



CITY OF NEWBURGH
COUNCIL MEETING AGENDA
January 13, 2014
7:00 pm

Mayor:

1. Prayer
2. Pledge of Allegiance

City Clerk:

3. Roll Call

Communications:

4. Approval of the minutes of the City Council meeting of December 9, 2013
5. Approval of the minutes of the Special meeting of January 2, 2014

Comments from the public regarding the agenda:

Comments from the Council regarding the agenda:

City Manager's Report:

6. Resolution No. 2-2014
A resolution adopting Rules of Order and Procedures for the Council of the City of Newburgh for the year 2014.
7. Resolution No. 3-2014
A resolution amending Resolution No. 247-2013, the Budget for the City of Newburgh, New York to allocate \$5,000.00 from City Manager to Police Department for the purpose of funding the temporary part-time grant coordinator from Jan. 1, 2014 to Feb. 28, 2014.
8. Resolution No. 4-2014
A resolution amending Resolution No. 248-2013 of December 9, 2013 which authorized the interim City Manager to apply for, accept if awarded and enter into an inter-municipal agreement between the County of Orange and the City of Newburgh in connection with the 2013 Byrne Memorial JAG program award.

9. Resolution No. 5-2014
A resolution authorizing the interim City Manager to enter into an agreement with Hudson Valley Pet Hotel to provide for boarding services for dogs in the custody of the City of Newburgh.
10. Resolution No. 6-2014
A resolution authorizing the execution of an agreement with Watson Services, Inc. for the use of six parking spaces in the City's municipal parking lot at Grand Street and Broadway.
11. Resolution No. 7-2014
A resolution authorizing the interim City Manager to accept a donation of a vehicle from the Town of Ramapo Police Department to be used by the City of Newburgh K-9 Unit.
12. Resolution No. 8-2014
A resolution authorizing the execution of an agreement with William A. Smith & Son, Inc. for the use of nine parking spaces in the City of Newburgh's Van Ness Street municipal parking lot.
13. Resolution No. 9-2014
A resolution authorizing the interim City Manager to execute an access agreement with Memorare Holding Corp. in connection with the installation of a new water service as a result of a water main break on December 31, 2013.
14. Resolution No. 10-2013
A resolution to authorize the repurchase of real property known as 175 Renwick Street at private sale to Osiah Gayle.
15. Resolution No. 11-2014
A resolution to authorize the repurchase of real property known as 7- Grove Street at private sale to Jose Sanchez and Luz Maria Sanchez.
16. Resolution No. 12-2014
A resolution amending Resolution No. 256-2013 of December 9, 2013 to authorize the repurchase of real property known as 213 N. Miller Street, 202 Dubois Street and 214 Dubois Street at private sale to Jesse Blackmon.

Old Business:

New Business:

Agenda - City Council Meeting
January 13, 2014

Public Comments Regarding General Matters of City Business:

Further Comments from the Council:

Adjournment:

RESOLUTION NO.: 2 - 2014

OF

JANUARY 13, 2014

A RESOLUTION ADOPTING
RULES OF ORDER AND PROCEDURE
FOR THE COUNCIL OF THE CITY OF NEWBURGH
FOR THE YEAR 2014

BE IT RESOLVED, that the Council of the City of Newburgh, New York adopts for use during the year 2014 the Rules of Conduct and Procedure: By Laws, a copy of which is attached hereto and made a part of this Resolution; and

BE IT FURTHER RESOLVED, that this Resolution shall take effect immediately.

**City of Newburgh City Council
Rules of Order and Procedure**

Rule I: General Rules of Procedure

A. The presiding officer shall preserve order and decorum and shall decide questions of order, subject to an appeal by motion to the City Council; the appeal to be taken without debate. The presiding officer may, if (s)he so desires, present motions and resolutions to the City Council, and (s)he may debate on any question which is being considered by it.

B. When a question is under consideration, no motion shall be entertained except as herein specified, which shall have precedence in the following order:

1. Motion for clarification, or to request reversal of ruling of the presiding officer, or limiting or extending discussion;
2. Recess the session;
3. Lay on table;
4. Postpone to a meeting of a certain date;
5. Refer to work session;
6. Amend;
7. Call the previous question, to be asked as follows: "Shall the main question be put now?" If answered in the negative, the main question remains before the Council.

C. A motion to lay a question on the table shall be decided without amendment or debate, and a motion to postpone shall be decided without debate.

D. A motion to adjourn shall always be in order and shall be decided without debate.

E. Every member desiring to speak shall address the presiding officer. All council members shall confine him/herself to the question under debate and avoid personalities. A member once recognized shall not be interrupted when speaking.

F. No question or motion shall be debated or put, unless it is seconded. It shall then be stated by the presiding officer.

G. A motion to reconsider any action taken by the Council may be made on the day such action was taken, either immediately during the session or at a recessed or adjourned session. Such motion must be made by a member on the prevailing side, but may be seconded by any member. The motion is subject to debate. This rule shall not prevent any member of the Council from making or re-making the same or any other motion at a subsequent meeting of the Council.

H. No member of the Council shall by conversation or otherwise delay or interrupt the proceedings or the peace of the Council nor disturb any member while speaking or refuse to comply with these rules, or the orders of its presiding officer. The Presiding Officer, subject to appeal by motion to the Council, may direct a member who is acting in violation of this section to leave the meeting or call for a recess or adjournment.

I. As the sergeant-at-arms of the meetings, the Police Chief shall carry out all order and instructions given by the presiding officer, for the purpose of maintaining order and decorum at the meetings, subject to an appeal by motion, to the Council.

J. Any motion may be withdrawn by the maker before it has been amended or voted upon, but in such case any other member may renew the motion at that time.

Rule II. Order of Business

A. The Order of Business shall be in conformity with section 20-3 of the Code of Ordinances.

B. The Order of Business may be departed from by majority vote of the members present.

Rule III. Voting

A. The order of voting shall be by alphabetical order of the last name of each Council member with the Mayor voting last.

B. All votes shall be by roll call. It shall be the duty of the City Clerk to enter on the minutes the names of the members voting for or against the question. Once a question has been put and the vote is being taken, the members of the Council shall confine themselves to voting and shall not resume discussion or make further comments on the question.

C. Every resolution or motion must be seconded before being put to a vote. An abstention, silence or absence shall be considered a negative vote for the purposes of determining the final vote on a matter.

D. No resolution, ordinance or local law may be introduced at a meeting unless the resolution, ordinance or local law has been considered at a work session of the Council prior to the Council meeting or is listed on the written agenda for said meeting. Notwithstanding the foregoing, by majority vote, an item not discussed at work session or appearing on the written agenda may be introduced, considered, and voted upon.

Rule IV. Executive Session

Whenever the Council shall determine to transact business in an executive session, it shall do so in accordance with the provisions of the New York State Open Meetings Law. All executive sessions shall be commenced at the public meeting. Proposals, discussions, statements and transactions in executive session are intended to be and shall be held and maintained in confidence and shall not be disclosed. The presiding officer shall direct all persons except members and designated officers and employees of the City to withdraw.

Rule V. Participation of City Manager and Staff

The City Manager shall be permitted to address the Council and participate in discussions. Heads of Departments shall be permitted to address the Council. Any other City officer or employee shall be permitted to address the Council with permission of the presiding officer, subject to an appeal by motion to the City Council, the appeal to be taken without debate.

Rule VI. Suspension of the Rules

In order to hear persons other than members of the City Council, the Mayor, and members of City staff, it shall be necessary to pass a motion suspending the rules of order. A motion to suspend the rules may be made at any time during the meeting and shall be decided without debate. Any such person speaking shall confine himself-herself to the subject and shall spend not longer than three (3) minutes, unless the time is extended by the presiding officer. This rule shall not apply to public hearings.

Rule VII. Guidelines for Public Comment

- A. The public shall be allowed to speak only during the Public Comment periods of the meeting or at such other time as the presiding officer may allow, subject to appeal by motion to the Council.
- B. Speakers must adhere to the following guidelines:
 - 1. Speakers must be recognized by the presiding officer.
 - 2. Speakers must step to the front of the room.
 - 3. Speakers must give their name, address and organization, if any.
 - 4. Speakers must limit their remarks to 3 minutes on a given topic. The City Clerk shall keep a record of the time and shall inform the presiding officer when the 3 minutes has expired.
 - 5. Speakers may not yield any remaining time they may have to another speaker.

6. Council members may, with the permission of the presiding officer, , interrupt a speaker during their remarks, but only for the purpose of clarification or information.
7. All remarks shall be addressed to the Council as a body and not to any specific member or to staff.
8. Speakers shall observe the commonly accepted rules of courtesy, decorum, dignity and good taste. No profanities shall be used. No personal, slanderous, boisterous remarks shall be made. Council members, the Mayor and staff shall be treated with respect. The presiding officer, subject to appeal by motion to the Council, or the Council, may, by majority vote, request that the presiding officer direct that a speaker violating this provision or any other rule yield the floor and in the event the speaker fails to obey, (s)he may be escorted from the meeting by the sergeant-in-arms.
9. Interested parties or their representatives may address the Council by written communications. Written communications shall be delivered to the Clerk or their designee. Speakers may read written communications verbatim.

