

**NEW ISSUE—BOOK-ENTRY ONLY****RATINGS:** Moody's: "Baa3"

S&amp;P: "BBB-"

(See "RATINGS")

*In the opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C., Bond Counsel, under existing law, and assuming continuing compliance with the Internal Revenue Code of 1986, as amended (the "Code"), interest on the Series 2009 PILOT Bonds will not be included in gross income of holders of the Series 2009 PILOT Bonds for federal income tax purposes. Interest on the Series 2009 PILOT Bonds will not constitute a tax preference item for purposes of computation of the alternative minimum tax imposed on individuals and corporations and will not be included in adjusted current earnings when calculating corporate alternative minimum taxable income. Under existing law, interest on the Series 2009 PILOT Bonds is exempt from personal income taxes imposed by the State of New York and its political subdivisions, including The City of New York, to the extent that such interest is excluded from gross income for federal income tax purposes. See "TAX MATTERS" herein.*

**\$510,999,996.50****Brooklyn Arena Local Development Corporation  
PILOT Revenue Bonds, Series 2009  
(Barclays Center Project)****Dated: Date of Delivery****Due: As shown on the inside front cover**

The Brooklyn Arena Local Development Corporation (the "Issuer") is offering \$510,999,996.50 of its PILOT Revenue Bonds, Series 2009 (Barclays Center Project) (the "Series 2009 PILOT Bonds"), certain proceeds of which Series 2009 PILOT Bonds, together with certain other moneys, will be used to pay the costs of the Arena Project. The Series 2009 PILOT Bonds are being issued for the purposes of: (i) providing a portion of the costs of acquisition and construction of the Arena Project; (ii) funding the Series 2009 PILOT Bonds Debt Service Reserve Subaccount in the amount of the Senior PILOT Bonds Debt Service Reserve Account Requirement for the Series 2009 PILOT Bonds; (iii) funding the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount in a portion of the amount of the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement for the Series 2009 PILOT Bonds; (iv) paying capitalized interest on the Series 2009 PILOT Bonds from the Arena Project Effective Date (as such term is defined in the Commencement Agreement) through May 15, 2012; and (v) reimbursing certain Costs of Issuance. See "PLAN OF FINANCE."

The "Arena Project" is comprised of the design, development, acquisition, construction and equipping of an arena (the "Arena") and certain other improvements related to the Arena (the "Arena Infrastructure") in the Atlantic Terminal area of Brooklyn, New York, to be used as the home venue of the professional basketball team currently known as the New Jersey Nets (the "Nets") and as a venue for other entertainment, cultural, sporting and civic events. See "THE ARENA PROJECT."

Funds to pay a portion of the costs of acquisition and construction of the Arena Project have been and will be provided by ArenaCo and/or will be derived from one or more other related sources. Funds to pay a portion of the costs of the Arena Project have been and will be provided by The City of New York (the "City"), acting through the New York City Economic Development Corporation ("NYCEDC"). Funds to pay a portion of certain costs relating to items of Atlantic Yards Project infrastructure, including a portion of the Related Infrastructure (but not costs of the Arena Project), have been and will be provided by The State of New York (the "State"), acting through the New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC"). See "PLAN OF FINANCE."

The Series 2009 PILOT Bonds are special limited obligations of the Issuer, the principal or Accreted Value, as applicable, of and premium, if any, and interest, as applicable, on which are payable solely out of and secured by (i) revenues of the Issuer derived and to be derived from certain payments in lieu of *ad valorem* real estate taxes ("PILOTs") to be made under a Payment-in-Lieu-of-Tax Agreement (Arena) (the "PILOT Agreement"), among the Issuer, Brooklyn Events Center, LLC, a Delaware limited liability company ("ArenaCo"), the City and ESDC; (ii) all right, title and interest of The Bank of New York Mellon (the "PILOT Bond Trustee") in certain funds and accounts held by The Bank of New York Mellon (the "PILOT Trustee") under the PILOT Assignment and Escrow Agreement (Arena) (the "PILOT Assignment"), among ESDC, the Issuer, the PILOT Bond Trustee, the PILOT Trustee and the City; and (iii) all right, title and interest of the PILOT Bond Trustee in certain funds and accounts held by the PILOT Bond Trustee under the Master PILOT Indenture of Trust, dated as of December 1, 2009 (the "Master PILOT Indenture"), by and between the Issuer and the PILOT Bond Trustee, and the First Supplemental PILOT Indenture of Trust, by and between the Issuer and the PILOT Bond Trustee, dated as of December 1, 2009 (the "First Supplemental PILOT Indenture" and, together with the Master PILOT Indenture, the "PILOT Bonds Indenture"). ArenaCo is a newly-formed and wholly-owned subsidiary of Brooklyn Arena Holding Company, LLC, a Delaware limited liability company ("Arena HoldCo"), which in turn is a newly-formed and wholly-owned subsidiary of Brooklyn Arena, LLC, a Delaware limited liability company (the "Arena Developer"). See "SECURITY AND SOURCES OF PAYMENT FOR THE SERIES 2009 PILOT BONDS."

The Series 2009 PILOT Bonds will be issuable as current interest bonds (the "Series 2009 Current Interest PILOT Bonds") and as capital appreciation bonds (the "Series 2009 Capital Appreciation PILOT Bonds"). Interest on the Series 2009 Current Interest PILOT Bonds is payable on each January 15 and July 15, commencing July 15, 2010. The inside cover page of this Official Statement contains information concerning the maturity dates, interest rates, prices or yields and CUSIPs for the Series 2009 PILOT Bonds.

The Series 2009 PILOT Bonds will be subject to redemption prior to maturity, including, under certain circumstances, extraordinary mandatory redemption, all as more fully described herein. See "INTRODUCTION—Commencement Agreement" and "THE SERIES 2009 PILOT BONDS—Redemption."

The Series 2009 PILOT Bonds will be issued in authorized denominations of \$5,000 or any integral multiple thereof. The Series 2009 PILOT Bonds will be held initially in book-entry only form, registered in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC"), which will act as securities depository for the Series 2009 PILOT Bonds. Individual purchases of beneficial interests in the Series 2009 PILOT Bonds will be made in book-entry form under DTC's book-entry only system. Purchasers of beneficial interests in the Series 2009 PILOT Bonds will not receive certificates representing their interests in the Series 2009 PILOT Bonds. So long as Cede & Co. is the registered owner of the Series 2009 PILOT Bonds, payments of principal of and premium, if any, and interest on the Series 2009 PILOT Bonds will be paid through the facilities of DTC. Disbursement of such payments to DTC participants is the responsibility of DTC, and disbursement of such payments to the purchasers of beneficial interests in the Series 2009 PILOT Bonds is the responsibility of DTC participants and indirect participants, as more fully described herein. See "THE SERIES 2009 PILOT BONDS—General" and "APPENDIX A—BOOK-ENTRY ONLY SYSTEM."

THE SERIES 2009 PILOT BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM AND SECURED BY PILOT REVENUES DERIVED FROM PILOTS MADE BY ARENACO PURSUANT TO THE PILOT AGREEMENT, THE INTEREST OF THE PILOT BOND TRUSTEE IN THE DEBT SERVICE AND REIMBURSEMENT FUND HELD BY THE PILOT TRUSTEE UNDER THE PILOT ASSIGNMENT AND CERTAIN FUNDS AND ACCOUNTS HELD BY THE PILOT BOND TRUSTEE UNDER THE PILOT BONDS INDENTURE. NONE OF THE STATE, THE CITY AND ESDC IS OR SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF AND PREMIUM, IF ANY, OR INTEREST ON THE SERIES 2009 PILOT BONDS, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR THE CITY IS PLEDGED TO SUCH PAYMENT. THE ISSUER HAS NO TAXING POWER.

THE SERIES 2009 PILOT BONDS DO NOT CONSTITUTE AN OBLIGATION OF ARENACO, THE ARENA DEVELOPER, NEW JERSEY BASKETBALL, OR ANY OF THEIR RESPECTIVE AFFILIATES. THE SERIES 2009 PILOT BONDS ARE NOT SECURED BY ANY INTEREST IN ANY PORTION OF THE ATLANTIC YARDS PROJECT (INCLUDING THE ARENA PROJECT) NOR ANY PROPERTY OF OR INTEREST IN ARENACO, THE ARENA DEVELOPER, NEW JERSEY BASKETBALL, OR ANY OF THEIR RESPECTIVE AFFILIATES.

An investment in the Series 2009 PILOT Bonds involves certain risks as described herein. See the information provided under the headings “RISK FACTORS AND INVESTMENT CONSIDERATIONS” in this Official Statement.

The Series 2009 PILOT Bonds are offered by the underwriters set forth below (collectively, the “*Underwriters*”), subject to prior sale, when, as and if delivered to and accepted by the Underwriters, subject to the approval of the proceedings authorizing the Series 2009 PILOT Bonds, and certain other matters, by Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C., Bond Counsel. Certain legal matters will be passed upon for ArenaCo, the Arena Developer and New Jersey Basketball by Fried, Frank, Harris, Shriver & Jacobson LLP, Edwards Angell Palmer & Dodge LLP, Richards, Layton & Finger, P.A., and Kelley Drye & Warren LLP; for the Issuer and ESDC by ESDC’s General Counsel; and for the Underwriters by Nixon Peabody LLP. It is expected that the Series 2009 PILOT Bonds will be available for delivery through the services of DTC on or about December 23, 2009.

**Goldman, Sachs & Co.**

**Barclays Capital**

**Citi**

Dated: December 16, 2009

**\$510,999,996.50**  
**Brooklyn Arena Local Development Corporation**  
**PILOT Revenue Bonds, Series 2009**  
**(Barclays Center Project)**

**\$482,085,000.00 CURRENT INTEREST BONDS**

<b><u>Maturity Date</u></b> <b><u>(July 15)</u></b>	<b><u>Principal Amount</u></b>	<b><u>Interest Rate</u></b>	<b><u>Price or Yield</u></b>		<b><u>CUSIPs<sup>(†)</sup></u></b>
2014	\$700,000.00	5.750%	4.210%	9	113807AA
2015	1,575,000.00	5.750	4.600	7	113807AB
2016	2,445,000.00	5.750	4.920	5	113807AC
2017	3,325,000.00	5.750	5.170	3	113807AD
2018	4,200,000.00	5.750	5.390	1	113807AE
2019	5,070,000.00	5.750	5.560	8	113807AF
2020	6,055,000.00	5.750	5.680 <sup>(††)</sup>	6	113807AG

\$110,090,000.00 6.000% per annum Term Bonds Due July 15, 2030 — Yield 6.100%; CUSIP: 113807AH4

\$25,250,000.00 6.500% per annum Term Bonds Due July 15, 2030 — Yield 5.875%<sup>(††)</sup>; CUSIP: 113807AT8

\$187,585,000.00 6.250% per annum Term Bonds Due July 15, 2040 — Yield 6.350%; CUSIP: 113807AJ0

\$135,790,000.00 6.375% per annum Term Bonds Due July 15, 2043 — priced at 98.625 to yield approximately 6.476%; CUSIP: 113807AS0

**\$28,914,996.50 CAPITAL APPRECIATION BONDS**

<b><u>Maturity Date</u></b> <b><u>(July 15)</u></b>	<b><u>Initial Principal Amount</u></b>	<b><u>Accreted Value at Maturity Date</u></b>	<b><u>Initial Amount per \$5,000 Accreted Value at Maturity</u></b>	<b><u>Yield to Maturity Date</u></b>	<b><u>CUSIPs</u></b>
2031	\$5,063,720.10	\$23,515,000.00	\$1,076.70	7.250%	113807AK7
2032	4,850,146.50	24,450,000.00	991.85	7.300	113807AL5
2033	4,630,380.75	25,365,000.00	912.75	7.350	113807AM3
2034	4,421,744.80	26,345,000.00	839.20	7.400	113807AU5
2035	1,922,499.90	12,470,000.00	770.85	7.450	113807AV3
****	****	****	****	****	****
2044	2,379,600.30	35,805,000.00	332.30	8.000	113807AN1
2045	2,118,181.50	34,470,000.00	307.25	8.000	113807AP6
2046	1,875,866.20	33,020,000.00	284.05	8.000	113807AQ4
2047	1,652,856.45	31,465,000.00	262.65	8.000	113807AR2

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<sup>(†)</sup> CUSIP® is a registered trademark of the American Bankers Association. CUSIP data herein are provided by Standard & Poor's CUSIP Service Bureau, a division of The McGraw-Hill Companies, Inc. CUSIP numbers have been assigned by an independent company not affiliated with the Issuer and are included solely for the convenience of the holders of the Series 2009 PILOT Bonds. The Issuer is not responsible for the selection or uses of these CUSIP numbers, nor is any representation made as to their correctness on the Series 2009 PILOT Bonds or as indicated above.

<sup>(††)</sup> Priced to call on July 15, 2019.

**[Insert Drawing of the Arena]**

NO DEALER, BROKER, SALESMAN OR OTHER PERSON HAS BEEN AUTHORIZED BY THE ISSUER, ARENACO OR THE UNDERWRITERS TO GIVE ANY INFORMATION OR TO MAKE ANY REPRESENTATIONS, OTHER THAN THOSE CONTAINED IN THIS OFFICIAL STATEMENT, AND, IF GIVEN OR MADE, SUCH OTHER INFORMATION OR REPRESENTATIONS MUST NOT BE RELIED UPON AS HAVING BEEN AUTHORIZED BY THE ISSUER, ARENACO, ARENACO'S AFFILIATES OR THE UNDERWRITERS. THIS OFFICIAL STATEMENT DOES NOT CONSTITUTE AN OFFER TO SELL OR THE SOLICITATION OF AN OFFER TO BUY, NOR SHALL THERE BE ANY SALE OF THE SERIES 2009 PILOT BONDS BY ANY PERSON IN ANY JURISDICTION IN WHICH IT IS UNLAWFUL FOR SUCH PERSON TO MAKE SUCH OFFER, SOLICITATION OR SALE. THE INFORMATION SET FORTH HEREIN CONCERNING DTC HAS BEEN FURNISHED BY DTC, AND NO REPRESENTATION IS MADE BY THE ISSUER, ARENACO, ARENACO'S AFFILIATES OR THE UNDERWRITERS AS TO THE COMPLETENESS OR ACCURACY OF SUCH INFORMATION. THE ISSUER HAS ONLY PROVIDED THE INFORMATION SET FORTH IN THIS OFFICIAL STATEMENT UNDER THE HEADINGS "THE ISSUER", "PROJECT PARTICIPANTS—THE ISSUER" AND "LITIGATION" (INsofar AS SUCH INFORMATION RELATES TO THE ISSUER). ALL OTHER INFORMATION SET FORTH HEREIN HAS BEEN OBTAINED FROM ARENACO, ARENACO'S AFFILIATES AND OTHER SOURCES WHICH ARE BELIEVED TO BE RELIABLE BUT IS NOT GUARANTEED AS TO ACCURACY OR COMPLETENESS BY, AND IS NOT TO BE CONSTRUED AS A REPRESENTATION BY, THE UNDERWRITERS.

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THIS OFFICIAL STATEMENT IS INTENDED TO REFLECT FACTS AND CIRCUMSTANCES ON THE DATE OF THIS OFFICIAL STATEMENT OR ON SUCH OTHER DATE OR AT SUCH OTHER TIME AS IDENTIFIED HEREIN. NO ASSURANCE CAN BE GIVEN THAT SUCH INFORMATION WILL NOT BE INCOMPLETE OR MISLEADING AT A LATER DATE. CONSEQUENTLY, RELIANCE ON THIS OFFICIAL STATEMENT AT TIMES SUBSEQUENT TO THE ISSUANCE OF THE SERIES 2009 PILOT BONDS DESCRIBED HEREIN SHOULD NOT BE MADE ON THE ASSUMPTION THAT ANY SUCH FACTS OR CIRCUMSTANCES ARE UNCHANGED.

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THE UNDERWRITERS HAVE PROVIDED THE FOLLOWING SENTENCE FOR INCLUSION IN THIS OFFICIAL STATEMENT: THE UNDERWRITERS REVIEWED THE INFORMATION IN THIS OFFICIAL STATEMENT IN ACCORDANCE WITH, AND AS PART OF, THEIR RESPECTIVE RESPONSIBILITIES TO INVESTORS UNDER THE FEDERAL SECURITIES LAWS AS APPLIED TO THE FACTS AND CIRCUMSTANCES OF THIS TRANSACTION, BUT THE UNDERWRITERS DO NOT GUARANTEE THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

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IN CONNECTION WITH THIS OFFERING, THE UNDERWRITERS MAY OVERALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE SERIES 2009 PILOT BONDS OFFERED HEREBY AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET, AND SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITERS MAY OFFER AND SELL THE SERIES 2009 PILOT BONDS TO CERTAIN DEALERS AND OTHERS AT PRICES OR YIELDS LOWER THAN THE PUBLIC OFFERING PRICES OR YIELDS STATED ON THE INSIDE COVER

PAGE OF THIS OFFICIAL STATEMENT, AND SUCH PUBLIC OFFERING PRICES OR YIELDS MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITERS.

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THE REGISTRATION, QUALIFICATION OR EXEMPTION OF THE SERIES 2009 PILOT BONDS IN ACCORDANCE WITH THE APPLICABLE SECURITIES LAW PROVISIONS OF THE JURISDICTIONS IN WHICH THESE SECURITIES HAVE BEEN REGISTERED, QUALIFIED OR EXEMPTED DOES NOT MEAN THAT EITHER THESE JURISDICTIONS OR ANY OF THEIR AGENCIES HAVE PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED, THE SERIES 2009 PILOT BONDS OR THEIR OFFER OR SALE. NEITHER THESE JURISDICTIONS NOR ANY OF THEIR AGENCIES HAVE GUARANTEED OR PASSED UPON THE SAFETY OF THE SERIES 2009 PILOT BONDS AS AN INVESTMENT, UPON THE PROBABILITY OF ANY EARNINGS THEREON OR UPON THE ACCURACY OR ADEQUACY OF THIS OFFICIAL STATEMENT.

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THE SERIES 2009 PILOT BONDS HAVE NOT BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR HAS THE PILOT BONDS INDENTURE BEEN QUALIFIED UNDER THE TRUST INDENTURE ACT OF 1939, AS AMENDED. IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY UPON THEIR OWN EXAMINATIONS OF THE ISSUER, ARENACO AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED.

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THE STATEMENTS CONTAINED IN THIS OFFICIAL STATEMENT THAT ARE NOT PURELY HISTORICAL ARE FORWARD-LOOKING STATEMENTS, INCLUDING STATEMENTS REGARDING ARENACO'S EXPECTATIONS, HOPES, INTENTIONS OR STRATEGIES REGARDING THE FUTURE. ALL FORWARD-LOOKING STATEMENTS INCLUDED IN THIS OFFICIAL STATEMENT ARE BASED ON INFORMATION AVAILABLE TO ARENACO ON THE DATE HEREOF, AND NEITHER THE ISSUER NOR ARENACO ASSUMES ANY OBLIGATION TO UPDATE ANY SUCH FORWARD-LOOKING STATEMENTS. SEE "RISK FACTORS AND INVESTMENT CONSIDERATIONS."

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NONE OF THE NATIONAL BASKETBALL ASSOCIATION, ANY OF ITS AFFILIATES OR MEMBERS (OTHER THAN NEW JERSEY BASKETBALL), AND ANY OF THEIR RESPECTIVE OWNERS, OFFICERS, EMPLOYEES OR REPRESENTATIVES HAS PASSED UPON OR IS RESPONSIBLE FOR THE ACCURACY OR COMPLETENESS OF THIS OFFICIAL STATEMENT OR ANY STATEMENT CONTAINED HEREIN. SEE "RISK FACTORS AND INVESTMENT CONSIDERATIONS."

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## **DATA RELATED TO PROJECTED RESULTS OF ARENACO**

THE FINANCIAL AND OPERATING PROJECTIONS CONTAINED IN THIS OFFICIAL STATEMENT REPRESENT ARENACO'S BEST ESTIMATES AS OF DECEMBER 16, 2009. NEITHER THE ISSUER'S NOR ARENACO'S INDEPENDENT PUBLIC ACCOUNTANTS NOR ANY OTHER THIRD PARTY, EXCEPT CONVENTIONS, SPORTS & LEISURE INTERNATIONAL, INC. ("*CSL INTERNATIONAL*"), HAS EXAMINED, REVIEWED OR COMPILED THE PROJECTIONS AND, ACCORDINGLY, NONE OF THE FOREGOING EXPRESSES AN OPINION OR OTHER FORM OF ASSURANCE WITH RESPECT THERETO. CSL INTERNATIONAL HAS CONDUCTED A FINANCIAL FEASIBILITY ANALYSIS WITH RESPECT TO ARENA OPERATIONS (THE "*CSL FINANCIAL FEASIBILITY STUDY*"), AND A COPY OF SUCH CSL FINANCIAL FEASIBILITY STUDY IS ATTACHED TO THIS OFFICIAL STATEMENT AS APPENDIX W; REFERENCE IS MADE THERETO FOR THE OPINIONS EXPRESSED THEREIN. CSL INTERNATIONAL HAS ALSO CONDUCTED A MARKET STUDY (THE "*CSL MARKET STUDY*"), AND A COPY OF SUCH CSL MARKET STUDY IS ATTACHED TO THIS OFFICIAL STATEMENT AS APPENDIX X. THE ASSUMPTIONS UPON WHICH ARENACO'S PROJECTIONS ARE BASED ARE DESCRIBED IN MORE DETAIL HEREIN. SOME OF THESE ASSUMPTIONS INEVITABLY WILL NOT MATERIALIZE, AND UNANTICIPATED EVENTS MAY OCCUR THAT COULD AFFECT ARENACO'S RESULTS. THEREFORE, ARENACO'S ACTUAL RESULTS ACHIEVED DURING THE PERIODS COVERED BY THE PROJECTIONS WILL VARY FROM THE PROJECTED RESULTS, AND THESE VARIATIONS COULD MATERIALLY AFFECT ARENACO'S ABILITY TO MAKE THE PAYMENTS IN LIEU OF REAL ESTATE TAXES WHICH ARE THE ANTICIPATED SOURCE OF REVENUES FOR THE PAYMENT BY THE ISSUER OF DEBT SERVICE ON THE SERIES 2009 PILOT BONDS. PROSPECTIVE INVESTORS IN THE SERIES 2009 PILOT BONDS ARE CAUTIONED NOT TO PLACE UNDUE RELIANCE ON THE PROJECTIONS INCLUDED HEREIN.



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## SUMMARY STATEMENT

*The following summary is qualified in its entirety by reference to more detailed information appearing elsewhere in this Official Statement, including the Appendices hereto, and by each of the documents referenced herein. This is an offering of securities, certain proceeds of which will be used to finance a portion of the costs of the development and construction of a new event facility in the Borough of Brooklyn, New York, including certain related infrastructure and improvements. The purchase and holding of such securities involve significant investment risks. For an index of certain terms defined herein, see “APPENDIX B—INDEX OF CERTAIN DEFINED TERMS.” For definitions of certain terms used herein, see “APPENDIX C—CERTAIN DEFINITIONS.”*

Overview..... Brooklyn Arena Local Development Corporation (the “*Issuer*”), a local development corporation formed under Section 1411 of the Not-For-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”), and created by action of the New York Job Development Authority (the “*NYJDA*”) established under Section 1802, Subtitle 1, Title 8, Article 8 of the New York Public Authorities Law, as amended, is issuing \$510,999,996.50 of its PILOT Revenue Bonds, Series 2009 (Barclays Center Project) (the “*Series 2009 PILOT Bonds*”), certain proceeds of which Series 2009 PILOT Bonds, together with certain other moneys, will be used to pay the costs of the Arena Project.

The “*Arena Project*” is comprised of the design, development, acquisition, construction and equipping of an arena (the “*Arena*”) and certain other improvements related to the Arena (the “*Arena Infrastructure*”) in the Atlantic Terminal area of the Borough of Brooklyn, New York, to be used as the home venue of the professional basketball team currently known as the New Jersey Nets (the “*Nets*”) and as a venue for other entertainment, cultural, sporting and civic events.

The Arena Project is a phase of a major mixed-use development project planned for an approximately twenty-two- (22-) acre site (inclusive of certain areas of air space) in the Atlantic Terminal area of Brooklyn entitled the Atlantic Yards Land Use Improvement and Civic Project (the “*Atlantic Yards Project*”). Brooklyn Events Center, LLC, a Delaware limited liability company (“*ArenaCo*”), is a newly-formed and wholly-owned subsidiary of Brooklyn Arena Holding Company, LLC, a Delaware limited liability company (“*Arena HoldCo*”). Arena HoldCo is a newly-formed and wholly owned subsidiary of Brooklyn Arena, LLC, a Delaware limited liability company (the “*Arena Developer*”). ArenaCo will be the tenant of the Arena Project and will make payments in lieu of *ad valorem* real estate taxes (“*PILOTs*”) to the New York State Urban Development Corporation d/b/a Empire State Development Corporation (“*ESDC*”) under the PILOT Agreement.

See “THE ISSUER”, “THE ARENA PROJECT” and “PROJECT PARTICIPANTS.”

The Issuer.....	<p>The Issuer is an instrumentality of the State of New York (the “<i>State</i>”), separate and apart from the State itself, the NYJDA and ESDC. The Issuer was formed to finance certain components of the Atlantic Yards Project, including the design, development and construction of the Arena Project and certain infrastructure related thereto.</p> <p>The Issuer will be the lessee of the Arena Premises and the Arena Project under the Ground Lease and will sublease the Arena Premises and the Arena Project to ArenaCo under the Arena Lease Agreement. The Issuer will also be a party to, and a beneficiary of, the Non-Relocation Agreement and will be a party to the PILOT Agreement. See “THE ISSUER” and “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements.”</p>
The Series 2009 PILOT Bonds...	<p>The Series 2009 PILOT Bonds will be issued in accordance with the Enabling Act and the Master PILOT Indenture of Trust, dated as of December 1, 2009 (the “<i>Master PILOT Indenture</i>”), by and between the Issuer and The Bank of New York Mellon (the “<i>PILOT Bond Trustee</i>”) and the First Supplemental PILOT Indenture of Trust, by and between the Issuer and the PILOT Bond Trustee, dated as of December 1, 2009 (the “<i>First Supplemental PILOT Indenture</i>” and, together with the Master PILOT Indenture, the “<i>PILOT Bonds Indenture</i>”). The Series 2009 PILOT Bonds will be issuable as current interest bonds (the “<i>Series 2009 Current Interest PILOT Bonds</i>”) and as capital appreciation bonds (the “<i>Series 2009 Capital Appreciation PILOT Bonds</i>”). The Series 2009 Current Interest PILOT Bonds are issued in the aggregate principal amount of \$482,085,000.00 and will bear interest at the rates per annum set forth on the inside cover page hereof, which interest will be payable semiannually, in arrears, in cash on each January 15 and July 15, commencing July 15, 2010. The Series 2009 Capital Appreciation PILOT Bonds are issued in the aggregate initial principal amount of \$28,914,996.50 and will accrete in value at the rates per annum set forth on the inside cover page hereof, which interest will be compounded semiannually on each January 15 and July 15, commencing July 15, 2010. See “THE SERIES 2009 PILOT BONDS.”</p>
Commencement Agreement .....	<p>Concurrently with the issuance of the Series 2009 PILOT Bonds, the Issuer, ESDC, The City of New York (the “<i>City</i>”), Atlantic Yards Development Company, LLC, a Delaware limited liability company (“<i>AYDC</i>”), AYDC Interim Developer, LLC, a Delaware limited liability company, the Arena Developer, ArenaCo, Atlantic Rail Yards, LLC, a New York limited liability company, The Bank of New York Mellon, in its capacity as Infrastructure Trustee (the “<i>Infrastructure Trustee</i>”), The Bank of New York Mellon, in its capacity as PILOT Trustee (the “<i>PILOT Trustee</i>”), the PILOT Bond Trustee, New Jersey Basketball, LLC, a New Jersey limited liability company (“<i>New Jersey Basketball</i>”), the Metropolitan Transportation Authority, a body corporate and politic constituting</p>

a public benefit corporation of the State of New York, The Long Island Rail Road Company, a body corporate and politic constituting a public benefit corporation of the State of New York, New York City Transit Authority, a body corporate and politic constituting a public benefit corporation of the State of New York, and Commonwealth Land Title Insurance Company, a Nebraska corporation, as Document Agent (the “*Document Agent*”) will execute a Commencement Agreement (the “*Commencement Agreement*”), pursuant to which (i) the net proceeds of the Series 2009 PILOT Bonds will be held by the PILOT Bond Trustee under the PILOT Bonds Indenture and (ii) certain documents, including documents related to the Arena Project, will be held in escrow by the Document Agent in accordance with such Commencement Agreement until the earlier of the Arena Project Effective Date (as such term is defined in the Commencement Agreement) or [January 15, 2011] (the “*Outside Commencement Date*”), all as more fully described herein.

See “INTRODUCTION—Commencement Agreement” and “THE SERIES 2009 PILOT BONDS—Commencement Agreement” and “—Redemption”; see also “APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT.”

Purpose of the Series 2009 PILOT Bonds.....

The Issuer is issuing the Series 2009 PILOT Bonds for the purposes of (i) providing a portion of the costs of acquisition and construction of the Arena Project; (ii) funding the Series 2009 PILOT Bonds Debt Service Reserve Subaccount in the amount of the Senior PILOT Bonds Debt Service Reserve Account Requirement for the Series 2009 PILOT Bonds; (iii) funding the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount in a portion of the amount of the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement for the Series 2009 PILOT Bonds; (iv) paying capitalized interest on the Series 2009 PILOT Bonds from the Arena Project Effective Date through May 15, 2012; and (v) reimbursing certain Costs of Issuance. See “PLAN OF FINANCE—General” and “—Estimated Sources and Uses of Funds”; see also “THE SERIES 2009 PILOT BONDS.”

Certain costs associated with the Arena Project are expected to be paid for by: (A) the City, which will make a capital contribution for the Arena Project through the appropriation of \$131 million from the City’s budget, to be applied to the payment of certain costs incurred in connection with the acquisition by ESDC of the Arena Premises, and (B) ArenaCo (or its members or investors) as part of ArenaCo’s obligations under the Arena Lease Agreement. The State, acting through ESDC, will make a capital contribution of \$100 million for certain costs incurred in connection with the construction of certain items of the Atlantic Yards Project infrastructure, including a portion of the Related Infrastructure, which benefit but are not a part of the Arena Project. **Neither the State nor the City is or shall become obligated to pay the principal of or interest on the Series 2009 PILOT Bonds, and**

**neither the faith and credit nor the taxing power of the State or City is pledged to such payment. See “PLAN OF FINANCE.”**

Sources of Payment and Security  
for the Series 2009 PILOT  
Bonds.....

The principal or Accreted Value, as applicable, of and premium, if any, and interest, as applicable, on the Series 2009 PILOT Bonds are payable out of and secured by (i) revenues of the Issuer derived and to be derived from PILOTs made by ArenaCo to ESDC under the PILOT Agreement and assigned by ESDC to the PILOT Trustee pursuant to the PILOT Assignment, which revenues are actually received by the PILOT Bond Trustee pursuant to the PILOT Assignment (the “*PILOT Revenues*”); (ii) all right, title and interest of the PILOT Bond Trustee in certain funds and accounts held by the PILOT Trustee under the PILOT Assignment; and (iii) all right, title and interest of the PILOT Bond Trustee in certain funds and accounts held by the PILOT Bond Trustee under the PILOT Bonds Indenture. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS.”

Series 2009 PILOT Bonds Debt  
Service Reserve  
Subaccount .....

At the time of the issuance of the Series 2009 PILOT Bonds, the PILOT Bonds Indenture establishes the Series 2009 PILOT Bonds Debt Service Reserve Subaccount, which Subaccount is required to be funded on the Arena Project Effective Date in an amount equal to \$39,852,956, which is amount is equal to Average Annual Debt Service on the Series 2009 PILOT Bonds as of their date of issuance. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Senior PILOT Bonds Debt Service Reserve Fund.”

Series 2009 PILOT Bonds Strike  
and Liquidity Reserve  
Subaccount.....

At the time of the issuance of the Series 2009 PILOT Bonds, the PILOT Bonds Indenture establishes the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount, which Subaccount is required to be funded on the Arena Project Effective Date in an amount equal to \$19,926,478, which is amount is equal to one-half of Average Annual Debt Service on the Series 2009 PILOT Bonds as of their date of issuance. Amounts on deposit in the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount will be available to pay the principal of and interest on the Series 2009 PILOT Bonds to the extent (A) moneys on deposit in the Series 2009 PILOT Bonds Interest Subaccount, the Series 2009 PILOT Bonds Principal Subaccount and the Series 2009 PILOT Bonds Debt Service Reserve Subaccount and required to be withdrawn from such subaccounts are insufficient for the purposes thereof on such Interest Payment Date, or (B) (1) a delay in the construction of the Arena Project has occurred and (2) on the next Interest Payment Date to occur following the date of the commencement of such delay, moneys on deposit in the Series 2009 PILOT Bonds Capitalized Interest Account and required to be withdrawn from such subaccount are insufficient to pay all or any part of the accrued interest due and payable on such Interest Payment Date. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Senior PILOT Bonds Debt

Service Reserve Fund.”

PILOT Agreement and PILOT  
Assignment .....

So long as ESDC holds fee title to the Arena Premises and the Arena Project, no general *ad valorem* real estate taxes (other than assessments for local improvements) will be payable to the City by ESDC, the Issuer or ArenaCo or any other person with respect to the Arena Premises or the Arena Project. However, the City, the Issuer, ESDC and ArenaCo will enter into a Payment-in-Lieu-of-Tax Agreement (Arena) (the “*PILOT Agreement*”) under which ArenaCo will be required to make PILOTs to ESDC. ESDC will agree under the PILOT Agreement to pay or cause to be paid to the City, or as the City may otherwise provide by assignment or other agreement, the PILOTs received under the PILOT Agreement. ESDC, the Issuer, the PILOT Bond Trustee, the PILOT Trustee and the City will enter into a PILOT Assignment and Escrow Agreement (Arena) (the “*PILOT Assignment*”), pursuant to which the City, as the municipality to which *ad valorem* taxes would be owed with respect to the Arena Project and the Arena Premises, but for ESDC’s ownership of such real property, will expressly agree, among other things, to forego receipt of the PILOTs it would have otherwise been entitled to receive. Furthermore, pursuant to the PILOT Assignment, ESDC will, among other things, assign to the PILOT Trustee all of its right to and interest in all PILOTs due or to become due under the PILOT Agreement and any and all other of its rights and remedies under or arising out of the PILOT Agreement, except for Unassigned PILOT Rights.

See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS,” “APPENDIX M—SUMMARY OF THE PILOT AGREEMENT” and “APPENDIX N—SUMMARY OF THE PILOT ASSIGNMENT.”

The Series 2009 PILOT Bonds are  
Special Limited  
Obligations.....

The Series 2009 PILOT Bonds are special limited obligations of the Issuer payable solely from PILOT Revenues derived from PILOTs made by ArenaCo pursuant to the PILOT Agreement, the interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment and certain Funds and Accounts held by the PILOT Bond Trustee under the PILOT Bonds Indenture. **None of the State, the City and ESDC is or shall be obligated to pay the principal of or interest on the Series 2009 PILOT Bonds, and neither the faith and credit nor the taxing power of the State or the City is pledged to such payment. The Issuer has no taxing power. The Series 2009 PILOT Bonds do not constitute an obligation of ArenaCo, New Jersey Basketball, the Arena Developer or any of their respective affiliates. The Series 2009 PILOT Bonds are not secured by any interest in the Atlantic Yards Project, including the Arena Project, nor any property of or interest in ArenaCo, New Jersey Basketball, the Arena Developer or any of their respective affiliates. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009**



PILOT BONDS.”

Enforcement of PILOTs—  
Leasehold PILOT  
Mortgages.....

The obligation of ArenaCo under the PILOT Agreement to make PILOTs to ESDC with respect to each separate PILOT Year will be secured by a separate Leasehold PILOT Mortgage for each such PILOT Year, granted by ArenaCo to ESDC and assigned to the PILOT Trustee, encumbering ArenaCo’s interest under the Arena Lease Agreement in and to the Arena Premises and the Arena Project (each, a “*Leasehold PILOT Mortgage*” and, collectively, the “*Leasehold PILOT Mortgages*”). Each Leasehold PILOT Mortgage is (i) subject and subordinate to those Leasehold PILOT Mortgages securing ArenaCo’s PILOT obligations corresponding to all succeeding PILOT Years and (ii) paramount in lien to those Leasehold PILOT Mortgages securing ArenaCo’s PILOT obligations corresponding to all preceding PILOT Years. If the PILOT Trustee should foreclose any Leasehold PILOT Mortgage as to a PILOT Year for which PILOTs were not paid, any sale of ArenaCo’s interest in and to the Arena Premises and the Arena Project upon foreclosure would be subject to liens of the Leasehold PILOT Mortgages for later years. Each Leasehold PILOT Mortgage is also subordinate to the Permitted Encumbrances. The Leasehold PILOT Mortgages will be assigned to the PILOT Trustee pursuant to an Assignment of Leasehold PILOT Mortgages. The Leasehold PILOT Mortgages will not be assigned to the PILOT Bond Trustee and will not constitute security for the Series 2009 PILOT Bonds. Holders of the Series 2009 PILOT Bonds will have no rights under the Leasehold PILOT Mortgages, and the Series 2009 PILOT Bonds will not be secured by any interest in the Arena Project, the Arena Premises or any other portion of the Atlantic Yards Project. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS” and “APPENDIX O—SUMMARY OF THE LEASEHOLD PILOT MORTGAGES.”

Optional Redemption.....

The Series 2009 Current Interest PILOT Bonds maturing on or after July 15, 2020 are subject to optional redemption prior to maturity in whole or in part on and after July 15, 2019 (in accordance with procedures of DTC, so long as DTC is the sole registered owner, and otherwise by lot in such manner as the PILOT Bond Trustee in its discretion deems proper) at one hundred percent (100%) of the principal amount thereof, together with accrued and otherwise unpaid interest thereon up to but not including the redemption date. The Series 2009 Capital Appreciation PILOT Bonds are not subject to optional redemption prior to maturity at the option of the Issuer. See “THE SERIES 2009 PILOT BONDS—Redemption—Optional Redemption for the Series 2009 Current Interest PILOT Bonds” and “—Optional Redemption for the Series 2009 Capital Appreciation PILOT Bonds.”

Extraordinary Mandatory

**Under a number of conditions as described in detail in this Official Statement, the Series 2009 PILOT Bonds will be**

Redemption .....	<p><b>subject to extraordinary mandatory redemption prior to maturity in whole at a Redemption Price equal to 101% of: (i) with respect to the Series 2009 Current Interest PILOT Bonds, the Amortized Value thereof, plus accrued and unpaid interest thereon through the Extraordinary Mandatory Redemption Date, and (ii) with respect to the Series 2009 Capital Appreciation PILOT Bonds, the Accreted Value thereof as of such Extraordinary Mandatory Redemption Date.</b></p> <p>See “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption”; see also “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—Failure to Satisfy Vacant Possession Release Conditions.”</p>
Mandatory Sinking Fund Redemption.....	<p>The Series 2009 Current Interest PILOT Bonds maturing on July 15, 2030 (two separate maturities), July 15, 2040 and July 15, 2043 are subject to scheduled mandatory redemption prior to maturity in part, by the payment of sinking fund installments, on the dates and in the amounts set forth in the PILOT Bonds Indenture and herein. The Series 2009 PILOT Bonds called for scheduled mandatory redemption will be redeemed at a Redemption Price equal to 100% of the principal amount thereof, plus accrued and unpaid interest thereon to the redemption date. See “THE SERIES 2009 PILOT BONDS—Redemption—Mandatory Sinking Fund Redemption.”</p>
Special Mandatory Redemption.....	<p>The Series 2009 PILOT Bonds are also subject to special mandatory redemption, in whole or in part, on any date upon the occurrence of certain events, at a Redemption Price equal to 100% of (i) with respect to Series 2009 Current Interest PILOT Bonds, the principal amount to be redeemed plus accrued interest, if any, to the date of redemption, and (ii) with respect to Series 2009 Capital Appreciation PILOT Bonds, the Accreted Value thereof on such redemption date. See “THE SERIES 2009 PILOT BONDS—Redemption—Special Mandatory Redemption.”</p>
Additional PILOT Bonds .....	<p>The PILOT Bonds Indenture provides that the Issuer may issue Additional PILOT Bonds on a parity with, or subordinated to, the Series 2009 PILOT Bonds for any one (1) or more of the following purposes: (i) to provide for the costs of design, development, acquisition, construction and equipping of the Arena Project, (ii) to provide funds necessary to complete the Arena Project, (iii) to provide funds in excess of Restoration Funds to repair, relocate, replace, rebuild or restore the Arena Project in the event of damage, destruction or taking by eminent domain, (iv) to provide funds for extensions, additions, improvements or facilities to the Arena, the purpose of which must constitute a “project” within the meaning of the UDC Act, or (v) to refund Outstanding PILOT Bonds (or other obligations issued on a parity therewith) (“<i>Refunding PILOT Bonds</i>”). Under current Internal Revenue Service rules, interest on any Additional PILOT Bonds which are</p>

not Refunding PILOT Bonds would not be excluded from gross income for federal income tax purposes. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Additional PILOT Bonds.”

ArenaCo..... ArenaCo will be the tenant of the Arena Premises and the Arena Project under the Arena Lease Agreement as well as the licensor of the Arena under the Nets License Agreement. ArenaCo will be responsible for making all PILOTs under the PILOT Agreement. ArenaCo will receive all Arena Tenant Revenue, which will be used by ArenaCo to make such PILOTs under the PILOT Agreement, to pay Rent under the Arena Lease Agreement, to pay certain costs of operating and maintaining the Arena Project, and to pay for certain capital repairs and improvements of the Arena Project. See “PROJECT PARTICIPANTS—The Arena Developer, ArenaCo and New Jersey Basketball”; see also “ARENA MANAGEMENT AND OPERATIONS.”

The sole member of ArenaCo will be Arena HoldCo. Pursuant to ArenaCo's operating agreement (the “*ArenaCo Operating Agreement*”), ArenaCo may not make distributions to Arena HoldCo unless a number of financial conditions have been satisfied, as described herein. See “PROJECT PARTICIPANTS—The Arena Developer, ArenaCo and New Jersey Basketball” and “APPENDIX T—ARENACO OPERATING AGREEMENT.”

The Arena Project..... The Arena Project will be constructed on the Arena Premises located in the Borough of Brooklyn, New York, and adjacent to the Atlantic Terminal, New York City's third largest transit hub. When complete, the Arena is expected to have a maximum seating capacity for basketball of approximately 18,282 spectators, including 17,103 in non-suite seats and 1,179 in the various luxury suites, loge boxes and party suites, and will also allow for simple reconfiguration to create seating options for as few as 3,000 spectators. The Arena will contain various facilities and amenities typical of and appropriate to a state-of-the-art, first-class professional basketball facility. In addition to hosting Home Games, the Arena will be designed to accommodate other entertainment, religious, sporting, and civic events, as described herein. See “THE ARENA PROJECT.”

Arena Project Development ..... *Arena Project Construction.* ArenaCo will be responsible for managing construction of the Arena Project. On or before the date of delivery of the Series 2009 PILOT Bonds, ArenaCo will enter into a design/build contract with Hunt Construction Group, Inc. (the “*Arena Design/Build Contractor*”) for the design and construction of the Arena (the “*Arena Design/Build Contract*”). The Arena Design/Build Contract will provide for a guaranteed maximum price. The Arena is being designed by AECOM Ellerbe Becket Architects and Engineers, P.C., and the façade of the Arena is being designed by ShoP Architects, P.C. The façade consists of an exterior wall system of glass and metal panels with horizontal

steel bands encircling the building. Pre-construction work for the Arena Project, including but not limited to excavation work at the Arena Premises, has commenced and is ongoing, and ArenaCo expects that construction of the Arena Project will be completed by the second calendar quarter of 2012.

*Arena Infrastructure.* ArenaCo or its affiliates will enter into contracts with contractors and/or construction managers for the development and construction of the Arena Infrastructure, which will include, without limitation, the following items: the Transit Improvements, the Urban Experience and other site work, and the Fourth Avenue Reconfiguration, as more fully described herein. ArenaCo and its affiliates anticipate retaining Turner Construction Company, a New York corporation, to provide program management and construction oversight services in connection with the Arena Project, including the Arena Infrastructure.

*Related Infrastructure.* In addition to the construction of Arena Infrastructure, certain other items of infrastructure (the “*Related Infrastructure*”) will be required in order to construct and open the Arena. The costs of such Related Infrastructure are not covered by the proceeds of the Series 2009 PILOT Bonds. Such work overlaps with that of the Atlantic Yards Project, some of which is in progress and all of which will be performed by AYDC or its affiliates and will be funded from other sources, including amounts received from the State under the State Funding Agreement.

See “THE ARENA PROJECT—Arena Project Development.”

Arena Project Development  
Costs.....

Arena Project costs including site preparation costs, hard costs, soft costs and contingency which total approximately \$807.1 million and Arena Infrastructure costs which total approximately \$97.2 million. Total Arena Project costs will thus equal approximately \$904.3 million. Of the approximately \$904.3 million of total Arena Project costs, approximately \$156.5 million has been contributed as of October 31, 2009, which amount includes \$85 million in funds received under the City Funding Agreement. As of November 1, 2009, approximately \$747.8 million in costs will be required to complete the Arena Project (approximately \$655.8 million are Arena costs and approximately \$92.0 million are Arena Infrastructure costs). Of the approximately \$655.8 million of remaining Arena costs, approximately \$481.3 million are covered by the provisions of the Arena Design/Build Contract (exclusive of approximately \$3.3 million which has been paid to the Arena Design/Build Contractor). The approximately \$481.3 million covered by the Design/Build Contract includes approximately \$19.7 million of contingency. Furthermore, there is an additional Arena Project contingency in the amount of approximately \$33.4 million. Contracts have not yet been entered into for the construction of the Arena Infrastructure.

See “THE ARENA PROJECT—Arena Project Development” and “—Estimated Arena Project Development Costs”; see also “PLAN OF FINANCE—Estimated Sources and Uses of Funds.”

Governmental Permits and  
Approvals—Condemnation  
and Vacant Possession.....

The Atlantic Yards Project, including the Arena Project, was approved by ESDC in a project plan dated July 18, 2006, as subsequently modified in a Modified General Project Plan adopted by ESDC’s Board on December 8, 2006, as further modified on June 23, 2009, and affirmed by ESDC’s Board on September 17, 2009. The Atlantic Yards Project and ESDC’s participation were approved by the New York State Public Authorities Control Board on December 20, 2006.

On September 18, 2009, the Developer and ESDC entered into a Land Acquisition Funding, Property Management and Relocation Agreement (the “*LAFPMRA*”), pursuant to which ESDC agreed to exercise its power of eminent domain pursuant to Section 207 of the New York State Eminent Domain Procedure Law (“*EDPL*”) to condemn or otherwise acquire portions of the property required for the Atlantic Yards Project, including the Arena Project. Upon the completion of all procedures prescribed by the *EDPL*, it is anticipated that title to the properties necessary for the first phase of the Atlantic Yards Project, including the Arena Project, will vest in ESDC. Prior to completion of the Arena Project, a number of other governmental permits and approvals must be obtained. See “THE ARENA PROJECT—Governmental Permits and Approvals.”

Project Leases and  
Agreements.....

*Arena Block Declaration.* ESDC will execute the Arena Block Declaration of Easements (the “*Arena Block Declaration*”), which will establish certain economic and real property arrangements among all owners and occupants of the other portions of the Arena Block (as defined in the *Arena Block Declaration*), including ArenaCo. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Arena Block Declaration of Easements” and “APPENDIX F—SUMMARY OF THE DECLARATION OF EASEMENTS.”

*Development Agreement.* ESDC and the Developer will execute a Development Agreement (the “*Development Agreement*”) that will set forth the general rights and obligations of ESDC and the Developer with respect to the development and construction of the overall Atlantic Yards Project, including the Arena Project. The Development Agreement will authorize and engage the Arena Developer and its affiliates to construct the Atlantic Yards Project. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Development Agreement.”

*Arena Premises Interim Lease Agreement.* Pursuant to the Arena Premises Interim Lease Agreement, the Arena Developer will lease the Arena Premises from ESDC, subject to Permitted

Encumbrances (as defined in the Arena Premises Interim Lease Agreement), including the Arena Block Declaration and certain other easements, on or about the date of issuance of the Series 2009 PILOT Bonds, and will perform certain site work and other pre-construction work. As provided in the LAFPMRA, ESDC will have the obligation to obtain vacant possession of occupied parcels that make up the AY Project Site, including the Arena Premises. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Arena Premises Interim Lease Agreement.” “*Vacant possession*” is generally defined as the actual vacant occupancy and possession of the subject real property, free and clear of all leases, tenancies, occupancies, liens, encumbrances, licenses or any other matter other than specifically excepted encumbrances. See “APPENDIX E—SUMMARY OF THE ARENA PREMISES INTERIM LEASE AGREEMENT.”

*Ground Lease.* Pursuant to the Ground Lease, ESDC will lease the Arena Premises and the Arena Project to the Issuer for a period of thirty-seven (37) years commencing on the date of delivery of vacant possession of the parcels that make up the first taking of land within the AY Project Site, including the Arena Premises, is achieved (the “*Commencement Date*”). See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Ground Lease.”

*Arena Lease Agreement.* The Issuer will sublease the Arena Premises and the Arena Project to ArenaCo under the Arena Lease Agreement for an initial term commencing on the Commencement Date until the sooner to occur of (i) the later of (A) the last day of the calendar month in which the thirty-seventh (37<sup>th</sup>) anniversary of the Commencement Date occurs (“*37<sup>th</sup> Anniversary*”) and (B) if the 37<sup>th</sup> Anniversary occurs during an NBA Season, the ninetieth (90<sup>th</sup>) day following the end of such NBA Season, and (ii) such earlier date upon which the Arena Lease Agreement may be terminated pursuant to its terms. ArenaCo will have limited renewal options and a right to purchase fee title to the Arena and the Arena Premises.

ArenaCo will pay to the Issuer a Base Rent during the Initial Term of the Arena Lease Agreement *plus* an amount of Additional Rent in respect of all other amounts that become due and payable by ArenaCo under the Arena Lease Agreement, excluding PILOTs (the aggregate of all annual Base Rent and Additional Rent payments is referred to herein as “*Rent*”). Such Additional Rent will include ArenaCo’s obligation to provide for the construction cost of the Arena Project in excess of the amount of Series 2009 PILOT Bond proceeds available for such purpose, which excess cost is presently estimated at \$[334.2] million (and which amount may ultimately be reduced to reflect prior expenditures made for the Arena Project and included in the budget for the Arena Project on and after November 1, 2009). The Arena Lease Agreement

includes ArenaCo's agreement to make PILOTs in accordance with and subject to the terms of the PILOT Agreement.

Under the Arena Lease Agreement, ArenaCo will agree to fulfill its purposes of acquiring, designing, developing, equipping and constructing the Arena Project and managing the operation of the Arena, including maintenance of the Arena in a first-class manner and in compliance with the applicable League Rules.

The Arena Lease Agreement permits ArenaCo to use and occupy the Arena Project and the Arena Premises year-round for Home Games and various other events as described herein. In connection with all such events (but in each case subject to the terms of any applicable license agreement into which ArenaCo may enter), ArenaCo will have the sole and exclusive right to charge, collect and retain Arena Tenant Revenue and to determine, in its sole discretion, the prices and terms of admission, usage and/or license fees for such events and may, subject to compliance with the Arena Lease Agreement, enter into one (1) or more agreements or arrangements pursuant to which other parties may share in all or a portion of the Arena Tenant Revenue. Furthermore, the Arena Lease Agreement provides that ArenaCo may enter into a variety of advertising and sponsorship agreements, including but not limited to agreements with a party (or parties) granting such party Naming Rights, and various other long-term revenue-generating agreements, all as described herein. See "ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Arena Lease Agreement" and "APPENDIX G—SUMMARY OF THE ARENA LEASE AGREEMENT." For a further discussion of Arena Tenant Revenue, see "ARENA MANAGEMENT AND OPERATIONS—Arena Tenant Revenue," and for a discussion of some of the factors which may affect Arena Tenant Revenue, including with respect to the sources described herein, see "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations."

*PILOT Bonds Partial Lease Assignment.* Pursuant to the PILOT Bonds Partial Lease Assignment, the Issuer will directly assign to the PILOT Bond Trustee the right to enforce certain representations, warranties and covenants that ArenaCo will have made under the Arena Lease Agreement. ArenaCo will acknowledge the PILOT Bonds Partial Lease Assignment. See "ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—PILOT Bonds Partial Lease Assignment" and "APPENDIX H—SUMMARY OF THE PILOT BONDS PARTIAL LEASE ASSIGNMENT."

*Nets License Agreement.* Under the Nets License Agreement, ArenaCo will grant to New Jersey Basketball a license to use and occupy the Arena, including for Home Games, on the terms and conditions contained therein. Pursuant to the Nets License

Agreement, ArenaCo will annually collect the License Fee and certain other fees. Any Arena-related revenues (and the right to collect or retain such revenues) not specifically granted to New Jersey Basketball under the Nets License Agreement are to be retained by ArenaCo, subject to the League Rules and to other agreements into which ArenaCo may enter. From time to time, New Jersey Basketball will also be obligated to pay to ArenaCo a Merchandising Fee.

Under the Nets License Agreement, New Jersey Basketball agrees not to play any Home Games in which the Nets is the home team in any location other than the Arena, except as may be permitted by the Non-Relocation Agreement. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Nets License Agreement” and “APPENDIX I—SUMMARY OF THE NETS LICENSE AGREEMENT.”

*Parking Easement.* The Arena Lease Agreement requires ArenaCo to have access to parking for the Arena. ArenaCo will be the beneficiary of one (1) or more non-exclusive easements (collectively, the “*Parking Easement*”) appurtenant to the Arena Premises granting ArenaCo the right to access and use no less than 1,100 parking spaces on one (1) or more parcels within the AY Project Site, subject to reduction or relocation with the approval of ArenaCo. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Parking Easement.”

*Non-Relocation Agreement.* New Jersey Basketball will be party to a Non-Relocation Agreement (the “*Non-Relocation Agreement*”), which will require New Jersey Basketball to cause the Nets to play substantially all Home Games at the Arena; provided that the Nets may play any number of pre-season Home Games, up to two (2) regular season Home Games per NBA Regular Season and, if certain conditions are met, any number of post-season Home Games, in alternate venues. Additionally, the Non-Relocation Agreement will permit the Nets to play Home Games in a venue other than the Arena during the construction of the Arena Project until the later of (i) the substantial completion of the Arena Project, as defined in the Non-Relocation Agreement, and (ii) the commencement of the 2012-2013 NBA Regular Season. Certain other limited exceptions apply.

In the event New Jersey Basketball fails to meet its obligations under the Non-Relocation Agreement, the City, ESDC and the Issuer are entitled to seek declaratory relief or an equitable remedy, including specific performance. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Non-Relocation Agreement” and “APPENDIX J—SUMMARY OF THE NON-RELOCATION AGREEMENT.”

*Barclays Center Naming Rights Agreement, Founding*



*Partner/Sponsorship Agreements, and Suite License Agreements.* As of the date of this Official Statement, the Arena Developer has entered into an Amended and Restated Naming Rights Agreement with Barclays Services Corporation, numerous founding partner and sponsorship agreements, and several luxury suite license agreements, as further described herein. The Arena Developer's rights and obligations under all such agreements will be assigned to ArenaCo, and such agreements are anticipated to provide a substantial amount of Arena Tenant Revenue to ArenaCo over their respective terms. See "ARENA MANAGEMENT AND OPERATIONS—Project Lease and Agreements—Barclays Center Naming Rights Agreement and Naming Rights Agreement Assignment" and "—Arena Tenant Revenue."

NBA Consent Letter..... In connection with ArenaCo's financing of the Arena Project, the NBA will issue a letter indicating its approval and consent of the financing plan described therein (the "*NBA Consent Letter*"). The NBA originally approved of the PILOT Bond portion of the financing for the Arena Project on October 21, 2009. See "ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—NBA Consent Letter," "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—The NBA Consent Letter" and "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with PILOTs—*NBA Consent Letter*."

Risk Factors and Investment Considerations..... ***An investment in the Series 2009 PILOT Bonds involves significant risks.*** Prospective investors in the Series 2009 PILOT Bonds should carefully consider all of the information in this Official Statement, including the Appendices, prior to investing in the Series 2009 PILOT Bonds. In particular, prospective investors in the Series 2009 PILOT Bonds are urged to consider carefully each of the factors described in the sections titled "RISK FACTORS AND INVESTMENT CONSIDERATIONS" before investing in the Series 2009 PILOT Bonds.

