

PUBLIC HEARING

PLEASE TAKE NOTICE that the City Council of the City of Newburgh will hold a public hearing on Tuesday, May 29, 2012 at 7:00 p.m. in the 3rd floor Council Chambers, City Hall, 83 Broadway, Newburgh, NY to hear public comment concerning the development of the long term control plan for the City of Newburgh combined sewer overflow.

**LORENE VITEK
CITY CLERK**

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& Mid-Hudson Times)

LOCAL LAW NO.: 3 - 2012

OF

JUNE 18, 2012

A LOCAL LAW AMENDING CHAPTER 248 "SEWERS"
OF THE CODE OF ORDINANCES OF THE CITY OF NEWBURGH
AMENDING ARTICLE IV ENTITLED
"STORMWATER MANAGEMENT REGULATIONS"

BE IT ENACTED by the City Council of the City of Newburgh as follows:

SECTION 1 - TITLE

This Local Law shall be referred to as "A Local Law Amending Chapter 248, 'Sewers', Article IV entitled 'Stormwater Management Regulations' of the Code of the City of Newburgh".

SECTION 2 - PURPOSE AND INTENT

The purpose of this local law is to comply with New York State Department of Environmental Conservations related to Stormwater Management/Control and Prohibition of Illicit Discharges and Connections to City MS4 System.

SECTION 3 - AMENDMENT

Chapter 248 entitled "Sewers", Article IV entitled "Stormwater Management Regulations" of the Code of the City of Newburgh is hereby amended by to read as follows:

§ 248-58. Definitions and word usage.

STORMWATER MANAGEMENT OFFICER (SMO)

An employee or officer designated by the municipality to accept and review stormwater pollution prevention plans, forward the plans to the applicable municipal board, inspect stormwater management practices and enforce the provisions of this Local Law in conjunction with other City officials and departments and other municipal agencies. Unless otherwise designated, the City Stormwater Management Officer shall be the City Consulting Engineer.

~~Strikethrough~~ denotes deletions

Underscore denotes additions

STORMWATER MANAGEMENT PLAN

~~The detailed analysis of stormwater and drainage as described in and required by these regulations, including standards, criteria, requirements and enforcement thereof.~~

STORMWATER POLLUTION PREVENTION PLAN (SWPPP)

A plan for controlling stormwater runoff and pollutants from a site during and after construction activities, and as described in and required by these regulations, including standards, criteria, requirements and enforcement thereof.

§ 248-59. Applicability.

- A. This Local Law shall apply to all water and other substances and materials entering the MS4 generated on any developed and/or undeveloped lands unless explicitly exempted by law, statute, rule or regulation or by an authorized enforcement agent or agency.
- B. A ~~stormwater management plan~~ and stormwater pollution prevention plan developed in compliance with the New York State Stormwater Management Design Manual dated latest revision and prepared in accordance with the specifications herein must be submitted by the Owner and/or by his agent as authorized hereunder for review and acceptability to all City agencies and officials having jurisdiction over approval of a project land development activity, as defined in this Local Law, including any one or more of the following:
- (1) A subdivision of land.
 - (2) The approval of a site plan.
 - (3) Issuance of a building permit where greater than one acre of property will be impacted.
 - (4) Construction or extension of an existing City street or property, or private roadway.
 - (5) Alteration of an existing drainage system or watercourse.
 - (6) Redevelopment of existing sites.
 - (7) Such other project undertaken within the boundaries of the City or on or adjacent to property in which the City has an interest which poses an impact upon such property and which in the opinion of the City Engineer requires the creation and implementation of such plan or plans as necessary to satisfy the Purpose and Objectives of this Law.

§ 248-60. Exemptions.

The following development activities are exempt from the ~~Stormwater Management and Stormwater Pollution Prevention Plan Requirements.~~

- A. Developments which disturb less than one acre of land and which in the professional opinion of the ~~City Engineer and/or~~ Stormwater Management Officer will not cause or may be reasonably anticipated to not cause stormwater accumulation, discharges, or flows equivalent to or greater than such as are regulated under and restricted or prohibited hereunder, or which will not cause or may be reasonably anticipated to not cause prohibited discharges, pollution, erosion, sedimentation, flooding or other impacts intended to be regulated, restricted or prohibited by this Local Law, regardless of the size of the parcel of land being developed or re-developed.
- B. Agricultural land management activities.
- C. Maintenance or improvement of an existing structure which will not have an impact on the quantity and/or quality of surface water discharge from the site, and which are performed in such manner as to maintain pre-existing grade, facilities, boundaries, hydraulic capacity and/or function and purpose.
- D. Repairs to any stormwater management practice or facility deemed required by the Stormwater Management Officer ~~and/or City Engineer.~~
- E. Cemeteries, graves, and plots therein which existed prior to the enactment of this law and/or which are exempt under State law, rule or regulation.
- F. Emergency activities undertaken to protect the life, health and safety of any person(s), or property or natural resources, as same may be deemed an emergency by the City Manager or by the Stormwater Management Officer.
- G. Home gardening undertaken for the personal benefit of the owner which does not generate the impacts intended to be regulated hereby.

§248-61. Prohibitions of illegal discharges.

No private or corporate person, owner, developer, contractor, site operator or other party or entity or agent shall discharge or cause to be discharged into any stormwater collection or conveyance system, natural watercourse or water body within the City of Newburgh or the MS4 any materials other than stormwater except as provided in Subsection A(1) hereinbelow. The commencement, conduct or continuance of any illegal discharge to the MS4 is prohibited except as described as follows:

~~Strikethrough~~ denotes deletions
Underscore denotes additions

- A. The following discharges are exempt from discharge prohibitions established by this article, unless the Department or the municipality has determined them to be substantial contributors of pollutants or the cause of impacts prohibited hereunder: water line flushing or flushing of other portable water sources, landscape irrigation or lawn watering, existing diverted stream flows, rising groundwater, uncontaminated groundwater infiltration to storm drains, uncontaminated pumped groundwater, foundation or footing drains, crawl space or basement sump pumps, air-conditioning condensate, irrigation water, springs, water from individual residential car washing, natural riparian habitat or wetland flows, dechlorinated swimming pool discharges, residential street washwater, water from fire-fighting activities, and any other water source not containing pollutants or causing impacts prohibited hereunder. Such exempt discharges shall be made in accordance with an appropriate plan for reducing pollutants or mitigating or eliminating prohibited impacts. With the exception of the discharges identified herein, no discharge piping from any floor drain, sanitary drains, process piping or other similar source shall be connected to any City-owned or -maintained stormwater collection and conveyance system. The Building Inspector and/or Code Enforcement Officer shall be authorized to enforce the provisions of this section.
- B. Discharges approved in writing by the SMO to protect life or property from imminent harm or damage, provided that such approval shall not be construed to constitute compliance with other applicable laws and requirements, and further provided that such discharges may be permitted for a specified time period and under such conditions as the SMO may deem appropriate to protect such life and property while reasonably maintaining the purpose and intent of this article.
- C. Dye testing in compliance with applicable state and local laws is an allowable discharge but requires a verbal notification to the SMO prior to the time of the test.
- D. This prohibition shall not apply to any discharge permitted under an SPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the Department, provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the MS4.
- E. Violations of this section shall be punishable by the penalties set forth in § 248-76 herein. Every new day, measured from 12:00 midnight, during all or part of which a violation is found to exist shall constitute a separate violation hereof. In addition to such penalty, the City may bring a separate civil action in any court of competent jurisdiction to recover from any violator(s) the cost of any damages caused by such violation plus the cost of remediating such damage, plus any legal and attorneys' fees and costs associated with such action, including the right of the City to compel compliance or to restrain by injunction

any such violations of this section. This shall be in addition to any other penalties or remedies provided by any other law, regulation, or rule or section hereof.

§248-68. Access and monitoring of discharges.

A. Applicability. This section applies to all facilities that the SMO must inspect to enforce any provision of this Law, or whenever the authorized enforcement agency has ~~probable~~ cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Law.

B. Access to Facilities.

1. The SMO shall be permitted to enter and inspect facilities subject to regulation under this Law as often as may be necessary to determine compliance with this Law. If a person who is the owner or is in control of or is responsible for such premises or who is a discharger has security measures in force which require proper identification and clearance before entry into its premises, such person(s) shall make the necessary arrangements to allow access to the SMO.
2. Facility operators shall allow the SMO ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records as may be required to implement this law.
3. The municipality shall have the right to set up on any facility subject to this Law such devices as are necessary in the opinion of the SMO to conduct monitoring and/or sampling of the facility's stormwater discharge.
4. The municipality has the right to require the facilities subject to this Law to install monitoring equipment at the expense of the owner, operator or responsible person(s) or discharger(s) as is reasonably necessary to determine compliance with this Law. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by such person(s) at their own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
5. Unreasonable delays in allowing the municipality access to a facility subject to this Law is a violation of this Law. A person who is the owner, operator, person responsible for or discharger of a facility subject to this Law commits an offense if the person denies the municipality reasonable access to the facility for the purpose of conducting any activity authorized or required by this Law. Such offense shall be

considered a Class A Misdemeanor and may be prosecuted as set forth in §248-76 ~~§248-66B and as set forth in §248-65A(2) hereinabove.~~

6. If the SMO has been refused access to any part of the premises from which is stormwater discharged, and he/she is able to demonstrate probable cause to believe that there may be a violation of this Law, or that there is a need to inspect and/or sample as part of a routine inspection and sampling program designed to verify compliance with this Law or any order issued hereunder, then the SMO may seek issuance of a search warrant from any court of competent jurisdiction in addition to all other remedies as set forth in this Chapter.

§ 248- 70. Contents of a stormwater ~~management~~ pollution prevention plan

The ~~stormwater management~~ and stormwater pollution prevention plan shall fully document compliance with the requirements of NYSDEC construction SPDES permit and New York State Stormwater Management Design Manual. All sites requiring a ~~stormwater management plan~~ and/or a stormwater pollution prevention plan to be implemented must document a zero increase in peak discharge from the predevelopment conditions as compared to postdevelopment conditions.

§ 248- 71. Components of a stormwater ~~management~~ pollution prevention plan

- A. Stormwater ~~Management~~ Pollution Prevention Plans shall be prepared by a professional licensed by the State of New York to prepare such documents. Plans shall consist of an analysis of the predevelopment runoff rates, versus post development runoff rates with engineering controls implemented to assure that predevelopment peak discharge at property lines, streams or water courses are not exceeded in the post development conditions for each design storm event and return frequency. Each stormwater management report shall take into account existing soils, vegetation and cover types, and topography in the analysis. Reports shall identify engineering computations and variables utilized in all calculations. Any assumptions utilized in the calculations shall be clearly identified. Stormwater management reports shall comply with the requirements of the New York State Stormwater Management Design Manual, (year of latest revision), and appropriate regulatory guidelines and standards. Additional information shall be provided as requested by the Planning Board, Building Inspector, Stormwater Management Officer ~~or City Engineer~~. Stormwater management reports will address both water quantity control as well as water quality control including storage requirements for water quality and/or volume, stream, brook and other water and watercourse protection, ten-year peak runoff control and a 100 year flood control. Detention ponds shall be analyzed for a 25 year return frequency storm event for pre and post development runoff analysis. This local law by reference will utilize the New York State Stormwater Management Design Manual (year of latest revision) as a basis for stormwater management and design

guidelines for stormwater management practices; and shall include such other and further provisions as the ~~City Engineer and/or~~ Stormwater Management Officer may reasonably require as being in the best interests of the City and as are required or defined in all applicable laws, rules and regulations.

B. Such Plans shall include but not be limited to the following:

(1) Background information and erosion and sediment controls:

- (a) Background information about the scope of the project, including location, type and size of project.
- (b) Site map/construction drawing(s) for the project, including a general location map. At a minimum, the site map should show the total site area; all improvements; areas of disturbance; areas that will not be disturbed; existing vegetation; on-site and adjacent off-site surface water(s); wetlands and drainage patterns that could be affected by the construction activity; existing and final slopes; locations of off-site material, waste, borrow or equipment storage areas; and location(s) of the stormwater discharges; *Site map should be at a scale no smaller than 1" = 100.*
- (c) Description of the soil(s) present at the site.
- (d) Construction phasing plan describing the intended sequence of construction activities, including clearing and grubbing, excavation and grading, utility and infrastructure installation and any other activity at the site that results in soil disturbance. Consistent with the New York Standards and Specifications for Erosion and Sediment Control (Erosion Control Manual), not more than five (5) acres shall be disturbed at any one time unless pursuant to an approved Stormwater Management Pollution Prevention Plan.
- (e) Description of the pollution prevention measures that will be used to control litter, construction chemicals and construction debris from becoming a pollutant source in stormwater runoff.
- (f) Description of construction and waste materials expected to be stored on-site with updates as appropriate, and a description of controls to reduce pollutants from these materials including storage practices to minimize exposure of the materials to stormwater, and spill prevention and response.

