

**CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY
("IDA")
MINUTES OF MEETING
NOVEMBER 1, 2010, 7:00P.M.**

Present

Board Members: Joshua Smith
Richard Bedrosian
Michael Curry
John Penney
Sean O'Shea
Jerry Maldonado
Excused Absence: Spencer Gulliver
Administrative Director: Edward Lynch
Counsel: Thomas Whyatt, Esq.

City Corporation Counsel: Bernis Nelson, Esq.

1. **Roll Call.** Mr. Smith called the roll; a quorum was present.

2. **Proof of Notice of Meeting.** Accepted.

3. **Approval of Minutes of September 27 Meeting**

Mr. Bedrosian: Motion to Approve the September 27 Minutes

Mr. Penney: Motion Seconded

Vote: Unanimously approved.

4. **Request for Bills and Communications:** Mr. Curry reported receipt of the Authority Budget Office Evaluation Forms, and the revised Annual Agreement with the City. The engagement letter for the 2010 Audit was mailed out.

5. **Reports of Committees**

Audit Committee: Presentation and discussion of the proposed 2011 Budget. Ms. Nelson noted that the loan to Leyland was from KNEC funds; therefore principal repayments will continue to be deposited in a separate account to be reused for approved HUD projects. The HUD office will provide additional information and Ms. Nelson suggested that at that time, the joint City/IDA Committee could meet to discuss a KNEC Plan. The final Administrative Agreement with the City will be presented at the November 15 meeting showing expenses.

Mr. Bedrosian: Motion to adopt the proposed budget for 2011.

Mr. Maldonado: Motion Seconded.

VOTE: Unanimously Approved.

Governance Committee: The Strategic Financial Assistance Policy document will be presented for approval at the November 15 meeting.

Treasurer's Report: September and October ledger sheets were distributed. Mr. Curry presented invoices for payment. Mr. Curry presented eight invoices: Sedore & Co (2), CK Boyle, Oxman Tulis, Title Search, Check to City for third quarter services, school taxes (2)..

Mr. Penney: Motion to pay eight invoices presented.

Mr. Bedrosian: Motion Seconded.

VOTE: Unanimously approved.

6. Old Business.

M&T Bank/ GEMMA Development Corporation LLC (“GEMMA”) Bond.

Mr. Whyatt summarized the payment history. Bondholders are seeking payments for three months beginning in April 2009 which were not passed through to them. Mr. Whyatt presented a draft Freedom of Information request to Orange County for Board approval as an attorney action.

Mr. Maldonado: Motion to direct attorney to proceed with a FOIL request to the County

Mr. O’Shea: Motion seconded

VOTE: Unanimously approved.

Additionally, in 2006 GEMMA took a 2nd mortgage from M&T Bank which the IDA signed off on, apparently without Bondholders’ approval. Bondholders are requesting that M&T release the property from the second mortgage. Bond Counsel is reviewing IDA’s responsibilities. .

St. Luke’s Parking Garage (Community Development Properties):

- **Bond Swap:** Mr. Patel, Harris Beach Bond Counsel, presented a Resolution to the Board. St. Luke’s seeks to convert the bonds to “Bank Qualified Bonds”. This requires amending the 2005 documents to allow the bank to hold the bonds, and IDA’s role in conduit financing requires a Resolution authorizing the execution of documents to amend the 2005 Bond documents before the November 30th closing. Mr. Whyatt has reviewed the documents. All fees incurred by the IDA will be submitted directly to St. Luke’s Hospital for payment.

Mr. Maldonado: Motion to approve the Resolution Authorizing the Amendments.

Mr. O’Shea: Motion Seconded

VOTE: Resolution Unanimously Approved.

(A copy of Resolution No. 2010-11-1-1 is attached hereto and made a part hereof).

Mr. Patel will forward records from the original 2005 Closing.

- **IRS Audit.** Mr. Whyatt distributed the report from Robinson Cole on the status of the IRS Audit of the Parking Garage. Mr. Lynch reported that the IRA Auditor will not complete this audit until early in 2011.

Signage for IDA Properties: There is no update at this time.

Consolidation Deed (West Street Parcels). Mr. Whyatt recapped the history. Hudson Valley Bank is foreclosing on the Northeast Development mortgage. Both the City and the IDA have been served with foreclosure notices on two undeveloped lots . References were made to the 2004 Land Disposition Agreement. Ms. Nelson recommends meeting with Mr. Lambert. Mr. Whyatt and Ms. Nelson further recommend that the Consolidation Deed be deferred at this time in light of the potential bank foreclosure. Actions that the City and/or IDA can take at this time include sending a Notice of Default to Northeast Development. The Board authorized Mr. Whyatt to cooperate with document preparation being drafted by City Corporation Counsel. The City will improve lighting on the site; trash needs to be cleaned up if serious attempts are being made to lease the spaces. Mr. Smith noted that enforcement of illegal dumping is a problem throughout the City.

