

Garvies Block F - Approving Resolution

A regular meeting of the Glen Cove Industrial Development Agency (the "Agency") was convened in public session at City Hall, 9-13 Glen Street, 2nd floor conference room, City of Glen Cove, Nassau County, New York, on July 25, 2023, at 6:33 p.m., local time.

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

PRESENT:

Pamela D. Panzenbeck	Chairperson
Vincent C. Hartley	Vice Chairperson/Treasurer
James J. Cappiello	Member
Grady Farnan	Member
David V. Jimenez	Member
Tom Hopke	Member

NOT PRESENT:

John Fielding	Member
---------------	--------

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Ann S. Fangmann	Executive Director
Camille Byrne	Secretary
Paul O'Brien, Esq.	Transaction Counsel

The attached resolution no. 6(b) was offered by Chairperson Panzenbeck, seconded by Vice Chair Hartley:

GC-IDA
ENTERED
7-25-23
CB

Resolution No. 6(b)

RESOLUTION TAKING OFFICIAL ACTION TOWARD AND APPROVING THE
STRAIGHT LEASE DOCUMENTS FOR A CERTAIN PROJECT FOR GARVIES BLOCK F
LLC AND/OR ITS AFFILIATES OR RELATED DESIGNEES

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 “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, all 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 Project (collectively, the “Master Transaction Documents”); and

WHEREAS, in connection with the 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 Project; and

WHEREAS, pursuant to a certain Bifurcation, Assignment and Assumption Agreement (or similar agreement approved by the Agency) (the “Bifurcation Agreement”) among the Agency, GCLEAC, RXR and/or certain affiliates of RXR, RXR will assign its interest in and to the Assumed Documents (as defined in the Bifurcation Agreement) with respect to the Assigned Site (as defined in the Bifurcation Agreement) to RXR Garvies P1 Building F Owner LLC (or another entity approved by the Agency) (“Building F Owner”); and

WHEREAS, pursuant to a certain Mortgage Modification Agreement (or similar agreement approved by the Agency) (the “Mortgage Modification”) by and among Building F Owner, the Agency, GCLEAC and The Bank of New York Mellon, as Trustee (the “Trustee”), Building F Owner will be released from its obligations with respect to the portion of the Assigned Site known as the northern approximately 1.99 acre portion of Section 21, Block 259, Lot 22 to be subdivided as Lot F (the “Block F Parcel”) upon execution and delivery of (i) a certain Lease Agreement (the “Block F Lease”) by and among RXR, GCLEAC and the Agency, pursuant to which RXR leases the Block F Parcel to the Agency, and (ii) a certain Leaseback Agreement (the “Block F Leaseback Agreement”) between the Agency and RXR, pursuant to which the Agency subleases the Block F Parcel to RXR; and

WHEREAS, pursuant to a notification and consent request letter dated April 17, 2023 (the “Consent Request Letter”), RXR requested that the Agency consent to the transfer by RXR to Garvies Block F LLC, a limited liability company organized and existing under the laws of the State of New York (the “Company”), of all of RXR’s right, title and interest in and to the Block F Lease, the Block F Leaseback Agreement and the related Master Transaction Documents (collectively, the “Assignment Transaction”), as required by Section 18 of the Covenants Agreement; and

WHEREAS, pursuant to a resolution adopted by the members of the Agency on June 13, 2023 (the “Consent Resolution”), the Agency consented to the Assignment Transaction; and

WHEREAS, the Company presented a certain application for financial assistance (the “Application”) to the Agency, which Application requested that the Agency consider undertaking the following (the “Proposed Project”): (A) the consent by the Agency to the assignment of all right, title and interest of RXR in and to the Block F Lease, the Block F Leaseback Agreement and the related Master Transaction Documents to the Company in place of RXR; (B) the construction, installation and equipping of the buildings and improvements on the Block F Parcel contemplated by the Block F Leaseback Agreement (collectively, the “Block F

