

Property subject to all such Violations, the existence of any conditions at the Property which would give rise to such Violations, if any, and any governmental claims arising from the existence of such Violations, in each case without any abatement of or credit against the Purchase Price.

(f) "Institutional Lender" means one or more of the following:

(i) a real estate investment trust, bank, saving and loan association, investment bank, insurance company, trust company (whether acting individually or in a fiduciary or representative capacity, whether or not for other Institutional Lenders), commercial credit corporation, pension plan, pension fund or pension advisory firm, provided that any such Person referred to in this clause (i) satisfies the Eligibility Requirements;

(ii) an investment company, money management firm or "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, as amended, or an institutional "accredited investor" within the meaning of Regulation D under the Securities Act of 1933, as amended, provided that any such Person referred to in this clause (ii) satisfies the Eligibility Requirements;

(iii) an institution substantially similar to any of the foregoing entities described in clauses (i) or (ii) above that satisfies the Eligibility Requirements;

(iv) any entity Controlled by any of the entities described in clauses (i), (ii) or (iii) above;

(v) a Qualified Trustee in connection with a securitization of, the creation of collateralized debt obligations ("CDO") secured by or financing through an "owner trust" of a loan (collectively, "Securitization Vehicles"), so long as (A) the special servicer or manager of such Securitization Vehicle has the Required Special Servicer Rating and (B) the entire "controlling class" of such Securitization Vehicle, other than with respect to a CDO Securitization Vehicle, is held by one or more entities that are otherwise Institutional Lenders under clauses (i), (ii), (iii) or (iv) of this definition; provided that the operative documents of the related Securitization Vehicle require that (1) in the case of a CDO Securitization Vehicle, the "equity interest" in such Securitization Vehicle is owned by one or more entities that are Institutional Lenders under clauses (i), (ii), (iii), or (iv) of this definition and (2) if any of the relevant trustee, special servicer, manager fails to meet the requirements of this clause (v), such Person must be replaced by a Person meeting the requirements of this clause (v) within thirty (30) days; or

(vi) an investment fund, limited liability company, limited partnership or general partnership where a Permitted Fund Manager or an entity that is otherwise a Institutional Lender under clauses (i), (ii), (iii), or (iv) of this definition acts as the general partner, managing member or fund manager and at least 50% of the equity interests in such investment vehicle are owned, directly or indirectly, by one or more entities that are otherwise Institutional Lenders under clauses (i), (ii), (iii) or (iv) of this definition.

(g) For purposes of this Section 6, the following terms shall have the following meanings:

(i) "Eligibility Requirements" means, with respect to any Person, that such Person (i) is subject to the jurisdiction of the courts of the State of New York in any actions pertaining to or arising in connection with this Agreement and (ii) has net assets (in name or under management) in excess of \$250,000,000 or such lower amounts as are deemed acceptable in the Purchaser's sole reasonable discretion.

(ii) "Person" shall mean a natural person, corporation, partnership, limited liability company, association, trustee or other legal entity.

(iii) "Control" shall mean (a) the ownership, directly or indirectly, of more than 50% of the voting stock of a corporation, or (b) in the case of any Person which is not a corporation, the ownership, directly or indirectly, of more than 50% of the beneficial ownership interests in such Person, with the power to direct or cause the direction of the management and policies of such Person.

(iv) "Qualified Trustee" means (i) a corporation, national bank, national banking association or a trust company, organized and doing business under the laws of any state or the United States of America, authorized under such laws to exercise corporate trust powers and to accept the trust conferred, having a combined capital and surplus of at least \$100,000,000 and subject to supervision or examination by federal or state authority, (ii) an institution insured by the Federal Deposit Insurance Corporation or (iii) an institution whose long-term senior unsecured debt is rated either of the then in effect top two rating categories of each of the Rating Agencies.

(v) "Required Special Servicer Rating" means (i) in the case of S&P, on the S&P list of approved special servicers and (ii) in the case of Moody's, such special servicer is acting as special servicer in a commercial mortgage loan securitization that was rated by Moody's within the twelve (12) month period prior to the date of determination, and Moody's has not downgraded or withdrawn the then-current rating on any class of commercial mortgage securities or placed any class of commercial mortgage securities on watch citing the continuation of such special servicer as special servicer of such commercial mortgage securities.

(vi) "Permitted Fund Manager" means any Person that on the date of determination is (i) a nationally recognized manager of investment funds investing in debt or equity interests relating to commercial real estate and (ii) investing through a fund with committed capital of at least \$250,000,000.

