

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.

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.

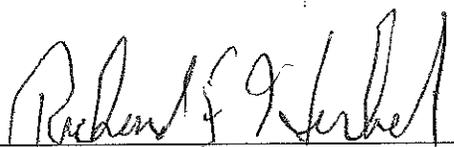
10.05 Commencement. The license or privilege hereby given shall commence upon the execution of this development agreement between City and Developer.

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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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: 
Name: Richard F. Herbek
Title: City Manager

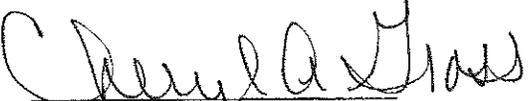
10/23/12
Date

MILL STREET PARTNERS, LLC

By: 
Name: Patrick Normoyle
Title: Manager

10/23/12
Date

APPROVED AS TO FORM


Cheryl A. Gross
Comptroller

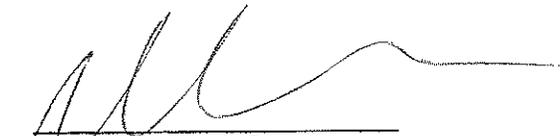

Michelle Kelson
Corporation Counsel

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:

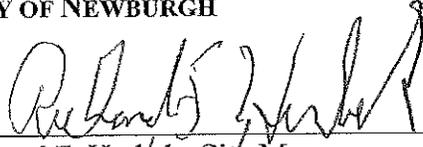
Mill Street Partners, LLC
853 Broadway
New York, New York 10003
Attention: Patrick Normoyle

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:

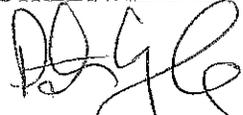

Richard F. Herbek, City Manager

Dated:

10/23/12

MILL STREET PARTNERS, LLC

By:


Patrick Normoyle, Manager

Dated:

10/23/12



ADOPTION OF AMENDMENTS TO THE TC-1 ZONING DISTRICT TO ALLOW
A LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT

City of Newburgh, New York

ENVIRONMENTAL ASSESSMENT FORM – Part 1

March 25, 2013

BFJ Planning

**ADOPTION OF AMENDMENTS TO THE TC-1 ZONING DISTRICT TO ALLOW A
LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT**

City of Newburgh, New York

ENVIRONMENTAL ASSESSMENT FORM PART 1

Prepared on behalf of:

City of Newburgh City Council
City Hall
83 Broadway
Newburgh, NY 12550-5617

Prepared by:

BFJ Planning
115 Fifth Avenue
New York, NY 10003

Prepared: March 25, 2013

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Appendix A: Proposed Zoning Text Amendments

1.0 INTRODUCTION: LOCATION, PROJECT COMPATIBILITY AND DESCRIPTION OF THE PROPOSED ACTION

Pursuant to the New York State Environmental Quality Review Act [6 NYCRR Part 617 (SEQR)], the proposed action discussed in this Full Environmental Assessment Form (EAF) is the adoption of text amendments to the City of Newburgh Zoning Code to create a Large-Scale Mixed-Use Development Special Use Permit within the City's Tourist Commercial (TC-1) District.

1.1 Project Location

The City of Newburgh is located on the western shore of the Hudson River in Orange County, approximately 60 miles north of New York City. The City is bordered by the Town of Newburgh to the west and north, the Hudson River to the east and the Town of New Windsor to the south (see Figure 1). Newburgh is a small, densely settled community, comprising 3.9 square miles.

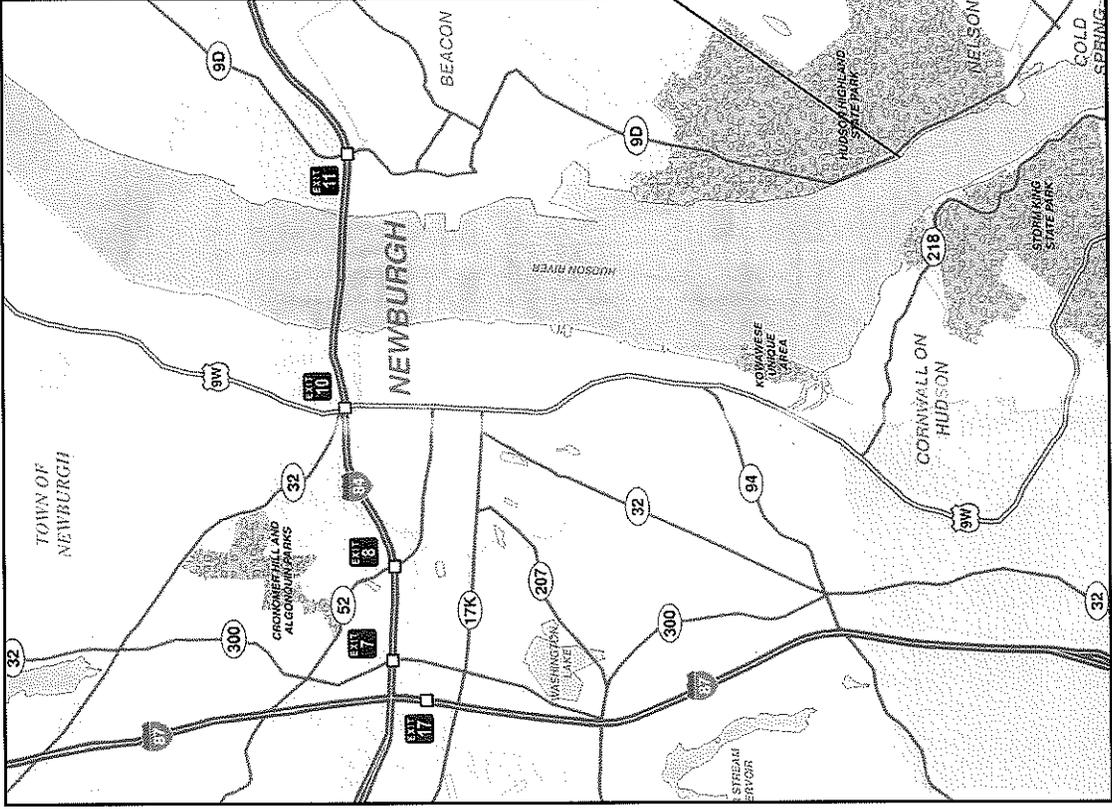
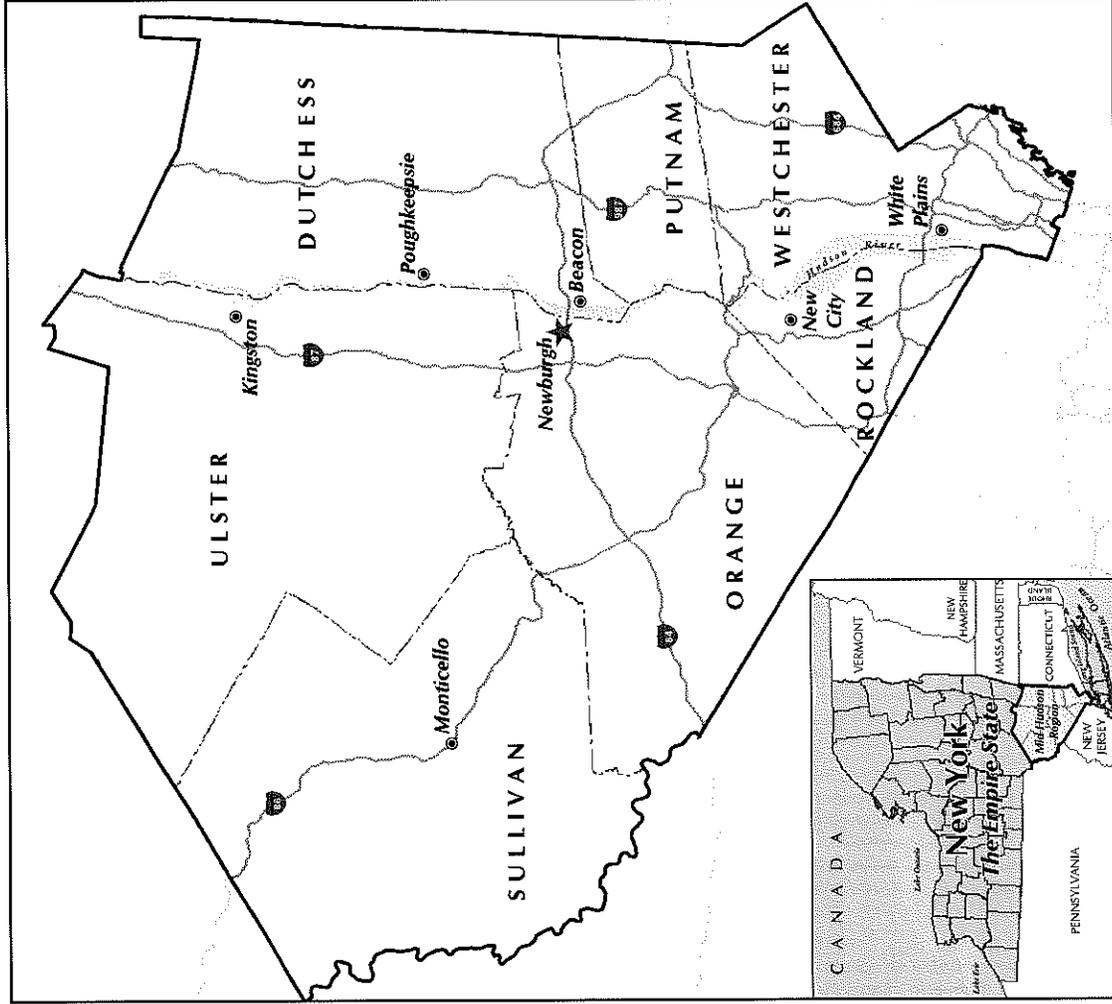
The proposed zoning text amendments will only apply within the City's TC-1 Zoning District and only to parcels located within the TC-1 District that have frontage along Broadway (see Figure 2: Existing Zoning Map). Of the 310-acres of land zoned TC-1 the proposed new large-scale mixed-use special use permit would only apply within the 13.8 acres of TC-1 land fronting Broadway located between Concord Street to the east and Colden Street to the west (see Figure 3:

1.2 Project Compatibility

The proposed action is consistent with the recommendations made in the 2008 *"Plan-It Newburgh"* Sustainable Master Plan and the 2011 City of Newburgh Future Land Use Plan which was adopted as an addendum to the 2008 Master Plan.

