

Ordinance offered by Mayor Spinello and seconded by \_\_\_\_\_

**BE IT ORDAINED**, that the City Council hereby amends Section 265-49 (Time Limit Parking) as it relates to Glen Street as follows:

**Add:**

<b><u>Name of Street</u></b>	<b><u>Side</u></b>	<b><u>Time Limit; Hours/Days</u></b>	<b><u>Location</u></b>
Glen Street	South	15 mins.; 9:00 a.m. to 6:00 p.m.	From a point 65feet west of Pulaski Street for a distance of 42 feet west therefrom

Resolution offered by Mayor Spinello and seconded by \_\_\_\_\_

**RESOLUTION OF THE GLEN COVE CITY COUNCIL AUTHORIZING THE MAYOR OF THE CITY OF GLEN COVE TO ENTER INTO THE GARVIES POINT CONTINUING COVENANTS AGREEMENT WITH RXR GLEN ISLE PARTNERS LLC**

**WHEREAS**, the Glen Cove Industrial Development Agency (“IDA”), the Glen Cove Community Development Agency (“CDA”), and RXR Glen Isle Partners LLC (“RXRGIP”) (successor-by-assignment to Glen Isle Partners, LLC) are parties to a Contract for Sale of Land for Private Redevelopment dated as of May 14, 2003, as amended (the “LDA”), with respect to approximately fifty-six (56) acres of real property located along the north side of Glen Cove Creek, more particularly set forth in the LDA and commonly known as the Glen Cove Waterfront (the “Property”); and

**WHEREAS**, although the City of Glen Cove (the “City”) is not a party to the LDA, the LDA sets forth certain actions and responsibilities to be performed by the City with respect to the redevelopment of the Property for the Garvies Point Mixed-Use Waterfront Redevelopment Project (the “Project”); and

**WHEREAS**, by letter agreement dated August 28, 2012, the City affirmed its rights and obligations under the LDA (the “2012 Letter Agreement”) upon the request of the IDA/CDA and RXRGIP; and

**WHEREAS**, the IDA/CDA are preparing to transfer fee title to a portion of the Property to RXRGIP (the “Closing”) pursuant to the LDA, upon which the LDA will be terminated; and

**WHEREAS**, the IDA/CDA and RXRGIP at the Closing will enter into the Garvies Point Continuing Covenants Agreement (the “Continuing Covenants Agreement” or “CCA”), which will set forth certain terms and conditions with respect to the ongoing responsibilities regarding the construction and operation of the Project, and the Property in general, after the Closing; and

**WHEREAS**, similar to the LDA, the CCA sets forth certain rights and obligations specifically relevant to the City, including, Sections 3, 6, 8(b), 10(c), 21(d), 24, 26, 27 and 30 of the CCA; and

**WHEREAS**, the aforementioned Sections relate to the City’s planned ferry service (including compliance with ferry site environmental requirements), the Garvies Point Road/Herb Hill Road Reconstruction Project, the future use of the property commonly known as Li Tungsten Parcel Lower C, demolishing the City’s decommissioned incinerator on Morris Avenue, workforce housing requirements, covenants of good faith and fair dealing, and default; and

**WHEREAS**, like the 2012 Letter Agreement, the City should be a signatory to the CCA with respect to only those Sections that relate to the City; and

**WHEREAS**, a form of the CCA was presented to the members of the Glen Cove City Council for their consideration at the Council’s November 9, 2016 Meeting; and

**WHEREAS**, regarding compliance with the New York State Environmental Quality Review Act (“SEQRA”), the City, as an involved agency, previously adopted its SEQRA Findings for the Project when authorizing the 2012 Letter Agreement, by Resolution 6E, dated August 2, 2012.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GLEN COVE CITY COUNCIL, AS FOLLOWS:**

Section 1. Sections 3, 6, 8(b), 10(c), 21(d), 24, 26, 27 and 30 of the Continuing Covenants Agreement, in the form presented to the members of the Glen Cove City Council at the Council’s November 9, 2016 Meeting, together with such non-material changes as the Mayor may hereafter deem necessary or appropriate, are hereby approved.

Section 2. The Mayor of the City of Glen Cove is hereby authorized, on behalf of the City of Glen Cove, to execute the Continuing Covenants Agreement as to Sections 3, 6, 8(b), 10(c), 21(d), 24, 26, 27 and 30, and deliver any documentation necessary to effectuate the acts authorized by this Resolution.

Section 3. The execution of the Continuing Covenants Agreement as to Sections 3, 6, 8(b), 10(c), 21(d), 24, 26, 27 and 30 by the Mayor shall evidence the Council’s approval of the terms thereof.

Section 4. The City determines that the proposed action for a previously approved 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 5. This Resolution shall take effect immediately.

Resolution 6C

Resolution offered by Mayor Spinello and seconded by \_\_\_\_\_

**RESOLUTION OF THE GLEN COVE CITY COUNCIL AUTHORIZING THE MAYOR OF THE CITY OF GLEN COVE TO EXECUTE A MULTI PARTY SUBORDINATION, NON DISTURBANCE AND RECOGNITION AGREEMENT WITH AMERICAN MULTI-CINEMA, INC. (AMC).**

**WHEREAS**, AMC has entered into a lease (the “**Lease**”) with TDG Glen Cove LLC, a New York limited liability company (the “**Landlord**”) whereby AMC has leased certain premises (the “**Premises**”) owned by Landlord located adjacent to the north of Brewster Street Garage and School Street, and

**WHEREAS**, as a condition to its execution of the AMC Lease, AMC has requested that the City of Glen Cove (the “**City**”) The Glen Cove Industrial Agency (the “**Agency**”) and AMC enter into a Multi-Party Subordination, Non-Disturbance and Recognition Agreement, and

**WHEREAS**, AMC’s obligations under the Lease, including the opening of a movie theatre, are conditioned upon the City’s execution and delivery of this Multi-Party Subordination, Non-Disturbance and Recognition Agreement and other conditions as set forth in the Lease, and

**WHEREAS**, the City has concluded that the AMC Lease is beneficial to the City and the local economy and is consistent with the City’s mission and therefore wishes to encourage same

**WHEREAS**, the City is desirous of attracting AMC to the City and having AMC open a quality movie theater for the use and enjoyment of the citizens of Glen Cove and surrounding communities.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GLEN COVE CITY COUNCIL, AS FOLLOWS:**

1. The Mayor of the City of Glen Cove is hereby authorized, on behalf of the City of Glen Cove, to execute a Multi-Party Subordination, Non-Disturbance and Recognition Agreement with AMC herein and deliver any documentation necessary to effectuate the acts authorized by this Resolution.
2. This Resolution shall take effect immediately.

Resolution 6D

Resolution offered by Mayor Spinello and seconded by \_\_\_\_\_

**RESOLUTION OF THE GLEN COVE CITY COUNCIL AUTHORIZING THE MAYOR OF THE CITY OF GLEN COVE TO ENTER INTO A NON-EXCLUSIVE PARKING AGREEMENT WITH AMERICAN MULTI-CINEMA, INC. (AMC)**

**WHEREAS**, the City is the owner of certain municipal parking garages, including the four (4) story parking garage (the “**Brewster Street Garage**”), and

**WHEREAS**, the Brewster Street Garage includes a parking structure located immediately adjacent to the Glen Cove movie Theatre, and

**WHEREAS**, the City of Glen Cove is required to maintain the Brewster Street Garage for the benefit of the general public, and

**WHEREAS**, AMC has entered into a lease (the “**Lease**”) with TDG Glen Cove LLC, a New York limited liability company (the “**Landlord**”) whereby AMC has leased certain premises (the “**Premises**”) located within a project (the “**Project**”) owned by Landlord located immediately adjacent to the north of Brewster Street Garage,

**WHEREAS**, AMC’s obligations under the Lease, including the opening of a movie theatre, which are conditioned upon the City’s execution and delivery of this Agreement and other conditions as set forth in the Lease, and

**WHEREAS**, it is important to AMC’s business operations to provide adequate parking for its customers and employees, and

**WHEREAS**, the City is desirous of attracting AMC to the City and having AMC open a quality movie theater for the use and enjoyment of the citizens of Glen Cove and surrounding communities.

**NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE GLEN COVE CITY COUNCIL, AS FOLLOWS:**

1. The Mayor of the City of Glen Cove is hereby authorized, on behalf of the City of Glen Cove, to execute a non-exclusive parking agreement with AMC herein and deliver any documentation necessary to effectuate the acts authorized by this Resolution.

2. This Resolution shall take effect immediately.

Resolution 6E

Resolution offered by Mayor Spinello and seconded by \_\_\_\_\_

**BE IT RESOLVED**, that the City Council hereby authorizes the purchase of a bus, for the Glen Cove Adult Day Program, from Bird Bus Center, in the amount of \$75,057.

Funding: 100 % Reimbursement from New York State Office for the Aging (NYSOFA)

Resolution 6F

Resolution offered by Mayor Spinello and seconded by \_\_\_\_\_

**BE IT RESOLVED**, that the City Council hereby authorizes the Glen Cove Chamber of Commerce to erect twenty lawn signs, November 27, 2016 through December 12, 2016, to advertise annual “Winter Wonderland”.

Resolution 7A-1

Resolution offered by Mayor Spinello and seconded by \_\_\_\_\_

**BE IT RESOLVED**, that the City Council hereby appoints Carolina A. Guastella, provisionally, as full-time Youth Program Coordinator, at an annual salary of \$42,735, Grade 9 Step 0, effective November 10, 2016.

Budget Line A7050-51101

Resolution 7A-2

Resolution offered by Mayor Spinello and seconded by \_\_\_\_\_

**BE IT RESOLVED**, that the City Council hereby appoint Pino R. Guadio as part-time Bus Driver at \$17.00 per hour, effective November 10, 2016.

Budget Line A7050-51120

WHEN RECORDED  
RETURN TO:

Mark D. Eisemann  
Lewis Rice, LLC  
1010 Walnut, Suite 500  
Kansas City, Missouri 64106

**MULTI-PARTY SUBORDINATION, NONDISTURBANCE  
AND RECOGNITION AGREEMENT**

This **MULTI-PARTY SUBORDINATION, NONDISTURBANCE AND RECOGNITION AGREEMENT** (this “**Agreement**”) is entered into as of \_\_\_\_\_, 2016 (the “**Effective Date**”), between the **CITY OF GLEN COVE**, a New York municipal corporation, whose address is 9-13 Glen Street, Glen Cove, New York 11542 (“**City**”), the **GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY**, a New York public benefit corporation, whose address is 9-13 Glen Street, Glen Cove, New York 11542 (“**Agency**”), **TDG GLEN COVE LLC**, a New York limited liability company (“**Owner**”) c/o The DiNoto Group, 7600 Jericho Turnpike, Suite 110, Woodbury, New York 11797 and **AMERICAN MULTI-CINEMA, INC.**, a Missouri corporation, whose address is One AMC Way, 11500 Ash Street, Leawood, Kansas 66211, Attention: Lease Administrator (“**Tenant**”).

**RECITALS:**

- A. Owner is the fee owner of that certain project located in Glen Cove, New York (“**Project**”), a legal description of which Project is attached hereto as Schedule A.
- B. Owner and Agency entered into that certain Payment in Lieu of Taxes Agreement dated December 1, 2013 (“**PILOT Agreement**”) with respect to the Project.
- C. In connection with the PILOT Agreement, Owner leased the Project to Agency pursuant to that certain Company Lease Agreement dated as of December 1, 2013 between Owner, as lessor, and Agency, as lessee (“**Company Lease**”), for a term ending on December 31, 2029 (“**Overlease Expiration Date**”).
- D. In connection with the PILOT Agreement, Agency then subleased the Project to Owner pursuant to that certain Sublease Agreement dated as of December 1, 2013 between Agency, as sublessor, and Owner, as sublessee, as amended by that certain First Amendment to Sublease dated as of the Effective Date (collectively, “**Agency Sublease**”) for a term ending on the Overlease Expiration Date. The Company Lease and Agency Sublease are referred to individually as an “**Overlease**” and collectively as the “**Overleases**”.
- E. To secure the obligations under the PILOT Agreement, Owner and Agency executed that certain Mortgage and Assignment of Leases and Rents on the Project dated as of December 1, 2013 and recorded on January 13, 2014, at Liber 39449, Page 473, in the Official

Records of the County of Nassau State of New York (such mortgage, together with all ancillary security documents with respect to the PILOT Agreement, being herein referred to as the “**Mortgage**”) in favor of the City, on behalf of said City and such other instrumentalities to which amounts shall be due and owing pursuant to the PILOT Agreement (“**Mortgagee**”).