## 7. APPORTIONMENTS

There shall be no apportionment between the parties for any matters that are customarily apportioned at real estate closings of commercial properties in the City of New York, State of New York (including without limitation with respect to the Leases, with respect to

which Section 13 shall govern). It is understood and agreed that Sellers shall be responsible for all such charges prior to the Closing and after the Closing all such charges shall be the responsibility of Ground Lease Tenant under the applicable Ground Lease. The provisions of this Section 7 shall survive the Closing.

#### 8. NO CONFLICTS

Sellers hereby agree that no member, officer, director, official, agent or employee of Purchaser, NYCEDC or the City of New York (the "City"), or their designees, consultants or agents, no member of the governing body of NYCEDC or the City and no public official of the City who exercises or exercised any functions or responsibilities with respect to the subject matter of this Agreement during his tenure, if known to Sellers, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Project or in any activity or benefit arising out of or in connection with the performance of the Project. Upon receiving notice or knowledge of any of the circumstances specified in the preceding sentence, Sellers shall deliver notice to Purchaser of the circumstances and immediately shall use its best efforts to cause the Persons affected to terminate their interest in the prohibited contract or property. Sellers shall require their respective contractors and subcontractors to make appropriate representations in writing that they, their employees and principals do not have any conflict of interest prohibited under this Section 8, and to covenant to cause the prohibited persons to terminate their interest in the relevant contract or property upon demand by Sellers.

#### 9. COVENANTS

(a) During the period from the date hereof until the Closing Date, Sellers shall:

(i) be permitted to enter into any agreements (including Leases and modifications thereof) with respect to all or any portion of the Property provided that such agreements expire by their terms are cancellable on or prior to the Closing Date or, in accordance with their terms, would not be effective following the Closing Date;

(ii) operate and manage the Property in a safe condition; and

(iii) have the right to enter into one or more agreements with the MTA and/or the New York City Transit Authority with respect to the Property including the creation of easements and the imposition of restrictions, thereon, on terms and conditions reasonably acceptable to Purchaser and Seller (collectively, the "MTA Agreements").

(b) In the event the Closing occurs and ESDC is the Purchaser, the Ground Leases shall provide that the Property will be developed in a manner consistent with the Modified GPP, as the same may be further modified from time to time.

## 10. CONDITIONS TO CLOSING

(a) Conditions to Obligations of Sellers. The obligation of Sellers to effect the Closing shall be subject to the fulfillment or written waiver by Sellers at or prior to the Closing Date of the following conditions:

(i) *Representations and Warranties.* Unless this Agreement has been assigned to NYCEDC pursuant to this Agreement, representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects as of the Closing Date, as though made at and as of the Closing Date.

(ii) *Performance of Obligations.* Purchaser shall have paid the full balance of the Purchase Price, executed, acknowledged (if applicable) and/or delivered all documents required to be executed, acknowledged (if applicable) and/or delivered by Purchaser hereunder on the Closing Date; and in all material respects performed all other obligations required to be performed by it under this Agreement on or prior to the Closing Date.

(b) Conditions to Obligations of Purchaser. The obligations of Purchaser to effect the Closing shall be subject to the fulfillment or written waiver by Purchaser at or prior to the Closing Date of the following conditions:

(i) *Representations and Warranties.* The representations and warranties of Sellers contained in Section 11(d) shall be true and correct in all material respects as of the Closing Date, as though made at and as of the Closing Date (subject to the last sentence of Section 11(d)(iii)).

(ii) *Performance of Obligations.* Sellers shall have executed, acknowledged (if applicable) and/or delivered all documents required to be executed, acknowledged (if applicable) and/or delivered by Sellers hereunder on the Closing Date and Seller shall in all material respects performed all other obligations required to be performed by Seller under this Agreement on or prior to the Closing Date.

(iii) *Indemnity.* Sellers shall have delivered to Purchaser, in form and substance and from a party or parties reasonably satisfactory to Purchaser, an agreement (which may be set forth in the Ground Leases) indemnifying and holding harmless Purchaser (and other governmental entities or Persons) from and against claims and liabilities arising from the Property, including environmental claims and liabilities, other than those arising from the negligence or misconduct of Purchaser or such other governmental entities. Any such agreement shall become effective upon, and shall survive, the Closing.

(iv) *Closing of MTA Purchase.* Unless this Agreement has been assigned to NYCEDC, Sellers shall have notified Purchaser in writing that Sellers are prepared, simultaneously with the Closing, to effectuate the closing under that certain land acquisition agreement between Sellers (or their affiliate) and MTA.

(c) Conditions and Obligations of Purchaser and Sellers.

(i) *Modified GPP.* Unless this Agreement has been assigned to NYCEDC pursuant to this Agreement, the Modified GPP, as it may be further modified, remains in full force and effect.