"Plan-It Newburgh" Sustainable Master Plan

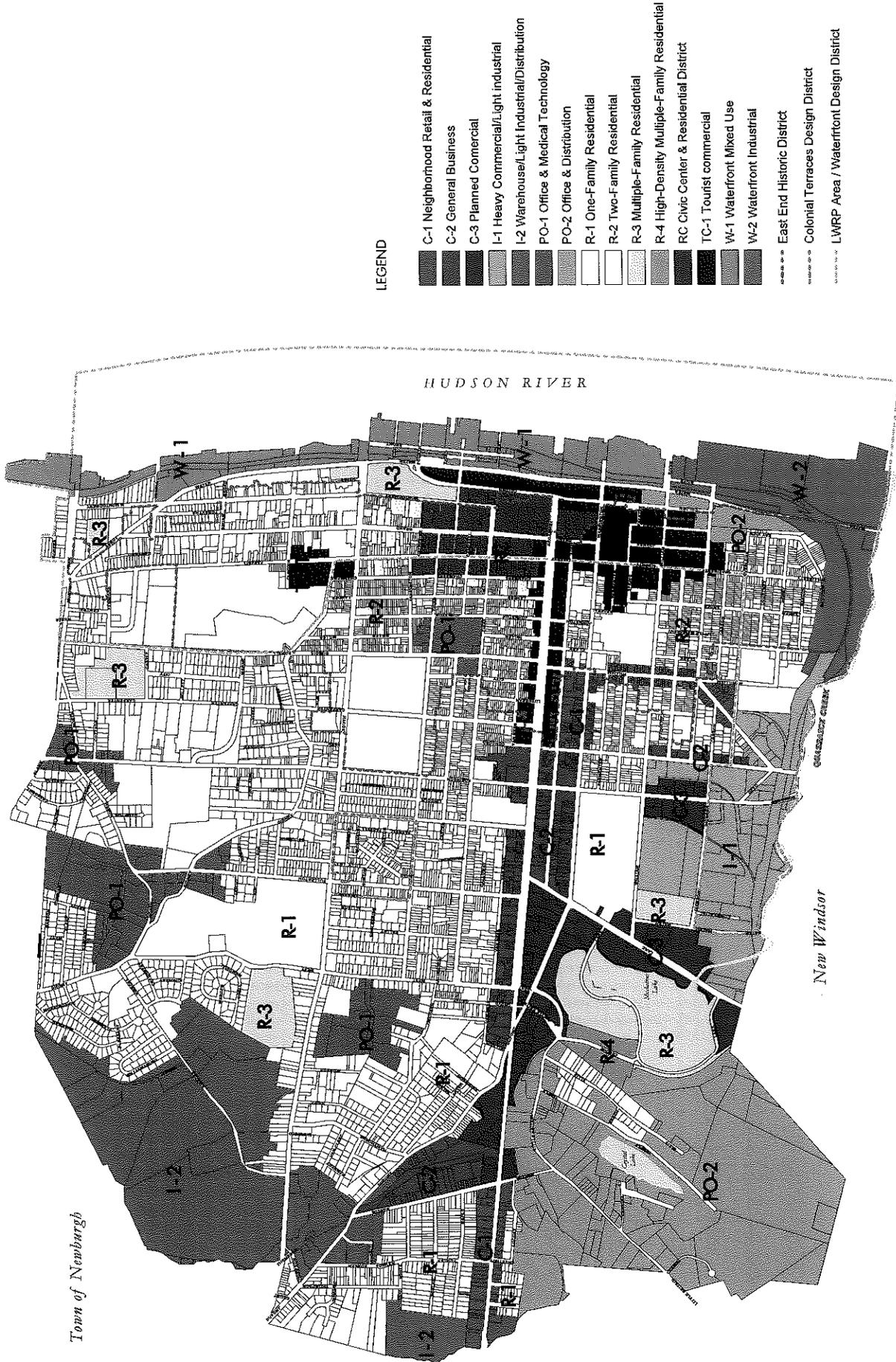
The *"Plan-It Newburgh"* Sustainable Master Plan, adopted December 8, 2008, describes the "visions and hopes of the city regarding future growth and development." Goals, targets and strategies in the Master Plan outline how the City of Newburgh will accommodate growth and development until the target date 2040. The objective of the Master Plan is to direct and guide public and private decisions and actions in a consistent and logical manner (pg. 8). Specifically, the Master Plan included targets to provide balance in the City's zoning districts to accommodate all types of land use, including mixed-use development and directing that a future land use plan be prepared to assess where residential development can be accommodated at increased densities in appropriate areas (Housing Goal 2, pg. 61-62). In addition, the Master Plan called for a



LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

FIGURE 1: REGIONAL LOCATION MAP





LEGEND

- C-1 Neighborhood Retail & Residential
- C-2 General Business
- C-3 Planned Commercial
- I-1 Heavy Commercial/Light Industrial
- I-2 Warehouse/Light Industrial/Distribution
- PO-1 Office & Medical Technology
- PO-2 Office & Distribution
- R-1 One-Family Residential
- R-2 Two-Family Residential
- R-3 Multiple-Family Residential
- R-4 High-Density Multiple-Family Residential
- RC Civic Center & Residential District
- TC-1 Tourist commercial
- W-1 Waterfront Mixed Use
- W-2 Waterfront Industrial
- East End Historic District
- Colonial Terraces Design District
- LWRP Area / Waterfront Design District

0 1,000 ft



FIGURE 2: CITY OF NEWBURGH EXISTING ZONING MAP

LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF



LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

FIGURE 3: TC-1 PARCELS FRONTING BROADWAY

NEWBURGH, NY

SOURCE: BFJ PLANNING



BFJ Planning

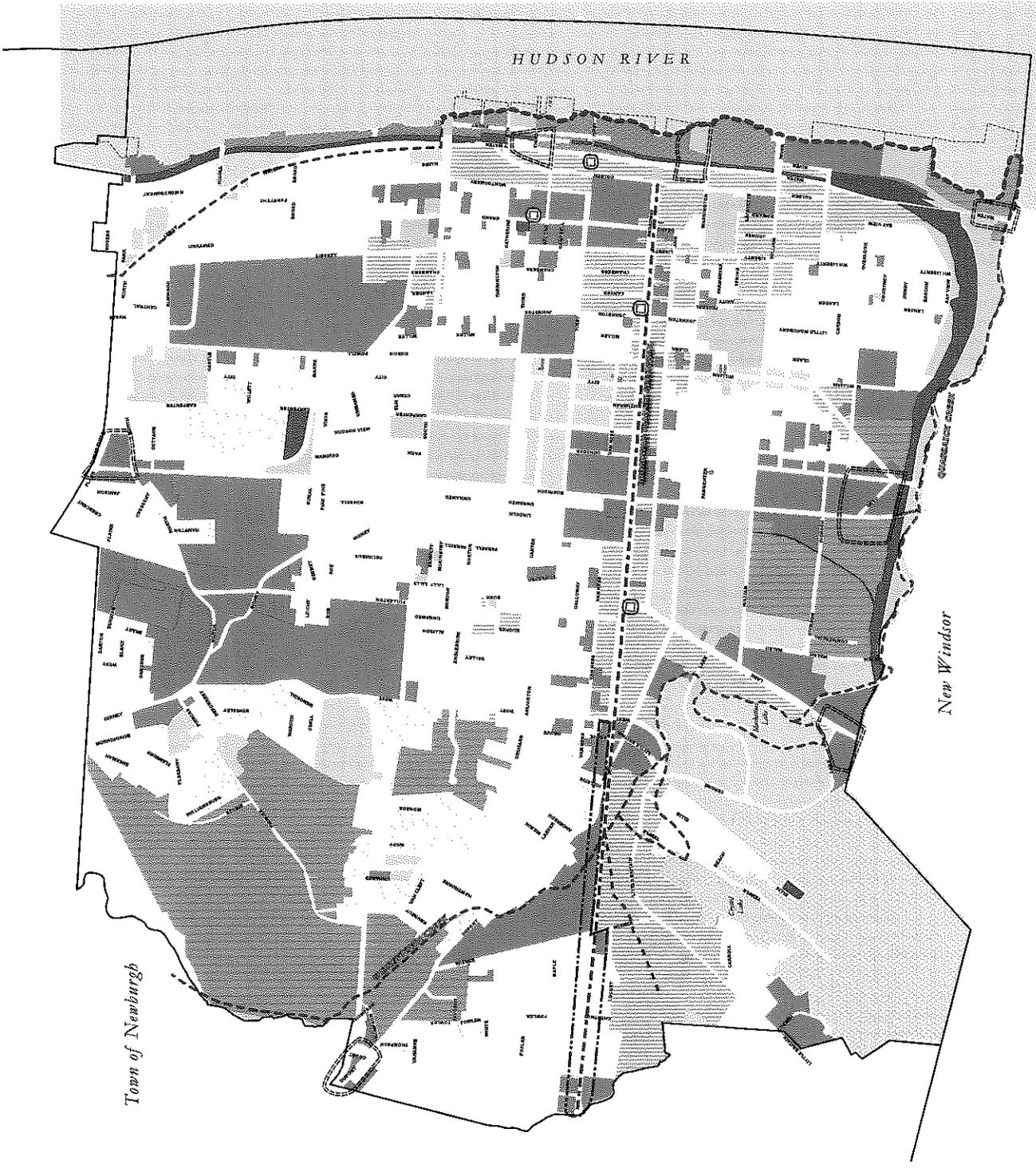
reduction in off-street parking requirements in traditional mixed-use and business/retail corridors where adequate off-street parking is within walking distance (Economic Development Goal 2, pg. 88) as well as a reduction or elimination of front yard setback requirements to allow for traditional neighborhood design (Economic Development Goal 4, pg. 90). The proposed zoning text amendments are consistent and compatible with the recommendations of the 2008 Master Plan and seek to implement, on a limited scale, the Plan recommendations outlined above.

Future Land Use Plan

Although the Master Plan identified and described issues regarding land use planning, the document did not specifically contain a future land use component, which provides a framework for potential future zoning changes. The proposed Future Land Use Plan, adopted September 12, 2011, supports the goals enumerated in the 2008 Master Plan and was prepared as an addendum to the plan, pursuant to the New York State General City Law §28. The proposed Future Land Use Plan serves as the land use component of the Master Plan. All land use regulations adopted in the City must be in accordance with the proposed Future Land Use Plan.

Specifically, the Future Land Use Plan calls for higher density mixed-use development in the Lower Broadway corridor [See Figure 4: Future Land Use Plan (Opportunity Area I, pg. 15)]. The Future Land Use Plan states that “there is a significant opportunity in this area to promote the re/development of a traditional urban/city neighborhood that has a mix of uses; is pedestrian oriented; and provides for a diverse public to live, learn, work and play” (pg. 15). Further, the plan recommends that an increase in mixed-use development in the Lower Broadway area will promote an urban lifestyle typical of thriving urban areas where residences, related commercial and entertainment uses support one another and that by promoting mixed-use development and increasing residential density in this area, the City will re-establish a physical and walkable connection between the Broadway corridor and the waterfront.

The Future Land Use Plan also included revisions to the Zoning Code are proposed to include “building coverage” standards and Floor Area Ratios (FAR), where appropriate, to the existing schedules of area and bulk controls. When combined with a height control, building coverage and FAR control density on any given site. Recommended revisions to the City’s parking standards and use group definitions as well as to the City’s administrative and enforcement aspects of the Zoning Code are also proposed.



LEGEND

- 1-4 Family
- 5+ Family
- Mixed Use w/ Res
- Commercial
- Industrial/Commercial/Recreational
- Institutional
- Conservation Area Development
- Planned Waterfront Development
- Park/Open Space
- Utility
- Broadway Transit Corridor
- Greenway
- Waterfront Buffer/Walkway
- Public Plaza
- Gateway District
- Residential Transitional Zone

FIGURE 4: FUTURE LAND USE MAP

0 1,000 ft



SOURCE: NEWBURGH FUTURE LAND USE PLAN, 2011

NEWBURGH, NY



LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

Town of Newburgh

New Windsor

The Plan recommends zoning changes that support the goal of increasing opportunities for mixed-use development at increased densities. In the Broadway portion of the existing TC-1 District, the Plan recommends zoning changes that would permit heights ranging from 6-8 stories and significant increases in residential densities. The proposed zoning text amendments are a first step in implementing the land use and zoning recommendations contained in the Future Land Use Plan. The proposed action is consistent and compatible with the Future Land Use Plan.

2.0 DESCRIPTION OF THE PROPOSED ACTION

The Newburgh City Council, through the adoption of the proposed action seeks to support the recommendations to provide opportunities for mixed-use development of an increased scale and density along the Lower Broadway Corridor expressed in both the 2008 Master Plan and 2011 Future Land Use Plan. The proposed zoning text amendments are compatible with both the Master Plan and Future Land Use Plan. Specifically, the City Council is proposing amendments to the City Zoning Code (§300-38 and §300 Attachment 8) adding a new special use permit subject to review and approval by the City Council to permit new large-scale mixed-use developments within the TC-1 District.

The proposed zoning text amendments would create a new "Large-Scale Mixed-Use Development" Special Use Permit within the City's existing TC-1 District. The purpose of this special use permit is to facilitate the redevelopment of vacant or underutilized properties along the Lower Broadway Corridor with a mix of vibrant residential and commercial uses. This new special use permit would be added to the *Schedule of Use and Bulk Regulations* for the TC-1 District (§300 Attachment 8). In order to apply for a large-scale mixed-use development special use permit an applicant would have to meet the following area and bulk requirements:

- Only applicable to TC-1 zoned lots with frontage on Broadway;
- Projects may extend from Broadway through the length of the block to the next public street, irrespective of the zone, provided that the portion outside the TC-1 zone is part of a unified development parcel with frontage on Broadway;
- 20,000 square foot minimum lot size;
- 100 foot minimum lot width;
- 15 foot minimum front yard and up to a 5 foot side yard, subject to reduction or elimination at the discretion of the City Council;
- 20 foot minimum rear yard; and
- Maximum building height of 65 feet/6 stories within 200 feet of Broadway and 45 feet/4 stories beyond 200 feet.

In addition, a new special use permit section (§300-38) has been added within the Zoning Code to allow large-scale mixed-use developments within the TC-1 District. This section sets forth the power, applicability, conditions to be fulfilled and the standards that must be met in order to qualify for a large-scale mixed-use development special use permit. The conditions and standards set forth in this section are similar to other special permit uses in the City, except that this special use permit can only be granted by the City Council; all other special permit uses in the City are subject to review and approval by the Planning Board. The approval authority for this special permit use has been placed with the City Council in recognition of the importance of the Lower Broadway Corridor to the City as a whole, as well as the potential benefits these types of large-scale projects could have on the City. The proposed zoning text also includes provisions for shared parking and grants the City Council the authority to modify parking requirements based on a parking analysis that demonstrates that the parking demands of a proposed development can be met through the provision of fewer spaces than those required by the City's off-street parking regulations. Finally, the City Council may also allow up to 25% of the required parking spaces to be provided at an off-site location within 300 feet of the project site.

