

Mid-Broadway Redevelopment

Block: 3 Lot: 21-38

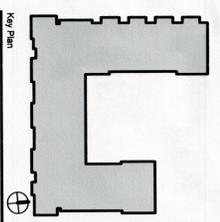
Application #:

Client:
**MILL STREET
PARTNERS**

42 West Street, 10th Floor,
New York, NY 10038
Tel: (212) 233 7820 Fax: (212) 233 1276



SUSTAINABILITY TARGET:
LEED FOR HOMES



NUMBER	DATE	DESCRIPTION
04/18/13	7/24	Submission
07/21/13	5/14	Site Plan for Submission
12/05/13	1/20	HCR Submission
11/20/15	1/20	Workshop Submission
01/08/16	1/20	Planning Board Submission
07/27/16	1/20	Planning Board Submission



Architect

MVP
Magnusson Architecture & Planning PC
42 West 39th Street, 15th Floor,
New York, NY 10018
Tel: (212) 233 7820 Fax: (212) 233 1276

Civil Engineer

Tecotek
Corporate Office
PO Box 27, P.O. Route 441 Rt 70, Honesdale, NY 10093
Tel: (845) 254 2222 Fax: (845) 254 2222

Structural Engineer

Mulligan & Kulp
2015 Maple Street, Suite 130
Ardur, PA 19002
Tel: (215) 646 8301 Fax: (215) 646 8310

MEP Engineer

Johnson & Urban, LLC
Hempstead, NY 07729
Tel: (201) 772 1500 Fax: (201) 772 1515

Energy Consultant

Steven Winters Associates
307 Seventh Avenue, Suite 1701,
New York, NY 10001
Tel: (212) 254 3830

Photographic Services

Polder Design Group PC
New York, NY 10011
Tel: (646) 779 7612

Do Not Scale Plans

These drawings were prepared under contract and are not to be used for any other project without the written consent of the architect. The architect assumes no responsibility for conditions as indicated in Contract documents.

Drawing Title:
Broadway Elevation

Project Number: 12008
Date: 04/20/16 Drawing #: _____
Scale: _____

Drawn by: Author
Checked by: Checker
B-6

Conservation Advisory Council | City of Newburgh, New York

123 Grand Street, Newburgh, New York, 12550

Phone: (845) 569-7366 e-mail: conservation@cityofnewburgh-ny.gov

Council Members:

Chuck Thomas, Acting Chair

C. Kippy Boyle

Marcel Barrick

Deborah Dresser

Karen Eberle-McCarthy

Gail Fulton

Phil Prinzivalli



June 20, 2016

MEMO TO: Lisa Daily, Chair
City of Newburgh Planning Board

FROM: Chuck Thomas, Acting Chair
Conservation Advisory Council ("CAC")

RE: Proposed Project - Mid-Broadway Site
91 Residential Units/Mixed Use

It is our understanding that the above-referenced project with revised plans is coming before the Planning Board for review. A partial set of plans for the project was reviewed by the CAC at our regularly scheduled meeting of June 2, 2016. The phase II evaluation on the project has revealed that there are materials that need to be removed from the site. We have also since learned that 14 Johnston Street is still standing; comments on the plans for Johnston Street at our meeting were made on the assumption that this was a vacant lot.

Also attached is the September 10, 2013 Comment Letter from the Shade Tree Commission. In 2014, the Shade Tree Commission was rolled into the newly-formed Conservation Advisory Council as the Urban Forestry Committee of the CAC. Subsequent to our 2013 Comments, the re-zoning has gone into effect. Several of our 2013 recommendations are now included in the Form-Based Code. However, the 2013 letter remains part of this review.

We offer the following comments and recommendations to the Planning Board and the applicant based on the current set of plans, but not including any elements that might be revealed when more materials are removed from the site. Our comments are also to be included in the official record of any Public Hearings.

Overview:

The site is a 1.94 Acre site which is bounded by Broadway, Lander and Johnston Street. The mixed-use project will consist of 91 rental units, a supermarket and other ground floor commercial use. The site is located in two zones: the front on Broadway is located in the Broadway Corridor District; the rest is in the Downtown Neighborhood District. The proposed 111 parking spaces include on and off-site locations at the city-owned Ann Street Parking Lot and city-owned Lander St. lots.

Recommendations and Concerns:

1. Interior Water Usage. The EAF referenced water use for the building. The projected use for the entire building at full occupancy was 18,775 gallons per day. Projections for the commercial areas were unavailable. The City of Newburgh is undergoing a long-term water crisis, therefore, the water use of the project is of major concern. The CAC recommends low-flow toilets and prohibiting apartment washer/dryers, since there will be a community laundry room where we recommend Energy-star rated units. According to the applicant, the building will meet the LEED for Residential Homes Standard and the NYSERDA MPP standards once completed. This rating doesn't include dishwashers, only showers, toilets and faucets. There are energy star dishwashers that can save around 1600 gallons of water over the lifetime of the product. <https://www.energystar.gov/products/appliances/dishwashers> This is a substantial amount of water over 91 units so we recommend use of energy-star units. Energy star products also save electricity. Similarly the washing machines and dryers that are going to be in the laundry rooms should also be energy star compliant.
2. Stormwater drainage. It was stated that the site drains at the corner of the DMV to Broadway which is a combined sewer outflow. Since this project was originally proposed, the rules and regulations that govern storm water in NY have been adopted by the City and have been written in the storm water permit for the waste water system. The project sponsor is still obligated to improve performance. According to the 2015 manual any increase in impervious that is proposed over what was impervious (ratio of pervious to impervious) is considered redevelopment and is held to a higher standard. Anything that was grass and becomes pavement is considered new development.
3. Collection Basin. The estimated projection of a reduction in run-off discharge, going from 4.1 cubic feet per second to 3.8 cubic feet per second is encouraging. The proposed retention tank for storm water was also addressed. The council asked if the water from there could be used to water the green areas on the project, it was stated by the applicant that something like that could be done. The council recommends this be done (see Stormwater Re-Use below). It is further recommended that the grassed area to be landscaped to the south of the apartments and east of the parking lots be used for stormwater management. Even if the area is at it's narrowest 4 feet wide, this still offers an area for stormwater catchment and conveyance before it drops into the swirl separator and then the stormwater detention chamber. Most of already slopes to the north where the stormwater detention chamber is, and it makes sense to include storm water management features for this area.
4. Re-Use of Stormwater. The Council recognizes the effort the applicant has made to date however the Council recommends that storm water be aggressively maintained within the site and that every effort be made to further reduce stormwater influx into the Combined Storm Sewer System (CSSS). In addition to the recommendations made previously, the council recommends that the northern portion of the parking area also be included in storm water retention efforts and that the runoff not be channeled through the 14 Johnston Street property to the CSSS but rather be collected and used on-site. This could be accomplished in a variety of ways including use of permeable pavement treatments, bioswales (see below), and collection and distribution to green areas from detention chambers.
- Bioswales. It was stated that even though this project is to inherit the visual aspects of the Liberty Street project standards it does not seem to be also following the recommended design standards as there are no bioswales proposed for this project. We recommend using rainwater from any surface or source as supplemental irrigation or as a sole source of irrigation on green infrastructure. This can include grassed walkways, bioswales, treepits that are designed to retain water or raingardens in all possible locations over the entire project, including the area on Broadway in order to adhere to the form based sidewalk and tree pit code that the city has adopted.
5. Pervious Surfaces. There is an excess of hardscape on this 1.94-acre site, surrounded by pavement on 3 sides. Asphalt is proposed to be used for the main parking lot, however the Council recommends that permeable pavement or pavers be utilized in the parking lot and for the front of the building. We recommend landscaping between the parking area and the building to increase visual appeal and to limit

impervious surfaces. We recommend permeable pavers for the resident's courtyard. We recommend the inclusion of permeable pavement throughout the parking and other to be paved areas. Where a grass 'strip' is proposed, on the Lander Street side, we recommend replacing grass with clover, or other groundcover which is low-maintenance and will retain stormwater.

6. Trees & Sidewalks: Form-based Code sidewalk and tree pit specifications are recommended to be met. The Council recommends permeable materials and additional plantings be used for the enlarged tree pits to increase stormwater retention and decrease the area of hardscape. [Applicant comments: There is the possibility to have 67 large trees and 29 medium size trees which helps exceed the new development requirements due to vegetation planting.] The applicant has been asked to inherit the visual aspect of the Liberty Street project, the aesthetics, stamping, texturing of sidewalks, arrangements of trees and the relationship between the sidewalk to street and the tree as well any parking in the area. The concept of recycling the city bluestone is to be used as edge treatment is supported.
7. Solar Panels. A small, unspecified portion of the roof is to use solar panels. The CAC recommended a solar roof over the parking lot, unless shading by surrounding structure prevents this application, which would provide energy savings and protect vehicles. We recommend that the applicant do further investigation on the NYSERDA incentives available for commercial projects. Will the energy produced be used to increase affordability for residents such as common area lighting?
8. Public Benefit. It is recommended that the applicant make provision for a Public recreation area, since children currently use it as a playground. With the concentration of units proposed the tenants should have access to an activity area. This recommendation could be fulfilled through the assessment of a recreation impact fee utilized to provide recreation opportunities in the neighborhood.
10. The applicant should provide a watering and maintenance plan to help assure long term success of the new landscape installations. Although a critical component of a successful site, maintenance is often overlooked during the design process.
11. We also recommend collecting the roof runoff and directing it to landscaping elements as irrigation rather than sending it to the City of Newburgh storm sewer system. Can water from the building be directed to the park area to recharge ground water? This may already be part of the plan; however, we did not have access to all plan sheets. We recommend using rainwater from any surface or source as supplemental irrigation or as a sole source of irrigation on green infrastructure. This can include grassed walkways, bioswales, treepits that are designed to retain water or raingardens in all possible locations over the entire project, including the area on Broadway which are recommended to adhere to the form based sidewalk and tree pit code that the city has adopted.
12. Rain Garden. We recommend using rainwater from any surface or source as supplemental irrigation or as a sole source of irrigation on green infrastructure. This can include grassed walkways, bioswales, treepits that are designed to retain water or raingardens in all possible locations over the entire project, including the area on Broadway which are recommended to adhere to the form based sidewalk and tree pit code that the city has adopted.
13. Curbing to include ADA ramps at the corners on Lander and Johnston.