- (g) Temporary and permanent structural and vegetative measures to be used for soil stabilization, runoff control and sediment control for each stage of the project from initial land clearing and grubbing to project close-out.
 - (h) A site map/construction drawing(s) specifying the location(s), size(s) and length(s) of each erosion and sediment control practice.
 - (i) Dimensions, material specifications and installation details for all erosion and sediment control practices, including the siting and sizing of any temporary sediment basins.
 - (j) Temporary practices that will be converted to permanent control measures.
 - (k) Implementation schedule for staging temporary erosion and sediment control practices, including the timing of initial placement and duration that each practice should remain in place.
 - (l) Maintenance schedule to ensure continuous and effective operation of the erosion and sediment control practice.
 - (m) Name(s) of the receiving water(s).
 - (n) Delineation Plan implementation responsibilities for each part of the site.
 - (o) Description of structural practices designed to divert flows from exposed soils, store flows, or otherwise limit runoff and the discharge of pollutants from exposed areas of the site to the degree attainable.
 - (p) Any existing data that describes the stormwater runoff at the site.
- (2) Conditions A, B and C. In addition to the foregoing, land development activities as defined in this Law and meeting conditions "A", "B" or "C" below shall also include water quantity and water quality controls (post-construction stormwater runoff controls) as set forth below as applicable and as may be required by the Stormwater Management Officer ~~and/or City Engineer~~.
- (a) Condition A: Stormwater runoff from land development activities discharging a pollutant of concern to either an impaired water identified on the Department's 303(d) list of impaired waters or a Total Maximum Daily Load (TMDL) designated watershed for which pollutants in stormwater have been identified as a source of the impairment.

- (b) Condition B: Stormwater runoff from land development activities disturbing five (5) or more acres.
 - (c) Condition C: Stormwater runoff from land development activity disturbing between one (1) and five (5) acres of land during the course of the project, exclusive of the construction of single family residences and construction activities at agricultural properties.
- (3) SWPPP Requirements for Condition A, B and C:
- (a) All information in §248-71(B) (a-p) of this Local Law.
 - (b) Description of each post-construction stormwater management practice.
 - (c) Site map/construction drawing(s) showing the specific location(s) and size(s) of each post-construction stormwater management practice.
 - (d) Hydrologic and hydraulic analysis for all structural components of the stormwater management system for the applicable design storms.
 - (e) Comparison of post-development stormwater runoff conditions with pre-development conditions.
 - (f) Dimensions, material specifications and installation details for each post-construction stormwater management practice.
 - (g) Maintenance schedule to ensure continuous and effective operation of each post-construction stormwater management practice.
 - (h) Maintenance easements to ensure access to all stormwater management practices at the site for the purpose of inspection and repair. Easement shall be recorded on the plan and shall remain in effect with transfer of title to the property.
 - (i) Inspection and maintenance agreement binding on all subsequent landowners served by the on-site stormwater management measures in accordance with the provisions of this local law.

C. Plan certification.

- (1) The Stormwater ~~Management~~ Pollution Prevention Plan shall be prepared by a landscape architect, certified professional or professional engineer and must be

signed by the professional preparing the plan, who shall certify that the design of all stormwater management practices meets the requirements in this local law.

- (2) Each contractor and subcontractor identified in the SWPPP who will be involved in soil disturbance and/or stormwater management practice installation shall sign and date a copy of the following certification statement before undertaking any land development activity: "I certify under penalty of law that I understand and agree to comply with the terms and conditions of the Stormwater Pollution Prevention Plan. I also understand that it is unlawful for any person to cause or contribute to a violation of water quality standards." The certification must include the name and title of the person providing the signature, address and telephone number of the contracting firm; the address (or other identifying description) of the site; and the date the certification is made.
- (3) A copy of the SWPPP shall be retained at the site of the land development activity during construction from the date of initiation of construction activities to the date of final stabilization.

D. Other environmental permits. The applicant shall assure that all other applicable environmental or legal permits and other approvals have been or will be acquired for the land development activity prior to approval of the final stormwater design plan.

§ 248-73. Maintenance.

A. The Applicant or Developer

- (1) Stormwater management and stormwater pollution prevention plans shall address maintenance of all stormwater related improvements on subdivisions and site plans. Maintenance activity shall be the responsibility of the Owner and/or responsible party as defined herein of the site. Erosion control plans, in compliance with NYSDEC standards and as approved by the Planning Board, Zoning Board of Appeal, Building Department, Office of Code Compliance, ~~City Engineer~~ or Stormwater Management Officer, or any office, department, agency or officer charged with enforcement of law, codes or regulations, shall be implemented prior to construction activities commencing on a site. Soil erosion control methods and techniques shown on the approved plans and any additional controls required by the Code Compliance Supervisor, Building Inspector, Stormwater Management Officer and/or City Engineer shall be implemented and maintained throughout the project construction phase. Erosion and sediment control devices shall remain properly maintained on the site until the site has been stabilized. Maintenance of stormwater management appurtenances on site plans shall continue to be the responsibility of the site Owner and/or responsible party as defined herein. Periodic maintenance of stormwater management control is

required to assure their functions. Maintenance shall be performed in accordance with the stormwater pollution prevention plan and sound environmental practices, and as may be reasonably required by the Stormwater Management Officer ~~and/or~~ ~~City Engineer~~. Maintenance activities shall include, but are not limited to, mowing of vegetation, removal of debris, removal of sediment, cleaning of catch basins and pipes, repair and replacement of defective structures, equipment, or devices. During construction, sediment shall be removed from sediment traps, sediment ponds and other sediment collection facilities and points as soon as and whenever their total design capacity has been reduced for any reason or cause by fifty (50%) percent.

- (2) Post development maintenance of stormwater management facilities designed and constructed on a residential subdivision shall be performed by a Homeowners Association, or other individual, partnership, association, corporation, Owner or other legally-responsible party, or a drainage district established by the City Council in order to provide for required maintenance activities. Appropriate easements shall be provided to City and to other parties as necessary, for access to and maintenance of all stormwater management facilities. Costs for maintenance shall be borne either by a Homeowners Association, or other individual, partnership, association, corporation, Owner or other legally-responsible party, or a drainage district. Cost associated with maintenance within a district shall be assessed to each individual property annually on an ad valorem basis, as same is approved by the State Comptroller and as is assessed and administered under law.
 - (3) The applicant or developer or their representative shall be on site at all times when construction or grading activity takes place and shall inspect and document the effectiveness of all erosion and sediment control practices. Inspection reports shall be completed every 7 days and within 24 hours of any storm event producing 0.5 inches of precipitation or more. The reports shall be delivered to the Stormwater Management Officer and also copied to the site log book.
- B. Maintenance Easement(s). Prior to the issuance of any approval that has a stormwater management facility as one of the requirements, the applicant or developer must execute a maintenance easement agreement that shall be binding on all subsequent landowners served by the stormwater management facility. The easement shall provide for access to the facility at all reasonable times for periodic inspection by the City of Newburgh to ensure that the facility is maintained in proper working condition to meet design standards and any other provisions established by this local law. The easement shall be recorded by the grantor in the office of the County Clerk after approval by the Corporation Counsel for the City of Newburgh.
- C. Stormwater Management and Maintenance after Construction.

- (1) Owners and/or other responsible parties are hereby made responsible for the continued operation and maintenance of all stormwater management facilities on properties, construction sites and subdivisions. The policy of the City of Newburgh is to reduce negative impacts associated with construction activities, including reducing impacts to receiving water quality as well as to maintain appropriate erosion, run-off and flood control from developed sites. All temporary soil erosion and sediment control devices and appurtenances required during the construction phase shall be maintained until sites become stabilized either through the provision of impervious surfaces or the establishment of vigorous vegetative growth, or the permanent establishment of such facilities and controls as the Stormwater Management Officer ~~and/or City Engineer~~ may reasonably require. All areas disturbed during construction shall be revegetated sufficiently to control erosion from all disturbed areas. Prior to issuance of a Certificate of Occupancy for a site plan or the first residential structure on a subdivision, the involved engineer shall certify to the ~~City of Newburgh Engineer and Code Compliance Supervisor and Stormwater Management Officer and/or Building Department official~~ that all stormwater management facilities have been constructed in conformance with the applicable stormwater pollution prevention plan. All appropriate and necessary elements of the stormwater pollution prevention plan shall become part of the approved site plan/subdivision and shall be enforceable by the City code enforcement officer. The City of Newburgh hereby recognizes that the stormwater management and soil erosion sediment control plans are an important part of site development plans and therefore require enforcement of the implementation of said plans as part of the site development building permit process, as well as of such other and further legal procedures as may be proper under applicable law, rules and regulations. All site plans and subdivisions which are subject to this stormwater management Local Law shall contain appropriate notes under seal of the authorized and licensed professional responsible therefor requiring ongoing maintenance of all stormwater management facilities and devices during construction. Annual review and inspection of the stormwater management facilities by the Owner, homeowners association, or other responsible party, or district as may be applicable, shall be required; and such other further and more frequent reviews, inspections and reports thereupon shall be performed as the ~~City Engineer and/or~~ Stormwater Management Officer may reasonably require.

- (2) The owner or operator of permanent stormwater management practices installed in accordance with this law shall be operated and maintained to achieve the goals of this law. Proper operation and maintenance shall include as a minimum, the following:

- (a) A preventive/corrective maintenance program for all critical facilities and systems of treatment and control (or related appurtenances) which are installed or used by the owner or operator to achieve the goals of this law.
- (b) Written procedures for operation and maintenance and training and qualification of new maintenance personnel.
- (c) Discharges from the SMP's shall not exceed design criteria or cause or contribute to water quality standard violations.

D. Maintenance Agreements. The City of Newburgh may approve a formal maintenance agreement for stormwater management facilities binding on all subsequent landowners and recorded in the office of the County Clerk as a deed restriction on the property prior to final plan approval. The maintenance agreement shall be consistent with the terms and conditions of this local law and all applicable provisions of local or State code, rules and regulations. The City of Newburgh, in lieu of a maintenance agreement, at its sole discretion may accept dedication of any existing or future stormwater management facility, provided such facility meets all the requirements of this local law and includes adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

E. Maintenance Bonds; Required documents and filing

- (1) ~~The Planning Board and/or City Council shall have authority to require a maintenance bond be posted to meet the construction, improvement and/or maintenance obligations for stormwater management facilities. The bonds if required shall be posted prior to final approval of a plan before the Planning Board or the issuance of a building permit by the Building Inspector, or the issuance of formal final City Council approval, as may be required, whichever occurs first. Maintenance bonds shall cover the estimated cost of maintaining the system for five years after issuance of the final certificates of occupancy on a site plan, subdivision or building permit. Ownership and responsibility for operational maintenance of stormwater management appurtenances of residential subdivisions shall be determined by the terms and provisions of this and/or other applicable laws, rules and regulations, or by the City Council or Planning Board, with the advice and recommendations of the City Engineer and/or Stormwater Management Officer. Owners, developers and/or their authorized agents shall execute necessary agreements, documents, deed restrictions, covenants or easements, and any and all other required documents required to comply with this and other provisions of this local law, and shall be responsible for satisfying all filing and certification requirements prior to final approval of a residential subdivision by the City Planning Board.~~

(2) Construction completion guarantee. In order to ensure the full and faithful completion of all land development activities related to compliance with all conditions set forth by the City in its approval of the Stormwater Pollution Prevention Plan, the City may require the applicant or developer to provide, prior to construction, a performance bond, cash escrow, or irrevocable letter of credit from an appropriate financial or surety institution which guarantees satisfactory completion of the project and names the City of Newburgh as the beneficiary. The security shall be in an amount to be determined by the City based on submission of final design plans, with reference to actual construction and landscaping costs. The performance guarantee shall remain in force until the surety is released from liability by the City, provided that such period shall not be less than one year from the date of final acceptance or such other certification that the facility(ies) have been constructed in accordance with the approved plans and specifications and that a one year inspection has been conducted and the facilities have been found to be acceptable to the City. Per annum interest on cash escrow deposits if any shall be reinvested in the account until the surety is released from liability.

(3)(2) Maintenance guarantee. Where stormwater management and erosion and sediment control facilities are to be operated and maintained by the developer or by a corporation that owns or manages a commercial or industrial facility, the developer, prior to construction, may be required in the City's discretion to provide the City with an irrevocable letter of credit from an approved financial institution or surety to ensure proper operation and maintenance of all stormwater management and erosion control facilities both during and after construction, and until the facilities are removed from operation. If the developer or landowner fails to properly operate and maintain stormwater management and erosion and sediment control facilities, the City may draw upon the account to cover the costs of proper operation and maintenance, including engineering and inspection costs. Owners, developers and/or their authorized agents shall execute necessary agreements, documents, deed restrictions, covenants or easements, and any and all other required documents required to comply with this and other provisions of this local law, and shall be responsible for satisfying all filing and certification requirements prior to final approval of a residential subdivision by the City Planning Board.

~~§ 248-75. Prohibited discharges, penalties, civil action and other remedies.~~

~~A. Prohibited discharges:~~

~~(1) No private or corporate person, owner, developer, contractor, site operator or other party or entity or agent shall cause to be discharged to any stormwater collection or~~

~~conveyance system, natural watercourse or water body within the City of Newburgh any substance other than naturally occurring surface water discharges, naturally occurring melted snow and ice, uncontaminated groundwater discharges from foundation footing drains, air-conditioning or other uncontaminated nontoxic condensate, irrigation waters, springs, water from crawl space and basement sump pumps, lawn watering, individual residential car washing, dechlorinated swimming pool discharges, street washwater and fire-fighting water.~~

- (2) ~~The above discharges must be free from any hazardous or toxic chemicals or substances, petroleum products, sanitary sewage, pesticides, herbicides or other noxious, dangerous or harmful chemicals, pollutants or substances.~~
- (3) ~~With the exception of the discharges identified above, no discharge piping from any floor drain, sanitary drains, process piping or other similar source shall be connected to any City-owned or maintained stormwater collection and conveyance system. The Building Inspector and/or Code Enforcement Officer shall be authorized to enforce the provisions of this section.~~

B. ~~Violations of this section shall be punishable by the penalties set forth in § 248-77 herein. Every new day, measured from 12:00 midnight, during all of part of which a violation is found to exist shall constitute a separate violation hereof. In addition to such penalty, the City may bring a separate civil action in any court of competent jurisdiction to recover from any violator(s) the cost of any damages caused by such violation plus the cost of remediating such damage, plus any legal and attorneys' fees and costs associated with such action, including the right of the City to compel compliance or to restrain by injunction any such violations of this section. This shall be in addition to any other penalties or remedies provided by any other law, regulation, or rule or section hereof.~~

§ 248-76 75. Fees for services.

