

**LEASE**

**Between**

**THE COUNTY OF NASSAU, LANDLORD**

**and**

**ARENACO SPE LLC, TENANT**

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**LIST OF SCHEDULES**

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THIS LEASE (as amended from time to time in accordance with its terms, this "Lease") is made and entered into as of the Lease Effective Date, by and between THE COUNTY OF NASSAU, acting solely in its proprietary, not governmental capacity, together with its successors and assigns (the "Landlord"), having an address at One West Street, Mineola, New York 11501, and ARENACO SPE LLC, a Delaware limited liability company, together with its successors and permitted assigns (the "Tenant"), having an office address at 1600 Old Country Road, Plainview, New York 11803.

**WITNESSETH:**

In consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant hereby covenant and agree as follows:

**1. CERTAIN DEFINITIONS**

For the purposes of this Lease, unless the context otherwise requires, the following words and terms shall have the meanings indicated:

1.1 Additional Rent shall have the meaning as defined in Section 9.1.

1.2 Alterations shall have the meaning as defined in Section 11.1.

1.3 Alternate Tax shall have the meaning as defined in Section 9.8.

1.4 Annual Coliseum Revenue Accounting shall have the meaning as defined in Section 8.3.

1.5 Annual Rent shall have the meaning as defined in Section 8.1.

1.6 Approvals shall mean all approvals, consents and permits from all applicable federal, state, county and municipal boards, bodies, agencies or authorities (including, without limitation, the County Legislature, the Referendum, the Office of Legislative Budget Review, the Office of Management and Budget, and NIFA), and environmental, site plan, zoning, parking, wetlands, traffic, height, bulk, exterior signage and building permits and approvals as may be required in order to perform and finance (a) any and all of the Work, and (b) the issuance by the County of the Bonds, (including all Final Approvals for such Bonds) all of which are to be applied for and obtained by the Landlord at the expense of the Tenant as a "Pre-Issuance Cost" (as hereinafter defined).

1.7 Approvals and Construction Period shall be that period of time commencing on the Lease Effective Date and continuing until the earlier of (a) the Substantial Completion of the Coliseum Improvements or (b) four (4) years after the Lease Effective Date, unless the expiration of such period of time is extended by any Event(s) of Force Majeure, or otherwise extended pursuant to the terms of this Lease; provided, however, that in no event shall the Approvals and Construction Period be tolled or extended beyond the date that is five (5) years after the Lease Effective Date plus the period of time any Tenant Change Orders delay the completion of construction of the Coliseum Improvements.

1.8 Architect's Certification shall mean a certificate of Landlord's architect certifying that (a) the architect has examined the applicable Coliseum Improvements Plans and Specifications, and (b) after appropriate investigation, that part of the Work specified in said certificate has been completed in all material respects in accordance with the Coliseum Improvements Plans and Specifications (subject only to an attached punch list which shall identify the incomplete items of work, the non-completion of which shall not materially interfere with the use of the that part of the Work specified in said certificate for its intended purpose).

1.9 Assignment of Leases and Rents shall have the meaning as defined in Section 25.1.

1.10 Award shall have the meaning as defined in Section 22.3.

1.11 Bankruptcy Code shall mean Title 11, Sections 101 et seq. of the United States Code.

1.12 Benefits shall mean "Financial Assistance" as said term is defined in Article 18-A of the General Municipal Law of the State of New York as of the date hereof and any other form of financial assistance or tax abatements granted with respect to the Premises by the State of New York or any agency, authority or public benefit corporation of the State of New York or the federal government.

1.13 Bonds shall have the meaning as defined in Section 4.1(j).

1.14 Business Days shall mean all days excluding Saturdays, Sundays and all days observed by the State of New York, the County or the federal government as legal holidays.

1.15 Capital Improvements shall mean such improvements to the Premises that qualify as capital improvements in accordance with GAAP.

1.16 Capital Repairs shall have the meaning as defined in Section 16.3.

1.17 Casualty Repairs shall have the meaning as defined in Section 21.1.

1.18 Coliseum shall mean that part of the Coliseum Improvements consisting of the arena building to be constructed on the Coliseum Parcel, and, to the extent necessary for the proper operation and functioning of such arena building, any connections between such arena building and the remainder of the Coliseum Improvements (whether such connections are held by fee title or easement acceptable to Landlord), as same may be constructed in accordance with this Lease.

1.19 Coliseum Design Standard shall mean a standard for the design of the Coliseum mutually acceptable to Landlord and Tenant which shall, following the procedure hereinafter set forth in Article 6 of this Lease, provide plans and specifications for the Coliseum that will result in the construction of a facility that is substantially similar to, but not identical to, The Prudential Center located in Newark, New Jersey, and will comply with Legal Requirements; provided, however, that it is understood and agreed that (a) the Coliseum will not be exactly the same as The Prudential Center, and may have, for example, different types or

numbers of amenities, suites, and/or seats, and (b) the Coliseum shall have a minimum of seventeen thousand (17,000) seats, and a minimum of fifty (50) suites, each of which shall be capable of accommodating a minimum of eight (8) patrons, and that are intended for the use as the Islanders' home arena and the other Coliseum Uses.

1.20 Coliseum Improvements shall mean the improvements described in and to be constructed substantially in accordance with the Coliseum Improvements Plans and Specifications.

1.21 Coliseum Improvements Plans and Specifications shall have the meaning as defined in Section 6.3.

1.22 Coliseum Improvements Plans and Specifications Approval Period shall have the meaning as defined in Section 6.3.

1.23 Coliseum Improvements Property shall mean the Coliseum Improvements and the Coliseum Parcel.

1.24 Coliseum Parcel shall mean the real property to be designated on the Project Diagram as that portion of the Land upon which the Coliseum is to be constructed.

~~1.25 Coliseum Parking Areas shall mean that part of the Land upon which there shall be located six thousand five hundred (6,500) parking spaces.~~

1.26 Coliseum Revenues shall mean gross revenues, net of sales taxes, ticket taxes and ticket surcharges, due and paid to the Islanders and/or the Tenant from, or in any way related to, (a) the operation of, or the activities conducted at, the Coliseum Improvements and any and all other improvements or businesses from time to time located upon the Land, including, without limitation, pre-season, regular season and post-season hockey ticket revenues, ticket revenues from other sports and ticket revenues from family events, concerts and other entertainment, and (b) ~~pre-season and regular season home games permitted to be played away under the non-relocation agreement referenced in Section 4.1(p) of this Lease.~~ In all cases revenues shall include, without limitation, ticket revenues and revenues from food, beverage, merchandise and other concessions, novelties, catering, suite licenses and fees, club seats, radio broadcast, sponsorship (including signage and other advertising), internet (website, Facebook, Twitter, and all other similar social networking internet sites relating to the Coliseum), naming rights, publications, parking and personal seat licenses, but shall exclude all media revenue (other than radio broadcast) from television, cable, or the internet relating to the Islanders and other "new media," and further excluding all revenue received from the NHL. If following the Lease Effective Date the NHL rules shall be modified, or other NHL decisions made, such that the Coliseum Revenues would, but for the operation of this provision, be reduced, then the parties shall agree upon an equitable adjustment to this definition such that the intended economic effect is restored as nearly as is practicable. If the parties are unable to agree upon the adjustment, then the matter shall be determined by arbitration pursuant to Article 39 of this Lease. If any revenue which would constitute Coliseum Revenues if paid to the Islanders and/or the Tenant during the Lease Term is paid to the Islanders and/or the Tenant prior to the Lease Term Commencement Date (e.g. advanced rentals, payment for naming rights or booking fees)

for events that will occur on the Premises following the Lease Term Commencement Date, then these revenues shall be included in Coliseum Revenues during the first Lease Year (or during the Lease Year during which Tenant is entitled to use, retain and enjoy such revenues, if later). If any revenue is paid to the Islanders and/or the Tenant for any period, a portion of which would constitute Coliseum Revenue during a Lease Year and a portion of which would be for a period following the expiration of the Lease Term, then only that portion of such revenue as shall constitute Coliseum Revenue during such Lease Year shall be included in the computation of Coliseum Revenues and the balance shall belong to Tenant.

1.27 Coliseum Uses shall have the meaning as defined in Section 13.1.

1.28 Completion Date shall have the meaning as defined in Section 10.3.

23.10. 1.29 Concession Agreements shall have the meaning as defined in Section

1.30 Construction Commencement Date shall mean that date which is sixty (60) days after all Approvals necessary to commence construction have been obtained and all Contingencies satisfied, except for the Contingency set forth in Section 4.1(t).

1.31 Contingencies shall have the meaning as defined in Section 4.1.

1.32 Control (including the terms “controlling,” “controlled by” and “under common control with”) of a Person shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting interests, by virtue of being a general partner or managing member, by contract or otherwise.

1.33 County shall mean Nassau County, New York.

1.34 County Executive shall mean the individual then serving as the elected official in Nassau County known as the County Executive.

1.35 County Legislature shall mean the County’s legislative body.

1.36 CPI Index shall mean the Consumer Price Index (1982-84=100) as published by the United States Department of Labor Bureau of Labor Statistics for the New York-Northern New Jersey-Long Island area, as measured by the Consumer Price Index for All Urban Consumers (CPI-U), (all Items) or, if such index is no longer published, such other comparable index as shall be agreed to by the parties to measure increases in the cost of living.

1.37 Design Architect shall mean an architect selected by Landlord pursuant to an RFP process conducted in accordance with Legal Requirements based on such criteria set forth in the RFP as determined by Landlord in consultation with Tenant to the fullest extent permitted by Legal Requirements. The Design Architect shall be the design architect that submits a proposal pursuant to said RFP and that Landlord and, to the fullest extent permitted by Legal Requirements, Tenant, mutually select as their choice to be the Design Architect and which is approved by the County Legislature and, to the extent required by Legal Requirements, NIFA.

1.38 Environmental Authorities shall have the meaning as defined in Section 32.1(d).

1.39 Environmental Laws shall have the meaning as defined in Section 32.1(a).

1.40 Equity Funds shall have the meaning as defined in Section 5.2.

1.41 Equity Funds L/C shall have the meaning as defined in Section 5.2.

1.42 Event of Force Majeure shall mean (a) strikes, (b) lock-outs, (c) labor troubles, (d) inability to procure materials (excluding lack of funds or inability to procure the same at prices deemed advantageous), (e) failure of power, (f) riots, (g) insurrection, (h) the act, failure to act or default of the other party, (i) war, (j) acts of terrorism, (k) either party's failure timely to and in good faith grant its consent or approval to any matter explicitly requiring such consent or approval as set forth herein, (l) the filing of a lawsuit by a third party contesting or challenging the actions or proposed actions of Landlord or Tenant pursuant to this Lease, (m) delays caused by any arbitration proceedings undertaken pursuant to the terms of this Lease, including, without limitation, any arbitration proceedings in any way related to the Proposed Coliseum Plans and Specifications, the Coliseum Plans and Specifications and any decision to deny a change order to such Coliseum Plans and Specifications requested pursuant to this Lease, (n) any delays caused by Tenant's failure to timely approve change orders and/or (o) any extension of the duration of the construction period due to the terms of any change orders.

1.43 Excess Coliseum Bond Proceeds shall have the meaning as defined in Section 5.3.

1.44 Existing Improvements shall mean the buildings and improvements located on the Land on the Lease Effective Date.

1.45 Fee Mortgage shall mean any mortgage from time to time encumbering all or any part of the fee estate in the Land and/or the Improvements from time to time located thereon.

1.46 Final shall mean as to any determination or approval, a written decision or approval issued by the Governmental Authority (including judicial authorities) having jurisdiction over the subject matter, which shall not have been reversed, stayed, enjoined, set aside, annulled or suspended, and with respect to which no timely request by a party with standing for stay, petition for rehearing, reconsideration, review or appeal shall be pending, and as to which the time for filing any such request, petition or appeal shall have expired or otherwise terminated.

1.47 GAAP shall mean generally accepted accounting principles.

1.48 Governmental Authority shall mean any federal, state, municipal, national or other government, governmental department, commission, board, bureau, court, agency or instrumentality or political subdivision thereof or any entity, officer or examiner exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any

government or any court, in each case whether associated with a state of the United States, the United States, or a foreign entity or government.

1.49 Hazardous Materials shall have the meaning as defined in Section 32.1(b).

1.50 HUB shall mean that portion of Nassau County from time to time commonly referred to as "the HUB."

1.51 IDA shall have the meaning as defined in Section 23.3(a).

1.52 Impairment Taking shall mean a Taking of a portion of the Premises from time to time situated thereon which causes diminution in value to all or a portion of the remainder of the Premises.

1.53 Impositions shall mean all real estate taxes, assessments, water and sewer charges, vault rent or charges, governmental impositions and charges of every kind and nature whatsoever, extraordinary as well as ordinary, and each and every installment thereof, which shall or may during the Lease Term be charged, laid, levied, assessed, imposed, become due and payable, or liens upon, or arise in connection with the ownership, leasing, operation, use, occupancy or possession of, or grow due or payable out of, or for, the Premises or any portion thereof, and all taxes charged, laid, levied, assessed or imposed in lieu of or in addition to the foregoing under or by virtue of all present or future laws, ordinances, requirements, orders, directions, rules or regulations of the Federal, state and town governments and of all other Governmental Authorities having jurisdiction over the Premises whatsoever, and all fees and charges of public and Governmental Authorities for maintenance, occupation or use of the Premises or any portion thereof; provided, however, that in no event shall the foregoing include (i) any municipal, state or federal corporate income, franchise, inheritance, estate, succession or gift taxes imposed upon Landlord which are based upon the income or capital of Landlord (except as expressly provided in Section 9.2(a), or (ii) any real estate taxes, state and local sales and use taxes or mortgage recording taxes, to the extent same are subject to exemption by virtue of the Benefits granted with respect to the Premises.

1.54 Improvements shall mean any buildings or other improvements constructed or to be constructed on the Land in accordance with this Lease, together with any alterations, additions and improvements thereto, restorations and replacements thereof and the fixtures and equipment appurtenant thereto but excluding trade fixtures and personal property belonging to Tenant or subtenants of the Premises or portions thereof.

1.55 Independent CPA shall mean an independent certified public accounting firm reasonably acceptable to Landlord.

1.56 Information shall have the meaning as defined in Section 53.1.

1.57 Insurance Proceeds shall have the meaning as defined in Section 21.1.

1.58 Insurance Requirements shall mean all present or future terms and conditions of all insurance policies maintained or required to be maintained hereunder, all of which shall be in compliance with all applicable Legal Requirements, reasonable requirements of

any insurer of the Premises and the rules, orders, regulations or requirements of the national and local Board of Fire Underwriters, the New York Fire Rating organization or any other similar body having jurisdiction and those of any appropriate New York State or federal agency, office, department, board or commission thereof.

1.59 Intended Exemptions shall have the meaning as defined in Section 9.2(a).

1.60 Interest Rate shall mean the lesser of (a) the prime rate, as published in the Wall Street Journal, in effect from time to time, plus three percent (3%) and (b) the maximum applicable legal rate, if any.

1.61 Islanders shall mean the New York Islanders professional ice hockey franchise of the NHL.

1.62 Islanders' Ownership Entity shall mean the entity which owns the New York Islanders professional ice hockey franchise of the National Hockey League.

1.63 Islanders' Pledge Agreement shall have the meaning as defined in Section 25.1.

1.64 Islanders/SMG Lease shall mean the existing lease between the Islanders' Ownership Entity and SMG dated as of January 28, 2010 (together with any amendments, modifications, supplements, extensions and restatements thereto).

1.65 Islanders/SMG Lease Amendment shall have the meaning as defined in Section 4.1(h).

1.66 Islanders/SMG Lease Expiration Date shall mean July 31, 2015.

1.67 Land shall mean all that certain plot, piece or parcel of real property situate lying and being in Uniondale, Town of Hempstead, County of Nassau, State of New York more particularly bounded and described in Schedule A attached hereto and made a part hereof (as the same may be amended from time to time pursuant to the terms of this Lease), together with all rights appurtenant thereto, including, without limitation, any and all easements now or hereafter benefiting such property.

1.68 Landlord shall have the meaning as defined in the preamble.

1.69 Landlord Indemnitees shall mean Landlord, its successors, assigns, agents, invitees, licensees, contractors, consultants, employees, elected officials, officers, managers, directors, members, shareholders and partners.

1.70 Landlord's Capital Repair Costs Obligation shall have the meaning as defined in Section 16.3.

1.71 Landlord's Change Order shall have the meaning as defined in Section 7.1.

1.72 Landlord's Telecommunications Antennae means any and all devices now or hereafter used to send and/or receive communications signals of any type by Landlord and/or any and all other federal, state, and municipal public safety authorities, agencies or organizations (e.g., the Department of Homeland Security) for public safety and emergency communications of any nature.

1.73 Lease shall have the meaning as defined in the preamble.

1.74 Lease Effective Date shall mean the date of execution and delivery of this Lease by the County Executive following a SEQRA determination reasonably acceptable to Landlord having been obtained, the execution and delivery of this Lease by Tenant and the approval of this Lease by the County Legislature, the Referendum and, if applicable, the Office of Legislative Budget Review, the Office of Management and Budget, and NIFA; provided, however, that if this Lease is not executed by the County Executive and a copy of this Lease signed by the County Executive provided to Tenant on or before December 1, 2011, then at any time thereafter until Tenant is provided with a copy of this Lease signed by the County Executive, Tenant may terminate this Lease by providing Landlord with Notice of such termination, in which event, this Lease shall terminate and thereafter all parties hereto shall be relieved of and from any and all further rights and obligation other than such rights and obligations as by their terms survive the termination or expiration of this Lease.

1.75 Lease Term shall have the meaning as defined in Section 3.1.

1.76 Lease Term Commencement Date shall mean the first Business Day after the satisfaction (or waiver by the benefitted party or parties) of all of the Contingencies.

1.77 Lease Year shall mean each period of twelve (12) consecutive months beginning on August 1<sup>st</sup> and ending on July 31<sup>st</sup> during the Lease Term, except that if the Lease Term Commencement Date shall not be on an August 1<sup>st</sup>, then the first Lease Year shall commence on the Lease Term Commencement Date and end on the next ensuing July 31<sup>st</sup> and the last Lease Year shall commence on August 1<sup>st</sup> of that year and end on the last day of the Lease Term.

1.78 Legal Requirements shall mean all laws, statutes, ordinances, building codes, zoning regulations and ordinances and the orders, rules, regulations and requirements of all Federal, state, local and municipal governments, and the appropriate agencies, officers, departments, boards and commissions thereof to the extent same have jurisdiction over the Premises and/or this Lease, as the case may be, whether now or hereafter in effect which may be applicable to this Lease, the Premises, or any part thereof, or the use or manner of use of all or any part of the Premises or the sidewalks and curbs adjacent thereto.

1.79 Living Wage Law shall have the meaning as defined in Section 66.1.

1.80 Major Alterations shall mean (a) a material change, alteration or addition to any structural component of the Coliseum or building or mechanical systems of the Coliseum, or (b) any alterations involving work in excess of Two Million Dollars (increasing on each fifth anniversary of the Lease Term Commencement Date by \$250,000.00), but which are

commenced after the Lease Term Commencement Date; provided, however, specifically excluding alterations made in connection with, or resulting from, Casualty Repairs.

1.81 Major Change Order shall have the meaning as defined in Section 7.2.

1.82 Master Lease shall mean a lease of the entire Premises in which Landlord hereunder is the lessee or any mesne lease by Landlord of all or any portion of the Premises.

1.83 Minimum Annual Rent shall have the meaning as defined in Section 8.1.

1.84 MOU shall mean that certain Memorandum of Understanding dated as of June 29, 2006, between the County and Lighthouse Development Group, LLC, as amended by First Amendment to the Memorandum of Understanding dated as of September 28, 2006, and Second Amendment to the Memorandum of Understanding dated as of December 28, 2006, and deemed amended by Section 8.04 of the Prior Development Agreement.

1.85 Nassau Veterans Memorial Coliseum shall mean the existing arena located on the Land.

1.86 NHL shall mean the National Hockey League and, to the extent applicable, its successors and assigns.

1.87 NIFA shall mean the Nassau County Interim Finance Authority.

1.88 Notice shall have the meaning as defined in Section 35.1.

1.89 Objection Notice shall have the meaning as defined in Section 7.1.

1.90 Office of Legislative Budget Review shall mean the County Legislature's Office of Legislative Budget Review.

1.91 Office of Management and Budget shall mean the County's Office of Management and Budget.

1.92 Permitted Encumbrances shall mean those items set forth on Schedule B attached hereto and made a part hereof.

1.93 Person shall mean any natural persons, corporations, limited partnerships, general partnerships, limited liability companies, limited liability partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts or other organizations, whether or not legal entities, and all Governmental Authorities.

1.94 Pre-Issuance Costs shall have the meaning as defined in Section 5.1.

1.95 Premises shall mean the Land together with Coliseum Improvements as the same may be constructed in accordance with the provisions of this Lease, and all other Improvements and all easements benefiting the Land, and the Coliseum Improvements, but

excluding trade fixtures and personal property belonging to Tenant or subtenants of the Premises or portions thereof.

1.96 Prior Development Agreement shall mean that certain Development Plan Agreement dated as of January 5, 2007, by and between the County and Lighthouse Development Group, LLC.

1.97 Prohibited Name shall mean any name which is obscene, pornographic or criminal (as determined in Landlord's reasonable discretion), or is or contains the name of any municipality (other than the County of Nassau) or the name of any other Governmental Authority.

1.98 Prohibited Person shall have the meaning set forth on Schedule C attached hereto and made a part hereof.

1.99 Prohibited Uses shall mean any use which would in the reasonable judgment of Landlord, (i) violate any Legal Requirements, (ii) make void or voidable any insurance policy then in force with respect to the Premises, (iii) impair the character or reputation of the Premises, (iv) discharge objectionable fumes, vapors or odors into the Premises or surrounding areas, (v) be for the treatment, storage, disposal, generation, refining, transporting, handling, production, processing, release, dispersal or placement of any Hazardous Materials, or (vi) be dangerous, hazardous, noxious or otherwise hazardous to the health or safety of the general public or public welfare, in each case excluding hazards that are customarily assumed by attendees of stadium events.

1.100 Project Cost Change Orders shall mean all Tenant's Change Orders, Major Change Orders and Landlord's Change Orders.

1.101 Project Costs shall mean collectively, all out-of-pocket (a) costs of demolition of any Existing Improvements to be demolished in accordance with the Coliseum Improvements Plans and Specifications, (b) costs of constructing the Coliseum Improvements in accordance with the terms of this Lease, (c) Project Cost Change Orders, (d) professional fees and other soft costs incurred by Landlord or Tenant in connection with the items specified in this Section 1.101, (e) costs of issuance of the Bonds, (f) Pre-Issuance Costs, and (g) costs of any change order that does not constitute a Project Cost Change Order but which is approved by both Landlord and Tenant.

1.102 Project Diagram shall mean that certain surveyor's sketch of the Land to be prepared depicting (a) the location of the Coliseum Parcel, (b) the parking areas for the parking spaces to serve the Coliseum, and (c) access to and from the Coliseum Parcel and the parking areas to serve the Coliseum, which surveyor's sketch is to be mutually agreed upon by Landlord and Tenant and attached hereto and made a part hereof as Schedule D by an amendment to this Lease on or before the Lease Effective Date.

1.103 Proposed Coliseum Improvements Plans and Specifications shall mean a full set of construction drawings and specifications for the construction of the Coliseum Improvements which shall contain the information reasonably necessary for the Landlord to determine whether such plans conform to and satisfy the Coliseum Design Standard.

1.104 Quarterly Accounting shall have the meaning as defined in Section 8.1.

1.105 Referendum shall have the meaning as defined in Section 4.1(j).

1.106 Referendum Costs shall have the meaning as defined in Section 5.1.

1.107 Release shall have the meaning as defined in Section 32.1(c).

1.108 Rent shall mean Annual Rent and Additional Rent.

1.109 RFP shall mean a request for proposals process undertaken by or on behalf of Landlord.

~~1.110 Required Parking shall have the meaning as defined in Section 12.1.~~

1.111 Sale of the Islanders shall mean the conveyance, assignment, encumbrance or other transfer of the ownership of the Islanders or of any interest in the Islanders' Ownership Entity which results in a change of Control.

1.112 Security Agreement shall have the meaning as defined in Section 25.1.

~~1.113 SEQRA shall mean the State of New York State Environmental Quality Review Act.~~

1.114 SMG shall mean Spectacor Management Group Inc.

1.115 SMG/County Lease shall mean that certain agreement dated October 15, 1979, between Landlord and Hyatt Management Corporation of New York, Inc., as amended by that certain Amendment to an Indenture of Lease dated as of February 8, 1980, and that certain Amendment to an Indenture of Lease dated as of March 6, 1986, as assigned to SMG, by that certain Agreement to Assignment - Nassau Coliseum dated January 24, 1991, by and between Facility Management of New York, Inc. (formerly Hyatt Management Corporation of New York), Landlord, SMG and Hyatt Corporation, as further amended by that certain Amendment to an Indenture of Lease dated as of June 11, 1991, and by that certain letter dated February 21, 1995, from SMG to Landlord pursuant to which SMG exercised its right to extend the term of the lease for an additional twenty (20) years, to terminate on July 31, 2015, which SMG/County Lease relates to the management of the Nassau Veterans Memorial Coliseum, a memorandum of which is dated as of May 16, 1998, and recorded on June 26, 1997, in Liber 10790 Page 965.