F. Pursuant to that certain lease dated as of \_\_\_\_\_, 2016 (the “**Lease**”), Owner, as sublessee under the Agency Sublease, demised to Tenant certain premises (“**Tenant’s Premises**”) in the Project.

G. Owner, as landlord under the Lease, is required to deliver this Agreement to Tenant as a condition under the Lease. Mortgagee, Agency and Owner acknowledge and agree that the operation of a theatre by Tenant in the Project, and the satisfaction of Owner’s conditions under the Lease, including the execution and delivery of this Agreement, are beneficial to their respective interests.

**NOW, THEREFORE**, in consideration of mutual covenants, Mortgagee (which term shall include, for all purposes herein, the City on behalf of itself and other taxing jurisdictions), Agency, Owner, and Tenant agree:

1. **CONSENTS.** Mortgagee, Agency and Owner (as fee owner) hereby approve, recognize and consent to the Lease and all terms and provisions thereof including, without limitation, and notwithstanding the provisions of the Mortgage or Overleases to the contrary, all rights of Tenant regarding assignment and use of the Leased Premises. Owner and Tenant shall have the right to amend the Lease from time to time without the consent of Mortgagee or Agency; provided, however, Mortgagee and Agency shall not be bound by any amendment made without their respective consent (which consent shall not be unreasonable withheld, conditioned or delayed) except for amendments (a) contemplated in the Lease for confirming the rent commencement date and similar dates, the term, the square footage, and the renewal or extension of the Lease and (b) those that do not materially adversely affect Mortgagee or Agency. Mortgagee, Agency and Owner covenant and agree that the PILOT Agreement, Mortgage and Overleases (collectively, “**PILOT Documents**”) will not be modified or amended in any manner that would materially adversely affect Tenant (including without limitation, in a manner that would diminish its rights or increase its obligations under the Lease). Owner, as landlord under the Lease, consents and agrees to the terms and provisions of this Agreement, which is entered into at its request, and agrees that the terms and provisions of this Agreement shall not alter, waive or diminish any of its obligations under the PILOT Documents or the Lease.

2. **REPRESENTATIONS.** Mortgagee represents to Tenant that (i) it has full authority to enter into this Agreement, and Mortgagee’s entry into this Agreement has been duly authorized by all necessary actions, (ii) the Mortgage is in full force and effect and has not been amended or assigned, and to Mortgagee’s knowledge, no default exists thereunder, and (iii) the execution and delivery by Owner and Tenant of the Lease and this Agreement will not constitute a violation of any term, covenant or condition of the Mortgage. Agency warrants and represents to Tenant that (a) it is the owner of the lessee’s interest under the Company Lease and sublessor’s interest in the Agency Sublease, which interests are free and clear of all liens and encumbrances whatsoever which would restrict or prevent the use or enjoyment by Tenant of the Leased Premises as

contemplated in this Lease (other than the Mortgage being subordinated); (b) it has full authority to enter into this Agreement, and its entry into this Agreement has been duly authorized by all necessary actions; (c) the PILOT Documents are in full force and effect and have not been amended or assigned, and to Agency's knowledge, no default exists thereunder; and (d) the execution and delivery by Owner and Tenant of the Lease and this Agreement will not constitute a violation of any term, covenant or condition of the PILOT Documents. Owner warrants and represents that (a) it is the owner of the Project and sublessee's interest in the Agency Sublease, free and clear of all liens and encumbrances other than the Mortgage and the Bank Mortgage (as defined in Section 5 below); (b) it has full authority to enter into this Agreement, and its entry into this Agreement has been duly authorized by all necessary actions; (c) the PILOT Documents are in full force and effect and have not been amended or assigned, and no default exists thereunder; and (d) the execution and delivery by Owner and Tenant of the Lease and this Agreement will not constitute a violation of any term, covenant or condition of the PILOT Documents. Tenant warrants and represents to Agency and Mortgagee that it has full authority to enter into this Agreement, and its entry into this Agreement has been duly authorized by all necessary actions.

3. **SUBORDINATION.** The Lease is and shall remain subject and subordinate to the lien of the Mortgage; however, (i) nothing in this Agreement is intended to subject or subordinate "Tenant's Property" (as defined in the Lease) to the lien of the Mortgage, and (ii) insurance and condemnation proceeds shall be applied in the manner described in the Lease. Mortgagee, Agency and Owner (as fee owner) hereby (a) waive any and all liens, claims, demands or rights including, but not limited to, rights of levy, execution, sale and distraint for unpaid rent, or any other rent, interest or lien which it now or may hereafter acquire in any and all trade fixtures and equipment, signs, appliances, furniture and other personalty installed at any time by it on the Tenant's Premises, and (b) agree to execute and deliver to Tenant, in connection with any financing of Tenant's Property (by granting a security interest therein or entering into an equipment lease therefor) a waiver and all other documents reasonably required by such lessor or the holder of a security interest in Tenant's Property.

4. **NONDISTURBANCE.** Mortgagee agrees that so long as the Lease has not been terminated due to a Tenant default under the Lease that has continued beyond any applicable notice and cure period ("**Tenant Default**"), Mortgagee shall do nothing to disturb or otherwise affect in any manner the quiet possession by Tenant of the Tenant's Premises under the Lease. Agency agrees that so long as the Lease has not expired, been terminated or canceled, Agency shall not do anything to disturb or otherwise affect in any manner the quiet possession by Tenant of the Tenant's Premises under the Lease. Owner, as fee owner (and not in its capacity as landlord under the Lease, which is governed by the Lease) agrees that so long as the Lease has not expired, been terminated or canceled, Owner (in such capacity) shall not do anything to disturb or otherwise affect in any manner the quiet possession by Tenant of the Tenant's Premises under the Lease. In no event shall Tenant's rights under the Lease be disturbed due to a default by Tenant under the provisions of Section 50 of the Lease, or any other provision of the Lease that imposes a direct obligation upon Tenant with respect to the Agency.

5. **CONTINUANCE OF LEASE.**

a. The term “**Successor Landlord**” means (i) a party that becomes owner of the Project as the result of a Foreclosure Event, or (ii) Owner in the event of an Overlease Termination. The term “**Foreclosure Event**” means: (a) foreclosure under the Mortgage; (b) any other exercise by Mortgagee (whether under the Mortgage or applicable law, including bankruptcy law) as holder of the Mortgage and/or obligations secured thereby, as a result of which Successor Landlord becomes owner of the Project; or (c) delivery by Owner or its successors to Mortgagee (or its designee or nominee) of a deed or other conveyance of Owner’s interest in the Project in lieu of any of the foregoing. The term “**Overlease Termination**” means the expiration, termination or cancellation of either Overlease during the term of the Lease, including any extension thereof, for any reason whatsoever, whether as the result of the expiration of the term, default by Owner or Agency thereunder, notice by Owner or Agency of cancellation thereof or otherwise. Notwithstanding anything else in the Overleases or this Agreement, the expiration, termination or cancellation of either Overlease shall automatically and simultaneously result in the expiration, termination and cancellation of the other Overlease.

b. Upon the occurrence of a Foreclosure Event or Overlease Termination, (i) Successor Landlord shall be bound to Tenant under all the terms and conditions of the Lease (and Successor Landlord and Tenant shall be deemed to have automatically entered into a new lease on the same terms and provisions of the Lease for the remaining balance of the term of the Lease); (ii) Tenant shall recognize and attorn to Successor Landlord as Tenant’s direct landlord under the Lease; and (iii) the Lease shall continue in full force and effect as a direct lease between Successor Landlord and Tenant in accordance with its terms as if Successor Landlord had originally entered into such Lease as landlord thereunder. The provisions of this Section shall be effective and self-operative without any need for Successor Landlord or Tenant to execute any further documents (but Tenant and Successor Landlord shall confirm the provisions of this Section in writing upon request by either, and Agency and Owner agree to give Tenant prompt written notice of an Overlease Termination). Tenant shall have no obligation to make any payments to Successor Landlord and shall be deemed to have fully performed in respect of any sums theretofore paid to landlord in accordance with the provisions of the Lease until receipt of notice to Tenant from Successor Landlord of a Foreclosure Event or Overlease Termination.

c. The parties hereto acknowledge and agree that (i) the rights of Mortgagee are prior, intervening rights with respect to the Overleases, and that the provisions of Section 5.b. of this Agreement shall apply with respect to the Successor Landlord who becomes owner in the event of a Foreclosure Event, without any obligation of Tenant as to a Successor Landlord resulting from an Overlease Termination; and (ii) the rights of the holder of that certain mortgage in favor of Signature Bank dated May 6, 2014 and recorded on May 12, 2014, at Liber 39682, Page 302., in the Official Records of the County of Nassau State of New York (the “**Bank Mortgage**”) encumbering the Project are prior, intervening rights with respect to the Overleases and to the provisions of this Agreement with respect to the Overleases.

6. **NO JOINDER.** Mortgagee shall not name or join Tenant as a defendant in any exercise of Mortgagee's rights and remedies arising upon a default under the Mortgage unless applicable law requires Tenant to be made a party thereto as a condition to proceeding against Owner or prosecuting such rights and remedies (in which case Mortgagee may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action, and Owner shall reimburse Tenant for Tenant's reasonable attorneys' fees incurred in connection with such Foreclosure Event). Tenant shall not be named or joined in any action or proceeding by Agency or Owner under an Overlease to recover possession of the Tenant's Premises or any part thereof or for any other relief from Owner or Agency unless applicable law requires Tenant to be made a party thereto as a condition to Agency proceeding against Owner or prosecuting such rights and remedies (in which case Agency may join Tenant as a defendant in such action only for such purpose and not to terminate the Lease or otherwise adversely affect Tenant's rights under the Lease or this Agreement in such action, and Owner shall reimburse Tenant for Tenant's reasonable attorneys' fees incurred in connection with such Foreclosure Event).

7. **Future Mortgage.** The Agency will not cause or suffer the creation of a mortgage or other security interest affecting the Project or Tenant's Premises. Owner, as fee owner (and not in its capacity as landlord under the Lease, which is governed by the Lease), will not cause or suffer the creation of a mortgage or other security interest affecting the Project or Tenant's Premises (a "**Future Mortgage**") which would attain priority over the Lease unless Owner obtains a Non-Disturbance Agreement (as defined in the Lease) with respect to the Future Mortgage in accordance with the provisions of Section 31(C)(1) of the Lease.

8. **Agency Liability under Overleases.** The liability of Agency to Tenant under the Overleases and this Agreement shall be enforceable only out of, and limited to, the Agency's interests under the Overleases. There shall be no other recourse with respect to the Overleases or this Agreement against the Agency, its members, directors, officers, agents (other than the Landlord), servants and employees and persons under the Agency's control or supervision, past, present or future, or against any of the property (other than interests in the Project) now or hereafter owned by it or any of them.

