment could materially adversely affect (i) any of the requirements of the Transaction Documents applicable to it or (ii) any of the covenants in this Section 19.06;
- (11) (i) Own or acquire any stock or securities of any Affiliate or (ii) except as otherwise permitted under the Transaction Documents and upon terms and conditions which are substantially similar to those that would be available on an arm's length basis with an unrelated third party, make or permit to remain outstanding any loan or advance to any Affiliate;
- (12) Except as otherwise permitted under the Transaction Documents, take any action to dissolve, wind-up, terminate or liquidate in whole or in part; to sell, transfer or otherwise dispose of all or substantially all of its assets; to change its legal structure, transfer, or permit the direct or indirect transfer of, any membership or other equity interests; or seek to accomplish any of the foregoing;
 - (13) Merge or consolidate with any other Person;
- (14) Form, acquire or hold any subsidiary (whether corporate, partnership, limited liability company or other form of entity);
- (15) Incur any debts that would be beyond its ability to pay as such debts mature; and
 - (16) Fail to observe each of the following:
- (A) remain solvent and pay its debts and liabilities (including employment and overhead expenses) from its assets as and when the same shall become due;

- (B) do all things necessary to observe limited liability company formalities and to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation;
- (C) correct any known misunderstanding regarding its separate identity;
- (D) maintain its books and records, bank accounts, financial statements, accounting records and other entity documents separate and apart from those of any other Person (including its Affiliates) and file its own tax returns as required under Federal and state law or as otherwise determined to be in the best interests of Tenant;
- (E) hold itself out to the public as a legal entity separate and distinct from any other Person (including any of its Affiliates) and conduct its business in its own name, and not identify itself or any of its Affiliates or any constituent party as a division or part of the other;
- (F) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations;
- (G) maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any Affiliate or any other Person;
 - (H) use separate stationery, invoices and checks;
- (I) allocate fairly and reasonably shared expenses (including, without limitation, overhead for shared office space) with any Affiliate or other Person;
- (J) at all times cause there to be at least one (1) duly appointed Independent Manager; provided, however, if any duly appointed Independent Manager shall cease to serve for any reason, there shall be a new Independent Manager appointed as soon as practicable;
- (K) not permit any Affiliate or other Person independent access to its bank accounts;
- (L) not permit any Affiliate or other Person to conduct the Tenant's businesses in the name of such Affiliate or other Person or utilize the Tenant's stationery, invoices or checks in conducting the business of such Affiliate or other Person;
- (M) pay its own liabilities from its own funds (including, without limitation, salaries of its own employees) and maintain a sufficient number of employees in light of its contemplated business operations; and

- (N) cause the representatives and other agents of the Tenant to act at all times with respect to the Tenant in furtherance of the foregoing and in the best interests of the Tenant; and
- (z) Tenant shall use commercially reasonable efforts to insure that each Retained Rights Agreement shall be assignable to any successor of Tenant.

The covenants set forth in this Section 19.06 are set forth herein in furtherance of the covenants made by the Agency pursuant to the Tax-Exempt Bonds Indenture, and same are not intended to nor shall they in any way whatsoever nullify, void, impair or diminish any similar covenant, condition or representation of Tenant under this Lease Agreement or the rights or remedies of Landlord to enforce any of same.

Section 19.07. <u>Additional Representations and Warranties of Tenant</u>. Tenant represents and warrants to Landlord as of the date of this Lease Agreement as follows:

- (a) Tenant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of New York, has the power and authority to enter into and perform its obligations under this Lease Agreement and the other Project Documents to which Tenant is a party, and by proper action has duly authorized Tenant's execution and delivery of, and its performance under, this Lease Agreement and the other Project Documents to which Tenant is a party and all other agreements and instruments relating thereto.
- (b) No litigation, inquiry or investigation of any kind in or by any judicial or administrative court or agency is pending or, to its knowledge, threatened against Tenant with respect to (1) the organization and existence of Tenant, (2) its authority to execute, deliver and perform its obligations under this Lease Agreement and the other Project Documents to which Tenant is a party, (3) the validity or enforceability of this Lease Agreement and the other Project Documents to which Tenant is a party, or the transactions contemplated thereby, or (4) the ability of Tenant to acquire, use, operate, maintain and lease the Stadium for the uses provided in Article 4 of this Lease Agreement.
- (c) Tenant has not imposed or formally or informally agreed to impose any liens on the Premises other than the PILOT Mortgages and the Rental Mortgage and the Installment Sale Agreement (collectively, and as the same may be amended, the "Existing Mortgages") and the other Permitted Encumbrances.
- (d) Tenant is not in any material respect in default under or in violation of, and the execution and delivery by Tenant of this Lease Agreement or the other Project Documents to which Tenant is a party, and the performance by Tenant of its obligations hereunder and thereunder and the consummation by Tenant of the transactions contemplated hereby and thereby do not or will not conflict with, or constitute a breach or result in a violation of (1) Tenant's constituent or organizational documents, (2) any agreement or other instrument to which Tenant is a party or by which it is bound, or (3) any constitutional or statutory provision or order, law, rule, regulation, decree or ordinance of any court, government or governmental authority having jurisdiction over Tenant or its property, and no event has occurred and is

continuing which with the lapse of time or the giving of notice, or both, would constitute or result in such a default or violation.

- (e) Tenant has obtained all consents, approvals, permits, authorizations and orders of any governmental or regulatory authority or MLB that are required to be obtained by Tenant as a condition precedent to the execution and delivery of this Lease Agreement and the other Project Documents to which Tenant is a party, or that are required as a condition precedent to the commencement of the infrastructure portion of the construction work required to be performed under the Development Agreement, other than permits of a ministerial nature that are granted in the ordinary course. There are no appeals pending with respect to any of the foregoing consents, approvals, permits, authorizations and orders; and all such consents, approvals, permits, authorizations and orders are final and unappealable. The execution and delivery of this Lease Agreement and the other Project Documents to which Tenant is a party do not violate any Requirements.
- (f) Correct and complete copies of this Lease Agreement and each other Project Document to which Tenant is a party have been furnished to Landlord. This Lease Agreement and each other Project Document to which Tenant is a party have been duly authorized, executed and delivered, are in full force and effect, and are the valid and binding obligation or agreement of Tenant, except as may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally, and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), and no party thereto is in or reasonably expected by Tenant to be in default in any material respect thereunder.
- (g) A materially correct and complete copy of the Project Budget as in effect on the date of this Lease Agreement has been furnished to Landlord.
 - (h) Intentionally omitted.
 - (i) Intentionally omitted.
- (j) Tenant has no material assets, liabilities (contingent or otherwise), contracts or business except (A) holding, leasing, operating and maintaining the Stadium under this Lease Agreement and the On-Site Parking Facilities under the On-Site Parking Agreements, (B) managing, operating and maintaining the Off-Site Parking Facilities, (C) designing, developing, constructing and equipping the Stadium and the On-Site Parking Facilities whether as agent or in its own capacity, (D) acquiring, managing, operating and installing the Stadium Equipment, (E) entering into documents in connection with the financing, development and leasing of the Stadium and the On-Site Parking Facilities, including, without limitation, the Project Documents, and (F) all other acts or activities that may be necessary or incidental to the foregoing.
- (k) No approval or consent (that has not been duly obtained and that is not in full force and effect) on the part of MLB is required in connection with the execution or delivery by Tenant of this Lease Agreement and the other Project Documents to which Tenant is a party.

- (l) (A) The approval of the Independent Manager is required to approve the filing by Tenant of a voluntary bankruptcy petition under Section 301 of the Bankruptcy Code, or any comparable provisions of any successor thereto, or comparable provisions of applicable state insolvency laws.
- (B) No suit or action is pending or threatened against any of (i) Tenant or (ii) the Partnership or any other entity Affiliated with Tenant or the Partnership (collectively, the "Other Entities") seeking to consolidate the assets and liabilities of two or more of Tenant and the Other Entities, or generally to impose the obligations of one on any of the others.
- (C) Tenant is not in violation of any of the covenants contained in Section 19.06(y).
- (m) Tenant is not in default in any material respect with respect to any judgment, order, writ, injunction, decree or decision of any governmental body. Tenant is complying with all applicable statues and regulations, including ERISA, of all governmental bodies.
 - (n) No ERISA Event has occurred with respect to any Plan.
 - (o) Tenant has not incurred any Withdrawal Liability.
- (p) Neither Tenant nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA.

Section 19.08. Other Covenants. Notwithstanding anything contained herein to the contrary, during the Term, Tenant covenants and agrees with Landlord that Tenant shall pay (i) all Rental due hereunder in accordance with the terms of Article 3 above (including, without limitation, all Additional Rent, if any, due pursuant to the provisions of Section 3.02 above) (ii) all PILOTs due under the PILOT Agreement in accordance with the terms thereof. Tenant shall not agree to any amendment or modification of the Stadium Use Agreement that would have a material adverse effect on Tenant's ability to perform Tenant's obligations under this Lease Agreement, and Tenant shall not agree to any termination of the Stadium Use Agreement without Landlord's consent. Such covenant to be enforceable by Landlord through all equitable remedies, including without limitation injunction and specific performance. The City and ESDC shall be third party beneficiaries of this Section 19.08.

ARTICLE 20

LANDLORD NOT LIABLE FOR INJURY OR DAMAGE, ETC.

Section 20.01. Landlord not liable for injury or damage, etc. Landlord 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 the Improvements, hatches, openings, installations, stairways or hallways

or other common facilities, the streets or sidewalk areas) or that may arise from any other cause whatsoever, unless, and only to the extent of the proportion of which, any such injury or damage is determined to be caused by the negligence or wrongful conduct or omissions of Landlord or its directors, officials, employees, agents, invitees or contractors or the City or any instrumentality of the City, or their respective officials, employees, agents (excluding Tenant its partners, joint venturers, directors, shareholders, trustees, officers, members, employees, agents, invitees, servants, licensees and contractors and subcontractors), invitees or contractors. In addition, 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 body of water under or adjacent to 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 from interference with light or other incorporeal hereditaments by any Person, or caused by any public or quasi-public work, unless, and only to the extent of the proportion by which, caused by the negligence or wrongful conduct or omissions of Landlord's or its directors, officials, employees, agents (excluding Tenant its partners, joint venturers, directors, shareholders, trustees, officers, members, employees, agents, invitees, servants, licensees and contractors and subcontractors), invitees or contractors, or the City or any instrumentality of the City, or their respective officials, employees, agents (excluding Tenant its partners, joint venturers, directors, shareholders, trustees, officers, members, employees, agents, invitees, servants, licensees and contractors and subcontractors), invitees or contractors. The foregoing shall not apply to any loss, injury or damage arising out of the City's use and occupancy of the Police Substation, or any Cityoperated kiosk at the On-Site Parking Facilities or acts or omissions done by or at the direction of Landlord, the City or any instrumentality of the City, or their respective officers, directors, members, trustees, officials, employees, agents (excluding Tenant its partners, joint venturers, directors, shareholders, trustees, officers, members, employees, agents, invitees, servants, licensees and contractors and subcontractors), invitees or contractors.

ARTICLE 21

INDEMNIFICATION

Section 21.01. <u>Tenant Obligation to Indemnify</u>. Tenant shall not do or permit any act or thing to be done upon the Premises, or any portion thereof, during its period of use of the Premises, or in connection with or as its obligations under this Lease Agreement, which subjects Landlord, the Bond Insurer, the City or EDC, to any liability or responsibility for injury or damage to Persons or property or to any liability by reason of any violation of Requirements, but shall exercise such reasonable control over the Premises as to the foregoing matters so as to protect such other parties against any such liability. To the fullest extent permitted by law, Tenant shall indemnify and save Landlord, Bond Insurer, the City, EDC and their respective director, trustees, officials, members, officers, directors, employees, agents (excluding Tenant its partners, joint venturers, directors, shareholders, trustees, officers, members, employees, agents, invitees, servants, licensees and contractors and subcontractors) and servants (collectively, the "Indemnitees") harmless from and against any and all liabilities, suits, obligations, fines, damages, penalties, claims, costs, charges and expenses, including, without limitation,

reasonable 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, except that no Indemnitee shall be so indemnified and saved harmless to the extent of which such liabilities, etc., are caused by the negligence or wrongful acts or omissions of Bond Insurer, Landlord, the City or EDC or their respective directors, officers, members, trustees, officials, employees, agents (excluding Tenant its partners, joint venturers, directors, shareholders, trustees, officers, members, employees, agents, invitees, servants, licensees and contractors and subcontractors), invitees or contractors (contractors shall not include Tenant or any of its contractors or subcontractors doing construction-related work):

(a) Intentionally omitted.

- (b) <u>Control</u>. From and after the date of Substantial Completion until the end of the Term, the control or use, non-use, possession, occupation, alteration, condition, operation, maintenance, repair, replacement, improvement, or management of the Premises or any part thereof or of any street, plaza, sidewalk, curb, vault, or space comprising a part thereof or adjacent thereto, including, without limitation, any violations imposed by any Governmental Authorities in respect of any of the foregoing; provided, that this provision shall not apply to the Police Substation, which shall be within the sole control and possession of Landlord and/or the City except to the extent caused by the negligence or wrongful acts or omissions of Tenant or its partners, joint venturers, directors, shareholders, officers, members, trustees, officials, employees, agents, invitees, servants or contractors.
- (c) Acts or Failure to Act. Any act or failure to act on the part of Tenant or its partners, joint venturers, officers, directors, shareholders, trustees, employees, agents, servants or contractors occurring from and after the date of Substantial Completion until the end of the Term.
- (d) <u>Agreement Obligations</u>. Tenant's failure to make any payment or to perform or comply with any other of its obligations, representations or covenants under this Lease Agreement.
- (e) Accidents, Injury to Person or Property. Any accident, injury (including death at any time resulting therefrom) or damage to any Person or property arising from and after the date of Substantial Completion until the end of the Term occurring in, on, or about the Premises or any part thereof, or in, on, or about any street, plaza, sidewalk, curb, vault, or space comprising a part thereof and arising in connection with the use, occupancy or operation of the Premises; provided, that the foregoing shall not apply to the Police Substation except to the extent of the proportion caused by the negligence or wrongful acts or omissions of Tenant or its partners, joint venturers, directors, shareholders, officers, members, trustees, officials, employees, agents, servants, invitees or contractors.
- (f) <u>Claim Against Premises</u>. Any claim that may be alleged to have arisen from and after the date of Substantial Completion until the end of the Term against or on the Premises, or any claim created or permitted to be created from and after the date of Substantial Completion until the end of the Term by Tenant or any of its subtenants, or their respective officials, members, partners, joint venturers, officers, shareholders, directors, agents, contractors,

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

(g) <u>Intentionally omitted</u>.

(h) Hazardous Materials. The presence, storage, transportation, disposal, release or threatened release of any Hazardous Materials over, under, in, on, from or affecting the Premises or any persons, real property, personal property, or natural substances thereon or affected thereby, except that Tenant shall not indemnify and save harmless the Indemnitees to the extent that such Hazardous Materials were present, stored, disposed of, or released at the Premises prior to the date of physical possession by Tenant of the Premises pursuant to this Lease Agreement (but the foregoing shall not release Tenant from its obligation to indemnify the Indemnitees for damages arising from any disposal or release occurring after the date of physical possession of the Premises due to the acts or omissions of Tenant with respect to any Hazardous Materials preexisting such date of Tenant'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.

Section 21.02. <u>Contractual Liability</u>. Neither party's obligations under this Article shall 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 21.03. <u>Defense of Claim, Etc.</u> If any claim, action or proceeding is made or brought against Landlord by reason of any event to which reference is made in <u>Section 21.01</u>, 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 reasonably approve. The foregoing notwithstanding, Landlord may engage its own attorneys to defend Landlord, or to assist Landlord in Landlord's defense of such claim, action or proceeding provided that Tenant shall have no obligation to pay any amounts therefor.

Section 21.04. <u>Notification and Payment</u>. Landlord shall notify Tenant of the incurrence by or assertion against such Indemnitee, or the imposition of any cost or expense as to which Indemnitor has agreed to indemnify Landlord pursuant to any of the provisions of this Article 21. Provided that Landlord has afforded reasonable notice to Tenant to enable Tenant to appropriately defend a claim, action or proceeding, Tenant shall pay Landlord all amounts due under this Article 21 within ninety (90) days after such payment is determined to be Tenant's obligation, and any non-payment thereof by Tenant after such determination shall constitute a Default.

Section 21.05. <u>Third Party Beneficiaries</u>. The City and EDC are hereby made third-party beneficiaries of the provisions of this Article 21.

Section 21.06. <u>Survival Clause</u>. The provisions of this Article shall survive the Expiration Date.

ARTICLE 22

NON-DISCRIMINATION AND AFFIRMATIVE ACTION

Section 22.01. Non-Discrimination and Affirmative Action.

