

CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY (IDA)
MINUTES OF **SPECIAL** BOARD MEETING
October 25, 2021

Present

Board Members: Nancy Thomas, Vice Chair
Christina Amato, Gregory Nato, Adam Pollick, and Marlon Ramos

Absent: Michael Kelly
Recused: Chair Austin DuBois

Staff: Cherisse Vickers, Executive Director
Counsel: IDA Counsel Robert McLaughlin

1. **Roll Call**: Vice Chair Nancy Thomas called the meeting to order; a quorum is present.
2. **Proof of meeting notice**: accepted.
3. Resolution No. 2021-10-25-01, *Resolution Declaring Certain Findings of the Agency with Respect to Certain Bonds*.

IDA Counsel Bob McLaughlin explained to the board members the lineage of the Series A and B bonds for St. Luke's Parking Garage and IDA's involvement with those bonds

On a motion made by Christina Amato and seconded by Marlon Ramos, the resolution came before the board for passage.

A roll call of the resolution resulted in the following votes – Austin DuBois, recused; Nancy Thomas, Yea; Christina Amato, Yea; Marlon Ramos, Yea; Adam Pollick, Yea; Gregory Nato, Yea. With five (5) Yea votes, the resolution is approved and passes.

4. **Adjournment**

As there is no further business to come before the board, a motion to adjourn was made by Christina Amato and seconded by Gregory Nato; unanimously passed.

CITY OF NEWBURGH
INDUSTRIAL DEVELOPMENT AGENCY

Resolution No. 2021-10-25-01

**RESOLUTION DECLARING CERTAIN
FINDINGS OF THE AGENCY
WITH RESPECT TO CERTAIN BONDS**

**RESOLUTION DECLARING CERTAIN FINDINGS OF THE AGENCY WITH RESPECT
TO CERTAIN BONDS**

A special meeting of the City of Newburgh Industrial Development Agency (the “Agency”) was convened in public session at City Hall, 83 Broadway, Newburgh, New York in the 3rd Floor Meeting Room on October 25, 2021 at 6:00 o'clock p.m., local time.

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

Nancy Thomas	Vice Chairperson
Marlon Ramos	Treasurer
Christina Amato	Secretary
Adam Pollick	Member
Gregory Nato	Member
Michael Kelly	Member

ABSENT:

Austin DuBois	Chairperson
---------------	-------------

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

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

The following resolution was offered by Christina Amato, seconded by Marlon Ramos, 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" or the "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 commercial, manufacturing 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, 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 "Series 2005 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 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 Series 2005 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 Series 2005 Bonds to the Company; and

WHEREAS, the Series 2005 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 Series 2005 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 Series 2005 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 Series 2005 Bonds; and

WHEREAS, the Series 2005 Bonds were originally secured pursuant to an irrevocable, transferable, direct pay letter of credit (the "Letter of Credit"), issued by KeyBank National Association ("Key Bank") in a stated amount equal to the aggregate principal amount of the Series 2005 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 Key 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 Series 2005 Bonds.

WHEREAS, as further security for, among other things, the Series 2005 Bonds, and the Company's obligations under the Reimbursement Agreement:

(i) the Issuer assigned to the Trustee and Key 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 Key Bank;

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

(iii) the Issuer and the Company granted a first priority mortgage lien on and security interest in the Facility to Key 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 Key Bank (collectively, the "Mortgage");

(iv) the Company and the Issuer assigned to Key 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 Key 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 Series 2005 Bonds pursuant to the terms of a certain Guaranty, dated as of November 1, 2005 (the "Guaranty"), from the Guarantor to the Trustee; and

WHEREAS, in connection with the Series 2005 Bonds, on or about September 3, 2008, the Company and the Bank entered into an interest rate swap transaction (the "Series 2005 Bonds Swap") pursuant to an ISDA Master Agreement, Schedule and Confirmation (collectively, as previously amended, the "Series 2005 Bonds Swap Documents"); and

WHEREAS, in connection with the issuance of the Series 2005 Bonds, the Hospital executed a certain Makewell Agreement dated November 1, 2005 (as previously amended, the "Makewell Agreement") pursuant to which the Hospital agreed to fund certain operating shortfalls/deficits and other amounts of the Company required pursuant to the Reimbursement Agreement; and