(ii) *Status of Litigation.* Unless this Agreement has been assigned to NYCEDC pursuant to this Agreement, the status of any Litigation (as hereinafter defined) is as set forth in Section 18(a) hereof.

(d) Failure of Condition. If Purchaser is unable to timely satisfy (and Seller has not waived in writing) the conditions precedent to Sellers' obligation to effect the Closing, then such failure shall constitute a default hereunder, in which case, Section 20(a) shall govern. If Sellers are unable to timely satisfy the conditions precedent to Purchaser's obligation to effect the Closing, then, (i) Sellers may, if they so elect and without any abatement in the Purchase Price, adjourn the Scheduled Closing Date for a period or periods not to exceed ninety (90) days in the aggregate and (ii) if, after any such extension, the conditions precedent to Purchaser's obligation to effect the Closing continue not to be satisfied (and Purchaser has not waived the same) or Sellers do not elect such extension, and the failure of such condition precedent is not the result of Purchaser's default hereunder, then Purchaser shall have the right to seek specific performance of Sellers' obligations hereunder or, in the event Sellers are in default under the Funding Agreement, exercise any of its remedies under the Funding Agreement.

11. **CONDITION OF THE PROPERTY; REPRESENTATIONS**

(a) PURCHASER HEREBY ACKNOWLEDGES THAT, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT OR THE FUNDING AGREEMENT, NEITHER SELLERS, NOR ANY PERSON ACTING ON BEHALF OF SELLERS, NOR ANY PERSON OR ENTITY WHICH PREPARED OR PROVIDED ANY OF THE MATERIALS REVIEWED BY PURCHASER IN CONDUCTING ITS DUE DILIGENCE, NOR ANY DIRECT OR INDIRECT OFFICER, DIRECTOR, PARTNER, MEMBER, SHAREHOLDER, EMPLOYEE, AGENT, REPRESENTATIVE, ACCOUNTANT, ADVISOR, ATTORNEY, PRINCIPAL, AFFILIATE, CONSULTANT, CONTRACTOR, SUCCESSOR OR ASSIGN OF ANY OF THE FOREGOING PARTIES (SELLERS AND ALL OF THE OTHER PARTIES DESCRIBED IN THE PRECEDING PORTIONS OF THIS SENTENCE (OTHER THAN PURCHASER) SHALL BE REFERRED TO HEREIN COLLECTIVELY AS THE "EXCULPATED PARTIES") HAVE MADE OR SHALL BE DEEMED TO HAVE MADE ANY ORAL OR WRITTEN REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION WARRANTIES OF HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE PROPERTY, THE PERMITTED USE OF THE PROPERTY OR THE ZONING AND OTHER LAWS, REGULATIONS AND RULES APPLICABLE THERETO OR THE COMPLIANCE BY THE PROPERTY THEREWITH, THE REVENUES AND EXPENSES GENERATED BY OR ASSOCIATED WITH THE PROPERTY, OR OTHERWISE RELATING TO THE PROPERTY OR THE TRANSACTIONS CONTEMPLATED HEREIN. PURCHASER FURTHER

ACKNOWLEDGES THAT ALL MATERIALS WHICH HAVE BEEN PROVIDED BY ANY OF THE EXCULPATED PARTIES HAVE BEEN PROVIDED WITHOUT ANY WARRANTY OR REPRESENTATION, EXPRESSED OR IMPLIED AS TO THEIR CONTENT, SUITABILITY FOR ANY PURPOSE, ACCURACY, TRUTHFULNESS OR COMPLETENESS AND PURCHASER SHALL NOT HAVE ANY RECOURSE AGAINST SELLER OR ANY OF THE OTHER EXCULPATED PARTIES IN THE EVENT OF ANY ERRORS THEREIN OR OMISSIONS THEREFROM. PURCHASER IS ACQUIRING THE PROPERTY BASED SOLELY ON ITS OWN INDEPENDENT INVESTIGATION AND INSPECTION OF THE PROPERTY AND NOT IN RELIANCE ON ANY INFORMATION PROVIDED BY SELLER, OR ANY OF THE OTHER EXCULPATED PARTIES, EXCEPT FOR THE REPRESENTATIONS EXPRESSLY SET FORTH HEREIN OR THE FUNDING AGREEMENT. PURCHASER EXPRESSLY DISCLAIMS ANY INTENT TO RELY ON ANY SUCH MATERIALS PROVIDED TO IT BY SELLERS IN CONNECTION WITH ITS DUE DILIGENCE AND AGREES THAT IT SHALL RELY SOLELY ON ITS OWN INDEPENDENTLY DEVELOPED OR VERIFIED INFORMATION.

