

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SAVE OUR PARKS, GENEVA HESTER,)
ALBERTHA HUNTER, LUZ I. ROLDOS,)
ESTHER ROSA, LUCRECIA SANTIAGO,)
FRANCES TEJADA and BRONX COUNCIL)
FOR ENVIRONMENTAL QUALITY,)
) Index 06 Civ. 6859
) Plaintiffs,)
) Judge Buchwald
) v.)
))
))
DIRK KEMPTHORNE, Secretary, UNITED)
STATES DEPARTMENT OF THE)
INTERIOR; FRAN MAINELLA, Director,) **DECLARATION OF**
NATIONAL PARK SERVICE; MARY G.) **LONN TROST**
BOMAR, Regional Director, Northeast Region,)
NATIONAL PARK SERVICE;)
BERNADETTE CASTRO, Commissioner,)
New York State Office of Parks, Recreation)
and Historic Preservation; ADRIAN BENEPE,)
Commissioner, New York City Department of)
Parks and Recreation; and NEW YORK)
YANKEES PARTNERSHIP,)
) Defendants.)
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I, LONN TROST, declare as follows:

1. I am Chief Operating Officer of the New York Yankees (“Yankees”). I have personal knowledge of the matters set forth below and, if called upon to do so, could and would testify competently thereto.

The Yankees need a new stadium and the related investment in the future of the South Bronx will benefit the City generally and local residents in particular.

2. Although Yankee Stadium has been the beloved and iconic home of the New York Yankees for more than eighty years, it has become severely outdated and is inadequate to meet the needs of a modern-day baseball franchise in nearly every important respect. Quite simply, if the Yankees — one of the most internationally celebrated sports teams of all time — are to continue to compete at the high level to which they are accustomed, they require a new

stadium, and they require one by opening day 2009. Furthermore, if the Yankees are to remain in the Bronx, the new stadium must be located at the site currently under construction, which is the only viable location with sufficient space to meet the needs of a baseball franchise in today's world.

3. Moreover, as the City has separately affirmed, the New Yankee Stadium Project ("Project") will have enormous benefits for the City as a whole and for the local community. As Deputy Mayor Doctoroff explains in his own Declaration, the injunction plaintiffs seek jeopardizes critical investment in the South Bronx and threatens a Project that will create more and better recreational facilities for local residents, provide thousands of jobs, and save the City hundreds of millions of dollars in stadium maintenance costs that will be assumed by the Yankees.

The existing stadium has severe physical constraints.

4. Yankee Stadium was originally built at its present site in 1923, at East 157th Street, River Avenue, East 161st Street and Ruppert Place in the Bronx Borough of New York City. The seating configuration was expanded over the years, in 1928, 1937, and 1938. On August 8, 1972, the Yankees signed a 30-year lease with the City which called for Yankee Stadium to be modernized in time for the 1976 season. After the 1973 season, the Yankees moved to Shea Stadium for two seasons while Yankee Stadium was almost completely demolished and then rebuilt. The renovated stadium opened for the 1976 season and has been used in its present form for the past 30 years.

5. Since 1976, stadium operations have become severely constrained. Although the stadium's seating capacity is sufficient to house the larger crowds of today, Yankee Stadium is nonetheless exceedingly crowded because there is not enough space to support baseball and

stadium operations. The stadium sits on a site of just under 10 acres, substantially less than the more than 13 acres that a state-of-the-art facility requires. Within Yankee Stadium's constrained site, space for entries and pedestrian walkways is very limited, and many of the facility's service and staging functions must take place outside the stadium grounds, in public areas, where they compete for space with fans and local residents.

6. The footprint and overall building size of the stadium are also too small to supply comfortable seating and room for circulation, food stands, shops, restrooms, and other support areas. Presently, Yankee Stadium cannot comfortably handle attendance greater than 35,000; at that point, the hallways are exceedingly crowded, long lines form for the food, concessions, and bathrooms, further interfering with pedestrian flow, and the kitchens and other support facilities are inadequate to meet the demand. However, the history of attendance at Yankee Stadium shows that, from the first, and with few exceptions, the Yankees have attracted more patrons than the American League average. For the past decade, Yankees' home game attendance has trended upward. Average game attendance has exceeded 35,000 every year since 1998. This year, the Yankees' total attendance already exceeds 4.2 million fans, an average of more than 51,000 per game. Given the constraints and limitations of existing Yankee Stadium, each year that attendance has grown, the problems of accommodating that demand have become more frequent and more difficult.

