

City of New Rochelle, N.Y.

Introduced On: 2/12/13

Introduced By:

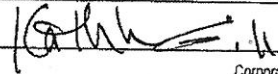
Held:

Adopted:

No. **21**

Bramson
Moved: Mayor Noam Bramson
(and)

Fertel
Seconded: Council Member Barry R. Fertel

Approved As To Form: 

Corporation Counsel

Rev. 6.1

Dist	Member	Yeas	Nays	Abstain	Absent
1 st	Trangucci		✓		
2 nd	Tarantino		✓		
3 rd	Rice	✓			
4 th	Hyden		✓		
5 th	Fertel	✓			
6 th	Rackman	✓			
Mayor	Bramson	✓			

SUBJECT }
OR }
TITLE }

RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A FIRST AMENDMENT TO RESTATED MEMORANDUM OF UNDERSTANDING WITH FOREST CITY RESIDENTIAL GROUP, INC. FOR THE ECHO BAY DEVELOPMENT PROJECT.

WHEREAS, in May, 2008, the City and Forest City entered into a Memorandum of Understanding with respect to the proposed mixed-use redevelopment of a portion of the Echo Bay Redevelopment Area (the "Original Project"); and

WHEREAS, in May, 2012, the City and Forest City entered into a Restated Memorandum of Understanding (the "MOU") with respect to the Original Project; and

WHEREAS, the scope and components of the project have evolved during the course of the SEQRA review process, and the City and Forest City now wish to (i) extend the term of the MOU, and (ii) amend the MOU to reflect the Project (as hereinafter defined) as most recently described in the accepted DEIS (as hereinafter defined).

NOW, THEREFORE, the City and Forest City agree as follows:

1. Sections A and B of the MOU are amended and restated as follows:

"A. Parties:

1. City of New Rochelle ("City") -- Owner and seller of Section 1, Block 84, Lot 5 ("the Public Works Yard," or "City Property"), and owner of Section 1, Block 84, Lot 22 (the "Armory Property").

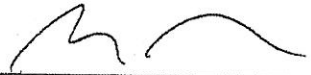
2. Forest City Residential Group, Inc. ("Forest City") -- Purchaser of the Public Works Yard, and developer of the Project (as hereinafter defined) in the Project Area (as hereinafter defined).

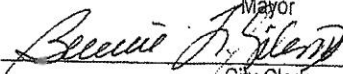
B. Project Description:

Authenticated and certified this

12th day of February 20 13

2/13/13



Mayor


City Clerk

1. Project Area: The "Project Area" is comprised of the Public Works Yard and a portion of the Armory Property. The City Department of Public Works facility currently located at the Public Works Yard is proposed to be relocated to another site by the City at the City's cost and expense pursuant to a separate and independent review and approval process conducted by the City.

2. The Project: On February 12, 2013, the City Council accepted a draft environmental impact statement ("DEIS") prepared by Forest City for a proposed redevelopment of the Project Area consisting of the following components (the "Project"):

- a. Approximately 285 residential dwelling units, 29 of which would be "Moderate Income Housing Units".
- b. Approximately 25,000 square feet of retail space.
- c. Approximately 430 parking spaces to serve all uses.
- d. The creation on the Armory Property of "Armory Place," a landscaped boulevard providing physical access to: (i) the lobby of the Project building on the Public Works Yard, (ii) the east side of the Armory Property, and (iii) parking for the "Echo Bay Walkway" waterfront esplanade.
- e. The following public amenities and improvements:
 - A pedestrian bridge (approximately 80 feet long by 8 feet wide) connection to the Westchester County Wastewater Treatment Plant parcel for a future pedestrian path connection to Five Islands Park;
 - A public seating area with three benches and a pergola overlooking Echo Bay;
 - A sloped open lawn area oriented towards the waterfront for unlimited seating opportunities, including multiple nodes of activity and destinations to create a robust public waterfront space;
 - The "Echo Bay Walkway" pedestrian esplanade (approximately 2,100 linear feet with connections to adjacent parcels, the public parking area and Main Street);
 - A 45-car public parking lot (approximately 15,000 square feet) on the Armory Property; and
 - A small non-motorized boat launch dock (approximately 1,200 square feet) and rehabilitated stone building (approximately 450 square feet) on the Armory Property.

