

provided, however, that if Purchaser gives Sellers written notice of such a breach within the Limitation Period, and Sellers subsequently send a Cure Extension Notice, then Purchaser shall have until the date which is thirty (30) days after the date Sellers notify Purchaser they have ceased endeavoring to cure such breach, to commence such Proceeding. If Purchaser shall have timely commenced a Proceeding and a court of competent jurisdiction shall, pursuant to a final, non-appealable order in connection with such Proceeding, determine that (1) Sellers were in breach of the applicable representation or warranty as of the date of this Agreement, and (2) Purchaser suffered actual damages (the "Damages") by reason of such breach, and (3) Purchaser did not have actual knowledge of such breach on or prior to the Closing Date and is not deemed to have knowledge of such breach as described in clause (d) below, then Purchaser shall be entitled to receive an amount equal to the Damages. Any such Damages, subject to the limitations contained herein, shall be paid within thirty (30) days following the entry of such final, non-appealable order and delivery of a copy thereof to Sellers. In the event that Sellers shall be in breach of any of the Representations, Purchaser shall have no recourse to the property or other assets of Sellers or any of the other Exculpated Parties, other than the net sale proceeds from the sale of the Property and Purchaser's sole remedy, in such event, shall be as described above.

(e) [Intentionally Deleted]

(f) [Intentionally Deleted]

(g) Purchaser hereby represents and warrants to Sellers as of the date hereof and as of the Closing Date that:

(i) Purchaser is a public benefit corporation duly organized, validly existing and in good standing under the laws of the State of New York.

(ii) Purchaser has full power and authority to enter into and perform this Agreement in accordance with its terms and this Agreement and all documents executed by Purchaser which are to be delivered to Sellers at the Closing are, and at the time of Closing will be, duly authorized, executed and delivered by Purchaser and are, and at the time of Closing will be the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, and do not, and at the time of Closing will not, violate any provision of any agreement in judicial order to which Purchaser is a party or subject.

(iii) Purchaser has not 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 Purchaser; no general assignment of Purchaser's property has been made for the benefit of creditors, and no receiver, master, liquidator or trustee has been appointed for Purchaser or any of its property; Purchaser is not insolvent and the consummation of the transactions contemplated by this Agreement shall not render Purchaser insolvent.

(iv) The Modified GPP has not been amended and remains in full force and effect.

(h) In addition, in no event shall either party be liable for any incidental, consequential, indirect, punitive, special or exemplary damages, or for lost profits, unrealized expectations or other similar claims.

12. DAMAGE AND DESTRUCTION.

If all or any part of the improvements on the Arena LLC Land and/or the Development Land (the "Improvements") is damaged by fire or other casualty occurring on or after the date hereof and prior to the Closing, whether or not such damage affects a material part of the Improvements, then neither party shall have the right to terminate this Agreement and the parties shall nonetheless consummate this transaction in accordance with this Agreement, without any abatement of the Purchase Price or any liability or obligation on the part of the Sellers by reason of such destruction or damage. In such event, Sellers shall have the right to make a claim for and to retain any casualty insurance proceeds received under casualty insurance policies in effect with respect to the Property on account of such physical damage or destruction, but shall have no obligation to restore the Improvements (except to bring the Improvements into safe condition). The provisions of this Section 12 shall supersede Section 5-1311 of the General Obligations Law or any law applicable to the Property governing the effect of fire or other casualty in contracts for real property.

13. LEASES

(a) It is the express understanding of the parties that in the event of a Closing hereunder, the interest of tenant under the Ground Leases shall be subject to the leases, licenses and other occupancy agreements demising space at the Property (collectively, "Leases") and that Purchaser shall have no obligation to perform the obligations of landlord under the Leases or receive rent or other amounts payable by the tenants under the Leases (which shall remain the property of the applicable Ground Lease Tenant and Purchaser shall promptly remit to such Ground Lease Tenant any amounts received from such tenants). Accordingly, at the Closing, Purchaser, such Ground Lease Tenant and Sellers shall execute, exchange and deliver any instruments reasonably requested by any such party to confirm the foregoing and that the applicable Ground Tenant shall have the right, title and interest of Landlord in all security deposits maintained under the Leases.

(b) In the event of a Condemnation, Sellers shall pay and hold Purchaser harmless from any liability or claim for any awards payable to tenants, licensees or other occupants as a result of the Condemnation of such Leases.