- (a) So long as (i) the IDA is Landlord and/or (ii) the City is the fee owner of the Premises:
 - (i) 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, advertising, 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;
 - (ii) 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;
 - (iii) Tenant will state in all solicitations or advertisements for employees placed by or on behalf of Tenant (A) 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 (B) that Tenant is an equal opportunity employer;
 - (iv) 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 Bureau of Labor Services, General Counsel's Office, 66 Leonard Street, 4th Floor, New York, New York 10013, (212) 431-1772";

- (v) Tenant will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other employment contract, memorandum of agreement of understanding, written notification of its equal employment opportunity commitments hereunder and all employment programs and other agreements between Tenant and the Bureau (collectively, "Agreement");
- (vi) Tenant, as "Owner" (as such term is used in AIA Form 201), will include, or require to be included, the following provisions in every construction agreement for Construction Work of One Million Dollars (\$1,000,000) or more or subcontract of Seven Hundred Fifty Thousand (\$750,000) or more. Landlord reserves the right to inspect all contracts and subcontracts prior to execution to ensure that the required language is included:
 - (A) "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 not limited to, recruitment, hiring, compensation, fringe benefits, leaves, promotion, upgrading, demotion, downgrading, transfer, training and apprenticeship, 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

the Bureau of Labor Services, General Counsel's Office, 66 Leonard Street, 4th Floor, New York, New York 10013, (212) 431-1772";

- (5) will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other employment contract, memorandum of agreement or understanding, written notification of its equal employment opportunity commitments under all employment programs and other agreements between the contractor and the Bureau (collectively, "Agreements");
- (6) will permit the Bureau to have access to all relevant books, records, accounts and work sites, to investigate compliance with this contract and Agreements.
- **(7)** Contractor's violation of the nondiscrimination clauses (A)(1) through (6) of this Contract, contractor's failure to comply with an employment program or other Agreement and/or contractor's failure to cause compliance on the part of a subcontractor as provided below shall constitute a material breach of this contract. Neither the provisions of any collective bargaining agreement or other contract or understanding with a union, nor the union's refusal to comply with the terms hereof, shall excuse contractor's obligations to abide by the terms hereof. If the Bureau's staff, as a result either of the Bureau's review of or a complaint by a job applicant, employee or former employee, finds that contractor may not be in compliance, the Bureau's staff and the contractor will meet to negotiate an employment program of corrective actions to achieve contractor's full compliance with this contract. If contractor fails or refuses either to meet, to agree to take necessary corrective measures, or to implement agreed corrective measures, this contract or any portion hereof may be disapproved, canceled, terminated or suspended, or liquidated damages may be assessed by Owner (or the general contractor, construction manager, prime contractor or their subcontractors, as the case may be) or payments thereon may be withheld and such other sanctions may be imposed and remedies invoked in accordance with law. Liquidated damages for contractor's failure to comply with the equal opportunity requirements hereunder will be the amount of wages and fringe benefits that would have been paid to the parties that should have been employed, as determined by the Bureau or Owner. Nothing hereinbefore stated in these requirements shall limit the Owner or the Bureau from pursuing any other remedy available by law to enforce the terms hereof or Agreements as the Director may order.

- (8) Contractor agrees to include the provisions of the foregoing paragraphs (A)(1) and (2) in every subcontract of Seven Hundred Fifty Thousand Dollars (\$750,000) or more to which it becomes a party. Contractor agrees, and will state in every subcontract, that contractor will take such action with respect to the subcontract as Owner may direct, including canceling, suspending or terminating the subcontract and/or stopping payments under the subcontract, to enforce the foregoing and Agreements."
- (9) The Director (the "Director") of the City of New York's Bureau of Labor Services" (the "Bureau") may examine this contract to ensure these provisions are included.
- Default. Tenant's failure (i) to comply with nondiscrimination clauses (i) through (v) of Section 22.01(a) or (ii) to comply with the nondiscrimination provisions of clauses (b)(i) and (b)(ii) of Section 22.01 or to enforce the requirements imposed on contractors or subcontractors by such clauses at the direction of the Bureau, shall constitute a Default. Neither the provisions of any collective bargaining agreement or other contract or understanding with a union, nor the union's refusal to comply with the terms hereof shall excuse Tenant's obligations to abide by the terms hereof or its obligations to include and enforce the contractor clauses of Section 21.01(a) and (b) hereof. If Landlord, acting through the Bureau, as a result either of the Bureau's review or the complaint by a job applicant, employee or former employee, finds that Tenant or a contractor or subcontractor may not be in compliance, Landlord, acting through the Bureau, may notify Tenant (and the contractor or subcontractor, as the case may be) describing the extent of non-compliance. If the non-compliance is not remedied within thirty (30) days of Tenant's receipt of notice, the Bureau shall request a meeting with Tenant (and with the contractor or subcontractor, as appropriate) to negotiate an employment program of corrective actions to achieve Tenant's full compliance with these clauses. If Tenant fails or refuses either to meet, to agree to take necessary corrective measures, to implement agreed corrective measures, or to enforce contractors' obligations pursuant to the contract provisions set forth in clauses (a)(ix) and (b)(ii) of this Section 22.01 and to cause contractors to enforce subcontractors' obligations thereunder, Landlord, acting through the Director may (i) require Tenant to take corrective measures pursuant to an employment program, (ii) assess Tenant as liquidated damages an amount equal to the wages and fringe benefits that would have been paid to the parties that should have been employed pursuant to the non-discrimination clauses of this Lease Agreement or (iii) impose such other sanctions as may be imposed and remedies invoked in accordance with law. Nothing hereinbefore stated in these requirements shall limit Landlord from pursuing any other remedy available by law to enforce the terms hereof and Agreements or from seeking additional damages; provided, that Landlord shall not have the right to terminate this Lease Agreement for violation of any of the covenants or provisions of this Article 22.

ARTICLE 23

LANDLORD'S RIGHT TO PERFORM TENANT'S COVENANTS

Section 23.01. <u>Landlord's Right to Perform</u>. If Tenant shall at any time fail to pay for or maintain any of the insurance policies required to be provided by Tenant pursuant to Article 14, or shall fail to perform any other covenant or obligation under this Lease Agreement, then, after thirty (30) days' notice to (or, in case of any emergency or any other exigent circumstances that are likely to materially adversely affect Landlord's interest, on such lesser notice, as may be reasonable under the circumstances, or, if not feasible in the case of emergency only, without notice), and without releasing Tenant from any of its obligations hereunder and without waiving Landlord's right to terminate this Lease Agreement or any other of Landlord's rights or remedies permissible hereunder, Landlord may (but shall not be required to):

- (a) pay for and maintain any of the insurance policies required to be furnished by Tenant pursuant to Article 14, or
- (b) make any other payment or perform any other act on Tenant's part to be made or performed as in this Lease Agreement provided.

Section 23.02. <u>Amount Paid by Landlord as Additional Rental</u>. All reasonable sums so paid by Landlord and all reasonable costs and expenses incurred by Landlord in connection with the performance of any such act, together with interest thereon at the Late Charge Rate from the respective dates of Landlord's making of each such payment or incurring of each such cost and expense, shall constitute, following notice from Landlord to Tenant (which notice shall be accompanied by reasonably detailed back-up), Rental and shall be paid by Tenant to Landlord within thirty (30) days following the giving of such notice.

Section 23.03. 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 a 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 Agreement in accordance with the provisions hereof 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 its past, present or future obligations hereunder.

Section 23.04. <u>Proof of Insurance Damages</u>. 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 Agreement 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 reasonable costs and expenses of any suit in connection therewith, including, without limitation, reasonable attorneys' fees and disbursements.

ARTICLE 24

EVENTS OF DEFAULT, CONDITIONAL LIMITATIONS, REMEDIES, ETC.

Section 24.01. <u>Definition</u>. Each of the following events shall be an "<u>Event of Default</u>" hereunder:

- (a) if Tenant shall fail to make any payment (or any part thereof) of any Rental as and when due hereunder and such failure shall continue for a period of twenty (20) days after notice thereof to Tenant;
- (b) if there shall occur any material default (after the expiration of applicable notice and cure periods) under the Development Agreement or the On-Site Parking Agreements, provided that with respect to any default under the On-Site Parking Agreements relating to any physical maintenance or operational obligations thereunder, 'material' shall be considered as if the On-Site Parking Agreements and the Stadium were demised under a single lease agreement;
- (c) if Tenant shall fail in any material respect to maintain the Premises as provided in Article 10 and if such failure shall continue for a period of thirty (30) days after notice (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 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 within a reasonable period);
- (d) if Tenant shall enter into (or permit to be entered into) a Sublease or a Capital Transaction, or any other transaction, in violation of the provisions of this Lease Agreement and such Capital Transaction, Sublease or other transaction shall not be made to comply with the provisions of this Lease Agreement or canceled within thirty (30) Business Days after Landlord's notice thereof to Tenant;
- (e) if Tenant shall fail to enforce the terms of the Stadium Use Agreement against the Partnership, including without limitation the obligation to enforce the Partnership's compliance with Section 2.1.1 of the Non-Relocation Agreement, unless Tenant replaces the Partnership with another sports team capable of generating substantially equivalent revenues or greater revenues than the Partnership;
- (f) if Tenant shall fail in any material respect to observe or perform one or more of the other terms, conditions, covenants or agreements of this Lease Agreement, 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 such thirty (30) day period and shall diligently and continuously prosecute the same to completion);
- (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 a petition under Title 11 of the United States Code 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, joint venture or corporate action in furtherance of any action described in Section 24.01(g) or this Section 24.01(h);
- (i) to the extent permitted by law, if within ninety (90) 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 eighty (180) 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 not be vacated or stayed on appeal or otherwise, or if, within one hundred eighty (180) days after the expiration of any such stay, such appointment shall not be vacated;
- (j) if any of the material representations made by Tenant herein is or shall become false or incorrect in any material respect when made, provided that, if such misrepresentation was unintentionally made, and the underlying condition is susceptible to being corrected, Tenant shall have a period of thirty (30) days after Landlord's notice of such misrepresentation to correct the underlying condition and thereby cure such Default (unless such cure cannot by its nature reasonably be performed within such thirty (30) day period, in which event Tenant shall have such time as is required so long as Tenant shall have commenced such cure within such thirty (30) day period and shall diligently and continuously prosecute the same to completion);
- (k) if a levy under execution or attachment shall be made against the Premises or any part thereof, the income therefrom, this Lease Agreement 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 ninety (90) days;
- (1) if Tenant shall fail to obtain and maintain any insurance policy required hereunder in accordance with the terms hereof and such failure shall continue for a period of thirty (30) days after notice thereof to Tenant;
- (m) if Tenant, or any Affiliate or any Principal of Tenant, is or becomes a Prohibited Person, and the condition giving rise to such status is not cured within thirty (30) days after notice thereof to Tenant; or

(n) Tenant shall default in the performance of any material covenant or obligation (including without limitation any payment obligation) under any of the Bond Documents to which Tenant is a party beyond the grace periods provided in said documents, or, if none is provided, for a period of thirty (30) days after notice thereof to Tenant, and as a result of such default, the other party to such Bond Document terminates such agreement or otherwise commences the exercise of any remedy against Tenant thereunder.

Section 24.02. <u>Enforcement of Performance</u>. (a) If an Event of Default occurs, subject to the provisions of <u>Sections 38.04(c)</u> and <u>38.23(a)(v)</u> below, 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 Agreement and/or to recover damages for breach thereof; provided, however, that, as long as Bonds are outstanding, in no event shall Landlord be permitted to terminate this Lease by reason of an Event of Default resulting from a default by Tenant under the Development Agreement, or while Bonds are outstanding Tenant's failure to pay Base Rent, PILOTs or Installment Sale Payments.

- (b) For as long as Bonds are outstanding, Landlord shall deliver to Bond Insurer a copy of all notices of default at the same time it delivers same to Tenant, and Landlord shall not exercise any rights to terminate this Lease unless such notice has been so delivered to Bond Insurer. Landlord covenants that, while any Bonds remain outstanding, Landlord shall consult with the Bond Insurer prior to taking any enforcement action which would have a substantial adverse impact on Tenant's financial condition. While any Bonds remain outstanding, the Bond Insurer shall be the third party beneficiary of this subparagraph.
- (c) Landlord shall deliver notice of a default to the Partnership at the same time it delivers such notice to Tenant, and Landlord covenants not to terminate this Lease unless such notice has been delivered to the Partnership.

Section 24.03. Expiration and Termination of Lease.

If an Event of Default occurs and, provided that Landlord shall have the (a) right to terminate this Lease Agreement pursuant to Section 24.02 above, Landlord, at any time thereafter, at its option, gives Tenant notice stating that this Lease Agreement and the Term shall terminate on the date specified in such notice, which date shall not be less than ten (10) days after the giving of the notice, then this Lease Agreement and the Term and all rights of Tenant under this Lease Agreement 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 24.01(g), (h), or (i) 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 Agreement within the period prescribed therefor by law or within thirty (30) 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 Agreement as provided in Section 24.09, 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 Agreement on ten (10) days notice to Tenant, Tenant as debtor-in-possession or the trustee. Upon the expiration of the ten (10) day period this Lease Agreement shall cease and Tenant, Tenant as debtor-in-possession and/or the trustee immediately shall quit and surrender the Premises.

- (b) If this Lease Agreement is terminated as provided in <u>Section 24.03(a)</u>, Landlord may dispossess Tenant by summary proceedings.
- (c) If this Lease Agreement shall be terminated as provided in <u>Section</u> 24.03(a):
 - (i) Tenant shall pay to Landlord all Rental payable under this Lease Agreement by Tenant to Landlord to the Fixed Expiration Date as the same may have been extended and Tenant shall remain liable for all Rental thereafter falling due on the respective dates when such Rental would have been payable but for the termination of this Lease Agreement; and
 - (ii) Landlord may complete all repair, maintenance and construction work required 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 Agreement 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 retain any rent and other sums collected or received as a result of such reletting by Landlord. Landlord shall in no way 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 Agreement or to otherwise affect any such liability. The amount of any such rent collected by Landlord for periods occurring during the Term after deducting therefrom the expenses (including without limitation all costs incurred by Landlord in completing the repair, maintenance and construction work required by Tenant hereunder and such repairs to and alterations of the Premises as is reasonably necessary or desirable) incurred by Landlord as a result of the Default giving rise to the termination of this Lease Agreement, shall be credited against any unpaid Rental and other unsatisfied obligations of Tenant under this Lease Agreement.

Section 24.04. Partnership Right to Cure Tenant Defaults, Nondisturbance.

(a) <u>Partnership Right to Cure Defaults</u>. An Event of Default shall be deemed to have not occurred if within the applicable period set forth in <u>Section 17.04(b)</u>:

- (i) In the case of a Default that is curable without possession of the Premises by the Partnership, the Partnership shall have commenced in good faith to cure the Default within the applicable period provided in Section 17.04(b) above and is prosecuting such cure to completion with reasonable diligence and continuity (subject to Unavoidable Delay); provided, that any Event of Default under Section 24.01(a) must be cured within ten (10) days after Tenant's failure to timely cure such default and delivery of notice of such default to the Partnership under Section 24.02; or
- (ii) In the case of a Default where (A) either (x) possession of the Premises is required in order to cure the Default, or (y) such Default is otherwise not susceptible of being cured by the Partnership, and (B) the Partnership is not under common control with Tenant, the Partnership shall have proceeded expeditiously to take possession of the Premises, and shall continuously prosecute proceedings with reasonable diligence and continuity (subject to Unavoidable Delay) to obtain possession of the Premises and, upon obtaining possession of the Premises, promptly commenced cure of the Default (other than a Default which is not susceptible of being cured by the Partnership) and prosecuted such cure to completion with reasonable diligence and continuity (subject to Unavoidable Delay);

provided, however, that acceptance of such performance by the Partnership (including without limitation acceptance of any Base Rent or other Rental from the Partnership) shall not by itself constitute a recognition by Landlord of the Stadium Use Agreement or the Partnership's right to use or occupy the Premises under same.

(b) Partnership Right to New Lease.