9. **Tenant's Right to Cure; Operation of Movie Theatre.** Notwithstanding anything to the contrary in the Overleases or this Agreement:

(a) before exercising any remedies for default under the Agency Sublease or PILOT Documents that would affect Tenant (including, without limitation, any termination of any Overlease or Pilot Documents, any increase in PILOT amounts or any Recapture of Benefits), Agency shall deliver to Tenant a written notice of such default (the "**Default Notice**"), and Tenant shall have the same period of time after receipt of such notice as is available to Owner with respect to such default [but in no event less than thirty (30) days from the date of notice to Tenant in the case of a default which (i) would also be a default by Tenant under the Lease with respect to any Tenant IDA Obligations (as defined in the Lease) or (ii) relates to the use or operation of Tenant's Premises] in which to cure such default;

(b) the use of Tenant's Premises for the Initial Uses (as defined in the Lease) is deemed a permitted use under the Agency Lease; and

(c) the failure to operate a movie theatre shall not be a default by Owner under the Agency Sublease or PILOT Documents unless such failure relates solely to Tenant's Premises and shall continue for a period in excess of 180 consecutive calendar days [excluding (i) periods of closure for force majeure, casualty damage, condemnation, (ii) reasonable periods of closure for repairs or remodeling, and (iii) any periods that the City Parking Facilities (as defined in the Lease) are not available or maintained as required under Section 26 of the Lease] and Owner shall have failed to cure within the period provided in the Agency Sublease (and Tenant, without any obligation whatsoever to do so, shall have failed to cure within the time period set forth in clause (a) of this Section 9).

#### 10. **Miscellaneous.**

a. **Notices.** All notices or other communications required or permitted under this Agreement shall be in writing and given by certified mail (return receipt requested) or by nationally recognized overnight courier service that regularly maintains records of items delivered. Each party's address is as set forth in the opening paragraph of this Agreement, subject to change by written notice to the other party in accordance with the terms of this paragraph. Notices shall be effective the next business day after being sent by overnight courier service, and 3 business days after being sent by certified mail (return receipt requested).

b. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, and any Successor Landlord and its successors and assigns.

c. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subordination of the Lease to the Mortgage and recognition of the Lease and rights and obligations of Tenant, Mortgagee, Owner (as fee owner) and Agency as to the subject matter of this Agreement.

d. **Governing Law.** The interpretation, validity and enforcement of this Agreement shall be governed by and construed under the laws of the state in which the Project is located without regard to principles of conflicts of laws.

e. **Amendment.** This Agreement may be amended or terminated only by written agreement of the parties hereto. No provision of this Agreement shall be deemed waived by a party unless waived in writing by the party entitled to enforce such provision.

f. **Miscellaneous.** Paragraph headings and captions shall not be used in construing this Agreement. If any party obtains a judgment against any other party by reason of a breach of this Agreement, a reasonable attorneys' fee as fixed by the court shall be included in such judgment. No remedy conferred upon a party in this Agreement is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and in addition to every other remedy given hereunder or at law or in equity. No waiver of any breach of this Agreement or of any representation hereunder shall be deemed to be a waiver of any other

breach (whether preceding or succeeding or of the same or similar nature), and no acceptance of payment or performance after any breach shall be deemed to be a waiver of any breach or of any representation hereunder, whether or not known at the time of acceptance. No failure or delay to exercise any right by reason of the default of another party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right while the other party continues to be so in default. The parties waive trial by jury in any action, proceeding or counterclaim brought on any matter arising out of or in any way connected with this Agreement or the relationship of the parties created hereunder. If any provision of this Agreement, or the application of such provision to the persons or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to the persons or circumstances, shall not be affected thereby. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

**[Remainder of Page Intentionally Left Blank]**





**TENANT:**

**AMERICAN MULTI-CINEMA, INC.**

By: \_\_\_\_\_  
Mark McDonald, Executive Vice-President

STATE OF KANSAS            )  
  ) SS  
COUNTY OF JOHNSON    )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public in and for such County and State, personally appeared Mark McDonald, to me know to be the Executive Vice-President of **AMERICAN MULTI-CINEMA, INC.**, a Missouri corporation, and who executed as such officer the foregoing instrument on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**OWNER:**

**TDG GLEN COVE LLC,**  
a New York limited liability company  
By: RDPP Glen Cove, LLC,  
its managing member

By: \_\_\_\_\_  
Name: Robert DiNoto  
Title: Managing Member

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, personally appeared ROBERT DINOTO, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**SCHEDULE A**  
**DESCRIPTION OF THE PROJECT**

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of Glen Cove, County of Nassau and State of New York, bounded and described more particularly as follows:

BEGINNING at a point on the Southeasterly side of Highland Road, said point of beginning being the Easterly end of a 30.00 foot radius curve connecting the Easterly line of Brewster Street with the Southerly line of Highland Road;

RUNNING THENCE from said point of beginning the following eleven (11) courses and distances:

1. Easterly along the Southerly line of Highland Road, South 76 degrees 46 minutes 39 seconds East, 174.46 feet;
2. Southeasterly along the arc of a curve bearing to the right whose radius is 30.00 feet, Delta is 94 degrees 48 minutes 48 seconds and length is 49.64 feet;
3. Southerly along the Westerly line of School Street (new widened line), South 18 degrees 02 minutes 09 seconds West, 88.91 feet;
4. Continuing Southerly along the aforesaid line of School Street, South 22 degrees 59 minutes 09 seconds West, 31.34 feet;
5. Westerly, North 76 degrees 46 minutes 39 seconds West, 108.22 feet;
6. Southerly and at right angles to the aforesaid course, South 13 degrees 13 minutes 21 seconds West, 24.00 feet;
7. Westerly and at right angles to the aforesaid course, North 76 degrees 46 minutes 39 seconds West, 47.55 feet;
8. Westerly, North 61 degrees 36 minutes 05 seconds West, 92.81 feet;
9. Northerly along the Easterly line of Brewster Street, North 24 degrees 06 minutes 15 seconds East, 115.29 feet;
10. Northerly along the arc of curve bearing to the left whose radius is 540.00 feet, Delta is 1 degree 26 minutes 44 seconds and length is 13.62 feet to a point of reverse curvature;
11. Northeasterly along the arc of a curve bearing to the right whose radius is 30.00 feet, Delta is 80 degrees 33 minutes 50 seconds and length is 42.18 feet to the point or place of BEGINNING.

WHEN RECORDED  
RETURN TO:

Mark D. Eisemann  
Lewis Rice, LLC  
1010 Walnut, Suite 500  
Kansas City, Missouri 64106

**CITY PARKING MAINTENANCE AGREEMENT**

**THIS CITY PARKING MAINTENANCE AGREEMENT** (this “**Agreement**”), dated the \_\_\_\_ day of \_\_\_\_\_, 2016, is by and between **AMERICAN MULTI-CINEMA, INC.**, a Missouri corporation, whose address is One AMC Way, 11500 Ash Street, Leawood, Kansas 66211, Attention: Lease Administrator (“**AMC**”) and the **CITY OF GLEN COVE**, a municipality of the State of New York, with an address at 9-13 Glen Street, Glen Cove, NY 11542 (the “**City**”).

WHEREAS, the City is the owner of certain municipal parking garages, including the four (4) story parking garage (the “**Brewster Street Garage**”) located on the property legally described on Exhibit A (the “**Brewster Street Land**”) as generally depicted on Exhibit B, and

WHEREAS, the Brewster Street Garage includes a parking structure located immediately adjacent to the Project (and connected by ramps to a second parking structure within the Brewster Street Garage) as generally depicted on Exhibit B (the “**Brewster North Garage Portion**”), and

WHEREAS, the City also is the owner of that certain three (3) story parking garage located as generally depicted on Exhibit B (the “**City Hall Garage**”), and

WHEREAS, AMC has entered into a lease (the “**Lease**”) with TDG Glen Cove LLC, a New York limited liability company (the “**Landlord**”) dated \_\_\_\_\_, 2016 whereby AMC has leased certain premises (the “**Premises**”) located within a project (the “**Project**”) owned by Landlord located immediately adjacent to the north of Brewster Street Garage,

WHEREAS, AMC’s obligations under the Lease, including the opening of a movie theatre, are conditioned upon the City’s execution and delivery of this Agreement and other conditions as set forth in the Lease, and

WHEREAS, it is important to AMC’s business operations to provide adequate parking for its customers and employees, and

WHEREAS, the City is desirous of attracting AMC to the City and having AMC open a movie theater for the use and enjoyment of the citizens of Glen Cove and surrounding communities.

NOW, THEREFORE, the parties hereto agree as follows:

1. Use. AMC shall have a non-exclusive right and easement, for itself and its employees, patrons and customers, subtenants, concessionaires and licensees, from time to time, of the Premises (the “**Permittees**”), in concert with the public at large, (a) in and across the Brewster Street Garage for the parking of motor vehicles in the parking spaces located therein and (b) for the use, access and movement of pedestrians and vehicles within the Brewster Street Garage, and from and to the Brewster Street Garage and adjacent public streets at the ingress and egress locations currently providing access. The City shall not interfere with or impede, nor knowingly permit others to interfere with or impede, the use, access and movement of pedestrians within the walkway connecting the north portion of the Brewster Street Garage to the Project (the “**Brewster Walkway**”) nor between the Brewster Street Garage and the Brewster Walkway. Such parking and use shall be free of charge at all times, and available seven (7) days per week from one hour prior to AMC’s operating hours until one hour after AMC’s operating hours (including without limitation, AMC’s extended operating hours during holidays or for special films and/or events and other occasions) (“**Parking Hours**”). Provided that not less than the Required Spaces are available during the Parking Hours, such use shall be limited by (a) the City’s maintenance schedule (as to which the City shall use good faith efforts to provide not less than 10 days’ notice to AMC of the closure of designated parking areas) and (b) reasonable usage restrictions in effect generally from time to time provided that (i) the City shall have given AMC not less than 30 days’ prior written notice of any such restrictions, (ii) such restrictions are expressly and impliedly non-discriminatory, and (iii) such restrictions neither reduce nor adversely affect AMC’s rights, nor increase AMC’s obligations, under this Agreement, nor impose any costs on AMC or the Permittees.

2. Number of Spaces. The City represents that there are approximately 500 parking spaces in the Brewster Street Garage, of which approximately one half are located in the Brewster North Garage Portion, and at least five hundred (500) unreserved parking spaces in the City Hall Garage. The City agrees to provide, at all times during the term of this Agreement, not less than the following unreserved parking spaces, together with the pedestrian and vehicular access thereto, for use by AMC and its Permittees in accordance with the preceding paragraph (“**Required Spaces**”): (a) at least four hundred (400) unreserved parking spaces in the Brewster Street Garage, and (b) at least 200 unreserved parking spaces within the Brewster North Garage Portion.

3. Maintenance. The City shall be solely responsible for the maintenance and upkeep of (or for causing others, excluding AMC, to maintain and keep) the Brewster Street Garage in good order, condition and repair and adequately striped and restriped as needed, including cleaning, sweeping and removal of trash, ice and snow, well lighted, and secured, and in accordance with all laws, at no cost or expense to AMC. The foregoing maintenance requirement shall not apply to the Brewster Walkway.

4. Casualty. If the Brewster Street Garage shall be damaged or destroyed by fire, casualty or any other cause whatsoever, either in whole or in part, the City shall (a) with due diligence remove any resulting debris and restore the Brewster Street Garage in accordance with the plans and specifications pursuant to which they were originally constructed or which are substantially similar thereto (and in all events shall commence restoration within 180 days after such damage), and (b) as promptly thereafter as reasonably possible (but not less than 30 days after the casualty), ensure that the City Hall Garage shall be open and available to AMC and its Permittees for parking and access, and maintained, on the same terms herein provided for the Brewster Street Garage for so long as the Brewster Street Garage spaces shall be unavailable during such restoration for parking and access in accordance with the terms herein provided.

5. Condemnation. If twenty percent (20%) or more of the parking area within the Brewster Street Garage or 10% or more of the parking area within the Brewster North Garage Portion shall become unavailable due to Condemnation, or access to the Brewster Street Garage or the Brewster North Garage Portion from any public street abutting the same shall be lost, terminated or materially altered by reason of any such Condemnation (and not replaced by comparable access), City shall ensure, as promptly after such loss, termination or alteration as reasonably possible (but not less than 30 days thereafter), that the City Hall Garage shall be open and available to AMC and its Permittees for parking and access, and maintained, on the same terms hereof provided for the Brewster Street Garage (but such substitute parking shall not limit AMC's rights with respect to remaining parking within the Brewster Street Garage).

