

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

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DEVELOP DON'T DESTROY BROOKLYN, et	:	
al.,	:	Index No. 100686/06
	:	
Petitioners - Plaintiffs	:	IAS Part 35
	:	
- against -	:	Justice Edmead
	:	
EMPIRE STATE DEVELOPMENT	:	
CORPORATION and	:	
FOREST CITY RATNER COMPANIES,	:	
	:	
Respondents - Defendants.	:	

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AFFIRMATION OF ANITA W. LAREMONT

ANITA W. LAREMONT affirms, under the penalties of perjury pursuant to Rule 2106 of the Civil Practice Law and Rules, as follows:

1. I am an attorney admitted to practice in the State of New York and am Senior Vice President and General Counsel for respondent Empire State Development Corporation ("ESDC"). I make this affirmation in opposition to petitioners' request for a preliminary injunction enjoining the demolition of five vacant buildings within the footprint of the proposed Atlantic Yards Arena and Redevelopment Project ("Atlantic Yards") in Brooklyn, and in support of respondents' cross-motion to dismiss.

2. Petitioners' third cause of action seeks a "prospective disqualification" of David Paget, Esq. and his firm Sive, Paget & Riesel, P.C. ("Sive Paget") from serving as ESDC's outside counsel for the proposed Atlantic Yards project due to a purported "conflict of interest." Petitioners also ask this Court to "direct ESDC to refrain from issuing a Final Scoping Document until a new independent special

counsel can review the Draft Scoping Document." (Petition ¶ 82) I respectfully submit that such relief is wholly unwarranted as a matter of law, and would cause serious harm to ESDC as well as to the public.

3. Mr. Paget and the members of his firm are among the most knowledgeable, experienced and respected environmental lawyers in the United States. Indeed, for the past two years, Sive, Paget has been ranked the #1 Environmental Law Firm in New York in the annual "Chambers and Partners" survey, which ranks lawyers based on the recommendation of their clients. Mr. Paget is particularly well-known for his skill and expertise in preparing Environmental Impact Statements ("EISs") in accordance with the requirements of the National Environmental Policy Act ("NEPA") and its New York State and City counterparts, the State Environmental Quality and Review Act ("SEQRA") and the City Environmental Quality Review ("CEQR") process.

4. Because of his extensive experience and expertise, ESDC values Mr. Paget's counsel highly, and he is typically our environmental counsel of choice with respect to the largest and most demanding projects we undertake. Over the course of the past thirty years, we have retained Mr. Paget to provide environmental advice and assistance in the preparation of EISs on a wide variety of large and complex projects including the Jacob Javits Convention Center, the redevelopment of Times Square, the Hudson River Park, the Bank of America building, the development of the Brooklyn Bridge Park, the redevelopment of Governors Island, and the expansion of the Javits Convention Center, among other matters.

5. ESDC retained Mr. Paget and his firm to provide environmental advice concerning the proposed Atlantic Yards project, effective as of October 1, 2005.

When we retained Mr. Paget and his firm, we were well aware of, and did not object to, the fact that, at an earlier stage of the proposed project, they had provided environmental advice to respondent Forest City Ratner Companies ("Forest City"), the project's developer.

6. In fact, my colleagues and I at ESDC were pleased that Forest City had retained Mr. Paget at the early stages of this project, because he is knows the stringent demands we make on developers with respect to environmental issues and the preparation of the EIS. We were confident that Mr. Paget would convey this to Forest City, and that the entire environmental review process respecting the project would benefit as a result. Had we known at the time that we might be deprived of Mr. Paget's counsel as a result of his work for Forest City at this stage of the project, we certainly would have objected to Forest City's retention of Mr. Paget.

7. Moreover, from the outset of our involvement in the proposed Atlantic Yards project, we always anticipated -- and I believe that Mr. Paget and Forest City did as well -- that ESDC would seek to retain Mr. Paget and his firm when the EIS process for the proposed project began. Indeed, in February 2004, ESDC and Forest City entered into a cost reimbursement agreement that expressly stated on its first page that "[Forest City] has requested that [ESDC] authorize and/or oversee the following services to be performed in connection with the Project . . . Legal services to be provided by Sive, Paget & Riesel, P.C. in connection with the environmental analysis of the Project . . . ." A copy of this agreement is annexed hereto as Exhibit A.