Cc: _____, Mill Street Partners
Chad Wade, Assistant Engineer
City Manager
Planning Department
City Council

The City of Newburgh Office of the Corporation Counsel

City Hall – 83 Broadway
Newburgh, New York 12550

Michelle Kelson
Corporation Counsel

Tel. (845) 569-73335
Fax. (845) 569-7338

June 16, 2016

David J. Cooper, Esq.
Zarin & Steinmetz
81 Main Street, Suite 415
White Plains, New York 10601

Re: Mill Street Partners, LLC with the City of Newburgh
Mid-Broadway Development Agreement
18 Johnston Street (Section 30, Block 3, Lot 38)

Dear Mr. Cooper:

Enclosed please find a certified copy of Resolution No. 146-2016 of June 13, 2016, which corrects Exhibit "A" - "List of City-Owned Parcels to be Conveyed to Developer" to include the inadvertently omitted the property known as 18 Johnston Street (Section 30, Block 3, Lot 38) and further authorizes the sale and conveyance of 18 Johnston Street in accordance with the terms and provisions of the Development and Land Disposition Agreement with Mill Street Partners, LLC, as amended. Also enclosed is an Amended Exhibit "A" which contains 18 Johnston Street and is identified with the footer "Amended per Resolution No. 146-2016 of June 13, 2016". Certified copies of Resolution No. 146-2016 and the Amended Exhibit "A" with the resolution number and date in the footer should be maintained by both parties with the Development Agreement and the subsequent amendments.

Thank you for your attention to this matter.

Very truly yours,



MICHELLE KELSON
Corporation Counsel

MK/ar
Enclosures

cc: Robert H. Feller, Esq.
Lorene Vitek, City Clerk

RESOLUTION NO.: 146 - 2016

OF

JUNE 13, 2016

A RESOLUTION AUTHORIZING THE CORRECTION OF EXHIBIT "A" - "LIST OF CITY-OWNED PARCELS TO BE CONVEYED TO DEVELOPER" TO THE DEVELOPMENT AND LAND DISPOSITION AGREEMENT WITH MILL STREET PARTNERS, LLC TO CORRECT THE INADVERTENT OMISSION OF THE PROPERTY KNOWN AS 18 JOHNSTON STREET (SECTION 30, LOT 3, BLOCK 38) IN CONNECTION WITH THE REDEVELOPMENT OF CITY OWNED PROPERTIES KNOWN AS THE MID-BROADWAY SITE

WHEREAS, the City of Newburgh wishes to develop the City-owned .66 acre Lander Street surface parking lot (between Chambers Street and Lander Street) as well as the 1.8 acre principal site that fronts on Broadway (the "Mid-Broadway Site"); and

WHEREAS, the City has issued a Request For Qualifications (RFQ) for the development of the Mid-Broadway Site and received six (6) responses from developers interested in pursuing a development project on the Mid-Broadway site; and

WHEREAS, the City Council has reviewed the responses to the RFQ and has determined that Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. is the preferred team to develop the Mid-Broadway site; and

WHEREAS, by Resolution No. 78-2012 of May 29, 2012, the City Council authorized to the City Manager to negotiate on behalf of the City of Newburgh a Development and Land Disposition Agreement with Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. for the redevelopment of the Mid-Broadway site; and

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

WHEREAS, Section 5.04 of the Development Agreement authorized by Resolution No. 194-2012 of October 22, 2012 provides that "The City hereby agrees to sell and convey the City owned parcels listed in Exhibit A to the Developer in accordance with the terms and provisions of this Agreement and subject to compliance with applicable law."; and

WHEREAS, Exhibit "A" - "List of City-Owned Parcels to be Conveyed to Developer" inadvertently omitted the property known as 18 Johnston Street, more accurately described as Section 30, Block 3, Lot 38 on the official Tax Map of the City of Newburgh; and

WHEREAS, it was the intention of the City and the understanding of the Developer that 18 Johnston Street was a parcel included in the 1.8 acre principal site to be developed; and

WHEREAS, the City and the Developer wish to correct the omission in Exhibit "A" and to clarify that 18 Johnston Street was intended to be one of the parcels to be conveyed to the Developer pursuant to the Development and Land Disposition Agreement, as amended, and the Exhibits thereto; the same being 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 authorizes the correction to the Exhibit "A" - "List of City-Owned Parcels to be Conveyed to Developer" to include the inadvertently omitted the property known as 18 Johnston Street, more accurately described as Section 30, Block 3, Lot 38 on the official Tax Map of the City of Newburgh and further authorizes the sale and conveyance of the City-owned parcel known as 18 Johnston Street, more accurately described as Section 30, Block 3, Lot 38 in accordance with the terms and provisions of the Development and Land Disposition Agreement with Mill Street Partners, LLC, as amended.

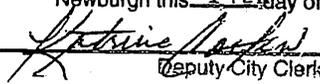
I, Katrina Cotten, Deputy City Clerk of the City of Newburgh, hereby certify that I have compared the foregoing with the original resolution adopted by the Council of the City of Newburgh at a regular meeting held 6/13/16 and that it is a true and correct copy of such original.
Witness my hand and seal of the City of Newburgh this 14th day of June 20 16

Deputy City Clerk

EXHIBIT A

LIST OF CITY-OWNED PARCELS TO BE CONVEYED TO DEVELOPER

SBL	Address	Assessed Value
30-3-24	132 Broadway	2,100
30-3-25	136 Broadway	2,100
30-3-26	138 Broadway	1,600
30-3-27	140 Broadway	1,300
30-3-28	142 Broadway	1,300
30-3-29	142A Broadway	500
30-3-30	144 Broadway	1,300
30-3-31	146 Broadway	1,500
30-3-32	148 Broadway	2,100
30-3-33	6 Johnston Street	1,000
30-3-34	10 Johnston Street	1,600
30-3-35	12 Johnston Street	1,600
30-3-37	16 Johnston Street	4,300
30-3-38	18 Johnston Street	154,100
30-3-23	6 Lander Street	1,800
30-3-22	8 Lander Street	5,800
30-3-21	14 Lander Street	2,400

The City of Newburgh Office of the Corporation Counsel

City Hall – 83 Broadway
Newburgh, New York 12550

Michelle Kelson
Corporation Counsel

Tel. (845) 569-7335
Fax. (845) 569-7338

Timothy W. Kramer
Assistant Corporation Counsel

MEMORANDUM

TO: Lorene Vitek, City Clerk

FROM: Michelle Kelson, Corporation Counsel

RE: Mid Broadway Redevelopment Project - Mill Street Partners, LLC

CC: Robert H. Feller, Esq.
David J. Cooper, Esq.
Michael G. Ciaravino, City Manager
Deirdre Glenn, Planning & Development Director
Timothy W. Kramer, Assistant Corporation Counsel

DATE: March 31, 2016

Attached for filing in your office is the original Second Amendment to the Development Agreement for the Mid Broadway Redevelopment Project.



MICHELLE KELSON

MK/ar
Attachment

WHEREAS, litigation filed by third parties against the City and Developer in Orange County Supreme Court interrupted Developer's progress under the Development Agreement (Works II Assocs., L.P. v. City of Newburgh, Index No. 9921-2013) by the Court's decision dated, June 24, 2014, which vacated the City's approvals for the Development for failure to comply with the Zoning Ordinance; and

WHEREAS, litigation was pending against the City and Developer from November 12, 2013 to June 24, 2014; and

WHEREAS, the Orange County Supreme Court's Decision vacated the City's approvals for the Development for failure to comply with the Zoning Ordinance; and

WHEREAS, Section 2.02 of the Development Agreement provides that "[t]he Developer shall diligently and in good faith pursue such actions as may be reasonably necessary or appropriate to obtain all [permits and approvals] necessary to obtain, establish or construct the Development;" and

WHEREAS Section 2.02 of the Development Agreement further provides that "[t]he City will provide reasonable assistance in obtaining [all necessary permits and approvals], if and to the extent requested by the Developer;" and

WHEREAS, Section 2.03 of the Development Agreement provides that in addition to other costs to be paid as described in the Agreement, and fees legally required to be paid to the City as part of the zoning and building permit process, the Developer shall be liable for and reimburse the City for all Reimbursable Municipal Expenses including but not limited to consultants' reasonable costs and expenses paid by the City to its consultants for adopting modifications to the City's Zoning Ordinance to permit the proposed development and other expenses incurred by the City, including but not limited to defending any lawsuits, environmental consultant costs and review and analysis of the Developer's financial information; and

WHEREAS, Section 2.03 of the Development Agreement further provides for the City to pay the Reimbursable Municipal Expenses through an Escrow Account funded by the Developer in accordance with the terms of the Escrow Agreement attached as Schedule "C" to the Development Agreement; and

WHEREAS, the City and Developer recognize the importance of ensuring that City of Newburgh residents benefit from the Development and are indeed beneficiaries of the Development's hiring policies and practices; and

WHEREAS, the City and Developer now desire to amend the Development Agreement to (i) modify the Agreement Term; (ii) include a local training, hiring and vendor program; (iii) provide an average median income level for the Development; and (iv) pay all outstanding Reimbursable Municipal Expenses owed to the City and replenish the Escrow Account.

throughout the Development community and with community-based organizations regarding employment opportunities; and (v) coordinate with Best Resources Center, Inc. (or other agency designated by the City) to create appropriate job training programs and/or linkages with existing job training programs designed specifically for City residents.