Forest City agrees that the proposed architecture and layout for the Project shall be subject to non-binding architectural peer design review and recommendation to the City Council, and shall be subject to approval of the City Council, all prior to execution of the Land Disposition Agreement ("LDA"), in addition to the normal architectural review of site plans and major

subdivisions pursuant to section 331-117.1 of the City's Zoning Code, with all costs of such peer design review to be paid from the Escrow Fund hereunder.

3. Public Works Yard. The City shall complete the design of a new Public Works Yard within 120 days of the execution of this First Amendment to the Restated MOU."

2. Section E.1 of the MOU is amended and restated as follows:

"The Public Works Site: The Public Works Yard shall be sold and conveyed to Forest City in accordance with an LDA. The purchase price ("Purchase Price") shall be Fair Market Value of the property as determined by an MAI appraiser to be mutually selected by the Parties, unless mutually agreed otherwise by the parties, subject to adjustment as set forth in paragraph F(4) below. In determining Fair Market Value, the Public Works Yard shall be appraised for the highest and best use of the property as an individual parcel under the existing zoning. The Purchase Price shall be increased in proportion to the amount of increase, if any, in the Consumer Price Index (published by the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers, N.Y-Northeastern New Jersey Area, All Items - 1982-84=100) for the month preceding the date of closing over the Consumer Price Index for the month in which the appraisal of the Public Works Yard is completed and released to Forest City."

3. Section E.2 of the MOU is amended and restated as follows: "To the extent that any part of the Project Area requires any State grant of land or other approval, the cost of obtaining such grant or approval shall be the responsibility of Forest City."

4. Section F.4 of the MOU is amended and restated as follows:

"The cost of such public amenities and infrastructure borne by Forest City shall be credited against the Purchase Price to be conveyed by the City to Forest City. However, any such credit shall be offset by any public grants, financing and/or subsidies obtained to fund the costs of such public amenities and infrastructure including, but not limited to, the \$1,500,000 grant recently awarded by the State for public infrastructure improvements in the Echo Bay waterfront area. As part of the LDA, the parties may agree to modify the definition of public and private infrastructure costs used to determine the credit against the Purchase Price."

5. Section G of the MOU is amended to provide that the MOU shall expire twelve (12) months from the date of execution of this First Amendment;

now, therefore,

BE IT RESOLVED, by the City Council that the City Manager is hereby authorized to execute a First Amendment to the Memorandum of Understanding with Forest City.

Authenticated and certified) NOAM BRAMSON, Mayor
this 12th day of Feb., 2013) BENNIE F. GILES, III, City Clerk

ECHO BAY REDEVELOPMENT PROJECT
RESTATED MEMORANDUM OF UNDERSTANDING

This RESTATED MEMORANDUM OF UNDERSTANDING (the "MOU") is made as of this __ day of May _____, 2012, by and between the CITY OF NEW ROCHELLE, a New York municipal corporation, with offices at 515 North Avenue, New Rochelle, New York 10801, and FOREST CITY RESIDENTIAL GROUP, INC., an Ohio business corporation authorized to do business in the State of New York, with offices at 50 Public Square, Suite 1160, Cleveland, Ohio 44113.

A. Parties:

1. City of New Rochelle ("City") – Owner and seller of Section 1, Block 84, Lot 5 ("the Public Works Yard"), Section 1, Block 84, Lot 22 ("Armory Property"), and Section 1, Block 84, Lot 110 ("the former Mancuso Marina").

2. Forest City Residential Group, Inc. ("Forest City") – Purchaser of properties within the Project Area (as hereinafter defined), and developer of the Project (as hereinafter defined).

