

CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY (IDA)  
MINUTES OF BOARD MEETING  
December 19, 2022

Present

Board Members: Marlon Ramos, Chairman  
Christina Amato, 1st Vice Chair  
Michael Kelly, 2<sup>nd</sup> Vice Chair  
Adam Pollick, Treasurer  
Gregory Nato, Secretary  
Robin Yanyiah Pearson  
Theresa Priester

Excused: None

Staff: Cherisse Vickers, Executive Director  
Counsel: Catherine Kemp, Whiteman Osterman & Hanna LLP

Guests: None

1. **Roll Call:** Marlon Ramos, Chair
2. **Proof of Meeting Notice:** Marlon Ramos, Chair. Notice Sent and Accepted.
3. **Reading and Approval of Minutes of the Previous Meeting**

Minutes from the regular board meeting of November 21, 2022 were distributed to the board via e-mail.

Motion to approve November 21, 2022 minutes as presented:

Ms. Pearson: Motion to approve the minutes  
Mr. Pollick: Motion seconded  
Mr. Kelly: Abstained  
**VOTE: Unanimously adopted.**

#### 4. **Report of the Treasurer; Approval of Payment of Bills**

Treasurer Adam Pollick presented the November 2022 Treasurer's Report to the board. He further noted that the Operating Bank Account received a closing fee deposit of \$127,329.19 and the Labor Monitoring Bank Account also received a deposit wire of \$15,000.00, both from the Foster Hotel project.

On a motion made by Michael Kelly and seconded by Christina Amato, the board unanimously approved the November 2022 Treasurer's Report.

On a motion made by Christina Amato and seconded by Gregory Nato, payment of the bills presented for November 2022 (check numbers 1088-1091) were unanimously approved.

##### Audit Finance Committee Report from 12/5/2022 meeting:

The Committee met to review policies and recommended adopting all. See *Annual Resolution #2022-12-19-01* below under #9 New Business. At the current board meeting Christina Amato also suggested an RFP for the Agency bank accounts, to improve our Money Marker Bank Account interest income, while interest rates are still high. All were in agreement.

Audit Services for 2023 – Committee also discussed accountant audit candidate proposals submitted in response to a Request For Proposal published on the Industrial Development Agency website. Committee recommended selecting PKF. See *Annual Resolution #2022-12-19-01* below under #9 New Business.

5. **Chairman's Report:** Mr. Ramos, Mr. Nato, and Executive Director, Cherisse Vickers met with the 191 Washington St. developer with the following objectives in mind: keeping communication open with Newburgh City Council and identifying positions and obstacles. The meeting practice will continue and there is an open invite for any board member that would like to attend. All will be informed if there is next meeting.

Mission Statement it was suggested the Executive Director send board members a red line copy of the suggested changes to the mission statement.

Governance Committee Report from 11/17/2022 meeting: policies reviewed and recommended for adoption as set forth below in the *Annual Housekeeping Resolution #2022-12-19-01* vote, under #8 New Business.

#### 6. **Counsel's Report**

FSH Newburgh Hotel: Project finally closed on November 4, as stated at last month's board meeting. Delays occurred due to the hotel's financing and volatility of construction budgets. Closing fee was received as noted above under #4 The Treasurer's Report.

Scobie Drive: Moving forward slowly and at the rate the Department of Environmental Conservation allows. Developer participation in The Brownfield Cleanup agreement discussed and allowed voluntarily as per prior resolution. Due diligence extension recommended. Please see the *Resolution #2022-12-19-03* vote below, under #8 New Business.

### **Executive Session:**

On a motion made by Christina Amato and seconded by Adam Pollick the board went into Executive Session to discuss matters regarding potential litigation. On a motion made by Michael Kelly and seconded by Christina Amato the board exited Executive Session. No decisions were made.

