

**Garvies Point Workforce LLC
Approving Resolution**

A special meeting of the Glen Cove Industrial Development Agency (the "Agency") was convened in public session on August 18, 2020, at 5:31 p.m., local time, and held remotely in compliance with Executive Order 202.1 issued by the Governor of the State of New York on March 12, 2020, as amended and supplemented.

The meeting was called to order by Chairman Tenke, upon roll being called, the following members of the Agency were:

PRESENT:

Timothy J. Tenke	Chair
Vincent C. Hartley	Vice Chair/Treasurer (late)
James J. Cappiello	Member
Joseph Gioino	Member

NOT PRESENT:

John Tetta	Member
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THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Ann S. Fangmann	Executive Director
Margo Zoldessy	Finance Manager
Camille Byrne	Secretary
Milan K. Tyler, Esq.	Transaction Counsel

A motion to adopt the attached resolution no. 6a was offered by Chairman Tenke, seconded by Vice Chairman Hartley:

GC-IDA
ENTERED
8-18-2020

oBy

Resolution No. 6a

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE
STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR
GARVIES POINT WORKFORCE LLC AND/OR ITS AFFILIATES

WHEREAS, the Glen Cove Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”), and Chapter 374 of the 1974 Laws of New York, as amended, constituting Section 919 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, industrial and commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, RXR Glen Isle Partners LLC, a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of New York (“RXR”), presented a certain application for financial assistance (the “Initial Application”) to the Agency, which Initial Application requested that the Agency consider undertaking a mixed-use project (the “Original Project”) consisting of the following: (A) the acquisition of an interest in approximately 56 acres of land (the “Land”) located on Garvies Point Road, Herb Hill Road and Dickson Street in the City of Glen Cove, New York; (B) the acquisition and construction on the Land by RXR as part of a planned smart growth community of certain buildings and other improvements containing in the aggregate approximately 1,800,000 square feet of space comprising (i) approximately 1,720,000 square feet of space containing a total of up to 486 rental residential units, 513 for sale condominium units and 111 workforce housing units (55 for rent and 56 for sale) (collectively, the “Residential Units”), and (ii) up to approximately 75,000 square feet of retail, restaurant, cultural and related space (collectively, the “Commercial Space”, and together with the Residential Units, the “Improvements”); and (C) the acquisition and installation in and around the Improvements of certain items of machinery, personal property, fixtures and equipment (the “Equipment”, and together with the Land and the Improvements, the “Facility”); and

WHEREAS, RXR leased the Facility to the Agency pursuant to the terms and conditions set forth in that certain Lease Agreement dated as of November 1, 2016 by and among RXR, Glen Cove Local Economic Assistance Corporation (“GCLEAC”) and the Agency (as amended, the “Original Lease”); and

WHEREAS, the Agency subleased the Facility to RXR pursuant to the terms and conditions set forth in that certain Leaseback Agreement dated as of November 1, 2016 between RXR and the Agency (as amended, the “Original Leaseback Agreement”), and the other documents, instruments and agreements executed by RXR and/or the Agency in connection with the Original Project (collectively, the “Original Transaction Documents”); and

WHEREAS, in connection with the Original Project, RXR and the Agency entered into that certain Garvies Point Continuing Covenants Agreement dated as of November 22, 2016 (as amended, the “Covenants Agreement”), pursuant to which RXR made certain continuing covenants to the Agency and the City of Glen Cove, New York (the “City”), relating to the Original Project; and

WHEREAS, pursuant to that certain Bifurcation, Assignment and Assumption Agreement dated as of November 1, 2016 (the “Bifurcation Agreement”) among the Agency, GCLEAC, RXR and certain affiliates of RXR, RXR assigned its interest in and to the Assumed Documents (as defined in the Bifurcation Agreement) with respect to Assigned Site 2 (as defined in the Bifurcation Agreement) to RXR Garvies P1 Building H Owner LLC (“Building H Owner”); and

WHEREAS, pursuant to that certain Mortgage Modification Agreement dated as of July 1, 2017 (the “Mortgage Modification”) by and among Building H Owner, the Agency, GCLEAC and The Bank of New York Mellon, as Trustee (the “Trustee”), Building H Owner was released from its obligations with respect to the portion of Assigned Site 2 known as Private Use Improvement Area Lot 619 (the “Block G Parcel” or the “Block G Land”), which portion of the Land is more particularly described on Exhibit A attached hereto, upon execution and delivery of (i) that certain Lease Agreement dated as of July 1, 2017 (the “Block G Lease”) by and among RXR, GCLEAC and the Agency, pursuant to which RXR leased the Block G Parcel to the Agency, and (ii) that certain Leaseback Agreement dated as of July 1, 2017 (the “Block G Leaseback Agreement”) between the Agency and RXR, pursuant to which the Agency subleased the Block G Parcel to RXR; and