## OFFICIAL STATEMENT

**\$510,999,996.50**

**Brooklyn Arena Local Development Corporation  
PILOT Revenue Bonds, Series 2009  
(Barclays Center Project)**

**Consisting of**

**\$482,085,000.00 Series 2009 Current Interest PILOT Bonds  
and  
\$28,914,996.50 Series 2009 Capital Appreciation PILOT Bonds**

## INTRODUCTION

*All capitalized terms used in this Official Statement and not otherwise defined herein shall have the meanings assigned thereto in “APPENDIX C—CERTAIN DEFINITIONS.”*

### General

This Official Statement (this “*Official Statement*”), including the cover page, inside cover page and Appendices hereto, provides information concerning the issuance by the Brooklyn Arena Local Development Corporation (the “*Issuer*”), a local development corporation formed under Section 1411 of the Not-For-Profit Corporation Law, being Chapter 35 of the Consolidated Laws of New York, as amended (the “*Enabling Act*”), and created by action of the New York Job Development Authority (the “*NYJDA*”) established under Section 1802, Subtitle 1, Title 8, Article 8 of the New York Public Authorities Law, as amended, of \$510,999,996.50 of its PILOT Revenue Bonds, Series 2009 (Barclays Center Project) (the “*Series 2009 PILOT Bonds*”), certain proceeds of which Series 2009 PILOT Bonds, together with certain other moneys, will be used to pay the costs of the Arena Project. See “PLAN OF FINANCE.” The Series 2009 PILOT Bonds will be issued as \$482,085,000.00 aggregate principal amount of current interest bonds (the “*Series 2009 Current Interest PILOT Bonds*”) and \$28,914,996.50 aggregate initial principal amount of capital appreciation bonds (the “*Series 2009 Capital Appreciation PILOT Bonds*”).

The Enabling Act authorizes the creation of local development corporations with the power to issue debt obligations to create or maintain jobs and to promote related economic development and generally to lessen the burdens of government. Pursuant to and in accordance with the provisions of the Enabling Act and Section 1804(13), Subtitle 1, Title 8, Article 8 of the New York Public Authorities Law, as amended (“*Section 1804(13)*”), the NYJDA created the Issuer to issue bonds to finance the “*Arena Project*”, namely: the design, development, acquisition, construction and equipping of an arena (the “*Arena*”) and the Arena Infrastructure in the Atlantic Terminal area of Brooklyn, New York, to be used as the home venue of the professional basketball team currently known as the New Jersey Nets (the “*Nets*”) and as a venue for other entertainment, cultural, sporting and civic events.

The Arena Project is a phase of a major mixed-use development project planned for an approximately twenty-two- (22-) acre site (inclusive of certain areas of air space) in the Atlantic Terminal area of Brooklyn, New York entitled the Atlantic Yards Land Use Improvement and Civic Project (the “*Atlantic Yards Project*”), which is being undertaken by the New York State Urban Development Corporation d/b/a Empire State Development Corporation (“*ESDC*”), The City of New York (the “*City*”), the New York City Economic Development Corporation (“*NYCEDC*”) and affiliates of Forest City Ratner Companies, LLC (“*FCRC*”), including Atlantic Yards Development Company, LLC (“*AYDC*”)

and Brooklyn Arena, LLC (the “*Arena Developer*” and, together with AYDC, the “*Developer*”). The Arena Project was approved by ESDC in a Project Plan dated July 18, 2006, as modified in a Modified General Project Plan adopted by ESDC’s Board on December 8, 2006, as further modified on June 23, 2009, and affirmed by ESDC’s Board on September 17, 2009 (the “*MGPP*”). Brooklyn Events Center, LLC, a Delaware limited liability company (“*ArenaCo*”), is a newly-formed and wholly-owned subsidiary of Brooklyn Arena Holding Company, LLC, a Delaware limited liability company (“*Arena HoldCo*”), which in turn is a newly-formed and wholly-owned subsidiary of the Arena Developer. ArenaCo will be the tenant of the Arena Project and the Arena Premises (pursuant to a sublease agreement with the Issuer) and will make payments in lieu of *ad valorem* real estate taxes (“*PILOTS*”) to ESDC under the PILOT Agreement, as summarized below under “—Certain Project Leases and Agreements; Arena Tenant Revenue; Applicability of League Rules” and “—PILOT Agreement and PILOT Assignment.” See also “PROJECT PARTICIPANTS” AND “ARENA MANAGEMENT AND OPERATIONS.”

The Series 2009 PILOT Bonds will be issued in accordance with the Enabling Act and the Master PILOT Indenture of Trust, dated as of December 1, 2009 (the “*Master PILOT Indenture*”), by and between the Issuer and The Bank of New York Mellon (the “*PILOT Bond Trustee*”), and the First Supplemental PILOT Indenture of Trust, by and between the Issuer and the PILOT Bond Trustee, dated as of December 1, 2009 (the “*First Supplemental PILOT Indenture*” and, together with the Master PILOT Indenture, the “*PILOT Bonds Indenture*”).

### **Commencement Agreement**

Concurrently with the issuance of the Series 2009 PILOT Bonds, the Issuer, ESDC, the City, AYDC, AYDC Interim Developer, LLC, a Delaware limited liability company (the “*Interim Developer*”), the Arena Developer, ArenaCo, Atlantic Rail Yards, LLC, a New York limited liability company (“*RailCo*”), The Bank of New York Mellon, in its capacity as Infrastructure Trustee (the “*Infrastructure Trustee*”), the PILOT Trustee, the PILOT Bond Trustee, New Jersey Basketball, LLC, a New Jersey limited liability company (“*New Jersey Basketball*”), the Metropolitan Transportation Authority, a body corporate and politic constituting a public benefit corporation of the State of New York (the “*MTA*”), The Long Island Rail Road Company, a body corporate and politic constituting a public benefit corporation of the State of New York (“*LIRR*”), New York City Transit Authority, a body corporate and politic constituting a public benefit corporation of the State of New York (the “*Transit Authority*”), and Commonwealth Land Title Insurance Company, a Nebraska corporation, as Document Agent (the “*Document Agent*”) will execute a Commencement Agreement (the “*Commencement Agreement*”), pursuant to which such parties will concurrently therewith execute (and where appropriate, acknowledge) and deposit certain documents and letters of credit related to the Atlantic Yards Project, including documents related to the Arena Project and the Series 2009 PILOT Bonds, with the Document Agent to be held in escrow in accordance with the terms of the Commencement Agreement.

The following documents related to the Arena Project (together with certain other documents and letters of credit related to other portions of the Atlantic Yards Project as described and set forth in the Commencement Agreement, the “*Vesting Title Documents*”) will be released from escrow and recorded (as applicable) promptly following the date that ESDC files the order entered by the New York State Supreme Court, Kings County granting the condemnation petition, together with acquisition maps and any required bond or undertaking, with the City Register, Kings County and the satisfaction of certain other conditions pertaining to required improvements to the transit system on the Arena Block (the “*Vesting Title Release Conditions*”): (1) the Development Agreement, (2) the Arena Block Declaration, (3) the DEP Easement, (4) the Arena Premises Interim Lease Agreement (and a memorandum thereof), (5) the Lot 7 Sale and Purchase Agreement, the deed to Block 1119, Lot 7 on the Borough of Brooklyn Tax Map and other closing documents required under such agreement, (6) the Lot 47 Transfer Agreement, the deed to the Lot 47 MTA Premises and other closing documents required under such agreement, (7) the Lot 42 Transfer Agreement, (8) the Parking Easement, (9) the Transit Improvement

Agreement (and a memorandum thereof), (10) the Transit Improvements Easement, and (11) the TA Naming Rights Agreement. If ESDC does not make such filing and deliver notice thereof to the parties to the Commencement Agreement, on or before 5:00 p.m., New York City time on March 31, 2011, the Document Agent is instructed to return the letters of credit held in escrow and destroy all of the other documents deposited therewith in accordance with the Commencement Agreement. However, if, by [January 15, 2011] (the “*Outside Commencement Date*”), the “Vacant Possession Release Conditions” described below shall have not occurred or been satisfied, then the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption prior to maturity in whole, and the PILOT Bond Trustee will issue a notice of redemption of the Series 2009 PILOT Bonds in accordance with the PILOT Bonds Indenture. See “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption.”

The following documents related to the Arena Project (together with certain other documents related to other portions of the Atlantic Yards Project, as set forth in the Commencement Agreement, the “*Vacant Possession Documents*”) will be released from escrow and recorded (as applicable) upon the satisfaction of the Vacant Possession Release Conditions: (1) the Ground Lease, (2) the Arena Lease Agreement, (3) the Arena Completion Guaranty, (4) the Non-Relocation Agreement, (5) the Nets License Agreement, (6) the PILOT Agreement, (7) the PILOT Assignment, (8) the Leasehold PILOT Mortgages, (9) the PILOT Mortgages Assignment and (10) the PILOT Bonds Partial Lease Assignment. The “*Vacant Possession Release Conditions*” consist of the following: (1) satisfaction of the Vesting Title Release Conditions and the Document Agent’s completion of the actions required to be taken by it as set forth in the Vesting Title Release Certificate in the form thereof attached to the Commencement Agreement; (2) the Document Agent being prepared to issue and deliver the PILOT Title Policy to the PILOT Trustee (subject to completion of the actions set forth in the Arena Project Effective Date Certificate); (3) the Document Agent having received from the Infrastructure Trustee a certificate in the form thereof attached to the Commencement Agreement to the effect that the funds required to be deposited into the Infrastructure Fund have been deposited therein in accordance with the Infrastructure Trust Agreement; (4) the Document Agent having received from ArenaCo a certificate in the form attached to the Commencement Agreement to the effect that either (a) the Sale Transaction has closed (which closing is subject to certain conditions as described herein) or (b) the rating agencies have confirmed the rating of the Series 2009 PILOT Bonds; and (5) the Document Agent having received from ESDC, the Arena Developer, AYDC and ArenaCo a certificate in the form thereof attached to the Commencement Agreement to the effect that (a) either (I) ESDC has obtained and delivered to the Arena Developer and AYDC actual vacant occupancy and possession of the properties necessary for the first phase of the Atlantic Yards Project (the “*Phase I Properties*”), free and clear of all leases, tenancies, occupancies, liens, encumbrances, licenses or any other matter other than those encumbrances permitted under the Arena Premises Interim Lease Agreement or other interim leases for the AY Project Site other than the Arena Premises or (II)(A) the requirement specified in clause (I) above has been waived by the Arena Developer and AYDC with respect to portions of the Phase I Properties described in such certificate, not including any portion of the property designated as the “Arena Block” (which includes the Arena Premises) and (B) the requirement specified in clause (I) above has been satisfied with respect to all other areas of the Phase I Properties, such Arena Project Effective Date Certificate to be delivered by ESDC, the Arena Developer, AYDC and ArenaCo to the Document Agent and the PILOT Trustee, with a copy to the other parties to the Commencement Agreement, no later than five (5) Business Days after satisfaction of the condition specified in either clause (I) or clause (II) above; and (b) the amount of Additional Rent then due has been paid. Upon the satisfaction of the Vacant Possession Release Conditions, the Document Agent will deliver a certificate in the form attached to the Commencement Agreement (the “*Arena Project Effective Date Certificate*”) to the PILOT Bond Trustee to the effect that the Vacant Possession Release Conditions have been satisfied and the Vacant Possession Documents are simultaneously being released from escrow. Upon the receipt of the Arena Project Effective Date Certificate, the PILOT Bond Trustee may apply proceeds of the Series 2009 PILOT Bonds deposited to the Funds, Accounts and Subaccounts under the PILOT Bonds Indenture for the purposes of the Series

2009 PILOT Bonds set forth in the PILOT Bonds Indenture, including but not limited to the payment of accrued interest on the Series 2009 Current Interest PILOT Bonds from the Arena Project Effective Date through May 15, 2012 and the payment of certain costs of the Arena Project.]

See “THE SERIES 2009 PILOT BONDS—Redemption” and “APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT.”

### **Sources of Payment and Security for the Series 2009 PILOT Bonds**

The Series 2009 PILOT Bonds are payable from and secured by: (i) the Issuer’s right, title and interest in the PILOT Revenues, (ii) all right, title and interest of the Issuer in and to the Funds and Accounts (other than the PILOT Bonds Rebate Fund) under the PILOT Bonds Indenture, including the PILOT Bonds Project Fund, the PILOT Bonds Revenue Fund, the Senior PILOT Bonds Bond Fund, the Series 2009 PILOT Bonds Debt Service Reserve Subaccount and the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount, including moneys and investments therein, (iii) all right, title and interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment, and (iv) any and all moneys or other property, including, without limitation, Restoration Funds, insurance proceeds and condemnation awards to be deposited in the PILOT Bonds Renewal Fund, of every kind and nature from time to time which are by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security under the PILOT Bonds Indenture, by the Issuer or by any other person, firm or corporation with or without the consent of the Issuer, to the PILOT Bond Trustee. ArenaCo is obligated under the PILOT Agreement, and has covenanted under the Arena Lease Agreement, to make PILOTs to ESDC. Under the PILOT Assignment, ESDC has assigned its rights to receive PILOTs under the PILOT Agreement to the PILOT Trustee, and the PILOT Trustee is required to transfer PILOTs received to the PILOT Bond Trustee in an amount sufficient to pay debt service and other amounts due on the Series 2009 PILOT Bonds and certain other amounts payable by the PILOT Bond Trustee. “*PILOT Revenues*” are comprised of PILOTs that are transferred to and actually received by the PILOT Bond Trustee pursuant to the PILOT Assignment.

**The Series 2009 PILOT Bonds are special limited obligations of the Issuer payable solely from PILOT Revenues derived from PILOTs made by ArenaCo pursuant to the PILOT Agreement, the interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Bonds Assignment, and certain Funds and Accounts held by the PILOT Bond Trustee under the PILOT Bonds Indenture. None of the State, the City and ESDC is or shall be obligated to pay the principal of or interest on the Series 2009 PILOT Bonds, and neither the faith and credit nor the taxing power of the State or the City is pledged to such payment. The Issuer has no taxing power.**

**The Series 2009 PILOT Bonds do not constitute an obligation of ArenaCo, New Jersey Basketball, the Arena Developer or any of their respective affiliates. The Series 2009 PILOT Bonds are not secured by any interest in the Atlantic Yards Project (including the Arena Project) nor by any property of or interest in ArenaCo, New Jersey Basketball, the Arena Developer or any of their respective affiliates.**

See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS.”

### **The Arena Project Plan of Finance**

#### *The Series 2009 PILOT Bonds*

The Issuer is issuing the Series 2009 PILOT Bonds for the purposes of (i) providing a portion of the costs of acquisition and construction of the Arena Project; (ii) funding the Series 2009 PILOT Bonds

Debt Service Reserve Subaccount in the amount of the Senior PILOT Bonds Debt Service Reserve Account Requirement for the Series 2009 PILOT Bonds; (iii) funding the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount in a portion of the amount of the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement for the Series 2009 PILOT Bonds; (iv) paying capitalized interest on the Series 2009 PILOT Bonds from the Arena Project Effective Date (as such term is defined in the Commencement Agreement) through May 15, 2012, and (v) reimbursing certain Costs of Issuance. It is anticipated that proceeds of the Series 2009 PILOT Bonds will pay for a substantial portion of the costs of the Arena Project.

#### *The City and State Capital Contributions*

The City's capital contribution for the Arena Project, agreed under the City Funding Agreement to be in the aggregate amount of \$131 million, will be made available to NYCEDC. The State of New York (the "State"), acting through ESDC, will make a capital contribution of \$100 million for certain costs incurred and to be incurred in connection with the construction of certain items of Atlantic Yards Project infrastructure (which items are described in detail in Exhibit C to the State Funding Agreement), which include a portion of the Related Infrastructure, which benefits but is not a part of the Arena Project. See "PLAN OF FINANCE." ESDC and the Developer have entered into a funding agreement, dated September 12, 2007 (as amended from time to time, the "*State Funding Agreement*"), which provides for the funding and disbursement of the capital contributions to be made by the City and the State to the Developer and allocated to the Atlantic Yards Project. NYCEDC and ESDC have entered into a funding agreement, dated September 12, 2007 (as amended from time to time, the "*City Funding Agreement*" and, together with the State Funding Agreement, the "*Public Funding Agreements*"), pursuant to which NYCEDC will fund the City capital contribution to ESDC, and ESDC will utilize such contribution solely for disbursement to the Developer for certain costs incurred in connection with the acquisition by ESDC of the Arena Premises. The disbursement of the capital contribution to be made pursuant to the State Funding Agreement is referred to herein as the "*State Funding Portion*," and the disbursement of the capital contribution to be made pursuant to the City Funding Agreement is referred to herein as a "*City Funding Portion*." As of the date of this Official Statement, NYCEDC has funded approximately \$85 million of the City Funding Portion, which has been disbursed to the Developer by ESDC, and the State has advanced approximately \$75 million of the State Funding Portion. The funding and disbursement of the remaining portions of the City's and the State's contributions are subject to the satisfaction of certain requirements set forth in the City Funding Agreement, including, without limitation, certification to the effect that at least \$100 million of Total Project Costs have been or will be incurred on or prior to the Funding Date during the Third Contribution Period (as defined in the City Funding Agreement). The funding and disbursement of the remaining \$31 million of the City Funding Portion is also subject, without limitation, to the occurrence of the later of the issuance of the Series 2009 PILOT Bonds and the filing of a condemnation petition by ESDC. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—The Disbursement of the Remaining City and State Capital Contributions." Requisitions for the remaining funds have been submitted, and approval is anticipated on or prior to the date of delivery of the Series 2009 PILOT Bonds. Pursuant to the State Funding Agreement, the City Funding Portion and the State Funding Portion are to be funded at the later of ESDC's filing of the condemnation petition and closing of the sale of the Series 2009 PILOT Bonds. Moneys received from the City and the State pursuant to the Public Funding Agreements will not be available to ArenaCo to make payments under the PILOT Agreement, nor will such moneys be available to the PILOT Bond Trustee to pay the principal of and premium, if any, and interest on the Series 2009 PILOT Bonds. **Neither the State nor the City is or shall become obligated to pay the principal or Accreted Value, as applicable, and premium, if any, of or interest on the Series 2009 PILOT Bonds, and neither the faith and credit nor the taxing power of the State or City is pledged to such payment.**

### *Additional Arena Project Financing*

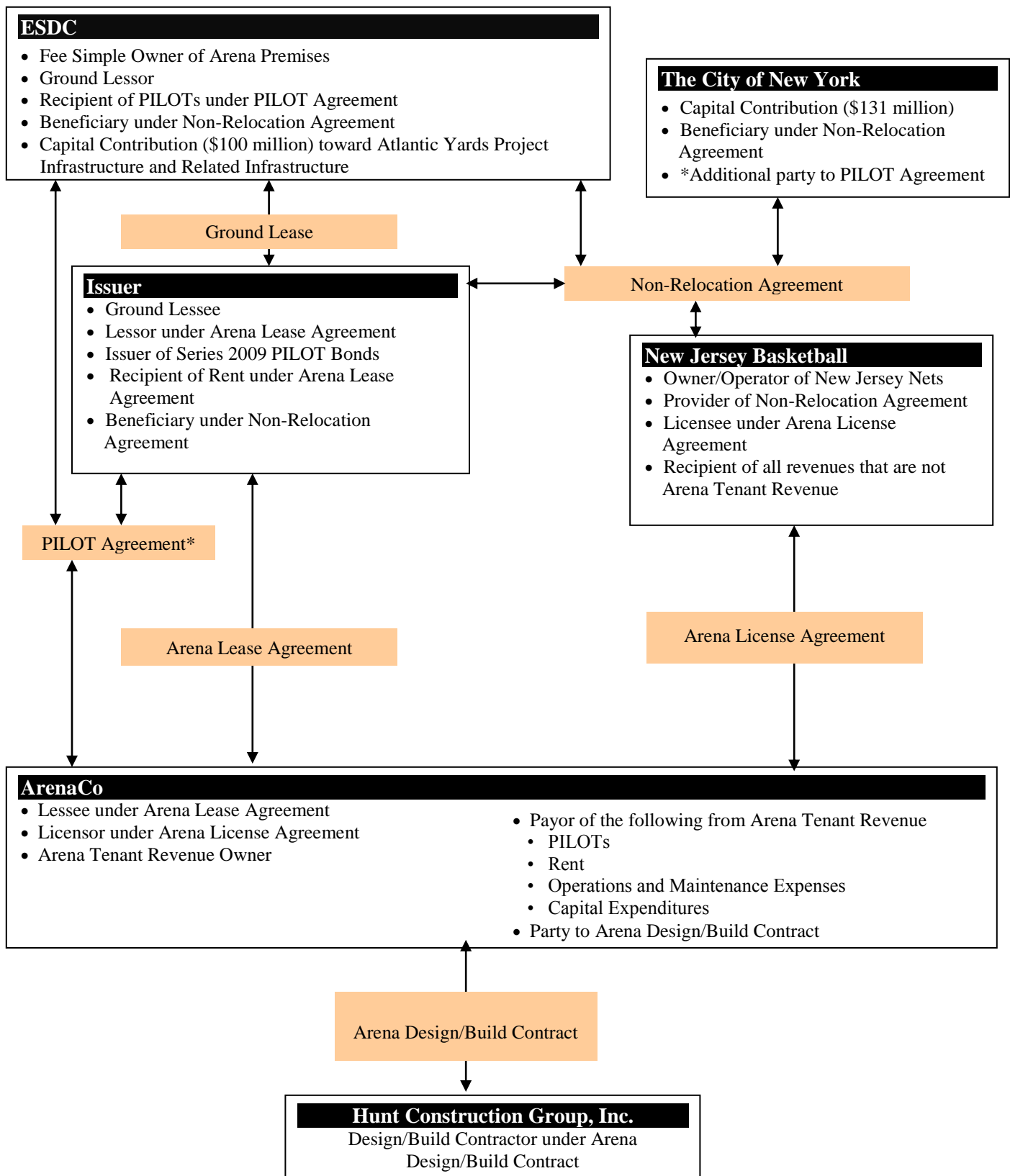
Certain costs of the Arena Project will be paid by ArenaCo or its members as part of ArenaCo's obligations under the Arena Lease Agreement. As of October 31, 2009, ArenaCo or its members have expended approximately \$71.5 million (which amount is net of \$85 million of the City's capital contribution) toward the \$904.3 million total estimated Arena Project cost, which is comprised of site preparation, site work and pre-construction costs, permits, architecture and engineering costs, legal costs, development costs, and Arena Infrastructure costs, in anticipation of that obligation.

Certain costs of the Arena Project may be financed with the proceeds of rental revenue bonds which may be issued by the Issuer at the request of ArenaCo (the "*Rental Revenue Bonds*"). In the event such Rental Revenue Bonds are issued, ArenaCo would be obligated to make payments of Additional Rent under the Arena Lease Agreement to provide the Issuer with revenues (the "*Rental Revenues*") in amounts sufficient to timely pay the principal of and premium, if any, and interest on such Rental Revenue Bonds when due. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Relating to the Series 2009 PILOT Bonds—Additional Rent in Respect of Rental Revenue Bonds." The net proceeds of any Rental Revenue Bonds would reduce the amount of ArenaCo's required deposit to the Series 2009 Additional Rent Account described in the next succeeding paragraph.

As one of the Vacant Possession Release Conditions, ArenaCo will be obligated to deposit approximately \$[334.2] million (the "*Additional Rent Amount*") into the Series 2009 Additional Rent Account in the PILOT Bonds Project Fund, which amount may ultimately be reduced to reflect prior expenditures made for the Arena Project and included in the budget for the Arena Project on and after November 1, 2009. It is estimated that such deposit will cover the excess of the total remaining cost to achieve substantial completion of the Arena Project over the amount of Series 2009 PILOT Bond proceeds available for the Arena Project (the "*Completion Cost*"). All payments on account of such obligation will be paid as Additional Rent under the Arena Lease Agreement and treated ultimately as equity of ESDC in the Arena Project. At the time of the issuance of the Series 2009 PILOT Bonds, ArenaCo will not have funds sufficient to pay the Additional Rent Amount, but ArenaCo expects to raise sufficient funds prior to the Arena Project Effective Date from one or more of the following sources: (a) the proceeds of the Purchase Price payable by the New Investor, subject to the New Investor entering into the Investment Agreement and consummating the transactions contemplated thereunder (for a description of the Investment Agreement and definitions of such terms, see "PROJECT PARTICIPANTS—The Arena Developer, ArenaCo and New Jersey Basketball—Anticipated New Investment"), (b) additional financing at one or more of the parent companies of ArenaCo, including but not limited to Arena HoldCo, (c) additional equity contributions from the Arena Developer, its parent companies, and/or the New Investor, subject to the New Investor entering into the Investment Agreement and consummating the transactions contemplated thereunder, (d) additional equity contributions from the third parties or (e) any combination of the foregoing, in each case subject to the receipt of any applicable NBA approvals. Although ArenaCo expects that the necessary funds will be timely raised, there can be no assurance that the funds will be raised or that the amount of such funds will be sufficient to make the full payment of the Additional Rent Amount. If such Additional Rent Amount is not paid, the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption as described herein. After such initial deposit, additional payments will be required on account of any Completion Cost if, as construction progresses, the actual cost to achieve substantial completion of the Arena Project exceeds ArenaCo's initial estimate. Also in connection with the delivery of the Series 2009 PILOT Bonds, it is anticipated that ArenaCo will be obligated to pay approximately \$[24.7] million (as adjusted for final Series 2009 PILOT Bond sizing and the overall financing structure and which amount shall be credited toward the Additional Rent Amount) for costs of issuance, closing costs and interest on the Series 2009 PILOT Bonds from their date of delivery to but not including July 15, 2010. See "PLAN OF FINANCE—General"; see also "INTRODUCTION—Commencement Agreement" and "THE SERIES 2009 PILOT BONDS—Extraordinary Mandatory Redemption."

## Summary of Basic Structure

The diagram set forth below illustrates the basic structure of the transactions among the key participants in the Arena Project:





## **Certain Project Leases and Agreements; Arena Tenant Revenue; Applicability of League Rules**

### *Arena Premises Interim Lease Agreement*

The New York State Urban Development Corporation, a corporate governmental agency constituting a political subdivision and public benefit corporation of the State of New York, organized and existing pursuant to the New York State Urban Development Corporation Act, Chapter 174 of the Laws of New York of 1968, as amended and supplemented (the “UDC Act”), and doing business as ESDC, will be, upon the completion of condemnation proceedings and the closing under the Lot 7 Sale Purchase Agreement (as defined and described below), the fee owner of a substantial portion of approximately twenty-two (22) acres of land (inclusive of certain areas of air space) in the Borough of Brooklyn, New York (the “AY Project Site”), including a portion (the “Arena Premises”) upon which the Arena Project will be constructed. While such condemnation proceedings will be undertaken in two (2) or more series of takings, that portion of the AY Project Site required to construct, open and operate the Arena Project will be included in the first taking. ESDC and the Arena Developer will enter into an Agreement of Interim Lease (Arena Block, Arena Parcel) (the “Arena Premises Interim Lease Agreement”) pursuant to which the Arena Developer will lease the Arena Premises from ESDC as of the effective date of the Arena Premises Interim Lease Agreement, subject to Permitted Encumbrances (as defined in the Arena Premises Interim Lease Agreement), including without limitation the Arena Block Declaration and other easements granted to the MTA, LIRR, the Transit Authority, and the New York City Department of Environmental Protection (the “DEP”) and the MTA Indemnity Agreements. ESDC will have the exclusive right, and has agreed, to pursue writs of assistance in obtaining vacant possession of any occupied parcels included in the Arena Premises. The Arena Developer will be permitted to perform site work and other pre-construction activities on the Arena Premises. ArenaCo will ultimately assume the obligations of the Arena Developer in the Arena Developer’s capacity as the tenant under the Arena Premises Interim Lease Agreement. The Arena Premises Interim Lease Agreement contemplates that once vacant possession of the parcels that make up the first taking of land within the AY Project Site, including the Arena Premises, is achieved, the Ground Lease and the Arena Lease Agreement will take effect and the Arena Premises Interim Lease Agreement will terminate. At its option, the Developer may waive vacant possession of certain parcels included within the first taking of land which are not included in the Arena Premises and instead opt to cause the effectiveness of the Ground Lease and Arena Lease Agreement to occur when vacant possession of only those parcels within the Arena Block (as such term is defined in the “Arena Block Declaration” referenced in “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Arena Block Declaration of Easements” below) is achieved.

The Arena Premises Interim Lease Agreement will be held in escrow by the Document Agent pursuant to the Commencement Agreement, and, upon its release from escrow, a memorandum thereof will be recorded in the Office of the City Register, Kings County. See “INTRODUCTION—Commencement Agreement,” “APPENDIX E—SUMMARY OF THE ARENA PREMISES INTERIM LEASE AGREEMENT” and “APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT.”

### *Arena Lease Agreement and Ground Lease*

Upon the termination of the Arena Premises Interim Lease Agreement as described above, ESDC will lease the Arena Premises and the buildings and improvements to be constructed thereon, including the Arena, to the Issuer under a Ground Lease Agreement (the “Ground Lease”). The Issuer, as the landlord, will simultaneously enter into an Agreement of Arena Lease (the “Arena Lease Agreement”) with ArenaCo, as the tenant, under which ArenaCo will sublease the Arena Premises and the buildings and improvements to be constructed thereon, including the Arena, for a term of approximately thirty-seven (37) years (subject to extension and/or early termination as provided in the Arena Lease

Agreement) and will agree to construct, operate and maintain the Arena Project. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Ground Lease” and “—Arena Lease Agreement”; see also “APPENDIX G—SUMMARY OF THE ARENA LEASE AGREEMENT.” The Ground Lease from ESDC to the Issuer will obligate the Issuer to lease the Arena Project and the Arena Premises to ArenaCo pursuant to the Arena Lease Agreement. The League Rules, and/or any future changes thereto, may affect the ability of ArenaCo to perform its obligations and/or to exercise its rights under the Arena Lease Agreement. See “—Applicability of League Rules” below. Pursuant to the Arena Lease Agreement, ArenaCo will be obligated to fund the Completion Cost. To satisfy certain of its obligations under the PILOT Bonds Indenture, the Issuer will enter into a PILOT Bonds Partial Lease Assignment (the “*PILOT Bonds Partial Lease Assignment*”) pursuant to which the Issuer will assign to the PILOT Bond Trustee all of its right, title and interest in certain representations, warranties and covenants of ArenaCo under the Arena Lease Agreement. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements.”

In addition to requiring ArenaCo to enter into the Nets License Agreement (as defined and described below), the Arena Lease Agreement permits ArenaCo to use and occupy the Arena Project and the Arena Premises year-round for any and all accessory and incidental uses relating to Home Games, including, without limitation, the operation (including by sublease or license to third parties) of retail establishments, concession facilities (including sit-down restaurants) and clubs, and for any and all other lawful purposes, including but not limited to the staging of other entertainment, religious, sporting, cultural, theatrical, recreational, promotional, community and civic events, such as concerts, rodeos, circuses, ice skating shows, convocations, private parties, commercial film and television shoots, fashion shows, meetings, conventions, intercollegiate sporting events, auctions and tours. In connection with all such events and activities (but in each case subject to the terms of each license agreement into which ArenaCo may enter), ArenaCo will have the sole and exclusive right to charge, collect and retain Arena Tenant Revenue and to determine, in its sole discretion, the prices and terms of admission, usage and/or license fees for such events and activities at and the use of the Arena Project, and may, subject to compliance with the Arena Lease Agreement, enter into one (1) or more agreements or arrangements pursuant to which other parties may share in all or a portion of the Arena Tenant Revenue. Furthermore, the Arena Lease Agreement provides that ArenaCo may enter into a variety of advertising and sponsorship agreements, including but not limited to agreements with a party (or parties) granting such party (or parties) the right to designate the name of the Arena and (A) the right to include such party’s name, product name, logo and/or corporate identifiers in the name of the Arena, (B) the right to have such name, logo and/or corporate identifiers prominently displayed on the interior and, subject to the provisions of the Arena Lease Agreement, on the exterior of, and on and around the entrances of the Arena, and on the Arena apron, as part of the name of the Arena, and (C) such other rights and benefits which are customarily included in the grant of the rights described in clauses (A) and (B) above (collectively, “*Naming Rights*”).

Simultaneously with the execution of the Arena Lease Agreement, ESDC will enter into a recognition agreement with ArenaCo (the “*Recognition Agreement*”) pursuant to which ESDC will agree to recognize ArenaCo as the tenant under the Arena Lease Agreement if the Ground Lease is terminated, provided that no Event of Default has occurred and is continuing under the Arena Lease Agreement and subject to the other conditions contained in the Recognition Agreement. The Ground Lease, the Arena Lease Agreement and the Recognition Agreement will be held in escrow by the Document Agent pursuant to the Commencement Agreement, and the Ground Lease, the Recognition Agreement and a memorandum of the Arena Lease Agreement will be recorded in the Office of the City Register, Kings County. See “INTRODUCTION—Commencement Agreement” and “APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT.”

### *Arena Tenant Revenue*

ArenaCo will use Arena Tenant Revenue to make PILOTs under the PILOT Agreement, to pay Rent under the Arena Lease Agreement, and to pay certain costs of operating and maintaining the Arena Project. “*Arena Tenant Revenue*” means any and all revenues derived from any source that are generated by and associated with the operation or use of the Arena Project, including but not limited to revenues derived from all events and activities of any kind and manner at the Arena, and consisting of, but not limited to, all cash and receivables (subject to the Nets License Agreement and the League Rules) relating to ticket sales, luxury suite license fees, seat licenses, facility fees, food and beverage concessions, Naming Rights, club seats, novelties, memorabilia, broadcast rights, Internet service and technology, club memberships, signage and other advertising, product rights, and lease or licensing (or subleasing or sub-licensing) fees, but excluding any payments or other amounts due to the Issuer, ESDC or any contracting party other than ArenaCo under the terms of the Arena Lease Agreement and the Nets License Agreement and as the right to collect and/or retain the same may be limited by the League Rules. Certain Arena-related revenues are specifically reserved to the Nets under the Nets License Agreement, and such revenues are hereinafter referred to as “*Nets Team Revenue*.” The manner in which certain Arena-related revenues are modified or limited by the terms of the Nets License Agreement with respect to being designated as Arena Tenant Revenue is described below under “—Nets License Agreement.” See also “APPENDIX I—SUMMARY OF THE NETS LICENSE AGREEMENT.”

### *Nets License Agreement*

Simultaneously with the execution and delivery of the Ground Lease and the Arena Lease Agreement, ArenaCo and New Jersey Basketball will enter into an Arena License Agreement (the “*Nets License Agreement*”) under which ArenaCo will grant to New Jersey Basketball a license to use the Arena on the terms and conditions contained therein, including that the Arena is to be used for the playing of Home Games and other events for an initial term beginning on the date of the first Home Game of the first National Basketball Association (“*NBA*”) season following the completion of the Arena, subject to certain conditions precedent, and New Jersey Basketball will be obligated to pay an annual License Fee (and certain other fees) to ArenaCo for the use and occupancy of the Arena, all as described herein and in the Nets License Agreement. “*Home Game*” means a game played by the Nets in the NBA pre-season, regular season or post-season and for which the Nets (and not the opposing team) has the right to designate the location of such game. The Nets is also permitted access to the Arena as early as is commercially reasonable (and so long as such access is not prohibited or impractical as a result of the scheduling of other events at the Arena) prior to the commencement date of the Nets License Agreement (at no additional charge to the Nets) for the purpose of conducting marketing events and other marketing purposes; for installing fixtures, furnishings, and equipment in, and the stocking and setting up of “*Team Areas*” (as defined in the Nets License Agreement) such as the equipment rooms, storage space, locker room, training rooms, coaches’, trainers’ and other New Jersey Basketball staff offices, players’ lounge, and any office reception area reserved for Nets use; and for conducting Nets practices to acclimate players, coaches, and other Nets personnel to the Arena’s playing conditions. Under the terms of the Nets License Agreement, ArenaCo will retain the right to collect and keep certain Arena-related revenues that will be, as and when received, a part of Arena Tenant Revenue, as follows: all revenues and rights to revenues (including any and all cash and receivables) arising out of or relating to luxury suite premiums (*i.e.*, exclusive of any Ticket Component); food, beverage and merchandise concessions (exclusive of merchandise bearing the Nets name or logo or any other NBA intellectual property); advertising at the Arena (subject to the Nets’ exclusive rights to sell and retain all revenues from (i) Courtside Advertising (as defined in the Nets License Agreement), (ii) advertising appearing on telescreens, electronic scoreboards, LED rings, and public address systems to the extent that such advertising pertains specifically to the playing of, or is shown or displayed solely at, Home Games, (iii) advertising appearing in Nets programs and on tickets to Home Games (other than advertising on tickets sold at or processed through Arena box office facilities), (iv) game day promotions such as “hat night,” and (v) other sources

typically controlled by NBA teams on game days, as well as certain other rights reserved by the Nets under the Nets License Agreement); and certain revenues arising generally from ArenaCo's contractual agreements and from the licensing or staging of non-Nets events held at the Arena (including \$10 million in Naming Rights Fees that shall be payable to ArenaCo pursuant to the Barclays Center Naming Rights Agreement and Naming Rights Agreement Assignment, other signage/advertising revenues received under founding partner agreements and sponsorship agreements (collectively, "*Founding Partner/Sponsorship Agreements*") and other contracts for advertising at the Arena, luxury suite premiums and revenues from food, beverage and merchandise concessions (including pursuant to the assignments thereof to ArenaCo by the Arena Developer, as applicable)).

See "ARENA MANAGEMENT AND OPERATIONS—Organizational Structure—Allocation of Revenue"; "ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Nets License Agreement" and "ARENA MANAGEMENT AND OPERATIONS —Arena Tenant Revenue"; "APPENDIX I—SUMMARY OF THE NETS LICENSE AGREEMENT"; "APPENDIX R—FORM OF FOUNDING PARTNER/SPONSORSHIP AGREEMENT" and "APPENDIX S—FORM OF SUITE LICENSE AGREEMENT."

#### *Non-Relocation Agreement*

The City, ESDC, the Issuer, and New Jersey Basketball will enter into a Non-Relocation Agreement (the "*Non-Relocation Agreement*"), pursuant to which New Jersey Basketball will be required to cause the Nets to play substantially all of its Home Games at the Arena, commencing on the earlier of the date (a) on which the Nets first commences playing Home Games at the Arena, and (b) of the opening of the first "*NBA Season*" (which term is defined in the Non-Relocation Agreement to mean the NBA Regular Season together with any playoff or championship games in which the Nets is scheduled to participate after the end of such NBA Regular Season) immediately following the later of (x) Substantial Completion (as such term is defined in the Non-Relocation Agreement) of the Arena and (y) if a Temporary Relocation (as such term is defined in the Non-Relocation Agreement) has occurred prior to Substantial Completion, the end of the Temporary Relocation, subject to the League Rules. New Jersey Basketball's obligations under the Non-Relocation Agreement will terminate on the earliest to occur of (i) the thirty-seventh (37<sup>th</sup>) anniversary of the effective date of the Non-Relocation Agreement, (ii) the abandonment of the Arena Project prior to the date of the opening of the first NBA Season or (iii) the thirtieth (30<sup>th</sup>) anniversary of the effective date of the Non-Relocation Agreement if on or prior to such date all bonds, debentures, loans, credit facilities or other financing or liability issued, facilitated or incurred by the Issuer in connection with the acquisition, construction, development or operation of the Arena Project have been indefeasibly paid or otherwise satisfied in full. The Non-Relocation Agreement will provide that the Nets may play any number of pre-season Home Games, up to two (2) regular season Home Games per NBA Regular Season and any number of post-season Home Games in alternate venues so long as, except as otherwise provided under the League Rules applicable generally to all NBA members which are intended to deal with the different number of home games played by opposing teams in a post-season series, the Nets' opponent in any post-season series will be scheduled to play an equal or greater number of its home games in such series outside of the city, municipality or similar local jurisdiction in which its "*NBA Regular Season*" (which term is defined in the Non-Relocation Agreement to mean the regular NBA season exclusive of any preseason, exhibition, all-star and championship games) home venue is located; and provided further, that playing at such alternate venue is imposed by application of the League Rules and not pursuant to a voluntary election by the Nets. Additionally, the Non-Relocation Agreement permits the Nets to play Home Games in a venue other than the Arena during the construction of the Arena Project and until the later of (i) the substantial completion of the Arena Project, as defined in the Non-Relocation Agreement, and (ii) the commencement of the 2012-2013 NBA Regular Season. The Non-Relocation Agreement also provides an exception to the requirement that the Nets play all Home Games at the Arena for certain NBA player or NBA referee labor disputes, provided that the Nets is not playing Home Games elsewhere during any such period of work-stoppage, slowdown,

walkout or lockout (to the extent the Nets might otherwise be able to play with replacement referees). In addition, subject to the terms and conditions of the Non-Relocation Agreement, in the event of a casualty, force majeure or condemnation action, the Nets may play Home Games in another location until such conditions are remediated or repaired. In the event New Jersey Basketball breaches its obligations under the Non-Relocation Agreement, the City, ESDC and the Issuer are entitled to seek declaratory relief or an equitable remedy, including specific performance of the Nets' obligation to play its Home Games at the Arena. Additionally, if a "Relocation" under the Non-Relocation Agreement occurs, and the City, ESDC, or the Issuer is unable to obtain an injunction or award of specific performance, ESDC will have the right to recover liquidated damages from New Jersey Basketball as specified in the Non-Relocation Agreement. See "ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Non-Relocation Agreement," "APPENDIX J—SUMMARY OF THE NON-RELOCATION AGREEMENT" and "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—Team Relocation Risk."

#### *Applicability of League Rules*

New Jersey Basketball's obligations to play Home Games at the Arena under the Non-Relocation Agreement are subject in all respects to the League Rules. In addition, the Nets License Agreement provides that the manner of conduct of New Jersey Basketball's activities at the Arena in conjunction with Home Games or other Nets or NBA events is subject to the League Rules. The "*League Rules*" include all of the mandates, rules, regulations, policies, bulletins, directives, memoranda, resolutions and agreements of the NBA (or its members generally), the other NBA Entities, their respective governing bodies (including, without limitation, the NBA Board of Governors and the committees thereof), and the NBA Commissioner generally applicable to members of the NBA, as they presently exist or as they may, from time to time, be entered into, created or amended, including, without limitation, the Constitution and By-Laws of the NBA (the "*NBA Constitution*"), any Collective Bargaining Agreement between the NBA and the National Basketball Players Association ("*NBPA*") and any other Collective Bargaining Agreement to which the NBA is a party then in force (as in effect from time to time, the "*CBA*"), all current and future television, radio and other agreements involving the telecast of NBA games, and all resolutions of the NBA Board of Governors or any committee thereof. The "*NBA Entities*" are, collectively, the NBA, NBA Properties, Inc., NBA Media Ventures, LLC, NBA Development League Holdings, LLC, WNBA Holdings, LLC, any other entity formed generally by the NBA members and each direct and indirect subsidiary of any of the foregoing, and each of their respective successors and assigns.

The Arena Lease Agreement will require that the Arena be constructed, operated and maintained as a first-class, high quality (subject to ordinary wear and tear and obsolescence) professional sports venue and in compliance with the League Rules. By definition, the "League Rules" include the minimum standards which, pursuant to the NBA Constitution, the NBA Commissioner has the power to establish from time to time for the design, construction, and operation of "NBA-quality arenas" (as such term is used in the NBA Constitution) (the "*NBA Facility Standards*"). Because the Arena will be a newly-constructed arena, all designs, plans and specifications for the Arena must comply with the NBA Facility Standards and the construction of the Arena must be determined by the NBA to be completed in substantial compliance with the NBA Facility Standards prior to the time any Home Game is held at the Arena.

As discussed above and in further detail herein, the League Rules, and/or any future changes thereto, may affect the ability of New Jersey Basketball and/or ArenaCo to perform their respective obligations and/or to exercise their respective rights under various agreements, including, but not limited to, the Non-Relocation Agreement, the PILOT Agreement, the Leasehold PILOT Mortgages, the Arena Lease Agreement, the Nets License Agreement and/or other agreements to which New Jersey Basketball

and/or ArenaCo is a party (including by assignment). See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—National Basketball Association.”

#### *Other Agreements*

**Arena Completion Guaranty.** Under the Arena Lease Agreement, ArenaCo is required to deliver a completion guaranty (the “*Arena Completion Guaranty*”) from Forest City Enterprises, Inc., an Ohio corporation and affiliate of ArenaCo (“*FCE*”), to the Issuer and ESDC guarantying the substantial completion of the Arena and the Arena Infrastructure (including the Transit Improvements and the Urban Experience) in accordance with the terms of the Arena Lease Agreement. If called upon under the Arena Completion Guaranty to construct and achieve substantial completion of the Arena and Arena Infrastructure, FCE will also guaranty that all costs in connection with such work are paid and performed in a lien-free condition. FCE’s obligation to substantially complete the Arena and Arena Infrastructure is conditioned on the PILOT Bond Trustee, and if applicable, any trustee for Rental Revenue Bonds, if issued, not being in default of its obligations to disburse the proceeds of the Series 2009 PILOT Bonds and such Rental Revenue Bonds, respectively. The Arena Completion Guaranty will be held in escrow by the Document Agent pursuant to the Commencement Agreement. **The Arena Completion Guaranty is not (and will not be) assigned to the PILOT Bond Trustee, and holders under the Series 2009 PILOT Bonds will not have any rights under the Arena Completion Guaranty.** See “INTRODUCTION—Commencement Agreement” and “APPENDIX V—SUMMARY OF COMPLETION GUARANTY.”

**Lot 7 Sale and Purchase Agreement.** The MTA will enter into a Sale-Purchase Agreement (the “*Lot 7 Sale and Purchase Agreement*”) with the Arena Developer granting the Arena Developer the right to purchase Block 1119, Lot 7 on the Borough of Brooklyn Tax Map (“*Lot 7*”) for a basic purchase price of \$20 million, plus, if the closing thereunder occurs after January 1, 2010, interest on the basic purchase price from January 1, 2010 through the closing thereunder at the rate of five percent (5%) per annum (the “*Purchase Price Interest Payment*”). The Lot 7 Sale and Purchase Agreement will be held in escrow by the Document Agent pursuant to the Commencement Agreement. Payment of the basic purchase price is secured by a letter of credit that will be held by the Document Agent in accordance with the Commencement Agreement. Payment of the Purchase Price Interest Payment is secured by the letter of credit that will be delivered by RailCo in connection with the Temporary Yard Work. See “THE ARENA PROJECT—Arena Project Development—Related Infrastructure—Temporary Yard.” In accordance with the Lot 7 Sale and Purchase Agreement and the Commencement Agreement, the Arena Developer will designate ESDC to receive the deed for Lot 7. Under the terms of the Lot 7 Sale and Purchase Agreement, Lot 7 may be conveyed subject to certain judgment liens and an existing mortgage. The MTA is obligated to cause the same to be removed from record after the closing thereunder.

**Lot 47 Sale Agreement.** Simultaneously with the execution of the Lot 7 Sale and Purchase Agreement, ESDC, the MTA and RailCo, an affiliate of FCRC, will enter into Transfer Agreement (Lot 47) (the “*Lot 47 Sale Agreement*”), pursuant to which ESDC will transfer the portion of Block 1121, Lot 47 on the Borough of Brooklyn Tax Map below a limiting plane to the MTA for a purchase price of \$10.00. The closing of the Lot 47 Sale Agreement will occur simultaneously with the closing of the Lot 7 Sale and Purchase Agreement.

**Lot 42 Sale Agreement.** Simultaneously with the execution of the Lot 7 Sale and Purchase Agreement, ESDC, the MTA and RailCo will also enter into Transfer Agreement (Lot 42) (the “*Lot 42 Sale Agreement*”), pursuant to which ESDC will transfer a portion of Block 1121, Lot 42 on the Borough of Brooklyn Tax Map below a limiting plane to the MTA (the “*Lot 42 MTA Premises*”) for a purchase price of \$10.00. The closing of the Lot 42 Sale Agreement will occur on the earliest of (x) two (2) Business Days after ESDC secures vacant possession of the Lot 42 MTA Premises, (y) such date after the first anniversary of the execution of the Commencement Agreement on which the MTA elects to cause

the closing thereunder to occur and (z) such date that is twenty-four (24) months after the Vesting Title Release Date (as such term is defined in the Commencement Agreement) (but in no event will the closing under the Lot 42 Sale Agreement occur prior to the closing under the Lot 7 Sale and Purchase Agreement).

MTA Indemnity Agreements. The Arena Developer will be entering into indemnity agreements in favor of the MTA and LIRR and in favor of the Transit Authority indemnifying these parties against damage to their properties and claims arising from injuries to persons which may result from the construction of the Arena Project (collectively, the “*MTA Indemnity Agreements*”). The MTA Indemnity Agreements will also contain certain requirements for construction that may affect the MTA, LIRR and the Transit Authority and will mandate the maintenance of certain insurance coverages during construction. The MTA Indemnity Agreements will be recorded against the Arena Premises and will be superior to the Arena Premises Interim Lease Agreement, the Ground Lease, the Arena Lease Agreement and the Leasehold PILOT Mortgages.

MG Set Easement. ESDC, the MTA, LIRR and the Interim Developer will enter into a Substation and Motor Generator Easement that provides, *inter alia*, for a temporary easement benefiting the MTA and LIRR for continued use of and access to the motor generator set (the “*MG Set*”) currently located along the northern edge of the Arena Premises (the “*Existing MG Set*”). Upon installation of a new MG Set in accordance with a license agreement to be entered into by RailCo with the MTA and LIRR, the temporary easement on the Arena Parcel will automatically terminate. Until an access road to the existing MG Set is installed by RailCo in accordance with such license agreement, which is anticipated to be complete prior to the closing of the purchase of Lot 7, or the relocation occurs, the MTA and LIRR will have temporary access to the MG Set through the Arena Premises. Delay in the performance of this work could delay the construction of the Arena Project.

Each of these other agreements will be held in escrow by the Document Agent pursuant to the Commencement Agreement. See “INTRODUCTION—Commencement Agreement” and “APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT.”

### **PILOT Agreement and PILOT Assignment**

So long as ESDC holds fee title to the Arena Premises and the Arena Project, no general *ad valorem* real estate taxes (other than assessments for local improvements) will be payable to the City by ESDC, the Issuer or ArenaCo or any other person with respect to the Arena Premises or the Arena Project. However, the City, the Issuer, ESDC and ArenaCo will enter into a Payment-in-Lieu-of-Tax Agreement (Arena) (the “*PILOT Agreement*”) under which ArenaCo will be required to make PILOTs to ESDC. ESDC will agree under the PILOT Agreement to pay or cause to be paid to the City, or as the City may otherwise provide by assignment or other agreement, the PILOTs received under the PILOT Agreement.

ESDC, the Issuer, the PILOT Bond Trustee, The Bank of New York Mellon (the “*PILOT Trustee*”) and the City will enter into a PILOT Assignment and Escrow Agreement (Arena) (the “*PILOT Assignment*”), pursuant to which the City, as the municipality to which *ad valorem* taxes with respect to the Arena Project and the Arena Premises, but for ESDC’s ownership of such real property, would be owed, as part of the City’s participation in the Arena Project, will expressly agree, among other things, to forego receipt of the PILOTs it would have otherwise been entitled to receive. Furthermore, pursuant to the PILOT Assignment, ESDC will, among other things, assign to the PILOT Trustee all of its right to and interest in all PILOTs due or to become due under the PILOT Agreement and any and all other of its rights and remedies under or arising out of the PILOT Agreement, except for Unassigned PILOT Rights. PILOT Revenues of the Issuer collected on behalf of the Issuer by the PILOT Trustee will be transferred to the PILOT Bond Trustee pursuant to the PILOT Assignment.

The Series 2009 PILOT Bonds are special limited obligations of the Issuer, the principal of and premium, if any, and interest on which are payable solely out of and secured by (i) the PILOT Revenues derived and to be derived from PILOTs received by the PILOT Trustee on behalf of the Issuer; (ii) all right, title and interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment; and (iii) certain funds and accounts held by the PILOT Bond Trustee under the PILOT Bonds Indenture. See “APPENDIX M—SUMMARY OF THE PILOT AGREEMENT” and “APPENDIX N—SUMMARY OF THE PILOT ASSIGNMENT.”

### **Enforcement of PILOTs**

The obligation of ArenaCo under the PILOT Agreement to make PILOTs to ESDC with respect to each separate PILOT Year will be secured by a separate Leasehold PILOT Mortgage for each such PILOT Year granted by ArenaCo to ESDC and assigned to the PILOT Trustee, encumbering ArenaCo’s leasehold interest under the Arena Lease Agreement in and to the Arena Premises and the Arena Project (each, a “*Leasehold PILOT Mortgage*” and, collectively, the “*Leasehold PILOT Mortgages*”). Each Leasehold PILOT Mortgage is (i) subject and subordinate to those Leasehold PILOT Mortgages securing ArenaCo’s PILOT obligations corresponding to all succeeding PILOT Years and (ii) paramount in lien to those Leasehold PILOT Mortgages securing ArenaCo’s PILOT obligations corresponding to all preceding PILOT Years. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Summary of Collection and Application of PILOTs.” If the PILOT Trustee should foreclose any Leasehold PILOT Mortgage as to a PILOT Year for which PILOTs were not paid (in whole or in part), any sale of ArenaCo’s interest in and to the Arena Premises and the Arena Project upon foreclosure would be subject to the liens of the Leasehold PILOT Mortgages for later years. Each Leasehold PILOT Mortgage is also subordinate to the Permitted Encumbrances. See “APPENDIX N—SUMMARY OF THE PILOT ASSIGNMENT” and “APPENDIX O—SUMMARY OF THE LEASEHOLD PILOT MORTGAGES.”

The Leasehold PILOT Mortgages will secure the making of PILOTs by ArenaCo to ESDC under the PILOT Agreement and will be assigned to the PILOT Trustee pursuant to an Assignment of Leasehold PILOT Mortgages (the “*PILOT Mortgages Assignment*”). **Accordingly, the Leasehold PILOT Mortgages are not (and will not be) assigned to the PILOT Bond Trustee and will not constitute security for the Series 2009 PILOT Bonds. Holders of the Series 2009 PILOT Bonds will have no rights under the Leasehold PILOT Mortgages, and the Series 2009 PILOT Bonds will not be secured by any interest in the Arena Project, the Arena Premises or any other portion of the Atlantic Yards Project.**

### **PILOT Revenues**

Under the PILOT Agreement, ArenaCo will pay, as PILOTs, the amounts set forth on a schedule to the PILOT Agreement (“*Scheduled PILOTs*”), and the PILOTs payable for each PILOT Period are expected to be in an amount sufficient to pay debt service, Bond Fees and any other amounts regularly payable with respect to the Series 2009 PILOT Bonds under the PILOT Bonds Indenture (collectively, the “*Bond Payment Requirement*” for the Series 2009 PILOT Bonds) for the corresponding Payment Period. Pursuant to the PILOT Assignment, the PILOT Trustee establishes the PILOT Fund, into which fund the PILOT Trustee will deposit all PILOT Receipts and any other amounts required or permitted to be deposited therein pursuant to the provisions of the PILOT Assignment. Immediately upon receipt by the PILOT Trustee from the PILOT Bond Trustee of a certificate (the “*PILOT Certificate*”) setting forth the Bond Payment Requirement for the next succeeding Payment Period, and in any event no later than January 5 or July 5, as applicable, PILOT Receipts in an amount equal to the Bond Payment Requirement set forth in such PILOT Certificate will be transferred to the Debt Service and Reimbursement Fund established under the PILOT Assignment and held by the PILOT Trustee. Amounts held in the Debt Service and Reimbursement Fund, on each date on which PILOT Receipts are deposited therein, are to be



immediately transferred to the PILOT Bond Trustee as the Issuer's PILOT Revenues. See "APPENDIX N—SUMMARY OF THE PILOT ASSIGNMENT." Pursuant to the PILOT Bonds Indenture, the PILOT Bond Trustee will deposit or cause to be deposited all PILOT Revenues into the PILOT Bonds Revenue Fund immediately upon the receipt of such PILOT Revenues. See "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—PILOT Bonds Indenture—Flow of Funds under the PILOT Bonds Indenture."

Notwithstanding the foregoing, under the PILOT Agreement, PILOTs, including Scheduled PILOTs, may not exceed the amount of City *ad valorem* real estate taxes and assessments that otherwise would have been levied with respect to the Arena Project and the Arena Premises by the City's Department of Finance but for ESDC's ownership interest in the Arena Premises and the Arena Project. See "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Summary of Collections and Applications of PILOTs—Projected PILOT" and "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with PILOTs."

### **Additional PILOT Bonds**

Subject to certain conditions described herein under "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS," and provided that at the relevant time no Event of Default exists under the PILOT Bonds Indenture, the Issuer may issue Additional PILOT Bonds on a parity with, or subordinated to, the Series 2009 PILOT Bonds for any one (1) or more of the following purposes: (i) to provide for the costs of design, development, acquisition, construction and equipping of the Arena Project, (ii) to provide funds necessary to complete the Arena Project, (iii) to provide funds in excess of Restoration Funds to repair, relocate, replace, rebuild or restore the Arena in the event of damage, destruction or taking by eminent domain, (iv) to provide funds for extensions, additions, improvements or facilities to the Arena, the purpose of which must constitute a "project" within the meaning of the UDC Act, or (v) to refund Outstanding PILOT Bonds (or other obligations issued on a parity therewith) ("*Refunding PILOT Bonds*"). Under current Internal Revenue Service rules, interest on any Additional PILOT Bonds which are not Refunding PILOT Bonds would not be excluded from gross income for federal income tax purposes. See "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Additional PILOT Bonds."