C. Members of the public not speaking shall observe commonly accepted rules of courtesy and decorum. They shall not annoy or harass others or speak when another speaker is being heard by the Council.

Rule VIII. Use of Recording Equipment

All members of the public and all public officials are allowed to audio or video record public meetings. Recording is not allowed during executive sessions. The recording should be done in a manner which does not interfere with the meeting. The presiding officer, subject to appeal by motion to the Council, may make the determination that the recording is being done in an intrusive manner, taking into consideration, but not limited to, brightness of lights, distance from the deliberations of the Council, size of the equipment, and the ability of the public to still participate in the meeting. If the presiding officer makes the determination that the recording is intrusive and has the effect of interfering with the meeting, (s)he may request an accommodation to avoid the interference and if not complied with, may ask the individual to leave the meeting room.

Rule IX. Rules for Public Hearings

The following rules shall apply to a legally required public hearing held before the City Council:

- (a) Speakers shall register in writing prior to the beginning of the hearing by providing their name, address, and organization, if any. Individuals arriving after the commencement of the hearing shall be permitted to register upon arrival as long as the Chairperson has not closed the hearing.

(b) The Presiding Officer shall recognize each speaker, in the order registered, when the hearing is commenced. Speakers shall identify themselves, their address and organization, if any, prior to the remarks.

(c) Speakers must limit their remarks to five (5) minutes. Remarks shall be addressed only to the hearing issues. Speakers may not yield any remaining time they may have to another speaker. The City Clerk shall time speakers and advise the presiding officer when the time has expired.

(d) All remarks shall be addressed to the Council as a body and not to any individual member thereof.

(e) Speakers shall observe the commonly accepted rules of courtesy, decency, dignity and good taste. Any loud, boisterous individual shall be asked to leave by the Presiding Officer and may be removed at the request of the Presiding Officer, subject to appeal by motion to the Council. Speakers addressing issues outside the scope of the hearing shall be asked to cease their comments.

(f) Interested parties may address the Council by written communication. The statements may be read at the hearing, but shall be provided to all Council members and entered in the minutes of the hearing by the City Clerk.

(g) The City Clerk shall include in the minutes of the hearing the name, address and organization, if any, of each speaker, a summary of the remarks, and written statements submitted to the Council.

Rule X. Work Sessions

There shall be regular work sessions of the Council to be held each Thursday preceding a Monday evening Council meeting. The work sessions shall be held at 6:00 p.m. in City Hall, 83 Broadway, Third Floor Council Chambers, unless the Council by majority vote cancels or changes the time or place of such session. The Rules IV, V, VI, and VIII of the Rules of Order of the Council shall apply to all work sessions.

Rule XI. Robert's Rules of Order

In the event any question in procedure shall arise that is not provided for by these rules, then, in that event, Robert's Rules of Order, Newly Revised, 10th Edition, shall be followed.

Rule XII. Adoption of Ordinances

Provided the proposed adoption of an ordinance has been placed on an agenda for a meeting of the Council at which the public is afforded the opportunity to comment on

agenda items before Council action, a formal public hearing will not be conducted prior to the adoption of such ordinance, unless otherwise required by federal, state, or local law, ordinance, rule or regulation.

This rule shall not be construed to prevent the Council from holding a public hearing on any ordinance at its discretion, provided a majority of the members of the Council in attendance at a meeting, upon a motion or resolution duly introduced, vote to conduct such public hearing.

Date Adopted: May 14, 2001

Amended: February 25, 2002 (Rule XII added)

January 10, 2014 (Rule IV)

RESOLUTION NO.: 3 -2014

OF

JANUARY 13, 2014

A RESOLUTION AMENDING RESOLUTION NO.: 247-2013,
THE 2014 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO ALLOCATE \$5,000.00 FROM CITY MANAGER TO POLICE DEPARTMENT FOR
THE PURPOSE OF FUNDING THE TEMPORARY PART-TIME GRANT
COORDINATOR FROM JANUARY 1, 2014 TO FEBRUARY 28, 2014

WHEREAS, the 2014 Budget of the City of Newburgh provides for a full-time grant coordinator position which has not been filled; and

WHEREAS, the City of Newburgh previously has contracted with an individual to serve as a part-time grant coordinator for the Police Department and who can continue as a temporary part-time grant coordinator for the City and provide services until the full-time grant coordinator position is filled; and

WHEREAS, this Council finds that it is in the best interests of the City of Newburgh to provide funding for a temporary part-time grant coordinator position until the full-time grant coordinator is appointed;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that Resolution No: 247-2013, the 2014 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1230.0101 City Manager - Salary	\$5,000.00	
A.3120.0102 Police Department - Part time		\$ 5,000.00

RESOLUTION NO. 4 - 2014

OF

JANUARY 13, 2014

A RESOLUTION AMENDING RESOLUTION NO. 248-2013 OF
DECEMBER 9, 2013 WHICH AUTHORIZED THE INTERIM CITY MANAGER
TO APPLY FOR, ACCEPT IF AWARDED AND
ENTER INTO AN INTER-MUNICIPAL AGREEMENT BETWEEN
THE COUNTY OF ORANGE AND THE CITY OF NEWBURGH
IN CONNECTION WITH THE 2013 BYRNE MEMORIAL JAG PROGRAM AWARD

WHEREAS, the City of Newburgh by Resolution 248-2013 of December 9, 2013 the City Council of the City of Newburgh authorized the Interim City Manager to enter into an Inter-Municipal Agreement with between the County of Orange and the City of Newburgh in connection with the 2013 Byrne Memorial JAG Program Award to receive funds through the County of Orange under the terms of the grant program and under the terms and conditions of the agreement; and

WHEREAS, the County has agreed to set aside \$21,000.00 from the 2013 Local JAG Award for the City of Newburgh; and

WHEREAS, the County has advised the funds can only be used to upgrade computer equipment to enhance police records and information sharing and to purchase video equipment; and

WHEREAS, this Council has determined that authorizing the Interim City Manager to execute the annexed Inter-Local Agreement is in the best interests of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to execute an Inter-Local Agreement with the between the County of Orange and the City of Newburgh in connection with the 2013 Byrne Memorial JAG Program Award to receive funds through the County of Orange under the terms of the grant program and under the terms and conditions of the agreement, a copy of which is attached hereto, for various important law enforcement functions for the City of Newburgh and other local law enforcement agencies.

**STATE OF NEW YORK
COUNTY OF ORANGE**

**INTER-LOCAL AGREEMENT
BETWEEN THE COUNTY OF ORANGE AND CITY OF NEWBURGH, NY
2012 BYRNE JUSTICE ASSISTANCE GRANT (JAG) PROGRAM AWARD**

THIS AGREEMENT, made and entered into this ____ day of _____, 2014, by and between the COUNTY OF ORANGE, which is authorized to execute this Inter-local Agreement by virtue of authority granted pursuant to the Orange County Charter, more specifically Section 3.02(m) thereof, to be administered by and through the Orange County Office of Emergency Services, hereinafter referred to as COUNTY, and the CITY OF NEWBURGH, acting by and through its governing body, the NEWBURGH CITY COUNCIL, hereinafter referred to as CITY, both of ORANGE COUNTY and in the STATE OF NEW YORK, witnesseth:

WHEREAS, this agreement is made under the authority of Section 99-h of the New York State General Municipal Law; and

WHEREAS, each governmental instrumentality, in performing their governmental functions or in paying for the procurement of the governmental functions contemplated hereunder, shall make that performance or the payments for the procurement of such services from current revenues legally available to that party; and

WHEREAS, each governmental instrumentality finds that the performance of this Inter-local Agreement is in its best interests and that the undertaking of the obligations as defined and described herein will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Inter-local Agreement; and

WHEREAS, the CITY agrees that the COUNTY will receive the full amount of the disparate aware to the County of \$54,828 and will administrator the FY 2013 JAG recovery award and that further, the County will act as the fiscal agent for said funds; and

WHEREAS, funds obtained from the 2013 JAG Award will be shared by the County of Orange and the municipalities of the City of Newburgh and the City of Middletown.

WHEREAS, the County will receive the 2013 JAG funding in the amount of \$56,098 and act as the fiscal agent and will obtain grant funds and distribute same to the participating municipalities for their individual projects in the agreed allocation amounts.

The COUNTY and the CITY agrees that this disparate award will be allocated as followed:

The City of Newburgh will receive \$21,000 from the FY 2013 JAG award to be used upgrade computer equipment to enhance police records and information sharing and to purchase video equipment to aid in criminal investigations.