(c) The provisions of this Section 13 shall survive the Closing.

14. BROKERS AND ADVISORS

(a) Purchaser represents and warrants to Sellers that it has not dealt or negotiated with, or engaged on its own behalf or for its benefit, any broker, finder, consultant,

advisor, or professional in the capacity of a broker or finder (each a "Broker") in connection with this Agreement or the transactions contemplated hereby.

(b) Sellers represent and warrant to Purchaser that they have not dealt or negotiated with, or engaged on their own behalf or for their benefit, any Broker in connection with this Agreement or the transactions contemplated hereby. Sellers hereby agree to indemnify, defend and hold Purchaser and its direct and indirect shareholders, officers, directors, partners, principals, members, employees, agents, contractors and any successors or assigns of the foregoing, harmless from and against any and all claims, demands, causes of action, losses, costs and expenses (including reasonable attorneys' fees, court costs and disbursements) arising from any claim for commission, fees or other compensation or reimbursement for expenses made by any Broker engaged by or claiming to have dealt with Sellers in connection with this Agreement or the transactions contemplated hereby.

(c) The provisions of this Section 14 shall survive the termination of this Agreement or the Closing.

15. TAX REDUCTION PROCEEDINGS

Sellers may file and/or prosecute an application for the reduction of the assessed valuation of the Property or any portion thereof for real estate taxes or a refund of Property Taxes previously paid (a "Tax Certiorari Proceeding") to the City of New York for any fiscal year. Sellers shall have the right to withdraw, settle or otherwise compromise Tax Certiorari Proceedings affecting real estate taxes assessed against the Property without the consent of Purchaser. The amount of any tax refunds shall be paid to Sellers and Purchaser shall remit to Sellers within the (5) business days of receipt thereof or refund of Property Taxes received by Purchaser. The provisions of this Section 15 shall survive the Closing.

16. TRANSACTION COSTS.

At the Closing, Sellers and Purchaser shall execute, acknowledge, deliver and file all such returns (or, if required by ACRIS E-tax procedures, an electronic version thereof) as may be necessary to comply with Article 31 of the Tax Law of the State of New York and the regulations applicable thereto, and the New York City Real Property Transfer Tax Law (Admin. Code Article 21) and the regulations applicable thereto (the "Returns"), Sellers shall pay any recording fees for documentation to be recorded in connection with the transactions contemplated by this Agreement and any transfer taxes payable in connection therewith. The provisions of this Section 16 shall survive the Closing.

17. DELIVERIES TO BE MADE ON THE CLOSING DATE

(a) Sellers' Documents and Deliveries: On the Closing Date, Sellers shall deliver or cause to be delivered to Purchaser the following:

(i) A duly executed and acknowledged Bargain and Sale Deed Without Covenants Against Grantor's Acts with respect to the Property in the form of Exhibit 1;

(ii) A duly executed Bill of Sale from each Seller in the form of Exhibit 2;

(iii) A duly executed certification as to each Seller's non-foreign status as prescribed in Section 21, if appropriate, in the form of Exhibit 3; and

(iv) Evidence of authority, good standing (if applicable) and due authorization of each entity constituting Sellers to enter into the within transaction and to perform all of their obligations hereunder, including without limitation, the execution and delivery of all of the closing documents required by this Agreement.

(b) Purchaser's Documents and Deliveries: On the Closing Date, Purchaser shall deliver or cause to be delivered to Sellers the following:

(i) Payment of the balance of the Purchase Price by 1:00 p.m., eastern time, on the Closing Date, in the manner required under this Agreement; and

(ii) Evidence of authority, good standing (if applicable) and due authorization of Purchaser to enter into the within transaction and to perform all of its obligations hereunder, including without limitation, the execution and delivery of all of the closing documents required by this Agreement.

(c) Jointly Executed Documents: Sellers and Purchaser shall, on the Closing Date, each execute, acknowledge (as appropriate) and exchange the following documents:

(i) The Returns, if any;

(ii) Unless this Agreement has been assigned to NYCDEC pursuant to this Agreement, the Ground Leases;

(iii) Unless this Agreement has been assigned to NYCDEC pursuant to this Agreement, duly executed and acknowledged memoranda of the Ground Leases in form and substance reasonably satisfactory to the parties in form for recording; and

(iv) Any other affidavit, document or instrument required to be delivered by Sellers or Purchaser, pursuant to the terms of this Agreement or applicable law in order to effectuate the transfer of title to the Property.

