

of either party, the parties will execute a writing either confirming that the Project Documentation has been finalized in a form acceptable to Developer and ESDC or indicating which of the Project Documentation remains to be finalized in such an acceptable form.

Section 13.04 Termination. At any time during the Term, Developer and ESDC shall each have the right to deliver a termination notice (a "Termination Notice") to the other party setting forth its decision to terminate this Agreement. Unless a Termination Notice is determined by a court of competent jurisdiction to be an ESDC Withdrawal Notice, (i) Developer shall be obligated to pay to ESDC the Required Amount within thirty (30) business days after delivery of a Termination Notice, and (ii) ESDC shall assign to EDC ESDC's interest in the Purchase Agreement, subject to the provision of Section 28 thereof.

Section 13.05 Failure of Effective Date to Occur. In the event that the Effective Date does not occur prior to December 19, 2009 and if at any time thereafter, Developer or its Affiliates fail to (i) pursue the Site Litigation to which Developer or its Affiliates are a party with due diligence and to cooperate in all Site Litigation as reasonably requested with all government parties involved therein, or (ii) take reasonable steps in furtherance of the Project (including advancing design work and other predevelopment activities), then the Project will be deemed abandoned and (iii) ESDC will be entitled to its remedies as set forth in Section 13.03 hereof.

Section 13.06 Right to Refrain. ESDC shall have the right, in its sole discretion, to refrain from exercising any of its rights under this Agreement at any time or from time to time.

Section 13.07 No Waivers; Remedies Not Exclusive; Etc. No course of dealing on the part of ESDC or any failure or delay on the part of ESDC to exercise any right shall operate as a waiver of such right or otherwise prejudice ESDC's powers and remedies. No right, power or remedy conferred upon or reserved to ESDC is intended to be exclusive of any other right, power or remedy. Every right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy contained in this Agreement or existing at any time at law or in equity, or otherwise, and may be exercised from time to time and as often and in such order as ESDC may deem appropriate. The exercise of any right, power or remedy shall not be construed as an election or a waiver of any other right, power or remedy.

Section 13.08 Effective Date Delayed. If the Effective Date does not occur prior to the tenth anniversary of the date hereof, the Project shall be deemed abandoned and Developer shall be obligated to pay to ESDC the Required Amount within thirty (30) business days after such anniversary.

Section 13.09 Survival. The provisions of Section 13.02, Section 13.03 and Section 13.04, and Section 13.06 shall survive the expiration or termination of this Agreement.

ARTICLE XIV

CLAIMS, ACTIONS, CONSENT TO JURISDICTION AND VENUE

Section 14.01 Waiver of Trial by Jury. ESDC and Developer and its Affiliates hereby waive trial by jury in any action, proceeding or counterclaim brought by any of the

foregoing against the other on any matters whatsoever arising out of or in any way connected with this Agreement, the Project, the relationship of ESDC and Developer and its Affiliates (in the case of the Affiliates, arising out of the Project), the GPP, as it may be amended, and/or any claim for injury or damages made by either party hereto.

Section 14.02 Jurisdiction. Any and all claims asserted by or against ESDC or Developer and its Affiliates arising under this Agreement or related thereto shall be heard and determined either in the courts of the United States located in New York City or in the courts of the State of New York ("**New York State Courts**") located in the City and County of New York. To this effect (and with respect to any Affiliates, only to the extent of any action arising out of the Project), ESDC and Developer and its Affiliates each agrees as follows:

(a) With respect to any action between ESDC and Developer or its Affiliates in a New York State Court located in New York County, ESDC and Developer and its Affiliates each hereby waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens; (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

(b) With respect to any action between ESDC and Developer or its Affiliates in Federal Court located in New York City, ESDC and Developer and its Affiliates each hereby waives and relinquishes any right it might otherwise have to move to transfer the action to a Federal Court outside New York City.

(c) If Developer or its Affiliates commences any action against ESDC in a court located other than in the City, County and State of New York, upon request of the ESDC, Developer or its Affiliates, as applicable, shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, Developer or its Affiliates, as applicable, shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

(d) If ESDC commences any action against Developer or its Affiliates in a court located other than in the City, County and State of New York, upon request of the Developer or its Affiliates, as applicable, ESDC shall either consent to a transfer of the action to a court of competent jurisdiction located in the City, County and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, ESDC shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in the City, County and State of New York.

(e) Nothing herein shall limit the right of ESDC to seek recovery against any assets of Developer and its Affiliates wherever located.

(f) A final judgment in any action or proceeding hereunder shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

Section 14.03 Service of Process. Developer irrevocably consents to the service of any and all process in any judicial action or proceeding described in Section 14.01 either in

person, wherever Developer may be found, or by registered mail addressed to Developer to its address, and in the manner, set forth in Article XV hereof. Nothing in this Section shall affect the right of ESDC to serve legal process in any other manner permitted by law.