- (i) <u>Notice of Termination</u>. If this Lease Agreement is terminated by reason of an Event of Default or otherwise, Landlord shall give prompt notice thereof to the Partnership. This obligation shall survive a termination of this Lease Agreement.
- (ii) Request for and Execution of New Lease. If, within thirty (30) days of the receipt (as shown on proof of service or return receipt) of the notice referred to in Section 24.04(b)(i) hereof, the Partnership shall request a new lease, then subject to the provisions of this Section 24.04, 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 Partnership, or any designee or nominee of the Partnership (provided such designee or nominee or any Principal (as defined in Section 19.02) thereof shall not be a Prohibited Person). The new lease shall contain all of the covenants, conditions, limitations and agreements contained in this Lease Agreement, 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. The Premises shall be delivered in "as-is" condition and subject to then-existing occupancies and title objections. The provisions

of this Section 24.04(b)(ii) notwithstanding, Landlord shall not be obligated to enter into a new lease with the Partnership unless (A) the Partnership shall pay to the appropriate party, concurrently with the execution and delivery of the new lease, all Base Rent and other Rental due under this Lease Agreement, up to and including the date of the commencement of the term of the new lease (excluding penalties and interest thereon) and all expenses of Landlord, including, without limitation, reasonable attorneys' fees and disbursements and court costs, incurred in connection with the Default or Event of Default, and the termination of this Lease Agreement, if and to the extent such expenses would be collectible under this Lease Agreement from Tenant, and (B) the Partnership shall deliver to Landlord a statement, in writing, acknowledging that Landlord, by entering into such new lease with the Partnership or such designee or nominee, shall not have or be deemed to have waived any Defaults or Events of Default then existing under this Lease Agreement (other than the Defaults or Events of Default mentioned in Section 24.01(g) through (i) which Landlord shall be deemed to have waived) notwithstanding that any such Defaults or Events 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 provisions of this Section 24.04(b) shall survive the termination of this Lease.

- (c) No Waiver of Default. The execution of a new lease shall not constitute a waiver of any Default existing immediately before termination of this Lease Agreement and, except for a Default which is not susceptible of being cured by the Partnership, the tenant under the new lease shall cure, within the applicable periods set forth in Section 24.01 as extended by this Section 24.04, all Defaults (except those described in Section 24.01(g) through (i)) existing under this Lease Agreement immediately before its termination.
- (d) <u>Partnership as Third Party Beneficiary</u>. The Partnership shall be a third party beneficiary of the provisions set forth in this <u>Section 24.04</u>.

Section 24.05. Receipts of Moneys after Notice of Termination. No receipt of moneys by Landlord from Tenant after the termination of this Lease Agreement, or after the giving of any notice of the termination of this Lease Agreement, 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 Agreement 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, provided, however, that if Landlord shall relet the Premises during said period, Landlord shall credit Tenant with the net rents received by Landlord from such reletting, such net rents to be determined by first deducting from the gross rents as and when received by Landlord from such reletting the expenses reasonably incurred or paid by Landlord in terminating this Lease and of re-entering the Premises and of securing possession thereof, including reasonable attorneys' fees and costs of removal and storage of Tenant's property, as well as the reasonable expenses of reletting, including repairing, restoring and improving the Premises for new tenants,

brokers' commissions, advertising costs, reasonable attorneys' fees and disbursements, and all other similar or dissimilar expenses chargeable against the Premises and the rental therefrom in connection with such reletting.

Section 24.06. Waiver of Rights. If Tenant is dispossessed by a 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 Agreement, Tenant hereby waives and releases 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 Agreement. The terms "enter", "re-enter", "entry" or "re-entry", as used in this Lease Agreement, are not restricted to their technical legal meanings. Tenant shall execute, acknowledge, and deliver within ten (10) days after request by Landlord any instrument evidencing such waiver or release that Landlord may reasonably request.

Section 24.07. Strict Performance. No failure by either party hereunder to insist upon the other party's strict performance of any covenant, agreement, term or condition of this Lease Agreement or to exercise any right or remedy available to it hereunder, shall constitute a waiver of any Default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this Lease Agreement to be performed or complied with by either party, and no Default or Event of Default, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any Default or Event of Default shall affect or alter this Lease Agreement, but each and every covenant, agreement, term and condition of this Lease Agreement shall continue in full force and effect with respect to any other then existing or subsequent Default or Event of Default.

Section 24.08. Right to Enjoin Defaults or Threatened Defaults. In the event of a Default or threatened Default by a party hereunder, the other party shall be entitled to enjoin such 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 by this Lease Agreement, other remedies that may be available to such party notwithstanding. Except as otherwise provided in this Lease Agreement, each right and remedy of each party provided for in this Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute, and, except as otherwise provided in this Lease Agreement, the exercise or beginning of the exercise by a party of any one or more of the rights or remedies provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute.

Section 24.09. Remedies Under Bankruptcy and Insolvency Codes. If an order for relief is entered or if any stay of proceeding or other act becomes effective against Tenant or Tenant's interest in this Lease Agreement 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 Agreement, including, without limitation, such rights and remedies as may be necessary to protect adequately 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 Agreement. 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 Agreement, shall include, without limitation, all of the following requirements:

- (a) that Tenant shall comply with all of its obligations under this Lease Agreement;
- (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 Agreement;
- (d) that Landlord shall be permitted to supervise the performance of Tenant's obligations under this Lease Agreement;
- (e) that Tenant shall hire such security personnel as may be necessary to ensure 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 Agreement, a security deposit in an amount acceptable to Landlord;
- (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 Agreement;
- (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 Agreement; and
- (i) that if Tenant's trustee, Tenant or Tenant as debtor-in-possession shall assume this Lease Agreement 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 this Lease Agreement, 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 the trustee, Tenant or Tenant as debtor-inpossession 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 Agreement 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 Agreement.

ARTICLE 25

NOTICES

Section 25.01. <u>All Notices, Communications, Etc. in Writing</u>. Whenever it is provided herein that notice, demand, request, consent, approval or other communication shall or may be given to, or served upon, either of the parties by 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 only if given or served as follows (unless a specific form of delivery is expressly required by the provisions of this Lease Agreement, in which event notice delivered only in such form shall be effective):

(a) If to Tenant, (i) by hand with proof of delivery, (ii) by mailing the same to Tenant by express or certified mail, postage prepaid, return receipt requested, or (iii) by recognized national overnight courier addressed to:

Queens Ballpark Company, L.L.C. Shea Stadium Flushing, New York 11368 Attention: David Cohen, Esq., Secretary Facsimile No.: (718) 335-8036

with a copy to:

Sterling Mets, L.P.
Shea Stadium
Flushing, New York 11368
Attn: Jeffrey S. Wilpon, Chief Operating Officer
Facsimile No.: (718) 205-7949

and, if the notice is a notice of default, to:

Stroock & Stroock & Lavan LLP 180 Maiden Lane New York, New York 10038 Attention: Ross F. Moskowitz, Esq. Facsimile No.: (212) 806-6006

or to such other address as Tenant may from time to time designate by notice given to Landlord as above provided.

(b) If to Landlord, in triplicate (i) by hand with proof of delivery, (ii) by mailing the same to Landlord by express or certified mail, postage prepaid, return receipt requested or (iii) by recognized national overnight courier, addressed to:

The City of New York
Department of Parks and Recreation
The Arsenal
Central Park
New York, New York 10021
Attention: Commissioner
Facsimile No.: (212) 360-1373

with a copy to:

The City of New York c/o New York City Economic Development Corporation 110 William Street New York, New York 10038 Attention: Senior Vice President, Property Management Facsimile No.: (212) 312-3919

with a copy to:

New York City Law Department 100 Church Street New York, New York 10007 Attention: Chief, Economic Development Division Facsimile No.: (212) 227-5648

or to such other address(es) and attorneys as Landlord may from time to time designate by notice given to Tenant as above provided.

(c) If to Lease Administrator, in duplicate (i) by hand with proof of delivery, (ii) by mailing the same to DPR by express or certified mail, postage prepaid, return receipt requested or (iii) by recognized national overnight courier, addressed to:

New York City Department of Parks and Recreation The Arsenal Central Park New York, New York 10021 Attention: First Deputy Commissioner Facsimile No.: (212) 360-1345

with a copy to:

New York City Law Department 100 Church Street New York, New York 10007 Attention: Chief, Economic Development Division Facsimile No.: (212) 227-5648

with a copy to:

New York City Economic Development Corporation 110 William Street New York, New York 10038 Attn: Senior Vice President Finance Facsimile No. (212) 312-3908

or to such other address(es) and attorneys as EDC may from time to time designate by notice given to Tenant as above provided.

(d) If to Bond Insurer, to:

Ambac Assurance Corporation One State Street Plaza New York, New York 10004 Attention: Surveillance Facsimile No.: (212) 797-5725

or to such other address(es) as Bond Insurer may from time to time designate by notice given to Landlord as above provided.

Section 25.02. <u>Service</u>. Every notice, demand, request, consent, approval or other communication hereunder (i) by express or certified mail, return receipt requested, shall be deemed effective on the date such receipt is dated by the Post Office or express mail carrier, as the case may be, (ii) by hand shall be effective upon delivery, as evidenced by a signed receipt, and (iii) by nationally recognized overnight courier shall be deemed effective on the next Business Day following the date sent when accompanied by a record evidencing delivery.

ARTICLE 26

CERTIFICATES BY LANDLORD AND TENANT

Section 26.01. 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 written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease Agreement is unmodified and in full force and effect (or if there are modifications, that this Lease Agreement, as modified, is in full force and effect and stating such modifications), and (ii) that no Rental is due and owing under this Lease Agreement, or, in the alternative, the amount due and owing, (b) stating (i) whether Tenant has given Landlord notice of any default by Landlord, 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 Agreement, and, if so, specifying in detail each such default; and (c) stating such other information as Landlord may reasonably request.

Section 26.02. Certificate of Landlord. Landlord shall, within thirty (30) days after notice by Tenant, execute, acknowledge and deliver to Tenant, or any other Person specified by Tenant, a written statement (which may be relied upon by such Person) (a) certifying (i) that this Lease Agreement is unmodified and in full force and effect (or if there are modifications, that this Lease Agreement, as modified, is in full force and effect and stating such modifications), and (ii) the date to which any Rental payable by Tenant hereunder has been paid, (b) stating (i) whether an Event of Default has occurred and not been cured or whether Landlord has given Tenant notice of any 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 Agreement, 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 26.03. Failure to Deliver Certificate. Provided that Landlord's notice makes express reference to this Section and the thirty (30) day turnaround time set forth herein, Tenant's failure to deliver the certificate required by Section 26.01 hereof within such thirty (30) day period shall be conclusive upon Tenant that (a) this Lease Agreement is in full force and effect without modification except as may be represented by Landlord, (b) there are no uncured Landlord defaults, (c) no notice has been sent to Landlord of any Landlord default which has not been cured. Provided that Tenant's notice makes express reference to this Section and the thirty (30) day turnaround time set forth herein, Landlord's failure to deliver the certificate required by Section 26.02 hereof within such thirty (30) day period shall be conclusive upon Landlord that (a) this Lease Agreement is in full force and effect without modification except as may be represented by Tenant, (b) there are no uncured Defaults, (c) there is no outstanding Rental due and owing, and (d) no notice has been sent to Tenant of any Default which has not been cured.

ARTICLE 27

CONSENTS AND APPROVALS

Section 27.01. Effect of Granting or Failure to Grant Approvals or Consents. Subject to Section 27.02, all consents and approvals which may be required under this Lease

Agreement 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 Agreement, 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 27.02. Remedy for Failure or Refusal to Grant Consent or Approval. If, pursuant to the terms of this Lease Agreement, any consent or approval by Landlord or Tenant is required, then unless expressly provided otherwise in this Lease Agreement, if and only if the party seeking the other party's consent or approval includes in its request for consent or approval a specific written statement making express reference to this Section 27.02 and stating that failure of the other party to respond by a particular date shall be deemed to result in consent or approval, then, if the party who is to give its consent or approval shall not have notified the other party within thirty (30) Business Days or such other period as is expressly specified in this Lease Agreement after receiving such other party's request for a consent or approval that such consent or approval is granted or denied, and if denied, the reasons therefor in reasonable detail, such consent or approval shall be deemed granted. No such specific written statement shall be required in those instances set forth in this Lease Agreement where consent or approval is deemed granted if not denied within stated time periods. If, pursuant to the terms of this Lease Agreement, any consent or approval by Landlord or Tenant is not to be unreasonably withheld or is subject to a specified standard, then either party shall have the right to submit the issue to expedited arbitration in accordance with the provisions of Section 35.02, and, 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.

ARTICLE 28

SURRENDER AT END OF TERM

Section 28.01. <u>Surrender of Premises</u>. Upon the expiration of the Term (or under a re-entry by Landlord upon the Premises pursuant to Article 24), Tenant, without any payment or allowance whatsoever by Landlord, shall surrender the Premises to Landlord in then as-is condition (but consistent with Tenant's obligations for maintenance and repair and restoration of the Improvements hereunder), free and clear of all Subleases, liens and encumbrances other than Title Matters existing on the date hereof or liens or encumbrances caused by the action or inaction of Landlord or otherwise approved in writing by Landlord. Tenant hereby waives any notice now or hereafter required by law with respect to vacating the Premises on the Expiration Date.

Section 28.02. <u>Delivery of Subleases</u>, <u>Etc.</u> Upon the expiration of the Term (or upon a re-entry by Landlord upon the Premises pursuant to Article 24), Tenant shall deliver to Landlord copies of Tenant's executed counterparts of all Subleases, the Stadium Use Agreement, and any service and maintenance contracts then affecting the Premises, true and complete maintenance records for the Premises, all original licenses and permits then pertaining to the Premises, Certificate(s) of Occupancy then in effect for the Premises and all warranties and

guarantees then in effect which Tenant has received in connection with any work or services performed on any property at the Premises, together with a duly executed assignment thereof, without recourse.

Section 28.03. <u>Trade Fixtures and Personal Property</u>. Tenant may remove trade fixtures and personalty (but not seats) not incorporated into or permanently attached to the Premises, if any, but upon removal of any such fixtures from the Premises, Tenant shall immediately and at its sole expense repair any damage to the Premises due to such removal. Any trade fixtures or other personal property of Tenant or of any Subtenant which shall remain on the Premises after the Expiration Date (or upon a re-entry by Landlord upon the Premises pursuant to Article 24) 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 at Tenant's expense without accountability, in such manner as Landlord may see fit. Landlord shall not be responsible for any loss or damage occurring to any such property owned by Tenant or any Subtenant.

Section 28.04. <u>Survival Clause</u>. The provisions of this Article 28 shall survive the Expiration Date.

ARTICLE 29

ENTIRE AGREEMENT

Section 29.01. Entire Agreement. This Lease Agreement, together with the Exhibits hereto contains 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 or as may be expressly contained in any enforceable written agreements or instruments executed simultaneously herewith by the parties hereto.

ARTICLE 30

ADMINISTRATIVE AND JUDICIAL PROCEEDINGS, CONTESTS, ETC.

Section 30.01. <u>Tax Contest Proceedings</u>. Tenant, as agent for Landlord, shall have the exclusive right, at its sole cost and expense, to challenge the valuation of the Premises assessed for tax purposes and to prosecute any action or proceeding in connection therewith by appropriate proceedings diligently conducted in good faith, in accordance with the New York City Charter and Administrative Code of New York City. Nothing here contained shall be deemed to imply that Tenant has any obligation to pay Taxes.

Section 30.02. <u>Imposition Contest Proceedings</u>. Tenant, as agent for Landlord, shall have the right to contest, at its sole cost and expense, 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 <u>Section 6.01</u>, 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 Landlord, in danger of being forfeited and 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 30.02(b) hereof by reason of nonpayment thereof; and
- (b) Tenant has either (i) deposited with Landlord cash, or (alternatively, at Tenant's option) given to Landlord a letter of credit in form and substance 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, in Landlord's reasonable judgment, be assessed against, or become a charge on, the Premises or any part thereof in or during the pendency of such proceedings, or (ii) provided other equivalent security in form, substance and amount, and on terms, satisfactory to Landlord. 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, Landlord shall return any cash deposited with it with respect to such Imposition, together with the interest, if any, earned thereon and Landlord shall return any form of security being held by it together with interest, if any, earned thereon. If Tenant shall not pay the amounts referred to in the preceding sentence of this paragraph, then Landlord shall, at Landlord's direction, disburse any moneys deposited with it by Tenant pursuant to the first sentence of this paragraph directly to the Person to whom or to which such Imposition is payable, and the Landlord shall likewise be entitled to apply the proceeds of any security deposited with it by Tenant pursuant to said sentence to such Person in payment of said amounts. Tenant shall remain liable for any unpaid balance of said amounts remaining after application by Landlord or Landlord as aforesaid, and Tenant shall pay said balance to Landlord or the Person entitled to receive it within ten (10) days after Landlord's demand. If at any time during the continuance of such proceedings Landlord, in its sole but 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 with Landlord of such additional sums or deliver to Landlord such other acceptable security as Landlord may reasonably request, and upon failure of Tenant to so do, the amount theretofore deposited (or made available by alternative security), together with the interest, if any, earned thereon, may 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 attorney's 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.

Section 30.03. <u>Requirement Contest</u>. Tenant, as agent for Landlord, 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 on the condition that before instituting any such proceeding, Tenant shall furnish a cash deposit to Landlord or, alternatively at Tenant's option, furnish to Landlord a letter of credit or other

security, securing compliance with the contested Requirement and payment of all interest, penalties, fines, civil liabilities, fees and expenses in connection therewith, all such forms of security to be reasonably satisfactory to Landlord in form, substance, amount, and identity of the issuing party. Any such proceeding instituted by Tenant shall be prosecuted with diligence to final adjudication, settlement, compliance or other mutually acceptable disposition of the Requirement so contested. The furnishing of any bond, deposit, letter of credit or other security notwithstanding, Tenant shall comply with any such Requirement in accordance with the provisions of Section 18.01 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, or if failure to comply is hazardous to persons or property or would violate any insurance policy provisions.

