

**CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY ("IDA")
MINUTES OF MEETING
June 17, 2013**

Present

Board Members: Joshua Smith, Chair
John Penney, Richard Bedrosian, Nancy Thomas
Sean O'Shea, Michael Curry, Jerry Maldonado
Counsel: Thomas Whyatt, Esq., Counsel
Staff: Theresa Waivada, Executive Director
Craig Skelly, CFO

1. **Roll Call** Mr. Smith called the meeting to order at 7:00pm. A quorum was present.

2. **Proof of Notice of June 17th Meetings**

(Mr. Smith asked if there were any objections to moving directly to the Resolutions on the Agenda. There being none, the discussion moved to "Report From Counsel".)

3. **Approval of the May 20th Minutes.** The Minutes were unanimously approved.

4. **Communications.** There were no reports under Communications.

5. **Bills and Treasurer's Report.** Mr. Curry presented the Treasurer's report (ending balance of \$672,047.93 and requested a motion to approve payment of 6 invoices as presented. We will look into the Key Bank fees. Mr. Whyatt asked about the Applications Escrow account. Going forward it will be placed in the Treasurer's Report. Mr. Whyatt will prepare an itemized bill to 5 Scobie Drive. .

Mr. Penney: Motion to approve six checks as presented.

Mr. Maldonado: Motion Seconded.

VOTE: Unanimously approved.

Mr. Penney: Motion to accept the Treasurer's report

Ms. Thomas: Motion seconded.

VOTE: Unanimously passed.

6. **Report from the Chair.**

- Mr. Smith distributed copies of the Minutes from the City's re-Zoning Code leadership team and Advisory taskforce. He reported that each taskforce member is to carry information back to the constituent groups. Anyone having advice or comments should contact him and he will take it back to the taskforce. He noted that the Architectural Review Commission and the Zoning board have not been represented. Mr. Maldonado suggested that the Task Force the coordinator, Sue Sullivan, be requested to reach out to those to committees. Ms. Waivada will also advise Mr. Slaughter. The Board discussed what the IDA can contribute to re-zoning and whether there are any zoning requirements that hinder development? It was noted that set-backs (25 ft) and variances to bulk rate tables are an issue as well as the parking requirements thereby impeding economic development. The Board concluded that it should take two actions: 1) Alert the city manager that two important boards aren't represented at the taskforce meetings and 2) ask zoning consultant

to review the types and numbers of zoning, use, variances being requested to determine possible changes.

- The Quassaick Creek Watershed Committee visited Grahamsville to visit a NYC water system facility where hydropower is produced. The Group is investigating the feasibility of putting hydropower at Muchattoes Lake or other dams. Archimedes screw? Mr. Smith described how NYC protects its watershed from intrusion of roads and there was a discussion of watershed management issues in Orange County.
- Mr. Smith attended a public meeting of the Planning Board and City Council, moderated by Prof. John Nolan of PACE. The purpose was to bring the two boards together. Discussion included new urban model trends which have moved past home ownership to focus now on rentals and condominiums.

7. Report from the Executive Director

- Ms. Waivada distributed Picene Developers information/analysis on their two projects. The information includes income levels for the two locations. The Agency has requested Volume Cap for ESD for this project.
- She attended a conference on Brownfield Opportunity Areas and the annual meeting of the NYS Economic Development Council. She discussed the issue of retail on Broadway in Newburgh and distributed a brochure produced by a Harlem neighborhood to attract retail businesses. There followed a discussion of spending power and demographics in Newburgh.
- The Tax Free Zones to be located at SUNY campuses was discussed with the hope that Orange County Community College will consider utilization of its Newburgh Campus for a zone. Ms. Waivada will follow up with the city and OCCC to open up discussions.
- Mr. Bedrosian spoke about population density in economically distressed neighborhoods noting Professor Porter posits that there is money to spend in distressed areas.
- Mr. O'Shea suggested that Lake Drive (with two nearby apartment complexes) is a prime location for retail development
- West Street property has been issued a formal address of 159 West Street by the Assessor's office.

8. Reports of Committees.

Audit Committee: There was no report.

Governance Committee: There was no report.

9. Report from Counsel:

- **Brownfield Cleanup Program.** Mr. Whyatt reported that the BCP has been approved by the DEC. The first step in the program is for the parties to sign an agreement between the parties and the DEC.. Resolution 2013-6-17-1 authorizes Ms. Waivada to sign the agreement. It includes the cover letter from the DEC and a copy of the Clean-Up Agreement. He explained the details of the agreement's detailed set of regulations. Mr. Whyatt advised that the regulations don't subject the IDA to anything onerous, and the IDA can withdraw at any point once property changes hand to 5 Scobie Partners. The application lists the IDA in name, but the actual work and expense will be incurred by 5 Scobie Partners. The Board reviewed the resolution. Mr. O'Shea asked about the scale-down and the existing contractual agreements; Ms. Waivada referred it for an executive session.

Mr. Penney: Motion to pass Resolution 2013-6-17-1

Mr. O'Shea: Motion Seconded.
Discussion: None
VOTE: Unanimously passed by roll call.

Resolution 2013-6-17-2 – Modification to amend the footprint of 5 Scobie Drive Partners property. Mr. Whyatt explained that 5 Scobie Partners wants to reduce the size of the property. It will save the cost and time of subdivision, eliminate excavation and any land analysis which the City might wish to defer for now. If there are plans for a future highway, that could be left in the deed as a 100 ft wide strip along the IDA property line. This resolution authorizes the modification as long as it stays with the sketch presented. The DEC has recommended this change and it would be considered a minor modification. Ms. Thomas asked for clarification. Ms. Waivada requested that the Board go into Executive Session.

Mr. Bedrosian: Motion to go into Executive Session to discuss the Agency's disposition agreement and land transfer from the City of Newburgh..
Mr. Curry: Motion seconded.
Discussion: None.
Vote: Unanimously approved.

The Board went into Executive Session at 7:11pm, and returned to open session at 7:25pm.

Mr. Curry: Motion to pass Resolution 2013-6-17-2
Mr. Penney: Motion seconded
Discussion: No further discussion
VOTE: By a roll call vote, the motion carried by a majority, with 2 abstentions

- **GEMMA:** Mr. Whyatt recapped the issues. The Bondholders' Trustee wants the IDA to 'intercede' with the County. Regarding a plan apparently worked out between the County and M&T Bank that would convey the property to M&T by foreclosure and later to the County. IDA has some claims that could be raised, such as lack of proper authorization of signatures on the mortgage. If the Board pursues those claims, Mr. Whyatt would contact Stuart Glenn Esq. (Ida's attorney at the time of the mortgage to be foreclosed) to provide background materials. Although the IDA might possibly be estopped from raising the claim that the mortgage was not validly entered into by the IDA,, Mr. Whyatt noted that other legitimate issues can still be raised. There's language in the first mortgage and in the lease that seems to prevent encumbrance of property with 2nd mortgage without trustee approval. IDA could also make this argument. Mr. Whyatt discussed provisions in case of defaults, and whether the property could be assigned or turned back to the IDA. Mr. Whyatt suggested that the IDA needs to consider what its interests are, and the City should consider its position if it loses tax revenues. Mr. Whyatt: the County might put bondholders at the end of the line, deferring payments of rent in favor of improvements. The IDA can play an aggressive role if it chooses and Mr. Whyatt suggests reviewing the timeline, since in November a new County government will be present. In the interim, there is a lease extension agreement between the County and M&T. The Bondholders would like the IDA to negotiate with the County. Mr. Curry recommends reviewing how the GEMMA deal was actually structured before speaking to the City. There was a discussion concerning possible scenarios, and the general consensus is that the Board needs to familiarize itself with the facts before taking action.
- **The Foundry.** To be discussed in Executive Session as on-going litigation.
- **Corwin Management.** Mr. Whyatt advised that another meeting with the City is necessary. The City will need to step in to approve a final PILOT payment that must be made by Corwin before the IDA conveys title to the property to Corwin Management LLC.. Corwin has

proposed a figure for total PILOT payments due. The City Manager needs to make the decision whether the figure is acceptable. Ms. Waivada will set up a meeting.