See Appendix A for the proposed Zoning Text Amendments.

3.0 ANALYSIS OF DEVELOPMENT POTENTIAL

Based on a review of the TC-1 zoned lots with frontage along Broadway, it is projected that only two potential development sites exist that are likely to be developed under the proposed special use permit. These two sites, shown on Figure 5, are both currently vacant and meet all of the dimensional requirements set forth in the proposed zoning text amendments. Additional large-scale mixed-use development sites may exist, but due to current ownership constraints, their redevelopment would require assembling numerous parcels from multiple property owners which would most likely serve to hinder this type of large-scale development. Small scale mixed-use developments are currently permitted within the TC-1 District as-of-right.

Since the special use permit process for a large-scale mixed-use development will be discretionary and based on a review of site specific development plan, the exact number of future potential residential units and commercial square footage cannot be determined with certainty at this time. However, based on a cursory review of the two potential development sites illustrated in Figure 5, which total approximately 105,600 square feet, it is estimated that redevelopment of these parcels could result in approximately 144 residential units and 19,500 square feet of commercial space. This estimate assumes a 30% building coverage and groundfloor retail uses fronting Broadway. In addition, this estimate assumes a 6-story building within 200 feet of Broadway tapering down to a 4-story building beyond 200 feet of Broadway.



LARGE-SCALE MIXED-USE DEVELOPMENT SPECIAL USE PERMIT EAF

FIGURE 5: POTENTIAL LARGE-SCALE MIXED-USE DEVELOPMENT SITES

NEWBURGH, NY

SOURCE: BEJ PLANNING



BEJ Planning

This potential increase in density along the Broadway Corridor and the resultant potential increase in population, could result in impacts to the City's infrastructure, including water, sewer, and transportation systems. Given that special use permits are not granted as-of-right, any site specific proposal for a large-scale mixed-use development would be required to comply with the special use permit standards set forth in the proposed zoning text amendments as well as all existing standards set forth in the City's Zoning Code, including site plan review as well site specific review under SEQR. Therefore, the exact number and unit type of residential units and associated parking requirements, the projected future population, and breakdown of commercial space cannot be determined. However, when testing the implications of new zoning, a realistic market based approach and demographic based projection of what the likely population that could result is an important benchmark.

Within this context, it is important to look at Newburgh's population over time, as well as to project anticipated future growth within the City over the next 10 years. Table 1 below, presents the City's population, as reported by the US Census, since 1940. As this table demonstrates, the City's population peaked in 1950 and steadily declined by 27% over the following 30 years. Since the 1980s the City's population has grown, but is still 9.7% lower than the 1950 historic high.

Table 1: City of Newburgh Population

Year	Population	% Change from Previous 10-year period
1940	31,883	--
1950	31,956	2.3%
1960	30,979	-3.1%
1970	26,219	-15.1%
1980	23,438	-10.6%
1990	26,454	12.9%
2000	28,259	6.8%
2010	28,866	2.1%
% Change 1950 – 2010:		-9.7%

Source: US Bureau of the Census. <http://www.census.gov/prod/www/abs/decennial>

Using population growth projections generated by Orange County¹, and adjusting for the actual 2010 US Census data, the City of Newburgh is only projected to grow to 29,410

¹The Orange County Planning Department generated population projections using four different methodologies for each of the County's municipalities. For Newburgh, depending on the methodology used, the County projected growth rates of -0.03%, 0.07%, 0.09%, and 0.17%. To be conservative, the highest projected growth rate of 0.17% has been used in this analysis. http://www.orangecountygov.com/filestorage/124/1362/3210/Municipal_Population_Projections_Comparison_Sheet.pdf

residents by 202, an increase of only 1.9% over the next 10 years and still 8.0% below the 1950 population high. The City's overall infrastructure is able to reasonably sustain the small impact of the proposed zoning text amendments as any increase in population reasonably anticipated to occur over the next 10 years would be below the peak 1950 numbers.

However, in part, the purpose of the zoning text amendments is to foster development along the Lower Broadway Corridor that could in turn result in related increases in population density. This possible increase in density could result in impacts to the City's infrastructure as discussed below².

Water

The City of Newburgh's water supply is from the Washington Lake reservoir, located at the intersection of Route 300 and Little Britain Road, in the Town of New Windsor. The Washington Lake Reservoir was constructed in 1907 and holds approximately 1.5 billion gallons of water. An emergency water supply source from the NYC Catskill Aqueduct is also available. Raw water from the reservoir is conveyed to the City's water filtration plant through a 30-inch diameter water main. The City's water filtration plant has the ability to treat approximately 9 million gallons of water per day (MGD) and its current average daily demand is 4.2 MGD. The plant employs a series of mechanical and chemical treatments to remove color, odor, and tastes along with organic material, dirt, and particles. The water then passes through a series of sand filters; chlorine is added for disinfection; fluoride is added to help promote sound dental health; and corrosion inhibitors are added to reduce the corrosive effects of water on pipes and plumbing. Once treated, the water is pumped to the distribution system.

The City water system is comprised of two zones, the high service zone, which services properties north of Broadway and west of Lake Street, and the low service zone, which services the remainder of the City, including Lower Broadway. The high service district is serviced by two water storage tanks, a one (1) million gallon tank located on Brady Avenue and a one and one half (1.5) million gallon tank located on Marne Avenue. A small pumping station is located on Marne Avenue to boost the pressure for residence located around the base of the tank (University Heights neighborhood in the vicinity of Mount St. Mary's College). The two tanks are fed by the Marne Avenue/Carter Street Pumping Station, which draws water from the low service district.

² The analysis in this section is based in part on the analysis contained in the June 2008 Preliminary DEIS for "The Newburgh Waterfront Redevelopment Project Preliminary DEIS," prepared by Saccardi & Schiff, Inc. as well as on an October 15, 2010 meeting between BFJ Planning and Craig Marti, Newburgh City Engineer.

The low service district is serviced by two (2) water storage tanks. The first tank is a two (2) million gallon tank located near the water treatment plant on Little Britain Road. A second two (2) million gallon tank is located on Ellis Avenue. The high water level of the tanks is at approximately 275 ft.

Water distribution for the City is through approximately 80 miles of water mains ranging from 4 inches to 30 inches in diameter. The mains within the City are, for the most part, interconnected for improved hydraulic characteristics and decrease of minor losses. The distribution system provides domestic water and fire demand for residents within the water district.

As demonstrated there is not a significant constraint on serving the entire City with water. The water demand of the City would have to more than double (a 100% increase in demand) before any constraints to the design capacity of the City's water filtration plant would occur. As the population of Newburgh is only projected to grow by approximately 1.9% over the next ten years, even if the zoning text amendments result in an increase in density along Lower Broadway, no impact to the City's water supply are anticipated.

According to the Newburgh City Engineer, the issue with water is not one of capacity, but rather has to do with water pressure in certain parts of the City, in particular the University Heights section. Water pressure is not an issue for areas along Lower Broadway which may increase in density as a result of proposed zoning text amendments.

Sanitary Sewer

The City of Newburgh is serviced by the City of Newburgh wastewater treatment plant (WWTP), located in the southern portion of the waterfront, off of Martin Luther King Boulevard. The WWTP has a dry weather capacity of nine (9) million gallons per day (MGD); 3.8 MGD are reserved for the Town of Newburgh and 5.2 MGD are available for the City of Newburgh. The plant currently operates at an average daily flow rate of approximately six (6) MGD, of which 1.6 MGD is generated by the Town of Newburgh. Based on the current flow rates, approximately 3 MGD of remaining plant capacity is available for use by the City of Newburgh and available to meet the needs of any future population generated by the proposed zoning text amendments; a 68% increase in demand would need to occur before the WWTP would reach dry weather capacity.

Traffic and Parking

The adoption of the proposed zoning text amendments does not appear to result in significant traffic issues along Broadway. Localized impacts at specific intersections may occur as part of implementation of future projects seeking the proposed special use permit, but these would be addressed during site specific review of future actions under

SEQR. The Newburgh Waterfront Redevelopment Project proposed the development of approximately 1,170 residential units, a 150-room hotel, 100,000 square feet of office space, and 140,000 of retail space to be located in the area just west of the TC-1 District parcels with frontage along Broadway.

The traffic study, prepared by Saccardi & Schiff, Inc. as part of the Preliminary Draft Environmental Impact Statement (DEIS) for the Waterfront Redevelopment Project found that the proposed development program outlined above would have an impact on the operation of the road network in the area, including slight changes in the level of service at the intersections of Broadway and Robinson Avenue, Robinson Avenue and South Street, Robinson Avenue and Plank Road, and North Street and Balmville Road. The DEIS did provide mitigation measures for these localized intersection impacts; these measures should be considered, and implemented, if deemed appropriate, as part of the SEQR review of future development projects seeking the large-scale mixed-use development special use permit, if deemed applicable.

In addition to on-street metered parking that is available on most of the streets located within the vicinity of the Lower Broadway Corridor, the City of Newburgh currently has a significant amount of off-street parking. Much of the off-street parking is located in close proximity to Broadway and Martin Luther King Jr. Boulevard. Currently there is approximately 22 acres of parking east of Route 9W, roughly 13 acres of which is located east of Liberty Street within close proximity to Broadway and the TC-1 District.

As demonstrated above, Newburgh has the water capacity, sewer capacity and street network capacity to sustain a substantial amount of growth. In the case of Newburgh, the population has slightly increased over the last 30 years, but is still 9.7% below its 1950 historic peak. In addition, using the most aggressive growth rate provided by the County, the population is only projected to grow by 1.9% over the next 10 years; which is still 8.0% below the historic peak. Therefore, the limited growth that might realistically be expected to occur can be accommodated by the City's existing infrastructure.

Further, as special use permits are not granted as-of-right, any site specific large-scale mixed-use development proposal would be required to comply with the special use permit standards set forth in the proposed zoning text amendments as well as all existing standards set forth in the City's Zoning Code, including site plan review as well site specific review under SEQR.

4.0 FULL ENVIRONMENTAL ASSESSMENT FORM

This EAF evaluates the potential for environmental impacts to be created by the adoption of amendments to the City of Newburgh Zoning Code to create a Large-Scale Mixed-Use Development Special Use Permit within the City's Tourist Commercial (TC-1) District. This legislative action is generic in nature, not site-specific, and does not directly result in any physical changes to the environment. Part 1 of the Full EAF is designed for a site specific action rather than area-wide or generic proposals. As a result, many of the questions in Part 1 are not relevant to the proposed action and have been answered "not applicable" or "NA."

PART 1--PROJECT INFORMATION
Prepared by Project Sponsor

NOTICE: This document is designed to assist in determining whether the action proposed may have a significant effect on the environment. Please complete the entire form, Parts A through E. Answers to these questions will be considered as part of the application for approval and may be subject to further verification and public review. Provide any additional information you believe will be needed to complete Parts 2 and 3.

It is expected that completion of the full EAF will be dependent on information currently available and will not involve new studies, research or investigation. If information requiring such additional work is unavailable, so indicate and specify each instance.

Name of Action Adoption of Amendments to the TC-1 Zoning District to allow a Large-Scale Mixed-Use Development Special Use Permit

Location of Action (include Street Address, Municipality and County)

Broadway between Concord Street and Grand Street, City of Newburgh, Orange County, NY 12550

Name of Applicant/Sponsor City of Newburgh City Council

Address City Hall, 83 Broadway

City / PO Newburgh State NY Zip Code 12550-5617

Business Telephone (845) 569-7301

Name of Owner (if different) N/A

Address _____

City / PO _____ State _____ Zip Code _____

Business Telephone _____

Description of Action:

Pursuant to the New York State Environmental Quality Review Act [6 NYCRR Part 617 (SEQR)], the proposed action discussed in this Full Environmental Assessment Form (EAF) is the adoption of text amendments to the City of Newburgh Zoning Code to create a Large-Scale Mixed-Use Development Special Use Permit within the City's Tourist Commercial (TC-1) District. The purpose of this special use permit is to facilitate the redevelopment of vacant or underutilized properties along the Lower Broadway Corridor with a mix of vibrant residential and commercial uses. This new special use permit would be added to the Schedule of Use and Bulk Regulations for the TC-1 District (§300 Attachment 8). Please see the attached project description for a detailed discussion of the proposed action.

Please Complete Each Question--Indicate N.A. if not applicable

A. SITE DESCRIPTION

Physical setting of overall project, both developed and undeveloped areas.