Improvements”) by the Company as agent of the Agency; (C) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion of the Block F Improvements (collectively, the “Block F Equipment” and together with the Block F Parcel and the Block F Improvements, collectively, the “Block F 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 “Additional Financial Assistance”); and

WHEREAS, in accordance with Section 859-a of the Act, any approval of the Proposed Project is contingent upon, inter alia, a determination by the members of the Agency to proceed with the Proposed Project following a determination by the Agency that (A) the applicable procedural requirements contained in the Act relating to the Proposed Project have been satisfied; and (B) the undertaking of the Proposed Project by the Agency and the granting of the Additional Financial Assistance are and will be in compliance with all other applicable requirements of the Act, SEQRA (as hereinafter defined), and all other statutes, codes, laws, rules and regulations of any governmental authority having jurisdiction over the Proposed Project and/or the Block F 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 Proposed Project and the Additional Financial Assistance contemplated by the Agency with respect to the Proposed Project, to be mailed on June 29, 2023 to the chief executive officer of the City of Glen Cove, New York, and of each other affected tax jurisdiction within which the Block F Facility is or is to be located; (B) caused notice of the Public Hearing to be published on June 29, 2023 in the *Glen Cove Herald*, 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 13, 2023 at 6:00 p.m., local time, at City Hall, 9-13 Glen Street, City of Glen Cove, Nassau County, New York; (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, the members of the Agency attended the Public Hearing or have reviewed the recording of the Public Hearing posted on the Agency’s website; and

WHEREAS, the members of the Agency received, reviewed and have considered the Report, all other correspondence and comments received by the Agency with respect to the Proposed Project and certain additional documents, studies and reports; and

WHEREAS, pursuant to Article 8 of the 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 “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 an action; and

WHEREAS, the City of Glen Cove Planning Board (the “Planning Board”), acting as lead agency, conducted a coordinated environmental of the Proposed Project, resulting in the issuance of a Final Environmental Impact Statement (FEIS) with additional lead agency findings in 2011 and 2015; and

WHEREAS, in conjunction with the Company’s 2016 application to the Agency for Financial Assistance, the Agency thoroughly reviewed, considered, and deliberated upon the entire SEQRA record before the Planning Board and issued its own SEQRA Findings approving the Proposed Project; and

WHEREAS, the granting of the Additional Financial Assistance would not represent a deviation from the Agency’s uniform tax exemption policy; and

WHEREAS, the Agency now desires to make its determination to proceed with the Proposed Project and to grant the Additional Financial Assistance, subject to the terms hereof; and

WHEREAS, the Company and/or one (1) or more of its affiliates or related designees will (A) execute and deliver a certain Company Lease Agreement (the “Company Lease”), pursuant to which the Company and/or such affiliate(s) or related designee(s) will grant to the Agency a leasehold interest in the Block F Facility; (B) execute and deliver a certain Bill of Sale (the “Bill of Sale”), pursuant to which the Company and/or such affiliate(s) or related designee(s) will convey title to the Block F Equipment to the Agency; (C) execute and deliver a certain Agency Lease Agreement (Uniform Project Agreement) (the “Agency Lease”), pursuant to which the Agency will grant to the Company and/or such affiliate(s) or related designee(s) a subleasehold interest in the Block F Facility; and (D) execute and deliver certain other certificates, documents, instruments and agreements related to the Proposed Project (together with the Company Lease, the Bill of Sale and the Agency Lease, collectively, the “Transaction Documents”);

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

Section 1. This Resolution is adopted in full compliance with the SEQRA process for the Proposed Project as outlined in the Application consented to and approved herein constitutes “routine or continuing agency management, not including new programs ... that may affect the environment,” and, as such, is a Type II Action under SEQRA 6 N.Y.C.R.R. §617.5(c)(26) as this approval allows for the redevelopment of the Block F Facility in furtherance of the approved Covenants Agreement. Therefore, no findings or determination of significance are required under SEQRA. In addition, the Proposed Project as outlined in the Application, is consistent with the terms of the Covenants Agreement and the actions analyzed in the SEQRA process for the Proposed Project.