7. **Executive Director's Report:** None

8. **New Business**

**New 2023 Board of Directors Meeting Schedule:**

Wednesday: January 18, (instead of Jan 16 - federal holiday),

Wednesday: February 22 (instead of Feb 20 - federal holiday),

Mondays: March 20, April 17, May 15, June 19,

Summer Recess: July/August

Monday: September 18, October 16, November 20

Wednesday: December 13 (instead of 18<sup>th</sup> during busy holiday week)

Agreed upon unanimously after discussion. Will be voted on formally as a part of Resolution #2022-12-19-01 below.

**Resolution # 2022-12-19-01 Annual Housekeeping:**

1) Approval & Confirmation of Agency Policies & Procedures for Calendar Year 2023:

**Governance Policies:** Mission Statement, By-laws, Anti-Harassment (revised to include current board members), Code of Ethics, Conflicts of Interest, Retaliatory Action (Whistleblower), Board of Director's Duties and Responsibilities, Internal Controls, FOIL, Local Labor

**Audit/Finance Policies:** Investment, Use of Agency Discretionary Funds, Procurement, Property Acquisition, Property Disposition, Uniform Criteria for the Evaluation of Projects, Recapture, Uniform Tax-Exempt Policy.

2) Confirmation of Regular Agency Meeting Schedule for Calendar Year 2023:  
See schedule listed above

3) Appointment of Executive Director and Agency Staff  
Cherisse Vickers – Executive Director  
Michele Gruber – Part-Time Staff

4) Appointment of Annual Agency Audit Accounting Firm: PKF O'Connor Davies

5) Appointment of Agency Counsel and Bond Counsel to the Agency:  
Whiteman, Osterman & Hanna, LLP – Robert McLaughlin/Catherine Kemp

6) Appointment of Bank of the Agency and Accounts: TD Bank

7) Fee Structure of The Agency: as set forth in Schedule C of Resolution –

discussed and explained by Cherisse Vickers. Fees are not changing. Showing the required amounts as a decimal instead of a percentage makes the accounting easier at each use or billing.

On a motion, made by Gregory Nato, and seconded by Robin Yanyiah Pearson, the Annual Housekeeping Resolution was unanimously approved. All board members present. None excused. No abstentions.

Resolution # 2022-12-19-02 Resolution Approving Settlement Agreement With County of Orange. After Discussion, on a motion made by Mike Kelly and seconded by Christina Amato, the resolution was unanimously approved. All board members present. None excused. No abstentions.

Resolution # 2022-12-19-03 Resolution Approving the Extension and Certain Amendments to the Contract of Sale for the Premises at 5 Scobie Drive, Newburgh, NY After discussion, on a motion made by Christina Amato and seconded by Christina Amato, the resolution was unanimously approved. All board members present. None excused. No abstentions.

9. **Old Business:**

None. 120 Grand Developers did not attend this meeting as expected. They are still engaged with appearing before the Planning Board for SEQR approval.

10. **Adjournment**

As there is no further business to come before the board, a motion to adjourn was made by Adam Pollick and seconded by Christina Amato. Unanimously passed.

**CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY  
TREASURER'S REPORT DECEMBER 19, 2022 MEETING**

**OPERATING Account #2847**

Opening Balance	As of Nov 1, 2022	<b>\$306,484.45</b>	<b>X = Cleared Bank Acct</b>
from Quickbooks			

Deposits	Payor	Amount	Remarks
	11/1/2022 AT&T	3,767.28 X	Cell tower
	11/2/2022 Central Hudson	2,091.56 X	Cell tower
	11/3/2022 T-Mobile	5,076.64 X	increased by \$100 mo
	11/3/2022 T-Mobile	2,139.33 X	Cell tower
	11/4/2022 FSH (via Gargliano Law Offices, LLP) Incoming Wire	127,329.19 X	Closing fee
<b>TOTAL DEPOSITS 2847</b>		<b><u><u>\$140,404.00</u></u></b>	