B. Project Description:

1. Project Area: The land comprising approximately 11 acres. The project parcels include Block 84, Lot 5 (Public Works Yard Property) and a portion of Block 84, Lot 22 (the Armory), Block 84, Lot 120 (the former Nelstad property) and possibly Block 84, Lot 110 (the former Mancuso Marina) (collectively the "Project Area"). The City Department of Public Works facility currently located at the Public Works Yard Property is proposed to be relocated to another City site by the City at the City's cost and expense pursuant to a separate and independent review and approval process conducted by the City.

2. The Project: Forest City has prepared and submitted a Redevelopment Plan of the Project Area, which is attached and made a part hereof as Exhibit "A." The City Council has reviewed the Redevelopment Plan and believes that it presents a suitable land use planning vision for the Project Area. Development of the Project shall be consistent with the Main/Echo Bay Urban Renewal Plan, the City of New Rochelle Comprehensive Plan, the Echo Bay Redevelopment Plan, as prepared by JJR, LLC and Associates, the City's LWRP and the City's overall expressed goals and visions for the redevelopment and sustainability of the Project Area, as any of the same may be modified from time to time with the consent of the City. The "Project" consists of the following components:

- a. Approximately 200 to 300 residential dwelling units and associated parking.

- b. Approximately 25,000-50,000 square feet of retail space and associated parking.
- c. Approximately 4.5 acres of publicly accessible waterfront open space, amenities and improvements.

Forest City agrees that the proposed architecture and layout for the Project shall be subject to non-binding architectural peer design review and recommendation to the City Council, and shall be subject to approval of the City Council, all prior to execution of the Land Disposition Agreement ("LDA"), in addition to the normal architectural review of site plans and major subdivisions pursuant to section 331-117.1 of the City's Zoning Code, with all costs of such peer design review to be paid from the Escrow Fund hereunder.

3. Public Works Yard. The City shall complete the design of a new Public Works Yard within 120 days of the execution of the MOU, and, following the completion of such design shall present within 60 days for the City Council's consideration, a financing plan for the construction of a new Public Works Yard, as well as legislation to authorize the financing for such construction. In the event that the City Council does not authorize funding for the relocation of the Public Works Yard prior to October 31, 2012, then Forest City may terminate this MOU and neither party shall have any further obligations or liabilities under this MOU except that Forest City shall pay any outstanding Municipal Expenses, pursuant to paragraph J, below.

4. Local Hiring Program: Forest City shall implement a local hiring and vendor program in relation to the construction and ongoing operation and maintenance of the Project modeled after the City's New Rochelle Development Employment Initiative (NRDEI).

5. Affordable Housing: Forest City shall comply with the City's Affordable Housing Ordinance (Zoning Code Section 331-152 et. seq.).

C. Good Faith Commitments: The City shall covenant in good faith to diligently and reasonably perform its obligations under the MOU, provided, that the City cannot commit to any particular outcome regarding the Project under the State Environmental Quality Review Act ("SEQRA"), the Eminent Domain Procedure Law ("EDPL"), and the respective regulations thereunder, and the City makes no representations as to any approvals with respect to the Project. Based upon SEQRA findings and other governmental findings and determinations required in connection with the Project, the Project may be modified, reduced in scope or rejected in whole or part, and any covenants, conditions and agreements set forth in the MOU are subject to and conditioned upon compliance with each of such findings and determinations.

D. Exclusivity: The City shall not enter into or offer or agree to enter into (nor shall the City authorize or direct any representative to act on its behalf in connection with) any negotiation, discussion, or agreement with any other firm, person, or other entity with respect to the Project (or any similar project) proposed to be undertaken in the Project Area until the date of termination of the MOU, except respecting the portion of the Armory

property which will be the subject of the City RFP. As consideration for the exclusivity and purchase option hereunder, and to provide for payment of the City's SEQRA and other reasonable review costs related to the Project, Forest City shall post and maintain a \$75,000 Escrow Fund as set forth more fully in paragraph J, below.