“**Condemnation**” means a taking in any proceeding by any governmental authority by condemnation or otherwise, or acquisition for public or quasi-public purposes, or conveyance under threat of such taking or acquisition.

6. Notices. All notices and communications provided for herein shall be in writing and sent to the addresses first set forth above or as may later be designated by notice to the other party. All notices shall be sent by registered or certified mail (return receipt requested), postage prepaid, or by Federal Express, U. S. Post Office Express Mail, or similar overnight courier which delivers only upon signed receipt of the addressee, and shall be effective upon being delivered in the manner prescribed above (however, the time period in which a response to any such notice shall commence to run from the date of receipt by the addressee thereof as shown on the courier receipt of the notice). Rejection or other refusal to accept or the inability to delivery because of changed address of which no notice was given shall be deemed to be receipt of the notice as of the date of such rejection, refusal or inability to deliver.

7. Term. This Agreement shall continue in full force and effect until the earlier of (i) expiration of the term of the Lease (including options), or (ii) termination of the Lease (without execution of a new lease with Landlord or its mortgagee or ground lessor); provided, however, if after initially opening, AMC shall cease operating a theatre or other retail, service or entertainment business in a first class manner at the Premises for 120 consecutive days (excluding cessations due to unavailability of film, casualty damage, condemnation, remodeling, events of Force Majeure, or a default by City under this Agreement), then the City may terminate this Agreement at any time after such 120-day period by giving notice to AMC of such termination and, unless AMC shall commence operating a theatre or other retail, service or entertainment business in a first class manner at the Premises within thirty (30) days after such

notice (which commencement shall negate the City's termination notice), then this Agreement shall terminate effective as of the expiration of such thirty (30) day period. A "Force Majeure" event shall include failure of power, restrictive laws, riots, insurrection, terrorism, war, natural disasters or other reason not the fault of AMC. Without impairing the automatic effect of the foregoing termination, AMC and the City shall, upon request of the other, execute an agreement evidencing the termination of this Agreement in the form set forth on Exhibit C.

8. Miscellaneous. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. For purposes of this Agreement, references to AMC shall include successors or assigns of AMC as tenant under the Lease. Landlord shall be deemed a third-party beneficiary as to AMC's rights hereunder during the term of the Lease and shall have the right, without affecting AMC's enforcement rights, to enforce the obligations of the City hereunder. If any provision of this Agreement, or the application of such provision to the persons or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to the persons or circumstances, shall not be affected thereby.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**CITY OF GLEN COVE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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

On the \_\_\_\_\_ day of \_\_\_\_\_, 2016, before me, the undersigned, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person on behalf of which the individual acted, executed the instrument.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**AMERICAN MULTI-CINEMA, INC.**, a Missouri corporation

By: \_\_\_\_\_  
Mark McDonald, Executive Vice-President

STATE OF KANSAS            )  
  ) SS  
COUNTY OF JOHNSON    )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public in and for such County and State, personally appeared Mark McDonald, to me know to be the Executive Vice-President of **AMERICAN MULTI-CINEMA, INC.**, a Missouri corporation, and who executed as such officer the foregoing instrument on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF BREWSTER STREET GARAGE LAND**

Disposition Parcel 8

Commencing at a point on the easterly line of Brewster Street, said point being the southerly end of a curve connecting the southerly line of Highland Road (as extended) with easterly line of Brewster Street.

Running thence from said point the following two (2) courses and distances:

1. Southerly along the easterly line of Brewster Street along the arc of a curve bearing to the right whose radius is 540.000 feet, an arc length of 13.62 feet to a point of tangency;
2. Continuing southerly along the easterly line of Brewster Street, South  $24^{\circ}-06'-15''$  West 115.29 feet to the point or place of beginning:

Running thence from said point of beginning the following six (6) courses and distances:

1. Easterly, South  $61^{\circ}-36'-05''$  East, 92.81 feet;
2. Easterly, South  $76^{\circ}-46'-39''$  East, 62.55 feet to a point of curvature;
3. Southeasterly along the arc of a curve bearing to the right whose radius is 15.00 feet and delta is  $105^{\circ}-10'-34''$  an arc length of 27.54 feet to a point of tangency;
4. Southerly, South  $28^{\circ}-23'-55''$  West, 155.68;
5. Westerly, North  $62^{\circ}-14'-35''$  West, 160.43 feet to the easterly line of Brewster Street;
6. Northerly, along the aforementioned line North  $24^{\circ}-06'-15''$  East, 156.01 feet to the point or place of beginning, containing within said bounds 0.6081 acres more or less.

Disposition Parcel 9

Commencing at a point on the easterly line of Brewster Street said point being the southerly end of a curve connecting the southerly line of Highland Road (as extended) with the easterly line of Brewster Street.

Running thence from said point the following two (2) courses and distances:

1. Southerly along the easterly line of Brewster Street along the arc of a curve bearing to the right whose radius is 540.00 feet, an arc length of 13.62 feet to a point of tangency;

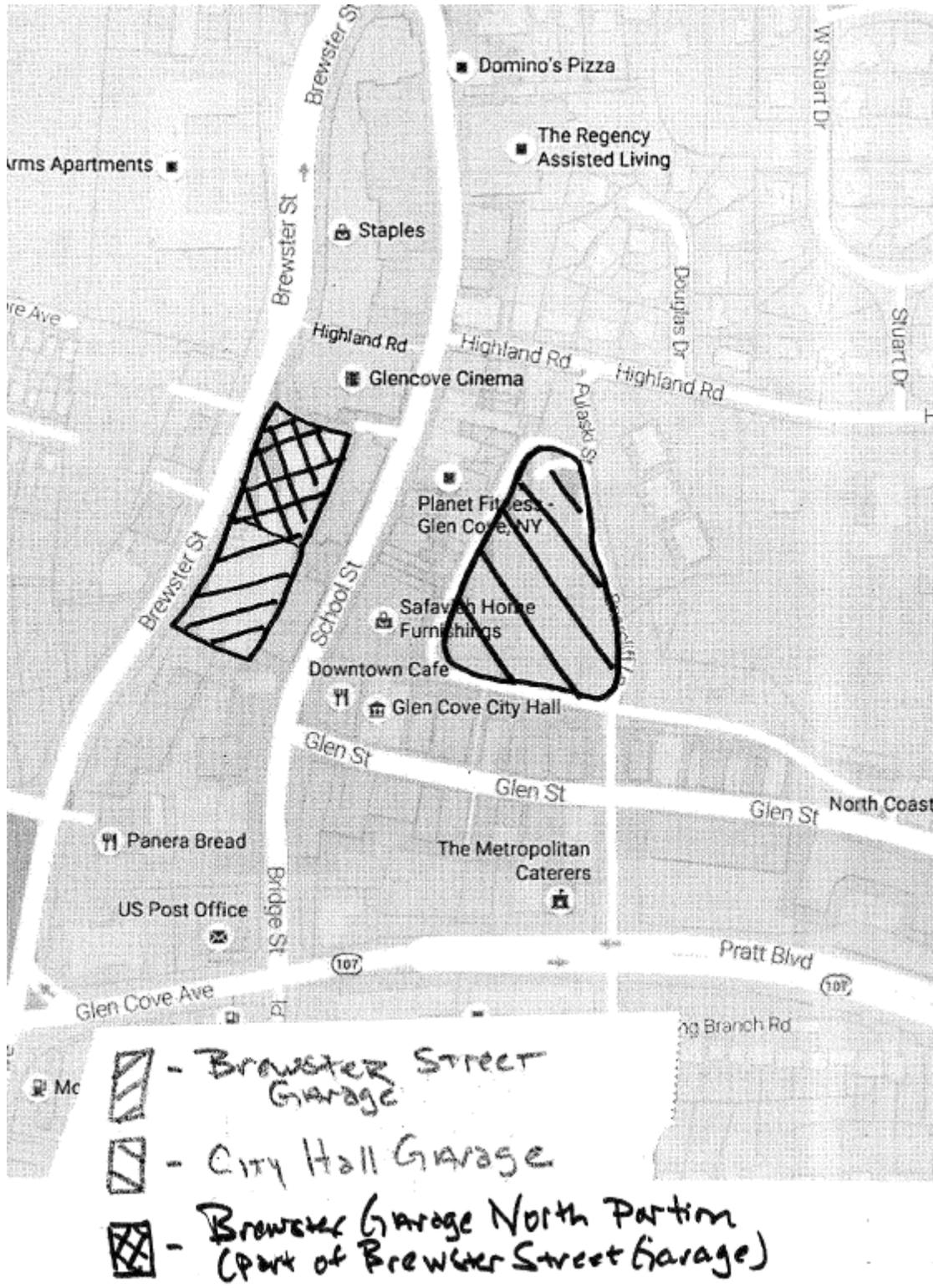
2. Continuing southerly along the easterly line of Brewster Street, South  $24^{\circ}-06'-15''$  West, 271.30 feet to the point or place of beginning:

Running thence from said point of beginning the following eleven (11) courses and distances:

1. Easterly, South  $62^{\circ}-14'-35''$  East, 160.43 feet;
2. Southerly, South  $28^{\circ}-23'-55''$  West, 309.03 feet;
3. Southerly, South  $37^{\circ}-20'-29''$  West, 18.11 feet;
4. Westerly, North  $86^{\circ}-05'-55''$  West, 20.64 feet;
5. Northerly, North  $7^{\circ}-22'-15''$  East, 8.88 feet;
6. Northerly, North  $60^{\circ}-41'-08''$  West, 37.82 feet;
7. Northerly, North  $29^{\circ}-18'-52''$  East, 2.50 feet;
8. Westerly, North  $60^{\circ}-41'-08''$  West, 103.98 feet to the easterly line of Brewster Street (as relocated);
9. Northerly along the easterly line of Brewster Street (as relocated) along the arc of a curve bearing to the left whose radius is 1,240.00 feet and delta is  $11^{\circ}-51'-50''$ , an arc length of 256.76 feet;
10. Northerly along the easterly line of Brewster Street and non tangent to the aforementioned curve North  $26^{\circ}-52'-43''$  East, 50.77 feet;
11. Northerly and continuing along the easterly line of Brewster Street, North  $24^{\circ}-06'-15''$  East, 13.75 feet to the point or place of beginning, containing within said bounds 1.1768 acres more or less.

The above described parcels are shown on a map entitled "Glen Cove Community Development Agency, City of Glen Cove, Nassau County, N.Y., Downtown Renewal Project Area within Neighborhood Development Program NDP Area No. 1, Project N.Y.A. – 23 and Project Area within Renewal Project N.Y.R. -185, Disposition Plat, Disposition Parcels 8 & 9", prepared by Sidney B. Bowne & Son and dated January 29, 1988, and also appear on the Nassau County Land and Tax Map as Lot 33 in Block 85, Section 31.

**EXHIBIT B**  
**GARAGE SITE PLAN**



**EXHIBIT C**  
**FORM OF TERMINATION AGREEMENT**

WHEN RECORDED  
RETURN TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CITY PARKING MAINTENANCE TERMINATION AGREEMENT**

**THIS CITY PARKING MAINTENANCE TERMINATION AGREEMENT** (this “**Termination**”) dated the \_\_\_\_ day of \_\_\_\_\_, is by and between [**TENANT**], whose address is \_\_\_\_\_ (“**Tenant**”) and the **CITY OF GLEN COVE**, a municipality of the State of New York, with an address at 9-13 Glen Street, Glen Cove, NY 11542 (the “**City**”).

WHEREAS, the City and American Multi-Cinema, Inc., a Missouri corporation, [successor-in-interest to AMC under the Lease (as defined in the Agreement),] entered into that certain City Parking Maintenance Agreement (“**Agreement**”) dated \_\_\_\_\_, 2016 and recorded \_\_\_\_\_, 2016 in Deed \_\_\_\_\_ page \_\_\_\_\_ with respect to the property legally described on Exhibit A (the “**Brewster Street Land**”), and

WHEREAS, the parties desire to evidence the termination of the Agreement.

NOW, THEREFORE, Tenant and City agree that the Agreement is terminated and hereby release the Brewster Street Garage from further force and effect of the Agreement.