1.116 SMG/County Lease Amendment shall have the meaning as defined in Section 4.1(i).

1.117 SMG/County Lease Expiration Date shall mean July 31, 2015.

1.118 Sublease shall have the meaning as defined in Section 4.1(n).

1.119 Substantial Completion or Substantially Completed shall mean, with respect to any of the Work, the delivery by Landlord to Tenant of (a) an Architect's

Certification, (b) final or conditional lien releases or waivers from all contractors providing services or materials with respect to any such Work and having contracts in excess of Five Hundred Thousand and No/100 Dollars (\$500,000.00) (it being understood that final and complete waivers of liens cannot be delivered in advance of completion of a particular trade or contract), and except for any contractors, subcontractors and materialmen, if any, with whom there is a bona fide dispute, and (c) if applicable, a certificate of occupancy relating to that part of the Work completed, whether temporary or otherwise, or other similar instrument issued by the applicable Governmental Authority.

1.120 Taking shall have the meaning as defined in Section 22.1.

1.121 Taking Date shall have the meaning as defined in Section 22.1.

1.122 Tenant shall have the meaning as defined in the preamble.

1.123 Tenant Agent shall have the meaning as defined in Section 51.1.

1.124 Tenant's Capital Repair Costs shall have the meaning as defined in Section 16.3.

1.125 Tenant's Change Order shall have the meaning as defined in Section 7.3.

1.126 Tenant's Coliseum Improvements Property shall mean all improvements made to the Coliseum Improvements by Tenant pursuant to any Alteration.

1.127 Tenant's Improvements shall have the meaning as defined in Section 20.1(i).

1.128 Third Party Events shall mean any and all uses of the Coliseum other than Islanders games held at the Coliseum.

1.129 Trigen Agreement shall mean collectively (a) that certain Lease Agreement by and between the County of Nassau and Nassau District Energy Corp., executed by the County of Nassau on February 2, 1990 and recorded in the County Clerk's Office in Liber 10087 at Page 159, as amended by First Amendment To Lease Agreement by and between the County of Nassau and Nassau District Energy Corp., executed by the County of Nassau on February 2, 1990; and (b) that certain Master Energy Agreement dated as of February 2, 1990 by and between the County of Nassau and Nassau District Energy Corp., recorded in the County Clerk's Office in Liber 10087 at Page 54.

1.130 Trustee shall mean a depository designated by Tenant and reasonably acceptable to Landlord (Landlord acknowledging that any money center bank located in the greater New York metropolitan area which is prepared to make disbursements as required herein shall be acceptable to Landlord).

1.131 Work shall mean the construction of the Coliseum Improvements and the demolition of that part of the Existing Improvements to be demolished in accordance with the

Coliseum Improvements Plans and Specifications, including, without limitation any site preparations, as more particularly described herein.

## 2. DEMISE

2.1 Effective as of the Lease Term Commencement Date, Landlord hereby demises and leases to Tenant, and Tenant hereby leases and hires from Landlord, the Land, any of the then remaining Existing Improvements, together with the Coliseum Improvements, to have and to hold the same subject to the terms and conditions of this Lease and the Permitted Encumbrances. For avoidance of doubt, although this Lease is binding on Landlord and Tenant effective as of the Lease Effective Date, Tenant's possessory rights pursuant to this Lease shall commence on the Lease Term Commencement Date.

## 3. LEASE TERM

3.1 This Lease shall be for a period of thirty (30) years (the "Lease Term") commencing on the Lease Term Commencement Date and expiring on the thirtieth (30th) anniversary thereof, unless sooner terminated as hereinafter provided, upon and subject to the covenants, agreements, terms, provisions and limitations herein set forth.

3.2 Promptly after the occurrence of the Lease Term Commencement Date, and after consultation with the other party hereto, Landlord and Tenant shall enter into an amendment to this Lease acknowledging that all Contingencies have been satisfied or waived, that the Coliseum Improvements have been Substantially Completed and setting forth the date of the Lease Term Commencement Date. The failure of either party to enter into such an amendment shall not affect in any manner the obligations of the parties hereto or the determination of the Lease Term Commencement Date.

## 4. CONTINGENCIES/APPROVALS AND CONSTRUCTION PERIOD

4.1 The occurrence of the Lease Term Commencement Date is subject to the satisfaction (or waiver by the benefitted party or parties) of the following contingencies (the "Contingencies") within the time periods or on or before the dates specified below:

(a) Simultaneously with or prior to the execution and delivery of this Lease by Tenant, the Prior Development Agreement and the MOU shall be terminated by termination agreements in a form and substance reasonably acceptable to Landlord.

(b) The Lease Effective Date shall have occurred.

(c) On or before, and as a condition to, the Lease Effective Date, Tenant shall have delivered to Landlord the executed Assignment of Leases and Rents, and Security Agreement (together with any normal and customary Uniform Commercial Code Financing Statements related thereto) and shall have obtained from the Islanders' Ownership Entity, and delivered to Landlord, the executed Islanders Pledge Agreement and an executed indemnification agreement, in a form reasonably acceptable to Landlord, setting forth indemnification, defense and hold harmless obligations of the Islanders set forth in this Lease.

(d) Within three (3) months after the Lease Effective Date, Landlord and the Design Architect shall have executed an architects' agreement for the design of the Coliseum Improvements.

(e) Within five (5) months after the Lease Effective Date, Landlord and Tenant shall have agreed to the configuration of the Project Diagram and shall have amended this Lease to attach such Project Diagram as **Schedule D** of this Lease.

(f) Within nine (9) months after the Lease Effective Date, substantial completion of the Coliseum Improvements Plans and Specifications as hereinafter set forth in Article 6 of this Lease. Substantial Completion of the Coliseum Improvements Plans and Specifications shall mean that, in the reasonable judgment of the Design Architect, the Coliseum Improvements Plans and Specifications are sufficiently complete to allow Landlord to commence applying for the Approvals.

(g) Within ten (10) months after the Lease Effective Date, the obtaining by Landlord of all Final Approvals.

(h) Within ten (10) months after the Lease Effective Date, the execution and delivery by the Islanders' Ownership Entity and SMG of, and the delivery to Landlord of a signed copy of, a binding agreement with respect to the Islanders/SMG Lease (the "**Islanders/SMG Lease Development Agreement**"), without any contingencies, and in a form reasonably acceptable to Landlord, which shall provide that (a) the Islanders/SMG Lease shall expire on the earlier of (i) the Islanders/SMG Lease Expiration Date or (ii) the Lease Term Commencement Date, (b) SMG consents to this Lease, the construction of the Coliseum Improvements and the demolition of that part of the Existing Improvements to be demolished in accordance with the Coliseum Improvements Plans and Specifications, as more particularly set forth in this Lease, (c) any such construction and demolition activities shall not constitute a nuisance or in any way a violation of the Islanders/SMG Lease, as amended by the Islanders/SMG Lease Development Agreement, and (d) until the expiration of the Islanders/SMG Lease, the Islanders will continue to play substantially all of its regular and post season games at the Nassau Veterans Memorial Coliseum.

(i) Within ten (10) months after the Lease Effective Date, the execution and delivery by Landlord and SMG of, and the delivery to Tenant of a signed copy of, a binding agreement with respect to the SMG/County Lease (the "**SMG/County Lease Development Agreement**") which shall provide that (a) the SMG/County Lease shall expire on the earlier of (i) the SMG/County Lease Expiration Date or (ii) the Lease Term Commencement Date, (b) SMG consents to this Lease, the construction of the Coliseum Improvements and the demolition of that part of the Existing Improvements to be demolished in accordance with the Coliseum Improvements Plans and Specifications, as more particularly set forth in this Lease, and (c) any such construction and demolition activities shall not constitute a nuisance or in any way a violation of the SMG/County Lease, as amended by the SMG/County Lease Development Agreement.

(j) On or before September 1, 2011, the Final approval by the voters of the County of a public referendum (such approval, the "**Referendum**") authorizing the issuance by the County of its general obligation bonds in a principal amount of not more than \$400,000,000 (the "**Bonds**"), which Referendum shall provide that \$350,000,000.00 of the Bond proceeds shall be allocated to fund the Project Costs (which Project Costs shall include the pro-rata costs of the issuance of the Bonds).

(k) Prior to the date of issuance of the Bonds, the receipt by the Landlord of all off-site easements and rights-of-way for storm and sanitary sewer lines, water lines, gas lines, electricity lines, telephone and data cable lines and all other utilities necessary for the construction, use, maintenance and operation of the Coliseum Improvements, which easements and rights-of-way shall be applied for and obtained by the Landlord at the expense of the Tenant as a Pre-Issuance Cost.

(l) Prior to the date of issuance of the Bonds, the receipt by the Landlord and Tenant of such environmental, geotechnical, soil and other engineering studies as Landlord or Tenant may require (which studies shall be obtained by Landlord at the expense of Tenant as a Pre-Issuance Cost), the results of which are reasonably acceptable to Landlord and Tenant. The results of such studies (i) shall be deemed to be reasonably acceptable to Landlord unless, prior to the date of issuance of the Bonds, Landlord provides Notice to Tenant setting forth Landlord's objections thereto, and (ii) shall be deemed to be reasonably acceptable to Tenant unless, prior to the date of issuance of the Bonds, Tenant provides Notice to Landlord setting forth Tenant's objections thereto.

(m) Prior to the date of issuance of the Bonds, the execution by Landlord of one or more guaranteed maximum price project management agreements or construction contracts for the Work that, together with all other Project Costs, in the aggregate do not exceed Three Hundred Seventy Five and No/100 Dollars (\$375,000,000.00). The construction contractors or the project managers, as the case may be, shall be selected through competitive sealed bids or an RFP process, as the case may be, conducted in accordance with Legal Requirements based on such criteria set forth in the bid documents and RFP, as applicable, as determined by Landlord, in consultation with Tenant to the fullest extent permitted by Legal Requirements. The project managers shall be those that submit proposals pursuant to such RFP that Landlord and, to the fullest extent permitted by Legal Requirements, Tenant, mutually select as their choice for the project managers, subject to the approval of the County Legislature and, to the extent required by Legal Requirements, NIFA. The construction contractors shall be the lowest responsible bidders that are awarded contracts by Landlord, with input from Tenant to the fullest extent permitted by Legal Requirements, in accordance with Legal Requirements, subject to the approval of the County Legislature and, to the extent required by Legal Requirements, NIFA.

(n) Prior to the date of issuance of the Bonds, execution and delivery by the Tenant, as sublandlord, and the Islanders' Ownership Entity, as subtenant, of a sublease with respect to the Coliseum, in form and substance satisfactory to the Landlord in its reasonable sole discretion, having a term expiring one (1) day prior to the date of

the expiration of this Lease (the "Sublease"). The subtenant shall pay to the Tenant each year as rent under the Sublease an amount equal to or greater than the Annual Rent and Additional Rent due hereunder. The subtenant also shall pay to the Tenant each year an amount sufficient to pay the cost of maintenance and repair of the Land and all improvements located thereon, including, without limitation, the Coliseum Improvements, for each such year as described in Article 16 below. The Sublease also shall include non-relocation covenants typical for a sublease between a single-purpose bankruptcy remote entity, as sublessor, and a sports team, as sublessee.

(o) Prior to the date of the issuance of the Bonds, Tenant shall cause to be delivered to Landlord a non-substantive consolidation opinion (pairing at least the Islanders' Ownership Entity and the Tenant) of an attorney for the Islanders' Ownership Entity to the Landlord ~~experienced in delivering such opinions and which opinion shall~~ be reasonably satisfactory in form and substance to Landlord's counsel.

(p) Prior to the date of the issuance of the Bonds, the execution by Landlord and the Islanders' Ownership Entity of a ~~non-relocation agreement pursuant to which the Islanders' Ownership Entity shall agree to play substantially all of the Islanders' home games (including post-season home games) at the Coliseum for a period of thirty (30) years, subject to applicable NHL League requirements, which obligation shall be supported by specific performance and certain other remedies to be determined,~~ and otherwise shall be in form satisfactory to Landlord in its sole discretion.

(q) Prior to the Lease Effective Date, Tenant, in good faith using commercially reasonable efforts, shall have entered into such labor agreements as Tenant may negotiate with the various labor organizations that may be hired to provide services in connection with the operation of the Coliseum.

(r) The name of the arena is the "Nassau Veterans Memorial Coliseum." This Lease recognizes that a prior agreement, no longer in effect, between ~~Tenant's Affiliate and the United Veterans Organization provided for a more beneficial recognition of our veterans. This Lease further recognizes ongoing discussions between~~ Tenant and the United Veterans Organization to reach a similar agreement for the Coliseum. Therefore on or before the Lease Effective Date, Tenant shall have entered into an agreement with the United Veterans Organization satisfactory to Tenant with respect to the recognition of the Nassau County veterans.

(s) On or before the later of (i) thirty (30) days after all of the Contingencies set forth in Sections 4.1(a) through Section 4.1(r), inclusive, above have been satisfied or waived, and (ii) twelve (12) months after the Lease Effective Date, the satisfactory marketing and closing on the issuance and sale of the Bonds by the County pursuant to terms and conditions reasonably acceptable to Landlord.

(t) On or before the last day of the Approvals and Construction Period, the Coliseum Improvements shall be Substantially Completed and the possession thereof delivered to Tenant.

4.2 With respect to any of the foregoing Contingencies which are dependant upon Tenant taking some action to achieve the same (including for the purpose of granting any consent or approval), Tenant shall be obligated to act in good faith and use commercially reasonable efforts to cause the same to be satisfied and to pursue the same with diligence and continuity as a prerequisite to Tenant's rights to terminate this Lease under the provisions of Section 4.3 below. Tenant shall keep Landlord apprised on a regular basis of its progress in achieving the satisfaction of each the Contingencies in question. With respect to any of the foregoing Contingencies which are dependant upon Landlord taking some action to achieve the same (including for the purpose of granting any consent or approval), Landlord shall be obligated to act in good faith and use commercially reasonable efforts to cause the same to be satisfied and to pursue the same with diligence and continuity as a prerequisite to Landlord's rights to terminate this Lease under the provisions of Section 4.3 below. Landlord shall keep Tenant apprised on a regular basis of its progress in achieving the satisfaction of each the Contingencies in question.

4.3 In the event that any of the Contingencies has not been satisfied or waived within the timeframe specified, then either party may terminate this Lease by providing Notice of such termination to the other party within ten (10) Business Days after the expiration of said specified date. The failure to so timely terminate this Lease shall be deemed a waiver of such Contingency and such Contingency shall be of no further force or effect whatsoever.

## 5. PRE-ISSUANCE COSTS AND EXCESS DEVELOPMENT COSTS

5.1 The Tenant and the Islanders' Ownership Entity shall pay as incurred, or within thirty (30) days of request for, reimburse Landlord, as the case may be, and shall be jointly and severally liable for, (a) all actual out-of-pocket third party costs and expenses incurred by Landlord, from and after the date of the Referendum to and including the date of issuance of the Bonds, in connection with the proposed Lease and the proposed development, construction and financing of the Coliseum Improvements and the performance of the Work and (b) all actual out-of-pocket third party costs and expenses incurred by Landlord in connection with the Referendum (the "Referendum Costs") in the event that the Referendum approves the issuance of the Bonds and all Contingencies shall have been satisfied or waived, other than for the Contingency set forth in Section 4.1(t) (collectively, the "Pre-Issuance Costs"). If the Bonds are issued, Landlord shall reimburse Tenant for all Pre-Issuance Costs, except for the Referendum Costs, previously paid by the Tenant or the Islanders' Ownership Entity on or within thirty (30) Business Days after the date of issuance of the Bonds with proceeds of the Bonds. All such payments shall be paid to Landlord within thirty (30) days after Tenant and/or the Islanders' Ownership Entity receive(s) a request for payment or reimbursement by Landlord, which requests shall be accompanied by invoices or other evidence of an obligation to pay on the part of Landlord. Tenant and the Islanders' Ownership Entity shall reimburse Landlord for all Referendum Costs within thirty (30) days of the Construction Commencement Date.

5.2 Except as otherwise expressly set forth herein, Landlord shall be entitled to select any and all consultants (including, without limitation, all engineers, insurance consultants, attorneys, and all other consultants and advisors) as Landlord deems to be necessary and/or desirable to properly carry out its obligations hereunder from the date of the approval of the Referendum through the Lease Term Commencement Date, the actual out-of-pocket third

party costs and expenses for which shall be included in the definition of Pre-Issuance Costs or shall otherwise be included as a part of the Project Costs; provided, however that from the date of the approval of the Referendum until the Lease Effective Date, the maximum Pre-Issuance Costs reimbursable to Landlord by Tenant shall be Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00), unless otherwise agreed to by Tenant.

5.3 In the event that, at any time and from time to time, Landlord shall determine, in consultation with the Design Architect, that the proceeds of the Bonds allocated to be applied to pay the Project Costs in the amount of Three Hundred Fifty Million and No/100 Dollars (\$350,000,000.00) are insufficient to pay all Project Costs, the Tenant shall, within ten (10) Business Days after demand by Landlord, deposit with the Trustee cash, an Equity Fund L/C, or any combination thereof, to be held in trust for the benefit of Landlord and Tenant in an aggregate amount equal to the amount of such deficiency (the "**Equity Funds**"). Landlord may thereafter use such Equity Funds or proceeds of the Bonds to pay Project Costs in such order as Landlord shall determine. Landlord, Tenant and such escrow agent shall execute such documents as may be reasonably requested by any of such parties relating to the holding and disbursing of such Equity Funds. For the purposes of this Section 5.2, the term "**Equity Funds L/C**" shall mean a clean, unconditional, irrevocable and transferable letter of credit in the amount of the Equity Funds, or such portion thereof not consisting of cash on deposit with the Trustee in accordance with this Section, in a form reasonably satisfactory to Landlord, issued by and drawn on a bank satisfactory to Landlord and that is a member of the New York Clearinghouse Association, for the account of Landlord, for a term of not less than one (1) year. The Equity Funds L/C shall state that if the Equity Funds L/C requires presentment outside of New York City, that it will allow presentment and delivery of the Equity Funds L/C via a nationally recognized courier. Landlord shall have the right to draw down on the Equity Funds L/C and to use the proceeds thereof to pay Project Costs to the same extent as if cash had been deposited. Tenant shall renew any Equity Funds L/C from time to time, at least thirty (30) days prior to the expiration thereof, and, at least thirty (30) days prior to the expiration thereof, deliver to Landlord a new Equity Funds L/C, or an endorsement or amendment thereto, and any other evidence required by Landlord that the Equity Funds L/C has been renewed for a period of at least one (1) year. If Tenant shall fail to renew the Equity Funds L/C as aforesaid, Landlord may present the Equity Funds L/C for payment and retain the proceeds thereof as cash security Equity Funds in lieu of the Equity Funds L/C.

5.4 If on the Lease Term Commencement Date, the Project Costs are less than the Three Hundred Fifty Million and No/100 Dollars (\$350,000,000.00), then on or before thirty (30) days after the Lease Term Commencement Date, the difference between the Project Costs and the Three Hundred Fifty Million and No/100 Dollars (\$350,000,000.00) (the "**Excess Coliseum Bond Proceeds**") shall be deposited with the Trustee, which Excess Coliseum Bond Proceeds shall be held in trust for the benefit of Landlord and Tenant pursuant to a trust agreement, the terms of which are to be agreed upon by Landlord and Tenant on or before the Lease Term Commencement Date. For a period of time commencing on the Lease Term Commencement Date and continuing for a period of ten (10) years thereafter, the Excess Coliseum Bond Proceeds shall be made available by the Trustee to Landlord and Tenant to make Capital Improvements to the Premises in accordance with the terms of this Lease, the cost of which are to be paid from the Excess Coliseum Bond Proceeds. Any such funds remaining on deposit and unused at the expiration of such ten(10) year period shall be paid over by the Trustee

to Landlord. The procedure for requesting and disbursing any such funds shall be specified in such trust agreement.

6. COLISEUM IMPROVEMENTS PLANS AND SPECIFICATIONS

6.1 Tenant shall work diligently with the Design Architect and in consultation with Landlord to timely develop the Proposed Coliseum Improvements Plans and Specifications in conformance with the Coliseum Design Standard. Tenant and the Design Architect shall meet periodically with Landlord to keep Landlord abreast of the status of the design process and to obtain Landlord's input; provided, however, that Landlord shall be entitled to address whether the Proposed Coliseum Improvements Plans and Specifications meets the Coliseum Design Standard.

6.2 At such time as the Proposed Coliseum Improvements Plans and Specifications are completed and the Design Architect determines that the Proposed Coliseum Improvements Plans and Specifications are ready to be used to seek Approvals, Tenant shall submit three (3) sets of the Proposed Coliseum Improvements Plans and Specifications to Landlord for Landlord's review and approval. Tenant shall submit to Landlord the Proposed Coliseum Improvements Plans and Specifications for Landlord's approval not later than seven (7) months after the Lease Effective Date.

6.3 Landlord, as a Pre-Issuance Cost, shall review (and may have reviewed by a licensed architect on Landlord's behalf) the Proposed Coliseum Improvements Plans and Specifications submitted to Landlord for approval to determine whether the Coliseum Improvements Plans and Specifications satisfy the Coliseum Design Standard. Landlord shall, within fifteen (15) days after being provided with three (3) sets of the Coliseum Improvements Plans and Specifications (the "**Coliseum Improvements Plans and Specifications Approval Period**"), by Notice to Tenant either (a) grant its approval of the Coliseum Improvements Plans and Specifications if Landlord determines that the Coliseum Improvements Plans and Specifications satisfy the Coliseum Design Standard, or (b) object to the Coliseum Improvements Plans and Specifications if Landlord determines that the Coliseum Improvements Plans and Specifications fail to satisfy the Coliseum Design Standard, in which event Landlord shall provide Tenant with a Notice containing specific suggested changes which, if incorporated into the Proposed Coliseum Improvements Plans and Specifications, would cause the Proposed Coliseum Improvements Plans and Specifications to be consistent with the Coliseum Design Standard. Tenant shall have the Proposed Coliseum Improvements Plans and Specifications revised by the Design Architect to incorporate such of Landlord's proposed changes as are within the foregoing right of Landlord to object to the Proposed Coliseum Improvements Plans and Specifications, if any, and shall deliver to Landlord three (3) sets of such revised Proposed Coliseum Improvements Plans and Specifications, together with a Notice to Landlord indicating which, if any, of the changes suggested by Landlord do not qualify as proper objections. If Landlord determines that such revised Proposed Coliseum Improvements Plans and Specifications still do not satisfy the Coliseum Design Standard, then the Design Architect shall endeavor to resolve with Landlord and Tenant any such disagreement within thirty (30) days after the delivery of the revised Proposed Coliseum Improvements Plans and Specifications and/or Notice from Tenant to Landlord. In the event, the parties are unable to reach an agreement to resolve the parties' differences regarding the Proposed Coliseum Improvements

Plans and Specifications within said thirty (30) day period, then the remaining disagreements regarding whether the Proposed Coliseum Improvements Plans and Specifications meet the Coliseum Design Standard shall be submitted to arbitration pursuant to Article 39 (it being understood that for purposes of this Section 6.3, each of the time periods with regard to such arbitration shall be reduced by one-half). The plans and specifications as finally arrived at by agreement of the parties or by arbitration, as set forth in this Section 6.3, shall hereinafter be referred to as the "**Coliseum Improvements Plans and Specifications**."

## 7. **CHANGE ORDERS**

7.1 At any time after the Coliseum Improvements Plans and Specifications have been arrived at, Landlord shall have the right from time to time to make such changes to the Coliseum Improvements Plans and Specifications as Landlord, after consultation with the Design Architect, determines to be necessary or appropriate in order (a) to accommodate changes to construct the Coliseum Improvements in accordance with Legal Requirements and (b) to resolve design issues that relate to field and other conditions arising, encountered or otherwise discovered during the ordinary course of constructing the Coliseum Improvements (individually, a "**Landlord's Change Order**", and collectively, the "**Landlord's Change Orders**") without Tenant's consent or approval so long as such Landlord Change Orders satisfy the Coliseum Design Standard and do not materially and adversely affect the ability of Tenant to use the Coliseum Improvements as a home facility for the Islanders. Landlord shall use reasonable efforts to deliver to Tenant prior Notice of any Landlord's Change Orders or, if Landlord is unable to deliver prior Notice, Landlord shall deliver such Notice to Tenant as soon thereafter as is reasonably practicable. Notwithstanding the foregoing, Landlord may proceed with implementing the work necessary to effectuate any such Landlord's Change Order regardless of whether Tenant has received Landlord's Notice prior to the commencement of such work. Upon receipt of Landlord's Notice of any Landlord's Change Order, Tenant will have seven (7) Business Days with respect to any Landlord's Change Order less than \$2,000,000 (it being understood that all such Landlord Change Orders relating to one (1) project shall be aggregated for this purpose), to object to such Landlord's Change Order by providing Landlord with Notice of such objection (an "**Objection Notice**"), any such objection to be based solely upon a failure of the Landlord's Change Order to satisfy the Coliseum Design Standard. If, upon review of Tenant's objection, Landlord agrees with Tenant's determination that the Landlord's Change Order would not satisfy the Coliseum Design Standard, Landlord shall implement such corrections as are necessary to satisfy such Coliseum Design Standard and shall submit a revised Change Order for Tenant's review in accordance with the procedures set forth in this Section above. If Landlord does not agree with Tenant's determination, Landlord shall not be required to give any Notice to Tenant and shall in no event be required to stop work on any such Landlord's Change Order due to any such Objection Notice.