WHEREAS, pursuant to a notification and consent request letter dated March 5, 2019 (the “Consent Request Letter”), RXR requested that the Agency consent to the transfer by RXR to G&G Garvies Point LLC, a limited liability company organized and existing under the laws of the State of New York (the “Assignee”), of all of RXR’s right, title and interest in and to the Block G Lease, the Block G Leaseback Agreement and the related Original Transaction Documents (collectively, the “Assignment Transaction”), as required by Section 18 of the Covenants Agreement; and

WHEREAS, the Agency approved the Assignment Transaction by resolution of the members of the Agency adopted on March 23, 2019 (the “Consent Resolution”); and

WHEREAS, the Company, which is an affiliate of the Assignee, presented a certain application for financial assistance (the “Application”) to the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) consisting of the following: (A) the consent by the Agency to the assignment of all right, title and interest of RXR in and to the Block G Lease, the Block G Leaseback Agreement and the related Original

Transaction Documents to the Company in place of the Assignee; (B) the construction, installation and equipping of an approximately 59,236 square foot, 55-unit affordable residential rental facility (collectively, the “Block G Improvements”), together with related improvements to the Block G Parcel; (C) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion of the Block G Improvements (collectively, the “Block G Equipment” and together with the Block G Parcel and the Block G Improvements, collectively, the “Block G Project Facility”) by the Company as agent of the Agency; and (D) the granting of certain additional “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions or partial exemptions from sales and use taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and

WHEREAS, any approval of the Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Project following a determination by the Agency that (A) the applicable procedural requirements contained in the Act relating to the Project have been satisfied; and (B) the undertaking of the Project by the Agency and the granting of the Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA, and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Project and/or the Block G Project Facility (collectively, the “Applicable Laws”); and

WHEREAS, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency pursuant to Section 859-a of the Act (the “Public Hearing”) to hear all persons interested in the Project and the Financial Assistance contemplated by the Agency with respect to the Project, to be mailed on July 14, 2020 to the chief executive officer of the City of Glen Cove and of each other affected tax jurisdiction within which the Block G Project Facility is or is to be located; (B) caused notice of the Public Hearing to be published on July 16, 2020 in the Glen Cove Herald Gazette, a newspaper of general circulation available to residents of the City of Glen Cove, New York; (C) caused the Public Hearing to be conducted on July 27, 2020 at 5:00 p.m., local time, from City Hall, 9-13 Glen Street, Glen Cove, New York, held remotely in accordance with Executive Order 202.15, as amended and supplemented, issued by the Governor of the State of New York in connection with the COVID-19 pandemic; (D) caused the Public Hearing to be streamed on the Agency’s website in real-time and caused a recording of the Public Hearing to be posted on the Agency’s website, all in accordance with Section 857 of the Act; and (E) prepared a report of the Public Hearing (the “Report”), which fairly summarizes the views presented at the Public Hearing and distributed the Report to the members of the Agency; and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (the “NYSDEC”), being 6 N.Y.C.R.R. Part 617, et. seq., as amended (the “Regulations” and collectively with the SEQR Act, “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, if the Project and the Financial Assistance are approved by the Agency, (A) the Company will execute and deliver a certain amended and restated lease agreement to the Agency, pursuant to which the Company will convey an interest in the Block G Parcel and the Block G Improvements to the Agency (the "Conveyance Instrument"), (B) the Company will execute and deliver a certain Bill of Sale (the "Bill of Sale to Agency") to the Agency, pursuant to which the Company will convey to the Agency its interest in the Block G Equipment, (C) the Company will execute and deliver an amended and restated leaseback agreement (uniform project agreement) (the "Leaseback Agreement") between the Agency and the Company, pursuant to which the Agency will grant to the Company a subleasehold interest in the Block G Project Facility, (D) the Company will cause to be executed and delivered a certain Environmental Compliance and Indemnification Agreement (the "Environmental Indemnification") pursuant to which the Agency will be indemnified from and against certain losses, costs, damages and liabilities, (E) the Company will execute and deliver or cause to be executed and delivered a certain Master Tax Agreement Mortgage in favor of the City of Glen Cove, New York (the "PILOT Mortgage"), and (F) the Company will execute and deliver and/or cause to be executed and delivered certain other certificates, documents, instruments and agreements related to the Project, including, without limitation, those required to consummate the Assignment Transaction as approved by the Consent Resolution and modified by this Resolution (together with the Conveyance Instrument, the Bill of Sale to Agency, the Leaseback Agreement, the Environmental Indemnification, the PILOT Agreement and the PILOT Mortgage, collectively, the "Transaction Documents");

