

NEW YORK STATE DEPARTMENT  
OF ENVIRONMENTAL CONSERVATION  
ORDER ON CONSENT

In the Matter of an Order on Consent Relating to Site  
Code ## 130032, 130046, Remedial Obligations during  
Redevelopment E1-30-152 Activities for the 52-Acre  
Glen Cove Waterfront Site,

by RXR Glen Isle Partners, LLC

**WHEREAS,**

1     A     The New York State Department of Environmental Conservation ("Department") is responsible for carrying out the policy of the State of New York ("State,") to conserve, improve and protect its natural resources and environment and control water, land, and air pollution consistent with the authority granted to the Department and the Commissioner by the Environmental Conservation Law ("ECL")

      B     The Department is also responsible under the Navigation Law ("NL") for carrying out the policy of the State to ensure a clean environment and healthy economy for the State by preventing the unregulated discharge of petroleum which may result in damage to lands, waters or natural resources of the State

      C     The Department, by and through its Commissioner, is authorized to carry out the policy of the State as stated in Article 1, Title 1 of the ECL

      D     RXR Glen Isle Partners, LLC ("RXRGIP,") has entered into an agreement with the City of Glen Cove, New York, ("City,") Industrial Development Agency ("IDA,") and Community Development Agency ("CDA,") to develop certain areas within the City commonly known as the "Garvies Point Waterfront Redevelopment Project,,"

      E     The Department has determined that, due to the historical remediation activities, existing Institutional and Engineering Controls and residual contamination that exists at the properties which comprise the Garvies Point Waterfront Redevelopment Project, as defined below, any substantive construction activities should be conducted under a Consent Order as a means to ensure that any construction activities maintain the human health and environmental protections necessary

2     This Consent Order relates to the Redevelopment Site to be redeveloped by the prospective purchaser, as set forth in Appendix A

3. This Consent Order covers remedial work conducted before the closing of the sale of the Site (the Pre-Closing Remedial Work,,) and after the closing of the sale of the Site (the Post-Closing Remedial Work,,).

4. The purpose of this Consent Order is to ensure that any construction activities at the Site are done in a manner that is protective of human health and the environment, in accordance with existing and subsequently required institutional and engineering controls and to reimburse the State for future oversight costs related to this Order.

5. RXRGIP consents to the Department's issuance of this Consent Order without an admission or finding of liability of any kind.

**NOW, THEREFORE,** having considered this matter and being duly advised, **IT IS ORDERED THAT:**

**I. Definitions**

Unless otherwise expressly provided herein, terms used in this Consent Order which are defined in the ECL or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations or amendments thereto. The following terms shall have the following meanings:

A. **"Garvies Point Waterfront Redevelopment Project,, "Redevelopment Site,, or "Site,,** shall mean the following real property in the event that such parcels are acquired by RXRGIP:

(a) the Li Tungsten (Site Code # 130046) and Captain's Cove Condominium (Site Code # 130032) properties located in the City, as such properties are registered in the New York State Superfund Program, which ~~properties~~ are also identified as United States Environmental Protection Agency ("EPA,,) National Priority List Site # NYD986882660 and defined in the March 30, 1999 Agreement and Covenant Not to Sue, Index No. CERCLA-02-99-2008, executed between the EPA and the Glen Cove IDA [the "1999 Agreement,,]; provided, however, that the foregoing properties shall not include the property commonly known as the "Ferry Terminal,,;

(b) 10 Garvies Point Road, Glen Cove, Nassau County, New York, Stipulation Case Number S130214, more particularly described in the environmental easement recorded with respect to this property (the "Doxey Site,,);

(c) a portion of 51 Garvies Point Road, Glen Cove, Nassau County, New York, Environmental Remediation Program Number E1-30-152 known as the Gladsky Marine property, more particularly described in the environmental easement recorded with respect to this portion of the property (the "Gladsky Site,,).