4. Article I shall be further amended to add new Section 1.10 to read:

1.10 Average Median Income. The Developer shall provide that at least eighty percent (80%) to ninety percent (90%) of the residential units associated with the Development shall be leased to persons and families whose household income is between seventy percent (70%) to two-hundred-fifty percent (250%) of the City of Newburgh's area median income, adjusted for family size.

5. Article II is amended to add a new paragraph at the end of Section 2.03, Reimbursable Municipal Expenses, to read:

The Developer shall deposit \$26,271.16 to the Escrow Account within sixty (60) days of the execution of this Second Amendment, which amount represents outstanding Reimbursable Municipal Expenses paid by the City in accordance with Section 2.03 of the Development Agreement plus an additional \$10,000 which represents the balance it is required to maintain in the Escrow Account.

6. Article III is amended to add the following sentences after the second sentence in Section 3.01, Public Funds, to read:

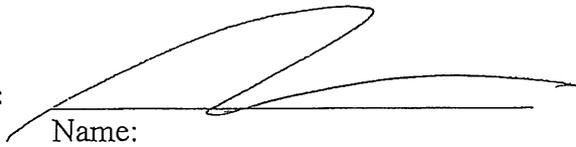
After the execution of the Second Amendment, the Developer will promptly file applications for all funding programs that do not require the presentation of final project approvals as part of the application. Where the application does require the submission of project approvals at the time the application is submitted, the Developer will promptly file such application as soon as it receives the approvals from the City other than those for building permits and certificates of occupancy.

7. Article III is further amended to delete the last sentence in Section 3.01, Public Funds and to add the following in its place to read:

If the Developer has not secured Public Funding sufficient to begin construction of the project within twelve (12) months after the execution of the Second Amendment, the Developer may, at its election extend the term of this agreement for two successive six (6) month periods ("Extension Option," each six (6) month period hereinafter referred to as an "Extension Period"). Each such extension shall require the separate prior consent of the City Council.

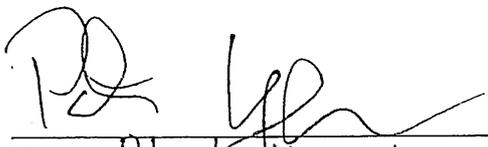
IN WITNESS WHEREOF, the parties have executed this Second Amendment and this Second Amendment shall be effective as of _____, 2016.

CITY OF NEWBURGH

By: 
Name:
Title: *city mgr.*

3/28/16
Date

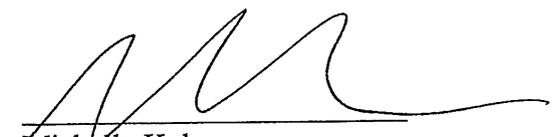
MILL STREET PARTNERS, LLC

By: 
Name: *Patrick Normoyle*
Title: *Manager*

3/30/16
Date

APPROVED AS TO FORM


John Aber
Comptroller


Michelle Kelson
Corporation Counsel

DEVELOPMENT AGREEMENT

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

RECITALS:

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

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

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

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

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

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

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

ARTICLE I TERMS OF ENGAGEMENT

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

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

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

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

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

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

Exhibit B: Development Schedule and Milestones

Exhibit C: Escrow Agreement

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

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

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

For the City: Richard F. Herbek, City Manager

For the Developer: Patrick Normoyle, Manager

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

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

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

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

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

ARTICLE II OVERALL DESIGN AND APPROVAL RESPONSIBILITIES

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

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

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

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

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

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

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

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

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

ARTICLE III PROJECT FINANCING AND CLOSINGS

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

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

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

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

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

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

ARTICLE IV DEVELOPER MILESTONES AND MILESTONE DEADLINES

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

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

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

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

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

5.03 Specific Responsibilities. The City shall:

A. Act reasonably and take all reasonable actions as are within its authority and as are reasonably necessary to complete the development and construction of each Project;

B. Investigate the feasibility and advisability of approving requests by the Developer (or where the granting authority is another governmental entity, consider recommending that such entity approve such request of the Developer), including but not limited to the following:

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

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

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

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

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

ARTICLE VI

TERMINATION, DEFAULT AND REMEDIES

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

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

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

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

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

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

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

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

ARTICLE VII REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

ARTICLE VIII INDEMNIFICATION

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

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

ARTICLE IX MISCELLANEOUS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

ARTICLE X ACCESS TO THE DEVELOPMENT PARCELS

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

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

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

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

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

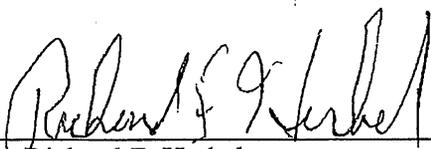
10.05 Commencement. The license or privilege hereby given shall commence upon the execution of this development agreement between City and Developer.

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

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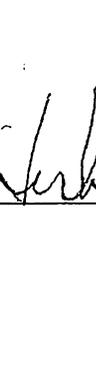
IN WITNESS WHEREOF, the parties have duly executed this Agreement by their duly authorized signatories on or as of the date first written below.

CITY OF NEWBURGH

By: 
Name: Richard F. Herbek
Title: City Manager

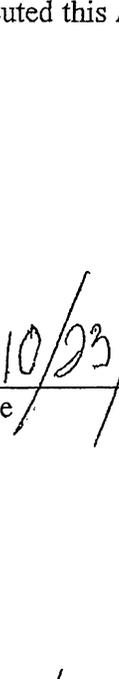
10/23/12
Date

MILL STREET PARTNERS, LLC

By: 
Name: Patrick Normoyle
Title: Manager

10/23/12
Date

APPROVED AS TO FORM


Cheryl A. Gross
Comptroller


Michelle Kelson
Corporation Counsel

EXHIBIT A

LIST OF CITY-OWNED PARCELS TO BE CONVEYED TO DEVELOPER

EXHIBIT A

LIST OF CITY-OWNED PARCELS TO BE CONVEYED TO DEVELOPER

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

EXHIBIT B
DEVELOPMENT SCHEDULE
and
MILESTONES

**EXHIBIT B
DEVELOPMENT SCHEDULE AND MILESTONES ***

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

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

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

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

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

EXHIBIT "C"

ESCROW AGREEMENT

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

WITNESSETH:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Additional Deposits.

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

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

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

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

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

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

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

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

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

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

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

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

To the City:

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

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

with a copy to:

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

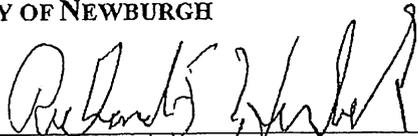
To the Developer:

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

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

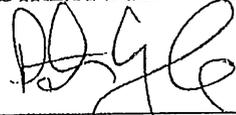
IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

CITY OF NEWBURGH

By: 
Richard F. Herbek, City Manager

Dated: 10/23/12

MILL STREET PARTNERS, LLC

By: 
Patrick Normoyle, Manager

Dated: 10/23/12

Where a #generating site# or #MIH site# is not located within the #compensated zoning lot# for which it generates #floor area compensation# or the #MIH zoning lot#, as applicable:

- (1) the #generating site# or #MIH site# and the #compensated zoning lot# or #MIH zoning lot#, as applicable, shall be located within the same Community District; or
- (2) the #generating site# or #MIH site# and the #compensated zoning lot# or #MIH zoning lot#, as applicable, shall be located in adjacent community districts and within one-half mile of each other, measured from the perimeter of each #zoning lot#.

However, special rules for the location of a #generating site# and a #compensated zoning lot# apply in Community District 1, Borough of Brooklyn, where the provisions of paragraph (a)(2) of this Section shall apply only to adjacent community districts located in the Borough of Brooklyn; in the #Special Clinton District#, pursuant to the provisions of Section 96-21 (Special Regulations for 42nd Street Perimeter Area); in the #Special Downtown Jamaica District#, pursuant to the provisions of Section 115-211 (Special Inclusionary Housing regulations); and in the #Special Southern Hunters Point District#, pursuant to the provisions of Section 125-22 (Newtown Creek Subdistrict).

(b) Distribution of #affordable housing units#

In #new construction affordable housing# or #substantial rehabilitation affordable housing#, where one or more of the #dwelling units# or #rooming units# in a #generating site#, other than any #super's unit#, are not #affordable housing units#:

- (1) the #affordable housing units# shall be distributed on not less than 65 percent of the #residential stories# of such #generating site# or, if there are insufficient #affordable housing units# to comply with this requirement, the distribution of #affordable housing units# shall be as specified in the #guidelines#; and
- (2) not more than one-third of the #dwelling units# and #rooming units# on any #story# of such #generating site# shall be #affordable housing units#, unless not less than one-third of the #dwelling units# and #rooming units# on each #residential story# of such #generating site# are #affordable housing units#. However, on a #residential story# with fewer than three #dwelling units# or #rooming units#, only one #dwelling unit# or #rooming unit# may be

an #affordable housing unit#, unless not less than one #dwelling unit# or #rooming unit# on each floor is an #affordable housing unit#.