Section 14.04 Immunities. To the extent that Developer has or hereafter may acquire any immunity from jurisdiction of any court or from any legal process (whether through service or notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise) with respect to itself or its property, Developer hereby waives such immunity in respect of its obligations under this Agreement and the matters contemplated herein.

ARTICLE XV

NOTICES

Section 15.01 General Requirements. All notices and communication to the parties hereunder will be delivered by hand or sent by registered or certified mail, return receipt requested, or by Airborne Express, Federal Express, Express Mail or other overnight mail service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is transmitted will be deemed to have occurred upon receipt, if hand delivered; five days from the date of mailing, if mailed; or the next Business Day after transmittal by Airborne Express, Express Mail or other overnight delivery service that provides a receipt to the sender. Notices shall be effective upon receipt, the refusal to accept receipt or the inability to deliver on account of a change of address with respect to which no notice was given.

(a) All notices and correspondence to ESDC will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) of which ESDC may notify the Developer from time to time:

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

with copies to:

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

(b) All notices and correspondence to Developer will be delivered to the following address(es) and addressee(s) or to such other address(es) or addressee(s) of which Developer may notify ESDC from time to time:

Address: Brooklyn Arena LLC and
Atlantic Yards Development Company LLC
c/o Forest City Ratner Companies

1 Metro Tech Center North
Brooklyn, New York 11201
Attention: David Berliner

with copies to:

Address: Forest City Enterprises, Inc.
Terminal Tower 50 Public Square
Cleveland, Ohio 44113-2267
Attention: General Counsel

and

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

ARTICLE XVI

AFFIRMATIVE ACTION

Section 16.01 Policy. It is the policy of the State of New York, and the ESDC, to comply with all federal, State and local laws, policies, orders, rules and regulations which prohibit unlawful discrimination because of race, creed, color, national origin, sex, sexual orientation, age, disability or marital status, and to take affirmative action in working with contracting parties to ensure that New York State Business Enterprises, Minority and Women-owned Business Enterprises (the "**M/WBEs**"), Minority Group Members and women share in the economic opportunities generated by ESDC's participation in projects or initiatives, and/or the use of ESDC funds. ESDC's non-discrimination and affirmative action policy will apply to the Project. Developer has established a goal for the Project of minority owned firm participation of not less than 20% , and women owned firm participation of not less than 10%, of the total dollar value of the work performed on the Project, and an overall goal of 35% Minority and 10% Female workforce participation. Developer shall endeavor to cause the work with respect to the Infrastructure to achieve this Project goal to the degree practicable. Developer shall be required to comply with ESDC's non-discrimination and affirmative action provisions, attached as **Exhibit M** to this Agreement.

ARTICLE XVII

MISCELLANEOUS

Section 17.01 Project Documentation. Although Developer and ESDC each acknowledge that the Project Documentation has not been finalized and the parties will continue to negotiate the same throughout the Term, Developer and ESDC acknowledge and agree that Project

Documentation shall contain provisions which are consistent with the provisions and terms set forth on **Exhibit K** attached hereto and made a part hereof, except to the extent inconsistent with the GPP, as the same may be amended. In no event shall either party's failure to reach agreement upon the terms of the Project Documentation give rise to a determination that an ESDC Withdrawal Notice has been delivered except to the extent it is determined by a court of competent jurisdiction that such failure resulted from ESDC's negotiating in bad faith or has otherwise acted arbitrarily. In addition to the terms set forth on **Exhibit K**, the Project Documentation shall contain such other provisions which are acceptable to ESDC and Developer, each acting in good faith but in their sole discretion, which provisions shall be consistent in all material respects with the requirements set forth in the GPP, as the same may be amended. Although the parties agree that the Project Documentation will contain provisions requiring the use of commercially reasonable efforts to achieve construction of the Arena and the other buildings in accordance with the project schedule set forth in the GPP, as the same may be amended, to the extent such schedule is not achieved by Developer, the remedies available to ESDC shall be consistent with the terms set forth on **Exhibit K**.

Section 17.02 Prohibited Vendor. A "**Prohibited Vendor**" shall mean:

(i) Any Person (A) that is in monetary default or in breach of any nonmonetary obligation under any material written agreement with the State of New York (including ESDC) or the City of New York after notice and beyond any applicable cure periods, or (B) that directly or indirectly controls, is controlled by, or is under common control with, a Person that is the subject of any of the matters set forth in clause (A), unless, in each instance, such monetary default or breach either (x) has been waived in writing by the State or City of New York or (y) is being disputed in a court of law, administrative proceeding, arbitration or other forum, or (z) is cured within thirty (30) days after a determination and notice to Developer from ESDC that such Person is a Prohibited Vendor as a result of such default or breach;