1. Present Land Use: Urban Industrial Commercial Residential (suburban) Rural (non-farm)
 Forest Agriculture Other mixed-use, vacant

2. Total acreage of project area: 13.8 acres.

APPROXIMATE ACREAGE	PRESENTLY	AFTER COMPLETION
Meadow or Brushland (Non-agricultural)	<u>N/A</u> acres	<u>N/A</u> acres
Forested	<u>N/A</u> acres	<u>N/A</u> acres
Agricultural (Includes orchards, cropland, pasture, etc.)	<u>N/A</u> acres	<u>N/A</u> acres
Wetland (Freshwater or tidal as per Articles 24,25 of ECL)	<u>N/A</u> acres	<u>N/A</u> acres
Water Surface Area	<u>N/A</u> acres	<u>N/A</u> acres
Unvegetated (Rock, earth or fill)	<u>N/A</u> acres	<u>N/A</u> acres
Roads, buildings and other paved surfaces	<u>N/A</u> acres	<u>N/A</u> acres
Other (Indicate type) <u>vacant</u>	<u>N/A</u> acres	<u>N/A</u> acres

3. What is predominant soil type(s) on project site? Urban Land

- a. Soil drainage: Well drained ____% of site Moderately well drained ____% of site.
N/A Poorly drained ____% of site

b. If any agricultural land is involved, how many acres of soil are classified within soil group 1 through 4 of the NYS Land Classification System? N/A acres (see 1 NYCRR 370).

4. Are there bedrock outcroppings on project site? Yes No

a. What is depth to bedrock N/A (in feet)

5. Approximate percentage of proposed project site with slopes: N/A

- 0-10% ____% 10- 15% ____% 15% or greater ____%

6. Is project substantially contiguous to, or contain a building, site, or district, listed on the State or National Registers of Historic Places? Yes No

7. Is project substantially contiguous to a site listed on the Register of National Natural Landmarks? Yes No

8. What is the depth of the water table? >6.5 (in feet)

9. Is site located over a primary, principal, or sole source aquifer? Yes No

10. Do hunting, fishing or shell fishing opportunities presently exist in the project area? Yes No

11. Does project site contain any species of plant or animal life that is identified as threatened or endangered? Yes No

According to:

Not known. The proposed action is generic in nature and will not result in any direct impacts to plant or animal species; however, the TC-1 District is predominantly comprised of urban developed land and formerly developed vacant land. The potential for threatened or endangered species limited.

Identify each species:

There are no state-designated Significant Coastal Fish and Wildlife Habitats located within Newburgh.

12. Are there any unique or unusual land forms on the project site? (i.e., cliffs, dunes, other geological formations?)

Yes No

Describe:

N/A

13. Is the project site presently used by the community or neighborhood as an open space or recreation area?

Yes No

If yes, explain:

14. Does the present site include scenic views known to be important to the community? Yes No

Newburgh's View Preservation District regulations identify the following view planes for protection: Grand and Washington Streets, Washington's Headquarters, Broadway and Colden Street, Grand and Second Streets, Public Library, First and Grand Streets.

15. Streams within or contiguous to project area:

None.

a. Name of Stream and name of River to which it is tributary

16. Lakes, ponds, wetland areas within or contiguous to project area:

None.

b. Size (in acres):

17. Is the site served by existing public utilities? Yes No
- a. If YES, does sufficient capacity exist to allow connection? Yes No N/A
- b. If YES, will improvements be necessary to allow connection? Yes No N/A
18. Is the site located in an agricultural district certified pursuant to Agriculture and Markets Law, Article 25-AA, Section 303 and 304? Yes No
19. Is the site located in or substantially contiguous to a Critical Environmental Area designated pursuant to Article 8 of the ECL, and 6 NYCRR 617? Yes No
20. Has the site ever been used for the disposal of solid or hazardous wastes? Yes No

B. Project Description N/A*

1. Physical dimensions and scale of project (fill in dimensions as appropriate).
- a. Total contiguous acreage owned or controlled by project sponsor: N/A acres.
- b. Project acreage to be developed: N/A acres initially; N/A acres ultimately.
- c. Project acreage to remain undeveloped: N/A acres.
- d. Length of project, in miles: N/A (if appropriate)
- e. If the project is an expansion, indicate percent of expansion proposed. N/A %
- f. Number of off-street parking spaces existing N/A; proposed N/A
- g. Maximum vehicular trips generated per hour: N/A (upon completion of project)?
- h. If residential: Number and type of housing units: N/A
- | | One Family | Two Family | Multiple Family | Condominium |
|------------|------------|------------|-----------------|-------------|
| Initially | _____ | _____ | _____ | _____ |
| Ultimately | _____ | _____ | _____ | _____ |
- i. Dimensions (in feet) of largest proposed structure: N/A height; N/A width; N/A length.
- j. Linear feet of frontage along a public thoroughfare project will occupy is? N/A ft.
2. How much natural material (i.e. rock, earth, etc.) will be removed from the site? N/A tons/cubic yards.
3. Will disturbed areas be reclaimed Yes No N/A
- a. If yes, for what intended purpose is the site being reclaimed?
-
- b. Will topsoil be stockpiled for reclamation? Yes No
- c. Will upper subsoil be stockpiled for reclamation? Yes No
4. How many acres of vegetation (trees, shrubs, ground covers) will be removed from site? N/A acres.

*The proposed action is the adoption of a Zoning Text Amendments to the City's TC-1 District to allow a new special use permit with respect to large-scale mixed-use developments. This legislative action is generic in nature, not site-specific, and does not directly result in physical changes to the environment. Thus, project-related impacts assumed by the EAF are generally not applicable or variable dependent on location within the City.

5. Will any mature forest (over 100 years old) or other locally-important vegetation be removed by this project?

Yes No

6. If single phase project: Anticipated period of construction: N/A months, (including demolition)

7. If multi-phased:

a. Total number of phases anticipated _____ (number)

b. Anticipated date of commencement phase 1: _____ month _____ year, (including demolition)

c. Approximate completion date of final phase: _____ month _____ year.

d. Is phase 1 functionally dependent on subsequent phases? Yes No

8. Will blasting occur during construction? Yes No N/A

9. Number of jobs generated: during construction N/A ; after project is complete N/A

10. Number of jobs eliminated by this project None .

11. Will project require relocation of any projects or facilities? Yes No N/A

If yes, explain:

12. Is surface liquid waste disposal involved? Yes No N/A

a. If yes, indicate type of waste (sewage, industrial, etc) and amount _____

b. Name of water body into which effluent will be discharged _____

13. Is subsurface liquid waste disposal involved? Yes No Type _____

14. Will surface area of an existing water body increase or decrease by proposal? Yes No

If yes, explain:

15. Is project or any portion of project located in a 100 year flood plain? Yes No

16. Will the project generate solid waste? Yes No N/A

a. If yes, what is the amount per month? _____ tons

b. If yes, will an existing solid waste facility be used? Yes No

c. If yes, give name _____ ; location _____

d. Will any wastes not go into a sewage disposal system or into a sanitary landfill? Yes No

e. If yes, explain:

17. Will the project involve the disposal of solid waste? Yes No

a. If yes, what is the anticipated rate of disposal? _____ tons/month.

b. If yes, what is the anticipated site life? _____ years.

18. Will project use herbicides or pesticides? Yes No N/A

19. Will project routinely produce odors (more than one hour per day)? Yes No N/A

20. Will project produce operating noise exceeding the local ambient noise levels? Yes No N/A

21. Will project result in an increase in energy use? Yes No N/A

If yes, indicate type(s)

22. If water supply is from wells, indicate pumping capacity N/A gallons/minute.

23. Total anticipated water usage per day N/A gallons/day.

24. Does project involve Local, State or Federal funding? Yes No

If yes, explain:

25. Approvals Required:

			Type	Submittal Date
City, Town, Village Board	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<u>City Council - Resolution to</u> <u>Amend Zoning Text</u>	_____
City, Town, Village Planning Board	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<u>Referral to Newburgh</u> <u>Planning Board</u> <u>Referrals to adjoining</u> <u>municipalities: Town of</u> <u>Newburgh, Town of New</u> <u>Windsor</u>	_____
City, Town Zoning Board	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____
City, County Health Department	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____
Other Local Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	<u>Referral to County Planning</u> <u>Department</u>	_____
Other Regional Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____
State Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____
Federal Agencies	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No		_____

C. Zoning and Planning Information

1. Does proposed action involve a planning or zoning decision? Yes No

If Yes, indicate decision required:

- | | | | |
|--|---|---|--------------------------------------|
| <input checked="" type="checkbox"/> Zoning amendment | <input type="checkbox"/> Zoning variance | <input checked="" type="checkbox"/> New/revision of master plan | <input type="checkbox"/> Subdivision |
| <input type="checkbox"/> Site plan | <input type="checkbox"/> Special use permit | <input type="checkbox"/> Resource management plan | <input type="checkbox"/> Other |

2. What is the zoning classification(s) of the site?

TC-1 Tourist Commercial

3. What is the maximum potential development of the site if developed as permitted by the present zoning?

Approximately 937,759 square feet.

4. What is the proposed zoning of the site?

N/A.

5. What is the maximum potential development of the site if developed as permitted by the proposed zoning?

N/A.

6. Is the proposed action consistent with the recommended uses in adopted local land use plans? Yes No

The Propose Zoning Text Amendments are consistent with both the 2011 Future Land Use Plan and the 2008 Sustainable Master Plan.

7. What are the predominant land use(s) and zoning classifications within a ¼ mile radius of proposed action?

Uses within a 1/4-mile include residential, office, commercial and institutional zones.

Zoning districts include: C-1 Neighborhood Retail and Residential, C-2 General Business, RC Civic Center and Residential District, R-2 Two-family Residential, PO-1 Office and Medical Technology, and R-1 One-Family Residential.

8. Is the proposed action compatible with adjoining/surrounding land uses with a ¼ mile? Yes No

9. If the proposed action is the subdivision of land, how many lots are proposed? No

a. What is the minimum lot size proposed? _____

10. Will proposed action require any authorization(s) for the formation of sewer or water districts? Yes No

11. Will the proposed action create a demand for any community provided services (recreation, education, police, fire protection)?
 Yes No

a. If yes, is existing capacity sufficient to handle projected demand? Yes No

12. Will the proposed action result in the generation of traffic significantly above present levels? Yes No

a. If yes, is the existing road network adequate to handle the additional traffic. Yes No

D. Informational Details

Attach any additional information as may be needed to clarify your project. If there are or may be any adverse impacts associated with your proposal, please discuss such impacts and the measures which you propose to mitigate or avoid them.

E. Verification

I certify that the information provided above is true to the best of my knowledge.

Applicant/Sponsor Name Sarah K. Yackel Date March 25, 2013

Signature *Sarah K. Yackel*

Title Associate Principal, BFJ Planning

If the action is in the Coastal Area, and you are a state agency, complete the Coastal Assessment Form before proceeding with this assessment.

Appendix A

Proposed Zoning Text Amendments

Article VII. SPECIAL USE PERMITS

§ 300-35. Special uses.

§ 300-36. Procedures.

§ 300-37. Standards for individual special uses.

§ 300-38. Large-Scale Mixed-Use Development Special Use Permit
and § 300-39. (Reserved)

§ 300-35. Special uses.

A. Power. The Planning Board shall have the power to hear and decide on applications to permit the proper integration into the community of uses which may be suitable only in specific locations in a zone or only if such uses are designed and laid out on the site in a particular manner, provided that this chapter otherwise permits such uses subject to the validation of the Planning Board.

B. Conditions to be fulfilled. In applying for a special use permit, the applicant need not demonstrate hardship, since the basis for the action is general benefit to the City as a whole. In granting a special use permit, the Planning Board, with due regard to the nature and condition of all adjacent structures and uses, the zone within which the same is located, the Master Plan, the Local Waterfront Revitalization Program (LWRP) and any relevant urban renewal plans, shall find all of the following general conditions to be fulfilled:

(1) The use requested is listed among the special uses in the zone for which application is made.

(2) The special use is essential or desirable to the public convenience or welfare.

(3) The special use will not impair the integrity or character of the zone or adjoining zones nor be detrimental to the health, morals or welfare.

(4) The special use will be in conformity with the Master Plan.

(5) Consistency with policies.

(a) The special use, if undertaken within the waterfront area, will be consistent with the LWRP policies, standards and conditions, which are derived from and further explained and described in Section III of the City of Newburgh LWRP.

[1] To revitalize deteriorated and underutilized waterfront areas (Policies 1, 1A, 1B, 1C, 1D and 1E).

[2] To retain and promote commercial and recreational water-dependent uses (Policy 2).

[3] To strengthen the economic base of smaller harbor areas by encouraging traditional uses and activities (Policies 4 and 4A).