8. While petitioners now seek to characterize Mr. Paget's earlier work for Forest City and his current retention by the ESDC as a "conflict of interest," ESDC

does not believe that this is the case. Indeed, we believe that such a characterization indicates a serious and fundamental misconception of ESDC's unique mission and the legislatively mandated role it plays in the development process. ESDC is New York State's primary economic development agency, and is charged with encouraging economic investment and development in the State. To fulfill this mandate, ESDC has been given broad powers including the authority to override local zoning and planning laws and to condemn and acquire property. When ESDC agrees to become involved in a proposed project, it does so because it perceives that the project has the potential to further ESDC's mission of fostering economic investment and development. In short, when we determine to sponsor a project, we want to see it completed for the benefit of New York State and its residents. The developer also wants the project to be completed, so our interests are not adverse.

9. Nor do we believe that there is any divergence of interest with respect to the environmental review process and the preparation of the EIS. Before approving a project, ESDC has an obligation to make sure that the environmental review process under SEQRA is complied with. ESDC always seeks to perform a complete and thorough environment review that encompasses all relevant issues, because this is required by law, it is in the public interest, and it is the best way to assure that a project is completed in a timely and cost-effective manner. In my experience, developers seek the very same thing -- if only to insure that the project, if approved, can withstand a legal challenge from persons or organizations such as petitioners who may be opposed to it.

10. We do not believe that Mr. Paget's prior retention by Forest City will in any way affect the nature or quality of the advice he renders to ESDC in this

matter. In our long experience with Mr. Paget and his firm, we have always found his advice to be of the highest quality, and we do not believe that he would risk jeopardizing his relationship with ESDC by permitting his advice to vary from that standard in this case. Indeed, to do so would be pointless since, as Mr. Paget knows very well, our environmental review process and the actions we take will ultimately be subject to review by the courts. Moreover, ESDC is a sophisticated consumer of legal services with its own experienced in-house legal staff, including those familiar with environmental issues. I am confident that it would be immediately apparent to us if Mr. Paget and his firm provided us with anything less than his customary exemplary counsel.

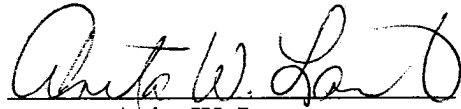
11. I understand that other lawyers at the Sive Paget firm are currently representing Forest City on other matters unrelated to the Atlantic Yards project. Because it perceives no conflict, ESDC consents to Sive Paget's representation of Forest City on those other unrelated matters.

12. Finally, I respectfully submit that permitting Mr. Paget and his firm to continue as our counsel poses no risk of harm, either to petitioners or, more broadly, to the public interest, since ESDC's actions in this matter will be subject to judicial review on the merits. In sharp contrast, if Mr. Paget is disqualified from acting as ESDC's counsel in this matter, ESDC -- and, we submit, the public interest as well -- will be seriously harmed, in that we will be deprived of our counsel of choice, and of the advice and counsel of someone I believe to be the preeminent environmental lawyer in the United States.

13. For the reasons set forth above, ESDC respectfully submits that petitioners' request to disqualify Mr. Paget and his firm from serving as ESDC's

environmental counsel on the Atlantic Yards project is entirely without merit and should be denied.

Affirmed under the penalties of perjury this 8<sup>th</sup> day of February, 2006.

  
Anita W. Laremont

# **Exhibit A**

FOREST CITY RATNER COMPANIES  
One Metrotech Center North  
Brooklyn, New York 11201

February 18, 2004

EMPIRE STATE DEVELOPMENT  
CORPORATION  
633 Third Avenue, 37<sup>th</sup> Floor  
New York, New York 10017  
Attn: Charles Gargano, Chairman

Re: Atlantic Yards Brooklyn Arena – Mixed-Use Development

Dear Chairman Gargano:

This letter sets forth the agreement of Forest City Ratner Companies (“FCR”) to pay certain costs incurred by the New York State Urban Development Corporation (“UDC”) doing business as Empire State Development Corporation (“ESD”) with respect to the proposed Atlantic Yards – Brooklyn Arena Mixed-Use Development Project (the “Project”). It is expected that the Project will entail the development of an 18,000 to 20,500 seat arena, up to approximately 2.1 million zoning square feet of commercial development, up to approximately 5,500 units of residential development and up to approximately 350,000 zoning square feet of retail on a site identified in Exhibit “A” hereto. For purposes of this letter, ESD shall include UDC or any subsidiary created by UDC to facilitate the Project.