(b) PURCHASER ACKNOWLEDGES AND AGREES THAT IT IS PURCHASING THE PROPERTY "AS IS" AND "WITH ALL FAULTS", BASED UPON THE CONDITION (PHYSICAL OR OTHERWISE) OF THE PROPERTY AS OF THE DATE OF THIS AGREEMENT, REASONABLE WEAR AND TEAR AND, SUBJECT TO THE PROVISIONS OF SECTIONS 3 AND 12 OF THIS AGREEMENT. PURCHASER ACKNOWLEDGES AND AGREES THAT ITS OBLIGATIONS UNDER THIS AGREEMENT SHALL NOT BE SUBJECT TO ANY FINANCING CONTINGENCY OR OTHER CONTINGENCIES OR SATISFACTION OF CONDITIONS AND PURCHASER SHALL HAVE NO RIGHT TO TERMINATE THIS AGREEMENT OR RECEIVE A RETURN OF THE DEPOSITS EXCEPT AS EXPRESSLY PROVIDED FOR IN THIS AGREEMENT OR THE FUNDING AGREEMENT. WITHOUT LIMITING THE PROVISIONS OF SECTION 3, THE PROVISIONS OF THIS SECTION (b) SHALL APPLY IN THE EVENT OF A CLOSING PURSUANT TO SECTION 18 HEREOF AND NOT A CONDEMNATION CONTEMPLATED BY SAID SECTION 3.

(c) Notwithstanding the foregoing, (i) Purchaser's obligation to close hereunder will be subject to the conditions set forth in Section 10(b) hereof and (ii) the provisions of this Section 11 are not intended to further modify the Modified GPP or limit Purchaser's rights or remedies under the Funding Agreement.

(d) Sellers hereby represent and warrant to Purchaser as of the date hereof and as of the date of the Closing as follows (each, a "Representation" and collectively, the "Representations"):

(i) Brooklyn Arena LLC is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Atlantic Yards Development Company, LLC is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Each Seller has full power and authority to enter into and perform this Agreement in accordance with its terms. This Agreement and all documents executed by Sellers which are to be delivered to Purchaser at

the Closing are, and at the time of the Closing will be, duly authorized, executed and delivered by Sellers, and at the time of Closing will be the legal, valid and binding obligations of Sellers enforceable against Sellers in accordance with their respective terms, and do not and, at the time of Closing will not, violate any provision of any agreement or judicial order to which Sellers or the Property is subject.

(ii) Sellers have not granted any rights or options to purchase all or any part of the Property.

(iii) Except for the matters set forth on Schedule B, there is no action, suit, litigation, hearing or administrative proceeding pending against Sellers, or, to Sellers' actual knowledge, threatened with respect to all or any portion of the Property in each case which is not or would not be covered by insurance or which would have a material adverse effect on the use or operation of Property. It is expressly understood and agreed that the pendency of the Litigation or any appeals thereof shall not constitute an objection to the Closing to the extent the parties make the determination contemplated by Section 18(a).

(iv) Neither Seller has filed any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any law relating to bankruptcy or insolvency, nor has any such petition been filed against Seller; no general assignment of the property of either Seller has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for either such entity or any of its property; the entities constituting Sellers are not insolvent and the consummation of the transactions contemplated by this Agreement shall not render either Seller insolvent.

(v) Sellers have not been asked to pay, and have neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the execution and delivery by Purchaser of this Agreement.

The representations and warranties of Sellers contained in this Section 11(d) with respect to each Parcel shall survive the Closing for one hundred eighty (180) days following the Closing Date (the "Limitation Period"). Each such representation and warranty shall automatically be null and void and of no further force and effect on the 180th day following the Closing Date unless, prior to such 180th day, Purchaser shall have provided Seller with a notice alleging that Sellers are in breach of such representation or warranty and specifying in reasonable detail the nature of such breach. Purchaser shall allow Sellers sixty (60) days after its notice within which to cure such breach or if such breach cannot be cured within such sixty (60) day period, and Sellers notify Purchaser they wish to extend its cure period (the "Cure Extension Notice"), such additional reasonable period of time as is required to cure the same so long as such cure has been commenced within such sixty (60) day period and is being diligently pursued to completion. If Sellers fail to cure such breach after written notice thereof, Purchaser's sole remedy (subject to Section 11(h)) shall be to commence a legal proceeding against Sellers alleging that Sellers shall be in breach of such representation or warranty and that Purchaser shall have suffered actual damages as a result thereof (a "Proceeding"), which Proceeding must be commenced, if at all, within sixty (60) days after the expiration of the Limitation Period;