In an #MIH site#, where one or more of the #dwelling units# or #rooming units#, other than any #super's unit#, are not #affordable housing units#, the #affordable housing units# shall share a common primary entrance with the other #dwelling units# or #rooming units#.

In addition, except where all #affordable housing units# are rental #affordable housing# and all other #dwelling units# are #homeownership# housing, any #affordable housing units# other than #supportive housing units# or #affordable independent residences for seniors# shall be distributed on at least 65 percent of the #residential stories# of such #MIH site# or, if there are insufficient #affordable housing units# to comply with this requirement, the distribution of #affordable housing units# shall be as specified in the #guidelines#.

However, #HPD# may waive such distribution requirements for any #new construction affordable housing# that is participating in a Federal, State or local program where such #generating site# or #MIH site# cannot comply with both the regulations of such Federal, State or local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing#, or for #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.

(c) Bedroom mix of #affordable housing units#

(1) In #new construction affordable housing# and #substantial rehabilitation affordable housing#, where one or more of the #dwelling units# in a #generating site# or #MIH site#, other than any #super's unit#, are not #affordable housing units#, either:

(i) the #dwelling units# in the #generating site# or #MIH site# that are #affordable housing units# shall contain a bedroom mix at least proportional to the bedroom mix of the #dwelling units# in the #generating site#, other than any #super's unit#, that are not #affordable housing units#; or

(ii) not less than 50 percent of the #dwelling units# in the #generating site# or #MIH site# that are #affordable housing units# shall contain two or more bedrooms and not less than 75 percent of the #dwelling units# in the #generating site# or #MIH

site# that are #affordable housing units# shall contain one or more bedrooms.

However, such bedroom mix requirements shall not apply to #affordable independent residences for seniors# in an #MIH site#. #HPD# may also waive such bedroom mix requirements for any #new construction affordable housing# that either is participating in a Federal, State or local program where such #generating site# or #MIH site# cannot comply with both the regulations of such Federal, State or local program and those of this Section, or is located on an #interior lot# or #through lot# with less than 50 feet of frontage along any #street#. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing# or #affordable floor area# created in an #MIH site# through #enlargement, as specified in the #guidelines#.

- (2) Where all of the #dwelling units# in a #generating site# or #MIH site#, other than any #super's unit#, in #new construction affordable housing# and #substantial rehabilitation affordable housing# are #affordable housing units#, not less than 50 percent of such #affordable housing units# shall contain two or more bedrooms and not less than 75 percent of such #affordable housing units# shall contain one or more bedrooms. However, such bedroom mix requirements shall not apply to #affordable independent residences for seniors# in an #MIH site#. #HPD# may also waive these requirements for any #affordable housing# that is participating in a Federal, State or local program where such #generating site# or #MIH site# cannot comply with both the regulations of such Federal, State or local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing# or #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.
- (3) All of the #supportive housing units# in a #generating site# or #MIH site# shall be #affordable housing units# and shall contain such configuration as #HPD# shall require.
- (4) For purposes of this paragraph, (c), inclusive, fractions equal to or greater than one-half resulting from any calculation shall be considered to be one #dwelling unit#.

(d) Size of #affordable housing units#

- (1) In #new construction affordable housing# and #substantial

rehabilitation affordable housing#, an #affordable housing unit# in a #generating site# shall contain not less than:

- (i) 400 square feet of #floor area# within the perimeter walls for a zero bedroom #dwelling unit#; or
- (ii) 575 square feet of #floor area# within the perimeter walls for a one bedroom #dwelling unit#; or
- (iii) 775 square feet of #floor area# within the perimeter walls for a two bedroom #dwelling unit#; or
- (iv) 950 square feet of #floor area# within the perimeter walls for a three bedroom #dwelling unit#.

For an #MIH site#, the average size of #affordable housing units# of a particular bedroom count shall be not less than either the average size of #dwelling units# that are not #affordable housing units# with the same number of bedrooms, or the minimum size specified above for a #dwelling unit# of a particular bedroom count, whichever is less.

However, these unit size requirements shall not apply to #affordable independent residences for seniors# in an #MIH site#. #HPD# may also waive such unit size requirements for any #new construction affordable housing# that is participating in a Federal, State or local program where such #generating site# cannot comply with both the regulations of such Federal, State or local program and those of this Section. In addition, #HPD# may waive these requirements for #substantial rehabilitation affordable housing# or #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.

For an #MIH site#, #HPD# may specify the method of measuring #floor area# within #affordable housing units# in the #guidelines#, compliant with Department of Buildings practice; and

- (2) Where all of the #dwelling units# in a #generating site# or #MIH site#, other than any #super's unit#, in #new construction# or #substantial rehabilitation affordable housing# are #affordable housing units#, #HPD# may waive such square footage requirements for any #affordable housing unit# that is participating in a Federal, State or local program where such #generating site# or #MIH site# cannot comply with both the regulations of such Federal, State or local program and those of this Section. In

addition, #HPD# may waive such square footage requirements for #substantial rehabilitation affordable housing# or #affordable floor area# created in an #MIH site# through #enlargement#, as specified in the #guidelines#.

- (3) #Supportive housing units# shall comply with the size requirements specified by #HPD#.

(e) #Administering agent#

- (1) #HPD# shall approve each #administering agent# and may revoke such approval at any time before or during the #regulatory period#.
- (2) For #generating sites#, an #administering agent# shall be a not-for-profit entity and shall not be, or be an affiliate of, an owner or managing agent of the #generating site#, unless #HPD# approves such owner, managing agent or affiliate to serve as the #administering agent# upon a determination that either:
 - (i) the #affordable housing# is participating in a Federal, State or local program that provides adequate independent means of ensuring compliance with the #regulatory agreement#; or
 - (ii) the owner and any such managing agent or affiliate are not-for-profit entities and there are adequate safeguards to ensure that such entities comply with the #regulatory agreement#.
- (3) For #MIH sites#, the #administering agent# may be selected as provided for #generating sites#, or #HPD# may require that the #administering agent# be selected from a list of qualified not-for-profit or public entities as specified in the #guidelines#.
- (4) For a period of time specified in the #guidelines#, the #administering agent# shall maintain all records setting forth the facts that form the basis of any affidavit submitted to #HPD#. The #administering agent# shall maintain such records, and such other records as #HPD# may require, at the offices of the #administering agent# or at such other location as may be approved by #HPD#. The #administering agent# shall make such records, and all facets of the operations of the #administering agent#, available for inspection and audit by #HPD# upon request.

(f) #Regulatory agreement#

The following provisions shall apply to #generating sites#:

- (1) the #regulatory agreement# shall require compliance with and shall incorporate by reference the #affordable housing plan# and the applicable provisions of this Zoning Resolution and the #guidelines# and shall contain such additional terms and conditions as #HPD# deems necessary;
- (2) the #regulatory agreement# shall require that #HPD# be provided with documentation indicating the amount of #affordable floor area#. For #new construction affordable housing# or #substantial rehabilitation affordable housing#, such documentation shall include, but shall not be limited to, plans meeting the requirements of Section 23-94, paragraph (c);
- (3) the #regulatory agreement# shall be recorded against all tax lots comprising the portion of the #zoning lot# within which the #generating site# is located and shall set forth the obligations, running with such tax lots, of the owner and all successors in interest to provide #affordable housing# in accordance with the #affordable housing plan# for the entire #regulatory period#;
- (4) #affordable housing# may serve to secure debt with the prior approval of #HPD#. Any lien securing such debt shall be subordinated to the #regulatory agreement#;
- (5) the #regulatory agreement# may, but shall not be required to, provide that such #regulatory agreement# may be terminated prior to the issuance of a temporary or permanent certificate of occupancy for any #compensated development# by the Department of Buildings; and
- (6) where all of the #dwelling units#, #rooming units# or #supportive housing units# in a #generating site#, other than any #super's unit#, are #affordable housing units#, the #regulatory agreement# shall provide that, following a default and any applicable opportunity to cure, #HPD# may, in addition to any other remedies provided therein or by applicable law:
 - (i) appoint a receiver to manage such #generating site#;
or
 - (ii) take control of the board of directors of any housing development fund company or not-for-profit corporation that owns, controls or operates such #generating site#.

- (7) Where applicable in accordance with paragraph (b), (Monthly rent), of Section 23-961, the #regulatory agreement# shall provide that certain obligations shall survive the #regulatory period#.

For #MIH sites#, the following provisions shall apply:

- (8) The #regulatory agreement# shall require compliance with and shall incorporate by reference the #MIH application# and the applicable provisions of this Zoning Resolution and the #guidelines# and shall contain such additional terms and conditions as #HPD# deems necessary.
- (9) The #regulatory agreement# shall require that #HPD# be provided with documentation indicating the amount of #affordable floor area#. For #new construction affordable housing# such documentation shall include, but shall not be limited to, plans meeting the requirements of paragraph (c) of Section 23-94.
- (10) The #regulatory agreement# shall be recorded against all tax lots comprising the portion of the #zoning lot# within which the #MIH site# is located and shall set forth the obligations, running with such tax lots, of the owner and all successors in interest to provide #affordable housing# in accordance with the #MIH application# for the entire #regulatory period#.
- (11) Where applicable in accordance with paragraph (b) (Monthly rent) of Section 23-961, the #regulatory agreement# shall provide that certain obligations shall survive the #regulatory period#.