7. Many back-of-the-house functional areas — standard in state-of-the-art facilities — simply do not exist. For the stadium to function properly and provide a comfortable experience for fans, players, and the press, a nearly 100 percent increase in public concourse and fan amenity areas is required. Space for the players is equally constrained. Adequate practice space and batting cages are lacking. One weight room is shared by both the Yankees and visiting

teams. The area for the press is inadequate as well; often, they overflow into seats intended for fans.

8. The existing stadium has 41 percent of its seats (23,607 seats) in the upper deck. Due to the large number of seats and constrained footprint, the existing upper deck is the steepest in major league baseball. The seats themselves are too small compared to seats in modern ballparks. Moreover, many of the seats are not oriented properly to face towards second base, making it uncomfortable for fans to watch a game.

9. The existing stadium also lacks facilities necessary to accommodate disabled customers as required by state and federal law. In December 1998 the New York Yankees were served with a complaint alleging claims under the Americans with Disabilities Act of 1990 (“ADA”), New York Executive Law, and the Human Rights Law of the Administrative Code of the City of New York (the “City”). Subsequently, the United States Department of Justice intervened in that action to enforce provisions of the ADA against the New York Yankees, the City, and the Department of Parks. The United States’ Complaint in Intervention alleged violations of the ADA in connection with Yankee Stadium accessibility; failure to make alterations to Yankee Stadium; failure to remove barriers; and failure to modify procedures at Yankee Stadium pertaining to seats, tickets, transfer seats, and lines of sight. It also generally alleged that Yankee Stadium was not ADA-compliant. A Stipulation and Order of Settlement was entered into in December 1999. Among other provisions, the stipulated settlement called for certain structural modifications to various portions of Yankee Stadium including exterior and interior routes, doors, bathrooms, fire alarms, telephones, water fountains, concession areas, ticket booths, signage, and press areas. Additionally, Yankee Stadium was to add wheelchair and companion seating locations each year. But given the limitations inherent in retrofitting an

80-year-old structure, all of the parties recognized that this was at best a patchwork attempt to make a non-ADA-compliant facility somewhat more comfortable for fans with disabilities.

10. Because the United States, the City, and the New York Yankees recognized that these issues could best be dealt with by building a new Yankee Stadium, the Stipulation and Order of Settlement contained provisions relieving the New York Yankees and the City of the obligation to continue retrofitting Yankee Stadium if, by certain specific dates, agreements were entered into providing (i) for the New York Yankees to lease or otherwise occupy a new Yankee Stadium by no later than the commencement of the 2009 regular season; or (ii) that a new Yankee Stadium be constructed for the New York Yankees use by no later than the commencement of the 2009 regular season.

11. On October 20, 2005, Randy Levine, President of the New York Yankees, wrote to the United States to request a moratorium on further Yankee Stadium retrofitting based upon the planned construction of the new Yankee Stadium in time for the start of the 2009 regular season. A copy of Mr. Levine's October 20, 2005 letter (without the voluminous exhibits) is attached hereto as Exhibit A.

12. On November 15, 2005, Michael J. Garcia, Esq., United States Attorney for the Southern District of New York, "recognize[d] that the Yankees and the City have taken significant steps toward an agreement on a new stadium. Given those significant steps, we believe that it may be appropriate to agree to a moratorium on the Yankees' and the City's obligations for this upcoming year . . ." Further, the United States was "willing to consider a moratorium on the obligations of Paragraph 27 of the Stipulation, with the issue to be revisited one year from now. . . . [Because] by next year the parties may be in a position to know whether the stadium proposal will go forward. We are therefore prepared to agree to a one-year

moratorium on the additional wheelchair and companion seating obligations required by the Stipulation.” A copy of that letter is provided as Exhibit B.

13. As part of the moratorium-negotiation process, the United States requested — and the Yankees are in the process of providing — “a declaration under penalty of perjury . . . [that] would detail the substantial efforts and resources the Yankees have expended in pursuing and investigating the development of the new Stadium. . . . so that we will have a complete record to review regarding the Yankees’ efforts and expenditure of resources to date.” A copy of my sworn declaration is attached as Exhibit C. The United States also asked for — and the Yankees also provided — “the designs, plans, architectural drawings, and other materials that reflect the configuration of the proposed new stadium, including information as to the number of locations of wheelchair seats, companion seats, and aisle transfer seats, and information as to the amenities of the ballpark, including, inter alia, those relating to restrooms, drinking fountains, ticket windows, elevators, and concession counters.”

