



City of Newburgh Council Work Session

6:00 pm

April 4, 2013

AGENDA

1. Review of Tentative Agenda for Monday night:
 - a. Approval of the minutes of the City Council meeting of March 25, 2013
 - b. Approval of the minutes of the Work Session of March 21, 2013
 - c. Matters of Litigation

2. Presentations:
 - a. Audit update – O’Conner Davies and Munns CPA, Dominick Consolo and Margaret Modugno
 - b. Workforce Development Institute update
 - c. Quassaick Creek Watershed Management Plan – Kelly Dobbins, Project Manager

3. Finance:
 - a. 2009 BAN status
 - b. (Res. 69) 2013 Budget modification in order to provide dental and vision insurance coverage for the City Council members
 - c. (Res. 70) 2013 Budget modification in order to purchase decibel readers necessary for the enforcement of the noise ordinance

4. Economic and Community Development/Real Estate:
 - a. (Res. 71) Release of Restrictive Covenants and Right of ReEntry from a deed issued to Habitat for Humanity of Greater Newburgh, Inc. to 45 Chambers Street.
 - b. (Res. 72) Release of Restrictive Covenants and Right of ReEntry from a deed issued to Habitat for Humanity of Greater Newburgh, Inc. to 47 Chambers Street
 - c. (Res. 73) Schedule public hearing for April 21 on the zoning amendment related to special permits
 - d. 34 Carter Street

5. Grants/Contracts:
 - a. (Res. 74) Agreement with Economy Cleaners for Police Department uniform dry cleaning
 - b. (Res. 75) A resolution authorizing a license agreement with the House of Refuge for the Farmers Market to operate on the Mid Broadway site

c. Route 9W bridge construction – request of Testa Construction for a license agreement

6. Discussion:

a. International Festival:

- Contracts with vendors
- Location of festival

b. (Res. 76) Board of Assessment Review reappointment of Kathy Parisi

7. Executive Session:

a. _____



CITY OF NEWBURGH

CITY CLERK'S OFFICE
83 BROADWAY
NEWBURGH, NEW YORK 12550
PHONE (845)569-7311
FAX (845)569-7314

LORENE VITEK
CITY CLERK

KATRINA COTTEN
LISETTE ACOSTA-RAMIREZ
DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lorene Vitek, City Clerk

RE: Notice of Claim:
Roseann DeGeorge vs. City of Newburgh

DATE: March 26, 2013

Please find attached Notice of Claim regarding the above, which was received via FedEx in our office on this date.

Attachment

Cc City Manager ✓
Mayor & Council



In the Matter of the Claim of

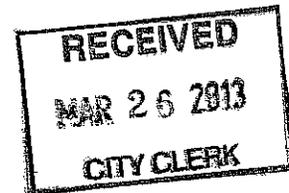
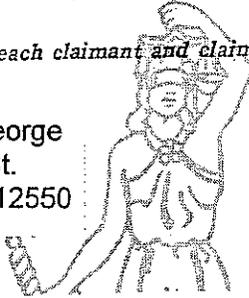
Roseann DeGeorge
34 Poplar St.
Newburgh, NY 12550

TO: City of Newburgh, City of Newburgh Water Dept.

PLEASE TAKE NOTICE that the undersigned claimant(s) hereby make(s) claim and demand against you as follows:

1. *The name and post-office address of each claimant and claimant's attorney is:*

Roseann DeGeorge
34 Poplar St.
Newburgh, NY 12550



2. *The nature of the claim:*

Claimant is seeking reimbursement of payment to Instant Plumbing Repair Services, Inc. for services rendered to correct City of Newburgh Water Dept. Violation dated 02/26/2013, since it was determined that the violation belong to the 36 Poplar St. Dwelling.

3. *The time when, the place where and the manner in which the claim arose:*

SEE ATTACHED

4. *The items of damage or injuries claimed are (do not state dollar amounts)*

Reimbursement for services rendered by Instant Plumbing Repair Service, Inc. to correct erroneous City of Newburgh Water Dept. violation.

#3. The time when, the place where and the manner in which the claim arose:

03/20/2013 Instant Plumbing Repair Service Inc., excavated at Claimant property's located at 34 Poplar St, Newburgh, New York to correct City of Newburgh Water Dept. violation dated 02/26/2013. As a result, it was determined that the leaking pipe was an old pipe and it was capped off. The work was inspected by a City of Newburgh Water Dept. employee before the trench was filled and closed.

03/20/2013 Evening Dwellers of 36 Poplar St. informed Claimant that they had no Water service.

3/21/2013 The trench was re-opened and it was determined that the leaking pipe was the Service line into the 36 Poplar St dwelling and not the Claimant's property.

SEE ATTACHMENTS

- 1) Copy of City of Newburgh Water Dept. Violation dated 02/26/2013
- 2) Copy of Instant Plumbing Repair Service Invoice # 032893
- 3) Cancelled Bank Check # 1087



CITY OF NEWBURGH

WATER DEPARTMENT
NEWBURGH, NEW YORK 12550
(845)565-3356

JEFFREY WYNANS
SUPERINTENDENT OF WATER

NOTICE OF VIOLATION

February 26, 2013

Ms. Roseann DeGeorge
34 Poplar St
Newburgh, New York 12550

Re: Account #043860

Dear Ms. DeGeorge:

PLEASE TAKE NOTICE

The Water Department has determined that the water is leaking from the above mentioned premises, and that you are indicated as the owner of said premises on City records. You are in Violation of Section 293-19 of the Code of Ordinances of the City of Newburgh and service to the premises shall be terminated on Tuesday, March 13, 2013, fifteen days from the date of this notice. If this condition is not corrected immediately, the City will be forced to act immediately to correct this condition.

Therefore, you are hereby directed, pursuant to my authority as Water Superintendent, under section 293-3 of the Code of Ordinances, to immediately take all actions necessary to correct such condition.

You have a right to request a hearing from the Water Superintendent on the discontinuance of service by applying to the Superintendent in writing within five (5) days of this notice. The hearing, if requested, shall be held within five (5) days, and the Superintendent's determination shall be final. At such hearing, the Water Superintendent may affirm, modify or rescind this order. If you fail to appear at said hearing, or to request an adjournment in writing setting forth a good cause, therefore, you will be deemed to have waived your right to a hearing and this order shall become final.

If you fail to comply with this order, the City shall, pursuant to Chapter 226 of the Code of Ordinances, cause such action to be taken by City employees or contractors as may be necessary to correct this condition, including the termination of the water service. The City will charge to you the cost of any action taken by it pursuant to this order, and such amount may be levied against the property as part of the general City tax or collected from you in a civil action or both.

THE CITY OF NEWBURGH

A handwritten signature in cursive script that reads "Reynaldo Santiago" followed by a circled "A" in the right margin.

By:

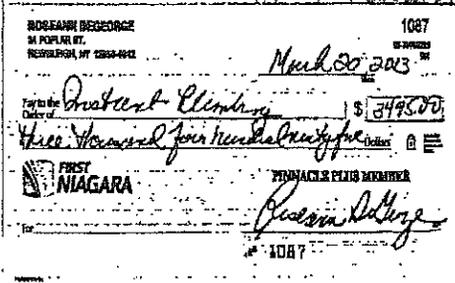
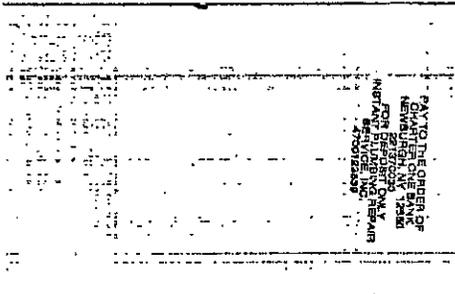
Reynaldo Santiago
Acting Water Superintendent

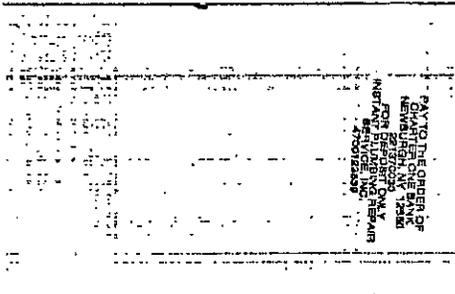
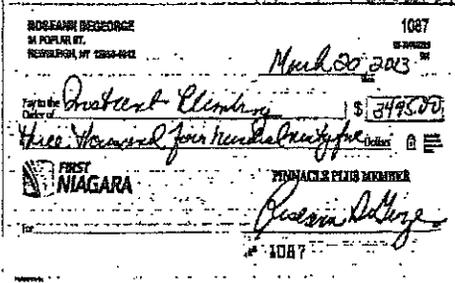
RS/dm

cc: Richard F. Herbek, City Manager
Michelle Kelson, Corporation Counsel
George Garrison, Superintendent DPW
Steve Hunter, Code Supervisor
Ed Howard, Plumbing Inspector

View Transaction Printable View

Transaction information	
Description:	CHECK NUMBER 1087
From Account:	1087 - Pinnacle Plus Checking
Amount:	-3,495.00
Status:	Posted
Payee:	
Customer Reference Number:	1087
FI Reference Number:	20130321000001
Transaction:	Check 1087
Date/Time Cleared:	03/21/2013 00:00
Date/Time Initiated:	03/21/2013 00:00

Front and Back of Check		
Views:	Front	Back
Front and Back		
		
		





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LORENE VITEK
CITY CLERK

KATRINA COTTEN
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DEPUTY CLERKS

MEMORANDUM

TO: Michelle Kelson, Corporation Counsel

FROM: Lorene Vitek, City Clerk

RE: Notice of Claim:
Alan David Gardner and Darlene Marie Gardner
vs. City of Newburgh

DATE: March 27, 2013

Please find attached Notice of Claim regarding the above, which was hand delivered to our office on this date.