7. **Bookkeeper Position.** A template of the City's civil service position was distributed. The Subcommittee has some edits. Mr. Lynch will post the final document on the website. Posting and interviews will be expedited.
8. **RFQ for Scobie Drive Environmental Clean-Up.** Mr. Lynch recommends postponing the RFQ because the grant study by NCAC is paying for consultants to gather information which will be available when a real project is proposed. Mr. Penney said the Board should be ready if a business is interested in purchasing the IDA property. Previous studies have been made, and the Board concurred that copies of those studies should be made available to them. Mr. Lynch will further research their whereabouts.
9. **Unitex.** Ms. Nelson presented legal information on the PILOT arrangements. A Uniform PILOT Policy needs to be created for the Board. In this case, Unitex is prepared to make retroactive payments upon signing the PILOT agreement. Mr. Whyatt recommends that the Board authorize the PILOT agreement. A template will be provided so that a Unitex Pilot Agreement can be approved at the next meeting on November 15. A tax exemption policy is deferred to the December meeting.
10. **IDA/City Council Working Committee:** The Committee has not met recently.
11. **Public Forum with Waterfront Commission.** No date has been set yet, while the City manager resolves other issues.
12. **SCOBIE DRIVE – Conference Call with WRT.** WRT, the consulting firm performing work for NCAC through a DOS Grant, presented a slide presentation regarding their study of the 137 acres with 22 separate parcels. The study is a 12-month 'fact-based' project. The timetable of tasks and progress will be posted on a web site to be determined. WRT is talking to adjacent property owners to developing a market analysis. The Board referenced previous studies, and the larger regional view for development. Reference was made to the ownership issue for the DuPont site, when it could be reasonably remediated for development and how that affects the overall regional development plan. WRT is working with an advisory committee. The DOS is only interested in alternative development plans that have financial feasibility. 90% of the DOS grant is for deliverables from WRT as defined by the contract. Clarification is sought for who 'owns' the product outcome and how information will be shared. NCAC is WRT's client, however the grant is from public funding. This issue will be clarified by the State.

WRT stated that the ideal outcome would be collaboration by stewards of the land, including the City, the IDA and NCAC. WRT Group asked to meet with individual Board members; the Board preference is to hold a special meeting in order to stay transparent. .

13. **Website Update.** The Subcommittee is developing parameters of an RFP for vendors to construct a website. Changes have been made to the web page including addition of the Policies and Mission statement.
14. **New Business.**
 - **MURPHY'S DITCH.** Messrs. Curry and Penney attended the on-site review of watershed protection with the Quassaick Creek group. In 2008, the Easement Agreement was entered into, but a Title Search revealed that it had never been recorded. Therefore, the City still owns the ditch. Ms. Nelson will conduct background research to determine whether the Deed should be recorded at this time.
 - **FOIL of IDA Records.** Certain documents are missing from Mr. Lynch's files which might be available in IDA records. There was a discussion of client-privileged documents. Mr. Whyatt will review the requested list.

15. **EDA Check Award**. There is no update, since Congressman Hinchey's office assured the City that the check would be received by the end of September.

16. **Next IDA Meeting**. The next regularly scheduled November meeting is November 15.

Mr. Penney:	Motion to Adjourn.
Mr. O'Shea	Motion Seconded.
Vote:	Unanimously approved.

(RESOLUTION No. 2010-11-1-1 Follows Below)

Motion By: Jerry Maldonado
Seconded By: Sean O'Shea

RESOLUTION No. 2010-11-1-1
(Community Development Properties, Dubois St. II, Inc. Project)

A meeting of the City of Newburgh Industrial Development Agency (the "Issuer") was held on November 1, 2010, at 7:00 p.m. (local time) in the City Hall Council Chambers, 83 Broadway, 3rd Floor.