The City of Newburgh may require any person undertaking land development or other activities regulated by this article to pay reasonable costs at prevailing rates for review of SWPPPs, inspections, or SWP maintenance performed by the City or performed by a third party for or on behalf of the City. The City may require the payment of such fees and/or the establishment of an escrow account in an amount to be determined by the City upon the recommendation of the City Engineer and/or Stormwater Management Officer to provide a fund sufficient to pay the reasonably anticipated costs thereof.

§ 248-77 76. Enforcement; penalties for offenses; civil action and other remedies.

A. Notice of violation.

- (1) The City shall have the right to gain access to and to inspect any stormwater sewer or other collection system or conduct, whether man-made or natural or combination of both, in the same manner and with the same authority as provided by this article or by any law, code, rule or regulation which provides the City with the authority to gain access to and inspect property and structures to ensure and enforce compliance with all state and local building, fire, safety and health codes, rules and regulations, including but not limited to this article. When the City determines that a land development activity is not being carried out in accordance with the requirements of this article or that a person has violated a provision hereof, it may issue a written notice of violation to the landowner, operator, person responsible for same or the discharger. The notice of violation shall contain:
 - (a) The name and address of the landowner, developer, applicant, operator, discharger and/or responsible party.
 - (b) The address, when available, or a description of the building, structure or land upon which the violation is occurring.
 - (c) A statement specifying the nature of the violation.
 - (d) A description of the remedial measures required of the owner, operator, person responsible or discharger necessary to bring the land development activity and/or to eliminate any illicit or illegal connections or discharges and to bring such premises and persons into compliance with this article, and a time schedule for the completion of such remedial action.
 - (e) A statement of the penalty or penalties that are, shall be or may be assessed against the person to whom the notice of violation is directed.
 - (f) A statement and description of any monitoring, analysis and reporting requirements to be imposed.
 - (g) A statement that the determination of violation may be appealed to the municipality by filing a written notice of appeal within 15 days of service of notice of violation with the Code Compliance Office.
 - (h) The description of the required implementation of source control or treatment BMPs. If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that should the violator fail to remediate or restore within the established deadline, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.
- (2) Cease and desist/stop-work orders. The City may issue a cease and desist and/or a stop-work order for violations of this article. Persons receiving a cease and desist or stop-work order shall be required to halt all land development activities, except those activities that address the violations leading to the order as the City may allow. The order shall be in effect until the City confirms that the land development activity is in compliance and the violation has been satisfactorily addressed. Failure to obey an order

in a timely manner may result in civil, criminal, or monetary penalties in accordance with the enforcement measures authorized in this article.

- (3) Injunctions. Any land development or other activity that is commenced or is conducted contrary to this article may be restrained by injunction or otherwise abated in a manner provided by law. The City may recover from the violator(s) any and all of its costs and expenses, including attorneys' fees incurred in securing injunctive relief, fines or other relief or remedies.
- (4) Withholding of certificate of occupancy or other approval or permit. If any building or land development or other activity is installed or conducted in violation of this article, the City Engineer, Stormwater Management Officer and/or Code Enforcement Officer may prevent the occupancy of said building or land by withholding, suspending or rescinding a certificate of occupancy or other permit issued by any City agency or official.
- (5) Restoration of lands. Any violator may be required to restore land and related facilities to its undisturbed condition and to remove or to require corrections of defective or noncompliant or illegal connections to any storm sewer system or other system or conduit, whether man-made or natural or any combination thereof. In the event that restoration is not undertaken within a reasonable time after notice, the City may take necessary corrective action, the cost of which shall become a lien upon the property until paid. If said cost remains unpaid, it shall become a tax upon the premises and may be enforceable by the City in the same manner as provided by law for the enforcement of unpaid taxes, as provided for and as described in § 248-65A(2) hereinabove.
- (6) Appeal of notice of violation. Any person receiving a notice of violation may appeal the determination of the SMO to the City Manager within 15 days of its issuance, who shall hear the appeal within 30 days after the filing of the appeal, and within five days of making a decision, shall file such decision in the office of the Municipal Clerk and mail a copy of the decision by certified mail to the violator(s).

B. Alternative remedies.

(1) Where a person has violated a provision of this article, he/she may be eligible for alternative remedies in lieu of a civil penalty, upon recommendation of the City Manager and/or SMO and/or Director of Code Compliance, where:

- (a) The violation was unintentional.
- (b) The violator has no history of previous violations of this article.
- (c) Environmental damage was minimal.
- (d) The violator acted quickly to remedy the violation.
- (e) The violator cooperated in investigation and resolution.
- (f) Other significant mitigating factors exist.

(2) Alternative remedies may consist of one or more of the following:

(a) Attendance at compliance workshops.

(b) Storm drain stenciling or storm drain making.

(c) River, stream or creek cleanup activities.

(d) Any other activity deemed by the City to be a significant contribution to the health, safety and welfare of the City of Newburgh, its citizens and/or the environment.

C. Penalties. Any person who commits any act in violation of any provision of this article shall be deemed to have committed an offense and shall be liable for penalties imposed herein for such violation. Each act committed in violation of any provision of this article shall constitute a separate offense. Each day a violation continues shall be deemed a separate act.

(1) Except as otherwise provided in this article, for every violation of every provision of this article, a person shall be subject to a fine of not less than \$200 but not more than \$1,000 or imprisonment not exceeding 15 days, or both.

(2) Any person violating this article shall be subject to a civil penalty enforceable and collectable by the City in the amount of \$500 for each such offense.

(3) In addition to the above-provided penalties, the City also may bring an action or proceeding in the name of the City in the City Court of the City of Newburgh, or other court of competent jurisdiction, to compel compliance with, or to restrain by injunction or otherwise, the violation of this article, or of the New York State Department of Environmental Conservation Rules and Regulations, notwithstanding that a penalty or other enforcement measure for such violation has otherwise been provided or imposed.

(4) In addition to the foregoing and at the City's discretion, after due notice and opportunity to correct any violation(s) have been given by the City, the City may undertake any and all necessary and proper actions to correct such violation(s). The City may, then seek full reimbursement for all of its costs and expenses, including attorneys fees and court costs, which the City has incurred for such corrections and any legal action brought hereunder, as provided in § ~~248-65A(2)~~ hereinabove.

D. Remedies not exclusive. The remedies listed in this article are not exclusive of any other remedies available under this article; under any other local law, regulation, rule, code or ordinance; or under any applicable federal, state, county or regulatory law, code, rule or regulation, and it shall be within the discretion of the City and its enforcement officers to seek individual or cumulative or any combination of such remedies.

RESOLUTION NO.: 87 - 2012

OF

JUNE 18, 2012

RESOLUTION OF THE CITY COUNCIL ACCEPTING
LAND USE STREAMLINING RECOMMENDATIONS
FOR THE CITY OF NEWBURGH

WHEREAS, the Pace Law School Land Use Law Center has met with each of the City's land use boards individually and conducted two training sessions with land use board members and City staff to identify problems with the City's current land use project and approval process and researched best land use practices from other municipalities within New York State and across the country, and submitted a report to the City Council making recommendations for the streamlining of the City's land use process; and

WHEREAS, the City Council supports the land use streamlining process and finds that continuing the process is in the best interests of the City of Newburgh.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York hereby adopts the following:

1. The City Council hereby accepts the Streamlining Newburgh's Land Use Process report and recommendations; and
2. The City Council hereby supports the review and updating of the City's land use laws, including an update of the City's entire Zoning Code;
3. The City Council hereby authorizes the City Manager to take such steps as are necessary to seek funding sources for a comprehensive update of the City's Zoning Code and to take other steps necessary and appropriate to implement the recommendations set forth in the Streamlining Newburgh's Land Use Process report.

RESOLUTION NO.: 88 - 2012

OF

JUNE 18, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AGREEMENT FOR THE PAYMENT IN
LIEU OF TAXES BY AND AMONG THE CITY OF
NEWBURGH AND VOISINS OF NEWBURGH, INC.**

WHEREAS, the City of Newburgh (the "City") encourages a sufficient supply of adequate, safe and sanitary dwelling accommodations properly planned for families and senior citizens of low income; and

WHEREAS, Voisins of Newburgh, Inc. (the "HDFC"), a New York not-for-profit corporation organized under Article XI of the New York Private Housing Finance Law ("PHFL") and Section 402 of the NYS Not-for-Profit Corporation Law has constructed, owned and maintained certain improved real property located at 51 Leroy Place, City of Newburgh, Orange County, New York, Tax Map No. Section 4, Block 8, Lot 24 (the "Land"), consisting of approximately seventy-eight (78) residential units for families and senior citizens of low income and known as Voisins of Newburgh, Inc. (the "Project"); and

WHEREAS, the HDFC's plan for the continued use of the Project constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL and Section 577 of the PHFL authorizes the City Council to exempt the Project from real property taxes; and

WHEREAS, the HDFC is seeking a new PILOT Agreement whereby they will make annual payments in lieu of taxes to the City as set forth in the PILOT Agreement presented to the City Council for approval;

NOW THEREFORE, BE IT RESOLVED, that the members of the City Council hereby exempt the Project from real property taxes to the extent authorized by Section 577 of the PHFL and approve the proposed PILOT Agreement by and among the City of Newburgh and the HDFC, in substantially the form presented at this meeting, providing for annual payments as set forth in such agreement; and

BE IT FURTHER RESOLVED, that the City Manager is hereby authorized to execute and deliver the foregoing PILOT Agreement, in substantially the same form with other documents as Corporation Counsel may require, on behalf of the City.

**AGREEMENT FOR PAYMENT IN LIEU OF TAXES (PILOT) BY AND AMONG
THE CITY OF NEWBURGH AND VOISINS OF NEWBURGH, INC.**

THIS AGREEMENT FOR PAYMENT IN LIEU OF TAXES (the "PILOT Agreement" or "Agreement"), dated _____, 2012, by and among the **CITY OF NEWBURGH, NEW YORK**, a municipal corporation organized and existing under the laws of the State of New York, having its principal office located at 83 Broadway, Newburgh, New York 12550 (the "City"), **VOISINS OF NEWBURGH, INC.**, a New York not-for-profit corporation organized pursuant to Article XI of the Private Housing Finance Law of the State of New York, having its principal office located at 51 Leroy Place, Newburgh, New York 12550 (the "HDFC").

WHEREAS, the HDFC is the record owner of certain improved real property located at 51 Leroy Place, City of Newburgh, Orange County, New York, Tax Map No. Section 4, Block 8, Lot 24 (the "Property"); and

WHEREAS, the HDFC is a corporation established pursuant to section 402 of the Not-For-Profit Corporation Law and Article XI of the Private Housing Finance Law ("PHFL"); and

WHEREAS, the HDFC has been formed for the purpose of providing residential rental accommodations for low income families and senior citizens; and

WHEREAS, the HDFC will continue to own, redevelop, rehabilitate, renovate, maintain and operate a housing project on the Property consisting of approximately 78 dwelling units; and

WHEREAS, the HDFC's plan for the use of the Property constitutes a "housing project" as that term is defined in the PHFL; and

WHEREAS, the HDFC is a "housing development fund company" as the term is defined in Section 572 of the PHFL; and

WHEREAS, pursuant to Section 577 of the PHFL, the local legislative body of a municipality may exempt the real property of a housing project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements, to the extent of all or a part of the value of the property included in the completed project; and

WHEREAS, the City Council members of the City of Newburgh, New York, by resolution adopted _____, approved and authorized the execution of this Agreement,

NOW, THEREFORE, it is agreed as follows:

1. Pursuant to Section 577 of the PHFL, the City hereby exempts from local and municipal taxes, other than assessments for local improvements, one hundred percent (100%) of the value of the Property, including both land and improvements. "Local and Municipal Taxes" shall mean any and all real estate taxes levied by Orange County ("County"), the City of Newburgh ("City"), the Newburgh City School District ("School District") or other taxing

jurisdiction. Exclusions from the exemption described herein (in addition to assessments for local improvements) shall include special tax and/or special assessment districts, if any.

2. This tax exemption will operate for a period of twenty-five (25) years from July 1, 2012. This Agreement shall not limit or restrict the HDFC's right to apply for or obtain any other tax exemption to which it might be entitled upon the expiration of this Agreement.

3. So long as the exemption hereunder continues, the HDFC shall make annual payments in lieu of taxes ("PILOT") in the amount of the greater of Twenty-two Thousand and 00/100 Dollars (\$22,000.00) or Eighteen Percent (18%) of the effective gross rents ("PILOT Payment") to cover all Local and Municipal Taxes owed in connection with the Property and the Project. Annual PILOT Payments shall be due on _____ of each calendar year. PILOT Payments shall be mailed via First Class mail through the United States Postal Service to the City of Newburgh, Attention Tax Collector at 83 Broadway, Newburgh, New York 12550. So long as the tax exemption remains in effect, tenant rental charges for restricted units shall not exceed the maximum established or allowed by law, rule or regulation, and the Property shall be operated in conformance with the provisions of Article XI of PHFL.

4. The tax exemption provided by this Agreement will continue for the term described above provided (a) the Property continues to be used as housing facilities for families and senior citizens of low income, and (b) any of the following occur (i) the HDFC operates the Property in conformance with Article XI of the PHFL; or (ii) in the event an action is brought to foreclosure a mortgage upon the Property, and the legal and beneficial interest in the Property shall be acquired at the foreclosure sale or from the mortgagee, or by a conveyance in lieu of such sale, by a housing development fund corporation organized pursuant to Article XI of the PHFL, or by the Federal government or an instrumentality thereof, or by a corporation which is, or by agreement has become subject to the supervision of the superintendent of banks or the superintendent of insurance, such successor in interest shall operate the Property in conformance with Article XI of the PHFL.