The City of Middletown will receive \$6,500 to provide for additional police presence in high crime areas of the city;

The County will receive \$27,328 toward the operation cost of maintaining a County Law Enforcement vehicle locator dispatching system for police and for grant administration.

WHEREAS, the CITY and COUNTY believe it to be in the best interests to allocate the FY 2013 JAG funds accordingly.

NOW THEREFORE, the COUNTY and CITY agree as follows:

Section 1.

The recitals are hereby incorporated into this agreement as if fully set forth hereto.

Section 2.

CITY acknowledges that the COUNTY will receive the total amount of JAG funds.

Section 3

COUNTY agrees to set aside \$21,000 for the CITY's portion of the project funding

Section 4.

Nothing in the performance of this Inter-local Agreement shall impose any liability for claims against COUNTY other than claims for which liability may be imposed by the General Municipal Law and/or Local Laws.

Section 5.

Nothing in the performance of this Agreement shall impose any liability for claims against CITY other than claims for which liability may be imposed by the General Municipal Law and/or Local Laws.

Section 6.

Each party to this Agreement will be responsible for its own actions in providing services under this Inter-local Agreement and shall not be liable for any civil liability that may arise from the furnishing of the services by the other party.

Section 7.

The parties to this Inter-local Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 8.

By entering into this Agreement, the parties do not intend to create any obligations express or implied other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

CITY OF NEWBURGH

Mayor

Notary Public

Sworn to before me this ____ day
of 2013

COUNTY OF ORANGE

County Executive

Notary Public

Sworn to before me this ____ day
of 2013

RESOLUTION NO.: 5 - 2014
OF

JANUARY 13, 2014

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ENTER INTO AN AGREEMENT WITH HUDSON VALLEY PET HOTEL
TO PROVIDE FOR BOARDING SERVICES FOR DOGS IN
THE CUSTODY OF THE CITY OF NEWBURGH**

WHEREAS, as mandated by the Agriculture & Markets Law of New York State, the Animal Control Unit must have caregivers for the dogs taken into the custody of the City of Newburgh; and

WHEREAS, Hudson Valley Pet Hotel has submitted a proposal to provide boarding services such as clean housing, feeding and rehabilitation of dogs in the custody of the City of Newburgh; and

WHEREAS, this Council has reviewed the proposed agreement with Hudson Valley Pet Hotel. and has determined that entering into the same would be in the best interests of the City of Newburgh, its citizens and the animals alike;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to enter into an agreement, in substantially the same form annexed hereto with such other terms and conditions as may be required by the Corporation Counsel, with Hudson Valley Pet Hotel to provide boarding services for the dogs in the custody of the City of Newburgh.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2014, by and between the CITY OF NEWBURGH, a municipal corporation chartered under the authority of the State of New York, hereinafter referred to as the "CITY," with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550; and HUDSON VALLEY PET HOTEL, a firm with principal offices at 309 S. Plank Road, Newburgh, New York 12550 hereinafter referred to as "VENDOR."

ARTICLE 1. SCOPE OF WORK

VENDOR agrees to perform the SERVICES and/or supply the goods identified in Schedule A, (the "SERVICES") which is attached to, and is part of this Agreement. VENDOR agrees to perform the SERVICES and/or supply the goods in accordance with the terms and conditions of this Agreement. It is specifically agreed that the CITY will not compensate VENDOR for any SERVICES and/or goods provided outside those specifically identified in Schedule A, without prior authorization, evidenced only by a written Change Order or Addendum to this Agreement executed by the City Manager of the CITY after consultation with the City Department Head responsible for the oversight of this Agreement (hereinafter "Department Head").

Any and all reports, documents, charts, graphs, maps, designs, images, photographs, computer programs and software, artwork, creative works, compositions, and the rights to employ, publish, disseminate, amend or otherwise use same, and/or any other intellectual property to be provided by VENDOR to CITY under the terms of this Agreement shall become the property of the CITY, unless otherwise provided for by the parties.

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning as of January 15, 2014, and ending December 31, 2014. This contract may be renewed by the City for each of five (5) successive one-year terms.

ARTICLE 3. COMPENSATION

For satisfactory performance of the SERVICES and/or receipt of conforming goods or, as such SERVICES or goods may be modified by mutual written agreement, the CITY agrees to compensate VENDOR in accordance with the fees and expenses as stated in Schedule A, which is attached to and is part of this Agreement. VENDOR SHALL submit to the CITY a monthly itemized invoice for SERVICES rendered during the prior month, or as otherwise set forth in Schedule A, and prepared in such form and supported by such documents as the CITY may reasonably require. The CITY will pay the proper amounts due VENDOR within sixty (60) days after receipt of a CITY Claimant's Certification form, and if the Claimant's Certification form is objectionable, will notify VENDOR, in writing, of the CITY'S reasons for objecting to all or any portion of the invoice submitted by VENDOR.

ARTICLE 4. EXECUTORY CLAUSE

The CITY shall have no liability under this Agreement to VENDOR or to anyone else beyond funds appropriated and available for this Agreement.

ARTICLE 5. PROCUREMENT OF AGREEMENT

VENDOR represents and warrants that no person or selling agency has been employed or retained by VENDOR to solicit or secure this Agreement upon an agreement or upon an understanding for a commission, percentage, a brokerage fee, contingent fee or

any other compensation. VENDOR further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. VENDOR makes such representations and warranties to induce the CITY to enter into this Agreement and the CITY relies upon such representations and warranties in the execution hereof.

ARTICLE 6. CONFLICT OF INTEREST

VENDOR represents and warrants that neither it nor any of its directors, officers, members, partners or employees, have any interest nor shall they acquire any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the SERVICES herein provided. VENDOR further represents and warrants that in the performance of this Agreement, no person having such interest or possible interest shall be employed by it and that no elected official or other officer or employee of the CITY, nor any person whose salary is payable, in whole or in part, by the CITY, or any corporation, partnership or association in which such official, officer or employee is directly or indirectly interested shall have any such interest, direct or indirect, in this Agreement or in the proceeds thereof, unless such person submits a letter disclosing such an interest, or the appearance or potential of same, to the City Manager and a copy to the Corporation Counsel of the CITY in advance of the negotiation and execution of this Agreement.

ARTICLE 7. FAIR PRACTICES

VENDOR and each person signing on behalf of the VENDOR represents, warrants and certifies that the prices in this Agreement have been arrived at independently by VENDOR without collusion, consultation, communication, or agreement with any other bidder, proposer or with any competitor as to any matter relating to such prices which has the effect of, or has as its purpose, restricting competition; and that no attempt has been made or will be made by VENDOR to

induce any other person, partnership, corporation or entity to submit or not to submit a proposal or quote for the purpose of restricting competition.

ARTICLE 8. INDEPENDENT CONTRACTOR

In performing the SERVICES and/or supplying goods and incurring expenses under this Agreement, VENDOR shall operate as, and have the status of, an independent contractor and shall not act as agent, or be an agent, of the CITY. As an independent contractor, VENDOR shall be solely responsible for determining the means and methods of performing the SERVICES and/or supplying of the goods and shall have complete charge and responsibility for VENDOR'S personnel engaged in the performance of the same.

In accordance with such status as independent contractor, VENDOR covenants and agrees that neither it nor its employees or agents will hold themselves out as, nor claim to be officers or employees of the CITY, or of any department, agency or unit thereof by reason hereof, and that they will not, by reason hereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the CITY including, but not limited to, Worker's Compensation coverage, health coverage, Unemployment Insurance Benefits, Social Security coverage or employee retirement membership or credit.

ARTICLE 9. NON-EXCLUSIVITY, ASSIGNMENT AND SUBCONTRACTING

The parties recognize and agree that VENDOR is providing specialized professional services to assist CITY in performing its obligations under the Agricultural & Markets Law and other state and local laws, rules and regulations; and that VENDOR will provide its services in accordance with same. The parties agree that this agreement is non-exclusive, and that CITY shall be entitled to secure the same services and/or goods from another

vendor as provided by **VENDOR** hereunder at any time including during the term of this Agreement.

VENDOR shall not assign any of its rights, interest or obligations under this Agreement, or subcontract any of the **SERVICES** to be performed by it under this Agreement, without the prior express written consent of the City Manager of the **CITY**. Any such subcontract, assignment, transfer, conveyance, or other disposition without such prior consent shall be void and any **SERVICES** provided thereunder will not be compensated. Any subcontract or assignment properly consented to by the **CITY** shall be subject to all of the terms and conditions of this Agreement.

The provisions of this clause shall not hinder, prevent, or affect any assignment by **VENDOR** for the benefit of its creditors made pursuant to the laws of the State of New York.