Attachment

Cc City Manager ✓
Mayor & Council

NOTICE OF CLAIM

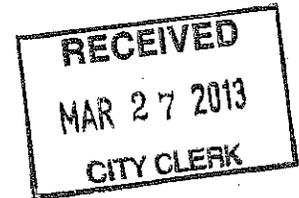
of

ALAN DAVID GARDNER and DARLENE MARIE GARDNER,

Claimants,

-against-

THE CITY OF NEWBURGH



-
1. Claimants reside at:
94 Brown Road
Wappingers Falls, New York 12590

Claimants' counsel is:

Elizabeth M. Hecht, Esq.
Mead Hecht Conklin & Gallagher, LLP
Trial Counsel to Peter K. Overzat, Esq.
925 Westchester Avenue - Suite 302
White Plains, New York 10604
Telephone: 914-899-3100
Facsimile: 914:899-3101

2. The nature of the claim is negligence.
3. Upon information and belief, the claim arose at approximately 9:30 a.m. on December 29, 2012 on the public sidewalk/walkway adjacent to the City of Newburgh Code Compliance Building, 123 Grand Street, Newburgh, New York.

At that time and place, Claimant, ALAN DAVID GARDNER, was caused to fall upon an accumulation of ice and water upon the surface of the public sidewalk/walkway. Upon falling, he fell to the pavement and struck his head and body violently. (Annexed are two

photos. The photos are not intended to depict the conditions as they existed at the time of the incident. Photo "A" shows the general vicinity of the incident; photo "B" shows the specific portion of the sidewalk which is to the right of the stanchion closest to the ramp leading to the building as one walks from the bottom of the photo.)

Upon information and belief, the wrongful, careless and negligent acts of the CITY OF NEWBURGH, its departments, officers, agents, servants, employees and/or contractors, consist of, among other things: permitting snow, ice and water to accumulate upon the surface of the aforementioned sidewalk/walkway; in failing to timely and adequately sand and/or salt and/or apply calcium chloride to the surface of the sidewalk/walkway; in failing to close and/or cordon off the sidewalk/walkway; in failing to take appropriate and adequate measures to warn users of the aforesaid area of the sidewalk/walkway, including Claimant, ALAN DAVID GARDNER, of the hazardous conditions present thereon. It will be further claimed that THE CITY OF NEWBURGH, its departments, officers, agents, servants, employees and/or contractors created the hazardous conditions about which Claimants complain by negligently designing and/or paving, and/or repairing and/or resurfacing and/or inspecting and/or maintaining the aforesaid sidewalk/walkway and by failing to provide adequate drainage for runoff, snow and water in the aforesaid area; created the hazardous runoff and icing condition by permitting improper grading and pitch to persist along with insufficient drainage; and permitting the hazardous conditions to exist, persist and reoccur despite sufficient prior written, actual and/or constructive notice of the dangers presented thereby. It will be claimed that the CITY OF NEWBURGH was negligent in failing to repair, correct or remedy the sidewalk/walkway hazards, and allowed same, after due notice of such conditions, to remain in an unsafe and improper condition for pedestrian travel. As a result of the aforesaid negligence and carelessness, acts of omission and commission there was an accumulation of water and ice causing and creating a hazardous condition which rendered the sidewalk/walkway slippery, dangerous, treacherous and impassable and susceptible to the known, reoccurring hazards and dangers of freeze-thaw cycles. Further, it

will be claimed that the CITY OF NEWBURGH retained incompetent third-parties who negligently designed and constructed the aforesaid sidewalk/walkway and/or failed adequately to address, remedy, correct or rectify the design, maintenance, drainage, icing and freezing problem despite due notice thereof and/or thereby created the dangerous conditions.

4. Upon information and belief, as a consequence of his fall, Claimant ALAN DAVID GARDNER suffered, *inter alia*: contusion of the skull, coup contrecoup injury, loss of consciousness, severe concussive injury, traumatic brain injury, post-concussion syndrome, severe headache, amnesia, attention deficits, impairment of concentration, impairment of executive functioning, memory impairment, aphasia, impairment of his ability to focus, visual impairment, blurred vision, sleep disruption and disturbance, irritability, fatigue, loss of stamina, mood disturbance, lumbar injury, lumbar derangement, lumbar spasm. All of the foregoing injuries are persisting and believed to have permanency; all involve injuries and adverse ramifications to the surrounding tissues, blood vessels, nerves, tendons, ligaments and musculature.

Upon information and belief, as a consequence of the fall of Claimant, ALAN DAVID GARDNER, Claimant, DARLENE MARIE GARDNER has suffered and will continue to suffer the loss of the society and consortium of her lawful, wedded spouse, ALAN DAVID GARDNER all to her damage and detriment.

As a consequence of the injuries suffered by Claimant, ALAN DAVID GARDNER, he has been extremely limited in his ability to work in his chosen occupation. It is estimated that, to date, he has lost approximately \$25,000 in lost earnings and those losses continue and will continue into the future.

Moreover, he has been and will be required to make co-payments to his medical providers for care, treatment and assessment of his accident-related injuries. Details will be provided when available.

Dated: Fishkill, NY
March 25, 2013


ALAN DAVID GARDNER

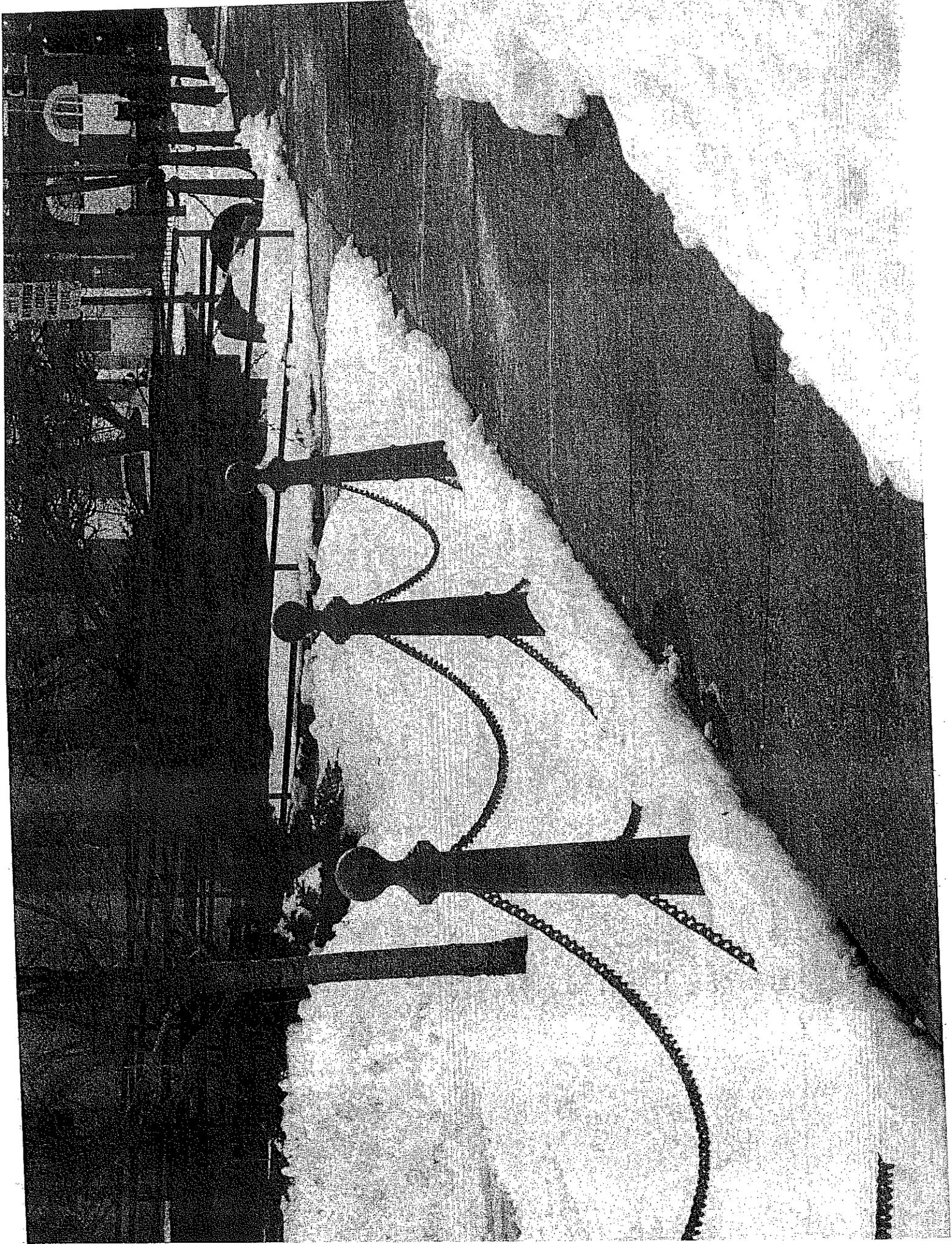
Before me this date did appear ALAN DAVID GARDNER who did swear in my presence that the contents of the within Notice of Claim are true to the best of his knowledge and belief and that those matter alleged upon information and belief are believed by him to be true under penalties of perjury.