18. CLOSING DATE

(a) Unless this Agreement has been assigned to NYCEDC pursuant to this Agreement, the Closing of the transactions contemplated by this Agreement (the "Closing") shall occur, and the documents referred to in Section 17 shall be delivered upon tender of the Purchase Price provided for in this Agreement, at 10:00 a.m., Eastern Time, on the date that is ten (10) business days after Sellers notify Purchaser that either:

(i) All litigation that has been filed under Article 78 of the New York Civil Practice law and Rules or other litigation, including litigation initiated in the Federal Courts, challenging, directly or indirectly, the transactions contemplated by this Agreement or any Ground Lease or the development of the Project (any such litigation hereinafter collectively referred to as the "Litigation") has been withdrawn with prejudice or dismissed beyond all available appeals; or

(ii) The parties have reasonably determined that such Litigation is unlikely to be successful and that the parties have agreed to proceed with the Closing irrespective of the pendency of the Litigation or any appeals thereof.

The date the parties so set for the Closing, is referred to in this Agreement as the "Scheduled Closing Date"; and the actual date of the Closing, the "Closing Date"), at the offices of Purchaser's attorneys, Skadden, Arps, Slate, Meagher & Flom LLP, Four Times Square, New York, New York 10036. Sellers shall have the right, from time to time, by giving notice to Purchaser at least five (5) days prior to the then Scheduled Closing Date, to extend the Scheduled Closing Date by up to twenty (20) business days. Notwithstanding the giving of any notice of Closing pursuant to this Section 18(a), Purchaser shall have the right to assign this Agreement in accordance with Section 28 upon giving notice to Sellers and if such notice is not given to Sellers at least five (5) days prior to the then Scheduled Closing Date, the Scheduled Closing Date shall be extended to the fifth business day after the giving of such notice of assignment.

(b) The acceptance of title to the Property by Purchaser, payment of the Purchase Price by Purchaser and execution and delivery of the Ground Leases shall be deemed to be full performance and discharge of any and all obligations on the part of the parties to be performed pursuant to this Agreement, except where such agreements and obligations are specifically stated to survive. Nothing contained in this Section 18(b) is intended to limit a party's obligations to the other party under any other written agreement between Purchaser and any Seller, including without limitation any Ground Lease.

19. NOTICES

All notices, demands, requests or other communications (collectively, "Notices") required to be given or which may be given hereunder shall be in writing and shall be sent by (a) certified or registered mail, return receipt requested, postage prepaid, or (b) national overnight delivery service, or (c) personal delivery, addressed as follows:

(i) If to Sellers:

Brooklyn Arena, LLC
c/o Forest City Ratner Companies
1 Metro Tech Center North
Brooklyn, New York 11201
Attention: Executive Vice President of Real Estate

and

Atlantic Yards Development Company, LLC
c/o Forest City Ratner Companies
1 Metro Tech Center North
Brooklyn, New York 11201
Attention: Executive Vice President of Real Estate

With copies to:

Forest City Ratner Companies
1 Metro Tech Center North
Brooklyn, New York 11201
Attention: David L. Berliner, Esq.

and

Fried, Frank, Harris, Shriver & Jacobson LLP
One New York Plaza
New York, New York 10004
Attention: Stephen Lefkowitz, Esq.

(ii) If to Purchaser:

Empire State Development Corporation
633 Third Avenue
New York, NY 10017
Attention: General Counsel

With copies to:

Skadden, Arps, Slate, Meagher & Flom LLP
Four Times Square
New York, New York 10036
Attention: Neil L. Rock, Esq.

Any Notice so sent by certified or registered mail, national overnight delivery service or personal delivery shall be deemed given on the date of receipt or refusal as indicated on the return receipt, or the receipt of the national overnight delivery service or personal delivery service. A Notice may be given either by a party or by such party's attorney. Sellers or Purchaser may designate, by not less than five (5) business days' notice given to the others in accordance with the terms of this Section 19, additional or substituted parties to whom Notices should be sent hereunder.