IN WITNESS WHEREOF, the parties have executed this Termination effective as of the date first above written.

**CITY OF GLEN COVE**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**[TENANT]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_ day of \_\_\_\_\_, before me, a Notary Public in and for such County and State, personally appeared \_\_\_\_\_, to me know to be the \_\_\_\_\_ of the City of Glen Cove, a New York municipal corporation, and who executed as such official the foregoing instrument on behalf of the City of Glen Cove and such person duly acknowledged the execution of the same to be the act and deed of the City of Glen Cove.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_ day of \_\_\_\_\_, 2016, before me, a Notary Public in and for such County and State, personally appeared \_\_\_\_\_, to me know to be the \_\_\_\_\_ of \_\_\_\_\_, and who executed as such officer the foregoing instrument on behalf of such corporation, and such person duly acknowledged the execution of the same to be the act and deed of such corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year last above written.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF BREWSTER STREET GARAGE LAND**

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**GARVIES POINT CONTINUING COVENANTS AGREEMENT**

Dated as of \_\_\_\_\_, 2016

by and between

GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY

and

RXR GLEN ISLE PARTNERS LLC

**THIS GARVIES POINT CONTINUING COVENANTS AGREEMENT**, dated as of November \_\_, 2016 (this “Agreement”), by and between the **GLEN COVE INDUSTRIAL DEVELOPMENT AGENCY**, a corporate governmental agency constituting a body corporate and politic and a public benefit corporation existing under the laws of the State of New York having its principal office at City Hall, 9 Glen Street, Glen Cove, New York 11542 (the “Agency”) and **RXR GLEN ISLE PARTNERS LLC**, a limited liability company organized under the laws of the State of Delaware and authorized to transact business in the State of New York, with an office at 625 RXR Plaza, Uniondale, New York 11556 (the “Company” and, collectively with the Agency, the “Parties”).

**WHEREAS**, pursuant to that certain Contract for Sale of Land for Private Development by and among the Agency, Glen Cove Community Development Agency (“GCCDA”), and Glen Isle Development Company, LLC (as assigned to the Company), dated as of May 14, 2003, as amended (the “Land Disposition Agreement”), the Agency is to take actions under the New York Urban Renewal Law and as otherwise permitted by law to effectuate the Urban Renewal Plan established by the GCCDA, and on or about the date hereof, the Agency transferred to the Company by bargain and sale deed (the “Deed”) approximately 44 acres of land located on Garvies Point Road, Herb Hill Road and Dickson Street in the City of Glen Cove, New York (the “City”) as more accurately described in **Schedule A** attached hereto (the “Land”) (the Land shall also include any additional lands acquired by the Company for the Project defined below); and

**WHEREAS**, the Company is the redeveloper of the mixed-use waterfront project known as Garvies Point (the “Project”), encompassing approximately 56 acres on the north side of Glen Cove Creek in the City of Glen Cove (the “City”); and

**WHEREAS**, public investment in the Project was always contemplated, especially as the Project neared construction, and is customary in this type of transformative, public-private partnership, which will result in substantial economic and employment benefits to the City and region; and

**WHEREAS**, pursuant to a certain Public Use Improvements Construction and Funding Agreement, dated on or about the date hereof, between the Agency and the Company (the “Construction and Funding Agreement”), the Company, as agent for the Agency, is constructing, among other things, parks and playgrounds, an esplanade, underground utilities, wetlands, marine bulkheads, marinas, boardwalks and other walkways, an amphitheater, an ecology pier, landscaping, lighting, roadways and other public improvements, infrastructure and amenities (the “Public Use Improvements”) on certain public use easement areas reserved by the Agency in the Deed, as well as contiguous properties (the “Public Use Easement Areas”); and

**WHEREAS**, the Public Use Improvements shall be constructed in the areas covered by the Garvies Point Perpetual and Exclusive Public Use Easement (the “Easement”) in favor of the Agency, its successors and assigns, including the right to assign or dedicate said easement to the City, for public use of the Public Use Easement Areas; and

**WHEREAS**, the Land Disposition Agreement is being terminated as of even date herewith, and certain of the provisions thereof, as may be amended herein, as well as certain new provisions, are intended to survive such termination; and

**WHEREAS**, in this Agreement, the Parties desire to set forth certain terms and conditions with respect to the construction and operation of the Project; and

**WHEREAS**, this Agreement is intended to burden and run with the Land.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Payment for Maintenance of Public Use Easement Areas and Public Use Improvements**

(a) The Company, and its successors and assigns determined in accordance with Section 18 hereof (each an “Obligated Party”) shall be responsible in perpetuity to pay for the Agency’s direct and indirect fees, costs and expenses of any nature relating to the maintenance, repair, replacement, operation and management of the Public Use Easement Areas and the Public Use Improvements required under the Easement in accordance with the provisions set forth herein (whether performed by the Agency, the City or any of its departments or agencies, or a third-party maintenance company).

(b) The Agency shall prepare annually a budget for the maintenance and repair of the Public Use Easement Areas and the Public Use Improvements for the upcoming calendar year (the “Budget”). The Budget shall include, but not be limited to, a capital improvement and replacement budget, costs for the management of the Public Use Easement Areas and Public Use Improvements required under the Easement, and the Agency’s insurance costs required under the Easement (including premiums and deductibles, casualty loss, and coverage for any non-insurable items). The Agency shall submit the Budget to the Obligated Party, for review and consultation in an advisory capacity, on or before November 1st of each year. The Obligated Party shall have the right, but not the obligation, to provide the Agency with input on the Budget in a timely manner. The Agency shall reasonably consider the Obligated Party’s input and finalize the Budget, in writing, on or before December 31st of each year. Notwithstanding anything to the contrary in this Agreement, the Agency shall have the right, in its sole discretion, to determine the Budget following reasonable consultation, in an advisory capacity, with the Obligated Party, and/or other parties as the Agency deems appropriate.

(c) The Obligated Party shall advance to the Agency one-quarter of the approved Budget on or before January 10th of each year, and shall advance to the Agency the remaining installments on April 1st, July 1st and October 1st of each year (collectively, the “Maintenance Advances”). The Agency shall use the Maintenance Advances advanced to it solely to maintain and repair the Public Use Easement Areas and the Public Use Improvements in accordance with the Budget.

(d) The Agency shall establish and maintain accurate records and accounts which sufficiently and properly reflect all direct and indirect costs and expenses of any nature relating to the maintenance, repair, replacement, operation and management of the Public Use Easement Areas and Public Use Improvements. Such records and accounts shall conform to generally accepted accounting principles.

(e) The Obligated Party shall pay to the Agency the actual amount of any expenditures the Agency makes which exceed the Budget on or before March 1st of each next subsequent year. The Agency shall return to the Obligated Party on or before March 1st of each year any unused portion of the Maintenance Advances from the previous year, or credit said unused portion against the Maintenance Advances for the current year if authorized in writing by the Obligated Party.

(f) In the event there is a dispute or delay between the Parties regarding any budgetary or other matter, the Parties shall cooperate in good faith to resolve such dispute within a reasonable time. Notwithstanding the preceding sentence, in the event there is any dispute between the Parties concerning the Budget, during said period until such dispute is resolved, the Obligated Party shall advance to the Agency all funds requested by the Agency for the maintenance, repair, replacement, operation and management of the Public Use Easement Areas and the Public Use Improvements for the next quarterly period, which amounts advanced shall be credited against the Maintenance Advances determined to be owed following resolution of the dispute.

(g) The Agency, in its sole and absolute discretion, shall have the right to assign its rights and obligations hereunder regarding the maintenance and repair of the Public Use Easement Areas and the Public Use Improvements to the City, the City Parks Department, or another City department or agency, or another municipal or quasi-municipal entity upon written notice to the Obligated Party.

(h) Notwithstanding anything to the contrary in Section 27 below, in the event the Obligated Party shall fail to deliver the Maintenance Advances to the Agency as required under this Section 1, or fail to perform any other material obligation under this Section 1, and such failure shall continue unremedied for a period of ten (10) business days after written notice thereof from the Agency, the Agency may take whatever action at law or in equity as may appear necessary or desirable to recover damages for the breach hereof or to enforce performance of the Obligated Party's obligations hereunder, together with any expenses, including reasonable attorneys' fees. No remedy referred to in this Section 1(h) is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to above or otherwise available at law or in equity, and the exercise or beginning of exercise by the Agency of any or all of such other remedies shall not preclude the simultaneous or later exercise by the Agency of any or all of such other remedies. The amount of any Maintenance Advances which remain unpaid ten (10) business days after written notice thereof from the Agency, together with interest at the highest rate permitted by law, shall be a lien upon the Land which shall run with the Land (the Agency shall have the right to unilaterally file a Notice of Lien against the Land), and shall be enforceable by the Agency, together with any expenses, including reasonable attorneys' fees, incurred by the Agency in collecting any delinquent amount of Maintenance Advances pursuant to this Section 1.

## 2. Completion of Public Use Improvements/Certificates of Occupancy

(a) The Company shall construct and install all of the Public Use Improvements together as part of the first phase of construction of the Project as agent of the Agency pursuant to the Construction and Funding Agreement (except the portion of the Public Use Improvements that will be constructed on the Gateway Properties, defined below). The completion of the Public Use Improvements is expected to take between 18 and 24 months from the date of commencement.

(b) The Company, its successors and assigns, shall not be entitled to receive a Temporary or Permanent Certificate of Occupancy for any residential rental unit on development Block H or Block I, as shown on the Amended PUD Master Development Plan (a copy of which is annexed hereto as **Schedule B**), until such time as (i) the City Building Department issues a certificate of completion or other comparable written determination that the Public Use Improvements approved to be installed east of the Ferry Terminal Site (defined below) (the “East Public Use Improvements”) have been satisfactorily completed and are approved for public use and occupancy, and (ii) the Agency, or an authorized representative, finds in its reasonable discretion that the Company is working diligently, in good faith and using commercially reasonable efforts, towards constructing and completing the Public Use Improvements approved to be installed west of the Ferry Terminal Site (the “West Public Use Improvements”), including, based on a written report to be provided by the Company to the Agency summarizing the status of the West Public Use Improvements, and the anticipated timeframe and funding sources for completing them promptly.

(c) In addition to the above, the Company, its successors and assigns, shall not be entitled to receive a Temporary or Permanent Certificate of Occupancy for any residential rental unit on development Block E or Block G, as shown on the Amended PUD Master Development Plan (or any other development block as may be approved for residential rental units), until such time as the City Building Department issues a certificate of completion or other comparable written determination that the East Public Use Improvements and the West Public Use Improvements have been satisfactorily completed and are approved for public use and occupancy.

(d) Notwithstanding anything to the contrary, completion of the Public Use Improvements approved to be installed on development Block J, as shown on the Amended PUD Master Development Plan, shall not be a condition to receipt of a Temporary or Permanent Certificate of Occupancy for any residential rental unit so long as the lack of completion thereof is not due to any unreasonable delay by the Company, its successors and assigns, in acquiring and/or developing all or a portion of Block J.

## 3. Ferry

(a) The Agency and the City shall reasonably consult with the Company with respect to the City’s selection of a new ferry operator (the “Ferry Operator”), and the City’s provision of ferry service, including, but not limited to, the ferry schedule (“Ferry Service”), provided that the Company shall have no right to approve the Ferry Service or the monetary arrangements between the City and the Ferry Operator.

(b) The Company shall provide a subsidy of One Million Dollars (\$1,000,000.00) to the City, payable quarterly at the rate of Two Hundred Fifty Thousand Dollars (\$250,000.00) per quarter, to be used to subsidize any losses or enhance the quality of the Ferry Service (the “Ferry Subsidy”). The first quarterly payment of the Ferry Subsidy shall be due upon demand by the City after (i) substantial completion of the Public Use Improvements and the Garvies Point Road/Herb Hill Road Reconstruction Project and (ii) the completion of at least two hundred (200) residential units of the Project, as evidenced by the issuance of permanent or temporary Certificates of Occupancy (or at such other time agreed upon in good faith by the Parties). The Company, at its option, may extend its obligation to provide a subsidy for Ferry Service on an annual basis thereafter.