Section 30.04. <u>Landlord's Participation in Contest Proceedings</u>. Landlord shall not be required to join in any action or proceeding brought by Tenant referred to in this Article or permit the action to be brought by Tenant in Landlord's name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all costs and expenses (including, without limitation, reasonable attorneys' fees and disbursements) reasonably incurred by Landlord in connection therewith.

ARTICLE 31

INVALIDITY OF CERTAIN PROVISIONS

If any term or provision of this Lease Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid and unenforceable, the remainder of this Lease Agreement, 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 Agreement shall be valid and enforceable to the fullest extent permitted by law, provided that such invalidity or unenforceability shall not materially affect the transactions contemplated in this Lease Agreement.

ARTICLE 32

FINANCIAL AND OTHER REPORTS AND RECORDS

Section 32.01. <u>Capital Improvement or Loss Statement</u>. By October 1st of each year during the Term, Tenant shall deliver to Landlord and the City's Department of Finance ("<u>DOF</u>"), a statement, certified by a financial officer of Tenant, which identifies and describes, in reasonable detail, any capital improvements (whether replacements or additions) made to the Stadium since the last statement delivered to Landlord and DOF, or stating that no capital improvements were made to the Stadium since the last statement so delivered, and also stating any destruction or damage constituting a capital loss to the Stadium that occurred since the last statement. The statement will set forth the actual cost of each item of capital improvement and the actual cost (or estimated cost, if actual cost is not available) to replace or rehabilitate any

capital loss. For purposes of this <u>Section 32.01</u>, "capital improvement" or "capital loss" means the addition or replacement or loss of any improvement to or component of the Stadium having a useful life of five years or more and which is incorporated into the land constituting the Premises or into the Stadium and having a cost or value in excess of One Million Dollars (\$1,000,000), subject to CPI Adjustment.

Section 32.02. <u>Maintenance of Books and Records</u>. Tenant shall keep and maintain at an office in New York City complete and accurate books and records of accounts of Tenant's operations of the Premises relating to this Agreement and the construction, financing and operation of the Stadium 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.

Section 32.03. 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 five (5) Business Days' notice, to inspect, audit and, at its option, duplicate, at Landlord's expense, all of Tenant's books and records required to be maintained under Section 32.02 if and to the extent that such audit is reasonably related to the parties rights and obligations under the Transaction Documents. 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 and 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 the Transaction Documents.
- (b) During the period from the Commencement Date to the end of the second (2nd) Lease Year following the Lease Year to which books and records referred to in Section 32.02 pertain, Tenant or its agents or representatives qualified to perform audits shall have the right during regular business hours, upon five (5) Business Days prior written notice, to inspect, audit, and, at its option, duplicate, at Tenant's expense, Landlord's books and records and other papers and files of Landlord that relate solely to any statement of Tenant's described in Section 32.01. Landlord shall produce all such books and records upon request of Tenant or those acting on behalf of Tenant.
- (c) As soon as practicable after receipt of financial statements of Tenant pursuant to Section 32.01(b), Landlord shall respond by notifying Tenant whether it (i) accepts the contents therein or (ii) contests the contents therein. If Landlord fails to provide Tenant with the such response within one hundred-eighty (180) 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 City's Comptroller if and to the extent that such audit is reasonably related to the parties rights and obligations under the Transaction Documents.

Section 32.04. Each party's obligations under this Article 32 shall survive the Expiration Date.

ARTICLE 33

INVESTIGATIONS, SOLICITATIONS, ETC.

Section 33.01. 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 this Lease Agreement, when it 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, contract, lease, permit or license entered into with the City, the State of New York or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, EDC or any local development corporation or public benefit corporation organized under the laws of the State of New York.
- (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 this Lease Agreement,

then the commissioner or agency head whose agency is a party in interest to this Lease Agreement 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 33.02. <u>Adjournments of Hearing, Etc.</u> If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any such contract, lease, permit or license pending the final determination pursuant to <u>Section 33.04</u> without Landlord's incurring any penalty or damages for delay or otherwise.

Section 33.03. <u>Penalties</u>. 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 the City or EDC; and/or
- (b) The cancellation or termination of any and all such existing City or EDC contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Lease Agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or EDC incurring any penalty or damages on account of such cancellation or termination.

Section 33.04. Criteria for Determination.

- (a) 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:
- (b) 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.
- (c) 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.
- (d) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.
- (e) 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 33.03, 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 33.03 gives notice and proves that such interest was previously acquired. Under either circumstances 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 33.05. <u>Definitions</u>. As used in this Article:

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

- (b) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as partner, director, officer, principal, or employee.
- (c) The term "entity" shall mean any firm, partnership, corporation, association or Person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.
- (d) The term "member" shall mean any Person associated with another Person or entity as a partner, director, officer, principal or employee.

Section 33.06. <u>Failure to Report Solicitations</u>. In addition to and notwithstanding any other provision of this Lease Agreement, the commissioner or agency head may in his or her sole discretion terminate this Lease Agreement upon not less than three (3) days written notice in the event Tenant fails to promptly report in writing to the Commissioner of Investigation of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, 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 Agreement by Tenant, or affecting the performance of this Lease Agreement.

Section 33.07. Indictment.

Procedures and Requirements. If any grand jury impaneled by any federal (a) or state court files an indictment with such court charging Tenant or any principal of Tenant (such indicted Person referred to hereafter as the "Indicted Party") with having committed an intentional felony in connection with the Premises, construction or operations thereon, or any other matter, then Landlord shall convene a hearing (the "Hearing") before a panel of three persons consisting of (i) the City's Deputy Mayor for Finance and Economic Development (or a successor in function designated by the City's Mayor), (ii) the President of EDC (or a successor in function designated by the City's Mayor), and (iii) the Corporation Counsel of the City, or the respective duly authorized designees 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 Agreement or in Tenant, 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 Agreement, (y) the deleterious effect which an assignment of the Indictment Party's interest in this Lease Agreement or in Tenant, as the case may be, would have on the economic development interests of the City which this Lease Agreement is intended to promote, and (z) other relevant matters. The Hearing Officers shall render a decision in writing within thirty (30) 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 by the Indicted Party, 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 in this Lease Agreement or in Tenant, as the case may be, within six (6) months of the date of the notice of such decision by the Hearing Officers to a Permitted Person who is not an affiliate of the Indicted Party acting either in its own behalf or as an independent trustee in accordance with Section 33.07(c) below for the benefit of the Indicted Party for the purpose of actively managing this Lease Agreement or the Indicted Party's interest in Tenant, as the case may be. The Indicted Party may receive the consideration, if any, for such assignment in installment payments, provided that such consideration shall be for a sum certain and that, except as hereinafter provided, following such assignment the Indicted Party shall have no further interest in the Premises or in any profits arising therefrom. If the Indicted Party has sought review of the Hearing Officers' decision by appropriate lawful means, the time for the assignment of the Indicted Party's interest, if required by the Hearing Officers' decision, shall be stayed until such review has been completed.

- (b) Failure to Assign. Any failure of (i) the Indicted Party to assign its interest in this Lease Agreement or in Tenant, as the case may be, or (ii) a Permitted Person who is not affiliated with the Indicted Party, acting as a trustee, to assign the Indicted Party's interest in this Lease Agreement or in Tenant, as the case may be, following a Conviction within the time and in the manner provided hereunder, shall be deemed to be a material Default by Tenant hereunder and shall permit Landlord to obtain injunctive or equitable relief to compel an assignment, or other appropriate remedies, but shall not permit Landlord to terminate this Lease Agreement.
- (c) <u>Assignment to Trustee</u>. If the Indicted Party assigns its interest in Tenant or in this Lease Agreement to a trustee as provided in <u>Section 33.07(a)</u>, the trust agreement between the Indicted Party and the trustee shall be reasonably satisfactory to Landlord, and the trust agreement shall provide 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 Indicted Party are dismissed, then the trustee shall reassign the Indicted Party's interest in Tenant or in this Lease Agreement, 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 either the period for appeal of such verdict has expired or such verdict is affirmed by the court having ultimate jurisdiction to hear an appeal for such determination or (y) the Indicted Party pleads guilty to the felony for which it is indicted or another intentional felony or pleads "no contest" to the felony for which it is indicted or another intentional felony (either (x) or (y) above, a "Conviction"), then the trustee shall assign this Lease Agreement or the Indicted Party's interest in Tenant, as the case may be, within six (6) months of the date of the Conviction to a Permitted Person who is not affiliated with the Indicted Party; and
 - (iii) During the pendency of any such trust, the Indicted Party shall exercise no control over the Premises but may make contributions

in connection with operations at the Premises and receive distributions therefrom.

(d) <u>Application</u>. This <u>Section 33.07</u> shall apply only for so long as the City or any agency or instrumentality thereof shall be Landlord hereunder.

ARTICLE 34

EMPLOYMENT REPORTING AND REQUIREMENTS

Section 34.01. <u>Employment Reporting and Requirements</u>. During the Term, so long as (i) the IDA is Landlord, or (ii) the City is the fee owner of the Premises, Tenant shall be bound by the following requirements:

- (a) Tenant has completed and delivered to Landlord a questionnaire setting forth in substance, how many and what types of jobs Tenant in good faith estimates will be created or retained at the Premises when the Stadium Project is completed and ready for occupancy, and such supplementary documentation as may be required by the form.
- (i) to provide either that such Subtenant under, or assignee of, such Sublease shall furnish employment reports to Landlord or that said Subtenant shall furnish such reports to Tenant, and (ii) to provide that said Subtenant, and any such sub-subtenant or assignee, 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, for itself, its Subtenants and any assignee:
 - (A) 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;
 - (B) to provide the City and such entities with the opportunity (1) to refer candidates who are City residents having the requisite experience or training for positions at the Premises, and (2) to create a program to train City residents for those jobs; and
 - (C) for each calendar year included in whole or in part in the period ending on the fifth (5th) anniversary of the commencement of the Sublease, to report to Tenant or Landlord (the Sublease to provide which), by February 1 of the following year, the gross number of jobs at the Premises at the end of the prior calendar year and the number of employees at the 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 Landlord, said reports shall be on a form to be provided by Landlord).
- (c) By March 1 of each year, Tenant shall submit, for the immediately preceding Lease Year, a certificate (the "Certificate") certified by its managing member or a duly

authorized officer, setting forth as of the end of the prior calendar year (1) the names, addresses and contact persons of all Subtenants, (2) the approximate number of square feet leased by each Subtenant, if applicable, 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 such 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 the managing member or a duly authorized officer 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 sublicensed by such Subtenants, as applicable. Tenant must retain all backup documents relating to any Certificate in its office until at least one year after submitting such Certificate to Landlord. Landlord and its agents and employees shall be permitted upon two (2) Business Days notice to inspect and copy such documents during normal business hours.

- (d) Tenant must also notify Landlord or its designee of the name and address of any Subtenant which has executed a Sublease within 30 days after such Subtenant has executed the Sublease.
 - (e) The above obligations of Tenant are for the benefit of the City.
- employment opportunities generated at the Premises is of material concern to Landlord and agrees that Tenant's covenants and obligations in this Article 34 are a material inducement for Landlord, as lessor, to deliver this Lease Agreement. Tenant agrees to cooperate fully with Landlord and their designees in enforcing against Subtenants the covenants and requirements referred to in paragraphs (b) and (c), provided, however, that Landlord 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 Sublease as described in paragraphs (b) and (c) above shall not in and of itself constitute a Default under this Lease Agreement, although it shall create a right in Landlord and its designees, to pursue equitable enforcement of such obligations against such Subtenants. Upon demand made by Landlord or its designees, as the case may be, Tenant shall assign without recourse to Landlord or its designees Tenant's cause of action and legal rights to enforce such covenants and requirements or otherwise permit Landlord or its designees to enforce such covenants and requirements.
- (g) The Landlord and its 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 Article 34.
- (h) References to Landlord in this Article 34 shall be construed to include its respective designees.
- (i) Tenant agrees to submit to Landlord on August 1st of each year a completed Employment and Benefits Report in the form of Exhibit C "Employment and Benefits Report" -attached hereto.

Section 34.02. <u>Remedies</u>. Notwithstanding anything to the contrary contained in this Article, the remedies available to Landlord in the case of a Default or Event of Default resulting from a violation of the provisions of this Article shall not include the right to terminate this Lease Agreement under Article 24.

ARTICLE 35

ARBITRATION

Section 35.01. <u>Arbitration</u>. All disputes or questions that are to be determined by arbitration pursuant to this Lease Agreement shall be resolved by arbitration as follows, except that disputes to be resolved by expedited arbitration shall be resolved pursuant to <u>Section 35.02</u>:

- (a) The party desiring arbitration shall appoint a person as arbitrator on its behalf and give notice thereof to the other party who shall, within fifteen (15) days thereafter, appoint a second person as arbitrator on its behalf and give notice thereof to the first party.
- (b) 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 determination or award may be entered in any court having jurisdiction.
- (c) 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 (together with any organization successor thereto, the "AAA"), or in its absence, refusal, failure or inability to act, may apply for a court appointment of such arbitrator.
- (d) The arbitration shall be conducted in the City and County of New York and, to the extent applicable and consistent with this Section 35.01, shall be in accordance with the Commercial Arbitration Rules then in effect of the American Arbitration Association or any successor body of similar function. 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' determination or award shall be binding and conclusive on all parties. The arbitrators shall have no power to vary or modify any of the provisions of this Lease Agreement and their jurisdiction is limited accordingly. If the arbitration relates to any Improvement, then all of the arbitrators shall be licensed professional engineers or registered architects having at least ten (10) years experience in the design of sports facilities, and, to the extent applicable and consistent with this Section 35.01, such arbitration shall be conducted in accordance with the

Construction Arbitration Rules then in effect of the American Arbitration Association or any successor body of similar function.

Section 35.02. Expedited Arbitration Procedure.

- (a) <u>Construction Related Expedited Arbitration Procedure</u>. For disputes which are to be resolved under this Lease Agreement by express reference to this <u>Section 35.02</u>, the dispute shall be settled by arbitration through the "Fast-Track Procedures" of the Construction Industry Arbitration Rules and Mediation Procedures of the AAA, as may be modified from time to time.
- (b) <u>Real Estate Related Arbitration Procedure</u>. For disputes which are to be resolved by express reference to this <u>Section 35.02(b)</u>, the dispute shall be settled by arbitration through the "Expedited Procedures" of the Rules and Procedures for Arbitration Rules for the Real Estate Industry of the AAA may be modified from time to time.

Section 35.03. Expenses. Notwithstanding anything to the contrary set forth above 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.

Section 35.04. <u>Final Decision</u>. All disputes for which resort is made to arbitration pursuant to this Lease Agreement shall be final and binding, and, unless the parties agree otherwise, this Article 35 shall be exclusive remedy with respect to matter subject to arbitration pursuant to this Lease Agreement. Tenant and Landlord shall have no right to seek any injunctive or other mandatory relief pending completion of the procedures set forth in this Article 35.

ARTICLE 36

DISCHARGE OF LIENS, BONDS

Section 36.01. Creation of Liens. Tenant shall not create or cause to be created (a) any mortgage lien, encumbrance or charge upon this Lease Agreement, the leasehold estate created hereby, the income therefrom or the Premises or any part thereof except for any Permitted Encumbrances, (b) any mortgage lien, encumbrance or charge upon any assets of, or funds appropriated to, Landlord, other than Landlord's interest in this Lease Agreement and the Primary Site Ground Lease and the leasehold estate or estates created hereby and thereby except for Permitted Encumbrances, 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 except for Permitted Encumbrances. Notwithstanding the foregoing, Tenant shall have the right to enter into Subleases and use and occupancy agreements (including the Stadium Use Agreement) relating to Stadium events as provided by, and in accordance with, the provisions of this Lease Agreement, and Permitted Transactions. Nothing herein is intended to limit Landlord's expressly mortgaging, in writing, its own interest as Landlord in this Lease Agreement. Nothing

in this <u>Section 36.01</u> shall prohibit Tenant from executing and delivering a Recognized Mortgage encumbering Tenant's interest in the leasehold estate created under this Lease Agreement (including without limitation, any Mortgage made in connection with the issuance of Bonds, including without limitation the PILOT Mortgage and the Leasehold Mortgage).

Section 36.02. Discharge of Liens.