E. Consideration For City Property:

1. City Property: All property in the Project Area owned by the City (including any property acquired by the City pursuant to subparagraph 3, below) ("City Property") shall be sold and conveyed to Forest City in accordance with an LDA. The purchase price ("Purchase Price") shall be Fair Market Value of the property as determined by an MAI appraiser to be mutually selected by the Parties, unless mutually agreed otherwise by the parties, subject to adjustment as set forth in paragraph F(4) below. In determining Fair Market Value, each City Property shall be appraised for the highest and best use of the property as an individual parcel under the existing zoning. The Purchase Price shall be increased in proportion to the amount of increase, if any, in the Consumer Price Index (published by the Bureau of Labor Statistics of the U.S. Department of Labor for All Urban Consumers, N.Y-Northeastern New Jersey Area, All Items - 1982-84=100) for the month preceding the date of closing over the Consumer Price Index for the month in which the appraisal of such City Property is completed and released to Forest City.

2. Privately Owned Property: To the extent that any property is privately owned as of the date of the MOU, acquiring said property and/or obtaining site access or site control agreements shall be the responsibility of Forest City, subject to subparagraph 3, below.

3. Eminent Domain: In the event that Forest City is unable, after a good faith effort, to consensually acquire the former Nelstad property, then, at the request of Forest City, and only as a last resort and subject to all applicable State and local laws, the City shall commence the use of eminent domain to acquire such private property and thereafter shall diligently pursue, in its reasonable discretion and in consultation with Forest City, all actions and procedures required under the EDPL in a good faith effort to accomplish such condemnation as expeditiously as possible. The City may not take title to such private property hereunder pursuant to eminent domain until SEQRA for the Project is completed.

The purchase price for such private property acquired by the City shall be equal to the aggregate of any acquisition and relocation costs incurred by the City for the acquisition of said private property, and the relocation of any displacees, including, but not limited to, any settlement or determinations of compensation awarded prior to or subsequent to the closing with Forest City pursuant to the EDPL ("Private Acquisition and Relocation Costs"). All Private Acquisition and Relocation Costs, including, but not limited to, all City out-of-pocket expenses, legal fees, surveys, relocation costs, appraisal costs and other expenses, shall be paid by Forest City to the City prior to or at closing, as the Parties may agree, except that any compensation paid by the City to the owner of such private property after the closing with Forest City shall be reimbursed by Forest City

to the City as and when paid by the City. At closing, to secure the post-closing payment by Forest City of any such amounts of compensation, Forest City shall post a letter of credit with the City equaling 20% of the aggregate amount or such other collateral that is acceptable to the parties of any unaccepted offers made by the City to the owners of such private property under the EDPL. The City shall not make any acquisition offer in an amount greater than the amount of the City's "highest approved appraisal" or make any binding acquisition offers of any kind to, or settle any proceedings under the EDPL with, any of the owners of the such private property without the prior consent of Forest City, such consent not to be unreasonable withheld or delayed.

F. Infrastructure:

1. "Project Infrastructure" shall refer to all road, utility and other infrastructure improvements directly related to or necessary for the development of the Project, including, but not limited to, drainage facilities, gas, electric, communications, parking facilities, dredging, bulkheads and all other utility improvements and installations required as part of the Project.

2. The City and Forest City recognize that federal, State, County, City and other governmental and public grants, financing and/or subsidies ("Public Funding") may be necessary to fund the costs of public amenities and infrastructure. To the extent permitted by law, the City and Forest City shall jointly and cooperatively seek Public Funding for the Project, provided that nothing herein shall be construed as a guarantee by the City to provide said funding. Forest City shall be responsible for designing, engineering, obtaining governmental approvals for, and constructing all public amenities and Project Infrastructure, subject to applicable laws and governmental procurement policies. The City shall support, assist and cooperate with Forest City in its performance of such responsibilities.

3. Forest City shall demolish the Public Works Yard presently on East Main Street, undertake any environmental remediation necessary to accomplish project, and construct the Project Infrastructure including public areas, parking and open space in accordance with an approved site plan. Forest City shall provide continuous public access to the shoreline, including an esplanade, shoreline stabilization and creation of additional public amenities or attractions to be determined in consultation with the City. Forest City shall be responsible for necessary utility lines, sanitary and storm systems, water, gas, electric, phone, cable and other public utility lines and associated permits related to such public improvements and amenities. Forest City shall be responsible for traffic improvements as necessary.