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. In accordance with Section 859-a of the Act, the Agency has prepared a written cost-benefit analysis with respect to the Project and the granting of the Financial Assistance (the "Analysis"). The Agency has reviewed the Application, the Report and the Analysis, and, based upon the representations made by the Company to the Agency and information obtained by the Agency, the Agency has reviewed and assessed all material information necessary to afford a reasonable basis for the Agency to make a determination to approve the Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Project:

(a) based on the proposed use of the Block G Project Facility as set forth in the Application, the economic effects of the Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Project, and an analysis of how the Project contributes to the realization of the public purposes of promoting employment opportunities in the City and the prevention of economic deterioration in the City, the Project will constitute a commercial facility with a significant impact on the area in which it is situated, and will advance the Agency's purposes by promoting employment opportunities and preventing economic deterioration in the City. Therefore, the Project constitutes a "project" within the meaning of the Act;

(b) the granting by the Agency of the Financial Assistance with respect to the Project will be an inducement to the Company to undertake the Project in the City;

(c) there is a likelihood that the Project would not be undertaken but for the granting of the Financial Assistance by the Agency to the Company;

(d) the completion of the Block G Project Facility and the operation thereof by the Company will not result in the removal of a facility or plant of the Company or any other occupant, tenant or user of the Block G Project Facility from one area of the State of New York (the "State") to another area of the State or in the abandonment of one or more plants or facilities of the Company or any other occupant, tenant or user located within the State (but outside of the City). Therefore, the provisions of subdivision (1) of Section 862 of the Act are not and will not be violated as a result of the granting of the Financial Assistance by the Agency to the Company;

(e) the Project will serve the public purposes of the Act by preserving permanent, private sector jobs, and increasing the overall number of permanent, private sector jobs in the State;

(f) no funds of the Agency shall be used in connection with the Project for the purpose of preventing the establishment of an industrial or manufacturing plant, nor shall any funds of the Agency be given in connection with the Project to any group or organization which is attempting to prevent the establishment of an industrial or manufacturing plant within the State, nor shall any funds of the Agency be used for advertising or promotional materials which depict elected or appointed government officials in either print or electronic media;

(g) the Block G Project Facility will not constitute a project where facilities or property that are primarily used in making retail sales of goods and/or services to customers who personally visit such facilities constitute more than one-third of the total cost of the Project. Therefore, the Project does not violate the provisions of Section 862 of the Act. For purposes of this representation, retail sales shall mean: (i) sales by a registered vendor under Article 28 of the New York Tax Law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section 1101 of the New York Tax Law; or (ii) sales of a service to such customers; and

(h) the granting of the Financial Assistance by the Agency with respect to the Project will encourage and assist the Company in undertaking the Project in the City, will promote the job opportunities, health, general prosperity and economic welfare of the inhabitants of the City and the State and improve their standard of living, and thereby serve the public purposes of the Act.

Section 2. The Agency determines that the Company's request with respect to a previously approved and unchanged Project is a Type II Action pursuant to SEQRA involving "continuing agency administration" which does not involve "new programs or major reordering of priorities that may affect the environment" (6 N.Y.C.R.R. §617.5(c)(20)) and therefore no Findings or determination of significance are required under SEQRA.

Section 3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director and staff of the Agency with respect to the Application, the Public Hearing and the Consent Resolution, including, without limitation, (a) those actions required to ensure full compliance with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project, and (b) the appointment of the law firm of Phillips Lytle LLP as Counsel to the Agency with respect to all matters in connection with the Project.

Section 4. The Agency hereby determines that the Agency has fully complied with the requirements of the Act, SEQRA and all other Applicable Laws that relate to the Project.