(a) If any mechanic's, laborer's, vendor's, materialman's or similar statutory lien (including tax liens, provided the underlying tax is an obligation of Tenant by law or by a provision of this Lease Agreement) is filed against the Premises or any part thereof due to any act or omission of Tenant or any of its agents or contractors, 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, then, Tenant shall, within sixty (60) days after receipt of 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 vacated or 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 liens if Tenant shall have brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity; except that if, despite Tenant's efforts to seek discharge of the lien, Landlord reasonably believes such lien is about to be foreclosed and so notifies Tenant, Tenant shall immediately cause such lien to be discharged of record.

Section 36.03. No Authority to Contract in Name of Landlord. otherwise provided in this Lease Agreement, nothing contained in this Lease Agreement 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 assets of, or funds appropriated to, Landlord. Notice is hereby given, and Tenant shall cause all construction agreements in respect of Construction Work 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, Landlord.

ARTICLE 37

NO SUBORDINATION

Section 37.01. Fee Owner's Interest. Fee Owner's interest in the Premises shall not be subject (except as may otherwise be expressly set forth in the Primary Site Ground Lease) or subordinate to (a) any mortgage suffered to exist by Landlord or Tenant now or hereafter affecting Landlord's interest in the Primary Site Ground Lease or Landlord's and/or Tenant's interest in this Lease Agreement and the leasehold estate or estates created thereby and hereby, (b) any other liens or encumbrances hereafter affecting Landlord's interest in the Primary Site Ground Lease or Landlord's and/or Tenant's interest in this Lease Agreement and the leasehold estate or estates created thereby and hereby, or (c) any Sublease or any mortgages, liens or encumbrances now or hereafter placed on any Subtenant's interest in the Premises. Fee Owner shall be a third party beneficiary of the provisions of this Section 37.01.

Section 37.02. <u>Tenant's Interest</u>. Tenant's interest in this Lease Agreement, as the same may be modified, amended or renewed, and the leasehold estate created hereby shall not be subject or subordinate to (a) any mortgage suffered to exist by Fee Owner now or hereafter affecting Fee Owner's interest in the Premises or (b) any other liens or encumbrances hereafter affecting Fee Owner's interest in the Premises.

ARTICLE 38

MISCELLANEOUS

Section 38.01. <u>Captions</u>. The captions of this Lease Agreement are for the purpose of convenience of reference only, and in no way define, limit or describe the scope or intent of this Lease Agreement or in any way affect this Lease Agreement.

Section 38.02. <u>Table of Contents</u>. 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 Agreement.

Section 38.03. <u>Reference to Landlord and Tenant</u>. The use herein of the neuter pronoun in any reference to Landlord or Tenant shall be deemed to include any individual Landlord or Tenant. 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.

Section 38.04. Quiet Enjoyment.

(a) Landlord covenants that Tenant shall and may (subject to the terms and conditions of this Lease Agreement) peaceably and quietly have, hold and enjoy the Premises for the Term without molestation or disturbance by or from Landlord or any Person claiming by, through or under Landlord and free of any encumbrances created or permitted by Landlord or any Person claiming by, through or under Landlord (without fault of Tenant); except that Tenant takes this Lease Agreement and the Premises subject to Title Matters.

- (b) Landlord agrees not to terminate the Primary Site Ground Lease or the South Parking Site Ground Lease or modify the Primary Ground Lease or the South Parking Site Ground Lease in any manner that would adversely affect Tenant or the Partnership; provided, that Landlord may modify the Ground Lease for effectuating the purpose of Section 1.1 thereof with respect to the Police Substation and the sewer easement contemplated therein, and may be amended in connection with the execution and delivery of the On-Site Parking Agreements and other agreements to be entered into by Tenant with the City or Landlord with respect to parking operations in the vicinity of the Premises.
- (c) Landlord and Tenant covenant not to modify, amend or terminate or accept the surrender of this Lease Agreement without the prior consent of the City, the Partnership and, while any Bonds remain outstanding, the Bond Insurer, provided that no consent shall be required that is unreasonably withheld, delayed or conditioned; provided, that this Lease Agreement may be amended to provide terms, covenants and conditions relating to the construction and operation of the Police Substation at the Stadium, and the sewer easement reserved in Section 1.1 of the Ground Lease, and may be amended in connection with the execution and delivery of the On-Site Parking Agreements and other agreements to be entered into by Tenant with the City or Landlord with respect to parking operations in the vicinity of the Premises. The City, the Partnership and, while any Bonds remain outstanding, the Bond Insurer shall be the third party beneficiaries of this subparagraph (c).

Section 38.05. Limitation on Liability.

- (a) Landlord Exculpation. The liability of Landlord, the City, or of any other Person who has at any time acted as Landlord hereunder, for damages or otherwise, shall be limited to Landlord's and the City's interest in the Premises, the proceeds, payable to Landlord or the City, of any insurance policies covering or relating to the Premises, and any awards payable to Landlord or the City in connection with any condemnation of part or all of the Premises. In no event, however, shall Landlord's or the City's interest in the Premises include: (i) any rights, claims, or interests of Landlord or the City that at any time may exist pursuant to a loan document to which Landlord or the City is a party or any note or mortgage given to Landlord or the City in connection with the Premises; (ii) any rights, claims, or interests of Landlord or the City that at any time may arise from or be a result of Landlord's governmental powers or rights or Landlord's or the City's actions in its governmental capacity; or (iii) any rents, issues, or proceeds from or in connection with the Premises, or that would otherwise be within Landlord's or the City's interest in the Premises, from and after such time as such items have been received by Landlord or the City. None of the directors, officers, partners, joint venturers, principals, shareholders, employees, agents or servants of Landlord or the City shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Tenant available hereunder.
- (b) <u>Tenant's Member's Exculpation</u>. None of the members, directors, shareholders, officers, partners, joint venturers, affiliates, principals, shareholders, employees, agents or servants of Tenant shall have any liability (personal or otherwise) hereunder or be subject to levy, execution or other enforcement procedure for the satisfaction of any remedies of Landlord available hereunder.

(c) <u>Governs Lease</u>. The provisions of this <u>Section 38.05</u> shall govern every other provision of this Lease Agreement. The absence of explicit reference to this Section 38.05 in any particular provision of this Lease Agreement shall not be construed to diminish the application of this <u>Section 38.05</u> to such provision. <u>This Section 38.05</u> shall survive the Expiration Date.

Section 38.06. <u>Remedies Cumulative</u>. Except as otherwise provided in this Lease Agreement, each right and remedy of either party provided for in this Lease Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this Lease Agreement, or now or hereafter existing at law or in equity or by statute or otherwise, and the exercise or beginning of the exercise by either party of any one or more of the rights or remedies provided for in this Lease Agreement, or now or hereafter existing at law or in equity or by statute or otherwise shall not preclude the simultaneous or later exercise by such party of any or all other rights or remedies provided for in this Lease Agreement or now or hereafter existing at law or in equity or by statute or otherwise.

Section 38.07. Merger. Unless Landlord and Tenant sign and record an agreement to the contrary, there shall be no merger of Landlord's and Tenant's respective interests in this Lease Agreement, or of Tenant's interest in this Lease Agreement with Landlord's interest in the Primary Site Ground Lease or any leasehold estate created hereby or thereby, or any part of any of same, by reason of the same Person acquiring or holding, directly or indirectly, this Lease Agreement and/or Landlord's interest in the Primary Site Ground Lease and the leasehold estate created hereby or thereby. To the extent that by operation of law or otherwise a merger of any interest in Landlord's and Tenants interest in this Lease Agreement, or of Tenant's interest in this Lease Agreement with Landlord's interest in the Primary Site Ground Lease notwithstanding the immediately preceding sentence, is nevertheless effectuated, then all the covenants, representations, terms and conditions of this Lease Agreement shall be incorporated into the Primary Site Ground Lease as if fully set forth therein, and to the extent of any inconsistency between the covenants, representations, terms and conditions of the Primary Site Ground Lease and the covenants, representations, terms and conditions of this Lease Agreement, the covenants, representations, terms and conditions of the Lease Agreement shall control.

Section 38.08. <u>Sole Cost and Expense of Performance</u>. Except as otherwise specifically provided by the terms of this Lease Agreement, all of Tenant's obligations hereunder shall be performed at Tenant's sole cost and expense. Except as otherwise specifically provided by the terms of this Lease Agreement, all of Landlord's obligations hereunder shall be performed at Landlord's sole cost and expense.

Section 38.09. <u>Relationship of Landlord and Tenant</u>. This Lease Agreement 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 38.10. Waiver, Modification, Etc. No covenant, agreement, term or condition of this Lease Agreement shall be changed, modified, altered, waived or terminated except by a written instrument of change, modification, alteration, waiver or termination executed by Landlord and Tenant. No waiver of any default under this Lease Agreement,

including without limitation any Default, shall affect or alter this Lease Agreement, but each and every covenant, agreement, term and condition of this Lease Agreement shall continue in full force and effect with respect to any other then existing or subsequent default thereof.

Section 38.11. Transfer of Lease Interests.

- <u>Transfer of Landlord's Interest</u>. Subject to the provisions of <u>Section 38.24</u> of this Lease Agreement, and the delivery of customary certificate and legal opinions regarding the proposed transfer, for as long as any Bonds remain outstanding, Landlord may not sell, assign or transfer all or any portion of Landlord's interest in the Premises and this Lease Agreement, except to a fully tax exempt public benefit corporation, which is fully exempt from all real estate taxes, sales and use taxes, mortgage recording taxes, and other taxes from which the Stadium Project is exempt by virtue of IDA's leasehold interest in the Premises, subject to the rights of bondholders, and shall in no event sell, assign or transfer all or any portion of Landlord's interest in the Premises and this Lease Agreement during construction of the Stadium and/or the On-Site Parking Facilities. In the event of any permitted sale or sales, assignment or assignments, or transfer or transfers of Landlord's interest in the Premises and this Lease Agreement, the seller, assignor or transferor, as the case may be, shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Landlord hereunder to be performed whether accruing before or after the date of such sale, assignment or transfer, with the exception of obligations arising from fraud, fraud of creditors, conversion or intentional damage to the Premises by the seller, assignor or transferor occurring before the sale, assignment or transfer, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns Landlord's interest in the Premises under the Primary Site Ground Lease or the South Parking Site Ground Lease including, without limitation, the purchaser, assignee or transferee in any such sale, assignment or transfer, that such Person has assumed and agreed to carry out any and all agreements, covenants and obligations of Landlord hereunder whether accruing before or after the date of such sale, assignment or transfer, and security for such obligations in form and substance reasonably satisfactory to Tenant. Upon the sale, assignment or transfer of Landlord's interest in the Premises and the City's fee interest in the Premises, the rights of Landlord under Section 4.04, 7.01, 7.02(e), 7.03, 9.03, 12.02(g), Article 22, Article 32, Article 33, and Article 34 shall be void and of no further force or effect.
- (b) Transfer of Tenant's Interest. If the named Tenant or any successor to its interest hereunder ceases to have any interest in the leasehold estate hereby created by reason of any authorized and valid sale or sales, assignment or assignments or transfer or transfers of Tenant's interest hereunder in accordance with the terms of this Lease Agreement, the seller, assignor or transferor, as the case may be, shall be and hereby is entirely freed and relieved of all agreements, covenants and obligations of Tenant hereunder to be performed whether accruing before or after the date of such sale, assignment or transfer, with the exception of obligations arising from fraud, fraud of creditors, conversion or intentional damage to the Premises by the seller, assignor or transferor occurring before the sale, assignment or transfer, and it shall be deemed and construed without further agreement between the parties or their successors in interest or between the parties and the Person who acquires or owns Tenant's interest in the Premises under this Lease Agreement, including, without limitation, the purchaser, assignee or transferee in any such sale, assignment or transfer, that such Person has assumed and agreed to

carry out any and all agreements, covenants and obligations of Tenant hereunder and under the PILOT Agreement to be performed whether accruing before or after the date of such sale, assignment or, transfer. Notwithstanding the preceding, however, a buyer, assignee or transferee of the tenancy interest in this Lease Agreement shall not be required to assume, or be deemed to have assumed, obligations of Tenant accruing before the sale, assignment or transfer, provided the seller, assignor or transferor provides Landlord, at the closing of the sale, assignment or transfer, an agreement, in form and substance reasonably satisfactory to Landlord, to continue to be liable for all obligations under the Lease Documents and the Bond Documents to which Tenant is a party accruing up to the date of the sale, assignment or transfer.

Section 38.12. <u>Governing Law</u>. This Lease shall be governed by, and be construed in accordance with, the laws of the State of New York, without reference to any conflict of laws provisions thereof except Sections 5-1401 and 5-1402 of the New York General Obligations Law.

Section 38.13. Claims, Jury Trial Waiver.

- (a) Except to the extent arbitration is expressly provided for in this Lease Agreement, each party hereto hereby agrees that all actions or proceedings arising directly or indirectly out of this Lease Agreement shall be litigated in the Supreme Court of the State of New York, New York County, or the United States District Court for the Southern District of New York or in any court located in the City and State of New York in which the City, Landlord or Tenant shall initiate such action, to the extent such court has jurisdiction. Each party hereto hereby expressly submits and consents in advance to such jurisdiction and waives any claim that New York, New York or the Southern District of New York or any such court in the City and State of New York with jurisdiction is an inconvenient forum or an improper forum based on improper venue. Each party hereto agrees to service of process by certified mail, return receipt requested, postage prepaid, addressed to it as set forth in Section 25.01. Each party hereto agrees not to institute suit arising out of this Lease Agreement against any other party in a court in any jurisdiction, except as stated above, without such other party's consent. Each party hereto agrees that a true, correct and complete copy of this Lease Agreement kept in Landlord's, the City's or Tenant's course of business may be admitted into evidence as an original.
- (b) WAIVER OF JURY TRIAL. EACH PARTY HERETO, BY EXECUTING THIS AGREEMENT, WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY ACTION, WHETHER ARISING IN CONTRACT OR TORT, BY STATUTE OR OTHERWISE, IN ANY WAY RELATED TO THIS LEASE AGREEMENT. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE PARTIES HERETO TO ENTER INTO THIS LEASE AGREEMENT AND NO WAIVER OR LIMITATION OF ANY OF THEIR RIGHTS UNDER THIS SECTION SHALL BE EFFECTIVE UNLESS IN WRITING AND SIGNED BY THE PARTY TO BE CHARGED. LANDLORD AND TENANT AGREE THAT THE CITY, LANDLORD OR TENANT MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THIS WAIVER OF RIGHT TO TRIAL BY JURY.

Landlord and Tenant acknowledge that the above paragraph has been expressly bargained for by each of them and that, but for the agreement by the each of them, such parties would not enter into this Lease Agreement.

Section 38.14. <u>Successors and Assigns</u>. The agreements, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, Landlord and Tenant and, except as otherwise provided herein, their respective successors and assigns.

Section 38.15. <u>Effect of Other Transactions</u>. No Sublease or Capital Transaction, whether executed simultaneously with this Lease Agreement or otherwise, and whether or not consented to by Landlord, shall be deemed to modify this Lease Agreement in any respect.

Section 38.16. Waivers. Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease Agreement, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, and/or any claim for injury or damages. In the event Landlord commences any proceeding for nonpayment of Rental or any other sums required to be paid by Tenant under the terms of this Lease Agreement, Tenant will not interpose any counterclaim of whatever nature or description in any such proceedings (unless a failure to interpose such counterclaim would operate as a waiver thereof).

Section 38.17. <u>Designee</u>. References to Landlord in this Lease Agreement shall be deemed to refer also to any designee named by Landlord to act in its behalf with respect to this Lease Agreement (without in any way releasing Landlord from or with respect to any of Landlord's obligations under this Lease Agreement).

Section 38.18. <u>Gender and Number</u>. Words of any gender in this Lease Agreement shall be held to include any other gender and words in the singular number shall be held to include the plural when the sense requires.

Section 38.19. Recording of Lease. Landlord and Tenant shall execute a memorandum of this Lease Agreement. Tenant shall cause such memorandum and any amendments thereto to be recorded in the Office of the Register of the City of New York (Queens County) promptly after the execution and delivery of this Lease Agreement or any such amendments, and Landlord shall pay and discharge all costs, fees and taxes (if any) in connection therewith.

Section 38.20. (Intentionally omitted)

Section 38.21. Sales Taxes Exemption.

(a) Any exemption from Sales Taxes resulting from or occasioned by Landlord involvement with the Stadium shall be limited to purchases of Eligible Materials by or for Tenant as agent for Landlord pursuant to the Sales Tax Letter, it being the intent of the parties that no operating expenses of Tenant and no purchases of equipment or other personal property (other than Eligible Materials) shall be subject to an exemption from Sales Taxes because of Landlord involvement with the Stadium Project.