Disbursements			
Check			
Number	Check Date	Payee	Amount
	11/10/2022	Cherisse Vickers	46.22
1088	11/10/2022	Jabobowitz & Gubits, LLP	645.00
1089	11/16/2022	Jabobowitz & Gubits, LLP	2434.38
1090	11/16/2022	MRB Group	650.00
1091			
<b>TOTAL CHECKS 2847</b>			<b><u><u>\$3,775.60</u></u></b>

Closing Balance	As of Nov 30, 2022	<b><u><u>\$443,112.85</u></u></b>	<b>Op Acct #2847</b>
from Quickbooks			

**PAYROLL Acct #8243**

Opening Balance	As of Nov 1, 2022	\$28,288.89
Credit	Trnsfr from Op Acct to Fund Payroll	0.00
Debit	11/1/2022 Payroll Fees month of Oct 2022	55.14
Debit	11/3/2022 Net Pay (part of gross wages)	2593.74
Debit	11/3/2022 Employer Payroll Tax + Employee WH (part of gross wages)	933.18
Debit	11/14/2022 Net Pay (part of gross wages)	2593.75
Debit	11/14/2022 Employer Payroll Tax + Employee WH (part of gross wages)	933.16
Closing Balance	As of Nov 30, 2022	<u><u>\$21,179.92</u></u>

**Payroll Acct #2843****APPLICATIONS FUND Account #2855**

Opening Balance	As of Nov 1, 2022	\$14,137.50
Closing Balance	As of Nov 30, 2022	<u><u>\$14,137.50</u></u>

**App Fund Acct #2855****LESSOR/TENANT Account #2863**

Opening Balance	As of Nov 1, 2022	\$2,400.00
Closing Balance	As of Nov 30, 2022	<u><u>\$2,400.00</u></u>

**Lessor Acct #2863****LABOR MONITORING Account #7072**

Opening Balance	As of Nov 1, 2022	\$0.00
	WIRE TRANSFER IN FROM FSH	\$15,000.00
Closing Balance	As of Nov 30, 2022	<u><u>\$15,000.00</u></u>

**Labor Monitor Acct #2863****MONEY MARKET Account #2871**

Opening Balance	As of Nov 1, 2022	\$752,286.69
Interest credit		927.48
Closing Balance	As of Nov 30, 2022	<u><u>\$753,214.17</u></u>

**MM Acct #2871**

**CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY**

**Resolution No. 2022-12-19-01**

**ANNUAL HOUSEKEEPING RESOLUTION 2023**

A special meeting of the City of Newburgh Industrial Development Agency (the “Agency”) was convened in public session in City Hall located at 83 Broadway, in the City of Newburgh, Orange County, New York on December 19, 2022 at 6:00 o’clock p.m., local time.

The meeting was called to order by the Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

**PRESENT:**

Marlon Ramos	Chairperson
Christina Amato	First Vice Chairperson
Michael Kelly	Second Vice Chairperson
Adam Pollick	Treasurer
Gregory Nato	Secretary
Theresa Priester	Member
Robin Yanyiah Pearson	Member

**ABSENT:**

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Cherisse Vickers	Executive Director
Robert J. McLaughlin, Esq.	Agency Counsel

The following resolution was offered by Gregory Nato seconded by Yanyiah Pearson, to wit:

**RESOLUTION APPROVING CERTAIN APPOINTMENTS AND ADMINISTRATIVE MATTERS OF THE AGENCY.**

WHEREAS, the City of Newburgh Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 577 of the 1982 Laws of New York, as amended, constituting Section 913 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing,

warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, under Section 858 of the Act, the Agency has the power to make certain appointments and approve certain administrative matters; and

WHEREAS, under Section 856 of the Act, the members of the Agency shall elect the officers of the Agency; and

WHEREAS, under the Agency's Policy Manual, the Agency shall review its policies and by-laws on an annual basis;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency hereby takes the following actions:

(A) Approves and confirms the existing policies and procedures of the Agency described on Schedule A, as the same may have been amended previously to or at this meeting.