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to the Community Development Properties, Dubois St. II, Inc. Project:

RESOLUTION AUTHORIZING THE EXECUTION AND DELIVERY OF CERTAIN DOCUMENTS IN CONNECTION WITH THE PROVISION OF AN ADDITIONAL INTEREST RATE MODE WITH RESPECT TO THE ISSUER'S \$21,230,000 ORIGINAL PRINCIPAL AMOUNT VARIABLE RATE DEMAND CIVIC FACILITY REVENUE BONDS (COMMUNITY DEVELOPMENT PROPERTIES, DUBOIS ST. II, INC. PROJECT), SERIES 2005A

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 577 of the Laws of 1982 of the State of New York (the "Act"), the **CITY OF NEWBURGH INDUSTRIAL DEVELOPMENT AGENCY** (the "Issuer") was created with the authority and power to issue its special revenue bonds for the purpose of, among other things, acquiring, constructing, reconstructing and equipping, manufacturing, warehousing, civic, research, commercial, or industrial facilities as authorized by the Act; and

WHEREAS, on or about November 17, 2005, the Issuer issued its \$21,230,000 original principal amount Variable Rate Demand Civic Facility Revenue Bonds (Community Development Properties, Dubois St. II, Inc. Project), Series 2005A (the "Bonds") for the benefit of **COMMUNITY DEVELOPMENT PROPERTIES, DUBOIS ST. II, INC.**, a Delaware not-for-profit corporation duly authorized to conduct business under the laws of the State of New York (the "Company"), to provide funds to the Company for the purpose of undertaking a certain project (the "Project") consisting of: (A) the acquisition by the Issuer of an interest in an approximately 1.25-acre parcel of land located at 59-73, 75 and 77 Dubois Street, in the City of Newburgh, Orange County, New York (the "City") and the improvements thereon consisting principally of an approximately 183-spot surface parking lot (the "Parking Garage Land") and certain air rights above Dubois Street and certain real property of St. Luke's Cornwall Hospital (the "Hospital") in order to construct the Skyway (as defined below) (the "Dubois Street Land" and, collectively with the Parking Garage Land, the "Land"); (B) the construction and equipping (i) upon the Parking Garage Land of an approximately 224,320 square-foot five-story public parking garage containing approximately 550 parking spaces, a heliport and related improvements (the "Parking Garage"), and (ii) above the Dubois Street Land an enclosed approximately 1,080 square-foot walkway sky bridge connecting the Parking Garage to the Hospital and approximately 1,676 square-feet of related space running parallel to the Hospital and linking the walkway sky bridge to the Hospital (the "Skyway" and collectively with the Parking

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Garage, the "Improvements"); (C) the acquisition and installation in and around the Improvements of certain items of machinery, equipment and other tangible personal property (the "Equipment" and, collectively with the Land and the Improvements, the "Facility"); (D) paying certain costs and expenses incidental to the issuance of the Bonds (the costs associated with items (A) through (D) above being hereinafter collectively referred to as the "Project Costs"); and (E) the lease (with an obligation to purchase) or sale of the facilities financed with the Bonds to the Company; and

WHEREAS, the Bonds were issued pursuant to certain resolutions adopted by the Issuer on September 26, 2005 and November 2, 2005 and under a certain Indenture of Trust, dated as of November 1, 2005 (the "Original Indenture"), by and between the Issuer and Manufacturers and Traders Trust Company, as trustee (the "Trustee") ; and

WHEREAS, pursuant to a certain Lease of Air Rights, dated as of November 1, 2005 (the "Air Rights Lease Agreement"), by and between the City, as landlord, and the Hospital, as tenant, the City granted to the Hospital a leasehold interest in the air space above the Dubois Street Land for a period of 99 years (with the option to renew for an additional 99-year period), for the purpose of constructing the Skyway; and

WHEREAS, pursuant to a certain Parking Garage Ground Lease and Air Rights Lease Agreement, dated as of November 1, 2005 (the "Ground Lease"), by and between the Hospital, as landlord, and the Company, as tenant, the Hospital granted to the Company a leasehold interest in the Parking Garage Land and a sub-leasehold interest in the air space above the Dubois Street Land for a term of thirty-one (31) years, for the purpose of constructing and operating the Improvements; and

WHEREAS, in connection with the issuance of the Bonds (i) the Company and the Issuer entered into a certain Company Lease Agreement, dated as of November 1, 2005 (the "Company Lease"), pursuant to which the Company subleased the Land and any improvements thereon to the Issuer in order to undertake the Project and (ii) the Issuer and the Company entered into a certain Lease Agreement, dated as of November 1, 2005 (the "Original Lease Agreement"), for the purposes of, among other things, specifying the terms and conditions pursuant to which the Issuer subleased its interest in the Facility financed with the Bonds to the Company, with the rental payments thereunder in an amount sufficient to pay the principal of, Sinking Fund Installments on, Purchase Price and Redemption Price of, and interest on the Bonds; and

WHEREAS, the Bonds were originally secured pursuant to an irrevocable, transferable, direct pay letter of credit (the "Letter of Credit"), issued by KeyBank National Association (the "LOC Bank") in a stated amount equal to the aggregate principal amount of the Bonds plus up to fifty (50) days' accrued interest thereon pursuant to a Letter of Credit Reimbursement Agreement, dated as of November 1, 2005, as amended from time to time (as so amended, the "Reimbursement Agreement"), by and between the Company and the LOC Bank, with the Letter of Credit being issued to the Trustee for the benefit of the Holders to pay the principal of, Sinking Fund Installments on, Purchase Price and Redemption Price (as such terms are defined in the Schedule A to the Original Indenture) of, and interest on the Bonds.