This agreement may be assigned by the **CITY** to any corporation, agency, municipality or instrumentality having authority to accept such assignment.

ARTICLE 10. BOOKS AND RECORDS

VENDOR agrees to maintain separate and accurate books, records, documents and other evidence and accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement.

ARTICLE 11. RETENTION OF RECORDS

VENDOR agrees to retain all books, records and other documents relevant to this Agreement for six (6) years after the final payment or termination of this Agreement, whichever later occurs. **CITY**, or any State and/or Federal auditors, and any other persons duly authorized by the **CITY**, shall have full access and the right to examine any of said materials during said period.

ARTICLE 12. AUDIT BY THE CITY AND OTHERS

All Claimant Certification forms or invoices presented for payment to be made hereunder, and the books, records and accounts upon which said Claimant's Certification forms or invoices are based are subject to audit by the **CITY**. **VENDOR** shall submit any and all documentation and justification in support of expenditures or fees under this Agreement as may be required by the **CITY** so that it may evaluate the reasonableness of the charges, and **VENDOR** shall make its records available to the **CITY** upon request. All books, Claimant's Certification forms, records, reports, cancelled checks and any and all similar material may be subject to periodic inspection, review and audit by the **CITY**, the State of New York, the federal government, and/or other persons duly authorized by the **CITY**. Such audits may include examination and review of the source and application of all funds whether from the **CITY**, State, the federal government, private sources or otherwise. **VENDOR** shall not be entitled to any interim or final payment under this Agreement if any audit requirements and/or requests have not been satisfactorily met.

ARTICLE 13. INSURANCE

For all of the **SERVICES** set forth herein and as hereinafter amended, **VENDOR** shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation insurance, liability insurance covering personal injury and property damage of a minimum of \$2,000,000 per occurrence, naming the City as additional insured, and other insurance with stated minimum coverages, as required by law: Notwithstanding anything to the contrary in this Agreement, **VENDOR** irrevocably waives all claims against the **CITY** for all losses, damages, claims or expenses resulting from risks commercially insurable under commercially-available policies of insurance.

If the insurance is terminated for any reason, VENDOR agrees to purchase an unlimited extended reporting provision to report claims arising from the SERVICES performed or goods provided for the CITY; and

Immediate notice shall be given to the CITY through the City Manager of circumstances or incidents that might give rise to future claims with respect to the SERVICES performed under this Agreement.

ARTICLE 14. INDEMNIFICATION

VENDOR agrees to defend, indemnify and hold harmless the CITY, including its officials, employees and agents, against all claims, losses, damages, liabilities, costs or expenses (including, without limitation, reasonable attorney fees and costs of litigation and/or settlement), whether incurred as a result of a claim by a third party or any other person or entity, arising out of the SERVICES performed and/or goods supplied pursuant to this Agreement which the CITY or its officials, employees or agents, may suffer by reason of any negligence, fault, act or omission of VENDOR, its employees, representatives, subcontractors, assignees, or agents.

ARTICLE 15. PROTECTION OF CITY PROPERTY

VENDOR assumes the risk of and shall be responsible for, any loss or damage to CITY property, including property and equipment leased by the CITY, used in the performance of this Agreement and caused, either directly or indirectly by the acts, conduct, omissions or lack of good faith of VENDOR, its officers, directors, members, partners, employees, representatives or assignees, or any person, firm, company, agent or others engaged by VENDOR as an expert consultant specialist or subcontractor hereunder.

In the event that any such CITY property is lost or damaged, except for normal wear and tear, then the CITY shall have the right to withhold further payments hereunder for the

purposes of set-off in sufficient sums to cover such loss or damage.

ARTICLE 16. CONFIDENTIAL INFORMATION

In the course of providing the SERVICES and/or goods hereunder, VENDOR may acquire knowledge or come into possession of confidential, sensitive or proprietary information belonging to CITY. VENDOR agrees that it will keep and maintain such information securely and confidentially, and not disclose such information to any third parties, including the media, nor use such information in any manner publically or privately, without receiving the prior approval, in writing, of the CITY authorizing such use. VENDORS obligations under this clause to maintain the confidentiality of such information and to refrain from using such information in any manner without the prior written approval of the CITY shall survive the termination or expiration of this Agreement.

ARTICLE 17. TERMINATION

Either party may, by written notice to the other effective ninety (90) days after mailing, terminate this Agreement in whole or in part at any time (i) for convenience, (ii) upon the failure of a party to comply with any of the terms or conditions of this agreement, or (iii) upon the VENDOR becoming insolvent or bankrupt.

Upon termination of this Agreement, the VENDOR shall comply with any and all CITY closeout procedures, including, but not limited to:

A. Accounting for and refunding to the CITY within thirty (30) days, any unexpended funds which have been paid to VENDOR pursuant to this Agreement; and

B. Furnishing within thirty (30) days an inventory to the CITY of all equipment, appurtenances and property purchased by VENDOR through or provided under this Agreement, and carrying out any CITY directive concerning the disposition thereof.

ARTICLE 18. GENERAL RELEASE

The acceptance by VENDOR or its assignees of the final payment under this Agreement, whether by Claimant's Certification form, judgment of any court of competent jurisdiction, or administrative means shall constitute and operate as a general release to the CITY from any and all claims of VENDOR arising out of the performance of this Agreement.

ARTICLE 19. NO ARBITRATION

Any and all disputes involving this Agreement, including the breach or alleged breach thereof, may not be submitted to arbitration unless specifically agreed thereto in writing by the City Manager of the CITY, but must instead only be heard in the Supreme Court of the State of New York, with venue in Orange County.

ARTICLE 20. GOVERNING LAW

This Agreement shall be governed by the laws of the State of New York. VENDOR shall render all SERVICES under this Agreement in accordance with applicable provisions of all federal, state and local laws, rules and regulations as are in effect at the time such SERVICES are rendered.

ARTICLE 21. ENTIRE AGREEMENT

The rights and obligations of the parties and their respective agents, successors and assignees shall be subject to and governed by this Agreement, including Schedules A and B, which supersede any other understandings or writings between or among the parties.

ARTICLE 22. MODIFICATION

No changes, amendments or modifications of any of the terms and/or conditions of this Agreement shall be valid unless reduced to writing and signed by both parties. Changes in the scope of SERVICES in this Agreement shall not be binding, and no payment shall be due in connection therewith, unless prior to the performance of any such SERVICES, the City Manager of the CITY, after consultation with the Department Head and Corporation Counsel, executes an Addendum or Change Order to this Agreement, which Addendum or Change Order shall specifically set forth the scope of such extra or additional SERVICES and the amount of compensation and the extension of the time for performance, if any, for any such SERVICES. Unless otherwise specifically provided for therein, the provisions of this Agreement shall apply with full force and effect to the terms and conditions contained in such Addendum or Change Order.

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IN WITNESS THEREOF, the parties hereto have executed this Agreement as of the date set forth above.

THE CITY OF NEWBURGH

COUNTRYRUN, INC.

BY: _____
JAMES A. SLAUGHTER,
INTERIM CITY MANAGER

BY: _____
Title:

DATE: _____

DATE: _____

APPROVED:

JOHN J. ABER,
CITY COMPTROLLER

MICHELLE KELSON,
CORPORATION COUNSEL

SCHEDULE A

SCOPE OF SERVICES / FEES & EXPENSES

VENDOR shall receive from and take custody of dogs brought to VENDOR by CITY's animal control officer, or by any police officer or other authorized officer, official, agent or employee of CITY. VENDOR shall provide such shelter, food, treatment and care, and shall otherwise serve the needs of all such dogs as shall be required by the Agriculture and Markets Law of the State of New York, and by the laws, rules, regulations and policies of the City of Newburgh and its officials and officers in connection therewith.

For each dog brought to or caused to be placed in the physical custody of VENDOR by CITY, VENDOR shall be paid a one-time fee as follows:

- A. For each such dog the fee will be Two Hundred Seventy-Five (\$275.00) Dollars for ten (10) days.
- B. For each such dog which shall not have been spayed or neutered and are at H.V. Pet Hotel for seven (7) days must be picked up by City to have procedure done at the City's expense and then can be returned to the Hudson Valley Pet Hotel.

RESOLUTION NO.: 6 - 2014

OF

JANUARY 13, 2014

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH
WATSON SERVICES, INC. FOR THE USE OF SIX (6) PARKING SPACES IN THE CITY
OF NEWBURGH'S MUNICIPAL PARKING LOT
AT GRAND STREET AND BROADWAY**

WHEREAS, by Resolution No.: 176-2010 of August 9, 2010, the City Council of the City of Newburgh authorized the execution of a License Agreement with Watson Services, Inc. for the use of six (6) parking spaces in the City of Newburgh's municipal parking lot at Grand Street and Broadway; and

WHEREAS, said license agreement terminated on August 31, 2013; and

WHEREAS, Watson Services has continued to make payments for the use of the same six (6) parking spaces since the license agreement ended and has expressed an interest to enter into a new three (3) year license agreement to utilize the same six (6) parking spaces at a cost of Fifty (\$50.00) Dollars per space per month; and

WHEREAS, a copy of such License Agreement is annexed hereto and made a part of this resolution; and

WHEREAS, this Council has examined such License Agreement and determined it to be in the best interests of the City of Newburgh to enter into such;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager is hereby authorized to execute and enter into the attached License Agreement with Watson Services, Inc. on behalf of the City of Newburgh.