[4] To ensure that development occurs where adequate public infrastructure is available to reduce health and pollution hazards (Policy 5).

[5] To protect significant and locally important fish and wildlife habitats from human disruption and chemical contamination (Policies 7, 7A, 8 and 8A).

[6] To maintain and expand commercial fishing facilities to promote commercial and recreational fishing opportunities (Policies 9, 9A and 10).

[7] To minimize flooding and erosion hazards through nonstructural means, carefully selecting long-term structural measures and appropriate siting of structures (Policies 11, 11A, 12, 13, 14, 16, 17 and 28).

[8] To safeguard economic, social and environmental interests in the coastal area when major actions are undertaken (Policies 18 and 18A).

[9] To maintain and improve public access to the shoreline and to water-related recreational facilities while protecting the environment (Policies 2, 19, 19A, 20, 20A, 21, 21A, 21B, 22 and 22A).

[10] To protect and restore historic and archaeological resources (Policies 23 and 23A).

[11] To protect and upgrade scenic resources (Policy 25).

[12] To site and construct energy facilities in a manner which will be compatible with the environment and contingent upon the need for a waterfront or water location (Policies 27, 29 and 40).

[13] To prevent ice management practices which could damage significant fish and wildlife and their habitat (Policy 28).

[14] To protect surface and groundwater from direct and indirect discharge of pollutants and from overuse (Policies 30, 31, 33, 34, 35, 36, 36A, 37 and 38).

[15] To perform dredging and dredge spoil in a manner protective of natural resources (Policies 15 and 35).

[16] To handle and dispose of solid and hazardous wastes and effluents in a manner which will not adversely affect the environment nor expand existing landfills (Policies 39 and 39A).

[17] To protect air quality (Policies 41, 42 and 43).

[18] To protect freshwater wetlands (Policy 44).

(b) The Planning Board will consider the recommendations of the Waterfront Advisory Committee when determining consistency with the above policies.

C. Factors to be considered. In making such determination, the Planning Board shall give consideration to any or all of the following as they may be appropriate:

(1) The character of the existing uses and the probable development of uses in the district and the peculiar suitability of such district for the location of any of such permissive uses.

(2) The conservation of property values and the encouragement of the most appropriate uses of land.

- (3) The effect that the location of the proposed use may have upon the creation of or undue increase of vehicular traffic congestion on public street or highways.
- (4) The availability of adequate and proper public or private facilities for the treatment, removal or discharge of sewage, refuse or other effluent, whether liquid, solid, gaseous or otherwise, that may be caused or created by or as a result of the use.
- (5) Whether the use or materials incidental thereto or produced thereby may give off obnoxious gases, odors, smoke or soot.
- (6) Whether the use will cause disturbing emission of electrical discharges, dust, light, vibration, noise or radioactivity.
- (7) Whether the operations in pursuance of the use will cause undue interference with the orderly enjoyment by the public of parking or of recreational facilities, if existing, or if proposed by the City or by other competent governmental agency.
- (8) The necessity for bituminous-surfaced space for the purpose of off-street parking of vehicles incidental to the use and whether such space is reasonably adequate and appropriate in area and design and can be furnished by the owner of the plot sought to be used within or adjacent to the plot wherein the use shall be had.
- (9) Whether a hazard to life, limb or property because of fire, flood, erosion or panic may be created by reason of or as a result of the use, by the structures to be used therefor, by the inaccessibility of the property or structure thereon for the convenient entry and operation of fire and other emergency apparatus or by the undue concentration or assemblage of persons upon such plot.
- (10) Whether the use of the structures to be used therefor will cause an overcrowding of land or undue concentration of population.
- (11) Whether the plot area is sufficient, appropriate and adequate for the use and the reasonably anticipated operation and expansion thereof.
- (12) Whether the use to be operated is unreasonably near to a church, school, theater, recreational area or other place of public assembly.

D. Planning Board action. The Board may approve, approve with modifications, or disapprove any application for a special use permit. The Planning Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit and may be necessary in the Board's opinion to meet the objectives herein set forth. Upon its granting of said special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the City.

- (1) Such conditions may include a time limitation.
- (2) Conditions may be imposed which require that one or more improvements be done before the use requested can be initiated; for example, that a solid board fence be erected entirely around the site to a height of six feet before the use requested is initiated.

(3) Conditions of a continuing nature may be imposed. For example, exterior loudspeakers shall not be used between the hours of 10:00 p.m. and 9:00 a.m.

(4) The Planning Board may establish a schedule of inspection to be conducted by the Building Inspector to determine continued compliance with this chapter and any conditions of the special use permit.

E. Reversion to permitted use. Whenever all the conditions required are of such type that they can be completely and permanently satisfied, the administrative official, upon request of the applicant, may, if the facts warrant, make a determination that the conditions have been satisfied and enter said determination on the file copy of the special use permit. Thereafter, said special use, provided that it continues to meet the other requirements of the chapter, will be treated as a permitted use.

F. Compliance with other codes. Granting of a special use permit does not exempt the applicant from complying with all of the requirements of building codes and other ordinances.

G. Revocation. In any case where the conditions of a special use permit have not been or are not being complied with, the administrative official shall give the permittee notice of intention to revoke such permit at least 10 days prior to a Planning Board review thereon. After conclusion of the review, the Planning Board may authorize the administrative official to revoke such permit.

H. Expiration. In any case where a special use permit has not been exercised within the time limit set by the Planning Board, or within one year if no specific time limit has been set, then, without further action, the permit shall be null and void. "Exercised," as set forth in this section, shall mean that binding contracts for the construction of the main building have been let or, in the absence of contracts, that the main building is under construction to a substantial degree or that prerequisite conditions involving substantial investment are contracted for, in substantial development, or completed (sewage, drainage, etc.). When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions set forth in the permit.

§ 300-36. Procedures.

The powers and duties of the Planning Board shall be exercised in accordance with the procedures set forth in this article plus the following additional procedures:

A. Strict compliance. The Planning Board shall act in strict accordance with the procedures specified by law and by this chapter.

B. Fees. All applications made to the Planning Board shall be accompanied by the fee established by the City Council as provided for in § 300-83. The Board may, in its discretion, return to the applicant part or all of the fee paid by him in the event that his appeal is under § 300-78 hereof and is partially or wholly successful. The fees filed in connection with applications under § 300-35 shall not be returnable regardless of the disposition of the case by the Planning Board.

C. Submission. An application for a special use permit shall be submitted to the Planning Board office on the last business day of the month preceding the month in which the application is to be heard.

D. Contents of applications. Each application shall fully set forth the circumstances of the case. Every application shall refer to the specific provision of the chapter involved.

- E. Site plan required. Application for a special use permit shall require site plan approval in accordance with the site plan regulations contained in this chapter, except that the Planning Board may waive site plan approval for a special use permit application that will involve no physical alteration or disturbance to a site. At a minimum, the application for a special permit use shall be accompanied by a plan showing the size and location of the lot, and the location of all buildings and proposed facilities, including access drives, parking areas, and all streets within 200 feet of the lot lines.
- F. Public hearings. The Planning Board shall conduct a public hearing within 62 days from the day a complete application is received by the Planning Board. At least 10 days prior to such hearing the Secretary of the Board shall mail, by regular mail, at the applicant's expense, a notice of such hearing and of the substance of the application to the owners of all properties within 300 feet of the exterior boundaries of the property affected by the application. At least 10 days prior to such hearing, the Secretary of the Planning Board, at the expense of the applicant, to be paid in advance, shall cause to be published in the official newspaper of the City a notice of such hearing and of the substance of the appeal or application. Prior to said hearing, the applicant shall submit to the Board affidavits of the Secretary of the Board swearing that the required mailings and publication have been performed, which documents shall become part of the application. For the purpose of the mailings required by this section, the term "owner" shall be construed to mean the owner as indicated on the assessment roll of the City of Newburgh.
- G. Notice to the applicant and the Orange County Planning Department. At least 10 days prior to the public hearing, the Planning Board shall mail notices thereof to the applicant and to the Orange County Planning Department, as required by § 239-m of the General Municipal Law, which shall be accompanied by a full statement of the matter under consideration, as defined therein.
- H. Architectural Review Commission advisory opinion. The Planning Board shall, within 10 days of its submission, refer any special use permit application within historic districts or architectural design districts to the Architectural Review Commission for review and recommendations. The Planning Board shall defer any decision on these matters pending the receipt of a report from the Architectural Review Commission.
- I. Waterfront Advisory Committee. Whenever a request for a special use permit involves a use to be located within the City's waterfront districts, the Planning Board shall refer a copy of a completed coastal assessment form (CAF) to the Waterfront Advisory Committee within 10 days of its submission and, prior to making its determination, shall consider the recommendation of the Waterfront Advisory Committee with reference to the consistency of the proposed action as set forth in Chapter 296 of the Code of the City of Newburgh, known as the "City of Newburgh Waterfront Consistency Review Law." In the event that the Waterfront Advisory Committee recommendation is not forthcoming within 30 days following referral of the CAF, the Planning Board shall make its decision without the benefit of the Waterfront Advisory Committee recommendation.
- J. Decision. The Planning Board shall decide upon an application within 62 days after the public hearing is closed. The time within which the Planning Board must render its decision may be extended by mutual consent of the applicant and the Planning Board.
- K. Filing. The decision of the Planning Board shall be filed in the office of the City Clerk within five business days after such decision is rendered and a copy thereof mailed to the applicant.

L. Existing violations. No special use permit shall be issued for property where the Building Inspector has found a violation of this chapter, and where such violation has not been corrected, unless the granting of such special use permit and site plan approval will result in a correction of said violation.

M. Area variance. Where a proposed special use permit would require an area variance, an application may be made to the Zoning Board of Appeals without the necessity of a denial of an administrative official charged with enforcement of this chapter.

§ 300-37. Standards for individual special uses.

The following individual standards are hereby established for special uses:

A. Garages, filling stations, auto repair shops, used car lots, automobile painting, automobile rebuilding or reconditioning, tire retreading or recapping, and taxi and limousine service shall be subject to the following:

(1) Notwithstanding any grant of authority contained elsewhere in this chapter, no special permit or variance shall be granted for a use enumerated herein to be located within a designed historic district or architectural design district unless the Architectural Review Commission shall certify to the Planning Board that said use will not be out of keeping with the architectural character of the district and will not be out of harmony with the style, materials, colors, line and details of the buildings in the district and that said use will not detrimentally affect the preservation of the beauty and character of the district. Said certification must be reviewed by the Planning Board prior to its acceptance of any application for a special use permit.

(2) Any special use permit granted shall be granted only for an initial period of six months, after which the Planning Board shall review the compliance with the permit conditions and may vote to permanently grant the permit or to continue the special permit for an additional limited time period, in the absence of which said special permit shall lapse and become null and void.

(3) Sufficient off-street parking is to be provided for all cars brought for repair; a minimum of five off-street parking spaces are to be provided.

(4) No repair or storage of vehicles shall be on the public street.

(5) The property must be maintained in a neat and orderly manner with no accumulation of junk vehicles, tires, auto parts, garbage, refuse or debris on the property.

(6) Hours of operation are to be established by the Planning Board so as to limit the effect of noise and traffic on the neighborhood.

(7) All facilities are to conform to the New York State Uniform Fire Prevention and Building Code, environmental regulations and sewer use regulations and ordinances, particularly in regard to prevention of the discharge of oil, grease, or other petroleum products into the public sewers.

(8) All surfaces for vehicle travel or storage are to be provided with a desirable dustless surface to be approved by the Planning Board and an adequate system of storm drainage.

(9) All lighting is to be installed in accordance with a plan to be submitted to and approved by the City Engineer and the Building Inspector and so designed as to prevent light from being thrown onto neighboring properties.

(10) All parking, vehicle storage areas and driveways must be constructed so as to meet the requirements of Article VIII of this chapter.

(11) The use shall be screened from all abutting residences or residential districts in accordance with § 300-12 of this chapter, except that the Planning Board may permit the substitution of an eight-foot-high wooden fence or masonry wall as a substitute for or in addition to the plantings provided in § 300-12. The screening strips of 10 feet in width must be measured entirely within the property lines of the parcel to be devoted to the use.

(12) The Planning Board shall have the power to impose such additional conditions as it may deem required in accordance with the standards established by § 300-35 of this chapter. However, the Planning Board shall not have the power to delete or modify any of the conditions required by Subsection A(1) through (11) of this section.

(13) Where the Zoning Board of Appeals has approved a special use permit and said permit is subject to renewal, the Planning Board shall be responsible for renewing said special use permit.