### **Risk Factors**

There are risks associated with the purchase of the Series 2009 PILOT Bonds. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS" for a discussion of certain of these risks.

## **THE ISSUER**

### **General**

The Issuer is a not-for-profit local development corporation created by a resolution of the members of the NYJDA, dated April 8, 2008, which resolution was adopted pursuant to the powers granted to the NYJDA by Section 1804(13). The Issuer is an instrumentality of the State, separate and apart from the State itself, the NYJDA and ESDC. The Issuer has no taxing power. The Issuer's principal office is located at 633 Third Avenue, New York, New York 10017.

The Issuer was formed to finance certain components of the Atlantic Yards Project, including the design, development and construction of the Arena Project and, if deemed beneficial to the overall Atlantic Yards Project, the infrastructure and land related to such project, all for the public objective of removing blight, relieving and reducing unemployment, promoting and providing for additional and

maximum employment, bettering and maintaining job opportunities, and lessening the burdens of government of the State and the NYJDA.

### **Members; Directors; Corporate Management**

The Issuer has a membership body of two (2) members (each a “*Member*”) that is divided into two (2) classes: the Class A Member and the Class B Member. Each class represents one (1) unit of membership interest in the Issuer. The Class A Member of the Issuer is the Governor of the State of New York, and the Class B Member of the Issuer is the NYJDA. The Issuer may not issue any additional membership interests except as may be approved by a unanimous vote of all the Members. No membership interest may be assigned or otherwise transferred without the prior written consent of all other Members.

The board of directors of the Issuer (the “*Board*”) consists of six (6) directors, three (3) of whom are elected and appointed by the Class A Member and three (3) of whom are elected and appointed by the Class B Member. The six (6) directors are classified into three (3) categories, each including one (1) director elected by the Class A Member and one (1) director elected by the Class B Member. The first category consists of directors elected for a term expiring at the annual meeting of the Board to be held in 2009, the second category consists of directors elected for a term expiring at the annual meeting to be held in 2010 and the third category consists of directors elected for a term expiring at the annual meeting to be held in 2011. Subsequent directors elected to succeed those directors whose terms have expired are to be elected for a term of office to expire at the third succeeding annual meeting of the Board after their election. However, directors continue to serve in office until their successors have been appointed and qualified.

The Issuer’s present directors (with the year in which his or her term expires) and officers are as follows:

#### Directors

Arana Hankin, 2009  
Peter Kiernan, 2010  
Robert L. Megna, 2011  
Robert Godley, 2009  
Frances Walton, 2010  
Anita Laremont, 2011

#### Officers

Frances Walton, Chairperson of the Board and Vice President  
Anita Laremont, Secretary  
Douglas Wehrle, President  
Robert Godley, Treasurer  
Jonathan Beyer, Assistant Secretary

### **Special Limited Obligations**

**THE SERIES 2009 PILOT BONDS ARE SPECIAL LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM AND SECURED BY THE PILOT REVENUES DERIVED AND TO BE DERIVED FROM PILOTS RECEIVED BY THE ISSUER, ALL RIGHT, TITLE AND INTEREST OF THE PILOT BOND TRUSTEE IN THE DEBT SERVICE AND REIMBURSEMENT FUND HELD BY THE PILOT TRUSTEE UNDER THE PILOT ASSIGNMENT, AND CERTAIN FUNDS AND ACCOUNTS HELD BY THE PILOT BOND TRUSTEE UNDER THE PILOT BONDS**

**INDENTURE. NONE OF THE STATE, THE CITY AND ESDC IS OR SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF OR INTEREST ON THE SERIES 2009 PILOT BONDS, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR THE CITY IS PLEDGED TO SUCH PAYMENT. THE ISSUER HAS NO TAXING POWER.**

**NONE OF THE MEMBERS, DIRECTORS OR OFFICERS OF THE ISSUER, OR ANY PERSON EXECUTING THE SERIES 2009 PILOT BONDS, SHALL BE PERSONALLY LIABLE FOR THE PAYMENT OF, OR BE SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY WITH RESPECT TO, THE SERIES 2009 PILOT BONDS. ACCORDINGLY, NO FINANCIAL INFORMATION WITH RESPECT TO THE ISSUER OR ITS MEMBERS, DIRECTORS OR OFFICERS HAS BEEN INCLUDED IN THIS OFFICIAL STATEMENT.**

**THE ISSUER HAS NOT VERIFIED, AND DOES NOT REPRESENT IN ANY WAY, THE ACCURACY OR COMPLETENESS OF ANY OF THE INFORMATION SET FORTH IN THIS OFFICIAL STATEMENT OTHER THAN INFORMATION SET FORTH UNDER THE HEADINGS “THE ISSUER,” “PROJECT PARTICIPANTS—THE ISSUER” AND “LITIGATION” (INsofar AS SUCH INFORMATION RELATES TO THE ISSUER) HEREIN.**

## **THE SERIES 2009 PILOT BONDS**

### **General**

The Series 2009 PILOT Bonds will be dated the date of delivery and will be issued in the respective aggregate principal amounts, and will mature, as set forth on the inside cover page hereof. The Series 2009 PILOT Bonds are subject to redemption prior to maturity as set forth below under “—Redemption.”

The Series 2009 PILOT Bonds will be issued in authorized denominations of \$5,000 or any integral multiple thereof. The Series 2009 PILOT Bonds will be registered with DTC or its nominee to be held in DTC’s book-entry only system (the “*Book-Entry Only System*”). So long as the Series 2009 PILOT Bonds are held in the Book-Entry Only System, DTC (or a successor securities depository) or its nominee will be the registered owner of the Series 2009 PILOT Bonds for all purposes of the PILOT Bonds Indenture, and payments of principal of and interest on the Series 2009 PILOT Bonds will be made solely through the facilities of DTC. See “APPENDIX A—BOOK-ENTRY ONLY SYSTEM.”

The Bank of New York Mellon is the PILOT Bond Trustee under the PILOT Bonds Indenture and is also the Paying Agent for the Series 2009 PILOT Bonds.

The Series 2009 Current Interest PILOT Bonds will bear interest at the rates per annum set forth on the inside cover page hereof, which interest will be payable semiannually, in arrears, in cash on each January 15 and July 15, commencing July 15, 2010. Interest on the Series 2009 PILOT Bonds will accrue from the most recent date to which interest has been paid or, if no interest has been paid, from and including the date of the initial delivery of the Series 2009 PILOT Bonds. Interest will be computed on the basis of a 360-day year comprised of twelve (12) thirty- (30-) day months.

Interest on the Series 2009 Current Interest PILOT Bonds will be payable by check or draft and mailed to the persons who are the registered owners of the Series 2009 Current Interest PILOT Bonds as of the close of business on each January 1 and July 1 immediately preceding the applicable interest payment date.

The Series 2009 Capital Appreciation PILOT Bonds will be issued in the initial principal amounts with the Accreted Values (as defined below) at maturity set forth on the inside cover page of this Official Statement. The Series 2009 Capital Appreciation PILOT Bonds will be dated the date of delivery of the Series 2009 PILOT Bonds and accrete in value from such date, compounded semiannually on January 15 and July 15 of each year, commencing on July 15, 2010, payable only upon maturity or prior redemption thereof. The Series 2009 Capital Appreciation PILOT Bonds are issuable in denominations of \$5,000 payable upon maturity (the “*Maturity Value*”) or any integral multiple thereof. Interest will accrete on the Series 2009 Capital Appreciation PILOT Bonds on the basis of a 360-day year comprised of twelve (12) thirty- (30-) day months.

The principal amount of the Series 2009 Current Interest PILOT Bonds and the Accreted Value of the Series 2009 Capital Appreciation PILOT Bonds (the principal amount of a Series 2009 Current Interest PILOT Bond and the Accreted Value of a Series 2009 Capital Appreciation PILOT Bond are each referred to as “*Principal*”) and premium, if any, on the Series 2009 PILOT Bonds are payable only upon surrender of the Series 2009 PILOT Bonds at maturity or earlier redemption at the office of the PILOT Bond Trustee.

APPENDIX U hereto contains a table of the initial principal amount plus interest accreted thereon (the “*Accreted Value*”) as of each July 15 and January 15 for each maturity of Series 2009 Capital Appreciation PILOT Bonds. On the maturity date of each Series 2009 Capital Appreciation PILOT Bond, the Accreted Value of such Series 2009 Capital Appreciation PILOT Bond will be equal to the Maturity Value of such PILOT Bond. Any Accreted Value determined by the PILOT Bonds Paying Agent by computing interest in accordance with the provisions of the PILOT Indenture, however, shall control over any Accreted Value for such Series 2009 Capital Appreciation PILOT Bond set forth in APPENDIX U hereto.

### **Commencement Agreement**

Pursuant to the Commencement Agreement, (i) the net proceeds of the Series 2009 PILOT Bonds will be (A) held by the PILOT Bond Trustee under the PILOT Bonds Indenture until satisfaction of the Vacant Possession Release Conditions or, (B) if such conditions have not been satisfied by the Outside Commencement Date, used to redeem the Series 2009 PILOT Bonds as described below, and (ii) certain documents, including documents related to the Arena Project, will be held in escrow in accordance with such Commencement Agreement until satisfaction of the Vacant Possession Release Conditions or the Outside Commencement Date occurs. See “INTRODUCTION—Commencement Agreement”; see also “APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT.”

### **Redemption**

The Series 2009 PILOT Bonds are subject to optional redemption, mandatory sinking fund redemption, extraordinary mandatory redemption and special mandatory redemption prior to their stated maturity dates as described below.

#### *Optional Redemption for the Series 2009 Current Interest PILOT Bonds*

The Series 2009 Current Interest PILOT Bonds maturing on or after July 15, 2020 are subject to optional redemption prior to maturity in whole or in part on and after July 15, 2019 (in accordance with procedures of DTC, so long as DTC is the sole registered owner, and otherwise by lot in such manner as the PILOT Bond Trustee in its discretion deems proper) at one hundred percent (100%) of the principal amount thereof, together with accrued interest thereon up to but not including the redemption date.

### *Optional Redemption for the Series 2009 Capital Appreciation PILOT Bonds*

The Series 2009 Capital Appreciation PILOT Bonds are not subject to optional redemption prior to maturity at the option of the Issuer.

### *Extraordinary Mandatory Redemption*

If, by the Outside Commencement Date, the Vacant Possession Release Conditions have not been satisfied, then the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption prior to maturity in whole at a Redemption Price equal to 101% of (i) with respect to the Series 2009 Current Interest PILOT Bonds, the Amortized Value thereof, plus accrued and unpaid interest thereon through the Extraordinary Mandatory Redemption Date, and (ii) with respect to the Series 2009 Capital Appreciation PILOT Bonds, the Accreted Value thereof on such Extraordinary Mandatory Redemption Date, [which shall be a date no later than forty-five (45) days after the Outside Commencement Date]. Pursuant to the Commencement Agreement, the Vacant Possession Release Conditions require, among other things, a certification that the amount of Additional Rent then due has been paid. The Vacant Possession Release Conditions also require, among other things: (1) the Infrastructure Trustee to deliver a certificate to the effect that the funds required to be deposited into the Infrastructure Fund have been deposited in accordance with the Infrastructure Trust Agreement as described herein; and (2) ArenaCo to deliver a certification that either (a) the Sale Transaction has closed or (b) the rating agencies have confirmed the rating of the Series 2009 PILOT Bonds. See “INTRODUCTION—Commencement Agreement.”

If, by June 10, 2010, the Arena Project Effective Date has not yet occurred and the PILOT Bond Trustee has not received from ArenaCo, from ArenaCo’s available funds, an amount equal to the interest projected to accrue (and the amount of value to accrete, as applicable) on the Series 2009 PILOT Bonds from July 15, 2010 to but not including the Outside Commencement Date, plus an amount equal to the extraordinary mandatory redemption premium projected to be payable to holders of the Series 2009 PILOT Bonds in the event the Series 2009 PILOT Bonds were subject to extraordinary mandatory redemption on the Outside Commencement Date, [less investment earnings held, and investment earning projected to be received under guaranteed investment contracts and to be held, in the Series 2009 PILOT Bonds Construction and Acquisition Account, Series 2009 PILOT Bonds Debt Service Reserve Subaccount, and Series 2009 PILOT Bonds Strike and Liquidity Reserve Account – Mintz confirming language], then the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption on July 15, 2010 at a Redemption Price equal to 101% of (i) with respect to the Series 2009 Current Interest PILOT Bonds, the Amortized Value thereof, plus accrued and unpaid interest thereon through the such date, and (ii) with respect to the Series 2009 Capital Appreciation PILOT Bonds, the Accreted Value thereof on such date; provided, however, that the Series 2009 PILOT Bonds will not be subject to such redemption if, prior to such redemption date, the Vacant Possession Release Conditions have been satisfied.

If, at any time prior to the Outside Commencement Date, the Issuer notifies the PILOT Bond Trustee that the Arena Project will not commence and the Vacant Possession Release Conditions will not be satisfied, then the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption prior to maturity at a Redemption Price equal to 101% of (i) with respect to the Series 2009 Current Interest PILOT Bonds, the Amortized Value thereof, plus accrued and unpaid interest thereon through the redemption date established pursuant to the PILOT Bonds Indenture, and (ii) with respect to the Series 2009 Capital Appreciation PILOT Bonds, the Accreted Value thereof on such redemption date the established pursuant to the PILOT Bonds Indenture.

Upon the occurrence of one or more of the events described above, any funds on deposit in the PILOT Bonds Project Fund (other than the Series 2009 Non-Asset Bond Reserve Account), the Senior PILOT Bonds Bond Fund and any other moneys on deposit under the PILOT Bonds Indenture are to be

transferred to the Series 2009 PILOT Bonds Redemption Subaccount in the Senior PILOT Bonds Redemption Account in the Senior PILOT Bonds Bond Fund and used to pay the Redemption Price of the Series 2009 PILOT Bonds. To the extent the amounts then on deposit in the Series 2009 PILOT Bonds Redemption Subaccount are insufficient to pay the Redemption Price of the Series 2009 PILOT Bonds, the PILOT Bond Trustee is to transfer from the Series 2009 Non-Asset Bond Reserve Account in the PILOT Bonds Project Fund to the Series 2009 PILOT Bonds Redemption Subaccount an amount equal to any such deficiency. Any such redemption is to be made on the first date for which notice of redemption may be timely given by the PILOT Bond Trustee under the PILOT Bonds Indenture. Any amounts on deposit in the Series 2009 Non-Asset Bond Reserve Account after payment of the Redemption Price of Series 2009 PILOT Bonds are to be transferred to ArenaCo.

Under the PILOT Bonds Indenture, “*Amortized Value*” means an amount equal to the principal amount of a Series 2009 PILOT Bond to be redeemed multiplied by the price of such Series 2009 PILOT Bond expressed as a percentage, calculated based on the industry standard method of calculating bond prices, with (1) a delivery date equal to the date of redemption, (2) a maturity date equal to the date to which such Series 2009 PILOT Bond is priced (*i.e.*, the first optional redemption date or maturity date), and (3) a yield equal to such Series 2009 PILOT Bond’s original reoffering yield.

See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena—Failure to Satisfy Vacant Possession Release Conditions.”

#### *Mandatory Sinking Fund Redemption*

The Series 2009 PILOT Bonds maturing on July 15, 2030 and bearing interest at a rate of 6.000% per annum are subject to mandatory sinking fund redemption, in part (in accordance with procedures of DTC, so long as DTC is the sole registered owner, and otherwise by lot in such manner as the PILOT Bond Trustee in its discretion deems proper) on each July 15 on and after the first sinking fund installment date shown below at the principal amount thereof plus accrued interest up to but not including the date of redemption thereof from mandatory Sinking Fund Installments that are required to be made in amounts sufficient to redeem on July 15 of each year the principal amount of such Series 2009 PILOT Bonds shown below:

<b>Date</b>	<b>Amount</b>
2021	\$5,790,000.00
2022	6,735,000.00
2023	7,760,000.00
2024	8,860,000.00
2025	10,000,000.00
2026	11,260,000.00
2027	12,625,000.00
2028	14,085,000.00
2029	15,650,000.00
2030 <sup>†</sup>	17,325,000.00

<sup>†</sup> Stated Maturity

The Series 2009 PILOT Bonds maturing on July 15, 2030 and bearing interest at a rate of 6.500% per annum are subject to mandatory sinking fund redemption, in part (in accordance with procedures of DTC, so long as DTC is the sole registered owner, and otherwise by lot in such manner as the PILOT Bond Trustee in its discretion deems proper) on each July 15 on and after the first sinking fund installment date shown below at the principal amount thereof plus accrued interest up to but not including the date of redemption thereof from mandatory Sinking Fund Installments that are required to be made in

amounts sufficient to redeem on July 15 of each year the principal amount of such Series 2009 PILOT Bonds shown below:

<b>Date</b>	<b>Amount</b>
2021	\$1,325,000.00
2022	1,545,000.00
2023	1,780,000.00
2024	2,030,000.00
2025	2,295,000.00
2026	2,585,000.00
2027	2,895,000.00
2028	3,230,000.00
2029	3,590,000.00
2030 <sup>†</sup>	3,975,000.00

<sup>†</sup> Stated Maturity

The Series 2009 PILOT Bonds maturing on July 15, 2040 and bearing interest at a rate of 6.250% per annum are subject to mandatory sinking fund redemption, in part (in accordance with procedures of DTC, so long as DTC is the sole registered owner, and otherwise by lot in such manner as the PILOT Bond Trustee in its discretion deems proper) on each July 15 on and after the first sinking fund installment date shown below at the principal amount thereof plus accrued interest up to but not including the date of redemption thereof from mandatory Sinking Fund Installments that are required to be made in amounts sufficient to redeem on July 15 of each year the principal amount of such Series 2009 PILOT Bonds shown below:

<b>Date</b>	<b>Amount</b>
2035	\$14,880,000.00
2036	29,315,000.00
2037	31,585,000.00
2038	35,035,000.00
2039	37,220,000.00
2040 <sup>†</sup>	39,550,000.00

<sup>†</sup> Stated Maturity

The Series 2009 PILOT Bonds maturing on July 15, 2043 and bearing interest at a rate of 6.375% per annum are subject to mandatory sinking fund redemption, in part (in accordance with procedures of DTC, so long as DTC is the sole registered owner, and otherwise by lot in such manner as the PILOT Bond Trustee in its discretion deems proper) on each July 15 on and after the first sinking fund installment date shown below at the principal amount thereof plus accrued interest up to but not including the date of redemption thereof from mandatory Sinking Fund Installments that are required to be made in amounts sufficient to redeem on July 15 of each year the principal amount of such Series 2009 PILOT Bonds shown below:

<b>Date</b>	<b>Amount</b>
2028	\$42,020,000.00
2029	44,700,000.00
2030 <sup>†</sup>	49,070,000.00

<sup>†</sup> Stated Maturity

### *Special Mandatory Redemption*

The Series 2009 PILOT Bonds are subject to special mandatory redemption prior to maturity by the Issuer in whole on any date or in part on any Interest Payment Date at a Redemption Price of one hundred percent (100%) of (i) with respect to the Series 2009 Current Interest PILOT Bonds, the principal amount thereof to be redeemed plus accrued interest, if any, to the date of redemption, and (ii) with respect to the Series 2009 Capital Appreciation PILOT Bonds, the Accreted Value thereof on the date of redemption, if either (1) a Casualty Event or less than a Substantial Taking has occurred during the last five (5) Lease Years of the Term of the Arena Lease Agreement and ArenaCo elects not to perform a Casualty Restoration or a Condemnation Restoration by terminating the Arena Lease Agreement in accordance with its terms; or (2) a Substantial Taking has occurred. Upon the occurrence of one (1) or more of such events, any and all Restoration Funds, condemnation awards and any other moneys on deposit in the PILOT Bonds Renewal Fund are to be transferred to the Senior PILOT Bonds Redemption Account in the Senior PILOT Bonds Bond Fund and used to pay the Redemption Price of such Series 2009 PILOT Bonds. Any such redemption is to be made on the first date for which notice of redemption may be timely given by the PILOT Bond Trustee under the PILOT Bonds Indenture.

### **Selection of Bonds for Redemption; Notice of Redemption**

In the event of the redemption of less than all of the Outstanding Series 2009 PILOT Bonds of the same maturity, the particular Series 2009 PILOT Bonds or portions thereof to be redeemed will be selected by the PILOT Bond Trustee in such manner as the PILOT Bond Trustee in its discretion may deem fair. Unless otherwise required by any Supplemental PILOT Indenture in the event of redemption of less than all of the Outstanding Series 2009 PILOT Bonds stated to mature on different dates, the principal amount of such Series 2009 PILOT Bonds to be redeemed is to be applied in any order of maturity that the Issuer may elect of the Outstanding Series 2009 PILOT Bonds to be redeemed and by lot within a maturity. The portion of Series 2009 PILOT Bonds to be redeemed in part is to be in the principal amount of the minimum authorized denomination thereof or some integral multiple thereof and, in selecting Series 2009 PILOT Bonds for redemption, the PILOT Bond Trustee is to treat each such Series 2009 PILOT Bond as representing that number of Series 2009 PILOT Bonds which is obtained by dividing the principal amount of such registered Series 2009 PILOT Bond by the minimum denomination (referred to below as a “unit”) then issuable rounded down to the integral multiple of such minimum denomination.

When redemption of any Series 2009 PILOT Bonds is requested or required pursuant to the PILOT Bonds Indenture, the PILOT Bond Trustee is to give notice of such redemption in the name of the Issuer, specifying the name of the Series, CUSIP number, Bond numbers, the date of original issue of such Series, the date of mailing of the notice of redemption, maturities, interest rates and principal amounts of the Series 2009 PILOT Bonds or portions thereof to be redeemed, the redemption date, the Redemption Price, and the place or places where amounts due upon such redemption will be payable (including the name, address and telephone number of a contact person at the PILOT Bond Trustee) and specifying the principal amounts of the Series 2009 PILOT Bonds or portions thereof to be payable and, if less than all of the Series 2009 PILOT Bonds of any maturity are to be redeemed, the numbers of such Series 2009 PILOT Bonds or portions thereof to be so redeemed. Such notice is to further state that there is on deposit in the Senior PILOT Bonds Redemption Account moneys or securities in an amount which, together with moneys deposited at the same time as such notice, shall be sufficient to pay when due the principal or Redemption Price, if applicable, of and interest due and to become due on such Series 2009 PILOT Bonds on and prior to the Redemption Date or maturity date thereof, as applicable, and that on such date there will become due and payable upon each Series 2009 PILOT Bond or portion thereof to be redeemed the Redemption Price thereof together with interest accrued to the redemption date, and that from and after such date interest thereon will cease to accrue and be payable. Such notice may set forth any additional information relating to such redemption. The PILOT Bond Trustee, at the direction of the



Issuer, in the name and on behalf of the Issuer, is to mail a copy of such notice by certified mail, return receipt, postage prepaid, not more than sixty (60) nor less than thirty (30) days prior to the date fixed for redemption, to Series 2009 PILOT Bondholders, at their last address, if any, appearing upon the registration books, but any defect in such notice will not affect the validity of the proceedings for the redemption of such Series 2009 PILOT Bonds with respect to which proper mailing was effected. Any notice mailed as described above will be conclusively presumed to have been duly given, whether or not the registered owner receives the notice. In the event of a postal strike, the PILOT Bond Trustee is to give notice by any other appropriate means selected by the PILOT Bond Trustee in its discretion. If any Series 2009 PILOT Bond is not presented for payment of the Redemption Price within sixty (60) days of the redemption date, the PILOT Bond Trustee is to mail a second notice of redemption to the Series 2009 PILOT Bondholders by certified mail, return receipt, postage prepaid. Any amounts held by the PILOT Bond Trustee due to non-presentment of Series 2009 PILOT Bonds for payments on or after any redemption date are to be retained by the PILOT Bond Trustee for a period of at least one (1) year after the final maturity date of such Series 2009 PILOT Bonds.

## **SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS**

### **General**

The Series 2009 PILOT Bonds are payable from and secured by: (i) the Issuer's right, title and interest in the PILOT Revenues, (ii) all right, title and interest of the Issuer in and to the Funds and Accounts (other than the PILOT Bonds Rebate Fund) under the PILOT Bonds Indenture, including the PILOT Bonds Project Fund, the PILOT Bonds Revenue Fund, the Senior PILOT Bonds Bond Fund, the Series 2009 PILOT Bonds Debt Service Reserve Subaccount and the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount, including moneys and investments therein, (iii) all right, title and interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment, and (iv) any and all moneys or other property, including, without limitation, Restoration Funds, insurance proceeds and condemnation awards to be deposited in the PILOT Bonds Renewal Fund, of every kind and nature from time to time which are by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security under the PILOT Bonds Indenture, by the Issuer or by any other person, firm or corporation with or without the consent of the Issuer, to the PILOT Bond Trustee. ArenaCo is obligated under the PILOT Agreement, and has covenanted under the Arena Lease Agreement, to make PILOTs to ESDC. Under the PILOT Assignment, ESDC has assigned its rights to receive PILOTs under the PILOT Agreement to the PILOT Trustee, and the PILOT Trustee is required to transfer PILOTs to the PILOT Bond Trustee in an amount sufficient to pay debt service and other amounts due on the Series 2009 PILOT Bonds and certain other amounts payable by the PILOT Bond Trustee. PILOT Revenues are comprised of PILOTs that are transferred to and actually received by the PILOT Bond Trustee pursuant to the PILOT Assignment.

### **Special Limited Obligations**

**The Series 2009 PILOT Bonds are special limited obligations of the Issuer payable solely from PILOT Revenues derived from PILOTs made by ArenaCo pursuant to the PILOT Agreement, the interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment, and certain Funds and Accounts held by the PILOT Bond Trustee under the PILOT Bonds Indenture. None of the State, the City and ESDC is or shall be obligated to pay the principal of or interest on the Series 2009 PILOT Bonds, and neither the faith and credit nor the taxing power of the State or the City is pledged to such payment. The Issuer has no taxing power.**

**The Series 2009 PILOT Bonds do not constitute an obligation of ArenaCo, New Jersey Basketball, the Arena Developer or any of their respective affiliates. The Series 2009 PILOT Bonds**

are not secured by any interest in the Atlantic Yards Project, including the Arena Project, nor by any property of or interest in ArenaCo, New Jersey Basketball, the Arena Developer or any of their respective affiliates.

## PILOT Revenues

### *PILOT Agreement and PILOT Assignment*

Under the PILOT Agreement, ArenaCo agrees to make PILOTs, without diminution, deduction or set-off whatsoever, and without prior notice or demand in the amounts set forth therein; provided, however, that in no event will ArenaCo be required to make PILOTs in any PILOT Year in an amount greater than the real estate taxes and assessments for such PILOT Year that would have been levied upon or with respect to the Arena Premises, the Arena Project and any other improvements on the Arena Premises, if the Arena Premises, the Arena Project and any other improvements on the Arena Premises were not exempt from *ad valorem* real estate taxes by virtue of ESDC's interest therein (the "*Actual Taxes*"). See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with PILOTs." The PILOT Agreement will provide for the making of PILOTs by each January 1 and July 1, commencing July 1, 2012. ESDC has agreed in the PILOT Agreement that, during the term of the PILOT Assignment, it will pay or cause to be paid to the PILOT Trustee, in accordance with the PILOT Assignment, the PILOTs received under the PILOT Agreement. See "APPENDIX M—SUMMARY OF THE PILOT AGREEMENT."

Payment of the principal of, premium, if any, and interest on the Series 2009 PILOT Bonds is expected to be made from a portion of PILOTs received by the PILOT Trustee under the PILOT Assignment, pursuant to which ESDC pledges, assigns, transfers and sets over to the PILOT Trustee all of ESDC's right to and interest in all PILOTs due or to become due under the PILOT Agreement, except for Unassigned PILOT Rights.

Pursuant to the PILOT Assignment, the PILOT Trustee establishes the PILOT Fund, into which fund the PILOT Trustee will deposit all amounts received by it pursuant to the PILOT Agreement and the PILOT Assignment (the "*PILOT Receipts*"). While the Series 2009 PILOT Bonds (or any Reimbursement Obligations) are Outstanding, such PILOT Receipts are to be transferred:

- (i) FIRST, to the Debt Service and Reimbursement Fund, immediately upon receipt by the PILOT Trustee from the PILOT Bond Trustee of the PILOT Certificate setting forth the Bond Payment Requirement for the Payment Period that begins during the current PILOT Period, and in any event no later than each July 5 and January 5: a portion of the deposited PILOT Receipts equal to the Bond Payment Requirement set forth in such PILOT Certificate; provided, however, that if for any Payment Period no PILOT Certificate is received by the PILOT Trustee from the PILOT Bond Trustee by July 5 or January 5, as applicable, the PILOT Trustee shall transfer to the Debt Service and Reimbursement Fund on each such date an amount equal to 90% of the PILOTs due for such PILOT Period (the "*Minimum PILOT Bond Transfer*"); and
- (ii) SECOND, to the O&M Fund, immediately after the transfer described in paragraph (i) above, but only to the extent that all deposits, transfers or payments required by such paragraph (i) above have been made and all requirements with respect thereto have been fully and completely satisfied (including the curing of any deficiencies in prior deposits, transfers or payments): all moneys remaining in the PILOT Fund after the transfer described paragraph (i) above; provided, however, no transfer to the O&M Fund shall be made as described in this paragraph (ii) to the extent such transfer would reduce the

amount on deposit in the PILOT Fund below an amount equal to ten percent (10%) of the aggregate PILOTs for the then current PILOT Year.

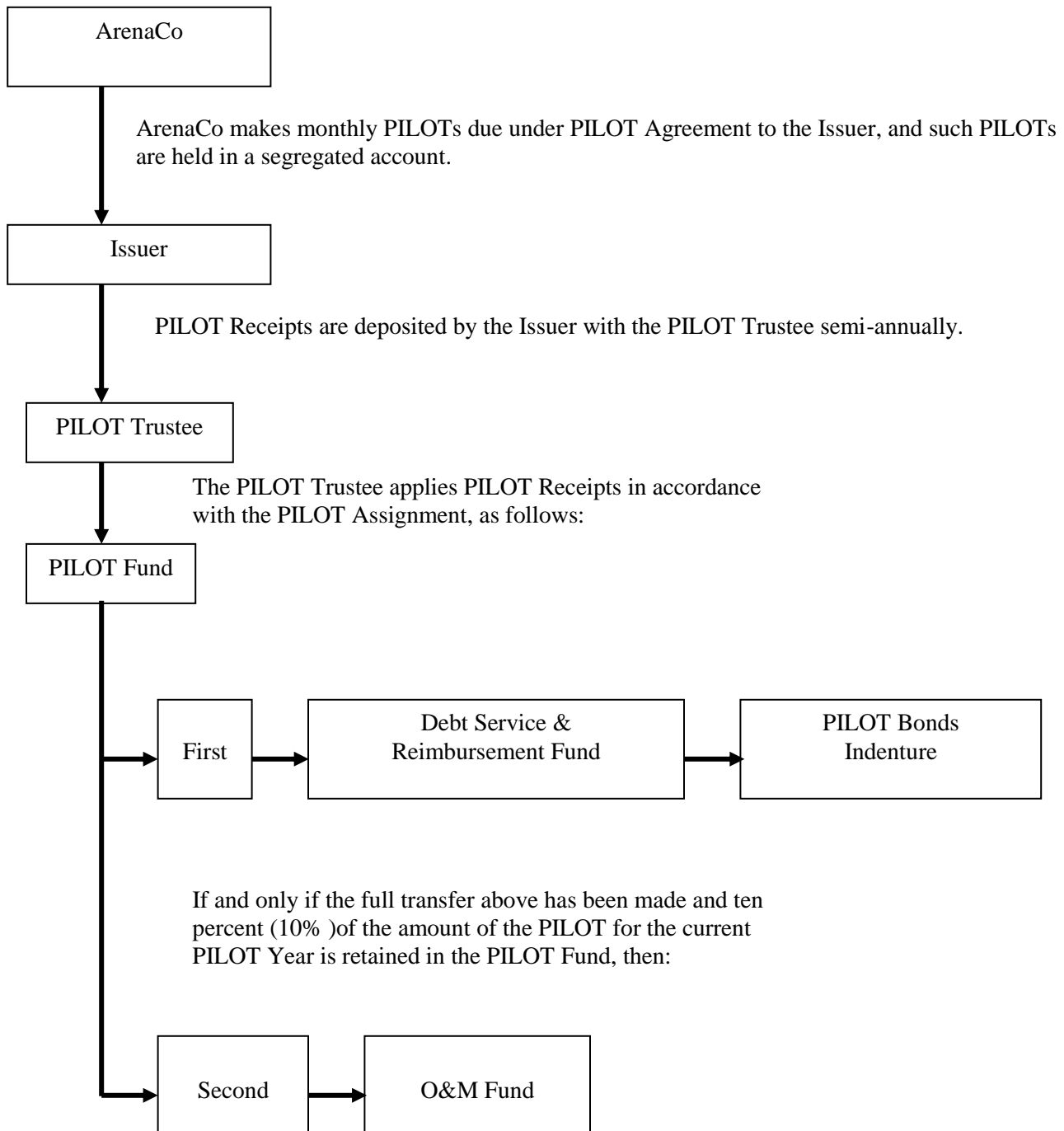
Under the PILOT Assignment, the PILOT Trustee holds the Debt Service and Reimbursement Fund for the benefit of, and such account is pledged to, the PILOT Bond Trustee. PILOT Receipts held by the PILOT Trustee while Series 2009 PILOT Bonds are Outstanding are to be applied for the following purposes in the priority in which listed (including curing any deficiencies in prior deposits, transfers or payments), the requirements of each deposit, transfer or payment to be fully satisfied, leaving no deficiencies, prior to any deposit, transfer or payment later in priority, except as otherwise specifically provided in the PILOT Assignment and described below:

- (i) FIRST, from the Debt Service and Reimbursement Fund, on each date on which an amount of PILOT Receipts is deposited to such Debt Service and Reimbursement Fund, the PILOT Trustee shall immediately transfer such amount of PILOT Receipts to the PILOT Bond Trustee, in any event in an aggregate amount such that upon the final transfer of such PILOT Receipts to the PILOT Bond Trustee during any PILOT Period, the amount so transferred to the PILOT Bond Trustee during such PILOT Period is equal to the Bond Payment Requirement for the Payment Period that begins during such PILOT Period; and
- (ii) SECOND, on each July 6 and January 6, or on the first Business Day thereafter in the event that either such date is not a Business Day, but only to the extent that all deposits, transfers or payments required as described in the preceding paragraph have been made and all requirements with respect thereto have been fully and completely satisfied (including the curing of any deficiencies in any prior deposits, transfers or payments), from the O&M Fund, the PILOT Trustee shall transfer to ESDC the amount on deposit in the O&M Fund, such amount to be transferred by ESDC to the Issuer in accordance with the Ground Lease, and then by the Issuer to ArenaCo in accordance with the Arena Lease Agreement, to be applied by ArenaCo in accordance with the Arena Lease Agreement; provided that, by its acceptance of any amount so transferred, ArenaCo shall be deemed to covenant (A) to expend such moneys on Landlord O&M Costs and/or the Landlord Allowance (as such terms are defined in the Arena Lease Agreement); (B) to keep such moneys in a segregated account, not commingled with any moneys of ArenaCo, until they are so expended; (C) to maintain reasonably sufficient records of the expenditure of such moneys so as to be able to demonstrate that such expenditure complies with clause (A), above; and (D) to provide a certification to the PILOT Trustee, the Issuer and ESDC, if and when requested, but in no event more frequently than once in any PILOT Period, as to compliance with clause (A), above, including copies of any records described in clause (C), above, necessary to substantiate such certification.

The PILOT Assignment also provides for the allocation of PILOT Receipts upon the occurrence of certain unexpected events, such as a failure by the PILOT Bond Trustee to deliver the PILOT Certificate when required under the PILOT Bonds Indenture. See “APPENDIX N—SUMMARY OF THE PILOT ASSIGNMENT.”

## Summary of Collection and Application of PILOTs

The following chart illustrates the collection of and application of PILOTs under the PILOT Agreement and the PILOT Assignment.



### *Projected PILOT*

Under the PILOT Agreement, ArenaCo agrees to pay, as PILOTs, the amounts set forth on a schedule to the PILOT Agreement; provided, however, that in no event can ArenaCo be required to make PILOTs in any PILOT Year in an amount greater than the Actual Taxes. See “APPENDIX M—SUMMARY OF THE PILOT AGREEMENT” and “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with PILOTs.” ESDC is to compute the Actual Taxes or cause the Actual Taxes to be computed (without regard to any discretionary reduction thereof or exemption therefrom for which the Arena Project and the Arena Premises might otherwise be eligible under any law or regulation other than the UDC Act) not more than sixty (60) days prior to, and not later than, the first Business Day of each PILOT Year, as follows: ESDC or its designee will multiply the applicable assessment of the Arena Project and the Arena Premises, as most recently determined by the City, by the tax rate then applicable to Class Four Property, or any successor property classification established by the City that would otherwise be applicable to the Arena Project and the Arena Premises, for purposes of levying real estate taxes on the Arena Project and the Arena Premises, if the Arena Project and Arena Premises were subject to real estate taxation. Such computation of the Actual Taxes will be conclusive, absent manifest error, and written notice of the amount of the Actual Taxes will be provided by ESDC to ArenaCo not fewer than thirty (30) days prior to the date any PILOT is required to be made under the PILOT Agreement; provided, however, that any failure by ESDC to provide such notice will not alter, reduce or diminish the obligation of ArenaCo to make such PILOT when due. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with PILOTs.”

### *Calculation of Actual Taxes*

The New York City Department of Finance (“Finance”) presently uses the cost approach to determine the Market Value of real property improvements such as the Arena Project. Utilizing this methodology, Finance would calculate the then current full assessed value of the Arena Premises (the “Land Value”) based on its fair market value and then, pursuant to the cost approach, determine the reproduction cost of a new arena and related improvements less depreciation using the actual cost of construction of the Arena Project consisting of other than fifteen- (15-) year life real property, together with the pro rata portion of capitalized interest and costs of issuance thereof (the “Improvement Value”). Improvement Value is adjusted after the first PILOT Year by the then applicable annual rate of construction cost inflation as measured by the McGraw-Hill Engineering News-Record Construction Cost Index, or by a comparable successor construction costs index, for the City less Accrued Depreciation. Finally, the cost approach also factors in the actual cost of construction of the Arena Project consisting of fifteen- (15-) year life real property, together with the pro rata portion of capitalized interest and costs of issuance thereof (the “Tenant Improvement Value”). The Tenant Improvement Value is adjusted after the first PILOT Year by the then applicable annual rate of consumer inflation as measured by the annual average seasonally adjusted CPI-U, U.S. City Average for All Items, published by the United States Bureau of Labor Statistics, less Accrued Depreciation. Accrued Depreciation takes into consideration the current amount of depreciation and obsolescence of the Arena Project. Applying these principles, the “Estimated Market Value” of the Arena Premises and the Arena Project would be equal to the sum of (i) the then applicable Land Value, (ii) the Improvement Value, and (iii) the Tenant Improvement Value. Finance calculates the “applicable assessment” of the Arena Premises and the Arena Project by multiplying the Estimated Market Value of the Arena Premises and the Arena Project by the applicable Equalization Ratio (currently 0.45). See “APPENDIX M—SUMMARY OF THE PILOT AGREEMENT.”

### *Real Property Tax Assessment Methodology*

In a report delivered to the Developer, Joel Marcus of the law firm of Marcus & Pollack LLP reviewed the methodology described in the PILOT Agreement by which Finance, which determines the

assessed values of real property for the purpose of levying real property taxes in New York City, would, under current practice, value the improvements to be constructed on the Arena Premises. In doing so, Mr. Marcus considered the applicable statute and case law and the professional assessment and appraisal literature relevant to the valuation of the Arena Project and concluded that the methodology described in the PILOT Agreement is consistent with good assessment practices and has been correctly applied to date. Mr. Marcus also projected the market value of the Arena Project upon completion as \$[1,009,009,209] which projection was calculated in accordance with current Finance practice. There can be no assurance that Finance, which will value the Arena Project for purposes of determining the assessed value of the property on which real property taxes will be based, will assign the same value to the Arena Project.

*Appraisal of Land Included within the Arena Project*

The firm of Cushman & Wakefield, Inc. was retained by ArenaCo to perform an appraisal of the Arena Premises as if all infrastructure work and environmental remediation needed to construct the Arena Project has been completed and the Arena Premises is a “ready-to-build” development site for a 670,000 square foot state-of-the-art sports and entertainment arena, to be developed under the MGPP, with no adverse environmental or soil conditions (the “C&W Appraisal”). Subject to certain assumptions, limiting conditions, certifications, and definitions qualified therein, the appraisal valued the Arena Premises as of September 1, 2009 at \$147 million. Such appraisal is only an opinion of value as of the specific date stated in the C&W Appraisal and is subject to the certain assumptions, and limiting conditions stated in the report. There can be no assurance that the New York City Department of Finance, which will value the Arena Premises for purposes of determining the assessed value of the property on which real property taxes will be based, will assign the same value to the Arena Premises.

### *Historic Property Tax Rates*

Set forth below are historic property tax rates applicable to Class Four Property for the past twenty (20) years.

<u>Year<sup>1</sup></u>	<u>New York City Property Tax Rate</u>
2009 <sup>2</sup>	10.612%
2009 <sup>3</sup>	9.870
2008	10.059
2007	10.997
2006	11.306
2005	11.558
2004	11.431
2003 <sup>2</sup>	11.580
2003 <sup>3</sup>	9.776
2002	9.712
2001	9.768
2000	9.989
1999	10.236
1998	10.164
1997	10.252
1996	10.402
1995	10.608
1994	10.724
1993	10.698
1992	10.631
1991	10.004
1990	9.539

Source: New York City Department of Finance.

<sup>1</sup> For purposes of this table, the term “year” shall refer to the fiscal tax year of the City beginning on July 1 of the preceding calendar year and ending on June 30 of such calendar year.

<sup>2</sup> Property tax rates for the third and fourth quarters of the fiscal tax year.

<sup>3</sup> Property tax rates for the first and second quarters of the fiscal tax year.

### *Enforcement of PILOT Obligation—Leasehold PILOT Mortgages*

The obligation of ArenaCo under the PILOT Agreement to make PILOTs during each PILOT Year during the Initial Term will be secured by a Leasehold PILOT Mortgage with respect to such PILOT Year, granted by ArenaCo to ESDC and assigned to the PILOT Trustee, encumbering ArenaCo’s interest under the Arena Lease Agreement in and to the Arena Project and the Arena Premises. The Leasehold PILOT Mortgages will be recorded in inverse order, with the Leasehold PILOT Mortgage securing PILOTs due in the last PILOT Year during the Initial Term recorded first and the Leasehold PILOT Mortgage securing PILOTs due in the first PILOT Year recorded last. Therefore, each Leasehold PILOT Mortgage is (a) subject and subordinate to the Leasehold PILOT Mortgages securing the obligation to make PILOTs corresponding to any succeeding PILOT Year (and to other Permitted Encumbrances), and (b) paramount in lien to the Leasehold PILOT Mortgage securing the obligation to make PILOTs corresponding to any preceding PILOT Year. As a result, in case of any payment default under a Leasehold PILOT Mortgage and subsequent foreclosure of such Leasehold PILOT Mortgage by the

PILOT Trustee, the liens of each Leasehold PILOT Mortgage securing PILOTs due in subsequent PILOT Years will survive such foreclosure and retain their priority.

Upon a failure of ArenaCo to make PILOTs for a given PILOT Year in accordance with the PILOT Agreement (a “*PILOT Mortgage Default*”), the PILOT Trustee may exercise the rights and remedies set forth in the corresponding Leasehold PILOT Mortgage, which include the right to institute proceedings to foreclose the lien of such Leasehold PILOT Mortgage against all or part of ArenaCo’s interests in the Arena Project and the Arena Premises. However, the exercise of the rights and remedies of the PILOT Trustee specified in a Leasehold PILOT Mortgage will be expressly subject to the satisfaction of the following conditions precedent:

(i) the failure to pay any of the PILOT Obligations, as defined in each Leasehold PILOT Mortgage, or any interest or late payment charges thereon, as specified in the PILOT Agreement, as and when payment of such PILOT Obligations, interest or late payment charges thereon were due, constituting such Leasehold PILOT Mortgage Default; provided such failure of payment shall have continued unremedied for a period of one (1) year after the date any such PILOT Obligations, interest or late payment charges thereon were due in accordance with the PILOT Agreement;

(ii) at least ten (10) weeks before the exercise of any such rights or remedies, the PILOT Trustee shall have given ArenaCo, New Jersey Basketball, the Commissioner of Finance of The City of New York and the holder of record of any other mortgage encumbering all or any portion of the Mortgaged Property that is subordinate in lien to the lien of a Leasehold PILOT Mortgage (each, a “*Subordinate Mortgage*”) written notice of (A) ArenaCo’s failure to pay any of the PILOT Obligations, interest or late payment charges thereon, as and when such PILOT Obligations, interest or late payment charges thereon were due, and (B) the intent of the PILOT Trustee to exercise its rights and remedies under the Leasehold PILOT Mortgage unless such failure is cured within ten (10) weeks after the date of such notice (the “*Foreclosure Notice*”); and

(iii) a copy of the Foreclosure Notice shall have been published at least once a week for six (6) consecutive weeks in (A) the City Record and (B) two (2) newspapers, one (1) of which may be a law journal and the other of which is circulated generally in the Borough of Brooklyn, New York, the first such publication to occur at least ten (10) weeks before the exercise of any of such rights or remedies.

In addition, the Leasehold PILOT Mortgages provide that if the PILOT Trustee (as assignee of ESDC) exercises any remedy or takes any other action that would result in the termination of any of the rights of the Nets to use the Arena in accordance with and pursuant to the Nets License Agreement during a Team Season, then the execution upon any writ of assistance or judgment of possession against the Nets or any like remedy terminating the rights of the Nets to use the Arena will be stayed for a period (the “*Stay Period*”) commencing on the date such writ or judgment of possession or like remedy is issued, granted or entered and ending on the last day of the then current Team Season, and the rights of the Nets to use the Arena shall not be disturbed by the PILOT Trustee during such Stay Period.

The Arena Project and the Arena Premises are exempt from *ad valorem* real estate taxes because they will be owned by ESDC. Although the Leasehold PILOT Mortgages do not create statutory liens to secure the making of PILOTs, the annual Leasehold PILOT Mortgage structure is intended to impose liens on the interest of ArenaCo in the Arena Project and the Arena Premises that are similar in certain respects to the liens held by taxing authorities for unpaid *ad valorem* real estate taxes and to provide for remedies that approximate the remedies that would ordinarily be exercised in the event of nonpayment of *ad valorem* real estate taxes. In addition, because no *ad valorem* real estate taxes are payable in connection with the Arena Project or the Arena Premises, no liens of any taxing jurisdictions with respect



to any *ad valorem* real estate taxes can obtain priority over the liens of the Leasehold PILOT Mortgages. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Leasehold PILOT Mortgages.”

See “APPENDIX O—SUMMARY OF THE LEASEHOLD PILOT MORTGAGES.”

**Although the Leasehold PILOT Mortgages will secure the making of PILOTs by ArenaCo to the PILOT Trustee (as assignee of ESDC) under the PILOT Agreement, the Leasehold PILOT Mortgages will not be assigned to the PILOT Bond Trustee and will not constitute security for the Series 2009 PILOT Bonds. Holders of the Series 2009 PILOT Bonds will have no rights under the Leasehold PILOT Mortgages, and the Series 2009 PILOT Bonds will not be secured by any interest in the Arena Project or the Arena Premises.**

#### *No Impairment*

Pursuant to the PILOT Assignment, the City acknowledges, covenants and agrees for the benefit of the holders of the Series 2009 PILOT Bonds that the City will not limit or alter the rights vested in ESDC under the UDC Act to undertake the Arena Project, to establish and collect PILOTs and to fulfill the terms of the PILOT Assignment and the other PILOT Security Documents entered into on behalf of the holders of the Series 2009 PILOT Bonds, nor will the City in any way impair the rights and remedies of the PILOT Trustee, the PILOT Bond Trustee or the holders of the Series 2009 PILOT Bonds until the Series 2009 PILOT Bonds, together with interest thereon, with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the holders of the Series 2009 PILOT Bonds are fully met and discharged.

### **PILOT Bonds Indenture**

#### *General*

The Series 2009 PILOT Bonds are special limited obligations of the Issuer, payable from and secured by: (i) the Issuer’s right, title and interest in the PILOT Revenues, (ii) all right, title and interest of the Issuer in and to the Funds and Accounts (other than the PILOT Bonds Rebate Fund) under the PILOT Bonds Indenture, including the PILOT Bonds Project Fund, the PILOT Bonds Revenue Fund, the Senior PILOT Bonds Bond Fund, the Series 2009 PILOT Bonds Debt Service Reserve Subaccount and the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount, including moneys and investments therein, (iii) all right, title and interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment, and (iv) any and all moneys or other property, including, without limitation, Restoration Funds, insurance proceeds and condemnation awards to be deposited in the PILOT Bonds Renewal Fund, of every kind and nature from time to time which are by delivery or by writing of any kind conveyed, mortgaged, pledged, assigned or transferred, as and for additional security under the PILOT Bonds Indenture, by the Issuer or by any other person, firm or corporation with or without the consent of the Issuer, to the PILOT Bond Trustee. See “APPENDIX L—SUMMARY OF THE PILOT BONDS INDENTURE.”

#### *Flow of Funds under the PILOT Bonds Indenture*

Pursuant to the PILOT Bonds Indenture, all PILOT Revenues are deposited to the credit of the PILOT Bonds Revenue Fund established under the PILOT Bonds Indenture. The PILOT Bond Trustee will make the following transfers from the PILOT Bonds Revenue Fund in the following order, subject to credits for amounts already on deposit in the Funds, Accounts and Subaccounts described below:

(i) To each Subaccount established with respect to a Series of Senior PILOT Bonds in the Senior PILOT Bonds Interest Account in the Senior PILOT Bonds Bond Fund, pro rata, an amount equal to the interest due and the Parity Reimbursement Obligations, Regularly Scheduled Swap Payments payable under related Parity Swap Obligations and any Bond Fees related to such Series of Senior PILOT Bonds due and payable on the next succeeding Interest Payment Date or during the next succeeding Payment Period with respect to such Series of Senior PILOT Bonds;

(ii) To each Subaccount established with respect to a Series of Senior PILOT Bonds in the Senior PILOT Bonds Principal Account in the Senior PILOT Bonds Bond Fund, pro rata, an amount equal to (A) one-half of the principal and Sinking Fund Installment due and payable on such Series of Senior PILOT Bonds on the next succeeding January 15, provided, however, if the next succeeding Interest Payment Date is January 15, such amount, together with amounts held in such Subaccount of the Senior PILOT Bonds Principal Account in the Senior PILOT Bonds Bond Fund for the payment of the principal and Sinking Fund Installment due and payable on such Series of Senior PILOT Bonds on such January 15, shall be equal to the amount necessary to pay such principal and Sinking Fund Installment in full and (B) the related Parity Reimbursement Obligations due and payable on the next succeeding Interest Payment Date or during the next succeeding Payment Period with respect to such Series of the Senior PILOT Bonds;

(iii) To each Subaccount established with respect to a Series of Senior PILOT Bonds in the Senior PILOT Bonds Redemption Account in the Senior PILOT Bonds Bond Fund, pro rata, an amount equal to the redemption price of such Series of Senior PILOT Bonds which is due and payable on the next succeeding Interest Payment Date or during the next succeeding Payment Period;

(iv) To reimburse each Reserve Account Credit Facility Provider for any amounts advanced under its Reserve Account Credit Facility relating to Senior PILOT Bonds, including paying interest thereon and any other amounts owed, in accordance with the terms of such Reserve Account Credit Facility; to the extent that on any date the amounts available for such reimbursement payments are insufficient to make all such payments, including interest, the amounts actually available will be paid, *pro rata*, to each Reserve Account Credit Facility Provider in proportion to the payments then due under the respective Reserve Account Credit Facilities; provided however, that if any such payment will not result in the reinstatement of a portion of such Reserve Account Credit Facility in an amount equal to such payment (excluding the portion thereof representing interest on such advance), such reimbursement payment will be made only after the payments otherwise required under the PILOT Bonds Indenture and described in subparagraphs (i) through (iii) above;

(v) If the balance in any Subaccount of the Senior PILOT Bonds Debt Service Reserve Account in the Senior PILOT Bonds Debt Service Reserve Fund is less than the Senior PILOT Bonds Debt Service Reserve Account Requirement for such Series of Senior PILOT Bonds, to such Subaccount of the Senior PILOT Bonds Debt Service Reserve Account in the Senior PILOT Bonds Debt Service Reserve Fund the amount necessary to satisfy the Senior PILOT Bonds Debt Service Reserve Account Requirement for such Series of Senior PILOT Bonds; to the extent that on any date the amounts available for such transfer are insufficient to make all such deposits in the Subaccounts of the Senior PILOT Bonds Debt Service Reserve Account, the amounts actually available will be paid, *pro rata*, to each Subaccount of the Senior PILOT Bonds Debt Service Reserve Account in proportion to the amounts then necessary to satisfy the Senior PILOT Bonds Debt Service Reserve Account Requirement for applicable Series of Senior PILOT Bonds;

(vi) If the balance in any Subaccount of the Senior PILOT Bonds Strike and Liquidity Reserve Account in the Senior PILOT Bonds Debt Service Reserve Fund is less than the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement for such Series of Senior PILOT Bonds, to such Subaccount of the Senior PILOT Bonds Strike and Liquidity Reserve Account in the Senior PILOT

Bonds Debt Service Reserve Fund the amount necessary to satisfy the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement for such Series of Senior PILOT Bonds; to the extent that on any date the amounts available for such transfer are insufficient to make all such deposits in the Subaccounts of the Senior PILOT Bonds Strike and Liquidity Reserve Account, the amounts actually available will be paid, pro rata, to each Subaccount of the Senior PILOT Bonds Strike and Liquidity Reserve Account in proportion to the amounts then necessary to satisfy the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement for applicable Series of Senior PILOT Bonds;

(vii) To each Subaccount established for a Series of Senior PILOT Bonds in the Senior PILOT Bonds Interest Account in the Senior PILOT Bonds Bond Fund, pro rata, the amount necessary, if any, to pay any Swap Termination Payments due and payable in the next succeeding Payment Period with respect to Qualified Swaps relating to such Series of Senior PILOT Bonds, which amount will be segregated from and not commingled with any other moneys held in such Subaccount of the Senior PILOT Bonds Interest Account in the Senior PILOT Bonds Bond Fund, and which amount alone will be available for the payment of any such Swap Termination Payments with respect to Qualified Swaps related to such Series of Senior PILOT Bonds;

(viii) To each Subaccount established with respect to a Series of Subordinated PILOT Bonds in the Subordinated PILOT Bonds Interest Account in the Subordinated PILOT Bonds Bond Fund, pro rata, an amount equal to the interest due and the Parity Reimbursement Obligations, Regularly Scheduled Swap Payments payable under related Parity Swap Obligations and any Bond Fees related to such Series of Subordinated PILOT Bonds due and payable on the next succeeding Interest Payment Date or during the next succeeding Payment Period with respect to such Series of the Subordinated PILOT Bonds;

(ix) To each Subaccount established with respect to a Series of Subordinated PILOT Bonds in the Subordinated PILOT Bonds Principal Account in the Subordinated PILOT Bonds Bond Fund, pro rata, an amount equal to (A) one-half of the principal and Sinking Fund Installment due and payable on such Series of Subordinated PILOT Bonds on the next succeeding January 15, provided, however, if the next succeeding Interest Payment Date is January 15, such amount, together with amounts held in such Subaccount of the Senior Bonds Principal Account in the Senior PILOT Bonds Bond Fund for the payment of the principal and Sinking Fund Installment due and payable on such Series of Subordinated PILOT Bonds on such January 15, shall be equal to the amount necessary to pay such principal and Sinking Fund Installment in full and (B) the related Parity Reimbursement Obligations due and payable on the next succeeding Interest Payment Date or during the next succeeding Payment Period with respect to such Series of Subordinated PILOT Bonds;

(x) To each Subaccount established with respect to a Series of Subordinated PILOT Bonds in the Subordinated PILOT Bonds Redemption Account in the Subordinated PILOT Bonds Bond Fund, pro rata, an amount equal to the redemption price of such Series of Subordinated PILOT Bonds which is due and payable on the next succeeding Interest Payment Date or during the next succeeding Payment Period;

(xi) To reimburse each Reserve Account Credit Facility Provider for any amounts advanced under its Reserve Account Credit Facility relating to Subordinated PILOT Bonds, including paying interest thereon and any other amounts owed, in accordance with the terms of such Reserve Account Credit Facility; to the extent that on any date the amounts available for such reimbursement payments are insufficient to make all such payments, including interest, the amounts actually available will be paid, *pro rata*, to each Reserve Account Credit Facility Provider in proportion to the payments then due under the respective Reserve Account Credit Facilities; provided however, that if any such payment will not result in the reinstatement of a portion of such Reserve Account Credit Facility in an amount equal to such payment (excluding the portion thereof representing interest on such advance), such reimbursement payment will be made only after the payments otherwise required by the PILOT Bonds Indenture and described in subparagraphs (i) through (x) above;

(xii) If the balance in any Subaccount of the Subordinated PILOT Bonds Debt Service Reserve Account in the Subordinated PILOT Bonds Debt Service Reserve Fund is less than the Subordinated PILOT Bonds Debt Service Reserve Account Requirement for such Series of Subordinated PILOT Bonds, to such Subaccount of the Subordinated PILOT Bonds Debt Service Reserve Account in the Subordinated PILOT Bonds Debt Service Reserve Fund the amount necessary to satisfy the Subordinated PILOT Bonds Debt Service Reserve Account Requirement for such Series of Subordinated PILOT Bonds; to the extent that on any date the amounts available for such transfer are insufficient to make all such deposits in the Subaccounts of the Subordinated PILOT Bonds Debt Service Reserve Account, the amounts actually available shall be paid, pro rata, to each Subaccount of the Subordinated PILOT Bonds Debt Service Reserve Account in proportion to the amounts then necessary to satisfy the Subordinated PILOT Bonds Debt Service Reserve Account Requirement for applicable Series of Subordinated PILOT Bonds;

(xiii) If the balance in any Subaccount of the Subordinated PILOT Bonds Strike and Liquidity Reserve Account in the Subordinated PILOT Bonds Debt Service Reserve Fund is less than the Subordinated PILOT Bonds Strike and Liquidity Reserve Account Requirement for such Series of Subordinated PILOT Bonds, to such Subaccount of the Subordinated PILOT Bonds Strike and Liquidity Reserve Account in the Subordinated PILOT Bonds Debt Service Reserve Fund the amount necessary to satisfy the Subordinated PILOT Bonds Strike and Liquidity Reserve Account Requirement for such Series of Subordinated PILOT Bonds; to the extent that on any date the amounts available for such transfer are insufficient to make all such deposits in the Subaccounts of the Subordinated PILOT Bonds Strike and Liquidity Reserve Account, the amounts actually available shall be paid, pro rata, to each Subaccount of the Subordinated PILOT Bonds Strike and Liquidity Reserve Account in proportion to the amounts then necessary to satisfy the Subordinated PILOT Bonds Strike and Liquidity Reserve Account Requirement for applicable Series of Subordinated PILOT Bonds;

(xiv) To each Subaccount established for a Series of Subordinated PILOT Bonds in the Subordinated PILOT Bonds Interest Account in the Subordinated PILOT Bonds Bond Fund, pro rata, the amount necessary, if any, to pay any Swap Termination Payments due and payable in the next succeeding Payment Period with respect to Qualified Swaps relating to such Series of Subordinated PILOT Bonds, which amounts shall be segregated from and not commingled with any other moneys held in such Subaccount of the Subordinated PILOT Bonds Interest Account in the Subordinated PILOT Bonds Bond Fund, and the amount necessary, if any, any Other Swap Payments due and payable in the next succeeding Payment Period, which amounts designated for the payment of Other Swap Payments shall be segregated from and not commingled with any other moneys held in the Subordinated PILOT Bonds Interest Account in the Subordinated PILOT Bonds Bond Fund, and which amounts alone shall be available for the payment of any such Swap Termination Payments due and payable in the next succeeding Payment Period with respect to Qualified Swaps related to such Series of Subordinated PILOT Bonds and such Other Swap Payments, as applicable;

(xv) To the PILOT Bonds Rebate Fund, the amount, if any, as shall be required to pay any PILOT Bonds Rebate Requirement; and

(xvi) To the PILOT Bonds Administrative Cost Account, an amount, equal to the Issuer's costs incurred in the administration of the PILOT Agreement or the PILOT Bonds Indenture.