1. Scope of Work FCR has requested that ESD authorize and/or oversee the following services to be performed in connection with the Project (collectively, the “Scope of Work”):

- (a) Services to be provided by AKRF, Inc. (“AKRF”) in connection with the environmental analysis for the Project.;
- (b) Legal services to be provided by Sive, Paget & Riesel, P.C. in connection with the environmental analysis of the Project;



- (c) Services to be provided by a design review consultant(s) to review, on behalf of ESD, the design for the Project prepared by FCR's design consultant;
- (d) Services to be provided by real estate counsel retained by ESD to assist in the preparation of transaction documents for the Project;
- (e) Services to be provided by condemnation counsel retained by ESD to assist with the proposed acquisition, by condemnation, of properties within the Project site;
- (f) Services to be provided by fee, fixture and relocation appraisers with respect to the proposed condemnation and services by such other consultants necessary or appropriate to facilitate the proposed condemnation, including relocation and property management services related thereto;
- (g) Services related to the holding of any public hearings required, or deemed appropriate by ESD, in furtherance of the Project; and
- (h) Services to be provided by counsel retained by ESD in connection with any litigation related to the Project or the foregoing Scope of Work.

2. Obligation to Pay Costs In order to induce ESD to authorize and oversee the Scope of Work, FCR hereby agrees to pay all Costs (as hereafter defined), and FCR hereby waives any rights it may otherwise have to challenge the amount of any bill for any Costs.

The term "Costs" shall mean:

- (a) actual costs billed for performance of the Scope of Work by any third party consultant or contractor;
- (b) any other actual out-of-pocket costs which may be incurred from time to time by ESD arising, directly or indirectly, from ESD's authorization and oversight of the Scope of Work, including, without limitation, costs imposed as a matter of law whether pursuant to the Eminent Domain Procedure Law or otherwise (including attorneys' fees and expenses). Specifically, FCR agrees to defend and indemnify ESD from and against all liabilities (statutory or otherwise), obligations, claims, demands, penalties, causes of action, costs, expenses (including attorney's fees and expenses), losses and injuries in any manner relating to or arising from ESD's authorization and oversight of the Scope of Work, including any enforcement of any such indemnity by ESD, all and any of which shall constitute "Costs"; and

- (c) actual costs for services related to the Project that are outside of the Scope of Work but have been in approved, in writing, by FCR.

The term "Costs" shall not include any costs that may be incurred by the New York City Economic Development Corporation ("EDC"), The City of New York (the "City") or any agency of the City with respect to the Scope of Work, and payment of any such costs shall be subject to a separate agreement, if any, among FCR and EDC and/or the City. Where practicable, ESD shall use reasonable efforts to: (i) coordinate with other public parties in the engagement of consultants so as to reduce Costs; (ii) obtain fee and costs estimates from consultants and provide the same to FCR in order to enable FCR to better budget costs and anticipate future expenditures; and (iii) obtain the benefit of discounts offered to ESD by consultants. It is understood that, subject to applicable law, the payment of Costs by FCR under this letter shall not, in and of itself, preclude FCR from including such Costs in a subsequent public financing of the project and/or portions thereof (if any).

3. No Obligation Notwithstanding this Letter, the parties hereto recognize and agree that ESD shall have no obligation to commence, continue or conclude the Scope of Work. Specifically, the parties hereto recognize and agree that ESD: (a) may halt the Scope of Work at any time in its sole discretion; and (b) shall have the right, but not the obligation, to halt the Scope of Work at any time FCR fails to fund the Costs as set forth in this Letter (but by not halting the Scope of Work, ESD shall not be deemed to have waived its right to payment of, or FCR's obligation to pay, Costs).

