

**ECHO BAY REDEVELOPMENT PROJECT**  
**MEMORANDUM OF UNDERSTANDING**

This MEMORANDUM OF UNDERSTANDING (the “MOU”) is made as of this \_\_\_ day of May \_\_\_\_\_, 2008, 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 (“City Yard Property”), Section 1, Block 84, Lot 22 (“Armory Property”), and Section 1, Block 84, Lot 110 (“Mancuso Marina Property”), and contract vendee and seller of Section 1, Block 84, Lot 73 (“Con Edison Property”), all on the tax assessment maps of the City (collectively, the “City Properties”). The City Council of the City of New Rochelle (the “City”) must vote to approve the Memorandum of Understanding (“MOU”) and LADA (as hereinafter defined).

2. Forest City Residential Group, Inc. (“Forest City”) – Purchaser of the City Properties and other properties (collectively, the “Project 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 26.21 acres and 19 parcels to be identified and listed in an Exhibit to the MOU (the “Project Area”). The Project Area excludes Section 1, Block 84, Lot 54, currently owned by R.S.T. DiRoma, LLC, and Section 1, Block 84, Lot 56, currently owned by Beacon Hall Owners Corp., listed on page III-5 of the Request for Proposal as Key#s 17 and 18. The City Department of Public Works facility currently located at the City Yard Property is being 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. The City Yard Property shall be conveyed to Forest City in accordance with the MOU and LADA as set forth below.

2. The Project and Master Redevelopment Plan: Forest City has prepared and submitted a conceptual “Master Redevelopment Plan” for the redevelopment of the Project Area, which is attached and made a part hereof as Exhibit “A.” The City Council has reviewed the Master Redevelopment Plan and believes that it presents a suitable land use planning vision for the Project. 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. Forest City shall be liable for all costs to prepare the Master Redevelopment Plan, which may be modified from time to time, upon mutual consent of the Parties. The "Project" is shown on the current Master Development Plan and consists of the following components:

- a. Approximately 1,090,000 square feet gross floor area of all uses.
- b. Approximately 700 residential dwelling units, including approximately 600 rental units, 40 multifamily condominium units, and 60 town home condominium and/or homeowners' association units.
- c. Approximately 1,939 parking spaces.
- d. Approximately 99,000 square feet of private rooftop open space.
- e. Approximately 150,000 square feet of retail comprised of 100,000 square feet of retail at the ground level of the residential buildings and 50,000 square feet of retail at other locations in the Project Area.
- f. Approximately 300 hotel rooms.
- g. Approximately 20,000 square foot of floor area to replace the Armory building as generally described in Section E(3) herein.
- h. Approximately 6 acres of publicly accessible open space, and waterfront improvements, including, but not limited to, a waterfront esplanade ("Bay Walk"), various walking and bicycle trails, new "Town Green," new pedestrian connection to Five Islands Park, public marina improvements, bulkhead repairs, and dredging in Echo Bay (the "Public Amenities").

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 LADA, 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. Project Phases: Plans for the phasing of the Project have not yet been formulated beyond the general planning concepts set forth in the Master Development Plan. Forest City shall submit to the City updated phasing plans for specific phases of the Project during the SEQRA process. Completion and construction of various of the Public Amenities shall be required as part of the first phase of the Project. The phasing of the Project (including the Public Amenities) shall be included in the LADA.

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 Employment Development Initiative.

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 can not commit to any particular outcome regarding the Project or Project Area under SEQRA, the Eminent Domain Procedure Law ("EDPL"), and the respective regulations thereof, 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 earlier to occur of: (i) the date the City declines to designate Forest City as a "qualified and eligible sponsor" under the State Urban Renewal Law, or (ii) the date of termination of the MOU. 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 K, below.

E. Assemblage of Project Area and Consideration For City Properties:

1. City Properties: City Properties shall be sold and conveyed to Forest City in accordance with a Land Disposition and Development Agreement ("LADA"). 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 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. For the purpose of furthering the development of the Project as an urban renewal project,

based on the Project Financial Model (hereinafter defined), the City shall contribute all or a portion of the full value of the Purchase Price of the City Properties to the Project, provided that (i) Forest City shall be responsible to the City for any and all out of pocket expenses that the City may incur in the acquisition and/or conveyance of such City Properties, and (ii) the amount of the contribution as provided herein shall be determined based on the final agreed upon Project Financial Model as reflected in the LADA.

2. Privately Owned Properties: To the extent that any Project Property is privately owned as of the date of the MOU (a “Private Property” and collectively, the “Private Properties”), acquiring said Private Property and/or obtaining site access or site control agreements shall be the responsibility of Forest City, subject to subparagraph 4, below.