10. Old Business. Status of the BOA: Ms. Waivada reported that the Step 3 is being reviewed by the DOS. Requests totaling \$23 million have been made, while there is only \$10mm in available funding. The DOS will be ranking the requests.

11. New Business:

- **N4N12550.com Project.** Mr. Bedrosian introduced this project, whose purpose is to bring potential residential buyers to Newburgh. Dr. Brooks, Mr. Bedrosian and Mr. Tegni are founders and coordinators. He described the website, houses available, houses sold (both residential and multi-family). Ads have gone into Brooklyn publications. The team distributes information at Brooklyn festivals locations such as Bedford Ave. and Williamsburg. Many recent buyers are from Brooklyn. All income levels, from trendy to modest. The next event in Brooklyn is July 13th. N4N12550.com welcomes IDA suggestions. On Sept. 21st the project will bring visitors to the City of Newburgh, with a tour of the historic district and its architectural heritage. Following the tour, there will be an open house tour of properties for sale. September 21st is a Hudson River Ramble weekend. Ms. Waivada suggested that the team ask to be on a work session to get support from the City. Mr. Bedrosian noted that Mr. Slaughter has also talked about the reuse of large houses which aren't tax-affordable as single-family.

The next IDA Board meeting is set for Monday, July 29th.

Mr. Penney: Motion to Adjourn to Executive Session to discuss The Foundry litigation settlement.
Mr. O'Shea: Motion Seconded.
VOTE: Unanimously Passed.

The Meeting was adjourned at 9:15pm, and the Board entered into Executive Session to discuss the Foundry litigation and Corwin Management PILOT settlement.

The Meeting reconvened at 9:40 pm.

Mr. Penney: Motion to pass Resolution 2013-6-17-3
Ms. Thomas: Motion seconded.
Discussion: There was no further discussion
VOTE: Unanimously approved.

Mr. O'Shea : Motion to adjourn
Mr Curry Motion seconded.
VOTE: Unanimously approved.

The meeting was adjourned at 9:50 pm.

Respectfully submitted,

C. K. Boyle
Recording Secretary
May

Volume Gap Request

Project Narrative

Rehabilitation of Hudson and High Pointe Apartments

Project Information:

This project consists of 147 units of elderly affordable multifamily housing located in the city of Newburgh, within Orange County, NY. The 147 units are divided between two (2) buildings Hudson Pointe at 90 Grand Street and High Pointe at 223 West Street. The proposed plans call for a tenant in place rehabilitation of both buildings, utilizing energy efficient and green technology. The completion of this project will help preserve high quality affordable housing for the elderly in Newburgh.

Hudson Pointe Apartments (61,815 sq. ft. with 31,963 rentable sq. ft.) is comprised of 65 senior residential units with plans calling for renovation of all 65 units, common areas and the exterior of the building. Hudson point contains 58 one-bedroom units and 7 efficiency units. There are two elevators located in the main lobby. Parking is available in a gated lot with 21 spaces. There is a landscaped garden and bench seating long the north side of the building. The 9-story brick building is the former Hotel Washington built in 1929 and is located in the West End Historic District one block from the Hudson River. The utilities provided by the landlord are heat, water, sewer and trash pickup. The renovation calls for energy efficiency improvements including replacement energy efficient windows, energy star appliances, and efficient lighting. The project plans to use the NYSEBDA program which calls for an energy audit and have all energy efficiency improvements overseen by an energy consultant. The tenant is responsible for electric, A/C, and cable. Property amenities include onsite management office, community room, fitness center, laundry and indoor storage. The surrounding neighborhood is comprised of residential homes, apartments and several churches. The recently completed SUNY Orange College campus is located across the street from the property.

High Point Apartments (69,840 sq. ft. with 48,640 rentable sq. ft.) is comprised of 82 senior residential units with plans calling for renovation of all 82 units, common area and exterior of the building. There are 62 one bedroom/one bath units and 20 two bedroom/one bathroom units over two floors. The building, which is clad in brick and siding, is two stories and laid out in a "T" shape plan with a central hall. There is one elevator in the building. 108 parking spots are available for tenants and visitors to the property. High Pointe apartments are located in a suburban environment. The property has landscaped gardens, walking path, and a gazebo sitting area. The utilities provided by the landlord are heat, water, sewer and trash pickup. The tenant is responsible for electric, A/C, and cable. The renovation calls for energy efficiency improvements including replacement energy efficient windows, energy star appliances, and efficient lighting. The project plans to use the NYSEBDA program which calls for an energy audit and have all energy efficiency improvements overseen by an energy consultant. Property amenities include on site management office, library, community room, fitness center, covered storage, and a laundry room on each floor. Built in 1998, the building is located in a suburban neighborhood on the corner of West and South Streets in Newburgh, NY.

Land Information:

Hudson Pointe and High Pointe apartments are both currently used exclusively for multifamily senior housing. High Pointe Apartments is owned in fee simple ownership by High Pointe Apartments L.P. and Hudson Pointe Apartments in owned in fee simple ownership by Washington Partners Associated L.P. Both sites are managed by Picene Management Corporation. A phase I environmental review was completed on both properties and found to have no environmental issues. Len Sedney, Director of Environmental Services and Jim Warren, from the State Historic Preservation Office, have both given environmental approval. The Architectural Review Commission of Newburgh has approved the historic restoration of Hudson Pointe Apartments.

Description of rehabilitation scope of work to be undertaken:

High Pointe

Asphalt Overlay

Repair sidewalks that have settled and bring to ADA compliance including HC parking, stripping and signage.

Landscape repair as needed.

Replace vinyl siding around windows with hardy siding flash windows; replace windows as needed.

Repair brick as needed.

Reroof entire building- replace soffits

Replace one window A/C in each unit and common area A/C

Change electrical fixtures in common area and hallways- repair exterior lighting

Replace and add common area tile and carpet

Hallway wallpaper

Repaint common area

Replace doors as needed; locks; trim; shelving

Replace all appliances in apts

Repair dumpster enclosures-build new

Redo signage

Hudson Pointe:

All sidewalks to be replaced to meet ADA requirements including slopes, ramp detectable warning and rails as needed.

Install new energy star vinyl windows with insulated glass meeting design pressure for Newburgh New York. Single Hung Replacement Windows shall have a fixed upper sash with an operating lower sash. Windows to be anchored per manufacturers specs. Windows to be caulked using NPI or equal. Caulking to be placed at window frame to brick mold and brick mold to brick.

Repair wood window units on first floor.

Install all new wood cabinets conforming to ANSI/KCMA A 161.1 -Performance and Construction Standard for kitchen and vanity cabinets.

Flat panel hardwood doors with solid edge trim in door and drawer profile.

Countertops & splash are high pressure plastic laminate.

Replace exterior and interior doors as needed

All apartment entry doors to be replaced. Interior doors shall match existing in size and finish.