5. The failure to make the required payment will be treated as failure to make payment of taxes and will be governed by the same provisions of law as apply to the failure to make payment of taxes, including but not limited to enforcement and collection of taxes and assessment of interest and penalties to the extent permitted by law. In the event the City commences a proceeding to enforce the provisions of this Agreement, then, in addition to the remedies to which the City shall be entitled, it shall have the right to award reasonable attorney fees. Notwithstanding the above, the City may terminate this Agreement, and the tax exemption shall thereupon terminate, pursuant to Section 6 hereof.

6. This Agreement and the exemption granted hereunder shall terminate pursuant to Section 5 above or in an event of default as follows:

(a) Failure of the HDFC to pay in full any payment due under this Agreement within thirty (30) days of mailing of written notice by the City stating that said payment is past due.

(b) Failure of the HDFC to comply with or perform any provision of this

Agreement if such failure continues in whole or in part for more than thirty (30) days after mailing of written notice by the City of such failure to comply or perform.

In the event of a default hereunder, in addition to the termination of this Agreement and the tax exemption, the City may exercise any and all rights or remedies permitted by law.

Notwithstanding any provision hereof to the contrary, the mortgagees of record with respect to the Property (the "Lender") shall have an additional period of thirty (30) days after the cure periods of the Borrower set forth in this Section 6 to cure any monetary defaults and an additional period of up to one hundred twenty (120) days to cure non-monetary defaults provided that the Lender shall diligently pursue such cure.

7. All notices and other communications hereunder shall be in writing and shall be sufficiently given when delivered to the applicable address stated above (or such other address as the party to whom notice is given shall have specified to the party giving notice) by registered or certified mail, return receipt requested or by such other means as shall provide the sender with documentary evidence of such delivery. Copies of notices to the Company shall be provided to the Lender and investor for the Project at such address as may be designated in writing by the HDFC.

8. This Agreement shall inure to the benefit of and shall be binding upon the City, and the HDFC and their respective successors and assigns, including the successors in interest of the HDFC. There shall be no assignment of this Agreement except in accordance with Section 4 hereof or with written consent of the other party, which consent shall not be unreasonably withheld.

9. If any provision of this Agreement or its application is held invalid or unenforceable to any extent, the remainder of this Agreement and the application of that provision to other persons or circumstances shall be enforced to the greatest extent permitted by law.

10. This Agreement may be executed in any number of counterparts with the same effect as if all the signing parties had signed the same document. All counterparts shall be construed together and shall constitute the same instrument.

11. This Agreement constitutes the entire agreement of the parties relating to payments in lieu of taxes with respect to the Property and supersedes all prior contracts, or agreements, whether oral or written, with respect thereto.

12. Each of the parties individually represents and warrants that the execution, delivery and performance of this Agreement, (i) has been duly authorized and does not require any other consent or approval, (ii) does not violate any article, by-law or organizational document or any law, rule, regulation, order, writ, judgment or decree by which it is bound, and (iii) will not result in or constitute a default under any indenture, credit agreement, or any other agreement or instrument to which any of them is a party. Each party represents that this Agreement shall constitute the legal, valid and binding agreement of the parties enforceable in accordance with its terms.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the City and the HDFC have caused this Agreement to be executed in their respective names by their duly authorized representatives and their respective seals to be hereunder affixed, all as of the date above-written.

DATED: _____, 2011

CITY OF NEWBURGH, NEW YORK

By: _____

Name: Richard Herbek

Title: City Manager

DATED: _____, 2011

VOSINS OF NEWBURGH, INC.

By: _____

Name:

Title:

RESOLUTION NO.: 89 - 2012

OF

JUNE 18, 2012

RESOLUTION AMENDING RESOLUTION NO: 238-2011,
THE 2012 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK
TO TRANSFER \$38,000.00 FROM CONTINGENCY TO
CODE COMPLIANCE IN CONNECTION WITH THE PURCHASE
OF TWO VEHICLES FOR USE BY THE CITY OF NEWBURGH
DEPARTMENT OF CODE COMPLIANCE

BE IT RESOLVED, by the Council of the City of Newburgh, that Resolution No: 238-2011, the 2012 Budget of the City of Newburgh, is hereby amended as follows:

	<u>Decrease</u>	<u>Increase</u>
A.1900.1990. Contingency	\$38,000.00	
A.3620 Code Compliance 0202. Motor Vehicle		\$38,000.00

RESOLUTION NO: 90 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO APPLY FOR AND ACCEPT IF AWARDED MONIES
FROM THE NEW YORK STATE DEPARTMENT OF EDUCATION
FOR THE 21ST CENTURY COMMUNITY LEARNING CENTERS GRANT AND
AUTHORIZING ANY AND ALL EXPENDITURES NECESSARY TO FUND
THE PROGRAM THROUGHOUT ITS ENTIRETY THROUGH VENDOR
CONTRACTS AND OTHER PROGRAM RELATED COSTS
AS PER THE STATE APPROVED BUDGET
IN AN AMOUNT NOT TO EXCEED \$1,300,000.00

WHEREAS, under the Federal 21st Century Community Learning Centers Program, a key component of the Federal *No Child Left Behind* Act, funds are available to community collaboratives to provide expanded academic enrichment opportunities for children attending low performing schools; and

WHEREAS, the legislation's specific purposes are to: (1) provide opportunities for academic enrichment, including providing tutorial services to help students (particularly students in high-poverty areas and those who attend low-performing schools) meet State and local student performance standards in core academic subjects such as reading and mathematics; (2) offer students a broad array of additional services, programs, and activities, such as youth development activities, drug and violence prevention programs, counseling programs, art, music, and recreation programs, technology education programs, and character education programs, that are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development; and

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a grant under the Federal 21st Century Community Learning Centers Program in an amount not to exceed \$1,300,000.00; and

WHEREAS, the City's 21st Century Community Learning Centers Program partners with the Armory Unity Center, Best Resources, SUNY Orange, St. Luke's Cornwall Hospital, and the Newburgh Enlarged City School District for strengthening and expanding opportunities afterschool for children and youth; and

WHEREAS, this Council has determined that making such application and accepting if awarded is in the best interests of the City of Newburgh and its residents;

NOW THEREFORE BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager is hereby authorized to apply for and accept if awarded the 21st Century Community Learning Centers grant in an amount not to exceed \$1,300,000.00 to support and expand, in collaboration with our valued community partners, quality afterschool services for children and youth in the City of Newburgh; and is authorized to execute such contracts with providers as will enable such programs to be carried out in keeping with the budget for same as approved by New York State.

RESOLUTION NO.: 91 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED A GRANT FROM THE NEW YORK STATE
OFFICE OF ALCOHOLISM AND SUBSTANCE ABUSE SERVICES
FOR ENFORCING UNDERAGE DRINKING LAWS
WHICH IS ADMINISTERED THROUGH CATHOLIC CHARITIES
IN AN AMOUNT NOT TO EXCEED \$9,300.00

WHEREAS, the City of Newburgh wishes to apply for and accept if awarded a grant from the New York State Office of Alcoholism and Substance Abuse Services ("OASAS") for Enforcing Underage Drinking Laws ("EUDL") in an amount not to exceed \$9,300.00; and

WHEREAS, such grant is administered through Catholic Charities and is a reimbursable grant which requires the City to first expend monies to obtain reimbursement; and

WHEREAS, this Council has determined that said grant is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized to apply for and accept if awarded from the New York State Office of Alcoholism and Substance Abuse Services for Enforcing Underage Drinking Laws which is administered through Catholic Charities in an amount not to exceed \$9,300.00 Dollars.

ORDINANCE NO.: 3 - 2012

OF

JUNE 18, 2012

AN ORDINANCE AMENDING SECTION 220-19, "AQUATIC CENTER AND ATHLETIC FIELDS" OF CHAPTER 220, "PARKS AND RECREATION AREAS" OF THE CODE OF ORDINANCES

BE IT ORDAINED, by the Council of the City of Newburgh, New York that Section 220-19, "Aquatic Center and Athletic Fields" of Chapter 220, Parks and Recreation Areas, of the City Code of Ordinances of the City of Newburgh be and are hereby amended as follows:

Section 1. § 220-19. Aquatic Center and Athletic Fields.

- A. Use of the City's Aquatic Center shall be at the rates set forth in Chapter 163, Fees of this Code.
- B. All requests to use the athletic fields, except by City departments, boards or agencies, shall be submitted in writing to the City Manager or the City Manager's designee no less than 30 days prior to the date requested, except that all requests to use the athletic fields between May 1 and August 31 shall be submitted no earlier than February 1 of the current year. All such requests shall be on a form to be provided by the City Manager or the City Manager's designee and shall be accompanied by the fees set forth in Chapter 163, Fees, of this Code.
- C. Conditions and rules for use of athletic fields.
 - 1. The City Manager or the City Manager's designee shall have the sole authority to cancel or delay game(s) due to inclement weather and/or due to unsafe field conditions.
 - 2. No alcoholic beverages be served, distributed, used or possessed on City property.
 - 3. The City Manager or the City Manager's designee shall determine the hours during which games can be played Monday through Friday and maximum number of games to be played in a single weekday. On Saturdays, no games shall begin before ~~10:00 am~~ 9:00 am and must end no later than ~~5:00~~ 10:00 pm. On Sundays, no games shall begin before 12:00 pm and must end no later than 5:00 pm.

Section 2. This Ordinance shall take effect immediately.

~~Strikethrough~~ denotes deletions
Underlining denotes additions

ORDINANCE NO.: 4 - 2012

OF

JUNE 18, 2012

AN ORDINANCE AMENDING CHAPTER 293 ENTITLED "WATER"
OF THE CODE OF THE CITY OF NEWBURGH TO REQUIRE
CONNECTION TO CITY WATER SYSTEM AND PROHIBIT WATER WELLS

WHEREAS, Chapter 293, entitled "Water" of the Code of Ordinances of the City of Newburgh provides for rules and regulations governing the use of water within the City of Newburgh, and

WHEREAS, in order to preserve and protect the integrity of the City of Newburgh water supply and distribution system and to provide for the public health, safety and welfare, the City Council of the City of Newburgh determines that it is necessary and appropriate to prohibit the installation and use of any and all new water wells servicing property within the City and to require all properties within the City to connect to the City's water supply and distribution system; and

WHEREAS, in order to accomplish this purpose, it is necessary to add Article VIII and to further amend Chapter 293, entitled "Water" of the Code of Ordinances of the City of Newburgh.

NOW, THEREFORE, BE IT ORDAINED, by the Council of the City of Newburgh, New York that Chapter 293, entitled "Water" of the Code of the City of Newburgh be and is hereby amended to read as follows:

SECTION 1. Chapter 293, WATER

§ 293-1. Definitions.

As used in this chapter, the following terms shall have the meanings indicated:

OWNER

Any individual or individuals, partnership or corporation or any similar type of business organization, whether for profit or otherwise, in whose name title to a building stands.

Strikethrough denotes deletions

Underlining denotes additions

§ 293-8. Connection to City water system required. Permission of Superintendent required to take water from municipal water system.

- A. The owner of any house, building, or property used for human occupancy, employment, recreation, commercial or other purpose, situated within the City are required, at such owner's expense, to install waterline facilities and connect such facilities directly to the City's water supply and distribution system in accordance with the provisions of this Chapter.
- B. No person shall use or take water from the municipal water system without permission from the Superintendent. New building operations which require water must make the necessary connections to the water system and install meters before drawing any water.

§ 293-8. Bills due when rendered; penalty.

All bills shall be due when rendered. Bills remaining unpaid ~~30 days after rendition~~ shall be subject to the penalties set forth in Section C8.89 of the City Charter ~~a penalty of 5%. Bills remaining unpaid 90 days after rendition will bear interest at the rate of 10% per annum dated from the date of rendition in addition to the penalty of 5%.~~

Article VIII. Water Wells

§ 293.39. Installation and use of water wells within the City prohibited.

- A. No owner of any house, building or property used for human occupancy, employment, recreation, commercial or other purpose situated within the City shall construct, dig, install or use a water well on such property and shall not supply such property with water from a well of any type.
- B. This section shall not apply to properties within the City that are supplied with water from a well prior to the effective date of this ordinance.

§ 293.40. Registration of water wells.

The owner of each water well within the City shall register with the Superintendent of Water all operational and non-operational water wells. The information shall be provided on a form approved and supplied by the Superintendent of Water and shall include the name and address of the owner or person responsible for the well, the exact location of the well, the size and depth of the well, the amount of water pumped per day, the amount of pressure on the discharge of the pump and whether there is any protective device installed on the waterline to prevent a backflow into the City's waterline.

~~Strikethrough~~ denotes deletions
Underlining denotes additions

§ 293.40. Discontinuance.

Whenever, upon examination, it shall appear that water from a well is contaminated with substances injurious to health or which may become injurious to health, the use of such water shall be discontinued and the well shall be filled in, unless otherwise determined by the Superintendent of Water that such use of the water shall not endanger the public health.

§ 293.41. Out of City users.

The provisions of this Article shall apply to all current and future out-of-City users that are or will be connected to the City's water supply and distribution system.

SECTION 2. This Ordinance shall take effect immediately.