(B) In connection with the Agency's appointment of the Agency's Depository Banking Institutions, the Agency hereby authorizes its officers and/or members to execute any depository agreement, signature cards, and any related documents required to be executed before such officer and/or member will be authorized to make deposits and execute checks on behalf of the Agency.

Section 2. The Agency hereby authorizes the Chairperson, the Executive Director and Agency Counsel to take all steps necessary to implement the matters described in Schedule A attached.

Section 3. This Resolution shall take effect immediately.

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

Marlon Ramos	VOTING	Yea
Michael Kelly	VOTING	Yea
Adam Pollick	VOTING	Yea
Gregory Nato	VOTING	Yea
Christina Amato	VOTING	Yea
Theresa Priester	VOTING	Yea
Robin Yanyiah Pearson	VOTING	<u>Yea</u>

The foregoing resolution was thereupon declared duly adopted.




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

I, the undersigned (Assistant) Secretary of City of Newburgh Industrial Development Agency (the "Agency"), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency held on December 19, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_\_ day of December, 2022.

 1-23-23  
\_\_\_\_\_  
(Assistant) Secretary

(SEAL)

SCHEDULE A

CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY

HOUSEKEEPING MATTERS

1. Approval and Confirmation of Agency Policies and Procedures for Calendar Year 2023:

By-laws  
Anti-Harassment  
Code of Ethics  
Conflicts of Interest  
Board of Directors Duties and Responsibilities  
Internal Controls  
FOIL Policy  
Investment Policy  
Policies Governing the Use of Agency Discretionary Funds  
Procurement Policy  
Property Acquisition Policy  
Property Disposition Policy  
Retaliatory Action policy (Whistleblower Policy)  
Uniform Criteria for the Evaluation of Projects Policy  
Uniform Tax Exempt Policy (UTEP)  
Recapture Policy  
Local Labor Policy

2. Confirmation of Regular Agency Meeting Schedule for Calendar Year 2023:

See attached tentative meeting schedule attached hereto as Schedule B

3. Appointment of Executive Director and Staff to the Agency

Cherisse Vickers – Executive Director  
Michele Gruber – Part-Time Staff

4. Appointment of Accounting Firm of the Agency for Annual Audit

PKF O'Connor Davies

5. Appointment of Agency Counsel and Bond Counsel to the Agency

**From Whiteman Osterman & Hanna LLP:**

Robert J. McLaughlin, Esq.                      Bond and Agency Counsel

6. Appointment of Bank of the Agency and Accounts

TD Bank

7. Fee Structure of Agency

See attached tentative fee schedule attached hereto as Schedule C

SCHEDULE B  
TENTATIVE MEETING SCHEDULE

## PROPOSED 2023 IDA BOARD MEETING DATES

Month	Day	Notes
January	16	Martin Luther King Day Suggest 18 or 25
February	20	President's Day Suggest 16 <sup>th</sup> or 23rd
March	20	
April	17	
May	15	
June	19	
<i>July</i>		<i>Summer recess</i>
<i>August</i>		<i>Summer recess</i>
September	18	
October	16	
November	20	
December	18	

SCHEDULE C  
AGENCY FEE SCHEDULE



City of Newburgh  
**INDUSTRIAL DEVELOPMENT AGENCY**

83 Broadway  
Newburgh, NY 12550  
*ida@cityofnewburgh-ny.gov*

TEL: (845) 569-7369

**FEE STRUCTURE OF THE AGENCY**

PROJECT FEES

Application Fee:	\$1,000.00
Public Hearing Notification Fee:	\$ at cost
Legal Fees for preparation of project documents	\$ at cost
Annual compliance processing fee:	\$ 150 to \$500

*Annual compliance fee should be tied to amount of benefits provided.*

- Confirmation of insurance
- Compliance with PILOT payments (if applicable)
- Sales tax exemption reporting
- Job status - # of jobs created, retained
- Bond status (if applicable)