New Exterior door shall be 3-0 in width with all necessary hardware.

Threshold on entry doors to be ADA complaint not to exceed 1/2" in height

Provide residential appliances in matching finish using GE Products. White Finish

Refrigerator 18 cubic foot energy star.

Dishwasher under counter type 5 cycle energy star.

**High Pointe/Hudson Pointe
Rent Schedule**

6/13/2013

Unit Type	Income Level Served	# of Units (A)	# of Bedrooms	# of Bathrooms	Rentable SF (B)	Max Gross Rent / Unit (C)	Tenant Utility Allowance (D)	Max Net Rent / Unit (G) (D)-(E)	Proforma Rent / Unit (F)	Total Rent / Month (A) * Min(E) (H)
Rent Restricted										
TC60-High Pointe	60%	62	1	1.0	536	\$981	\$28	\$953	\$875	\$54,250
TC60-High Pointe	60%	20	2	1.0	768	\$1,177	\$36	\$1,141	\$985	\$19,700
TC60-Hudson Pointe	50%	58	1	1.0	520	\$818	\$28	\$790	\$750	\$43,500
TC60-Hudson Pointe	50%	7	EFF	1.0	350	\$763	\$22	\$741	\$635	\$4,445
Total	**	147	**	**	81,202	\$1,163	\$114	\$3,625	\$3,245	\$121,895

CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY

RESOLUTION NO. 2013-06-17-1

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE
AN AGREEMENT (BROWNFIELD CLEANUP AGREEMENT,
or BCA) TO PARTICIPATE IN THE NYS DEC BROWNFIELD
CLEANUP PROGRAM

WHEREAS:

The City of Newburgh Industrial Development Agency (AIDA@) desires to stimulate industrial development in the City of Newburgh in order to create new jobs, expand the tax base and redevelop certain areas of the City of Newburgh in accordance with IDA=s purposes;

The IDA wishes to work in cooperation with the City of Newburgh and 5 Scobie Partners, LLC (the ALLC”) to secure the remediation and improvement of a tract of land owned in part by the IDA and in part by the City of Newburgh, and located at 5 Scobie Drive in the City of Newburgh (the AProperty@), for the purposes of industrial development and creation of jobs in the City of Newburgh;

The IDA has joined with the LLC in applying for participation in the New York State DEC=s Brownfield Cleanup Program (ABCP@) affecting the Property.

By letter dated May 29, 2013, the DEC has notified the IDA and the LLC that their application has been accepted, conditioned on, among other steps, timely return to the DEC by both parties of the attached BCA.

Upon review of the BCA, and after consulting with staff and counsel, the IDA wishes to enter into the BCA.

NOW THEREFORE BE IT RESOLVED:

1. The actions contemplated by the IDA in entering into the BCA are granting access onto the Parcel by the LLC to conduct an environmental investigation of the Parcel in connection with the application; any cleanup activities would be undertaken by the LLC as owner of the parcel, and would not be IDA actions. The IDA has previously determined that the environmental investigation contemplated is a Type II action under SEQRA and requires no further action under SEQRA.

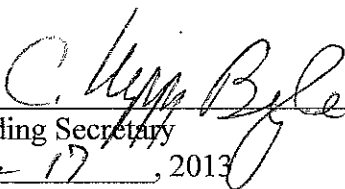
further action under SEQRA.

2 The Executive Director is hereby authorized to execute the BCA as annexed, and to submit it to the DEC simultaneously with submission of the LLC=s executed BCA.

The foregoing resolution Number 2013-06-17-1 was duly put to vote, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Joshua Smith	✓			
Naney Billman	✓			
Richard Bedrosian	✓			
Michael Curry	✓			
Jerry Maldonado	✓			
Sean O'Shea	✓			
John Penney	✓			

The resolution was thereupon duly adopted.


Recording Secretary
June 17, 2013

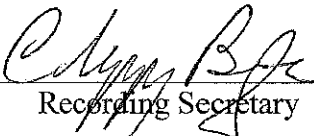
STATE OF NEW YORK)
 : ss.:
CITY OF NEWBURGH)

I, the undersigned, Recording Secretary of the City of Newburgh Industrial Development Agency, DO HEREBY CERTIFY that:

I have compared the annexed extract of the minutes of the meeting of the City of Newburgh Industrial Development Agency (the "Agency") including the resolution contained therein, held on the 17th of June, 2013 in the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such Resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I further certify that (i) all members of the Agency had due notice of the meeting, (ii) pursuant to Article 7 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public, and notice of the time and place of such meeting was duly given in accordance with Article 7 of the Public Officers Law, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency as of June 17, 2013.


Recording Secretary

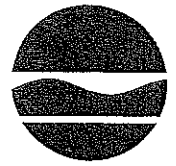
New York State Department of Environmental Conservation

Division of Environmental Remediation, 12th Floor

625 Broadway, Albany, New York 12233-7011

Phone: (518) 402-9706 Fax: (518) 402-9020

Website: www.dec.ny.gov



Joe Martens
Commissioner

MAY 29 2013

Certified Mail, Return Receipt Requested

5 Scobie Partners, LLC
David Littman
106 Pierces Road
Newburgh, NY 12550

✓ City of Newburgh Industrial Development Agency
Theresa G. Waivada
83 Broadway
Newburgh, NY 12550

Re: 5 Scobie Drive
Tax Map ID No.: 1-1-6, 5-1-16
Property County: Orange
Site No.: C336085

Dear Applicants:

Your application for the above-referenced Brownfield Cleanup Program ("BCP") project has been reviewed by the New York State Department of Environmental Conservation ("Department"). I am pleased to inform you that your request is accepted. The acceptance is based upon your participation as follows:

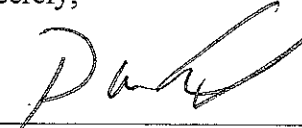
5 Scobie Partners, LLC is a Volunteer as defined in ECL 27-1405(1)(b).

City of Newburgh Industrial Development Agency is a Volunteer as defined in ECL 27-1405(1)(b).

Based upon the facts and information in the application, information contained in the Department's records, and a timely return of the signed Brownfield Cleanup Agreements (BCAs), the Department is prepared to execute a BCA for the above-described property. Enclosed are three original proposed BCAs. Please have the authorized representatives sign all three originals where indicated and return them to my attention at 625 Broadway, Albany, New York, **along with proof that the party executing the BCA is authorized to bind the Requestor. This would be documentation from corporate organizational papers, which are updated, showing the authority to bind the corporation, or a Corporate Resolution showing the same, or an Operating Agreement or Resolution for an LLC.** The BCA shall not be effective until it is fully executed by the parties. A reassessment of eligibility may result in a denial of the application if there are any changes to material facts and information before the BCA is fully executed. **Please note, if the BCA is not signed and returned to the Department within 60 days, the Department will consider the Application withdrawn and the offer to enter the BCP will be deemed rescinded.**

The Department looks forward to working with you on this project. The Department's project manager will assist you in completing your project. You can arrange a meeting to discuss the program's requirements and work plan. The work plan will determine the scope of work to be conducted and completed. You may contact the Department's project team as set forth in Paragraph IV of the attached draft BCA to discuss the next steps.