7.2 Notwithstanding the terms of Section 7.1 above, prior to commencing any work on a Landlord's Change Order that is equal to or greater than \$2,000,000 (it being understood that all such Landlord Change Orders relating to one (1) project shall be aggregated for this purpose) (a "**Major Change Order**"), Landlord shall be required to submit such Major Change Order to Tenant for its review and approval prior to implementing the Major Change Order. Tenant will have fifteen (15) days with respect to any Major Change Order to object to such Major Change Order, any such objection to be based solely upon a failure of the Major

Change Order to satisfy the Coliseum Design Standard. If, upon Tenant's objection, Landlord agrees with Tenant's determination that the Major Change Order would not satisfy the Coliseum Design Standard, Landlord shall implement such corrections as are necessary to satisfy such Coliseum Design Standard and shall submit a revised Major Change Order for Tenant's review in accordance with the procedures set forth in this Section 7.2. If Landlord does not agree with Tenant's determination, then the issue shall be submitted to the Design Architect immediately following the expiration of said fifteen (15) day period for final determination, which decision shall be rendered by the Design Architect within seven (7) days after the receipt of the dispute, and which decision shall be conclusive and binding upon the parties.

7.3 At any time after the Coliseum Improvements Plans and Specifications have been arrived at, Tenant shall have the right from time to time to make such changes to the Coliseum Improvements Plans and Specifications (individually, a "Tenant's Change Order", and collectively, the "Tenant's Change Orders"), (a) subject to Landlord's prior written consent, which consent shall not be unreasonably denied, withheld, delayed or conditioned and (b) provided that any such Tenant's Change Order, and the improvements to be made pursuant to such Tenant's Change Order, shall be in compliance with the Coliseum Design Standard. Tenant shall submit such Tenant Change Orders to Landlord for its review and approval prior to implementing the Tenant Change Order. Each Tenant's Change Order shall be submitted to the Design Architect simultaneously with such submission to Landlord for a determination regarding whether, as a result of such Tenant's Change Order, Tenant is required to deposit Equity Funds. If the Design Architect determines that Equity Funds are required to be deposited, then Tenant's Change Order shall provide that payment for the work to be performed pursuant to such Tenant's Change Order shall be placed in an account to be held in trust for the payment of the Tenant's Change Order prior to the commencement of any construction activities related to such Tenant's Change Order, which account shall require the signature of both Landlord and Tenant for disbursement of funds from such account. Landlord shall have seven (7) Business Days with respect to any Tenant Change Order to object to such Tenant Change Order, any such objection to be based solely upon a failure of the Tenant Change Order to satisfy the Coliseum Design Standard. If, upon Landlord's objection, Tenant agrees with Landlord's determination that the Tenant Change Order would not satisfy the Coliseum Design Standard, Tenant shall implement such corrections as are necessary to satisfy such Coliseum Design Standard and shall submit a revised Tenant Change Order for Landlord's review in accordance with the procedures set forth in this Section 7.3. If Tenant does not agree with Landlord's determination, then the issue shall be submitted to the Design Architect immediately following the expiration of said seven (7) Business Day period for final determination, which decision shall be rendered by the Design Architect within seven (7) days after the receipt of the dispute, and which decision shall be conclusive and binding upon the parties.

## 8. RENT

8.1 From and after the Lease Term Commencement Date, Tenant shall pay base rent during each Lease Year (the "Annual Rent") in an amount equal to the greater of (a) eleven and one-half percent (11.5%) of all Coliseum Revenues received for such Lease Year or (b) Fourteen Million and No/100 Dollars (\$14,000,000.00) (the "Minimum Annual Rent"), less any credits to which Tenant is entitled pursuant to the terms of this Lease. Annual Rent shall be prorated for any partial Lease Year occurring during the Lease Term. Payments toward

the Annual Rent shall be payable in immediately available funds in four (4) quarterly installments on the fifteenth (15<sup>th</sup>) day after the end of Lease Year quarter (i.e., November 15<sup>th</sup>, February 15<sup>th</sup>, May 15<sup>th</sup> and August 15<sup>th</sup>), with each of such payments of estimated Annual Rent being one-quarter (1/4) of the Minimum Annual Rent, less any and all credits against Annual Rent to which Tenant is entitled for such quarter pursuant to the terms of this Lease that are actually known at the time such payment is due. In addition to the forgoing, the calculation of Annual Rent for the last Lease Year of the Lease Term shall include any and all Coliseum Revenue received by Tenant after the expiration of the Lease Term but which relates to games, events and all other Coliseum Revenue generating activities that occurred on the Premises during the Lease Term. A final Annual Coliseum Revenue Accounting for the last Lease Year of the Lease Term shall be conducted in accordance with Section 8.4 below.

8.2 The Tenant and the Islanders' Ownership Entity shall keep and maintain or shall cause to be kept and maintained in accordance with GAAP consistently applied, proper and accurate books, records and accounts regarding the Coliseum Revenues. The Tenant and the Islanders' Ownership Entity shall supply such additional records and accounts relating to the Coliseum Revenues as may be reasonably required by Landlord.

8.3 On or before the seventy fifth (75th) day after each calendar year, Tenant shall provide to Landlord an accounting of the Coliseum Revenue prepared by Tenant and reviewed by the Independent CPA in accordance with GAAP consistently applied certified to be true and correct by the Tenant's chief financial officer (the "Annual Coliseum Revenue Accounting"). The Annual Coliseum Revenue Accounting shall be submitted with supporting documentation reasonably necessary for Landlord to make a proper analysis of the accuracy of the Annual Coliseum Revenue Accounting. Other than as set forth below, the Annual Coliseum Revenue Accounting shall be used as the basis for determining the actual amount of Annual Rent due for the calendar year most recently ended. If any Annual Coliseum Revenue Accounting discloses that Tenant owes additional Annual Rent to Landlord, then Tenant shall pay such sum to Landlord simultaneously with delivering the Annual Coliseum Revenue Accounting. If any Annual Coliseum Revenue Accounting discloses that Tenant has paid in excess of the Annual Rent due for the calendar year described in such Annual Coliseum Revenue Accounting, then Tenant shall be entitled to a credit against the next ensuing installment(s) of Annual Rent in the amount of such overpayment until fully exhausted.

8.4 In addition to the Annual Coliseum Revenue Accounting for the final Lease Year of the Lease Term to be performed in accordance with Section 8.3 above, following the same procedures as are set forth in Section 8.3 above, on or before the seventy fifth (75th) days after the one (1) year anniversary of the expiration or other termination of the Lease Term, Tenant shall provide Landlord with a final Annual Coliseum Revenue Accounting for the final Lease Year of the Lease Term, which accounting shall include (a) any and all Coliseum Revenue received by Tenant during the final Lease Year of the Lease Term, or attributable to such period, and (b) any and all Coliseum Revenue received by Tenant after the expiration of the Lease Term but which relates to games, events and all other Coliseum Revenue generating activities that occurred during the Lease Term. If such final Annual Coliseum Revenue Accounting discloses that Tenant owes to Landlord additional Annual Rent for the final Lease Year of the Lease Term, then Tenant shall pay such sum to Landlord simultaneously with delivering the final Annual

Coliseum Revenue Accounting. The final Annual Coliseum Revenue Accounting shall be treated as an Annual Coliseum Revenue Accounting for all purposes as set forth in this Article 8.

8.5 In addition to any other remedies Landlord may have under this Lease, and without reducing or adversely affecting any of Landlord's rights and remedies hereunder, if any installment of Annual Rent payable hereunder is not paid within ten (10) days after same is due, Landlord shall provide Tenant with Notice that same has not been received. If Tenant has not paid said amounts within ten (10) days after receipt of said Notice, Tenant shall pay a late fee equal to two (2%) percent of the unpaid amount. Notwithstanding the foregoing, Landlord shall only be required to deliver one such Notice in any calendar year; thereafter in such calendar year, such late fee shall be payable if any installment of Annual Rent payable hereunder is not paid within ten (10) days after same is due. Such late fee shall be Additional Rent hereunder, payable upon Notice.

8.6 Landlord and its employees and agents shall have the right, during reasonable business hours mutually convenient for Landlord and Tenant, upon not less than ten (10) days' prior written Notice to Tenant given within one hundred eighty (180) days following the receipt by Landlord of the Annual Coliseum Revenue Accounting, to examine Tenant's books and records in any way relating to the Coliseum Revenues at a location in Nassau County, New York with respect (x) only to the specific items which Landlord disputes, (y) particular items that Landlord desires to audit or (z) if Landlord desires a general or limited audit, all items or such limited portions thereof; provided, however, that such examination shall be conducted in a reasonably expeditious manner, and that such examination is commenced within ninety (90) days following rendition of Landlord's ten (10) day Notice. Tenant shall retain its books and records with respect to the Annual Coliseum Revenue Accounting for a period of at least six (6) years after the end of any applicable calendar year and in any event until the resolution of any known dispute between Landlord and Tenant with respect to the same. All non-public information made available to Landlord will be kept strictly confidential by Landlord, Landlord's agents and consultants; provided, however, that the failure to keep such information confidential solely because disclosure is required under the terms of a subpoena, order, civil investigative demand or similar process issued by a court of competent jurisdiction or by a governmental body or regulatory authority, or pursuant to any governmental sunshine law or any other Legal Requirement that requires that such information not remain confidential, or in an arbitration proceeding or other action or proceeding brought by Landlord to recover payment of Annual Rent described above will not be deemed a default by Landlord hereunder and shall not subject Landlord to any liability. Before exercising its right to audit Tenant's books and records, Landlord agrees to give to Tenant a reasonable opportunity (not to exceed sixty (60) days) to substantiate by documentary or other reasonably satisfactory evidence the accuracy of the statement disputed by Landlord, if Landlord's concern is limited to questioning particular items rather than a desire to audit to confirm the accuracy of the Annual Coliseum Revenue Accounting. Nothing contained herein shall limit Landlord's audit rights as hereinabove set forth, if for any reason, Landlord is not satisfied with Tenant's substantiation. If, as a result of any such audit, arbitration proceeding, or agreement between the parties, it shall be determined that a payment is due to Landlord, Tenant shall promptly pay to Landlord the amount of any underpayment, with interest at the Interest Rate from the end of the applicable calendar year to the date so paid. If it shall be determined that Annual Rent which was paid was underpaid by more than five percent (5%) more than two (2) times in any four (4) consecutive Lease Years,

then Tenant shall also within thirty (30) days after demand therefor reimburse Landlord for all reasonable actual out-of-pocket third party costs and expenses of conducting such audit. In such an event, until such time as it is determined that Annual Rent in any given Lease Year was underpaid by less than two percent (2%), for all Lease Years occurring thereafter, Tenant shall within thirty (30) days after demand therefor reimburse Landlord for all reasonable actual out-of-pocket third party costs and expenses of conducting such audit. In the event it shall be determined that Annual Rent was understated by more than ten percent (10%) and Landlord shall not have previously audited all or any of the three (3) immediately preceding years of Annual Coliseum Revenue Accounting as hereinafter set forth, Landlord shall have the right, by Notice to Tenant within thirty (30) days of such determination, to audit Annual Coliseum Revenue Accounting for the immediately preceding three (3) years (or if Landlord has previously audited any of such previous three (3) years, then it shall only have the right to audit that year or those years that it has not previously audited) and all of Landlord's rights and obligations under this audit provision shall also apply to such audit as if the same were with respect to the current Lease Year. If, as a result of any such audit, arbitration proceeding, or agreement between the parties, it shall be determined that an additional amount of Annual Rent payments is due to Landlord (including for this purpose any amount determined to be due upon such audit which is not disputed by Tenant), Tenant shall make such payment to Landlord within thirty (30) days of demand therefor, with interest at the Interest Rate from the end of the applicable calendar year to the date payment is made to Landlord.

## 9. ADDITIONAL RENT

9.1 Any monies payable to Landlord hereunder other than Annual Rent are deemed to be "**Additional Rent**", and any default in the payment of Additional Rent shall give Landlord the same remedies as it has with respect to a default in the payment of any installment of Annual Rent, provided Landlord shall have given Notice and time to cure if required to do so in accordance with Section 24.1(b). Tenant may make any such payment "under protest" and may reserve all rights if it shall be determined that such payment was not properly payable by Tenant.

### ~~9.2~~ Impositions.

(a) Tenant shall be obligated to pay the Impositions imposed with respect to the Premises. Without limiting the foregoing, at Tenant's election, and at Tenant's sole cost and expense, the Landlord agrees to cooperate with Tenant in any commercially reasonable efforts undertaken by Tenant to cause the Nassau County Industrial Development Agency or any other industrial development agency to enter into agreements with Tenant, in form and substance reasonably satisfactory to Tenant, which provide for the Coliseum Improvements Property and 6,500 parking spaces to be located on the Premises to be exempt from Impositions (all of the foregoing exemptions, the "**Intended Exemptions**"). In the event that any industrial development agency provides financial assistance in the form of an exemption from real estate taxes for any portion of the Premises, Tenant shall be responsible for paying any and all payments in lieu of real estate taxes required to be paid in connection with such financial assistance.

(b) Subject to Section 9.6 hereof, all Impositions imposed with respect to the Premises, are to be paid and discharged by Tenant before the first day on which penalties may accrue or be assessed thereon for non-payment, and Tenant shall, within thirty (30) days after Notice from Landlord, produce and exhibit to Landlord the original or photocopies of official records or other evidence of such payment reasonably satisfactory to Landlord. Notwithstanding the foregoing, Tenant shall have the right to endeavor to procure such exemptions from real estate taxes as are available by law and Landlord shall, pursuant to Section 9.2(a) hereof, cooperate with Tenant, at Tenant's cost and expense, in connection with any application by Tenant for such exemptions.

9.3 It is the intention of the parties that, except to the extent expressly set forth in the Lease, the Annual Rent herein reserved is absolutely net and that Landlord shall receive the same free from all Impositions, Additional Rent, costs, charges, actual out-of-pocket third party costs and expenses and damages which shall or may be chargeable during the Lease Term against the Premises and which, except for the execution and delivery hereof, would have been payable by Landlord.

9.4 If any Imposition or assessment for improvements assessed during the Lease Term is payable in installments, Tenant may pay same in such installments. In any event, Tenant shall pay, in the final year of the Lease Term and prior to the expiration of the Lease Term, the full amount of all installments of any such Imposition or assessment including the installments which are due and payable after the expiration of the Lease Term to the extent same apply to the Lease Term.

9.5 Impositions or assessments for improvements, except for deferred installments thereof payable for a period prior to the expiration of the Lease Term, shall be apportioned at the beginning and the end of the Lease Term so that Tenant shall pay only the portion of same which are applicable to the Lease Term.

9.6 Tenant may, at its sole expense and without cost or liability to Landlord ~~contest any Impositions provided that such contest does not adversely affect the Premises, nor result in a lien, charge, encumbrance or liability against the Premises and further provided that non-compliance therewith shall not constitute a crime or offense punishable by fine or imprisonment or subject Landlord to the possibility of criminal prosecution.~~ Non-compliance by Tenant during such contest shall not be deemed a breach of this Lease provided that Tenant shall indemnify Landlord Indemnitees and hold Landlord Indemnitees harmless and defend Landlord Indemnitees from and against all liabilities, costs, damages, interests, penalties and actual out-of-pocket third party costs and expenses, including reasonable out-of-pocket third party attorneys' fees and costs (whether incurred in a third party action or in an action brought by any Landlord Indemnitee against Tenant to enforce its rights under this Section 9.6), resulting from or incurred in connection with such contest or non-compliance and that Tenant shall prosecute such contest in good faith and with due diligence to a Final determination. During the contest period, neither Landlord nor Tenant shall enter into any settlement of an assessment contest without the consent of the other. Notwithstanding the foregoing, if Tenant pays any Imposition under protest or otherwise, nothing herein shall prohibit or place any requirements on Tenant's right to contest such Imposition.

9.7 Landlord shall not be required to join in any action or proceedings referred to in this Article 9 or permit the action to be brought in its name unless the provisions of any law, rule or regulation at the time in effect require that such action or proceeding be brought by and/or in the name of Landlord. If so required, Landlord shall join and cooperate in such proceedings or permit them to be brought by Tenant in Landlord's name, in which case Tenant shall pay all reasonable actual out-of-pocket third party costs and expenses (including, without limitation, attorneys' fees and disbursements) incurred by Landlord in connection therewith.

9.8 Notwithstanding anything to the contrary contained in this Lease, with the exception of Section 9.9 below, if the present system of taxation of real estate is changed, with the result that the whole or a determinable part of the original real estate taxes which Tenant is obligated to pay is substituted for or added to by a tax (an "**Alternate Tax**") imposed on owners of real property with respect to that property in a form other than that of the original real estate taxes, or on or measured by the rents received by Landlord and clearly determinable as a tax on real property, and which has a materially different applicability to the owners of real property, or to real property, or to income from real property than it does to owners of other kinds of property, or to other kinds of property, or to other kinds of income, then each Alternate Tax imposed with respect to the whole or for a determinable part of the original real estate taxes shall be considered part of real estate taxes for the purposes of this Lease. Nevertheless, the amount of any such Alternate Tax which may be taken into consideration for the purposes of determining the real estate taxes attributable to the Premises (or for determining Tenant's liability with respect to the alternate tax) shall be no greater than would be the case if the Premises were the only property of Landlord subject to the Alternate Tax. Notwithstanding the foregoing, to the extent Tenant would otherwise be exempt from payment of (or is afforded an offset right with respect to) real estate taxes on the Coliseum Improvements Property, Tenant shall be similarly exempt from paying (or shall have similar offset rights with respect to) an Alternate Tax to the extent the same is imposed with respect to the Coliseum Improvements Property, in such case, solely with respect to the County's portion of any such taxes.

9.9 Notwithstanding the foregoing, other than with respect to the Impositions, in no event shall Tenant be liable for any County tax, impositions or fees assessed after the Lease Effective Date against the Premises and/or the Improvements from time to time located thereon unless and to the extent that such County tax, impositions or fees are assessed generally against County owned property within the County of Nassau.

**10. CONSTRUCTION OF COLISEUM IMPROVEMENTS BY LANDLORD**

10.1 Prior to or promptly following the Construction Commencement Date, Landlord shall commence construction of the Coliseum Improvements and shall complete the same with commercially reasonable diligence and continuity.

10.2 The construction of the Coliseum Improvements shall be performed using union labor pursuant to such project labor agreements as Landlord may negotiate with participation by Tenant to the fullest extent permitted by Legal Requirements for such Coliseum Improvements with the various labor organizations that may be hired to provide services in connection with the construction of the Coliseum Improvements.

10.3 The Coliseum Improvements shall be Substantially Completed by the earlier of (a) the third (3<sup>rd</sup>) anniversary of the Construction Commencement Date (the "Completion Date") and (b) the end of the Approvals and Construction Period.

10.4 Prior to commencing any of the Work, Landlord shall have obtained all Approvals required for that part of the Work then to be commenced. All construction work shall be done in a good and workmanlike manner and in accordance with all Legal Requirements and Insurance Requirements.

10.5 Landlord shall use commercially reasonable efforts to require its general contractor, project manager, major trade contractors and all other workers at the Land, and/or engaged in any construction activities related to the construction of the Coliseum Improvements to work harmoniously with each other, and with other contractors and workers on the balance of the Premises, and Landlord shall not engage in, knowingly permit or suffer, any conduct which may disrupt such harmonious relationship. Landlord shall make commercially reasonable efforts to (a) enforce the aforesaid requirements, and (b) cause its general contractor, project manager and major trade contractors to minimize any interference with the use, occupancy and enjoyment of the Premises by other occupants and visitors thereof.

**11. ALTERATION OF COLISEUM IMPROVEMENTS BY TENANT**

11.1 After the Lease Term Commencement Date, Tenant may, from time to time, at its sole cost and expense, make such alterations, additions, restorations, repairs, changes, replacements and installation in, of, or to the Coliseum Improvements as Tenant determines to be necessary or desirable, structural or non-structural ("Alterations"); provided, however, that, the following must be satisfied: (a) any proposed buildings or improvements shall comply with applicable Legal Requirements, (b) any proposed building shall be built entirely within the boundary lines of the Coliseum Parcel, (c) access to and from the Premises (and to and from the Coliseum and the Required Parking) shall not be adversely impacted, and (d) any Major Alterations to the Coliseum shall be subject to Landlord's prior approval in accordance with the provisions of Section 7.2. Notwithstanding the foregoing, no Alteration to the Coliseum shall be made which, after completion, would reduce the fair market value of the Coliseum below the fair market value of the Coliseum immediately preceding the making of such Alteration and the Coliseum Improvements shall not be materially altered in a way that would conflict with or be adverse in any material respect to the Coliseum Uses or Coliseum Revenue.

11.2 Tenant shall indemnify, protect, defend and hold harmless Landlord Indemnitees and the Premises from and against all claims, losses, damages, liabilities, interest, penalties, and actual out-of-pocket third party costs and expenses incurred by Landlord Indemnitees, including, without limitation, reasonable attorneys' fees (whether incurred in a third party action or in an action brought by any Landlord Indemnitee against Tenant to enforce its rights under this Section 11.2), caused by the making of any Alterations except to the extent caused by the sole negligence or willfull misconduct of Landlord Indemnitees. If any Landlord Indemnitee is required to defend any action or proceeding pursuant to this Section to which action or proceeding any Landlord Indemnitee is made a party, such Landlord Indemnitee shall also be entitled to appear, defend, or otherwise take part in the matter involved, at its election, by counsel of its own choosing, and unless the claim or loss is being defended by counsel for an insurer representing the interests of the Landlord Indemnitees and Tenant, Tenant shall bear the cost of the Landlord Indemnitees' defense, including reasonable attorneys' fees to the extent such Landlord Indemnitees are indemnified under this Section.

11.3 The construction of all Alterations shall be performed using union labor pursuant to such project labor agreements as Tenant may negotiate for such Alterations with the various labor organizations that may be hired to provide services in connection with the construction of such Alterations.

~~11.4 Tenant shall, using commercially reasonable efforts, diligently and continuously pursue the construction of the Alterations until the same shall be complete and operational.~~

11.5 Tenant shall use commercially reasonable efforts to require its general contractor, project manager, major trade contractors and all other workers at the Land, and/or engaged in any Alteration to work harmoniously with each other, and with other contractors and workers on the balance of the Premises, and Tenant shall not engage in, knowingly permit or suffer, any conduct which may disrupt such harmonious relationship. Tenant shall make commercially reasonable efforts to (a) enforce the aforesaid requirements, and (b) ~~cause its general contractor, project manager and major trade contractors to minimize any interference with the use, occupancy and enjoyment of the Premises by other occupants and visitors thereof.~~

11.6 Prior to commencing any demolition or construction with respect to the Alterations, Tenant shall not be in default of its obligations under this Lease beyond any applicable Notice and cure period and shall furnish Landlord with the following (all of which shall be kept in full force and effect throughout the performance of such work):

(a) If the cost of such demolition or construction for any such Alterations (it being understood that the cost of work to be done in phases which is part of the same Alteration shall be aggregated for this purpose) shall exceed One Million and No/100 Dollars (\$1,000,000.00), either (1) a letter of credit or bond for the benefit of Landlord in the full amount of the cost of such demolition and/or construction costs issued by a financially sound national bank or other financially sound financial institution (any such bank or other financial institution shall be subject to Landlord's prior approval, which approval shall not be unreasonably denied, withheld, delayed or conditioned) and otherwise in a form and content reasonably acceptable to Landlord to secure payment for

such work including, without limitation, the cost of all labor and materials required to accomplish such work, or (2) a contractor's performance and payment bond of a financially sound surety company (any such surety company shall be subject to Landlord's prior approval, which approval shall not be unreasonably denied, withheld, delayed or conditioned) for the benefit of Landlord and Tenant, as dual obligee, which performance and payment Bond shall be in a form and content reasonably satisfactory to Landlord and shall secure (i) completion of the work required under the general contract for the Alterations to be constructed and any other material work not covered by the general contract, and (ii) the payment of all sums required of the general contractor under the general contract and any other material work not covered by the general contractor;

(b) comply with all Insurance Requirements and, with respect to any demolition or construction involving the Alterations, furnish Landlord with satisfactory policies for completed Value Builder's Risk insurance coverage, including on all building materials insuring loss or damage from fire, lightning, extended coverage perils, sprinkler leakage, vandalism, malicious mischief and the perils insured against under a "difference in conditions" policy in an amount not less than the cost of the Alterations (such insurance to comply with the requirements of Section 20.3 of this Lease); and

(c) evidence that Tenant has obtained all Approvals required for the work in question;

11.7 Tenant shall, prior to commencing any demolition or construction of each phase of the Alteration work, furnish Landlord with, as applicable to each phase, the insurance required by Section 11.6(b) hereof.