(ii) 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 for purposes of this paragraph (ii) shall be within the sole discretion of ESDC, which discretion shall be exercised in good faith; provided however, that such Person shall not be deemed a Prohibited Vendor if the State of New York, having actual knowledge that such Person meets

the criteria set forth in clauses (A) or (B) of this paragraph (ii), entered into a contract and is then doing business with such Person;

(iii) Any government, or any Person that is directly or indirectly controlled (rather than only regulated) by a government, which is finally determined, beyond right to appeal, by the Federal Government of the United States or any agency, branch or department thereof 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 which is, or any Person which, directly or indirectly, is controlled (rather than only regulated) by a government which is subject to the regulations or controls thereof. Such control shall not be deemed to exist in the absence of a determination to that effect by a Federal court or by the Federal Government of the United States or any agency, branch or department thereof;

(iv) Any government or any Person that, directly or indirectly, is controlled (rather than only regulated) by a government, the effects of 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;

(v) Any Person that has received written notice of default in the payment to the City of any real property taxes, sewer rents or water charges, in an amount greater than ten thousand dollars (\$10,000), unless such default is then being contested in good faith in accordance with applicable legal requirements with due diligence in proceedings in a court or other appropriate forum or unless such default is cured within thirty (30) days after a determination and notice to Developer from ESDC that such Person is a Prohibited Vendor as a result of such default; and

(vi) Any Person (A) that has owned any property at any time in the five (5) years immediately preceding a determination of whether such Person is a Prohibited Vendor, which such property both (x) was acquired by such Person following an in rem foreclosure of such property and (y) was reacquired during such five (5) year period from such Person by the City in an in rem foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administrative Code of the City, or (B) that directly or indirectly controls the management of property, or is controlled by or is under common control with a Person that has controlled the management of property at any time in the five (5) years preceding such determination of a Prohibited Vendor status, which such property (x) was acquired by such Person following an in rem foreclosure of such property and (y) was reacquired during

such five (5) year period from such Person by the City in an in rem foreclosure, other than a property in which the City has released or is in the process of releasing its interest pursuant to the Administrative Code of the City.

Section 17.03 Procedure for Determining Prohibited Vendor Status. If Developer seeks to determine whether any Person subject to the restrictions in this Agreement regarding Prohibited Vendors is a Prohibited Vendor, Developer may submit to ESDC the name of such Person and, except with respect to any Person that is publicly held, the name of each Principal of such Person, together with such completed questionnaires or forms as are standard for ESDC to prescribe. Notwithstanding anything to the contrary contained in this Agreement, any provision in this Agreement prohibiting a Person from being a Prohibited Vendor shall also apply to the Principals of such Person unless such Person is a publicly traded entity. Within fifteen (15) Business Days after receipt of such names and completed questionnaires or forms, as applicable, ESDC shall notify Developer of ESDC's determination, which determination shall be limited to whether such Person (and any Principals thereof) is a Prohibited Vendor. If ESDC fails to so notify Developer within such fifteen (15) Business Day period, then such Person shall be deemed not to be a Prohibited Vendor. The term "**Principal**" for purposes of this Section 17.03 shall mean, with respect to any Person, (i) any director or the president, any vice president, the treasurer, or the secretary thereof if such Person is a corporation, (ii) any general partner of a partnership or managing member of a limited liability company, or (iii) any shareholder, limited partner, member or other Person having a direct or indirect economic interest in such Person, whether beneficially or of record, in excess of ten percent (10%) of all of the issued and outstanding shares, partnership interests, limited liability company interests or other ownership interests of such Person. In calculating the percentage interest of any shareholder, partner, member or other beneficially interested Person referred to in the prior sentence, the interest in the equity of any affiliate of such shareholder, partner, member or other beneficially interested Person.

Section 17.04 Headings, Captions and Table of Contents. The descriptive headings and captions used in this Agreement are for the purposes of convenience only and do not constitute a part of this Agreement. The Table of Contents hereof is for the purpose of convenience of reference only, and is not to be deemed or construed in any way as part of this Agreement.

Section 17.05 Governing Law. This Agreement and its performance shall be governed by and construed in accordance with the laws of the State of New York.

Section 17.06 Amendments; Waiver. This Agreement may not be amended except by an instrument in writing signed by both parties. The failure by either party to exercise in any respect any right provided for herein will not be deemed a waiver of any rights hereunder.

Section 17.07 Entire Agreement. This Agreement, including the Exhibits hereto (including without limitation the Purchase Agreement) contain all of the promises, agreements, conditions, inducements and understandings between ESDC and Developer concerning the Funding and the other matters contemplated by this Agreement and there are no promises, agreements, conditions, understandings, inducements, warranties or representations, oral or written, expressed or implied, between them concerning the Funding or the other matters contemplated by this Agreement other than as expressly set forth herein or as it may be expressly