

Empire State Development Corporation
633 Third Avenue
New York, New York 10017

New York City Economic Development Corporation
110 William Street
New York, New York 10038

The City of New York
City Hall
New York, New York 10007

February 18, 2005

Forest City Ratner Companies
One MetroTech Center North
Brooklyn, New York

ATURA Development Project

Ladies and Gentlemen:

This memorandum of understanding (this "MOU") sets forth certain understandings and agreements among The City of New York ("City"), New York City Economic Development Corporation ("NYCEDC" and the City, the "City Parties"), New York State Urban Development Corporation d/b/a Empire State Development Corporation ("ESDC" and the City Parties, the "Public Parties") and Forest City Ratner Companies, or affiliated entities ("FCRC"), with respect to the Project, as defined below. This MOU supersedes the Memorandum of Understanding dated May 17, 2004 between the NYCEDC, the City and FCRC with respect to the Project (as defined below).

1. The Project shall mean the design, development and construction of a mixed-use development consisting of residential development, commercial office space, and retail space (the "Project") using the unused development rights ("Development Rights") attributable to the following sites (the "Development Sites"): (i) Atlantic Center (Block 2002, Lot 1) (including the rights attributable to the demapped portion of Fort Greene Place), which FCRC and the City Parties believe consist of approximately 1.586 million zoning square feet under applicable zoning (the "Atlantic Center Site"), and (ii) Site 5 (the entirety of Block 927, excluding the community garden parcel thereon, as currently configured) in the Atlantic Terminal Urban Renewal Area ("ATURA"), Brooklyn, New York ("Site 5"), which FCRC and the Public Parties believe consist of approximately 308,000 zoning square feet (in addition to existing retail) under applicable zoning.

Provided that FCRC proceeds with all necessary agreements with the Public Parties and the Metropolitan Transportation Authority ("MTA"), on terms acceptable to such parties, for design, development, construction and operation of an arena for use by a professional basketball team currently known as the New Jersey Nets and for other sports and arena events (the "Arena") and a mixed-use development consisting of multifamily housing, commercial office space and retail space on the entirety of Tax Blocks 1118, 1119, 1120, 1121, 1127, 1129 and Tax Block 1128, lots 1, 2, 4, 6, 85, 86, 87, 88 and 89, in the Borough of Brooklyn, all as described in a certain Memorandum of Understanding, dated of even date herewith, among the Public Parties and FCRC (collectively the "Arena Development Project") then ESDC will seek the approval of the ESDC Board of Directors to have ESDC, or a subsidiary of ESDC:

- (i) to incorporate the Project into the General Project Plan for the Arena Development Project, or to seek adoption of an independent General Project Plan for the Project, conduct public hearings, make project findings and take such other actions and proceedings under the New York State Urban Development Corporation Act (the "UDC Act") as may be necessary or convenient to establish the Project as one or more "projects" under the UDC Act;
 - (ii) exercise, in consultation with the City, including referral to the City Planning Commission, and NYCEDC and subject to applicable provisions of the UDC Act, its power to override local zoning and other local regulation where appropriate to provide for up to an additional 328,272 zoning square feet in development rights to be added to Site 5, on the condition that FCRC concurrently agree to an equivalent reduction in the allowable density available under its City ground lease for Atlantic Center Site;
 - (iii) act as a "lead agency" for the Project for purposes of compliance with the State Environmental Quality Review Act ("SEQR"); and
 - (iv) approve acquisition and disposition of the Project Site to FCRC, including, acquisition by eminent domain of the fee interests and the leasehold interests of tenants occupying space on Site 5, provided further that FCRC funds all costs related to the acquisition.
2. FCRC shall submit for the review and approval by the Public Parties, the following items:
- (i) a program and land use plan for the Project, including parking, vehicular and pedestrian circulation and such other uses, improvements and amenities as it deems useful and appropriate;
 - (ii) a financing plan and operating plan for the Project; and

- (iii) a proposed set of design guidelines for the Project, which shall include, but not be limited to, building massing and height, streetwall location and height, building articulation, lot and tower coverage, retail continuity and glazing, signage, streetscape improvements, sidewalk locations and dimensions, location of loading and truck access, parking location and vehicular access, and ground elevations.

The Public Parties and FCRC will agree on the program and land use plan, financing and operating plan, and the design guidelines prior to ESDC initiating the foregoing actions listed in Paragraph 1, sections (i) through (iv).

3. Subject to obtaining necessary approvals, if the Arena Development Project does not occur, the City would arrange for the Development Rights to be used by FCRC on the Development Sites to the extent permitted under existing zoning (or, if the Arena Development Project is implemented, to the extent permitted by ESDC, in accordance with Section 1 above). FCRC would pay the City for the Development Rights based on fair market value as determined by independent appraisal. FCRC shall develop the Development Sites as follows: (i) Site 5 Development Rights would be used to develop 308,000 square feet of residential space on Site 5 (in addition to existing retail square footage) (plus, if the Arena Development Project is implemented, up to 328,272 additional zoning square feet of office, retail and/or residential space); and (ii) Atlantic Center Site Development Rights would be used develop up to 875,000 square feet of commercial office space and up to 711,000 square feet of residential space on the Atlantic Center Site (minus, if the Arena Development Project is implemented, 328,272 zoning square feet of office, retail and/or residential space). The Public Parties and FCRC acknowledge that the approved design guidelines, which shall be incorporated into the Project, may affect the overall project density and density on individual sites.