4. The cost of such public amenities and infrastructure borne by Forest City shall be credited against the Purchase Price to be conveyed by the City to Forest City. However, any such credit shall be offset by any public grants, financing and/or subsidies obtained to fund the costs of such public amenities and infrastructure. As part of the LDA, the parties may agree to modify the definition of public and private infrastructure costs used to determine the credit against the Purchase Price.

5. The City and Forest City shall cooperate in the preparation of a financial and cash flow modeling analysis of the Project in order to analyze the development costs for the Project, including the projected rate of return for Forest City (the "Project Financial Model"). The Project Financial Model shall show projected construction costs of the public amenities and Project Infrastructure and shall be subject to change, depending upon, among other items, final cost estimates and actual incurred costs, and the final approved program for the Project. The Project Financial Model shall additionally assist in future negotiations between the City and Forest City regarding the terms and conditions of the LDA. Forest City, in cooperation with the City, shall continue to update the Project Financial Model on a timely and transparent basis as the review of the Project progresses, and shall share such updates with the City. Forest City shall certify that all financial and other information submitted in furtherance of the Project Financial Model is accurate and complete as of the date submitted to the best of Forest City's knowledge.

G. This MOU shall expire nine (9) months from the date of execution. Forest City and the City shall use good faith efforts to meet the following milestones, subject to Unavoidable Delay and notice and opportunity to cure as set forth in paragraph K, below:

1. The City shall issue a Request for Proposals (RFP) for the adaptive reuse of the Armory property within 30 days after the execution of the MOU. The City shall complete its evaluation of options for the Armory and determine a re-use strategy for the Armory property prior to entering into an LDA and in a manner necessary to complete the SEQRA review.

2. Within sixty (60) days after the MOU is executed by the Parties, the City shall amend the scoping document for the DEIS previously adopted in connection with the prior project proposed by Forest City.

3. Within one hundred eighty (180) days after the City amends the scoping document, Forest City shall submit a preliminary DEIS for completeness review that includes a traffic, parking and circulation study, preliminary plans for utility placement and public improvements and a design program sufficient to undertake reviews as required by SEQRA. The DEIS shall, without limitation, include a socioeconomic/fiscal analysis and shall address sequencing, land use and zoning matters, and consistency with the Comprehensive Plan.

4. Within ninety (90) days after the City Council issues DEIS completeness comments, Forest City shall submit a revised DEIS.

5. Within ninety (90) days after the close of the public comment period on the accepted DEIS, Forest City shall submit a preliminary FEIS for completeness review.

6. Within sixty (60) days after the City Council issues FEIS completeness comments, Forest City shall submit a revised FEIS.

7. Within forty-five (45) days after the City Council accepts the FEIS, the City Council shall issue its SEQRA findings statement.

8. Within thirty (30) days after the City Council issues the SEQRA findings statement, the City Council shall conduct applicable public hearings on all applications/petitions for approvals for the Project under the jurisdiction of the City Council (the "City Council Approvals," and collectively with all other City approvals for the Project, the "City Approvals"), including under the EDPL (if applicable), and as may be required, including, without limitation, in connection with amendments to the Main/Echo Bay Urban Renewal Plan and any amendments to the City LWRP.

9. Within sixty (60) days after the City Council grants the City Council Approvals, Forest City and the City shall execute the LDA, pursuant to which City Property is conveyed for the Purchase Price (and Private Acquisition and Relocation Costs, if any).

G. Commencement and Completion of the Project: The LDA shall contain dates by which Forest City shall be required to commence and complete the Project (and/or the phases thereof) including, without limitation, the public amenities and Project Infrastructure, subject to Unavoidable Delay. The LDA shall establish the Purchase Price, development phases and their timing, performance thresholds, specific construction actions and rights of each party for the duration of the Project, including a resolution for the Armory property. To secure commencement and completion of the Project in accordance with the LDA, Forest City shall deliver to the City a guaranty by Forest City Enterprises, Inc. of performance and completion of the Project in form and substance the same as shall be required by and delivered to Forest City's construction lender(s) (the "Completion Guaranty"), provided, that the guaranty shall be approved as to form and correctness by the City Corporation Counsel in accordance with Section 51 of the City Charter.