4. Imprest Account As security for the foregoing obligation of FCR to pay Costs, FCR shall pay to ESD \$500,000 simultaneously with the execution of this Letter, and ESD agrees to hold such funds, in an interest-bearing account (the "Imprest Account") to be used by ESD solely for the payment of Costs. ESD shall have the right to draw against the principal and any accrued interest in the Imprest Account, from time to time, for the payment of Costs. At any time when the remaining balance of the Imprest is \$100,000 or less, ESD shall notify FCR, in writing, and request that FCR replenish the Imprest Account to its original amount. If FCR fails within twenty (20) business days after such notice to replenish the Imprest Account (or if the balance therein has been reduced to zero), ESD may cease any uncompleted Scope of Work until such time as FCR delivers to ESD such additional funds. Notwithstanding any failure to deliver further requested Imprest funds, FCR shall remain liable for the payment of all then incurred Costs. ESD shall inform FCR of the Costs paid from the Imprest Account and/or the balance remaining therein within ten (10) business days after written request from FCR, not to be made more often than quarterly, together with reasonable supporting documentation for Costs incurred. Upon completion or other termination of the Scope of Work and payment of all then incurred Costs, ESD shall provide FCR with a final accounting of the Imprest Account and return any funds remaining in the Imprest Account (inclusive of any unspent interest) to FCR. Notwithstanding anything in this Letter to the contrary, FCR shall have the right at any time to request termination of the Imprest Account so long as all then incurred Costs have been paid, and upon and after such request, ESD shall have the right to cease any uncompleted Scope of Work (and FCR shall have no obligation with respect to any of the Scope of Work ESD elects to complete) and ESD shall return all funds remaining in the Imprest Account (inclusive of any unspent interest) to FCR.

5. Continuing Obligation FCR's obligation to pay all Costs and to defend and indemnify ESD, as set forth in paragraph 2 above, shall survive any termination or other conclusion of: (i) the Scope of Work; (ii) the Imprest Account; or (iii) this Letter.

6. Waivers FCR hereby agrees and acknowledges that ESD:

(a) shall not incur any liability to FCR as a result of: (i) this Letter (other than ESD's express obligations hereunder); (ii) the authorization and oversight of the Scope of Work; and (iii) any discussions had with FCR in connection with the Scope of Work; and FCR agrees that it waives all claims it may otherwise have against ESD with respect thereto;

(b) shall not be deemed to have approved any FCR proposal concerning the Project until, and only if, such approval is set forth in writing by ESD and approved by the Board of Directors of ESD and by any other required public authorities, including but not limited to the City and EDC to the extent required; and

(c) has not made any representations whatsoever to FCR concerning the: (i) outcome of the Scope of Work; or (ii) approval of any FCR proposal concerning the Project by the Board of Directors of ESD or by any other required public authorities, including but not limited to the City and EDC.


7. Miscellaneous This Letter constitutes the entire agreement among the parties concerning ESD authorization and oversight of the Scope of Work and all prior or contemporaneous understandings or oral agreements had among the parties with respect to ESD authorization and oversight of the Scope of Work are hereby merged in this Letter. This Letter may not be amended orally, but only by a written agreement signed by the parties hereto. This Letter shall be governed and construed in accordance with the laws of the State of New York.

If the foregoing accurately sets forth our understanding with respect to the subject matter of this Letter, kindly sign this Letter in the space set forth below and return an originally signed copy to me, whereupon this Letter shall become a binding agreement among the parties hereto.

Very truly yours,

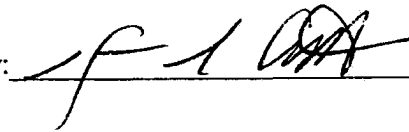
FOREST CITY RATNER COMPANIES

By: RATNER GROUP, INC.

By:   
Name: James P. Stuckey  
Title: Exec. V.P.