4. If the Arena Development Project does not occur, the urban renewal plan for ATURA (the "Urban Renewal Plan") and/or any existing land disposition agreement, deed, ground lease or applicable agreement or instrument encumbering the Development Sites would be amended by the City in compliance with applicable law including ULURP if and to the extent required, and subject to all necessary approvals, to eliminate the present restrictions on the use of the Development Rights to permit development in compliance with the existing zoning.

5. NYCEDC would, on behalf of the City, coordinate the activities of the Department of City Planning, Department of Housing Preservation and Development, Department of Transportation, Department of Environmental Protection, Law Department of City-Wide Administrative Services and such other City departments and agencies as will be necessary or useful in planning and implementing the Project.

6. FCRC would have the responsibility for constructing vehicular and pedestrian access, relocating and installing utilities, etc., within the Development Sites.

7. The parties acknowledge that ESDC's participation in the project is conditioned upon the implementation of the Arena Development Project and all applicable legal requirements including compliance with, among others, the State Environmental Quality Review Act, the New York State Urban Development Corporation Act, the Eminent Domain Procedures Law. In addition, the participation, actions and approvals of the City Parties is subject to all applicable legal requirements, including compliance with, among others, the City Environmental Quality Review Act, the Urban Renewal Plan, and the City Zoning Resolution (subject to ESDC override, if applicable).

8. The Public Parties and FCRC agree to cooperate with respect to any public announcement or public disclosure of the terms of the transaction described in this MOU or of any information of any type or nature given by one party to the other (or otherwise obtained) relating to the transaction described in this MOU.

9. Whether the transaction described herein shall be consummated or not FCRC shall reimburse the Public Parties within thirty (30) days of demand from time to time, for the following costs and expenses relating to the transaction contemplated by this MOU, including but not limited to the costs and expenses described in the letter dated February 18, 2004 from James Stuckey of FCRC to Chairman Charles A. Gargano of ESDC: (a) the cost of all environmental analysis performed by the Public Parties with respect to the Project; (b) the cost of consultants acting on behalf of the Public Parties; (c) third party legal fees and third-party fees incurred by the Public Parties pursuant to the Public Parties' customary fee structure for outside lawyers, (d) third party fees associated with the public approval process, including, without limitation, those arising from public hearings and notices, and (e) fees and expenses associated with the condemnation process. FCRC further agrees to defend and indemnify the Public Parties from and against all liabilities (statutory or otherwise), obligations, claims, demands, penalties, causes of action, third party costs and expenses (including third party attorney's fees and expenses pursuant to the Public Parties' customary fee structure for outside lawyers), losses and injuries in any manner relating to or arising in connection with the Project described herein, including any enforcement of any such indemnity by the Public Parties.

10. FCRC and the Public Parties agree that, except as set forth in Section 9, (a) neither the provisions of this MOU, nor any discussions had or to be had between FCRC, the Public Parties in respect of the Project, shall in any event form the basis for any action against, or claim of liability on the part of, any or all of FCRC or the Public Parties; and (b) this MOU is non-binding and does not create or give rise to any legally enforceable rights or legally enforceable obligations or liabilities of any kind on the part of any party hereto. The terms of this Section 10 shall survive the expiration or earlier termination of this MOU.

11. This MOU shall be terminable at will by the Public Parties or FCRC upon 30 days written notice. The obligations of FCRC set forth in Section 9 above shall survive such termination.

Please execute this MOU below to indicate your acknowledgment of, and agreement to, the foregoing. This MOU may be executed in several counterparts, each of which shall be original and all of which shall constitute but one and the same instrument.

Very truly yours,

NEW YORK STATE URBAN
DEVELOPMENT CORPORATION d/b/a
EMPIRE STATE DEVELOPMENT
CORPORATION

By:


Charles A. Gargano
Chairman and Chief Executive Officer

THE CITY OF NEW YORK

By: _____

Name: Daniel L. Doctoroff
Title: Deputy Mayor for Economic
Development and Rebuilding

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

By: _____

Name: Andrew M. Alper
Title: President

Acknowledged and agreed to
day of February, 2005:

Forest City Ratner Companies

By: _____
Name:
Title:

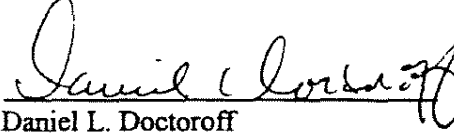
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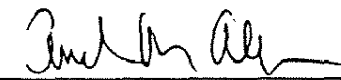
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Chairman and Chief Executive Officer

THE CITY OF NEW YORK

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Title: Deputy Mayor for Economic
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Charles A. Gargano
Chairman and Chief Executive Officer

THE CITY OF NEW YORK


By: _____
Name: Daniel L. Doctoroff
Title: Deputy Mayor for Economic
Development and Rebuilding

NEW YORK CITY ECONOMIC
DEVELOPMENT CORPORATION

By: _____
Name: Andrew M. Alper
Title: President

Acknowledged and agreed to
18th day of February, 2005:

Forest City Ratner Companies

By: 
Name: _____
Title: **Bruce C. Ratner**
President