(g) Housing standards

Upon the date that #HPD# issues the #completion notice#, the #generating site# or #MIH site# shall be entirely free of violations of record issued by any City or State agency pursuant to the Multiple Dwelling Law, the Building Code, the Housing Maintenance Code and this Zoning Resolution, except as may be otherwise provided in the #guidelines# with respect to non-hazardous violations in occupied #affordable housing units# of #preservation affordable housing# or #substantial rehabilitation affordable housing#.

(h) Insurance

The #affordable housing# in a #generating site# or #MIH site# shall at all times be insured against any damage or destruction in an amount not less than the replacement value of such

#affordable housing#. Any insurance proceeds resulting from damage or destruction of all or part of the #generating site# or #MIH site# containing such #affordable housing# shall be used first to restore any damaged or destroyed #affordable housing#, except that #HPD# may provide priority for lenders participating in the financing of #affordable housing# that is assisted under City, State or Federal programs.

(i) Duration of obligations

The obligation to provide and maintain a specified amount of #affordable housing# on a #generating site# or #MIH site# shall run with the #zoning lot# containing such #generating site# or #MIH site# for not less than the #regulatory period#. If any portion of such #affordable housing# is damaged or destroyed, no #floor area# shall be #developed#, reconstructed or repaired on such #zoning lot#, and no #development#, #enlargement#, extension or change of #use# shall occur on such #zoning lot#, unless

- (1) the amount of such #floor area# devoted to #affordable housing# is not less than the #floor area# of the #affordable housing# that was damaged or destroyed; or
- (2) 100 percent of such #developed#, reconstructed or repaired #floor area# is #affordable housing#.

(j) One #generating site# or #MIH site# may satisfy requirements for multiple #compensated zoning lots# or #MIH zoning lots#, as applicable

Any #generating site# or #MIH site# may contain #affordable housing# that satisfies the requirements of Section 23-90, inclusive, for more than one #compensated development# or #MIH development#, as applicable, provided that no #affordable floor area# shall be counted more than once in determining the amount of #floor area compensation# for such #compensated developments# or in satisfying the #floor area# provisions for #zoning lots# in paragraph (d) of Section 23-154 (Inclusionary Housing).

(k) #Guidelines#

#HPD# shall adopt and may modify #guidelines# for the implementation of the provisions of Section 23-90, inclusive.

23-961

Additional requirements for rental affordable housing

The additional requirements of this Section shall apply to rental #affordable housing# on a #generating site# or #MIH site# for the entire #regulatory period#.

(a) Tenant selection

- (1) Upon #rent-up# and any subsequent vacancy for the entire #regulatory period#, #affordable housing units# shall only be leased to and occupied by #low income households#, #moderate income households# and #middle income households#, as applicable for #generating sites#, or to #qualifying households#, as applicable, for #MIH sites#. No lease or sublease of an #affordable housing unit# shall be executed, and no tenant or subtenant shall commence occupancy of an #affordable housing unit#, without the prior approval of the #administering agent#.
- (2) A tenant may, with the prior approval of the #administering agent#, sublet an #affordable housing unit# for not more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The aggregate payments made by any sublessee in any calendar month shall not exceed the #monthly rent# that could be charged to the sublessor in accordance with the #regulatory agreement#.
- (3) A #low income household# or #qualifying household# may rent an #affordable housing unit# that is restricted to occupancy by #moderate income# or #middle income households#, or by #qualifying households# of higher income levels, provided that the #administering agent# determines that such #low income household# or #qualifying household# is able to utilize rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, as amended, to afford the applicable #monthly rent#.

(b) Monthly rent

- (1) Unless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#, the #regulatory agreement# shall provide that each #affordable housing unit# shall be registered with the Division of Housing and Community Renewal at the initial #monthly rent# established by #HPD# within 60 days following the #rent-up date# and shall thereafter remain subject to #rent stabilization# for the entire #regulatory

period# and thereafter until vacancy. However, the #regulatory agreement# may permit an alternative date by which any #affordable housing units# that are vacant on the #rent-up date# shall be registered with the Division of Housing and Community Renewal at the initial #monthly rent# established by #HPD#.

- (i) However, any #affordable housing unit# of #preservation affordable housing# or #substantial rehabilitation affordable housing# that is both occupied by a #grandfathered tenant# and subject to the Emergency Housing Rent Control Law on the #regulatory agreement date# shall remain subject to the Emergency Housing Rent Control Law until the first vacancy following the #regulatory agreement date# and shall thereafter be subject to #rent stabilization# as provided herein.
- (ii) The #regulatory agreement# shall provide that upon each annual registration of an #affordable housing unit# with the Division of Housing and Community Renewal, the #legal regulated rent# for such #affordable housing unit# shall be registered with the Division of Housing and Community Renewal at an amount not exceeding the #maximum monthly rent#. However, the #regulatory agreement# shall provide that this requirement shall not apply to an #affordable housing unit# occupied by a #grandfathered tenant# until the first vacancy after the #regulatory agreement date#.

- (2) Unless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#, the #regulatory agreement# shall provide that the #monthly rent# charged to the tenant of any #affordable housing unit# at #initial occupancy# and in each subsequent renewal lease shall not exceed the lesser of the #maximum monthly rent# or the #legal regulated rent#. However, the #regulatory agreement# shall provide that these requirements shall not apply to an #affordable housing unit# occupied by a #grandfathered tenant#, until the first vacancy after the #regulatory agreement date#.

However, for #supportive housing units# or #affordable independent residences for seniors# on #MIH sites#, the #monthly rent# may exceed the #maximum monthly rent#, provided that it does not exceed the HUD Fair Market Rent for such unit, and that the #monthly rent#, less rent subsidies pursuant to Section 8 of the United States Housing Act of 1937, does not exceed the lesser of the

#maximum monthly rent# or the #legal regulated rent#.

- (3) Within 60 days following the #rent-up date#, the #administering agent# shall submit an affidavit to #HPD# attesting that the #monthly rent# registered and charged for each #affordable housing unit# complied with the applicable #monthly rent# requirements at the time of #initial occupancy#.
- (4) Each year after #rent-up#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each lease or sublease of an #affordable housing unit# or renewal thereof during the preceding year complied with the applicable #monthly rent# requirements at the time of execution of the lease or sublease or renewal thereof.
- (5) For any #affordable housing unit# subject to #rent stabilization#, the applicable #regulatory agreement# shall provide that the lessor of an #affordable housing unit# shall not utilize any exemption or exclusion from any requirement of #rent stabilization# to which such lessor might otherwise be or become entitled with respect to such #affordable housing unit#, including, but not limited to, any exemption or exclusion from the rent limits, renewal lease requirements, registration requirements, or other provisions of #rent stabilization#, due to:
 - (i) the vacancy of a unit where the #legal regulated rent# exceeds a prescribed maximum amount;
 - (ii) the fact that tenant income or the #legal regulated rent# exceeds prescribed maximum amounts;
 - (iii) the nature of the tenant; or
 - (iv) any other reason.
- (6) Unless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#, the #regulatory agreement# and each lease of an #affordable housing unit# shall contractually require the lessor of each #affordable housing unit# to grant all tenants the same rights that they would be entitled to under #rent stabilization# without regard to whether such #affordable housing unit# is statutorily subject to #rent stabilization#. If any court declares that #rent stabilization# is statutorily inapplicable to an

#affordable housing unit#, such contractual rights shall thereafter continue in effect for the remainder of the #regulatory period#.

- (7) Unless alternative provisions are established in the #regulatory agreement# or #guidelines# for #MIH sites#, the #regulatory agreement# shall provide that each #affordable housing unit# that is occupied by a tenant at the end of the #regulatory period# shall thereafter remain subject to #rent stabilization# for not less than the period of time that such tenant continues to occupy such #affordable housing unit#, except that any occupied #affordable housing unit# that is subject to the Emergency Housing Rent Control Law at the end of the #regulatory period# shall remain subject to the Emergency Housing Rent Control Law until the first vacancy.

(c) Income

- (1) Each #affordable housing unit# on a #generating site# shall be leased to and occupied by #low income households#, #moderate income households# or #middle income households#, as applicable, for the entire #regulatory period#. Each #affordable housing unit# on an #MIH site# shall be leased to and occupied by #qualifying households# for the entire #regulatory period#.
- (2) The #administering agent# shall verify the #household# income of the proposed tenant prior to leasing any vacant #affordable housing unit# in order to ensure that it is a #low income household#, #moderate income household#, #middle income household# or #qualifying household#, as applicable.
- (3) Within 60 days following the #rent-up date#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #household# occupying an #affordable housing unit# complied with the applicable income eligibility requirements at the time of #initial occupancy#.
- (4) Each year after #rent-up#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #household# that commenced occupancy of a vacant #affordable housing unit# during the preceding year, and each #household# that subleased an #affordable housing unit# during the preceding year, complied with the applicable income eligibility requirements at the time of #initial occupancy#.

(d) #Affordable housing plan# and #MIH application#

The following shall apply to #affordable housing plans#:

- (1) An #affordable housing plan# shall designate the initial #administering agent#, include the agreement with the initial #administering agent#, state how #administering agents# may be removed, state how a new #administering agent# may be selected upon the removal or other departure of any #administering agent#, include the building plans, state the number and bedroom mix of the #affordable housing units# to be #developed#, rehabilitated or preserved, indicate how tenants will be selected at #rent-up# and upon each subsequent vacancy of an #affordable housing unit#, indicate how the #household# income of each prospective tenant will be verified prior to such #household's initial occupancy# of an #affordable housing unit# and include such additional information as #HPD# deems necessary.
- (2) An #affordable housing plan# shall demonstrate the feasibility of creating and maintaining #affordable housing# in accordance with Section 23-90 (INCLUSIONARY HOUSING), inclusive, including that:
 - (i) there will be sufficient revenue to provide for adequate maintenance, operation and administration of the #affordable housing#;
 - (ii) #affordable housing units# will be leased to eligible #households# by a responsible #administering agent# at #rent-up# and upon each subsequent vacancy; and
 - (iii) tenants will be selected in an equitable manner in accordance with laws prohibiting discrimination and all other applicable laws.
- (3) A copy of any proposed #affordable housing plan# shall be delivered to the affected Community Board, which may review such proposal and submit comments to #HPD#. #HPD# shall not approve a proposed #affordable housing plan# until the earlier of:
 - (i) the date that the affected Community Board submits comments regarding such proposal to #HPD# or informs #HPD# that such Community Board has no comments; or
 - (ii) 45 days from the date that such proposal was submitted to the affected Community Board.