11.8 All construction work shall be done in good and workmanlike manner and in accordance with all Legal Requirements and Insurance Requirements.

11.9 Landlord, at Tenant's reasonable actual out-of-pocket third party cost, shall have the right, during the performance of any Alterations affecting a structural component of the Premises, the exterior of the Coliseum Improvements or the exterior of any other improvements from time to time located on the Land, or the functioning of the heating, ventilation, air conditioning, electrical, mechanical, or other building systems of the Premises to (i) maintain, field personnel or other representatives at the Coliseum Parcel to observe Tenant's construction methods and techniques and to determine that such Alteration is being performed in accordance with the provisions of this Lease, and (ii) have such field personnel or other designers attend Tenant's job and/or safety meetings (it being agreed that such Landlord's field personnel or other representatives shall not instruct contractors, interfere with or impede the work of such or other workers in respect of any such Work). Landlord agrees that the presence and activities of such field personnel or other representatives shall not impede in any respect the performance of such Work. No such observation or attendance by Landlord's personnel, designers or other representatives shall impose upon Landlord responsibility for any failure by Tenant to comply with any Legal Requirements, Insurance Requirements or safety practices in connection with such Alteration or constitute an acceptance of any such Alteration which does not comply in all respects with the provisions of this Lease.

11.10 Tenant shall, at its expense, cause to be discharged (by bond of lien or otherwise) within thirty (30) days after Notice to Tenant of filing, any lien filed against the Premises for work done or claimed to be done or for materials furnished to Tenant in connection with Tenant's Alterations.

11.11 The Coliseum Improvements shall, after completion of the Alterations, comply with the Coliseum Design Standard.

11.12 To the extent applicable, Tenant, at its own cost and expense, shall obtain and deliver to Landlord a permanent certificate of occupancy for the Alterations (or a temporary certificate of occupancy if permitted by law and provided Tenant shall in such instance proceed to diligently comply with all conditions of such temporary certificate of occupancy, shall not let the same lapse, and shall obtain a final certificate of occupancy). Landlord will, upon Notice from Tenant, at Tenant's cost and expense, execute any documents reasonably necessary to be signed on its part to obtain such certificate of occupancy provided the same are in proper form, but Landlord shall not be required to incur any expense in connection therewith (any such expense to be reimbursed by or through Tenant). Notwithstanding the foregoing, the Alterations shall be performed in such manner as to minimize, in a commercially reasonable manner, the complete closure of the facility.

~~11.13 In addition to the requirements set forth herein, promptly following completion of any Alteration, Tenant shall, to the extent the same was not theretofore delivered, furnish to Landlord:~~

(a) a complete set of "as built" plans in duplicate (one of such plans being delivered in electronic format (including CAD drawings)) showing such Alteration construction, as then constructed, and showing the location of all easements affecting the Premises, if available, and if not available, "marked" final drawings;

(b) copies of any documents filed with the Town of Hempstead Building Department;

(c) any permits or authorizations which are required for such Alteration as completed;

(d) copies of all guaranties or certifications called for under any construction agreements, promptly after receipt thereof by Tenant;

(e) copies of all New York Board of Fire Underwriters Certificates (or the equivalent certificate of any successor organization) for such Alterations;

(f) copies of duly executed waivers of mechanic's lien from each provider of materials, supplies, equipment or labor to the Alterations relating to such Alterations or other evidence of payment reasonably satisfactory to Landlord, promptly after receipt thereof by Tenant; and

(g) any documents in Tenant's possession reasonably requested by Landlord to demonstrate compliance with the plans and specifications for the Alterations.

11.14 This Lease shall continue in full force and effect during the construction of any Alterations and Tenant's obligation to pay Annual Rent and Additional Rent shall be unaffected by such construction activity.

11.15 Notwithstanding anything contained herein, Landlord shall have no responsibility to Tenant or to any subtenant, architect, engineer, contractor, subcontractor, supplier, materialman, workman or other person, firm or corporation who shall engage in or participate in any Alteration at the Premises. In addition, Landlord's approval of any plans and specifications, permit applications or other recognition of the construction of the Alterations shall not be, nor shall be construed as being, or relied upon as, a determination that any such documents (or any modification thereto) comply with any Legal Requirements or Insurance Requirements.

## 12. REQUIRED PARKING.

12.1 Tenant agrees that it shall provide patrons of the Coliseum access and use, at market rates, of a minimum of Six Thousand Five Hundred (6,500) parking spaces on the Land, which parking spaces may be surface parking spaces, parking spaces located within building structures or any combination thereof (the "**Required Parking**"), during all events at the Coliseum; provided, however, that the Required Parking shall be reduced on a one to one basis in the event of and to the extent of any Taking of all or any portion of the Required Parking.

## 13. USE AND OCCUPANCY

13.1 Tenant shall use and occupy the Coliseum solely for the conduct of sporting events, athletic games, contests, spectacles, concerts and entertainment events, meetings, conventions, exhibitions and trade shows and other uses for which similarly sized Coliseums and/or exhibition halls are generally used, including the operation of souvenir and refreshment concessions and other uses customarily and reasonably ancillary thereto (collectively, the "**Coliseum Uses**") in accordance with the Coliseum Design Standard. Notwithstanding the foregoing, if the Sublease is terminated or expires, the principal use of the Coliseum shall be limited to sports and entertainment uses and such other uses as Landlord deems reasonable at such time. In the event of a dispute between the parties over whether any such alternative use to which the Coliseum may be put at such time is a sports or entertainment use, either party, on Notice to the other party, may submit such dispute to arbitration in accordance with Article 39 hereof.

13.2 Except as permitted by Article 14 hereof, Tenant shall not enter into any covenant or declaration or grant any easement or restriction with respect to the Premises without Landlord's prior written consent, and Landlord (at no cost to Landlord) shall join with Tenant in the creation or the granting of any such easement or restriction to which Landlord consents. Landlord shall grant such easements over the Premises as are necessary for the development of the Premises in accordance with the Approvals, including but not limited to utility easements, easements for ingress, egress and access. Without limiting the generality of the foregoing, the parties acknowledge that the Improvements constructed may share services, as determined by Tenant, and the Premises will be subject to such temporary and permanent construction,

operating and reciprocal easement agreements as may be required by Tenant in order to effectuate the foregoing. In addition, if Tenant shall desire that the Premises be made part of a business improvement district or that a business improvement district be formed for the Premises, Landlord shall cooperate with such efforts at no cost or expense to Landlord, but Landlord makes no representation that such a business improvement district will be authorized or established for the Premises. Landlord shall cooperate with Tenant in effectuating all of the foregoing and, as fee owner, shall execute and record in the appropriate land records of Nassau County such documents as Tenant may reasonably request, subject to (i) Landlord's approval of such documents, which approval shall not be unreasonably withheld, conditioned, or delayed and (ii) Tenant's payment of all actual out-of-pocket third party costs and expenses costs, including, without limitation, all reasonable out-of-pocket third party attorneys' fees and costs and recording expenses incurred in connection therewith. In addition, Landlord shall cooperate with Tenant in dedicating portions of the Premises for public streets and roadways, but any such dedication shall be only at Landlord's direction and shall be consistent with applicable Legal Requirements governing such dedications.

13.3 Any sale or licensing of any naming rights related to the Coliseum shall prohibit the use of any of the Prohibited Names in the naming of the Coliseum or any other part of the Premises, but otherwise shall not be restricted.

13.4 For so long as Nassau County is Landlord, the operation of the Coliseum shall be performed using union labor pursuant to such labor agreements as Tenant may negotiate for such Coliseum operations with the various labor organizations that may be hired to provide services in connection with the operation of the Coliseum.

#### 14. GRANT OF NEW LEASE AT EXPIRATION OF SMG/COUNTY LEASE

14.1 If the SMG/County Lease shall expire prior to the Lease Term Commencement Date, then Landlord and Tenant shall enter into a new lease on substantially the same terms and conditions as the SMG/County Lease, which new lease shall have a term commencing on the date of the expiration of the SMG/County Lease and expiring on the Lease Term Commencement Date.

#### 15. LIABILITY OF LANDLORD

15.1 Except to the extent caused by Landlord's active negligence (which shall be deemed to exclude negligence implied by law due to the fact that Landlord is the fee owner of the Premises) or willful misconduct, Landlord shall not be liable for any damage or injury to persons or to personal property of Tenant, or of any other person for any reason whatsoever, including without limitation those occasioned by or arising from any or all of the following:

(a) the Coliseum Improvements and the construction, improvement, ownership, operation and maintenance of the Premises;

(b) the heating, ventilating or air-conditioning system, electric wiring, plumbing, dampness, water, gas, steam, or other pipes, or sewage, or the breaking of any electric wire, the bursting, leaking or running of water from any tank, washstand, water

closet or waste pipe, supply pipe, sprinkler system, radiator, or any other pipe now or hereafter in, above, upon or about the Premises;

(c) fire, explosion, falling plaster, electricity, smoke, or water, snow or ice being upon or coming through or from the street, roof, sub-surface, skylight, trapdoor, windows or otherwise;

(d) acts or neglect of any tenant or occupant of the Premises, or of any owners or occupants of adjacent or contiguous property;

(e) any latent defect in the Premises or the Improvements to be erected thereon;

(f) the loss or theft of any property of Tenant however occurring, including loss of property entrusted to employees of Landlord; and

(g) any demolition and/or construction activities on or about the Premises.

15.2 Except to the extent caused by the active negligence (which shall be deemed to exclude negligence implied by law due to the fact that Landlord is the fee owner of the Premises) or willful misconduct by Landlord, Tenant shall make no claim against Landlord for any injury or damage to Tenant or any other person.

15.3 Landlord shall not be liable for the cessation, interruption, suspension, failure or adequacy of any utilities furnished to the Premises or any apparatus or appliance used in connection therewith.

## 16. PREMISES REPAIRS AND MAINTENANCE

16.1 Tenant has not relied on any representations or warranties and Tenant shall, except as set forth in this Lease, accept the Premises on both the Lease Effective Date and the Lease Term Commencement Date in their as is condition, and, except as set forth in this Lease, Landlord has not made any representations or warranties in either case express or implied, as to (i) the current or future real estate tax liability, assessment or valuation of the Premises; (ii) the potential qualification of the Premises for any and all benefits conferred by Federal, state or municipal laws, whether for subsidies, special real estate tax treatment, insurance, mortgages, or any other benefits, whether similar or dissimilar to those enumerated (including, without limitation, Benefits); (iii) the compliance of the Premises, in its current or any future state with applicable zoning ordinances and the ability to obtain a variance in respect to the Premises' non-compliance, if any, with said zoning ordinances; (iv) the availability of any financing for the purchase, alteration, rehabilitation or operation of the Premises from any source, including but not limited to state, city or Federal government or any institutional lender; (v) the current or future use of the Premises, (vi) the present and future condition and operating state of any machinery or equipment on the Premises and the present or future structural and physical condition of the Premises or its suitability for rehabilitation or renovation; (vii) the ownership or state of title of any personal property on the Premises; (viii) the presence or absence of any rules or notices of violations of law issued by any Governmental Authority, (ix) the layout, leases,

rents, income, expenses or operation of the Premises, (x) financial statements or (xi) any other matter or thing affecting or relating to the Premises.

16.2 From and after the Lease Term Commencement Date, until the expiration of this Lease, Tenant assumes the sole responsibility for the condition, operation, maintenance, repair and management of the Premises. Tenant, at its sole cost, shall maintain the Premises in good repair and in a first class manner and condition, reasonable wear and tear excepted and subject to the provisions of Section 16.3, and Article 22 hereof, and shall, at its sole expense, make or cause to be made all necessary structural and non-structural repairs to the Premises to maintain the Premises as a first class arena facility, including, without limitation to the foundations, walls, roof, structural members, plumbing and waste lines, utility conduits within the floors and walls, fixtures and equipment within and appurtenant to the Premises, windows, doors or other glass, together with the frames and supports thereof on the inside and outside of the Premises, and the vaults, sidewalks and curbs adjoining the Premises, all in accordance with industry standards for a first class arena facility, and in accordance with all Legal Requirements. Tenant shall also make any repairs, structural and non-structural, interior or exterior, to the Premises (i) which may be required by Legal Requirements or Insurance Requirements, (ii) made necessary by reason of Alterations made by Tenant or (iii) made necessary by the acts or omissions of Tenant, its employees, agents, licensees, invitees or agents. Landlord shall use commercially reasonable efforts to negotiate that any warranties received from any contractor or subcontractor in connection with the performance of the Work run for the joint benefit of Landlord and Tenant and, at Tenant's sole cost and expense, shall enforce any such warranties to the full extent that Landlord shall have the right to do so on Tenant's behalf if Tenant shall be unable to do so directly in Tenant's own name. Landlord shall not, under any circumstances, be required to build any improvements on the Premises other than the Coliseum Improvements, or to make repairs, replacements, alterations or renewals of any nature or description to the Premises, whether interior or exterior, ordinary or extraordinary, structural or non-structural, foreseen or unforeseen, or to make any expenditure whatsoever in connection with the Premises or to inspect or maintain the Premises in any way. Except to the extent the same is allowed pursuant to Section 16.3, Tenant hereby waives the right to make repairs, replacements, renewals or restorations at the expense of Landlord, including, without limitation, any repairs, replacements, renewals or restorations required pursuant to any Legal Requirements.

16.3 For the purposes of this Section 16.3, "**Capital Repairs**" shall mean and be limited to repairs that are Capital Improvements and are made to any structural component or to the mechanical, electrical, heating, ventilation, air conditioning, elevator, plumbing, sanitary, life-safety and related communications apparatus and other utility and service systems of the Coliseum Improvements, as the same shall exist from time to time, or which are necessary to maintain the (a) Coliseum Improvements and/or such systems thereof in a safe condition or (b) integrity of the Coliseum Improvements and/or such systems. Notwithstanding the terms of Section 16.2 above, with respect to the Capital Repairs, Tenant shall only be liable for the first Five Hundred Thousand and No/100 Dollars (\$500,000.00) of the cost of such Capital Repairs incurred during any particular Lease Year ("**Tenant's Capital Repair Costs**"). Subject to the limitations and qualifications set forth below, Landlord shall be obligated to reimburse Tenant for the cost of the Capital Repairs in excess of Tenant's Capital Repair Costs incurred by Tenant during any particular Lease Year ("**Landlord's Capital Repair Costs Obligation**"); provided, however, that if in any particular Lease Year, Capital Repairs shall or may exceed the Tenant's

Capital Repair Costs, then prior to Tenant agreeing to undertake any Capital Repairs for which Landlord shall or may be obligated to pay, Tenant shall obtain Landlord's approval prior to incurring or entering into any agreement for the performance of such proposed Capital Repairs or for supplying materials related thereto, which approval shall not be unreasonably denied, withheld, conditioned or delayed. Landlord shall be entitled to deny any such proposed Capital Repairs if, in Landlord's reasonable judgment, all or any portion of the proposed repairs do not constitute Capital Repairs. Any dispute regarding whether a repair proposed by Tenant constitutes a Capital Repair shall be resolved in accordance with the arbitration provisions set forth in Article 39 below. For the purpose of this Section 16.3, the term "incurred" shall mean, as to work performed and/or materials delivered to the Premises which relate to a Capital Repair, that Tenant has received and paid invoices for the same. Notwithstanding the foregoing to the contrary, any Capital Repairs required due to the acts or omissions of Tenant shall be paid for by Tenant whether or not the same shall constitute Capital Repairs, without regard to the foregoing Five Hundred Thousand and No/100 Dollars (\$500,000.00) limitation and shall be excluded from the calculation of the cap placed on Tenant's responsibility for the cost of Capital Repairs as set forth in this Section 16.3 above. Tenant shall provide Landlord with no less than forty five (45) days prior Notice of the commencement of any proposed Capital Repairs. If Landlord determines that the proposed Capital Repairs do not constitute Capital Repairs, then on or before thirty (30) days after Landlord's receipt of Notice of the proposed Capital Repairs, Landlord shall provide Tenant with a Notice informing Tenant that the proposed Capital Repairs do not constitute Capital Repairs as defined herein. Any dispute between Landlord and Tenant as to whether a proposed Capital Repair constitutes a Capital Repair shall be resolved in accordance with the arbitration procedures set forth in Section 39 below. Notwithstanding the foregoing, with regard to emergency Capital Repairs, Tenant shall not be obligated to provide Landlord with any prior Notice of its intention to perform such emergency Capital Repairs but shall rather provide Landlord with verbal notice and Notice of such emergency Capital Repairs as soon as is reasonably practicable under the circumstances.

16.4 As to the Landlord's Capital Repair Costs, Landlord shall reimburse Tenant for all such Landlord's Capital Repair Costs for which Tenant has requested reimbursement (which request for reimbursement shall be accompanied by evidence of Tenant's payment of the sums for which Tenant is requesting reimbursement) on or before the later of (a) five (5) business days after the next ensuing County bond issuance after Landlord's receipt of such properly documented reimbursement request, or (b) six (6) months after Landlord's receipt of such properly documented reimbursement request; provided, however, that with respect to any Landlord's Capital Repair Costs Obligation for an emergency Capital Repair, Tenant shall be reimbursed by Landlord within forty five (45) days of Landlord's receipt of such properly documented reimbursement request, failing which reimbursement, Tenant shall be entitled to offset such unreimbursed amount against the next ensuing installments of Annual Rent until fully exhausted, as set forth in Section 58.1 below.

16.5 From time to time during the Lease Term, Landlord shall be entitled to make inspections of the Coliseum Improvements and all other Improvements from time to time located on and made a part of the Premises. If, at any time, Landlord determines that a Capital Repair is required, then Landlord shall notify Tenant by a Notice setting forth the necessary Capital Repairs and requiring Tenant to proceed in good faith and with commercially reasonable diligence to perform such Capital Repairs. Any dispute regarding whether a repair proposed by

Landlord constitutes a Capital Repair shall be resolved in accordance with the arbitration provisions set forth in Article 39 below.

16.6 When used in this Article 16, the term "repairs" as applied to all equipment, machinery, apparatus and fixtures of every kind used in connection with the operation and maintenance of the Premises and the roof and structural portions of the Premises shall be deemed to include replacements, restorations (subject to the provisions of Article 21 hereof) and renewals. In any event, Tenant shall have the right at any time and from time to time to remove and dispose of such machinery and equipment which may become obsolete or unfit for use or which is no longer useful in the operation of the Premises.

16.7 Tenant shall not obstruct or permit the obstruction of the street or sidewalk adjoining the Premises and shall keep any roadways, parking areas or spaces and sidewalks on the Premises clean and free from ice and snow.

16.8 All repairs, restorations and replacements by Tenant shall be in quality and class as good as the original work or installations, shall be done in a good and workmanlike manner and shall be performed and completed in accordance with all Legal Requirements and Insurance Requirements.

16.9 In the event that the County, acting in its governmental capacity, enacts or imposes any tax, user fee or similar charge which is not of general applicability and which increases Tenant's monetary obligations to Landlord (in its capacity as landlord under this Lease or as a Governmental Authority), Tenant shall be entitled (upon not less than sixty (60) days Notice to Landlord) to offset such amounts paid to Landlord (in its capacity as landlord under this Lease or as a Governmental Authority) by Tenant against Annual Rent. Any dispute as to whether or not such tax, user fee or similar charge is of general applicability shall be subject to arbitration in accordance with Article 39 hereof. Any such tax, fee or charge which solely affects the Premises or any part thereof shall be deemed a tax, fee or charge which is not of general applicability.

## ~~17.~~ ENTRY BY LANDLORD

~~17.1~~ Upon reasonable prior Notice to Tenant (except in emergency), at reasonable times, and upon reasonable terms and conditions, Landlord shall have the right to enter the Coliseum Improvements to inspect same or exhibit same to prospective purchasers of the Land, or to Landlord's agents or designees. Neither the right and authority hereby reserved, nor the exercise thereof, shall impose nor does Landlord assume by reason thereof, any responsibility or liability for the care or supervision of the Premises or Improvements. Such right of entry and access shall not be considered as exercising control of the Premises or Improvements, or as obligating Landlord to make repairs or improvements not otherwise required under this Lease. Nothing herein shall limit the rights of the County and its various departments and agencies from entering upon the Premises from time to time in connection with the exercise of governmental functions in a manner comparable to which such entities may lawfully enter other private or commercial property within the County.

18. COMPLIANCE WITH LEGAL REQUIREMENTS AND INSURANCE REQUIREMENTS

18.1 Tenant shall comply with all present or future Legal Requirements regarding the Premises, or the use or occupation thereof, whether or not such compliance involves structural repairs or changes and without regard to whether any such Legal Requirement or order be of a kind now within the contemplation of the parties hereto.

18.2 Tenant may contest at its expense any Legal Requirement and such contest shall stay Tenant's compliance obligations, provided that (i) such contest does not adversely affect in any material respect the Premises or Landlord or result in a lien, charge, encumbrance or liability against the Premises; (ii) non-compliance therewith shall not constitute a crime or offense punishable by fine or imprisonment or subject Landlord to the possibility of criminal prosecution and (iii) if such contest relates to the Coliseum Improvements, Tenant shall have given Landlord Notice of its intent to contest such obligation. Non-compliance by Tenant during such contest shall not be deemed an Event of Default under this Lease provided that Tenant shall indemnify Landlord Indemnitees and hold Landlord Indemnitees harmless from and against all liabilities, costs, damages, interest, penalties and actual out-of-pocket third party costs and expenses incurred by any of the Landlord Indemnitees, including, without limitation, reasonable attorneys' fees (whether incurred in a third party action or in an action brought by any of the Landlord Indemnitees against Tenant to enforce its rights under this Section 18.2), resulting from or incurred in connection with such contest or non-compliance and shall prosecute such contest in good faith and with due diligence to a final determination by the court, authority or governmental body having jurisdiction.

18.3 Tenant shall not be entitled to any abatement, diminution or reduction of the Annual Rent or Additional Rent reserved herein for any inconvenience, interruption, cessation or loss of business or damage caused directly or indirectly by any present or future Legal Requirement, or by priorities, rationing or curtailment of labor or materials, or by war, civil commotion, strikes or riots, or any matter or thing resulting therefrom.

~~18.4 Tenant shall not do or permit to be done any act or thing upon the Premises which will invalidate or be in conflict with the Insurance Requirements. Tenant, at its own expense, shall comply with all present and future Insurance Requirements, and shall not knowingly do or permit to be done in or upon the Premises or bring or keep anything therein or use the same in a manner which could result in denial of such fire and casualty insurance coverage.~~

18.5 If any Insurance Requirement shall require Tenant to perform any work or meet any condition which Tenant may deem unfair, unreasonable, improper or otherwise burdensome, Tenant, at its sole expense, may contest the validity thereof and such contest shall stay Tenant's compliance obligations, provided that (i) non-compliance therewith shall not constitute a crime or offense punishable by fine or imprisonment, subject any Landlord Indemnitee to the possibility of criminal prosecution or adversely affect the Premises in any material respect or result in any lien, charge, encumbrance or other liability against the Premises, (ii) such non-compliance shall not result in any lapse in insurance coverage or safety hazard, and (iii) if such contest relates to the Coliseum Improvements, Tenant shall have given Landlord

Notice of its intent to contest such obligations. Non-compliance by Tenant during such contest shall not be deemed a breach of this Lease provided that Tenant shall indemnify Landlord Indemnitees and hold Landlord Indemnitees harmless from and against all liabilities, costs, damages, interest, penalties and actual out-of-pocket third party costs and expenses incurred by any Landlord Indemnitee, including, without limitation, reasonable attorneys' fees (whether incurred in a third party action or in an action brought by any Landlord Indemnitee against Tenant to enforce its rights under this Section 18.5), resulting from or incurred in connection with such contest or non-compliance and shall prosecute such contest in good faith and with due diligence to a final determination by the court authority or governmental body having jurisdiction.

## 19. UTILITIES AND SERVICES

### 19.1 Utilities.

(a) Tenant agrees to directly contract for gas, water, sewer, electricity, light, heat, power, steam, telephone, cable or other communications service and all other utility or service of every nature and kind used, rendered or supplied to, upon or in connection with the Premises throughout the Lease Term and shall indemnify Landlord Indemnitees from and hold Landlord Indemnitees harmless against any claims, liabilities, damages, losses, costs or actual out-of-pocket third party costs and expenses incurred by Landlord Indemnitees, including, without limitation, reasonable attorneys' fees (whether incurred in a third party action or in an action brought by a Landlord Indemnitee against Tenant to enforce its rights under this Section 19.1(a), in connection therewith.