RESOLUTION NO.: 92 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE EXECUTION OF
A LICENSE AGREEMENT FOR THE USE OF THE STADIUM
LOCATED AT DELANO-HITCH RECREATION PARK
BY THE NEWBURGH HOOK ELITE BOXING CLUB
AND EBC SPORTS MINISTRY

WHEREAS, the Newburgh Hook Elite Boxing Club and EBC Sports Ministry wishes to enter into a license agreement with the City of Newburgh for the use of the stadium located at Delano-Hitch Recreation Park for a youth boxing program; and

WHEREAS, a copy of such license agreement is annexed hereto and made a part of this resolution; and

WHEREAS, the City Council has examined such license agreement and determined it to be in the best interests of the City of Newburgh to enter into such license agreement.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that the City Manager be and is hereby authorized to execute and enter into the attached license agreement, in substantially the same form and with other terms as Corporation Counsel may require, on behalf of the City of Newburgh.

AGREEMENT

THIS AGREEMENT, entered into this _____ day of _____, 2012, by and between:

THE CITY OF NEWBURGH, a municipal corporation having its principal place of business at 83 Broadway, City Hall, Newburgh, New York 12550, hereinafter called the "City"; and

THE NEWBURGH HOOK ELITE BOXING CLUB and EBC SPORTS MINISTRY, c/o Leonard Lee, 70 Johnes Street, Newburgh, New York 12550 hereinafter called "Licensee".

WITNESSETH, that the City and Licensee, for the consideration hereinafter named, agree as follows:

ARTICLE 1: Term.

This Agreement shall run from June 1, 2012 to December 31, 2012.

ARTICLE 2: Obligation of the City.

The City shall grant to the Licensee a revocable license to use the municipal stadium located in the Delano-Hitch Recreation Park in the City of Newburgh for a youth boxing program by the Newburgh Hook Elite Boxing Club for the period of time set forth above pursuant to a written schedule to be submitted to and approved in writing by the City Manager or his designee. The City shall provide space for players/participants in a location in the Delano-Hitch Recreation Park to be determined by the City Manager or his designee.

ARTICLE 3: Obligation of Licensee.

- A. The Licensee shall provide the City Manager or his designee a written schedule of all programs and other uses of the facility for the term of the Agreement and failure to do so may result in City canceling any or all such program(s). No programs or other uses may be schedule to start after 8:00 p.m.
- B. The Licensee shall pay the cost of all personnel, supplies and equipment necessary and proper for the maintenance of the facility as is required by their use thereof.
- C. The Licensee shall, after each day of programs, return the facility to the City on that same day to a clean condition free of all equipment, garbage and debris. Licensee shall clean up all garbage generated in the area designated for use and deposit in proper trash receptacle. The Licensee shall repair all damage incurred to the area designated for use during the exercise of the license at its own sole expense. Such repairs shall be performed immediately. Licensee agrees that if such damages are not promptly and completely repaired, Licensee shall remain liable for all consequences, direct and

indirect, consequential and incidental, to the City resulting from the damages and from the unavailability of such facilities resulting therefrom.

D. The Licensee shall have a representative with authority over all programs and activities present at all times. Licensee shall secure the facility after each use. Noise levels shall be kept at appropriate decibel levels so as not to disturb neighbors.

E. The Licensee shall cooperate with City authorities to provide necessary security and supervision of minors, participating in programs or present as spectators, during the period of this agreement. The Licensee shall be liable for any damage done to the premises by its officers, agents, servant, employees or invitees during the period of this agreement.

ARTICLE 4: Payment.

The Licensee shall pay to the City, as and for a fee for the use of the facility during the period of this agreement, ONE THOUSAND (\$1,000.00 AND 00/100) DOLLARS.

ARTICLE 5: Insurance.

The Licensee shall not commence any program under this agreement until it has obtained all insurance required under this paragraph and such insurance has been approved by the City.

A. Compensation Insurance - The Licensee shall take out and maintain during the life of this agreement such Workers' Compensation Insurance for its employees or members to be assigned to the work hereunder as may be required by New York State Law.

B. General Liability and Property Damage Insurance - The Licensee shall take out and maintain during the life of this agreement such general liability and property damage insurance as shall protect it from claims for damages for personal injury including accidental death, as well as from claims for property damage which may arise from operations under this agreement. The amounts of such insurance shall be as follows:

1. General Liability Insurance in an amount not less than \$1,000,000.00 for injuries including wrongful death to any one person and subject to the same limit for each person, in an amount not less than \$3,000,000.00 on account of any one occurrence.
2. Property Damage Insurance in an amount not less than \$50,000.00 for damage on account of all occurrences.

The Licensee shall furnish the above insurance to the City and shall also name the City as an additional named insured in said policies. Such insurance shall be maintained in force during the entire term of this contract.

C. Any accident shall be reported to the Office of the City Manager as soon as possible and not later than twenty-four hours from the time of such accident. A detailed written report must be submitted to the City as soon thereafter as possible and not later than three (3) days after the date of such accident.

ARTICLE 6: Representations of Licensee.

The Licensee represents and warrants:

A. That it is financially solvent and that it is experienced and competent to perform the type of work or to furnish the consideration to be furnished by it; and

B. That it is familiar with all federal, state, municipal and department laws, ordinances and regulations which may in any way affect the work or play or those employed or engaged therein. It is understood and agreed between the parties that the Licensee shall have no right to control the actions of City employees nor any duty to supervise the actions of City employees.

ARTICLE 7: Permits and Regulations.

The Licensee shall procure and pay for all permits and licenses necessary for the services to be rendered hereunder.

ARTICLE 8: City's Right to Terminate Agreement.

The City shall have the right to stop work or terminate this agreement under the following terms and conditions:

1. (a) The Licensee refuses or fails to perform any of its obligations under this agreement; or
(b) The Licensee fails to make prompt payment or perform work as required by this agreement;
or
(c) The Licensee fails or refuses to comply with all applicable laws or ordinances; or
(d) The Licensee is guilty of substantial violation of any provision of this agreement.

(e) In the event the City elects to stop work or terminate this agreement on any ground or grounds set forth in subparagraphs (a) - (d) of this paragraph, the City shall provide the Licensee with written notice, no less than fourteen (14) days prior to such stop work or termination of this agreement, of the City's intent to so stop work or terminate this agreement and the ground or grounds therefore. In the event the Licensee shall cure such ground or grounds prior to the date noticed for stop work or termination of this agreement, the City shall not stop work or terminate the agreement on such grounds.

2. The City, at its sole discretion and, with or without cause, may, without prejudice to any other rights or remedy it may have, by fourteen (14) days notice to the Licensee, terminate the agreement with the Licensee.

ARTICLE 9: Damages.

It is hereby mutually covenanted and agreed that the relation of the Licensee to the work to be performed by it under this agreement shall be that of an independent contractor. As an independent contractor, it will be responsible for all damage, loss or injury to persons or property that may arise in or be incurred during the conduct and progress of said performances, whether or not the Licensee, its agents or employees have been negligent. The Licensee shall hold and keep the City free and discharged of and from any and all responsibility and liability of any sort or kind. The Licensee shall assume all responsibility for risks or casualties of every description, for loss, death or injury to persons or property arising out of the nature of the performance, other than those wholly caused by Acts of God or conditions pre-existing this license. The Licensee shall make good any damages that may occur in consequence of the performances or any part of it. The Licensee shall assume all blame, loss and responsibility of any nature by reason of the Licensee's neglect or violation of any federal, state, county or local laws, regulations or ordinances applicable to the Licensee and/or the nature of its performance.

ARTICLE 11: Indemnity and Save Harmless Agreement.

A. The Licensee agrees to indemnify and save the City, its officers, agents and employees harmless from any liability imposed upon the City, its officers, agents and/or employees arising from the negligence, active or passive, of the Licensee.

B. The City agrees to indemnify and save the Licensee, its officers, agents and employees harmless from any liability imposed upon the Licensee, its officers, agents and/or employees arising from the negligence, active or passive, of the City.

ARTICLE 12: No Assignment.

The Licensee is hereby prohibited from assigning, transferring, conveying, subletting or otherwise disposing of this agreement or of its right, title or interest in this agreement or its power to execute this agreement to any other person or corporation without the previous consent in writing of the City.

ARTICLE 13: Required Provisions of Law.

Each and every provision of law and clause required by law to be inserted in this agreement shall be deemed to have been inserted herein. If any such provision is not inserted through mistake or otherwise, then upon the application of either party, this agreement shall be physically amended forthwith to make such insertion.

ARTICLE 14: Notices.

Any and all notices and payments 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 of Newburgh
City Manager
City Hall, 83 Broadway
Newburgh, New York 12550
(845) 569-7301

TO: Newburgh Hook Elite Boxing Club
c/o Leonard Lee
70 Johnes Street
Newburgh, New York 12550
(845) 857-0612

ARTICLE 15: Waiver.

No waiver of any breach of any condition of the agreement shall be binding unless in writing and signed by the party waiving said breach. No such waiver shall in any way affect any other term or condition of this agreement or constitute a cause or excuse for a repetition of such or any other breach unless the waiver shall include the same.

ARTICLE 16: Modification:

This agreement constitutes the complete understanding of the parties. No modification or any provisions thereof shall be valid unless in writing and signed by both parties.

Remainder of page intentionally left blank.

IN WITNESS WHEREOF, the parties have caused this agreement to be executed on the day and year first above written.

THE CITY OF NEWBURGH

by: _____
RICHARD F. HERBEK
City Manager

NEWBURGH HOOK ELITE BOXING CLUB

by: _____
LEONARD LEE

EBC SPORTS MINISTRY

By: _____
DR. BRUCE DAVIS
Pastor

Approved as to form:

MICHELLE KELSON
Corporation Counsel

CHERYL A. GROSS
City Comptroller

RESOLUTION NO.: 93 - 2012

OF

JUNE 18, 2012

**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 twelve, 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, 2012 to November 1, 2012.

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.: 94 - 2012

OF

JUNE 18, 2012

RESOLUTION OF THE NEWBURGH CITY COUNCIL, AS THE ELECTED LEGISLATIVE BODY OF THE CITY OF NEWBURGH, NEW YORK, IN ACCORDANCE WITH SECTION 147(F) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), APPROVING THE ISSUANCE BY THE NEWBURGH HOUSING AUTHORITY OF UP TO \$10,000,000 AGGREGATE PRINCIPAL AMOUNT MULTI-FAMILY HOUSING REVENUE BONDS (BURTON TOWERS, LLC PROJECT), SERIES 2012

WHEREAS, the Newburgh City Council (the "Council"), as the elected legislative body of the City of Newburgh, New York (the "City"), has been advised by the Newburgh Housing Authority (the "Issuer") that, in order to assist in the financing of a certain Project (as defined below) for the benefit of Burton Towers, LLC (the "Company"), a New York limited liability company, the Issuer proposes to issue, contingent upon the adoption of this Resolution, its Multi-Family Housing Revenue Bonds (Burton Towers, LLC Project), Series 2012, in an aggregate principal amount not to exceed \$10,000,000 (the "Bonds"); and

WHEREAS, the project (the "Project") shall consist of: (A) the acquisition by the Issuer of title to or a leasehold (or other) interest in an approximately 3.90-acre site located at 36 Cerone Place, Newburgh, New York, TMID No. 33.00-6-3.1 (the "Land") and the existing improvements located thereon, including a multi-story building structure with 126 housing units and related storage facilities (the "Existing Improvements"); (B) the renovation, reconstruction, refurbishing and equipping by the Company as agent of the Issuer of the Existing Improvements in order to (i) modernize approximately one hundred twenty five (125) one-bedroom apartments and one (1) two-bedroom Superintendent apartment, in accordance with the Internal Revenue Code of 1986, as amended (the "Code") and applicable regulations promulgated by the United States Department of Housing and Urban Development ("HUD") and New York State Housing Finance Agency ("HFA") and/or Division of Housing and Community Renewal ("DHCR"), which are and will be leased to households of persons 62 years of age or older and earning 60% or less of the area's median gross income, (ii) modernize one non-subsidized superintendent's apartment, and (iii) install, construct and equip certain structural and mechanical upgrades and improvements to the Existing Improvements, including renovations to the common areas, heating systems, plumbing, roof, windows and elevators (items (i), (ii) and (iii) collectively, the "Improvements"); (C) the acquisition of and installation in and around the Existing Improvements and Improvements of certain machinery, fixtures, equipment and other items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and (D) paying certain costs and expenses incidental to the issuance of the Bonds (the costs associated with items (A) through (D) above being hereinafter collectively referred to as the "Project Costs"); and

WHEREAS, pursuant to Section 147(f) of the Code, interest on the Bonds will not be excluded from gross income for Federal income tax purposes unless the issuance of the Bonds is approved by the Council after a public hearing to consider both the issuance of the Bonds and the nature and location of the facilities financed therewith has been conducted following reasonable public notice; and

WHEREAS, on March 8, 2012, the Issuer held such a public hearing upon proper notice in compliance with Section 147(f) of the Code; and

WHEREAS, to aid the Council in its deliberations, the Issuer has made available to the members of the Council prior to this meeting (a) the Company's application to the Issuer for financial assistance; (b) the notice of public hearing published by the Issuer in *Times Herald-Record*, along with the affidavit of publication of such newspaper; and (c) the minutes of such public hearing held on March 8, 2012; and

WHEREAS, the Council, after due consideration of the foregoing, as the "applicable elected representative" of the City, within the meaning of Section 147(f)(2)(E) of the Code, desires to approve the issuance of the Bonds, provided THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS SHALL BE SPECIAL OBLIGATIONS OF THE ISSUER AND SHALL NEVER BE A DEBT OF THE STATE OF NEW YORK (THE "STATE") OR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING WITHOUT LIMITATION THE CITY OF NEWBURGH, AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF, INCLUDING WITHOUT LIMITATION THE CITY, SHALL BE LIABLE THEREON.