Sworn to before me this 27th day of
March, 2013

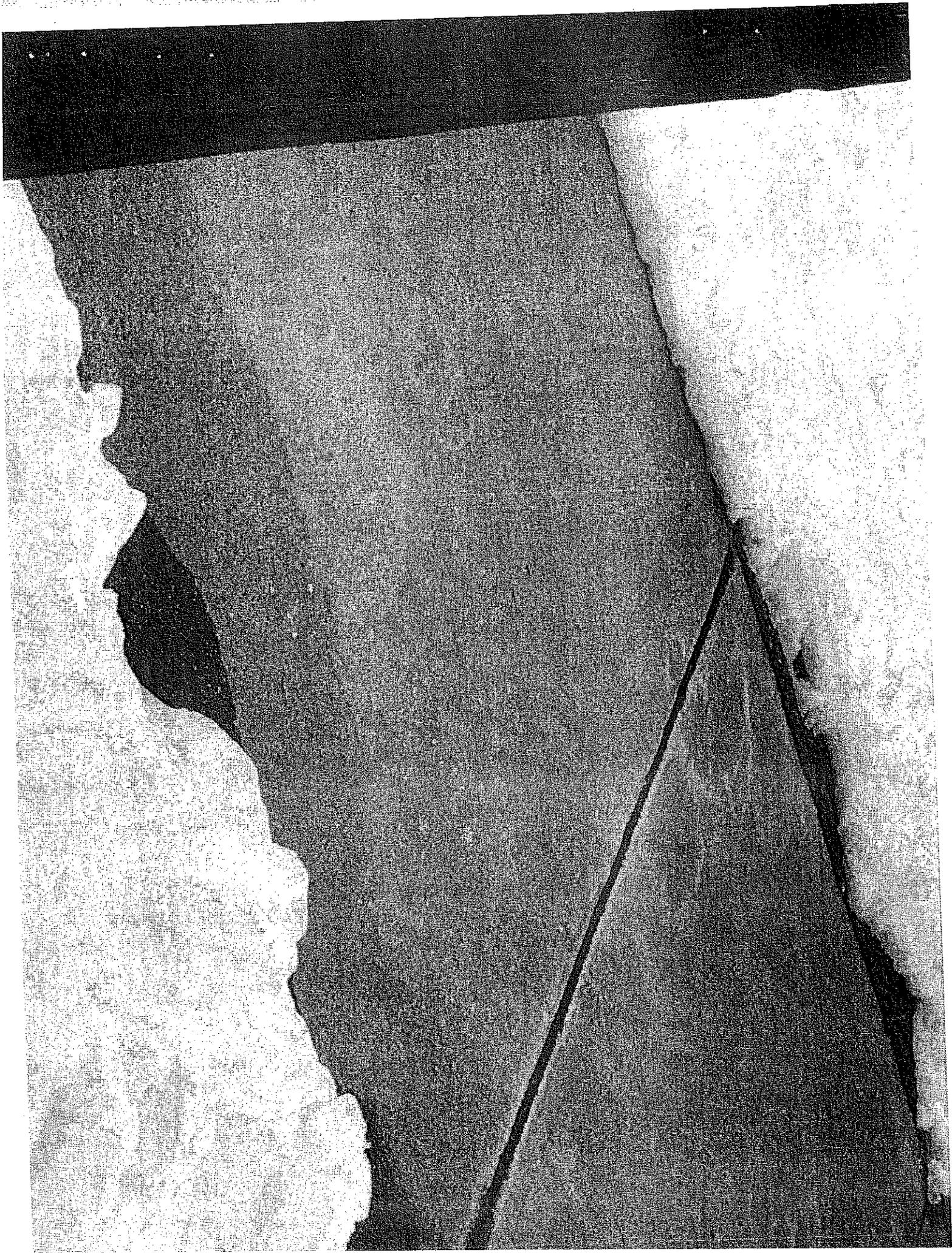

Notary Public

ELIZABETH M. HECHT
A Notary Public, State of New York
No. 4803897
Qualified in Westchester County
Commission Expires 7-15-15

A



B



RESOLUTION NO.: 109 - 2013

OF

APRIL 8, 2013

RESOLUTION AMENDING RESOLUTION NO: 223-2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$2,400.00 FROM CONTINGENCY TO
CITY COUNCIL AND MAYOR EMPLOYEE BENEFIT
IN CONNECTION WITH DENTAL AND VISION PLANS
WHICH WOULD COVER JULY 1, 2013 THROUGH DECEMBER 31, 2013

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1900 Special Items	\$2,400.00	
.1990 Contingency - Emergency		
A.1010 City Council		\$1,800.00
.0880 Employee Benefit		
A.1210 Mayor		
.0880 Employee Benefit		\$ 600.00

RESOLUTION NO.: 70 - 2013

OF

APRIL 8, 2013

RESOLUTION AMENDING RESOLUTION NO: 223-2012,
THE 2013 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$1,200.00 FROM CONTINGENCY TO
FIRE DEPARTMENT OTHER EQUIPMENT IN CONNECTION
WITH THE PURCHASE OF DECIBEL METERS

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 223-2012, the 2013 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1900 Special Items	\$1,200.00	
.1990 Contingency		
A.3412 Fire Department		\$1,200.00
.0205 Other Equipment		

RESOLUTION NO.: 71-2013

OF

APRIL 8, 2013

A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO
HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC.
TO THE PREMISES KNOWN AS 45 CHAMBERS STREET
(SECTION 30, BLOCK 4, LOT 12)

WHEREAS, on June 7, 2012, the City of Newburgh conveyed property located at 45 Chambers Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 30, Block 4, Lot 12, to Habitat for Humanity of Greater Newburgh, Inc.; and

WHEREAS, in preparation for the sale of 45 Chambers Street to the homeowner Habitat for Humanity has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh and its further development to grant such request;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4, 5, 6 and 7 of the aforementioned deed.

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 45 Chambers Street, Section 30, Block 4, Lot 12 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, 5, 6 and 7 in a deed dated June 7, 2012, from THE CITY OF NEWBURGH to HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC., recorded in the Orange County Clerk's Office on June 15, 2012 in Liber 13358 of Deeds at Page 1005 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed

Dated: _____, 2013

THE CITY OF NEWBURGH

By: _____

RICHARD F. HERBEK
City Manager

STATE OF NEW YORK)

)ss.:

COUNTY OF ORANGE)

On the ____ day of _____ in the year 2013, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: 72 -2013

OF

APRIL 8, 2013

A RESOLUTION AUTHORIZING THE EXECUTION
OF A RELEASE OF RESTRICTIVE COVENANTS AND RIGHT OF RE-ENTRY
FROM A DEED ISSUED TO
HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC.
TO THE PREMISES KNOWN AS 47 CHAMBERS STREET
(SECTION 30, BLOCK 4, LOT 11)

WHEREAS, on June 7, 2012, the City of Newburgh conveyed property located at 47 Chambers Street, being more accurately described on the official Tax Map of the City of Newburgh as Section 30, Block 4, Lot 11, to Habitat for Humanity of Greater Newburgh, Inc.; and

WHEREAS, in preparation for the sale of 47 Chambers Street to the homeowner Habitat for Humanity has requested a release of the restrictive covenants contained in said deed; and

WHEREAS, this Council believes it is in the best interest of the City of Newburgh and its further development to grant such request;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the release, annexed hereto and made a part of this resolution, of restrictive covenants numbered 1, 2, 3, 4, 5, 6 and 7 of the aforementioned deed.