H. Environmental Reviews: All costs for planning, engineering, environmental reviews, remediation, mitigation, and all other costs and expenses related to obtaining the City Approvals and any other approvals for the Project shall be the responsibility of Forest City.

I. Remediation:

1. From and after closing Forest City shall be responsible for, and shall indemnify and shall hold harmless the City and all its successors and assigns, and each of its employees and representatives, from and against, any cleanup or remediation expenses, claims, demands, penalties, fines, liabilities, settlements, damages, losses or any other expenses or costs, related to any and all environmental conditions, hazardous materials or environmental damages, discovered or arising, before or after the closing

date, related to City Property. All City Property conveyed by the City to Forest City shall be conveyed "as is".

2. Forest City may, at any time, if applicable, and if permitted by the New York State Department of Environmental Conservation ("DEC"), submit an application to the DEC to undertake environmental investigation and/or remediation of all or part of any parcel within the Project Area, as a "volunteer" under the New York State Brownfield Cleanup Program ("BCP"), and the City shall support any such application, including by being a co-applicant with respect to applications relating solely to the City Property. Any related environmental investigation and remediation, undertaken pursuant to the BCP shall be at the sole cost and expense of Forest City.

3. Forest City shall perform any and all necessary remedial work required by law in order to address any environmental condition or hazardous materials affecting the City Property at such times and in such manner as shall be approved by DEC.

4. The City shall cooperate with and take all necessary measures to the extent permitted by law to provide Forest City with access to all City Property pre-closing, to enable Forest City to investigate and/or remediate said parcels with respect to all environmental conditions or hazardous materials thereof. To the extent permitted by law, Forest City may access, investigate and/or remediate any City Property at its own cost and expense prior to closing subject to submission to the City of proof of insurance coverages in accordance with City requirements.

J. Escrow Fund:

1. Forest City shall be liable for the reasonable costs and expenses paid by or invoiced to the City for consultants to review the Project under SEQRA, and for all other reasonable expenses incurred by or invoiced to the City in furtherance of the Project, including, but not limited to, expenses incurred preparing and negotiating various legal and other agreements and defending any lawsuits, any damages or judgments against the City arising from or related to the Project (except to the extent attributable to the City's own negligence or misconduct), environmental and SEQRA consultant costs, reasonable costs of architectural review, financial and planning review including review and analysis of the Project and the Project Financial Model, public relations costs (as approved by Forest City), and costs of condemnation appraisals and other costs related to condemnation (the "Municipal Expenses"), subject to the periodic review and approval by Forest City of the Municipal Expenses in accordance with the existing Escrow Agreement between the City and Forest City. Municipal Expenses shall not include internal activities or work related to the Project.

2. Upon the signing of the MOU and the submission of the City's estimated annual budget as set forth in the Escrow Agreement, Forest City shall deposit with the City such amount as shall bring the balance of the previously established escrow account maintained by the City (the "Escrow Account") to Seventy Five Thousand

(\$75,000.00) Dollars, which funds shall be applied solely to the payment of Municipal Expenses. All outside legal fees incurred by the City for the preparation and negotiation of the MOU and/or scoping document shall be charged retroactively against the Escrow Fund, provided that the MOU is executed by the Parties.

When the Escrow Account is reduced below \$25,000.00, Forest City shall deposit an additional sum of money so as to maintain the Account at or near \$75,000.00. In the event of a dispute concerning Municipal Expenses, Forest City and the City shall promptly confer in a good faith effort to resolve the dispute, provided that such dispute shall not be cause for non-performance by either Party of any of its obligations under the MOU. If Forest City and the City are unable to resolve a dispute concerning Municipal Expenses, Forest City shall have the right to appeal the dispute to the City Manager, whose decision shall be final and binding.