(c) If at any time after Ferry Service commences such Ferry Service is not in operation for a period of three (3) months, the Agency and/or City may use the Ferry Terminal, to the extent permitted by law or any state or federal rules or regulations or other restrictions, for any use or ancillary use reasonably consistent with the purposes and objectives of the MW-3 District and the Project, including, but not limited to, (i) not-for-profit entities for purposes authorized by the New York State Not-For-Profit Corporation Law, (ii) municipal and quasi-municipal uses, which are maritime in nature, including, but not limited to, recreation uses, and (iii) retail or other public destination uses, provided, such uses must be available to the general public, are not competitive with and would not materially negatively impact the uses planned for the Project pursuant to the Amended PUD Master Development Plan or the marketing thereof, and the Company shall have the right to review and consent to such uses prior to the City entering into a lease regarding such uses, such consent not to be unreasonably withheld, conditioned or delayed.

(d) While Ferry Service is in operation, the Agency and/or City may use the Ferry Terminal, to the extent permitted by law or any state or federal rules or regulations or other restrictions, for such ferry or water taxi service and ancillary uses which are reasonably consistent with the purposes and objectives of the MW-3 District, such as a newsstand, dry cleaner, restaurant, sandwich shop, coffee kiosk, or other similar uses, provided that such ancillary uses do not unreasonably interfere or compete with the viability of any other existing or planned use in the Project pursuant to the Amended PUD Master Development Plan. The Company shall have the right to review and consent to such proposed ancillary uses prior to the City, or any turnkey operator/user licensed by the City to operate the Ferry Terminal, entering into a lease regarding such ancillary uses, which consent shall not be unreasonably withheld, conditioned or delayed. The Company, Agency, and the City shall reasonably cooperate to address each other’s concerns, with the mutual goal of establishing and maintaining the viability of both the ferry or water taxi service and the Project.

(e) The requirements of any Federal or State agency having jurisdiction over the Ferry Terminal shall supersede any conflicting provisions in this Section 3.

#### 4. **Ferry Terminal Site**

(a) The Parties acknowledge that the Ferry Terminal Site (73 Garvies Point Road) will be conveyed to the Company at Closing as part of an unsubdivided tax lot. Notwithstanding the foregoing, equitable ownership of the land upon which the Ferry Terminal is situated, and

legal ownership of all improvements located thereon, including the Ferry Terminal building and parking lot, shall remain with the City pursuant to an existing ground lease between the Agency and the City. Accordingly, simultaneous with the Company's filing of a subdivision plat in the County Clerk's Office establishing the Ferry Terminal lot as a separate lot, the Company shall convey the Ferry Terminal lot to the Agency for the price of One (\$1.00) Dollar free and clear of all liens and encumbrances other than those which affect the Land as of the date hereof.

5. **Ferry Terminal Site Right of First Refusal**

Upon re-acquiring the Ferry Terminal Site pursuant to Section 4, in the event that the Agency proposes to sell the Ferry Terminal Site to a non-municipal entity for non-ferry or other non-municipal or not-for-profit use, the Agency shall promptly notify the Company in writing of any bona fide offer from a third party to purchase the Ferry Terminal Site, and the Company is hereby granted a one-time right to purchase the Ferry Terminal Site on the same material terms and conditions offered by such party, provided that the Company exercises its right in writing within sixty (60) days of notification of the offer. In the event the Company timely notifies the Agency or that it has elected to exercise its right of first refusal, the Company and Agency shall enter into a Contract of Sale materially consistent with the terms of the third party offer within sixty (60) days after such election. This right of first refusal shall not apply to any transfer of the Ferry Terminal Site to a municipal entity quasi-municipal entity, not-for-profit entity, or governmental agency, or to any party for ferry or municipal use.

6. **Garvies Point Road Project**

(a) The City shall be responsible, at its own cost, for the construction of the Garvies Point Road/Herb Hill Road Reconstruction Project (DOT PIN 0759.34) (the "Road Project"), in accordance with the plans and specifications approved by New York State Department of Transportation, including the placement of PSEG conduit below the roadway grade.

(b) The Parties and the City shall cooperate in good faith and diligently seek to ensure that construction of the Road Project and Garvies Point Project are coordinated, to the greatest extent practicable, including for access, grading and other construction-related purposes, as well as for the Company's marketing purposes. The Parties shall meet with the City Department of Public Works and any other agency or department, as reasonably needed, to devise appropriate construction management plans for the construction and coordination of these related projects, as well as the City's Ferry Project. Representatives of the Parties and the responsible City agencies with on-site construction responsibilities will conduct regular meetings, and senior officials and officers will make themselves available when necessary, to ensure that such coordination is a high priority of both projects.

(c) The Road Project shall not include, and the City shall not be responsible for, any improvements outside the Land conveyed by the Agency which are identified and required as mitigation in the SEQRA Findings Statement due to impacts resulting from the Project, or are included as conditions with respect to any of the relevant governmental approvals for the Project ("Off-Site Project Improvements"). The Company shall be responsible for the cost and construction of all Off-Site Project Improvements.

7. **Other Roadway Maintenance**

The Parties shall cooperate in good faith and meet with the City Department of Public Works, as reasonably necessary, to determine maintenance responsibilities and obligations, including costs thereof, for the roads constructed within the Public Use Easement Areas, which roadways shall be made available at all times for public vehicular and pedestrian use and passageway.

8. **Environmental Compliance**

(a) The Company shall implement, at its own cost, all Site Management Plans (“SMPs”), Environmental Easements (“EEs”), Records of Decision (“RODs”), and other requirements of EPA and/or DEC with respect to all Land acquired by the Company (including the Public Use Easement Areas), both during and post-construction, including, but not limited to, implementation of all required Engineering and Institutional Controls, as well as all inspection, monitoring (including, without limitation, groundwater and vapor intrusion), reporting, certifications, and operation and maintenance obligations set forth in the SMPs, EEs, and/or RODs.

(b) The City shall implement, at its own cost, all requirements set forth in Section 8(a) with respect to the Ferry Terminal Site for so long as the Agency remains in ownership or the City possesses a leasehold interest thereof. The Parties shall work together in good faith to retain the same engineering firm (with separate billing arrangements) to coordinate the Parties’ respective implementation of the requirements set forth in Sections 8(a) and 8(b), and the various submittals to EPA and/or DEC (e.g., reports, certifications).

9. **Environmental Monitor**

(a) Promptly following the execution of this Agreement, the Parties shall jointly retain an environmental consultant to review and monitor all remedial work and compliance on behalf of the Parties to ensure that all proper protocols and requirements of EPA and DEC are implemented with respect to construction of the Improvements (the “Environmental Monitor”). The Company shall be responsible for all costs related thereto. The retention agreement for said Environmental Monitor shall afford the Agency the right, but not the obligation, to access the work of the Environmental Monitor. It is the intent of the Parties that the Environmental Monitor shall report to the Parties and promptly disclose all information regarding the status of remedial work and environmental compliance to the Parties upon request for same by any Party. The Parties shall coordinate all communications with the Environmental Monitor so that neither Party shall have any substantive discussion with the Environmental Monitor without the other Party having the right to participate on reasonable notice. The Parties shall cooperate in good faith with the Environmental Monitor, including by providing all information reasonably requested regarding the status of remedial work and environmental compliance. The retention agreement shall afford the Parties the right to terminate the Environmental Monitor for either Party’s convenience at any time, provided that the Parties shall jointly retain another Environmental Monitor in a timely manner. The Environmental Monitor shall also provide the Agency and/or the Planning Board with periodic written status reports concerning the

Environmental Monitor's work, as well as appear before the Agency and/or the Planning Board if requested.

(b) The Parties have pre-approved the following firms as acceptable Environmental Monitors: (i) D&B Engineers and Architects, P.C., 330 Crossways Park Drive, Woodbury, New York, and (ii) P.W. Grosser Consulting, 630 Johnson Avenue, Suite 7, Bohemia, New York.

10. **Li Tungsten Lower C**

(a) The Parties acknowledge that the Company has elected not to take title at this time to the parcel commonly known as Li Tungsten Lower C ("Lower C") while the EPA completes its final remedial work on said parcel. As Lower C is not a separate subdivided lot shown on a subdivision map filed in the County Clerk's Office, the Agency has retained ownership in the entire Tax Lot 142 (approximately 4.7 acres) upon which Lower C (approximately 1.4 acres) is located, subject to the terms of Section 11 below.

(b) The Parties agree that they shall cooperate in good faith to determine the precise use(s), ownership and financing of Lower C in accordance with all EPA requirements for re-use of Lower C and other governmental approvals related to such site, including, but not limited to, allocating sufficient parking to the Company on Lower C, if necessary, to facilitate the Company satisfying its parking requirements of approximately one hundred (100) spaces under the Amended PUD Master Development Plan and related approvals. The Parties shall also cooperate in good faith to agree upon a fair and reasonable allocation of the Parties' respective financial obligations regarding the uses(s) on Lower C, including, but not limited to, relating to the costs for the implementation of any Site Management Plan required by EPA and/or DEC for Lower C.

(c) The Parties acknowledge that they have discussed conceptually the potential for the Agency or the City to develop a public parking structure on Lower C, which would include approximately one hundred (100) spaces for the residents of Building I, and potentially could also include commercial/office space for the Project on the upper floor(s) of said structure. The Parties shall cooperate in good faith with respect to potentially pursuing such parking structure, including, but not limited to, the design and exterior elements thereof and seeking third-party funding or other financing for the design and construction thereof.

(d) Notwithstanding the foregoing, nothing contained herein shall be construed as modifying the presently planned use of Lower C as 50,000 sf of commercial space as shown on the approved Amended PUD Master Development Plan. The precise square footage amount and location of the 50,000 gsf of office space approved by the Planning Board and planned for Block D under the Amended PUD Master Development Plan shall be determined by the Agency and RXR in the future, and in accordance with any and all approvals and/or further amended approvals as may be required from the Planning Board in relation thereto.

11. **Conveyance of Tax Lot 142**

(a) The Parties acknowledge that the portion of Tax Lot 142 outside the boundaries of Lower C (the "Non-Lower C Portion") is planned as residential use under the approved Amended PUD Master Development Plan. Accordingly, simultaneous with the Company's filing of a subdivision plat in the County Clerk's Office establishing Lower C and the Non-

Lower C Portion as a separate tax lot, the Agency shall convey the Non-Lower C Portion to the Company free and clear of all liens and encumbrances other than those which affect the Land as of the date hereof.

(b) In the event that the Parties agree at a future date that the Company shall own Lower C pursuant to Section 10 above, the Agency shall convey Lower C to the Company free and clear of all liens and encumbrances other than those which affect the Land as of the date hereof or are required by EPA or DEC after the date hereof.

(c) The Company's purchase price for each of Lower C and the Non-Lower C Portion shall be One Dollar (\$1.00), in recognition of the fact that the Company did not offset any monies owed to the Agency under the Land Disposition Agreement even though the Company did not take title to Tax Lot 142. As such, the Company already paid fair market value for Lower C and the Non-Lower C Portion.

12. **Dredge Spoils**

The Parties acknowledge that certain dredge spoils removed from Glen Cove Creek by the United States Army Corps of Engineers have been deposited on a portion of the Land. If the Company is unable to secure all required approvals from EPA and/or DEC for the re-use of all or a portion of such spoils on the balance of the Land by February 1, 2017 (which date may be extended in writing by mutual agreement of the Parties), the same shall be removed from the Land by, and at the expense of, the Company on behalf of the City and disposed of in accordance with all legal requirements.

13. **Doxey**

The Parties acknowledge that certain additional environmental remedial work is planned for the Doxey site by the Company during construction, including, but not limited to, removal of certain soils near the existing bulkhead. The Company shall be responsible, at its own cost, for implementing the approved SMP and any groundwater monitoring or other requirements imposed by DEC at the Doxey site.