**II. Remedial Work Plans Necessary for Site Redevelopment**

A. Work plans shall be submitted by the RXRGIP for the Department's review and approval and shall include, among other things, a description of the anticipated pre-closing remedial work to be conducted pursuant to a Department-approved Pre-Closing Remedial Work Plan(s) or a Department-approved Post-Closing Remedial Work Plan(s) for the post-closing installation of Engineering Controls, including construction activities, the phasing of those activities and specific details as to such activities. All work plans must be prepared under the supervision of, and signed and sealed by, a Professional Engineer. Upon the Department's written approval of a work plan(s), such work plan(s) shall be incorporated into and become an enforceable part of this Consent Order, subject to RXRGIP's right to submit amendments to the work plan(s) as set forth in this Consent Order. In the event that the Department disapproves of a proposed work plan or proposed amendment, the Department's notice shall include an explanation of the basis for the disapproval. Within twenty (20) days after receiving written notice of disapproval, RXRGIP shall elect in writing to either: (i) modify or expand the proposed work plan(s) to address the Department's concerns; or (ii) invoke the dispute resolution procedures contained in this Consent Order.

B. During all field activities that are subject to the work plan(s), RXRGIP shall have on- Site a representative who is qualified to supervise the activities undertaken. Such representative may be a consultant retained by RXRGIP to perform such supervision.

C. If revisions or supplements to the work plan(s) are deemed necessary or desirable by the RXRGIP, the undersigned parties to this Consent Order will negotiate such revisions or supplements which, upon mutual agreement of the parties, shall be attached to and incorporated into the relevant work plan(s) and which shall be enforceable under this Consent Order. If the parties cannot agree upon revisions to the relevant work plan(s), then the RXRGIP may invoke dispute resolution procedures contained in 6 New York Code of Rules and Regulations ("NYCRR") § 375-1.5(b)(2).

D. All pre-closing remedial work shall be performed pursuant to a Department-approved Pre-Closing Remedial Work Plan(s). Upon successful completion of the Pre-Closing Remedial Work detailed by these approved plans, the Department and EPA will issue Site-wide "No Further Action," letters.

### III. Review of Submittals Other Than Work Plans

A. The Department will use best efforts to timely notify RXRGIP in writing of its approval or disapproval of each submittal by RXRGIP other than a work plan. All Department- approved submittals shall be incorporated into and become an enforceable part of this Consent Order.

B. If the Department disapproves a submittal covered by this paragraph, it shall specify the reasons for its disapproval and may request RXRGIP to modify or expand the submittal. Within twenty (20) days after receiving written notice that RXRGIP's submittal has been disapproved, RXRGIP shall elect in writing to either: (i) modify or expand it; or (ii) invoke the dispute resolution procedures of 6 NYCRR § 375-1.5(b)(2).



#### IV. Enforcement

A. The purpose of the Consent Order is to provide for Department oversight of remedial work and construction activities related to the redevelopment of the Site. The Department hereby waives any action or proceeding that could be brought against RXRGIP, its successors or assigns provided that: (a) RXRGIP complies with the ECL, the Navigation Law and terms and conditions of the Order, Department-approved work plans, institutional and engineering controls, approved schedules, and SMP(s) to the reasonable satisfaction of the Department; (b) RXRGIP does not revise its Redevelopment plan in any manner which the Department or the Department of Health determine would result in insufficient protection of human health or the environment for the proposed use of the site, whether due to known or unknown environmental conditions; (c) no new information related to the site arises which was unknown at the time this Order was issued and which indicates that this Order cannot be implemented with sufficient protection of human health and the environment; (d) no actions by Respondent exacerbate conditions at the site, such that a greater risk is posed to human health or the environment; and (e) RXRGIP, its agents, successors or assigns did not commit fraud in entering into or implementing the Order.

B. RXRGIP shall not suffer any penalty or be subject to any proceeding or action if it cannot comply with any requirement of this Consent Order as a result of a Force Majeure Event (as described in Section VIII below) provided it notifies the Department in writing within ten (10) business days of when it obtains or should have obtained knowledge of any such event. RXRGIP shall include in such notice the measures taken and to be taken to prevent or minimize any delays resulting from any Force Majeure Event and shall request an appropriate extension or modification of this Consent Order.