RELEASE OF COVENANTS AND
RIGHT OF RE-ENTRY

KNOWN ALL PERSONS BY THESE PRESENTS, that the City of Newburgh, a municipal corporation organized and existing under the Laws of the State of New York, and having its principal office at City Hall, 83 Broadway, Newburgh, New York 12550, in consideration of TEN (\$10.00) DOLLARS lawful money of the United States and other good and valuable consideration, receipt of which is hereby acknowledged, does hereby release and forever quitclaim the premises described as 47 Chambers Street, Section 30, Block 4, Lot 11 on the Official Tax Map of the City of Newburgh, from those restrictive covenants numbered 1, 2, 3, 4, 5, 6 and 7 in a deed dated June 7, 2012, from THE CITY OF NEWBURGH to HABITAT FOR HUMANITY OF GREATER NEWBURGH, INC., recorded in the Orange County Clerk's Office on June 15, 2012 in Liber 13358 of Deeds at Page 1011 and does further release said premises from the right of re-entry reserved in favor of the City of Newburgh as set forth in said deed

Dated: _____, 2013

THE CITY OF NEWBURGH

By: _____

RICHARD F. HERBEK
City Manager

STATE OF NEW YORK)

)ss.:

COUNTY OF ORANGE)

On the ____ day of _____ in the year 2013, before me, the undersigned, a Commissioner of Deeds in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted; executed the instrument.

RESOLUTION NO.: 73 - 2013

OF

APRIL 8, 2013

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH
ASSUMING LEAD AGENCY STATUS UNDER STATE ENVIRONMENTAL
QUALITY REVIEW ACT (SEQRA) CONCERNING AN AMENDMENT OF
ARTICLE VII, ENTITLED "SPECIAL USE PERMITS" OF THE ZONING ORDINANCE OF
THE CITY OF NEWBURGH, DECLARING THE PROJECT TO BE AN UNLISTED
ACTION, CONSIDERING AN ENVIRONMENTAL ASSESSMENT FORM(EAF),
REFERRING SAME TO THE ORANGE COUNTY PLANNING DEPARTMENT AS
REQUIRED BY SECTION 239 OF THE GENERAL MUNICIPAL LAWS AND
SCHEDULING A PUBLIC HEARING**

WHEREAS, by Resolution No. 194-2012 of October 22, 2012, the City Council of the City of Newburgh, New York authorized the City Manager to execute the attached Development and Land Disposition Agreement with Mill Street Partners, LLC (the "Development Agreement") for the redevelopment of the Mid-Broadway site; and

WHEREAS, the Development Agreement obligates the City to adopt modifications to the Zoning Code to permit the proposed development; and

WHEREAS, consistent with the City's Future Land Use Plan and Map, adopted by Resolution No. 172-2011 of September 12, 2011, the City is proposing to adopt an amendment to Article VII, entitled "Special Use Permits" of Chapter 300 of the Code of Ordinances, to add Section 300-38 entitled Large-Scale Mixed-Use Development Special Permit, which will permit the proposed development project at the Mid-Broadway site and allow for other mixed-use development to proceed in the future; and

WHEREAS, in compliance with SEQRA, the City Council of the City of Newburgh wishes to assume Lead Agency status, declare the action to be an Unlisted action, proposes to accept as complete an Environmental Assessment Form ("EAF"), refer the proposed ordinance to the Orange County Planning Department pursuant to General Municipal Law Section 239, and schedule a public hearing in connection with the proposed legislation.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York as follows:

1. That the City Council of the City of Newburgh hereby declares itself as the Lead Agency for the environmental review of the action pursuant to 6 NYCRR 617.6; and
2. Classifies the action as an Unlisted Action; and
3. Proposes to accept as complete the Environmental Assessment Form ("EAF") attached hereto; Refers the proposed Ordinance to the Orange County Planning Department as required by General Municipal Law Section 239; and
4. Schedules a public hearing to receive comments concerning "An Ordinance to Amend Article VII, entitled "Special Use Permits" of Chapter 300 entitled "Zoning" of the Code of Ordinances of the City of Newburgh to Add Section 300-38 entitled "Large-Scale Mixed-Use Development Special Use Permit"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 22nd day of April, 2013, in the 3rd Floor Council Chambers, City Hall, 83 Broadway, Newburgh, New York.

DEVELOPMENT AGREEMENT

This Development Agreement (the "Agreement") is dated as of Oct. 23, 2012 and entered into by the City of Newburgh (the "City"), a municipal corporation organized and existing under the laws of the State of New York, having its office at 83 Broadway, Newburgh, New York 12550, and Mill Street Partners, LLC, a limited liability company organized and existing under the laws of the State of New York, having an office at 853 Broadway, New York, New York 10003 (the "Developer").

RECITALS:

WHEREAS, in response to a Request for Qualifications (RFQ) solicitation by the City, the Developer was designated as the preferred developer to redevelop certain parcels of land commonly known as the Mid Broadway Redevelopment Opportunity located in the City of Newburgh; and

WHEREAS, the RFQ by the City sought proposals from private developers to create a dense, mixed use commercial and residential development which was sensitive to Newburgh's historic design aesthetic, environmentally sustainable, and which generated pedestrian use along Broadway; and

WHEREAS, such redevelopment is intended to include the acquisition, demolition and new construction of a mixed-use project consisting of housing and commercial components (the "Development") along Broadway, Johnston Street, and Lander Street in the City of Newburgh, New York; and

WHEREAS, the City desires that the Developer be formally designated as the Developer for the Development; and

WHEREAS, the City and the Developer acknowledge that the development of the Mid Broadway Redevelopment Opportunity is a public-private partnership whose success relies and depends upon the close coordination and collaboration between the City and the Developer to achieve the City's and Developer's redevelopment goals and objectives; and

WHEREAS, the parties intend for this Agreement to govern their relationship, and to set forth the respective roles and obligations of the parties with respect to the Development;

NOW, THEREFORE, in consideration of the foregoing recitals and underlying promises, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

ARTICLE I TERMS OF ENGAGEMENT

1.01 Agreement Term. This Agreement shall be effective as of the date hereof and shall expire twenty-four (24) months after its execution if the Developer has not secured the Public Funding sufficient to begin construction of the Development, or on the date on which a valid permanent certificate of occupancy is issued for the Development (or phase thereof, if the project is phased), or upon an earlier termination of this Agreement in accordance with the terms hereof. The term of this Agreement may be extended upon the mutual agreement of the parties hereto. Any provisions of this Agreement that are expressly identified to survive a termination of this Agreement shall survive such termination.

1.02 The Development. The Development shall consist of a mixed-use project consisting of housing and commercial components along Broadway, Johnston Street, and Lander Street in the City of Newburgh, New York. The Development may be constructed in one phase (consisting of approximately 103 residential rental apartment units, together with a ground floor supermarket and/or other retail space and sufficient parking spaces) or may be constructed as a

two-phase project [with the Phase 1 Project consisting of approximately sixty-seven (67) residential rental apartment units, together with a ground floor supermarket and/or other retail space and sufficient parking spaces and the Phase 2 Project consisting of the new construction of approximately thirteen (13) two-family attached residential townhomes, together with sufficient parking spaces]. In either case, total residential development shall not exceed 105 residential units and the Development shall provide, at a minimum, at least one parking space per residential unit.

(b) Notwithstanding anything contained herein to the contrary, the City and the Developer reserve the right to revise the above development program in order to create a financially feasible project which achieves the City's and Developer's redevelopment goals and objectives. The approval of the City under such circumstances shall not be unreasonably withheld or delayed and, if so approved, the parties shall use good faith efforts to negotiate such amendment(s) to this Agreement as may be necessary or appropriate.

1.03 Exhibits. This Agreement contains the following Exhibits, which are attached hereto and incorporated as though fully set forth herein:

Exhibit A: List of City-Owned Parcels To Be Conveyed to Developer

Exhibit B: Development Schedule and Milestones

Exhibit C: Escrow Agreement

1.04 Cooperation. The City and the Developer shall each cooperate with one another in good faith to successfully consummate the Development. Such cooperation shall include reasonable efforts to respond to one another as expeditiously as possible with regard to requests for information or approvals required under this Agreement. With regard to materials or documents requiring the approval of one or more parties, if such materials or documents are not

approved as initially submitted, then the parties shall engage in such communication as is reasonably necessary under the circumstances to resolve any issues so that approval may be given. A spirit of good faith and a mutual desire for the success of the Development, subject to applicable financial constraints and regulatory limitations, shall govern the parties' relationship under this Agreement.

1.05 Communication. In connection with the Development, the following individuals shall serve as the primary points of contact for each party:

For the City: Richard F. Herbek, City Manager

For the Developer: Patrick Normoyle, Manager

In all cases in this Agreement where information, notices and documents, etc. are to be transmitted from, between or among the parties, such transmission shall be made through the contact persons described above or such other persons as the City or the Developer, as applicable may hereafter designate, so as to keep one another informed of all material events, information and communications relating to the Development.

1.06 Developer not an Agent. The Developer is hereby formally designated as the developer for the Development. Notwithstanding anything to the contrary contained in this Agreement, the City shall not have any liability nor duty to any person, firm, corporation, or governmental body for any act or omission or commission, liability, or obligation of the Developer arising from the action or inaction of the Developer under this Agreement.