Closing Fee(s):

**Taxable/Tax Exempt Bond and Straight Lease Transactions**

Sliding Scale:

- .005 of total project costs on the first \$10 million
- .00333 of total project costs in excess of \$10,000,001 to Total Remaining Project Costs



City of Newburgh  
**INDUSTRIAL DEVELOPMENT AGENCY**

83 Broadway  
Newburgh, NY 12550  
*ida@cityofnewburgh-ny.gov*

TEL: (845) 569-7369

MISCELLANEOUS FEES

<u>TYPE</u>	<u>MINIMUM AMOUNT</u>
Document Processing	\$750.00 - \$1,500.00
Extension of Inducement	\$250.00
Amendments, waivers assignments, leases and subleases, etc.*	\$500.00
Consent, 2 <sup>nd</sup> Mortgages and other Financings	Set by Board on a case-by-case basis
Refinancing of Bonds*	½ of 1% of the outstanding bonds, plus the applicable Administrative Fee as scheduled above for new money
Assumption of Outstanding Bonds*	1/8 of 1% of the outstanding Bonds, plus the applicable Administrative Fee as scheduled above for new money
Termination Fee	\$500.00

\*- Each transaction is reviewed for its complexity, and these fees are subject to an adjustment at the discretion of the IDA.

EXPENSES

All expenses incurred by the IDA (i.e. notices, court recorders, meeting rooms, etc.) shall be for the account of the applicant. All underwriting, trustee, legal, etc. expenses for the issuing of the bonds, notes, or straight leases shall be for the account of the applicant.



City of Newburgh Industrial Development Agency

Resolution No. 2022-12-19-02

**RESOLUTION APPROVING SETTLEMENT AGREEMENT  
WITH COUNTY OF ORANGE**

A regular meeting of the City of Newburgh Industrial Development Agency (the “Agency”) was convened in public session at City Hall, 83 Broadway, 3rd Floor, Newburgh, New York December 19, 2022 at 6:00 o'clock p.m., local time.

The meeting was called to order by the Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Marlon Ramos	Chairperson
Christina Amato	First Vice Chairperson
Adam Pollick	Treasurer
Michael Kelly	Second Vice Chairperson
Gregory Nato	Secretary
Theresa Priester	Member
Robin Yanyiah Pearson	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Cherisse Vickers	Executive Director
Catherine Kemp, Esq.	Agency Counsel

WHEREAS, through negotiation between the parties and counsel, the County of Orange recognizes that is obligated to pay for its use and occupancy of the Armory building and premises and to pay all real property taxes levied against the premises and, therefore, in lieu of litigation, the County has agreed to make all such past and current payments and to negotiate a new lease; and

WHEREAS, the Board has reviewed and considered the draft Settlement Agreement which establishes such terms and related matters.

THEREFORE, IT IS RESOLVED that the Settlement Agreement as presented is approved and the Chairman is authorized to execute the Settlement Agreement.

The following resolution was offered by Michael Kelly, seconded by Christina Amato, to wit:

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

Marlon Ramos	VOTING	Yes
Christina Amato	VOTING	Yes
Michael Kelly	VOTING	Yes
Adam Pollick	VOTING	Yes
Gregory Nato	VOTING	Yes
Theresa Priester	VOTING	Yes
Robin Yanyiah Pearson	VOTING	Yes



CITY OF NEWBURGH  
INDUSTRIAL DEVELOPMENT AGENCY

Resolution No. 2022-12-19-03

**RESOLUTION AUTHORIZING THE AGENCY TO EXECUTE  
A SECOND AMENDMENT TO THE CONTRACT FOR THE SALE OF THE REAL  
PROPERTY LOCATED AT  
5 SCOBIE DRIVE, NEWBURGH, NEW YORK**

A regular meeting of the City of Newburgh Industrial Development Agency (the “Agency”) was convened in public session at City Hall, 83 Broadway, 3rd Floor, Newburgh, New York December 19, 2022 at 6:00 o'clock p.m., local time.