(b) Tenant covenants and agrees that it shall include the following language (through an attached rider, or by reference to the Sales Tax Letter or otherwise) in and as part of each contract, agreement, invoice, bill or purchase order entered into by Tenant as agent for Landlord in connection with the Stadium Project:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by [Queens Ballpark Company, L.L.C.] a limited liability company existing under the laws of the State of as agent for and on behalf of the New York City Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the Agent consisting of the acquisition, renovation and equipping of a sports and entertainment stadium (the "Stadium") consisting of the [add description of Stadium Project] (the Stadium and construction thereof and the costs related thereto are herein referred to as the "Project"). The capital improvements, materials, machinery, equipment, trade fixtures, furniture, furnishings and other tangible personal property to be used for the Project which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of Landlord, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges the terms and conditions set forth in this paragraph."

If Tenant shall fail to include, incorporate by reference or otherwise cause the contract, agreement, invoice, bill or purchase order to be subject to the above applicable language in substantially the above form, such contract, agreement, invoice, bill or purchase order shall not be an undertaking on behalf of Landlord and shall not be entitled to any of the benefits able to be conferred by Landlord, and Tenant shall not claim any sales or use tax benefits or exemptions with respect to any such contract, agreement, invoice, bill or purchase order and Tenant shall return to Landlord any such benefits or exemptions so taken, together with interest on such amount at the rate of eighteen percent (18%) per annum, from the date of such taking.

(c) Concurrently with the execution of this Lease Agreement, Landlord shall make available to Tenant the Sales Tax Letter. The Agency, at the sole cost and expense of Tenant, shall also execute such other authorizations, letters and documents (and such amendments to the Sales Tax Letter) as may be reasonably necessary to permit Tenant to obtain the intended benefits hereunder. Subject to the terms of this Lease Agreement, it is intended that the aggregate scope of the sales and use tax benefits received by Tenant pursuant to this Lease Agreement and the Sales Tax Letter shall be limited in both duration and amount as follows:

- (i) The Sales Tax Letter shall be dated the date of original issuance of the Bonds and shall be effective for a term commencing on the Commencement Date and expiring upon the termination of this Lease (if the Sales Tax Letter has a stated expiration date a New Sales Tax Letter shall be issued upon request of Tenant).
- (ii) The authorizations set forth in the Sales Tax Letter shall automatically be suspended after notice to Tenant that if Tenant shall be in default under this Lease Agreement until Tenant shall pay any amounts due, and perform all of its obligations, with respect to any such default.
- (iii) The sales and use tax exemption to be provided pursuant to the Sales Tax Letter:
 - (A) shall not be available for payment of any costs other than for Eligible Materials for incorporation into or use at the Stadium,
 - (B) shall only be utilized for Eligible Materials which shall be purchased, completed or installed for use only by Tenant at the Stadium (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Materials to another Person), it being the intention of Landlord and Tenant that the sales and use tax exemption shall not be made available with respect to any item of Eligible Materials unless such item is used at the Stadium,
 - (C) shall not be available for any item of (i) rolling stock or watercraft, (ii) tangible personal property having a useful life of less than one year, or (iii) computer software unless the computer software is of a type that is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure for use only at the Stadium by Tenant,
 - (D) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended as provided in Section 38.21(c)(ii) hereof; provided, however, that in the event Tenant shall thereafter cure any defaults under this Lease Agreement, or Landlord shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or such waiver.
 - (E) shall be available only if purchased by Tenant as agent for Landlord for use by Tenant and/or the Partnership and/or the Team at the Stadium.

- (F) shall not be available for any tangible movable personal property (including computer software), or trade fixture, for use by any person other than Tenant and/or the Partnership and/or the Team at the Stadium,
- (G) shall not be available for any cost of utilities, cleaning service or supplies,
- (H) shall not be available for any item the acquisition or leasing of which would otherwise be exempt from Sales Taxes absent involvement by Landlord,
- (I) shall not be available subsequent to the termination of this Lease Agreement, and
- (J) shall only be available for those costs set forth in "Exhibit A" to the Sales Tax Letter attached hereto as Exhibit D.
- (d) In the event that Tenant shall utilize the sales or use tax exemption authorization provided pursuant to the Sales Tax Letter in violation of the provisions of Section 38.21(c)(iii) hereof, Tenant shall promptly deliver notice of same to Landlord, and Tenant shall, upon demand by Landlord, pay to or at the direction of Landlord a return of sales or use tax exemptions in an amount equal to all such unauthorized sales or use tax exemptions together with interest at the rate of eighteen percent (18%) per annum from the date and with respect to the dollar amount for which each such unauthorized sales or use tax exemption was availed of by Tenant.
- (e) The sales and use tax exemption authorizations provided to Tenant under the Sales Tax Letter and this Lease Agreement availed of by Tenant shall extend both to those Project Costs the payment for which shall first be made from the proceeds of the Bonds as well as those Project Costs the payment of which is to be reimbursed from the proceeds of the Bonds.
- (f) Upon request by Landlord of, and reasonable notice to, Tenant, Tenant shall make available at reasonable times to Landlord all such books and records of Tenant and require all appropriate officers and employees of Tenant to respond to reasonable inquiries by Landlord as shall be necessary to indicate in detail those costs to which Tenant shall have utilized the Sales Tax Letter and the dates and amounts so utilized.
- (g) Tenant shall observe and comply with the terms and conditions of the Sales Tax Letter.
- (h) Tenant shall on February 28, 2007 and on each February 28 thereafter until the February 28 following the calendar year in which the Sales Tax Letter shall have been terminated, cancelled, or expired, file a statement (Form ST-340 or any successor or additional mandated form) with the New York State Department of Taxation and Finance, on a form and in a manner and consistent with such regulations as is or may be prescribed by the Commissioner of the New York State Department of Taxation and Finance, of the value of all sales and use tax

exemptions claimed by Tenant or agents of Tenant in connection with the Stadium Project and the Stadium as required by Section 874(8) of the New York State General Municipal Law (as the same may be amended from time to time), including, but not limited to, consultants or subcontractors of such agents, under the authority granted pursuant to this Lease Agreement. Tenant shall furnish a copy of such annual statement to Landlord at the time of filing with the Department of Taxation and Finance. Should Tenant fail to comply with the foregoing requirement related to a statement filing with the New York State Department of Taxation and Finance and fail to timely cure such failure to comply, Tenant shall immediately cease to be the agent for Landlord in connection with the Stadium Project (such agency relationship being deemed to be immediately revoked) without any further action of the parties, Tenant shall be deemed to have automatically lost its authority as agent of Landlord to purchase Eligible Materials on Landlord's behalf, and shall desist immediately from all such activity, and shall immediately and without demand return to Landlord the Sales Tax Letter issued to Tenant by Landlord which is in Tenant's possession or in the possession of any agent of Tenant, subject to any rights of Tenant to cure such failure permitted to Tenant under applicable law. Nothing herein shall be construed as a representation by Landlord that any property acquired as part of the Stadium Project is or shall be exempt from sales taxes or use taxes under the laws of the State.

Certain Defined Terms used in this Section 38.21:

"Eligible Materials" shall mean all construction materials, machinery, equipment and other tangible personal property, in each case incorporated into and becoming a part of the Premises in connection with the Initial Construction of the Stadium Project, and all capital improvements constructed and all tangible personal property installed or affixed to the Premises at any time during the Initial Term and all machinery, equipment and tools purchased or leased for the maintenance and repair of the Premises at any time during the Term and located and used exclusively at the Premises (but excluding supplies, inventory and other consumable materials), in each case acquired through purchase or lease by Tenant as agent of Landlord, pursuant to the Sales Tax Letter in connection with the Stadium Project or capital improvement or machinery or equipment fixture installation or maintenance or repair.

"Sales Taxes" shall mean New York City and New York State sales and/or compensating use taxes imposed pursuant to Sections 1105, 1107, 1109 and 1110 of the New York State Tax Law, as each of the same may be amended from time to time (including any successor provisions to such statutory sections).

"Sales Tax Letter" shall mean the Letter of Authorization for Sales Tax Exemption, which the Agency shall make available to the Lessee in accordance with and substantially in the form set forth in the Appendices to this Agreement.

Section 38.22. Express Tenant Remedies.

(a) Tenant has performed an environmental investigation for the Premises with respect to the presence or possible presence of Hazardous Materials on the Premises, including those investigations for which the following reports were prepared for Tenant: (1) Shea Stadium Redevelopment Final Environmental Impact Statement, prepared for the New York City

Department of Parks and Recreation by Allee King Rosen and Fleming, Inc. with Vollmer Associates, LLP, Urbitran Associates, Inc. and Jack L. Gordon Architects, P.C., dated December 17, 2001, (2) Shea Stadium Redevelopment, Phase II Environmental Site Investigation Report, prepared for Mets Development Company, L.L.C. by AKRF, Inc. and dated February 2006, and (3) Phase I Environmental Site Assessment Report, Shea Stadium, prepared for Queens Ballpark Company, L.L.C. by AKRF, Inc. and dated July 2006. Tenant shall promptly notify Landlord and Bond Insurer upon the discovery of substantial and previously unknown Hazardous Materials condition at the Premises (a "Hazardous Materials Notice"). In the event that, prior to the completion of all excavation and grading that takes place prior to the completion of foundation work for the Stadium Project, types or quantities of Hazardous Materials are discovered on the Premises, which types or quantities of Hazardous Materials were not revealed in such environmental investigation as existing on the Premises and could not reasonably have been discovered using the means and methods employed under then prevailing environmental conditions investigation practices, and the cost of removal, containment or mitigation of such unknown Hazardous Materials such as is necessary for the development and use of the Stadium for the purposes contemplated in this Lease Agreement is in excess of \$150,000,000 above the proceeds available under insurance policies for such Hazardous Materials removal, containment or mitigation, then, following the delivery of the Hazardous Materials Notice, Tenant shall have the right to terminate this Lease Agreement, provided, that Tenant makes such election by written notice to Landlord within six (6) months of the discovery of such types or quantities of Hazardous Materials, which notice shall contain a detailed report as to the type and quantity of previously unknown Hazardous Materials, the required removal, containment or mitigation required and the reasons why such method is required, and a detailed explanation of the costs of such work, and shall contain a specific reference to this Section 38.22 and the thirty (30) Business Day turnaround time set forth herein. If Landlord does not dispute Tenant's right to terminate this Lease Agreement under this Section 38.22 within thirty (30) Business Days of Landlord's receipt of the aforesaid notice, then upon the expiration thereof this Lease Agreement shall be deemed terminated.

- (b) In the event that, solely as the direct result of Unavoidable Delays, Tenant is unable to Substantially Complete the Stadium by the Non-Completion Termination Date, Tenant shall have the option to terminate this Lease Agreement from and after the Non-Completion Termination Date by paying an amount equal to Three Hundred Fifty Million (\$350,000,000) Dollars (the "Termination Payment"), escalating at the annual rate of Six and Twenty-five Hundredths Percent (6.25%) commencing on March 1, 2019, as follows and in the following order of priority:
- (i) to pay for Tenant's undertaking Stadium demolition, site clearance and leveling of the Premises, in the manner provided under <u>Section 15.05</u>,
- (ii) to EDC and ESDC, in the amount of the unamortized portion of the funding disbursed for the Stadium Project pursuant to that certain Funding Agreement dated as of June 7, 2006 between EDC and Mets Development Company, L.L.C. in the amount of \$13,000,000 (the "MDC Funding Agreement") and that certain Funding Agreement among ESDC, EDC and Tenant dated as of August 2, 2006, in the amount of \$153,100,000 (the "QBC Funding Agreement"), such amortization to be on a straight line basis over a 37 year period commencing from the date of Substantial Completion,

- (iii) to discharge all outstanding Bonds and discharge all amounts payable under the Bond Documents, and
 - (iv) the balance to the City.
- (c) In the event of a Casualty, if, (1) for a period of seven (7) years from the date of such Casualty, (a) Restoration Funds have been rendered unavailable under the terms of Section 5.03(d) of the PILOT Indenture for a Casualty Restoration, and (b) Tenant is not in the process of performing a Casualty Restoration, and (2) following the seventh (7th) anniversary of such Casualty, Tenant receives from the Partnership a cumulative amount equal to or in excess of Three Hundred Fifty Million Dollars (\$350,000,000), less amounts paid by Tenant for costs described in clauses (b)(i) and (ii) above, from the operations of the Partnership at a "Substantially Equivalent Facility", and has expended same in furtherance of satisfaction of its obligations under this Lease Agreement and the Bond Documents, including without limitation PILOTs, then Tenant may, upon thirty (30) days written notice to Landlord and Bond Insurer, terminate this Lease, in which case all Restoration Fund insurance proceeds shall be disbursed in the order of priority set forth in (b) above.
- (d) Any amounts payable to the City, EDC or ESDC pursuant to paragraphs (b) above shall be paid either in cash, or by clean and unconditional promissory notes issued to each such party, with annual interest at the Prime Rate, payable in equal monthly installments over a five (5) year period from the date of delivery of the note, together with security for payment under such notes as may be reasonably acceptable to each such payee (e.g., a clean, unconditional, and irrevocable standby letter of credit), all such instruments to be in form reasonably acceptable to each such payee.
- (e) The City, ESDC, the Bond Insurer and EDC shall be third party beneficiaries of this <u>Section 38.22</u>.

Section 38.23. Subordination of Lease Agreement.

- (a) Notwithstanding any other provision of this Lease Agreement or any Bond Document:
 - (i) The manner of conduct of activities in the Stadium in conjunction with any Team Home Games or other event conducted under the auspices of or in affiliation with Major League Baseball or the Partnership and the rights and obligations of the parties with respect to such manner of conduct of activities, shall be subject in all respects to each of the following, as they may be amended from time to time: (A) any present or future agreements entered into by, or on behalf of, any of the MLB Entities or the member clubs, collectively, including without limitation the MLB Governing Documents and MLB Rules and Regulations, and each agreement entered into pursuant thereto, or (B) the present and future mandates, rules, regulations, policies, bulletins or directives issued or adopted by the Commissioner or the MLB Entities (the

documents described in clauses (A) and (B), collectively, the "MLB Documents"); provided that the provisions of this Section 38.23 shall not restrict the ability of any Recognized Mortgagee or any other enforcing party to exercise the remedies provided under the applicable Recognized Mortgage, it being agreed however, that following such foreclosure, Recognized Mortgagee or other entering party shall nonetheless be bound by this Section 38.23(a).

- (ii) Each party hereto is aware of the provisions contained in Article V, Section 2(b)(2) of the Major League Constitution among the Major League Baseball clubs, and recognizes that the Ownership Committee of Baseball has issued "Control Interest Transfers – Guidelines & Procedures", dated November 9, 2005 (such document and any successor guidelines, as may be amended from time to time, the "Guidelines").
- (iii) Each party hereto acknowledges that Article V, Section 2(b)(2) of the Major League Constitution and the Guidelines require that the transfer of a control interest in either the Team or the Partnership be subject to the approving vote of the Major League Baseball clubs in their absolute discretion. Each party hereto also acknowledges the "best interests of Baseball" powers held by the Commissioner under the Major League Constitution. Accordingly, each party hereto acknowledges that such approvals would be required for any sale or transfer of the Team, the Partnership, or an interest in either the Team or the Partnership, to a third party as well as to any party hereto, and that each such transaction shall be subject to and made in accordance with the Major League Constitution and the Guidelines.
- (iv) Each party hereto acknowledges that any temporary or permanent management of the Team or the Partnership shall be subject to the prior approval of the Commissioner of Baseball (the "Commissioner") and the Major League Baseball Clubs. In the event any party hereto desires to operate the Team or the Partnership for its own account on a temporary or permanent basis, such Person shall seek the prior approval of the Commissioner and the Major League Baseball Clubs in accordance with the Major League Constitution and the Guidelines.
- (v) Each party hereto agrees that upon the occurrence and continuance of an Event of Default, Landlord shall not exercise any remedy or take any other action which would result in the termination of any of the rights of the Partnership to use the Stadium and Parking Facilities in accordance with and pursuant to the terms of the Stadium Use Agreement prior to the expiration of a period (the "Stay Period") commencing on the date of the occurrence of such

Event of Default, and ending on the date that is six months thereafter, provided, that if the Stay Period expires during a Team Season, the Stay Period shall be extended to the first day immediately succeeding the last day of such Team Season.

- (b) Subordination of Lease Agreement to Recognized Mortgages. Subject to Section 17.02(b), Tenant agrees that this Lease Agreement is, shall be and shall remain in all respects unconditionally and irrevocably encumbered by and subject and subordinate to each Recognized Mortgage, the lien thereof, any and all advances and/or re-advances made and to be made thereunder, any and all sums now or hereafter secured thereby and any and all modifications, amendments, renewals, extensions, increases, consolidations, reductions, severances, supplements, restatements and/or replacements thereof, with the same force and effect as if such Mortgage had been executed and delivered prior to the execution and delivery of this Lease Agreement and without regard to the order of priority of the recording of such Mortgage and this Lease Agreement. This provision shall be self operative, but, Tenant agrees to execute and deliver any additional documents or other instruments which may be reasonably required by the holder of such Mortgage from time to time to evidence or confirm this subordination agreement. This subordination agreement shall be binding upon Tenant, its successors and assigns and all subsequent tenants under this Lease Agreement and shall inure to the benefit of the holder of such Mortgage, its successors and assigns and all subsequent holders of such Mortgage.
- (c) <u>Subordination of Lease Agreement to Primary Site Ground Lease</u>. This Lease Agreement is subject and subordinate to the Primary Site Ground Lease.