#### V. Entry upon Site

RXRGIP hereby agrees, to provide access to any portion of the Redevelopment Site owned by it or under its control to any duly designated officer or employee of the Department any agent, consultant, contractor or other person so authorized in writing by the Commissioner, consistent with the provisions of ECL § 27-1431.

#### VI. Payment of State Eligible Costs

RXRGIP shall make payments to the Department in order to pay for State expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs and contractor costs) incurred after the effective date of this Consent Order associated with the activities to be performed by the Department pursuant to this Consent Order, which shall include costs associated with this Consent Order up to and including the date the Consent Order is terminated ("State Eligible Costs,,"). Within forty-five (45) days after receipt of an itemized invoice from the Department for State Eligible Costs, the RXRGIP shall pay to the Department a sum of money which shall represent reimbursement for the State Eligible Costs. RXRGIP shall not be responsible for State expenses (including, but not limited to, direct labor and fringe benefits, overhead, travel, analytical costs and contractor costs) which were incurred prior to the effective date of this Order. Such payments shall be sent to the following address:

New York State Department of Environmental  
Conservation Division of Environmental Remediation  
625 Broadway  
Albany, New York 12233-7010  
Attention: Director, Bureau of Program Management,

A. Cost Documentation

State Eligible Costs shall be invoiced and documented pursuant to the provisions of 6 NYCRR § 375-1.5 (b)(3)(ii) and shall be sent to RXRGIP at the following address:

c/o RXR Realty  
625 RXR Plaza  
6<sup>th</sup> Floor  
Uniondale, NY 11556

B. Objection to an Invoice

RXRGIP may object to an invoice under the procedures of 6 NYCRR § 375-1.5 (b)(3)(vi).

C. Payment/Reimbursement

RXRGIP's payment obligations under this Consent Order represent payment for or reimbursement of State Eligible Costs, and shall not be deemed to constitute any type of fine or penalty.

VII. Communications

A. All written communications required by this Consent Order shall be transmitted by United States Postal Service, private courier or hand delivery.

1. Communication from RXRGIP shall be sent to:

Heidi Dudek  
NYSDEC, Division of Environmental  
Remediation  
625 Broadway  
Albany, New York 12233

2. Communication from the Department to RXRGIP shall be sent to:

RXR Glen Isle Partners, LLC  
625 RXR Plaza



Uniondale, NY 11556

with a copy to:

Benjamin Conlon, Esq.  
NYSDEC, Office of General Counsel  
625 Broadway  
Albany, NY 12233-5500

Gregory J. Allen, Esq.  
Allen & Desnoyers LLP  
90 State Street, Suite 1009  
Albany, NY 12207

B. The Department and RXRGIP reserve the right to designate additional or different addressees for communication on written notice to the other.

C. Each party shall notify the other within ninety (90) days after any change in the contacts or addresses listed in this Paragraph.

#### VIII. Force Majeure

RXRGIP shall suffer no penalty or be subject to any proceeding or action if it cannot perform under this Consent Order if the failure to perform is the result of any *force majeure* event, including, without limitation, an act of God, fire, explosion, epidemic, riot, war, rebellion, sabotage, terrorism or any other fact or circumstance beyond the reasonable control of the RXRGIP.

#### IX. Miscellaneous

A. Each party shall have the right to take samples and to obtain split samples, duplicate samples, or both, of all substances and materials sampled by the other party. The Department shall make the results of all sampling available to RXRGIP and RXRGIP shall make the results available pursuant to its reporting obligations.

B. RXRGIP shall allow the Department to attend, and shall notify the Department at least seven (7) Days in advance of, any field activities to be conducted pursuant to this Consent Order, as well as any pre-bid meeting, job progress meeting, substantial completion meeting and inspection, and/or final inspection and associated meeting.