LICENSE AGREEMENT, made this _____ day of _____, 2014 by and between,

THE CITY OF NEWBURGH, a municipal corporation organized and existing under the Laws of the State of New York and having its principal office for the transaction of business at City Hall, 83 Broadway, Newburgh, New York, hereinafter called the "City", and

WATSON SERVICES, INC. a New Jersey business corporation authorized to do business in New York having its principal office at 47 Grand Street, Newburgh, New York, hereinafter called "Watson Services".

WHEREAS, the City is the owner of a municipal parking lot located at the intersection of Grand Street and Broadway in the City of Newburgh; and

WHEREAS, Watson Services wishes to secure off street parking for the support of its offices in the City,

NOW, THEREFORE, it is hereby agreed between the parties as follows:

1. The City shall reserve for the use of Watson Services six (6) parking spaces in the City parking lot at the intersection of Grand Street and Broadway. The location of said spaces in said lot shall be determined by the City.
2. Watson Services shall pay to the City the sum of \$300.00 per month for said spaces, or \$50.00 per space. Said sum to be paid in advance, prior to the first day of the month on which this agreement commences and thereafter prior to the first day of each month.
3. The City shall provide to Watson Services six parking permits for said spaces.
4. Watson Services shall have the option of increasing the number of spaces reserved for their use to twelve spaces at the rate of fifty (\$50.00) dollars per space on thirty (30) days notice to the City, subject to the availability of space in the parking lot which shall be determined in the City's sole discretion.
5. The City assumes no liability for actions of Watson Services. Watson Services agrees to indemnify and hold harmless the City against any and all liability, loss, damage, cost or expense, including but not limited to legal fees which the City may incur, sustain or be required to pay as a result of any and all wrongful or negligent acts of Watson Services or its employees.
6. Any notice which is required to be given under this agreement or which may be given shall be sent to the parties at the following addresses:

If to the City:

James A. Slaughter
Interim City Manager
83 Broadway, City Hall
Newburgh, NY 12550

If to Watson Services:

Frederick A. Watson
Watson Services, Inc.
47 Grand Street
Newburgh, NY 12550

7. This agreement shall commence on January 1, 2014 and shall terminate on December 31, 2016 unless sooner terminated by either party.
8. Either party may terminate this agreement by giving thirty (30) days written notice to the other at the address specified in Section 6 of this agreement.

WHEREFORE, the parties have caused this agreement to be executed on the date and year first above written.

WATSON SERVICES, INC.

THE CITY OF NEWBURGH

By: _____

FREDERICK A. WATSON
President

By: _____

JAMES A. SLAUGHTER
Interim City Manager

Approved as to form:

MICHELLE KELSON
Corporation Counsel

JOHN J. ABER
City Comptroller

RESOLUTION NO.: 57 - 2014

OF

JANUARY 13, 2014

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO ACCEPT A DONATION OF A VEHICLE FROM THE
TOWN OF RAMAPO POLICE DEPARTMENT TO BE USED
BY THE CITY OF NEWBURGH POLICE DEPARTMENT K-9 UNIT**

WHEREAS, the Town of Ramapo Police Department has offered to donate a 2003 Chevrolet Tahoe to the City of Newburgh; and

WHEREAS, this contribution will be used by the City of Newburgh Police Department K-9 Unit; and

WHEREAS, this Council deems it to be in the best interests of the City of Newburgh to accept such donation;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager of the City of Newburgh be and he is hereby authorized to accept a 2003 Chevrolet Tahoe from the Town of Ramapo, New York, upon assurance by the Corporation Counsel that title and documentation are in order, with the appreciation and thanks of the City of Newburgh.

RESOLUTION NO.: 8 -2014

OF

JANUARY 13, 2014

A RESOLUTION AUTHORIZING THE EXECUTION OF AN AGREEMENT WITH WILLIAM A. SMITH & SON, INC. FOR THE USE OF NINE (9) PARKING SPACES IN THE CITY OF NEWBURGH'S VAN NESS STREET MUNICIPAL PARKING LOT

WHEREAS, William A. Smith & Son, Inc. previously has applied and paid for nine (9) parking permits for the use of nine (9) parking spaces in the municipal parking lot located at Van Ness Street and owned by the City of Newburgh; and

WHEREAS, William A. Smith & Son, Inc. has expressed an interest to enter into a License Agreement for a term of three (3) years for the exclusive use of the same nine (9) parking spaces at a cost of Fifty (\$50.00) Dollars per space per month; and

WHEREAS, a copy of such License Agreement is annexed hereto and made a part of this resolution; and

WHEREAS, this Council has examined such License Agreement and determined it to be in the best interests of the City of Newburgh to enter into such;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the Interim City Manager is hereby authorized to execute and enter into the attached License Agreement with William A. Smith & Son, Inc. on behalf of the City of Newburgh.

LICENSE AGREEMENT, made this _____ day of _____, 2014 by and between,

THE CITY OF NEWBURGH, a municipal corporation organized and existing under the Laws of the State of New York and having its principal office for the transaction of business at City Hall, 83 Broadway, Newburgh, New York, hereinafter called the "City", and

WILLIAM A. SMITH & SON, Inc., a corporation authorized to do business in New York having an office located at 380 Broadway, Newburgh, New York, hereinafter called "William A. Smith".

WHEREAS, the City is the owner of a municipal parking lot located at Van Ness Street in the City of Newburgh; and

WHEREAS, William A. Smith wishes to secure off street parking for the support of its offices in the City,

NOW, THEREFORE, it is hereby agreed between the parties as follows:

1. The City shall reserve for the use of William A. Smith, nine (9) parking spaces in the City parking lot at Van Ness Street. The location of said spaces in said lot shall be determined by the City.
2. William A. Smith shall pay to the City the sum of \$450.00 per month for said spaces, or \$50.00 per space. Said sum to be paid in advance, prior to the first day of the month on which this agreement commences and thereafter prior to the first day of each month.
3. The City shall provide to William A. Smith nine parking permits for said spaces.
4. The City assumes no liability for actions of William A. Smith. William A. Smith agrees to indemnify and hold harmless the City against any and all liability, loss, damage, cost or expense, including but not limited to legal fees which the City may incur, sustain or be required to pay as a result of any and all wrongful or negligent acts of William A. Smith or its employees.
5. Any notice which is required to be given under this agreement or which may be given shall be sent to the parties at the following addresses:

If to the City:

If to William A Smith & Son, Inc.:

James A. Slaughter
Interim City Manager
83 Broadway, City Hall
Newburgh, NY 12550

6. This agreement shall commence on February 1, 2014 and shall terminate on December 31, 2016 unless sooner terminated by either party.
7. Either party may terminate this agreement by giving thirty (30) days written notice to the other at the address specified in Section 5 of this agreement.

WHEREFORE, the parties have caused this agreement to be executed on the date and year first above written.

WILLIAM A. SMITH & SON, INC.

THE CITY OF NEWBURGH

By: _____

By: _____

JAMES A. SLAUGHTER
Interim City Manager

Approved as to form:

MICHELLE KELSON
Corporation Counsel

JOHN J. ABER
City Comptroller

RESOLUTION NO.: 9 -2014

OF

JANUARY 13, 2014

**A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO EXECUTE AN ACCESS AGREEMENT WITH MEMORARE HOLDING CORP.
IN CONNECTION WITH THE INSTALLATION OF A NEW WATER SERVICE AS
A RESULT OF A WATER MAIN BREAK ON DECEMBER 31, 2013**

WHEREAS, on December 31, 2013, the City of Newburgh experienced a break in a 6" diameter water main located beneath the CSX railroad track crossing at the intersection with Washington Street, adjacent to Water Street; and

WHEREAS, the break along this water main necessitated the isolation and shut-down of this 6" water main, resulting in a loss of water service to the properties owned by Memorare Realty Holding Corp. located at 29 South Water Street and 2 Front Street, Newburgh, New York, more accurately described as Section 31, Block 5, Lot 13.2 and Section 31, Block 5, Lot 14, respectively, on the official Tax Map of the City of Newburgh (the "Memorare Properties"); and

WHEREAS, the occupied buildings located on these properties are currently served potable water via an existing service line with a tap on the 6" water main that is now out of service due to a break which occurred on the morning of December 31, 2013; and

WHEREAS, the City of Newburgh and Memorare Holding Corp. have agreed to undertake certain actions necessary to provide a new water service from an active water main located along Front Street, which actions are memorialized in an Access Agreement, attached hereto; and

WHEREAS, entering into said Access Agreement is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to execute the Access Agreement with Memorare Holding Corp., in substantially the same form as attached hereto and made part hereof with other provisions as Corporation Counsel may require, for access to the Memorare Properties to allow for the installation of a new water service.