After making the deposits required by the PILOT Bonds Indenture and described in subparagraphs (i) through (xvi) above, any moneys remaining in the PILOT Bonds Revenue Fund are to be held in the PILOT Bonds Revenue Fund.

The PILOT Bonds Indenture permits the Issuer to enter into Qualified Swaps, and payments under such Qualified Swaps are to be made pursuant to the provisions of the PILOT Bonds Indenture

described in the above flow of funds. The PILOT Bonds Indenture also permits the Issuer to fund over time a deficiency in an account of the Senior PILOT Bonds Debt Service Reserve Fund or Subordinated PILOT Bonds Debt Service Reserve Fund. See “APPENDIX L—SUMMARY OF THE PILOT BONDS INDENTURE.”

Subject to the Issuer’s Unassigned PILOT Rights and the Issuer’s non-recourse obligation under the PILOT Bonds Indenture, the Issuer has covenanted under the PILOT Bonds Indenture that it will take no action nor omit to take any action under any Issuer Document that would materially impair the right or remedies of the Series 2009 PILOT Bondholders under the Series 2009 PILOT Bonds or the PILOT Bonds Indenture.

#### *Remedies upon Default under the PILOT Bonds Indenture*

Moneys held by the PILOT Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment are held for the benefit of, and such fund is pledged to, the PILOT Bond Trustee. In the event that an Event of Default under the PILOT Bonds Indenture occurs and is continuing, the PILOT Bond Trustee may demand the transfer by the PILOT Trustee to the PILOT Bond Trustee of all amounts, if any, held for the benefit of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund. **In no event will the obligation of ArenaCo to make PILOTs under the PILOT Agreement be accelerated because of the occurrence of an Event of Default under the PILOT Bonds Indenture, and the Series 2009 PILOT Bonds are not subject to acceleration. The Series 2009 PILOT Bondholders have no rights under the Leasehold PILOT Mortgages, and the Series 2009 PILOT Bonds are not secured by any interest in the Arena Project, the Arena Premises or any other portion of the Atlantic Yards Project.** See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with PILOTs—No Acceleration of PILOTs.”

#### **Senior PILOT Bonds Debt Service Reserve Fund**

##### *Series 2009 PILOT Bonds Debt Service Reserve Subaccount*

The Series 2009 PILOT Bonds Debt Service Reserve Subaccount of the Senior PILOT Bonds Debt Service Reserve Account is required to be funded on the Arena Project Effective Date in an amount equal to \$39,852,956, which is amount is equal to Average Annual Debt Service on the Series 2009 PILOT Bonds as of their date of issuance (the “*Senior PILOT Bonds Debt Service Reserve Account Requirement*”). Amounts in the Series 2009 PILOT Bonds Debt Service Reserve Subaccount will be available to pay the principal of and interest on the Series 2009 PILOT Bonds to the extent moneys on deposit in the Series 2009 PILOT Bonds Interest Subaccount and Series 2009 PILOT Bonds Principal Subaccount are insufficient for the purposes thereof on such Interest Payment Date. All earnings on amounts in the Series 2009 PILOT Bonds Debt Service Reserve Subaccount will be retained therein if the amount on deposit therein is not at least equal to the Senior PILOT Bonds Debt Service Reserve Account Requirement established for the Series 2009 PILOT Bonds or, if no such deficiency exists, upon the direction of the Issuer, transferred on each January 10 and July 10, to the Series 2009 PILOT Bonds Interest Subaccount, then to the Series 2009 PILOT Bonds Principal Subaccount, and finally to the PILOT Bonds Revenue Fund. The Issuer will satisfy the Senior PILOT Bonds Debt Service Account Fund Requirement established for the Series 2009 PILOT Bonds with a cash deposit, from the proceeds of the Series 2009 PILOT Bonds, in an amount equal to the Senior PILOT Bonds Debt Service Reserve Account Requirement established for the Series 2009 PILOT Bonds. In no event may the Issuer deposit or cause to be deposited in the Series 2009 PILOT Bonds Debt Service Reserve Subaccount a reserve account credit facility in lieu of or in substitution for moneys on deposit in or to be deposited in such Subaccount. See “APPENDIX L—SUMMARY OF THE PILOT BONDS INDENTURE.”

### *Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount*

The Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount of the Senior PILOT Bonds Strike and Liquidity Reserve Account is required to be funded on the Arena Project Effective Date in amount equal to \$19,926,478, which is amount is equal to one-half of Average Annual Debt Service on the Series 2009 PILOT Bonds as of their date of issuance (the “*Senior PILOT Bonds Strike and Liquidity Reserve Fund Requirement*”). Amounts in the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount will be available to pay the principal of and interest on the Series 2009 PILOT Bonds to the extent (A) moneys on deposit in the Series 2009 PILOT Bonds Interest Subaccount, the Series 2009 PILOT Bonds Principal Subaccount and the Series 2009 PILOT Bonds Debt Service Reserve Subaccount and required to be withdrawn from such subaccounts are insufficient for the purposes thereof on such Interest Payment Date, or (B) (1) a delay in the construction of the Arena Project has occurred and (2) on the next Interest Payment Date to occur following the date of the commencement of such delay, moneys on deposit in the Series 2009 PILOT Bonds Capitalized Interest Account and required to be withdrawn from such subaccount are insufficient to pay all or any part of the accrued interest due and payable on such Interest Payment Date. All earnings on amounts in the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount will be retained therein if the amount on deposit therein is not at least equal to the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement established for the Series 2009 PILOT Bonds or, if no such deficiency exists, upon the direction of the Issuer, transferred on each January 10 and July 10, to the Series 2009 PILOT Bonds Interest Subaccount, then the Series 2009 PILOT Bonds Principal Subaccount, and finally the PILOT Bonds Revenue Fund. The Issuer will satisfy the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement for the Series 2009 PILOT Bonds in part with a portion of the proceeds of the Series 2009 PILOT Bonds and in part available funds received from ArenaCo. See “APPENDIX L—SUMMARY OF THE PILOT BONDS INDENTURE.”

“*Strike*” means any termination, suspension or cancellation of regular or post-season Home Games caused by (i) a players’ strike or work stoppage called by the NBPA or any successor organization, (ii) an NBA lockout of the NBPA, or (iii) any other expiration or termination of a CBA.

### **Series 2009 Non-Asset Bond Reserve Account**

Pursuant to the First Supplemental Indenture, in connection with the delivery of the Series 2009 PILOT Bonds, ArenaCo will transfer to the PILOT Bond Trustee, from available funds, an amount equal to the interest projected to accrue (and the amount of value to accrete, as applicable) on the Series 2009 PILOT Bonds from the date of delivery of the Series 2009 PILOT Bonds to but not including July 15, 2010 plus costs of issuance including, without limitation, Underwriters’ discount, plus an amount equal to the extraordinary mandatory redemption premium projected to be payable to holders of the Series 2009 PILOT Bonds in the event the Series 2009 PILOT Bonds are subject to extraordinary mandatory redemption on July 15, 2010, for deposit in the Series 2009 Non-Asset Bond Reserve Account of the PILOT Bonds Project Fund established by the PILOT Bonds Indenture. On or before June 10, 2010, if the Arena Project Effective Date has not yet occurred, ArenaCo will be required to transfer to the PILOT Bond Trustee, from available funds, an amount equal to the interest projected to accrue (and the amount of value to accrete, as applicable) on the Series 2009 PILOT Bonds from July 15, 2010 to but not including the Outside Commencement Date, plus an amount equal to the extraordinary mandatory redemption premium projected to be payable to holders of the Series 2009 PILOT Bonds in the event the Series 2009 PILOT Bonds were subject to extraordinary mandatory redemption on the Outside Commencement Date, [less investment earnings held, and investment earning projected to be received under guaranteed investment contracts and to be held, in the Series 2009 PILOT Bonds Construction and Acquisition Account, Series 2009 PILOT Bonds Debt Service Reserve Subaccount, and Series 2009 PILOT Bonds Strike and Liquidity Reserve Account – Mintz confirming language]. The PILOT Bond Trustee is to deposit such amount(s) into the Series 2009 Non-Asset Bond Reserve Account in the PILOT Bonds Project Fund.

Two (2) Business Days prior to an Interest Payment Date occurring prior to the earlier of the Arena Project Effective Date and the Extraordinary Mandatory Redemption Date, the PILOT Bond Trustee is to transfer from the Series 2009 Non-Asset Bond Reserve Account to the Series 2009 PILOT Bonds Interest Subaccount an amount necessary to make the amounts on deposit therein equal to the interest due on the Series 2009 Current Interest PILOT Bonds and any Bond Fees related to the Series 2009 PILOT Bonds due and payable on such Interest Payment Date. Notwithstanding the foregoing provisions of the First Supplemental Indenture, on the Arena Project Effective Date, the PILOT Bond Trustee is to: (i) immediately transfer from the Series 2009 Non-Asset Bond Reserve Account to the Series 2009 PILOT Bonds Interest Subaccount the amount necessary to make the amount on deposit therein equal to accrued but unpaid interest on the Series 2009 PILOT Bonds to, but not including, the Arena Project Effective Date and (ii) then transfer any surplus in the Series 2009 Non-Asset Bond Reserve Account to the Series 2009 Additional Rent Account. However, in the event of the occurrence of an Extraordinary Mandatory Redemption Date, amounts in the Series 2009 Non-Asset Bond Reserve Account are to be applied to the redemption of the Series 2009 PILOT Bonds at the applicable Redemption Price therefor. See “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption.”

### **Series 2009 Additional Rent Account**

Pursuant to the First Supplemental Indenture, on the Arena Project Effective Date, ArenaCo is required to deposit or cause to be deposited with the PILOT Bond Trustee cash and/or an Additional Rent Credit Facility (or Facilities) in the amount established as the Additional Rent Amount. See “PLAN OF FINANCE—General—Additional Arena Project Financing.” On the Arena Project Effective Date and on the first Business Day of each quarter thereafter, the PILOT Bond Trustee is to draw on the Additional Rent Credit Facility and deposit the proceeds of such draw into the Additional Rent Account. With respect to any demand for payment under any Additional Rent Credit Facility, the PILOT Bond Trustee is to make such demand for payment in accordance with the terms of such Additional Rent Credit Facility at the earliest time provided therein to assure the availability of moneys on the payment date for which such moneys are required. Upon receipt by the PILOT Bond Trustee of a requisition, the PILOT Bond Trustee is to first disburse moneys held for the credit of the Additional Rent Account for payment of the requisition and then, to the extent amounts on deposit in the Additional Rent Account are inadequate to make such payment, is to disburse funds on deposit in the Series 2009 PILOT Bonds Construction and Acquisition Account of the PILOT Bonds Project Fund in an amount equal to such deficiency. Upon the disbursement of moneys from the Additional Rent Account, the amount so disbursed is to constitute Additional Rent for the payment of Project Costs. Upon Completion of the Arena Project, any amount remaining in the Additional Rent Account is to be transferred to ArenaCo, provided that ArenaCo has certified to the City that the Transit Improvements have been completed and that ArenaCo (or any of its affiliates) has expended at least \$13 million on the Transit Improvements. To the extent that ArenaCo (and any of its affiliates) has expended, in the aggregate, less than \$13 million on the Transit Improvements, the difference between the amount actually expended on the Transit Improvements and \$13 million is to be transferred to the City.

### **Additional PILOT Bonds**

The PILOT Bonds Indenture provides that the Issuer may issue Additional PILOT Bonds on a parity with, or subordinated to, the Series 2009 PILOT Bonds for any one (1) or more of the following purposes: (i) to provide for the costs of design, development, acquisition, construction and equipping of the Arena Project, (ii) to provide funds necessary to complete the Arena Project, (iii) to provide funds in excess of Restoration Funds to repair, relocate, replace, rebuild or restore the Arena in the event of damage, destruction or taking by eminent domain, (iv) to provide funds for extensions, additions, improvements or facilities to the Arena, the purpose of which must constitute a “project” within the meaning of the UDC Act, or (v) to refund Outstanding PILOT Bonds (or other obligations issued on a

parity therewith). Under current Internal Revenue Service rules, interest on any Additional PILOT Bonds which are not Refunding PILOT Bonds would not be excluded from gross income for federal income tax purposes.

If no Event of Default exists under the PILOT Bonds Indenture, the PILOT Agreement and the PILOT Assignment, Additional PILOT Bonds may be issued upon receipt by the PILOT Bond Trustee of, among other things, (i) a Rating Confirmation Notice with respect to any Outstanding Series 2009 PILOT Bonds, (ii) a written statement from the Construction Monitor: (1) if the Additional PILOT Bonds are being issued to finance Completion of or a Capital Addition to the Arena, giving an estimate of the cost of achieving Completion or such Capital Addition, as applicable (including all financing and related costs) and the date on which such Capital Addition is likely to be completed; and (2) stating an opinion that the proceeds of such Additional PILOT Bonds, together with any moneys identified and available for such purpose, will be sufficient to pay the cost of achieving Completion or completing the Capital Addition; and (iii) a certificate of an Accountant stating that the Pro Forma PILOTs Coverage Percentage is at least equal to the Initial PILOTs Coverage Percentage.

### **Refunding PILOT Bonds**

The Issuer may issue one or more Series of Refunding PILOT Bonds at any time to refund Outstanding Series 2009 PILOT Bonds. Refunding PILOT Bonds may be issued upon receipt of, among other things, a Rating Confirmation Notice with respect to the Refunding PILOT Bonds and any Series 2009 PILOT Bonds which shall remain Outstanding following such refunding.

### **NBA Consent Letter**

[The making of PILOTs by ArenaCo] and the contractual arrangements related thereto require the prior consent of the NBA. The NBA originally approved of the PILOT Bond portion of the financing for the Arena Project on October 21, 2009. In connection with the financing of the Arena Project, the NBA will issue a letter indicating its approval of and consent to the financing plan described therein (the “*NBA Consent Letter*”). Pursuant to the terms of the NBA Consent Letter, the NBA is expected to consent to ArenaCo’s incurrence of the obligation to make PILOTs and the grant by ArenaCo of the liens on its leasehold interest in the Arena Premises and the Arena Project granted pursuant to the Leasehold PILOT Mortgages. Pursuant to the NBA Consent Letter, the NBA’s consent is conditioned on ArenaCo and the other Requesting Parties being and remaining in compliance with all of the terms and conditions set forth therein, and on the continuing accuracy of the representations and warranties of ArenaCo and such other Requesting Parties. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Relating to the Series 2009 PILOT Bonds —NBA Consent Letter.” All defined terms used under this heading and not defined in this Official Statement shall have the meanings set forth in the NBA Consent Letter.

Pursuant to the NBA Consent Letter, the ability of ArenaCo to take certain actions permitted by the Transaction Documents, and the exercise by the PILOT Trustee of certain of its rights following the occurrence of an Event of Default, are subject to, and limited to the extent set forth in, the NBA Consent Letter. In general, there is a one- (1-) year Standstill Period after a Default or Event of Default under the Transaction Documents, during which period the NBA may elect to offer the Collateral for sale and to select the purchaser therefor, provided that such purchaser agrees to make all PILOTs that are past due and assume the obligations of ArenaCo under the PILOT Agreement. With respect to the Leasehold PILOT Mortgages, the Standstill Period generally begins on the date that any PILOT is due and not paid in accordance with the PILOT Agreement and ends on the later to occur of: (a) the date on which all current and past due PILOTs are paid in full, and (b) the date which is one (1) year after such PILOT was due and not paid in accordance with the PILOT Agreement.



If the NBA pays or causes to be paid PILOTs that are then due and unpaid, and the Collateral is subsequently sold to a party that assumes the outstanding obligations of ArenaCo under the PILOT Agreement, the NBA Consent Letter entitles the NBA to be repaid from the proceeds of such sale of the Collateral any amounts so paid by the NBA, as further described below. If a sale of the Collateral does not occur within the Standstill Period, the PILOT Trustee agrees in the NBA Consent Letter to consult with the NBA in connection with the identification of a purchaser for the Collateral.

Under the terms of the NBA Consent Letter, if any of the Collateral is sold, the proceeds are to be applied as follows: (i) first, for Pledged Collateral only, to the payment of PILOTs then due, and to the satisfaction of any amounts having priority over the amounts due to the NBA or the Secured Parties; (ii) second, to the satisfaction of amounts (if any) then due from the Team Parties to the NBA, the other NBA Entities or any other Person to whom NBA Obligations may be owed in respect of NBA Obligations; (iii) third, to the payment of out-of-pocket costs incurred by the NBA in conducting the sale or other disposition of the Collateral (and any other Basketball Related Assets sold along with such Collateral), including legal and accounting fees and investment bank or other sale consultants' commissions; (iv) fourth, to the satisfaction of the amounts then due to the NBA with respect to NBA Priming Loans; provided, that such priority shall be limited to NBA Priming Loans with an aggregate principal amount not to exceed the sum of \$50 million and the amount of then accrued and unpaid interest and all reasonable related administrative costs incurred by the NBA in connection with such NBA Priming Loans; (v) fifth, to the NBA in payment of all NBA Cure Amounts; (vi) sixth, to the satisfaction of any remaining amounts then due to the NBA with respect to NBA Priming Loans; and (vii) seventh, to satisfy such other obligations of, and then to make the remaining amounts, if any, available for distribution to ArenaCo, in each case, in accordance with applicable law or as directed by a court of competent jurisdiction; provided, however, that, with respect to the preceding clause, each Team Party authorizes, pursuant to the NBA Consent Letter, the NBA to distribute such proceeds in accordance with such priorities and rights as may exist under the League Rules, except to the extent prohibited by applicable law or a court of competent jurisdiction.] See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with PILOTs—NBA Consent Letter."

## **PLAN OF FINANCE**

### **General**

#### *Series 2009 PILOT Bonds*

The Issuer is issuing the Series 2009 PILOT Bonds for the purposes of (i) providing a portion of the costs of acquisition and construction of the Arena Project; (ii) funding the Series 2009 PILOT Bonds Debt Service Reserve Subaccount in the amount of the Senior PILOT Bonds Debt Service Reserve Account Requirement for the Series 2009 PILOT Bonds; (iii) funding the Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount in a portion of the amount of the Senior PILOT Bonds Strike and Liquidity Reserve Account Requirement for the Series 2009 PILOT Bonds; (iv) paying capitalized interest on the Series 2009 PILOT Bonds from the Arena Project Effective Date through May 15, 2012, and (v) reimbursing certain Costs of Issuance.

The Series 2009 PILOT Bonds are special limited obligations of the Issuer, the principal of and premium, if any, and interest on which are payable out of and secured by (i) revenues of the Issuer derived and to be derived from PILOTs made by ArenaCo to ESDC under the PILOT Agreement and assigned by ESDC to the PILOT Trustee pursuant to the PILOT Assignment; (ii) all right, title and interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment; and (iii) all right, title and interest of the PILOT Bond Trustee in certain funds and accounts held by the PILOT Bond Trustee under the PILOT Bonds Indenture. Payment of the principal of, premium, if any, and interest on the Series 2009 PILOT Bonds will be made from the

amounts received by the PILOT Trustee and transferred to the PILOT Bond Trustee under the PILOT Assignment, pursuant to which ESDC pledges, assigns, transfers and sets over to the PILOT Trustee all of ESDC's right to and interest in all PILOTs due or to become due under the PILOT Agreement and any and all other rights and remedies of ESDC under or arising out of the PILOT Agreement, except for the Unassigned PILOT Rights. Under the PILOT Assignment, the City also agrees, for the benefit of the holders of the Series 2009 PILOT Bonds, that the City will not limit or alter the rights vested in ESDC under the UDC Act to undertake the Arena Project, to establish and collect PILOTs under the PILOT Agreement or to fulfill the terms of the PILOT Assignment and the other documents and agreements entered into in connection therewith on behalf of the holders of the Series 2009 PILOT Bonds. Additionally, the City has agreed that it will not in any way impair the rights and remedies of the PILOT Trustee, the holders of the Series 2009 PILOT Bonds or the PILOT Bond Trustee until the Series 2009 PILOT Bonds, together with interest thereon (and with interest on any unpaid installments of interest and all costs and expenses in connection with any action or proceeding by or on behalf of the holders thereof to collect amounts due), are fully paid and discharged. See "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS."

#### *The City and State Capital Contributions*

The City's capital contribution for the Arena Project, agreed under the City Funding Agreement to be in the aggregate amount of \$131 million, will be made available to NYCEDC. The State, acting through ESDC, will make a capital contribution of \$100 million for certain costs incurred and to be incurred in connection with the construction of certain items of Atlantic Yards Project infrastructure (which items are described in detail in Exhibit C to the State Funding Agreement), which include a portion of the Related Infrastructure, which benefits but is not a part of the Arena Project. ESDC and the Developer have entered into the State Funding Agreement, which provides for the funding and disbursement of the capital contributions to be made by the City and the State to the Developer and allocated to the Atlantic Yards Project. NYCEDC and ESDC have entered into the City Funding Agreement pursuant to which NYCEDC will fund the City's capital contribution to ESDC. ESDC will utilize such contribution solely for disbursement to the Developer for certain costs incurred in connection with the acquisition by ESDC of the Arena Premises. As of the date of this Official Statement, NYCEDC has funded approximately \$85 million of the City Funding Portion, and the State has advanced approximately \$75 million of the State Funding Portion. The funding and disbursement of the remaining amounts of the City's and the State's capital contributions are subject to the satisfaction of certain requirements which include, without limitation, satisfying eligibility requirements for the types of expenditures requested for reimbursement. ESDC's obligation to disburse any amounts of the City Funding Portion is conditioned upon, and subject to, ESDC receiving the amount of such City Funding Portion from NYCEDC pursuant to the City Funding Agreement; accordingly, ESDC will be under no obligation to disburse any part of the City Funding Portion to the Developer except when, and to the extent that, funds for such disbursement have been released and made available to ESDC by NYCEDC. In addition, the funding and disbursement of a \$15 million City Funding Portion is subject to the satisfaction of certain requirements set forth in the City Funding Agreement, including, without limitation, certification to the effect that at least \$100 million of Total Project Costs have been or will be incurred on or prior to the Funding Date during the Third Contribution Period. The funding and disbursement of the remaining \$31 million of the City Funding Portion is also subject, without limitation, to the occurrence of the later of the issuance of the Series 2009 PILOT Bonds and the filing of a condemnation petition by ESDC. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—The Disbursement of the Remaining City and State Capital Contributions." Requisitions for the remaining funds have been submitted, and approval is anticipated on or prior to the date of delivery of the Series 2009 PILOT Bonds. Pursuant to the State Funding Agreement, the City Funding Portion and the State Funding Portion are to be funded at the later of ESDC's filing of the condemnation petition and closing of the sale of the Series 2009 PILOT Bonds. Moneys received from the City and the State pursuant to the Public Funding Agreements will not be

available to ArenaCo to make payments under the PILOT Agreement, nor will such moneys be available to the PILOT Bond Trustee to pay the principal of and premium, if any, and interest on the Series 2009 PILOT Bonds. **Neither the State nor the City is or shall become obligated to pay the principal of or interest on the Series 2009 PILOT Bonds, and neither the faith and credit nor the taxing power of the State or City is pledged to such payment.**

#### *Additional Arena Project Financing*

Certain costs of the Arena Project will be paid by ArenaCo or its members as part of ArenaCo's obligations under the Arena Lease Agreement. As of October 31, 2009, ArenaCo or its members have contributed approximately \$71.5 million (which amount is net of \$85 million of the City's capital contribution) towards site preparation, site work, preconstruction costs, permits, architecture and engineering costs, legal and infrastructure costs, development fees and marketing in anticipation of that obligation.

Certain costs of the Arena Project may be financed with the proceeds of Rental Revenue Bonds which the Issuer may elect to issue. In the event such Rental Revenue Bonds are issued, ArenaCo would be obligated to make payments of Additional Rent under the Arena Lease Agreement to provide the Issuer with Rental Revenues in amounts sufficient to timely pay the principal of and premium, if any, and interest on such Rental Revenue Bonds when due. See "INTRODUCTION—The Arena Project Plan of Finance—Additional Arena Project Financing" and "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Relating to the Series 2009 PILOT Bonds—Additional Rent in Respect of Rental Revenue Bonds." The net proceeds of any Rental Revenue Bonds would reduce the amount of ArenaCo's required deposit to the Series 2009 Additional Rent Account described in the next succeeding paragraph.

In connection with the delivery of the Series 2009 PILOT Bonds, ArenaCo will be required to deposit the Additional Rent Amount (estimated to be \$[334.2] million, which amount may ultimately be reduced to reflect prior expenditures made for the Arena Project and included in the budget for the Arena Project on and after November 1, 2009) into the Series 2009 Additional Rent Account in the PILOT Bonds Project Fund. It is estimated that such deposit will cover the Completion Cost. All payments on account of such obligation will be paid as Additional Rent under the Arena Lease Agreement and treated ultimately as equity of ESDC in the Arena Project. At the time of the issuance of the Series 2009 PILOT Bonds, ArenaCo will not have funds sufficient to pay the Additional Rent Amount, but ArenaCo expects to raise sufficient funds prior to the Arena Project Effective Date from one or more of the following sources: (a) the proceeds of the Purchase Price payable by the New Investor, subject to the New Investor entering into the Investment Agreement and consummating the transactions contemplated thereunder (for a description of the Investment Agreement and definitions of such terms, see "PROJECT PARTICIPANTS—The Arena Developer, ArenaCo and New Jersey Basketball—Anticipated New Investment"), (b) additional financing at one or more of the parent companies of ArenaCo, including but not limited to Arena HoldCo, (c) additional equity contributions from the Arena Developer, its parent companies, and/or the New Investor, subject to the New Investor entering into the Investment Agreement and consummating the transactions contemplated thereunder, (d) additional equity contributions from the third parties or (e) any combination of the foregoing, in each case subject to the receipt of any applicable NBA approvals. Although ArenaCo expects that the necessary funds will be timely raised, there can be no assurance that the funds will be raised or that the amount of such funds will be sufficient to make the full payment of the Additional Rent Amount. If such Additional Rent Amount is not paid, the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption as described herein. After such initial deposit, additional payments will be required on account of any Completion Cost if, as construction progresses, the actual cost to achieve substantial completion of the Arena Project exceeds ArenaCo's initial estimate. Also in connection with the delivery of the Series 2009 PILOT Bonds, it is anticipated that ArenaCo will be obligated to pay approximately \$[24.7] million (as adjusted for final

Series 2009 PILOT Bond sizing and the overall financing structure and which amount shall be credited toward the Additional Rent Amount) for costs of issuance, closing costs and interest on the Series 2009 PILOT Bonds from their date of delivery to but not including July 15, 2010. See “INTRODUCTION—Commencement Agreement” and “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption.”

## Estimated Sources and Uses of Funds

The following table shows the initial estimated sources and uses of funds necessary to accomplish the proposed plan of financing for the Arena Project:

### *Estimated Sources of Funds:*

Series 2009 PILOT Bonds Proceeds.....	\$507,073,752
City Capital Contribution.....	131,000,000
Expended Amounts and Additional Rent Amount <sup>(1)</sup> .....	396,175,680
<b>Total Estimated Sources.....</b>	<b><u>\$1,034,249,432</u></b>

### *Estimated Uses of Funds:*

Deposit to PILOT Bonds Project Fund <sup>(2)</sup> .....	\$[ ]
Deposit to Series 2009 PILOT Bonds Capitalized Interest Account <sup>(3)</sup> .....	65,674,952
Deposit to Series 2009 PILOT Bonds Debt Service Reserve Subaccount.....	39,852,956
Deposit to Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount.....	19,926,478
Costs of Issuance and Other Costs <sup>(4)</sup> .....	[ ]
<b>Total Estimated Uses.....</b>	<b><u>\$1,034,249,432</u></b>

<sup>(1)</sup> Payable by ArenaCo to the Issuer pursuant to the Arena Lease Agreement; inclusive of approximately \$[24.7] million for costs of issuance, closing costs and interest on the Series 2009 PILOT Bonds to but not including July 15, 2010.

<sup>(2)</sup> The PILOT Bonds Project Fund will be net funded. For the purposes hereof, the amounts in the PILOT Bonds Project Fund are estimated to bear interest at 0.85%, which results in \$9.3 million of estimated interest earnings. When the interest earnings on the PILOT Bonds Project Fund are combined with the \$895.0 million initial deposit therein, the total funds available for construction are \$904.3 million.

<sup>(3)</sup> Includes net interest payable on the Series 2009 PILOT Bonds through May 15, 2012.

<sup>(4)</sup> Includes Underwriters' discount, fees of counsel, and other miscellaneous expenses.

## Debt Service Requirements

The following table sets forth for each twelve (12) month period ending July 15, the estimated annual debt service requirements for the Series 2009 PILOT Bonds and estimated PILOTs:

Period Ending July 15,	Principal Payments <sup>(1)</sup>	Interest Payments <sup>(2)</sup>	Total Debt Service Payments	Capitalized Interest <sup>(2)</sup>	Aggregate Investment Earnings <sup>(3)</sup>	Estimated Net Debt Service <sup>(4)</sup>	Estimated PILOTs <sup>(4)</sup>
2010	\$-0-	\$16,817,117	\$16,817,117	\$16,817,117	\$-0-	\$-0-	\$-0-
2011	-0-	29,971,100	29,971,100	29,971,100	-0-	-0-	-0-
2012	-0-	29,971,100	29,971,100	24,975,917	-0-	4,995,183	5,494,702
2013	-0-	29,971,100	29,971,100	-0-	2,092,280	27,878,820	30,666,702
2014	700,000	29,971,100	30,671,100	-0-	2,092,280	28,578,820	31,436,702
2015	1,575,000	29,930,850	31,505,850	-0-	2,092,280	29,413,570	32,354,927
2016	2,445,000	29,840,288	32,285,288	-0-	2,092,280	30,193,007	33,212,308
2017	3,325,000	29,699,700	33,024,700	-0-	2,092,280	30,932,420	34,025,662
2018	4,200,000	29,508,513	33,708,513	-0-	2,092,280	31,616,232	34,777,856
2019	5,070,000	29,267,013	34,337,013	-0-	2,092,280	32,244,732	35,469,206
2020	6,055,000	28,975,488	35,030,488	-0-	2,092,280	32,938,207	36,232,028
2021	7,115,000	28,627,325	35,742,325	-0-	2,092,280	33,650,045	37,015,049
2022	8,280,000	28,193,800	36,473,800	-0-	2,092,280	34,381,520	37,819,672
2023	6,540,000	27,689,275	37,229,275	-0-	2,092,280	35,136,995	38,650,694
2024	10,890,000	27,107,975	37,997,975	-0-	2,092,280	35,905,695	39,496,264
2025	12,295,000	26,444,425	38,739,425	-0-	2,092,280	36,647,145	40,311,859
2026	13,845,000	25,695,250	39,540,250	-0-	2,092,280	37,447,970	41,192,767
2027	15,520,000	24,851,625	40,371,625	-0-	2,092,280	38,279,345	42,107,279
2028	17,315,000	23,905,950	41,220,950	-0-	2,092,280	39,128,670	43,041,537
2029	19,240,000	22,850,900	42,090,900	-0-	2,092,280	39,998,620	43,998,482
2030	21,300,000	21,678,550	42,978,550	-0-	2,092,280	40,886,270	44,974,897
2031	5,063,720	38,831,955	43,895,675	-0-	2,092,280	41,803,395	45,983,734
2032	4,850,147	39,980,529	44,830,675	-0-	2,092,280	42,738,395	47,012,234
2033	4,630,381	41,115,294	45,745,675	-0-	2,092,280	43,653,395	48,018,734
2034	4,421,745	42,303,930	46,725,675	-0-	2,092,280	44,633,395	49,096,734
2035	16,802,500	30,928,175	47,730,675	-0-	2,092,280	45,638,395	50,202,234
2036	29,315,000	19,450,675	48,765,675	-0-	2,092,280	46,673,395	51,340,734
2037	31,585,000	17,618,488	49,203,488	-0-	2,092,280	47,111,207	51,822,328
2038	35,035,000	15,644,425	50,679,425	-0-	2,092,280	48,587,145	53,445,859
2039	37,220,000	13,454,738	50,674,738	-0-	2,092,280	48,582,457	53,440,703
2040	39,550,000	11,128,488	50,678,488	-0-	2,092,280	48,586,207	53,444,828
2041	42,020,000	8,656,613	50,676,613	-0-	2,092,280	48,584,332	53,442,766
2042	44,700,000	5,977,838	50,677,838	-0-	2,092,280	48,585,557	53,444,113
2043	49,070,000	3,128,213	52,198,213	-0-	2,092,280	50,105,932	55,116,526
2044	2,379,600	33,425,400	35,805,000	-0-	2,092,280	33,712,720	37,083,992
2045	2,118,182	32,351,819	34,470,000	-0-	2,092,280	32,377,720	35,615,492
2046	1,875,866	31,144,134	33,020,000	-0-	2,092,280	30,927,720	34,020,492
2047	1,652,856	29,812,144	31,465,000	-0-	2,092,280	29,372,720	32,309,992
<b>TOTALS</b>	<b>\$510,999,997</b>	<b>\$985,921,296</b>	<b>\$1,496,921,292</b>	<b>\$71,764,134</b>	<b>\$24,409,935</b>	<b>\$1,351,927,353</b>	<b>\$1,487,120,088</b>

(1) Includes Sinking Fund Installments in the years in which the Sinking Fund Installments are due. See "THE SERIES 2009 PILOT BONDS—Redemption—Mandatory Sinking Fund Redemption."

(2) Interest payable from the Arena Project Effective Date through May 15, 2012 will be paid from the proceeds of the Series 2009 PILOT Bonds. Interest payable prior to the Arena Project Effective Date will be paid from amounts deposited to the Series 2009 Non-Asset Bond Reserve Account.

(3) Represents aggregate estimated investment earnings on amounts deposited to the Series 2009 PILOT Bonds Debt Service Reserve Subaccount and Series 2009 PILOT Bonds Strike and Liquidity Reserve Subaccount.

(4) Results in minimum Initial PILOT Revenue Coverage Percentage of approximately 110%. PILOTs may not exceed Actual Taxes. Estimates of the amounts of PILOTs to become due are based on the Developer's current estimates of total Arena Project development costs, the report of an independent third party and a current appraisal of the Arena Premises. Actual Taxes will not be known until Finance fixes an assessed value for the completed Arena and the Arena Premises and the New York City Council fixes a tax rate for the next succeeding tax year. See "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Summary of Collection and Application of PILOTs."

## THE ARENA PROJECT

### The Arena

The Arena Project will be constructed on the Arena Premises located in the Borough of Brooklyn, New York. The Arena is being designed by AECOM Ellerbe Becket Architects and Engineers, P.C. (the “*Architect*”), and the façade of the Arena is being designed by ShoP Architects, P.C. (the “*Façade Architect*”). The Arena will be located at the intersection of Atlantic Avenue and Flatbush Avenue adjacent to the Atlantic Terminal, New York City’s third largest transit hub. Access is provided by ten (10) subway lines (the 2, 3, 4, 5, N, R, M, Q, B and D lines), the Long Island Rail Road and eleven (11) bus lines. Forty million people pass through this hub annually. As part of the Arena Project, RailCo will be constructing an extension of an underground tunnel from the existing transit station to a new entrance within the Urban Experience (that is, the open space public plaza) in front of the Arena’s main entrance, which will provide direct access to the Arena. The Arena has been designed to NBA facility standards and to provide exceptional basketball sightlines from the lower and upper bowls. When complete, the Arena is expected to have a maximum seating capacity for basketball of approximately 18,282 spectators, including 17,103 in non-suite seats and 1,179 in the various luxury suites, loge boxes and party suites. The Arena seating will also allow for simple reconfiguration to create seating options for as few as 3,000 spectators. The Arena will contain various amenities, to include eighty-three (83) standard luxury suites, twelve (12) courtside suites, six (6) conference suites, four (4) party suites, and forty (40) loge boxes. The four (4) party suites can be converted into two (2) larger party suites by the removal of a partition. The Arena will contain four (4) entrances, which includes one (1) premium entrance. The premium entrance will be dedicated to premium customers and will deliver them directly to the exclusive suite levels. The Arena will feature five (5) premium clubs, as well as a general admission restaurant. The restaurant and two (2) of the clubs will have views into the bowl. An on-site basketball practice court located near the main entrance will be an added amenity for the Arena and the Urban Experience as both Arena patrons and passers-by will be able to look down onto the below-grade basketball practice court. Additionally, there are views into the Arena bowl and of the scoreboard from the Urban Experience outside the Arena. The Arena’s main concourse will be located at street level, meaning that lower bowl patrons will be able to access their seats without using vertical transportation. The Arena’s concourses will also receive natural light from large windows on the Flatbush Avenue and Atlantic Avenue façades.

The Arena’s façade is comprised of glass and metal panels that provide varying levels of transparency and opacity. The façade’s materials form three separate but woven bands around the building’s volume. The first band engages the ground; it rises and lowers to create a sense of visual transparency and transitions into a large canopy at the corner of Atlantic and Flatbush Avenues. The canopy, which is thirty (30) feet above ground level, contains an oculus that frames pedestrians’ view of the Arena. The second, a glass band, allows for views from inside and outside of the Arena. The third band floats around the roof of the Arena and varies in transparency.

The Arena also will house food, beverage and merchandise concessions facilities, retail space, basketball operations offices for the Nets, function space, and other locker room and Nets training facilities, facilities for media and other functions and amenities appropriate to a state-of-the-art, first-class professional basketball facility. In addition to hosting Home Games, the Arena will be designed to accommodate other entertainment, religious, sporting, cultural, theatrical, recreational, promotional, community and civic events, such as concerts, rodeos, circuses, ice skating shows, convocations, private parties, commercial film and television shoots, fashion shows, meetings, conventions, intercollegiate sporting events, auctions and tours.

## Arena Project Development

### *Arena Project Development Costs*

The following table sets forth ArenaCo's estimates as of December 1, 2009 of the Arena Project development costs, and includes costs necessary for Arena Infrastructure, which costs will be paid or financed in part with the proceeds of the Series 2009 PILOT Bonds and in part by ArenaCo's payment of Additional Rent and moneys from other sources. The estimates are based on costs already incurred, the provisions of the Arena Design/Build Contract discussed below, remaining soft cost estimates with respect to construction of the Arena, certain contractor bids and current estimates with respect to construction of the Arena Infrastructure, and ArenaCo's judgments and assumptions, which it believes are relevant and accurate. Arena Project costs including site preparation costs, hard costs, soft costs and contingency which total approximately \$807.1 million, and Arena Infrastructure costs total approximately \$97.2 million. Total Arena Project costs will thus equal approximately \$904.3 million. Of the approximately \$904.3 million of total Arena Project costs, approximately \$156.5 million has been expended as of October 31, 2009, which amount includes \$85 million in City funds received under the Public Funding Agreements. From November 1, 2009, approximately \$747.8 million in costs are required to complete the Arena and Arena Infrastructure (approximately \$655.8 million are Arena costs and approximately \$92.0 million are Arena Infrastructure costs). Of the approximately \$655.8 million of remaining Arena costs, approximately \$481.3 million are covered by the provisions of the Arena Design/Build Contract (exclusive of approximately \$3.3 million which have been paid to the Arena Design/Build Contractor). The approximately \$481.3 million covered by the Design/Build Contract includes approximately \$19.7 million of contingency. Furthermore, there is an additional Arena Project contingency in the amount of approximately \$33.4 million.

Although the technical review of the Arena Design/Build Contract, other contractor bids and ArenaCo's estimates for the Arena Project is on-going, in the opinion of Merritt & Harris, Inc. (the "Independent Engineer"), as of the date of this Official Statement, both the Arena Project budget and the construction schedule appear to be reasonable. In addition, in the opinion of AE Com Technical Services Northeast, Inc. (formerly Earth Tech Northeast, Inc.), which has been retained by ESDC to act as it's representative in reviewing the design of the Atlantic Yards Project for compliance with the design guidelines described in the MGPP, the design of the Arena Project as reflected in the plans and specifications appears to conform with such applicable design guidelines.

### **Estimated Arena Project Development Costs** *(numbers in millions)*

#### *Arena Costs:*

Site Preparation Costs .....	\$124.1
Hard Costs (trades, general contractor/fee, permits, bonds, etc.) .....	465.6
Soft Costs and Other .....	172.4
Hunt Contingency <sup>(1)</sup> .....	19.7
Owner's Contingency" .....	25.3
<b>Subtotal – Arena Costs<sup>(2)</sup> .....</b>	<b>\$807.1</b>

#### *Arena Infrastructure:*

Hard Costs (trades, general contractor/fee, permits, bonds, etc.) .....	\$80.9
Infrastructure Soft Costs .....	8.1
Infrastructure Contingency <sup>(1)</sup> .....	8.1
<b>Subtotal – Arena Infrastructure Costs<sup>(2)</sup> .....</b>	<b>\$97.1</b>

<b>Total Arena Project Costs<sup>(2)</sup> .....</b>	<b>\$904.3</b>
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<sup>(1)</sup> Total Arena Project contingency of \$53.1.

<sup>(2)</sup> Totals may not add due to rounding.

### *Arena Project Construction*

Pre-construction work for the Arena Project, including but not limited to excavation work at the Arena Premises, has commenced and is ongoing, and ArenaCo expects that construction of the Arena Project will be completed by the second calendar quarter of 2012.

ArenaCo will be responsible for managing construction of the Arena Project. On or before the date of delivery of the Series 2009 PILOT Bonds, ArenaCo will enter into a design/build contract with Hunt Construction Group, Inc. (the “*Arena Design/Build Contractor*”) for the design and construction of the Arena (the “*Arena Design/Build Contract*”). The Arena Design/Build Contract will provide for a guaranteed maximum price. Although the Arena Design/Build Contract contains provisions to establish and attain the completion date, there can be no assurance as to the exact timing of completion of the Arena Project or that unforeseen factors will not substantially delay the completion or increase the cost of the Arena Project. However, the Arena Design/Build Contractor will be responsible for the entire construction and design work for the Arena and will subcontract with the Architect for the design and with the subcontractors for the construction of the Arena. The Façade Architect will design the façade of the Arena in coordination with the Architect and its engineering consultants. The façade consists of an exterior wall system composed of glass and metal panels with horizontal steel bands encircling the building. The cost of the façade is included as an allowance in the guaranteed maximum price under the Design/Build Contract. The Façade Architect is responsible for designing the façade of the Arena so that the cost of the façade is no greater than the allowance included for it in the guaranteed maximum price under the Design/Build Contract. There can be no assurance, however, that the final cost of the façade will not exceed the allowance made therefor, and any costs incurred for the façade in excess of the allowance would cause the guaranteed maximum price to be adjusted for the actual cost of the design and construction thereof. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena—Construction Risks” and “APPENDIX D—SELECTED PROVISIONS OF THE ARENA DESIGN/BUILD CONTRACT” for selected provisions of the Arena Design/Build Contract.

### *Arena Infrastructure*

ArenaCo or its affiliates will enter into contracts with contractors and/or construction managers for the development and construction of the “*Arena Infrastructure*,” which will include, without limitation, the following items: the Transit Improvements, the Urban Experience and other site work, and the Fourth Avenue Reconfiguration (as such items are described in more detail below). ArenaCo and its affiliates anticipate retaining Turner Construction Company, a New York corporation (“*Turner*”), to provide program management and construction oversight services in connection with the Arena Project, including the Arena Infrastructure.

Transit Improvement Agreement. The Transit Authority and RailCo will enter into an agreement (the “*Transit Improvement Agreement*”) pursuant to which RailCo will undertake the design and construction of certain work described therein and furnish and install certain equipment in accordance with the Authority Standards (as such term is defined in the Transit Improvement Agreement) and the approved plans and specifications therefor. Such work (the “*Transit Improvements*”) consists principally of: (i) construction of a new subway station entrance (the “*Subway Entrance*”), at grade at the southeast corner of Atlantic Avenue and Flatbush Avenue, that will serve as the main entrance from the Arena to the Atlantic Terminal transportation complex (the “*Transportation Complex*”); (ii) construction of a mass transit access area (the “*Access Area*”) located one (1) level below the street surface and containing a new fare control area (the “*New Fare Control Area*”) adjacent to the IRT (2/3/4/5) and BMT (Brighton) (B/Q) subway lines consisting of eleven (11) turnstiles, three (3) high wheels, and two (2) gates; (iii) installation of stairs, escalators and an elevator compliant with the Americans with Disabilities Act (the “*ADA*”) providing access to the New Fare Control Area from grade level; (iv) construction of a general purpose



ramp connection from the New Fare Control Area to the existing underpass at the south end of the IRT 2/3/4/5 platform (the “*Southern Underpass*”); (v) restoration and reopening for public use of the Southern Underpass; (vi) construction of an ADA-compliant ramp connection from the New Fare Control Area to the Manhattan-bound IRT 2/3 platform; (vii) removal and relocation of any storage and equipment rooms that are impacted by the Transit Improvements; (viii) restoration of the stairs between the IRT 4/5 platform and the Southern Underpass; (ix) installation of new stairs between the New Fare Control Area and the Brighton B/Q subway line mezzanine and from the Brighton subway line mezzanine to the Brighton subway line platform; (x) installation of new signage throughout the Transportation Complex (including directional signs and those contemplated by the TA Naming Rights Agreement); (xi) at the Transit Authority’s request, construction within the Access Area of a Transit Authority operations room to help coordinate train service and transit rider movement after Arena events; (xii) reconstruction of a closed street stair as a separate emergency stair to the sidewalk with a kiosk (if required) complying with requirements of the New York State Code Office; (xiii) relocation of existing Transit Authority vents on the east side of Flatbush Avenue between Atlantic Avenue and Fifth Avenue and repair of existing Transit Authority vent structures affected by the Transit Improvements to meet Authority Standards for load requirements (the “*Vent Work*”); and (xiv) fabrication and installation of an agent booth in the New Fare Control Area in accordance with Authority Standards. RailCo may install a high quality fabric and steel temporary canopy over the Subway Entrance in accordance with the approved plans and specifications. If RailCo or its affiliate or its successor does not commence the construction of a permanent building that would enclose the Subway Entrance within such building within ten (10) years after Final Completion of the Subway Entrance (as defined in and determined in accordance with the Transit Improvement Agreement), RailCo and/or such successor must replace the temporary canopy with a permanent canopy meeting the Authority Standards for a free-standing subway entrance. If such temporary canopy is not replaced within such ten-year period, the Authority may construct such permanent canopy at RailCo’s expense. If a temporary canopy is installed, the installation of a permanent canopy is not a condition of the achievement of Beneficial Use of the Subway Entrance, Substantial Completion or Final Completion, as each term is defined in the Transit Improvement Agreement.

The Transit Improvement Agreement requires, among other things, that RailCo cause the design and construction of the Transit Improvements in accordance with applicable law and the drawings, specifications and a construction schedule submitted to and approved by the Transit Authority in accordance with the Transit Improvement Agreement. The Transit Improvement Agreement also contains certain approval rights by the Transit Authority of the contractors and subcontractors performing the Transit Improvements. RailCo is required to reimburse the Transit Authority for its costs in reviewing RailCo’s design submissions, overseeing the construction work, and providing personnel in connection with performing certain work and with respect to track outages and to indemnify the MTA, the Transit Authority and certain other entities with respect to claims arising from the Transit Improvements. RailCo is also required to maintain certain insurance during the performance of the Transit Improvements. RailCo is required to commence construction of the work under the Transit Improvement Agreement within three (3) months after the later of (i) the date of commencement of the excavation of foundations for the Arena and (ii) the Arena Project Effective Date under the Commencement Agreement.

In addition, as part of the Transit Improvements, RailCo is obligated to reinforce and repair at its own cost and in accordance with standards and procedures set forth in the Transit Improvement Agreement any subway tunnel structural support members that are found to exhibit a twenty-five percent (25%) or greater section loss and that are in the load path of the Transit Improvements. The Arena Developer has performed some preliminary testing on the support members within the subway tunnels to determine their structural integrity, and such testing indicated that some columns had deterioration in excess of twenty-five percent (25%); however, neither the final quantity of columns with more than twenty-five percent (25%) deterioration nor the level of deterioration of untested columns is known. Funds for such tunnel support repair work will be provided for out of contingency funds in the budget for the Arena Project. The total cost of the Transit Improvements, which estimate is based on bids received

on so-called “ninety percent” (90%) construction documents, is anticipated to be approximately \$71.6 million, \$3.2 million of which has been contributed and \$68.4 million of which is remaining.

RailCo must achieve Beneficial Use of the Subway Entrance (as such term is defined in the Transit Improvement Agreement) as a condition to the Arena opening for its first public event (the “*Arena Opening Date*”), subject to certain exceptions (*i.e.*, force majeure delays, “Railroad Emergencies” (as such term is defined in the Transit Improvement Agreement) and delays caused by the Transit Authority’s failure to comply with any of its obligations under the Transit Improvement Agreement (“*Authority Delay*”) (to the extent the Authority Delay exceeds forty (40) days in the aggregate), such as to provide timely approvals, track outages, and force account labor, provided that RailCo timely notifies the Transit Authority of the occurrence of the applicable event) (the “*Delay Exceptions*”). In addition, under certain limited circumstances, RailCo will be entitled to an additional extension of up to ninety (90) days on account of extraordinary conditions with respect to structural steel supports. Furthermore, subject to the Delay Exceptions, ArenaCo, as an affiliate of RailCo, is prohibited from accepting the issuance of any temporary or permanent certificate of occupancy for the Arena prior to the time that Beneficial Use of the Subway Entrance is achieved. Subject to Authority Delay, Railroad Emergency and force majeure, RailCo is required to achieve Substantial Completion of the Transit Improvements (other than the Vent Work) within 120 days after Beneficial Use of the Subway Entrance is achieved, achieve Final Completion of the Transit Improvements (other than the Vent Work) within three (3) months after Substantial Completion (other than of the Vent Work) is achieved, achieve Substantial Completion of the Vent Work within three (3) months after Substantial Completion of the other components of the Transit Improvements and achieve Final Completion of the Vent Work within three (3) months after Final Completion of the other components of the Transit Improvements. If achievement of Beneficial Use, Substantial Completion or Final Completion is delayed on account of the Delay Exceptions, the time period for RailCo to achieve the applicable milestone will be extended by the aggregate number of days that delays due to the Delay Exceptions exceeded the Budgeted Delay Period. If the Beneficial Use milestone is so extended, ArenaCo may open the Arena for public events and may accept the issuance of a temporary certificate of occupancy for the Arena prior to the Beneficial Use Achievement Date (as such term is defined in the Transit Improvement Agreement). If Beneficial Use of the Subway Entrance is not achieved by the Arena Opening Date due to the Delay Exceptions, the Transit Authority and RailCo are to cooperate to assure the safety and convenience of the public in entering and exiting the Arena. So-called “100% complete” construction documents have been delivered to the Transit Authority for review and approval, which documents include responses to the Transit Authority’s comments on earlier submissions. RailCo intends to enter into a separate agreement with a general contractor for the performance of the Transit Improvements. FCE will provide to the Transit Authority a guaranty of completion of the Transit Improvements. **The PILOT Bond Trustee and holders of the Series 2009 PILOT Bonds will not have any rights under such guaranty.** See “RISK FACTORS AND INVESTMENT CONSIDERATION—Risks Associated with Construction of the Arena Project—Construction Risks.” In the event that RailCo fails to timely achieve Substantial Completion and/or Final Completion of the applicable portions of the Transit Improvements within the periods specified above, the Transit Authority may exercise against RailCo (but not ArenaCo) certain remedies provided in the Transit Improvement Agreement, including the requirement of the payment of liquidated damages.

As of the date that the street entrance at the southern end of the Subway Station and any stairway and other access leading from such entrance and other means of access to and from the Arena and the Subway Station and the temporary and permanent canopy are each opened for use (collectively the “*Subway Access*”), RailCo will maintain and repair the Subway Access to the Authority Standards, at its expense. RailCo has no obligation to provide maintenance in areas beyond the unpaid zone of the New Fare Control Area or inside the agent booth, station command center or other Transit Authority facilities, which are for the exclusive use of Transit Authority personnel.

If RailCo or its affiliates is unable to obtain financing for the Arena Project satisfactory to RailCo in its sole discretion, (ii) RailCo or its affiliates abandons the Atlantic Yards Project, (iii) a permanent injunction is entered enjoining the carrying out of the Atlantic Yards Project beyond all applicable rights of appeal or (iv) the Atlantic Yards Project is otherwise terminated, and provided that no construction work has been commenced under the Transit Improvements Agreement, RailCo may elect to terminate the Transit Improvement Agreement by providing notice of such election to the Transit Authority.

The Transit Authority has the right to terminate the Transit Improvement Agreement if an Event of Default (as defined in the Transit Improvement Agreement) occurs thereunder.

Contemporaneously with the execution of the Transit Improvement Agreement, ESDC, the Transit Authority and either ArenaCo or its affiliate will execute an easement agreement (the “*Transit Improvements Easement*”) granting the Transit Authority permanent access to portions of the Transit Improvements to be located within the Arena Premises as are reasonably necessary for access to and from the Transportation Complex as a means of ingress and egress by transit users, and a license for purposes of inspection, repair and maintenance by employees, agents and licensees of the Transit Authority. Under the terms of the Transit Improvements Easement, ArenaCo, as the tenant under the Arena Lease Agreement, is responsible for the performance of all obligations of ESDC thereunder. The Transit Improvements Easement and a memorandum of the Transit Improvement Agreement will be recorded against the Arena Premises and will be superior to the Arena Premises Interim Lease Agreement, the Ground Lease, the Arena Lease Agreement and the Leasehold PILOT Mortgages. The Transit Improvement Agreement and the Transit Improvements Easement will be held in escrow by the Document Agent pursuant to the Commencement Agreement. See “INTRODUCTION—Commencement Agreement” and “APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT.”