C. RXRGIP shall use "best efforts" to obtain all permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations necessary to perform RXRGIP's obligations under this Consent Order, except that the Department may exempt RXRGIP from the requirement to obtain any state or local permit for any activity that is conducted on the Redevelopment Site and that the Department determines satisfies all substantive

technical requirements applicable to like activity conducted pursuant to a permit. If any permits, easements, rights-of-way, rights-of-entry, approvals, or authorizations required to perform this Consent Order are not obtained despite best efforts, RXRGIP shall promptly notify the Department, and shall include in that notification a summary of the steps RXRGIP has taken to attempt to obtain access. The Department may, as it deems appropriate and within its authority, assist RXRGIP in obtaining access. RXRGIP shall not be deemed to have violated the terms of this Consent Order if, despite its best efforts, RXRGIP is unable to obtain the access needed to carry out on any Site the activities required under this Consent Order.

D. RXRGIP shall not be considered an operator of the Redevelopment Site solely by virtue of having executed and/or implemented this Consent Order.

E. The paragraph headings set forth in this Consent Order are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Consent Order.

F. The terms of this Consent Order shall constitute the complete and entire Consent Order between the Department and RXRGIP. No term, condition, understanding or agreement purporting to modify or vary any term of this Consent Order shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment by the Department regarding any report, proposal, plan, specification, schedule, or any other submittal shall be construed as relieving RXRGIP of RXRGIP's obligation to obtain such formal approvals as may be required by this Consent Order. RXRGIP consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Consent Order.

G. If RXRGIP desires that any provision of this Consent Order be changed, RXRGIP shall make written application to the Department and the Department shall timely respond.

H. RXRGIP shall provide a copy of this Consent Order to each contractor and subcontractor hired to perform work required by this Consent Order and to each person representing RXRGIP with respect to the Redevelopment Site. Further, RXRGIP shall require all contracts entered into in order to carry out the obligations identified in this Consent Order to be in compliance with the terms of this Consent Order.

I. Nothing herein shall be construed as barring, diminishing, adjudicating, or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that RXRGIP may have against anyone other than the Department, including, but not limited to, rights of contribution under § 113(f)(B)(3) of CERCLA, 42 U.S.C. § 9613(f)(B)(3) ); and the Department may have against anyone other than RXRGIP and its directors, officers, employees, agents, and servants that were responsible under law for the development and implementation of a Remedial Program at the Site prior to the effective date of this Consent Order, and their respective secured creditors.

J. This Consent Order may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

K. This Consent Order shall terminate upon RXRGIP's filing and the Department's acceptance of a Final Engineering Report of the installation of the prescribed Engineering Controls at the Site. Upon acceptance of the Final Engineering Report, the Department will re-evaluate the classification of those parcels on the Site that are listed on the Registry of Inactive Hazardous Waste Disposal Sites.

L. The effective date of this Consent Order is the 10<sup>th</sup> Day after the date it is signed by the Commissioner or the Commissioner's designee.

DATED: *AUGUST 19, 2016*

BASIL SEGGOS  
COMMISSIONER NEW YORK STATE  
DEPARTMENT OF ENVIRONMENTAL  
CONSERVATION AND TRUSTEE OF  
THE STATE'S NATURAL RESOURCES

By:

A handwritten signature in blue ink, appearing to read 'R. Schick', is written over a horizontal line.

Robert W. Schick, P.E., Director  
Division of Environmental Remediation

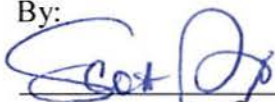


CONSENT BY RXRGIP

RXRGIP hereby consents to the issuing and entering of this Consent Order and agrees to be bound by the terms of Consent Order.

RXR Glen Isle Partners, LLC

By:



Title: Scott Reicher

Date: 8/17/16

STATE OF NEW YORK )

) s.s.:

COUNTY OF Nassau )

On the 17<sup>th</sup> day of August, in the year 2016, before me, the undersigned, personally appeared Scott Reicher, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

  
Notary Public

**DAWN M. KENNY**  
Notary Public, State of New York  
No. 01KE5040363  
Qualified in Nassau County  
Commission Expires March 13, 2019