ACCESS AGREEMENT

BETWEEN

CITY OF NEWBURGH

AND

MEMORARE REALTY HOLDING CORP.

This Access Agreement (“Agreement”), effective as of January ___, 2014, is hereby made by and among:

- A. The City of Newburgh, Orange County, New York, its agencies, departments, officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as the “City”; and
- B. Memorare Realty Holding Corp., its officers, employees, agents, representatives, successors and assigns, collectively referred to in this Agreement as “Property Owner”;

WHEREAS, on the morning of December 31, 2013, the City of Newburgh experienced a break in a 6” diameter water main located beneath the CSX railroad track crossing at the intersection with Washington Street, adjacent to Water Street; and

WHEREAS, the break along this water main necessitated the isolation and shut-down of this 6” water main, resulting in a loss of water service to the properties owned by Memorare Realty Holding Corp. located along Front Street; and

WHEREAS, Memorare Realty Holding Corp. is the sole owner of the properties located at 29 South Water Street and 2 Front Street, Newburgh, New York, more accurately described as Section 31, Block 5, Lot 13.2 and Section 31, Block 5, Lot 14, respectively, on the official Tax Map of the City of Newburgh (the “Memorare Properties”); and

WHEREAS, the occupied buildings located on these properties are currently served potable water via an existing service line with a tap on the 6” water main that is now out of service due to a break which occurred on the morning of December 31, 2013;

WHEREAS, the Parties have agreed to undertake certain actions necessary to provide a new water service from an active water main located along Front Street in accordance with Figure-1, dated January 3, 2014, attached (the “Work”); and

WHEREAS, the Parties believe it is in the best interest of each of them and to effectuate their individual and collective goals, Memorare Realty Holding Corp. is willing and does hereby

provide access to the Memorare Properties under the conditions described in this Agreement to enable the City to perform the installation of this new water service;

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

1. **Agreement Is a Contract:** The Parties to this Agreement intend this Agreement to be a contract and to be enforceable as such. The contract shall be governed and interpreted according to the laws of the State of New York.
2. **Good-Faith Cooperation:** The Parties shall coordinate and cooperate in good faith with each other to achieve the objectives of this Agreement. Included within the duty of good faith is the duty of both Property Owner and the City to periodically and timely inform each other of the activities they are undertaking to implement their responsibilities hereunder.
3. **Dispute Resolution:** The Parties shall make all reasonable efforts to resolve informally any questions or disputes that arise in the implementation or interpretation of this Agreement. The Parties agree that, except as otherwise provided herein, prior to seeking judicial enforcement of this Agreement, they will engage in a mutually acceptable form of alternative dispute resolution (“ADR”), to be conducted in New York, for a period of not less than one month and not to exceed three months. Notwithstanding the foregoing, however, if (a) the Parties are unable to agree upon a mutually acceptable form of ADR within a period of one month from the date that the Party seeking enforcement of this Agreement so notifies the other Parties, (b) the ADR process fails to achieve a mutually acceptable resolution within the time period set forth in the foregoing sentence, or (c) the Party seeking enforcement of this Agreement deems the circumstance to be an emergency such that it believes it necessary

to seek immediate injunctive or other equitable relief, then, in any such event, the Parties retain their rights to seek judicial enforcement of this Agreement.

4. **Responsibilities of Property Owner:** In exchange for the promises and covenants contained herein, the Property Owner shall:

- (a) Provide timely access to the Memore Properties to the City, its employees and contractors for the performance of the Work and the City's obligations in accordance with this Agreement. Notwithstanding anything to the contrary, the provision of access shall include, but not be limited to: allowing the clearing a privilege of entering upon the Memore Properties and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary for the purposes of engaging in certain activities in connection with the Work.
- (b) Cooperate with the City and its employees and contractors with respect to the performance of their responsibilities pursuant to Paragraph 5 below; provided, however, that the City, its employees and contractors shall provide the Property Owner with such prior notice as is reasonable under the circumstances in the event of any material modification of the Work and the City's obligations.
- (c) Be responsible for the costs it incurs in implementing its responsibilities under this Paragraph 4, including but not limited to the relocation of other underground utilities, if necessary and the disposal of soil and/or other items removed during excavation in connection with the Work.

5. **Responsibilities of the City:** In exchange for the promises and covenants contained herein, the City shall:
- (a) Except as otherwise provided in this Agreement, complete the Work and all other of the City's obligations as set forth in this paragraph 5.
 - (b) The City shall require that any of their contractors or subcontractors who (i) perform any portion of the Work at the Memorare Properties or (ii) enter onto the Memorare Realty Properties shall provide the insurance coverage on the terms set forth in the contracts between the City and its contractors and subcontractors.
 - (c) Cooperate with the Property Owner in the performance of his obligations pursuant to Paragraph 4.
 - (d) Install a new flow meter and backflow preventer within the existing concrete vault located adjacent to the existing 8" water main along Front Street, and install approximately 500ft of 2 inch diameter "CTS" plastic water service piping from the newly installed backflow preventer, to a point of connection located at the southeast corner of the existing "Marina" building as shown on Figure-1, attached. All excavated surfaces shall be replaced in-kind. Asphalt restoration within the parking/drive aisle areas shall occur in the spring of 2014 when hot-mix asphalt becomes available. Temporary surface restoration of excavations within these paved areas shall consist of compacted crushed stone (Item#4).
 - (e) Be responsible for the costs it incurs in implementing its responsibilities under this Paragraph 5.

6. **Authority, Access and Term of Agreement:** The Property Owner represents that it is the sole owner of the Memorare Properties, and has the authority to grant the access rights and other rights as set forth in this Agreement, and further represents that, to the best of its knowledge and information, there are no unrecorded liens, encumbrances or rights of others that could affect the City's access to the Memorare Properties as provided for herein. This Agreement shall terminate at the successful completion of the Work.

7. **Reservation of Claims:** Notwithstanding anything to the contrary contained in this Agreement or otherwise, in return for the performance of the commitments made and the consideration given in this Agreement, the City and the Property Owner each agrees to forgo any and all Claims against each of the other Party, so long as such Party is not in breach of this Agreement, as determined pursuant to Paragraph 3 (Dispute Resolution) or any judicial enforcement of any such alleged breach, and has not cured any such alleged breach within thirty (30) days of receipt of a written determination rendered pursuant to Paragraph 3 or any final judicial determination.

8. **No Admissions:** The entry into this Agreement shall not be deemed or construed as an admission by any Party of liability, fault or wrongdoing under any other statute, contract or common law. In the implementation of this Agreement, the Parties shall not be required to make any admission of liability to federal or state governmental entities for any purpose whatsoever. Nothing in this Agreement shall waive, alter or change any Party's rights, responsibilities or obligations under any federal, state or common law.

9. **Addressees for Purposes of Notice:**

For the City: City of Newburgh
 83 Broadway
 Newburgh, NY 12550
 Attn: James A. Slaughter

With copies to: City of Newburgh
 83 Broadway
 Newburgh, NY 12550
 Attn: Michelle Kelson, Esq.

For Memorare Realty Holding Corp.: Ralph Risio
 PO Box 3231
 Newburgh, NY 12550

10. **Enforceability:** Should any provision of this Agreement be deemed unenforceable for any reason, the remainder of this Agreement shall continue in effect so long as the purpose of this Agreement is not nullified by the absence of such provision.