WHEREAS, as further security for, among other things, the Bonds and the Company's obligations under the Reimbursement Agreement:

(i) the Issuer assigned to the Trustee and the LOC Bank all of its rights (except Unassigned Rights, as defined in the Original Indenture) under the Original Lease Agreement,

pursuant to the terms of a certain Pledge and Assignment, dated as of November 1, 2005 (the "Original Pledge and Assignment"), from the Issuer to the Trustee and the LOC Bank;

(ii) the Hospital agreed to transfer monies to the Company as directed by the Company (or as directed by the LOC Bank) to ensure that the Company is able to pay its monthly expenses and other obligations including debt service with respect to the Bonds, pursuant to a certain Makewell Agreement, dated as of November 1, 2005 (the "Makewell Agreement"), from the Hospital to the LOC Bank;

(iii) the Issuer and the Company granted a first priority mortgage lien on and security interest in the Facility to the LOC Bank pursuant to a certain Leasehold Building Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing and a certain Project Loan Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated as of November 1, 2005, from the Company and the Issuer to the LOC Bank (collectively, the "Mortgage");

(iv) the Company and the Issuer assigned to the LOC Bank all of their respective rights in any existing and future leases with respect to the Facility, pursuant to the terms of a certain Building Loan Assignment of Leases and Rents and a certain Project Loan Assignment of Leases and Rents, dated as of November 1, 2005, from the Company and the Issuer to the LOC Bank (collectively, the "Assignment of Leases");

(v) the Company, as guarantor, (the "Guarantor"), guaranteed to the Trustee the full and timely payment of the principal of, Sinking Fund Installments on, Redemption and Purchase Price of, and interest on the Bonds pursuant to the terms of a certain Guaranty, dated as of November 1, 2005 (the "Guaranty"), from the Guarantor to the Trustee.

WHEREAS, the Issuer has been advised that the Hospital and the LOC Bank desire, with the consent of the Company, to provide for an additional interest mode payable on the Bonds effective on or about November 30, 2010 (the "Bank Rate Mode"); and

WHEREAS, the Hospital has agreed to pay all fees, costs and other expenses of the Company and the Issuer, and their respective counsels incurred in effectuating the transactions contemplated hereby; and

WHEREAS, in order to effectuate the Bank Rate Mode:

(i) all outstanding Bonds will be mandatorily tendered for purchase and the Original Indenture will be supplemented and amended to, among other things, incorporate the Bank Rate Mode pursuant to the terms of the Original Indenture, as supplemented and amended by a certain First Supplemental Indenture of Trust, dated as of November 1, 2010 (the "First Supplemental Indenture") and a certain Second Supplemental Indenture of Trust, dated as of November 1, 2010 (the "Second Supplemental Indenture", and the Original Indenture as so supplemented and amended, is hereinafter referred to as the "Indenture");

(ii) the Original Lease Agreement will be supplemented and amended pursuant to a certain First Supplemental Lease Agreement, dated as of November 1, 2010, by and between the Issuer and the Company (the "First Supplemental Lease Agreement");

(iii) the Original Pledge and Assignment will be supplemented and amended pursuant to a certain First Supplemental Pledge and Assignment, dated as of November 1, 2010, by and among the Issuer, the Company and the LOC Bank (the "First Supplemental Pledge and Assignment"); and

(iv) the LOC Bank has agreed to purchase and hold the Bonds pursuant to a certain Bond Purchase Agreement or other similar agreement, dated the date of conversion to the Bank Rate Mode, by and among the Issuer, the Company and the LOC Bank (the "Purchase Agreement"); and

(v) the Issuer and the Company will amend and restate the Tax Compliance Agreement, dated November 17, 2005, pursuant to a certain First Amended Tax Compliance Agreement, to be dated the date of conversion to the Bank Rate Mode (the "Amended Tax Compliance Agreement"); and

(vi) certain other documents and instruments acceptable to the parties thereto will be executed and delivered; and

WHEREAS, the Issuer desires to adopt a resolution authorizing (i) the execution and delivery of the documents to which it is a party and (ii) the conversion of the Bonds to the Bank Rate Mode.