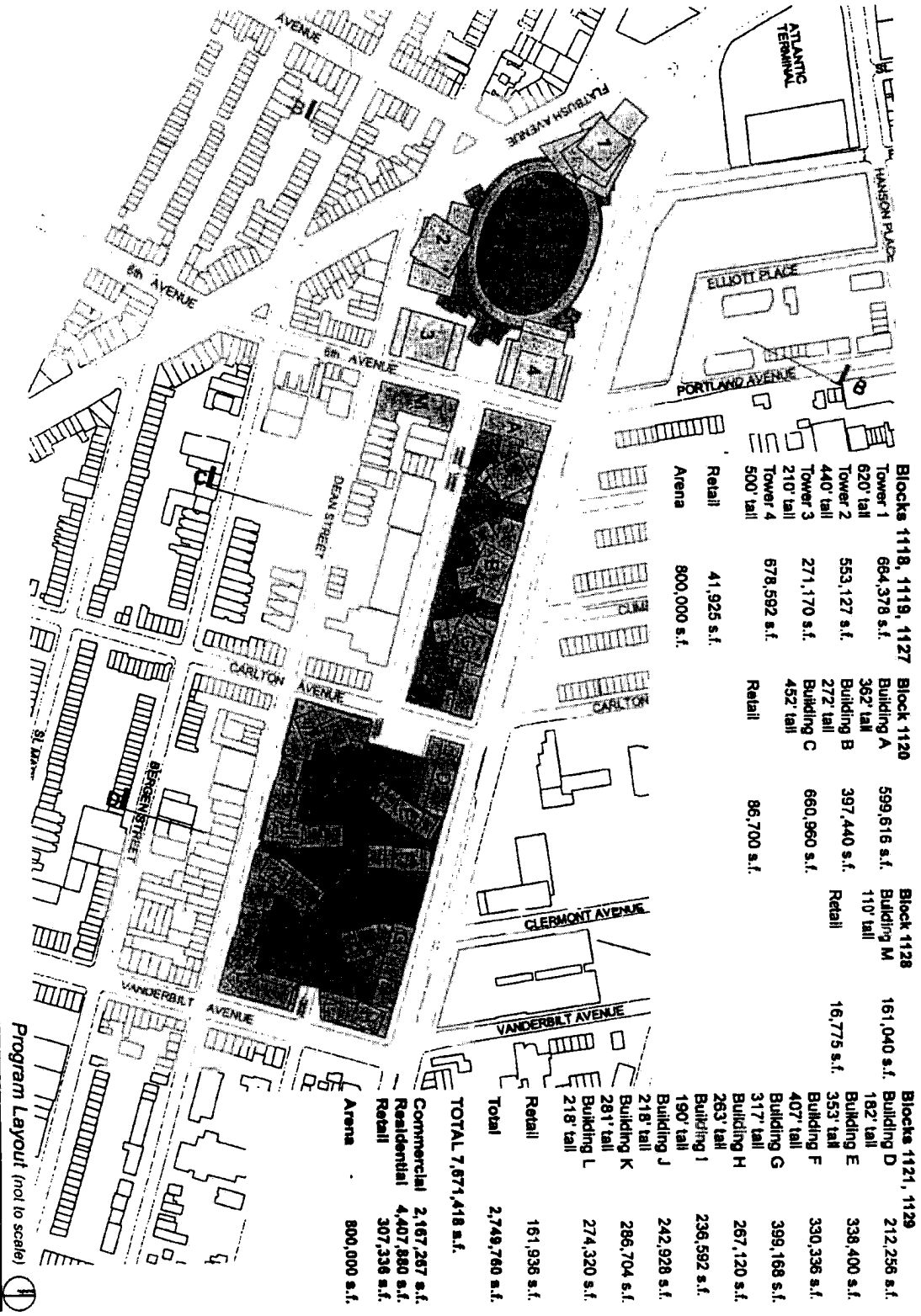
AGREED AND ACCEPTED THIS 25  
DAY OF Feb, 2004:

NEW YORK STATE URBAN DEVELOPMENT CORPORATION D/B/A  
EMPIRE STATE DEVELOPMENT CORPORATION

By: 

**Exhibit A**

**Site Plan**



Area Summary

Block	Building	Tall	Area (s.f.)
Blocks 1118, 1119, 1127	Tower 1	620'	684,378 s.f.
	Tower 2	440'	553,127 s.f.
	Tower 3	210'	271,170 s.f.
	Tower 4	500'	678,592 s.f.
Block 1120	Building A	362'	599,616 s.f.
	Building B	272'	397,440 s.f.
	Building C	452'	660,960 s.f.
Block 1128	Building M	110'	161,040 s.f.
	Retail		16,775 s.f.
Blocks 1121, 1129	Building D	182'	212,256 s.f.
	Building E	353'	338,400 s.f.
	Building F	407'	330,336 s.f.
	Building G	317'	399,168 s.f.
	Building H	263'	267,120 s.f.
	Building I	190'	236,592 s.f.
	Building J	218'	242,928 s.f.
	Building K	281'	286,704 s.f.
	Building L	218'	274,320 s.f.
	Retail		161,936 s.f.
	Total		2,749,760 s.f.

Residential Buildings  
Commercial Buildings

Commercial	2,167,267 s.f.
Residential	4,407,880 s.f.
Retail	307,336 s.f.
Arena	800,000 s.f.
<b>TOTAL</b>	<b>7,671,418 s.f.</b>

Program Layout (not to scale)