Sincerely,



Robert W. Schick, P.E., Director
Division of Environmental Remediation

Enclosures:

Department's Copies:

ec: Michael J. Ryan, P.E.
George Heitzman
Edward Moore
Benjamin Conlon
Kelly Lewandowski
Andrew Guglielmi
Kiera Thompson
Dana Schaefer

Applicant's Copies:

ec: David Littman (dslittman@aol.com)
Theresa G. Waivada (ida@cityofnewburgh-ny.gov)
John Cappello, Esq. (jcc@jacobowitz.com)
James D. McIver, Jr. (j.mciver@ctmale.com)

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
BROWNFIELD CLEANUP PROGRAM
ECL §27-1401 *et seq.*

In the Matter of a Remedial Program for

**BROWNFIELD SITE
CLEANUP AGREEMENT
Index No.: C336085-05-13**

5 Scobie Drive

DEC Site No.: C336085

Located at: 5 Scobie Drive
Orange County
Newburgh, NY 12550

Hereinafter referred to as "Site"

by:

5 Scobie Partners, LLC
106 Pierces Road, Newburgh, NY 12550

City of Newburgh Industrial Development Agency
83 Broadway, Newburgh, NY 12550

Hereinafter referred to as "Applicant"

WHEREAS, the Department of Environmental Conservation (the "Department") is authorized to administer the Brownfield Cleanup Program ("BCP") set forth in Article 27, Title 14 of the Environmental Conservation Law ("ECL"); and

WHEREAS, the Applicants submitted an application received by the Department on January 31, 2013; and

WHEREAS, the Department has determined that the Site and Applicants are eligible to participate in the BCP.

NOW, THEREFORE, IN CONSIDERATION OF AND IN EXCHANGE FOR THE MUTUAL COVENANTS AND PROMISES, THE PARTIES AGREE TO THE FOLLOWING:

I. Applicant Status

The Applicants, 5 Scobie Partners, LLC, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b), and the City of Newburgh Industrial Development Agency, is participating in the BCP as a Volunteer as defined in ECL 27-1405(1)(b).

II. Real Property

The Site subject to this Brownfield Cleanup Agreement (the "BCA" or "Agreement") consists of approximately 18.300 acres, a Map of which is attached as Exhibit "A", and is described as follows:

Tax Map/Parcel No.: 1-1-6
Street Number: 5 Scobie Drive, Newburgh
Owner: City of Newburgh Industrial Development Agency

Tax Map/Parcel No.: 5-1-16
Street Number: 70 Pierces Road, Newburgh
Owner: City of Newburgh DPW

III. Payment of State Costs

Invoices shall be sent to the Applicants at the following addresses:

5 Scobie Partners, LLC
Attn: David Littman
106 Pierces Road
Newburgh, NY 12550
dslittman@aol.com

City of Newburgh Industrial Development Agency
Attn: Theresa G. Waivada
83 Broadway
Newburgh, NY 12550
ida@cityofnewburgh-ny.gov

IV. Communications

A. All written communications required by this Agreement shall be transmitted by United States Postal Service, by private courier service, by hand delivery, or by electronic mail.

1. Communication from Applicants shall be sent to:

Kiera Thompson
New York State Department of Environmental Conservation
Division of Environmental Remediation
625 Broadway
Albany, NY 12233
kathomps@gw.dec.state.ny.us

Note: one hard copy (unbound) of work plans and reports is required, as well as one electronic copy.

Krista Anders (electronic copy only)
New York State Department of Health
Bureau of Environmental Exposure Investigation
Empire State Plaza
Corning Tower Room 1787
Albany, NY 12237
kma06@health.state.ny.us

Dana Schaefer, Esq. (correspondence only)
New York State Department of Environmental Conservation
Office of General Counsel
625 Broadway
Albany, NY 12233-1500
djschaef@gw.dec.state.ny.us

2. Communication from the Department to the Applicants shall be sent to:

5 Scobie Partners, LLC
Attn: David Littman
106 Pierces Road
Newburgh, NY 12550
dslittman@aol.com

City of Newburgh Industrial Development Agency
Attn: Theresa G. Waivada
83 Broadway
Newburgh, NY 12550
ida@cityofnewburgh-ny.gov

B. The Department and the Applicants reserve the right to designate additional or different addressees for communication on written notice to the other. Additionally, the Department reserves the right to request that the Applicants provide more than one paper copy of any work plan or report.

C. Each party shall notify the other within ninety (90) days after any change in the addresses listed in this paragraph or in Paragraph III.

V. Miscellaneous

A. Applicants acknowledge that they have read, understands, and agrees to abide by all the terms set forth in Appendix A - "Standard Clauses for All New York State Brownfield Site Cleanup Agreements" which is attached to and hereby made a part of this Agreement as if set forth fully herein.

B. In the event of a conflict between the terms of this BCA (including any and all attachments thereto and amendments thereof) and the terms of Appendix A, the terms of this BCA shall control.

C. The effective date of this Agreement is the date it is signed by the Commissioner or the Commissioner's designee.

DATED:

JOSEPH J. MARTENS
COMMISSIONER
~~NEW YORK STATE DEPARTMENT OF~~
ENVIRONMENTAL CONSERVATION

By:

Robert W. Schick, P.E., Director
Division of Environmental Remediation

CONSENT BY APPLICANT

Applicant hereby consents to the issuing and entering of this Agreement, waives Applicant's right to a hearing herein as provided by law, and agrees to be bound by this Agreement.

5 Scobie Partners, LLC

By: _____

Title: _____

Date: _____

STATE OF NEW YORK)
) ss:
COUNTY OF)

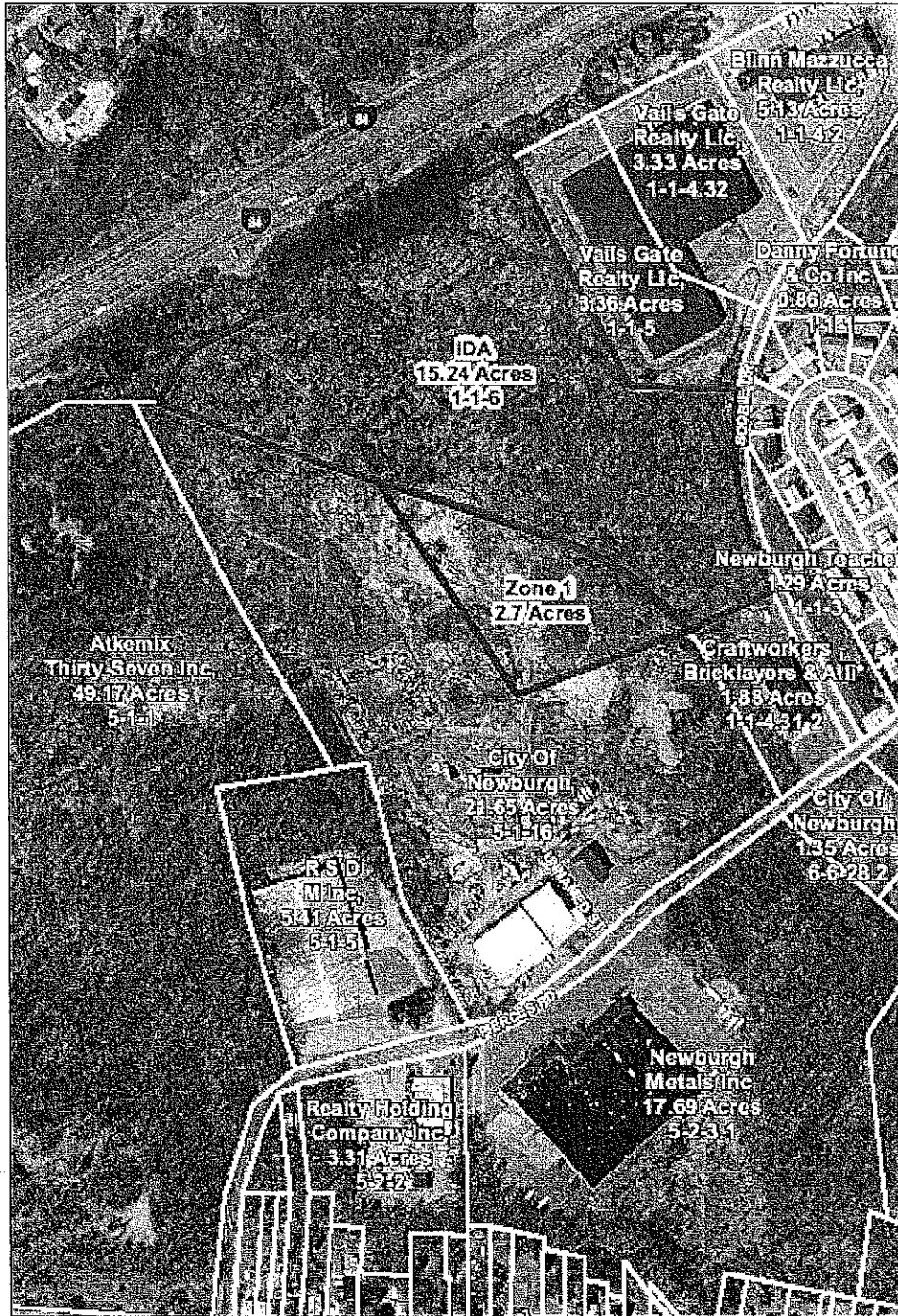
On the ____ day of _____ in the year 20__, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Signature and Office of individual
taking acknowledgment