B. Home occupation or professional office. Customary home occupations are deemed to be accessory uses to a single-family detached dwelling subject to the requirements contained herein. A home occupation shall not require full site development plan submission. However, an applicant shall be required to submit a lot survey indicating the location of the home and the area of the home to be used for purposes of the home occupation.

(1) The minimum lot size shall be 7,500 square feet.

(2) Such occupation is carried on in an area not exceeding 25% of the gross floor area of the principal building.

(3) At no time shall any premises be used in such a manner to cause the emanation therefrom of offensive or noxious odors, vapors, fumes, glare, dust, smoke, gas, vibration, noise or radiation or be used in such a manner as to cause injury, annoyance or disturbance to any of the surrounding properties and to their owners and occupants.

(4) Equipment capable of causing interference with radio or television reception in the neighborhood shall be prohibited unless also equipped with means to prevent such interference.

(5) There shall be no outdoor storage of materials, supplies, or equipment associated with the home occupation.

(6) Such occupation is incidental to the residential use of the premises and is carried on in the principal building by a resident therein with not more than two nonresident assistants.

(7) A studio where dancing or music instruction is offered is permitted, provided only up to a maximum of four pupils at any one time are instructed. Concerts or recitals are prohibited.

(8) The Planning Board may restrict the number of deliveries of materials or supplies associated with the home occupation.

(9) The Planning Board may approve the operation of a home occupation subject to any condition it deems necessary to ensure that the use does not diminish or impact the peace, security and the overall residential quality of the neighborhood.

C. Day-care center. The standards for a day-care center shall be as follows:

(1) The application shall describe the anticipated occupancy of the facility by age group, i.e., infant, toddler, and school age, and the hours of operation of the facility.

(2) A floor plan of the day-care center shall be submitted.

(3) In addition to the parking space requirements contained in Article VIII, Table 1, *Editor's Note: See § 300-45*, additional parking spaces shall be provided for dropoff and pickup of children at a rate of one parking space per 15 children. Said spaces shall be provided directly in front of the facility along an internal driveway or in an approved parking area. The most appropriate location for dropoff parking shall include a consideration of emergency access and shall be determined by the Planning Board during site plan review. The dropoff location shall be clearly posted with appropriate signage or pavement markings. Fire lanes shall not be used for dropoff areas.

(4) A minimum outdoor play area of 125 square feet per child under three years of age, or per child three and over, whichever is greater, shall be provided. Said outdoor play area shall be located at a minimum distance of 25 feet from any lot line or from any parking area and 50 feet from any public right-of-way. Outdoor play areas shall be directly accessible from the principal structure and shall not require crossing any street, driveway, or parking area for access. The Planning Board may, as part of site plan review and in consultation with the prospective operator, modify the area requirement to apply only to the largest age group enrollment scheduled to use the outdoor play area at one time.

(5) A six-foot-high solid fence or opaque fence combined with hedge or tree plantings shall be provided to screen the outdoor play area where it abuts a residential zoning district.

(6) Said facility shall provide a minimum of two exits.

(7) Day-care centers shall adhere to the requirements of the New York State Uniform Fire Prevention and Building Code and all other applicable state guidelines that govern said uses.

(8) If included as part of a professional office building, said day-care center shall occupy the ground floor only.

(9) Hallways with a length of 20 feet or greater between the building exterior and the day-care center shall be prohibited.

D. Bed-and-breakfasts shall be subject to the following:

(1) Applicability. A bed-and-breakfast is permitted as an accessory use to a single-family residence. A single-family residence must be in existence at the date of adoption of these regulations to

become eligible to be a bed-and-breakfast. Except as otherwise specified herein, the single-family residence shall be required to meet the bulk requirements for single-family residences within the applicable zoning district.

(2) Application submission. In addition to the general requirements for special use permit approval, the applicant shall also submit:

- (a) A sketch showing the floor plan of the home and the location of proposed guest rooms.
- (b) A site plan delineating the location of the residence on the tax parcel, minimum setback distances, proposed parking areas, proposed screening, and any other information applicable.
- (c) If a sign is proposed, a sign plan, including type and location of illumination, if proposed.
- (d) A certification that the owner resides and will continue to reside within the residence while the special use permit is in effect. A change in owner occupancy shall require renewal of the special use permit.
- (e) Proof of insurance to operate a bed-and-breakfast.

(3) Requirements and conditions of operation.

- (a) The bed-and-breakfast shall be the primary residence of the owner.
- (b) The number of paying guests accommodated per night shall not exceed 10 guests, and no guest shall stay for a period exceeding 15 days. The bed-and-breakfast shall maintain a guest registry identifying the arrival and departure dates of guests.
- (c) A maximum of two adult guests and accompanying minor children shall be allowed to occupy each guest bedroom, subject to fire safety standards.
- (d) There shall be no more than five bedrooms occupied by paying guests. Said rooms shall not be equipped with a kitchenette or other cooking devices.
- (e) As a minimum, one bathroom shall be provided for each two guest rooms. In addition, a separate bathroom shall be maintained for the owners of the single-family residence.
- (f) Each guest bedroom shall be equipped with a smoke detector alarm installed and maintained in a functional condition on or near the ceiling.
- (g) A bed-and-breakfast is permitted one sign, not to exceed two square feet, identifying the name of the facility. Illumination may be permitted, subject to Planning Board approval. The Planning Board shall take into consideration the proximity of adjoining residences and potential nighttime disturbance. Said sign shall not be illuminated between 9:00 p.m. and sunrise.
- (h) No parking space shall be located within the front yard. Parking spaces shall be set back a minimum distance of 15 feet from any side or rear lot line. A minimum of two spaces shall be provided for the single-family dwelling, plus a minimum of one off-street parking space shall be provided for each guest bedroom. Each space shall measure not less than nine feet by 18 feet in

size. New parking areas required to meet these requirements shall limit the introduction of impervious surfaces.

(i) The Planning Board shall consider the need for landscaping to screen views from adjoining residences.

(j) The dwelling shall not be altered in a manner which would cause the premises to differ from its residential character, nor shall any extensions or additions to the dwelling be made for the purpose of renting such space for overnight accommodations. Accessory buildings detached from the principal dwelling shall not be used for the purpose of a bed-and-breakfast.

(k) There shall be no more than two employees in addition to the owner.

(l) Each facility shall be operated and maintained so as to preserve the character and integrity of the surrounding residential neighborhood.

(4) Approval. A special use permit to operate a bed-and-breakfast shall be valid for one year from the date of issuance, subject to continuing compliance with the conditions of the special use permit and subject to continuing compliance with the New York State Uniform Fire Prevention and Building Code.

(5) Permit renewal. The applicant may renew the permit for additional two-year time periods, subject to approval by the Planning Board and any fees applicable to the review of special use permit applications. The Planning Board shall notify the Building Inspector, 15 days prior to the meeting at which the renewal is being considered, who shall provide a description, in writing, of any changes that have occurred in the floor or site plan since the time the special use permit was approved or last renewed and a list of violations or complaints, if applicable. The Planning Board shall take the Building Inspector's report into consideration when rendering a decision.

(6) Enforcement. The Building Inspector shall be given access to the premises for the purpose of making inspections as deemed necessary from time to time to ensure compliance with these regulations and with the New York State Uniform Fire Prevention and Building Code. Such inspections shall be conducted in accordance with procedures set forth in this chapter. Any facility operated in violation of this chapter shall have its permit suspended on a first violation and revoked for a second violation. No permit shall be reinstated until the owner fully complies with the provisions of this chapter.

(7) Registry. The Planning Board Secretary shall maintain a record of bed-and-breakfasts, including the name of the owner, the address, the maximum occupancy of the establishment, and the date of special use permit approval.

E. Community parking area. Community parking areas shall be subject to the following:

(1) A plan shall be submitted detailing the parking lot layout. Parking lots shall be macadam and parking spaces shall be appropriately striped. The City Engineer, in consultation with the Building Inspector, shall be responsible for reviewing and shall favorably recommend the layout prior to Planning Board approval of the special use permit.

(2) Adequate drainage shall be provided.

- (3) The owner shall be responsible for keeping said parking area clean and debris-free.
- (4) The community parking area shall be screened from abutting residential uses in accordance with § 300-12.
- (5) Mature trees in excess of eight inches dbh (diameter breast height) shall be identified on the site plan. The parking layout shall incorporate mature trees into the design of the parking area to the maximum extent practicable.
- (6) No more than one curb cut shall be permitted per each street frontage.

F. Planned residential development shall be subject to the following:

- (1) A planned residential development may consist of a mix of multiple-family dwellings or single-family attached (townhome) dwellings.
- (2) The site plan shall be accompanied by building elevations and a landscape plan.
- (3) The maximum density shall be 12 units per acre for multiple-family dwellings. The maximum density for townhomes shall be eight units per acre. A minimum of 25% of the site shall be maintained as open space.
- (4) No building shall exceed 120 feet in length.
- (5) Principal buildings shall be separated a minimum distance equal to the height of the taller of adjoining buildings, but in no case shall a building be located closer than 30 feet to any other principal building.
- (6) Accessory buildings, including recreational facilities, shall be located a minimum of 25 feet from principal buildings or from any lot line.
- (7) To the maximum extent practicable, buildings shall be situated in a manner so that the front facade and the main entry point to the dwellings face to the street line.
- (8) Off-street parking is prohibited in the front yard or adjacent to a street bounding the lot when the other side of the street is zoned residential. Parking shall be located to the rear of the principal buildings. The Planning Board may allow parking in a side yard, provided that said parking area shall be screened from the street and pedestrian traffic by means of a planted strip or fence of a height of at least three feet. Parking areas shall not be located closer than 10 feet to a principal building or outside deck or recreational space and shall be suitably screened from said buildings and spaces with appropriate landscape materials.
- (9) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the Planning Board and the City Council of the City of Newburgh.
- (10) All off-street parking areas shall be attractively landscaped. A minimum of 20% of the parking area shall be landscaped.

(11) Where provided, dumpsters shall be located in a fenced enclosure which shall be suitably screened with appropriate landscape materials.

(12) Each dwelling unit shall be provided with an outdoor deck or space consisting of a minimum of 25 square feet.

(13) On-site lighting shall not spill over onto adjoining residential properties.

G. Adaptive reuse of an existing building for residential use in the W-1 District shall be subject to the following:

(1) The ground floor of said structure shall be used for nonresidential uses permitted or allowed by special use permit in the W-1 District.

(2) Each dwelling unit shall contain a minimum of 1,000 square feet in area.

(3) On-site indoor or outdoor accessory recreational facilities are permitted, e.g., swimming pools or tennis or squash courts. The Planning Board may impose restrictions on the type and operation of lighting associated with outdoor recreational facilities in order to protect the "night sky" of the Hudson River.

(4) A landscape plan shall be submitted with the site plan.

(5) Off-street parking shall be provided in accordance with the standards for multifamily dwellings.

(6) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the Planning Board and the City Council of the City of Newburgh.

H. Boarding homes shall be subject to the following:

(1) In the R-4 District, up to three nontransient roomers or boarders may be accommodated for remuneration by the resident owner of the dwelling.

(2) The owner of the dwelling shall occupy the dwelling and shall constitute the principal use thereof.

(3) Kitchen and dining facilities shall be limited to use by the resident owner, roomers or boarders and bona fide guests but shall not be open to the general public. There shall be no individual kitchen or dining facilities for any sleeping room.

(4) There shall be no more than one rented sleeping room for each 2,000 square feet of lot area, with a maximum of three rooms being permitted.

(5) Each sleeping room for rent to a roomer or boarder shall be at least 100 square feet in area.

(6) One off-street parking space shall be provided for each rented sleeping room. The Planning Board may require landscaping or screening around the parking area.

(7) In order to preserve the residential character of the neighborhood, there shall be no exterior alteration or expansion of the structure to allow the use of the dwelling for boarders and roomers, except for parking.