14. On the strength of the materials provided, the United States agreed to a moratorium, which was approved and ordered by Judge Scheindlin. A copy of her Order is attached as Exhibit D.

The existing stadium does not have enough parking.

15. In addition to the insurmountable constraints of the existing stadium and its site, Yankee Stadium suffers from woefully insufficient parking to meet the demands of its fans. In 1923, most fans came to games at the then-new Yankee Stadium by public transportation. In the ensuing years, with the rise of the use of the automobile and the spread of the suburbs, driving to the game became more and more popular. The number of available parking spaces has increased steadily over the years, including garages built in conjunction with the 1973 renovation, but has

not kept pace with demand. The current off-street parking space inventory is 6,995 spaces. Of these, only approximately 3,500 are located within a 1/2-mile (a 10-minute walk) of the stadium. These 3,500 spaces are filled whenever game attendance reaches approximately 15,000. The remaining spaces are farther away and, clearly, much less convenient. All available spaces are filled when game attendance reaches approximately 30,000, a level that is lower than the average home attendance every year since 1997. Overflow parking has been accommodated, when possible, in the Bronx Terminal Market south of the stadium, and along public streets. But the Bronx Terminal Market parking will no longer be available after this season due to construction on that site. The accumulation of mostly illegal on-street parking impairs traffic flow. Parking conditions at the existing stadium today are clearly inadequate and contribute to the traffic congestion that accompanies most home games as fans circulate excessively on local streets in search of hard-to-find parking spaces.

The Existing Stadium: Costs, Expenses, and Revenues

16. Since the 1970s, the cost of fielding the type of team that our fans demand and deserve has increased enormously. The Yankees current payroll of approximately \$200 million dwarfs the payrolls back then. Stadium revenues have not kept pace, in large part because of the constraints imposed by the current stadium. State-of-the-art stadiums — like those housing many of our competitors — offer more luxury boxes and the additional restaurants, clubs, and other amenities that contribute to the entertainment experience for the fans. The existing Yankee Stadium lacks those amenities. A new Yankee Stadium is thus an economic necessity.

Summary of Goals and Objectives of the Project

17. The overall goal for the Project is therefore to construct a new stadium that will be fully ADA-compliant and will address the severe space constraints and parking problems that

the team now faces. Some of the more specific goals and objectives are to: (1) provide enough land area to accommodate a modern stadium and adequately support baseball and stadium operations; (2) accommodate game day staging of larger broadcast production vehicles on site rather than on public streets, as is the current practice; (3) create a stadium of appropriate size to offer comfortable seating for all fans and ample room for circulation, food kiosks, and all services supporting fans and the media; (4) create state-of-the-art facilities for the Yankees and visiting teams; (5) provide additional parking to alleviate congestion on neighboring streets and reliance on illegal on-street parking; and (6) create efficient and attractive pedestrian circulation space.

18. Moreover, while these goals and objectives might be accomplished in other cities, the historical legacy of the Yankees, particularly their historical home in the Bronx, is of great importance to the team, as well as the City. Therefore, additional goals and objectives of the Project are to: (1) keep the Yankees in the Bronx, preferably near their traditional home; (2) design a modern stadium with an exterior style that is reminiscent of the original Yankee Stadium; (3) recreate Monument Park in the new stadium; and (4) reuse the site of the existing stadium—for baseball and other public recreational uses and for other uses benefiting the neighborhood. Thus, the New Yankee Stadium has been designed to pay homage to its predecessor. For example, the new stadium will replicate the 1923 façade and frieze. Even the stadium sections will be numbered to conform with the 1923 section numbering. Moreover, the dimensions and orientation of the existing playing field will be faithfully replicated.

Various alternative means of providing a new Yankee Stadium have been considered but none is feasible.