(b) To the extent that Landlord is required to purchase water under the Trigen Agreement, Tenant shall reimburse Landlord for such expenses at the cost set forth in the Trigen Agreement, and, in any event, even if Landlord is not so obligated but Tenant so elects, Landlord shall purchase heated and chilled water under the Trigen Agreement for Tenant's use at the Premises, and Tenant shall reimburse Landlord for the cost thereof as set forth in the Trigen Agreement. Landlord (at no cost to Landlord) shall endeavor to (i) cause Trigen to create a system by which usage shall be accurately measured for each separate building at the Premises, and (ii) ensure that the Premises are billed in a manner that is no less favorable to Tenant than the billing of any other space covered by the Trigen Agreement.

(c) The Trigen Agreement is set to expire in accordance with its terms in 2016. Landlord agrees that it shall in no event extend the Trigen Agreement with respect to the Premises. Landlord further agrees that while the Trigen Agreement is still in effect with respect to the Premises, Landlord shall not amend, modify, restate or supplement the Trigen Agreement in any manner which will adversely affect Tenant; provided, however, that any amendment to the Trigen Agreement entered into pursuant to Section 19.1(b) above shall not be deemed to adversely affect Tenant regardless of the effect of any such amendment.

19.2 Except as otherwise set forth herein, Tenant expressly agrees that Landlord is not nor shall it be required to furnish to Tenant or any other occupant of the Premises

during the Lease Term any water, sewer, gas, heat, electricity, light, power, steam, telephone, cable or other facilities, equipment, labor, materials, utilities or any services of any kind whatsoever whether similar or dissimilar.

19.3 After the Lease Term Commencement Date, at Tenant's request and Tenant's sole cost and expense, Landlord shall create or grant utility easements to public or private utility companies in connection with the furnishing of gas, electricity, steam or other utility services to the Premises, provided that (a) the same are not inconsistent with the Approvals, (b) the terms and location of such easements shall be subject to Landlord's prior approval, which approval shall not be unreasonable denied, withheld, delayed or conditioned and (c) Landlord incurs no liability or cost which will not be reimbursed by or through Tenant in so doing. All actual out-of-pocket third party costs and expenses associated with the foregoing incurred by Landlord shall be paid by Tenant within thirty (30) days of demand therefor.

19.4 Landlord shall not be liable to Tenant in damages or otherwise for any failure of Tenant to make arrangements for or to obtain any utilities or services, except to the extent due to the active negligence (which shall be deemed to exclude negligence implied by law due to the fact that Landlord is the fee owner of the Premises), willful misconduct or breach of this Lease by Landlord. Tenant shall not be released or excused from the performance of any of its obligations under this Lease for any such failure or for any interruption or curtailment of any such utilities or services, and, ~~except to the extent caused by the active negligence, willful misconduct or breach of this Lease by Landlord, no such failure, interruption or curtailment shall constitute a constructive or partial eviction.~~

19.5 Provided that the following would not constitute a violation of the Trigen Agreement, if utilities are available to Landlord for the Nassau University Medical Center or other facilities in the HUB at a cost that is lower than the cost of the utilities otherwise available to Tenant, and such utilities can be made available to Tenant at a cost lower than otherwise available to Tenant, provided that Tenant pay all costs associated with availing itself of such lower rates, then upon request by Tenant (and at Tenant's sole option), Landlord shall purchase such utilities for the Coliseum Improvements at such lower cost on behalf of Tenant. In such an event, Tenant shall reimburse Landlord for the cost of such utilities, together with all actual out-of-pocket third party costs and expenses incurred in any way related to the purchase of such utilities on Tenant's behalf within ten (10) Business Days of being billed therefor from time to time.

19.6 Notwithstanding the foregoing, Landlord shall provide, at its sole expense, police protection to the Premises for events at the Coliseum. This obligation shall be a surviving obligation of Landlord for the full Lease Term notwithstanding any transfer of all or any portion of the Premises by either party.

## 20. INSURANCE

20.1 Tenant shall throughout the Lease Term:

(a) keep all Coliseum Improvements and all equipment on, in and appurtenant thereto, insured against loss or damage by fire, with extended coverage

including special form, in an amount equal to one hundred (100%) percent of the full replacement value thereof (excluding foundations and footings) ("**Replacement Value**") without diminution of such replacement cost for depreciation or obsolescence, by policies containing the usual co-insurance clause, and written with a "deductible" not to exceed Two-Hundred Fifty Thousand and No/100 Dollars (\$250,000); Landlord shall at all times be entitled to insurance in an amount sufficient to avoid being a co-insurer;

(b) keep in effect rent insurance (or as the case may be use and occupancy insurance) for the Coliseum and Coliseum Parcel in an amount not less than the total of the applicable Lease Year's Annual Rent, Impositions, and annual insurance premiums required by this Article 20, naming Landlord as sole insured. Tenant shall and hereby does assign the proceeds thereof for the payment of rent and Additional Rent hereunder until restoration of the Premises;

(c) keep in effect general public liability insurance against claims for bodily injury or death and property damage occurring upon, in or about the Premises and all Improvements thereon, and on, in or about the adjoining streets, sidewalks and passageways, providing coverage in the sum of Twenty-Five Million (\$25,000,000.00) Dollars (in 2011 dollars, adjusted for inflation based on the CPI Index no more frequently than on a bi-annual basis) combined single limit per occurrence in respect of either bodily injury or death to any number persons or for property damage. The aforesaid coverage limitations shall be increased (which increase may be effected by "umbrella" coverage) from time to time throughout the Lease Term (but not more than once in any three (3) year period) so that such coverage shall conform to the liability coverage then customarily maintained for premises similarly situate. Landlord agrees to give Tenant Notice not less than sixty (60) days prior to the expiration of Tenant's policy of the new required coverage amount, in each instance when Landlord determines the coverage hereunder shall be adjusted for inflation in accordance herewith;

(d) keep in effect elevator liability coverage insurance, boiler and machinery insurance, water damage insurance (direct and legal liability); sprinkler leakage insurance (direct and legal liability) and, in the event of war or threatened hostilities, appropriate forms of war damage or war risk insurance, to the extent available at commercially reasonable rates if issued by the Federal government or any agency thereof, including flood insurance to the extent available through the National Flood Insurance Program or any substitute therefor, or through a "difference in conditions" policy as aforesaid;

(e) workers' compensation and employers liability insurance covering all persons employed at or in respect of the Coliseum Improvements with statutorily required limits; workers' compensation insurance shall include policy endorsements providing an extension of the policy to cover the liability of the insured under the "Other States Coverage";

(f) during the performance of any Alterations with regard to the Coliseum Improvements, and with respect solely thereto, builder's risk completed value form insurance covering the perils insured under the ISO special causes of loss form or

equivalent coverage under an "All Risk" property policy, including collapse, water damage, transit, flood and earthquake to the extent obtainable at a reasonable cost in the commercial market, with deductibles reasonably approved by any Landlord, covering the total value of work performed and equipment, supplies and materials furnished (with an appropriate limit for soft costs in the case of construction) and covering the full insurable value (exclusive of the cost of non-insurable items, such as excavation, foundations and footings) of all equipment, supplies and materials at any off-site storage location used with respect to the Premises to the extent Tenant bears the risk of loss with respect thereto (subject to the foregoing qualification with respect to earthquake insurance) and subject to commercially reasonable deductibles reasonably approved by Landlord;

(g) solely with regard to the Coliseum, obtain and maintain such other insurance as Landlord may from time to time reasonably require, provided that such insurance is generally required of or maintained by tenants and operators of properties similar to the Coliseum, and is available at commercially reasonable rates; and

(h) Tenant shall only be required to keep in effect insurance for "certified acts of terrorism" if same is generally being maintained for the majority of similarly sized major league sports arenas in the suburbs of New York, New Jersey, Connecticut and Massachusetts metropolitan areas, and is available at commercially reasonable rates, and in such event, only for the Coliseum.

(i) keep in effect commercial property insurance, on an All Risk of Loss, Agreed Amount, Fully-Insured Replacement Cost Basis, on the Alterations and on all personal property in and about the Coliseum used in connection therewith, including without limitation, Tenant's improvements, decorations, fixtures, furniture and other contents (collectively, "**Tenant's Improvements**") as may be necessary to restore the Tenant's Improvements to a condition so that they may be operated as they had been operated immediately prior to any casualty. Replacement shall mean new for old without deduction for depreciation.

(j) — liquor liability coverage for all events where alcoholic beverages are served in an amount not less than Five Million Dollars (\$5,000,000). At Tenant's option, this coverage may be provided if available, as an express endorsement of the commercial general liability policy or an excess or umbrella liability insurance policy.

20.2 Tenant's casualty insurance policies shall be for a term of not less than one (1) year and shall provide a waiver of all right of subrogation against Landlord with respect to losses payable under such policies. Tenant's casualty insurance policies for the Coliseum Improvements shall also provide:

(a) that such policies shall not be invalidated nor shall coverage be disclaimed should the insured waive, prior to a loss, any or all right of recovery against any party for losses covered by such policies, or by reason of any act or neglect by the primary insured party; and

(b) that losses, if any, shall be payable to Landlord; and

(c) that such policies shall not be modified, cancelled or not renewed without at least thirty (30) days Notice to Landlord.

20.3 All insurance required by this Article 20 shall (a) be effected under valid and enforceable policies issued by insurers of recognized responsibility, licensed to do and doing business in the State of New York, having an A.M. Best rating of A- or better and a financial size of at least IX or a comparable rating by another national rating organization if A.M. Best is no longer in existence, (b) provide a waiver of all right of subrogation against Landlord with respect to losses payable under such policies, (c) such coverage for the Coliseum Improvements as Landlord may reasonably require, and (d) shall name Landlord, its successors and/or assigns, as named additional insureds, as their interests may appear. Before Tenant takes possession of the Premises (and thereafter not less than thirty (30) days prior to the expiration date of any expiring policies theretofore furnished pursuant to this Article 20) originals or certificates of such insurance, together with copies of such insurance policies with the requisite endorsements, shall be delivered by Tenant to Landlord. Tenant shall also furnish to Landlord from time to time upon Landlord's request, a certificate signed by an executive officer or managing partner of Tenant or a certificate of insurance certified by Tenant's insurance carriers containing a statement of insurance effected by Tenant pursuant to this Lease and then in force and evidence that the premiums thereon have been paid.

## ~~21. FIRE AND OTHER CASUALTY~~

21.1 If the Premises shall be partially or totally damaged or destroyed by fire or other casualty, Tenant shall notify Landlord in writing and, whether or not resulting from the fault or neglect of Tenant, or its servants, employees, agents, visitors or licensees, Landlord, unless Section 21.2 applies, at its own cost, but only to the extent of the proceeds of all fire and casualty insurance policies effected and paid for by or on behalf of Tenant ("**Insurance Proceeds**") with respect to the Coliseum Improvements actually made available to Landlord for such purposes, shall promptly take all steps, including without limitation making necessary temporary repairs to prevent injury to persons and to render the Premises safe pending adjustment of the insurance loss, if any, and completion of all repairs and restorations as contemplated by this Article 21. Subject to the provisions of Section 21.2, Landlord shall promptly following such damage or destruction, commence to and diligently proceed to repair the damage and restore, replace, and rebuild the Coliseum Improvements at least to the extent of the value and as nearly as possible to the character thereof prior to such damage ("**Casualty Repairs**"). In no event shall Tenant be obligated to repair, replace or rebuild the Coliseum Improvements as a result of a fire or other casualty; provided, however, that Tenant shall restore the Tenant's Improvements in accordance with the terms of this Lease.

21.2 Notwithstanding the foregoing, in the event of a fire or other casualty affecting the Premises, for which the net amount of such Insurance Proceeds available to Landlord for such purposes shall be insufficient to complete the Casualty Repairs, Landlord may, at its option, elect not to perform the Casualty Repairs by Notice to such effect given to Tenant within ninety (90) days of the adjustment of the insurance with regard to the casualty in issue, in which event this Lease shall terminate and expire effective as of the date of the giving of such Notice as if such date were the date otherwise scheduled for the expiration of this Lease unless Tenant shall within five (5) Business Days of receipt of such Notice deposit with Landlord an

amount equal to the difference between the amount of such Insurance Proceeds available to Landlord to perform the Casualty Repairs and the actual cost to perform the same. If Landlord shall not elect to terminate this Lease, then Landlord shall promptly perform the Casualty Repairs without regard to the sufficiency of the insurance proceeds. This Lease shall continue as to the affected Premises and Tenant's obligation to pay Annual Rent and Additional Rent shall be unaffected by such casualty. Additionally, if at the time of the fire or other casualty, there shall be less than two (2) Lease Years remaining before the expiration of this Lease, and if more than twenty percent (20%) of the Premises shall have been damaged, then by Notice given by Landlord or Tenant to the other within ninety (90) days of such casualty, either Landlord or Tenant may elect to terminate this Lease effective as of the date of the giving of said Notice, in which event this Lease shall expire and terminate effective as of such date as if such date were the date otherwise scheduled for the expiration of this Lease. In the event of a termination of this Lease under this ~~Section 21.2~~, the Insurance Proceeds shall be paid over to the Landlord to be applied to the Casualty Repairs or, if the Landlord elects not to perform the Casualty Repairs, to pay to the trustee for the holders of the Bonds the amount required for redemption of the Bonds and thereafter any excess, in either such case, shall be paid to Tenant.

21.3 The Casualty Repairs shall be performed in full compliance with the terms of this Lease.

~~21.4 The Insurance Proceeds with respect to the Coliseum Improvements shall be paid in accordance with this Section 21.4. In the case of a casualty or series of casualties resulting in payment of Insurance Proceeds less than Five Million (\$5,000,000.00) Dollars, the Insurance Proceeds shall be paid to Landlord and applied by Landlord in accordance with the terms of this Article 21. In the case of a casualty or series of casualties resulting in the payment of Insurance Proceeds in excess of the sum of Five Million (\$5,000,000.00) Dollars, the Insurance Proceeds shall be paid by the insurers to the Trustee and shall be held in an interest bearing account acceptable to Landlord and Tenant. All interest or other income received by the Trustee shall be considered Insurance Proceeds for the purpose of this Section 21.4. All Insurance Proceeds in the hands of the Trustee shall be applied by the Trustee to the payment of the cost of the Casualty Repairs except as otherwise set forth in Section 21.2, and may be withdrawn from time to time as the Casualty Repairs progress upon the written request of Landlord, a copy of which written request together with counterpart original accompanying certificates and documents shall be given to Tenant, which certificates shall provide the following:~~

(A) a certificate signed by the architect, project manager or engineer, as applicable, in charge of the Casualty Repairs dated not more than thirty (30) days prior to such request, setting forth:

(i) the amount requested on AIA form G702 (the "Payment Certificate"), and stating that no part of such expenditures has been or is being made the basis for the withdrawal of any Insurance Proceeds in any previous or then pending request;

(ii) that except for the amount, if any, stated in the Payment Certificate to be due for services or materials, there is no outstanding indebtedness known to such architect, engineer or project manager, after due inquiry, which is then due for labor, wages, materials, supplies or other services in connection with the Casualty Repairs;

(iii) the extent, if any, to which the cost, as estimated by such architect or engineer, of the Casualty Repairs required to be done subsequent to the date of the Payment Certificate in order to complete same exceeds the Insurance Proceeds remaining in the hands of the Trustee after withdrawal of the sum requested in the Payment Certificates;

(iv) that, if applicable, the architect has examined the applicable casualty repair plans and the Casualty Repairs and the Casualty Repairs, to the extent then completed, have been made in accordance with such casualty repair plans;

(v) that the sum requested in the Payment Certificate, when added to all sums previously paid out under this Section 21.4 for the Casualty Repairs does not, in the reasonable opinion of such architect, engineer or project manager, exceed the cost of the labor and services rendered and fixtures, equipment and material installed or supplied in connection with the Casualty Repairs completed to the date of such certificate.

(b) ~~Upon compliance with the foregoing provisions, Trustee shall, out of the Insurance Proceeds, pay to the persons named in the Payment Certificate, the respective amounts stated in the Payment Certificate to be due to them, and shall pay to Landlord the amounts stated in the Payment Certificate to have been paid by Landlord. Upon the completion of the Casualty Repairs and payment in full thereof, any balance of Insurance Proceeds remaining in the hands of the Trustee shall be paid to Tenant not later than fifteen (15) days following receipt by the Trustee and Tenant of a request therefor signed by Landlord and Tenant.~~

21.5 Insofar as a new certificate of occupancy may be necessary, Landlord shall obtain and deliver to Tenant a temporary or final certificate of occupancy before the Premises shall be reoccupied for any purpose (which shall be a permitted use of the Insurance Proceeds).

21.6 The provisions of this Article 21 shall be deemed an express agreement governing any case of damage or destruction of the Premises by fire or other casualty, and Section 227 of the Real Property Law of the State of New York, providing for such a contingency in the absence of an express agreement, and any other laws of like import, now or

hereafter in force, shall have no application in such case and are hereby waived by the parties hereto.

21.7 This Lease shall neither terminate or be forfeited by reason of damage to, or total, substantial or partial destruction of, the Coliseum Improvements, or by reason of the untenability of the Premises or any part thereof, nor for any reason or cause whatsoever, except pursuant to the express provisions of this Lease, nor shall there be any resulting abatement of the Annual Rent and Additional Rent and other charges payable by Tenant to Landlord.

## 22. CONDEMNATION

22.1 If at any time during the Lease Term there is a Taking of all or substantially all of the Premises or this Lease, this Lease and the Lease Term shall terminate and expire on the date that title to the Premises vests in the condemning authority (the "**Taking Date**"). The Annual Rent and Additional Rent shall be apportioned as of the date of such termination. "**Taking**" as used in this Lease shall mean a taking, including, if applicable, an Impairment Taking, for any public or quasi-public use or purpose by any competent lawful power or authority by the exercise of the right of condemnation or eminent domain, or by agreement between Landlord, Tenant and those authorized to exercise such right.

22.2 If during the Lease Term, less than all of the Premises or this Lease shall be taken in any condemnation or eminent domain proceeding and such taking would have a material adverse effect on the operations of the Coliseum, the Coliseum Improvements, or the Coliseum Revenues then Tenant shall have a right, by Notice given to the other party no later than thirty (30) days after the Taking Date, to terminate this Lease, in which event the Lease shall terminate as of the date set forth in such Notice and the parties shall thereafter have no further obligation or liability under this Lease other than for such obligations as are intended to survive the expiration or termination of this Lease. In the event that Tenant does not exercise its option to terminate, this Lease shall continue in full force and effect (except as to the portion of the Premises so taken as of the date of such taking) and Tenant shall continue to perform and observe all of the terms, covenants and conditions of this Lease on its part to be performed and observed with respect to the remaining Premises as though such taking had not occurred, and the Annual Rent or Additional Rent shall be reduced by a percentage equal to the ratio that the value of the portion of the Premises, as applicable, which is subject to the Taking bears to the value of the whole of the Premises, as applicable, prior to the Taking. In any such event, Landlord shall, at Tenant's sole cost and expense, without regard to any Award (as defined below), immediately take all steps, including without limitation making temporary repairs necessary to prevent injuries to persons, to protect the Premises and render the Premises safe in compliance with Legal Requirements and Insurance Requirements.

22.3 Upon a Taking of all or a portion of the Premises or this Lease, the rights of Landlord and Tenant in and to the condemnation award or compensation, the proceeds of any such sale, all damages (including, without limitation, impairment damages) accruing by reason of such taking, condemnation or eminent domain and interest thereon (collectively, the "**Award**"), shall be paid in the following order of priority made for such Taking, whether paid by damages, rent or otherwise:

(a) if such Taking does not result in the termination of this Lease, then Landlord shall restore with reasonable diligence the Coliseum Improvements to as nearly as practicable the same condition as it was prior to such Taking (or if not so practicable to as complete an architectural unit suitable for the intended use of the Coliseum Improvements as a facility suitable for professional ice hockey games as is then possible under the circumstances), but only to the extent that the entire Award (or that portion shall be necessary) shall cover the cost of such restoration and the balance of the Award, if any, shall be shared as between Landlord and Tenant based upon the ratio that the value of Tenant's leasehold estate in the affected portion of the Premises bears to the value of Landlord's estate as encumbered by this Lease in the affected portion of the Premises; and

(b) ~~if this Lease is terminated as the result of such Taking, then the entire Award (or that portion of the Award as shall be necessary) shall be paid over to the Landlord to pay the trustee for the holders of the Bonds the amount required for the redemption of the Bonds, and the balance of the Award, if any, shall be shared between Landlord and Tenant in the same manner as provided for in Section 22.3(a).~~

22.4 If, at any time during the Lease Term, a Taking shall be for the temporary use of all or any part of the Premises or this Lease, except as set forth herein the Lease Term ~~shall not be affected in any way and Tenant shall continue to pay the Annual Rent and Additional Rent herein provided to be paid by Tenant, except as hereinafter provided in this Section 22.4,~~ Tenant shall be entitled to receive the entire amount of any Award or payment made for such Taking, whether paid by damages, rent or otherwise. If such taking is for a period extending beyond the Lease Term and if any award or payment made for such use is made in a lump sum, such award or payment shall be apportioned between Landlord and Tenant as of the date of expiration of the Lease Term after deduction for any restoration related expenses incurred by Tenant. If possession of the Premises shall revert to Landlord after expiration of the Lease Term, any portion of the Award attributable to restoration related expenses shall be paid to Landlord. In the event that the portion of such award which is to compensate for restoration-related expenses is not specified, and the parties are unable to agree upon the amount of such portion within thirty (30) days after possession of the Premises reverts to Tenant or Landlord, as the case may be, the dispute shall be submitted to arbitration in accordance with Article 39 hereof.

### 23. ASSIGNMENT AND SUBLETTING

23.1 General Prohibition. Except as set forth herein, without prior written consent of Landlord, which consent may be withheld in Landlord's sole and absolute discretion, neither Tenant nor Tenant's successors in interest, by operation of law or otherwise, shall have the right, power or authority to sell, assign, hypothecate or in any manner transfer this Lease in whole or in part or sublet all or any part of the Premises at any time. If at any time Tenant or any person or entity directly or indirectly Controlling Tenant, shall be a corporation or partnership, any transfer of voting stock or partnership or membership interest resulting in the person or entity who shall have Controlled such corporation or the partnership or limited liability company as the case may be, immediately before such transfer, ceasing to Control such corporation, partnership or limited liability company, as the case may be, except as the result of transfers by

inheritance, shall be deemed to be an assignment of this Lease. Notwithstanding anything in this Lease to the contrary, in no event may Tenant assign this Lease or enter into a sublease affecting all or any portion of the Premises to a Prohibited Person or for a Prohibited Use.

### 23.2 Assignments.

(a) Submissions. At any time after the completion of two (2) full seasons of play (a full season of play shall be that period of time commencing with the first preseason game, wherever played, and concluding with the last game played during the regular season or, if applicable, the playoffs, wherever played), following the Lease Term Commencement Date (but not prior thereto), if Tenant shall desire to assign this Lease, other than an assignment expressly permitted under Section 23.2(b) hereof, Tenant shall give Notice thereof to Landlord requesting Landlord's consent thereto, which Notice shall be accompanied by a photocopy of the proposed assignment and assumption agreement, the effective or commencement date of which shall be at least thirty (30) days after giving of such Notice, a statement setting forth in reasonable detail the identity of the proposed assignee and current financial information with respect to the proposed assignee, including, without limitation, its most recent financial reports, and such other information as Landlord may reasonably request. Provided no Event of Default nor any other uncured monetary default with respect to which Notice has been given to Tenant or ~~any uncured non-monetary default of which Notice has been given to Tenant (unless~~ Tenant is diligently pursuing the cure of such non-monetary default) exists hereunder at the time of any proposed assignment, Landlord shall not unreasonably withhold, condition or delay its consent to such request. In making such a determination, and without limiting the generality of the foregoing, Landlord shall consider (i) the financial strength of the proposed assignee relative to the Tenant's obligations under this Lease and (ii) the experience of the proposed assignee in operating similar facilities or the proposed assignee's agreement to hire an experienced operator with the requisite experience to operate the Coliseum. Notwithstanding the foregoing, no such assignment may be made to a Prohibited Person. ~~Any assignment shall be subject to this Lease. No transfer of Tenant's interest herein (except a subletting as herein permitted), by operation of law, foreclosure or otherwise, shall be valid unless the party or parties claiming to be such transferees shall first execute and deliver to Landlord, a duplicate original of the instrument of transfer and assumption of this Lease in the manner and to the extent required herein. For the purpose of this Lease, it is agreed that a Sale of the Islanders that occurs prior to the completion of two (2) full seasons of play (as defined above) shall be deemed an assignment of this Lease in violation of the provisions of Section 23.1 and this Section 23.2 of this Lease.~~

(b) Certain Permitted Assignments. Notwithstanding the foregoing, without the consent of Landlord (but upon not less than ten (10) days prior Notice to Landlord), Tenant shall have the right to sell, assign or otherwise transfer all of its interest in this Lease and/or interests in Tenant, provided that Charles Wang or an entity controlled by Charles Wang, as long as he is alive and competent, or if he is not, controlled by his spouse or non-minor direct descendants, as the case may be, will, after giving effect to ~~such transfer, still be in Control of the Tenant under this Lease and further provided that~~ no Prohibited Person shall have any interest in the assignee of this Lease. Any such

permitted assignment shall not be effective until the Assignee shall have executed and delivered to Landlord an assumption of this Lease being assigned in form and substance satisfactory to Landlord.