I. Colleges or universities shall be subject to the following:

- (1) All buildings shall be located at least 100 feet from the street lot line and 50 feet from all other property lines. Grandstands, gymnasiums, central heating plants and similar buildings shall be located at least 200 feet from all property lines. The distance between principal buildings shall be at least equal to the height of the taller building. Total building coverage of the site shall be limited to 30%. On-campus housing, dormitory buildings or single-family detached dwellings shall be permitted as accessory buildings, provided that the minimum lot area for the entire site shall be increased by at least 1,000 square feet for each dormitory bed and by at least the minimum lot area of the applicable zoning district for each single-family dwelling. Use of such dormitories or dwellings shall be limited exclusively to students, teachers, or other members of the staff of the college or university, and a dormitory or dwelling shall not subsequently be sold or rented as a private residence or for any other legal use unless the building and any required lot surrounding it shall meet all regulations of the district in which it is located.
- (2) Multiple-family dwellings for the exclusive use of teachers and other members of the staff of the school shall be permitted as accessory buildings, provided that, in addition to all other site requirements, there shall be land set aside for each such dwelling of an area at least equal to the minimum residential lot size of the district in which such school site is located times the number of dwelling units in such dwelling and provided that each multifamily dwelling shall be at least 100 feet from any property line and be so located with respect to the required additional land that a lot could be separated from the balance of the school site and meet these area requirements. No such dwellings shall subsequently be rented or sold unless the above-mentioned lot shall be created with frontage on an approved street and unless the Planning Board shall find that the school to which such dwellings are accessory has ceased to operate or that the type of school has changed to one which no longer requires staff housing.
- (3) The minimum area that shall be dedicated to playgrounds and playfields shall be three acres, plus an additional two acres per 100 students.
- (4) Suitable fencing, landscaping and screening shall be provided to prevent any nuisance to surrounding properties and to protect students attending the school.
- (5) The college shall comply with any standards established for schools by the New York State Commissioner of Education.
- (6) The Planning Board may approve the design of a parking area to serve more than one use, provided that such uses will require parking facilities at different times. Parking areas shall be located at least 50 feet from all property lines, except that in the case of a property line adjacent to permanently reserved open space, parking areas may be located no closer than 25 feet therefrom. Access and interior drives shall be located so as to prevent unnecessary traffic on local residential streets and to avoid unsafe conditions and traffic congestion.

J. Used car lots shall be subject to the following:

- (1) All existing used car lots shall have a paved surface constructed in accordance with specifications of the City Engineer, an adequate system of storm drainage, screening in accordance with § 300-12 of this chapter to protect adjacent residential properties or residential-zoned areas and provision for lighting that is satisfactory to the City Building Inspector.

§ 300-38. and Large-Scale Mixed-Use Development Special Use Permit

A. Power. The City Council shall have the power to hear and decide on applications for a large-scale mixed-use development special use permit.

B. Applicability. The Large-Scale Mixed-Use Development Special Use Permit shall apply in the Tourist Commercial (TC-1) zoning district only, and only to parcels with frontage on Broadway. However, said project may extend from Broadway through the length of the block to the next public street, irrespective of the zone, provided that the portion outside of the TC-1 zone is part of a unified development parcel with frontage on Broadway.

C. Conditions to be fulfilled. In applying for a large-scale mixed-use development special use permit, the applicant need not demonstrate hardship, since the basis for the action is general benefit to the City as a whole. In granting a large scale mixed-use development special permit, the City Council, with due regard to the nature and condition of all adjacent structures and uses, shall consider the requirements of the zone within which the same is located, the Master Plan, the Future Land Use Plan, the Local Waterfront Revitalization Program (LWRP) and any relevant urban renewal plans and shall find all of the general conditions set forth in §300-35B.(1) through (5) fulfilled.

D. Factors to be considered. In making a determination that the conditions specified above have been fulfilled, the City Council shall give consideration to any or all of the factors set forth in §300-35C.(1) through (12).

E. City Council action. The City Council may approve, approve with modifications, or disapprove any application for a large-scale mixed-use development special use permit. The Council shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed large-scale mixed-use development special use permit and may be necessary in the Council's opinion to meet the objectives herein set forth. Upon the granting of said large-scale mixed-use development special use permit, any such conditions must be met in connection with the issuance of permits by applicable enforcement agents or officers of the City. Such conditions include those set forth in §300-35D.(1) through (4), or any that the Council determines reasonable and necessary.

F. Other conditions for approval. The application for a large-scale mixed-use development special use permit shall meet the conditions and provisions set forth in §300-35E. through (H).

G. Standards for large-scale mixed-use development special use permits.

The following individual standards are hereby established for large-scale mixed-use development special use permits:

(1) Area standards. The proposed development shall meet the minimum lot area, width and depth; yard; and maximum building height requirements for large-scale mixed-use development as set forth in the Schedule of Use and Bulk Regulations for the TC-1 District.

(2) In the case that the proposed large-scale mixed-use development contains any use which would be individually subject to a special permit from the Planning Board, the standards for such use, as provided in in §300-37., shall apply, unless the City Council determines that the application of said standards is unreasonably or unnecessary or impractical due to the unique characteristics of the site, mix of uses or other factors.

- (3) At a minimum, the special use permit application must be accompanied by a site plan prepared in accordance with §300-52.
- (4) To the maximum extent practicable, buildings shall be situated in a manner so that the front façade and the main entry face to the street line.
- (5) Off-street parking.
- (a) The City Council may modify the area requirements (length and width) of off-street parking spaces as set forth in §300-44, provided that in no case shall the width be decreased by more than 6 inches and the length by no more than one foot. In granting such reductions, the City Council shall consider such benefits as increased landscaping and screening within and adjacent to off-street parking areas;
- (b) When based on a Parking Analysis, the City Council may reduce the off-street parking space and loading berth requirements as set forth in §300-45 provided that the parking capacity to be provided will substantially meet the intent of this Article. The Parking Analysis shall be prepared assuming peak-hour utilization and demonstrate that sufficient parking spaces will exist so that no overflow parking is likely to occur in any public street; and
- (c) The City Council may permit a portion, not to exceed 25%, of the total required spaces, the total number of which shall be determined pursuant to §300-38.G.(5)(b) above, to be located at an off-site location no further than 300 feet from the premises to which they are appurtenant.
- (6) Shared parking. The use or uses proposed for the large-scale mixed-use development shall provide the required number of off-street parking spaces pursuant to §300-45., except that the number of required spaces may be reduced if the City Council finds that the parking capacity to be provided will substantially meet the intent of this Article by reason of variation in the probable time of maximum use by patrons, employees or residents of such establishments, provided that:
- (a) The City Council shall base its finding upon a Shared Parking Analysis to be prepared, assuming peak-hour utilization, to demonstrate that sufficient parking spaces will exist so that no overflow parking is likely to occur in any public street; and
- (b) In the event that any establishment changes use, the applicant seeking approval for the new use or uses shall adequately demonstrate, based upon a Shared Parking Analysis, that the new use configuration will continue to allow for sufficient parking capacity, or alternatively, that additional off-street parking spaces will be provided to ensure such capacity.
- (7) Off-street parking is prohibited in the front yard. Parking shall be located to the rear of the principal buildings. The City Council may allow parking in a side yard, provided that said parking area shall be screened from the street and pedestrian traffic by means of a planted strip or

fence. Parking areas shall be located a reasonable distance from principal buildings or outside decks or recreational spaces and shall be suitably screened from said buildings and spaces with appropriate landscape materials.

(8) When abutting a residential district, off-street parking areas must be appropriately landscaped and screened.

(9) The applicant shall make provisions for the maintenance of any open space or common areas in a manner that is satisfactory to the City Council.

(10) Mature trees in excess of eight inches dbh (diameter breast height) shall be identified on the site plan. The proposed development shall incorporate such mature trees into the plan to the maximum extent practicable.

(11) Where provided, dumpsters shall be located in a fenced enclosure which shall be suitably screened with appropriate fencing and/or landscaping materials.

(12) On-site lighting shall be designed and situated so that it does not spill over onto adjoining residential properties or create potential driving hazards. The City Council may require a lighting plan to verify that the proposed lighting will not present such adverse impacts.

H. Procedures. The powers and duties of the City Council in considering large-scale mixed-use development special permits shall be exercised in accordance with the procedures set forth in this article and in §300-36., except that, where relevant, said procedures shall apply to the City Council and not to the Planning Board.

§ 300-39. (Reserved)

Zoning

300 Attachment 8

City of Newburgh
Schedule of Use and Bulk Regulations
TC-1 Tourist Commercial District¹

Use	Use Type	Minimum Lot Area (feet)	Minimum Lot Width (feet)	Minimum Lot Depth (feet)	Minimum Front Yard (feet)	Minimum Side Yard Each (feet)	Minimum Rear Yard (feet)	Maximum Building Height	
								Stories	Feet
One-family detached dwelling	P	7,500	50	100	15	10	20	2.5	35
One-family attached (duplex, town home)	P	2,500**	25	100	15	0/10*	20	3	45
Two-family dwelling	P	10,000	75	100	15	10	20	2.5	35
Mixed use: residential on upper floors only****	P	2,500	25	100	15	0/5**	20	3	45
Professional and business office	P	2,500	25	100	15	0/5**	20	3	45
Government office	P	2,500	25	100	15	0/5**	20	3	45
Tourist-related retail use	P	2,500	25	100	15	0/5**	20	3	45
Art and antique gallery	P	2,500	25	100	15	0/5**	20	3	45
Museum	P	2,500	25	100	15	0/5**	20	3	45
Church and similar place of worship	P	7,500	75	100	15	15	20	3	45
Assembly hall	SP	2,500	25	100	15	0/5**	20	3	45
Craft shop	SP	2,500	25	100	15	0/5**	20	3	45
Restaurant, bar	SP	2,500	25	100	15	0/5**	20	3	45
Fast-food restaurant, without drive-through facility	SP	2,500	25	100	15	0/5**	20	3	45
Laundromat	SP	2,500	25	100	15	0/5**	20	3	45
Conference center	SP	10,000	100	100	25	15	25	3	45
Hotel	SP	10,000	100	100	25	15	25	3	45
Theater	SP	10,000	100	100	25	15	25	3	45
Large-scale mixed use development*****	SP	20,000	100	100	15*****	0/2*****	20	6/4*****	65/45*****
Swimming pools accessory to one-family detached	A								
Other customary accessory uses and buildings, provided that such use is clearly incidental to the principal use	A								

P = Permitted SP = Special Permit Use A = Accessory Use

NOTES:

¹In the TC-1 District, residential uses are not permitted east of Washington Place and Colden Street

* Where existing buildings share common wall, no side yard is required. All other buildings require five-foot side yard.

** Minimum area is per unit.

*** One dwelling unit is permitted for each 1,000 square feet of gross floor area per upper story floor.

**** Only applicable to lots with frontage on Broadway pursuant to Section 300-38.

***** Front and side yard requirements may be waived, reduced or otherwise modified at the discretion of the City Council as part of the Special Use Permit process.

***** Six stories (65 feet) are permitted within 200 feet of Broadway; four stories (45 feet) are permitted beyond 200 feet pursuant to Section 300-38.

RESOLUTION NO.: 74 - 2013

OF

APRIL 8, 2013

**A RESOLUTION TO AUTHORIZE THE AWARD OF A BID
AND TO EXECUTE AN AGREEMENT FOR VENDOR SERVICES
WITH ECONOMY CLEANERS
TO PROVIDE UNIFORM CLEANING SERVICES
TO THE CITY OF NEWBURGH POLICE DEPARTMENT**

WHEREAS, the City of Newburgh Police Department has implemented a Quartermaster system for issuing police uniforms which requires that the uniforms be cleaned on a regular basis prior to issuance to police officers; and

WHEREAS, the City of Newburgh has duly advertised for bids for the Uniform Cleaning Services for the City of Newburgh Police Department; and

WHEREAS, bids have been duly received and opened and Economy Cleaners is the low bidder; and

WHEREAS, the fees for items to be cleaned weekly are a flat rate price of \$9.95 for 2 pants and 2 shirts, 4 items of combination, and items to be cleaned on occasion are dress blouse \$3.25 each; winter jacket \$8.00 each; and vest cover \$2.25 each; and

WHEREAS, the quoted prices are fixed and guaranteed for the length of the contract for a term of one (1) year with no annual price index increases; and

WHEREAS, such contract is in the best interests of the Police Department and the citizens of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the bid for the Uniform Cleaning Services be and it hereby is awarded to Economy Cleaners and that the City Manager is hereby authorized to enter into a contract for such work in the aforesaid amounts, funds to be had from budget line A.3120.0448.

AGREEMENT FOR VENDOR SERVICES

THIS AGREEMENT is entered into as of this _____ day of _____, 2013, 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 Economy Cleaners, a firm with principal offices at 567 Broadway, 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").

ARTICLE 2. TERM OF AGREEMENT

VENDOR agrees to perform the SERVICES and/or supply goods beginning May 1, 2013, and ending April 30, 2014.

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 B, 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 B, 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 under penalty of perjury, that to the best of their knowledge and belief:

A. 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;

B. Unless otherwise required by law, the prices which have been quoted in this Agreement and on the proposal or quote submitted by VENDOR have not been knowingly disclosed by VENDOR prior to the communication of such quote to the CITY or the proposal opening directly or

indirectly, to any other bidder, proposer or to any competitor; and

C. 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.

The fact that VENDOR (i) has published price lists, rates, or tariffs covering items being procured, (ii) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (iii) has provided the same items to the other customers at the same prices being bid or quoted does not constitute, without more, a disclosure within the meaning of this Article.