1.07 Time of Performance. The Developer shall use its good faith efforts to complete the Development and meet all Developer Milestones and Milestone Deadlines (as described in Exhibit B), subject to and conditioned upon (i) acquisition of the development sites by the Developer in accordance with Section 5.04 below; and (ii) receipt of all financing necessary to

complete the Development, including receipt of Public Funds (as hereinafter defined); provided, however, that notwithstanding the foregoing, upon the execution and delivery of this Agreement by all parties the Developer shall promptly commence initial planning, design and local municipal approval activities related to the Development. The City shall diligently perform their obligations contained herein as and when required of this Agreement.

1.08 Quality of Work under this Agreement. The Developer shall perform the duties required to effectuate the Development described herein in a competent and professional manner. The Developer shall furnish the skill and judgment necessary to complete the Development in compliance with the Development Schedule and in an expeditious and efficient manner consistent with the terms and provisions of this Agreement.

ARTICLE II OVERALL DESIGN AND APPROVAL RESPONSIBILITIES

The Developer shall, at its sole cost and expense, have the authority and obligation, subject to and conditioned upon (i) acquisition of the development sites by the Developer in accordance with Section 5.04 below; and (ii) receipt of all financing necessary to complete the Development, including receipt of Public Funds, to:

2.01 Complete the Design of the Project. (a) The Developer will oversee and complete the design of all elements of the Development described in this Agreement, including the plans and specifications for each Project (the "Plans and Specifications").

2.02 Obtain Permits and Other Approvals. The Developer shall diligently and in good faith pursue such actions as may be reasonably necessary or appropriate to obtain all building and construction permits, licenses, easements, and local governmental approvals necessary to obtain, establish, or construct the Development, including necessary utilities, roads, and other infrastructure improvements contemplated by the construction documents for the

Development (the "Construction Documents"). The City will provide reasonable assistance in obtaining these items, if and to the extent requested by the Developer.

2.03 Reimbursable Municipal Expenses. In addition to other costs to be paid as described in this Agreement, and fees legally required to be paid to the City as part of the zoning and building permit process, the Developer shall be liable for and shall reimburse the City for all of the reasonable costs and expenses paid by the City to its consultants' for adopting modifications to the City's Zoning Ordinance to permit the proposed development and reviewing the Project under SEQRA (subject to SEQRA's statutory fee limitation), and for all other reasonable consultant expense incurred by the City in furtherance of the Project (including, but not limited to, defending any lawsuits, environmental consultant costs, and the review and analysis of Developer's financial information) (the "Reimbursable Municipal Expenses"), subject to the periodic review and approval of the consultant expenses in accordance with the Escrow Agreement attached hereto as Schedule C. Subject to Developer's right to dispute bills and invoices presented to it hereunder, the City shall pay Reimbursable Municipal Expenses in accordance with the terms and conditions of the Escrow Agreement, (subject to Developer's obligation to replenish said Escrow as set forth therein). Upon the execution of this Agreement and the Escrow Agreement (attached hereto as Schedule C) by all parties hereto, the Developer shall deposit with the City an advance in the amount of \$10,000.00 Dollars, which funds shall be held in a separate account maintained by the City (the "Escrow Account"), and applied solely to the payment of Reimbursable Municipal Expenses. When the Escrow Account is reduced below \$5,000.00 , the Developer shall deposit an additional sum of money so as to maintain the Account at or near \$ \$10,000.00. In the event of a dispute concerning Reimbursable Municipal Expenses the parties shall promptly confer in a good faith effort to resolve the dispute, provided,

that such dispute shall not be cause for non-performance by any party of any of its obligations hereunder.

2.04 Comply with Laws and Permits. The Developer shall cause the Development to be designed and constructed in compliance with all applicable Federal, state and local laws, codes, ordinances, rules and regulations.

2.05 Complete Construction. The Developer shall complete the construction of each Project in accordance with the Plans and Specifications.

2.06 Oversee Marketing. The Developer shall direct and oversee all marketing efforts for the Development in order to ensure that the residential units are leased and/or sold to qualified applicants and the commercial space is leased and/or sold to commercial tenants pursuant to leases or other agreements negotiated by the Developer.

ARTICLE III PROJECT FINANCING AND CLOSINGS

3.01 Public Funds. The Developer will seek to secure public funding including various grants, subsidies, private equity through various tax credit programs, and conventional financing sufficient to fund the project costs associated with the Development. The funding programs may include but not be limited to the following funding programs: Low Income Housing Tax Credit program (including both the "4%" and "9%" programs), New York State Housing Trust Fund program, New York State HOME program, New York State Affordable Home Ownership Development program, Orange County HOME program, Federal Home Loan Bank of New York Affordable Housing Program, and other relevant funding programs. The

Developer will provide copies of all funding applications submitted for the Development to the City. In addition, the Developer will provide copies of all market studies, environment site assessments, and any geotechnical reports prepared for the Development. If the Developer has not secured the Public Funding sufficient to begin construction of the project within twenty-four (24) months of the execution of this agreement, the Developer may, at its election, extend the term of this agreement for another twelve (12) month period by making a payment of \$50,000 to the City and the approval by a majority vote of the City Council.

3.02 Designation as a Priority Project. To secure the completion of the Development in accordance with this Development Agreement, the City shall designate the Mid Broadway Redevelopment Project as a Priority Project of the City of Newburgh and shall cooperate with the Developer in securing the Public Funds needed to complete the Development. The City shall issue letters of support, resolutions of support, and other evidence of the Development's designation as a Priority Project for the City of Newburgh. Given the importance that the sources of Public Funds place on local financial support, the City shall also prioritize the Mid Broadway project when awarding funding from the City grant programs, including but not limited to funding from the City's Community Development Block Grant (CDBG) program.

3.03 Payment in Lieu of Taxes (PILOT). In order to create a financially viable project, the City shall grant a PILOT to the Development. The term and level of payments for the Development will be determined within one hundred eighty (180) days of execution of the Development Agreement.

3.04 Closing. The City and the Developer will participate in one or more closings for the construction financing of the Development, at which time all of the documents as may be required by the lenders and investors for the construction of the Development (or phase thereof) will be executed (the "Project Documents").

3.05 Deed. The Project shall be developed in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York. The deed will contain provisions stating that the Developer is required to complete construction of the Project in compliance with all State, County and Local standards for occupancy within thirty (30) months of the date of the deed. Within such thirty (30) month time period the Developer must obtain a Certificate of Occupancy for all buildings within the Project. The deed shall require the Developer to schedule an inspection by City officials at or before the end of the thirty (30) month period. If the Developer has not complied with the deed provisions regarding rehabilitation of the property and obtained a Certificate of Occupancy by that time, then the title to the property shall revert to the City of Newburgh. The deed shall also provide that the property shall not be conveyed to any other person before a Certificate of Occupancy is issued.

ARTICLE IV DEVELOPER MILESTONES AND MILESTONE DEADLINES

4.01 Upon a good faith reasonable determination by the City of the achievement of any Completion Milestone described in Exhibit B and at the request of the Developer, the City shall issue a written Certificate of Completion with respect to such Milestone. Such Certificate of Completion shall constitute the City's confirmation that the Milestone has been completed in compliance with this Agreement. The City and the Developer agree to negotiate in good faith

and determine such additional or different Milestones and/or Milestone Deadlines during the planning of the Development as may be necessary to effectively and efficiently complete the Development.

**ARTICLE V
DUTIES AND RESPONSIBILITIES OF THE CITY**

5.01 In General. The City shall promptly review any matter submitted by the Developer for approval hereunder and advise the Developer of approval or of why approval is being reasonably withheld. In connection with any request for approval of the Development, the City shall respond to any request within ten (10) business days.

5.02 Development Support. The City shall provide assistance for the Development with local governmental agencies and other similar applicable parties, and will consider reasonable requirements imposed on the Development by any lenders and equity investors lending to or investing in the Development. The City shall provide assistance reasonably requested by the Developer in obtaining licenses, approvals, permits and other cooperation from local, state, and Federal agencies and local governmental bodies; provided, however, that except as otherwise specifically described herein, the Developer shall have the primary responsibility for obtaining such approvals and cooperation.

5.03 Specific Responsibilities. The City shall:

- A. Act reasonably and take all reasonable actions as are within its authority and as are reasonably necessary to complete the development and construction of each Project;
- B. Investigate the feasibility and advisability of approving requests by the Developer (or where the granting authority is another governmental entity, consider recommending that such entity approve such request of the Developer), including but not limited to the following:

- i. adopting modifications to the City's Zoning Ordinance to permit the proposed Development;
- ii. authorizing (through a license agreement between the City and the Developer) the use of up to twenty-six (26) parking spaces in the Lander Street Parking Lot, to be used solely by the Development, in each instance subject to any applicable requirements of the City Code.

5.04 Acquisition and Conveyance of Development Sites. (a) The City hereby agrees to sell and convey the City owned parcels listed in Exhibit A to the Developer in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law. Insurable title to the development parcels shall be conveyed by the City to the Developer at or prior to closing of the construction financing for the Development (or phase thereof) subject only to such exceptions to title as the Developer (and its financing sources) may approve, which approval will not be unreasonably withheld.