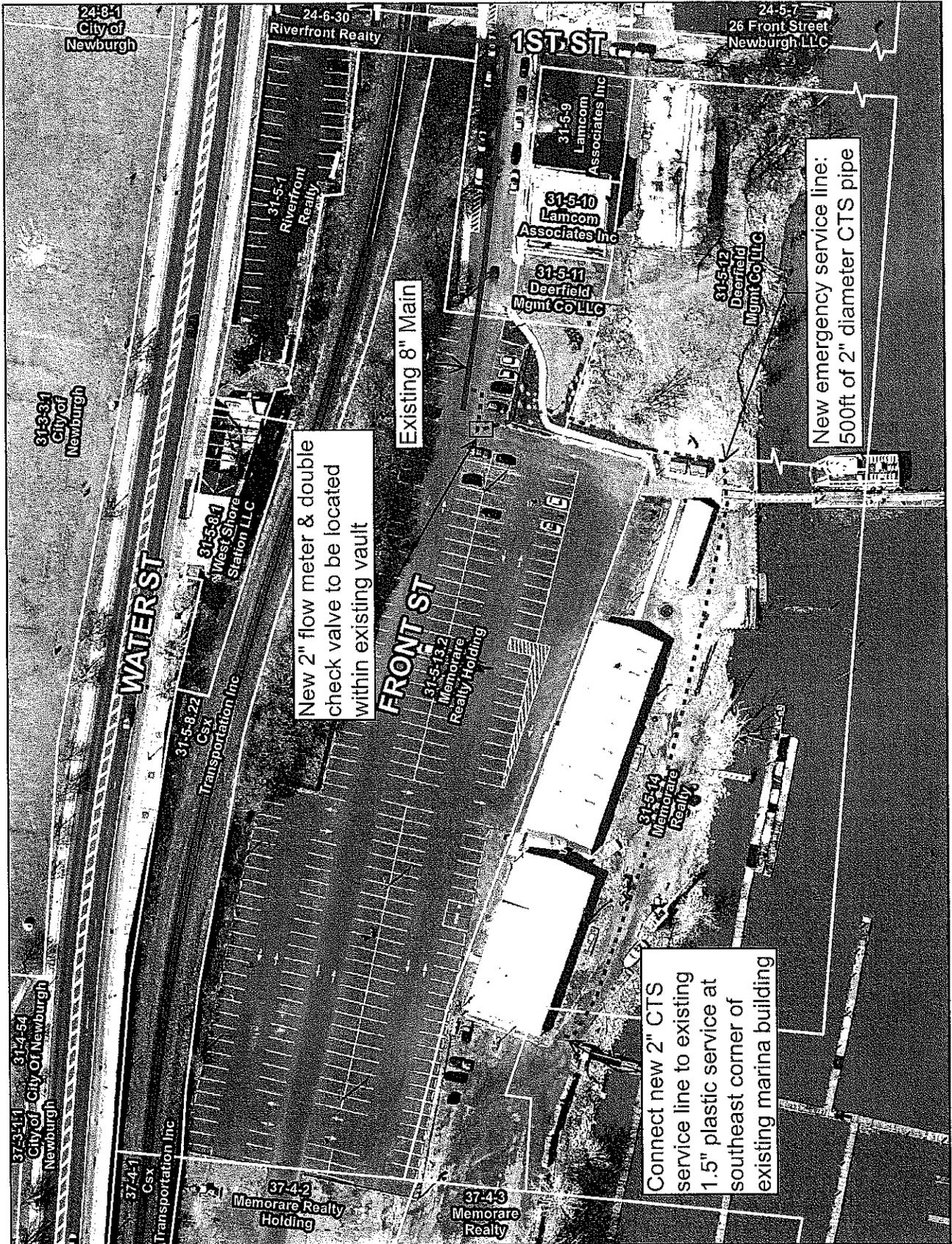
11. **Entire Agreement:** This Agreement reflects the entire agreement among the Parties as to the same subject matter, and, except as otherwise provided in this Agreement, all prior agreements, understandings and commitments are merged with and into and superceded by this Agreement. This Agreement can be amended restated or supplemented only by a written agreement signed by all Parties. This Agreement may be executed in counterparts, all of which together shall be the original Agreement.

12. **Non-Assignment:** The rights, liabilities and obligations under this Agreement shall not be transferred or assigned by any Party unless each Party shall give prior written consent for such transfer or assignment. Consent shall not be unreasonably delayed or withheld.

13. **Headings:** The headings are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

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Figure-1



RESOLUTION NO.: 10 - 2014

OF

JANUARY 13, 2014

A RESOLUTION TO AUTHORIZE THE RE-PURCHASE OF
REAL PROPERTY KNOWN AS 175 RENWICK STREET
(SECTION 45, BLOCK 10, LOT 9)
AT PRIVATE SALE TO OSIAH GAYLE

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax Law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, Osiah Gayle, the former owner, has made a request to re-purchase 175 Renwick Street, being more accurately described as Section 45, Block 10, Lot 9 on the official tax map of the City of Newburgh, has requested to re-purchase the property at private sale; and

WHEREAS, the City Council of the City of Newburgh has determined that it would be in the best interests of the City of Newburgh to allow the former owners to re-purchase this property, without the need for litigation and subject to any liens, encumbrances or mortgages of record that existed against this property at the time the City of Newburgh took title in the tax foreclosure proceeding, provided that all taxes, interest and penalties owed are paid expeditiously;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of 175 Renwick Street, Section 45, Block 10, Lot 9, to Osiah Gayle be and hereby is confirmed and that the Interim City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of all past due tax liens, together with all interest and penalties accruing thereon, and all currently due taxes and charges are paid, in full, for a total amount of \$7,074.30; no later than January 31, 2014; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

RESOLUTION NO.: 11 - 2014

OF

JANUARY 13, 2014

A RESOLUTION TO AUTHORIZE THE RE-PURCHASE OF
REAL PROPERTY KNOWN AS 70 GROVE STREET
(SECTION 23, BLOCK 2, LOT 13)
AT PRIVATE SALE TO JOSE SANCHEZ AND LUZ MARIA SANCHEZ

WHEREAS, the City of Newburgh has acquired title to several parcels of real property by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax Law of the State of New York; and

WHEREAS, pursuant to Section 1166 of the Real Property Tax Law the City may sell properties acquired by foreclosure *In Rem* at private sale; and

WHEREAS, the former owners, through their mortgage holder HSBC, have made a request to re-purchase 70 Grove Street, being more accurately described as Section 23, Block 2, Lot 13 on the official tax map of the City of Newburgh, has requested to re-purchase the property at private sale; and

WHEREAS, the City Council of the City of Newburgh has determined that it would be in the best interests of the City of Newburgh to allow the former owners to re-purchase this property, without the need for litigation and subject to any liens, encumbrances or mortgages of record that existed against this property at the time the City of Newburgh took title in the tax foreclosure proceeding, provided that all taxes, interest and penalties owed are paid expeditiously;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the sale of 70 Grove Street, Section 23, Block 2, Lot 13, to Jose Sanchez and Luz Maria Sanchez be and hereby is confirmed and that the Interim City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of all past due tax liens, together with all interest and penalties accruing thereon, and all currently due taxes and charges are paid, in full, for a total amount of \$1,488.74, no later than January 31, 2014; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcel is not required for public use.

RESOLUTION NO.: 12 - 2014

OF

JANUARY 13, 2014

**A RESOLUTION AMENDING RESOLUTION 256-2013 OF DECEMBER 9, 2013
TO AUTHORIZE THE REPURCHASE OF REAL PROPERTY KNOWN AS
213 NORTH MILLER STREET (SECTION 11, BLOCK 1, LOT 6), 212 DUBOIS STREET
(SECTION 1, BLOCK 1, LOT 34) AND 214 DUBOIS STREET (SECTION 11, BLOCK 1,
LOT 35) AT PRIVATE SALE TO JESSE BLACKMON**

WHEREAS, by Resolution No. 256-2013 of December 9, 2013, the City Council of the City of Newburgh authorized the sale of 213 North Miller Street, more accurately described as Section 11, Block 1, Lot 6 of the official tax map of the City of Newburgh, to Jesse Blackmon upon receipt of the purchase price of \$15,000.00; and that said purchase price must be paid no later than March 10, 2014, and in accordance with certain terms and conditions of sale; and

WHEREAS, the City of Newburgh also acquired title to 212 Dubois Street and 214 Dubois Street, being more accurately described as Section 11, Block 1, Lots 34 and 35, respectively, on the official tax map of the City of Newburgh, by foreclosure *In Rem* pursuant of Article 11 Title 3 of the Real Property Tax law of the State of New York; and

WHEREAS, Jesse Blackmon, the former owner of 213 North Miller Street, 212 Dubois Street and 214 Dubois Street has requested to re-purchase the properties at private sale; and

WHEREAS, the City Council of the City of Newburgh has determined that it would be in the best interests of the City of Newburgh to amend Resolution No. 256-2013 of December 9, 2013 to allow the former owner to re-purchase 213 North Miller Street, 212 Dubois Street and 214 Dubois Street, without the need for litigation and subject to any liens, encumbrances or mortgages of record that existed against 213 North Miller Street at the time the City of Newburgh took title in the tax foreclosure proceeding, for the sum as outlined below and under the terms of sale annexed hereto;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that Resolution 256-2013 of December 9, 2013 is hereby amended to confirm the sale of 213 North Miller Street, 212 Dubois Street and 214 Dubois Street to Jesse Blackmon and the Interim City Manager is authorized and directed to execute and deliver a quitclaim deed to said purchaser upon receipt of the purchase price of \$15,000.00; and that said purchase price must be paid no later than March 10, 2014, and in accordance with said terms and conditions; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York, that the parcels are not required for public use.