NOW, THEREFORE, BE IT RESOLVED BY THE NEWBURGH CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK:

Section 1. For the purpose of satisfying the approval requirement of Section 147(f) of the Code, the Council hereby gives its approval of the issuance by the Issuer of the Bonds and related acts to be taken by the Issuer as part of the Project, provided that the Bonds, and the premium (if any) and interest thereon, shall be special obligations of the Issuer and shall never be a debt of the State or any political subdivision thereof, including without limitation the City of Newburgh, New York, and neither the State nor any political subdivision thereof, including without limitation the City of Newburgh, shall be liable thereon. This approval is given pursuant to Section 147(f) of the Code for the sole purpose of qualifying the interest payable on the Bonds for exclusion from gross income for federal income tax purposes pursuant to the provisions of Sections 103 and 141-150 of the Code.

Section 2. This Resolution shall be deemed to be made for the benefit of the holders of the Bonds.

Section 3. This Resolution shall take effect immediately.

The foregoing Resolution was offered by _____
and seconded by _____.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>YEA</u>	<u>NAY</u>	<u>ABSENT</u>	<u>ABSTAIN</u>
Mayor Judy Kennedy	[]	[]	[]	[]
Councilwoman Regina M. Angelo	[]	[]	[]	[]
Councilman Cedric Brown	[]	[]	[]	[]
Councilman Curlie Dillard	[]	[]	[]	[]
Councilwoman Gay Lee	[]	[]	[]	[]

The Resolution was thereupon duly adopted.

CERTIFICATION

STATE OF NEW YORK)
)
COUNTY OF ORANGE) *ss.:*

This is to certify that I, the undersigned, Clerk of the City Council of Newburgh, New York, have compared the foregoing copy of resolution with the original resolution now on file in the office and which was passed by the Newburgh City Council on the ____ day of June, 2012, a majority of all the members elected to the Council voting in favor thereof, and that the same is a correct and true transcript of such original resolution and of the whole thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal of the Newburgh City Council, this ____ day of June, 2012.

Clerk of the Newburgh City Council

[SEAL]

RESOLUTION NO.: 95 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A MEMORANDUM OF UNDERSTANDING NUNC PRO TUNC
BETWEEN THE CITY OF NEWBURGH AND ST. LUKE'S CORNWALL HOSPITAL
TO ALLOW FOR THE PARTICIPATION IN THE DRUG DISCOUNT PROGRAM
ESTABLISHED UNDER SECTION 340B OF THE PUBLIC HEALTH SERVICES ACT

WHEREAS, St. Luke's Cornwall Hospital is a New York not-for-profit hospital that provides a disproportionate share of healthcare services to the Medicaid population in addition to supporting programs that benefit the indigent, uninsured or underinsured population in the State of New York; and

WHEREAS, St. Luke's Cornwall Hospital desires to participate in the Drug Discount Program established under Section 340B of the Public Health Services Act (the "340B Program"); and

WHEREAS, in order to participate in the 340B Program, St. Luke's Cornwall Hospital must enter into an agreement with a unit of the state or local government pursuant to which St. Luke's Cornwall Hospital commits to provide health care services to low-income individuals who are neither entitled to benefits under Title XVIII of the Social Security Act nor eligible for assistance under the State plan of Title XIX under this Act; and

WHEREAS, St. Luke's Cornwall Hospital desires to make such a formal commitment to the City of Newburgh and

WHEREAS, this Council has determined that it is in the best interests of the City of Newburgh to agree to accept such commitment on behalf of the citizens of the City of Newburgh;

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 a Memorandum of Understanding Nunc Pro Tunc between the City of Newburgh and St. Luke's Cornwall Hospital to allow for the participation in the Drug Discount Program established under Section 340B of the Public Health Services Act.

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein and for other good a valuable consideration, the receipt and sufficiency of which hereby are acknowledged, it is mutually agreed and covenanted, under seal, by and between the parties to this Agreement, as follows:

1. Commitment of St. Luke's Cornwall Hospital to Provide Indigent Care.

During the term of this Agreement, St. Luke's Cornwall Hospital agrees to continue its historic commitment to the provision of health care to indigent, uninsured and underinsured residents of the City of Newburgh. In 2011 this commitment totaled approximately 20 million dollars in lost charges. Pursuant to this commitment, it is the intention of St. Luke's Cornwall Hospital that indigent care provided during the term of this Agreement will range generally between 15 and 25 million dollars. In any event, the City of Newburgh will assume that all patients will receive necessary care, as required by law, regardless of ability to pay.

2. Acceptance and Acknowledgements of the City of Newburgh.

- (a) The City of Newburgh accepts the commitment of St. Luke's Cornwall Hospital set forth above;
- (b) the City of Newburgh has executed a certification form, attached hereto, which acknowledges that the healthcare services provided by St. Luke's Cornwall Hospital are being provided to low-income individuals who are neither entitled to benefits under Title XVIII of the Social Security Act nor eligible for assistance under the State plan of Title XIX under this Act; and
- (c) the City of Newburgh authorizes St. Luke's Cornwall Hospital to submit the attached certification in support of St. Luke's Cornwall Hospital's application to enroll in the 340B program.

3. Representations of St. Luke's Cornwall Hospital.

St. Luke's Cornwall Hospital represents that as of the date hereof:

- (a) St. Luke's Cornwall Hospital constitutes a corporation duly organized and validly existing in good standing under the laws

IN WITNESS WHEREOF, St. Luke's Cornwall Hospital and the City of Newburgh have executed this Agreement as of the day and year first written above by their duly authorized representatives.

WITNESS:

Name:

Title:

This Agreement has been reviewed for legal sufficiency by:

Legal Department

City of Newburgh

Name: _____

RESOLUTION NO.: 96 - 2011

OF

JUNE 18, 2012

A RESOLUTION REQUESTING THE STATE LEGISLATURE
TO ENACT LEGISLATION TO ALLOW FOR A THIRD FULL-TIME
CITY COURT JUDGE IN THE CITY OF NEWBURGH

WHEREAS, Newburgh City Court Judges preside over all of the prosecution of misdemeanor and criminal violations, preliminary felony proceedings, specialized Domestic Violence and Regional Drug Court matters, traffic and parking violations, as well as building and property code violations and all civil matters such as landlord-tenant proceedings and small claims; and

WHEREAS, the City of Newburgh recognizes that in addition to adjudicating criminal cases, improving the quality of life for our residents represents one of our biggest challenges; and

WHEREAS, the City of Newburgh issues an average of 2,200 fire and building code violations per year to City Court for adjudication and has significant housing problems with many absentee landlords along with dilapidated and abandoned buildings; and

WHEREAS, the two City Court Judges are burdened with an extremely heavy workload; and

WHEREAS, the newly constructed City Courthouse has three courtrooms and is ready to welcome a third judge at any time; and

WHEREAS, this Council has determined that it is in the best interests of the City of Newburgh that Newburgh City Court be assigned a third Judge dedicated to presiding over quality of life offenses and meting out appropriate penalties and remedies; and

NOW, THEREFORE, BE IT RESOLVED, that this Council of the City of Newburgh, New York, does hereby request that the State Legislature enact Legislation to allow for a third full-time City Court Judge in the City of Newburgh.

RESOLUTION NO.: 97-2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO SUBMIT AN APPLICATION TO NEW YORK STATE DEPARTMENT
OF ENVIRONMENTAL CONSERVATION FOR A PROJECT GRANT UNDER
THE ROUND 11 URBAN AND COMMUNITY FORESTRY PROGRAM
FOR THE PURPOSE OF PLANTING TREES ON CITY STREETS
FOR AN AMOUNT NOT TO EXCEED \$5,000.00 REQUIRING AN EQUAL MATCH

WHEREAS, the New York State Department of Environmental Conservation Urban and Community Forestry Program has funding available for urban forestry tree planting projects; and

WHEREAS, the Shade Tree Commission has identified a project for the re-planting of street trees in the City entitled "Greening Broadway"; and

WHEREAS, the Shade Tree Commission is seeking a grant from the above-mentioned program in the amount of \$5,000.00 for the planting of trees and shrubs, with an equal match from the City of Newburgh to be derived from other funding sources and/or in-kind services; and

WHEREAS, this Council has determined that applying for and, if awarded, accepting such grant funds is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to submit an application the New York State Department of Environmental Conservation for a project grant under the Round 11 Urban and Community Forestry Program for a project known as Greening Broadway in an amount not to exceed \$5,000.00 with an equal match and to accept said grant if awarded; and to carry out the terms of said program including the authority to execute documents and take all necessary and appropriate actions in connection therewith.

RESOLUTION NO.: 98 - 2012

OF

JUNE 18, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF NEWBURGH, NEW YORK SUPPORTING THE
CONSOLIDATED FUNDING APPLICATION OF
THE RITZ THEATER-NEWBURGH, INC. FOR URBAN INITIATIVES
PROGRAM FUNDING THROUGH THE OFFICE OF
COMMUNITY RENEWAL

WHEREAS, the purpose of the Urban Initiatives Program is to provide funding to New York communities for the restoration and improvement of housing, commercial areas and public facilities in urban neighborhoods; and

WHEREAS, Urban Initiatives Program funding will be awarded to organizations with a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood; and

WHEREAS, The Ritz Theater- Newburgh, Inc is requesting funding for the restoration of the Ritz Theater which will help to create a viable cultural and tourist destination, providing education and employment opportunities and enhancing and revitalizing the City of Newburgh through the creation of density and vitality; and

WHEREAS, monies granted will be used to create a vibrant professional performing arts venue in the city of Newburgh that revitalizes the local economy, enriches the education of youth, and enhances community pride;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York fully supports the Consolidated Funding Application of The Ritz Theater- Newburgh, Inc for Urban Initiatives Program funding through the Office of Community Renewal.

RESOLUTION NO.: 99 2012

OF

JUNE 18, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK
SUPPORTING THE CONSOLIDATED FUNDING APPLICATION OF BEST RESOURCE
CENTER, INC. FOR WORKFORCE DEVELOPMENT INITIATIVES PROGRAM
FUNDING THROUGH THE EMPIRE STATE DEVELOPMENT GRANT PROGRAM
FUNDING.

WHEREAS, the purpose of the Consolidated Workforce Plan Initiative is to provide comprehensive education and workforce training to the Newburgh disadvantaged unemployed/under-employed community residents; The Best Resource Center, Inc Workforce Development plan incorporates a wide spectrum of occupational demand training options that directly respond to local and regional employer needs. The offerings will include the following menu of specific training options: Call Center, Customer Service, Green job, literacy, ESOL, remediation, tutoring, professional skill development, technology, healthcare, retail, manufacturing, and service industry sector employment education and training. This will include speakers of other languages.

WHEREAS, Workforce Initiatives Program funding will be awarded to organizations with a direct interest in improving the workforce skills, and employment options while enhancing the overall talent pipeline through education and skill training offerings; and

WHEREAS, Best Resource Center, Inc. is requesting funding to implement the above listed training opportunities. By advancing the skill acquisition of Newburgh residents, this initiative will respond directly to local employer and industry need; As a result the overall economic development health will be improved considerably.

WHEREAS, monies granted will be used for improving the competitiveness and profitability/productivity of the local employer population, as well as create a skilled labor pool enhancing the overall talent pipeline, while enhancing the creation of employment, employment options and retention.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of Newburgh, New York fully supports the Consolidation Workforce Plan Initiative for the New York State Consolidated funding Application allocation in support of Best Resource Center, Inc. application.

RESOLUTION NO.: 100 - 2012

OF

JUNE 18, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF NEWBURGH, NEW YORK SUPPORTING THE
CONSOLIDATED FUNDING APPLICATION OF
SAFE HARBORS OF THE HUDSON FOR URBAN INITIATIVES
PROGRAM FUNDING THROUGH THE OFFICE OF
COMMUNITY RENEWAL

WHEREAS, the purpose of the Urban Initiatives Program is to provide funding to New York communities for the restoration and improvement of housing, commercial areas and public facilities in urban neighborhoods; and

WHEREAS, Urban Initiatives Program funding will be awarded to organizations with a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood; and

WHEREAS, Safe Harbors is requesting funding for the restoration of 1,500 square feet of commercial space in the Cornerstone Residence, Safe Harbors' supportive housing project on lower Broadway; and

WHEREAS, monies granted will be used to create a healthy, affordable café in Newburgh's downtown, enhancing and revitalizing the City through the creation of jobs, density and vitality; and

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York fully supports the Consolidated Funding Application of Safe Harbors on the Hudson for Urban Initiatives Program funding through the Office of Community Renewal.

RESOLUTION NO.: 101 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR
AND ACCEPT IF AWARDED STATE GRANT FOR FUNDING
UNDER THE NEW YORK MAIN STREET PROGRAM
FOR FAÇADE UPGRADES AND STREETScape IMPROVEMENTS
IN AN AMOUNT NOT TO EXCEED \$250,000.00

WHEREAS, the City of Newburgh is committed to complimenting the efforts of the private sector in promoting community revitalization efforts; and

WHEREAS, the State of New York has made funding available under the New York Main Street Program to assist in upgrading their Downtown Core Commercial Areas; and

WHEREAS, the City of Newburgh is a qualified applicant under this program; and

WHEREAS, the City of Newburgh has a successful history in delivering development programs throughout the City;

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 apply for and accept if awarded a grant for funding under the New York Main Street program for façade upgrades and streetscape improvements in an amount not to exceed \$250,000.00.