(b) The purchase price for the City owned parcels shall be subject to and conditioned upon (x) an appraisal of the highest and best use prepared by a licensed appraiser in conformance with the Uniform Standards of Professional Appraisal Practice; (y) any additional requirements dictated by each Project's financing sources, including the sources of Public Funds; and (z) the Developer's receipt of all financing necessary, including receipt of Public Funds described in Section 3.01 above, sufficient to complete the Development as herein described.

(c) The closing of the transfer of title for the City owned parcels shall occur at or prior to the closing of the Developer's construction financing for the Development (or phase

thereof). Any and all closings shall be held at the offices of the Developer's construction lender or such lender's counsel's office. At each such closing the City shall execute and deliver to the applicable Owner Entity a bargain and sale deed in recordable form with covenants against grantor's acts. The City shall be responsible for all taxes, assessments and water and sewer rents accrued against the City owned parcels as of the date preceding the closing date for the conveyance of such parcels. The Developer shall be responsible for all taxes, assessment and water and sewer rents accruing against the conveyed parcels on and after the closing date for such parcels. The City, as applicable, shall pay and be responsible for any and all real property transfer and similar taxes.

ARTICLE VI

TERMINATION, DEFAULT AND REMEDIES

6.01 Events of Default. Any of the following shall constitute an "Event of Default" by the Developer under this Agreement, subject to the provisions of Section 6.02, if such event has a material adverse impact upon the Development:

- (a) failure of Developer to complete any Milestone by the applicable Milestone Deadline within sixty (60) days after receiving written notice of such failure by the City, subject to the provisions of Sections 6.02 and 6.04 below;
- (b) failure of the Developer to pay or perform any other material obligation of Developer under this Agreement, and such failure continues and remains uncured for a period of sixty (60) days after receiving written notice thereof by the City; provided, however, that if such failure cannot reasonably be cured within such sixty (60) day period, the Developer shall have a period of sixty (60) additional days to cure such failure, so long as the Developer diligently pursues such cure;

- (c) if any representation of Developer under this Agreement is or becomes untrue or inaccurate in any material adverse respect and is not cured or commenced to be cured within sixty (60) days after receiving written notice thereof by the City;
- (d) if (i) the Developer consents to the appointment of a receiver, trustee or liquidator for the Development or for any substantial part of its property, or (ii) a bankruptcy or similar proceeding is commenced by the Developer under the laws of any jurisdiction, or if any such proceeding is and such proceeding commenced against the Developer under the laws of any jurisdiction is not stayed or dismissed within ninety (90) days after its institution; or
- (e) the unilateral withdrawal by the Developer as the Developer of the Development.

If an Event of Default shall occur and continue beyond the expiration of any applicable notice and cure period, the City may terminate this Agreement with respect to the Development or phase thereof, whichever shall be the subject matter of such Event of Default, upon giving written notice thereof to the Developer, and may exercise all other rights or remedies available to it in law or in equity.

6.02 Force Majeure. If the Developer is delayed in achieving any Developer Milestone due to unforeseeable causes beyond the control of the Developer, then the applicable Developer Milestone shall be extended for a period of time corresponding to the period of delay, with a reasonable adjustment to any other applicable milestones affected by the delay. Such causes include, but shall not be limited to acts of God, war, terrorism or public enemy, acts of any governmental entity or agency in either its sovereign or contractual capacity (including the failure of any governmental entity or agency to timely issue any necessary permits or approvals), fires, floods, epidemics, strikes or labor disputes, freight embargoes, unusually severe weather,

delays of any subcontractor or supplier arising from unforeseeable causes beyond the control of the Developer, or litigation by third parties.

6.03 No Fault Termination. Notwithstanding the foregoing, Developer shall not be in default of this Agreement and this Agreement may be terminated by the Developer upon notice to the City and if, through no fault of the Developer, (a) one or more environmental, geophysical or similar conditions detrimental to the Development is discovered and the cost to be borne by the Developer is extraordinary and renders the Project infeasible, or (b) the Developer, through no fault of its own (including, but not limited to, due to rejection of an application to one or more applicable funding sources for a portion of the Public Funds), cannot obtain the necessary financing to complete the Development (or phase thereof). If this Agreement is so terminated, no party shall have any liability to the others hereunder with respect to the Development (or phase thereof), whichever shall be the subject matter of such termination.

6.04 Default by the City. In the event that the City materially fails to comply with the terms of this Agreement and such failure causes a delay in the development process or in the achievement of one or more Milestones, then the Developer shall be provided with an extension of the appropriate or affected Milestone Deadlines in order to allow additional time to complete the work affected by such default or, at the option of the Developer, the Developer may terminate this Agreement with respect to the Development, but only if the City fails to cure such default and comply with the terms of this Agreement within a period of sixty (60) days after receiving written notice thereof from the Developer. Upon such termination, the Developer may exercise any right or remedy available to it in law or at equity.

ARTICLE VII REPRESENTATIONS AND WARRANTIES

7.01 Representations of the Developer. As of the date of this Agreement, the Developer represents that:

A. *Organization and Powers.* The Developer is a limited liability company, validly existing and in good standing under the laws of the State of New York. The Developer has the power and authority to own its assets and properties, to carry on its activities as now conducted by it, to execute, deliver and perform this Agreement.

B. *Authorization, Binding Agreement.* The execution, delivery and performance by the Developer of this Agreement have been duly authorized by all requisite action.

C. *Litigation.* There is no known action, suit or proceeding pending or, to the best knowledge of the Developer, threatened before any court or government or administrative body or agency which may reasonably be expected to (i) result in a material adverse change in the activities, operations, assets or properties or in the condition, financial or otherwise, of the Developer, or (ii) impair the ability of the Developer to perform its obligations under this Agreement.

7.02 Representations of the City. As of the date of this Agreement, the City represents that:

A. *Power, Binding Agreement.* The City has the power, authority and legal right to enter into and perform this Agreement, the execution, delivery and performance of which have been duly authorized by all requisite action.

B. *No Litigation.* There are no pending or, to the best knowledge of the City, threatened actions or proceedings before any court or administrative agency which would materially adversely affect the ability of the City to perform their obligations under this

Agreement, or any other agreement or instrument entered into by the City pursuant to this Agreement.

ARTICLE VIII INDEMNIFICATION

8.01 Indemnification by the Developer. The Developer shall indemnify, defend and hold the City and its respective officers, elected officials, employees and agents harmless from and against all claims, damages, demands, liabilities, obligations and causes of action of any kind whatsoever brought by third parties and suffered by the City (collectively "Claims"), including, but not limited to costs, expenses and reasonable attorneys' fees expended in settlement or defense of any Claim, if and to the extent caused by the fraud, gross negligence or willful misconduct of the Developer or any of its respective officers, directors, employees or agents.

8.02 Indemnification by the City. The City shall indemnify, defend and hold the Developer and its respective affiliates officers, directors, employees and agents harmless from and against all claims, damages, demands, liabilities, obligations and causes of action of any kind whatsoever brought by third parties and suffered by the Developer (collectively "Claims"), including, but not limited to costs, expenses and reasonable attorneys' fees expended in settlement or defense of any Claim, if and to the extent caused by the fraud, gross negligence or willful misconduct of the City or any of its respective officers, elected officials, employees or agents.

ARTICLE IX MISCELLANEOUS

9.01 Notices. All notices, requests, demands, approvals or other communications given hereunder or in connection with this Agreement shall be in writing and shall be deemed

given when delivered by hand or sent by registered or certified mail, return receipt requested, addressed as follows:

If to City: City of Newburgh
83 Broadway
Newburgh, NY 12550
Attn: Richard F. Herbek

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

If to Developer: Mill Street Partners, LLC
853 Broadway
New York, NY 10003
Attn: Patrick Normoyle

With copies to: Cannon Heyman & Weiss, LLP
54 State Street, 5th Floor
Albany NY 12207
Attn: Steve Heyman

9.02 Further Assurances. Each party shall execute such other and further documents as may be reasonably necessary or proper for the consummation of the transaction contemplated by this Agreement.

9.03 Assignment. This Agreement shall not be assignable by any party, without the prior written consent of the other parties; provided, however, that the Developer may, without such consent but with notice to the City per Section 9.01, assign or sub-contract this Agreement or any of its rights and responsibilities hereunder to an affiliate of the Developer or to an entity controlled by, or under common control with, the Developer, but no such assignment shall relieve the Developer of its obligations hereunder absent the prior written consent of the City.

9.04 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed original, but all of which, together, shall constitute one instrument.

9.05 Interpretation and Governing Law. This Agreement shall not be construed against the party who prepared it but shall be construed as though prepared by all parties. This Agreement shall be construed, interpreted, and governed by the laws of the State of New York.

9.06 Severability. If any portion of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable such portion shall be deemed severed from this Agreement and the remaining parts shall continue in full force as though such invalid or unenforceable provision had not been part of this Agreement.

9.07 Final Agreement. Unless otherwise provided herein, this Agreement constitutes the final understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings and agreements between the parties, whether written or oral.