14. **Sewer Pump Station**

The Company is responsible, at its own cost, for demolishing the existing sewer pump station located west of the Doxey site and restoring the property to safe and good condition and designing and constructing a new sewer pump station on Li Tungsten Lower C (collectively, the "Pump Station Work"). The Company shall perform the Pump Station Work in accordance with all requirements, agreements, specifications and approvals of Nassau County Department of Public Works and any other governmental agency having jurisdiction, as well as in accordance with all requirements of EPA and/or DEC, including, but not limited to, implementation of any Site Management Plan approved for Li Tungsten Lower C.

15. **Environmental Covenants**

The Company covenants, represents and warrants that all Land will comply in all respects with all environmental laws and regulations, and, except in compliance with environmental laws and regulations, (i) that no pollutants, contaminants, solid wastes, or toxic or hazardous substances will be stored, treated, generated, disposed of, or allowed to exist on the Land except in compliance with all material applicable laws, (ii) the Company will take all reasonable and prudent steps to prevent an unlawful release of hazardous substances on or into the Land or other property, (iii) that no underground storage tanks will be located on the Land, and (iv) that no investigation, order, agreement, notice, demand or settlement with respect to any of the above is threatened, anticipated, or in existence, except Order on Consent, Index No. A1-0862-1608, entered into between New York State Department of Environmental Conservation and the Company; and Agreement and Covenant Not To Sue, Index No. CERCLA-02-99-2008, entered into between the Glen Cove Industrial Development Agency and the United States Environmental Protection Agency, as assigned to the Company. The Company hereby releases the City from liability with respect to, and agrees to defend, indemnify, covenant not to sue and hold harmless the City, its executive director, directors, members, officers, employees, agents, representatives, successors, and assigns from and against any and all claims, demands, damages, costs, orders, liabilities, penalties, and expenses (including reasonable attorneys' fees) related in any way to any breach of the foregoing covenants, representations or warranties; any breach of any of the other covenants, representations or warranties set forth in this Agreement; or any environmental conditions on, at or under the Land, except to the extent caused by actions, including remedial actions, of the City prior to the effective date of this Agreement. In the event the Agency in its reasonable discretion deems it necessary to perform due diligence with respect to any of the above, or to have an environmental assessment performed with respect to the Land, the Company agrees to pay the expenses of same to the City upon demand.

16. **Gateway Properties**

(a) The Agency recognizes the importance of the acquisition of the properties commonly referred to as the Gateway Properties to the completion of the Project in accordance with the Amended PUD Master Development Plan. If requested by the Company (as a sponsor), and at the Company's sole cost and expense (including any and all acquisition, environmental testing and remediation, legal and consulting, and relocation costs and expenses), the Agency shall consider the appropriateness, through exercise of its power of eminent domain, of the acquisition of the Gateway Properties (subject to the requisite legal findings, determinations and requirements of the Eminent Domain Procedure Law) on behalf of the Company.

(b) If requested by the Company, to the extent permitted under law, the Agency shall commence the eminent domain process at any time after closing on the Land, and after the Company has provided the Agency with suitable financial and other assurances, demonstrating that sufficient funds will be available to the Agency at such time as it is legally required to make such payments in connection with acquiring said property through eminent domain hereunder. At the request of either Party to the other at any time after (i) the Agency acquires title to any of the Gateway Properties, and (ii) the Company has paid in full all amounts payable to the Agency under this Section 16 with respect to such Properties, the Agency shall convey title to such condemned Properties to the Company, and the Company shall close title to such condemned Properties.

(c) The Agency shall not be in default of this Agreement if any requested eminent domain proceedings are not completed by a certain date. The commencement of any requested eminent domain proceedings shall not be a condition to any of the Company's obligations under this Agreement, except with respect developing the Gateway Properties as shown on the Amended PUD Master Development Plan, which cannot be accomplished until the Company acquires title to same.

(d) Simultaneous with the commencement of the eminent domain process hereunder, the Parties shall in good faith enter into an escrow agreement governing the payment by the Company of the Agency's reasonable and customary costs and expenses (other than the Purchase Price for the property being taken) related to any eminent domain proceedings, including, without limitation, all necessary and reasonable legal and other fees incurred by the Agency in acquiring and disposing of the Gateway Properties, and in defending any legal or administrative challenges to such acquisition or disposition, as well as reasonable appraisal fees, consultant fees, surveying costs, title insurance charges and Court fees. The Parties shall cooperate in good faith in the selection of all consultants and professionals retained by the Agency in connection with its obligations under this Section 16.

(e) The Company shall also be responsible to pay when due any and all additional compensation under the EDPL determined to be due to a Gateway Property landowner/condemnee and/or tenant at the premises by a Court, or agreed to be due to a Gateway Property landowner/condemnee and/or tenant under a settlement of such claim (subject to the approval of the Company, which approval shall not be unreasonably withheld, conditioned or delayed), as well as all necessary and reasonable legal and other fees incurred by the Agency in defending such claims for additional compensation under the EDPL and/or the negotiation of settlements thereof (the "Post-Closing Consideration"). To secure the payment by Company of the Post-Closing Consideration, the escrow agreement shall further provide for the Company to deliver to the Agency, at the time a claim is made for additional compensation under the EDPL, a letter(s) of credit or other security in favor of and reasonably acceptable to the Agency in the amount of twenty percent (20%) of the aggregate of all claims filed by the Gateway Property landowner/condemnee and/or tenant under EDPL procedures (the "EDPL Security"). In the event that the amount of the EDPL Security is insufficient to pay the Post-Closing Consideration due and payable, the Company shall be responsible for, and shall pay to the Agency, any such amounts prior to five (5) business days before such amounts are due to the condemnee under the Judgment of the Court, or any settlement between the Agency and a claimant(s) as approved by the Court.

(f) The Company shall be responsible, at its own cost, for any and all testing and/or remediation of subsurface environmental conditions at the Gateway Properties, as well as for compliance with all requirements set forth in Section 8a as may be applicable to the Gateway Properties.

#### 17. **Asphalt Plant**

The Rason Asphalt Plant (the "Asphalt Plant") is a hot mix asphalt facility, located directly opposite Block I as shown on the Amended PUD Master Development Plan, on the south side of Glen Cove Creek. The Parties shall cooperate in good faith to determine whether a

more appropriate use is warranted for the Asphalt Plant site consistent with City planning documents and the Project, including, but not limited to, potentially converting the Asphalt Plant to such other uses as the Parties may agree upon. If requested by the Company, to the extent permitted under law, the Agency shall commence (and to the extent the City is the more appropriate party, the Agency shall actively support the City commencing) eminent domain proceedings to acquire the Asphalt Plant site upon the same terms and conditions as set forth in Section 16 regarding the Gateway Properties, but the commencement or progress of any requested eminent domain proceedings shall not be a condition to any of the Company's obligations under this Agreement.

18. **Eligible Transferee**

(a) The Company may assign, transfer or convey any rights it has in any phase of the Project to an affiliate of the Company without the consent of the Agency, provided (i) any required Maintenance Advance has been delivered to the Agency, (ii) written notice is provided to the Agency at least fifteen (15) business days in advance of such transfer, together with all reasonable documentation requested by the Agency, (iii) the Company is in substantial compliance with all of its material obligations under this Agreement, the Amended PUD Master Development Plan and related approvals, SEQRA Findings Statement, all other relevant agreements and approvals related to the Project, and any other applicable laws and regulations, and (iv) the transferee acknowledges in writing that as a successor in interest to the Company it is bound by all the terms and conditions of this Agreement, the Amended PUD Master Development Plan and related approvals, SEQRA Findings Statement, and all other relevant agreements and approvals related to the Project insofar as they relate to the interest being transferred. Notwithstanding the foregoing, the Agency acknowledges the transfer of Parcels B, H and I to affiliates of the Company as of even date herewith, and said affiliates shall comply with Section 18(a)(iv) hereof.

(b) The Company may assign, transfer or convey any rights it has in any phase of the Project to a non-affiliate of the Company, provided, (i) any required Maintenance Advance has been delivered to the Agency, (ii) written notice is provided to the Agency at least forty-five (45) days in advance of such transfer, together with all reasonable documentation requested by the Agency, (iii) the Company is in substantial compliance with all of its material obligations under this Agreement, the Amended PUD Master Development Plan and related approvals, SEQRA Findings Statement, all other relevant agreements and approvals related to the Project, and any other applicable laws and regulations, (iv) the transferee acknowledges in writing that as a successor in interest to the Company it is bound by all the terms and conditions of this Agreement, the Amended PUD Master Development Plan and related approvals, SEQRA Findings Statement, and all other relevant agreements and approvals related to the Project insofar as they relate to the interest being transferred, (v) the transferee meets the criteria of an Eligible Transferee as defined herein, and (vi) the Agency provides its prior written consent, which shall not be unreasonably withheld, conditioned or delayed.

(c) A transferee shall be an Eligible Transferee only if its principals collectively have, among other criteria (i) a demonstrated history in constructing, owning and/or operating the residential or commercial component it is seeking to develop, (ii) sufficient capital or access thereto, to carry out the Company's obligations hereunder with respect to the interest being

transferred, (iii) has not defaulted on a contract with the City or Agency, and (iv) an identified and demonstrated team capable of completing and/or operating the applicable phase of the Project in accordance with the terms and conditions of this Agreement, the Amended PUD Master Development Plan and related approvals, the SEQRA Findings Statement, and any other approvals related thereto.

(d) Contemporaneously herewith or at any time hereafter, the Company may assign its payment and financial performance obligations hereunder to the Garvies Point Master Association, Inc., the entity formed to be the master homeowners' association of the all of the owners of the Private Use Improvements, provided that for said assignment to be effective, the board of directors of the master homeowners' association shall adopt a written resolution expressly accepting and assuming the Company's payment and financial performance obligations hereunder, and a copy of said resolution shall be provided to the Agency.

19. **Project Conformance with Approvals**

(a) Except as set forth below in Section 19(b), the Project shall conform to all land use, zoning, environmental and other approvals granted by the Planning Board, Agency and GCCDA relating to the Project, whether granted prior to or subsequent to this Agreement, including, but not limited to, the Amended PUD Master Development Plan approved by the Planning Board by Resolution, dated October 6, 2015, and by the Agency and GCCDA by Resolution, dated June 23, 2015, and the original PUD Master Development Plan (as applicable) and the SEQRA Findings Statement approved by the Planning Board by Resolution, dated December 19, 2011. The Project shall also conform to all approvals granted by the City Building Department and any other City department, as well as all Federal, State, County and Local Agencies having jurisdiction over the Project.

(b) The Agency shall have the right, in its reasonable discretion, to approve or disapprove any additional amendments to the Amended PUD Master Development Plan, which shall be evidenced in the form of a formal written resolution approved at duly noticed public meetings. The Company shall not submit an application to the Planning Board for approval of additional amendments to the Amended PUD Master Development Plan without the prior approval of the Agency. The Company may submit an application to the Planning Board for amended PUD Site Plan and/or PUD Subdivision Approval without the prior approval of the Agency

20. **Applications for PUD Site Plan and/or PUD Subdivision Approval**

The Company shall diligently and timely prepare and submit to the Planning Board, and take all necessary actions commensurate with employing commercially reasonable efforts, to obtain PUD Site Plan and/or PUD Subdivision Approval for each phase of the Project so that construction of the Project proceeds in an orderly, sustained and timely fashion, commensurate with market demand and subject to economic conditions affecting the Project.

21. **Construction of Improvements**

(a) The Company shall ensure that construction of the Public Use Improvements, for the benefit of the Agency, shall proceed diligently to completion using commercially reasonable efforts in accordance with a construction schedule provided to the Agency by the Company prior to the start of construction. "Completion" for purposes of this subsection shall mean the Building Department's issuance of a certificate of completion or other comparable written determination that the Public Use Improvements have been satisfactorily completed and are approved for public use and occupancy.

(b) Construction for each phase of the Private Use Improvements shall proceed diligently to completion using commercially reasonable efforts in accordance with a construction schedule provided to the Agency by the Company prior to the start of construction of such phase. "Completion" for purposes of this subsection shall mean the Building Department's issuance of a temporary or permanent Certificate of Occupancy with respect to the Private Use Improvements. The Parties shall cooperate and use commercially reasonable efforts to overcome any potential constraint or obstacle to the timely completion of construction for each phase.