Section 2. In accordance with Section 859-a of the Act, the Agency has prepared or caused to be prepared a written cost-benefit analysis with respect to the Proposed Project and the granting of the Additional 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 Additional Financial Assistance. In addition, the Agency hereby makes the following findings and determinations with respect to the Proposed Project:

(a) based on the proposed use of the Block F Facility as set forth in the Application, the economic effects of the Proposed Project on the area in which it is situated, and the employment reasonably expected to be created and/or maintained by the Proposed Project, and an analysis of how the Proposed Project contributes to the realization of the public purposes of promoting employment opportunities in the City of Glen Cove (the “City”) and the prevention of economic deterioration in the City, the Proposed 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 Proposed Project constitutes a “project” within the meaning of the Act;

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

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

(d) the completion of the Block F Facility, the sublease thereof by the Agency to the Company 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 F 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 Additional Financial Assistance by the Agency to the Company;

(e) the Proposed 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 Proposed 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 Proposed 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 F 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 Proposed Project. Therefore, the Proposed 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;

(h) the granting of the Additional Financial Assistance by the Agency with respect to the Proposed Project will encourage and assist the Company in undertaking the Proposed 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;

(i) the Proposed Project will not result in the removal or abandonment of a plant or facility of the Company or any other occupant or user of the Block F Facility currently located within the City; and

(j) the Block F Facility, by providing affordable, safe, clean and modern rental housing will enable persons to remain in the City and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the City which will increase the economic health and well-being of the residents of the City and help preserve and increase permanent private sector jobs in furtherance of the Agency's public purposes as set forth in the Act.

Section 3. The Agency hereby ratifies, confirms and approves all actions heretofore taken by the Executive Director and the staff of the Agency with respect to the Application, the Analysis and the Public Hearing, 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 Proposed 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 Proposed 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 Proposed Project.

Section 5. Having considered fully all comments received at the Public Hearing or otherwise in connection with the Proposed Project, including correspondence received subsequent to the Public Hearing, the Agency hereby further determines to proceed with the Proposed Project and the granting of the Additional 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 Proposed Project and having a value not exceeding \$1,264,705, 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 (as hereinafter defined) having a value not exceeding \$222,657. The Agency's closing administrative fee will be \$264,270.63.

Section 6. The Agency is hereby authorized to (a) acquire the interests contemplated by the Company Lease, the Bill of Sale to Agency and the other Transaction Documents, (b) grant a subleasehold interest in the Block F Facility pursuant to the Agency Lease and the other Transaction Documents, (c) grant the aforementioned Additional Financial Assistance, (d) execute one (1) or more fee and leasehold mortgage, assignment of rents and leases, and security agreements (collectively, the "Bank Mortgage") 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 F Facility, solely to subject to the lien thereof its interest in the Block F Facility, all to secure one (1) or more loans made by such Bank to the Company with respect to the Block F 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 Agency Lease) 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 Additional 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 Proposed Project. The members hereby direct the officers of the Agency to comply with such terms and conditions with respect to the Proposed 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 the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>VOTING</u>
Pamela D. Panzenbeck	AYE
Vincent C. Hartley	AYE
James J. Cappiello	AYE
Grady Farnan	AYE
David V. Jimenez	AYE
John Fielding	ABSENT
Tom Hopke	AYE

The foregoing Resolution was thereupon declared duly adopted.

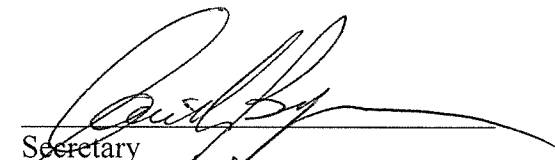

STATE OF NEW YORK)
) SS.:
COUNTY OF NASSAU)

WE, the undersigned officers of the Glen Cove Industrial Development Agency (the “Agency”), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on July 25, 2023 with the original thereof on file in our offices, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

WE FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, we have hereunto set our hand this 25 day of July, 2023.


Secretary

Chair