Site Work. The Arena Premises “*Site Work*” will include the design and construction of the sidewalks for the Arena Premises, bollards and street trees. Site Work will also include construction of the “*Urban Experience*,” which is an interim condition until a so-called “Urban Room” is developed by AYDC or its affiliate or assignee, as required by the Development Agreement between ESDC and the Developer. The Urban Experience will be an outdoor urban plaza designed to be located at the southeast corner of Flatbush Avenue and Atlantic Avenue and will be a significant public amenity complying with the basic use and design principles of the Urban Room, as set forth in the Atlantic Yards Design Guidelines. The plaza will be no less than 10,000 square feet in area and will be generally open to the public twenty-four (24) hours a day, seven (7) days a week. It is anticipated that the plaza will include the following elements: landscaping, retail, seating, the new subway entrance, and space to allow for formal and informal public uses, such as outdoor performances, temporary markets, and art installations. In addition, the plaza may include public art or a prominent sculptural element (such as a canopy or other architectural feature that could be part of the Arena and/or the Transit Improvements). The design of the Urban Experience is not yet complete, and the Developer has not yet contracted for its construction. The total cost for Site Work is anticipated to be approximately \$22.9 million (approximately \$1.9 million of which has been contributed and approximately \$21.0 million of which is remaining). Turner has estimated the cost of constructing and installing the sidewalks, bollards and street trees (approximately \$14.3 million of total Site Work cost) based on ninety percent (90%) construction documents, and the Arena Developer has estimated the anticipated approximately \$6.6 million cost of the plaza based on a conceptual design. The concepts and plans for the Site Work have been developed in consultation with the relevant public sector entities, whose final approval is still required.

Fourth Avenue Reconfiguration. The “*Fourth Avenue Reconfiguration*” work consists of street, curb and sidewalk improvements which will eliminate northbound traffic on Fourth Avenue between Flatbush Avenue and Atlantic Avenue by extending the existing pedestrian island, re-striping the roadway, and changing the traffic signals to accommodate the revised roadway geometry, all as required in the final EIS approved by ESDC. See “THE ARENA PROJECT—Governmental Permits and

Approvals.” The Fourth Avenue Reconfiguration has been designed to the extent required for review by the New York City Department of Transportation (the “DOT”), but full engineering plans are not yet complete. Contractors have not yet been hired to perform the Fourth Avenue Reconfiguration. The cost of the Fourth Avenue Reconfiguration is estimated by Turner to be approximately \$2.7 million, based on preliminary design drawings and a preliminary builder’s pavement plan.

Estimated costs of the Arena Infrastructure are included in the Arena Budget and are expected to be paid for in part from the proceeds of the Series 2009 PILOT Bonds. However, if sufficient other funds are not made available to complete the Arena Project, the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption as described herein. See “INTRODUCTION—Commencement Agreement” and “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption.”

### *Related Infrastructure*

General. In addition to the construction of the Arena Infrastructure, certain other items of infrastructure (the “*Related Infrastructure*”) will be required in order to open the Arena. Total Related Infrastructure Improvement Costs are projected to be \$195.0 million, approximately \$94.5 million of which has been incurred as of October 31, 2009, and \$100.5 million of which is remaining to be incurred. The costs of such Related Infrastructure are not covered by the proceeds of the Series 2009 PILOT Bonds. Such work overlaps with that of the Atlantic Yards Project, some of which is in progress and all of which will be performed by AYDC or its affiliates and funded from other sources, including but not limited to amounts received from the State under the State Funding Agreement. Funds needed to complete the Related Infrastructure will be deposited by AYDC in a trust account, separate from the funds and accounts established under the PILOT Bonds Indenture for the Series 2009 PILOT Bonds, on or about the date on which ESDC acquires vacant possession of the Arena Premises and certain other parcels within the AY Project Site, as described below under “—Infrastructure Trust Agreement.” However, if such funds are not made available at that time, the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption as described herein. See “INTRODUCTION—Commencement Agreement” and “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption.”

The Related Infrastructure will include the following work necessary for the development, construction, equipment and operation of the Arena: construction of a temporary rail yard in order to move most of LIRR operations off of the Arena Premises; excavation and relocation of sewer pipes and water mains from Fifth Avenue and Pacific Avenue to permit construction of the Arena Project and to service the Arena; demolition of existing improvements; environmental remediation; and the rebuilding of the Carlton Avenue Bridge which links Atlantic Avenue and Pacific Street on the East side of the AY Project Site, between Sixth Avenue and Vanderbilt Avenue. Parking to service Arena patrons on a non-exclusive basis will initially be provided on the eastern side of the AY Project Site, on Block 1129 on the Borough of Brooklyn Tax Map (“*Block 1129*”), to service the Arena. See “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Parking Easement.”

Infrastructure Trust Agreement. The funds necessary to complete the Related Infrastructure will be held pursuant to the Infrastructure Trust Agreement among AYDC, the City and The Bank of New York Mellon, as Infrastructure Trustee (the “*Infrastructure Trust Agreement*”). The Infrastructure Trust Agreement requires that, at the time of the delivery of vacant possession, the parcels that make up the first taking of land within the AY Project Site, including the Arena Premises, (i) \$15.0 million be placed in a Bridge Construction Account to be used for costs of the construction of the Carlton Avenue Bridge, and (ii) such funds as are required by the Construction Monitor to complete other Related Infrastructure improvements be placed in an Infrastructure Improvements Account (such account, together with the Bridge Construction Account, the “*Infrastructure Fund*”). The Infrastructure Trustee will disburse the funds in accordance with the requisition requests made by the Construction Monitor. Pursuant to the

Infrastructure Trust Agreement, no requisition requests to draw funds from the Bridge Construction Account may be approved until the Construction Monitor certifies that the amount required to complete the construction of the Carlton Avenue Bridge is less than or equal to \$15.0 million and is sufficient to complete such construction. At the time of the issuance of the Series 2009 PILOT Bonds, AYDC will not have funds sufficient to pay for the deposits to be made into the Infrastructure Fund, which deposits are required under the Infrastructure Trust Agreement for construction of the Carlton Avenue Bridge and the other Related Infrastructure work. However, AYDC expects to raise sufficient funds by the Arena Project Effective Date from additional equity contributions from the Arena Developer, its parent companies, the New Investor, and/or other third party investors, additional financing at one or more of the parent companies of AYDC, or any combination of the foregoing. Although AYDC expects that the necessary funds will be timely raised, there can be no assurance that the funds will be raised or that the amount of such funds will be sufficient to make the deposits necessary to be made into the Infrastructure Fund. If such deposit is not fully or timely made, the Series 2009 PILOT Bonds will be subject to extraordinary mandatory redemption. See “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption.”

Temporary Yard. The “*Temporary Yard Work*” consists of the construction by RailCo of a temporary commuter railroad storage yard and train servicing and maintenance facility (the “*Temporary Yard*”) in accordance with drawings and specifications that have been approved by the MTA and LIRR. The Temporary Yard is being built on Blocks 1120 and 1121 on the Borough of Brooklyn Tax Map. Pursuant to the LIRR Vanderbilt Yard License for Temporary Yard Work, dated as of February 14, 2007, as amended to date, between the MTA and LIRR, as Licensors, and RailCo, as Licensee, the Temporary Yard Work is required to be entirely completed by March 1, 2010. RailCo has entered into separate agreements for construction management services, excavation, electrical, track, signal and switch, trestle and cable bridge, and other construction work required to construct the Temporary Yard. Each such contract requires the work to be performed in accordance with the project construction schedule and the applicable drawings and specifications, mandates the maintenance of liability and other insurance, and calls for indemnification of the MTA and LIRR against claims and damages due to, among other things, bodily injury and property damage arising from the performance of the work. RailCo has delivered a notice of substantial completion of the Temporary Yard to the MTA and LIRR and as of the date of this Official Statement is awaiting sign-off from the MTA and LIRR. As of the date of this Official Statement, LIRR has moved operations into the completed Temporary Yard, has de-energized the existing tracks within the Arena Premises, and has signed an agreement with RailCo which allows for the cutting and removal of such track by RailCo. Of the budgeted hard-cost amount of \$65.7 million, \$55.8 million has been expended as of October 31, 2009, with approximately \$9.9 million remaining to be expended, of which amount approximately \$8.3 million consists mainly of so-called “dead-heading” costs of LIRR. FCE has delivered to the MTA and LIRR a completion guaranty for the Temporary Yard Work, together with a letter of credit in the amount of \$5.0 million, to secure the completion of the Temporary Yard Work and certain other obligations of RailCo, the Arena Developer and other affiliates of ArenaCo. **The PILOT Bond Trustee and holders of the Series 2009 PILOT Bonds will not have any rights under such guaranty.**

Utility Relocation. The utility relocation work consists of the excavation, removal, rerouting and upgrading of municipal water and sewer lines currently in portions of Fifth Avenue and Pacific Street within the Arena Premises. Utility relocation work includes designing and constructing new combined sewers and water mains, with associated valves and chambers to service the Arena Project, in the street beds of Sixth Avenue, Dean Street, Flatbush Avenue and Atlantic Avenue, in order to replace those services removed from the Arena Premises. Excavation and support work necessary to install new sewers to service the Arena Project has commenced on portions of the Arena Premises and adjacent areas, and the utility relocation work is scheduled to be completed on or about April 2010. The Developer has entered into a construction management agreement for the oversight and coordination of this work, together with separate trade contracts for the installation of the work. Each such contract requires, among

other things, that the work be performed in accordance with the project construction schedule and the applicable drawings and specifications, mandates the maintenance of liability and other insurance, and calls for indemnification of the Developer against claims and damages due to, among other things, bodily injury and property damage arising from the performance of the work. Of the total \$26.8 million in hard costs budgeted for this work, approximately \$17.7 million has already been completed under a contract with Felix Associates, LLC. The balance of work, approximately \$9.1 million, will be earned under extensions to this contract. Approximately \$870,000 of contingency is included in the remaining balance.

Demolition. The demolition work for the overall Atlantic Yards Project consists of asbestos abatement (where required), demolition, and removal of all various structures on the properties comprising the Atlantic Yards Project. Of the budgeted amount of \$22.2 million, approximately \$11.1 million has been expended as of October 31, 2009 and approximately \$11.1 million is remaining to be expended. A significant number of the structures originally located on the AY Project Site have previously been demolished. The remaining balance of the demolition work consists of demolishing the remaining structures on the properties to which ESDC will take title by eminent domain in order to construct the Arena Project. The affected properties include parcels on Block 1127 on the Tax Map of the Borough of Brooklyn, which are in the Arena footprint, and parcels on Block 1129 (two (2) blocks to the east) that must be cleared to accommodate staging, construction trailers and worker parking as required in the final EIS approved by ESDC, as well as parking for Arena patrons. Contracts have not been entered into for this remaining work, which is expected to commence when ESDC acquires vacant possession of the parcels. The remaining budgeted amount of approximately \$11.1 million is based on bids for the Arena Block buildings and estimates based on bids for the demolition of the buildings on Block 1129 and includes approximately \$1.0 million of contingency.

Environmental Remediation. The environmental remediation work consists of the excavation and legal disposal of any contaminated soil and other materials found on the Arena Premises as well as work in progress related to remediation of prior petroleum spills currently under way at the site. Excavation and soil remediation of portions of the Arena Premises and adjacent areas has commenced for purposes of Arena Project construction. Of the budgeted amount of \$22.9 million, approximately \$9.8 million has been expended as of October 31, 2009 and \$13.1 million is remaining to be expended. The remaining balance, which includes approximately \$1.1 million of contingency, is associated primarily with the excavation and legal disposal of contaminated soil and other materials. No contracts have been entered into to perform the remaining work. The Arena Developer will obtain environmental insurance for unanticipated environmental liability as required under the Arena Premises Interim Lease Agreement and Arena Lease Agreement.

Carlton Avenue Bridge. The Carlton Avenue Bridge work consists of the demolition and reconstruction of the bridge which was previously situated at Carlton Avenue between Pacific Street and Atlantic Avenue. As provided under the Arena Lease Agreement, substantial completion of the Carlton Avenue Bridge reconstruction is a condition to the opening of the Arena. Drawings and specifications for reconstruction of the bridge will require approval by the DOT pursuant to a Carlton Avenue Bridge Construction Agreement, dated December 17, 2007, between the City, acting by and through the Commissioner of the Department of Transportation, and RailCo (the "*Carlton Avenue Bridge Agreement*"). Among other things, the Carlton Avenue Bridge Agreement requires RailCo to (i) cause its contractors to demolish and reconstruct the bridge in strict accordance with the approved plans, (ii) furnish record drawings showing the bridge as-constructed, and (iii) grant the DOT an irrevocable permanent easement for the purpose of allowing the DOT to access the bridge for inspections, maintenance, repair and reconstruction, as and when required. Subject to unavoidable delays, which include litigation challenging the approvals for, or seeking to enjoin the development of, the Atlantic Yards Project (including the Arena Project), force majeure delays, and certain other conditions, the Carlton Avenue Bridge reconstruction is required to be completed within thirty-six (36) months after the initial closure of the existing bridge (which occurred on or about January 23, 2008), or RailCo will be

liable for liquidated damages in the amount of \$10,000 per day. The obligation to commence construction has been deferred due to an Unavoidable Delay (as such term is defined in the Carlton Avenue Bridge Construction Agreement). Notwithstanding the foregoing description of “unavoidable delays,” the Carlton Avenue Bridge Agreement provides that RailCo will be responsible for Substantially Completing the Carlton Avenue Bridge reconstruction no later than sixty (60) months from the date of execution of such agreement, regardless of any unavoidable delays, unless the unavoidable delay directly and specifically precludes RailCo from Substantially Completing the Carlton Avenue Bridge reconstruction. See “LITIGATION—Litigation Related to the Arena Project.” Such obligation will be reinstated upon the closing of the issuance of the Series 2009 PILOT Bonds. RailCo’s obligation to complete the Carlton Avenue Bridge work pursuant to such agreement has been guaranteed by FCE. **The PILOT Bond Trustee and holders of the Series 2009 PILOT Bonds will not have any rights under such guaranty.** Additionally, the Carlton Avenue Bridge Agreement requires that RailCo cause the contractor it retains to reconstruct the bridge to furnish payment and performance bonds guaranteeing performance and payments to subcontractors. During construction, and in accordance with the approved maintenance and protection of traffic plan, vehicular and pedestrian traffic on the bridge will be diverted to the Sixth Avenue Bridge situated at Sixth Avenue between Pacific Street and Atlantic Avenue until completion of the construction work. To date, the pre-existing Carlton Avenue bridge has been demolished, but RailCo has not yet begun reconstruction or entered into contracts to perform such work. The Carlton Avenue Bridge work has a budget of \$13.1 million, which amount includes \$1.1 million of contingency and is based on 100% drawings and specifications provided to the DOT.

In order to reconstruct the Carlton Avenue Bridge, RailCo must also complete construction of certain elements of work related to the permanent commuter railroad storage yard and train servicing and maintenance facility (the “*CAB Yard Work*”) to be built for LIRR under the Yard Relocation and Construction Agreement to be entered into among the MTA, LIRR and RailCo (the “*Permanent Yard Construction Agreement*”). The budgeted amount for the CAB Yard Work is \$42.7 million, including contingency of \$3.8 million, based on a cost estimate prepared by the engineering firm of Gannett Fleming, Inc. for a conceptual design of such work. Approximately \$90,000 of costs associated with the CAB Yard Work have been expended as of October 31, 2009. The final design and specifications of the CAB Yard Work will be subject to the approval of the MTA and LIRR, and the prosecution of such work will be governed by the provisions of the Permanent Yard Construction Agreement. After the approval of technical drawings for the CAB Yard Work, provided that no Event of Default then exists under the Permanent Yard Construction Agreement (as defined therein), RailCo has the right to commence the CAB Yard Work, provided that RailCo delivers to the MTA and LIRR a guaranty of the performance of RailCo’s obligations described in the next succeeding sentence, together with required bonds and insurance. **The PILOT Bond Trustee and holders of the Series 2009 PILOT Bonds will not have any rights under such guaranty.** In the event that the Permanent Yard Construction Agreement is terminated prior to completion of the CAB Yard Work, at LIRR’s option, RailCo is to either (a) secure the CAB Yard Work so that the same does not present a risk to life or safety, (b) promptly restore the CAB Yard Work to enable LIRR to utilize the yard in the manner the same was utilized on the date of the Permanent Yard Construction Agreement to the extent practicable in LIRR’s reasonable determination or (c) complete the CAB Yard Work. In the event that the Carlton Avenue Bridge reconstruction and/or the CAB Yard Work are not completed, the Arena will not be allowed to open for public events. The Permanent Yard Construction Agreement will be held in escrow by the Document Agent pursuant to the Commencement Agreement. See “RISK FACTORS AND INVESTMENT CONSIDERATION—Risks Associated with Construction of the Arena—Construction Risks.”

**Parking.** The Arena Lease Agreement requires ArenaCo to have access to at least 1,100 parking spaces for the Arena on a nonexclusive basis. ArenaCo will be the beneficiary of an easement appurtenant to the Arena Premises granting ArenaCo the right to access and use such parking spaces whenever the Arena is open on one (1) or more parcels in the vicinity of the Arena Premises. ESDC will acquire such parcels through its exercise of the power of eminent domain as part of the first taking of land

for the Atlantic Yards Project and will lease such parcels to an affiliate of ArenaCo. ESDC will grant such easement, and ArenaCo's affiliate will undertake within such easement to build such parking spaces, at its own cost and expense, and will retain the right to receive any and all revenues derived from such parking. Such affiliate will also retain the right to design such parking in any configuration suitable to it. Construction work to provide this parking, which is anticipated to be on grade at the time of the Arena opening, consists of site grading, paving, striping, lighting and fencing and is currently estimated at \$1.6 million. ArenaCo's affiliate may engage a third party operator to run the parking operation and, for an agreed upon share of parking revenues, such operator may provide additional parking equipment, such as stackers, if required. See "ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Parking Easement."

#### *TA Naming Rights Agreement*

RailCo will enter into a Naming Rights Agreement with the MTA and the Transit Authority (the "TA Naming Rights Agreement") pursuant to which the MTA and the Transit Authority will (i) change the name of the Atlantic Avenue/Pacific Street Subway Station (the "Subway Station") to include the name "Barclays Center" during the twenty- (20-) year term of the TA Naming Rights Agreement (which will commence upon the achievement of Beneficial Use of the Subway Entrance, (ii) refer to the new station name in way-finding Subway and Subway Station signage, which signage changes will be made by RailCo at its expense as part of the work under the Transit Improvement Agreement, (iii) upon the next publication of Subway system maps following the achievement of Beneficial Use of the Subway Station, modify all Subway system maps to refer to the new station name and (iv) endeavor to refer to the new station name in subway train stop audio announcements that reference the Subway Station. RailCo will reimburse the Transit Authority for all costs incurred by the Transit Authority in connection with the signage changes and pay the Transit Authority a fee of \$200,000 per annum. RailCo is responsible for the maintenance of all signage in the Subway Station within the unpaid zone of the New Fare Control Area in accordance with the general standards of maintenance of the Subway System. The Authority is responsible for the maintenance of all signage in the Subway Station that is not within the unpaid zone of the New Fare Control Area.

In the event that during the term of the TA Naming Rights Agreement, the MTA or the Transit Authority elects to negotiate with a third party the terms of a prospective naming rights agreement for the Subway Station that will take effect after the scheduled expiration date of the TA Naming Rights Agreement, RailCo will have a right of first refusal to enter into an agreement for such naming rights.

The TA Naming Rights Agreement will be held in escrow by the Document Agent pursuant to the Commencement Agreement. See "INTRODUCTION—Commencement Agreement" and "APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT."

#### **Governmental Permits and Approvals**

As described herein under the heading "THE ISSUER—General," the Issuer is a not-for-profit local development corporation formed to finance certain components of the Atlantic Yards Project, including (but not restricted to) the design, development and construction of the Arena Project. On September 11, 2009, the Issuer declared its official intent to issue tax-exempt bonds and use the proceeds thereof to finance the payment of certain costs of the Arena Project. The Issuer's Board adopted a Resolution at its November 24, 2009 meeting, approving the issuance of the Series 2009 PILOT Bonds.

The process by which ESDC will acquire the properties necessary for the first phase of the Atlantic Yards Project is described below under "—Condemnation and Vacant Possession."



The Atlantic Yards Project (including the Arena Project) has been the subject of review pursuant to the State Environmental Quality Review Act (“SEQRA”). As “lead agency” under SEQRA, ESDC issued a draft environmental impact statement (“EIS”) for the Project on July 18, 2006. Thereafter, ESDC held public hearings and prepared a final EIS which was accepted by the ESDC Board of Directors on November 27, 2006. In December 2006, the ESDC Board and the MTA’s Board of Directors approved and adopted SEQRA findings regarding the Atlantic Yards Project (including the Arena Project). See “LITIGATION—Litigation Related to the Arena Project—Environmental, Condemnation and Related Matters.”

The Arena Project will be constructed as part of the Atlantic Yards Project. The Atlantic Yards Project, including the Arena Project, was approved by ESDC in the MGPP. The Atlantic Yards Project and ESDC’s participation were approved by the New York State Public Authorities Control Board (the “PACB”) on December 20, 2006. During the approval process, ESDC approved the use of its eminent domain powers to acquire property needed for the Atlantic Yards Project, including the Arena Project. ESDC held several public hearings and also prepared a full EIS which described the potential impacts of the Atlantic Yards Project and the measures designed to mitigate those impacts. See “LITIGATION—Litigation Related to the Arena Project—Environmental, Condemnation and Related Matters.” The sale of certain property currently used by LIRR for its Vanderbilt Yard and needed for construction of the Arena Project was approved by the MTA and LIRR on December 13, 2006, which approvals were modified on June 24, 2009.

Prior to completion of the Arena Project, a number of governmental permits and approvals must be obtained. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena—Governmental Permits and Approvals” and “—Environmental Matters.” ArenaCo expects that the other permits required for the Arena Project will be obtained in the ordinary course as they are required. Such permits will likely include building permits, liquor licenses, and various approvals by ESDC and the City.

#### *Condemnation and Vacant Possession*

On September 18, 2009, the Developer and ESDC entered into a Land Acquisition Funding, Property Management and Relocation Agreement (the “LAFPMRA”), pursuant to which ESDC agreed to exercise its power of eminent domain to condemn or otherwise acquire portions of the property required for the Atlantic Yards Project, including the Arena Project. To date, all litigation challenges to ESDC’s determination and findings pursuant to Section 207 of the New York State Eminent Domain Procedure Law (“EDPL”) have been resolved in ESDC’s favor. Pursuant to the EDPL, ESDC has sent offer letters to all owners of the properties to be condemned in the so-called “First Taking.” ESDC will commence a proceeding to acquire the properties necessary for the first phase of the Atlantic Yards Project, including the Arena Project, by the filing and service of a notice of petition and a condemnation petition on the property owners pursuant to EDPL Section 402. Pursuant to EDPL Section 402(B)(2), ESDC must serve the notice of petition and petition on the property owners at least twenty (20) days prior to the return date of the petition. Upon the Court’s granting the petition by order and the filing of such order with copies of the acquisition maps, title to the property sought to be acquired will vest in ESDC. Subject to certain additional litigation which may be commenced, in ESDC’s judgment, a condemnation order will be issued in a timely fashion.

After ESDC obtains title to the property, it must send notices of its acquisition of such property through condemnation to each property owner not more than thirty (30) days after the order vesting title. Thereafter, ESDC may apply to the condemnation court pursuant to EDPL Section 405 for a writ of assistance for possession. The application for a writ of assistance is brought by motion which, depending on the mode of service, must provide at least twenty (20) days’ notice to an occupant prior to the return date of a motion seeking eviction of such occupant’s premises. In determining the date to require the

occupants to vacate, the Court will consider whether ESDC has an immediate need for the property, the needs of the occupants and the relocation services offered by ESDC to the occupants.

See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—Potential Delays in the Condemnation Process” and “—Failure to Satisfy Vacant Possession Release Conditions.” See also “LITIGATION—Litigation Related to the Arena Project—Environmental, Condemnation and Related Matters.”

## **PROJECT PARTICIPANTS**

### **New York State Urban Development Corporation d/b/a Empire State Development Corporation**

ESDC will be the fee owner of the Arena Premises and the Arena Project and will be the lessor of the Arena Premises and the Arena Project to the Issuer under the Ground Lease. Because the Arena Premises and the Arena Project to be constructed thereon will be owned by ESDC, no general *ad valorem* real estate taxes will be payable with respect thereto. Pursuant to the UDC Act, ESDC is permitted to agree to make PILOTs or cause PILOTs to be made to the City. Pursuant to the PILOT Agreement and the PILOT Assignment, the City is participating in the Arena Project by, among other things, foregoing receipt of the PILOTs and approving the assignment of the PILOTs payable to ESDC to the PILOT Trustee in part to support the repayment of the Series 2009 PILOT Bonds. See “—The State of New York” and “—The City of New York” below. **ESDC is not and shall not be obligated to pay the principal of or interest on the Series 2009 PILOT Bonds.**

### **Brooklyn Arena Local Development Corporation**

The Issuer will be the lessee of the Arena Premises and the Arena Project under the Ground Lease and will sublease the Arena Premises and the Arena Project to ArenaCo under the Arena Lease Agreement. The Issuer will also be a party to, and a beneficiary of, the Non-Relocation Agreement and will be a party to the PILOT Agreement and the PILOT Assignment. See “THE ISSUER” and “ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements.”

### **The State of New York**

The State, acting through ESDC, will make a capital contribution of \$100 million for certain costs incurred and to be incurred in connection with the construction of certain items of Atlantic Yards Project infrastructure (which items are described in detail in Exhibit C to the State Funding Agreement), which include a portion of the Related Infrastructure, which benefits but is not a part of the Arena Project. ESDC approved, among other things, such funding on December 8, 2006 as a part of its approval of the General Project Plan for the Atlantic Yards Project. The PACB confirmed and approved ESDC’s actions on December 20, 2006. ESDC and the Developer entered into the State Funding Agreement, which provides for the funding and disbursement of the capital contributions to be made by the City and the State to the Developer and allocated to the Atlantic Yards Project, including the Arena Project. As of the date of this Official Statement, the State has disbursed approximately \$75 million of the State Funding Portion. The disbursement of the remaining amount of the State Funding Portion is subject to the satisfaction of certain requirements which include, without limitation, satisfying eligibility requirements for the types of expenditures requested for reimbursement. In addition, ESDC’s obligation to disburse any City Funding Portion is conditioned upon, and subject to, ESDC receiving the amount of such City Funding Portion from NYCEDC pursuant to the City Funding Agreement; accordingly, ESDC will be under no obligation to disburse any part of the City Funding Portion to the Developer except when, and to the extent that, funds for such disbursement have been released and made available to ESDC by NYCEDC. See “PLAN OF FINANCE” and “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—The Disbursement of

the Remaining City and State Capital Contributions.” **The State is not and shall not be obligated to pay the principal of or interest on the Series 2009 PILOT Bonds, and neither the faith and credit nor the taxing power of the State is pledged to such payment.**

### **The City of New York**

The City will be a party to, *inter alia*, the PILOT Agreement and the PILOT Assignment. Pursuant to the authority vested in the Mayor under Section 8 of the City Charter, and in accordance with the UDC Act, the Mayor, acting on behalf of the City, is authorized to (i) enter into the PILOT Agreement and the PILOT Assignment, (ii) agree to forego, waive or surrender the City’s right to receive all or any portion of PILOTs that the City would otherwise be entitled to receive under the PILOT Agreement, (iii) direct the disposition thereof by ESDC and (iv) assign, transfer and convey its right, title and interest in and to any or all of such PILOTs. The City, through the PILOT Assignment, will assign certain PILOTs to the PILOT Trustee, to be in turn assigned and transferred by the PILOT Trustee to the PILOT Bond Trustee and applied to the payment of debt service on the Series 2009 PILOT Bonds. Such PILOTs would otherwise have been deposited into the City’s general fund.

The City’s capital contribution for the Arena Project, in the aggregate amount of \$131 million, will be made available to NYCEDC for transfer to ESDC and disbursement to the Developer upon the satisfaction of certain conditions. As of the date of this Official Statement, NYCEDC has disbursed approximately \$85 million of the City Funding Portion, which amount has been disbursed to the Developer by ESDC. The funding and disbursement of the remaining City Funding Portion is subject to the satisfaction of certain requirements which include, without limitation, satisfying eligibility requirements for the types of expenditures requested for reimbursement. ESDC’s obligation to disburse any City Funding Portion is conditioned upon, and subject to, ESDC receiving the amount of such City Funding Portion from NYCEDC pursuant to the City Funding Agreement; accordingly, ESDC will be under no obligation to disburse any part of the City Funding Portion to the Developer except when, and to the extent that, funds for such disbursement have been released and made available to ESDC by NYCEDC. In addition, the funding and disbursement of \$15 million of the City Funding Portion is also subject to the satisfaction of certain requirements set forth in the City Funding Agreement, including, without limitation, certification to the effect that at least \$100 million of Total Project Costs have been or will be incurred on or prior to the Funding Date during the Third Contribution Period. The funding and disbursement of the remaining \$31 million of the City Funding Portion is also subject, without limitation, to the occurrence of the later of the issuance of the Series 2009 PILOT Bonds and the filing of a condemnation petition by ESDC. See “PLAN OF FINANCE” and “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—The Disbursement of the Remaining City and State Capital Contributions.” **The City is not and shall not be obligated to pay the principal of or interest on the Series 2009 PILOT Bonds, and neither the faith and credit nor the taxing power of the City is pledged to such payment.**

### **The Arena Developer, ArenaCo and New Jersey Basketball**

#### *General*

The Arena Developer is an affiliate of New Jersey Basketball and was formed for the purpose of managing the development aspects of the Arena Project. ArenaCo, a newly-formed special purpose entity and subsidiary of Arena HoldCo, a wholly-owned subsidiary of the Arena Developer, will be the tenant of the Arena Premises and the Arena Project under the Arena Lease Agreement as well as the licensor of the Arena under the Nets License Agreement and will be responsible for making all PILOTs under the PILOT Agreement. ArenaCo will receive all Arena Tenant Revenue, which will be used by ArenaCo to make PILOTs under the PILOT Agreement, to pay Rent under the Arena Lease Agreement, to pay certain costs of operating and maintaining the Arena, and to pay for certain capital repairs and improvements as well as

all expenses directly related to the generation of Arena Tenant Revenue, including consulting fees and legal fees. For a description of ArenaCo's anticipated operating results, see "ARENA MANAGEMENT AND OPERATIONS."

The sole member of ArenaCo will be Arena HoldCo. Pursuant to ArenaCo's operating agreement (the "*ArenaCo Operating Agreement*"), ArenaCo may not make distributions to Arena HoldCo unless: (i) such distribution will not violate any applicable law; (ii) in the "*Operating Year*" (defined in the ArenaCo Operating Agreement as the period from July 1 of a given year through June 30 of the next succeeding year) immediately preceding the then current Operating Year, ArenaCo's actual revenues for such Operating Year were at least equal to the sum of (a) the PILOTs scheduled to be made in such Operating Year, (b) the actual expenses of ArenaCo for such Operating Year, and (c) the Base Rent and Supplemental Base Rent, if any, each as defined in the Arena Lease Agreement, scheduled to be paid in such Operating Year; (iii) in the then current Operating Year, ArenaCo's available cash and cash equivalents are at least equal to the sum of (a) the PILOT Reserve Amount, (b) \$2 million, and (c) the budgeted expenses of ArenaCo reflected in the Operating Budget for the remainder of such Operating Year following the date of the proposed distribution; and (iv) the sum of (a) the Projected Net Operating Income for the immediately subsequent Operating Year and (b) the Operational Expenditure Reserve Account Balance is at least equal to the Distribution Threshold Amount. Capitalized terms used but not defined in the preceding sentence are defined in the ArenaCo Operating Agreement. See "APPENDIX T—ARENACo OPERATING AGREEMENT."

Nets Sports and Entertainment, LLC, a Delaware limited liability company ("*NSE LLC*"), is the 100% owner of (i) the Arena Developer, which is in turn the 100% owner of ArenaCo, and (ii) Brooklyn Basketball, LLC, which is in turn the 100% owner of New Jersey Basketball. NSE LLC is owned by a group of investors and is managed by a Chairman's Council and headed by its Chairman, Bruce C. Ratner. Mr. Ratner is Chief Executive Officer of FCRC, a real estate development company principally engaged in the ownership, development, management and construction of commercial and multi-family residential real estate in New York City.

New Jersey Basketball, an NBA member, is the owner of the Nets. New Jersey Basketball will be the licensee of the Arena under the Nets License Agreement and a party to the Non-Relocation Agreement. New Jersey Basketball will retain all Nets Team Revenue under the Nets License Agreement. For a description of the ownership structure of the Nets organization, see "ARENA MANAGEMENT AND OPERATIONS—Organizational Structure."

#### *Anticipated New Investment*

On December 1, 2009, NSE LLC and certain of its subsidiaries, including the Arena Developer (collectively, the "*NSE Parties*"), entered into an "LLC interest purchase agreement" (the "*Investment Agreement*") with certain newly-formed entities that will be directly or indirectly owned by the Onexim Group (collectively, the "*New Investor*"), a Russian private investment fund founded by Mikhail Prokhorov. Pursuant to the Investment Agreement, the New Investor will, among other things, invest \$200 million (the "*Purchase Price*") and make certain contingent funding commitments, including but not limited to a commitment to fund up to \$60 million (in the aggregate) in losses or cash needs of BasketballCo prior to the date of completion of the Arena Project, in exchange for forty-five percent (45%) of the equity of the Arena Developer and eighty percent (80%) of the equity of BasketballCo, the indirect owner of 100% of New Jersey Basketball (collectively, the "*Sale Transaction*").

The obligations of the parties to complete the Sale Transaction will be subject to the satisfaction or waiver of certain conditions set forth in the Investment Agreement. Each of the NSE Parties and the New Investor will agree to use its reasonable best efforts to fulfill or obtain the fulfillment of the conditions for which each party is responsible, which include the consent of the NBA, the receipt of title to and vacant

possession of the Arena Premises, the availability of the proceeds of the Series 2009 PILOT Bonds pursuant to the PILOT Bonds Indenture and the Commencement Agreement, the consent of certain lenders to NSE LLC and Brooklyn Basketball, LLC and other customary conditions. The Investment Agreement contains various customary representations, warranties and covenants, and certain indemnification obligations of NSE LLC to the New Investor.

Pursuant to the Investment Agreement, at the closing of the Sale transaction, the New Investor and NSE LLC will also enter into an amended and restated limited liability company agreement for each of the Arena Developer and an entity that will be the indirect owner of New Jersey Basketball, referred to herein as “BasketballCo” (the “Arena Developer Operating Agreement” and the “BasketballCo Operating Agreement”, respectively), providing for on-going governance and other matters. Under the Arena Developer Operating Agreement, the Arena Developer will be managed by a board of directors controlled by NSE LLC, subject to certain consent rights of the New Investor. In addition, NSE LLC will be solely responsible for providing any required additional funding to the Arena Developer (which in turn will be contributed to Arena HoldCo) in the event that ArenaCo is obligated to pay any amounts in excess of the estimated Completion Cost necessary to complete the Arena Project. Under the BasketballCo Operating Agreement, BasketballCo will be managed by a board of directors controlled by the New Investor, subject to certain consent rights of NSE LLC, and the New Investor and NSE LLC will assume responsibility for certain contingent obligations. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Anticipated Change in Majority Ownership of New Jersey Basketball and Anticipated Significant New Outside Investment in the Arena Developer” and “—NBA Approval of the Sale Transaction.”

For a description of the current ownership structure of NSE LLC, the Arena Developer and New Jersey Basketball, and a description of the anticipated new ownership structure of the Arena Developer and New Jersey Basketball, see “ARENA MANAGEMENT AND OPERATIONS—Organizational Structure.”

### **The Arena Developer**

FCRC entered into an agreement dated as of June 1, 2005 with the Arena Developer to develop the Arena Project. Pursuant to such development agreement, FCRC is currently entitled to an annual reimbursement not to exceed, in the aggregate, the greater of \$7 million or five percent (5%) of cumulative total Arena Project costs at such time less all such reimbursement previously made to the Arena Developer, payable in monthly installments. Total Arena Project costs are estimated subject to adjustment from time to time for actual amounts. FCRC is also to be reimbursed for all out-of-pocket costs and expenses incurred by it in connection with the Arena Project, payable not more frequently than monthly. Such agreement provides that it will terminate upon the substantial completion of the Arena (subject to punchlist items), or upon earlier termination by either party due to certain specified defaults.

FCRC was founded in 1988 as an affiliate of FCE, an owner, developer and manager of a diverse portfolio of real estate property located throughout the United States, which is listed on the New York Stock Exchange (FCE.A and FCE.B). FCRC is a full service vertical developer, with 166 employees. Its core competencies lie in large scale, mixed-use, public-private development projects in all five (5) boroughs of New York City. FCRC has been responsible for some of New York’s largest State and City development initiatives, such as the Battery Park City Hotel and Retail Complex; MetroTech Center – approximately 6.5 million square feet of Class A office space in downtown Brooklyn, home to blue chip tenants such as Goldman, Sachs & Co., Morgan Stanley, JPMorgan Chase, and the Fire Department, City of New York; and the 42nd Street Redevelopment – a 444-room Times Square Hilton Hotel constructed over an approximately 300,000 square foot entertainment complex. It developed The New York Times Building – totaling approximately 1.6 million square feet, approximately 700,000 square feet of which are owned and occupied by The New York Times Company and approximately 900,000 square feet of which are owned and operated by FCRC. Additionally, FCRC developed approximately 1,165,000 square feet

directly across the street from the Arena Project comprised of the Atlantic Center Mall (approximately 395,000 square feet), the Atlantic Terminal Mall (approximately 370,000 square feet), and the Atlantic Terminal Office Building (approximately 400,000 square feet). This unique, urban, infill mixed use complex was constructed on top of the Atlantic Terminal transit hub which will service the Arena Project. FCRC has completed thirty-seven (37) development projects in past last twenty (20) years, containing approximately 13 million square feet with an additional approximately 11 million square feet in the pipeline.

FCE was founded in 1920 and has been a publicly traded company since 1960. FCE is principally engaged in the ownership, development, management and acquisition of commercial and residential real estate properties in twenty-seven (27) states and the District of Columbia. FCE's core markets include the New York City/Philadelphia metropolitan area, Denver, Boston, Greater Washington D.C./Baltimore metropolitan area, Chicago and the state of California. FCE has offices in Albuquerque, Boston, Chicago, Denver, London (England), Los Angeles, New York City, San Francisco and Washington, D.C., and its corporate headquarters are in Cleveland, Ohio. FCE has approximately \$11.7 billion in total assets (as of July 31, 2009) and operates under three (3) strategic business units:

The Commercial Group, FCE's largest business unit, has ownership interests in 101 retail, office and life science, hotel and mixed-use properties. As of January 31, 2009, the group's portfolio included:

- Forty-seven (47) retail properties containing approximately 14.6 million square feet of gross leasable area ("GLA");
- Forty-eight (48) office properties containing approximately 13.3 million square feet of GLA; and
- Five (5) hotels with 1,823 rooms.

The Residential Group owns and/or manages rental units in urban and suburban apartment communities, adaptive re-use, supported living properties and military housing communities. As of January 31, 2009, the group's portfolio included ownership interest in the following:

- 122 properties with over 36,000 residential units; and
- Eight (8) military housing communities with more than 11,950 units.

The Land Development Group acquires and sells raw land and sells fully-entitled developed lots to residential, commercial and industrial customers, and owns and develops raw land into master-planned communities, mixed use projects and other residential developments. As of January 31, 2009, the group's portfolio included approximately 10,840 acres of undeveloped land for commercial and residential development purposes.

### **The Arena Design/Build Contractor**

The Arena Design/Build Contractor, Hunt Construction Group, Inc., is one of the premier builders of sports facilities in the U.S., and is ranked by *Engineering News-Record* as one of the nation's top commercial construction firms. The Arena Design/Build Contractor has built over 100 sports venues since the early 1960s (among them thirteen (13) arenas for NBA teams), including Time Warner Cable Arena, US Airways Arena, AT&T Center, Toyota Center, United Center, Conseco Fieldhouse, Lucas Oil Stadium, University of Phoenix Stadium, Miller Park, Heinz Field, Raymond James Stadium and the New York Mets' Citi Field, to name several. The Arena Design/Build Contractor typically maintains a volume of \$6 billion to \$8 billion of work under contract nationally in a dozen different industries. In 2010, the Arena Design/Build Contractor will complete work on two (2) additional sports and entertainment facilities – the Amway Center, the future home of the Orlando Magic and the Consol Energy Center, the future home of the Pittsburgh Penguins.

## **The Architect and the Façade Architect**

The Architect, AECOM Ellerbe Becket Architects and Engineers, P.C., is a subsidiary of Ellerbe Becket, Inc., an architecture firm whose experience dates back to 1909 and which has designed over ninety (90) arena and stadium projects in the last twenty (20) years, including six (6) recent arenas for NBA teams: Conseco Fieldhouse in Indianapolis, Indiana, FedEx Forum in Memphis, Tennessee (winner of an AIA design award in 2006), AT&T Center in San Antonio, Texas, Quicken Loans Arena in Cleveland, Ohio, Time Warner Cable Arena in Charlotte, North Carolina, and TD Garden in Boston, Massachusetts. The Architect has also designed sports facilities internationally, including Guangdong Olympic Stadium in China and Saitama Super Arena in Japan. In addition, the Architect, which will contract with the Arena Design/Build Contractor to furnish the design services required for the Arena, has previously collaborated with the Arena Design/Build Contractor on prominent projects such as Conseco Fieldhouse, Time Warner Cable Arena, U.S. Airways Arena in Phoenix, Arizona, AT&T Center, Bank Atlantic Center in Sunrise, Florida, St. Pete Times Forum in Tampa, Florida, the i wireless Center in Moline, Illinois, and the HSBC Center in Buffalo, New York.

The façade of the Arena is being designed by ShoP Architects, P.C., the Façade Architect. The façade consists of an exterior wall system composed of glass and metal panels with horizontal steel bands encircling the building, as further described herein. See “THE ARENA PROJECT—The Arena.” The Façade Architect is a sixty (60) person practice founded by its five (5) principals in 1996 and has been a leader in the transformation of intricate theoretical design into easily understood construction models by rethinking architectural practice. Its current work includes a two- (2-) mile waterfront park along New York’s East River and projects for the Fashion Institute of Technology and Goldman, Sachs & Co., both in Manhattan, and Google in Mountain View, California. Recently completed projects include Garden Street Lofts in Hoboken, New Jersey, Hangil Book House in Seoul, South Korea, The Porter House in New York City, and SanLiTun in Beijing, China. The Façade Architect’s work has won numerous awards, including the 2009 National Design Award for Architecture Design, awarded by Smithsonian’s Cooper-Hewitt, National Design Museum. The Façade Architect’s work has also been published and exhibited internationally and is in the permanent collection of the Museum of Modern Art.

## **Independent Engineer**

Merritt & Harris, Inc., the Independent Engineer, is a construction consulting firm that was founded in 1937 and is headquartered in New York City. In addition to its Manhattan location, the firm has branch offices in Deerfield Beach, Florida and Glendale, California. The Independent Engineer has been engaged by ArenaCo to perform an independent review of the construction documents and deliver a report of its findings (the “*First Review Report*”). It is anticipated that the Independent Engineer will also be engaged to monitor development and construction of the Arena Project; in such role, the Independent Engineer would act on behalf of ESDC and the PILOT Bond Trustee in connection with the Arena Project and review requisitions for disbursement of the proceeds of the Series 2009 PILOT Bonds and Additional Rent. It is further anticipated that the Independent Engineer will also be engaged to monitor development and construction of the Related Infrastructure and would review requisitions for disbursement of moneys from the Infrastructure Fund. The Independent Engineer has provided similar services with respect to thirty (30) professional sports venues.

In the First Review Report, dated October 22, 2009, the Independent Engineer reviewed the plans, specifications and documents relating to the construction of the Arena Project, including the development team, completeness of the plans and specifications, milestone schedule, pro forma budget and Arena Design/Build Contract. The Independent Engineer was of the belief that the firms comprising the development team members, including FCRC, Hunt, the Architect, the Façade Architect and Turner, had substantial experience in the design, development and construction of similar projects and would be able to successfully complete the Arena Project. The Independent Engineer was also of the opinion that a

construction term of twenty-eight (28) months for the Arena Project to achieve substantial completion was reasonable, provided that adequate manpower is maintained throughout construction and that there are no unforeseen circumstances which delay construction. Finally, the Independent Engineer was of the opinion that the budgeted costs and projections were reasonable and the contingencies were adequate for a project of this scope.

In its report dated October 26, 2009, the Independent Engineer reviewed the plans and project cost documents relating to the Related Infrastructure. Based on the information provided to the Independent Engineer, it was its opinion that the quality of systems and materials in the bid documents were appropriate for a project of this size and scope, the costs to complete estimates were reasonable and adequate contingencies were available for the work that remains. In addition, the various construction schedules were integrated into the construction of the Arena Project allowing for its timely construction and completion.

## **Trustees**

### *PILOT Bond Trustee*

The Bank of New York Mellon will act as trustee for the Series 2009 PILOT Bonds under the PILOT Bonds Indenture and the PILOT Assignment and will be a party to, and the assignee under, the PILOT Bonds Partial Lease Assignment. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS.”

### *PILOT Trustee*

The Bank of New York Mellon will also act as the PILOT Trustee under the PILOT Assignment pursuant to which PILOTs and the rights of ESDC under the PILOT Agreement (other than Unassigned PILOT Rights) will be assigned to the PILOT Trustee and used to, among other things, pay debt service on the Series 2009 PILOT Bonds and pay a part of the costs of operating and maintaining the Arena.

### *Infrastructure Trustee*

The Bank of New York Mellon will act as Infrastructure Trustee under the Infrastructure Trust Agreement, pursuant to which the funds necessary to complete the Related Infrastructure will be held. The Infrastructure Trustee will disburse moneys held in the Infrastructure Fund in accordance with the requisition requests submitted to the Infrastructure Trustee by the Construction Monitor.

## **ARENA MANAGEMENT AND OPERATIONS**

### **Organizational Structure**

#### *Overview*

New Jersey Basketball, an NBA member, is the owner of the Nets NBA basketball team. The Nets play in the Atlantic Division of the Eastern Conference of the NBA and became an NBA team for the 1976-77 season after playing in the American Basketball Association since 1967. New Jersey Basketball and ArenaCo are indirectly owned by the same parent company.

NSE LLC is the parent company and 100% owner of (i) the Arena Developer, which is in turn the 100% owner of Arena HoldCo, the 100% owner of ArenaCo, and (ii) Brooklyn Basketball, LLC, which is in turn the 100% owner of New Jersey Basketball. NSE LLC is owned by a group of investors and is managed by a chairman’s council (the “*Chairman’s Council*”) and headed by its Chairman, Bruce C. Ratner. Mr. Ratner is Chief Executive Officer of FCRC. An affiliate of FCE, together with other



investors, formed NSE LLC, which in turn formed Brooklyn Basketball, LLC, which acquired New Jersey Basketball from the prior owners in August 2004.

The Chairman's Council oversees the major business decisions of the Nets, while NSE LLC's day-to-day operations are overseen by NSE LLC's Chief Executive Officer, Brett D. Yormark. Mr. Yormark joined NSE LLC in January 2005. He brought with him more than six (6) years of experience in corporate marketing at NASCAR®, the stock-car racing company, where he was the highest-ranking corporate marketing executive. Mr. Yormark is responsible for setting new standards for both new ticket sales and corporate sponsorships. For example, since becoming CEO of NSE LLC, Mr. Yormark increased the number of sponsors for the Nets from fifty-nine (59) to 110, including six (6) China-based companies, and doubled sponsorship revenues. Additionally, under Mr. Yormark, season ticket sales rose fifteen percent (15%) in his first three (3) seasons, and the Nets have sold at least 1,500 new full season tickets in each of his five (5) seasons, a feat reached by only three (3) other teams during that time frame. Mr. Yormark was also responsible for securing a twenty- (20-) year strategic marketing and media alliance with Barclays Services Corporation, which included naming rights for the Arena. In 2006, Mr. Yormark was named for the third time to the "Forty Under 40" list by the *Sports Business Journal*. That same year, *Crain's New York Business* named Mr. Yormark to its "40 Under Forty" roster for the second time in his career. Mr. Yormark has been profiled in *Newsweek*, *Fortune*, *Sports Illustrated*, *USA Today*, and on CBS Sunday Morning, and has participated in numerous media interviews to discuss his initiatives. Mr. Yormark's senior executive team includes the following individuals:

*Alex Diaz, Senior Vice President and General Manager of Arena Operations.* Mr. Diaz will oversee the operations of the Arena including general operations, engineering, scheduling, booking, marketing, food and beverage, security, housekeeping, event coordination/services and parking. Mr. Diaz has been involved in several aspects of the Arena Project, including Arena design and the creation of the standard operating procedures. Mr. Diaz came to the Nets after serving three (3) years as general manager of the AmericanAirlines Arena in Miami (and several years in other management positions). During Mr. Diaz's tenure in Miami, the AmericanAirlines Arena received several honors, including *Pollstar Magazine's* award of "Best New Major Concert Venue" for 2000. In 2003, the AmericanAirlines Arena hosted the Latin Grammy® Awards, which had been held the three (3) previous years (including the debut year of 2000) at various locations in Los Angeles. In 2004 and 2005, the AmericanAirlines Arena hosted the MTV Video Music Awards, making Miami the first host city for the event other than New York or Los Angeles since the event's debut in 1984. In 2005, the AmericanAirlines Arena also became the permanent home for Univision's awards show, Premio Lo Nuestro. In 2006, the AmericanAirlines Arena was a finalist for *Pollstar Magazine's* coveted "Arena of the Year" award.

*Jeff Gewirtz, Senior Vice President and General Counsel.* Mr. Gewirtz is a highly experienced transactional, marketing, and media lawyer in the sports and entertainment industries. Prior to joining New Jersey Basketball, Mr. Gewirtz served as the United States Olympic Committee ("USOC") General Counsel and Chief Legal and Government Affairs Officer. In addition to oversight of all USOC legal affairs, Mr. Gewirtz was responsible for the USOC's government relations activities with the United States Congress and federal government agencies. Prior to joining the USOC, Mr. Gewirtz was Counsel for sports & entertainment transactions, marketing and media in The Coca-Cola Company's Corporate Legal Division. His primary responsibilities at Coca-Cola included the provision of legal counsel on and the structuring and negotiation of many of the company's most significant sports marketing and media transactions with professional sports leagues, teams, stadiums, arenas, and professional athletes. Prior to joining Coca-Cola, Mr. Gewirtz was Director of Legal Affairs for IOC Television & Marketing Services SA, based in Lausanne, Switzerland. In that role, he served as the legal point person and primary negotiator of the International Olympic Committee's global sponsorship alliances under The Olympic Partners (TOP) Program with companies such as Coca-Cola, Eastman Kodak, John Hancock, McDonald's Corporation, Samsung Electronics, The Swatch Group (Omega), VISA and the Xerox

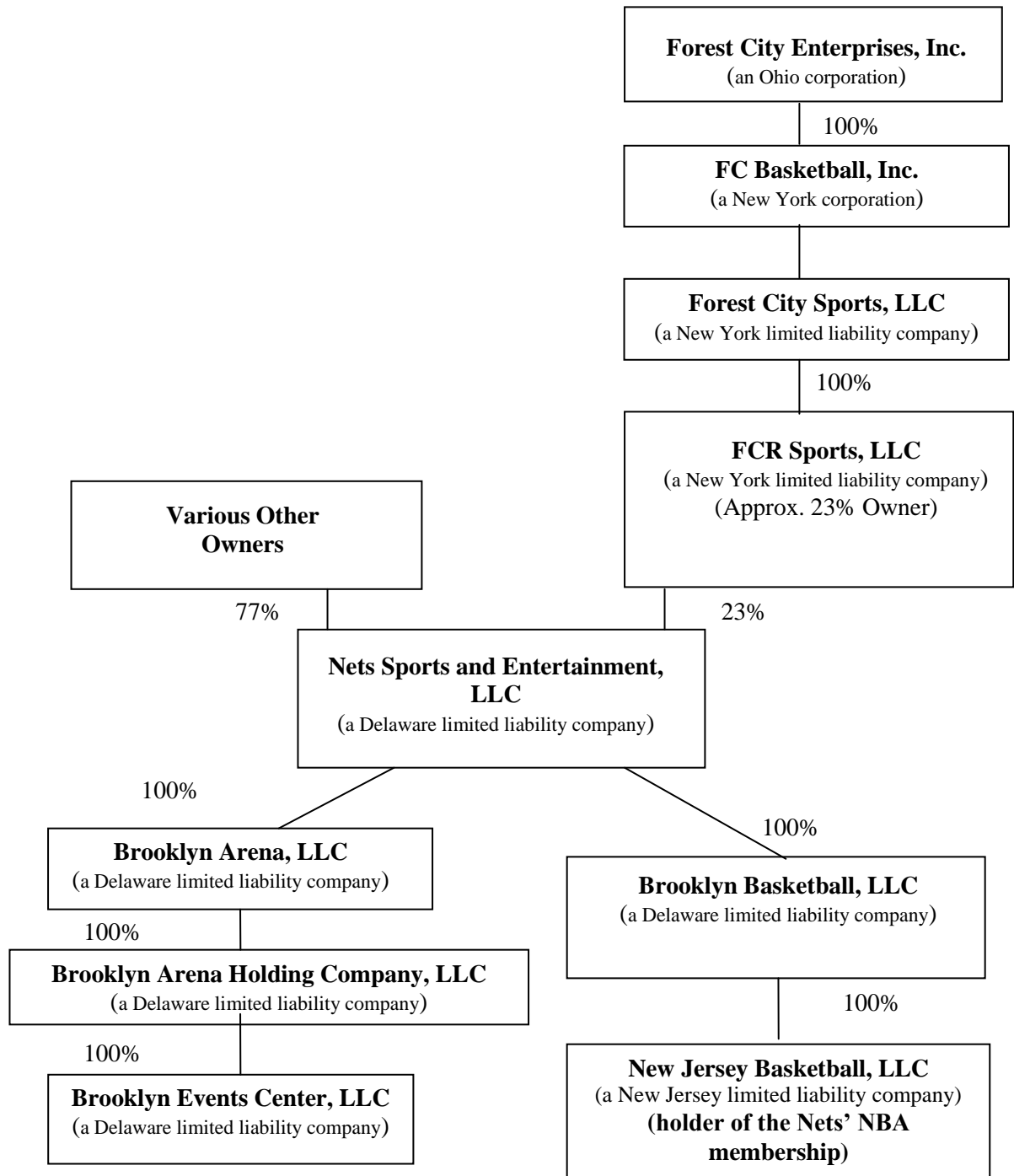
Corporation. Mr. Gewirtz has also served as General Counsel for the LPGA Tour. In 2009, Mr. Gewirtz was named as one of the *Sports Business Journal's* "Forty Under 40," and he currently serves as National Chair of the Sports Division for the American Bar Association's Forum on Entertainment & Sports Industries.

*Charles Mierswa, Senior Vice President and Chief Financial Officer.* Mr. Mierswa's responsibilities include overseeing the finance, box office and MIS departments. Prior to joining the Nets, Mr. Mierswa was Senior Vice President - Finance for Clear Channel Communications, Inc.'s Music Division (currently named "Live Nation"), the largest SEC-registered concert promoter, producer and venue operator for live entertainment events. Mr. Mierswa has not only venue and event experience, but a strong accounting and finance background, which he developed through almost ten (10) years at Ernst & Young LLP, one of the largest accounting and advisory firms in the world. While at Ernst & Young LLP, his client list included major entertainment conglomerates including EMI Music, Warner Communications, Orion Pictures and PolyGram Records/Entertainment. Featured in the May 2009 issue of *CFO Magazine*, Mr. Mierswa has been recognized for his extraordinary financial and operational knowledge, which has been a key component to the success of the Nets management team.