### 23.3 Subletting Permitted.

(a) Notwithstanding anything herein to the contrary, all agreements permitted in this Section 23.3 shall at all times be pursuant to arms-length transactions with parties who are not Prohibited Persons and shall be restricted to Coliseum Uses, specifically excluding all Prohibited Uses. Subject to the foregoing requirements and conditions, Tenant may sublet portions of the Premises including, without limitation, the Coliseum, for a term or terms expiring prior to the expiration of the Lease Term (and any sub-sublettings on such terms shall also be permitted) and on such terms as shall be determined by Tenant in its sole discretion, provided (x) such subleases are by their terms specifically made subject and subordinate to this Lease and any renewals, modifications or extensions of this Lease, and (y) such subleases shall provide that in the event of termination, re-entry or dispossession by Landlord under this Lease, Landlord may, at its option, take over all of the right, title and interest of Tenant, as sublessor, under such sublease, and such subtenant shall, at Landlord's option, attorn to Landlord pursuant to the then executory provisions of such sublease, except that Landlord shall not (1) be liable for any previous act or omission of Tenant under such sublease or breach of any representation or warranty of Tenant under such sublease; (2) be subject to any offset or defense which theretofore accrued to such subtenant against Tenant, (3) be bound by any prepayment of more than one (1) month's rent or additional charges or for any security or other lease deposits unless actually received by Landlord, (4) assume any of Tenant's liabilities under indemnification or hold harmless agreements in the sublease, or (5) be liable to the subtenant beyond Landlord's interest in the Premises. Tenant shall give Landlord a copy of all subleases within twenty (20) days following the execution thereof. If at any time during the Lease Term, Tenant has applied for financial assistance from the Nassau County Industrial Development Agency or the Town of Hempstead Industrial Development Agency or any other similar agency (collectively the "IDA"), then notwithstanding any of the other provisions of this Article 23, to the extent permitted to do so by the applicable IDA, the parties agree that this Agreement may be assigned by Tenant or the Tenant may sublet the Premises and any improvements thereon in whole or in part to the IDA, and upon such assignment or sublease to the IDA, a sublease or assignment, as applicable, may be entered into between the IDA and Tenant subleasing the Premises (or portion of the Premises) and any improvements thereon to Tenant on terms and conditions identical to the terms and conditions of this Lease, provided, however, that any such assignment or sublease(s) shall not relieve Tenant from any of its liabilities or obligations hereunder and the IDA shall not, in any event, be liable under this Lease.

(b) Tenant, with commercially reasonable practices, shall enforce the provisions of each sublease, so that each subtenant at all times remains in compliance with the Lease and permit no acts or omissions that adversely affects any structural component. If the breach of a sublease by the subtenant thereunder constitutes a material violation of this Lease in respect of structural components, Tenant shall promptly

commence and diligently prosecute any and all appropriate legal proceedings necessary to cause such subtenant to cure such breach.

23.4 Leasehold Mortgages Not Permitted. Tenant may not enter into leasehold mortgages except in connection with the receipt of Benefits; provided, however, that any such permitted leasehold mortgage shall be subject to the prior approval of Landlord, as to both form and content, which approval shall not be unreasonably denied, withheld, delayed or conditioned.

23.5 Joint and Several Liability of Assignees. If this Lease shall be assigned to more than one individual or entity, all the individuals or entity shall assume the obligations of this Lease and shall be jointly and severally liable for such obligations hereunder.

23.6 No Waiver. Landlord's consent to any assignment, mortgage, transfer or sublease shall neither constitute a waiver by Landlord of the provisions of this Article 23 or a consent to any subsequent assignment, mortgage, transfer or sublease, nor relieve Tenant, any subtenant or assignee or Tenant from obtaining the written consent of Landlord to any subsequent assignment, mortgage, transfer or subletting, or relieve Tenant of liability for the full performance of the covenants of this Lease on Tenant's part to be performed.

23.7 Landlord Right to Collect Rent. If this Lease is assigned, Landlord may and is hereby empowered to collect rent from the assignee. ~~If the Premises or any part thereof is~~ sublet or occupied by any person or corporation other than Tenant, Landlord, if an Event of Default by Tenant exists hereunder, may, and is hereby empowered to, collect rent from the subtenant or occupant during the continuance of any such Event of Default. In either of such events, Landlord may apply the net amount received by it to the Annual Rent and Additional Rent herein reserved, and no such collection shall be deemed a waiver of any applicable restriction herein against assignment, or transfer of this Lease, or constitute the acceptance of the subtenant or occupant as tenant, or a release of Tenant from the further performance or observance of the covenants herein contained on the part of Tenant to be performed or observed.

~~23.8~~ Continued Liability of Tenant; Certain Exceptions. Any person who shall ~~within the restrictions of this Article 23~~ become vested with the leasehold interest hereunder shall be bound by and liable upon all covenants and provisions contained in this Lease, whether of the nature of covenants ordinarily running with land or not, but neither the original Tenant, nor any subsequent Tenant whose interest is assigned or divested, shall be relieved of liability hereunder other than by an express release from liability executed in writing by Landlord. Tenant shall remain jointly and severally liable with such assignee for the performance of all agreements of Tenant hereunder. Tenant further agrees that Landlord, in the exercise of its rights hereunder, may proceed against Tenant, separately or jointly, before, after or simultaneously with any proceeding against any successors and/or assigns of tenant, and Landlord, without in any way impairing or modifying Tenant's obligations hereunder, may at Landlord's option have the right to send Notices and deal with such successors and assigns alone in all matters pertaining in any way to this Lease notwithstanding anything in this Lease to the contrary provided. The liability of Tenant for Tenant's obligations under this Lease shall not be discharged, released or impaired by any agreement or stipulation made by Landlord extending the time of, or modifying any of the obligations of, this Lease, or by any waiver or failure of Landlord to enforce any of the obligations of this Lease.

23.9 Bankruptcy Assignment Provisions. Without limiting any of the provisions of Article 24 hereof, if pursuant to the Bankruptcy Code (or any similar law hereafter enacted having the same general purpose), Tenant is permitted to assign this Lease notwithstanding the restrictions contained in this Lease, adequate assurance of future performance by an assignee expressly permitted under such Code shall be deemed to mean the deposit of cash security in an amount equal to the sum of one (1) year's Annual Rent plus an amount equal to the Additional Rent for the year preceding the year in which such assignment is intended to become effective, which deposit shall be held by Landlord for the balance of the Lease Term, without interest, as security for the full performance of any of Tenant's obligations under this Lease. If there exists an Event of Default by Tenant hereunder, Landlord may use, apply or retain the whole or any other sums as to which Tenant is in default or any sum which Landlord may expend or may be required to expend by reason of Tenant's default in respect of any of Tenant's obligations under this Lease, including, without limitation, any damages or deficiency in the reletting of the Premises, whether such damages or deficiency accrue before or after summary proceedings or other re-entry by Landlord.

23.10 Concession Agreements. Notwithstanding anything herein to the contrary, all Concession Agreements (as hereinafter defined) permitted in this Section 23.10 shall at all times (a) be pursuant to arms-length transactions with parties who are not Prohibited Persons, (b) be for the purpose of concession sales only, and (c) shall specifically be for Coliseum Uses. ~~Subject to the foregoing requirements and conditions, Tenant shall have the right, without Notice~~ to, or the consent of, Landlord to grant any and all such licenses, concessions and franchises to any party and to enter into any agreements or contracts with regard to the same (but not sublets except in accordance with the provisions of Section 23.3 of this Lease (collectively, the "Concession Agreements"), provided, however, any and all Concession Agreements shall be subject and subordinate to this Lease, shall have a term that expires prior to the expiration of the Lease Term. Tenant shall give Landlord a copy of all Concession Agreements within twenty (20) days following the execution thereof.

#### 24. EVENT OF DEFAULT AND CERTAIN REMEDIES OF LANDLORD

24.1 Each of the following events shall be an "Event of Default" hereunder by Tenant:

(a) (i) Tenant, while in possession of the Premises, shall file a voluntary petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state or shall voluntarily take advantage of any such law or act by answer or otherwise or shall be dissolved or shall make an assignment for the benefit of creditors or (ii) involuntary proceedings under any such bankruptcy law or insolvency act shall be instituted against Tenant and such proceedings are not stayed or dismissed within one hundred twenty (120) days after the date of the filing of the petition, and in each instance, Tenant, or a trustee or custodian appointed for all or a substantial portion of Tenant's property pursuant to the provisions of any insolvency, bankruptcy, reorganization or other law then in effect, shall fail within the time provided by law or an order of a court having competent jurisdiction, to provide Landlord with adequate protection as that term is currently used in 11 U.S.C. 361, and specifically the "indubitable equivalent" of

Landlord's interest in the Premises as currently provided in 11 U.S.C. 361(3). If a petition shall be filed by or against Tenant in any bankruptcy, reorganization, composition, arrangement or insolvency proceeding pursuant to the provisions of the present Bankruptcy Code or any subsequent Act similar thereto or amending same, demand shall be deemed automatically made for relief from the imposition of the automatic stay presently imposed by 11 U.S.C. 362 or such later or similar section or provision as shall be in effect imposing said stay. This provision shall be deemed the request of Landlord for a hearing to be held with regard to the modification, termination or lifting of said stay and shall be deemed effective as of the date of filing of said petition or by or against Tenant.

(b) If Tenant shall fail to pay Landlord any Annual Rent or Additional Rent reserved herein as and when the same shall become due and payable and such failure continues for fifteen (15) days after Notice from Landlord to Tenant thereof stating that failure of Tenant to cure the failure within such period shall allow Landlord to terminate the Lease and/or exercise other Landlord remedies.

(c) If Tenant shall fail to maintain the insurance required under Section 11.6(b) or Article 20.

(d) ~~If Tenant assigns this Lease or subleases the Premises in violation of Section 23.2 hereof and such default shall continue for a period of twenty (20) days after Notice.~~

(e) If Tenant shall fail to substantially perform or comply with any of the other material agreements, terms, covenants or conditions hereof on Tenant's part to be performed, and such non-performance or non compliance shall continue for a period of thirty (30) days after Notice thereof or, if specific Sections of this Lease provide for a different time period within which Tenant must perform or comply with its obligations hereunder, such failure continues for such specified period or, if such performance cannot reasonably be had within such thirty day or such specified period, ~~Tenant shall not in good faith have commenced such performance within such thirty day period or such specified period and shall not diligently proceed therewith to completion and in each instance.~~

24.2 In the event of any such Event of Default:

(a) Landlord shall have the right to terminate this Lease, and all of Tenant's right, title and interest hereunder, by giving Tenant thirty (30) days Notice of termination (which Notice shall not in any way be deemed to be a grant or extension of any grace period), and this Lease and the Lease Term and estate, of Tenant hereunder, shall expire on the date fixed in such Notice of termination, except as to Tenant's liability, as if the date of termination fixed in the Notice of termination were the end of the Lease Term;

(b) If this Lease shall be terminated as provided in Section 24.2(a) hereof, all of the right, title, estate and interest of Tenant (a) in and to the Premises,

including without limitation any Alterations thereto, (b) in and to all rents, income, receipts, revenues, issues and profits issuing from the Premises or any part thereof, then accrued, (c) in and to all insurance policies and all Insurance Proceeds, (d) condemnation Award(s), and (e) in the then entire undisbursed balance of any funds held by Landlord or the Trustee, for the purposes of Casualty Repairs or restorations shall automatically pass to and vest in and belong to Landlord without further action on the part of any party free of any claim thereto by Tenant;

(c) Landlord at its option may, but shall not be obligated to, make any payment required of Tenant or comply with any agreement, term, covenant or condition, required hereby to be performed by Tenant. Subject to the rights of subtenants, Landlord may enter the Premises for the purpose of correcting or remedying any such Event of Default by Tenant provided that Landlord shall use reasonable efforts to minimize interference with the operation of the Premises and any interference with other permitted occupants. Such performance by Landlord shall not be deemed to waive or release Tenant's default or the right of Landlord to take any action provided herein in the case of such default, and any cost, expense or expenditure incurred by Landlord in connection therewith together with interest thereon at the Interest Rate shall be deemed Additional Rent, payable on demand; and

~~(d) If this Lease is cancelled or terminated either by operation of law, by issuance of a dispossessory warrant, by service of a Notice of cancellation or termination as herein provided or otherwise, or if an Event of Default shall occur, then and in such event Landlord may re-enter and repossess the Premises, using such force for that purpose as may be necessary without being liable to prosecution therefor. The word "re-enter" as used herein is not restricted to its technical legal meaning. If Landlord shall so re-enter, Landlord may repair and alter the Premises in such manner as to Landlord may seem necessary or advisable, and let or relet the Premises or any parts thereof for the whole or any part of the remainder of the Lease Term or for a longer period, in Landlord's name or as the agent of Tenant, and Tenant nevertheless shall remain liable to Landlord for the payment of Rent, reduced by the amounts, if any, received by Landlord from reletting the Premises (net of actual out-of-pocket third party costs and reletting expenses incurred by Landlord) during what would have been the balance of the Lease Term had this Lease and the Lease Term not been terminated due to Tenant's default. Such Rent, if any, shall be payable in equal monthly installments in advance during the period which would have been the balance of the Lease Term but for termination due to Tenant's Event of Default. Landlord shall have no obligation to mitigate its damages in the event of a default by Tenant hereunder; and~~

24.3 Tenant hereby expressly waives service of any Notice of intention to re-enter upon an Event of Default. From and during the continuance of an Event of Default, Tenant hereby waives any and all rights to recover or regain possession of the Premises or to reinstate or to redeem this Lease or other right of redemption as permitted or provided by any statute, law or decision now or hereafter in force and effect.

~~24.4 Should any sums collected by Landlord after the payments referred to in Section 24.2 hereof be insufficient to fully pay to Landlord a sum equal to all Annual Rent and~~

Additional Rent reserved herein after an Event of Default, the balance or deficiency for each month shall be paid by Tenant to Landlord on the first day of the next succeeding month, and Tenant shall be and remain liable for any such deficiency, and Landlord shall be entitled to retain any surplus. Tenant hereby expressly waives any defense that might be predicated upon the issuance of a dispossessory warrant or other cancellation or termination of this Lease.

24.5 If Landlord shall have the right to hold Tenant liable as provided in Sections 24.2 and 24.4 hereof, Landlord shall have the option, in lieu thereof, forthwith to recover against Tenant damages for loss of the bargain and not as a penalty, in addition any other damages becoming due under this Article 24, an aggregate sum which, at the time of termination of this Lease or of recovery of possession of the Premises by Landlord, as the case may be, represents the then present worth of the excess, if any discounted at the Interest Rate, of the aggregate of the Annual Rent and Additional Rent payable by Tenant hereunder that would have accrued for the balance of the Lease Term over the then aggregate rental value of the Premises; such rental value to be computed on the basis of a Tenant paying not only a Annual Rent to Landlord for the use and occupation of Premises, but also such Additional Rent as is required to be paid by Tenant under the terms of this Lease for the balance of the Lease Term.

24.6 Suit or suits for the recovery of any deficiency or damages, or for a sum equal to any installment or installments of Annual Rent and Additional Rent reserved herein, ~~may be brought by Landlord from time to time at Landlord's election. Nothing herein contained~~ shall be deemed to require Landlord to delay any such suit or suits until the date when the Lease Term would have expired had there been no Event of Default by Tenant and no cancellation or termination of this Lease by Landlord.

24.7 Nothing in this Article 24 shall limit or prejudice the right of Landlord to prove and obtain as liquidated damages in any bankruptcy, insolvency, receivership, reorganization or dissolution proceeding an amount equal to the maximum allowed by any statute or rule of law governing such proceeding and in effect at the time when such damages are to be proved, whether or not such amount shall be greater, equal to or less than the amount of the damages referenced above.

24.8 Each and every covenant contained in this Article 24 shall be deemed separate and independent and not dependent upon other provisions of this Lease, and the performance of any such covenant shall not be considered to be rent or other payment for the use of the Premises. The damages for failure to perform the same shall be deemed in addition to and separate and independent of the damages accruing by reason of the breach of any other covenant contained in this Lease.

24.9 If an Event of Default shall be existing under this Lease, Landlord shall have the right of injunction to restrain the same and the right to invoke any remedy allowed by law or in equity, as if specific remedies, indemnity or reimbursement were not herein provided. The provision in this Lease for any remedy shall not preclude Landlord from any other remedy at law or in equity. The rights and remedies given to Landlord in this Lease are distinct, separate and cumulative, and no one of them, whether or not exercised by Landlord, shall be deemed to be in exclusion of any of the others herein or by law or equity provided.

24.10 No receipt of monies by Landlord from Tenant or any third party after the expiration, cancellation or termination hereof shall reinstate, continue or extend the Lease Term, or affect any Notice theretofore given to Tenant or operate as a waiver of the right of Landlord to enforce the payment of Annual Rent and Additional Rent reserved herein or to recover possession of the Premises by proper suit, action, proceedings or other remedy; it being agreed that, after the service of Notice to cancel or terminate this Lease as herein provided and the expiration of the time therein specified, after the commencement of any suit, action, proceedings or other remedy, or after a final order or judgment for possession of the Premises, Landlord may demand, receive and collect any monies due, or thereafter coming due, without in any manner affecting such Notice, suit, action, proceedings, order or judgment; and any and all such monies so collected shall be deemed to be payments on account of the use and occupation of the Premises, or at the election of Landlord, on account of Tenant's liability hereunder.

24.11 So long as Landlord hereunder is the County, no action or special proceeding shall lie or be prosecuted or maintained against Landlord upon any claims arising out of or in connection with this Lease unless:

(a) At least thirty (30) days prior to seeking relief, Tenant shall have presented the demand or claim(s) upon which such action or special proceeding is based by Notice to Landlord for adjustment and Landlord shall have neglected or refused to ~~make an adjustment or payment on the demand or claim for thirty (30) days after~~ presentment. Tenant shall send or deliver copies of the documents presented to Landlord under this Section to the County Attorney (at the address specified in Article 35 for Landlord) on the same day that documents are sent or delivered to Landlord. The complaint or necessary moving papers of Tenant shall allege that the above-described actions and inactions preceded Tenant's action or special proceeding against Landlord.

(b) Such action or special proceeding is commenced within the earlier of (i) one (1) year after the first to occur of (a) final payment under or the termination of this Lease, and (b) the accrual of the cause of action, and (ii) ~~the time specified in any other provision of this Lease.~~

## 25. SECURITY FOR PERFORMANCE OF TENANT'S OBLIGATIONS

25.1 As security for the performance of its obligations under this Lease, on or before the Lease Effective Date, Tenant shall execute and deliver to Landlord (a) an assignment of leases and rents in a form and content reasonably acceptable to Landlord (the "Assignment of Leases and Rents"), pursuant to which Tenant shall collaterally assign to Landlord as security for the performance of Tenant's obligations hereunder any and all subleases (including, without limitation, the Sublease) and the rents, issues and profits collectable by Tenant thereunder, and (b) a security agreement in a form and content reasonably acceptable to Landlord (the "Security Agreement"), pursuant to which Tenant shall pledge as security for the performance of Tenant's obligations arising hereunder, any and all contracts, licenses, permits and other intangible assets related to the use and operation of the Coliseum. In connection with the Assignment of Leases and Rents, the Islanders' Ownership Entity shall acknowledge (the "Islanders' Pledge Agreement") ~~the existence of the Assignment of Leases and Rents, shall agree to pay to~~ Landlord all sums due from the Islanders' Ownership Entity to Tenant, as sublandlord under the

Sublease, upon receipt of Notice from Landlord of the occurrence of an Event of Default and shall agree to perform such other covenants and obligations under the Sublease for the benefit of Landlord on demand, regardless of whether an Event of Default shall have occurred under this Lease. Such Islanders' Pledge Agreement shall also include, without limitation, the obligation of the Islanders' Ownership Entity to comply with the requirements imposed upon Tenant relating to the Islanders' Ownership Entity and/or directly on the Islanders' Ownership Entity pursuant to Sections 5.1 and 8.2 through 8.6, inclusive, and elsewhere herein, if any, and the right of Landlord to enforce the Sublease directly against the Islanders' Ownership Entity.

**26. INTENTIONALLY DELETED**

**27. SURRENDER**

27.1 Tenant shall on the last day of the Lease Term or on the sooner termination of this Lease peaceably and quietly surrender and yield up to Landlord the entire Premises including any Alterations, free and clear of all letting, subleases, occupancies, security agreements, liens or encumbrances (excepting only those which Landlord has specifically consented to remain in effect following the expiration of the Lease Term) in good order and condition, reasonable wear and tear excepted, and subject to the provisions of Sections 21 and 22 hereof.

27.2 On the last day of the Lease Term or on the date of the sooner termination of this Lease, provided no Event of Default by Tenant then exists, Tenant shall have the right to remove its movable personal property and trade fixtures provided Tenant repairs any damage to the Premises resulting from the removal of same. Any property not removed by Tenant prior to the expiration of the Lease Term shall be deemed abandoned and may be appropriated, sold, destroyed or otherwise disposed of by Landlord without Notice to Tenant and without obligation to account therefor and Tenant shall pay to Landlord upon demand all costs and actual out-of-pocket third party costs and expenses incurred by Landlord in removing, storing or disposing of same and in restoring the Premises.

27.3 -- If any subtenant of Tenant or anyone holding by, through, or under Tenant should fail to surrender possession of the Premises or any part thereof at the expiration or earlier termination of the Lease Term, the same shall constitute a "holding over" by Tenant.

27.4 Tenant agrees it shall indemnify and save Landlord harmless against all costs, claims, loss or liability resulting from delay by Tenant in surrendering the Premises upon expiration or sooner termination of the Lease Term, including, without limitation, any claims made by any succeeding tenant founded on such delay. The parties recognize and agree that the damage to Landlord resulting from any failure by Tenant timely to surrender the Premises will be substantial, will exceed the amount of monthly Annual Rent and Additional Rent theretofore payable hereunder, and will be impossible of accurate measurement. Tenant therefore agrees that if possession of the Premises is not surrendered to Landlord within two (2) days after the date of the expiration or sooner termination of the Lease Term, then Tenant will pay Landlord as liquidated damages (i) for each of the first two (2) months during which Tenant holds over in the Premises after expiration or sooner termination of the Lease Term, a sum equal to one and one-half (1 ½) times the average Annual Rent and Additional Rent which was payable per month

(prorated from the quarterly payment) under this Lease during the six (6) month period preceding such expiration or termination of the Lease Term, and (ii) and for period thereafter during which Tenant holds over in the Premises after expiration or sooner termination of the Lease Term, a sum per month equal to two and one-half (2 ½) times the average Annual Rent and Additional Rent which was payable per month (prorated from the quarterly payment) under this Lease during the six (6) month period preceding such expiration or termination of the Lease Term.

27.5 Tenant's obligations under this Article 27 shall survive the expiration or earlier termination of this Lease.

## 28. NO WAIVER

28.1 ~~One or more waivers of any covenant or condition by either party shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition, and the consent or approval by Landlord to, or of, any act by Tenant requiring Landlord's consent or approval shall not be construed to waive or render unnecessary Landlord's consent or approval to or of any subsequent similar act by Tenant. No provision of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord.~~

28.2 The receipt by Landlord of Annual Rent or Additional Rent due hereunder ~~with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such~~ breach. No receipt of money by Landlord from Tenant or a person acting on behalf of Tenant after the cancellation or termination hereof shall (a) reinstate, continue or extend the Lease Term, (b) affect any Notice theretofore given to Tenant, (c) operate as a waiver of a right of Landlord to enforce payment of Annual Rent or Additional Rent due or thereafter falling due or (d) operate as a waiver of the right of Landlord to recover possession of the Premises. Landlord may accept such money without prejudice to Landlord's right to recover the balance or pursue any other remedy in this Lease or provided at law or in equity.

28.3 ~~No payment by Tenant or receipt by Landlord of a lesser amount than the Annual Rent or Additional Rent due hereunder shall be deemed to be other than on account of the earliest stipulated Annual Rent or Additional Rent. No endorsement or statement on any check or any letter accompanying any check or payment shall be deemed an accord and satisfaction and Landlord in either instance may accept such check or payment without prejudice to Landlord's right to recover the balance of such Annual Rent or Additional Rent or pursue any other remedy in this Lease or at law or equity provided. Receipt by Landlord of Annual Rent or Additional Rent due hereunder from any third party shall be without prejudice and shall not constitute a waiver by Landlord of the provisions of Article 23 hereof or operate as a consent to any purported sale, assignment, mortgage, sublease or other transfer of this Lease, as a waiver of any breach by Tenant or as a release of Tenant from its obligations hereunder.~~

## 29. QUIET ENJOYMENT

29.1 Landlord covenants and agrees that as long as this Lease is in full force and effect, Tenant shall peaceably and quietly enjoy the Premises without disturbance by or from Landlord, subject, however, to the terms and conditions of this Lease and the Permitted Encumbrances. This covenant shall be construed as running with the Land to and against

subsequent owners of the Land and successors in interest and is not, nor shall it operate or be construed as a personal covenant by Landlord, except as to Landlord's interest in the Land so long as such interest continues. Thereafter it shall be deemed to be a covenant binding upon the successors in interest of Landlord to the extent of their interest as and when they shall acquire the same and so long as they may remain such successors in interest.