Terms and Conditions of Sale

1. City of Newburgh acquired title to the properties known as 213 North Miller Street, 212 Dubois Street and 214 Dubois Street, more accurately described as Section 11, Block 1, Lots 6, 34 and 35, respectively) on the official tax map of the City of Newburgh, (hereinafter referred to as "the parcels") in accordance with Article 11 of the Real Property Tax Law of the State of New York, and all known rights of redemption under said provisions of law have been extinguished by the tax sale proceedings and/or as a result of forfeiture.
2. The parcels, including any buildings thereon, are sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) water and sewer assessments are the responsibility of the purchaser, whether they are received or not; and (d) easements, covenants, conditions and rights-of-way of record existing at the time of the levy of the tax, the non-payment of which resulted in the tax sale in which City of Newburgh acquired title and (e) for purposes of taxation, the purchaser shall be deemed to be the owner prior to the next applicable taxable status date after the closing.
3. The purchaser shall continue to be responsible for all water, sewer and sanitation charges.
4. The purchase price of the properties is \$15,000.00. The purchaser shall pay to the City the purchase price as follows:

A down payment in the amount of \$1,000.00 shall be due on or before March 10, 2014. The down payment shall be payable to the City of Newburgh by **certified check, bank check or money order.**

The City, as seller, agrees to take back and hold and the purchaser agrees to execute and deliver to the seller a Purchase Money Second Mortgage and Note for the balance of the purchase price. The Purchase Money Note and Second Mortgage shall be self-amortizing and be in the sum of \$14,000.00 for a term of five years, payable in equal monthly installments of \$233.33 per month. The Purchase Money Mortgage shall be subordinate to the mortgage held by Hudson Valley Federal Credit Union encumbering the property known as 213 North Miller Street. The Purchase Money Mortgage shall contain a late charge for overdue payment. The Note and Mortgage shall provide, among other things, that it may be prepaid in whole or in part without penalty, that it shall be immediately due and payable upon the sale of the mortgaged premises or in the event that the purchaser enters into a land sale contract or in the event that purchaser files a voluntary petition in bankruptcy or assigns the premises for the benefit of creditors.

The mortgage tax imposed by law and the recording fee for this Purchase Money Mortgage shall be paid by the purchaser. Seller's attorney shall prepare the Purchase Money Note and Mortgage.

All payments due hereunder shall be payable to the City of Newburgh by **bank check, certified check or money order.**

5. Purchaser is advised to personally inspect the premises and to examine title to the premises prior to the date upon which the sale is scheduled to take place. Upon delivery of the quitclaim deed by the City of Newburgh to the purchaser, any and all claims with respect to title to the premises are merged in the deed and do not survive.
6. No personal property is included in the sale of any of the parcels owned by City of Newburgh, unless the former owner or occupant has abandoned same. The disposition of any personal property located on any parcel sold shall be the sole responsibility of the purchaser following the closing of sale.
7. All informational tools, such as slides, tax maps, deeds, photos, property record cards, etc., are for identification purposes only and are neither a guarantee nor a warranty as to location, dimensions, parcel use and/or size, or anything else. **THE CITY MAKES NO WARRANTY EXPRESSED OR IMPLIED IN CONNECTION WITH THIS SALE.**
8. The City makes no representation, express or implied, as to the condition of any property, warranty of title, or as to the suitability of any for any particular use or occupancy. Properties may contain paint or other similar surface coating material containing lead. Purchaser shall be responsible for the correction of such conditions when required by applicable law. Properties also may contain other environmental hazards. Purchasers shall be responsible for ascertaining and investigating such conditions prior to bidding. Purchasers shall be responsible for investigating and ascertaining from the City Building Inspector's records the legal permitted use of any property prior to closing. Purchaser acknowledges receipt of the pamphlet entitled "Protecting Your Family From Lead in Your Home." Purchaser also acknowledges that she has had the opportunity to conduct a risk assessment or inspection of the premises for the presence of lead-based paint, lead-based paint hazards or mold.
9. Notice is hereby given that the parcels lie within the East End Historic District as designated upon the zoning or tax map. These parcels are being sold subject to all provisions of law applicable thereto and it is the sole responsibility of the purchaser to redevelop such parcels so designated in accordance with same.
10. Purchaser has agreed to purchase the property known as 213 North Miller Street subject to the five (5) year owner occupancy restriction and shall, within 18 months of the delivery of the deed, establish his domicile and principal residence at said premises and maintain his domicile and principal residence at said premises for a period of at least five (5) years thereafter,

provided that within said five (5) year period, the purchaser may convey said premises to another who shall also maintain his domicile and principal residence at said premises for said period. This shall be set forth as a restrictive covenant in the deed, subject upon its breach, to a right of re-entry in favor of the City of Newburgh. This shall be in addition to all other provisions, covenants and conditions set forth in the Terms of Sale.

11. All recording costs, mortgage tax and transfer taxes shall be paid by the purchaser. Such recording costs shall be payable to the "Orange County Clerk" by **bank check, certified check or money order.**
12. The down payment and all closing costs/fees must be paid by guaranteed funds to the City of Newburgh Comptroller's Office on or before March 10, 2014. **The City is not required to send notice of acceptance to a purchaser. If the purchaser fails to pay the balance of the purchase price as herein provided, the down payment shall be forfeited.** The City Manager may, in his sole discretion and for good cause shown, grant one extension of time to close title of up to, but not to exceed, sixty (60) additional days. No request shall be entertained unless in writing, stating the reasons therefore, and unless accompanied by a fee of \$250.00 per parcel for which a request is submitted. The fee shall be in addition to all other fees and deposits and shall not be credited against the purchase price and shall not be returnable. In addition, should the purchaser fail to close within the time set forth above, the entire deposit shall be forfeited to the City as liquidated damages without further notice to the purchaser. Any additional request made thereafter shall be made in writing and placed before the City Council for their consideration.
13. The purchaser warrants that he is in possession of the parcels and shall remain in possession until such time as the payments set forth herein have been paid. Purchaser shall be responsible for all property maintenance during his continued possession of the parcels.
14. If the purchaser fails to close title by the close of business on March 10, 2014, then, the City may, but is not obligated to offer the parcel to another purchaser.
15. In the event that a sale is cancelled by court order, judgment, the Comptroller or the Newburgh City Council, the purchaser shall be entitled only to a refund of the purchase money paid with interest, but not to any payment of rent. Purchaser agrees that he shall not be entitled to special or consequential damages, attorney's fees, reimbursement for any expenses incurred as a result of ownership, improvements of property, or for taxes paid during period of ownership, and this agreement by the purchaser is a material condition of the sale. However, if purchaser fails to close title in accordance with the terms and conditions set forth herein, he shall be entitled to reimbursement for expenses incurred to bring said parcel into compliance with applicable building and maintenance codes made during his possession as tenant, and as required as a condition of sale, upon presentation of proof that such expenses were incurred in a form that is satisfactory to the City.

16. The sale shall be final, absolute and without recourse once title has closed and the deed has been recorded. In no event, shall City of Newburgh be or become liable for any defects in title for any cause whatsoever, and no claim, demand or suit of any nature shall exist in favor of the purchaser, its heirs, success or assigns, against City of Newburgh arising from this sale.
17. Conveyance shall be by quitclaim deed only, containing a description of the properties as they appeared on the tax roll for the year upon which the City acquired title or as corrected up to date of deed. The deed will be recorded by the City upon payment in full of the purchase price and closing fees/costs. Purchaser and tenant(s) remain in possession of the properties until the deed is recorded conveying title to the purchaser. **Title vests upon recording of deed.**
18. Upon closing, the City shall deliver a quitclaim deed conveying all of its right, title and interest in the subject properties, which deed shall be drawn by the City Corporation Counsel. The City shall not convey its interest in any street, water, sewer or drainage easement, or any other interest the City may have in the properties. The City shall only convey that interest obtained by the City pursuant to the judgment rendered in an *in rem* tax foreclosure action filed in the Orange County Clerk's Office.
19. The description of the properties shall be from the City of Newburgh Tax Map reference or a survey description certified to the City of Newburgh and provided to the City Corporation Counsel by the purchaser at least thirty (30) days in advance of closing title and approved by the City's Engineer.
20. By acknowledging and executing these Terms & Conditions, the purchaser certifies that he is the former owner(s) of the properties against whom City of Newburgh foreclosed and has no intent to defraud City of Newburgh of the unpaid taxes, assessment, penalties and charges which have been levied against the properties. The purchaser agrees that neither he nor his assigns shall convey the properties until after the date of the deed conveying title to the purchaser. If such conveyance is in violation of these terms and conditions, the purchaser understands that he may be found to have committed fraud, and/or intent to defraud, and will be liable for damages to the City of Newburgh.

JESSE BLACKMON

Date: _____