RESOLUTION NO.: 102 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER TO APPLY FOR AND ACCEPT IF AWARDED GRANTS FROM THE REGIONAL TOURISM MARKETING GRANT INITIATIVE, ENVIRONMENTAL PROTECTION FUND MUNICIPAL GRANT PROGRAM, AND THE LOCAL WATERFRONT REVITALIZATION PROGRAM THROUGH THE EMPIRE STATE DEVELOPMENT GRANT PROGRAM

WHEREAS, the City of Newburgh wishes to submit an application through the Hudson Valley Regional Councils Consolidated Funding Application process for the funding from Regional Tourism Marketing Grant Initiative, Environmental Protection Fund Municipal Grant Program, and The Local Waterfront Revitalization Program; and

WHEREAS, monies granted will be used to fund tourism, specifically the operation of the City of Newburgh Art and History Tour bus, the Water Storage Tank Improvements Project which includes the rehabilitation of two water storage tanks and replacement of one water storage tank, and the Local Waterfront Redevelopment Project; and

WHEREAS, this Council has determined that making such applications are in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to apply for and accept if awarded grants from the Empire State Development Grant Program through New York State Consolidated Funding Application.

RESOLUTION NO.: 103 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE SETTLEMENT OF
LITIGATION REGARDING THE IN REM TAX FORECLOSURE
OF LIENS FOR THE YEAR 2010 AND 2011 RELATIVE TO
98 GIDNEY AVENUE (SECTION 7, BLOCK 7, LOT 25)

WHEREAS, The City of Newburgh commenced proceedings for the foreclosure of certain tax liens, such actions being designated as Orange County Index Numbers 2010-012561 and 2012-001071; and

WHEREAS, the daughters' of property owner Gary Borel, by their attorney, have advised the City that they are prepared to settle such actions; and

WHEREAS, this Council has determined that it would be in the best interests of the City of Newburgh to settle these matters;

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 withdraw the liens on the property located at 98 Gidney Avenue (Section 7, Block 7, Lot 25), in the City of Newburgh, from the List of Delinquent Taxes, provided that the sum of Fourteen Thousand Nine Hundred Fifteen And 33/100 (\$14,915.30) Dollars representing all past due tax liens, together with all interest and penalties accruing thereon, together with all currently due taxes and charges, including but not limited to all open 2010-2011 school taxes, water charges and sewer charges, are all paid in full by certified or bank check on or before June 30, 2012.

RESOLUTION NO.: 104-2012

OF

JUNE 18, 2012

A RESOLUTION APPROVING THE CONSENT JUDGMENT AND AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDING AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NO. 7258-2011, INVOLVING SECTION 58, BLOCK 1, LOTS 1.48, 1.-7, 1.-17, 1.-25, 1.-27 AND 1.-28 (PAUL & JOSEPH MANAGEMENT, INC.)

WHEREAS, Paul & Joseph Management, Inc. has commenced a tax certiorari proceeding against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2011-2012 tax assessment year bearing Orange County Index No. 7258-2011; and

WHEREAS, it appears from the recommendation of the City Assessor, Joanne Majewski and Richard B. Golden, Esq. of Burke, Miele & Golden, LLP, Special Counsel for the City of Newburgh in the aforesaid proceedings, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

WHEREAS, Paul & Joseph Management, Inc. is willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.48 be reduced to a market value of \$ 107,910.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.-7 be reduced to a market value of \$ 80,050.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.-17 be reduced to a market value of \$ 85,545.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.-25 be reduced to a market value of \$ 90,345.
- 5- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.-28 be reduced to a market value of \$ 83,790.
- 6- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 58-1-1.-27 be reduced to a market value of \$ 94,050.

NOW, THEREFORE BE IT RESOLVED, that the proposed settlement as set forth and described above and the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law and other related laws.

BE IT FURTHER RESOLVED, that Richard F. Herbek, City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; and Richard B. Golden, Esq. on behalf of Burke, Miele & Golden, LLP, as Special Counsel, be and they hereby are designated as the persons for the City who shall apply for such approval pursuant to the aforesaid laws.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ORANGE

-----X
In the Matter of the Application of
PAUL & JOSEPH MANAGEMENT, INC.,

Petitioner,

- against -

CITY OF NEWBURGH ASSESSOR'S OFFICE,
FERNANDO L. GONZALEZ, ASSESSOR,

Respondents.

CONSENT JUDGMENT

Index No.: 7258-2011

To review a certain real property Assessment for the year
2011 under Article 7 of the Real Property Tax Law.

-----X
PRESENT: HON. CATHERINE M. BARTLETT

UPON THE CONSENT attached hereto duly executed by the attorneys for all the parties and by all the parties, it is

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.48

be reduced in market value from \$161,500.00, to a market value of \$107,910.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-7

be reduced in market value from \$100,000.00, to a market value of \$80,050.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-17

be reduced in market value from \$114,500.00, to a market value of \$85,545.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-25

be reduced in market value from \$120,500.00, to a market value of \$90,345.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-27

be reduced in market value from \$127,500.00, to a market value of \$94,050.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax year 2011-2012 as follows:

Tax Map No. 58-1-1.-28

be reduced in market value from \$111,000.00, to a market value of \$83,790.00, prior to the application of any real property tax exemptions, if any; and it is further,

ORDERED, that the Petitioner's real property taxes on said parcels above described for the 2011-2012 School, County and City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk's Office; and it is further,

ORDERED, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market values; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amounts, if any, paid as City taxes and City Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the County of Orange, the amounts, if any, paid as County taxes and County Special District taxes

against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

ORDERED, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amounts, if any, paid as School District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

ORDERED, that any interest required to be paid hereby shall be waived in the event payment is made within ninety (90) days from the date of service of this Consent Judgment with notice of entry upon the respective taxing entities; and it is further,

ORDERED, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed: June ____, 2012
Goshen, New York

ENTER:

HON. CATHERINE M. BARTLETT
SUPREME COURT JUSTICE

ON CONSENT:

HON. RICHARD F. HERBEK
Acting City Manager
Dated:

JOSEPH E. SUAREZ, ESQ.
PAUL & JOSEPH MANAGEMENT, INC.
Managing Partner
Dated:

HON. JOANNE MAJEWSKI
Assessor
Dated:

RICHARD B. GOLDEN, ESQ.
Burke, Miele & Golden, LLP
Attorney for Respondents
Dated:

RESOLUTION NO.: 105 - 2012

OF

JUNE 18, 2012

RESOLUTION RESCINDING RESOLUTION NOS.: 192-2010, 193-2010 AND 194-2010 OF AUGUST 16, 2010 AND AUTHORIZING THE CITY MANAGER TO EXECUTE AMENDMENTS TO THE LAND PURCHASE AGREEMENT DATED JUNE 19, 2008 BY AND BETWEEN THE CITY OF NEWBURGH AND BLUESTONE DEVELOPERS, INC. AND AUTHORIZING THE CITY MANAGER TO CLOSE TITLE FOR THE LIBERTY STREET SCHOOL PROPERTY KNOWN AS 1 LIBERTY STREET BEING SECTION 45, BLOCK 5, LOT 18 AND THE ASSOCIATED PROPERTIES LOCATED AT 5 AND 9 JOHNES STREET KNOWN AS SECTION 46, BLOCK 1, LOTS 14 AND 15

WHEREAS, the City of Newburgh ("City") and Bluestone Developers, Inc. ("Bluestone") executed a Land Purchase Agreement dated June 19, 2008 ("LPA") for purchase and redevelopment of the Liberty Street School Property known as 1 Liberty Street being Section 45, Block 5, Lot 18 on the tax assessment maps of the City of Newburgh ("Liberty Street School"); and

WHEREAS, the City and Bluestone executed an Option to Purchase Agreement dated November 6, 2009 ("OA") for purchase of properties for parking accessory to the Liberty Street School Property known as 5 and 9 Johnes Street being Section 46, Block 1, Lots 14 and 15; and

WHEREAS, by Resolution Nos. 192-2010, 193-2010 and 194-2010 of August 16, 2010, the City Council of the City of Newburgh rescinded Resolution No. 144-2012 of July 12, 2010 thereby withdrawing its approval of certain amendments to the LPA and OA, authorized the City Manager to serve a Notice to Cure on Bluestone and directed that a stop work order be issued by the City Manager and Building Inspector to Bluestone; and

WHEREAS, the City and Bluestone have engaged in negotiations and now wish to execute amendments to the LPA in the form attached hereto; and

WHEREAS, this Council feels it would be in the best interests of the City of Newburgh and its continuing development to execute amendments to the LPA;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that Resolution Nos. 192-2010, 193-20120 and 194-2010 of August 16, 2012 are hereby rescinded; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to withdraw the Notice to Cure, dated August 16, 2010; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, Newburgh, New York that the City Manager and the Building Inspector be and hereby are authorized to lift the stop work issued to Bluestone in connection with work at the Liberty Street School; and

BE IT FURTHER RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and hereby is authorized to execute amendments to the LPA in the form attached hereto and to close title as required by the LPA, as amended and the OA.

AMENDMENT
TO
LAND PURCHASE AGREEMENT
THE CITY OF NEWBURGH, NEW YORK AS SELLER
WITH
BLUESTONE DEVELOPERS, INC. AS PURCHASER

WHEREAS, the City of Newburgh, New York ("City") and Bluestone Developers, Inc. ("Bluestone") entered into an agreement entitled "Land Purchase Agreement" ("LPA") dated June 19, 2008, regarding the redevelopment and purchase of the properties located at 1 Liberty Street, 5 Johnes Street, and 9 Johnes Street in the City of Newburgh, which properties are more particularly described in the LPA, and

WHEREAS, the City and Bluestone are desirous of amending the LPA as herein provided, and

WHEREAS, the City has authorized this Amendment by Resolution No. ____ of 2012 of the City Council, dated June ___, 2012, and further authorized the City Manager to execute this Amendment on behalf of the City, the parties acknowledging adequate consideration therefor in the form of the mutual promises and conditions stated herein,

NOW, THEREFORE, the City and Bluestone hereby amend the LPA as follows:

1. Bluestone shall comply with the directives and obligations of the variance Decision No. 10-1022 of the New York State Department of Labor, dated September 30, 2010, regarding the premises described therein as "Former School No. 6, 1 Liberty Street, Newburgh, New York," and apply for and comply with any subsequent variance decisions that are necessary or required.

2. Bluestone shall adhere to the following revised milestone-driven timeline and work activities, all previous stop work orders by the City being hereby withdrawn:

(a) Bluestone must submit full construction plans, sufficient in scope and detail to support a building permit to allow full construction of the project within four (4) months of the execution of this Amendment.

(b) The City will issue a full construction building permit within thirty (30) days of the submission of complete, accurate and full construction plans, which will allow for the closing of the property within thirty (30) days thereafter. The closing date shall be extended by one (1) day for each day that the City fails to issue such building permit within said 30-day time frame.

(c) Completion of the redevelopment project in accordance with the PLA shall occur within 18 months of the closing. This 18-month period shall be as defined in subparagraph "3" of Schedule "C" of the PLA, except that said 18-month period may be extended for (i) unforeseeable causes (weather is only an unforeseeable cause if owing to severe weather events such as hurricanes or tornados, or, if such severe weather is due to rain and/or snow, then such rain and/or snow must be demonstrated, by official United States records, that it is a substantial departure from the relevant historical monthly averages), (ii) substantial interference by the City that is not due to the neglect or failure of Bluestone, or (iii) the failure of the City to transfer to Bluestone the Johnes Street parking lot. The City Building Department will cooperate with Bluestone in its endeavor to complete the project within the 18-month timeframe by allowing Bluestone to have occasional plan review meetings with the Building Department to assess Bluestone's progress, and issue comments or clarifications regarding Bluestone's performance and the Building Department's requirements.

3. Bluestone shall defend and indemnify the City with respect to any cause of action in law or equity arising out of any and all actions taken by Bluestone, its employees, agents, subcontractors, suppliers, materialmen, etc., except to the extent any such liability was caused directly by the City.

4. All asbestos remediation, abatement or other asbestos-related work on the project shall be performed by a properly licensed, experienced and financially secure subcontractor. All asbestos subcontractors shall be adequately insured, with the City being named as an additional insured.

5. At the closing of the 1 Liberty Street property identified in the PLA, Bluestone shall reimburse the City for 50% of all of the City's C.T. Male Associates, PC consultant costs incurred by the City in bringing the 1 Liberty Street School Building into federal and state compliance subsequent to the initial work performed by Bluestone prior to the City's stop work order dated on or about August 16, 2010. The City will submit to Bluestone proof of all such C.T. Male Associates, PC costs within 60 days after the full execution of this Amendment. The City will also provide to Bluestone prior to the closing a statement setting forth the facts of the United State Justice Department involvement regarding the asbestos work performed by Bluestone.

6. The City herein confirms to Bluestone that the purchase price of \$50,001.00 is the total purchase price for the 1 Liberty Street, 5 Johnes Street, and 9 Johnes Street properties.

7. Bluestone and Jerome H. Blue agree to execute and deliver to the City's Corporation Counsel within 60 days after the full execution of this Amendment, a verified written withdrawal of their Notice of Claim against the City dated September 10, 2010, including all claims noted therein, with prejudice.

8. The City shall pass the following resolutions either prior to or within 60 days after the execution of this Amendment: (1) a resolution rescinding that portion of its prior Resolution No.: 194 - 2010 (August 16, 2010) that requested Bluestone to stop work at the Liberty Street School, (2) a resolution rescinding its prior Resolution No.: 193- 2010 (August 16, 2010) directing the City Manager to serve upon Bluestone Developers., Inc. a Notice to Cure various alleged breaches of contract, and (3) a resolution rescinding its prior Resolution No.:192-2010 (August 16, 2010) that rescinded Resolution No.: 144-2010 regarding certain amendments to the LPA.