3. The City shall provide an estimated annual budget to Forest City for Municipal Expenses. The budget shall identify anticipated Municipal Expenses by task and consultant. The estimated budget provided by the City shall not limit the liability of Forest City to reimburse the City, but rather is for budgetary planning and accounting purposes only.

K. Default:

1. Forest City Default: In the event that Forest City fails to mutually comply with any of the terms and conditions of the MOU and Forest City fails to cure such default within ninety (90) days after written notice from the City, or, with respect to defaults not reasonably capable of cure within 90 days, fails to commence to cure such default within 90 days or thereafter fails to diligently prosecute such cure, then the City may in its discretion terminate the MOU, in which event either (x) Forest City shall promptly pay to the City any outstanding Municipal Expenses, or (y) the City shall refund to Forest City any excess amounts held in the Escrow Account), and Forest City shall provide the City with copies of any and all non-proprietary work product, studies, analyses and any other materials or documentation prepared in relation to the Project, which material and documents the City or its assignee may use in its sole discretion in furtherance of the redevelopment of all or a portion of the Project Area or City Properties. Thereafter neither Party shall have any obligations or liabilities to the other.

2. City Default: In the event that the City fails to materially comply with any of the terms and conditions of the MOU and the City fails to cure such default within ninety (90) days after written notice from Forest City, or, with respect to defaults not reasonably capable of cure within 90 days, fails to commence to cure such default within 90 days or thereafter fails to diligently prosecute such cure, then Forest City may in its discretion (i) terminate the MOU, in which event the City shall refund to Forest City any excess amounts held in the Escrow Account and thereafter neither Party shall have any obligations or liabilities to the other except as set forth below, or (ii) seek any other equitable or legal relief, provided however, that in no event shall the City be liable for consequential damages, nor required to exercise any power under the EDPL or

condemn any property. In no event shall a reduction in the overall floor area of the Project, or other modifications required by the City under SEQRA or in connection with any City Approval, constitute a default by the City. Notwithstanding anything to the contrary, if the MOU is terminated by Forest City as a result of the willful misconduct of the City, then the City shall be liable for and shall reimburse to Forest City all Municipal Expenses incurred and previously paid by Forest City, and all other out-of-pocket "soft" costs incurred and paid by Forest City for the design of the Project and review of the Project under SEQRA, said amount not to exceed \$2.0 million. For purposes of this paragraph, willful misconduct shall be defined as the City arbitrarily and/or unilaterally terminating this MOU or revoking the designation of Forest City as the preferred developer hereunder without any substantive justification or cause, or taking or omitting to take other deliberate and conscious actions intended to undermine the spirit and intent of this MOU. Willful misconduct shall not include, among other things (i) the City terminating this MOU in the event of Forest City's default hereunder or the failure of the City, for whatever reason, to relocate the Public Works Yard to another location, (ii) the failure of the parties to agree to the final terms of the LDA after good faith negotiation, (iii) the City's determination not to provide any form of Public Funding for the Project, (iv) the City's denial of or proposed modification to the Project or other conditions imposed upon the Project based upon the administrative record for the Project, (v) the acts or omissions of any City employee or elected official outside the scope of his/her employment or statutory legal duty, or with respect to which there is no requisite authorization, and (vi) any other good faith action taken by the City in the exercise or performance of any of its legislative, regulatory, policing or permitting functions or obligations in relation to the Project, except as provided hereunder.