EXHIBIT A

SITE MAP

Figure 2: Aerial Image & Tax Map



Prepared by City of Newburgh
Planning Department 2/6/13
Scale = 1 inch = 200 Feet



LF

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE BROWNFIELD SITE CLEANUP AGREEMENTS

The parties to the Brownfield Site Cleanup Agreement (hereinafter "the BCA" or "the Agreement" or "this Agreement") agree to be bound by the following clauses which are hereby made a part of the BCA. The word "Applicant" herein refers to any party to the Agreement, other than the New York State Department of Environmental Conservation (herein after "Department").

I. Citizen Participation Plan

Within twenty (20) days after the effective date of this Agreement, Applicant shall submit for review and approval a written citizen participation plan prepared in accordance with the requirements of ECL § 27-1417 and 6 NYCRR §§ 375-1.10 and 375-3.10. Upon approval, the Citizen Participation Plan shall be deemed to be incorporated into and made a part of this Agreement.

II. Development, Performance, and Reporting of Work Plans

A. Work Plan Requirements

The work plans ("Work Plan" or "Work Plans") under this Agreement shall be prepared and implemented in accordance with the requirements of ECL Article 27, Title 14, 6 NYCRR §§ 375-1.6(a) and 375-3.6, and all applicable laws, rules, regulations, and guidance documents. The Work Plans shall be captioned as follows:

1. "Remedial Investigation Work Plan" if the Work Plan provides for the investigation of the nature and extent of contamination within the boundaries of the Site and, if the Applicant is a "Participant", the extent of contamination emanating from such Site. If the Applicant is a "Volunteer" it shall perform a qualitative exposure assessment of the contamination emanating from the site in accordance with ECL § 27-1415(2)(b) and Department guidance;

2. "Remedial Work Plan" if the Work Plan provides for the development and implementation of a Remedial Program for contamination within the boundaries of the Site and, if the Applicant is a "Participant", the contamination that has emanated from such Site;

3. "IRM Work Plan" if the Work Plan provides for an interim remedial measure; or

4. "Site Management Plan" if the Work Plan provides for the identification and implementation of institutional and/or engineering controls as well as any

necessary monitoring and/or operation and maintenance of the remedy.

5. "Supplemental" if additional work plans other than those set forth in II.A.1-4 are required to be prepared and implemented.

B. Submission/Implementation of Work Plans

1. The first proposed Work Plan to be submitted under this Agreement shall be submitted no later than thirty (30) days after the effective date of this Agreement. Thereafter, the Applicant shall submit such other and additional work plans as determined in a schedule to be approved by the Department.

2. Any proposed Work Plan shall be submitted for the Department's review and approval and shall include, at a minimum, a chronological description of the anticipated activities to be conducted in accordance with current guidance, a schedule for performance of those activities, and sufficient detail to allow the Department to evaluate that Work Plan. The Department shall use best efforts in accordance with 6 NYCRR § 375-3.6(b) to approve, modify, or reject a proposed Work Plan within forty-five (45) days from its receipt or within fifteen (15) days from the close of the comment period, if applicable, whichever is later.

i. Upon the Department's written approval of a Work Plan, such Department-approved Work Plan shall be deemed to be incorporated into and made a part of this Agreement and shall be implemented in accordance with the schedule contained therein.

ii. If the Department requires modification of a Work Plan, the reason for such modification shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(3) shall apply.

iii. If the Department disapproves a Work Plan, the reason for such disapproval shall be provided in writing and the provisions of 6 NYCRR § 375-1.6(d)(4) shall apply.

3. A Site Management Plan, if necessary, shall be submitted in accordance with the schedule set forth in the IRM Work Plan or Remedial Work Plan.

C. Submission of Final Reports

1. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Report for an Investigation Work Plan prepared in accordance with ECL § 27-1411(1) and 6 NYCRR §

375-1.6. If such Final Report concludes that no remediation is necessary, and the Site does not meet the requirements for Track 1, Applicant shall submit an Alternatives Analysis prepared in accordance with ECL § 27-1413 and 6 NYCRR § 375-3.8(f) that supports such determination.

2. In accordance with the schedule contained in an approved Work Plan, Applicant shall submit a Final Engineering Report certifying that remediation of the Site has been performed in accordance with the requirements of ECL §§ 27-1419(1) and (2) and 6 NYCRR § 375-1.6. The Department shall review such Report, the submittals made pursuant to this Agreement, and any other relevant information regarding the Site and make a determination as to whether the goals of the remedial program have been or will be achieved in accordance with established timeframes; if so, a written Certificate of Completion will be issued in accordance with ECL § 27-1419, 6 NYCRR §§ 375-1.9 and 375-3.9.

3. Within sixty (60) days of the Department's approval of a Final Report, Applicant shall submit such additional Work Plans as it proposes to implement. Failure to submit any additional Work Plans within such period shall, unless other Work Plans are under review by the Department or being implemented by Applicant, result in the termination of this Agreement pursuant to Paragraph XII.

D. Review of Submittals other than Work Plans

1. The Department shall timely notify Applicant in writing of its approval or disapproval of each submittal other than a Work Plan in accordance with 6 NYCRR § 375-1.6. All Department-approved submittals shall be incorporated into and become an enforceable part of this Agreement.

2. If the Department disapproves a submittal covered by this Subparagraph, it shall specify the reason for its disapproval and may request Applicant to modify or expand the submittal. Within fifteen (15) days after receiving written notice that Applicant's submittal has been disapproved, Applicant shall elect in writing to either (i) modify or expand it within thirty (30) days of receipt of the written notice of disapproval; (ii) complete any other Department-approved Work Plan(s); (iii) invoke dispute resolution pursuant to Paragraph XIII; or (iv) terminate this Agreement pursuant to Paragraph XII. If Applicant submits a revised submittal and it is disapproved, the Department and Applicant may pursue whatever remedies may be available under this Agreement or under law.