Section 5. Having considered fully all comments received at the Public Hearing or otherwise in connection with the Project, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Project and the granting of the Financial Assistance, subject to the terms hereof. The Agency hereby approves the granting of (A) an exemption from all New York State and local sales and use taxes for purchases and rental of qualifying personal property necessary for the completion of the Project and having a value not exceeding \$987,010, and (B) an exemption from mortgage recording taxes (excluding the portion of the mortgage recording tax allocated to transportation districts referred to in Section 253(2)(a) of the Tax Law of the State of New York) with respect to the recording of the Bank Mortgage having a value not exceeding \$146,750.28. The Agency approves the assumption by the Company of the obligation to make payments in lieu of real property taxes with respect to the Block G Project Facility pursuant to the terms of the Leaseback Agreement.

Section 6. The Agency is hereby authorized to (a) acquire the interests contemplated by the Conveyance Instrument, the Bill of Sale to Agency and the other Transaction Documents, (b) under the Project pursuant to the Leaseback Agreement and the other Transaction Documents, (c) grant the aforementioned Financial Assistance, (d) execute the PILOT Mortgage for the sole purpose of encumbering its interest in the Block G Project Facility or accept such other collateral as the Executive Director shall determine to secure the performance by the Company of its obligations under the Leaseback Agreement, (e) execute one (1) or more fee and leasehold mortgage, assignment of rents and leases, and security agreements in favor of such bank, governmental agency or financial institution as the Company may determine (such bank, governmental agency or financial institution, the "Bank"), encumbering the Block G Project Facility, solely to subject to the lien thereof its interest in the Block G Project Facility, all to secure one (1) or more loans made by such Bank to the Company with respect to the Block G Project Facility, and (f) do all things necessary, convenient or appropriate for the accomplishment thereof. All acts heretofore taken by the Agency with respect to the foregoing are hereby approved, ratified and confirmed.

Section 7. The form and substance of the Transaction Documents, in the forms presented to the members of the Agency, together with such changes as the Chair, Vice Chair or Executive Director may hereafter deem necessary or appropriate, are hereby approved. The Chair, Vice Chair and Executive Director are hereby authorized, on behalf of the Agency, acting together or individually, to execute and deliver the Transaction Documents to which the Agency

is a party and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The execution and delivery of each such document, instrument and agreement by such person(s) shall be conclusive evidence of such approval.

Section 8. The Chair, Vice Chair and Executive Director of the Agency are hereby further authorized, on behalf of the Agency, acting together or individually, to designate any additional Authorized Representatives (as defined in the Leaseback Agreement) of the Agency.

Section 9. The officers, employees and agents of the Agency are hereby authorized and directed, acting individually or jointly, for and in the name and on behalf of the Agency to do all acts and things required or provided for by the provisions of the Transaction Documents, to execute and deliver all such additional certificates, instruments, agreements and documents, to pay all such fees, charges and expenses, and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, convenient or appropriate to effect the purposes of this Resolution and to cause compliance with all of the terms, covenants and provisions of the Transaction Documents to which the Agency is a party or which are binding on the Agency.

Section 10. The Agency recognizes that due to the complexities of the proposed transaction it may become necessary that certain of the terms approved hereby may require modifications from time to time which will not affect the intent and substance of the authorizations and approvals by the Agency herein. The Agency hereby authorizes the Chair, Vice Chair and Executive Director of the Agency, acting individually or jointly, to approve modifications to the terms approved hereby which do not affect the intent and substance of this Resolution, but may include adjustments to the Financial Assistance granted hereunder. The approval of such modifications shall be evidenced by the certificate of determination of an Agency officer or the execution and delivery by some or all such Agency officers of relevant documents containing such modified terms.

Section 11. The members of the Agency acknowledge the terms and conditions of Section 875(3) of the Act and the duties and obligations of the Agency thereunder with respect to granting of State Sales and Use Taxes (as such term is defined in Section 875 of the Act) with respect to the Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Project and hereby direct Counsel to the Agency to include such terms and conditions in all relevant Transaction Documents.

Section 12. The Chair, Vice Chair and Executive Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 13. This Resolution shall take effect immediately.

The question of adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>VOTING</u>
Timothy J. Tenke	AYE
Vincent C. Hartley	AYE
Joseph Gioino	AYE
James J. Cappiello	AYE
John Tetta	Absent

The foregoing Resolution was thereupon declared adopted 8/18/2020.

GC-IDA
ENTERED
8-18-2020

cbm