NOW, THEREFORE, BE IT RESOLVED by the City of Newburgh Industrial Development Agency as follows:

Section 1. The Issuer hereby approves the conversion of the Bonds to the Bank Rate Mode.

Section 2. In consequence of the foregoing, the Issuer hereby determines to cause a mandatory tender of the Bonds and to execute and deliver all documents necessary and incidental to the conversion of the Bonds to the Bank Rate Mode, including, but not limited to, the First Supplemental Indenture, the Second Supplemental Indenture, the First Supplemental Lease Agreement, the First Supplemental Pledge and Assignment, the Purchase Agreement, the Amended Tax Compliance Agreement, a replacement Bond bearing interest at the Bank Rate Mode and related documents.

Section 3. The execution and delivery of the First Supplemental Indenture and Second Supplemental Indenture (in such forms as are approved by Counsel to the Issuer and Bond Counsel) are hereby approved.

Section 4. The execution and delivery of the First Supplemental Lease Agreement (in such form as is approved by Counsel to the Issuer and Bond Counsel) is hereby approved.

Section 5. The execution and delivery of the First Supplemental Pledge and Assignment (in such form as is approved by Counsel to the Issuer and Bond Counsel) is hereby approved.

Section 6. The execution and delivery of the Amended Tax Compliance Agreement (in such form as is approved by Counsel to the Issuer and Bond Counsel) is hereby approved.

Section 7. The execution and delivery of the Purchase Agreement (in such form as is approved by Counsel to the Issuer and Bond Counsel) is hereby approved.

Section 8. (a) The Chairman (or Vice Chairman) or Administrative Director of the Issuer

are hereby authorized, on behalf of the Issuer, to execute and deliver the foregoing documents and any documents necessary and incidental to the conversion of the Bonds to the Bank Rate Mode (hereinafter collectively called the "Financing Documents"); and the Secretary of the Issuer is hereby authorized to affix the seal of the Issuer thereto where appropriate and to attest the same, all in substantially the forms thereof presented to this meeting or as otherwise authorized hereby with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman) or Administrative Director shall approve, including but not limited to the dated date of the Financing Documents. The execution of the Financing Documents by the Chairman (or Vice Chairman) or Administrative Director shall constitute conclusive evidence of such approval.

(b) The Chairman (or Vice Chairman) or Administrative Director is further hereby authorized, on behalf of the Issuer, to designate any additional Authorized Representatives of the Issuer.

Section 9. The officers, employees, and agents of the Issuer are hereby authorized and directed for and in the name and or behalf of the Issuer to do all acts and things required or provided by the provisions of the Financing Documents, and to execute and deliver all such additional certificates, instruments and documents, including the Financing Documents, and to do all such further acts and things as may be necessary or in the opinion of the officer, employee, or agent acting, desirable and proper to effect the purposes of the foregoing resolution and to cause compliance by the Issuer with all of the terms, covenants, and provisions of the Financing Documents binding upon the Issuer.

Section 10. It is hereby found and determined that all formal actions of the Issuer concerning and relating to the adoption of this resolution were adopted in an open meeting of the Issuer; and that all deliberations of the Issuer and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 11. Due to the complex nature of this transaction, the Issuer hereby authorizes its Chairman (or Vice Chairman) and/or Administrative Director to approve, execute and deliver such further agreements, documents and certificates as the Issuer may be advised by Counsel to the Issuer or Bond Counsel to be necessary or desirable to effectuate the foregoing, such approval to be conclusively evidenced by the execution of any such agreements, documents or certificates by the Chairman (or Vice Chairman) and/or Administrative Director.

Section 12. All other documents entered into in connection with the Bonds, including, but not limited to, the Makewell Agreement, shall remain in full force and effect.

Section 13. In connection with the execution and delivery of the Financing Documents and all other transactions contemplated hereby, the Hospital shall pay all fees and expenses of the Issuer and the Company, and their respective counsel, incurred in connection therewith, as well as all fees and expenses of the Issuer and the Company, and their respective counsel, incurred in connection with the ongoing examination of the Bonds by the Internal Revenue Service

Section 14. This resolution shall take effect immediately.

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

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
Joshua Smith	X			
Richard Bedrosian	X			
Michael Curry	X			
Spencer Gulliver			X	
Jerry Maldonado	X			
Sean O'Shea	X			
John Penney	X			

The resolutions were thereupon duly adopted.