7. Except as specifically provided above, all of the terms, conditions, obligations and duties set forth in the PLA dated June 19, 2008, and the Option to Purchase Agreement dated November 6, 2009, shall remain as so provided in those agreements.

IN WITNESS WHEREOF, the parties hereto have duly executed this Amendment and date this Amendment as the _____ day of June, 2012.

THE CITY OF NEWBURGH

By: _____
Richard F. Herbek, City Manager

BLUESTONE DEVELOPERS, INC.

By: _____
Jerome H. Blue, President

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

On the _____ day of June, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proven 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 was duly authorized to, and did, execute the same in his capacity as City Manager for the City of Newburgh, New York, and that by his signature on the instrument the City of Newburgh executed the instrument.

(Notary Public)

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

On the _____ day of June, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared JEROME H. BLUE, personally known to me or proven 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 was duly authorized to, and did, execute the same in his capacity as president of Bluestone Developers, Inc., and that by his signature on the instrument Bluestone Developer, Inc. executed the instrument.

(Notary Public)

RESOLUTION NO.: 106 - 2012

OF

JUNE 18, 2012

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH, NEW YORK
SUPPORTING THE CONSOLIDATED FUNDING APPLICATION OF
THE NEWBURGH COMMUNITY LAND BANK
FOR URBAN INITIATIVES PROGRAM FUNDING THROUGH
THE EMPIRE STATE DEVELOPMENT GRANT PROGRAM FUNDING

WHEREAS, the purpose of the Urban Initiatives Program is to provide funding to New York communities for the restoration and improvement of housing, commercial areas and public facilities in urban neighborhoods; and

WHEREAS, Urban Initiatives Program funding will be awarded to organizations with a direct interest in improving the health, safety and economic viability of a distressed urban neighborhood; and

WHEREAS, the Newburgh Community Land Bank is requesting funding to implement programs for the restoration and improvement of housing in the City of Newburgh, which result in the improvement of the overall development of the City of Newburgh and its residents;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Newburgh, New York fully supports the New York State Consolidated Funding Application through the Urban Initiatives Program of the Newburgh Community Land Bank.

RESOLUTION NO.: 107 - 2012

OF

JUNE 18, 2012

**A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE A SEPARATION AND SETTLEMENT AGREEMENT
WITH LEYLAND ALLIANCE LLC**

WHEREAS, the City of Newburgh and Leyland Alliance LLC entered into an Exclusivity and Planning Agreement dated September 22, 2006 and a Development Agreement together with Escrow Agreement dated August 14, 2007 (collectively the "Prior Agreements") regarding the proposed redevelopment of approximately thirty (30) acres of City-owned lands located on and in close proximity to the Newburgh waterfront on the Hudson River ("Newburgh Waterfront"); and

WHEREAS, the City and Leyland, due to the passage of time and the changing development market, wish to terminate the Prior Agreements and resolve any remaining obligations to the other; and

WHEREAS, this Council has determined that entering into to a Separation and Settlement Agreement with Leyland is 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 execute the Settlement and Separation Agreement with Leyland Alliance LLC, in substantially the same form as annexed hereto, with other provisions as Corporation Counsel may require.

A SEPARATION AND SETTLEMENT AGREEMENT dated _____, 2012, by and between the CITY OF NEWBURGH, a New York municipal corporation with offices at 83 Broadway, Newburgh, New York 12550 ("City"), and LEYLAND ALLIANCE LLC, a Delaware limited liability company authorized to do business in New York with offices at 233 Route 17, Tuxedo Park, New York 10987 ("Leyland").

WHEREAS, the City and Leyland entered into an Exclusivity and Planning Agreement dated September 22, 2006 and a Development Agreement together with Escrow Agreement dated August 14, 2007 (collectively the "Prior Agreements") regarding the proposed redevelopment of approximately thirty (30) acres of City-owned lands located on and in close proximity to the Newburgh waterfront on the Hudson River ("Newburgh Waterfront"), and

WHEREAS, the City and Leyland, due to the passage of time and the changing development market, wish to terminate the Prior Agreements and resolve any remaining obligations to the other,

NOW, THEREFORE, the City and Leyland agree as follows:

1. Termination of Prior Agreements. The Prior Agreements are hereby terminated in their entirety, with no continuing obligations to survive such termination, either to each other or other parties.
2. Compensation. In settlement of all obligations under the Prior Agreements, the parties hereto agree to exchange mutual releases of their obligations under the Prior Agreements, and the City shall transfer to Leyland certain unimproved real property generally bounded by First Street on the south and Second Street on the north; and Colden Street on the east and Montgomery Street on the west, and also described as the following twelve parcels of property: 1 and 3 Colden Street; 2, 4, 10, 12, 14, 28, 30, 32 and 34 Montgomery Street; and 55 Second Street; such parcels also known as Section 24, Block 9, Lots 1 and 2 (1 and 3 Colden Street); Section 24, Block 9, Lot 3 (2 Montgomery Street); Section 24, Block 10, Lots 14, 12, 11, 7, 4, 3, 2 and 1 (4, 10, 12, 14, 28, 30, 32 and 34 Montgomery Street); and Section 24, Block 10, Lot 15 (55 Second Street),, all as designated on the Official Tax Map of the City of Newburgh (hereafter collectively referred to as "the Premises").
3. Terms of Transfer. The terms of transfer shall be as follows:
 - A. TRANSFER PRICE. The price for the transfer of the properties shall be \$1.00 and other valuable consideration as set forth in Paragraph 2 above.

- B. PREMISES SOLD "AS IS". The Premises is sold "AS IS" and without any representation or warranty whatsoever as to the condition or title, and subject to: (a) any state of facts an accurate survey or personal inspection of the premises would disclose; (b) applicable zoning/land use/building regulations; (c) property tax, water and sewer assessments, and other costs of ownership of the Premises with respect to any period following the Closing hereunder shall be the responsibility of Leyland, as purchaser; and (d) all easements, covenants, conditions and rights-of-way of record, provided that the City agrees not to grant or otherwise create any such encumbrances between the date hereof and the date of Closing. In view of the "as is" nature of the proposed conveyance of the Premises hereunder, and the fact that the conveyance of the Premises is a material inducement to Leyland's decision to enter into this Agreement, the parties agree that this Agreement shall be subject to a due diligence period of sixty (60) days following the date hereof (the "Due Diligence Period"). In the event Leyland, during the course of its due diligence, determines that there are one or more material adverse issues relating to the Premises, Leyland shall so notify the City; the City shall then have up to thirty (30) days to cure or otherwise rectify any such matter. If the City is unable to do so, and one or more of such material adverse issues continue to exist, Leyland may terminate this Agreement at any time during or within ten (10) business days following the expiration of said thirty (30) day period, by giving notice of termination to the City, in which event this Agreement shall be of no force or effect. Notwithstanding the foregoing, in the event a notice of termination is given hereunder, the parties shall endeavor in good faith to enter into a new agreement substantially similar to this Agreement, but with property or other consideration of reasonably equivalent value being substituted for the Premises (such value being determined as though the Premises had not been affected by any material adverse issues).
- C. CLOSING. At the closing of title, the City will convey title to the Premises by standard City Quitclaim Deed, free and clear of all exceptions, liens and encumbrances, subject to the exceptions identified in paragraph 3B. The cost of recording the deed shall be the obligation of Leyland. The closing of title to the property will occur at the Office of the Corporation Counsel, City of Newburgh, no later than ninety (90) days from the date of this Agreement, subject to such adjournments as either party may reasonably request.
- D. DEVELOPMENT OF THE PREMISES.
1. PERMITTED USES. The Premises shall be developed subject to and in conformity with the laws, ordinances, codes, rules and regulations of the City of Newburgh and State of New York.

2. TIME FOR COMMENCEMENT AND COMPLETION. The deed to the premises will contain provisions stating that Leyland is required to obtain a building permit for the development of the Premises within thirty-six (36) months of the date of the deed and to complete the development of the Premises in compliance with all State, County and Local standards for occupancy within thirty-six (36) months following the date a building permit is issued. Said periods shall be extended by the number of days, if any, that Leyland is delayed in satisfying such requirements due to appeals as to any permits, approvals or other entitlements issued, or for any other reason beyond the control of Leyland. In addition, the City shall not unreasonably withhold its approval of extensions of said time periods as may be requested by Leyland, for good cause shown.

3. CITY'S RIGHT OF REVERSION.
 - a. The deed shall also require that any conveyance of the property must be made subject to the requirements of Paragraph 3(D).
 - b. The deed shall also require Leyland to use commercially reasonable efforts to combine the Premises herein identified as one lot of record within one (1) year of the date of transfer. The City agrees to cooperate with Leyland in this regard.
 - c. Failure to comply with any of the requirements in the deed shall cause the title to the property to revert to the City of Newburgh.

4. Entire Agreement. This Agreement contains the entire Agreement between Leyland and the City with respect to the transactions contemplated herein; and no party shall be bound by nor shall be deemed to have made any representations, warranties or covenants except those contained herein. This Agreement cannot be modified, changed, discharged or terminated except by an instrument in writing, signed by the party against whom the enforcement or any modification, change, discharge or termination is sought.

5. Notices. Any notices, request, instrument or other document to be given hereunder shall be in writing and, shall be delivered personally or sent by certified, registered or express mail, return receipt requested, as follows:

If to Leyland:

Leyland Alliance LLC
P.O. Box 878
233 Route 17
Tuxedo, New York 10987
Attn: Howard Kaufman, Manager

If to the City:

The City of Newburgh
83 Broadway, City Hall
Newburgh, New York 12550
Attn: City Manager

With a copy to:

Corporation Counsel
City of Newburgh
83 Broadway
Newburgh, New York 12550

Each party may change its address for the purposes of this Paragraph by giving written notice of such change to the other party in the manner herein provided. If this Agreement provides for a designated period after a Notice within which to perform an act, such period shall commence on the date of receipt or tender of the Notice. If this Agreement requires the exercise of a right by Notice on or before a certain date or within a designated period, such right shall be deemed exercised on the date of mailing or tender of the Notice pursuant to which such right is exercised.

6. Severability. In case any one or more of the provisions or parts of a provision contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement.
7. Governing Law. This Agreement has been negotiated and executed in the State of New York and shall be governed by and construed in accordance with the laws of the State of New York.
8. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
9. Assignment. Neither the City nor Leyland may assign this Agreement to another party.

Remainder of this Page Intentionally Left Blank

CITY OF NEWBURGH

By _____
Richard F. Herbek
City Manager

LEYLAND ALLIANCE LLC

By _____
Howard Kaufman
Managing Member

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

On the _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared RICHARD F. HERBEK, personally known to me or proven 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 was duly authorized to, and did, execute the same in his capacity as City Manager for the City of Newburgh, New York, and that by his signature on the instrument the City of Newburgh executed the instrument.

(Notary Public)

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

On the _____ day of _____, 2012, before me, the undersigned, a Notary Public in and for said State, personally appeared HOWARD KAUFMAN, personally known to me or proven 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 was duly authorized to, and did, execute the same in his capacity as managing member of Leyland Alliance LLC and that by his signature on the instrument Leyland Alliance LLC executed the instrument.

(Notary Public)

RESOLUTION NO.: 108 - 2012

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO EXECUTE AN AMENDMENT TO THE CONTRACT
WITH MALCOLM PIRNIE-ARCADIS FOR DETAILED DESIGN
SERVICES IN CONNECTION WITH THE WASTE WATER TREATMENT
PLANT WATER POLLUTION CONTROL PLAN EMERGENCY BACKUP
GENERATION AND SOLIDS HANDLING SYSTEMS PROJECT AT AN
ADDITIONAL COST NOT TO EXCEED
TWO HUNDRED TEN THOUSAND DOLLARS

WHEREAS, this Council, by Resolution No.: 254-2011 of December 12, 2011, authorized the City Manager to enter into an agreement for professional engineering services with Malcolm Pirnie-Arcadis in connection with the Waste Water Treatment Plant Water Pollution Control Plant Emergency Backup Generation and Solids Handling Systems Project; and

WHEREAS, Malcolm Pirnie-Arcadis has previously completed a basis of design memorandum subject to the electrical backup generator and the NYSERDA FlexTech Study, which together outline basis of design necessary for the completion of the referenced Waste Water Treatment Plant improvements; and

WHEREAS, detailed design services are necessary for the creation of plans and specifications suitable for competitive bidding and construction of referenced improvements; and

WHEREAS, Malcolm Pirnie-Arcadis submitted a proposal for engineering services dated May 30, 2012, outlining the necessary scope and fee schedules related thereto; and

WHEREAS, Malcolm Pirnie-Arcadis submitted a project schedule dated June 14, 2012, outlining key milestone dates relevant to the completion of services; and

WHEREAS, referenced Project is subject to a New York State Department of Environmental Conservation Consent Order requiring the completion of said Project; and

WHEREAS, funding for such project shall be derived from HG1.8130.0200.8100; and

WHEREAS, this Council has determined that entering into such contract is in the best interests of the City of Newburgh;

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute an amendment to the contract with Malcolm Pirnie-Arcadis for detailed design services in connection with the Waste Water Treatment Plant Water Pollution Control Plan Emergency Backup Generation and Solids Handling Systems Project at an additional cost not to exceed Two Hundred Ten Thousand Dollars.

RESOLUTION NO.: 109 - 201

OF

JUNE 18, 2012

A RESOLUTION AUTHORIZING THE CITY MANAGER
TO ACCEPT DONATIONS IN SUPPORT OF THE
NEWBURGH ILLUMINATED EVENT

BE IT RESOLVED, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to accept donations with the appreciation and thanks of the City of Newburgh.