3. Con Edison and Armory Properties: The City shall use best efforts to acquire the Con Edison Property and Armory Property and shall convey the Con Edison Property and Armory Property to Forest City free and clear of all claims and encumbrances, except for any environmental conditions as specified herein, provided, that the City shall not be required to cure any such claims or encumbrances. In the event that the City cannot deliver such title to the Con Edison and Armory Properties, Forest City’s sole remedy shall be to either accept such title as it then stands or terminate this Agreement with no damages against the City. Notwithstanding subparagraph E.1 above or any provision of the MOU or LADA, and to the extent permitted by law, the Purchase Price for the Con Edison Property and Armory Property shall not exceed all expenses or costs invoiced or incurred by the City in connection with the acquisition of said properties, including, but not limited to, all payments required by the City to the State, if any, to acquire the Armory site and/or release of the restrictive covenant held by the State with respect to said property. Expenses or costs incurred by the City in connection with acquisition of the Con Edison Property and Armory Property may be subject to adjustment as set forth in paragraph E.1 hereunder. Forest City shall also be responsible for building approximately 20,000 square feet of floor area to replace the Armory building, for use by the residents of the City, the precise functions, design and specifications of which shall be determined as a part of the SEQRA review of the Project.

4. Eminent Domain: In the event that Forest City is unable, after a good faith effort, to consensually acquire any Private Property which is part of the Project Area, 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 the 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 any Private Property hereunder pursuant to eminent domain until SEQRA for the Project is completed.

The Purchase Price for Private Properties 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 Properties, 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 a 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 of any unaccepted offers made by the City to the owners of Private Properties 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 Private Properties without the prior consent of Forest City, such consent not to be unreasonably 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, whether publicly dedicated or not, and whether or not situated within or beyond the boundaries of the Project Area, including, but not limited to, streets, roads, curbs, sanitary sewer hook-ups and mains, domestic water tap-ins and mains, storm water drainage facilities, gas, electric, communications, public and private parking facilities, traffic improvements, dredging, bulkheads and all other utility improvements and installations as 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 Project Infrastructure. To the extent permitted by law, the City shall use best efforts, in consultation and cooperation with Forest City, to pursue all available Public Funding in connection with the construction of Public Amenities and Project Infrastructure, provided, that nothing herein shall be construed as a guarantee by the City to provide said Public 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. 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 serve as a basis for City and other Public Funding, and/or financing of said components of the

Project. The Project Financial Model 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 LADA. 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. Milestones: Forest City and the City shall use good faith best efforts to meet the following milestones, subject to Unavoidable Delay and notice and opportunity to cure, as set forth in paragraph L. below:

1. Within the later of forty-five (45) days after the MOU is executed by the Parties, or June 18, 2008, Forest City submits to the City Council applicable applications and/or petitions for Project approvals within the jurisdiction of the City Council ("City Council Approvals"), including, but not limited to, Long Form Environmental Assessment Form and draft SEQRA Scoping Document, and submits Redeveloper's Statement for Public Disclosure and Statement of Qualifications and Financial Responsibility.

2. Within the later of ninety (90) days after City Council adopts the final Scoping Document, or January 15, 2009, Forest City submits preliminary DEIS for completeness review.

3. Within the later of ninety (90) days after the City Council issues DEIS completeness comments, or March 15, 2009, Forest City submits revised DEIS.

4. Within the later of ninety (90) days after the close of the public comment period on the accepted DEIS, or July 30, 2009, Forest City submits preliminary FEIS for completeness review.

5. Within the later of sixty (60) days after the City Council issues FEIS completeness comments, or November 30, 2009, Forest City submits revised FEIS.

6. Within the later of forty-five (45) days after the City Council accepts the FEIS, or January 15, 2010, the City Council issues SEQRA findings statement.

7. Within the later of thirty (30) days after the City Council issues the SEQRA findings statement, or February 15, 2010, the City Council conducts applicable public hearing(s) on all applications/petitions for City Council Approvals, under the EDPL (if applicable), and as may be required in connection with amendments to the Main/Echo Bay Urban Renewal Plan and any amendments to the City LWRP.

8. Within the later of forty-five (45) days after the City Council grants the City Council Approvals, or March 15, 2010, Forest City and the City execute the LADA.

9. Within the later of sixty (60) days after the City Council grants the City Council Approvals, or April 15, 2010, Forest City submits application to the City Planning Board for site plan approval of the Project (or first phase of the Project, as the case may be).

10. Within the later of one (1) year after the City Council issues the SEQRA findings statement, or July 30, 2010, Forest City submits application for building permit for the first phase of the Project.