(c) The Company shall submit quarterly written reports to the Agency, in such detail and at such other times as may be reasonably requested by the Agency, as to the actual progress of the Company with respect to construction of the Public Use Improvements and the Private Use Improvements.

(d) The City shall cause the City's off-site roadway and incinerator improvements related to the Project (the "City Public Improvements") to proceed diligently to completion using commercially reasonable efforts in accordance with a construction schedule provided by the City to the Agency and Company prior to the start of construction. "Completion" for the purposes of this subsection shall mean the completion of the demolition of the City's decommissioned incinerator located at 200 Morris Avenue, and the construction of the Garvies Point Road Project to such an extent that all governmental agencies with oversight thereover have accepted same for public use.

## 22. **LEED**

(a) As set forth in the SEQRA Findings Statement, each phase of the Project shall be certifiable under the LEED rating system appropriate for that phase and use. The Company shall provide a LEED checklist for each phase of the Project, demonstrating that it would be certifiable under the appropriate LEED program. The checklist shall cover the LEED category that might apply, and what level of LEED certification would be possible. Each checklist must specify LEED-certifiable items, at a minimum. The Company shall provide commitments at each PUD Site Plan review regarding energy efficiency goals and standards that will be met. The Agency believes that the Project is eligible for certification under the LEED for Neighborhood Development program.

(b) The Project shall contain green building components, including efficient mechanical systems using then current technology. Specific details regarding the major building components, fixtures, materials, etc., shall be provided during each PUD Site Plan review. The Project shall also employ Energy Star energy-saving features, such as increased insulation, high-efficiency heating and cooling systems, energy-saving appliances and high performance lighting.

All refrigerators, dishwashers, clothes washers, and clothes dryers shall be Energy Star compliant. The Company shall comply to the maximum extent practicable with the New York ENERGY STAR Multifamily Performance Program, which is intended to design buildings that use at least 20 percent less energy than buildings constructed to ASHRAE standards.

23. **Local Participation Plan**

(a) The Company shall make commercially reasonable efforts to award no less than twenty percent (20%) of all construction-related and post-construction permanent jobs and construction-related contracts to qualified City residents and vendors. The Company shall make commercially reasonable efforts to ensure that qualified City residents, veterans, minorities and women (collectively, “Local Workforce”), and qualified local, minority, women-owned and veteran-owned businesses (collectively, “Local Businesses”), are represented through this Local Participation Plan. The Company shall use commercially reasonable efforts to undertake, among other things, the following steps:

- Host informational sessions in local housing developments, schools, churches and associations to notify residents, area businesses and advocacy groups about the various work opportunities that the Project presents;
- Refer qualified Local Workforce and Local Businesses to current parties with whom the Company has entered into contracts regarding the Project (e.g., subcontractors, vendors);
- Package construction contracts where feasible in sizes appropriate for smaller businesses;
- Encourage trade contractors to partner and subcontract with Local Businesses and hire Local Workforce;
- Create a Project-specific prequalification form to hand out to subcontractors interested in bidding opportunities; and
- Include contract provisions with trade contractors and subcontractors, which impose a prioritization of hiring qualified Local Businesses and Local Workforce.

(b) The Company shall also work with the Agency and GCCDA and any other pertinent agencies in the City to secure a list of qualified local vendors, contractors and labor.

(c) The Company shall not be required to employ local residents or contract with local vendors at wages or contract prices that are higher than can be paid to non-residents for similar work or services.

(d) The Company shall maintain detailed records of the actions that it takes to achieve the participation goals in such forms as will enable the Agency and GCCDA to determine that Company has implemented efforts in accordance with this Local Participation Plan. The Company shall periodically at the Agency’s and GCCDA’s request submit reports to

the Agency and GCCDA to demonstrate compliance with this Plan until two (2) years after completion of construction of the final phase of the Project.

24. **Workforce Housing**

The Project's workforce units shall equate to a minimum of 10% of the dwelling units as required by the MW-3 regulations, and shall be located in Parcels F and G as shown on the Amended PUD Master Development Plan, or elsewhere within the Project subject to receipt of all necessary approvals. The workforce units shall be marketed and developed for households with incomes ranging between 50-130% of the Nassau/Suffolk Counties Area Median Income, or as otherwise agreed to between the Company and the Agency and/or the City, and subject to receipt of all necessary approvals. The Parties shall collaborate with the Long Island Housing Partnership, Inc., or other similar organization, to administer the program.

25. **Nondiscrimination**

The Company shall not discriminate against any employee or applicant for employment because of race, color, creed, religion, ancestry, national origin, sex, disability or other handicap, age, marital status, sexual orientation or any other protected class.

26. **Covenants of Good Faith and Fair Dealing, and Commercially Reasonable Efforts**

(a) The Parties recognize that the successful ongoing planning and implementation of the Project, and their respective ability to perform their obligations under this Agreement, will require coordination among them. Accordingly, this Agreement imposes an obligation of good faith and fair dealing on the Company, the Agency, and the City in the performance and enforcement of their respective rights and obligations hereunder. The Company, the Agency, and the City, with a shared commitment to honesty and integrity in the performance and administration of this Agreement, agree to the following mutual duties: (i) each will be held to a standard of good faith and fair dealing in the performance of its duties and obligations under this Agreement, (ii) each will function within the laws and statutes applicable to their duties and responsibilities, (iii) each will cooperate to facilitate the other's performance, (iv) each will avoid hindering the other's performance, (v) each will respond promptly and completely to the reasonable requests of the other, (vi) each will proceed to fulfill its obligations under this Agreement diligently and honestly, (vii) except as otherwise provided in this Agreement for the giving or the withholding of Parties' consent, approval or the like in its or their sole and arbitrary or absolute discretion, each agrees to use all commercially reasonable efforts to discharge their respective obligations under this Agreement and to assist each other in discharging their obligations under this Agreement which are dependent in any measure on another party's performance, and (viii) each will cooperate in the common endeavor of completing the performance and administration of this Agreement and the consummation of the transactions contemplated by this Agreement in a timely and efficient manner. Except as otherwise expressly provided in this Agreement for a consent or approval to be given or withheld in the sole and arbitrary discretion of a party, all other consents and approvals required or desired of any party shall be promptly addressed and not unreasonably withheld or delayed; provided, further, no party shall claim that the exercise, pursuant to the express provisions of this Agreement, of a party's sole, absolute or arbitrary discretion shall be deemed a breach of this Section.

(b) Whenever used in this Agreement, the term “commercially reasonable efforts” shall mean such efforts as are commercially reasonable in light of that Party’s own capabilities and of the other Party’s justifiable expectations.

27. **Default**

(a) In the event a Party delivers to the other Party a written notice of a dispute, or alleged default or breach, arising out of this Agreement, the Parties shall cooperate in good faith to explore a resolution to such dispute, or alleged default or breach. In the event that a resolution is not reached within a reasonable time, the non-defaulting or non-breaching Party may not terminate the Agreement, but instead may institute arbitration proceedings, provided, that it may only seek termination in the arbitration in accordance with the standards set forth hereunder.

(b) The arbitrator shall determine the appropriate remedy, at law and/or in equity, to resolve any dispute, or alleged default or breach, arising out of this Agreement, with the goal of keeping the Project progressing in a diligent and commercially reasonable manner. The remedies available to the arbitrator shall include, but not be limited to, requiring specific performance, requiring Project modification(s) subject to any applicable regulations and/or approvals, instituting mediation, awarding any appropriate damages or penalties, and/or declaring a default or breach and terminating the Agreement.

(c) The arbitrator’s determination shall be binding upon the Parties, and shall not be subject to review in a court action, except a determination terminating the Agreement. The arbitrator shall not find a default or breach of this Agreement justifying termination against either Party unless the arbitrator makes a specific finding that the defaulting or breaching Party’s actions or inactions relating to its material obligations hereunder constituted extreme or egregious unreasonableness under a rational commercial person standard. In the event that the arbitrator determines to terminate the Agreement, either Party may litigate the issues presented to the arbitrator in a competent court of law under a standard that affords the Parties a trial de novo of all matters considered by the arbitrator, provided, that either Party may admit the arbitrator’s determination into evidence, the probative value of which shall be determined by the Court. The Court may adopt or reject the arbitration decision in whole or in part. Any Party electing to litigate the issues presented to the arbitrator shall commence said litigation within forty-five (45) days of receipt of the arbitrator’s determination. In the event of such litigation, the Parties agree that they shall in good faith prosecute said litigation expeditiously, including with respect to discovery, without waiving any of their respective rights, and that this obligation may be enforced by the trial court as it may deem appropriate.

28. **Notices**

All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or to a nationally recognized courier such as Federal Express, addressed as follows:

**To the Agency:** Glen Cove Industrial Development Agency  
City Hall

9-13 Glen Street  
Glen Cove, New York 11542  
Attention: Reginald A. Spinello, Chairman

**With Copy To:** Glen Cove City Attorney  
City Hall  
9-13 Glen Street  
Glen Cove, New York 11542  
Attention: Charles McQuair, Esq.

Zarin & Steinmetz  
81 Main Street, Suite 415  
White Plains, New York 10601  
Attn: Michael Zarin, Esq.

And

Phillips Lytle LLP  
1205 Franklin Avenue  
Garden City, New York 11530  
Attn: Milan K. Tyler, Esq.

**To the Company:** RXR Glen Isle Partners, LLC  
625 RXR Plaza  
Uniondale, New York 11556  
Attention: Frank Haftel

**With Copy To:** Rivkin Radler, LLP  
926 RXR Plaza  
West Tower  
Uniondale, New York 11556  
Attention: Edward Ambrosino, Esq.

And

Farrell Fritz, P.C.  
1320 RXR Plaza  
Uniondale, New York 11556  
Attention: Peter L. Curry, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

29. **Agreement to Burden and Run with the Land**

This Agreement shall encumber, burden and run with the Land.

30. **Miscellaneous**

(a) **Binding Effect; Successors and Assigns.** The terms and provisions of this Agreement, and the respective rights and obligations hereunder of the Agency and Company shall be binding upon their respective successors and assigns and inure to the benefit of their respective permitted successors and assigns.

(b) **Amendment.** This Agreement may be amended, from time to time by written amendment hereto and executed by the Agency and Company (and/or the City, as the case may be).

(c) **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, and this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

(d) **No Personal Liability.** Notwithstanding anything in this Agreement to the contrary, the obligations and agreements of the Agency, City and the Company contained herein and any other instrument or document executed in connection herewith, and any other instrument or document supplemental hereto, shall be deemed the obligations and agreements of the Agency, City and the Company and not of any member, director, officer, agent or employee of the Agency, City or the Company in his\her individual capacity, and the members, directors, officers, agents and employees of the Agency, City and the Company shall not be liable personally hereon or thereon or be subject to any personal liability or accountability based upon or in respect hereof or of any transaction contemplated hereby.

(e) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original; but such counterparts shall together constitute but one and the same Agreement.

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IN WITNESS WHEREOF, the parties hereto have executed this Garvies Point Continuing Covenants Agreement, intending that the same be recorded in the Office of the Clerk of the County of Nassau, as of the day and year first above written.

**GLEN COVE INDUSTRIAL  
DEVELOPMENT AGENCY**

By: \_\_\_\_\_  
Name: Reginald A. Spinello  
Title: Chairman

**RXR GLEN ISLE PARTNERS, LLC**

By: \_\_\_\_\_  
Name:  
Title:

RIGHTS AND OBLIGATIONS UNDER SECTIONS 3, 6, 8(b), 10(c), 21(d), 24, 26, 27 AND 30 ACKNOWLEDGED

**THE CITY OF GLEN COVE**

By: \_\_\_\_\_  
Name: Reginald A. Spinello  
Title: Mayor

**SCHEDULE A**

**Metes and Bounds Description**

**SCHEDULE B**

**Amended PUD Master Development Plan**

DRAFT