9.08 Modification of Agreement. This Agreement may be amended, supplemented or changed only by a writing signed or authorized by or on behalf of the party to be bound thereby. This Agreement may not be altered, modified, rescinded, or extended orally.

9.09 Waivers. The failure of any party to insist in any one or more case upon the strict performance of any of the obligations under this Agreement or to exercise any right or remedy herein contained shall not be construed as a waiver or a relinquishment for the future of such obligation, right or remedy. No waiver by any party of any provision of this Agreement shall be deemed to have been made unless set forth in writing and signed by the party to be charged. In addition to the other remedies herein provided, either party may restrain by injunction the violation or threatened violation of either parties obligations under this Agreement and may obtain specific performance by either party of its obligations under this Agreement.

9.10 Successors. The terms, covenants, agreements, provisions, and conditions contained herein shall bind and inure to the benefit of the parties hereto, their successors and assigns.

9.11 Certain Approvals. Unless otherwise stated, all approvals or consents required of either party hereunder shall not be unreasonably withheld, delayed, conditioned or denied.

9.12 References to this Agreement. All references to this Agreement shall include all documents and exhibits incorporated by reference.

9.13 Headings. The headings in this Agreement are inserted for convenience only and shall not be used to define, limit or describe the scope of this Agreement or any of the obligations herein.

9.14 Construction. Whenever in this Agreement a pronoun is used, it shall be construed to represent either the singular or the plural, either the masculine or the feminine, as the case shall demand.

9.15 Authority to Execute. The undersigned represent and warrant that they are duly authorized to execute and deliver this Agreement.

9.16 Resolution of Disputes. It is mutually agreed by and among the parties, that the respective parties hereto shall and they hereby do agree to resolve all claims, controversies, disputes and disagreements (collectively, a "Dispute") by submitting the Dispute to determination by mediation. In the event the parties are not able to resolve a Dispute through mediation, any party may bring an action in any Federal or New York State court of competent jurisdiction located within the City, County and State of New York.

9.17 Non Discrimination. The Developer covenants and agrees that it shall comply with all applicable federal, state, and local laws in effect from time to time prohibiting

discrimination or segregation by reason of age, race, creed, religion, sex, color, national origin, ancestry, sexual orientation or affectional preference, disability, or marital status in the sale, lease or occupancy of the Phase 1 Project or Phase 2 Project, or any part thereof.

ARTICLE X ACCESS TO THE DEVELOPMENT PARCELS

10.01 Access to Development Parcels. From and after the date of this Agreement, the City hereby grants to the Developer and Developer's employees, agents and contractors, upon the conditions hereinafter stated, the license or privilege of entering upon the City-owned parcels listed in Exhibit A and taking thereupon such vehicles, equipment, tools, machinery and other materials as may be necessary for the purposes of inspecting the property which inspections may include, but are not limited to, conducting surveys, physical inspections, tests, engineering and construction evaluation and reports, architectural study and planning, and environmental study, testing, and such other tests and evaluations as are reasonably required for an evaluation of the property and the prosecution of any applications for governmental approvals.

10.02 Compliance with Existing Laws. Developer agrees to do such work and perform such tasks in such manner as will comply fully with the provisions of any laws, ordinances or other lawful authority, obtaining any and all permits required thereby.

10.03 Indemnification and Hold Harmless. Developer hereby agrees to defend, indemnify and hold City harmless against any claims, actions and proceedings brought against City arising out of, in connection with and/or relating to Developer's use of the premises. Developer has posted evidence of and shall maintain public liability insurance naming the City as additional insured in a minimum coverage amount of One Million (\$1,000,000.00) Dollars.

Such insurance shall be maintained until either the City-owned parcels are conveyed to the Developer or this agreement is terminated subject to the terms of this agreement.

10.04 Third Party Contractors and Consultants. Developer may retain certain employees, agents, contractors and consultants to perform the subject work. In the contract by which Developer retains such agents, Developer and such agents shall name the City as additional insured under insurance coverage concerning Developer's performance of the tasks referenced herein.

10.05 Commencement. The license or privilege hereby given shall commence upon the execution of this development agreement between City and Developer.

10.06 No Vested Rights. It is understood and agreed that no vested right in said premises is hereby granted or conveyed from either party to the other, and that the privileges hereby given are subject to any and all encumbrances, conditions, restrictions and reservations upon or under which the parties held said premises prior to the granting of this license.

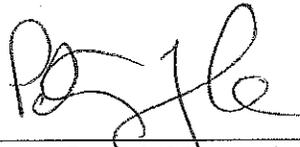
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IN WITNESS WHEREOF, the parties have duly executed this Agreement by their duly authorized signatories on or as of the date first written below.

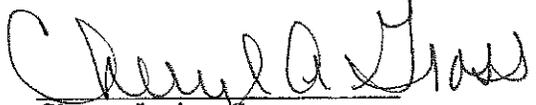
CITY OF NEWBURGH

By:  10/23/12
Name: Richard F. Herbek
Title: City Manager
Date

MILL STREET PARTNERS, LLC

By:  10/23/12
Name: Patrick Normoyle
Title: Manager
Date

APPROVED AS TO FORM


Cheryl A. Gross
Comptroller


Michelle Kelson
Corporation Counsel

EXHIBIT A

LIST OF CITY-OWNED PARCELS TO BE CONVEYED TO DEVELOPER

EXHIBIT B
DEVELOPMENT SCHEDULE
and
MILESTONES

EXHIBIT A

LIST OF CITY-OWNED PARCELS TO BE CONVEYED TO DEVELOPER

SBL	Address	Assessed Value
30-3-24	132 Broadway	2,100
30-3-25	136 Broadway	2,100
30-3-26	138 Broadway	1,600
30-3-27	140 Broadway	1,300
30-3-28	142 Broadway	1,300
30-3-29	142A Broadway	500
30-3-30	144 Broadway	1,300
30-3-31	146 Broadway	1,500
30-3-32	148 Broadway	2,100
30-3-33	6 Johnston Street	1,000
30-3-34	10 Johnston Street	1,600
30-3-35	12 Johnston Street	1,600
30-3-37	16 Johnston Street	4,300
30-3-23	6 Lander Street	1,800
30-3-22	8 Lander Street	5,800
30-3-21	14 Lander Street	2,400

EXHIBIT B
DEVELOPMENT SCHEDULE AND MILESTONES *

The City and the Developer shall use good faith efforts to adhere to the following development schedule and to meet the development milestones noted below. All deadlines are based on execution of the final development agreement.

Milestone	Deadline**
Execute Development Agreement	October 23, 2012
Developer Commences Preparation of Preliminary Engineering and Site Plan	October 24, 2012
City Commences Preparation of Zoning Modifications to Permit Development	November 13, 2012
Developer submits applicable applications and/or petitions for project approvals within the jurisdiction of the City and its municipal boards ("City Approvals")	March 1, 2013
City Adopts Zoning Modifications to Permit Development	April 1, 2013
Developer Submits NYS HCR or NYS HFA Funding Application	NYS HCR: November 29, 2012 or NYS HFA: January 15, 2013
COMPLETION MILESTONE 1: Developer Obtains Financing Commitments	Sixty (60) days from receipt of written funding award from NYS HCR or NYS HFA
COMPLETION MILESTONE 2: Developer Secures All City Approvals	Ninety (90) days from receipt of written funding award approval
Developer Completes Plans and Specifications	One hundred fifty (150) days from receipt of written funding award approval
COMPLETION MILESTONE 3: Developer Obtains Building Permit	One hundred eighty (180) days from receipt of written funding award approval
COMPLETION MILESTONE 4:	Two hundred seventy (270) days from

Developer Closes on Project Financing	receipt of written funding award approval
Developer Commences Construction	Thirty (30) days from closing of project's construction financing
COMPLETION MILESTONE 5: Developer Completes Construction	Twenty one (21) months after commencement of construction

* If the Project is executed as two distinct phases, the above schedule will apply to the Phase 1 project. The Development Schedule and Milestones for the Phase 2 project will be determined after commencement of construction of the Phase 1 project.

** All deadlines assume, and are contingent upon, execution of the Development Agreement by the City and the Developer by October 23, 2012.