19. Over the past several years, various options for improving or modernizing stadium operations to meet these goals have been considered, including renovation or

reconstruction of a stadium on the existing site, and building a new stadium in a different location. Four candidate locations for a new stadium were previously assessed: the Project site, Van Cortlandt Park, and Pelham Bay Park, all in the Bronx, and the Caemmerer Yard (West-Side rail yard) on Midtown Manhattan's West Side. The sites in Van Cortlandt and Pelham Bay Parks were eliminated as infeasible for several reasons: mass transit was not available; the highway access system could not support the traffic from the stadium; a stadium would require use of substantially more parkland in each location than the proposed project, and each would disturb 12 acres of high-quality wetlands. Moreover, the Van Cortlandt Park site has since become unavailable as it is the location of the Croton Filtration Plant currently under construction by the New York City Department of Environmental Protection. A stadium over Manhattan's West-Side rail yard (Caemmerer Yard) was considered because of its central location and the availability of mass transit, but, as confirmed by the Jets' inability to build a new stadium in Manhattan, was determined to be politically infeasible and was, in any event, eliminated from consideration when the Yankees decided to remain in the Bronx.

20. Renovation of the existing stadium was also considered, but was quickly determined not to be possible for a number of reasons. Most significantly, as discussed above, increasing the size of the stadium is absolutely critical to provide the necessary improvements, and this simply could not be done through the primarily cosmetic changes that would be accomplished through renovation.

21. In addition, reconstruction on the existing site was determined to be infeasible because of the physical limitations of the site and the consequent inability to provide a modern-day baseball facility. The reconstruction alternative would also require the use of portions of Macomb's Dam Park — which is now planned for use as a park and for parking — without the

opportunity to provide replacement facilities on the site of the existing stadium or elsewhere. These issues are discussed in further detail in the accompanying Santee Affidavit and the Affidavit of Debra C. Allee, AICP (“Allee Affidavit”).

22. One major reason that the on-site reconstruction alternative would be infeasible is the fact that construction of the new stadium is anticipated to take just under three years (not including the time it would take to demolish the existing stadium, a daunting task in its own right). During that time, the Yankees would need a stadium in which to play their 81 home games each season. The only other major league baseball stadium in New York City is Shea Stadium, home of the New York Mets, which the Yankees used during the last round of stadium renovations in the 1970’s. But sharing Shea Stadium with the Mets for several years would simply not be possible today.

23. In the 1970’s, in-stadium corporate signage was not a major source of the Yankees’ revenues. That is no longer true; the landscape has vastly changed in the intervening years. Now, such signage accounts for just under 20% of the team’s total revenue for the year. In other words, the Yankees’ fiscal survival depends on such sponsorships, as does the Mets’. As noted, these critical revenues are derived in large part from advertising within the stadium. But housing both teams in Shea Stadium would force one or both to give up a substantial portion of that revenue. The Yankees’ and Mets’ sponsorships are in virtually all cases different and mutually exclusive. The Shea Stadium signage could not practicably be changed from home stand to home stand to display Mets sponsors’ advertisements on one day and Yankees sponsors’ the next.

24. Each team also has many exclusive contracts with different major vendors, such as beverage distribution companies (at Yankee Stadium, Coca-Cola products are served, at Shea

Stadium, Pepsi products). Each company also contractually prohibits the other's products from being served through its equipment. Similarly, the Yankees enjoy a lucrative sponsorship relationship with Bank of America, which places its ATMs in the stadium and includes financing, signage, and suite licensing, while the Mets have similar sponsorships with other banks and whose ATMs are in place at Shea Stadium. In order to share Shea Stadium, the Yankees would have to forego that contract altogether.

25. Similarly, moving to Shea Stadium would require the Yankees to forego the substantial revenues generated by our historic partnership/affiliation with adidas, under which the adidas brand is featured at Yankee Stadium as prominently as it would be if it were a traditional naming rights relationship. The Yankees would not be able to provide any level of exposure for adidas at Shea Stadium. The loss of this revenue would be intolerable.

26. Finally, sharing Shea Stadium with the Mets would cut sharply into ticket sales, which account for approximately two-thirds of Yankees revenues. These revenues would decrease drastically if the team moved to Shea Stadium even temporarily, because Shea Stadium ticket and luxury box prices and license fees are not comparable Yankee Stadium rates.

27. Ticket sales would pose other untenable difficulties. At its most basic level, this manifests itself in the form of incompatible ticketing systems (the Yankees contract is with Ticketmaster, but Shea Stadium has its own ticketing system). In addition, the Yankees gain significant revenues from season ticket holders, of which there are currently about 33,684 (compared to about 3500 in the mid-1970's). These fans pay each season for the same seat in Yankee Stadium; but because Shea Stadium has a different layout there are no corresponding seats there.