### 30. INTENTIONALLY DELETED

### 31. SHORING, EXCAVATION OF ADJOINING PROPERTY, ENCROACHMENTS

31.1 If an excavation shall be made or authorized to be made for building or other purposes, upon land or streets adjacent to the Premises, Tenant shall afford to the person or persons causing such excavation license, at their expense including reimbursement of costs reasonably incurred by Tenant, to enter upon the Premises for the purpose of doing such work as shall reasonably be necessary to protect or preserve the Premises from injury or damage and to support the same by proper shoring; provided that Tenant may impose such conditions, ground rules and security requirements as Tenant reasonably deems necessary or desirable in order to minimize interference with the occupants of and invitees from time to time at the Premises. Landlord shall not be liable for any inconvenience, annoyance, disturbance, loss of business or other damage arising therefrom and Tenant's obligations hereunder shall not thereby be affected. ~~Nothing contained in this Article 31 shall be construed as a waiver of any rights of Tenant against persons other than Landlord.~~

31.2 If any adjoining building or structure encroaches or shall at any time encroach upon the Premises, no claim or demand or objection of any kind shall be made by Tenant against Landlord by reason of any such encroachment (unless such encroachment shall have been caused or approved by Landlord without Tenant's consent) and no claim for abatement of Annual Rent or Additional Rent which may become due under this Lease shall be made by reason of any such encroachment or acts of or in connection with the removal thereof, and the rights, liabilities and obligations of the parties hereto shall be the same as if there were no such encroachment. ~~In any legal proceedings relating thereto the Premises may properly and without prejudice be described according to the description herein contained without reference to any such encroachments. Landlord agrees to cooperate with Tenant in any proceedings brought by Tenant to remove any such encroachments, provided that the same shall be without cost, liability or expense to Landlord.~~

### 32. ENVIRONMENTAL PROVISIONS

32.1 Definitions. For purposes of this Lease:

(a) "Environmental Laws" shall mean any federal, state or local statute, regulation or ordinance or any judicial or administrative decree or decision, whether now existing or hereinafter enacted, promulgated or issued, with respect to any Hazardous Materials, drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water runoff, waste emissions or wells, including, without limiting the generality of the foregoing, the following statutes, and regulations, orders, decrees, permits, licenses and deed restrictions

now or hereafter promulgated thereunder, and amendments and successors to such statutes and regulations as may be enacted and promulgated from time to time: Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §9601 et seq., as amended by the Superfund Amendments and Reauthorization Act; the Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq.; the New York State Environmental Conservation Law, Chapter 43B, Consolidated Laws of New York ("ECL"), the New York State Navigation Law, Article 12, §170-204, Oil Spill Prevention, Control and Compensation ("NYSNL"); the Hazardous Material Transportation Act, 42 U.S.C. §1801 et seq., the Federal Water Pollution Control Act, 33 U.S.C. §1251 et seq., the Toxic Substances Control Act, 15 U.S.C. §2601 et seq., the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq., the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. §11001 et seq., the Clean Air Act, 42 U.S.C. §7401 et seq., the Uranium Mill Tailings Radiation Control Act (42 U.S.C. §7901 et seq.); the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. § 136 et seq.); the Noise Control Act (42 U.S.C. § 4901 et seq.); the Safe Drinking Water Act (21 U.S.C. § 349, 42 U.S.C. § 201 and § 300f et seq.); and the National Environmental Policy Act (42 U.S.C. § 4321 et seq.); each as heretofore or hereafter amended or supplemented to the extent same apply to the Premises.

(b) "Hazardous Materials" means each and every element, ~~compound, chemical mixture, contaminant, pollutant, material, waste or other substance~~ which is defined, determined or identified as hazardous or toxic under any Environmental Law including, without limitation, mold and mycotoxins.

(c) "Release" shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, discarding, burying, abandoning, or disposing into the environment.

(d) "Environmental Authorities" means the United States, the State of New York and any political subdivision thereof, ~~including the New York State Department of Environmental Conservation ("NYDEC"), the United States Environmental Protection Agency, and any and all Governmental Authorities and the agencies, departments, commissions, boards, bureaus, bodies, councils, offices, authorities, or instrumentality of any of them, of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise) whether now or hereafter in existence having jurisdiction over Environmental Laws.~~

32.2 Tenant, on its own behalf, and on behalf of any and all persons claiming by, through or under Tenant, covenants and agrees that it shall not Release, use, generate, store, dispose, suffer, permit, produce, introduce or maintain any Hazardous Materials in or about any portion of the Premises, except in compliance with all applicable Environmental Laws. Except to the extent any of the following arise from Landlord's active negligence (which shall be deemed to exclude negligence implied by law due to the fact that Landlord is the fee owner of the Premises), willful misconduct or breach of this Lease following the Lease Term Commencement Date, Tenant further covenants and agrees to indemnify, protect and save Landlord and all other Landlord-Indemnitees harmless from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings, or actual out-of-pocket

third party costs and expenses of any kind or of any nature whatsoever incurred by Landlord or any other Landlord Indemnitee, including, without limitation, actual out-of-pocket third party reasonable attorneys' fees and costs (whether incurred in a third party action or in an action brought by Landlord or any other Landlord Indemnitee against Tenant to enforce its rights under this Section 32.2), which may at any time be imposed upon, incurred by or asserted or awarded against Landlord or any other Landlord Indemnitee arising out of or in anyway connected with any breach or violation of the foregoing representations, warranties, covenants and agreements by Tenant, all parties claiming by, through or under Tenant, and each of their respective agents, servants, employees or contractors, arising from or out of the presence of any Hazardous Materials on, in, under or affecting all or any portion of the Premises, in violation of Environmental Law, including the cost of removal of any and all such Hazardous Materials from any portion of the Premises. In connection with any matters subject to Tenant's indemnification hereunder: (1) upon Notice from Landlord or any other Landlord Indemnitee, Tenant agrees to defend any claim or demand brought, or any action, petition, or order filed, against Landlord and/or any other Landlord Indemnitee, whether any such claim or action is rightfully or wrongfully brought or filed; and Tenant shall pay all reasonable actual out-of-pocket third party costs and expenses incurred in connection with defending against such action or proceeding, and (2) Tenant shall pay, satisfy and discharge any judgments, liens, orders or decrees which may be recovered or filed against Landlord and/or any of the other Landlord Indemnities, arising out of any such claim, demand, action, petition or order.

32.3 Tenant agrees that if any Hazardous Materials shall be found within, under, upon or about the Premises, then in any such events, Tenant shall promptly initiate and thereafter diligently prosecute to completion all actions necessary to remove and or remediate all such Hazardous Materials to the extent required by all Environmental Authorities, whether or not such Hazardous Materials were present on the Premises as of the Lease Term Commencement Date. In addition, prior to commencing any work of removal, repair, restoration or any other work in connection therewith, Tenant shall submit to Landlord a schedule indicating the dates on which the various phases of all such work will be commenced and completed as well as a description of all such work to be performed.

32.4 The obligations and indemnities contained in this Article 32 shall survive the expiration or sooner termination of this Lease.

### 33. WAIVER; NO COUNTERCLAIMS

33.1 Landlord and Tenant hereby waive trial by jury in any action or proceeding on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, and Tenant's use or occupancy of the Premises. Regardless of the nature or ground of any summary proceeding or other action brought by Landlord to recover possession of the Premises, Tenant will not interpose any counterclaim of any nature whatsoever except for any counterclaims that are mandatory in nature or any counterclaims which, if not raised, would be deemed waived. Nothing herein contained shall be deemed to prohibit Tenant from bringing a separate action against Landlord on account of any claim which Tenant may have against Landlord provided, however, that Tenant shall not in the prosecution of any such claim make a motion or otherwise request any court in which such claim is sought to be asserted to join any such claim and any proceeding instituted by Landlord to

recover possession of the Premises or seek to have any such proceeding instituted by Landlord and any action or proceeding commenced by Tenant to be tried simultaneously.

### 34. ESTOPPEL CERTIFICATES

34.1 Tenant and Landlord shall at any time and from time to time, upon not less than ten business (10) days prior request by the other party, execute, acknowledge and deliver to the requesting party a written certificate certifying:

(a) that this Lease is unmodified and in full force and effect (or if there have been modifications that the same is in full force and effect as modified and stating the modifications); and

(b) the dates to which the Annual Rent and Additional Rent have been paid in advance, if any; and

(c) whether there is any Notice of existing default or Event of Default under this Lease and, if so, specifying each such default; and

(d) to the best of such party's knowledge without investigation, whether any event has occurred or failed to occur which, with the passage of time or the giving of Notice, or both, would constitute such an Event of Default and, if so, specifying each such event.

34.2 It is intended that any certificate delivered pursuant to Section 34.1 hereof may be relied upon by any prospective purchaser, subtenant, and the prospective assignees thereof.

### 35. NOTICES

35.1 Any notice or communication which either party is required to give to the other shall be in writing and given in the manner set forth herein and addressed as set forth herein (the foregoing, a "**Notice**"). Any Notice shall given by registered or certified mail, return receipt requested, or by a nationally recognized overnight courier addressed to the other at the address below set forth or to such other address as either party may from time to time direct by Notice to the other party, and such Notice shall be deemed to have been given (a) three (3) Business Days after mailed by registered or certified mail in a properly addressed, sealed and postage prepaid wrapper or (b) one (1) Business Day after delivery to a nationally recognized overnight courier:

to Landlord at:

County of Nassau  
One West Street  
Mineola, New York 11501  
Attention: County Executive

with copies to:

Nassau County Attorney's Office  
One West Street  
Mineola, New York 11501  
Attention: County Attorney

and to:

Nixon Peabody LLP  
437 Madison Avenue  
New York, New York 10022  
Attention: New York City Office Managing Partner

And to:

Rivkin Radler LLP  
926 RXR Plaza  
Uniondale, New York 11556-0926  
Attention: Managing Partner

to Tenant at:

Arenaco SPE LLC  
1600 Old Country Road  
Plainview, New York 11803  
Attention: President

with copies to:

Arenaco SPE LLC  
1600 Old Country Road  
Plainview, New York 11803  
Attention: General Counsel

### 36. BROKER

36.1 Landlord and Tenant each represent to the other that it has dealt with no broker or person, licensed or otherwise, in connection with this Lease. If any claim is made for brokerage commissions with respect to the Premises as a result of alleged acts or actions of either Landlord or Tenant, the party whose actions are alleged to have resulted in any broker's or finder's fee being due shall indemnify and hold harmless the other party, its successors and assigns, from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, proceedings, or expenses of any kind or of any nature whatsoever incurred by the indemnified party, including, without limitation, actual out-of-pocket third party reasonable

attorneys' fees and costs (whether incurred in a third party action or in an action brought by the indemnified party against the indemnifying party to enforce its rights under this Section 36.1).

36.2 The provisions of this Article 36 shall survive the termination or expiration of this Lease.

### 37. INDEMNIFICATION BY TENANT

37.1 Tenant will protect, indemnify and save Landlord Indemnitees harmless from and shall defend Landlord Indemnitees (except to the extent caused by Landlord's gross negligence, which shall be deemed to exclude negligence implied by law due to the fact that Landlord is the fee owner of the Premises, or Landlord's willful misconduct), against all liabilities, obligations, claims, damages, penalties, causes of action, actual-out-of-pocket third party costs and expenses of any kind or of any nature whatsoever imposed upon, incurred by or asserted against any Landlord Indemnitee, including, without limitation, reasonable attorneys' fees and costs (whether incurred in a third party action or in an action brought by Landlord against Tenant to enforce its rights under this Section 37.1), by reason of:

(a) ownership, operation and maintenance of the Premises or any interest therein, or receipt of any rent or other sum therefrom;

(b) any accident, injury to or death of persons or loss of or damage to property, occurring from and after the Lease Effective Date through the end of the Lease Term or thereafter while Tenant is in possession of the Premises, on or about the Premises or any part thereof or the adjoining parking areas, sidewalks, curbs, streets or ways, vaults and vault space, if any;

(c) any use, non-use or condition of or occurrence at the Premises or any part thereof or the adjoining parking areas, sidewalks, curbs, vaults and vault space, if any, streets or ways;

(d) any failure on the part of Tenant to perform or comply with any of the terms of this Lease;

(e) performance on behalf of Tenant of any labor or services or the furnishing of any materials or other property in respect of the Premises, any property abutting the Premises or intended to serve the uses to be made of the Premises or any part thereof. In case any action, suit or proceeding is brought against Tenant by reason of any such condition or occurrence, Tenant, upon Landlord's request, will at Tenant's expense resist and defend such action, suit or proceeding, or cause the same to be resisted and defended by counsel designated by Landlord and approved by Tenant;

(f) any work or thing whatsoever done, or any condition created at the Premises on Tenant's behalf from the Lease Effective Date through the expiration of the Lease; and

(g) any act, omission or negligence of Tenant or any of its subtenants or licensees, its agents, employees, officers, directors or contractors.

37.2 In case any action or proceeding is brought against Landlord or its officials, officers, agents, employees or consultants by reason of any matter contemplated by this Article 37, Tenant, upon Notice from Landlord, shall resist and defend such action or proceeding on Landlord's behalf and at the sole cost of Tenant. Tenant shall cause a contractual liability endorsement of Tenant's undertaking hereunder to be written in connection with the comprehensive general public liability insurance required to be maintained by Tenant pursuant to this Lease.

37.3 The obligation of Tenant under this Article 37 shall survive any expiration or termination of this Lease.

### 38. LIMITATION OF LIABILITY

38.1 Notwithstanding anything contained to the contrary in this Lease, whether express or implied, it is agreed that Tenant shall look only to Landlord's estate, property and interest in and to the Premises in the event of any claim against Landlord arising out of or in connection with this Lease, the relationship of Landlord and Tenant or Tenant's use of the Premises. No other property or assets of Landlord shall be subject to levy, execution or other enforcement procedures for the satisfaction of any judgment (or other judicial process) or any other remedy of Tenant arising out of or in connection with this Lease, the relationship of Landlord and Tenant and the Premises. ~~The interest in and to the Premises of Landlord under this Lease shall include, without limitation, the rents, income, receipts, revenues, issues and profits issuing from the Premises, any insurance policies required by this Lease and the Insurance Proceeds, any money or securities deposited by Tenant with Landlord, any surety or performance bonds provided by Tenant hereunder the proceeds therefrom, and any Award to which Tenant may be entitled in any condemnation proceedings or by reason of a temporary taking of the Premises, and any real estate tax refunds (collectively "Landlord's Property Interest").~~ In confirmation of the foregoing, if Tenant or anyone claiming through Tenant acquires a lien on any property or assets of Landlord other than Landlord's Property Interests, by judgment or otherwise, Tenant (or such party) shall promptly release such lien by executing, acknowledging and delivering an instrument in recordable form to that effect. ~~Such instrument of release shall not release any such lien on Landlord's Property Interest. Tenant hereby waives the right of specific performance and any other remedy allowed in equity if specific performance or such other remedy could result in any liability of Landlord for the payment of money to Tenant, or to any court or Governmental Authority (by way of fines or otherwise) for Landlord's failure or refusal to observe a judicial decree or determination, or to any third party.~~

38.2 The provisions and conditions of Section 38.1 hereof are not intended to, and shall not in any way whatsoever, affect or limit any right or remedy which any party may have against the other under any agreement, matter, claim, or thing which is extrinsic to, and does not arise out of, this Lease.

38.3 If either Tenant or Landlord shall request the other party's (a) consent, (b) execution and delivery of any document, or (c) the performance of any act, in each case which is required by the terms of this Lease, and such party shall fail or refuse to give such consent, execute and deliver such document or perform such act, the requesting party shall be

entitled to any damages (other than consequential or special damages, except in the case of Tenant under Section 27.4 of this Lease) for any such failure or refusal by the refusing party.

### 39. ARBITRATION

39.1 When arbitration is required by any express provision of this Lease, and only if arbitration is so required, any dispute, controversy or claim arising out of this Lease shall be settled by expedited mandatory arbitration as follows:

(a) With regard to all monetary disputes, regardless of whether arbitration is required pursuant to this Lease, the party that is obligated to make payment to the other party hereunder shall timely pay any and all amounts that are not in dispute. The amount in dispute, if and only if expressly required by the terms of this Lease, shall be the subject of an arbitration proceeding as set forth in this Article 39. Otherwise, such dispute shall be resolved pursuant to any and all other remedies as are provided to the parties pursuant to this Lease (including, without limitation, summary proceedings).

(b) Either party may demand arbitration by notifying the other party in writing. The Notice shall describe the reasons for such demand, the amount involved, if any, and the particular remedy sought. The Notice shall also list the name of one arbitrator qualified in accordance with Section 39.1(d).

(c) The party that has not demanded arbitration shall respond to the Notice of demand within ten (10) calendar days of receipt of such Notice by delivering a written response. The response shall list the name of a second arbitrator qualified in accordance with Section 39.1(d). The response shall also describe counterclaims, if any, the amount involved, and the particular remedy sought. If a party fails to respond timely to the Notice of demand, the arbitrator selected by the party making such demand under Section 39.1(b) shall resolve the dispute, controversy or claim within thirty (30) calendar days of the deadline for response.

(d) Any arbitrator selected in accordance with Sections 39.1(b) or (c) shall be a natural person not employed by either of the parties or any parent or affiliated partnership, corporation or other enterprise thereof, and shall be either (i) a retired federal judge who formerly served in either the Southern or Eastern Districts of the State of New York or (ii) a person possessing such other qualifications and experience as shall be reasonably acceptable to the parties.

(e) If a party responds timely to a Notice of demand for expedited arbitration under Section 39.1(c), the two arbitrators shall appoint a third arbitrator who shall be qualified in accordance with Section 39.1(d). Such third arbitrator shall be appointed within ten (10) calendar days of receipt by the party demanding arbitration of Notice of response provided for under Section 39.1(c). If the two arbitrators fail to timely appoint a third arbitrator, the third arbitrator shall be appointed by the parties if they can agree within a period of ten (10) calendar days. If the parties cannot timely agree, then either party may request the appointment of such third arbitrator by the presiding judge of the Superior Court in Nassau County; provided that neither party shall

thereafter raise any question as to the Court's full power and jurisdiction to entertain such application and to make such appointment.

(f) The arbitration hearing shall commence within thirty (30) calendar days of appointment of the third arbitrator as described in Section 39.1(e). The hearing shall in no event last longer than two (2) calendar days. There shall be no discovery or dispositive motion practice (such as motions for summary judgment or to dismiss or the like) except as may be permitted by the arbitrators; and any such discovery or dispositive motion practice permitted by the arbitrators shall not in any way conflict with the time limits contained herein. The arbitrators shall not be bound by any rules of civil procedure or evidence, but rather shall consider such writings and oral presentations as reasonable business persons would use in the conduct of their day to day affairs, and may require the parties to submit some or all of their case by written declaration or such other manner of presentation as the arbitrators may determine to be appropriate. It is the intention of the parties to limit live testimony and cross examination to the extent absolutely necessary to insure a fair hearing to the parties on significant and material issues. Venue of any arbitration hearing pursuant to this Section 39.1 shall be in Nassau County, New York.

(g) The arbitrators' decision shall be made in no event later than ten (10) calendar days after the commencement of the arbitration hearing described in Section 39.1(f). ~~The award shall be final and judgment may be entered in any court having jurisdiction thereof.~~ The arbitrators may award specific performance of this Agreement. The arbitrators may also require remedial measures as part of any award. The arbitrators in their discretion may award attorneys' fees and costs to the more prevailing party. Any monetary award in arbitration shall be enforceable in summary proceedings in a court of competent jurisdiction.

(h) Nothing herein shall excuse Tenant from its obligations to pay all Annual Rent and Additional Rent and perform all other obligations under this Lease pending the resolution of such arbitration proceeding but Tenant shall not be precluded from attempting to obtain a "Yellowstone" or similar injunction which, if granted, shall stay Tenant's obligation to perform its non-Rent obligations under this Lease pending the resolution of such arbitration proceeding.

#### 40. MECHANICS' LIENS AND OTHER LIENS

40.1 Nothing contained in this Lease shall be deemed, construed or interpreted to imply any consent or agreement on the part of Landlord to subject Landlord's interest or estate to any liability under any mechanic's or other lien law. If any mechanic's or other lien or any notice of intention to file a lien is filed against the Premises or any part thereof, for any work, labor, services or materials claimed to have been performed or furnished for or on behalf of Tenant or anyone holding any part of the Premises through or under Tenant, Tenant shall cause the same to be cancelled and discharged of record by payment, bond or order of a court of competent jurisdiction within thirty (30) days after Notice by Landlord to Tenant.

**41. LIABILITY FOR PAYMENTS**

41.1 Any liability for the payment of any money hereunder, including, without limitation, reimbursements or other sums due Landlord, Pre-Issuance Costs, Fixed Rent and Additional Rent, and any advances made by Landlord on behalf of Tenant shall survive the expiration of the Lease Term or earlier termination of this Lease.

**42. NON-MERGER**

42.1 There shall be no merger of this Lease, nor of the leasehold estate created by this Lease, with the Land by reason of the fact that this Lease or the leasehold estate created by this Lease or any interest in this Lease or any such leasehold estate may be held, directly or indirectly, by or for the account of any person or persons who shall own the Land, or any interest therein. No such merger shall occur unless and until all persons at the time having an interest in the Land and all persons having an interest in this Lease, or in the leasehold estate created by this Lease, shall join in a written instrument effecting such merger and shall duly record the same.

**43. ENTIRE AGREEMENT**

43.1 This Lease sets forth all of the agreements, conditions and understandings between Landlord and Tenant relative to the Premises, and there are no promises, agreements, conditions, understandings, warranties or representations, oral or written, expressed or implied, between them other than as herein set forth. Any agreements between Landlord and Tenant prior to the date hereof are merged herein.

**44. NO ORAL MODIFICATION**

44.1 Any agreement hereafter made shall be ineffective to change, waive, modify, discharge, terminate or effect an abandonment of this Lease in whole or in part unless such agreement is in writing and signed by the party against whom such change, waiver, modification, discharge, termination or abandonment is sought to be enforced.

**45. SUCCESSORS AND ASSIGNS**

45.1 The covenants and agreements herein contained shall be binding upon and inure to the benefit of Landlord and Tenant, and their respective successors and assigns, provided, however, that no violation of the provisions of Article 23 hereof shall operate to vest any rights in any successor or assignee of Tenant.

**46. INDEX AND PARAGRAPH HEADINGS**

46.1 The index, paragraph headings and "recital" clauses are inserted herein only for convenience, and are in no way to be construed as a part of this Lease or as a limitation in the scope of the particular paragraphs to which they refer.

**47. INVALIDITY OF PARTICULAR PROVISIONS**

47.1 If any term or provision of this Lease or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and enforced to the fullest extent permitted by law.

47.2 If any rate of interest herein provided to be paid shall exceed the maximum legal rate of interest in effect at the time such interest is payable, such interest rate shall be deemed to be reduced so that the same shall in no event exceed the then maximum legal interest rate.

**48. INTERPRETATIONS**

48.1 The terms "Landlord" and "Tenant" whenever used herein shall mean only the owner at the time of Landlord's or Tenant's interest herein, and, upon any sale or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest or assigns shall, during the term of their ownership of their respective estates herein, be deemed to be Landlord or Tenant, as the case may be. In each provision hereof requiring (a) Tenant to pay ~~Landlord's actual out-of-pocket third party costs and expenses or the like, such actual out-of-pocket~~ third party costs and expenses shall not in any event include Landlord's internal administrative costs but only Landlord's actual out-of-pocket third party expenses, and (b) Landlord to pay Tenant's actual out-of-pocket third party costs and expenses or the like, such actual out-of-pocket third party costs and expenses shall not in any event include Tenant's internal administrative costs but only Tenant's actual out-of-pocket third party costs and expenses.

**49. NO OFFER**

~~49.1 This Lease shall neither be deemed to be an offer to lease or sell all or any part of the Premises nor shall it be binding or effective for any purpose whatsoever unless and until this Lease is executed and acknowledged by Landlord and Tenant and originals thereof exchanged and delivered.~~

**50. RECORDING OF MEMORANDUM OF LEASE**

50.1 Tenant (at Tenant's sole cost and expense, including without limitation, transfer or similar taxes) may record at Tenant's option, a short form memorandum of this Lease which shall be prepared by Tenant and executed by Tenant and Landlord; provided, however, that if the Lease shall expire or terminate for any reason, Tenant (at Tenant's sole cost and expense) shall execute such documents as are required to remove such memorandum thereof of record. This Section 50.1 shall survive the earlier termination or expiration of this Lease. Landlord agrees that it shall promptly execute and deliver any documents reasonably requested by Tenant with regard to the recording or termination of this Lease or any memorandum thereof.