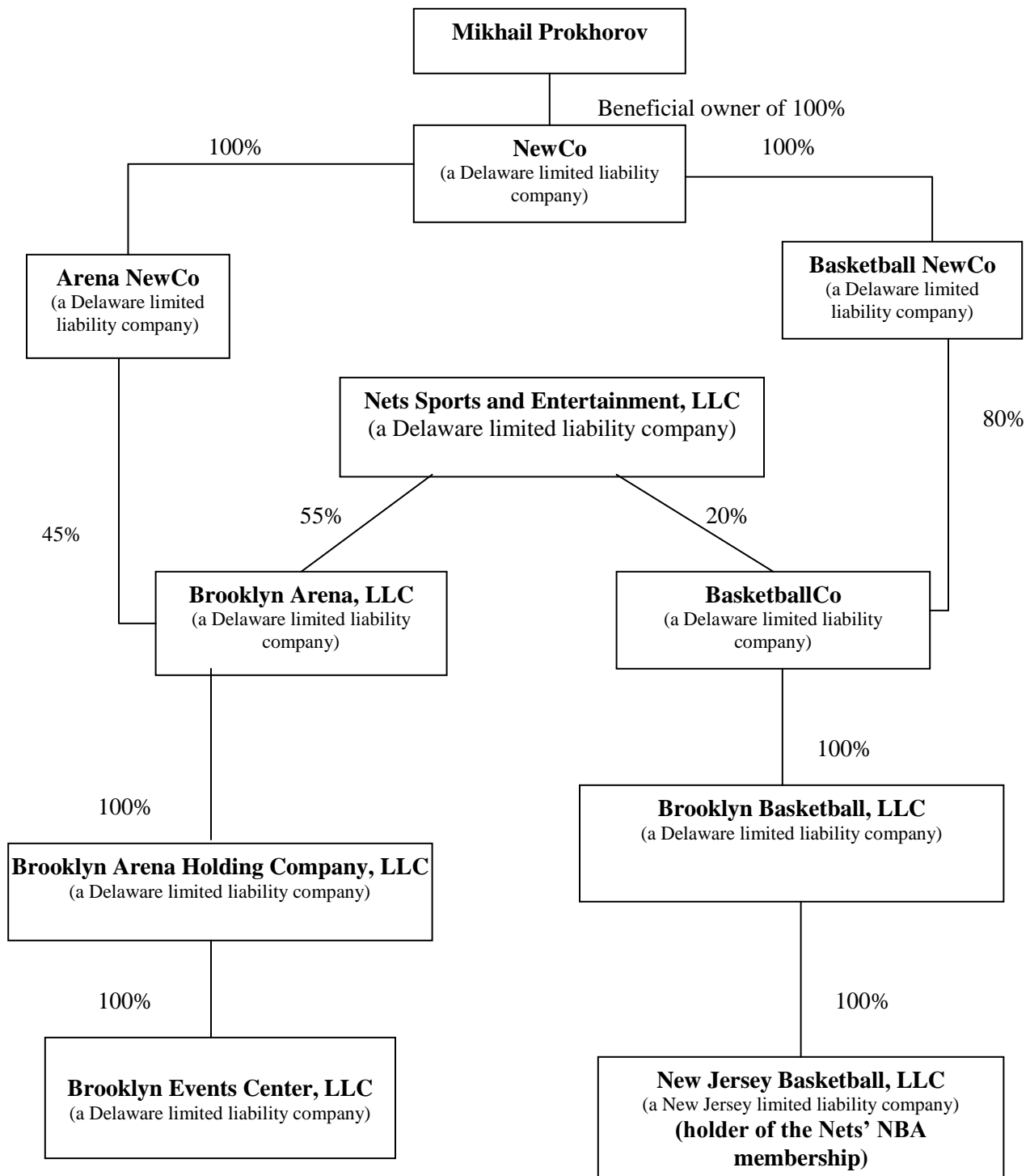
*Rod Thorn, President of New Jersey Basketball.* Mr. Thorn oversees all aspect of basketball operations, and New Jersey Basketball benefits greatly from Mr. Thorn's expertise, given his extensive playing, coaching and NBA executive experience. Inclusive of his nine (9) years as President of New Jersey Basketball, Mr. Thorn has spent the last four (4) decades serving in the NBA, also as a player, assistant coach, head coach, general manager and league official. Before taking on his current role with the Nets, Mr. Thorn spent fourteen (14) years working for the NBA's league office in New York City, where he was the NBA's Executive Vice President of Basketball Operations. At the NBA, Mr. Thorn oversaw all on-court operations, including officiating, game conduct and discipline. He has also served as chair of the Senior Men's Basketball Committee for USA Basketball (1992-2000), the committee responsible for selecting players and coaches for the Olympic Games and the World Championship of Basketball.

It is presently anticipated that forty-five percent (45%) of the equity of the Arena Developer and eighty percent (80%) of the equity of New Jersey Basketball will be sold to the New Investor. See “PROJECT PARTICIPANTS—The Arena Developer, ArenaCo and New Jersey Basketball.”

Set forth below is a chart of the current ownership structure of ArenaCo and New Jersey Basketball:



Set forth below is a chart of the anticipated ownership structure of the Nets organization and ArenaCo upon completion of the Sale Transaction:



*The Arena Developer, Arena HoldCo and ArenaCo*

The Arena Developer is an affiliate of New Jersey Basketball and was formed for the purpose of managing the development aspects of the Arena Project. ArenaCo is a wholly-owned subsidiary of Arena HoldCo, which is a wholly-owned subsidiary of the Arena Developer. ArenaCo is a newly-formed, special purpose entity created for the purposes of being the tenant of the Arena Premises and the Arena Project under the Arena Lease Agreement and being the licensor of the Arena under the Nets License Agreement. ArenaCo's primary rights to generate and collect revenues from the use and operation of Arena Project arise under the Arena Lease Agreement. Such revenues, and all other revenues which ArenaCo has the right to collect and retain under the various agreements to which it is a party, comprise Arena Tenant Revenue. ArenaCo will use Arena Tenant Revenue and other moneys made available to it to (i) make PILOTs under the PILOT Agreement, (ii) pay all Rent and other amounts due under the Arena Lease Agreement, and (iii) pay certain costs of operating and maintaining the Arena and certain capital repairs and improvements to the Arena, as well as all expenses directly related to the generation of Arena Tenant Revenue, including consulting fees and legal fees.

*New Jersey Basketball as Licensee of the Arena*

Under, and subject to the terms of, the Nets License Agreement, New Jersey Basketball will license the use of the Arena on certain dates and at certain times from ArenaCo. See “—Project Leases and Agreements—Nets License Agreement” below. ArenaCo will retain those revenues identified as components of Arena Tenant Revenue under the Nets License Agreement, while New Jersey Basketball will retain all Nets Team Revenue. See “—Arena Tenant Revenue” below.

## Allocation of Revenue

The following chart summarizes the allocation of certain revenues expected to be generated from the Arena Project between ArenaCo and New Jersey Basketball pursuant to the Arena Lease Agreement, Nets License Agreement, various Founding Partner/Sponsorship Agreements, the Barclays Center Naming Rights Agreement, Suite License Agreements, concessions agreements and related agreements.

ArenaCo <sup>(1)</sup>	New Jersey Basketball
<ul style="list-style-type: none"> <li>• Luxury suite and loge box Premium Component (and ticket component from all events other than Home Games)</li> <li>• Food, beverage and merchandise concessions<sup>(2)</sup></li> <li>• Arena signage/advertising<sup>(3)</sup></li> <li>• \$10 million annually in Naming Rights Fees</li> <li>• “Green Building” ticket surcharge generated from all events, including Home Games</li> <li>• License Fee (initially the greater of \$6.5 million and ten percent (10%) of Net Ticket Revenue (as defined in the Nets License Agreement), plus \$626,000, subject to annual increase) and Merchandising Fee (initially \$420,000, subject to annual increase) under the Nets License Agreement</li> <li>• Portion of revenue under Founding Partner/Sponsorship Agreements</li> <li>• Net revenues from non-Nets events held at the Arena, including license fees, ticket revenues and novelties sales</li> <li>• Facility fees for events other than Home Games</li> </ul>	<ul style="list-style-type: none"> <li>• Net revenue from Home Game ticket sales</li> <li>• Ticket Component of luxury suite and loge box license fees for Home Games</li> <li>• Club seat license fees</li> <li>• Personal seat license fees (“PSLs”)</li> <li>• Merchandise bearing the Nets name or logos (or other NBA intellectual property) sold in the Arena</li> <li>• Certain fees under Naming Rights Agreement</li> <li>• Facility fees assessed on Home Game tickets</li> <li>• All Nets-related media revenues</li> <li>• Nets-related Founding Partner/Sponsorship Agreement revenue</li> <li>• NBA-related revenues (subject to the League Rules)</li> <li>• Game day temporary signage and advertising revenues</li> <li>• Any other Nets Team Revenue</li> </ul>

- (1) ArenaCo has no rights to any revenue of New Jersey Basketball or its affiliates, including revenue derived from the NBA, but ArenaCo has rights to the Arena Tenant Revenue (as defined herein).
- (2) Exclusive of merchandise and novelties bearing the Nets name or logo or containing other NBA intellectual property.
- (3) Subject to the Nets exclusive rights to sell and retain all revenues from (i) Courtside Advertising (as defined in the Nets License Agreement), (ii) advertising appearing on telescreens, electronic scoreboards, LED rings, and public address systems to the extent that such advertising pertains specifically to the playing of, or is shown or displayed solely at, Home Games, (iii) advertising appearing on Nets programs and tickets to Home Games (other than advertising on tickets sold at or processed through Arena box office facilities), (iv) game day promotions such as “hat night,” and (v) other sources typically controlled by NBA teams on game days, as well as certain other rights allocated to New Jersey Basketball under the Nets License Agreement.

## **Project Leases and Agreements**

### *Arena Block Declaration of Easements*

ESDC will execute the Declaration of Easements (the “*Arena Block Declaration*”), which will establish certain economic and real property arrangements among all owners, tenants and occupants of the other portions of the Arena Block (as defined in the Arena Block Declaration), including ArenaCo. The Arena Block Declaration will be recorded against the entire Arena Block, and the rights and obligations thereunder will run with the land. The Arena Block Declaration will provide that the future developer of a building which may be constructed to the northwest of the Arena (the “*B1 Developer*”) is to notify ArenaCo when it is prepared to construct such building (the “*B1 Building*”). Prior to the commencement of construction of the B1 Building, the B1 Developer will construct temporary Arena facilities, including a box office and entrance for the Arena in a temporary location designated by ArenaCo on the Arena Block pursuant to the Arena Block Declaration, at the sole cost and expense of the B1 Developer. Prior to the construction of the temporary Arena facilities, the B1 Developer will be required to provide security or a completion guaranty acceptable to ArenaCo which will be released upon completion of the reconstructed permanent Arena facilities and removal of the temporary Arena facilities. Once the temporary Arena facilities are constructed, ArenaCo may occupy and maintain such temporary Arena facilities for its use until the completion of the permanent Arena facilities, to be constructed by the B1 Developer at its sole cost and expense, in conjunction with its construction of the B1 Building. Upon the completion of the permanent Arena facilities, the temporary Arena facilities are to be demolished by the B1 Developer.

The B1 Developer will also be responsible for replacing the Urban Experience, which is to be developed in conjunction with the development of the Arena Project, with an Urban Room, the design for which will be subject to applicable design guidelines described in the Modified General Project Plan, and which will otherwise be subject to ArenaCo’s approval, in ArenaCo’s sole discretion.

The B1 Developer will have the right to place the core of the B1 Building on a portion of the Arena Premises located adjacent to the Arena, subject to ArenaCo’s approval in ArenaCo’s sole discretion. Upon the completion of the B1 Building, the B1 Developer will have an easement for ingress and egress through a portion of the Arena Premises, including the Urban Room, for access to the B1 Building main lobby, and ArenaCo and the B1 Developer are to share the costs of operating a portion of the Arena Premises. The B1 Developer will have an easement to use, in common with ArenaCo, a loading dock located on the Arena Premises and will be required to reimburse ArenaCo for the B1 Developer’s share of expenses in operating such loading dock. The B1 Developer will also have an easement to create a pathway through the Arena Premises for access to the loading dock, subject to ArenaCo’s approval in ArenaCo’s sole discretion. Any costs related to the construction of such pathway will be borne exclusively by the B1 Developer. In no event will the B1 Developer’s activities, construction or otherwise, be allowed to disrupt the on-court performance of the Nets or substantially alter the performance by other licensees of their respective activities as advertised or promoted.

The surrounding buildings to be constructed on the Arena Block may, subject to the approval of ArenaCo in its sole discretion, cantilever over a portion of the Arena Project, and the occupants of such buildings may request an easement over the Arena Project and/or the conveyance of a portion of the airspace over the Arena to accommodate the cantilever. In no event will any surrounding building have the right to exercise a cantilever or may such building’s occupants request a severance of a portion of the airspace of the Arena Premises that would include any portion of the improvements constructed on the Arena Premises or would otherwise adversely affect ArenaCo or violate the League Rules. In addition, the occupants of the surrounding buildings will have limited rights to enter the Arena, upon timely notice, with appropriate insurance and at such occupants’ sole cost and expense, to perform certain work related to the construction and maintenance of such buildings, to install utility lines, and to use a portion of the

Arena Project's foundations for support. Any material alterations to the Arena Project adversely affecting any of the surrounding buildings will be subject to the consent of such surrounding building. One (1) of the surrounding buildings will have an easement to occupy and use a portion of the Arena Premises for the construction of a ramp to an underground parking garage to be located in such building. See "APPENDIX F—SUMMARY OF THE DECLARATION OF EASEMENTS."

The Arena Block Declaration will be held in escrow in accordance with the Commencement Agreement and will be recorded in the Office of the City Register, Kings County. The Arena Block Declaration will be superior to the Ground Lease, the Arena Lease Agreement and the Leasehold PILOT Mortgages. See "INTRODUCTION—Commencement Agreement" and "APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT."

#### *Development Agreement*

ESDC and the Developer will execute a Development Agreement (the "*Development Agreement*") that will set forth the general rights and obligations of ESDC and the Developer with respect to the development and construction of the overall Atlantic Yards Project, of which the Arena Project is a component. The Development Agreement will authorize and engage the Arena Developer and its affiliates to construct the Atlantic Yards Project. The Development Agreement will be held in escrow pursuant to the Commencement Agreement and will become effective upon the Vesting Title Release Date.

The Development Agreement reflects several of the substantive provisions of the Arena Lease Agreement, including the customary conditions with respect to construction. The remedies under the Development Agreement are with respect to the Developer and certain affiliates only and expressly do not affect ArenaCo or ArenaCo's obligations under the Arena Lease Agreement to construct, operate and maintain the Arena Project, nor do they impose responsibilities on ArenaCo for any other component of the Atlantic Yards Project.

#### *Arena Premises Interim Lease Agreement*

Pursuant to the Arena Premises Interim Lease Agreement, the Arena Developer will lease the Arena Premises from ESDC in order to perform site work and certain other pre-construction work, subject to Permitted Encumbrances (as defined in the Arena Premises Interim Lease Agreement), including the Arena Block Declaration, and other easements granted to the MTA, LIRR, the Transit Authority and the DEP. The Arena Premises Interim Lease Agreement will become effective upon the Vesting Title Release Date. The Arena Premises Interim Lease Agreement contemplates that once vacant possession of the parcels that make up the first taking of land within the AY Project Site, including the Arena Premises, is achieved, ESDC will lease the Arena Premises and the to-be-constructed Arena Project to the Issuer under the Ground Lease; the Issuer, as the landlord, and ArenaCo, as the tenant, will enter into the Arena Lease Agreement, under which ArenaCo will sublease the Arena Premises and the Arena Project for a term of approximately thirty-seven (37) years (subject to extension and/or early termination as provided in the Arena Lease Agreement) and will agree to construct, operate and maintain the Arena Project; ArenaCo will assume the Arena Developer's obligations as tenant; and the Arena Premises Interim Lease Agreement will terminate. As provided in the LAFPMRA, ESDC will have the obligation to obtain vacant possession of occupied parcels that make up the AY Project Site, including the Arena Premises. See "APPENDIX E—SUMMARY OF THE ARENA PREMISES INTERIM LEASE AGREEMENT."

#### *Ground Lease*

Pursuant to the Ground Lease, ESDC will lease the Arena Premises and the Arena Project to the Issuer for a period of thirty-seven (37) years commencing on the date of delivery of vacant possession of



the Arena Premises (the “*Commencement Date*”) for a rental equal to (a) a one time payment of \$1.00 and (b) all casualty insurance proceeds and condemnation awards payable to the Issuer under the Arena Lease Agreement and not required to be applied pursuant to the Arena Lease Agreement to (i) the restoration of the Arena Project (including any amount payable to ArenaCo on account of an elective restoration) and (ii) the demolition of the Arena Project and the clearing and leveling of the Arena Premises. The Issuer will also agree to assign to ESDC any insurance or condemnation proceeds remaining after application in accordance with the Arena Lease Agreement. Under the Ground Lease, ArenaCo may cure defaults of the Issuer. Subject to certain exceptions, the Ground Lease may not be amended or terminated while any of the Series 2009 PILOT Bonds remain Outstanding. In addition, to the extent that any liquidated damages are payable to ESDC under the Non-Relocation Agreement, ESDC will assign such damages to the Issuer. The proceeds of the damages so assigned will be applied by the Issuer to the payment in full of the Series 2009 PILOT Bonds. Thereafter, any remaining amounts will be paid to the City and the State.

#### *Arena Lease Agreement*

Under the Arena Lease Agreement, the Issuer will sublease the Arena Premises and the Arena Project to ArenaCo for an initial term commencing on the Commencement Date until the sooner to occur of (i) the later of (A) the last day of the calendar month in which the thirty-seventh (37th) anniversary of the Commencement Date occurs (“*37<sup>th</sup> Anniversary*”) and (B) if the 37th Anniversary occurs during an NBA Season, the ninetieth (90th) day following the end of such NBA Season, and (ii) such earlier date upon which the Arena Lease Agreement may be terminated pursuant to its terms. Subject to certain terms of the Arena Lease Agreement, ArenaCo will have consecutive renewal options at fair market value. In lieu of exercising such renewal options, ArenaCo has the right to purchase fee title to the Arena Project for the fair market value thereof as of the scheduled expiration date of the initial term and extension terms of the Arena Lease Agreement.

ArenaCo will pay to the Issuer a Base Rent during the Initial Term of the Arena Lease Agreement in an annual amount of \$10.00 through the end of the Initial Term *plus* an amount of Additional Rent in respect of all other amounts that become due and payable by ArenaCo under the Arena Lease Agreement, but not including PILOTs (the aggregate of all annual Base Rent and Additional Rent payments being referred to as “*Rent*”). Such Additional Rent will include ArenaCo’s obligation to provide for the construction cost of the Arena Project in excess of the amount of Series 2009 PILOT Bond proceeds available for such purpose, which excess cost is presently estimated at \$[334.2] million (and which amount may ultimately be reduced to reflect prior expenditures made for the Arena Project and included in the budget for the Arena Project on and after November 1, 2009). The Arena Lease Agreement includes ArenaCo’s agreement to make PILOTs in accordance with and subject to the terms of the PILOT Agreement.

Under the Arena Lease Agreement, ArenaCo agrees to fulfill its purposes of acquiring, designing, developing, equipping and constructing the Arena Project and managing the operation of the Arena Project. Subject to the occurrence of certain unavoidable delays and the availability of the proceeds of the Series 2009 PILOT Bonds for the development and construction of the Arena Project, ArenaCo has agreed to diligently prosecute the construction of the Arena Project.

Prior to the commencement of construction of the Arena Project, ArenaCo will be required to satisfy certain customary conditions, including obtaining required permits and approvals and approval of plans and specifications for the Arena Project by the Issuer (to the extent subject to the Issuer’s review). ArenaCo will also be obligated to maintain insurance relating to its obligations and functions under the Arena Lease Agreement throughout the term of the Arena Lease Agreement.

Except for any materials incorporated into any infrastructure that have been, or will be, dedicated to the City or the MTA, all materials to be incorporated into the Arena Project will, upon the purchase of such materials and at all times thereafter, constitute the property of ESDC, and, upon construction of the Arena Project or the incorporation of such materials therein, title thereto will vest in ESDC. ESDC may, on behalf of the Issuer, perform and exercise all obligations, reviews, consents, waivers and rights to be performed by the Issuer under the Arena Lease Agreement, and ArenaCo will accept ESDC's exercise and performance of such obligations, reviews, consents, waivers and rights, provided, among other items, that the Issuer will remain obligated to cooperate with ArenaCo in obtaining permits.

The Arena Lease Agreement requires ArenaCo to comply with customary covenants relating to the operation and maintenance of the Arena, including a covenant to maintain the Arena in a first-class manner (subject to ordinary wear and tear and obsolescence) and in compliance with the applicable League Rules. In addition, the Issuer has agreed to make funds available to ArenaCo for certain operating costs and expenses of the Arena from the Brooklyn Arena Local Development Corporation – Barclays Center Project Operation and Maintenance Fund (the “*O&M Fund*”) established under the PILOT Assignment. The Arena Lease Agreement is a “triple net lease,” in that, except as provided therein, ArenaCo will be obligated to pay all maintenance, repair and operating expenses for the Arena. Provided that no Event of Default is continuing under the Arena Lease Agreement, ArenaCo will be entitled to receive from the Issuer certain funds that the Issuer receives from ESDC which ESDC has received from the O&M Fund pursuant to the PILOT Assignment. These funds may be used by ArenaCo, as agent for the Issuer, to pay certain Arena operations and maintenance expenses, such as costs of heating, ventilation and air conditioning, utility and energy systems (including costs of gas and electricity), the costs of Builder's Risk and Property Insurance and capital improvements to the Arena.

ArenaCo will agree under the Arena Lease Agreement, among other things, to make PILOTs and to pay Rent and certain other required payments in accordance with the provisions of the Arena Lease Agreement and the PILOT Agreement and to take all actions necessary under the Leasehold PILOT Mortgages to maintain and protect the liens of the Leasehold PILOT Mortgages on the Mortgaged Property (as defined in the Leasehold PILOT Mortgages). See “APPENDIX G—SUMMARY OF THE ARENA LEASE AGREEMENT.”

#### *PILOT Bonds Partial Lease Assignment*

Pursuant to the PILOT Bonds Partial Lease Assignment, the Issuer will directly assign to the PILOT Bond Trustee the right to enforce certain representations, warranties and covenants that ArenaCo will have made under the Arena Lease Agreement. ArenaCo will acknowledge the PILOT Bonds Partial Lease Assignment. The PILOT Bonds Partial Lease Assignment gives the PILOT Bond Trustee a direct right of action against ArenaCo in the event ArenaCo fails to perform any of those representations, warranties or covenants. See “APPENDIX G—SUMMARY OF THE ARENA LEASE AGREEMENT” and “APPENDIX H—SUMMARY OF THE PILOT BONDS PARTIAL LEASE ASSIGNMENT.”

#### *Nets License Agreement*

Under the Nets License Agreement, ArenaCo will grant to New Jersey Basketball a license to use and occupy the Arena on the terms and conditions contained therein, including that the Arena is to be used for the playing of Home Games (except as otherwise permitted under the Non-Relocation Agreement) and other Nets-related events for an initial term beginning on the date of the first Home Game or the first date on which the Nets have the right to designate the location of a game in the first NBA season, or pre-season, as the case may be, following the completion of the Arena, subject to certain conditions precedent, as described in the Nets License Agreement. Pursuant to the Nets License Agreement, ArenaCo will annually collect the License Fee and, in consideration thereof, will grant certain rights to New Jersey Basketball. Any Arena-related revenues (and the right to collect or retain such

revenues) not specifically granted to New Jersey Basketball under the Nets License Agreement are retained by ArenaCo, subject to the League Rules and to other agreements into which ArenaCo may enter from time to time. See “—Arena Tenant Revenue” below.

New Jersey Basketball will be obligated to make payments each year to ArenaCo for the use and occupancy of the Arena (in the aggregate annually, the “*License Fee*”). The License Fee will be in amount calculated as the greater of the following: (a) the sum of \$6.5 million (the “*Basic License Fee*”) plus \$626,000 (the “*Ancillary Facilities License Fee*” and, together with the Basic License Fee, the “*Base Year Minimum License Fee*” (such Ancillary Facilities License Fee being the amount attributable to team locker rooms and related training facilities and Nets basketball operations offices as well as upper floor Nets executive offices)), for the first full NBA season of the term of the Nets License Agreement (provided, that if the Commencement Date of the Nets License Agreement occurs during an NBA season and the Nets play any Home Games or Playoff Games at the Arena during that NBA season, the portion of the Base Year Minimum License Fee attributable to and payable for that partial NBA season would be adjusted in accordance with the Nets License Agreement), as such amount is recalculated as described in the next succeeding sentence; or (b) the sum of the Ancillary Facilities License Fee (as same is increased as described in the next succeeding sentence) plus ten percent (10%) of “*Net Ticket Revenue*” (as such term is defined in the Nets License Agreement) for each NBA season (including pre-season) for Home Games. The amount of the Base Year Minimum License Fee will be increased as of October 1 prior to the commencement of the first full NBA season following the first NBA season in which the Nets play more than fifty percent (50%) of its regular season Home Games at the Arena (said first NBA season in which the Nets play more than fifty percent (50%) of its regular season Home Games at the Arena is referred to as the “*Base Year*”), and each subsequent October 1, by the lesser of (a) the Base Year Minimum License Fee applicable to the previous full NBA season multiplied by 3% (or, if the Base Year is a partial NBA season, 3% multiplied by the Base Year Minimum License Fee, *i.e.*, the amount that would have been payable if the Base Year were a full NBA season); and (b) the Base Year Minimum License Fee multiplied by the percentage increase in the average monthly Consumer Price Index (as such term is defined in the Nets License Agreement) for the preceding twelve (12) calendar months (*i.e.*, October through September) over the average monthly Consumer Price Index for the twelve (12) month period ending on the September 30 occurring prior to the commencement of the Base Year.

Under the Nets License Agreement, New Jersey Basketball will determine the ticket prices for admission to the Arena for all Home Games, subject to a limit on the issuance of complimentary tickets of fifteen percent (15%) of the Arena’s aggregate seating and standing room capacity. New Jersey Basketball will have the exclusive right to all revenues, net of taxes, ticket agent commissions, and a percentage payment to the NBA in accordance with the League Rules, from the sale of tickets for admission to the Arena for all Home Games and for special events that it hosts (“*Net Ticket Revenue*”), subject to its obligation to pay the License Fee. Certain license fees for the right to purchase season tickets (not including suite license fees) will not be included in Net Ticket Revenue and will not be subject to the payment of a license fee thereon, and there is to be a reasonable allocation of revenue between Net Ticket Revenue and concessions revenue with regard to “all-inclusive” tickets that entitle the bearer to admission to the Arena and some amount of concessions. Additionally, so long as one (1) or more Nets-identified team stores (each, a “*Nets Identified Store*”) are operated within the Arena and “*Non-Concession Merchandise*” (as such term is defined in the Nets License Agreement) is displayed and offered for sale in Nets Identified Stores at prices designated for such Non-Concession Merchandise by the Nets and such Nets Identified Stores bear the name “Nets” (or the then-current team name), then New Jersey Basketball is to pay to ArenaCo the sum of \$52,500 per month (the “*Merchandising Fee*”) in advance on the first day of each month beginning on October 1 of (or on the October 1 immediately in advance of) the first full NBA season of the term of the Nets License Agreement (or the first day of such other calendar month in such partial NBA season during which the term of the Nets License Agreement commences), through and including the next succeeding May 1. The Merchandising Fee is to be recalculated and increased by three percent (3%) at the beginning of the first full NBA season following

the Base Year, and the Merchandising Fee is to be increased at the beginning of each subsequent NBA season by the sum arrived at by multiplying 103% by the amount payable for the previous NBA season.

ArenaCo will retain the exclusive right to license Arena suites. The parties' respective shares of the revenues from such licenses, along with all other terms and conditions of the sale of such licenses and appurtenant Arena admission tickets (each a "*Suite Ticket*") and other rights and obligations related to the sale of such licenses and the use and occupancy of such suites, will be governed by suite license agreements between ArenaCo and the licensees ("*Suite License Agreements*"). Suite License Agreements entered into by the Arena Developer prior to the effective date of the Nets License Agreement will be assigned in whole to ArenaCo (which assignments will become effective when vacant possession of the Arena Premises is obtained). ArenaCo has absolute discretion in determining the license fees to be paid for the suites, and the allocation of suite license fees paid by suite licensees to ArenaCo and New Jersey Basketball will be in accordance with the allocation methodology approved by the NBA (the "*NBA Suite Approval*"). However, ArenaCo will not have the right to amend any Suite License Agreements, or to apply to the NBA for approval of any changes to the form of any Suite License Agreements, without New Jersey Basketball's prior written consent (which consent is not to be unreasonably withheld, delayed, or conditioned) with respect to any changes or amendments which may be adverse to New Jersey Basketball. New Jersey Basketball will be obligated to issue admission tickets to Home Games (including additional tickets to Home Games purchased by suite licensees in accordance with the Suite License Agreements for Home Games) in accordance with the Suite License Agreements and in consideration of New Jersey Basketball's right to receive its respective share of the revenues from such Suite License Agreements. ArenaCo will be obligated to enforce any obligations of any suite licensees whose breach would be illegal, in violation of the League Rules, or otherwise harmful to New Jersey Basketball or other persons in the Arena (e.g., regarding the conduct of any activities in any Arena suite during a Home Game).

In addition, the Nets License Agreement provides certain rights to ArenaCo to retain revenues from concessions merchandise that does not bear the Nets name or logo or other NBA intellectual property. In addition to certain Licensors Services (as such term is defined in the Nets License Agreement) to be provided by ArenaCo at the Arena, New Jersey Basketball is also entitled, subject to League Rules, to exclusive broadcast rights of each Home Game and to retain the other Nets Team Revenue.

Under the Nets License Agreement, New Jersey Basketball agrees not to play any Home Games in which the Nets NBA team is the home team in any location other than the Arena, except as may be permitted pursuant to the Non-Relocation Agreement. See "APPENDIX I—SUMMARY OF THE NETS LICENSE AGREEMENT."

**Neither the Series 2009 PILOT Bondholders nor the PILOT Bond Trustee will have any right to enforce the payment provisions or any remedies under the Ground Lease, the Arena Lease Agreement or the Nets License Agreement, and none of the Ground Lease, the Arena Lease Agreement or the Nets License Agreement will be pledged as security for the payment of debt service on the Series 2009 PILOT Bonds. See "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Special Limited Obligations."**

#### *Parking Easement*

The Arena Lease Agreement requires ArenaCo to have access to parking for the Arena. ArenaCo will be the beneficiary of one (1) or more non-exclusive easements (collectively, the "*Parking Easement*") appurtenant to the Arena Premises granting ArenaCo the right to access and use no less than 1,100 parking spaces on one (1) or more parcels within the AY Project Site, subject to reduction or relocation with the approval of ArenaCo. ESDC will grant an initial parking easement on Block 1129 within the AY Project Site, which easement will be recorded prior to the recording of any lease with

respect to such tax block. Pursuant to such easement, the tenant of the interim lease on Block 1129, which tenant is expected to be an affiliate of AYDC, will be obligated to build the required parking spaces at its own cost and expense and will retain the right to receive any and all revenues derived from such parking. Such tenant will also retain the right to design such parking in any configuration it deems suitable and to relocate or reconfigure such parking from time to time, including within buildings and other improvements to be constructed on the block or on undeveloped portions thereof. The initial easement will be delivered to the Document Agent (as defined in the Commencement Agreement) pursuant to the Commencement Agreement and will become effective on the Vesting Title Release Date.

#### *Non-Relocation Agreement*

The Non-Relocation Agreement requires New Jersey Basketball to cause the Nets to play substantially all of its Home Games at the Arena, commencing on the earlier of the date (a) on which the Nets first commences playing Home Games at the Arena, and (b) of the opening of the first NBA Season immediately following the later of (x) Substantial Completion (as such term is defined in the Non-Relocation Agreement) of the Arena and (y) if a Temporary Relocation (as such term is defined in the Non-Relocation Agreement) has occurred prior to Substantial Completion, the end of the Temporary Relocation, subject to the League Rules. The Non-Relocation Agreement provides that the Nets may play any number of pre-season Home Games, up to two (2) regular season Home Games per NBA Regular Season, and any number of post-season Home Games in alternate venues so long as, except as otherwise provided under League Rules applicable generally to all NBA members, which are intended to deal with the different number of home games played by opposing teams in a post-season series, the Nets' opponent in any post-season series will be scheduled to play an equal or greater number of its home games in such series outside of the city, municipality or similar local jurisdiction in which its NBA Regular Season home venue is located; and provided further, that playing at such alternate venue is imposed by application of the League Rules and not pursuant to a voluntary election by the Nets. Additionally, the Non-Relocation Agreement permits the Nets to play Home Games in a venue other than the Arena during the construction of the Arena Project until the later of (i) the substantial completion of the Arena Project, as defined in the Non-Relocation Agreement, and (ii) the commencement of the 2012-2013 NBA Regular Season. The Non-Relocation Agreement also provides an exception to the requirement that the Nets play all Home Games at the Arena for certain NBA player or NBA referee labor disputes, provided that the Nets is not playing Home Games elsewhere during any such period of work-stoppage, slowdown, walkout or lockout (to the extent the Nets might otherwise be able to play with replacement referees). In addition, subject to the terms and conditions of the Non-Relocation Agreement, in the event of a casualty, force majeure, or condemnation action, the Nets may play Home Games in another location until such conditions are remediated or repaired.

Pursuant to the Non-Relocation Agreement, and subject to the League Rules, New Jersey Basketball also agrees not to enter into or participate in any negotiations or discussions with, or apply for or seek approval from, third parties to relocate the Nets, other than for the purpose of relocating the Nets after expiration of the Non-Relocation Agreement or for the purpose of finding an alternate venue during construction of the Arena Project.

New Jersey Basketball's obligations under the Non-Relocation Agreement will terminate on the earliest to occur of (i) the thirty-seventh (37th) anniversary of the effective date of the Non-Relocation Agreement, (ii) the abandonment of the Arena Project prior to the date of the opening of the first season or (iii) the thirtieth (30th) anniversary of the effective date of the Non-Relocation Agreement if on or prior to such date all bonds, debentures, loans, credit facilities or other financing or liability issued, facilitated or incurred by the Issuer in connection with the acquisition, construction, development or operation of the Arena Project have been indefeasibly paid or otherwise satisfied in full.

New Jersey Basketball may, subject to the League Rules, sell or transfer any of its interest in the Nets or effect the sale of any interests in New Jersey Basketball, in each case, so long as (a) New Jersey Basketball delivers a notice of such transfer to the City, ESDC and the Issuer, (b) the proposed transferee assumes the obligations of New Jersey Basketball and agrees to be bound by the Non-Relocation Agreement (unless no more than forty-nine percent (49%) of the interests in New Jersey Basketball are transferred to a transferee or transferees who are not Prohibited Persons (as defined in the Non-Relocation Agreement)), and (c) no event of default, Relocation or other Material Breach, each as defined in the Non-Relocation Agreement, has occurred. New Jersey Basketball may not grant or permit to exist any covered pledge, unless the documents and other instruments implementing such covered pledge expressly provide, and the pledgee agrees in writing for the intended third-party benefit of the City, ESDC, the Issuer, and their respective successors and assigns that the pledgee will be liable to the city, ESDC, the Issuer and their respective successors and assigns in the event of a foreclosure or other enforcement action of such covered pledge that results in such pledgee either (i) taking title to the membership rights of the Nets in the NBA (allowing the Nets to play in the NBA) other than temporarily in connection with a substantially contemporaneous transfer to a third party, or (ii) effecting a transfer of the Nets that is fully controlled by such pledgee without causing the transferee of such transfer to assume the obligations under the Non-Relocation Agreement. The City, ESDC and the Issuer are entitled to seek injunctive relief to prevent the pledgee under the covered pledge from effecting a transfer fully controlled by such pledgee without complying with the provisions described in the preceding sentence.

In the event New Jersey Basketball breaches its obligations under the Non-Relocation Agreement, the City, ESDC and the Issuer are entitled to seek declaratory relief or an equitable remedy, including specific performance of the Nets' obligation to play substantially all of its Home Games at the Arena. Additionally, if a "Relocation" under the Non-Relocation Agreement occurs, and the City, ESDC, or the Issuer is unable to obtain an injunction or award of specific performance, ESDC will have the right to recover liquidated damages from New Jersey Basketball, the amount which will decline over the term of the Non-Relocation Agreement, as specified in the Non-Relocation Agreement. Under the Non-Relocation Agreement, "*Relocation*" means the failure by the Nets to play Home Games in any NBA season at the Arena during the term of the Non-Relocation Agreement, other than as permitted under the provisions of the Non-Relocation Agreement. Breaches of the Non-Relocation Agreement, other than Relocations and other than a breach of a covenant restricting the ability of New Jersey Basketball to enter into negotiations to relocate the Nets described above, permit recovery of actual damages rather than liquidated damages.

The Non-Relocation Agreement provides that the conduct of activities in the Arena, in conjunction with any Home Game or other event conducted under the auspices of or in affiliation with the NBA or New Jersey Basketball, and the obligations of New Jersey Basketball thereunder, are subject in all respects to the League Rules, as the same may change from time to time. The Non-Relocation Agreement also provides, however, that if the League Rules have the effect of causing or requiring New Jersey Basketball to breach its covenants and agreements in the Non-Relocation Agreement with respect to non-relocation, force majeure, casualty or taking, continuous operation, transfer of the Nets or pledges of interests in the Nets, and such action or failure to act would, but for the provision described in the preceding sentence, constitute an event of default thereunder, then notwithstanding such provision, the parties will have the right to sue for injunctive relief or liquidated damages, to the extent such remedies are provided for in the Non-Relocation Agreement as if such occurrence or omission were recognizable as an event of default thereunder. The effect of these provisions on the parties' rights and obligations under the Non-Relocation Agreement is unclear. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—National Basketball Association—NBA Preemption" and "APPENDIX J—SUMMARY OF THE NON-RELOCATION AGREEMENT."

**The Issuer's rights and remedies under the Non-Relocation Agreement will not be pledged or assigned to the PILOT Bond Trustee as security for the Series 2009 PILOT Bonds. Series 2009 PILOT Bondholders will have no rights under the Non-Relocation Agreement.**

For risks associated with the Non-Relocation Agreement, see "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Relating to the Series 2009 PILOT Bonds—Enforceability of Documents—General" and "—Enforceability of Documents with Respect to the Bankruptcy of ArenaCo and/or New Jersey Basketball," "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—Relocation Risk," and "—National Basketball Association."

*Barclays Center Naming Rights Agreement and Naming Rights Agreement Assignment*

The Arena Developer, New Jersey Basketball and Barclays Services Corporation ("Barclays") have entered into an Amended and Restated Naming Rights Agreement, dated January 17, 2007, and amended November 4, 2008 and August 3, 2009 (as so amended, the "*Barclays Center Naming Rights Agreement*"). The Barclays Center Naming Rights Agreement has a term of approximately twenty (20) years that expires on the twentieth (20<sup>th</sup>) anniversary of the date that the Arena has obtained a temporary certificate of occupancy and certain required NBA approvals, including approval of the relocation of the Nets to the Arena for use as its home venue (unless otherwise terminated or extended) (the "*Opening Date*"). If the Opening Date does not occur by May 1, 2013, then Barclays will have (and its sole remedies will be) (i) the continuation of a free extension of the New Jersey Team Sponsorship Rights (as defined in the Barclays Center Naming Rights Agreement) through the earlier of (A) the Team Occupancy Date (as defined in the Barclays Center Naming Rights Agreement), or (B) the date of exercise of Barclays' applicable termination right set forth in the Barclays Center Naming Rights Agreement, and (ii) a termination right, as provided in the Barclays Center Naming Rights Agreement and, if Barclays exercises such termination right, the right to recoup certain costs, as described in the Barclays Center Naming Rights Agreement. The Barclays Center Naming Rights Agreement contains other provisions setting forth the circumstances under which a specified party may terminate the agreement, including by Barclays due to a work stoppage by the NBA and/or NBPA that continues for a single sustained period longer than an aggregate of two (2) full NBA seasons plus one (1) Nets regular season Home Game. The Barclays Center Naming Rights Agreement also contains provisions setting forth the limited circumstances under which Barclays may otherwise terminate the Barclays Center Naming Rights Agreement or reduce its payment obligation thereunder, including prior to the Opening Date. Construction of the Arena has commenced for purposes of the Barclays Center Naming Rights Agreement. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—Failure to Satisfy Vacant Possession Release Conditions."

Pursuant to the Barclays Center Naming Rights Agreement, the official name of the Arena is to be "Barclays Center" (or such other names as may be established in accordance with the Barclays Center Naming Rights Agreement), and Barclays will have various other marketing, media, promotional and hospitality rights in connection with the Arena and certain Arena-related products. The Arena Developer and New Jersey Basketball will be entitled to receive from Barclays New Jersey Team Sponsorship fees (payable to New Jersey Basketball), initial Construction Period Entitlement fees (payable to the Arena Developer), Naming Rights fees (payable to the Arena Developer and New Jersey Basketball in accordance with the Barclays Center Naming Rights Agreement), and Suite License fees, which are credited against the Naming Rights fees payable to the Arena Developer (as such terms are defined in the Barclays Center Naming Rights Agreement).

For the rights and benefits that Barclays is to receive pursuant to the Barclays Center Naming Rights Agreement, Barclays is to pay certain fees to New Jersey Basketball and to the Arena Developer, including the Naming Rights fees allocated to the Arena Developer, which are in the amount of \$10

million and which are payable annually to the Arena Developer (subject to a credit in respect of Suite License fees paid by Barclays pursuant to the Barclays Center Naming Rights Agreement). These fees will be paid over in equal monthly installments on the first day of each month commencing on the Opening Date (as such term is defined in the Barclays Center Naming Rights Agreement) and continuing for twenty (20) years (subject to extension (and any free periods as a result thereof) or early termination of the term as provided in the Barclays Center Naming Rights Agreement).

The Arena Developer and ArenaCo will enter into an Assignment and Assumption of the Amended and Restated Naming Rights Agreement (the “*Naming Rights Agreement Assignment*”) pursuant to which the Arena Developer will assign to ArenaCo all of its benefits under the Barclays Center Naming Rights Agreement, including the Arena Developer’s right to receive \$10 million annually in Naming Rights Fees, and ArenaCo will assume the Arena Developer’s obligations under the Barclays Center Naming Rights Agreement. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—Financial Performance of the Arena.”

### **Arena Tenant Revenue**

ArenaCo’s principal revenue rights and expense obligations arise under the Arena Lease Agreement, the Nets License Agreement, the Naming Rights Agreement Assignment, Founding Partner/Sponsorship Agreements, Suite License Agreements and other licenses for use of the Arena. Under the Arena Lease Agreement, ArenaCo will possess, operate and maintain the Arena Project. Under the Nets License Agreement, ArenaCo will retain the right to receive all Arena-related revenues that have not been specifically designated to be received and retained by New Jersey Basketball. ArenaCo expects that the principal sources of Arena Tenant Revenue will be luxury suite premiums; revenues from food, beverage and merchandise concessions; revenues from non-Nets events held at the Arena (such as entertainment, religious, sporting, cultural, theatrical, recreational, promotional, community and civic events, such as concerts, rodeos, circuses, ice skating shows, convocations, private parties, commercial film and television shoots, fashion shows, meetings, conventions, intercollegiate sporting events, auctions and tours); Naming Rights Fees received pursuant to the Barclays Center Naming Rights Agreement and other signage/advertising revenues received under Founding Partner/Sponsorship Agreements and other contracts for advertising at the Arena; the License Fee and the Merchandising Fee. See “—Projections” below. Although ArenaCo will not receive any ticket revenues from Home Games, attendance at Home Games will have an effect on Arena Tenant Revenue. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—Financial Performance of the Arena”; see also “APPENDIX G—SUMMARY OF THE ARENA LEASE AGREEMENT” and “APPENDIX I—SUMMARY OF THE NETS LICENSE AGREEMENT.”

Under the Nets License Agreement, revenues from sales of tickets to Home Games would not be specifically included in Arena Tenant Revenue. However, the License Fee paid annually by New Jersey Basketball to ArenaCo will be calculated using a formula based in part on ticket sales from Home Games. See “—Project Leases and Agreements—Nets License Agreement” above. All Arena-related revenue that is not specifically categorized as Arena Tenant Revenue and which is to be retained by New Jersey Basketball pursuant to the Nets License Agreement will comprise Nets Team Revenue. In addition to the License Fee, New Jersey Basketball will pay to ArenaCo the Merchandising Fee in accordance with (and subject to the terms of) the Nets License Agreement.

ArenaCo expects to begin collecting some of Arena Tenant Revenue with respect to an NBA season (generally, October to April, with the post-season occurring generally in May and June) prior to the start of the Bond Year in which such season starts, through, for example, advance sales of luxury suite licenses. ArenaCo generally expects to collect Arena Tenant Revenue generated by its contractual agreements and from non-Nets events held at the Arena (including Naming Rights Fees received pursuant to the Barclays Center Naming Rights Agreement and other signage/advertising revenues received under



Founding Partner/Sponsorship Agreements and contracts for advertising at the Arena; luxury suite premiums and revenues from food, beverage and merchandise concessions) throughout the year, both during an NBA season and the NBA off-season. Such Arena Tenant Revenue would be available to make PILOTs and to pay Rent in the next succeeding Bond Year. Accordingly, ArenaCo's projections match certain revenue and expense amounts corresponding to an NBA season with certain expense amounts corresponding to the Bond Year in which the season takes place.

All revenue assumptions and the corresponding projections are based on current dollars and most escalate at varying annual percentages. As of the date of this Official Statement, the Arena Developer has entered into various agreements, as more particularly described herein, for certain contractually obligated income related to Arena Tenant Revenue as summarized below:

<b>Category</b>	<b>Contractually Obligated Initial Aggregate Annual Fee (Arena Portion)</b>	<b>Term (years)</b>
Naming Rights Agreement	\$10,000,000	20 years
Founding Partner/Sponsorship Agreements	11,036,802	5 years <sup>(3)</sup>
Suite License Agreements	2,446,520	5 years <sup>(3)</sup>
Nets License Agreement <sup>(1)</sup>	7,546,000	37 years
Concessionaire Agreement <sup>(2)</sup>	4,500,000	3 years
<b>Total</b>	<b>\$35,529,322</b>	

<sup>(1)</sup> Includes the Basic License Fee, the Ancillary Facilities License Fee, and Merchandising Fee.

<sup>(2)</sup> Minimum income to the Arena subject to certain annual attendance requirements as more particularly described below.

<sup>(3)</sup> Represents the average term for such agreements.

### *Signage/Advertising*

The signage/advertising category of Arena Tenant Revenue consists primarily of revenues from the sale of temporary and permanent signage in the Arena or any portion thereof, including billboards, scoreboard and other on-site fixed and electronic advertising, and from promotional events and giveaways at all events held at the Arena, including Home Games. In addition to certain Founding Partner/Sponsorship Agreements (as described below in "—Founding Partner/Sponsorship Agreements") into which the Arena Developer has entered as of the date of this Official Statement and which the Arena Developer will assign its interest therein to ArenaCo, ArenaCo expects to sell signage/advertising rights, some of which may cover both on-site Arena signage/advertising and external sponsorship. ArenaCo will be entitled to receive revenues attributable to signage and on-site advertising and promotions in the Arena, subject to the Nets' exclusive rights to sell and retain all revenues, with respect to Home Games, from (i) Courtside Advertising (as defined in the Nets License Agreement), (ii) advertising appearing on telescreens, electronic scoreboards, LED rings, and public address systems to the extent that such advertising pertains specifically to the playing of, or is shown or displayed solely at, Home Games, (iii) advertising appearing on Nets programs and tickets to Home Games (other than advertising on tickets sold at or processed through Arena box office facilities), (iv) game day promotions such as "hat night," and (v) other sources typically controlled by NBA teams on Home Game days, as well as certain other rights reserved by the Nets under the Nets License Agreement. Signage/advertising revenues are a function of attendance at the Arena, the quality of events and the potential for increased exposure due to the telecast of events at the Arena.

The marketing plan to generate signage/advertising revenues at the Arena consists primarily of the Barclays Center Naming Rights Agreement, as earlier described, and several primary sponsors or "Founding Partners" and other sponsors who have executed Founding Partner/Sponsorship Agreements,

as well as additional sponsor agreements. The Founding Partners will be strategically aligned in the Arena with ‘neighborhoods’ to create a stronger sense of branding identity throughout the Arena.

The projections for signage/advertising revenues are based on the terms of various Founding Partner/Sponsorship Agreements executed on or before the date of the date of this Official Statement as well as historical performance at IZOD Center and other New York metropolitan area event venues, results at other comparable new NBA arenas, ArenaCo’s judgment and assumptions, and a financial feasibility analysis (the “*CSL Financial Feasibility Study*”) and a market study (the “*CSL Market Study*”), each provided by Conventions, Sports & Leisure International, Inc. (“*CSL International*”). The projected price for signage/advertising is assumed to escalate at an annual rate of three percent (3%). See “—Founding Partner/Sponsorship Agreements” and “—Project Feasibility and Market Studies” below in this section. See also “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—Financial Performance of the Arena.”

#### *Founding Partner/Sponsorship Agreements*

The Arena Developer and New Jersey Basketball have currently entered into Founding Partner/Sponsorship Agreements with various local, regional, national and international businesses. These executed Founding Partner/Sponsorship Agreements, the interests of the Arena Developer in which will be assigned to ArenaCo, have terms that range from three (3) to seven (7) years and an initial-year annual aggregate payment to the Arena Developer of approximately \$11.0 million. The executed Founding Partner/Sponsorship Agreements provide for annual fee increases.

The executed Founding Partner/Sponsorship Agreements provide that the licensee/sponsor has a termination right in certain circumstances, including in the event that the Arena is not substantially completed and suitable for Home Games by a certain date, generally November 1, 2012. Certain of the executed Founding Partner/Sponsorship Agreements include terms that permit the licensee/sponsor to cease or reduce the payment of fees payable to New Jersey Basketball (but not to the Arena Developer (or, following the assignment of the agreements to ArenaCo, ArenaCo)) during the continuance of an NBA players’ strike or NBA-induced work stoppage; however, several of the executed Founding Partner/Sponsorship Agreements do not permit such fee payment reduction or cessation under such circumstances. A table summarizing the executed Founding Partner/Sponsorship Agreements follows:

<b><i>Founding Partner/Sponsor</i></b>	<b><i>Term*</i></b>
<b>ADT Security Services, Inc.</b>	Five (5) years from the Arena opening date and two consecutive one (1) year extensions thereafter (with each such extension being subject to a sponsor opt-out)
<b>Anheuser-Busch Incorporated (through its authorized agent, Busch Media Group, Inc.)</b>	Four (4) years from the Arena opening date
<b>A. Stein Meat Products Inc., d/b/a Brooklyn Burger</b>	Three (3) years from the Arena opening date
<b>Cushman &amp; Wakefield, Inc.</b>	Five (5) years from the Arena opening date
<b>EmblemHealth, Inc.</b>	Six (6) years from the Arena opening date
<b>Foxwoods Resort Casino</b>	Four (4) years from the Arena opening date; sponsor option to extend for one (1) additional year
<b>High Point Solutions, Inc.</b>	Five (5) years from the Arena opening date
<b>Jones Soda Co.</b>	Seven (7) years from the Arena opening date; sponsor option to early terminate after five (5) years
<b>MetroPCS New York, LLC</b>	Five (5) years from the Arena opening date
<b>Phillips-Van Heusen Corporation</b>	Five (5) years from the Arena opening date

\* Subject to a “tail” period in certain instances based on the occurrence of the Arena opening date during an NBA season.

None of the Barclays Center Naming Rights Agreement or Founding Partner/Sponsorship Agreements are pledged to the PILOT Bond Trustee. The PILOT Bond Trustee and the holders of Series 2009 PILOT Bonds will have no rights under the Barclays Center Naming Rights Agreement or any Founding Partner/Sponsorship Agreement. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—Construction Risks,” “—Risks Associated with Operations—Financial Performance of the Arena” and “APPENDIX R—FORM OF FOUNDING PARTNER/SPONSORSHIP AGREEMENT.”

#### *Luxury Suite Premiums*

Premium seating at the Arena will contain eighty-three (83) standard luxury suites, twelve (12) courtside suites, six (6) conference suites, four (4) party suites, and forty (40) loge boxes. Luxury suite licensees will have their own exclusive entrance, clubs, elevators, concourses and facilities creating a premium experience over standard ticket-holders. Individual suites are equipped with state-of-the-art electronics including flat screen TVs, Internet access, and other modern amenities and will be fully catered. Fifty-three (53) of the standard luxury suites will be located on the first suite level, and thirty (30) of the standard luxury suites will be located on the second suite level. Standard luxury suites are categorized and marketed as either “brownstones” or “lofts” and range from an initial suite license fee of \$195,000 to \$425,000 providing a variety of price points to service the mid-size to large-size corporate base in Brooklyn and in the greater New York City market. Brownstone suites seat approximately sixteen (16) patrons and loft suites seat approximately ten (10) patrons; provided, that suite license holders can purchase additional tickets. Suites on the first suite level form a full 360-degree circumference around the Arena. Suites on the second suite level exist only between the “baselines” (*i.e.*, the ends of the basketball court). Suites are currently marketed and licensed from the Barclays Center Showroom located on the 38th floor of The New York Times Building in midtown Manhattan. The Barclays Center Showroom contains a full mock suite as well as a 180-degree projection screen that allows a potential suite licensee to replicate a view of various Arena events from a particular suite in the Arena.

For purposes of the projections contained herein, ArenaCo assumes the annual licensing of ninety-one (91) of 105 suites more particularly described as follows: seventy-six (76) of eighty-three (83) standard luxury suites, ten (10) of twelve (12) courtside suites, and five (5) of six (6) conference suites for

terms of five (5), seven (7) or ten (10) years. Additionally, four (4) of the unlicensed luxury suites, thirty-eight (38) of the forty (40) loge boxes, and the party suites are assumed to be licensed for shorter time periods. Luxury suite licensees will receive tickets to all ticketed events held at the Arena, subject to certain exceptions set forth in the Suite License Agreements. For Home Games, the price of a luxury suite includes two (2) components: (1) the price of the ticket for the seat within the suite (referred to as the “*Ticket Component*”) and (2) the portion of the price that entitles the holder access to that luxury suite and certain specified amenities (referred to as the “*Premium Component*”). Pricing of the Ticket Component for a Home Game is established pursuant to a formula agreed upon under the Nets Suite Allocation Approval.

Pursuant to the Nets License Agreement, ArenaCo and New Jersey Basketball have agreed that all Suite License Agreements will provide that for Home Games, ArenaCo (for the Suite License Agreements that ArenaCo executes and by and through the assignment to ArenaCo by the Arena Developer of all of the Arena Developer’s rights and remedies under the Suite License Agreements that the Arena Developer has executed as of, and after, the date of this Official Statement) shall receive all payments constituting the Premium Component and that New Jersey Basketball shall receive all payments constituting the Ticket Component. Standard luxury suites are projected to be licensed at an initial average annual license fee of approximately \$278,000, which fee includes a Ticket Component (for Home Games) of approximately \$58,000 as well as a Premium Component of approximately \$220,000. As of the date of this Official Statement, the Arena Developer has entered into suite licenses, either through standalone Suite License Agreements or through Founding Partner/Sponsorship Agreements, with various individuals and local, regional, national and international businesses for ten (10) standard luxury suites, exclusive of complimentary suite agreements, with terms that range from five (5) to seven (7) years, and with an average initial year license fee of \$367,500 for an aggregate amount of initial license fees of \$3,675,000. All suite agreements require annual escalation of payments. Two (2) of the seven- (7-) year Suite License Agreements have a termination option after the fifth (5<sup>th</sup>) year, one (1) of the five- (5-) year Suite License Agreements has a termination option after the third (3<sup>rd</sup>) year, and four (4) of the suite licenses that are included in Founding Partner/Sponsorship Agreements have the right to terminate the suite license if the Arena is not substantially completed and suitable for Home Games by a date certain, generally November 1, 2012. The associated premium component of executed suite license agreements is currently calculated to be \$2,446,520 and represents twelve percent (12%) of the net licensed luxury suite budget. In order for ArenaCo to meet the projections for standard luxury suite licenses, the remaining sixty-six (66) standard luxury suites projected to be licensed would need to require an average initial year license fee of approximately \$267,000. Courtside suites are projected to be licensed at an initial average annual license fee of \$544,000, which fee includes a Ticket Component for Home Games of approximately \$218,000 and a Premium Component of approximately \$326,000. Additionally, the Arena will include six (6) conference suites on the first suite level with no view of the Arena bowl. For purposes of the projections contained herein, five (5) of these conference suites will be licensed at an initial average annual license fee of \$100,000 each, exclusive of tickets.

The remaining suites will be licensed either as nightly suites or as club suites, and four (4) of the remaining seven (7) luxury suites are projected to be licensed for all Home Games. The remaining three (3) luxury suites are projected to be provided to users on a complimentary basis. For purposes of the projections contained herein, the four (4) party suites are consolidated into two (2) larger party suites and are projected to be licensed at an initial average license fee of \$13,200 per game, including a Ticket Component for Home Games of approximately \$4,500 per Home Game and a Premium Component of approximately \$8,700 per Home Game. Projected occupancy levels for party suites are assumed to be 80% for Home Games and for an additional sixty (60) of 179 (or, thirty-four percent (34%) of) other Arena events, which include entertainment, religious, sporting, cultural, theatrical, recreational, promotional, community and civic events, such as concerts, rodeos, circuses, ice skating shows, convocations, private parties, commercial film and television shoots, fashion shows, meetings, conventions, intercollegiate sporting events, auctions and tours. Loge boxes are projected to be licensed

at an initial average annual license fee of approximately \$58,000, which fee includes a Ticket Component for Home Games of approximately \$9,800 and a Premium Component of approximately \$48,200. Loge boxes are projected to be ninety-five percent (95%) occupied for Home Games, and thirty (30) of the forty (40) loge boxes are projected to be licensed for twenty (20) of 179 (or, eleven percent (11%) of) non-Nets events.