Section 38.24. Performance on Behalf of Landlord. Without limitation of anything set forth in this Lease Agreement, it is understood and agreed that any and all the rights, covenants and obligations of Landlord hereunder may be exercised or performed on Landlord's behalf by Fee Owner (acting in its proprietary capacity through Lease Administrator), other than with respect to (i) the planning, design, construction and equipping of the Stadium, which Landlord shall undertake through Tenant as its agent, (ii) issuance of Bonds, (iii) cancellation of Taxes, and (iv) exemption from Sales Taxes. Any specific provision in this Lease Agreement that the City or Fee Owner may perform and exercise any of the covenants, rights and obligations of Landlord under this Lease Agreement shall in not in any way impair or diminish the general applicability of the preceding sentence with respect to any right, covenant or obligation which does not contain such a specific provision. Landlord and Tenant further understand, acknowledge and agree that, until Tenant is notified to the contrary by Landlord, Lease Administrator will administer this Lease Agreement on behalf of Landlord, and unless and until such notice is received, Lease Administrator will provide all consents and approvals to be provided under this Lease Agreement on behalf of Landlord, and 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 under this Lease Agreement and having the same force, effect and validity as if executed and/or delivered by Landlord under this Lease Agreement.

Section 38.25. <u>Bond Insurer Rights</u>. Any and all rights of the Bond Insurer, for consent, consultation, or otherwise, shall be in effect and valid and enforceable only for as long as there are Bonds outstanding. The Bond Insurer is hereby deemed to be a third party beneficiary of all rights of the Bond Insurer provided under this Lease.

Section 38.26. <u>Development Agreement</u>. Certain obligations of Tenant, especially but not limited to, obligations relating to repair, maintenance, construction, insurance and indemnification, which commence under this Lease Agreement upon Substantial Completion, are intended to be addressed for the period from the Commencement Date to the date of Substantial Completion in the Development Agreement, pursuant and subject to and in accordance with the terms, covenants and conditions set forth therein.

(Remainder of this page intentionally left blank; signature pages follow)

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

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY, Landlord

Name: Kei Hayashi

Title: Deputy Executive Director

QUEENS BALLPARK COMPANY, L.L.C., Tenant

1

Name: David P. Cohen

Title: Executive Vice President and Secretary

State of New York)) ss.:
County of New York)
On the <u>I</u> day of August in the year 2006 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared Kei Hayashi, 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.
Carolyn 4. CAROLYN YI
(Notary Public)(Commissioner of Deeds) Notary Public, State Of New York No. 01Y16013752 Qualified In Queens County Commission Expires Sept. 28,
State of New York)) ss.:
County of New York)
On the day of August in the year 2006 before me, the undersigned, a Notary Public/Commissioner of Deeds in and for said State/the City of New York, personally appeared David Cohen, 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.
CAROLYN YI Notary Public)(Commissioner of Deeds) CAROLYN YI Notary Public, State Of New York No. 01YI6013752 Qualified In Queens County
Commission Expires Sept. 28, 2006

EXHIBIT A

(Intentionally left blank)

EXHIBIT B

(Intentionally left blank)

EXHIBIT C

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 NYCIDA, 110 William Street, Attention: Compliance, New York, NY 10038 no later than the next <u>August 1 following the Reporting Year</u>. 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):							
lf y	ou 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. and	Total Number of employees of the Company and its Affiliates included in Items 1, 2, 3						
	ase attach the NYS-45 Quarterly Combined Withholding, Wage Reporting and						
Une	employment 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)	N	(please circle Y or			
	Do the Company and its Affiliates offer health benefits to all Part-Time Employees?	Y N)	N	(please circle Y or			
<u>If th</u>	ne answer to item 6 above is 250 or more employees, please complete Item 9 through 13						
<u>bel</u>	ow:						
9.	Number of employees in Item 6 who are "Exempt"						
10.	Number of employees in Item 6 who are "Non-Exempt"						
	Number of ampleyage in its 10 that sam up to \$25,000 appually.						

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	
ough 16, indicate the value of the benefits realized at Pro	ject Locations during the Reporting Y	<u>′ear:</u>
14. Value of sales and use tax exemption benefits		\$
15. Value of Commercial Expansion Program ("CEP") be	enefits	\$
16. Value of Relocation and Employment Assistance Pro	ogram ("REAP") benefits	\$
17. Were physical improvements made to any Project Loc Year at a cost exceeding 10% of the current assess improvements at such Project Location?	sed value of the existing	Y N (please circle Y or N)
If the Company and/or its Affiliates have applied for Industrial Program ("ICIP") benefits for new physical improvements at provide the ICIP application number(s)	Project Location(s), please	
Certification: I, the undersigned, an authorized officer or principal ow knowledge and belief, that all information contained in this report is true be disclosed to the New York City Economic Development Corporatio ("NYCIDA") and may be disclosed by NYCEDC and NYCIDA in control NYCIDA and/or the City of New York; and, without limiting the for NYCEDC pursuant to New York City Charter Section 1301 et. seq., (reports or disclosure required by law.	and complete. This form and information provion ("NYCEDC") and New York City Industriannection with the administration of the progrategoing, such information may be included in	ded pursuant hereto may al Development Agency ms of NYCEDC and/or (x) reports prepared by
Entity Name:		
Signature By:	Date:	
Name (print):	Title	

DEFINITIONS:

"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.

"Financial Assistance" is any of the following forms of financial assistance provided by or at the direction of NYCIDA and/or NYCEDC: a loan, grant, tax benefit and/or energy benefit pursuant to the Business Incentive Rate (BIR) program or New York City Public Utility Service (NYCPUS) program.

"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 pursuant to which an entity received or receives Financial Assistance.

"Project Location" is any location (a) with regard to which Financial Assistance has been provided to the Company and/or its Affiliates during the fiscal year reporting period covered by the Employment and Benefits Report, or (b) that is occupied by the Company and/or its Affiliates at which such entities have employees who are eligible to be reported per the terms of the Project Agreement with the Company and/or its Affiliates.

"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.

ITEM 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 NYCIDA's request must permit NYCIDA upon reasonable notice to inspect such forms and provide NYCIDA with a copy of such forms. The Company must submit to NYCIDA copies of this form completed by each Tenant.

- 1-4. 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**.
- 5. Report all Contract Employees providing services to the Company and its Affiliates and Tenants and subtenants of Tenants at all Project Locations.

- 6-14. 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.
- 9. 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 <u>not</u> eligible for overtime compensation.
- 10. 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.
- 14. 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 NYCIDA or the City of New York. <u>Do not include any sales and use tax savings realized under the NYS Empire Zone Program</u>.
- 15. 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 DFORM OF SALES TAX LETTER

NOTWITHSTANDING ANYTHING IN THE STADIUM LEASE TO THE CONTRARY, THIS SALES TAX LETTER IS NOT TO BE DELIVERED UNTIL AFTER COMPLETION OF THE STADIUM AND THE ON-SITE PARKING FACILITIES.

LETTER OF AUTHORIZATION FOR SALES TAX EXEMPTION (Stadium Lease Agreement)

TO WHOM IT MAY CONCERN

Re: New York City Industrial Development Agency (Queen Ballpark Project)

Expiration Date: June 30, 20

Eligible Location for Sales and Use Tax Exemption: 123-01 Roosevelt Avenue, Flushing, New York 11368, as more specifically defined in Section 2 below (the "Approved Project Location")

Ladies and Gentlemen:

The New York City Industrial Development Agency (the "Agency"), by this letter of authorization for sales tax exemption (the "Sales Tax Letter") which expires on the Expiration Date stated above, except as provided in Section 7 below, hereby advises you as follows:

- 1. The Agency constitutes a corporate governmental agency and a public benefit corporation under the laws of the State of New York, and therefore, in the exercise of its governmental functions, including the acquisition of property, is exempt from the imposition of any New York State or New York City sales and use tax. As an exempt governmental entity, no exempt organization identification number has been issued to the Agency nor is one required.
- 2. Pursuant to the terms of a certain Stadium Lease Agreement between the Agency, as landlord, and Queens Ballpark Company, L.L.C., a New York limited liability company (the "Company"), as tenant, dated as of August 1, 2006, as the same may be amended (the "Stadium Lease"), the Company, as the agent of the Agency, shall operate, maintain, equip and improve a Major League Baseball stadium having a seating and standing-room capacity for approximately 45,000 persons, together with related concession areas, ancillary structures and other improvements (collectively, the "Stadium"), to be located on a certain parcel of land in the Borough and County of Queens and the City and State of New York bounded on the north by the south side of Northern Boulevard, on the east by the west side of 126th Street, on the south by the north side of Roosevelt Avenue and on the west by the east side of Grand Central Parkway at the location, but excluding parking areas (the "Stadium Site"). The Stadium Site, together with the Stadium, is hereinafter referred to as the "Approved Project Location."

- 3. Pursuant to resolutions adopted by the Agency on March 14, 2006 and July 11, 2006, the Agency has authorized and pursuant to the terms hereof and the terms of the Stadium Lease (herein defined) the Agency does hereby authorize the Company having an address at 123-01 Roosevelt Avenue, Flushing, New York 11368, to act as its agent for and on behalf of the Agency in connection with the acquisition by the Company of Eligible Materials as defined in Exhibit A hereto. The Agency authorizes the Company to use and the Company shall use this letter only for the payment of costs incurred in connection with the Project.
- 4. Company covenants and agrees that it shall include the following language (through an attached rider, or by reference to the Sales Tax Letter or otherwise) in and as part of each contract, agreement, invoice, bill or purchase order entered into by Company, as agent for the Agency in connection with the Project:

"This [contract, agreement, invoice, bill or purchase order] is being entered into by Queens Ballpark Company, L.L.C., a limited liability company existing under the laws of the State of New York (the "Agent"), as agent for and on behalf of the New York City Industrial Development Agency (the "Agency"), in connection with a certain project of the Agency for the Agent consisting of the acquisition, renovation, operation, maintenance, equipping and improvement of a Major League Baseball stadium having a seating and standing-room capacity for approximately 45,000 persons, together with related concession areas, ancillary structures and other improvements (collectively, the "Stadium"), to be located on a certain parcel of land in the Borough and County of Queens and the City and State of New York generally bounded on the north by the south side of Northern Boulevard, on the east by the west side of 126th Street, on the south by the north side of Roosevelt Avenue and on the west by the east side of Grand Central Parkway (the Stadium and construction thereof and the costs related thereto are herein referred to as the "Project"). The Eligible Materials to be used for the Project which is the subject of this [contract, agreement, invoice, bill or purchase order] shall be exempt from the sales and use tax levied by the State of New York and The City of New York if effected in accordance with the terms and conditions set forth in the attached Letter of Authorization for Sales Tax Exemption of Agency, and the Agent hereby represents that this [contract, agreement, invoice, bill or purchase order] is in compliance with the terms of the Letter of Authorization for Sales Tax Exemption. The liability of the Agency hereunder is limited as set forth in the Letter of Authorization for Sales Tax Exemption. By execution or acceptance of this [contract, agreement, invoice, bill or purchase order], the [vendor or contractor] hereby acknowledges the terms and conditions set forth in this paragraph."

5. The acquisition by Company, acting as Agent of the Agency, from time to time of Eligible Materials constituting a part of the Project shall be exempt from the sales and use tax levied by the State of New York and The City of New York on the condition that the use of such exemption is in accordance with the terms and conditions of this Sales Tax Letter, including the exhibits hereto.

- 6. The Agency shall not be liable, either directly or indirectly or contingently, in any manner or to any extent whatsoever, and the Company shall be the sole party liable, under any lease, sublease, license, sublicense, contract, agreement, invoice, bill or purchase order entered into by the Company, as agent for the Agency hereunder.
- 7. Accordingly, until the earlier of (i) the Expiration Date referred to above, (ii) the expiration of the Initial Term of the Stadium Lease, and (iii) the termination by the Agency of this Sales Tax Letter, all vendors, lessors, contractors and subcontractors are hereby authorized to rely on this letter (or on a photocopy or fax of this letter) as evidence that purchases and leases of, and improvement, installation and maintenance contracts relating to, the Project property, to the extent effected by the Company (or by a contractor or subcontractor engaged by the Company) as agent for the Agency, are exempt from all New York State and New York City sales and use taxes.
- 8. Notwithstanding any inconsistent provision in the Stadium Lease, the Agency hereby grants to the Company the right to use all Eligible Materials acquired by the Company as agent for the Agency.

Notwithstanding any contrary provisions in the Stadium Lease, ten (10) days prior to the expiration of this Sales Tax Letter, the Company shall surrender this letter to the Agency for annual renewal. The Company may continue to use a facsimile copy of this Sales Tax Letter until its stated expiration date. Within ten (10) days of receipt of this Sales Tax Letter, the Agency, if required, shall provide such annual renewal of the Sales Tax Letter to the Company as provided in the Stadium Lease with a new stated Expiration Date, which shall not be later than the following June 30th or such earlier date on which the Initial Term of the Stadium Lease expires.

The signature of a representative of the Company where indicated below will indicate that the Company has accepted the terms hereof.

NEW YORK CITY INDUSTRIAL DEVELOPMENT AGENCY

	Ву:	Kei Hayashi Deputy Executive Director
ACCEPTED AND AGREED TO BY:		
QUEENS BALLPARK COMPANY, L.L.C.		
By: Name: Title:		

EXHIBIT A

The sales and use tax exemption to be provided pursuant to the Sales Tax Letter shall be made available to Company in connection with the acquisition by the Company of Eligible Materials.

"Eligible Materials" shall mean all construction materials, machinery, equipment and other tangible personal property, in each case incorporated into and becoming a part of the Approved Project Location at any time during the Initial Term in connection with the initial construction of the Stadium, and all capital improvements constructed and all tangible personal property installed or affixed to the Approved Project Location and all machinery, equipment and tools purchased or leased for the maintenance and repair of the Approved Project Location at any time during the Term and located and used exclusively at the Approved Project Location (but excluding supplies, inventory and other consumable materials), in each case acquired through purchase or lease by Company as agent of Agency, pursuant to this Sales Tax Letter in connection with the Project or capital improvement or machinery or equipment fixture installation or maintenance or repair, all as generally described in and limited as to scope as set forth below.

The Sales Tax Letter:

- (a) shall not be available for payment of any costs other than for Eligible Materials for incorporation into or use at the Stadium;
- (b) shall only be utilized for Eligible Materials which shall be purchased, completed or installed for use only by Company or the Partnership or the Team at the Stadium (and not with any intention to sell, transfer or otherwise dispose of any such Eligible Materials to another Person), it being the intention of Agency and Company that the sales and use tax exemption shall not be made available with respect to any item of Eligible Materials unless such item is used at the Stadium;
- (c) shall not be available for any item of (i) rolling stock or watercraft, (ii) tangible personal property having a useful life of less than one year, or (iii) computer software unless the computer software is of a type that is capable of being capitalized in accordance with generally accepted accounting principles as a capital expenditure for use only at the Stadium by Company or the Partnership or the Team or a Subtenant;
- (d) shall not be available for any date subsequent to which the Sales Tax Letter shall have been suspended by the Agency in accordance with Stadium Lease (provided, however, that in the event the Company shall thereafter cure all defaults under the Stadium Lease, or the Agency shall thereafter waive such suspension, as applicable, the sales and use tax exemption shall again continue from the date of such cure or waiver);
- (e) shall not be available for any tangible movable personal property (including computer software), or trade fixture, for use by any person other than the Company and/or Sterling Mets L.P. (the "Partnership") and/or the Team and/or a Subtenant at the Stadium;

- (f) shall not be available for any cost of utilities, cleaning service or supplies;
- (g) shall not be available for any item the acquisition or leasing of which would otherwise be exempt from sales and use taxes absent involvement by Agency;
- (h) shall not be available subsequent to the termination of the Stadium Lease; and
- (i) shall be available only if purchased by the Company as agent for the Agency for use by the Company and/or the Partnership and/or the Team and/or a Subtenant at the Stadium.