20. DEFAULT BY PURCHASER OR SELLERS

(a) If (i) Purchaser shall default in the payment of the Purchase Price or in the performance of any of its other obligations to be performed on the Closing Date, or (ii) Purchaser shall default in the performance of any of its material obligations to be performed prior to the Closing Date and, with respect to any default under this clause (ii) only, such default shall continue for five (5) business days after notice to Purchaser, Sellers' sole remedy by reason thereof shall be to terminate this Agreement and, upon such termination, Sellers shall be entitled to retain the Deposits as liquidated damages for Purchaser's default hereunder, it being agreed that the damages by reason of Purchaser's default are difficult, if not impossible, to ascertain, and thereafter Purchaser and Sellers shall have no further rights or obligations under this Agreement, except for those that are expressly provided in this Agreement to survive the termination hereof, provided, however, that (x) Purchaser's rights and Sellers' obligations under the Funding Agreement shall survive as provided therein, (y) clause (ii) above shall not apply to Purchaser in the event this Agreement has been assigned to NYCEDC pursuant to this Agreement and (z) the limitation contained herein shall not apply to the failure by Purchaser to re-convey the Property in accordance with Section 4(c)(iv).

(b) If (x) Sellers shall default in any of its obligations to be performed on the Closing Date or (y) Sellers shall default in the performance of any of their material obligations to be performed prior to the Closing Date and, with respect to any default under this clause (y) only, such default shall continue for five (5) business days after notice to Sellers, Purchaser as its sole remedy by reason thereof (in lieu of prosecuting an action for damages or proceeding with any other legal or equitable course of conduct, the right to bring such actions or proceedings being expressly and voluntarily waived by Purchaser, to the extent legally permissible, following and upon advice of its counsel) shall have the right, subject to the other provisions of this Section 20(b), to seek to obtain specific performance of Sellers' obligations hereunder, provided that any action for specific performance shall be commenced within sixty (60) days after such default, and if Purchaser prevails thereunder, Sellers shall reimburse Purchaser for all reasonable legal fees, court costs and all other reasonable costs of such action. If Purchaser elects to seek specific performance of this Agreement, then as a condition precedent to any suit for specific performance, Purchaser shall on or before the Closing Date, time being of the essence, fully perform all of its obligations hereunder which are capable of being performed (other than the payment of the balance of the Purchase Price, which shall be paid as and when required by the court in the suit for specific performance). Notwithstanding the foregoing, Purchaser shall have no right to seek specific performance if Sellers shall be prohibited from performing its obligations hereunder by reason of any law, regulation, or other legal requirement applicable to Sellers.

(c) Notwithstanding the foregoing, the parties shall have such rights and obligations as are set forth in the Funding Agreement.

(d) The provisions of this Section 20 shall survive the termination hereof.

21. FIRPTA COMPLIANCE

Sellers shall comply with the provisions of the Foreign Investment in Real Property Tax Act, Section 1445 of the Internal Revenue Code of 1986 (as amended, "FIRPTA"). Sellers acknowledge that Section 1445 of the Internal Revenue Code provides that a transferee of a United States real property interest must withhold tax if the transferor is a foreign person. To inform Purchaser that withholding of tax is not required upon the disposition of a United States real property interest by Sellers, Sellers hereby represent and warrant that Sellers are not foreign persons as that term is defined in the Internal Revenue Code and Income Tax Regulations. On the Closing Date, each Seller shall deliver to Purchaser a certification as to its non-foreign status in the form of Exhibit 3, and shall comply with any temporary or final regulations promulgated with respect thereto and any relevant revenue procedures or other officially published announcements of the Internal Revenue Service of the U.S. Department of the Treasury in connection therewith.

22. ENTIRE AGREEMENT

This Agreement (together with any other written agreement between Sellers and Purchaser of even date herewith or delivered at the Closing, including the Funding Agreement) contains all of the terms agreed upon between Sellers and Purchaser with respect to the subject matter hereof, and all other prior agreements, understandings, representations and statements, oral or written, between Sellers and Purchaser are merged into this Agreement. The provisions of this Section 22 shall survive the Closing or the termination hereof.

23. AMENDMENTS

This Agreement may not be changed, modified or terminated, except by an instrument executed by Sellers and Purchaser. The provisions of this Section 23 shall survive the Closing or the termination hereof.

24. WAIVER

No waiver by either party of any failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent failure or refusal to so comply. The provisions of this Section 24 shall survive the Closing or the termination hereof.

25. PARTIAL INVALIDITY

If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. The provisions of this Section 25 shall survive the Closing or the termination hereof.