EXHIBIT "C"

ESCROW AGREEMENT

THIS AGREEMENT is made this 23rd day of October, 2012, by and between **THE CITY OF NEWBURGH**, a New York municipal corporation with offices at 83 Broadway, Newburgh, New York 12550 (the "City") and the **MILL STREET PARTNERS LLC**, a limited liability company organized under the laws of the State of New York with offices at 853 Broadway, New York, New York 10003 (the Developer"):

WITNESSETH:

WHEREAS, the City desires to facilitate redevelopment of the City's downtown and promote a mixture of residential, retail and other appropriate uses on City-owned property, more commonly referred to as the Mid-Broadway Opportunity; and

WHEREAS, the City and the Developer entered into a Development Agreement dated _____, 2012 (the "Development Agreement"), for a mixed-use project consisting of housing and commercial components along Broadway, Johnston Street, and Lander Street in the City of Newburgh, New York; and

WHEREAS, the Developer, pursuant to the Development Agreement, provided an escrow deposit of \$ _____ to reimburse the City for outside consultant and other expenses incurred by the City in furtherance of the Project; and

WHEREAS, the Developer and the City have entered into a Development Agreement, in order to set forth certain understandings among them with respect the environmental review concerning the implementation of the Project, subject to the New York State Environmental Quality Review Act and the regulations promulgated thereunder by the Commissioner of the New York State Department of Environmental Conservation (collectively, "SEQRA"); and

WHEREAS, the Development Agreement provides, among other things, that the Developer shall be liable for and reimburse the City for all reasonable costs and expenses paid by the City to its consultants for reviewing the Developer's application for the Project (the "Application") under SEQRA, and for other consultant expenses incurred by the City in furtherance of the Project ("City Expenses"); and

WHEREAS, the City and the Developer wish to enter into an Escrow Agreement to govern the payment by the Developer of the City Expenses of the City and its Consultants pursuant to the terms and conditions set forth therein; and

WHEREAS, the City and the Developer desire to appoint the City Comptroller as escrow agent (the "Escrow Agent"), and the Escrow Agent agrees to serve in such capacity and act in accordance with the provisions hereof,

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Developer agree as follows:

1. Escrow Agent. The City and the Developer hereby appoint the Escrow Agent to act in accordance with the provisions of this Escrow Agreement, and hereby designate it with the authority to receive, deposit and withdraw said funds from the Escrow Fund in order to pay the City's Expenses, as those terms are hereinafter defined.

2. Escrow Fund. The Developer will deposit with the City the sum of Ten Thousand Dollars (\$10,000 .00) (the "Initial Deposit"), which shall be placed in an interest bearing account, and interest earned thereon shall be added thereto (the Initial Deposit, together with Additional Deposits as hereinafter defined, and the interest earned thereon shall be referred to as the "Escrow Fund").

3. Use of Escrow Fund. The Escrow Fund shall be used to pay for all City Expenses.

4. Consultants. The City reserves the absolute right in its full discretion to retain and control the work of the consultants in connection with their review of the Application and/or terminate their retention.

5. Consultants Invoices. The City shall require that all invoices submitted by the consultants ("Consultant(s) Invoice(s)") to the City in connection with the Project shall set forth in written form with sufficient specificity (i) descriptions of all work performed on a daily basis, (ii) total time spent performing such work on a daily basis, (iii) the charge for such work, including individual billing rates, (iv) a particular statement of any disbursements charged, and (v) the total fees charged for each bill or invoice. The Consultants Invoices shall be transmitted to the Escrow Agent, who shall transmit a copy by mail or facsimile to the duly authorized representative of the Developer as soon as reasonably possible after receipt of same, for review and approval.

6. Automatic Approval of Invoices. Unless the Escrow Agent receives a written objection to any Consultant Invoice within seven (7) business days of the Developer's receipt of such Invoice, the Escrow Agent shall promptly release that amount of the Escrow Fund to pay the invoiced City Expenses. All objections hereunder shall provide a detailed elaboration describing the disputed task and associated costs. The Escrow Agent may pay from the Escrow Fund any undisputed portion of the Consultant Invoice as set forth above. In making payment of any of the City Expenses out of the Escrow Fund, the Escrow Agent shall be entitled to rely upon the accuracy and veracity of any bill, invoice and/or statement for services which is tendered to the Escrow Agent in connection with the Project; provided, however, that upon each payment of the City Expenses out of the Escrow Fund, the Escrow Agent shall provide the Developer with a true and correct copy of the invoice or bill being paid.

7. Appeals Procedure. In the event the Developer timely objects to any Consultant Invoice as set forth above, the Escrow Agent and the Developer shall affirmatively seek to resolve said disagreement in a timely manner. If they are unable to resolve the disagreement within ten (10) days of the Escrow Agent's receipt of the written objection as set

forth above, the Escrow Agent shall refer such dispute to the City Attorney ("City Attorney") for its review and determination. The Escrow Agent shall provide the City Attorney with true and correct copies of all written records relevant to the dispute, and the City Attorney shall examine the record and issue a written decision within ten (10) business days of its receipt of the written objection regarding the reasonableness of the disputed expense. The determination of the City Attorney shall be reasonable and binding. The Developer agrees that the Escrow Agent may pay from the Escrow Fund reasonable City Expenses as determined by the City Attorney.

8. Accounting. The Escrow Agent shall provide the Developer with a full written accounting of the Escrow Fund within thirty (30) days of any written request thereof.

9. Additional Deposits.

(i) The Developer agrees to ensure that throughout the City's review of the Application, and until all Consultants Invoices regarding the City Expenses have been submitted and paid in full as set forth herein (the "Termination Date"), the Escrow Fund shall be replenished to \$10,000.00 at any time the balance is below \$5,000.00 by making additional deposits ("Additional Deposits") in such amount or amounts as the Escrow Agent, in its sole and reasonable discretion, shall determine is necessary to replenish the Escrow Fund to \$10,000.00. Such Additional Deposits shall be made by the Developer within ten (10) business days after written request for same is made by the Escrow Agent. In no event shall the Escrow Fund remain in effect more than 60 days after the Termination Date.

(ii) In the event the Developer fails or refuses to make such Additional Deposits in such amounts and in the manner required herein, then notwithstanding anything to the contrary contained or agreed to in any other contract or agreement between the Developer and the City, the City shall, at its sole option, stop processing the Application unless and until such time as the Developer makes such Additional Deposit.

10. Payment of All Consultants Invoices. The Developer agrees that in the event it withdraws the Application or otherwise terminates the City's review of the Application, all City Expenses incurred up to and including that point in time shall be paid out of the Escrow Fund pursuant to the terms set forth herein, including, those costs incurred but not yet submitted to the Escrow Agent for payment.

11. Refund of Escrow Fund. At the expiration of the Termination Date, the Escrow Agent shall pay to the Developer the balance of the proceeds contained within the Escrow Fund.

12. Indemnity. The Escrow Agent and the City Attorney undertake to perform only such duties as are specifically set forth in this Escrow Agreement. The Escrow Agent and the City Attorney shall not be liable for any action taken or omitted by them in good faith and believed by them to be authorized hereby or within the rights or powers conferred upon them hereunder, nor shall they be liable for any mistake of fact or error of judgment or for any acts or omissions of any kind, unless caused by their own gross negligence or willful misconduct. The City and the Developer, in equal part, shall indemnify the Escrow Agent and the City Attorney and hold them harmless from and against, and shall reimburse them with respect to, any and all

losses, damages, liabilities, claims, costs and expenses, including reasonable attorneys' fees, incurred by the Escrow Agent and the City Attorney in connection with their duties hereunder.

13. Entire Understanding. This Agreement contains the entire understanding of the parties who hereby acknowledge that there has been and there are no representations, warranties, covenants or understandings other than those expressly set forth herein.

14. Modification. Neither this Agreement nor any provision hereof, shall be amended or modified, or deemed amended or modified, except by an agreement in writing duly subscribed and acknowledged with the same formality as this Agreement. This Agreement and the provisions hereof may not be modified, changed, waived, discharged or terminated orally.

15. Binding Effect. This Agreement shall be binding upon, and inure to the benefit of, the parties, their related entities, successors and assigns.

16. Legal Interpretation. All matters affecting the interpretation of this Agreement and the rights of the parties hereto shall be governed by the laws of the State of New York.

17. Severability. Should any provision contained within this Agreement be determined to be invalid or illegal, such invalidity or illegality shall not affect in anyway any other provision hereof, all of which shall continue, nevertheless, in full force and effect.

18. Notices. Any and all notices required hereunder shall be addressed as follows, or to such other address as may hereafter be designated in writing by either party hereto:

To the City:

City of Newburgh
City Hall – 83 Broadway
Newburgh, New York 12550
Attention: Richard F. Herbek, City Manager

City of Newburgh
City Hall – 83 Broadway
Newburgh, New York 12550
Attention: Cheryl Gross, City Comptroller

with a copy to:

City of Newburgh
City Hall – 83 Broadway
Newburgh, New York 12550
Attention: Michelle Kelson, Esq., Corporation Counsel

To the Developer:

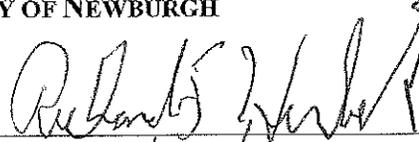
Mill Street Partners, LLC
853 Broadway
New York, New York 10003
Attention: Patrick Normoyle

With a copy to: Cannon Heyman & Weiss
54 State Street, 5th Floor
Albany, New York 12207
Attention: Steve Heyman, Esq.

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

CITY OF NEWBURGH

By:



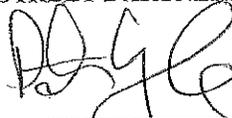
Richard F. Herbek, City Manager

Dated:

10/23/12

MILL STREET PARTNERS, LLC

By:



Patrick Normoyle, Manager

Dated:

10/23/12