3. Unavoidable Delay, for purposes of the MOU shall mean any delay, obstruction, or interference resulting from any act or event which has a material adverse effect on a party's obligations to perform under the MOU provided that such act or event is beyond the reasonable control of such party, including without limitation, approvals from Federal, State or county agencies, and was not separately, concurrently or partially caused by any negligent or willful act or omission of such party, and provided that such act or event could not have been prevented by reasonable action on such party's part and such party asserting such act or event has used its best efforts to remedy the delaying condition in an expedient and efficient manner, including, without limitation, acts of force majeure. Unavoidable Delay shall not include changes in market conditions or increased costs of construction or financing. If a third party, unrelated to the parties to the MOU commences a legal proceeding (a "Proceeding") which seeks to prevent Forest City from (x) obtaining or retaining any City Approval(s), or (y) obtaining or retaining a building permit or performing work on the Project pursuant to a building permit, or as a result of which financing for the construction of the Project cannot be obtained upon commercially reasonable terms, or if committed, is temporarily suspended, and as a result thereof and notwithstanding the diligent, good faith defense by Forest City of such proceedings (if Forest City is a defendant therein), Forest City is delayed or prohibited from timely complying with its obligations hereunder, the pendency of such Proceeding shall be deemed an Unavoidable Delay, and deadlines imposed herein shall be extended by the number of days of actual delay caused by any such injunction for purposes of

determining whether Forest City is in default hereunder. However, an injunction which arises from Forest City's violation of law in the manner in which Forest City is constructing the Project (as opposed to the process in which it obtained its City Approvals) shall not excuse timely performance hereunder.

L. Closing Of Title: Preconditions to closing of title under the LDA shall include, among other potential contingencies: (i) Forest City obtaining all applicable City Approvals, and (ii) delivery to the City of the Completion Guaranty, and (ii) the City obtaining any required approvals set forth in paragraph M.7, below.

M. Miscellaneous

1. Forest City expects to need a payment in lieu of taxes ("PILOT") for the Project and shall explore such incentive with the New Rochelle IDA. For the purposes of the MOU, the amount of such incentive is not quantified as necessary financial information is not yet known, but the estimated total cost of providing public services to the Project during the PILOT period shall not exceed the estimated total public revenue generated by the Project during the PILOT period. In the MOU, the City is agreeing only to represent to the IDA general support for the overall Project as proposed. The terms of Forest City's application to the New Rochelle IDA shall be disclosed to the City Council prior to the City' Council's approval of an LDA.

2. Forest City shall follow the City's Nondiscrimination and Equal Opportunity Policy.

3. Prior to the completion of the Project, Forest City may not assign or transfer any of its rights, title and/or interests in and to the Project and/or the City Properties, or any part thereof, or its rights and obligations under the LDA, except to an entity which directly or indirectly through one or more intermediaries controls, or is under common control with, or is controlled by Forest City. The term "control" (including the related terms "controlled by" and "under common control with") means: (1) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through the ownership of voting securities, by contract or otherwise; and (2) the ownership, either directly or indirectly, of at least 50% of the voting stock or other equity interest of such entity.

4. All performance dates in the MOU shall be subject to tolling for periods of Unavoidable Delay.


5. Until the City and Forest City approve an LDA, no property interest or development rights shall arise under the MOU, except as provided herein.

6. The Parties agree to take all reasonable actions to expedite and facilitate review of the Project under SEQRA and other applicable law, including, but not limited to, the scheduling of special City meetings where appropriate.

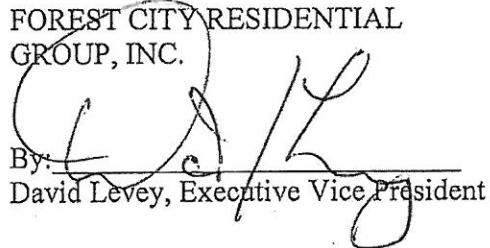
7. Conveyance of any City Property to Forest City may be subject to approval of the State Legislature for the conveyance of waterfront properties. The City shall use best efforts to obtain any required approval of the State Legislature.

CITY OF NEW ROCHELLE

th

By: 
Charles B. Strome, III, City Manager

FOREST CITY RESIDENTIAL
GROUP, INC.

By: 
David Levey, Executive Vice President

7. Conveyance of any City Property to Forest City may be subject to approval of the State Legislature for the conveyance of waterfront properties. The City shall use best efforts to obtain any required approval of the State Legislature.

Mr
CITY OF NEW ROCHELLE

By: 

Charles B. Strome, III, City Manager

FOREST CITY RESIDENTIAL
GROUP, INC.

By: 

David Levey, Executive Vice President