The following shall apply to #MIH applications#:

- (4) An #MIH application# shall designate the initial #administering agent#, where applicable, and include the building plans, state the number, bedroom mix and #monthly rents# of the #affordable housing units# to be #developed# or #converted#, and include such additional information as #HPD# deems necessary to ensure the satisfaction of the requirements of Section 23-90, inclusive.
- (5) A copy of any #MIH application# shall be delivered, concurrently with its submission to #HPD#, to the affected Community Board.

(e) Special requirements for rental #preservation affordable housing#

The additional requirements of this paragraph (e), shall apply to rental #preservation affordable housing#:

- (1) all of the #dwelling units#, #rooming units# and #supportive housing units# in the #generating site#, other than any #super's unit#, shall be #affordable housing units# that are leased to and occupied by #low income households# for the entire #regulatory period#;
- (2) on the #regulatory agreement date#, the average of the #legal regulated rents# for all #affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;
- (3) on the #regulatory agreement date#, #HPD# shall have determined that the condition of the #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;
- (4) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement

of such #capital element#;

- (5) except with the prior approval of #HPD#, #monthly rents# charged for #affordable housing units# shall not be increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection with qualification as a #generating site#, even though such increases may be permitted by other laws; and
- (6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

(f) Special requirements for rental #substantial rehabilitation affordable housing#

The additional requirements of this paragraph, (f), shall apply to rental #substantial rehabilitation affordable housing#:

- (1) such #affordable housing# shall be created through the rehabilitation of a #generating site# at a cost per completed #affordable housing unit# that exceeds a minimum threshold set by #HPD# in the #guidelines#;
- (2) on the #regulatory agreement date#, the average of the #legal regulated rents# for all #affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;
- (3) on the #regulatory agreement date#, #HPD# shall have determined that the condition of such #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;
- (4) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#;
- (5) except with the prior approval of #HPD#, #monthly rents#

charged for #affordable housing units# shall not be increased to reflect the costs of any repair, renovation, rehabilitation or improvement performed in connection with qualification as a #generating site#, even though such increases may be permitted by other laws; and

- (6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

(3/22/16)

23-962

Additional requirements for homeownership affordable housing

The additional requirements of this Section shall apply to #homeownership affordable housing# on a #generating site# or #MIH site# for the entire #regulatory period#.

(a) Homeowner selection

- (1) Upon #sale#, #homeownership affordable housing units# shall only be occupied by #eligible buyers# that are #low income households#, #moderate income households#, #middle income households# or, for #MIH sites#, #qualifying households#, as applicable. Upon any subsequent #resale# for the entire #regulatory period#, #homeownership affordable housing units# shall be sold to and occupied by #eligible buyers# at or below the #maximum resale price# on the #sale date#, as applicable. No #homeownership affordable housing unit# shall be sold to or occupied by any #household# or any other person without the prior approval of the #administering agent#.
- (2) A #homeowner# may, with the prior approval of the #administering agent#, sublet an #homeownership affordable housing unit# to another #low income household#, #moderate income household#, #middle income household#, #eligible buyer# or, for #MIH sites#, #qualifying households#, as applicable, for not more than a total of two years, including the term of the proposed sublease, out of the four-year period preceding the termination date of the proposed sublease. The aggregate payments made by any sublessee in any calendar month shall not exceed the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes paid by the sublessor.
- (3) A #homeowner# shall reside in the #homeownership

affordable housing unit#, except as provided in paragraph (a) (2) of this Section.

- (4) The restrictions in this paragraph, (a), on the ownership of #homeownership affordable housing units# shall not prevent the exercise of a valid lien by a #mortgage# lender, #cooperative corporation#, #condominium association# or any other entity authorized by the #regulatory agreement# to take possession of a #homeownership affordable housing unit# in the event of default by the #homeowner#. However, any #sale# or #resale# by such lien holder shall be to an #eligible buyer#, in accordance with this paragraph, (a), and the #guidelines#.

(b) Price

- (1) The #initial price# or #maximum resale price# of any #homeownership affordable housing unit# shall be set assuming a #mortgage#, as defined in Section 23-913 (Definitions applying to homeownership generating sites).
- (2) The #regulatory agreement# shall establish the #initial price# for each #homeownership affordable housing unit#. #HPD# shall set the #initial price# to ensure that the combined cost of #monthly fees#, #mortgage payments#, utilities and property taxes to be paid directly by the #homeowner# will not exceed 30 percent of the #low income limit#, #moderate income limit# or #middle income limit#, as applicable. For #MIH sites#, #HPD# shall establish the #initial price# based on the incomes of #qualifying households# in accordance with the #guidelines#.
- (3) Prior to any #resale# of a #homeownership affordable housing unit#, the #administering agent# shall set the #maximum resale price# for such #homeownership affordable housing unit#.
- (4) The #administering agent# shall not approve any #resale# unless the selected #eligible buyer# provides a #down payment#, as specified in the #guidelines#.
- (5) A #homeownership affordable housing unit#, or any shares in a #cooperative corporation# appurtenant thereto, shall not secure any debt unless such debt is a #mortgage# that has been approved by the #administering agent#.

(c) Income

- (1) The #administering agent# shall verify the #household#

income of a proposed #homeowner#, in accordance with the #guidelines#, prior to the #sale date# of any #homeownership affordable housing unit# in order to ensure that, upon #sale#, it is a #low income household#, #moderate income household#, middle income household# or, for #MIH sites#, #qualifying household#, as applicable, and that upon #resale#, it is to an #eligible buyer#.

- (2) The #administering agent# shall meet reporting requirements on each #sale# and #resale#, as set forth in the #guidelines#.
- (3) Each year after the #commencement date#, in the month specified in the #regulatory agreement# or the #guidelines#, the #administering agent# shall submit an affidavit to #HPD# attesting that each #resale# of a #homeownership affordable housing unit# during the preceding year complied with all applicable requirements on the #resale date#.

(d) #Affordable housing plan# and #MIH application#

The following shall apply to #affordable housing plans#:

- (1) An #affordable housing plan# shall include the building plans, state the number and bedroom mix of the #homeownership affordable housing units# to be #developed#, rehabilitated or preserved, indicate how #homeowners# will be selected upon each #sale# or #resale# of a #homeownership affordable housing unit#, indicate how the #household# income of #eligible buyers# will be verified prior to such #household's initial occupancy# of a #homeownership affordable housing unit# and include such additional information as #HPD# deems necessary.
- (2) An #affordable housing plan# shall demonstrate the feasibility of creating and maintaining #homeownership affordable housing#, including that:
 - (i) there will be sufficient revenue to provide for adequate maintenance, operation and administration of the #affordable housing#;
 - (ii) #affordable housing units# will be sold under the supervision of a responsible #administering agent# to #eligible buyers# at each #sale# and #resale#; and
 - (iii) #homeowners# will be selected in an equitable manner in accordance with laws prohibiting discrimination and all other applicable laws.

- (3) The requirements of Section 23-961, paragraph (d)(3), shall apply.

The following shall apply to #MIH applications#:

- (4) An #MIH application# shall include the building plans; state the number and bedroom mix of the #homeownership affordable housing units# to be #developed# or #converted#, and the #initial price# of each #homeownership affordable housing unit#; and include such additional information as #HPD# deems necessary to ensure the satisfaction of the requirements of Section 23-90, inclusive.
- (5) A copy of any #MIH application# shall be delivered, concurrently with its submission to #HPD#, to the affected Community Board.

(e) Housing standards

The requirements of Section 23-96, paragraph (g), shall apply. In addition, each #homeowner# shall be obligated to maintain each #homeownership affordable housing unit# in accordance with minimum quality standards set forth in the #guidelines#. Prior to any #resale#, #HPD#, or its designee as specified in the #guidelines#, shall inspect the #affordable housing unit# and shall either require the #homeowner# to remedy any condition that violates such minimum quality standards before the #sale date#, or require the retention of a portion of the #resale# proceeds to pay the cost of remedying such condition.

(f) Optional provisions for certain #new construction homeownership affordable housing#

In Community District 3, Borough of Manhattan, #HPD# may modify the requirements for #new construction homeownership affordable housing# to facilitate #development# on a site that has been disposed of pursuant to Article 16 of the General Municipal Law as set forth in this paragraph (g), inclusive.

- (1) #HPD# may permit a #household# to occupy a #new construction homeownership affordable housing unit# as rental #affordable housing# if:
 - (i) no more than 120 days prior to the #regulatory agreement date#, such #household# occupied a #dwelling unit# or #rooming unit# in a #building# located on the #zoning lot# of such #new construction homeownership affordable housing#, pursuant to a

lease or occupancy agreement to which one or more members of such #household# was a party or pursuant to a statutory tenancy;

- (ii) no more than 120 days prior to the #regulatory agreement date#, the average rent for all occupied #dwelling units# or #rooming units# in such #building# did not exceed 30 percent of the #low income limit# divided by 12; and
- (iii) after the #regulatory agreement date#, such #building# is demolished and replaced with #new construction homeownership affordable housing#.