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. ASSIGNMENT AND SUBCONTRACTING

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.

Failure of VENDOR to obtain any required consent to any assignment, shall be grounds for termination for cause, at the option of the CITY and if so terminated, the CITY shall thereupon be relieved and discharged from any further liability and obligation to VENDOR, its assignees or transferees, and all monies that may become due under this Agreement shall be forfeited to the CITY except so much thereof as may be necessary to pay VENDOR'S employees for past service.

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, and other insurance as may be required by law and as VENDOR may require.

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. TERMINATION

The CITY may, by written notice to VENDOR effective upon mailing, terminate

this Agreement in whole or in part at any time (i) for CITY'S convenience, (ii) upon the failure of VENDOR 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 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

In the event the CITY terminates this Agreement in whole or in part, as provided in this Article, the CITY may procure, upon such terms and in such manner as deemed appropriate, SERVICES similar to those so terminated, and the VENDOR shall continue the performance of this Agreement to the extent not terminated hereby. If this Agreement is terminated in whole or in part for other than the convenience of the CITY, any SERVICES or goods procured by the CITY to complete the SERVICES herein will be charged to VENDOR and/or set-off against any sums due VENDOR.

Notwithstanding any other provision of this Agreement, VENDOR shall not be relieved of liability to the CITY for damages sustained by the CITY by virtue of VENDOR'S breach of the Agreement or failure to perform in accordance with applicable standards, and the CITY may withhold payments to VENDOR for the purposes of set-off until such time as the exact amount of damages due to the CITY from VENDOR is determined.

The rights and remedies of the CITY provided herein shall not be exclusive and are in addition to any other rights and remedies provided by law or this Agreement.

ARTICLE 17. 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 18. SET-OFF RIGHTS

The CITY shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but are not limited to, the CITY'S right to withhold for the purposes of set-off any monies otherwise due VENDOR (i) under this Agreement, (ii) under any other agreement or contract with the CITY, including any agreement or contract for a term commencing prior to or after the term of this Agreement, (iii) from the CITY by operation of law, the CITY also has the right to withhold any monies otherwise due under this Agreement for the purposes of set-off as to any amounts due and owing to the CITY for any reason whatsoever including, without limitation, tax delinquencies, fee delinquencies or monetary penalties or interest relative thereto.

ARTICLE 19. 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 20. 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 21. 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 the party to be bound. 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.

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

THE CITY OF NEWBURGH

ECONOMY CLEANERS

BY: _____
RICHARD F. HERBEK,
CITY MANAGER

BY: _____
NAME:
TITLE:

DATE: _____

DATE: _____

APPROVED AS TO FORM:

MICHELLE KELSON,
CORPORATION COUNSEL

DATE: _____

KATHRYN NIVINS,
ACTING CITY COMPTROLLER

DATE: _____

SCHEDULE A

SCOPE OF SERVICES

UNIFORM CLEANING SERVICES

3.0 CLEANING:

- A. All uniforms are to be thoroughly cleaned and have all stains removed through laundering procedures in accordance with manufacturer's specifications.
- B. All garments are to be spotted for stains and treated with the proper chemicals to insure their removal.
- C. All cleaning chemicals used must meet or exceed current environmental and safety requirements.
- D. The final rinse water shall be brought to a PH of between 5.5 and 6.0.
- E. Officer pants are to be hung on a 13 gauge hanger with a no slip trouser guard.
- F. Officer shirts are to be hung on a 14 gauge executive shirt hanger.
- G. All garments are to be twist-tied and bagged in plastic cover.
- H. All invoices shall be sent to the Police Department on a monthly basis with a summary of all services attached. Such shall be mailed to: City of Newburgh Police Department, 83 Broadway, Newburgh, NY 12550.

SCHEDULE B

FEES AND EXPENSES

CLEANING PRICE RATE

1. ITEMS TO BE CLEANED WEEKLY - PRICED AT A FLAT RATE:

2 OFFICERS PANTS
2 OFFICERS SHIRTS
4 ITEMS OF COMBINATION \$ 9.95 FLAT RATE PRICE

2. ITEMS TO BE CLEANED ON OCCASION - PRICED PER ITEM:

DRESS BLOUSE \$ 3.25 PRICE EACH
WINTER JACKET \$ 8.00 PRICE EACH
VEST COVER \$ 2.25 PRICE EACH

Quoted prices are fixed and guaranteed for the length of the contract with no annual price index increases.

RESOLUTION NO.: 75 - 2013

OF

APRIL 8, 2013

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO A LICENSE AGREEMENT WITH HOUSE OF REFUGE
TO ALLOW USE OF CITY OWNED PROPERTY LOCATED AT
140 BROADWAY FOR THE TUESDAY FARM MARKET**

WHEREAS, the City of Newburgh is the owner of several parcels of real property located at 132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway"; and

WHEREAS, the Tuesday Farm Market has been held on the south side of Broadway between the House of Refuge and the Armory Building; and

WHEREAS, House of Refuge, the Tuesday Farm Market Manager and Orange County propose moving the Tuesday Farm Market to 140 Broadway, the City-owned land on the north side of Broadway, commonly referred to as the "Mid-Broadway site"; and

WHEREAS, the benefits of moving the Tuesday Farm Market include:

1. To provide greater visibility to attract more buyers and vendors;
2. To promote positive activity on Broadway; and
3. To provide more space for Orange County agencies to provide information and conduct demonstrations for the community; and

WHEREAS, moving the Tuesday Farm Market to 140 Broadway the requires the parties to execute a license agreement, a copy of which is attached hereto and made a part of this resolution; and

WHEREAS, this Council has reviewed such license and has determined that entering into the same would be in the best interests of the City of Newburgh and its further development;

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 enter into the attached license agreement with House of Refuge to allow access to and use of several City-owned properties for the purpose of holding the Tuesday Farm Market.

LICENSE AGREEMENT

This Agreement, made this _____ day of _____, two thousand and thirteen, by and between the HOUSE OF REFUGE, with offices at _____ as "LICENSEE"; and the CITY OF NEWBURGH, a municipal corporation organized and existing under the laws of the State of New York with offices at 83 Broadway, City Hall, Newburgh, New York 12550 as "LICENSOR";

WITNESSETH THAT:

WHEREAS, Licensee desires the license or privilege of gaining access to the premises of Licensor and in substantially the location and position shown as set forth on the map or plan hereto attached and made a part hereof and bearing the following address:

132, 136, 138, 140, 140A, 144, 146 and 148 Broadway; 6, 10, 12, 16 and 18 Johnston Street; and 6, 8 and 10 Lander Street, and more accurately described on the official tax map of the City of Newburgh as Section 30, Block 3, Lot(s) 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37 and 38, City of Newburgh, New York, hereinafter collectively referred to as "140 Broadway".

AND WHEREAS, Licensor is willing to give said license or privilege on the following terms and conditions:

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and conditions hereinafter contained, it is hereby agreed as follows:

First: Licensor hereby gives to Licensee, upon the conditions hereinafter stated, the license or privilege of entering upon Licensor's property located at 140 Broadway, in the City of Newburgh, New York, and taking thereupon such vehicles, equipment, tools, tables, chairs and other materials as may be necessary; for the purposes of hosting a farmer's market, including but not limited to the sale of farm products, produce and other general information and demonstrations by Orange County agencies on property owned by Licensor. No permanent improvements may be erected on the premises.

Second: Licensee agrees to use and maintain said facilities 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.

Third: Licensor acknowledges that the use of the subject property shall inure to the benefit of both parties, and shall be satisfactory, adequate and sufficient consideration for the Licensee granted hereunder.

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

Fifth: This Agreement and the license or privilege term is from July 1, 2013 to September 30, 2013.

Seventh: 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 hold said premises.

Eighth: Without limitation to the general provisions of this Agreement, it is understood and agreed that said facilities shall be installed in substantially the location and position shown in the attachments hereto, and in accordance with details and specifications as set forth on map or plan hereto attached and hereby made a part hereof.

WITNESSETH:

THE CITY OF NEWBURGH

LICENSOR

By:

Richard F. Herbek, City Manager

HOUSE OF REFUGE

LICENSEE

By:

Bishop Jeffrey Woody

RESOLUTION NO. 76 - 2013

OF

APRIL 8, 2013

A RESOLUTION REAPPOINTING KATHY PARISI
TO THE BOARD OF ASSESSMENT REVIEW

WHEREAS, it is necessary to appoint members to vacancies on the Board of Assessment Review; and

WHEREAS, each member of such Board serve a five-year term; and

WHEREAS, it is necessary to re-appoint one member whose term of office expired and who is willing to serve a new term;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the following individual be and is hereby reappointed to the Board of Assessment Review for the term indicated:

Kathy Parisi, to serve a new five-year term commencing retroactively on October 1, 2012 and expiring on September 30, 2017.

RESOLUTION NO.: 77 - 2013

OF

APRIL 8, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT A DONATION OF A VEHICLE FROM THE
CITY OF PORT JERVIS TO BE USED
BY THE CITY OF NEWBURGH POLICE DEPARTMENT K-9 UNIT

WHEREAS, the City of Port Jervis has offered to donate a 2005 Ford Crown Victoria 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 City Manager of the City of Newburgh be and he is hereby authorized to accept a 2005 Ford Crown Victoria from the City of Port Jervis, New York, with the appreciation and thanks of the City of Newburgh.

RESOLUTION NO.: 78 - 2013

OF

APRIL 8, 2013

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ENTER INTO AGREEMENTS WITH VARIOUS PARTIES
TO PROVIDE PERFORMING ARTISTS AND RELATED SERVICES
IN CONNECTION WITH THE CITY OF NEWBURGH
25th ANNUAL INTERNATIONAL FESTIVAL

WHEREAS, the City of Newburgh will hold its annual International Festival from Friday, August 30, 2013 through Monday, September 2, 2013, dates inclusive; and

WHEREAS, it is appropriate and necessary to authorize the City Manager to enter into agreements by which performing artists, production services and necessary equipment and facilities shall be provided; and

WHEREAS, there is funding from proceeds from previous festivals available in a Trust and Agency Account and the 2013 City budget; and

WHEREAS, such agreements shall not exceed and the funds in the Trust and Agency Account and the 2013 Festival Budget;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh, New York hereby authorizes the City Manager to enter into the referenced agreements in a form subject to approval of the Corporation Counsel with such other terms and conditions as Corporation Counsel may require, with the performing artists and providers of related necessary services in connection with the 25th Annual International Festival, with the net cost to the City of such agreements not to exceed the Trust and Agency Account proceeds and 2013 Festival Budget.

RESOLUTION NO. 79 - 2013

OF

APRIL 8, 2013

A RESOLUTION TO AUTHORIZE A SETTLEMENT IN THE MATTER OF
ROSEANN DEGEORGE AGAINST THE CITY OF NEWBURGH IN THE AMOUNT OF
THREE THOUSAND FOUR HUNDRED NINETY-FIVE DOLLARS

WHEREAS, Roseann DeGeorge brought a claim against the City of Newburgh; and

WHEREAS, the parties have reached an agreement for the payment of the settlement of the claim in the amount of Three Thousand Four Hundred Ninety-Five (\$3,495.00) Dollars in exchange for a release to resolve all claims among them; and

WHEREAS, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City's attorney is hereby authorized to settle the claim of Roseann DeGeorge in the total amount of Three Thousand Four Hundred Ninety-Five (\$3,495.00) Dollars, and that City Manager be and he hereby is authorized to execute documents as the City's attorney may require, to effectuate the settlement as herein described.

RESOLUTION NO. 80 - 2013

OF

APRIL 8, 2013

A RESOLUTION AUTHORIZING THE
EXTENSION OF TIME TO CLOSE TITLE ON THE PROPERTY
LOCATED AT 34 CARTER STREET (SECTION 22, BLOCK 2, LOT 26)
SOLD AT PRIVATE SALE TO STACEY BURKS

WHEREAS, the Council of the City of Newburgh, New York, by Resolution No. 16-2013 of January 14, 2013, authorized the sale of 34 Carter Street (Section 22, Block 2, Lot 26) to Stacey Burks; and

WHEREAS, Mr. Burks resides at said premises; and

WHEREAS, he is requesting an additional of time to close due to unforeseen circumstances in obtaining the necessary funds for the purchase price; and

WHEREAS, this Council has determined that granting the requested extension would be in the best interests of the City of Newburgh and the future homeowner;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that an extension of time to close title for the property located at 34 Carter Street is hereby authorized and that the closing shall take place on or before June 13, 2013, that date being sixty (60) days from the date set forth in Resolution No. 16-1013 of January 14, 2013.