The meeting was called to order by the Chairperson of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Marlon Ramos	Chairperson
Christina Amato	First Vice Chairperson
Michael Kelly	Second Vice Chairperson
Adam Pollick	Treasurer
Gregory Nato	Secretary
Robin Yanyiah Pearson	Member
Theresa Priester	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Cherisse Vickers	Executive Director
Catherine Kemp, Esq.	Agency Counsel

The following resolution was offered by Christina Amato, seconded by Gregory Nato, to wit:

WHEREAS, the City of Newburgh Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 577 of the 1982 Laws of New York, as amended, constituting Section 913 of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring,

constructing, reconstructing, improving, maintaining, equipping and furnishing of manufacturing, warehousing, research, commercial and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, the Agency owns certain real property located at 5 Scobie Drive, Newburgh, New York (the "Property") by deed from the City of Newburgh; and

WHEREAS, the Agency entered into a Contract of Sale for the Property on or about July 30, 2022; and

WHEREAS, the Agency authorized an amendment to the Contract of Sale effective August 12, 2022; and

WHEREAS, the Agency has been requested to entered into a Second Amendment to the Contract of Sale in substantially the form thereof which has been presented to the Board of the Agency at this meeting.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. The Agency hereby authorizes the Chair, any Vice Chair and/or the Executive Director of the Agency to execute the Second Amendment to the Contract of Sale for the Property substantially in the form placed before the Board at this meeting.

Section 2. This Resolution shall take effect immediately.

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

Marlon Ramos	VOTING	Yea
Christina Amato	VOTING	Yea
Michael Kelly	VOTING	Yea
Adam Pollick	VOTING	Yea
Gregory Nato	VOTING	Yea
Theresa Priester	VOTING	Yea
Robin Yanyiah Pearson	VOTING	Yea

The foregoing resolution was thereupon declared duly adopted.

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

I, the undersigned Secretary of City of Newburgh Industrial Development Agency (the “Agency”), do hereby certify that I have compared the foregoing extract of the minutes of the meeting of the members of the Agency held on December 19, 2022 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the “Open Meetings Law”), said meeting was open to the general public, and due notice of the time and place of said meeting was given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this \_\_\_ day of December, 2022.

 1-23-23  
Secretary

(SEAL)

**SECOND AMENDMENT TO CONTRACT OF SALE**

**THIS SECOND AMENDMENT TO CONTRACT OF SALE** (this “Second Amendment”) is made and entered into as of the 31<sup>st</sup> day of December, 2022 by and between **CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation of the State of New York (“Seller”) and **SCOBIE INDUSTRIAL PARTNERS LLC**, a New York limited liability company (“Purchaser”).

**RECITALS:**

A. Seller and Purchaser have heretofore entered into that certain Contract of Sale dated July 15, 2022 (the “Contract”), as amended by the Amendment to Contract of Sale dated as of August 12, 2022 (the “First Amendment to Contract of Sale” and with the Contract, the “Contract”), relating to the real property located at 5 Scobie Drive, City of Newburgh, County of Orange, State of New York, being known on the tax map as Section 1, Block 1, Lot 6 (the “Property”).

B. The parties mutually desire to amend the Contract in certain respects, all on and subject to the terms and conditions hereof.

**NOW, THEREFORE**, for and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto stipulate, covenant and agree as follows:

1. **Defined Terms.** Defined terms used herein and not otherwise defined shall have the definitions ascribed to such terms in the Contract.

2. **Amendments.** The Contract is hereby amended as follows:

(a) **Due Diligence Period Termination Date.** Section 3(b) of the Contract (labeled Due Diligence Period.) is hereby renumbered as “Section 3 (b)(1)”.