- (2) #HPD# may permit a #household# that is not an #eligible buyer#, but that meets the requirements of paragraph (f)(1) of this Section, to purchase a #new construction homeownership affordable housing unit# at #sale#, provided that such #household# is a #low income household#, #moderate income household# or #middle income household#, as applicable.

Where a #new construction homeownership affordable housing unit# is purchased at a nominal price, the #appreciated price# for such #homeownership affordable housing unit# shall be the product of the #initial price# of such #homeownership affordable housing unit# and the #appreciation index# applicable at #resale# as specified in the #guidelines#.

- (g) Special requirements for #homeownership preservation affordable housing#

The additional requirements in this paragraph (g) shall apply to #homeownership preservation affordable housing#:

- (1) on the #regulatory agreement date#, the #generating site# shall be an existing #building# containing #residences#;
- (2) on the #regulatory agreement date#, the average of the #legal regulated rents#, as such term is defined in Section 23-912, for all #homeownership affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;
- (3) where #grandfathered tenants# continue in residence subsequent to the #regulatory agreement date#, any #affordable housing unit# that is occupied by a #grandfathered tenant# shall be operated subject to the

restrictions of Section 23-961 (Additional requirements for rental affordable housing) until such #affordable housing unit# is purchased and occupied by an #eligible buyer#;

- (4) on the #regulatory agreement date#, #HPD# shall have determined that the condition of the #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;
- (5) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#; and
- (6) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

(h) Special requirements for #homeownership substantial rehabilitation affordable housing#

The additional requirements in this paragraph (h) shall apply to #homeownership substantial rehabilitation affordable housing#:

- (1) on the #regulatory agreement date#, the #generating site# or #MIH site# shall be an existing #building#;
- (2) such #affordable housing# shall be created through the rehabilitation of such existing #building# at a cost per completed #homeownership affordable housing unit# that exceeds a minimum threshold set by #HPD# in the #guidelines#;
- (3) on the #regulatory agreement date#, the average of the #legal regulated rents# for all #homeownership affordable housing units# in the #generating site# that are occupied by #grandfathered tenants# shall not exceed 30 percent of the #low income limit# divided by 12;

- (4) where #grandfathered tenants# continue in residence subsequent to the #regulatory agreement date#, any #affordable housing unit# that is occupied by a #grandfathered tenant# shall be operated subject to the restrictions of Section 23-961 until such #affordable housing unit# is purchased and occupied by an #eligible buyer#;
- (5) on the #regulatory agreement date#, #HPD# shall have determined that the condition of such #generating site# is sufficient, or will be sufficient after required improvements specified in the #affordable housing plan# and the #regulatory agreement#, to ensure that, with normal maintenance and normal scheduled replacement of #capital elements#, the #affordable housing units# will provide a decent, safe and sanitary living environment for the entire #regulatory period#;
- (6) on the #regulatory agreement date#, #HPD# shall have determined either that no #capital element# is likely to require replacement within 30 years from the #regulatory agreement date# or that, with regard to any #capital element# that is likely to require replacement within 30 years from the #regulatory agreement date#, a sufficient reserve has been established to fully fund the replacement of such #capital element#; and
- (7) such #affordable housing# shall comply with such additional criteria as may be specified by #HPD# in the #guidelines#.

RESOLUTION NO.: 257.2013

OF

DECEMBER 9, 2013

A RESOLUTION AUTHORIZING THE INTERIM CITY MANAGER
TO EXECUTE ON BEHALF OF THE CITY OF NEWBURGH
A FIRST AMENDMENT TO THE LAND DEVELOPMENT AGREEMENT WITH
MILL STREET PARTNERS, LLC FOR THE REDEVELOPMENT OF CITY OWNED
PROPERTIES KNOWN AS THE MID-BROADWAY SITE

WHEREAS, the City of Newburgh wishes to develop the City-owned .66 acre Lander Street surface parking lot (between Chambers Street and Lander Street) as well as the 1.8 acre principal site that fronts on Broadway (the "Mid-Broadway Site"); and

WHEREAS, the City has issued a Request For Qualifications (RFQ) for the development of the Mid-Broadway Site and received six (6) responses from developers interested in pursuing a development project on the Mid-Broadway site; and

WHEREAS, the City Council has reviewed the responses to the RFQ and has determined that Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. is the preferred team to develop the Mid-Broadway site; and

WHEREAS, by Resolution No. 78-2012 of May 29, 2012, the City Council authorized to the City Manager to negotiate on behalf of the City of Newburgh a Development and Land Disposition Agreement with Mill Street Partners, LLC, The Community Preservation Corp. and The Regional Economic Development Community Action Program, Inc. for the redevelopment of the Mid-Broadway site; and

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

WHEREAS, the Development and Land Disposition Agreement require the parties to cooperate and negotiate in good faith to successfully complete the development of the project; and

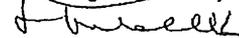
WHEREAS, the development requires an amendment to the Development Agreement to set the purchase price of the subject property and to extend the Development Agreement term until May 1, 2015; and

WHEREAS, this Council has reviewed the First Amendment to the Development and Land Disposition Agreement with Mill Street Partners, LLC, attached hereto and made part hereof, and finds that entering into such amendment is in the best interest of the City of Newburgh.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York that the Interim City Manager be and he is hereby authorized to execute the attached First Amendment to the Development and Land Disposition Agreement with Mill Street Partners, LLC for the redevelopment of the Mid-Broadway site.

I, Lorene Vitek, City Clerk of the City of Newburgh,
hereby certify that I have compared the foregoing with the
original resolution adopted by the Council of the City of
Newburgh at a regular meeting held 12/9/13
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of
Newburgh this 10 day of Dec. 20 13



City Clerk

**FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT
FOR THE MID BROADWAY REDEVELOPMENT PROJECT**

THIS FIRST AMENDMENT TO THE DEVELOPMENT AGREEMENT FOR THE MID BROADWAY REDEVELOPMENT PROJECT ("First Amendment") is entered into between THE CITY OF NEWBURGH (the "City"), a municipal corporation organized and existing under the laws of the State of New York, having its office at 83 Broadway, Newburgh, New York 12550, and MILL STREET PARTNERS, LLC, a New York limited liability company with a business address at 39 West 42nd Street, 15th Floor, New York, New York 10018 (the "Developer").

WHEREAS, City and Developer are parties to that certain Development Agreement for the Mid Broadway Redevelopment Project dated October 23, 2012 (the "Development Agreement"); and

WHEREAS, the Development Agreement states that the parties shall use good faith efforts to negotiate such amendment(s) to the Agreement as may be necessary or appropriate; and

WHEREAS, the Development Agreement states that a spirit of good faith and a mutual desire for the success of the Development shall govern the parties' relationship under the Agreement; and

WHEREAS, the Development Agreement states that the term of the Agreement may be extended upon the mutual agreement of the parties; and

WHEREAS, City and Developer desire to amend the Development Agreement to (i) define the Purchase Price for the City owned parcels, (ii) modify the Agreement Term, and (iii) amend the Agreement to account for Unavoidable Delays.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Purchase Price for City Owned Parcels. The Purchase Price for the City owned parcels shall be \$437,000.00. The Purchase Price reflects the appraised value of the highest and best use prepared by Certified Appraisal Service on behalf of the City.

2. Modification to the Agreement Term. Due to a variety of factors including a revised schedule for the adoption of zoning modifications which permit the proposed Project, additional time needed for municipal staff and board review of the proposed Project, and changes to the deadlines associated with the "Public Funds" as defined in the Development Agreement, the Agreement Term is extended until May 1, 2015.

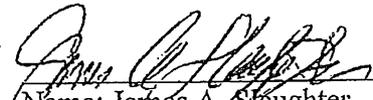
3. Inconsistency. In the event of any inconsistency between this First Amendment and the Development Agreement, this First Amendment shall control.

4. Effect on Agreement. All terms and conditions of the Development Agreement shall remain in full force and effect as written except as expressly modified by this First Amendment.

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IN WITNESS WHEREOF, the parties have executed this First Amendment and this First Amendment shall be effective as of Dec. 10, 2013.

CITY OF NEWBURGH

By: 
Name: James A. Slaughter
Title: Interim City Manager

December 10, 2013
Date

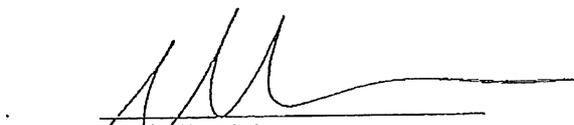
MILL STREET PARTNERS, LLC

By: 
Name: Patrick Normoyle
Title: Manager

December 10, 2013
Date

APPROVED AS TO FORM


John Aber
Comptroller


Michelle Kelson
Corporation Counsel



Engineers
Planners
Surveyors
Landscape Architects
Environmental Scientists

11 Bradhurst Avenue
Hawthorne, NY 10532
T: 914.347.7500
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www.maserconsulting.com

July 7, 2016

VIA UPS

Mr. Patrick Normoyle
Mill Street Partners, LLC
42 West 39th Street, 15th Floor
New York, NY 10018

Re: Mid-Broadway Mixed Use
Broadway and Johnson Street and Lander Street
City of Newburgh, Orange County, New York
MC Proposal No. 13001245A

Dear Mr. Normoyle:

We are writing to respond to questions and to provide additional clarifications on the information contained in our Traffic and Parking Studies for the proposed Mid-Broadway Mixed Use development. The specific studies conducted by our office include the November 8, 2013 Traffic and Parking Evaluation as well as our May 26, 2016 update. The following items provide clarification to specific items not fully addressed in our prior studies as well as additional information in response to comments from the City of Newburgh City Planner, Alexandra Church.