SCHEDULE A

PRIMARY SITE

PARCEL B

PART OF BLOCK 1787 LOT 2

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE WESTERLY SIDE OF WILLETS POINT BOULEVARD WITH THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE;

RUNNING THENCE ALONG THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 335.47 FEET TO A POINT;

THENCE SOUTH 49 DEGREES 28 MINUTES 26 SECONDS WEST 336.20 FEET TO A POINT:

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 301.20 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 407.80 FEET A DISTANCE OF 94.00 FEET TO A POINT:

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 552.33 FEET TO POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 115.90 FEET A DISTANCE OF 99.40 FEET TO A POINT ALONG THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE;

THENCE SOUTH 46 DEGREES 36 MINUTES 56 SECONDS WEST A DISTANCE OF 165.42 FEET TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 400.00 FEET, A DISTANCE OF 318.86 FEET, SAID CURVE HAVING AN ANGLE OF ARC 45 DEGREES 40 MINUTES 24.4 SECONDS, WITH CHORD SOUTH 69 DEGREES 26 MINUTES 08.5 SECONDS WEST AND A LENGTH OF 310.49 FEET, TO A POINT OF CURVE;

THENCE ALONG A CURVE AGAIN TO THE LEFT HAVING A RADIUS OF 400.00 FEET, A DISTANCE OF 144.01 FEET, SAID CURVE HAVING AN ANGLE OF ARC 20 DEGREES 37 MINUTES 38.7 SECONDS WITH CHORD SOUTH 81 DEGREES 57 MINUTES 31.3 SECONDS WEST AND A LENGTH OF 143.23 FEET, TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1200.00 FEET, A DISTANCE OF 1759.52 FEET, SAID CURVE HAVING AN ANGLE OF ARC 84 DEGREES 00 MINUTES 39.3 SECONDS WITH CHORD NORTH 3 DEGREES 43 MINUTES 02.8 SECONDS EAST AND A LENGTH OF 1606.08 FEET, TO A POINT;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST A DISTANCE OF 214.14 FEET TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 600.00 FEET, A DISTANCE OF 243.43 FEET, SAID CURVE HAVING AN ANGLE OF ARC 23 DEGREES 14 MINUTES 43.6 SECONDS WITH CHORD NORTH 15 DEGREES 27 MINUTES 32 SECONDS EAST A LENGTH 241.76 FEET, TO A POINT;

THENCE NORTH 27 DEGREES 04 MINUTES 53.9 SECONDS EAST A DISTANCE OF 486.73 FEET TO A POINT;

THENCE NORTH 36 DEGREES 37 MINUTES 58 SECONDS EAST A DISTANCE OF 251.56 FEET TO A POINT ON THE SOUTHERLY SIDE OF 126th STREET;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST ALONG SAID SIDE OF 126TH STREET A DISTANCE OF 396.56 FEET TO A POINT;

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 829.80 FEET TO POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 15.00 FEET A DISTANCE OF 23.60 FEET TO A POINT:

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 739.60 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET A DISTANCE OF 79.94 FEET TO A POINT:

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 303.40 FEET TO A POINT;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 210.00 FEET TO POINT;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST A DISTANCE OF 138.20 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 A DISTANCE OF 98.02 FEET TO A POINT;

THENCE NORTH 19 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 112.10 FEET TO A POINT;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 464.20 FEET TO POINT ON THE SOUTHERLY SIDE OF 126th STREET;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 328.48 FEET TO A POINT FORMED BY THE INTERSECTION OF THE WESTERLY SIDE OF WILLETS POINT BOULEVARD WITH THE SOUTHERLY SIDE OF 126th STREET;

THENCE ALONG THE WESTERLY SIDE OF WILLETS POINT BOULEVARD SOUTH 9 DEGREES 06 MINUTES 00 SECONDS EAST A DISTANCE OF 15.436 FEET TO THE POINT OR PLACE OF BEGINNING.

PARCEL E

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE DISTANT 335.47 FEET SOUTHWESTERLY FROM THE INTERSECTION OF THE WESTERLY SIDE OF WILLETS POINT BOULEVARD WITH THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE:

RUNNING THENCE SOUTH 49 DEGREES 28 MINUTES 26 SECONDS WEST A DISTANCE OF 336.20 FEET TO A POINT;

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 301.20 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 407.80 FEET A DISTANCE OF 94 FEET TO A POINT;

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 552.33 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 115.9 FEET A DISTANCE OF 99.40 FEET TO A POINT ON THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE;

THENCE ALONG THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 1364.53 FEET TO THE POINT OR PLACE OF BEGINNING.

PARCEL F

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT DISTANT 115 FEET NORTHWESTERLY ON A LINE DRAWN AT RIGHT ANGLES TO ROOSEVELT AVENUE, SAID LINE BEING LOCATED AT A POINT ALONG SAID SIDE OF ROOSEVELT AVENUE BEING DISTANT 666.63 FEET SOUTHWESTERLY FROM THE INTERSECTION OF THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE WITH THE WESTERLY SIDE OF WILLETS POINT BOULEVARD;

RUNNING THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST A DISTANCE OF 138.20 FEET TO A POINT:

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 170 FEET A DISTANCE OF 307.40 FEET TO A POINT;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 303.40 FEET TO A POINT;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 210 FEET TO THE POINT OR PLACE OF BEGINNING.

PARCEL G

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY SIDE OF 126th STREET DISTANT 60 FEET NORTHWESTERLY FROM THE INTERSECTION OF THE PROLONGATION OF THE NORTHWESTERLY SIDE OF 36th AVENUE WITH THE SOUTHWESTERLY SIDE OF 126th STREET (SAID POINT ALSO BEING DISTANT 1238.48 FEET NORTHWESTERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE SOUTHERLY SIDE OF 126TH STREET WITH THE WESTERLY SIDE OF WILLETS POINT BOULEVARD);

RUNNING THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 829.80 FEET TO A POINT;

THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 15 FEET AND A LENGTH OF 23.60 FEET TO A POINT;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 739.60 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170 FEET A LENGTH OF 485.40 FEET TO A POINT;

THENCE NORTH 19 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 112.10 FEET TO A POINT;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 464.20 FEET TO A POINT ALONG THE SOUTHERLY SIDE OF 126TH STREET;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST ALONG THE SOUTHERLY SIDE OF 126TH STREET A DISTANCE OF 910.00 FEET TO THE POINT OR PLACE OF BEGINNING.

SCHEDULE B

STADIUM SITE

PARCEL E

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE DISTANT 335.47 FEET SOUTHWESTERLY FROM THE INTERSECTION OF THE WESTERLY SIDE OF WILLETS POINT BOULEVARD WITH THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE;

RUNNING THENCE SOUTH 49 DEGREES 28 MINUTES 26 SECONDS WEST A DISTANCE OF 336.20 FEET TO A POINT;

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 301.20 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 407.80 FEET A DISTANCE OF 94 FEET TO A POINT:

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 552.33 FEET TO A POINT:

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 115.9 FEET A DISTANCE OF 99.40 FEET TO A POINT ON THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE:

THENCE ALONG THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 1364.53 FEET TO THE POINT OR PLACE OF BEGINNING.

PARCEL F

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT DISTANT 115 FEET NORTHWESTERLY ON A LINE DRAWN AT RIGHT ANGLES TO ROOSEVELT AVENUE, SAID LINE BEING LOCATED AT A POINT ALONG SAID SIDE OF ROOSEVELT AVENUE BEING DISTANT 666.63 FEET SOUTHWESTERLY FROM THE INTERSECTION OF THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE WITH THE WESTERLY SIDE OF WILLETS POINT BOULEVARD;

RUNNING THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST A DISTANCE OF 138.20 FEET TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 170 FEET A DISTANCE OF 307.40 FEET TO A POINT;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 303.40 FEET TO A POINT:

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 210 FEET TO THE POINT OR PLACE OF BEGINNING.

PARCEL G

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTHWESTERLY SIDE OF 126th STREET DISTANT 60 FEET NORTHWESTERLY FROM THE INTERSECTION OF THE PROLONGATION OF THE NORTHWESTERLY SIDE OF 36th AVENUE WITH THE SOUTHWESTERLY SIDE OF 126th STREET (SAID POINT ALSO BEING DISTANT 1238.48 FEET NORTHWESTERLY FROM THE CORNER FORMED BY THE INTERSECTION OF THE SOUTHERLY SIDE OF 126TH STREET WITH THE WESTERLY SIDE OF WILLETS POINT BOULEVARD);

RUNNING THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 829.80 FEET TO A POINT;

THENCE ON A CURVE TO THE LEFT HAVING A RADIUS OF 15 FEET AND A LENGTH OF 23.60 FEET TO A POINT;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 739.60 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170 FEET A LENGTH OF 485.40 FEET TO A POINT:

THENCE NORTH 19 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 112.10 FEET TO A POINT;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 464.20 FEET TO A POINT ALONG THE SOUTHERLY SIDE OF 126TH STREET;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST ALONG THE SOUTHERLY SIDE OF 126TH STREET A DISTANCE OF 910.00 FEET TO THE POINT OR PLACE OF BEGINNING.

SCHEDULE C

NORTH PARKING SITE

PARCEL B

PART OF BLOCK 1787 LOT 2

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE WESTERLY SIDE OF WILLETS POINT BOULEVARD WITH THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE:

RUNNING THENCE ALONG THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 335.47 FEET TO A POINT;

THENCE SOUTH 49 DEGREES 28 MINUTES 26 SECONDS WEST 336.20 FEET TO A POINT:

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 301.20 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 407.80 FEET A DISTANCE OF 94.00 FEET TO A POINT:

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 552.33 FEET TO POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 115.90 FEET A DISTANCE OF 99.40 FEET TO A POINT ALONG THE NORTHWESTERLY SIDE OF ROOSEVELT AVENUE;

THENCE SOUTH 46 DEGREES 36 MINUTES 56 SECONDS WEST A DISTANCE OF 165.42 FEET TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 400.00 FEET, A DISTANCE OF 318.86 FEET, SAID CURVE HAVING AN ANGLE OF ARC 45 DEGREES 40 MINUTES 24.4 SECONDS, WITH CHORD SOUTH 69 DEGREES 26 MINUTES 08.5 SECONDS WEST AND A LENGTH OF 310.49 FEET, TO A POINT OF CURVE;

THENCE ALONG A CURVE AGAIN TO THE LEFT HAVING A RADIUS OF 400.00 FEET, A DISTANCE OF 144.01 FEET, SAID CURVE HAVING AN ANGLE OF ARC 20 DEGREES 37 MINUTES 38.7 SECONDS WITH CHORD SOUTH 81 DEGREES 57 MINUTES 31.3 SECONDS WEST AND A LENGTH OF 143.23 FEET, TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1200.00 FEET, A DISTANCE OF 1759.52 FEET, SAID CURVE HAVING AN ANGLE OF ARC 84 DEGREES 00 MINUTES 39.3 SECONDS WITH CHORD NORTH 3 DEGREES 43 MINUTES 02.8 SECONDS EAST AND A LENGTH OF 1606.08 FEET, TO A POINT;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST A DISTANCE OF 214.14 FEET TO A POINT;

THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 600.00 FEET, A DISTANCE OF 243.43 FEET, SAID CURVE HAVING AN ANGLE OF ARC 23 DEGREES 14 MINUTES 43.6 SECONDS WITH CHORD NORTH 15 DEGREES 27 MINUTES 32 SECONDS EAST A LENGTH 241.76 FEET, TO A POINT;

THENCE NORTH 27 DEGREES 04 MINUTES 53.9 SECONDS EAST A DISTANCE OF 486.73 FEET TO A POINT;

THENCE NORTH 36 DEGREES 37 MINUTES 58 SECONDS EAST A DISTANCE OF 251.56 FEET TO A POINT ON THE SOUTHERLY SIDE OF 126th STREET;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST ALONG SAID SIDE OF 126TH STREET A DISTANCE OF 396.56 FEET TO A POINT;

THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 829.80 FEET TO POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 15.00 FEET A DISTANCE OF 23.60 FEET TO A POINT;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 739.60 FEET TO A POINT:

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET A DISTANCE OF 79.94 FEET TO A POINT;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 303.40 FEET TO A POINT;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 210.00 FEET TO POINT;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST A DISTANCE OF 138.20 FEET TO A POINT;

THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 A DISTANCE OF 98.02 FEET TO A POINT;

THENCE NORTH 19 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 112.10 FEET TO A POINT;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 464.20 FEET TO POINT ON THE SOUTHERLY SIDE OF 126th STREET;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 328.48 FEET TO A POINT FORMED BY THE INTERSECTION OF THE WESTERLY SIDE OF WILLETS POINT BOULEVARD WITH THE SOUTHERLY SIDE OF 126th STREET;

THENCE ALONG THE WESTERLY SIDE OF WILLETS POINT BOULEVARD SOUTH 9 DEGREES 06 MINUTES 00 SECONDS EAST A DISTANCE OF 15.436 FEET TO THE POINT OR PLACE OF BEGINNING.

SCHEDULE D

SOUTH PARKING SITE

PARCEL D

PART OF BLOCK 2018 LOT 1500

SITUATE, LYING AND BEING IN THE BOROUGH AND COUNTY OF QUEENS, CITY AND STATE OF NEW YORK, BEING MORE PARTICULARLY BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT FORMED BY THE INTERSECTION OF THE SOUTHERLY SIDE OF 126th STREET WITH THE SOUTHEASTERLY SIDE OF ROOSEVELT AVENUE;

RUNNING THENCE ALONG THE SOUTHEASTERLY SIDE OF ROOSEVELT AVENUE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 1872.25 FEET TO A POINT:

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST A DISTANCE OF 325.28 FEET TO A POINT;

THENCE NORTH 55 DEGREES 29 MINUTES 03 SECONDS EAST A DISTANCE OF 126.37 FEET TO A POINT:

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 305.74 FEET TO A POINT;

THENCE NORTH 50 DEGREES 27 MINUTES 43 SECONDS WEST A DISTANCE OF 100.00 FEET TO A POINT;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST A DISTANCE OF 1445.00 FEET TO A POINT;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST A DISTANCE OF 260.00 FEET TO THE POINT OR PLACE OF BEGINNING.

EXCEPTING AND RESERVING FROM PARCEL D THE FOLLOWING DESCRIBED PREMISES:

EXCEPTION A

NYC TRANSIT SYSTEM BUILDING

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH OF QUEENS, COUNTY OF QUEENS AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH EASTERLY SIDE OF ROOSEVELT AVENUE DISTANT 1445.00 FEET SOUTH WESTERLY FROM THE INTERSECTION OF THE SOUTH EASTERLY SIDE OF ROOSEVELT AVENUE WITH THE SOUTH WESTERLY SIDE OF 126th STREET;

RUNNING THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 100.00 FEET TO A POINT;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST ALONG A CHAIN LINK FENCE A DISTANCE OF 50.00 FEET TO A FENCE CORNER;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST ALONG A CHAIN LINK FENCE A DISTANCE OF 100.00 FEET TO A FENCE CORNER;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST ALONG A CHAIN LINK FENCE A DISTANCE OF 50.00 FEET TO THE SOUTH EASTERLY SIDE OF ROOSEVELT AVENUE TO THE POINT OR PLACE OF BEGINNING.

EXCEPTION B

NYC TRANSIT SYSTEM BUILDING

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND SITUATE, LYING AND BEING IN THE BOROUGH OF QUEENS, COUNTY OF QUEENS AND STATE OF NEW YORK, BOUNDED AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE SOUTH EASTERLY SIDE OF ROOSEVELT AVENUE DISTANT 1020.00 FEET SOUTH WESTERLY FROM THE INTERSECTION OF THE SOUTH EASTERLY SIDE OF ROOSEVELT AVENUE WITH THE SOUTH WESTERLY SIDE OF 126th STREET.

RUNNING THENCE SOUTH 39 DEGREES 32 MINUTES 18 SECONDS WEST A DISTANCE OF 75.00 FEET TO A POINT;

THENCE SOUTH 50 DEGREES 27 MINUTES 42 SECONDS EAST ALONG A CHAIN LINK FENCE A DISTANCE OF 100.00 FEET TO A FENCE CORNER;

THENCE NORTH 39 DEGREES 32 MINUTES 18 SECONDS EAST ALONG A CHAIN LINK FENCE A DISTANCE OF 75.00 FEET TO A FENCE CORNER;

THENCE NORTH 50 DEGREES 27 MINUTES 42 SECONDS WEST ALONG A CHAIN LINK FENCE A DISTANCE OF 100.00 FEET TO THE SOUTH EASTERLY SIDE OF ROOSEVELT AVENUE AND THE POINT OR PLACE OF BEGINNING.

SCHEDULE E

TITLE MATTERS

- 1. All easements, reservations and rights of re-entry set forth in the Primary Site Ground Lease.
- 2. Any state of facts which an accurate survey of the Premises would show and that existed on the Commencement Date.
- 3. Utility easements and right or way as of the Commencement Date.
- 4. The Existing Stadium Lease.
- 5. All existing parking concession agreements issued by the City for the Primary Site.
- 6. The staircase leading to the elevated train viaduct, and fencing and other appurtenances, which right of the City, the Metropolitan Transportation Authority, the New York City Transit Authority, or any of their affiliated or instrumentalities to maintain is hereby reserved.