11. Within the later of (i) sixty (60) days after the City issues the building permit, (ii) sixty (60) days after the date the City Properties are conveyed to Forest City, or (iii) September 30, 2010, Forest City commences construction of the first phase of the Project (for the purposes of this milestone, commencement of construction shall include performance of any required remediation activities).

12. Within three (3) years after Forest City commences construction of the first phase of the Project, Forest City shall complete construction of phase one of the Project.

H. Commencement and Completion of the Project: The LADA 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. To secure commencement and completion of the Project in accordance with the LADA, 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.

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

J. Remediation:

1. From and after closing on each Project Property, 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 such Project Property. All Project Properties 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 Properties. 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 Project Properties 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 Project Properties 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 Properties at its own cost and expense prior to closing.

K. 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, including any update of the blight study for the Project Area (the “Municipal Expenses”), subject to the periodic review and approval by Forest City of the Municipal Expenses in accordance with an Escrow Agreement to be attached to the MOU. 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 the amount of Seventy Five Thousand (\$75,000.00) Dollars, which funds

shall be held in a separate escrow account maintained by the City (the “Escrow Account”), and applied solely to the payment of Municipal Expenses. All outside legal fees incurred by the City for the preparation and negotiation of the MOU over and above the amount paid to the City under the Exclusivity and Planning Agreement 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. The City shall notify Forest City in the event that it determines that the estimated budget for any task or consultant may be exceeded by more than 5%.

L. Default:

1. Forest City Default:

(a) In the event that Forest City fails to materially 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 Forest City shall promptly pay to the City any outstanding Municipal Expenses due under the Escrow Agreement, together with providing 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 Project Properties. Thereafter neither Party shall have any obligations or liabilities to the other.

(b) In the event that Forest City fails to materially comply with any of the terms and conditions of the LADA 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 (i) terminate the LADA, in which event Forest City shall promptly pay to the City any outstanding Municipal Expenses due under the Escrow Agreement, together with providing 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 Project Properties, and/or (ii) seek any other equitable or legal relief. Thereafter neither Party shall have any obligations or liabilities to the other. Notwithstanding anything to the contrary, in the event Forest City fails to commence or complete construction of the Project (or applicable phases thereof) within the designated time frames set forth in the LADA (subject to Unavoidable Delay) and fails to timely cure such default, then in lieu of termination of the LADA, the City shall be entitled to enforce its rights under the Completion Guaranty.

2. City Default: In the event that the City fails to materially comply with any of the terms and conditions of the MOU or the LADA, as the case may be, 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 or the LADA, 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 Project 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 or LADA 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 Agreement or revoking the designation of Forest City as the preferred developer hereunder without any substantive justification or cause, or taking other deliberate and conscious actions or omissions intended to undermine the spirit and intent of this Agreement. Willful misconduct shall not include, among other things (i) the City terminating this Agreement in the event of Forest City’s default hereunder or the failure of the City, for whatever reason, to relocate the City Yard to another location, (ii) the failure of the parties to agree to the final terms of the LADA after good faith negotiation, (iii) the City’s determination not to provide certain Public Funding or other form of public financing 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 when there is no requisite authorization, and (vi) any other good faith action taken by the City or 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 and LADA, 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 or LADA 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 or LADA, 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.

M. Closing Of Title: Preconditions to closing of title for the City Properties and any Private Properties acquired by the City under the EDPL shall include, among other potential contingencies: (i) execution of LADA, (ii) Forest City obtaining all applicable City Approvals, and (iii) delivery to the City of the Completion Guaranty.

N. Miscellaneous

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

2. 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 Project Properties, or any part thereof, or its rights and obligations under the LADA, 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.

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

4. Once the LADA is executed for the Project, then the MOU shall cease to be operative, unless specifically provided for therein.

5. The MOU shall not be binding on either Party until the MOU is approved by the City Council. Moreover, until the City and Forest City approve an LADA, 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. Forest City shall use reasonable good faith efforts to employ and maintain, or cause to be employed, qualified union labor to construct the Project, as well to enter into Project Labor Agreements with respect to such union labor. In the event labor unrest ensues either prior to or during construction of the Project, Forest City shall use good faith efforts to resolve any and all issues relating to such unrest.

8. Forest City agrees to use best effort to design all Project buildings to meet the Leadership in Energy and Environmental Design (LEED) Green Building Rating System Standards.

9. Conveyance of the City Properties to Forest City may be subject to approval of the State Legislature for the conveyance of waterfront properties and for the release of the covenant in the Letters Patent to the City with respect to the Armory. The City shall use best efforts to obtain any required approval of the State Legislature.

CITY OF NEW ROCHELLE

By: \_\_\_\_\_

FOREST CITY RESIDENTIAL

GROUP, INC.

By: \_\_\_\_\_