1. As indicated in the May 26, 2016 update, based on the City Code requirements the development will require a total of 121 parking spaces. However, this does not account for use of the retail portion of the development by residents of the proposed apartment units. The site plan proposes to provide 111 on-site parking spaces of which 91 spaces will be reserved for residential tenants. Our experience with this type of residential use, i.e. workforce housing apartments indicates that a parking ratio of 1 parking space per dwelling unit is reasonable based on projected car ownership per dwelling unit. In addition, it is anticipated that a total of 32 on-street parking spaces will be provided along the Broadway site frontage and the Lander Street site frontage. As indicated in the original November 2013 Traffic and Parking Study, approximately 20 existing on-street parking spaces are proposed to be eliminated along Lander Street in order to accommodate the proposed access driveway as well as fire access and emergency vehicle and delivery vehicle access.



Recent parking utilization observations conducted by our office in May 2016 indicated that in the immediate vicinity of the site along Broadway, Johnston Street and Lander Street there are a total of 208 on-street parking spaces. These include the parking spaces located along the site frontage on Broadway and Johnston Street as well as those parking spaces proposed to be eliminated along Lander Street as a result of the project. Based on our parking observations, which are summarized in Table No. P-1 of the May 2016 update, prior to 7:00 AM and after 6:00 PM, when the residential portion of the development is expected to have its peak parking demand, there are in excess of 160 on-street parking spaces available in the vicinity of the site. Between 9:00 AM and 3:00 PM, when the retail portion of the development is expected to have its peak parking demand but the residential parking demand will be lower, there are in excess of 120 on-street parking spaces available. It should be noted that some of these parking spaces are restricted to Police Parking and D.A. Parking only (along the south side of Broadway between Johnston Street and Lander Street) and there are alternate side of the street parking rules along Johnston Street and Lander Street for street sweeping on Wednesdays and Thursdays between 8:00 AM and 3:00 PM. The below tables summarizes the total number of available on-street parking spaces based on our observations between 6:00 PM and 7:00 AM and between 9:00 AM and 3:00 PM. Note that this does not include any available parking the Lander Street Municipal Parking lot.

SUMMARY OF AVAILABLE ON-STREET PARKING SPACES		
	6:00 PM to 7:00 AM	9:00 AM to 3:00 PM
Total Parking Spaces	208	208
Existing Occupied Spaces	-44	-87
D.A./Police Reserved Parking	-4	-4
On-Street Parking Eliminated Due to Proposed Development	-20	-20
Alternate Side Parking Wednesday/Thursday (8:00AM to 3:00 PM)	-	-46
Total Available Parking Spaces	140	51

Parking data provided by the Institute of Transportation Engineers (ITE) in their publication entitled Parking Generation, 4th Edition dated 2010 and by the Urban Land Institute (ULI) in their publication entitled Shared Parking, 3rd Edition dated 2010 indicates a peak parking demand ratio of approximately 4.0 spaces per 1,000 square feet of retail space on weekdays and weekends. Based on this information a total of approximately 56 parking spaces would be required to accommodate the peak parking demand for the retail portion of the development. As previously discussed, 91 of the total 111 on-site parking spaces will be reserved for the residential portion of the development, leaving 20 on-site parking spaces for the use of the retail portion of the development. Therefore approximately 36 vehicles will require the use of on-street parking. As indicated in the above table there is sufficient on-street parking in the vicinity of the site

to accommodate this peak excess demand. **It should be noted that the ITE/ULI parking ratio does not account for potential walk-ins to the retail portion of the development from the area neighborhood or for the use of the retail portion of the development by residents of the proposed apartment units, both of which would reduce the overall parking demand of the retail uses.** Given that the retail uses would be servicing an urban neighborhood, it is highly likely that the peak demand for parking generated by this development would be lower than the conservative estimates utilized by the ITE/ULI.

In addition to the on-street parking spaces, there are 52 available parking spaces in the municipal lot between Lander Street and Chamber Street behind the DMV office.,. Parking observations were conducted by our office of the Lander Street Municipal Lot, which indicate that prior to 7:00 AM and after 6:00 PM the lot is mostly empty with five or less spaces occupied of the 52 available spaces, while during the 9:00 AM and 3:00 PM time period the lot has a higher occupancy with 35 to 40 parking spaces occupied. The current signing on the lot indicates that the lot is for municipal use with no restrictions to County use only. Regardless, as indicated above, the parking needs of the development can be accommodate without the use of the Lander Street municipal parking lot. Moreover, there are 62 spaces within the Ann Street municipal parking lot that is located approximately 500 ft. south of the proposed development. The 114 spaces available in these parking lots provide sufficient capacity to accommodate any “spill-over” vehicles unable to find available parking either on-site, or on the streets adjacent to the proposed development.

2. The November 2013 and May 2016 studies did not specifically account for traffic and/or parking associated with the recently approved RUPCO Project. The RUPCO project is proposed to convert 15 currently vacant properties within the City of Newburgh’s East End into 46 affordable housing rental apartment units including 26 one-bedroom units, 12 two-bedroom units and 8 three-bedroom units. The various properties included in the project are located along South Miller Street, Lander Street, DuBois Street, First Street and Johnston Street. Several of the properties will provide off-street parking for tenants of those specific buildings. Based on the observations of current parking conditions in the area of Broadway, Johnston Street and Lander Street, as discussed above, there is sufficient on-street parking to accommodate any additional potential parking needs related to that project. It should be noted that since the RUPCO properties are anticipated as affordable housing units, similar to the proposed Mid-Broadway development, it is likely that vehicle ownership of the residents of these properties will be lower than typical rental apartments. In addition, the due to the proximity of the RUPCO properties to the proposed development, many of the RUPCO residents would likely walk to access the retail portion of the proposed development, which would also reduce the overall parking demand of the proposed development and the overall area.



Relative to traffic conditions, while potential traffic volumes associated the RUPCO project were not specifically included in the projected future traffic volumes, a background growth factor of 1.0% per year was applied to the existing traffic volumes in order project the volumes to the future 2020 design year for a total growth rate of 4%. It should be noted that traffic volumes have actually continually decreased in this area as indicated by NYSDOT historical traffic volume data for the nearby NYS Route 9W corridor. Therefore the 4% total growth rates is somewhat conservative. This growth rate accounts for general background traffic growth as well as traffic generated by any other potential or approved developments in the area such as the RUPCO project. Based on ITE data the 46 total units that will be developed by the RUPCO project can be expected to generate approximately 18 to 20 PM Peak Hour trips. These trips will be distributed throughout the roadway network since the RUPCO properties are located along several area roadways. However, even if it was assumed that all the traffic generated by the RUPCO development were concentrated at the Broadway/Johnston Street intersection, this would equate to an approximately 2.15% increase in traffic at that intersection compared to existing PM Peak Hour conditions, which is less than the background growth factor utilized in the study. Therefore, it is assumed that the RUPCO project generated traffic is included in the background growth factor.

It should also be noted that the updated traffic counts collected in May 2016 were generally found to be consistent with the existing traffic volume data collected in 2013 as part of our original Traffic and Parking Evaluation and in some cases current volumes are actually less than the 2013 traffic volumes. The higher 2013 traffic volumes were utilized in conducting the capacity analysis for the May 2016 update and therefore we believe this provides a somewhat conservatively high analysis of future traffic operating conditions.

The following is in response to the Item 16 of the June 16, 2016 memorandum from Alexandra Church, AIACP, City Planner, City of Newburgh.

Comment: CNB, June 21, 2016 – The traffic study shoes relatively high potential for conflicts in its 2020 Build Traffic Volumes for Broadway & Lander, PM Peak SB. The distance from the exit of the proposed project to the intersection, does not appear adequate to que 218 vehicles per hour, especially since nearly 25% are expected to make SB left turns on Broadway. Further analysis of this intersection should be considered.

Response: The proposed development is estimated to generate a total of 228 vehicles during the PM Peak Hour as indicated on Table No. 1 of the May 26, 2016 updated analysis. This includes 124 entering vehicles and 104 exiting vehicles. However, these estimates assume no reduction for “pass-by” trips, walk-ins or internal trips from the residential portion of the project, which are likely to occur and therefore would decrease the overall trip generation of the development. Furthermore, it is projected that approximately 65% of the development generated traffic will exit the site via Lander Street, while 35% of the traffic will exit the site via Johnston Street.



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Therefore, the Lander Street/Broadway intersection will experience an increase of approximately 100 vehicles including entering and exiting trips during the PM Peak Hour as indicated on Figure No. 9A of the May 2016 update.

The capacity analysis conducted for the intersection Broadway/Lander Street intersection in the May 2016 update indicates that the 95th percentile (maximum) queue on the southbound Lander Street approach at Broadway is projected to be approximately 60 ft. during the PM Peak Hour. The proposed access driveway connection to Lander Street is located approximately 200 ft. from the stop location at the Lander Street/Broadway intersection. Therefore, there is sufficient space to accommodate the project queues on Lander Street without resulting in significant conflicts in the vicinity of the driveway.

If you have any questions regarding this, please do not hesitate to contact us.

Very truly yours,

MASER CONSULTING P.A.



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Principal/Department Manager



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PJG/jr
Enclosures