(b) The first sentence of Section 3(b)(1) of the Contract up to the defined term of the “Due Diligence Period” is deleted and the following is inserted in its place and stead: “Notwithstanding anything to the contrary herein, the Purchaser, its representatives and consultants, shall have, commencing on the Effective Date of the initial Purchase and Sale Agreement and terminating at 5:00 p.m. E.S.T. on June 30, 2023 (the “Due Diligence Period”),” with the remainder of the paragraph being unchanged.

(c) The following is added to end of Section 3(b)(1) as Subsection (i): (i) Within 60 days of execution of the Second Amendment, the Purchaser shall file the necessary application with NYSDEC to amend the BCA to include Purchaser as a Volunteer and to modify the boundary of the Project site. During the remainder of the Due Diligence Period, Purchaser shall also use commercially reasonable best efforts to pursue and obtain approvals from the NYSDEC to amend the BCA and any other permits that may be required for the Project, together with site plan and any other land use approvals required for the Project (the “Targeted Timeframes”) which are set forth in Exhibit C.

3. **Governing Law.** This Amendment shall be construed under and governed by the laws of the State of New York.



4. **Ratification and Reaffirmation of Contract.** Except as modified by this Amendment, the terms, conditions and covenants of the Contract shall remain unchanged and otherwise in full force and effect and are hereby ratified and reaffirmed.

5. **Obligations of the Parties.** Nothing contained herein shall be construed to relieve or diminish any of Seller's or Purchaser's rights or obligations under the Contract, except as expressly provided herein.

6. **Whole Agreement.** This Amendment, together with the Contract and its relevant attachments, sets forth the entire agreement between the parties with respect to the matters set forth herein. There have been no additional oral or written representations or agreements.

7. **Not an Offer.** This Amendment shall not be binding until executed and delivered by both parties.

8. **Successors and Assigns.** This Amendment shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except as provided for herein.

9. **Severability.** The parties hereto intend and believe that each provision in this Amendment comports with all applicable local, state and federal laws and judicial decisions. However, if any provision in this Amendment is found by a court of law to be in violation of any applicable ordinance, statute, law, administrative or judicial decision, or public policy, and if such court should declare such provision to be illegal, void or unenforceable as written, then such provision shall be given force to the fullest possible extent that the same is legal, valid and enforceable and the remainder of this Amendment shall be construed as if such provision was not contained therein.

10. **Construction.** The headings of this Amendment are for convenience only and shall not define or limit the provisions hereof. Where the context so requires, words used in singular shall include the plural and vice versa, and words of one gender shall include all other genders. In the event of a conflict between the terms and conditions of the Contract and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall prevail.

11. **No Third Party Beneficiaries.** This Amendment shall inure to the sole benefit of the parties hereto. Nothing contained herein shall create, or be construed to create, any right in any person not a party to this Amendment.

12. **Legal Review.** The parties hereto acknowledge that they have been advised by legal counsel of their choice in connection with the interpretation, negotiation, drafting and effect of this Amendment and they are satisfied with such legal counsel and the advice which they have received.

13. **Counterpart; Facsimile, Electronic or Photocopied Signatures.** This Amendment may be executed in any number of counterparts, any one of which shall be an original, but all of which together shall be one and the same instrument. The parties hereto agree that the use of facsimile, electronic or photocopied signatures for the negotiation and execution of this Amendment shall be legal and binding and shall have the same full force and effect as if originally signed.

*[Remainder of Page Intentionally Left Blank, Signature Page Follows]*

IN WITNESS WHEREOF, the parties hereto have executed this Amendment on the day and year first above written.

**SELLER:**  
CITY OF NEWBURGH INDUSTRIAL  
DEVELOPMENT AGENCY

**PURCHASER:**  
SCOBIE INDUSTRIAL PARTNERS  
LLC

\_\_\_\_\_  
Name: Marlon Ramos  
Title: Chairman

\_\_\_\_\_  
Name:  
Title:

DRAFT