The projections for luxury suite license revenues are based on results at other comparable new NBA arenas and other New York metropolitan area event venues, ArenaCo's judgment and assumptions (including the number of Suite License Agreements executed by the Arena Developer as of the date of this Official Statement, which Suite License Agreements will be assigned in whole to ArenaCo pursuant to contractual assignments which will become effective when vacant possession of the Arena Premises is obtained), the CSL Financial Feasibility Study and the CSL Market Study. However, there can be no assurance as to the number of Suite License Agreements that will be closed or the amount realized from such Suite License Agreements. Furthermore, the amount of the license fee and ticket price that is ultimately charged is subject to many factors outside the control of ArenaCo and cannot be predicted with certainty. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—Construction Risks" and "—Risks Associated with Operations—Financial Performance of the Arena"; see also "APPENDIX S—FORM OF SUITE LICENSE AGREEMENT," "APPENDIX W—CSL FINANCIAL FEASIBILITY STUDY" and "APPENDIX X—CSL MARKET STUDY."

#### *Food, Beverage and Merchandise Concessions*

ArenaCo intends to manage and operate the food and beverage concession services at the Arena in a manner consistent with the management and operation of such concession services at other first-class arena venues. The Arena Developer has entered into an agreement with Levy Premium Foodservice Limited Partnership, and such agreement will be assigned in whole to ArenaCo (which assignment will become effective when vacant possession of the Arena Premises is obtained). Under this agreement, ArenaCo will receive a specified percentage of all concession revenue. The remaining concession revenue will be retained by the concessionaire or used to pay applicable taxes. ArenaCo also will likely enter into a similar arrangement to sell merchandise and novelties at the Arena through one (1) or more concessionaires. Arena operators generally project their food and beverage concessions, merchandise and novelties revenue based on assumed "per capita" spending by event attendees. Concessions estimates are based on the estimated season attendance for each seating segment multiplied by a weighted average of approximately \$13.50 of gross revenue per capita. The projected operating cost of concessions is estimated to be approximately sixty percent (60%) of gross revenue. The executed concession agreement provides for contractually obligated annual income to the Arena of \$4.5 million, subject to total Arena attendance for all events during a particular year being no less than 1,638,836. The 1,638,836 attendance hurdle is approximately twenty-nine percent (29%) less than current concessions attendance projections of 2,293,656 attendees per year.

Projected merchandise revenue for Arena events other than Home Games assumes a per capita spending of approximately \$5.97 and assumes that ten percent (10%) of revenues flow to ArenaCo. For Home Games at the Arena, New Jersey Basketball pays the Arena a license fee of \$420,000 per year for the right to retain all net revenues from certain merchandise and novelties sales in the Arena, including from up to four (4) Nets-identified team stores, for merchandise and novelties bearing the Nets name or logo or bearing other NBA intellectual property.

Food, beverage and merchandise per capita revenue projections are estimated to inflate at an annual rate of three percent (3%). The terms and conditions of any agreement relating to provision of food and beverage or merchandise concessions at the Arena, including food and beverage menus and pricing, the location of concession stands and restaurants, menus, pricing and admission criteria for clubs

and restaurants, and selection and pricing of merchandise, will be subject to the approval of New Jersey Basketball to the extent that such terms and conditions have an impact on New Jersey Basketball's use of, or operation of, the Arena.

#### *Revenues from Other Events and Other Income*

ArenaCo intends the Arena to be a multi-purpose venue for many types of family entertainment events, religious events, sporting events, and cultural and other performances. It is currently anticipated that the Arena will host 179 non-Home Game events in the Arena each year, including entertainment, religious, sporting, cultural, theatrical, recreational, promotional, community and civic events, such as concerts, rodeos, circuses, ice skating shows, convocations, private parties, commercial film and television shoots, fashion shows, meetings, conventions, intercollegiate sporting events, auctions and tours.

The payment structure will vary for each type of event – in the case of concerts, other sporting events, and family shows, it is anticipated that ArenaCo will earn a percentage of the promoter's post-sales tax revenues (averaging 5.0%, 9.4%, and 10.0%, respectively) and that the promoter will also pay the majority of event-day expenses. Alternatively, ArenaCo may allow promoters to host events in the Arena in exchange for a fixed rent payment, assuming equal or better financial terms to the structure described above.

For fixed-fee rentals an average rental of \$47,741 is assumed, with 100% of the proceeds after sales tax flowing to ArenaCo and with the event covering thirty percent (30%) of its event costs.

Additional "other event" revenue is projected to come from party suites and loge boxes, as discussed above in the "Luxury Suite Premium" section.

ArenaCo's management team has begun discussions with various promoters and providers of entertainment, sporting, and family events. As of the date of this Official Statement, ArenaCo has received various forms of non-binding letters of intent and letters of interest from Live Nation, Inc., the largest concert promoter in the country; Feld Entertainment, Inc., the world's leading producer of live family entertainment experiences, which include Ringling Bros. and Barnum & Bailey®, Feld Motor Sports, Disney On Ice® and Disney Live!®; IMG, one of the world's premier and most diversified sports, entertainment and media company; as well as the United States Military Academy, Professional Bull Riders, Inc., and Blue Entertainment Sports Television.

Other Arena Tenant Revenue includes facility and green building fees and miscellaneous income. Facility fees are fees that range from \$1.00 to \$6.00 per ticket (based on the price of the ticket) that are attached to the ticket price of each event. ArenaCo will receive the facility fee revenue for all non-Nets events, and the Nets will receive the facility fees for Home Games. The green building fee is a \$1.00 per ticket surcharge added to all tickets to help defray the cost of the Arena's LEED certification. ArenaCo will receive all green building fees, regardless of whether they are attached to Nets or other event tickets.

Miscellaneous income includes rent paid by New Jersey Basketball for the Nets' office space and the Nets practice and training facilities, as well as other miscellaneous items such as ticket rebates.

The projections for other events income and other income are based on letters of interest received to date, results at other comparable new NBA arenas and other New York metropolitan area event venues, ArenaCo's judgment and assumptions, the CSL Financial Feasibility Study and the CSL Market Study. However, there can be no assurance as to the number of other events will be booked at the Arena or the amount realized from such other events or other sources. Furthermore, the amount of the license fee, use fee or other fee that is ultimately charged is subject to many factors outside the control of ArenaCo and

cannot be predicted with certainty. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena Project—Construction Risks” and “—Risks Associated with Operations—Financial Performance of the Arena”; see also “APPENDIX W—CSL FINANCIAL FEASIBILITY STUDY” and “APPENDIX X—CSL MARKET STUDY.”

## **Project Feasibility and Market Studies**

The Arena Developer retained CSL International to provide the CSL Financial Feasibility Study and the CSL Market Study for the Arena Project.

### *CSL Financial Feasibility Study*

CSL International, a sports facility consultant, has prepared its CSL Financial Feasibility Study for the Arena Developer to evaluate the ability of ArenaCo to meet the operating expenses, working capital needs and other financial requirements of the Arena Project, including the making of PILOTs. In performing the study, CSL International relied on the CSL Market Study further described below. CSL International participated in gathering information, assisted the Arena Developer in identifying and formulating assumptions, and assembled the statements of forecasted income and cash flows for ArenaCo included in the CSL Financial Feasibility Study, based upon those assumptions. CSL International concluded that, in its opinion, the underlying assumptions provide a reasonable basis for ArenaCo’s financial forecast; provided, however, that there will usually be differences between forecasted results and actual results because events and circumstances frequently do not occur as expected, and those differences may be material. In addition, CSL International concluded that the financial forecast indicates that sufficient funds could be generated to meet operating expenses, working capital needs, and other financial requirements, including the making of PILOTs; provided, however, that the achievement of any financial forecast is dependent upon future events, the occurrence of which cannot be assured. See “APPENDIX W—CSL FINANCIAL FEASIBILITY STUDY.” See also “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations” and “CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS.”

### *CSL Market Study*

CSL International has also prepared its CSL Market Study for the Arena Developer to evaluate the Arena Project’s market viability. In performing the study, CSL International’s procedures included an analysis of current NBA pricing and premium seating programs; analysis of demographic and socioeconomic characteristics of the New York market relative to the other U.S. markets currently supporting an NBA membership; analysis of projected operations at the Arena; and third party interviews with potential stakeholders whom may have an interest in the premium seating products that have been developed for the Arena. CSL International also participated in gathering market information need to compile the study, including interviews with key event promoters. CSL International concluded, among other conclusions, that the Brooklyn, New York area would be ideal for a new state-of-the-art arena. See “APPENDIX X—CSL MARKET STUDY”; see also “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations” and “CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS.”

### *Summary of Highlights of CSL International’s Reviews*

In performing the analytical work to compile the CSL Financial Feasibility Study and the CSL Market Study, CSL International specifically noted the following (which list is not intended to be exhaustive):

- The Nets currently play in one of the oldest facilities hosting a National Basketball Association franchise.
- The IZOD Center, the Nets' current home, offers only twenty-eight (28) private suites and no club seats, compared to an NBA average of ninety-four (94) private suites and approximately 2,100 club seats. The lack of premium seating limits the ability of the Nets to generate revenues.
- Brooklyn is part of the most densely populated metropolitan region in the nation with approximately 2.51 million residents. Brooklyn is centrally located between Manhattan and Queens with populations of 1.62 million and 2.26 million, respectively. With easy access to the tri-state metropolitan marketplace (New York, New Jersey, Connecticut) and the convergence of commercial and retail business, educational institutions and residential neighborhoods, a downtown Brooklyn site is ideal for a new state-of-the-art arena.
- The New York metropolitan area has a high number of professional sports venues and franchises that will present competition to the Barclays Center and the Nets. However, the market has the fourth (4<sup>th</sup>) highest ratio of population per professional sports franchise among the markets analyzed, and the Nets is already an existing franchise in the area.
- The corporate markets in both Manhattan and Brooklyn/Queens were surveyed and indicated a high level of support for the Barclays Center in Brooklyn.
- Based on the in-depth analysis of the current and future trends in the New York marketplace, it is recommended that the new arena incorporate approximately 100 private suites, forty (40) loge boxes and 3,300 club seats for revenue generation purposes.
- Based on interviews conducted in late 2008 and April 2009 with local and national promoters, the development of a new arena will provide the marketplace with a state of the art facility that will better serve concert and family show promoters. It is expected that the new arena will likely generate incremental events that are not currently being accommodated in the marketplace due to a lack of availability and amenities.
- The Arena Developer also retained CSL International to provide a financial feasibility study of the Arena Developer's proposal to develop and operate the proposed Barclays Center Arena to be located in Brooklyn, New York. This study was undertaken to evaluate the ability of ArenaCo to meet the operating expenses, working capital needs and other financial requirements of the Barclays Center, including the debt service requirements associated with the proposed bond issuance contemplated herein.

### **ArenaCo's Expenses**

Projected expenses of ArenaCo in connection with the Arena consist of PILOTs, Rent and expenses incurred for the operation and maintenance of the Arena and for certain capital repairs and improvements, as well as all expenses directly related to the generation of Arena Tenant Revenue, including consulting fees and legal fees. Operating expenses include expenses incurred in connection with Arena operations, special events, arena concessions, general and administrative matters and any other expenses required to be paid by ArenaCo in connection with the operation of the Arena, and the expenses, liabilities and compensation of the PILOT Bond Trustee required to be paid under the PILOT Bonds Indenture and other financing agreements. Projected expenses are based, in part, upon ownership experience managing the Nets and comparable expenses at other NBA arenas, and are assumed to escalate at an annual rate of three percent (3%). ArenaCo will not be responsible for expenses that relate to the operation of the Nets, such as player costs or costs imposed by the League Rules.



## Projections

The following table sets forth ArenaCo's estimates of revenue and expenses for the five (5) operating years (*i.e.*, July 1 of a given year to June 30 of the following year) from 2011-12 through 2015-16. These estimates are based on (1) historical performance of the Nets, (2) results at other comparable new NBA arenas, (3) ArenaCo's judgment and assumptions concerning future operations that it believes are relevant and accurate, including those assumptions that are set forth above under "ArenaCo's Revenue" and "ArenaCo's Expenses", (4) the CSL Financial Feasibility Study and the CSL Market Study, and (5) various contracts and agreements executed as of the date of this Official Statement for naming rights, other signage/advertising rights, luxury suite premiums and concessions. However, it is possible that assumed circumstances will not materialize, that anticipated events may not occur or may have different results than projected, or that unanticipated events may occur to cause future ArenaCo revenues, operating expenses and net cash flow to vary materially from the projections. These projections are not intended to comply with the guidelines established by the American Institute of Certified Public Accountants for preparation and presentation of financial projections. Please refer to "—Arena Tenant Revenue" and "—ArenaCo's Expenses" above for a discussion of the assumptions underlying the projections. See also "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations" and "CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS."

**ArenaCo Forecasted Statement of Income and Expenses**  
**For the Five Operating Years Ending June 30, 2012 through 2016**  
(numbers are in thousands)

	2011-12	2012-13	2013-14	2014-15	2015-16
<b><u>Income from Premium Seating</u></b>					
<b>Gross Revenue from Tickets and Premium Seating</b>					
Suites	\$4,178	\$26,646	\$27,445	\$28,268	\$29,117
Loge Boxes	0	2,269	2,337	2,407	2,479
Party Suites	0	912	940	968	997
<b>Total Gross Revenue from Tickets and Premium Seating</b>	\$4,178	\$29,827	\$30,722	\$31,643	\$32,593
Ticket Portion of Premium Seating to Nets	\$0	\$(5,374)	\$(5,562)	\$(5,757)	\$(5,959)
<b>Net Revenue from Premium Seating</b>	\$4,178	\$24,453	\$25,159	\$25,886	\$26,634
<b><u>Income from Nets Games</u></b>					
Concession Revenue	\$0	\$5,267	\$5,435	\$5,738	\$5,917
Rent from Team Store	70	420	433	446	459
Rental Payment from Ticket Sales	0	7,787	8,060	8,342	8,634
<b>Total Revenue from Nets' Games</b>	\$4,248	\$37,926	\$39,086	\$40,412	\$41,643
<b><u>Other Event Income</u></b>					
Net Ticket Revenue from Other Events	\$1,116	\$5,747	\$5,919	\$6,097	\$6,280
Net Suite Revenue from Other Events	206	1,059	1,090	1,123	1,157
Net Concessions Revenue from Other Events	943	6,036	6,229	6,576	6,781
Net Novelties Revenue from Other Events	175	907	935	963	995
<b>Total Other Event Income</b>	\$2,439	\$13,748	\$14,173	\$14,759	\$15,212
<b><u>Other Income</u></b>					
Naming Rights (net of suite and fulfillment expenses)	\$1,667	\$10,000	\$10,000	\$10,000	\$10,000
Sponsorship Revenue	4,942	30,540	31,456	32,400	33,372
Miscellaneous Revenue	292	1,803	1,857	1,912	1,970
Facility & Green Building Fees	1,118	6,445	6,639	6,838	7,043
Rent from Team for Practice Facility & Office Space	104	627	646	665	685
Net Rent from Arena Block Retail	33	200	206	212	219
<b>Total Other Income</b>	\$8,156	\$49,615	\$50,803	\$52,027	\$53,288
<b>Total Operating Revenue</b>	<b>\$14,843</b>	<b>\$101,289</b>	<b>\$104,062</b>	<b>\$107,198</b>	<b>\$110,143</b>
<b><u>Expenses</u></b>					
PILOTs	\$5,377	\$29,982	\$30,592	\$31,385	\$32,096
Arena Operating Expenses	3,449	24,559	25,392	26,247	27,034
<b>Total Operating Revenues less Operating Expenses and PILOTs</b>	<b>\$6,017</b>	<b>\$46,749</b>	<b>\$48,079</b>	<b>\$49,567</b>	<b>\$51,013</b>

## **National Basketball Association**

Labor relations between the NBA and the NBPA are governed by the CBA currently in effect. The CBA currently in effect provides financial stability to NBA teams through various mechanisms designed to provide players with a fixed percentage of NBA and team revenues and to maintain a competitive balance among all teams in their acquisition and retention of player talent. These mechanisms include a salary cap, which has been in place since 1984, and an escrow/tax system, which went into effect with the 2001-02 NBA season. The salary cap provides for a maximum per-team payroll each season, subject to certain exceptions. The escrow/tax system causes a portion of player salaries to be withheld and paid to the teams if aggregate player costs exceed agreed-upon levels and imposes a “tax” on teams whose payrolls exceed certain designated amounts. The tax and escrow funds are available for distribution back to the teams under formulas developed by the NBA that provide for larger payments to teams that do not pay a tax. The CBA currently in effect also provides for the NBA Draft, maximum and minimum individual player salaries, limitations on the length of guaranteed contracts, rookie salary scales, free agency rights and player benefits. The current CBA is in place through the end of the 2010-11 NBA Season. See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—National Basketball Association” for a discussion of risks presented by New Jersey Basketball being an NBA member.

### **RISK FACTORS AND INVESTMENT CONSIDERATIONS**

*An investment in the Series 2009 PILOT Bonds involves certain risks, including the risk of nonpayment of interest or principal due to Bondholders. The Series 2009 PILOT Bonds are obligations of the Issuer, payable solely from specific sources. The risk of nonpayment is affected by the following factors, among others, which should be considered by prospective investors, along with the other information presented in this Official Statement, in judging the suitability of an investment in the Series 2009 PILOT Bonds.*

#### **Risks Relating to the Series 2009 PILOT Bonds**

##### *Limited Recourse Obligations*

The Series 2009 PILOT Bonds are limited recourse obligations of the Issuer payable solely from PILOT Revenues derived from PILOTs paid by ArenaCo pursuant to the PILOT Agreement, the interest of the PILOT Bond Trustee in the Debt Service and Reimbursement Fund held by the PILOT Trustee under the PILOT Assignment and certain Funds and Accounts held by the PILOT Bond Trustee under the PILOT Bonds Indenture. None of the State, the City and ESDC is or shall be obligated to pay the principal of or interest on the Series 2009 PILOT Bonds and neither the faith and credit nor the taxing power of the State, the City or ESDC is pledged to such payment. The Issuer has no taxing power.

The Series 2009 PILOT Bonds do not constitute an obligation of ArenaCo, the Arena Developer, New Jersey Basketball, or any of their respective affiliates. The Series 2009 PILOT Bonds are not secured by any interest in the Arena Project, the Arena Premises or any other portion of the Atlantic Yards Project nor any property of or interest in ArenaCo, the Arena Developer, New Jersey Basketball or any of their respective affiliates.

##### *Nature of ArenaCo; Limited Recourse*

ArenaCo is a bankruptcy-remote special purpose limited liability company, and the Series 2009 PILOT Bonds will be payable solely from PILOTs paid by ArenaCo to ESDC (and which are assigned to the PILOT Trustee). ArenaCo will have no significant assets or revenues other than its interests in the Arena Premises and the Arena under the Arena Lease Agreement, in the Nets License Agreement, in

certain concession rights contracts, in the Barclays Center Naming Rights Agreement (pursuant to the Naming Rights Agreement Assignment) and certain Founding Partner/Sponsorship Agreements, in Suite License Agreements and in agreements relating to non-Home Games held at the Arena. ArenaCo has no operating history, and no statements of financial information presently exist with respect to ArenaCo. None of the payments due to ESDC under the PILOT Agreement will be pledged to the payment of the Series 2009 PILOT Bonds. Furthermore, the Leasehold PILOT Mortgages will not be pledged as security for the Series 2009 PILOT Bonds, and the Bondholders will have no rights or remedies under the Non-Relocation Agreement. None of the Arena Developer, New Jersey Basketball and any of their respective affiliates is obligated to make any payments under the Series 2009 PILOT Bonds, and no financial information with respect to the Arena Developer or New Jersey Basketball is presented in this Official Statement or will be made available pursuant to the Continuing Disclosure Agreement. The sole source of payment and security for amounts due to ESDC will be amounts paid by the ArenaCo under the PILOT Agreement. As a result, holders of the Series 2009 PILOT Bonds must depend on the PILOT Revenues and funds on deposit in the Senior PILOT Bonds Debt Service Reserve Fund and certain other Funds and Accounts established under the PILOT Bonds Indenture for the payment of principal of and interest on the Series 2009 PILOT Bonds.

#### *Enforceability of Documents—General*

Receipt of payments owed to Bondholders depends upon the enforceability of various instruments and agreements. The various legal opinions to be delivered concurrently with the delivery of the Series 2009 PILOT Bonds will be qualified as to the enforceability of various instruments and agreements because of limitations imposed by U.S. federal and state laws affecting remedies and other matters, and by bankruptcy, reorganization or other laws affecting the enforcement of creditors' rights generally.

Insofar as the PILOT Agreement, PILOT Assignment, Leasehold PILOT Mortgages, Arena Lease Agreement, Nets License Agreement, Barclays Center Naming Rights Agreement, Naming Rights Agreement Assignment, Founding Partner/Sponsorship Agreements and the Non-Relocation Agreement contain equitable remedies, a court of equity has broad discretion as to whether to grant equitable relief, including whether to require the specific performance of any such agreement. Furthermore, the liquidated damages provision contained in the Non-Relocation Agreement may be found to be excessive or punitive, in which case it may be disallowed.

ArenaCo, the Arena Developer and New Jersey Basketball are subject to the League Rules, as such League Rules may change from time to time. In addition, New Jersey Basketball's obligations under the Non-Relocation Agreement are subject and subservient in all respects to the League Rules, and the Nets License Agreement provides that the manner of conduct of Nets activities at the Arena in conjunction with Home Games and other Nets events is subject to the League Rules. The legal effect of the League Rules on the enforceability of the PILOT Agreement, PILOT Assignment, Leasehold PILOT Mortgages, Arena Lease Agreement, Nets License Agreement, Barclays Center Naming Rights Agreement, Naming Rights Agreement Assignment, Founding Partner/Sponsorship Agreements and the Non-Relocation Agreement or on any other document to which the Arena Developer, ArenaCo or New Jersey Basketball is a party is unclear. In addition, the effect of the League Rules on the ability of ArenaCo or New Jersey Basketball to perform their obligations and/or to exercise their rights under various agreements to which either of them is a party, including, but not limited to, the PILOT Agreement, PILOT Assignment, Leasehold PILOT Mortgages, Arena Lease Agreement, Nets License Agreement, Barclays Center Naming Rights Agreement, Naming Rights Agreement Assignment, Founding Partner/Sponsorship Agreements and the Non-Relocation Agreement cannot be known at this time. The League Rules and/or future changes thereto could limit, modify or prevent the enforcement of such agreements and documents, modify the benefits afforded thereby and ultimately have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds. See "—Risks Relating to the Series PILOT

Bonds—Enforceability of Documents—General” and “—Risks Associated with Operations—National Basketball Association—NBA Preemption.”

*Enforceability of Documents with Respect to the Bankruptcy of the Issuer*

If the Issuer were to become a debtor in a case under Title 11 of the United States Code (the “Bankruptcy Code”), among other things, payments to Bondholders would be stayed and a bankruptcy court could confirm a plan that could affect the Bondholders by reducing or eliminating the amount of the Issuer’s indebtedness, deferring or rearranging the debt service schedule(s), reducing or eliminating the interest rate(s), modifying or abrogating collateral or security arrangements, substituting (in whole or in part) other securities, and otherwise compromising, modifying, or terminating and discharging the rights and remedies of the Bondholders against the Issuer. Furthermore, a bankruptcy court has the power to avoid and recover certain payments made to creditors prior to the filing of the bankruptcy case.

*Enforceability of Documents with Respect to the Bankruptcy of ArenaCo and/or New Jersey Basketball*

In the event a voluntary or involuntary case is filed under the Bankruptcy Code with respect to ArenaCo and/or New Jersey Basketball, a bankruptcy court could determine that various agreements, including but not limited to the PILOT Agreement, PILOT Assignment, Leasehold PILOT Mortgages, Arena Lease Agreement, Nets License Agreement, Barclays Center Naming Rights Agreement, Naming Rights Agreement Assignment, Founding Partner/Sponsorship Agreements and the Non-Relocation Agreement, are executory contracts or unexpired leases. In a bankruptcy case, an executory contract or unexpired lease is capable of being rejected by a trustee or debtor-in-possession pursuant to Section 365 of the Bankruptcy Code. If an executory contract or unexpired lease is rejected, the debtor may no longer be required to perform its obligations under that contract. In addition, with the authorization of the bankruptcy court, ArenaCo and/or New Jersey Basketball may be able to assign their respective rights and obligations under various agreements, including but not limited to the PILOT Agreement, PILOT Assignment, Leasehold PILOT Mortgages, Arena Lease Agreement, Nets License Agreement, Barclays Center Naming Rights Agreement, Naming Rights Assignment, Founding Partner/Sponsorship Agreements and the Non-Relocation Agreement, to which one is a party or both are parties, to another entity, despite any contractual prohibition to the contrary. Furthermore, whether or not a bankruptcy court were to determine that one or more of such agreements are executory contracts or unexpired leases, claims and remedies arising from such agreement(s), as well as other claims and remedies against ArenaCo and/or New Jersey Basketball, as the case may be, may be reduced, modified, or terminated and discharged in the bankruptcy case, and equitable remedies may become unenforceable.

In the event a voluntary or involuntary case is filed under the Bankruptcy Code with respect to ArenaCo and/or New Jersey Basketball, a bankruptcy court could determine that various agreements, including but not limited to the PILOT Agreement, PILOT Assignment, Leasehold PILOT Mortgages, Barclays Center Naming Rights Agreement, Naming Rights Agreement Assignment, Founding Partner/Sponsorship Agreements and the Non-Relocation Agreement, are part of the Arena Lease Agreement or the Nets License Agreement and are therefore all part of a non-residential real property lease. A trustee in bankruptcy, or ArenaCo or New Jersey Basketball as a debtor-in-possession, as the case may be, might reject its respective agreements. If any such agreement were determined to be an unexpired lease of non-residential real property and were rejected by the trustee, or the debtor-in-possession as lessee, the amount of any corresponding claim resulting from the termination of such agreement would be limited to the rent payable under such agreement (without acceleration) for the greater of one (1) year or fifteen percent (15%), not to exceed three (3) years, of the remaining term of such agreement following the earlier of (a) the date the bankruptcy petition was filed, and (b) the date on which the lessor repossessed, or the lessee surrendered, the leased property, plus any unpaid rentals or guaranteed payments (without acceleration) on the earlier of such dates. This determination could allow

ArenaCo or New Jersey Basketball, as the case may be, to make minimal additional rental payments or other guaranteed payments under their respective agreements.

In the event a voluntary or involuntary case is filed under the Bankruptcy Code with respect to ArenaCo and/or New Jersey Basketball, a bankruptcy court could determine that various agreements, including but not limited to the PILOT Agreement, PILOT Assignment, Leasehold PILOT Mortgages, Arena Lease Agreement, Nets License Agreement, Barclays Center Naming Rights Agreement, Naming Rights Assignment, Founding Partner/Sponsorship Agreements and the Non-Relocation Agreement, are all part of a financing. If a bankruptcy court determines that an agreement is a financing, a bankruptcy court could also determine that a debtor is no longer required to perform its obligations under that agreement or that the agreement would not be effective.

In the event a voluntary or involuntary case is filed under the Bankruptcy Code with respect to ArenaCo and/or New Jersey Basketball, actions against ArenaCo or New Jersey Basketball, as the case may be, would be stayed. In addition, among other things, a bankruptcy court could confirm a plan that could affect Bondholders by reducing or eliminating the amount of ArenaCo's or New Jersey Basketball's obligations and/or indebtedness, by deferring or rearranging debt service schedule(s) for the Series 2009 PILOT Bonds, by reducing or eliminating interest rate(s) for the Series 2009 PILOT Bonds, by modifying or abrogating collateral or security arrangements for the Series 2009 PILOT Bonds, by substituting (in whole or in part) other securities, and by otherwise compromising, modifying, or terminating and discharging the rights and remedies of creditors against ArenaCo and/or New Jersey Basketball, as the case may be. Furthermore, a bankruptcy court has the power to avoid and recover certain payments made to creditors prior to filing of the bankruptcy case. In addition, either ArenaCo or a representative of its creditors could seek to recover all or a part of the Additional Rent then on deposit in the Series 2009 Additional Rent Account. Should such an effort be successful and the funds returned to ArenaCo prior to completion of construction, such moneys may no longer be available to pay costs of the Arena Project. In such an event, completion of the Arena Project might be delayed or not be achieved.

In addition, New Jersey Basketball, or another affiliate of ArenaCo and/or New Jersey Basketball that is in bankruptcy, or any of their creditors or representatives might attempt to reach assets of ArenaCo under one or more theories that exist under state or federal law, including but not limited to "alter ego," "piercing the veil," "substantive consolidation" or a similar equitable concept. While "separateness covenants" have been included in ArenaCo's organizational documents in part to mitigate the chances of one of these legal theories being successfully employed, no assurance can be given that a court, utilizing its equity jurisdiction, might not be convinced based upon the facts and circumstances present at the time of the request, to grant the requested relief. If that relief were granted, it could have a detrimental impact on ArenaCo and/or New Jersey Basketball and the Bondholders. Furthermore, notwithstanding provisions in the ArenaCo Operating Agreement that are intended to make ArenaCo "bankruptcy remote," no assurance can be given that ArenaCo will not become a debtor in a bankruptcy case or that a bankruptcy court will not permit funds of ArenaCo to be used in some fashion by a different but related bankruptcy case.

#### *Additional Rent in Respect of Rental Revenue Bonds*

In the event the Issuer issues Rental Revenue Bonds to finance certain costs of the Arena Project, ArenaCo would be obligated to make payments of Additional Rent under the Arena Lease Agreement to provide the Issuer with Rental Revenues in amounts sufficient to timely pay the principal of and premium, if any, and interest on such Rental Revenue Bonds. Such payments of Additional Rent could reduce the amount of Arena Tenant Revenue available to make PILOTs.

### *Additional PILOT Bonds*

Subject to certain conditions set forth in the PILOT Bonds Indenture and provided that no Event of Default exists under the PILOT Documents, the Issuer may issue Additional PILOT Bonds on a parity with, or subordinated to, the Series 2009 PILOT Bonds for any one (1) or more of the following purposes: (i) to provide for the costs of design, development, acquisition, construction and equipping of the Arena Project, (ii) to provide funds necessary to complete the Arena Project, (iii) to provide funds in excess of Restoration Funds to repair, relocate, replace, rebuild or restore the Arena in the event of damage, destruction or taking by eminent domain, (iv) to provide funds for extensions, additions, improvements or facilities to the Arena, the purpose of which must constitute a “project” within the meaning of the UDC Act, or (v) to refund Outstanding PILOT Bonds (or other obligations issued on a parity therewith). Under current Internal Revenue Service rules, interest on any Additional PILOT Bonds which are not Refunding PILOT Bonds would likely not be excluded from gross income for federal income tax purposes. Any Additional PILOT Bonds issued after this offering will be secured equally and ratably with the Series 2009 PILOT Bonds.

### **Risks Associated with PILOTs**

Under the PILOT Agreement, ArenaCo agrees to pay, as PILOTs, the amounts set forth on Schedule A attached to the PILOT Agreement and as set forth herein under “PLAN OF FINANCE—Debt Service Requirements”; provided, however, that in no event will ArenaCo be required to make PILOTs in any PILOT Year in an amount greater than Actual Taxes. It is currently anticipated that Actual Taxes will exceed the Scheduled PILOTs and that PILOTs (and, accordingly, PILOT Revenues) will be sufficient in each year to provide for the Bond Payment Requirement for the Series 2009 PILOT Bonds. However, in the event that Actual Taxes are less than the scheduled PILOTs, ArenaCo will only be required to make PILOTs equal to the lesser amount of Actual Taxes. Such an event could occur, for example, if there is substantial, unanticipated delay in the construction of the Arena Project, resulting in a delay in the assessment of the Arena Project which reflects its full construction costs, or in its reconstruction as part of a Casualty Restoration or Condemnation Restoration. In any such event, PILOT Revenues may not be sufficient to pay Debt Service on the Series 2009 PILOT Bonds. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—PILOT Revenues.”

The amount of Actual Taxes in each year is subject to change. See “APPENDIX M—SUMMARY OF THE PILOT AGREEMENT.” A reduction in the City tax rate, and/or reductions in the assessed valuation of the Arena Project or the Arena Premises due to legal proceedings, administrative proceedings, changes in assessment methodology or otherwise, may reduce Actual Taxes to an amount less than anticipated PILOTs. No assurance can be given that annual PILOTs will equal the amount set forth on Schedule A to the PILOT Agreement for the given year in the event that Actual Taxes are less than the amount indicated on Schedule A. In such event, no assurance can be given that PILOT Revenues will be sufficient to pay Debt Service on the Series 2009 PILOT Bonds. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—PILOT Revenues.”

### *No Acceleration of PILOTs*

Failure by ArenaCo to make PILOTs or other payments required to be made under the Arena Lease Agreement, or failure by ArenaCo to comply with any other terms, covenants or conditions contained in the Arena Lease Agreement, constitutes an event of default under the Arena Lease Agreement (subject to the notice and cure periods contained therein) which permits the Issuer to pursue any and all remedies available under the terms of the Arena Lease Agreement. Failure in the payment of principal of or interest on any Series 2009 PILOT Bonds when due and payable constitutes an Event of Default under the PILOT Bonds Indenture which permits the PILOT Bond Trustee to pursue remedies under the PILOT Bonds Indenture. In the event of a default, notwithstanding anything in the Arena Lease Agreement or in the PILOT Bonds Indenture to the contrary, **THERE SHALL BE NO RIGHT UNDER**

**ANY CIRCUMSTANCES TO ACCELERATE THE MAKING OF PILOTS OR THE PAYMENT OF DEBT SERVICE ON THE SERIES 2009 PILOT BONDS OR OTHERWISE DECLARE ANY PILOTS NOT THEN IN DEFAULT TO BE IMMEDIATELY DUE.**

**Risks Associated with Leasehold PILOT Mortgages**

The obligation of ArenaCo under the PILOT Agreement to make PILOTs during each PILOT Year will be secured by a Leasehold PILOT Mortgage granted by ArenaCo to ESDC and assigned to the PILOT Trustee encumbering ArenaCo's leasehold interest in and to the Arena Premises and the Arena Project under the Arena Lease Agreement.

**Although the Leasehold PILOT Mortgages will secure the making of PILOTs by ArenaCo to the PILOT Trustee under the PILOT Agreement and PILOT Assignment, the Leasehold PILOT Mortgages will not be assigned to the PILOT Bond Trustee and will not constitute security for the Series 2009 PILOT Bonds. PILOT Bondholders will have no rights under the Leasehold PILOT Mortgages.**

In the event ArenaCo fails to make any PILOTs due during any PILOT Year, the exercise by the PILOT Trustee of its rights and remedies under the corresponding Leasehold PILOT Mortgage will be expressly subject to the notice and cure periods, stay periods and other procedures described in that Leasehold PILOT Mortgage. Compliance by the PILOT Trustee with such notice and cure periods, stay periods and other procedures may significantly delay or otherwise limit the PILOT Trustee's ability to realize upon a foreclosure of that Leasehold PILOT Mortgage. See "SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—Enforcement of PILOT Obligation—Leasehold PILOT Mortgages."

No assurance can be given with respect to lien priority of the Leasehold PILOT Mortgages. Although the Arena Premises and the Arena Project will be owned by ESDC, no assurance is given that the Leasehold PILOT Mortgages will constitute a first priority lien against the leasehold interests pledged under the Leasehold PILOT Mortgages. Lien priority of the Leasehold PILOT Mortgages could affect the PILOT Trustee's ability to realize upon a foreclosure of the Leasehold PILOT Mortgages. A mortgagee title insurance policy will be purchased with respect to the Leasehold PILOT Mortgage that will secure PILOTs payable during the thirty-sixth (36<sup>th</sup>) PILOT Year. Neither a leasehold title insurance policy nor a mortgagee title insurance policy will be purchased with respect to the Ground Lease, the Arena Lease Agreement or the other Leasehold PILOT Mortgages.

**NBA Consent Letter**

The payment of the PILOTs by ArenaCo and the contractual arrangements related thereto require the prior consent of the NBA. Pursuant to the terms of the NBA Consent Letter, the NBA is expected to consent to the incurrence of the obligation to make PILOTs and the grant by ArenaCo of the liens granted pursuant to the Leasehold PILOT Mortgages. The NBA Consent Letter provides that the NBA's consent is conditioned on ArenaCo and the other Requesting Parties being and remaining in compliance with all of the terms and conditions set forth therein, and on the continuing accuracy of the representations and warranties of ArenaCo and such other Requesting Parties. The exercise of certain rights by the Secured Parties in the event of the occurrence of an event of default and certain other events is subject to, and limited to the extent set forth in, the NBA Consent Letter. Under the NBA Consent Letter, the NBA has broad discretion in exercising its rights thereunder. Certain actions taken by the NBA following an event of default by ArenaCo and the delivery of a Foreclosure Notice to the NBA under the NBA Consent Letter may have materially adverse effects ArenaCo's ability to generate sufficient Arena Tenant Revenue, which in turn would have a materially adverse effect on ArenaCo's ability to make PILOTs.



See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—NBA Consent Letter.”

## **Risks Associated with Construction of the Arena Project**

### *Potential Delays in the Condemnation Process*

Condemnation of property under the EDPL is a judicial process that may be subject to considerable delay. There can be no assurance that the condemnation judge will not delay the granting of the order vesting title in the condemnor, such as ESDC, while litigation challenging the use of eminent domain is pending in other courts or that those courts will not issue stays preventing an order vesting title in such condemnor. The order that vests title in ESDC can be appealed. After ESDC obtains title to the property, it must send notices of acquisition to the property owners not more than thirty (30) days after the order vesting title. Thereafter, ESDC may apply to the condemnation court pursuant to EDPL Section 405 for a writ of assistance for possession. The application for a writ of assistance is brought by motion which, depending on the mode of service, must be served to provide at least twenty (20) days notice to an occupant prior to the return date of a motion seeking eviction of such occupant's premises. In determining the date to require the occupants to vacate, the Court will consider whether ESDC has an immediate need for the property, the needs of the occupants and the relocation services offered by ESDC to the occupants. There can be no assurance that because of these or other factors, the condemnation court will not delay granting a writ of assistance to vacate the Arena Premises.

### *Litigation*

If any of the proceedings described under the heading “LITIGATION—Litigation Related to the Arena Project—Environmental, Condemnation and Related Matters” are decided in favor of the plaintiff-petitioners there may be delays in the Arena Project and the public parties may have to recommence the public approval processes or prepare additional analyses. There can be no assurance that such approval processes will be successful and that the Arena Project may proceed. In addition, additional actions may be brought against the Issuer or ArenaCo or their affiliates, the outcomes of which may not be predicted but which if adversely determined, in the aggregate or individually could have a material adverse effect on the Issuer or ArenaCo, the issuance of the Series 2009 PILOT Bonds or the development, design, construction and operation of the Arena Project.

### *Failure to Satisfy Vacant Possession Release Conditions*

Under the PILOT Bonds Indenture, the PILOT Bond Trustee will not be permitted to accept requisitions for proceeds of the Series 2009 PILOT Bonds until the Vacant Possession Release Conditions have been satisfied, pursuant to the Commencement Agreement, including satisfaction of the Vesting Title Release Conditions, ability of the Document Agent to deliver the PILOT Title Policy, evidence of the deposit of sufficient funds in the Infrastructure Fund, the delivery of a certification by ArenaCo that either (a) the Sale Transaction has closed or (b) the rating agencies have confirmed the rating of the Series 2009 PILOT Bonds, and the delivery of a certification by ESDC, ArenaCo, AYDC and the Arena Developer that (y) either (a) ESDC has delivered vacant possession of all EDPL Phase I Properties to the Developer; or (b) such requirements have been (I) waived by the Arena Developer and AYDC with respect to the specific parcels of the AY Project Site described in the Arena Project Effective Date Certificate (not including any portion of the Arena Premises) and (II) vacant possession of the Arena Premises has been delivered to the Arena Developer and AYDC and (z) the amount of Additional Rent then due has been paid. No assurance can be given that these conditions will be satisfied prior to the Outside Commencement Date, which is [January 15, 2011]. **As further described herein, in the event that the Vacant Possession Release Conditions have not been satisfied prior to the Outside Commencement Date, proceeds of the Series 2009 PILOT Bonds will not be applied to the**

**construction of the Arena Project, and the Issuer will be required to redeem the Series 2009 PILOT Bonds at a price equal to 101% of (i) with respect to the Series 2009 Current Interest PILOT Bonds, the Amortized Value thereof plus accrued and unpaid interest thereon through the Outside Commencement Date, and (ii) with respect to the Series 2009 Capital Appreciation PILOT Bonds, the Accreted Value on the Outside Commencement Date.** See “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption.” If such a mandatory redemption is made, Bondholders will not obtain the expected return on their investment in the Series 2009 PILOT Bonds, and Bondholders may not be able to reinvest the proceeds from such a redemption in an investment that results in a comparable return.

*ArenaCo May Not Satisfy Its Obligation to Pay Additional Rent in Respect of the Completion Cost*

As one of the Vacant Possession Release Conditions, ArenaCo will be obligated to pay the Additional Rent Amount (presently anticipated to be \$[334.2] million, which amount may ultimately be reduced to reflect prior expenditures made for the Arena Project and included in the budget for the Arena Project on and after November 1, 2009) to the Issuer under the Arena Lease Agreement (for deposit with the PILOT Bond Trustee). Such amount has been estimated by the Independent Engineer to be sufficient to pay the Completion Cost. At the time of the issuance of the Series 2009 PILOT Bonds, ArenaCo will not have funds sufficient to pay the Additional Rent Amount, but ArenaCo expects to raise sufficient funds prior to the Arena Project Effective Date from one or more of the following sources: (a) the proceeds of the Purchase Price payable by the New Investor (for a description of the Investment Agreement and definitions of such terms, see “PROJECT PARTICIPANTS—The Arena Developer, ArenaCo and New Jersey Basketball—Anticipated New Investment”), (b) additional financing at one or more of the parent companies of ArenaCo, including but not limited to Arena HoldCo, (c) additional equity contributions from the Arena Developer, its parent companies, and/or the New Investor, (d) additional equity contributions from the third parties or (e) any combination of the foregoing, in each case subject to the receipt of any applicable NBA approvals. Although ArenaCo expects that the necessary funds will be timely raised, there can be no assurance that the funds will be raised or that the amount of such funds will be sufficient to make the full payment of the Completion Cost. In the event that the Issuer shall not have received the Additional Rent Amount from ArenaCo for deposit with the PILOT Bond Trustee at or prior to the Outside Commencement Date, proceeds of the Series 2009 PILOT Bonds will not be applied to the construction of the Arena, and the Issuer will be required to redeem the Series 2009 PILOT Bonds at 101% of (i) with respect to the Series 2009 Current Interest PILOT Bonds, the Amortized Value thereof plus accrued and unpaid interest thereon through the Outside Redemption Date, and (ii) with respect to the Series 2009 Capital Appreciation PILOT Bonds, the Accreted Value on the Outside Commencement Date. See “THE SERIES 2009 PILOT BONDS—Redemption—Extraordinary Mandatory Redemption.” If such a mandatory redemption is made, Bondholders will not obtain the expected return on their investment in the Series 2009 PILOT Bonds and may not be able to reinvest the proceeds from such a redemption in an investment that results in a comparable return.

*Construction Risks*

General Construction Risks for Arena Project and Related Infrastructure. Completion of the Arena Project and Related Infrastructure involves many risks common to large construction projects such as shortages of materials and labor, work stoppages, labor disputes, litigation, environmental law compliance, errors and omissions by architects, engineers and contractors, significant increases in material costs for steel, lumber and other key commodities, weather interferences, terrorism, construction accidents, contractor or subcontractor defaults, defective workmanship, unforeseen engineering, geotechnical or environmental problems, land use permitting problems and unanticipated cost increases, any of which could give rise to significant delays or cost overruns. In addition, in recent years, these problems have been particularly significant in the construction of large sports stadiums and arenas, many

of which have encountered significant delays and cost overruns. No assurance can be given that the factors mentioned above will not cause significant delays and cost overruns. Any such delays and overruns may materially and adversely affect the construction budget, possibly requiring the Issuer to issue Additional PILOT Bonds or requiring ArenaCo to pay Additional Rent under the Arena Lease Agreement in respect of the construction completion shortfall amount or to value-engineer out of the Arena otherwise desirable features or amenities, including features or amenities important to the generation of Arena Tenant Revenue. In the event ArenaCo fails to pay Additional Rent in respect of the construction completion shortfall amount as required under the Arena Lease Agreement, the Issuer and ESDC may exercise their rights and remedies against FCE under the Arena Completion Guaranty. See “APPENDIX V—SUMMARY OF COMPLETION GUARANTY.” The PILOT Bond Trustee and holders of the Series 2009 PILOT Bonds will not have consent rights over these actions or any rights against FCE under the Arena Completion Guaranty or otherwise. See “SOURCES OF PAYMENT AND SECURITY FOR THE SERIES 2009 PILOT BONDS—PILOT Revenues.”

Any and all aspects of construction, including but not limited to labor and materials, could be subject to material price escalation. Although the Issuer believes that the Arena Developer’s estimates of costs of the Arena Project and Related Infrastructure and the adequacy of the contingencies are reasonable, it is possible that the Arena Developer’s judgments and assumptions are materially mistaken and that the actual costs of the Arena Project and Related Infrastructure will vary materially from the estimates thereof, including those set forth in this Official Statement. It is also possible that the aggregate costs of the Arena Project and Related Infrastructure, whether included or excluded from the Arena Design/Build Contract and any other contracts applicable to the Arena Project and Related Infrastructure, will exceed the sum of the price of the Arena Design/Build Contract (and such other contracts), the Issuer’s estimate of the costs of the Arena Project and Related Infrastructure excluded from the Arena Design/Build Contract (and such other contracts) and the aggregate contingencies budgeted to pay for such excess costs, and that ArenaCo will require significant additional funds in order to complete the work.

Although the PILOT Bonds Indenture permits the issuance of Additional PILOT Bonds for added costs incurred in completing the Arena Project, the risk associated with an incomplete arena on the scheduled opening day, and the resulting loss or delay in the receipt of Arena Tenant Revenue, remains a serious concern for investors. As more particularly described below, ArenaCo and the Arena Developer have taken several steps to mitigate the construction risks with respect to the Arena Project and Related Infrastructure; however, these steps may not be successful.

Under the terms of the Arena Design/Build Contract and any other contracts applicable to the Arena Project and to the Related Infrastructure, the Arena Design/Build Contractor or another contractor, as applicable, will be responsible for the construction of the Arena Project (including the Arena Infrastructure) and the Related Infrastructure and will assume some of the risks of delays and/or construction overruns. There are certain risks which ArenaCo and the Arena Developer expect to retain under the Arena Design/Build Contract or other applicable contracts. For example, ArenaCo and the Arena Developer expect to retain the risk of cost overruns caused by change orders precipitated or caused by either of them, including changes or acceleration orders initiated by either of them which may be deemed necessary by them and change orders required if the underlying assumptions and conditions specified in the Arena Design/Build Contract or other applicable contract prove to be incorrect or otherwise require adjustment. In addition, ArenaCo and the Arena Developer are expected to retain the risk that change orders affecting the contract price may be required as a result of new legal requirements, failure by ArenaCo or the Arena Developer to obtain necessary permits or power supplies, extreme weather conditions, terrorism, catastrophic events to the Arena Premises, unavailability of equipment, labor and materials and any unforeseeable hazardous or archeological conditions encountered at the Arena Premises that are not otherwise insured. In the event that change orders are required as a result of

any of these circumstances, construction costs could increase substantially and delays could occur. See “APPENDIX D—SELECTED PROVISIONS OF THE ARENA DESIGN/BUILD CONTRACT.”

There are some allowances in the guaranteed maximum price under the Design/Build Contract (the “GMP”). Allowances within the GMP are based on review by independent consultants, but the actual costs of the work to be performed under the GMP allowance has not been finalized. The schedule is based on certain assumptions regarding achieving vacant possession and demolition of existing buildings by specified target dates. Achievement of these dates may be delayed because, for example, there are delays in the condemnation proceeding due to litigation or other factors, or there are delays in achieving vacant possession of the Arena Premises. To the extent that these dates are delayed beyond the target dates included in the schedule, there is a risk of schedule slippage and additional costs in excess of available Series 2009 PILOT Bonds proceeds and other moneys earmarked for the Arena Project. The GMP is based on obtaining the Economic Recovery Project Labor Agreement (“ERPLA”) for the Arena Project. All indications are that the project will be accepted into the program, but the contractor cannot apply until the Design/Build Contract is signed. There could be a cost impact on the GMP if the Arena Project is not accepted into the ERPLA. Furniture, fixtures and equipment (“FF&E”) will be purchased through a separate vendor. ArenaCo has prepared a detailed budget for specific items, but there is no contract for these items at this time. The GMP is based upon an assumption that certain design parameters in connection with the HVAC system will be approved by the New York City Department of Buildings (the “DOB”). ArenaCo has had preliminary meetings with the DOB, and representatives of the DOB have indicated that the DOB will likely approve the proposed HVAC design. In the event that the DOB does not approve the proposed design parameters, there may be significant cost exposure. The complexity of multiple projects being performed at the same time on the Arena Block could result in a schedule impact if project coordination issues are encountered.

If certain construction commencement milestones are not met, the Barclays Center Naming Rights Agreement may terminate. If construction is not completed within six (6) years, ESDC and NYCEDC will be entitled to collect liquidated damages from the Arena Developer and FCE (but not from ArenaCo).

Design/Build Contractor, Trade Contractor and Subcontractor Defaults. Completion of the Arena Project and Related Infrastructure depends on the performance by the Arena Design/Build Contractor, other trade contractors, their subcontractors and other third parties of their obligations under certain construction contracts and subcontracts. If these parties do not perform their obligations, if construction and design are not adequately coordinated, if disputes arise between parties, if parties are excused from performing their obligations because of nonperformance by ArenaCo, the Arena Developer or the Arena Design/Build Contractor or any trade contractor, as applicable, or due to force majeure events, if the Arena Design/Build Contractor, any trade contractor or any subcontractor or material supplier declares bankruptcy, or if the Arena Design/Build Contractor or any trade contractor is undercapitalized, the construction of the Arena Project and Related Infrastructure may be delayed, ArenaCo and the Arena Developer may not be able to acquire substitute services, labor or materials on substantially the same terms and conditions as provided in the existing construction contracts (including, but not limited to, the Arena Design/Build Contract) or ArenaCo may be required to incur additional construction costs. ArenaCo has taken several steps to mitigate such risks as follows:

Subcontractor Default Insurance/Payment and Performance Bonds. The Arena Design/Build Contract will require the Arena Design/Build Contractor to obtain from all of its subcontractors payment and performance bonds securing the subcontractors’ performance of the construction work and payment to their subcontractors. However, such bonds will not be required to be provided by the design team. The provisions of the Arena Design/Build Contract will include the cost of all payment and performance bonds required of such subcontractors. See “APPENDIX D—SELECTED PROVISIONS OF THE ARENA DESIGN/BUILD CONTRACT.” With respect to work for the balance

of the Arena Project and Related Infrastructure, certain trade contractors have been required (and may be required) to obtain payment and performance bonds securing such trade contractors' performance of their construction work and payment to their subcontractors.

*Liquidated Damages.* The Arena Design/Build Contract will provide for the payment of liquidated damages to ArenaCo by the Arena Design/Build Contractor for delays if the Arena Design/Build Contractor does not achieve substantial completion of the Arena by the substantial completion date set forth in the project schedule (as such date may be extended pursuant to the terms of the Arena Design/Build Contract) due to actions within the control of the Arena Design/Build Contractor. The amount of liquidated damages may be significant. The liquidated damages payable by the Arena Design/Build Contractor will be \$50,000 per day. However, liquidated damages payable by the Arena Design/Build Contractor will be limited to the amount of fifty percent (50%) of the Arena Design/Build Contractor's fee. This will be an aggregate cap on the Arena Design/Build Contractor's liability for delays, applying to both liquidated damages and other damages, and will be ArenaCo's exclusive remedy against the Arena Design/Build Contractor in the event of delayed substantial completion of the Arena. As security for the Arena Design/Build Contractor's obligation to pay such liquidated damages, the Arena Design/Build Contractor will furnish a standby letter of credit in the amount of \$1 million at the start of construction, and increase over the term of the construction period to the limit of their maximum liquidated damages by March 1, 2012. Conversely, as an added incentive to the Arena Design/Build Contractor, if the Arena Design/Build Contractor achieves substantial completion of the Arena by a negotiated early completion date to be established as set forth therein, ArenaCo will pay the Arena Design/Build Contractor incentive fees up to a maximum amount of \$1 million. See "APPENDIX D—SELECTED PROVISIONS OF THE ARENA DESIGN/BUILD CONTRACT."

*Retainage.* Until construction of the Arena is fifty percent (50%) complete, ArenaCo will retain ten percent (10%) of the gross amount of each monthly payment request submitted by the Arena Design/Build Contractor or ten percent (10%) of the portion thereof approved by ArenaCo for payment, whichever is less. The gross amount from which retainage is withheld will not include the General Conditions Expenses or the Arena Design/Build Contractor's Fee. After construction of the Arena is 50% complete, no additional retainage will be withheld. Such sum shall be accumulated and not released to Arena Design/Build Contractor until Substantial Completion is obtained and the conditions for Final Payment are met. However, possible savings can be realized by ArenaCo if it permits a portion of the retainage associated with certain subcontractors' work to be released to those subcontractors after their work has been completed satisfactorily but prior to final payment being due and payable to the Arena Design/Build Contractor under the Arena Design/Build Contract. Further, additional savings may be realized if ArenaCo permits the Arena Design/Build Contractor to enter into certain subcontracts wherein no retainage will be held back on that portion of the Work. Accordingly, the Arena Design/Build Contractor will identify those Subcontracts which might be appropriate for either no retainage being withheld or early release of retainage, and the Arena Design/Build Contractor will provide ArenaCo with a written proposal regarding those subcontracts. In such written proposal, the Arena Design/Build Contractor shall state the name of the subcontractor, its scope of work, the special retainage terms to be applied and the savings to be realized by ArenaCo, if any. If ArenaCo concurs with the Arena Design/Build Contractor's written proposal, a Change Order shall be prepared by the Owner's Representative, to be signed by ArenaCo and the Arena Design/Build Contractor, wherein the retainage terms for that Subcontract shall be amended and the GMP adjusted. See "APPENDIX D—SELECTED PROVISIONS OF THE ARENA DESIGN/BUILD CONTRACT." Similar provisions for retainage are used, and are expected to be negotiated, in contracts for the balance of work for the Arena Project as well as for the Related Infrastructure, either under existing contracts or in agreements to be entered into.

*Ancillary Documents.* The Arena Design/Build Contract and any other contracts for work specific to the Arena Project or the Related Infrastructure will be subject to a number of ancillary agreements, including, without limitation, the Project Labor Agreement. It is anticipated that the trade

subcontracts will be on terms consistent with industry standards and trade subcontracts for work of similar size and scope. The Project Labor Agreement entered into among the Arena Developer, AYDC and the Building and Construction Trades Council of Greater New York and Vicinity (“BCTC”) lessens the risk of a labor union strike during the construction of the Arena Project. This Project Labor Agreement may be superseded by the ERPLA recently offered by the BCTC, if the Arena Project is accepted into such program. In such event, the Project Labor Agreement will be between the BCTC and Hunt.

Design/Build Contractor Limited Liability. Under the Arena Design/Build Contract, the Arena Design/Build Contractor’s liability to ArenaCo for delay damages, including liquidated damages, is limited to fifty percent (50%) of the Design /Build Contractor’s fee. In addition, the Arena Design/Build Contractor’s liability for design malpractice is limited to the amount of professional liability insurance maintained by the applicable design professional to cover errors and omissions by such design professional. ArenaCo has also waived claims for consequential damages against the Arena Design/Build Contractor. The Arena Design/Build Contractor’s indemnity obligations (and liability) for third party bodily injury and property damage claims is excluded from the delay damage limitation described herein, as are other types of claims and categories of damages not expressly limited by the foregoing.

#### *Risks Associated with Specific Components of the Arena Project*

In addition to the general construction risks described above, certain specific risks are attributable to certain components of the Arena Project, as follows:

Transit Improvements. Completion of the Transit Improvements will be subject to the risk that the final design and construction requirements imposed on RailCo by the Transit Authority could result in increased costs or a delay in completion of the Transit Improvements. Because Beneficial Use of the Subway Entrance is required to be achieved in order to open the Arena to the public (subject to limited exceptions), any delay in the completion of such work could result in a delay in the opening of the Arena and a resulting loss of Arena Tenant Revenue. In addition, the Transit Improvements work will require the inspection and approval by the Transit Authority of both the design and the construction work, and satisfaction of such requirements might not be achieved without increased costs and delays. The structural repair work required to be done under the Transit Improvement Agreement may result in increased costs and delays to the extent that the condition of the supporting steel structures is worse than RailCo has anticipated it to be and the current contingency included in the budget for the Arena Project is insufficient to cover increased costs related thereto. Performance of the Transit Improvements work will also be subject to the MTA and/or the Transit Authority providing track outages, making available personnel and equipment, performing inspections and granting approvals in a timely fashion. In addition, a default by RailCo under the Transit Improvement Agreement could result in a termination of the Transit Improvement Agreement (and consequently RailCo’s right to perform the Transit Improvements) or in the exercise of other remedies thereunder that may result in a delay in achieving Beneficial Use of the Subway Entrance. There can be no assurance that Beneficial Use of the Subway Entrance can be completed in time for the scheduled opening of the Arena, even after giving effect to the limited exceptions to the requirement contained in the Transit Improvements Agreement. Although funds for the cost of constructing the Transit Improvements are included in the budget for the Arena Project are based on bids received on ninety percent (90%) construction documents, there can be no assurance that such work can be completed within such budgeted amounts.