**51. INDEPENDENT CONTRACTOR**

51.1 Tenant is an independent contractor. Tenant shall not, nor shall any officer, director, employee, servant, agent or independent contractor of Tenant (a "**Tenant Agent**"), be (a) deemed an employee of Landlord, (b) commit Landlord to any obligation, or (c) hold itself, himself, or herself out as an employee of Landlord or person with the authority to commit Landlord to any obligation.

**52. NO ARREARS OR DEFAULT**

52.1 Tenant represents to Landlord that it is not in arrears to Landlord upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to Landlord, including any obligation to pay taxes to, or perform services for or on behalf of, Landlord.

**53. RECORDS ACCESS**

53.1 The parties acknowledge and agree that all records, information, and data ("**Information**") acquired in connection with performance or administration of this Agreement shall be used and disclosed solely for the purpose of performance and administration of the contract or as required by law. Tenant acknowledges that Tenant Information in Landlord's possession may be subject to disclosure under Section 87 of the New York State Public Officer's Law. In the event that such a request for disclosure is made, Landlord shall make reasonable efforts to notify Tenant of such request prior to disclosure of the Information so that Tenant may take such action as it deems appropriate.

**54. CONSENT TO JURISDICTION AND VENUE; GOVERNING LAW**

54.1 Unless otherwise specified in this Agreement or required by applicable Legal Requirements, exclusive original jurisdiction for all claims or actions with respect to this Lease shall be in the Supreme Court in Nassau County in New York State or the applicable federal court having jurisdiction and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Lease is intended as a contract under, and shall be governed and construed in accordance with, the laws of New York State, without regard to the conflict of laws provisions thereof other than Sections 5-1401 and 5-1402 of the New York General Obligations Law.

**55. ALL LEGAL PROVISIONS DEEMED INCLUDED; SUPREMACY; CONSTRUCTION**

55.1 To the extent possible, all the terms of this Lease should be read together as not conflicting. Each party has cooperated in the negotiation and preparation of this Agreement, so if any construction is made of the Agreement it shall not be construed against either party as drafter.

**56. ADMINISTRATIVE SERVICE CHARGE**

56.1 Tenant agrees to pay Landlord an administrative service charge of Five Hundred Thirty Three and No/100 Dollars (\$533.00) for the processing of this Agreement pursuant to Ordinance Number 74-1979, as amended by Ordinance Number 201-2001 and as further amended by Ordinance Number 128-2006. The administrative service charge shall be due and payable to the Landlord by Tenant upon signing this Agreement.

**57. EXECUTORY CLAUSE**

Notwithstanding any other provision of this Agreement:

(a) Approval and Execution. Landlord shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless this Lease has been approved by the County Legislature, the Referendum and, if required, the Office of Legislative Budget Review, the Office of Management and Budget, and NIFA and signed by the County Executive. Landlord shall notify Tenant promptly after such approval is given.

(b) Availability of Funds. Landlord shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated, extended or otherwise lawfully available for the transactions contemplated by this Agreement, and, if any portion of the funds for the transactions contemplated by this Agreement are from the state and/or federal governments, then beyond funds available to Landlord from the state and/or federal governments.

**58. TENANT'S OFFSETS AGAINST ANNUAL RENTAL**

58.1 Tenant shall receive an offset against the Annual Rent equal to (a) the County's portion of any real estate taxes imposed on the Coliseum Improvements and (b) the amount of Landlord's Capital Repair Costs Obligation for an emergency Capital Repair not reimbursed to Tenant within the timeframe required pursuant to Section 16.4 above.

**59. LANDLORD'S RESERVED RIGHTS**

59.1 Landlord reserves the right, free of rent, offset or any other charges, to use a portion of the Coliseum Improvements for the operation of one (1) Landlord's Telecommunications Antennae (including any replacement thereof). Landlord shall be entitled to select the location of Landlord's Telecommunications Antennae; provided, however, that Landlord shall make commercially reasonable efforts to place Landlord's Telecommunications Antennae in location(s) so as not to interfere with any other then existing Telecommunications Antennae or other communications devices. Once installed by Landlord, Tenant agrees that it shall not interfere with, or allow others to interfere with, Landlord's use of its Telecommunications Antennae and the communications signals sent and/or received therefrom. Landlord shall have access to Landlord's Telecommunications Antennae at all reasonable times, and at all times in the event of an emergency, for the purposes of installing, maintaining,

repairing, operating, improving, upgrading, renovating, refurbishing and/or replacing Landlord's Telecommunications Antennae.

59.2 Landlord hereby agrees to indemnify the Tenant against any and all losses, damages, liabilities, actual out-of-pocket third party costs and expenses incurred by Tenant, including, without limitation, actual out-of-pocket third party reasonable attorneys' fees and costs incurred in a third party action or in an action brought by Tenant against Landlord to enforce its rights under this Section 59.2), resulting from personal injury or property damage caused by Landlord's Telecommunications Antennae.

59.3 For so long as the Lease is in effect with respect to the Coliseum Parcel and the Coliseum is being operated for Coliseum Uses, Landlord shall be entitled to use the Coliseum for Nassau County events for up to ten (10) days per calendar year (but not more than two (2) consecutive days at any time), upon not more than one hundred twenty (120) days and not less than thirty (30) days Notice to Tenant, at no charge except that Landlord shall pay to Tenant any and all of Tenant's actual out-of-pocket third party reasonable costs and expenses in connection with Landlord's use of the Coliseum on such dates. In the event that Tenant shall reserve the Coliseum for a date designated by Landlord for Landlord's use of the Coliseum and Landlord does not use the Coliseum on such date, there shall be no charge or cost to Landlord for the first two (2) such occasions in any calendar year, and Landlord shall pay Tenant as liquidated damages the sum of ~~Twenty-Five-Thousand-and-No/100-Dollars (\$25,000)~~ (which sum shall be adjusted to reflect any increase in the CPI Index between the date hereof and the date same is payable) with respect to the third (3<sup>rd</sup>) and each subsequent occasion in any calendar year. Such payments are in consideration of Tenant's lost profits for such date(s), it being agreed that such damages would be hard to predict and such sum is a fair and reasonable amount and not a penalty. Any and all of such liquidated damages paid by or on behalf of Landlord, or for which Tenant takes an offset, as set forth in this Section 59.3 below, shall be deemed to be Coliseum Revenues. Landlord's use of the Coliseum as provided herein shall be subject to the Coliseum's availability on the desired dates, as determined by Tenant at the time Landlord's request is made. ~~Notwithstanding anything in this Lease to the contrary Landlord's rights under this Section 59.3 are personal rights granted to the County, and shall remain with the County notwithstanding any transfer of the Landlord's interest in this Lease to any successor Landlord. Tenant agrees that the County shall have the right to enforce the terms of this Section 59.3 after such time as the County is no longer the "Landlord" under the terms of this Lease.~~ Any sums due to Tenant under this paragraph and not paid by Landlord within thirty (30) days after Landlord's receipt of Tenant's invoice therefor may be taken by Tenant as an offset against the next installment(s) of Annual Rent due under this Lease.

## **60. LEASE AMENDMENT RELATING TO BOND FINANCING**

60.1 On or before the issuance of the Bonds, upon request by Landlord, Tenant shall enter into such amendments to this Lease as shall be reasonably necessary to permit Landlord to obtain the Bond financing; provided, however, that in no event shall any such amendment impose any new materially adverse obligation on Tenant or otherwise materially and adversely affect Tenant's rights pursuant to this Lease.

**61. COOPERATION REGARDING THE HUB**

61.1 Tenant shall cooperate, and shall cause the Islanders' Ownership Entity to cooperate, with the County and other parties involved in the development of other properties owned by the County in the "Hub" provided that such development will not materially and adversely affect the use and operation of the Coliseum or any other property located within the boundaries of the "Hub" owned by Tenant and/or any other entity under the Control of Tenant, Charles Wang and/or the Islanders. Such cooperation shall include, without limitation, support in public forums for all zoning changes, permits and approvals necessary for the development of such other properties and consent to any proposed easements, covenants and restrictions and rights of way affecting the Premises that are necessary and/or desirable to facilitate such development, which consent shall not be unreasonably denied, withheld, delayed or conditioned.

**62. REPRESENTATIONS AND WARRANTIES**

62.1 Landlord's Representations and Warranties. Landlord represents, warrants and covenants that the following are true as of the date hereof and shall be true as of the Lease Term Commencement Date and which shall survive the Lease Term Commencement Date:

(a) Power and Authority. Upon approval of this Lease by the County Legislature, the Referendum and, if required, the Office of Legislative Budget Review, the Office of Management and Budget, and NIFA, which approvals Landlord shall diligently pursue, (i) Landlord shall have the authority and power to enter into this Lease and to consummate the transactions provided for herein, (ii) this Lease shall constitute the legal, valid and binding obligation of Landlord enforceable against Landlord in accordance with its terms, and (iii) Landlord shall have no claims, defenses, or offsets whatsoever to the enforceability or validity of this Lease.

(b) No Conflict. The execution, delivery and performance by Landlord of its obligations under this Lease does not conflict with or result in a breach of (i) any law, governmental rule, regulation, judgment, decree or order by which Landlord is bound, or (ii) any provision of any contract to which Landlord is a party or by which Landlord is bound.

(c) Effect of Legislative Consent. Upon receipt of the approval of this Lease by the County Legislature, the Referendum and, if applicable, the Office of Legislative Budget Review, the Office of Management and Budget, and NIFA, to the extent permitted by Legal Requirements, the County Executive shall be authorized on behalf of Landlord, without the necessity of obtaining any further approval, to execute and deliver on behalf of Landlord such consents or waivers as may be requested of Landlord hereunder, modifications of this Lease, and easement and usage rights, all to the extent contemplated by the terms of this Lease, and provided that no such modification shall decrease the Annual Rent or Additional Rent or increase the land area demised hereunder.

(d) Condemnation. Landlord has not received any notice of any pending or threatened condemnation proceeding affecting the Premises or any portion thereof.

(e) Agreements and Contracts. Upon the Lease Term Commencement Date, there will be no management agreements, service contracts or other agreements affecting the Premises or the operation or maintenance thereof to which Landlord is a party.

(f) Bankruptcy Matters. Landlord has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy or suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due, or made an offer of settlement, extension or compensation to its creditors generally.

(g) Leases. Except pursuant to the SMG Lease, the Islanders Lease and the Permitted Encumbrances, Landlord has not granted any persons or entities any occupancy right in and to the Premises, which right remains in effect.

62.2 Tenant's Representations and Warranties. Tenant represents and warrants the following, which shall be true and correct as of the date of execution hereof by Tenant and as of the Commencement Date, and which shall survive the Commencement Date:

(a) Power and Authority. Tenant has the authority and power to enter into this Lease and to perform its obligations under this Lease. This Lease constitutes the legal, valid and binding obligation of Tenant enforceable against Tenant in accordance with its terms, and Tenant has no claims or defenses, personal or otherwise, or offsets whatsoever to the enforceability or validity of this Lease except as specifically set forth herein.

(b) No Conflict. The execution, delivery and performance by Tenant of its obligations under this Lease will not conflict with or result in a breach of (i) any law, governmental rule, regulation, judgment, decree or order by which Tenant is bound, or (ii) any provision of any contract to which Tenant is a party or by which Tenant is bound, or (iii) Tenant's organizational documents.

(c) Bankruptcy Matters. Tenant has not made a general assignment for the benefit of creditors, filed any voluntary petition in bankruptcy, suffered the filing of an involuntary petition by its creditors, suffered the appointment of a receiver to take possession of substantially all of its assets, suffered the attachment or other judicial seizure of substantially all of its assets, admitted its inability to pay its debts as they come due, or made an offer of settlement, extension or compensation to its creditors generally.

(d) Tenant Ownership. None of Tenant's members, managers, partners, shareholders or officers, or members, managers, partners, or shareholders or officers thereof, are Prohibited Persons, provided, however, with respect to any public

company, such representation and warranty shall be deemed to be made to the best of Tenant's knowledge.

62.3 Rule Against Perpetuities Savings Clause. This Lease shall be null and void and of no further force or effect unless the Lease Term Commencement Date occurs within the lives of those descendants of the late Joseph P. Kennedy, Sr. living on the date hereof, plus 21 years.

62.4 Consent; Approvals. Reasonable Standard. Wherever it is specifically provided in this Lease that Landlord's or Tenant's consent shall not be unreasonably withheld, Landlord or Tenant, as applicable, must be reasonable in granting its consent and a response to a request for such consent shall not be unreasonably delayed or conditioned. If a request is received in writing by Landlord or Tenant for a consent or approval required under this Lease or for information to which the party making such request shall be entitled, the party receiving such request shall act with reasonable promptness thereon and shall not unreasonably delay notifying the party making such request as to the granting or withholding of such consent or approval or furnishing to such party the information requested. Except where it is specifically provided in this Lease that Landlord's consent shall be subject to Landlord's sole discretion, whenever Landlord's consent or approval shall be required hereunder for any matter, the decision as to whether or not to consent to or approve the same shall not be unreasonably withheld, conditioned or delayed and shall be subject to the provisions of this Section 62.4.

### 63. EVENT OF FORCE MAJEURE

In the event that Landlord or Tenant shall be delayed, hindered in or prevented from the performance of any act required hereunder by reason of any Event of Force Majeure, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay; provided, however, that in the event any lawsuit or arbitration is filed that constitutes an Event of Force Majeure, then the running of the Approvals and Construction Period shall be tolled from the date of the filing of such litigation or arbitration, as the case may be, through the date that is sixty (60) days after the date that any such litigation or arbitration, as the case may be, is determined and such determination becomes Final, at which point the running of Approvals and Construction Period will re-commence. In the event of any such tolling of the Approvals and Construction Period due to litigation not between Landlord and Tenant but rather brought by third parties in an attempt to claim that the Referendum was not conducted properly, that this Lease is void and unenforceable, that the Bond financing is not proper or that the construction of the Coliseum Improvements are not permitted in accordance with Legal Requirements or any other similar claim intended to interfere with the effectiveness of this Lease, then Tenant shall contest and Landlord, to the extent legally required to do so to make the same effective, shall, at Tenant's sole cost and expense utilizing lawyers selected by the Landlord to represent Landlord, join, such action and pursue a favorable resolution of such litigation using good faith and diligent efforts. Any Event of Force Majeure shall not excuse, delay or defer, Tenant's obligations to pay all Annual Rent, Additional Rent or any other Tenant payment obligation set forth in this Lease.

64. GOVERNMENTAL OBLIGATIONS

Nothing contained in this Lease shall serve as a limitation on the rights, powers, obligations or liability the County would otherwise have with respect to the Premises in its governmental capacity (e.g., building inspector and other building department functions, public safety, planning and zoning, etc.). All references to Landlord herein shall be construed as being a reference to Landlord as the owner and lessor of the Land, and the Improvements to be constructed thereon, and shall in no event be construed as the County in its capacity as a Governmental Authority. By entering into this Lease, the County, in its governmental capacity, is not granting, issuing or approving any plan, permit, application or other matter, and nothing in this Lease shall excuse Landlord and/or Tenant, as the case may be, from obtaining all Approvals required in connection with its development of the Premises, the Alterations and the construction of Coliseum Improvements, including without limitation any required SEQRA approvals or declarations.

65. EXCLUSIVE

65.1 Until the earlier of (a) the expiration or earlier termination of this Lease and (b) such time as the Coliseum is no longer being used for the Coliseum Uses (subject to temporary discontinuances for alterations, casualty repair and other force majeure events), ~~Landlord agrees not to sell, lease or use or permit to be used any land or buildings owned by~~ Landlord anywhere else in the County as an arena containing more than 11,000 and less than 35,000 seats. Even if the County should ever cease to be Landlord, the County shall continue to be bound by the aforesaid covenant.

66. LIVING WAGE LAW.

66.1 Pursuant to LL 1-2006, as amended (the "Living Wage Law"), and to the extent that a waiver has not been obtained in accordance with such law or any rules of the County Executive, Tenant agrees as follows:

(a) ~~Tenant shall comply with the applicable requirements of the Living~~ Wage Law;

(b) Failure to comply with the Living Wage Law, may constitute a breach of Tenant's obligations under this Lease, provided, however, that pursuant to, and in accordance with, rules and regulations promulgated by the County, Tenant and Landlord agree that any failure by Tenant to comply with the Living Wage Law shall at no time grant either party a right to terminate this Lease. Tenant has the right to cure any such breach within thirty (30) days of receipt of notice of breach from the County. In the event that such breach is not timely cured, the County may exercise any other rights available to the County under applicable law, except that in no event shall County have a right to terminate this Lease, as a result thereof.

(c) Upon request of County from time to time, Tenant shall inform the County of any material changes in the content of its certification of compliance attached to this Agreement as Schedule F and shall provide to the County any information necessary to maintain the certification's accuracy.

**67. ATTORNEYS FEES.**

67.1 In any action brought by either party to enforce its rights under this Lease, the prevailing party shall be entitled to reimbursement by the other party of its out-of-pocket third party attorneys' fees and disbursements.

**68. LANDLORD'S COOPERATION**

Landlord agrees to use commercially reasonable efforts during the Lease Term to maintain the existing storm water basin that was constructed to serve the Premises.

**69. LIMITATION ON TENANT'S RIGHTS**

69.1 Any and all rights including, without limitation, any and all subleases, concession agreements, licenses, naming rights and any and all other agreements entered into by Tenant related to Tenant's rights under this Lease and/or to the Premises shall have a term that expires prior to the expiration of this Lease.

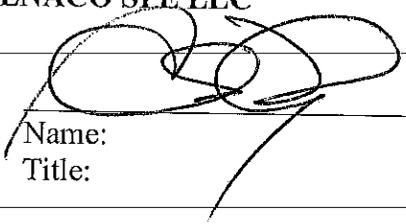
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IN WITNESS WHEREOF, the parties hereto have duly executed this Lease as of the day and year first above written.

**THE COUNTY OF NASSAU**

By: \_\_\_\_\_  
Name:  
Title:

**ARENACO SPE LLC**

By:  \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**

**DESCRIPTION OF LAND**

All that certain plot, piece or parcel of land, situate, lying and being at Uniondale, Town of Hempstead, County of Nassau and State of New York being known as lots 351 and 403 in Section 44 Block F as shown on the Nassau County Tax Map and as further described on that certain Survey by John Minto, Professional Land Surveyor, State of New York, dated April 20, 2004, as updated July 28, 2009 as follows:

ALL that certain plot or parcel of land with the buildings and improvements thereon erected, situate, lying and being in Uniondale, Town of Hempstead, Nassau County and State of New York shown and designated on the Nassau County tax map as section 44 Block F lot numbers 351 and 403. Being more particularly bounded and described as follows:

BEGINNING at the end of a line connection the northerly side of Hempstead Turnpike with the easterly side of Earl Ovington Boulevard;

THENCE along said line north 64 degrees 52 minutes 15.5 seconds west a distance of 44.67 feet to the easterly side of Earl Ovington Boulevard;

THENCE along the easterly side of Earl Ovington Boulevard and the easterly and southerly side of Charles Lindbergh Boulevard the following seven courses and distances:

1. Northerly along a curve bearing to the right having a radius of 895.00 feet a distance of 432.61 feet.
2. North 17 degrees 52 minutes 04.5 seconds East a distance of 291.66 feet.
3. Northerly along a curve bearing to the left having a radius of 1105.00 feet a distance of 427.65 feet.
4. North 04 degrees 18 minutes 23.2 seconds West a distance of 262.79 feet.
5. Northerly along a curve bearing to the right having a radius of 1720.00 feet a distance of 600.99 feet.
6. Northerly and easterly along a curve bearing to the right having a radius of 741.00 feet a distance of 747.23 feet.
7. North 73 degrees 29 minutes 27 seconds East a distance of 1126.24 feet to the intersection of the westerly side of James Doolittle Boulevard and the southerly side of Charles Lindbergh Boulevard.

THENCE along the westerly side of James Doolittle Boulevard the following two courses and distances:

1. South 17 degrees 30 minutes 22 seconds East a distance of 316.84 feet.

2. South 08 degrees 17 minutes 20 seconds East a distance of 88.78 feet.

THENCE South 72 degrees 55 minutes 23 seconds, West, 492.13 feet;

THENCE South 17 degrees 04 minutes 37 seconds East, 1499.83 feet to the northerly side of Hempstead Turnpike.

THENCE along said Northerly side of Hempstead Turnpike, South 64 degrees 42 minutes 29.5 seconds West, 2023.58 feet to the end of a line connecting the northerly side of Hempstead Turnpike with the easterly side of Earl Ovington Boulevard, the point or place of BEGINNING.

**SCHEDULE B**

**PERMITTED ENCUMBRANCES<sup>1</sup>**

1. Terms, covenants and conditions in deed from United States of America in Liber 7174 cp. 177.
2. Telephone Easement in Liber 8280 cp. 343.
3. Electric Easement in Liber 9467 cp 369.

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4. Gas/Electric Easement in Liber 8227 cp 336.
5. Right of Way contained in Lease in Liber 9210 cp 162.

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6. Tunnel and/or above ground passageway easement contained in lease in Liber 9210 cp 162.

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- ~~7. The SMG/County Lease.~~

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8. The Sublease.

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<sup>1</sup> Subject to update upon receipt of title.

## SCHEDULE C

### PROHIBITED PERSONS DEFINITION

**“Prohibited Person”** means:

(a) any Person: (i) that is in default after notice and beyond any applicable cure period of its obligations under any material written agreement with any federal, state or local governmental entity; or (ii) that directly or indirectly controls, is controlled by, or is under common control or ownership with a Person set forth in (i) above; unless, in either (i) or (ii), such default: (a) has been waived in writing by the federal, state or local governmental entity involved; (b) is being disputed in a court of law, administrative proceeding, arbitration or other forum; or (c) is cured within thirty (30) days after a determination and Notice to the Tenant from the Landlord that such Person is a Prohibited Person as a result of such default.

(b) any Person that: (i) is an Organized Crime Figure (as defined below); (ii) has been convicted of a felony or other crime involving moral turpitude in any jurisdiction; (iii) has been suspended, barred or otherwise disqualified from bidding or submitting a proposal on contracts by any governmental agency; or (iv) had a contract terminated by any governmental agency for any cause directly or indirectly related to an indictment or conviction.

(c) any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, that is finally determined to be in violation of (including, but not limited to, any participant in an international boycott in violation of) the Export Administration Act of 1979, as amended, or any successor statute, or the regulations issued pursuant thereto, or any government or Person (as hereinafter defined) that, directly or indirectly, is controlled (rather than only regulated) by a government that is subject to the regulations or controls thereof.

(d) any government, or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects or the activities of which are regulated or controlled pursuant to regulations of the United States Treasury Department or executive orders of the President of the United States of America issued pursuant to the Trading with the Enemy Act of 1917, as amended.

(e) any Person that is in default in the payment of any tax due to federal, state or local Governmental Authorities, unless such default is then being contested in good faith in accordance with the law, or unless such default is cured within thirty (30) days after a determination and Notice to the Tenant from the Landlord that such Person is a Prohibited Person as a result of such default.

(f) any Person: (i) that has solely owned, at any time during the immediately preceding three (3) year period, any property which, while in the ownership of such Person, was acquired in foreclosure by any federal, state or local Governmental Authority; or (ii) that directly or indirectly controls, is controlled by, or is under common control or ownership with a Person set forth in (i) above.

**“Organized Crime Figure”** means any Person (a) who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure or has had a contract terminated by any governmental agency for breach of contract or for any cause directly or indirectly related to an indictment or conviction, or (b) who directly or indirectly controls, is controlled by, or is under common control with, a Person who has been convicted in a criminal proceeding for a felony or any crime involving moral turpitude or that is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure. The determination as to whether any Person is an organized crime figure or is reputed to have substantial business or other affiliations with an organized crime figure shall be within the sole discretion of Landlord, which discretion shall be exercised in good faith; provided, however, that such Person shall not be deemed a Prohibited Person if the Landlord, having actual knowledge that such Person meets the criteria set forth in clause (a) or (b) above of this definition, entered into a contract and is then doing business with such Person.



**SCHEDULE E**

**CERTIFICATE OF COMPLIANCE**

In compliance with Local Law 1-2006, as amended (the "Law"), Tenant hereby certifies the following:

1. The chief executive officer of Tenant is:

\_\_\_\_\_ (Name)

\_\_\_\_\_ (Address)

\_\_\_\_\_ (Telephone Number)

2. Tenant agrees to either (1) comply with the requirements of the Nassau County Living Wage Law or (2) as applicable, obtain a waiver of the requirements of the Law pursuant to section 9 of the Law.

3. In the past five years, Tenant \_\_\_\_\_ has \_\_\_\_\_ has not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed against Tenant, describe below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action \_\_\_\_\_ has \_\_\_\_\_ has not been commenced against or relating to Tenant in \_\_\_\_\_ connection with federal, state, or local laws regulating payment of wages or benefits, labor

relations, or occupational safety and health. If such a proceeding, action, or investigation has been commenced, describe below:

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5. Tenant agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Signature of Chief Executive Officer

\_\_\_\_\_  
Name of Chief Executive Officer

Sworn to before me this

\_\_\_\_\_ day of \_\_\_\_\_, 2011.

\_\_\_\_\_  
**Notary Public**