28. Thus, because reconstructing Yankee Stadium in its present location would necessitate sharing Shea Stadium with the Mets for several years, it would not be possible from either a contractual or an economic standpoint. The architectural and environmental reasons which further negate this as an option are discussed in the Final Environmental Impact Statement (at 22-5 – 22-6), and in the accompanying Santee and Allee Affidavits.

The Yankees cannot start the 2009 season in the existing Stadium and finish it in the new stadium.

29. For the reasons explained in the Affidavit of Bruce Phillips, any further delay in the start of construction would mean that it is unlikely the new stadium would be ready in time for the start of the 2009 baseball season. Any suggestion that the Yankees can begin the season in one stadium and move to another mid-season ignores the enormous logistical challenges that such a move would entail. As a practical matter, the move itself would take months and would involve enormous time and effort of the Yankees' staff. Attempting to play in the existing stadium and relocate mid-year is infeasible due to the expensive duplication of effort and the need for training and familiarization of Yankees' personnel with the new stadium facility. For example, there would be no way simply to sell signage for one stadium and move it to equivalent positions in a new stadium. Rather, it would be necessary to sell signage rights in both stadiums separately, in effect doubling the requisite effort and jeopardizing relationships with sponsors. Similarly, it would be necessary to duplicate the work and resources devoted to permitting season ticket holders — including many partial-season ticket holders — to visit the stadium to select their seats for the upcoming season. And, more importantly, our customers would be inconvenienced by having to go through this process twice.

30. The seating in the new stadium will be completely different from the seating in the existing stadium, and it would therefore be logistically impossible to sell season tickets that

could be transferred from one stadium to another. Moreover, partial season ticket plans would be virtually impossible to sell because fans buying such plans would have to choose both games and seats in both stadiums, enormously complicating the sales process. Further, where the existing stadium has 19 luxury suites, the new stadium would have about 60 luxury suites, 9 party suites, and 3 outdoor suites with approximately 4200 seats.

31. Playing in two stadiums in a single season would drastically complicate negotiations with vendors and concessionaires. The new stadium will have more than 3 times as many clubs and restaurants as the existing stadium and moving from one stadium to another mid-season would multiply negotiations and threaten relationships with vendors and concessionaires, particularly those who would be able to get only a partial-season to recoup their investment. Also, the fact that the new stadium would not have the same concessionaire as the existing stadium would enormously complicate the process of hiring employees, purchasing equipment, food, beverages, and supplies, and the like.

32. In addition, the new stadium would have state-of-the-art computer, lighting, display, and other systems that would require extensive training for our employees to use effectively. As a practical matter, it would not be possible for that training to be done while our personnel continued to run the existing stadium.

33. For those reasons, the Yankees have determined that it would not be practical to transfer from one stadium to another mid-season. That means that if the Yankees were unable to start playing in the new stadium at the beginning of the 2009 season, we would not be able to start playing in the new stadium until the beginning of the 2010 season.

A delay until Opening Day 2010 or beyond would cost the Yankees hundreds of millions of dollars and would make the new stadium project economically infeasible.

34. If the Yankees cannot begin playing in the new stadium until 2010, the new stadium project will not be economically viable. As Mr. Phillips explains in his Affidavit, delay would sharply increase the cost of construction. Moreover, the economics of the project require that the increased revenues that the new stadium will generate begin in 2009. After Justice Cahn denied Plaintiffs' first preliminary injunction motion, \$955 million worth of bonds were sold to finance Project construction. Among other things, the first payment on the bonds (in the amount of approximately \$28 million) will be due in 2009, whether we have moved into the new stadium or not. Without increased revenue from the new stadium, that expense would be insupportable as it would be necessary to borrow more money to finance it at a cost of about \$50 million.

35. In addition, if the opening of the new stadium were delayed by a year, the Yankees would have to pay rent and other expenses on both the new property and the old property for another year. The expense associated with keeping the old stadium in operation for the 2009 season would be approximately \$33 million. In addition, the Yankees would lose about \$100 million per season in anticipated revenues that would not be realized if the new stadium does not open as planned.

36. Because of the rising costs of construction, if construction were halted or otherwise delayed until the spring of 2007, with a target completion date of the beginning of the 2010 season, the contracting costs of the project would likely rise by about \$80 million. With additional financing and interest costs, the total project costs could go up by as much as \$200 million over the term of the bonds.