E. Department's Determination of Need for Remediation

The Department shall determine upon its approval of each Final Report dealing with the investigation of

the Site whether remediation, or additional remediation as the case may be, is needed for protection of public health and the environment.

1. If the Department makes a preliminary determination that remediation, or additional remediation, is not needed for protection of public health and the environment, the Department shall notify the public of such determination and seek public comment in accordance with ECL § 27-1417(3)(f). The Department shall provide timely notification to the Applicant of its final determination following the close of the public comment period.

2. If the Department determines that additional remediation is not needed and such determination is based upon use restrictions, Applicant shall cause to be recorded an Environmental Easement in accordance with 6 NYCRR § 375-1.8(h).

3. If the Department determines that remediation, or additional remediation, is needed, Applicant may elect to submit for review and approval a proposed Remedial Work Plan (or modify an existing Work Plan for the Site) for a remedy selected upon due consideration of the factors set forth in ECL § 27-1415(3) and 6 NYCRR § 375-1.8(f). A proposed Remedial Work Plan addressing the Site's remediation will be noticed for public comment in accordance with ECL § 27-1417(3)(f) and the Citizen Participation Plan developed pursuant to this Agreement. If the Department determines following the close of the public comment period that modifications to the proposed Remedial Work Plan are needed, Applicant agrees to negotiate appropriate modifications to such Work Plan. If Applicant elects not to develop a Work Plan under this Subparagraph then this Agreement shall terminate in accordance with Paragraph XII. If the Applicant elects to develop a Work Plan, then it will be reviewed in accordance with Paragraph II.D above.

F. Institutional/Engineering Control Certification

In the event that the remedy for the Site, if any, or any Work Plan for the Site, requires institutional or engineering controls, Applicant shall submit a written certification in accordance with 6 NYCRR §§ 375-1.8(h)(3) and 375-3.8(h)(2).

III. Enforcement

Except as provided in Paragraph V, this Agreement shall be enforceable as a contractual agreement under the laws of the State of New York. Applicant shall not suffer any penalty except as provided in Paragraph V, or be subject to any proceeding or action if it cannot comply with any requirement of this Agreement as a result of a Force Majeure Event as described at 6 NYCRR § 375-1.5(b)(4) provided Applicant complies with the requirements set forth therein.

IV. Entry upon Site

A. Applicant hereby agrees to provide access to the Site and to all relevant information regarding activities at the Site in accordance with the provisions of ECL § 27-1431. Applicant agrees to provide the Department upon request with proof of access if it is not the owner of the site.

B. The Department shall have the right to periodically inspect the Site to ensure that the use of the property complies with the terms and conditions of this Agreement. The Department will generally conduct such inspections during business hours, but retains the right to inspect at any time.

C. Failure to provide access as provided for under this Paragraph may result in termination of this Agreement pursuant to Paragraph XII.

V. Payment of State Costs

A. Within forty-five (45) days after receipt of an itemized invoice from the Department, Applicant shall pay to the Department a sum of money which shall represent reimbursement for State Costs as provided by 6 NYCRR § 375-1.5 (b)(3)(i).

B. Costs shall be documented as provided by 6 NYCRR § 375-1.5(b)(3)(ii). The Department shall not be required to provide any other documentation of costs, provided however, that the Department's records shall be available consistent with, and in accordance with, Article 6 of the Public Officers Law.

C. Each such payment shall be made payable to the New York State Department of Environmental Conservation and shall be sent to:

Director, Bureau of Program Management
Division of Environmental Remediation
New York State Department of Environmental
Conservation
625 Broadway
Albany, New York 12233-7012

D. The Department shall provide written notification to the Applicant of any change in the foregoing addresses.

E. If Applicant objects to any invoiced costs under this Agreement, the provisions of 6 NYCRR §§ 375-1.5 (b)(3)(v) and (vi) shall apply. Objections shall be sent to the Department as provided under subparagraph V.C above.

F. In the event of non-payment of any invoice within the 45 days provided herein, the Department may seek enforcement of this provision pursuant to Paragraph III or the Department may commence an

enforcement action for non-compliance with ECL § 27-1423 and ECL § 71-4003.

VI. Liability Limitation

Subsequent to the issuance of a Certificate of Completion pursuant to this Agreement, Applicant shall be entitled to the Liability Limitation set forth at ECL § 27-1421, subject to the terms and conditions stated therein and to the provisions of 6 NYCRR §§ 375-1.9 and 375-3.9.

VII. Reservation of Rights

A. Except as provided in Subparagraph VII.B, Applicant reserves all rights and defenses under applicable law to contest, defend against, dispute, or disprove any action, proceeding, allegation, assertion, determination, or order of the Department, including any assertion of remedial liability by the Department against Applicant, and further reserves all rights including the rights to notice, to be heard, to appeal, and to any other due process respecting any action or proceeding by the Department, including the enforcement of this Agreement. The existence of this Agreement or Applicant's compliance with it shall not be construed as an admission of any liability, fault, wrongdoing, or violation of law by Applicant, and shall not give rise to any presumption of law or finding of fact which shall inure to the benefit of any third party.

B. Notwithstanding the foregoing, Applicant hereby waives any right it may have to make a claim pursuant to Article 12 of the Navigation Law with respect to the Site and releases the State and the New York Environmental Protection and Spill Compensation Fund from any and all legal or equitable claims, suits, causes of action, or demands whatsoever with respect to the Site that Applicant may have as a result of Applicant's entering into or fulfilling the terms of this Agreement.

VIII. Indemnification

Applicant shall indemnify and hold the Department, the State of New York, and their representatives and employees harmless from any claim, suit, action, and cost of every name and description arising out of or resulting from the fulfillment or attempted fulfillment of this Agreement by Applicant prior to the Termination Date except for those claims, suits, actions, and costs arising from the State's gross negligence or willful or intentional misconduct by the Department, the State of New York, and/or their representatives and employees during the course of any activities conducted pursuant to this Agreement. In the event that the Applicant is a Participant, this provision shall also include the Trustee of the State's Natural Resources. The Department shall provide Applicant with written notice no less than thirty

(30) days prior to commencing a lawsuit seeking indemnification pursuant to this Paragraph.

IX. Change of Use

Applicant shall notify the Department at least sixty (60) days in advance of any change of use, as defined in ECL § 27-1425, which is proposed for the Site, in accordance with the provisions of 6 NYCRR § 375-1.11(d). In the event the Department determines that the proposed change of use is prohibited, the Department shall notify Applicant of such determination within forty-five (45) days of receipt of such notice.

X. Environmental Easement

A. Within thirty (30) days after the Department's approval of a Remedial Work Plan which relies upon one or more institutional and/or engineering controls, or within sixty (60) days after the Department's determination pursuant to Subparagraph II.E.2 that additional remediation is not needed based upon use restrictions, Applicant shall submit to the Department for approval an Environmental Easement to run with the land in favor of the State which complies with the requirements of ECL Article 71, Title 36 and 6 NYCRR § 375-1.8(h)(2). Applicant shall cause such instrument to be recorded with the recording officer for the county in which the Site is located within thirty (30) days after the Department's approval of such instrument. Applicant shall provide the Department with a copy of such instrument certified by the recording officer to be a true and faithful copy within thirty (30) days of such recording (or such longer period of time as may be required to obtain a certified copy provided Applicant advises the Department of the status of its efforts to obtain same within such thirty (30) day period), which shall be deemed to be incorporated into this Agreement.