Site Work. Because site work has not been designed or contracted for, the amount budgeted for such work may change. To the extent the final contract price for such work is more than the budgeted amount, ArenaCo may experience cost overruns and difficulty finding sources of funds for such increased amounts. Approvals will be required by various municipal agencies for certain aspects of the work.

Fourth Avenue Reconfiguration. Because the work required for the Fourth Avenue Reconfiguration has not yet been designed or contracted for, the amount budgeted for such work may change. To the extent the final contract price for such work is more than the budgeted amount, ArenaCo may experience cost overruns and difficulty finding sources of funds for such increased amounts. Approvals will be required by various municipal agencies for certain aspects of the work.

Third Party Approvals and Coordination. Performance of certain components of the Arena Project work will require approvals by public parties of the design and completion thereof. Failure to obtain such approvals in a timely manner, as well as coordination of the work with public parties and the continuation of their operations, may cause delays in the completion of, and increase the final cost of, the Arena Project work.

#### *Risks Associated with Specific Components of the Related Infrastructure*

Costs of the Related Infrastructure work are not part of the Arena Project budget and will not be paid for out of the proceeds of the Series 2009 PILOT Bonds. In addition to the general construction risks described above, certain specific risks are attributable to certain components of the Related Infrastructure, as follows:

Demolition. Because the demolition work has not yet been contracted for, the amount budgeted for such work may change. To the extent the final contract price for such work is more than the budgeted amount, ArenaCo may experience significant cost overruns and difficulty finding sources of funds for such increased amounts. Approvals and monitoring will be required by various municipal agencies for certain aspects of the work. If such approvals are not obtained or monitoring hampers the performance of the work, the demolition work could be delayed, with a resulting delay in the opening of the Arena.

Environmental Remediation. While the Arena Developer has conducted environmental testing of the AY Project Site, in the course of doing excavation work, new conditions may be found requiring additional testing and remediation which are either not covered by environmental insurance or for which the proceeds thereof may not be adequate. Final rates for disposal and availability of disposal sites are still to be negotiated. In addition, such new conditions might cause a delay in the completion of Arena Project construction.

Carlton Avenue Bridge and CAB Yard Work. Reconstruction of the Carlton Avenue Bridge is a condition to opening the Arena and will require the approval of and coordination with the MTA and LIRR, whose operations will continue in the rail yard below during construction of the Carlton Avenue Bridge, and approval by the DOT. In addition, reconstruction of the Carlton Avenue Bridge will require completion of the CAB Yard Work. Reconstruction of the Carlton Avenue Bridge will also require that a portion of the new rail yard for LIRR be completed pursuant to the Permanent Yard Construction Agreement. Neither ArenaCo nor any of its affiliates has entered into a contract for the performance of this work. Completion of the CAB Yard Work will also be subject to the MTA and/or LIRR providing track outages, making available personnel and equipment, performing inspections and granting approvals in a timely fashion. In addition, a default by RailCo under the Permanent Yard Construction Agreement could result in the termination of the Permanent Yard Construction Agreement (and consequently RailCo's right to perform such work) or the exercise of other remedies thereunder that may result in a delay in completing the CAB Yard Work. There can be no assurance that the reconstruction of the Carlton Avenue Bridge can be completed in time for the scheduled opening of the Arena, or that work consistent with the final design of the Carlton Avenue Bridge as approved by the DOT, or the final design of the CAB Yard Work as approved by LIRR, will not cost more than currently budgeted.

Parking. Parking for Arena patrons will be provided by the ground lessee of Block 1129 (the "Subject Parcel Occupant"), located two (2) blocks east of the Arena Project in accordance with an

easement agreement pursuant to which the Subject Parcel Occupant will be required to construct and maintain the required parking facilities. The risk that such parking facilities will not be constructed or maintained is mitigated by ArenaCo's right to perform such obligations of the Subject Parcel Occupant at the Subject Parcel Occupant's sole cost and expense.

As discussed above, several aspects of the infrastructure supporting the Arena Project must be completed in order to open the Arena to the public. The inability to open the Arena by the anticipated opening date due to delays in completing one or more of these infrastructure elements would have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue to satisfy its obligations to make PILOTs and pay Rent and, in turn, the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

Furthermore, completion of certain portions of the Infrastructure may depend upon the performance by third parties outside the control of ArenaCo or with which ArenaCo does not have a contractual or similar relationship (other than the parking easement granted to ArenaCo by AYDC described in "ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Parking Easement"), including the development of certain parking and traffic and access improvements. Certain of these improvements are designed to improve access to the Arena upon completion. If these improvements are not completed in a timely manner or are not completed at all, access to the Arena by patrons may be adversely affected.

*AYDC, its Affiliate or Other Sources May Not Satisfy Their Obligations to Partially Fund the Related Infrastructure*

AYDC or its affiliates will be required to fund the remaining costs of the Related Infrastructure, which is estimated at \$100.5 million as of October 31, 2009 (and such amount is to be reduced as construction work progresses). The costs of such Related Infrastructure are not covered by the proceeds of the Series 2009 PILOT Bonds. Such work will be performed by AYDC or its affiliates and will be funded from other sources, including amounts received from the State under the State Funding Agreement and other sources. There can be no assurance that AYDC, its affiliates or other sources will provide sufficient funds to complete such Related Infrastructure or do so in a timely manner. Failure to complete such Related Infrastructure, or to do so in a timely manner, could delay the opening of the Arena.

*Governmental Permits and Approvals*

The Arena Project and Related Infrastructure require numerous discretionary state and local governmental permits or approvals. See "THE ARENA PROJECT—Governmental Permits and Approvals." ArenaCo and the Arena Developer are not aware of any engineering or technical circumstances which would prevent ArenaCo and the Arena Developer from obtaining in the ordinary course the remaining permits and approvals required, prior to the commencement of construction of or completion of the Arena Project and Related Infrastructure, in a timely manner. Those permits and approvals that have been obtained contain conditions, and those that have not yet been obtained are expected to contain conditions when they are issued. In addition, the state and local statutory and regulatory requirements (including requirements to obtain additional permits or approvals) applicable to the Arena Project and Related Infrastructure are subject to change. No assurance can be given that ArenaCo and the Arena Developer will be able to comply with such changes or that such changes will not materially increase the cost of the Arena Project and Related Infrastructure or cause delays. Delays in obtaining or any failure to obtain and maintain in full force and effect any such approval or permit, or delays in or any failure to satisfy any such conditions or other applicable requirements, could delay or prevent completion of the Arena Project or result in additional costs.



### *Environmental Matters*

Environmental matters may arise during the construction of the Arena Project and Related Infrastructure and, as a result, ArenaCo, the Arena Developer, or their affiliates may incur significant delays related to any such environmental conditions, and significant expenses, if found liable for such conditions. In particular, normal construction activity could trigger the need for additional permits dealing with, among other things, such issues as construction noise, accidental spills or discharges, equipment malfunctions or removal of contamination disturbed by such construction activity.

### *Third Party Contract Risk*

Completion of the Arena Project, including the Related Infrastructure, depends on the performance by third parties (such as the Arena Design/Build Contractor and the Architect) of their obligations under certain of the Contract Documents, including obligations with respect to the coordination of construction. If these parties do not perform their obligations, if construction and design are not adequately coordinated, if disputes arise between parties, or if third parties are excused from performing their obligations because of nonperformance by ArenaCo or the Arena Design/Build Contractor or due to force majeure events, ArenaCo may not be able to acquire substitute services on substantially the same terms and conditions (if at all) or may be required to incur greater construction costs, and ArenaCo's ability to generate Arena Tenant Revenue, and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds, may be adversely affected. See "APPENDIX D—SELECTED PROVISIONS OF THE ARENA DESIGN/BUILD CONTRACT."

This Official Statement contains no financial information regarding the parties with which ArenaCo and its Affiliates have entered into the Contract Documents. As a result, in making an investment decision with respect to the Series 2009 PILOT Bonds, a purchaser can have no assurance, based on the information contained herein, that any third party will have the ability to meet its obligations under the agreements to which it is a party.

### *Insurance*

ArenaCo is obligated under the Arena Lease Agreement to obtain and keep in force comprehensive insurance with respect to the Arena Project, including property insurance, general liability insurance, worker's compensation and employer's liability insurance, professional liability insurance and builder's risk insurance. There is no assurance that the amounts for which the Arena Project is insured will cover all losses. If there is a total or partial loss of the Arena, there can be no assurance that the insurance proceeds received by ArenaCo in respect thereof will be received in a timely manner or will be sufficient to cover all or a significant portion of losses. Nonetheless, ArenaCo is required to repair or restore the Arena Project even if insurance proceeds do not cover the full costs thereof.

The PILOT Bonds Indenture and the Arena Lease Agreement also contain provisions regarding the application of insurance proceeds, the decision whether to restore and other matters arising in connection with damage to or destruction of the Arena. If such damage or destruction occurs, the amount of PILOT Revenues received by the Issuer could be materially and adversely affected.

### *The Disbursement of the Remaining City and State Capital Contributions*

The City's capital contribution for the Arena Project, in the aggregate amount of \$131 million, will be made available to NYCEDC for transfer to ESDC and disbursement to the Developer upon the satisfaction of certain conditions. The State's capital contribution for the Arena Project, agreed under the State Funding Agreement to be in the aggregate amount of \$100 million, has been approved by the State Legislature, the Governor of the State, ESDC and the PACB and will be made available to ESDC for

disbursement to the Developer upon the satisfaction of certain conditions. As of the date of this Official Statement, NYCEDC has funded approximately \$85 million of the City Funding Portion, which amount has been disbursed to the Developer by ESDC, and the State has disbursed approximately \$75 million of the State Funding Portion. The funding and disbursement of the remaining City Funding Portion and the State Funding Portion is subject to certain requirements which include, without limitation, satisfying eligibility requirements for the types of expenditures requested for reimbursement. ESDC's obligation to disburse any City Funding Portion is conditioned upon, and subject to, ESDC receiving the amount of such City Funding Portion from NYCEDC pursuant to the City Funding Agreement; accordingly, ESDC will be under no obligation to disburse any part of the City Funding Portion to the Developer except when, and to the extent that, funds for such disbursement have been released and made available to ESDC by NYCEDC. In addition, the funding and disbursement of a \$15 million City Funding Portion is subject to the satisfaction of certain requirements set forth in the City Funding Agreement, including, without limitation, certification to the effect that at least \$100 million of Total Project Costs have been or will be incurred on or prior to the Funding Date during the Third Contribution Period. The funding and disbursement of the remaining \$31 million of the City Funding Portion is also subject, without limitation, the occurrence of the later of the issuance of the Series 2009 PILOT Bonds and the filing of a condemnation petition by ESDC. **Neither the State nor the City is or shall become obligated to pay the principal of or interest on the Series 2009 PILOT Bonds, and neither the faith and credit nor the taxing power of the State or City is pledged to such payment.**

Any termination of the City Funding Agreement or the State Funding Agreement or any delay in or reduction or suspension of funding for the Arena Project by NYCEDC or ESDC under the respective agreement due to the failure of the Developer to meet the requirements for such funding could have a material adverse effect on ArenaCo's ability to complete the Arena Project or on the scope of the Arena Project. No assurance can be given that alternative funds would otherwise be available for the Arena Project or what the terms of such alternative funding, if available, would be.

## **Risks Associated with Operations**

### *Financial Performance of the Arena*

Uncertainty exists regarding future Arena Tenant Revenue. Among other things, work stoppages or general and local economic conditions may affect ArenaCo's ability to generate Arena Tenant Revenue from Arena audiences, advertisers and sponsors as may competition for such audiences, advertisers and sponsors from stadia, arenas, sports facilities, amphitheaters, theaters and other venues within the region. The ability of ArenaCo to generate Arena Tenant Revenue may also be affected by future trends in cultural, entertainment and sporting activities, changes in government regulation, change in advertisers' marketing strategies and budgets, changes in public tastes and attitudes and changes in demographic trends, all of which are not possible to predict. Founding Partner/Sponsorship Agreements that are in execution as of the date of this Official Statement, as well as all Suite License Agreements and the Barclays Center Naming Rights Agreement, have terms that end prior to the final maturity date of the Series 2009 PILOT Bonds. Except for the CSL Financial Feasibility Study, the projections of Arena Tenant Revenue have not been examined by any financial advisor to verify either the reasonableness of the assumptions used by ArenaCo or its affiliates, the appropriateness of the preparation and presentation of the projections or the conclusions contained in such projections. Nonetheless, the projections of Arena Tenant Revenue have been prepared based on the terms of agreements executed as of the date of this Official Statement, management experience with other facilities, results at other comparable new NBA arenas, consultation with industry experts including CSL International, and ArenaCo's judgment and assumptions. There can be no assurance that future events will correspond with past events or that future financial results of the Arena will correspond with past financial results of the IZOD Center or other NBA arenas. Furthermore, there can be no assurance that the assumptions and conclusions of ArenaCo or its Affiliates with respect to future operations, including performance under executed contracts, will be

achieved. If Arena Tenant Revenue is deficient, such deficiency will adversely affect ArenaCo's ability to make PILOTs and, accordingly, the Issuer's timely and full payment of the principal of and interest on the Series 2009 PILOT Bonds.

Among other factors, Arena Tenant Revenue will likely be affected by the following:

- the on-court performance and popularity of the Nets, which in turn may be dependent in part upon New Jersey Basketball's ability to attract, draft and retain talented basketball players and its ability and willingness to pay those basketball players competitive salaries;
- the competitiveness of the other NBA teams against which the Nets is scheduled to play at the Arena;
- the ability to enter into Suite License Agreements, Founding Partner/Sponsorship Agreements and other advertising agreements on economically attractive terms (and to renew those agreements on economically attractive terms);
- the ability of the other parties to advertising, sponsorship, naming rights, and marketing agreements, Suite License Agreements and other Arena Tenant Revenue-generating agreements to perform their financial obligations thereunder;
- general and local economic conditions (see "—National Basketball Association" below);
- admission prices to Home Games and other Arena events;
- competition for audiences, advertisers, sponsors and other potential revenue sources from other stadiums, arenas, sports facilities, amphitheaters, theaters and entertainment venues within the New York metropolitan area (see "—National Basketball Association—Competition" below);
- work stoppages or slowdowns by the NBA, NBA players or workers performing essential functions at the Arena (see "—National Basketball Association—Player Relations/Collective Bargaining Agreement" below);
- changes in technology, public tastes and demographic trends, including changes that may affect the continuing popularity of live sporting events generally and basketball in particular in the greater New York area;
- ArenaCo's ability to book non-Nets events at the Arena;
- the condition and location of, and traffic flows to and from, the Arena; and
- the convenience and availability of parking, subway and pedestrian access to the Arena.

In addition, there can be no assurance that either the twenty- (20-) year term of the TA Naming Rights Agreement will be extended or a new agreement will be entered into at such time with the Transit Authority. This may adversely affect the Arena Tenant Revenue that may be generated under future naming rights agreements. Furthermore, a default by a party under the TA Naming Rights Agreement

could result in a loss of the naming rights thereunder, which may affect the rights and obligations of the parties to the Barclays Center Naming Rights Agreement.

In summary, the estimates used by ArenaCo or its Affiliates with respect to future Arena Tenant Revenue are based on management experience, results at other comparable new NBA arenas, executed contracts, consultation with industry experts and assumptions of ArenaCo and its Affiliates concerning future operations, which they believe are relevant and accurate. However, it is possible that assumed circumstances will not materialize, that anticipated events may not occur or may have unanticipated results, and that unanticipated events may occur to cause future Arena Tenant Revenue to vary materially from the projections.

### *Competition*

The Arena and its primary licensee, the Nets, are expected to share the greater New York metropolitan area with ten (10) professional sports teams that play in major professional sports leagues and an annual international sports event, including the New York Yankees and New York Mets (MLB), New York Giants and New York Jets (NFL), New York Islanders, New York Rangers and New Jersey Devils (NHL), New York Knicks (NBA), New York Liberty (WNBA) and Red Bull New York (formerly the MetroStars) (Major League Soccer), along with the annual staging of the US Open Tennis Championships. The Nets' sharing the New York metropolitan area with other professional teams, particularly another NBA team, may from time to time detract from the Nets' popularity and the corresponding ability of ArenaCo to generate Arena Tenant Revenue.

The New York metropolitan area has recently experienced, and may continue to experience, a dramatic increase in new, state-of-the-art sports stadiums and arenas over the next five (5) years. Specifically, in addition to the Arena, proposals have been made, plans have been announced, agreements have been reached or construction is underway or recently completed with respect to each of the following:

- new Yankee Stadium (for the Yankees; completed);
- new Citi Field (for the Mets; completed);
- New Meadowlands Stadium (for the Jets and Giants; under construction);
- planned renovation of Madison Square Garden (for the Knicks, Rangers and Liberty);
- new Prudential Center (for the Devils; completed);
- planned renovation of Nassau Veterans Memorial Coliseum (for the Islanders); and
- new Red Bull Arena (for Red Bull New York; under construction).

Furthermore, each of the teams and developers involved in these projects expects to increase prices for its inventory of regular and premium seating and luxury suites. Such a simultaneous availability of new, high-priced inventory in a single market would be unprecedented in the United States. Some of these venues, such as Madison Square Garden and the Nassau Coliseum, also provide competitive locations for the non-sports events and activities that the Arena will depend upon for the generation of Arena Tenant Revenue. Accordingly, notwithstanding the size, wealth and demographics of the New York market, it is possible that this level of enhanced competition could result in lower sales and

pricing, and correspondingly lower Arena Tenant Revenue than projected, which could materially and adversely affect ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

#### *Continuing Governmental Requirements*

Following its completion, operation of the Arena by ArenaCo will require certain state and local governmental permits or approvals. No assurances can be given that ArenaCo or its licensees will be able to obtain such permits and licenses in the future. Failure to obtain any of these permits and licenses could limit ArenaCo's ability to generate Arena Tenant Revenue, which is dependent on ArenaCo's ability to use and license the Arena for sporting, cultural, religious and other entertainment activities.

#### *Team Relocation Risk*

Pursuant to the Non-Relocation Agreement, New Jersey Basketball has contracted to cause the Nets to play substantially all of its regular season Home Games in the Arena, subject to the conditions contained therein (see "ARENA MANAGEMENT AND OPERATIONS—Project Leases and Agreements—Non-Relocation Agreement"). The financial success of ArenaCo and the Arena depend, among other things, upon the Nets continuing to play substantially all Home Games in the Arena. Notwithstanding the provisions of the Non-Relocation Agreement and the availability of equitable remedies and/or substantial monetary damages provided therein for violation thereof by New Jersey Basketball, there can be no assurance that New Jersey Basketball will not violate the Non-Relocation Agreement prior to the expiration of the Arena Lease Agreement or the Nets License Agreement, or that the Arena Lease Agreement, the Nets License Agreement and/or the Non-Relocation Agreement would not be rejected in the context of a bankruptcy case, and that New Jersey Basketball will not attempt to relocate the Nets to a new stadium and market. There also can be no assurance that a court will allow the City, ESDC or the Issuer to enforce the Non-Relocation Agreement via equitable remedies, including specific performance, and thereby prevent relocation of the Nets. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Relating to the Series 2009 PILOT Bonds—Enforceability of Documents—General" and "—Enforceability of Documents with Respect to the Bankruptcy of ArenaCo and/or New Jersey Basketball." There also can be no assurance that New Jersey Basketball would be able to pay in full the substantial monetary damages called for by the Non-Relocation Agreement in the event the equitable remedies therein are not available. Furthermore, there can be no assurance, notwithstanding the express intentions of the parties and the difficulty of calculating damages resulting from a Nets relocation, that a court will enforce the provision of the Non-Relocation Agreement requiring the payment of liquidated damages in excess of the amounts outstanding under the Series 2009 PILOT Bonds upon a breach of the non-relocation covenants that is not enjoined, either in whole or in part, or that New Jersey Basketball (particularly if it is the subject of bankruptcy proceedings) will be required, or will have the financial resources, to satisfy fully any such award (see "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Relating to the Series 2009 PILOT Bonds—Enforceability of Documents—General" and "—Enforceability of Documents with Respect to the Bankruptcy of ArenaCo and/or New Jersey Basketball"). If a court does not award the full amount of liquidated damages contemplated by the Non-Relocation Agreement, or awards actual damages less than the liquidated damages contemplated by such agreements, or if New Jersey Basketball is unable to pay in full any damages that are awarded, there may not be sufficient funds to repay in full the Series 2009 PILOT Bonds. Although the relevant parties in interest, including the City, ESDC and the Issuer, would have a common interest, following any relocation of the Nets, in attracting another NBA team to play its home games in the Arena on terms that would ultimately result in full repayment of the Series 2009 PILOT Bonds, there can be no assurance that a team can be attracted (either through relocation of an existing team or expansion), that the NBA would approve such a relocation (or agree to expand) or that any team that was attracted to the Arena would agree to such terms, would begin playing on a timely basis or would generate revenues comparable to those projected by ArenaCo. Such a relocation by New Jersey

Basketball would have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

In addition, the Non-Relocation Agreement contains exceptions permitting the Nets to play in other venues due to force majeure, casualty or condemnation and will terminate if the Arena Lease Agreement is terminated upon casualty- or condemnation-related reasons, thereby permitting the termination of the Nets License Agreement by either party. The Non-Relocation Agreement also permits the Nets to play in other venues during the construction of the Arena until the later of (i) the substantial completion of the Arena Project, as defined in the Non-Relocation Agreement, and (ii) the commencement of the 2012-2013 NBA Regular Season. There can be no assurance that the occurrence of the substantial completion of the Arena and the expiration of any interim lease or other arrangements made with other venues will be coterminous, and under certain circumstances the Nets may be contractually bound to make lease or license payments (or to pay contractual breakage damages) with respect to a venue that is not the Arena for period of time following the substantial completion of the Arena. These occurrences would also have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

New Jersey Basketball is also subject to the League Rules. The effect of the League Rules on the ability of New Jersey Basketball to perform its obligations and/or to exercise its rights under various agreements to which it is a party, including but not limited to the Nets License Agreement, the Non-Relocation Agreement, the Barclays Center Naming Rights Agreement and the Naming Rights Agreement Assignment, is uncertain. The League Rules and/or future changes thereto could limit, modify or prevent the enforcement of those agreements, modify the benefits afforded thereby and ultimately have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds. For other risks associated with the League Rules, see "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Operations—National Basketball Association—NBA Preemption."

#### *National Basketball Association*

New Jersey Basketball is subject to, and its personnel are bound by, the League Rules. Any changes to the League Rules adopted by NBA will generally be binding upon New Jersey Basketball and its personnel regardless of whether they agree or disagree with such changes, and such changes could adversely affect ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds. New Jersey Basketball has limited influence over, and does not control, the decisions of the NBA. ArenaCo has no rights at all to participate in NBA decisions.

- *NBA Preemption:* The NBA Commissioner and the NBA Board of Governors have the authority to take actions applicable to New Jersey Basketball that may not be consistent with the best interests of the Nets, ArenaCo or New Jersey Basketball. Certain aspects of the Non-Relocation Agreement and certain aspects of the Nets License Agreement and Arena Lease Agreement are also subject to the League Rules. The effect of the League Rules on the ability of New Jersey Basketball to perform its obligations and/or to exercise its rights under various agreements to which it is a party, including but not limited to the Non-Relocation Agreement, Nets License Agreement, Barclays Center Naming Rights Agreement, and Naming Rights Agreement Assignment, cannot be known at this time. Existing or future League Rules could limit, modify or prevent the enforcement of those agreements, could modify the benefits afforded thereby, could have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds, and could affect any aspect of

New Jersey Basketball's activities at the Arena, including the ability of the Nets to play substantially all of its Home Games at the Arena. While future changes are impossible to predict, the NBA (through collective bargaining when applicable) could change the duration of the NBA season, the scheduling of home or other games, the teams against which the Nets play basketball games, the conference in which the Nets play, the manner of play, the sharing of revenues, the NBA Draft, or any number of other items that could affect the enforcement of the Non-Relocation Agreement, Nets License Agreement, Barclays Center Naming Rights Agreement and Naming Rights Agreement Assignment. No assurance can be given as to the effect that future changes in the League Rules may have upon the Arena Project or ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

- *Escrow/Tax System:* The CBA currently in effect imposes an escrow/tax system, which causes a portion of player salaries to be withheld and returned to the NBA teams if aggregate player costs for any season exceed agreed-upon levels and imposes a dollar-for-dollar "tax" payable to the NBA on teams whose payrolls exceed certain designated amounts. The tax and escrow funds are distributed back to NBA teams according to formulas established by the NBA. New Jersey Basketball could be burdened by the current CBA's "tax" obligations. Even though ArenaCo is not currently a beneficiary of the current CBA's escrow system and ArenaCo is not currently subject to any NBA "tax" obligation, any new escrow or "tax" system under a CBA, or any extension of the existing "tax" system on terms adverse to New Jersey Basketball, could create payment obligations that could adversely affect New Jersey Basketball and, in turn, its ability to maintain a highly competitive team. These circumstances could in turn have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.
- *Revenue Sharing:* The NBA generates significant league-level revenues that are currently shared equally by the thirty (30) NBA member teams after provision for supplemental revenue sharing. Although New Jersey Basketball is not currently a beneficiary of supplemental revenue sharing due to the size of its home market, it is possible that the NBA could increase the allocation of NBA shared revenues to supplemental revenue sharing or otherwise after the allocation of shared league level revenues in a manner that may be adverse to New Jersey Basketball. These circumstances could in turn have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.
- *Limitations on Indebtedness:* Currently, the NBA limits the total indebtedness for borrowed money and similar obligations that can be incurred at the team and team owner level and by any affiliated entity that owns, leases, operates or otherwise has rights with respect to the arena in which a team's home games are played. If the NBA were to adopt different indebtedness rules in the future, such modifications could adversely affect New Jersey Basketball's ability to maintain a highly competitive team. These circumstances could in turn have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds. In addition, the undertaking by ArenaCo to make PILOTs and the execution and delivery of the contractual arrangements related thereto require the consent of the NBA. See "RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Relating to the Series 2009 PILOT Bonds —NBA Consent Letter".
- *Liability for Debts and Obligations of NBA:* New Jersey Basketball is subject to liabilities and rules and restrictions due to its membership in the NBA. Because the NBA is a joint

venture, the members of the NBA are generally liable for the debts and obligations of the NBA. If New Jersey Basketball were to incur a material liability by virtue of its membership in the NBA, its financial condition and the Nets' competitiveness could be materially adversely affected. These circumstances could in turn have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

- *Dependence on Other Teams and NBA:* The success of the NBA and its member teams and attendance at basketball games depends in part on the competitiveness of the other teams in the NBA and their ability to maintain fiscally sound teams. Certain teams have at times encountered financial difficulties, and neither New Jersey Basketball nor ArenaCo has any capacity to ensure that the NBA and its respective teams will continue to operate on a fiscally stable and effective basis.
- *Player Relations/Collective Bargaining Agreements:* While the NBA benefits from one of the most stable labor relationships in professional sports, relations between the NBA and the NBPA have been contentious at times, including a lock-out by the NBA of the NBPA members in 1999 causing the loss of approximately two (2) months of the NBA regular season. The NBA and the NBPA entered into their current CBA in July 2005. The six-year agreement expires following the 2010-2011 NBA season. There can be no assurance that there will not be a work stoppage involving the NBA players upon the expiration of the current or any subsequent collective bargaining agreement to which the NBA is a party, and any such work stoppage could have a material adverse effect on New Jersey Basketball, other NBA teams, and the NBA generally. These circumstances could in turn have a material adverse effect on ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

None of the NBA, any of its affiliates or members (other than New Jersey Basketball), and any of their respective owners, officers, employees or representatives has passed upon or is responsible for the accuracy or completeness of this Official Statement or any statement contained herein.

### **Dependence on Key Personnel and Service Providers**

The continued success of the Nets will be highly dependent on the services of members of the senior management of New Jersey Basketball. There can be no assurance that New Jersey Basketball will be able to retain these employees or replace them with equally competent employees. The failure to obtain necessary services from skilled individuals on favorable terms, the loss of the services of any of these individuals, or the failure of such individuals to perform satisfactorily or to work together successfully, may adversely affect ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

### **Anticipated Change in Majority Ownership of New Jersey Basketball and Anticipated Significant New Outside Investment in the Arena Developer**

Although it is anticipated that there will occur a change in majority ownership of New Jersey Basketball and a significant new outside investment made in the Arena Developer, the consummation of these transactions is subject to a number of conditions, including NBA approval, and there can be no assurance that these conditions will be satisfied and that such proposed change in ownership and such proposed investment will ultimately occur. Were these transactions not to occur, an expected source of moneys for ArenaCo to pay Additional Rent would not be available, and the confirmation of the ratings of the Series 2009 PILOT Bonds by the rating agencies would be an additional Vacant Possession Release Condition.



## **NBA Approval of the Sale Transaction**

The obligation of the parties to complete the Sale Transaction will be subject to the satisfaction of certain conditions including, without limitation, the consent of the NBA. The failure of the NBA to give its consent to the Sale Transaction would have a materially adverse effect on ArenaCo's ability to pay the Additional Rent Amount, and the confirmation of the ratings of the Series 2009 PILOT Bonds by the rating agencies would be an additional Vacant Possession Release Condition.

## **Maintenance, Repair and Risk of Loss**

ArenaCo will be responsible for all maintenance, repairs, capital repairs, capital improvements and risk of loss associated with the ownership and operation of the Arena Project. These responsibilities can require substantial expenditures. Although the Arena Lease Agreement will require ArenaCo to purchase and maintain customary insurance coverage, including property insurance at full replacement cost, there can be no assurance that the deductibles and exclusions from such policies will not increase over time, that such insurance will be sufficient or will cover each potential loss (either in whole or in part), or that the applicable insurers will have the financial ability to pay covered losses or will pay such losses without the necessity of litigation. ArenaCo has not established a reserve for uninsured losses or for future capital repairs and improvements. If ArenaCo fails to comply with its obligations to make necessary capital repairs, or fails to make discretionary capital improvements necessary to maintain the competitiveness of the Arena, ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

## **Damage to or Destruction of the Arena; Condemnation**

In the event of damage to or destruction of the Arena, ArenaCo will be required under the Arena Lease Agreement to restore the Arena and the Arena Premises with any net insurance proceeds, subject to its right to terminate the Arena Lease Agreement if the casualty damages all or substantially all of the Arena and occurs in the final five (5) years of the term of the Arena Lease Agreement, in which event, pursuant to the PILOT Bonds Indenture, net insurance proceeds will be applied by the Issuer to the redemption of the Series 2009 PILOT Bonds. There can be no assurance that the net insurance proceeds will be sufficient for the required purposes or that the applicable insurers will have the financial ability to pay the covered losses or will pay such losses without the necessity of litigation. While the Arena Lease Agreement requires ArenaCo, subject to receipt of an approving opinion of Nationally Recognized Bond Counsel, to furnish its own funds to restore the Arena and the Arena Premises in the event that restoration is required and net insurance proceeds are insufficient, there can be no assurance that ArenaCo will have sufficient funds available for such purpose. Furthermore, although in the event of a casualty that does not result in a termination of the Arena Lease Agreement, ArenaCo's obligations continue as if the casualty had not occurred, it is likely that in such event the Nets would play Home Games at, and other scheduled events would be relocated to, alternative locations during reconstruction. The use of another facility during reconstruction could adversely affect ArenaCo's ability to generate Arena Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds. Similarly, if the Arena is subject to a Substantial Taking by a governmental authority through the exercise of its eminent domain powers, the Arena Lease Agreement would terminate, subject to certain rights of the PILOT Bond Trustee to receive a share of the condemnation proceeds. There can be no assurance that such proceeds will be sufficient to pay in full all principal and interest to become due on the Series 2009 PILOT Bonds. If the Arena is the subject of a Taking by a governmental authority which is less than a Substantial Taking and is restored by ArenaCo pursuant to the Arena Lease Agreement, the collection of Arena Tenant Revenue could decline during and following such restoration. In addition, the Actual Taxes calculated under the PILOT Agreement may be reduced as a result of damage to or destruction or condemnation of the Arena. Such a reduction could have a material adverse effect on ArenaCo's ability to generate Arena

Tenant Revenue and the Issuer's ability to pay the principal of and interest on the Series 2009 PILOT Bonds.

## **LITIGATION**

### **Issuer**

There is no litigation, action, suit, proceeding, claim or arbitration pending or, to the knowledge of the Issuer, threatened in writing against the Issuer, as to which there is a reasonable likelihood of an adverse determination and which, if adversely determined, would have a material adverse effect on the issuance of the Series 2009 PILOT Bonds or the design, development, acquisition, construction, equipping, leasing or operation of the Arena.

### **ArenaCo**

Except as described below under “—Litigation Related to the Arena Project,” there is no litigation, action, suit, proceeding, claim, arbitration or investigation pending or, to the knowledge of ArenaCo or its affiliates, threatened in writing against ArenaCo or its affiliates, as to which there is a reasonable likelihood of an adverse determination and which, if adversely determined, individually or in the aggregate, with all such other litigation, actions, suits, proceedings, claims, arbitrations or investigations, would have a material adverse effect on ArenaCo, the issuance of the Series 2009 PILOT Bonds or the design, development, acquisition, construction, equipping, leasing or operation of the Arena.

### **Litigation Related to the Arena Project**

#### *General*

Subject to the discussion below, there is no litigation, action, suit, proceeding, claim, arbitration or investigation pending or, to the knowledge of the Issuer or ArenaCo or their respective affiliates, threatened in writing against the Issuer or ArenaCo or their respective affiliates, as to which there is a reasonable likelihood of an adverse determination and which, if adversely determined, individually or in the aggregate with all such other litigation, actions, suits, proceedings, claims, arbitrations or investigations, would have a material adverse effect on the Issuer or ArenaCo, the issuance of the Series 2009 PILOT Bonds or the design, development, acquisition, construction, equipping, leasing or operation of the Arena. Subject to the last item described below, all litigation that challenged the approvals of the Atlantic Yards Project issued in 2006 or final determinations relating to the project that were made in 2006 – specifically, the approvals and final determinations by, respectively, ESDC, the MTA and the PACB – have been concluded, and all of the challenged approvals and determinations have been sustained by the courts in final judicial determinations that are not subject to further appellate review.

#### *Environmental, Condemnation and Related Matters*

On October 13, 2009, three (3) New York State legislators, one (1) New York City Council Member and two (2) community groups, including Develop Don't Destroy (Brooklyn), Inc. (“DDDB”), one of the petitioners in a prior litigation challenging the 2006 approvals (collectively, the “*Montgomery Petitioners*”), commenced an Article 78 proceeding against the MTA and FCRC (collectively, the “*Montgomery Respondents*”) in the Supreme Court, New York County, seeking to annul the MTA Board's June 24, 2009 resolution on the ground that such resolution violates the New York Public Authorities Law as amended by the Public Authorities Accountability Act of 2005 (the “PAAA”). The Montgomery Petitioners assert that the MTA Board's resolution, which approved modifications to the terms of the transaction, originally approved by the MTA Board in 2005, whereby the MTA will sell its property interests and air rights in the Vanderbilt Yard to FCRC in connection with the Atlantic Yards

Project, violates the PAAA because the MTA should have (i) solicited new bids for the disposition of the Vanderbilt Yard property, (ii) obtained a new appraisal for the Vanderbilt Yard, and (iii) considered a bid from DDDDB. The briefing of this case has been completed by all parties, and all papers were submitted to the court on November 16, 2009. On December 15, 2009, the court issued a decision and judgment sustaining the MTA Board's resolution, denying the Article 78 petition, and dismissing the proceeding. It is not yet known whether the Montgomery Petitioners will seek to appeal from decision to the Appellate Division, but if there is an appeal and the Supreme Court's decision is overturned, the MTA may have to re-issue its 2005 Request for Proposals for disposition of the Vanderbilt Yard property and development rights and obtain a new appraisal. FCRC believes that the MTA complied with all applicable legal requirements and that the Supreme Court's decision is correct. Both of the Montgomery Respondents have stated in their court filings that the MTA and the MTA Board complied with all applicable legal requirements, and both Montgomery Respondents intend to vigorously defend the MTA Board's June 24, 2009 determination. However, there can be no assurance of the outcome of this proceeding.

On October 16, 2009, several Brooklyn community groups, including DDDDB (collectively, the "*DDDB II Petitioners*"), commenced an Article 78 proceeding against ESDC and FCRC (collectively, the "*DDDB II Respondents*") in the Supreme Court, New York County alleging violations of SEQRA and the UDC Act. The DDDDB II Petitioners seek to annul ESDC's September 17, 2009 affirmation of the MGPP for the Atlantic Yards Project, on the grounds that: (i) ESDC violated the UDC Act because the MGPP does not present a "plan" to alleviate blight; (ii) the determination, which authorizes ESDC staff to enter into a development agreement with FCRC, is illegal and arbitrary and capricious because it is inconsistent with the MGPP, which does not provide for conditions precedent to the requirement that the Atlantic Yards Project include affordable housing; and (iii) ESDC violated SEQRA by failing to prepare a supplemental EIS before approving the MGPP. The briefing of this case has been completed by all parties, all papers were submitted to the court on November 25, 2009, and the matter is pending before the court for decision. If the DDDDB II Petitioners' challenge is successful, ESDC may have to recommence the public approval process under the UDC Act and/or prepare a supplemental EIS, and there can be no assurance that such approval process would be successful and would allow the Arena Project to move forward. The DDDDB II Respondents believe that ESDC complied with all applicable legal requirements, and they intend to vigorously defend ESDC's September 17, 2009 determination. The DDDDB II Respondents expect to prevail in this litigation, but there can be no assurance of the outcome.

On November 19, 2009, several Brooklyn community groups, including Prospect Heights Neighborhood Development Council, Inc., together with the three elected officials who are among the Montgomery Petitioners and nine individuals who claim to live in the vicinity of the Atlantic Yards Project site (collectively, the "*Prospect Heights Petitioners*"), commenced an Article 78 proceeding against the DDDDB II Respondents in the Supreme Court, New York County, alleging violations of SEQRA and the UDC Act. The Prospect Heights Petitioners seek to annul ESDC's September 17, 2009 affirmation of the MGPP on the grounds that: (i) ESDC violated SEQRA by failing to prepare a supplemental EIS; and (ii) ESDC violated the UDC Act by impermissibly delegating its power to FCRC to determine the content and timing of the Atlantic Yards Project. The briefing of this case has been completed by all parties, and all papers were submitted to the court on December 17, 2009 to the same Justice who will decide the case brought by the DDDDB II Petitioners. The matter is now pending before the court for decision. If the challenge by the Prospect Heights Petitioners is successful, ESDC may have to recommence the public approval process under the UDC Act and/or prepare a supplemental EIS and/or a revised General Project Plan, and there can be no assurance that such approval process would be successful and would allow the Arena Project to proceed. The DDDDB II Respondents believe that ESDC complied with all applicable legal requirements, intend to vigorously defend ESDC's September 17, 2009 determination and expect to prevail in this litigation, but there can be no assurance of the outcome of this proceeding.

On November 24, 2009, the New York State Court of Appeals issued a decision in an appeal entitled *Goldstein, et al. v. New York State Urban Development Corporation* (No. 178) (“*Goldstein*”), in which the Court held that ESDC’s exercise of eminent domain to acquire properties for the Atlantic Yards Project and its financial contribution to the costs of the Atlantic Yards Project were in conformity with the New York State Constitution. On December 10, 2009, the petitioners in that case made a motion to the Court of Appeals for re-argument of their appeal and/or to hold the Court’s decision in abeyance pending the Court’s determination of another case involving an entirely different project. While there can be no assurance of the outcome of the motion, statistics that are available on the website of the Court of Appeals indicate that in the fourteen- (14-) year period from 1995 through 2008 (the only years for which such statistics are available on the website), the Court received a total of 247 motions for re-argument of appeals, granted three (3) of them and denied the others. ESDC believes that the *Goldstein* case was correctly decided and will oppose the motion. The decision by the Court of Appeals on the *Goldstein* appeal is not subject to review by the United States Supreme Court, because the case does not raise any issues of federal law. The project opponents’ objections to the Atlantic Yards Project under federal law previously were litigated in the federal courts and resolved in favor of ESDC and the Atlantic Yards Project. See *Goldstein v. Pataki*, 516 F.3d 50 (2d Cir.), *cert. denied*, 128 S.Ct. 2964 (2008).

See “RISK FACTORS AND INVESTMENT CONSIDERATIONS—Risks Associated with Construction of the Arena—Litigation.”

## **LEGAL MATTERS**

Certain legal matters relating to the authorization and validity of the Series 2009 PILOT Bonds and the exclusion of the interest on the Series 2009 PILOT Bonds from gross income for Federal income tax purposes will be subject to the approving opinion of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C., Bond Counsel. See “APPENDIX P-1—FORM OF BOND COUNSEL OPINION” and “APPENDIX P-2—FORM OF BOND COUNSEL OPINION WITH RESPECT TO ISSUER DOCUMENTS.” Certain legal matters will be passed upon for ArenaCo, the Arena Developer and New Jersey Basketball by Fried, Frank, Harris, Shriver & Jacobson LLP, Edwards Angell Palmer & Dodge LLP, Richards, Layton & Finger, P.A., and by Kelley Drye & Warren LLP. Certain legal matters will be passed upon for ESDC and the Issuer by ESDC’s General Counsel. Certain of the opinions covering legal matters to be passed upon for ArenaCo, the Arena Developer, New Jersey Basketball, the Issuer and ESDC, including the opinion attached hereto as Appendix P-2, will be delivered upon, and as a condition of, the satisfaction of the Vacant Possession Release Conditions and the release of the Vacant Possession Documents from escrow. See “INTRODUCTION—Commencement Agreement” and “THE SERIES 2009 PILOT BONDS—Commencement Agreement” and “—Redemption”; see also “APPENDIX K—SUMMARY OF THE COMMENCEMENT AGREEMENT.” Certain legal matters will be passed upon for the Underwriters by Nixon Peabody LLP.

## **TAX MATTERS**

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C., Bond Counsel, is of the opinion that under existing law interest on the Series 2009 PILOT Bonds will not be included in the gross income of the holders of the Series 2009 PILOT Bonds for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the “Code”). This opinion is expressly conditioned upon compliance with certain requirements of the Code, which requirements must be satisfied subsequent to the date of issuance of the Series 2009 PILOT Bonds in order to ensure that interest on the Series 2009 PILOT Bonds is and continues to be excludable from the gross income of the holders of the Series 2009 PILOT Bonds. Failure so to comply could cause interest on the Series 2009 PILOT Bonds to be included in the gross income of the holders thereof, retroactive to the date of issuance of the Series 2009 PILOT Bonds. In particular, and without limitation, those requirements include restrictions on the use, expenditure and

investment of proceeds and payment of rebate, or penalties in lieu of rebate to the United States, subject to certain exceptions.

In the opinion of Bond Counsel, under existing law, interest on the Series 2009 PILOT Bonds will not constitute a preference item under Section 57(a)(5) of the Code for purposes of the computation of the alternative minimum tax imposed on certain individuals and corporations under Section 55 of the Code and will not be included in adjusted current earnings when calculating corporate alternative minimum taxable income under Section 56(g) of the Code. The foregoing opinions reflect the enactment of the American Recovery and Reinvestment Act of 2009 (the “*Recovery Act*”), which includes provisions that modify the treatment under the alternative minimum tax of interest on certain bonds, such as the Series 2009 PILOT Bonds, issued in 2009 and 2010.

Bond counsel has not opined as to other federal tax consequences of holding the Series 2009 PILOT Bonds. However, prospective purchasers should be aware that (i) Section 265 of the Code generally denies a deduction for interest on indebtedness incurred or continued to purchase or carry the Series 2009 PILOT Bonds or, in the case of a financial institution, that portion of a holder’s interest expense allocated to interest on the Series 2009 PILOT Bonds, provided, however, that under the Recovery Act, Series 2009 PILOT Bonds and certain other similar bonds issued in 2009 and 2010 and held by such financial institution may not be required to be taken into account in such allocation to the extent that they do not in the aggregate exceed two percent (2%) of the average adjusted basis of the assets of the holder, subject to the requirement that interest on indebtedness otherwise allocable to bonds which are for that reason excluded from such allocation, be treated as a financial institution preference item as to which deductibility is reduced by twenty percent (20%), (ii) with respect to insurance companies subject to the tax imposed by Section 831 of the Code, Section 832(b)(5)(B) reduces the deduction for losses incurred by fifteen percent (15%) of the sum of certain items including interest on the Series 2009 PILOT Bonds, (iii) interest on the Series 2009 PILOT Bonds earned by certain foreign corporations doing business in the United States could be subject to a branch profits tax imposed by Section 884 of the Code, (iv) passive investment income, including interest on the Series 2009 PILOT Bonds, may be subject to federal income taxation under Section 1375 of the Code for an S corporation that has Subchapter C earnings and profits at the close of the taxable year if greater than twenty-five percent (25%) of the gross receipts of such S corporation is passive investment income, (v) Section 86 of the Code requires recipients of certain Social Security and Railroad Retirement benefits to take into account, in determining gross income, receipts or accruals of interest on the Series 2009 PILOT Bonds, and (vi) receipt of investment income, including interest on the Series 2009 PILOT Bonds, may disqualify the recipient from obtaining the earned income credit under Section 32(i) of the Code. Bond Counsel has not undertaken to advise in the future whether any events after the date of issuance of the Series 2009 PILOT Bonds may affect the tax exempt status of interest on the Series 2009 PILOT Bonds or the tax consequences of ownership of the Series 2009 PILOT Bonds. No assurance can be given that future legislation, or amendments to the Code, if enacted into law, will not contain provisions which could directly or indirectly reduce the benefit of the exclusion of the interest on the Series 2009 PILOT Bonds from gross income for federal income tax purposes. Holders should consult their own tax advisors with respect to any of the foregoing tax consequences.

In the opinion of Bond Counsel, under existing statutes, interest on the Series 2009 PILOT Bonds is exempt from personal income taxes imposed by the State of New York or any of its political subdivisions, including The City of New York, to the extent that such interest is excluded from gross income for federal income tax purposes.

For federal and New York tax purposes, interest includes original issue discount. Original issue discount with respect to a Series 2009 PILOT Bond is equal to the excess, if any, of the stated redemption price at maturity of such Series 2009 PILOT Bond over the initial offering price thereof to the public, excluding underwriters and other intermediaries, at which price a substantial amount of all Series 2009

PILOT Bonds with the same maturity were sold. Original issue discount accrues actuarially over the term of a Series 2009 PILOT Bond. Holders should consult their own tax advisers with respect to the computation of such accruals during the period in which any such Series 2009 PILOT Bond is held.

An amount equal to the excess, if any, of the purchase price of a Series 2009 PILOT Bond over the principal amount payable at maturity constitutes amortizable bond premium for federal and New York tax purposes. The required amortization of such premium during the term of a Series 2009 PILOT Bond will result in reduction of the holder's tax basis in such Series 2009 PILOT Bond. Such amortization also will result in reduction of the amount of the stated interest on the Series 2009 PILOT Bond taken into account as interest for tax purposes. Holders of Series 2009 PILOT Bonds purchased at a premium should consult their own tax advisers with respect to the determination and treatment of such premium for U.S. federal income tax purposes and with respect to state or local tax consequences of owning such Series 2009 PILOT Bonds.

Interest paid on tax-exempt obligations such as the Series 2009 PILOT Bonds is now generally required to be reported by payors to the Internal Revenue Service (the "IRS") and to recipients in the same manner as interest on taxable obligations. In addition, such interest may be subject to "backup withholding" if the Series 2009 PILOT Bond owner fails to provide the information required on IRS Form W-9, Request for Taxpayer Identification Number and Certification, as ordinarily would be provided in connection with the establishment of a brokerage account, or the IRS has specifically identified the Series 2009 PILOT Bond owner as being subject to backup withholding because of prior underreporting. Neither the information reporting requirement nor the backup withholding requirement affects the excludability of interest on the Series 2009 PILOT Bonds from gross income for federal tax purposes.

In rendering its opinion, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo P.C. will rely upon the Tax Certificate with respect to certain facts and expectations of the Issuer, ESDC, ArenaCo and New Jersey Basketball. In addition, pursuant to the Master PILOT Indenture and the Tax Certificate, the Issuer and ESDC have covenanted to comply with the applicable requirements of the Code in order to maintain the exclusion of interest on the Series 2009 PILOT Bonds from gross income for federal income tax purposes pursuant to Section 103 of the Code.

On the date of delivery of the Series 2009 PILOT Bonds, the original purchasers will be furnished with an opinion of bond counsel substantially in the form attached hereto as "APPENDIX P-1—FORM OF OPINION OF BOND COUNSEL."

## **RATINGS**

Prior to the delivery of the Series 2009 PILOT Bonds, it is anticipated that Moody's Investors Service Inc. ("*Moody's*") will give the Series 2009 PILOT Bonds a rating of "Baa3" and that Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. ("*S&P*"), will give the Series 2009 PILOT Bonds a rating of "BBB-." Such ratings will reflect only the views of such organizations, and an explanation of the significance of such ratings may be obtained only from the rating agencies furnishing the ratings. Explanations of the ratings may be obtained from Moody's at 7 World Trade Center, 250 Greenwich Street, New York, New York 10007, and from S&P at 55 Water Street, New York, New York 10041. There can be no assurance that such ratings will be continued for any given period of time or that they will not be revised downward or withdrawn entirely by such rating agencies if, in the judgment of such rating agencies, circumstances so warrant. Any such downward revision or withdrawal may have an adverse effect on the market price of the Series 2009 PILOT Bonds. The Issuer has undertaken no responsibility either to bring to the attention of the owners of the Series 2009 PILOT Bonds any proposed change in or withdrawal of such ratings or to oppose any such revision or withdrawal.

## CONTINUING DISCLOSURE

ArenaCo will enter into an agreement (the “*Continuing Disclosure Agreement*”) to provide certain information for the benefit of the holders of the Series 2009 PILOT Bonds to the Municipal Securities Rulemaking Board (“*MSRB*”), as the sole nationally recognized municipal securities repository through the MSRB’s Electronic Municipal Market Access (“*EMMA*”) system, in accordance with the requirements of Section (b)(5)(i) of the Securities and Exchange Commission Rule 15c2-12 (17 C.F.R. Part 240 Section 15c2-12) and the terms of such Continuing Disclosure Agreement. Following the delivery of the Series 2009 PILOT Bonds and while the Arena Project is being constructed (inclusive of the substantial completion of the Arena Project) and so long as the Series 2009 PILOT Bonds are Outstanding, ArenaCo will provide to EMMA the monthly reports that it is to receive from the Independent Engineer, quarterly financial information and unaudited annual financial statements, the amount of the Actual Taxes calculated with respect to the Arena Premises and the Arena Project and notice of certain material events. Following the substantial completion of the Arena Project and so long as the Series 2009 PILOT Bonds are Outstanding, ArenaCo will provide to EMMA quarterly financial information and audited annual financial information, the amount of the Actual Taxes with respect to the Arena Premises and the Arena Project and notice of certain material events. See “APPENDIX Q—FORM OF CONTINUING DISCLOSURE AGREEMENT.”

## CAUTIONARY NOTICE REGARDING FORWARD-LOOKING STATEMENTS

The statements contained in this Official Statement, including in the Appendices hereto and in any other information provided by ArenaCo, that are not purely historical are forward-looking statements. Such forward-looking statements can be identified, in some cases, by terminology such as “may,” “will,” “should,” “expects,” “project,” “intends,” “plans,” “anticipates,” “believes,” “estimates,” “predicts,” “potential,” “illustrate,” “example” and “continue,” or the singular, plural, negative or other derivations of these or other comparable terms. Readers should not place undue reliance on forward-looking statements. All forward-looking statements included in this Official Statement are based on information available to such parties on the date hereof, and the Issuer and ArenaCo assume no obligation to update any such forward-looking statements. ArenaCo’s actual results could differ materially from those discussed in such forward-looking statements.

The forward-looking statements included herein are necessarily based on various assumptions and estimates and are inherently subject to various risks and uncertainties, including, but not limited to, risks and uncertainties relating to the possible invalidity of the underlying assumptions and estimates and possible changes or developments in economic, industry, market, legal and regulatory circumstances, and conditions and actions taken or omitted to be taken by third parties, including customers, fans, NBA, suppliers, business partners, competitors, and legislative, judicial and other governmental authorities and officials. Accordingly, actual results may vary from the projections, forecasts and estimates contained in this Official Statement and such variations may be material, which could affect ArenaCo’s ability to generate Arena Tenant Revenue and to fulfill some or all of its obligations under the PILOT Agreement and the Arena Lease Agreement. For a description of certain risks and uncertainties to which the forward-looking statements are subject, see “RISK FACTORS AND INVESTMENT CONSIDERATIONS.”

Some important factors that could cause actual results to differ materially from those in any projections, forecasts and estimates contained herein include market conditions and changes in general economic conditions (whether local, national, international or otherwise). Consequently, the inclusion of projections, forecasts and estimates herein should not be regarded as a representation by any party of the results that will actually be achieved by ArenaCo.

Neither ArenaCo nor the Issuer assumes any obligation to update or otherwise revise any projections, forecasts and estimates, including any revisions to reflect changes in conditions or circumstances arising after the date of this Official Statement, or to reflect the occurrence of unanticipated events. Assumptions related to the foregoing involve judgments with respect to, among other things, future economic, competitive and market conditions and future business decisions, all of which are difficult or impossible to predict accurately and many of which are beyond the control of ArenaCo. Any of such assumptions could be inaccurate and, therefore, there can be no assurance that the forward-looking statements included in this Official Statement will prove to be accurate. New factors emerge from time to time and it is not possible for ArenaCo to predict all of such factors. Further, ArenaCo cannot assess the impact of each such factor on its business or the extent to which any factor, or combination of factors, may cause actual results to differ materially from those contained in any forward-looking statements.

## UNDERWRITING

Goldman, Sachs & Co., Barclays Capital Inc. and Citigroup Global Markets Inc., as underwriters (collectively, the “*Underwriters*”) have agreed, subject to certain conditions, to purchase all of the Series 2009 PILOT Bonds from the Issuer at an aggregate purchase price of \$502,458,688.33, reflecting the net original issue discount of \$3,926,244.20 and the Underwriters’ discount of \$4,615,063.97. The Underwriters are obligated to purchase all of the Series 2009 PILOT Bonds, if any are purchased, such obligation being subject to certain terms and conditions set forth in a separate bond purchase agreement among the Underwriters, the Issuer and ArenaCo, the approval of certain legal matters by counsel and certain other conditions. ArenaCo has agreed to indemnify the Underwriters and the Issuer against certain liabilities, and to contribute to any payments required to be made by the Underwriters and the Issuer relating to such liabilities, including, to the extent permitted under applicable law, liabilities under the federal securities laws. The initial offering prices may be changed from time to time by the Underwriters.

The Underwriters intend to offer the Series 2009 PILOT Bonds to the public initially at the offering prices set forth in the inside cover page of this Official Statement, which may subsequently change without any requirement of prior notice. The Underwriters reserve the right to join the dealers and other underwriters in offering the Series 2009 PILOT Bonds to the public. The Underwriters may offer and sell the Series 2009 PILOT Bonds to certain dealers at prices lower than the public offering price. In connection with this offering, the Underwriters may over-allot or effect transactions that stabilize or maintain the market price of the Series 2009 PILOT Bonds at a level above that which might otherwise prevail in the open market. Such stabilizing, if commenced, may be discontinued at any time.

Goldman, Sachs & Co. is advising the NSE Parties on the sale of a majority interest in New Jersey Basketball to the New Investor. Goldman, Sachs & Co.’s fee in connection with such advisory services is contingent on the closing of the sale to the New Investor, and the closing of the sale to the New Investor is contingent on the issuance of the Series 2009 PILOT Bonds.

Citigroup Inc., parent company of Citigroup Global Markets Inc., an underwriter of the Series 2009 PILOT Bonds, has entered into a retail brokerage joint venture with Morgan Stanley. As part of the joint venture, Citigroup Global Markets Inc. will distribute municipal securities to retail investors through the financial advisor network of a new broker-dealer, Morgan Stanley Smith Barney LLC. This distribution arrangement became effective on June 1, 2009. As part of this arrangement, Citigroup Global Markets Inc. will compensate Morgan Stanley Smith Barney LLC for its selling efforts with respect to the Series 2009 PILOT Bonds.



## MISCELLANEOUS

All summaries herein of documents and agreements are qualified in their entirety by reference to the original documents and agreements, and all summaries herein of the Series 2009 PILOT Bonds are qualified in their entirety by reference to the form thereof included in the PILOT Bonds Indenture, and the provisions with respect thereto included in the aforementioned documents and agreements. Copies of the documents referred to herein may be obtained upon request from The Bank of New York Mellon, 101 Barclay Street, Floor 7W, New York, New York 10286.

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such and not as representations of fact. This Official Statement is not to be construed as a contract or agreement between the Issuer, ArenaCo or the Underwriters and the registered owners or beneficial owners of the Series 2009 PILOT Bonds.

### BROOKLYN ARENA LOCAL DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Name: Frances Walton  
Title: Vice President

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