37. For these reasons, if the Yankees cannot be assured that the construction of the new stadium will be completed in time for the opening of the 2009 season, we will have to consider canceling the project altogether. Canceling the project would trigger a default on the

bonds issued to finance project construction, which would cost the bond insurers and/or the Yankees hundreds of millions of dollars over and above the hundreds of millions of dollars in lost anticipated revenue. Those bonds are to be repaid from the ticket and suite revenues generated by the new stadium. Moreover, as of October 5, 2006, the Yankees will have either disbursed or obligate themselves to disburse a total of \$131,905,909 of the bond proceeds. If construction were halted, those expenditures would be wasted.

The Yankees have made significant commitments to the local community.

38. The Yankees have entered into a Community Benefits Agreement (“CBA”), a true and correct copy of which is submitted herewith as Exhibit E.

39. The CBA provides that at least 25% of construction contracts for the new Yankee Stadium be assigned to Bronx-based businesses, that at least 25% of the total construction work force be Bronx residents and that at least 25% of the work force in the operations of the new Yankee Stadium post construction be Bronx residents. (See Exhibit E at 3.)

40. The CBA also provides that the Yankees will retain health effects and environmental impact monitors throughout the construction of the new Yankee Stadium to ensure the mitigation of any adverse health or environmental impact to the local community. (See Exhibit E at 12.)

41. The CBA also establishes a Bronx Community Trust Fund that will distribute, on an annual basis (a) \$800,000 in cash to Bronx not-for-profit institutions and community based organizations, (b) equipment and merchandise to Bronx not-for-profit institutions, schools, and youth and sports groups, and (c) 15,000 tickets to Bronx not-for-profit institutions, schools, and youth and sports groups and senior citizens. (See Exhibit E at 13.)

I declare under penalty of perjury that the foregoing is true and correct. Executed this th 18 day of
September, 2006 at New York, New York.


LONN TROST

EXHIBIT A

New York Yankees

RANDY LEVINE
PRESIDENT



EXECUTIVE OFFICE
YANKEE STADIUM
BRONX, NEW YORK 10451
TEL: (718) 578-4408
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October 20, 2005

Michael J. Garcia, Esq.
United States Attorney
Southern District of New York
One St. Andrews Plaza
New York, New York 10007

Dear ^{Mike}Michael,

I am writing to follow-up on my letter to your predecessor, David Kelly, dated November 1, 2004 wherein the New York Yankees (the "Yankees") requested a moratorium on the construction of wheelchair/companion seating areas in Yankee Stadium (the "Stadium") as required under Paragraph 26 of the Stipulation and Order of Settlement (the "Stipulation") entered into in the action entitled Pascuiti, et. al. v. New York Yankees, Case No. 98 Civ. 8186 (SAS). As you may be aware, David's letter response dated February 2, 2005 denied the requested moratorium but apparently indicated a willingness to reconsider the Yankees' request when a contractual agreement concerning the construction of a new Stadium was in place. (Attached for your reference as Exhibits A and B are copies of my November 1, 2004 letter and David's response dated February 2, 2005, respectively.)

We strongly believe that the developments concerning the new Stadium, which the Yankees and the City of New York (the "City") have been working on over the past few years, have reached a point where the Yankees and the City should be relieved from the construction of wheelchair/companion seating areas required under Paragraph 27 of the Stipulation.¹ Specifically, the Yankees believe that the

¹ As you may be aware, Paragraph 27 of the Stipulation states:

"Prior to the commencement of the 2006 regular season, defendants shall install 28 wheelchair and 28 companion seating locations in the back of the Main Reserve seating of the Main Level. If, however, by January 15, 2006, (i) the Yankees (or the Yankees' parent, successor-in-interest, or assignee), (ii) the City or another New York governmental or quasi-governmental entity, or (iii) any other person or public or private entity (including, but not limited to, a governmental entity located in a state other than New York) enters into a *contractual agreement* providing that the Yankees shall lease or otherwise occupy a stadium other than the current Stadium by no later than the commencement of the 2009 regular season, or that a new stadium shall be constructed for the Yankees' use to be occupied by no later than the commencement of the 2009 regular season, or that the Stadium shall be substantially renovated by no later than the commencement of the 2009 regular season, the City and the Yankees shall be relieved of

Michael J. Garcia, Esq.
United States Attorney
Southern District of New York
October 20, 2005
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Memorandum of Understanding ("MOU") executed on June 15, 2005 by the Empire State Development Corporation ("ESDC"), the New York City Economic Development Corporation ("NYCEDC"), the City and the Yankees satisfies the "contractual agreement" requirement of Paragraph 27 of the Stipulation. As set forth in detail in the MOU, the parties pledged their commitment to cooperate in the design, development, construction, financing and operation of the new Stadium to be constructed on parkland property owned by the City and located between 161st Street, River Avenue, Jerome Avenue and 164th Street in the Bronx, New York. In addition, as agreed to in the MOU, the City agreed to construct parking garages to serve the new Stadium and the NYCEDC agreed to provide up to \$70 million to defray the cost of the new parking garages. (Attached hereto as Exhibit C is true and correct copy of the Memorandum of Understanding.)