B. Applicant or the owner of the Site may petition the Department to modify or extinguish the Environmental Easement filed pursuant to this Agreement at such time as it can certify that the Site is protective of public health and the environment without reliance upon the restrictions set forth in such instrument. Such certification shall be made by a Professional Engineer or Qualified Environmental Professional as defined at 6 NYCRR § 375-1.2(ak) approved by the Department. The Department will not unreasonably withhold its consent.

XI. Progress Reports

Applicant shall submit a written progress report of its actions under this Agreement to the parties identified in Subparagraph III.A.1 of the Agreement by the 10th day of each month commencing with the month subsequent to the approval of the first Work Plan and ending with the Termination Date, unless a different frequency is set forth in a Work Plan. Such reports

shall, at a minimum, include: all actions relative to the Site during the previous reporting period and those anticipated for the next reporting period; all approved activity modifications (changes of work scope and/or schedule); all results of sampling and tests and all other data received or generated by or on behalf of Applicant in connection with this Site, whether under this Agreement or otherwise, in the previous reporting period, including quality assurance/quality control information; information regarding percentage of completion; unresolved delays encountered or anticipated that may affect the future schedule and efforts made to mitigate such delays; and information regarding activities undertaken in support of the Citizen Participation Plan during the previous reporting period and those anticipated for the next reporting period.

XII. Termination of Agreement

Applicant or the Department may terminate this Agreement consistent with the provisions of 6 NYCRR §§ 375-3.5(b), (c), and (d) by providing written notification to the parties listed in Paragraph IV of the Agreement.

XIII. Dispute Resolution

A. In the event disputes arise under this Agreement, Applicant may, within fifteen (15) days after Applicant knew or should have known of the facts which are the basis of the dispute, initiate dispute resolution in accordance with the provisions of 6 NYCRR § 375-1.5(b)(2).

B. All cost incurred by the Department associated with dispute resolution are State costs subject to reimbursement pursuant to this Agreement.

C. Notwithstanding any other rights otherwise authorized in law or equity, any disputes pursuant to this Agreement shall be limited to Departmental decisions on remedial activities. In no event shall such dispute authorize a challenge to the applicable statute or regulation.

XIV. Miscellaneous

A. If the information provided and any certifications made by Applicant are not materially accurate and complete, this Agreement, except with respect to Applicant's obligations pursuant to Paragraphs V, VII.B, and VIII, shall be null and void ab initio fifteen (15) days after the Department's notification of such inaccuracy or incompleteness or fifteen (15) days after issuance of a final decision resolving a dispute pursuant to Paragraph XIII, whichever is later, unless Applicant submits information within that fifteen (15) day time period indicating that the information provided and the certifications made were materially accurate and complete. In the event this Agreement is rendered null

and void, any Certificate of Completion and/or Liability Limitation that may have been issued or may have arisen under this Agreement shall also be null and void ab initio, and the Department shall reserve all rights that it may have under law.

B. By entering into this Agreement, Applicant agrees to comply with and be bound by the provisions of 6 NYCRR §§ 375-1, 375-3 and 375-6; the provisions of such subparts that are referenced herein are referenced for clarity and convenience only and the failure of this Agreement to specifically reference any particular regulatory provision is not intended to imply that such provision is not applicable to activities performed under this Agreement.

C. The Department may exempt Applicant from the requirement to obtain any state or local permit or other authorization for any activity conducted pursuant to this Agreement in accordance with 6 NYCRR §§ 375-1.12(b), (c), and (d).

D. 1. Applicant shall use "best efforts" to obtain all Site access, permits, easements, approvals, institutional controls, and/or authorizations necessary to perform Applicant's obligations under this Agreement, including all Department-approved Work Plans and the schedules contained therein. If, despite Applicant's best efforts, any access, permits, easements, approvals, institutional controls, or authorizations cannot be obtained, Applicant shall promptly notify the Department and include a summary of the steps taken. The Department may, as it deems appropriate and within its authority, assist Applicant in obtaining same.

2. If an interest in property is needed to implement an institutional control required by a Work Plan and such interest cannot be obtained, the Department may require Applicant to modify the Work Plan pursuant to 6 NYCRR § 375-1.6(d)(3) to reflect changes necessitated by Applicant's inability to obtain such interest.

E. The paragraph headings set forth in this Agreement are included for convenience of reference only and shall be disregarded in the construction and interpretation of any provisions of this Agreement.

F. 1. The terms of this Agreement shall constitute the complete and entire agreement between the Department and Applicant concerning the implementation of the activities required by this Agreement. No term, condition, understanding, or agreement purporting to modify or vary any term of this Agreement shall be binding unless made in writing and subscribed by the party to be bound. No informal advice, guidance, suggestion, or comment, by the Department shall be construed as relieving Applicant of its obligation to obtain such formal approvals as may be required by this Agreement. In the event of a conflict between the terms of this Agreement and any Work

Plan submitted pursuant to this Agreement, the terms of this Agreement shall control over the terms of the Work Plan(s). Applicant consents to and agrees not to contest the authority and jurisdiction of the Department to enter into or enforce this Agreement.

2. i. Except as set forth herein, if Applicant desires that any provision of this Agreement be changed, Applicant shall make timely written application to the Commissioner with copies to the parties in Subparagraph IV.A.1 of the Agreement.

ii. If Applicant seeks to modify an approved Work Plan, a written request shall be made to the Department's project manager, with copies to the parties listed in Subparagraph IV.A.1 of the Agreement.

iii. Requests for a change to a time frame set forth in this Agreement shall be made in writing to the Department's project attorney and project manager; such requests shall not be unreasonably denied and a written response to such requests shall be sent to Applicant promptly.

G. 1. If there are multiple parties signing this Agreement, the term "Applicant" shall be read in the plural, the obligations of each such party under this Agreement are joint and several, and the insolvency of or failure by any Applicant to implement any obligations under this Agreement shall not affect the obligations of the remaining Applicant(s) under this Agreement.

2. If Applicant is a partnership, the obligations of all general partners (including limited partners who act as general partners) under this Agreement are joint and several and the insolvency or failure of any general partner to implement any obligations under this Agreement shall not affect the obligations of the remaining partner(s) under this Agreement.

3. Notwithstanding the foregoing Subparagraphs XIV.G.1 and 2, if multiple parties sign this Agreement as Applicants but not all of the signing parties elect to implement a Work Plan, all Applicants are jointly and severally liable for each and every obligation under this Agreement through the completion of activities in such Work Plan that all such parties consented to; thereafter, only those Applicants electing to perform additional work shall be jointly and severally liable under this Agreement for the obligations and activities under such additional Work Plan(s). The parties electing not to implement the additional Work Plan(s) shall have no obligations under this Agreement relative to the activities set forth in such Work Plan(s). Further, only those Applicants electing to implement such additional Work Plan(s) shall be eligible to receive the Liability Limitation referenced in Paragraph VI.

4. Any change to parties pursuant to this Agreement, including successors and assigns through acquisition of title, is subject to approval by the Department, after submittal of an application acceptable to the Department.

H. Applicant shall be entitled to receive contribution protection and/or to seek contribution to the extent authorized by ECL § 27-1421(6) and 6 NYCRR § 375-1.5(b)(5).

I. Applicant shall not be considered an operator of the Site solely by virtue of having executed and/or implemented this Agreement.