In furtherance of the pledge contained in the MOU, on September 23, 2005, the New York City Department of Parks and Recreation ("Parks Department"), as lead agency for environmental review under the New York State Environmental Quality Review Act, certified as complete a draft Environmental Impact Statement ("EIS") which analyzes the impacts of the construction and operation of the new Stadium and the new parking garages. Since the City's execution of a lease for the new Stadium is considered an "action" within the meaning of the New York State Environmental Conservation Law and, consequently, subject to State environmental review, the EIS is a precondition to formal approval by the City to lease the new Stadium site to the Yankees. (Attached hereto as Exhibit D is a true and correct copy of the Notice of Completion of the Draft Environmental Impact State for the Yankee Stadium Redevelopment Project dated September 23, 2005. Also attached hereto as Exhibit E is a true and correct copy of the Yankee Stadium Project Draft Environmental Impact Statement. Furthermore, attached hereto as Exhibit F is a true and correct copy of the Environmental Assessment Statement submitted by the Parks Department and the Yankees in connection with the new Stadium project.)

Still further, on September 26, 2005, the City Planning Commission certified an application by the Parks Department to lease the site of the new Stadium to the Yankees and to lease sites for the development of the new garages to service the new Stadium. This action begins the Uniform Land Use Approval Process ("ULURP") pursuant to the City Charter, which is the seven-month formal process under the City Charter whereby the City reviews and approves leases of City land. (See, Section 197-c of the New York City Charter, a copy of which is attached as Exhibit G for your reference.)

the obligation to install 28 wheelchair and 28 companion seating locations in the Main Reserve prior to the commencement of the 2006 regular season. In the event that neither the Yankees (or the Yankees' parent, successor-in-interest, or assignee) nor the City or another New York governmental or quasi-governmental entity is a signator to the contractual agreement, in order for the City and the Yankees to be relieved of their obligation to install 28 wheelchair and 28 companion seating locations prior to the commencement of the 2006 regular season, the Yankees must, by January 15, 2006, simultaneously (a) submit to the Government a *declaration* signed under penalty of perjury by an authorized representative of the Yankees describing the substantial effort or resources the Yankees have expended in pursuing and investigating the possibility of moving to the stadium that is being constructed or contemplated by the signator, and (b) issue a *press release* declaring the Yankees' present intention to occupy that stadium by no later than the commencement of the 2009 regular season. Nothing herein shall relieve the City and the Yankees of any of the other obligations set forth in this Stipulation."
[Emphasis added.]

During the ULURP review process, the application will be reviewed by the local community board, the Bronx Borough President, the City Planning Commission and the City Council and the final Environmental Impact Statement will be prepared. Until the ULURP review process is complete, the City is legally prohibited from executing an agreement more binding than the MOU. However, following the completion of the ULURP, the City will be authorized to lease the dedicated parkland to the Yankees to construct the new Stadium.

Of course, even if the Government believes that the MOU does not satisfy the "contractual agreement" requirement of Paragraph 27 of the Stipulation, it is abundantly clear that the absolute intention of the parties to construct a new Stadium, to be opened in 2009, is evidenced by the time and resources expended by the City and the Yankees, the expenses incurred and paid by the Yankees, the new Stadium related contracts that have been executed by the Yankees and the actions the Yankees have initiated with the Office of the Commissioner of Baseball ("BOC").²

Given the foregoing, the Yankees would be willing to submit a declaration under penalty of perjury to satisfy the other requirement for the grant of relief under Paragraph 27 of the Stipulation.³ Such declaration would detail the substantial efforts and resources the Yankees have expended in pursuing and investigating the development of the new Stadium, which details will include the following:

1. The Yankees, together with the City and NYCEDC, have worked with various consultants including Vollmer Associates, Parsons Brinkerhoff and HOK Sport + Venue + Event ("HOKSVE") and PriceWaterhouseCoopers since 2000 to conduct preliminary development work related to the new Stadium including: (i) performing site surveys to determine the appropriate and alternate locations for the new Stadium; (ii) evaluating the impact a new Stadium would have on traffic patterns, noise and pollution; and (iii) analyzing the economic impact a new Stadium would have on the surrounding community.
2. In addition, over the past few years, the Yankees have retained (pursuant to written contractual agreements which are available for review and copying) numerous consultants and professionals who have performed work vital to the development of the new Stadium including:
 - (i) Tishman Speyer Properties ("TSP") – the development manager for the new Stadium.
 - (ii) HOKSVE – the primary architects for the new Stadium.
 - (iii) United Spinal Association – accessibility consultant to ensure that the new Stadium will conform to the ADAAG and the ADA.
 - (iv) Guiliani Security & Safety – security consultant.
 - (v) Parsons Brinkerhoff – security consultant.
 - (vi) SafirRosetti – security consultant.

² Representatives of the Yankees and BOC are already in the process of finalizing arrangements to the hold the 2008 All Star game in the Stadium – the final year the Stadium will be the home of the Yankees.

³ There can be no questions that the press conference held on June 15, 2005 (as specified in Item 4, below) and related press advisories and releases satisfy the "press release" requirement of Paragraph 27 of the Stipulation so that another press release would be unnecessary.

- (vii) Forensic Investigative Associates/T&M Protective Resources – security consultant.
 - (viii) Turner Construction Company – the construction company responsible for building the new Stadium.
 - (ix) DMJM Harris – construction representative.⁴
 - (x) Weidlinger Associates – blast consultant.
 - (xi) Ledgestone Associates – concessions consultant.
 - (xii) Bigelow Companies, Inc. – concessions programmer.
 - (xiii) Hanscomb, Faithful & Gould – cost consultant.
 - (xiv) Bruce Laval – crowd management consultant.
 - (xv) AKRF – environmental impact consultant.
 - (xvi) Sive, Paget & Riesel, P.C. – environmental attorneys.
 - (xvii) Fried, Frank, Harris, Shriver & Jacobson – land use counsel.
 - (xviii) Herrick, Feinstein – real estate and corporate counsel.
 - (xix) Nixon Peabody – bond counsel.
 - (xx) Jerome Gillman Consulting Architect – expediter.
 - (xxi) Mueser Rutledge Consulting Engineers – geotechnical consultants.
 - (xxii) Vollmer Associates – infrastructure design consultant/surveyor.
 - (xxiii) Lovett Silverman Construction Consultants – scheduling consultant.
 - (xxiv) Eng-Wong, Taub & Associates – traffic consultant.
 - (xxv) National Reprographics – printer.
 - (xxvi) Philip Habib & Associates – Uniform Land Use Approval Process consultant.
3. In February, 2005, the collaboration between the Yankees, TSP and HOKSVE led to the creation of a working program narrative draft upon which the new Stadium will be based. (Attached hereto as Exhibit H is a true and correct copy of the working draft program narrative for the development of the new stadium.) As detailed in the program narrative, the new Stadium will be designed to comply with the ADA and ADAAG and feature state-of-the-art amenities for all fans.
 4. HOKSVE has also prepared architectural drawings and artist renditions of the new Stadium and, along with Turner Construction Company, has prepared the construction and procurement schedule for the development of the new Stadium. (Attached hereto as Exhibit I is a true and correct copy of the Construction and Procurement Schedule for the new Stadium.)
 5. On June 15, 2005, a press conference was held by the Yankees in the Stadium where the development of the new Stadium was formally announced. In attendance at the press conference were numerous state and local officials including Governor George Pataki, Mayor Michael Bloomberg, New York City Council Speaker Gifford Miller, Bronx Borough President Adolfo Carrion and ESDC Chairman Charles Gargano. During the press conference, both Mayor Bloomberg and I announced that the new Stadium would be completed in time for the Yankees to play in for the 2009 season. (Enclosed is a videotape of the press conference for your reference.)
 6. On July 3, 2005, by chapter 161 of the 2005 Laws of New York, the New York State Legislature passed and Governor Pataki approved legislation authorizing the issuance of bonds in the amount of \$74,700,000 towards the cost of new garages which will serve the

⁴ The agreements with Turner Construction Company and DMJM Harris will be executed in the near future.