J. Applicant and Applicant's agents, grantees, lessees, sublessees, successors, and assigns shall be bound by this Agreement. Any change in ownership of Applicant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter Applicant's responsibilities under this Agreement.

K. Unless otherwise expressly provided herein, terms used in this Agreement which are defined in ECL Article 27 or in regulations promulgated thereunder shall have the meaning assigned to them under said statute or regulations.

L. Applicant's obligations under this Agreement represent payment for or reimbursement of State costs, and shall not be deemed to constitute any type of fine or penalty.

M. In accordance with 6 NYCRR § 375-1.6(a)(4), the Department shall be notified at least 7 days in advance of, and be allowed to attend, any field activities to be conducted under a Department approved work plan, as well as any pre-bid meetings, job progress meetings, substantial completion meeting and inspection, and final inspection and meeting; provided, however that the Department may be excluded from portions of meetings where privileged matters are discussed.

N. In accordance with 6 NYCRR § 375-1.11(a), all work plans; reports, including all attachments and appendices, and certifications, submitted by a remedial party shall be submitted in print, as well as in an electronic format acceptable to the Department.

O. This Agreement may be executed for the convenience of the parties hereto, individually or in combination, in one or more counterparts, each of which shall be deemed to have the status of an executed original and all of which shall together constitute one and the same.

CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY

RESOLUTION NO. 2013-06-17-2

AUTHORIZING THE EXECUTIVE DIRECTOR TO MODIFY
THE BROWNFIELD CLEANUP PROGRAM TO REDUCE THE
PROJECT AREA

WHEREAS:

The City of Newburgh Industrial Development Agency (AIDA@) desires to stimulate industrial development in the City of Newburgh in order to create new jobs, expand the tax base and redevelop certain areas of the City of Newburgh in accordance with IDA=s purposes;

The IDA wishes to work in cooperation with the City of Newburgh and 5 Scobie Partners, LLC (the ALLC”) to secure the remediation and improvement of a tract of land owned in part by the IDA and in part by the City of Newburgh, and located at 5 Scobie Drive in the City of Newburgh (the AProperty@), for the purposes of industrial development and creation of jobs in the City of Newburgh;

The IDA has joined with the LLC in applying for participation in the New York State DEC=s Brownfield Cleanup Program (ABCP@) affecting the Property.

By letter dated May 29, 2013, the DEC has notified the IDA and the LLC that their application has been accepted, conditioned on, among other steps, timely return to the DEC by both parties of the attached BCA.

Upon review of the BCA, and after consulting with staff and counsel, the IDA authorized the Executive Director to sign and return the BCA to the DEC.

Upon the request of the LLC, the IDA now wishes to modify the Brownfield Cleanup Program to reduce the size of the project area, as roughly shown on the attached Sketch. This modification of the boundaries will result in lower cleanup costs and, by removing from the project a portion of land now owned by the City of Newburgh, will eliminate the time and costs required to accomplish the subdivision of that parcel away from the adjoining City property.

NOW THEREFORE BE IT RESOLVED:

1. The actions contemplated by the IDA in entering into the BCA are granting access onto the Parcel by the LLC to conduct an environmental investigation of the Parcel in

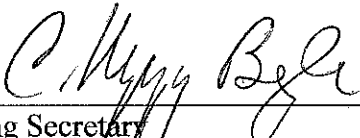
connection with the application; any cleanup activities would be undertaken by the LLC as owner of the parcel, and would not be IDA actions. Reducing the size of the cleanup area will not change the nature of the activities contemplated. The IDA has previously determined that the environmental investigation contemplated is a Type II action under SEQRA and requires no further action under SEQRA.

2 In consultation with counsel, the Executive Director is hereby authorized to undertake such steps and to execute such documents as are required to accomplish the modification requested by the BCA.

The foregoing resolution Number 2013-06-17-2 was duly put to vote, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Joshua Smith	✓			
Nancy Thomas				✓
Richard Bedrosian	✓			
Michael Curry	✓			
Jerry Maldonado				✓
Sean O'Shea	✓			
John Penney	✓			

The resolution was thereupon duly adopted.


 Recording Secretary
 June 17, 2013

STATE OF NEW YORK)
 : ss.:
CITY OF NEWBURGH)

I, the undersigned, Recording Secretary of the City of Newburgh Industrial Development Agency, DO HEREBY CERTIFY that:

I have compared the annexed extract of the minutes of the meeting of the City of Newburgh Industrial Development Agency (the "Agency") including the resolution contained therein, held on the 17th of June, 2013 in the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such Resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I further certify that (i) all members of the Agency had due notice of the meeting, (ii) pursuant to Article 7 of the Public Officers Law (Open Meetings Law), such meeting was open to the general public, and notice of the time and place of such meeting was duly given in accordance with Article 7 of the Public Officers Law, (iii) the meeting was in all respects duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency as of June 17, 2013.



Recording Secretary



Project Revision
6/2013

**RESOLUTION NO. 2013-6-17-3
AUTHORIZING CONVEYANCE OF ONE CORWIN COURT
TO CORWIN MANAGEMENT LLC
PURSUANT TO THE TERMS OF A LEASE
DATED APRIL 27, 2001**

WHEREAS:

The City of Newburgh Industrial Development Agency (“IDA”) entered into a straight-lease agreement dated April 27, 2001 (“Lease”) with Corwin Management LLC, a New York Limited Liability Company with offices at 5 Krolla Drive, Monroe, New York 10950 (“Lessee”) concerning a property located at One Corwin Court in the City of Newburgh (the “Parcel”);

The Lease was entered into for the purposes of extending financial assistance to Corwin Management LLC under the New York State Industrial Development Agency Act (General Municipal Law §§ 850 et seq.), as amended (the “Act”);

The IDA is not the beneficial owner of the Parcel, but instead holds title to the Parcel solely for the purpose of extending financial assistance to the beneficiary of a Project under the Act;

The Lease remains in force and requires Lessee to make annual PILOT payments to the City of Newburgh pursuant to a schedule set forth in the Lease;

Article 19 of the Lease grants Lessee an option to purchase the Parcel by paying to the IDA and sum of \$100 and paying all other amounts due under the Lease;

Lessee, the City of Newburgh and the IDA are now working out the amount of final PILOT payment that will be due under the Lease;

NOW THEREFORE BE IT RESOLVED:

1. Conveyance of the IDA’s non-beneficial interest in the Parcel pursuant to the terms of the Lease is routine agency administration of a ministerial nature, which is a Type II Action under SEQRA and is not subject to further SEQRA review.
2. The IDA holds title to the Parcel solely for the purpose of extending financial assistance to the beneficiary of a Project under the Act, and therefore conveyance of the Parcel in conformance with the terms of the Lease is exempt from the provisions of the IDA’s Property Disposition Policy.
3. Upon receipt from Lessee of a payment of \$100 to the IDA and payment by Lessee of all other funds due under the Lease, the amount of such funds to be acceptable to the IDA and the City of Newburgh, the IDA hereby authorizes and

directs its Chairman, in consultation with counsel, to execute and deliver to Lessee the deed and other such documents as are required to convey the Parcel in compliance with the terms of the Lease.

The foregoing resolution Number 2013-06-17-3 was duly put to vote, which resulted as follows:

	Yea	Nay	Absent	Abstain
Joshua Smith	✓			
Nancy Thomas	✓			
Richard Bedrosian	✓			
Michael Curry	✓			
Jerry Maldonado	✓			
Sean O'Shea	✓			
John Penney	✓			

The resolution was thereupon duly adopted.

Recording Secretary
_____, 2013