WHEREAS, on or about November 1, 2010, the Company notified the Trustee and the Issuer of its intent to supplement and amend the Original Indenture in order to provide for an additional interest rate mode payable on the Series 2005 Bonds (the "Bank Purchase Rate"); and

WHEREAS, as a result of the request of the Company, the Trustee caused a mandatory tender of the Series 2005 Bonds on November 30, 2010 (the "Tender Date"); and

WHEREAS, in connection with and in order to effectuate the conversion of the Series 2005 Bonds to the Bank Purchase Rate: (i) the Issuer and the Trustee entered into a Second Supplemental Indenture of Trust, dated as of November 1, 2010, supplementing and amending the Original Indenture (the "Supplemental Indenture"; the Original Indenture as so supplemented and amended, the "Indenture") for the purpose of, among other things, adding the Bank Purchase Rate as a new interest rate payable on the Series 2005 Bonds, (ii) the Issuer and the Company entered into a First Supplemental Lease Agreement, dated as of November 1, 2010, supplementing and amending the Original Lease Agreement (the "First Supplemental Lease Agreement"; the Original Lease Agreement as so supplemented and amended, the "Lease Agreement"), (iii) the Bank and the Company entered into a First Amendment of Reimbursement Agreement, dated as of November 1, 2010, supplementing and amending the Original Reimbursement Agreement (the "First Amendment of Reimbursement Agreement"; the Original Reimbursement Agreement as so supplemented and amended, the "Reimbursement Agreement"), and (iv) the Issuer, Key Bank and the Trustee executed a First Supplemental Pledge and Assignment (the "First Supplemental Pledge

and Assignment"), dated as of November 1, 2010, for the purpose of supplementing and amending that certain Pledge and Assignment, dated as of November 1, 2005, from the Issuer to Key Bank and the Trustee (as so supplemented and amended, the "Pledge and Assignment"); and

WHEREAS, in connection with the execution and delivery of the Supplemental Indenture and the conversion of the interest rate payable on the Series 2005 Bonds to the Bank Purchase Rate, the Issuer and the Company executed and delivered an Amended and Restated Tax Compliance Agreement, dated as of November 30, 2010 (the "Tax Compliance Agreement"), pursuant to which the Issuer and the Company made certain representations and covenants, established certain conditions and limitations and created certain expectations, relating to compliance with the requirements imposed by the Internal Revenue Code of 1986, as amended, and regulations of the United States Treasury Department promulgated thereunder (collectively, the "Code"); and

WHEREAS, on or about August 27, 2009, the Master Trustee, KeyBank, HSBC USA, National Association and the 2001 bond insurer for unrelated bonds issued on behalf of the Hospital, entered into an Amended and Restated Intercreditor Agreement pursuant to which the parties set forth certain agreements by and among them with respect to shared collateral for each of their respective Obligations under a November 1, 2001 Master Indenture (the "Intercreditor Agreement") with the Trustee as Master Trustee thereunder; and

WHEREAS, on or about October 20, 2017, as a result of certain Events of Default under the Intercreditor Agreement not related to the Series 2005 Bonds, the Lenders (as defined in the Intercreditor Agreement) and the Hospital, with the acknowledgement of the Master Trustee, entered into a Forbearance Agreement (the "Initial Forbearance Agreement") pursuant to which the Lenders agreed to forbear from (1) exercising any of their respective rights and remedies under their respective Debt Documents relating to certain bonds 9as defined in the Intercreditor Agreement, the 2001 Bond Documents, the 2006 Bond Documents, the Makewell Agreement, and the HSBC Documents, or (2) directing the Master Trustee to exercise any rights and remedies under Article VI of the November 1, 2001 Master Indenture until March 31, 2020; and

WHEREAS, pursuant to that certain First Amendment to Forbearance Agreement dated as of March 31, 2020 (the "First Amendment", and together with the Initial Forbearance Agreement, the "First Forbearance Agreement"), the Lenders agreed to extend the "Forbearance Period" thereunder to May 30, 2020 to provide the Obligors, as defined in the Intercreditor Agreement and in the First Forbearance Agreement, including the Hospital, with time to obtain refinancing for the Obligations stated therein; and

WHEREAS, the Obligors did not obtain financing on or before May 30, 2020 and the Obligations remain outstanding; and

WHEREAS, in connection with the conversion of the interest rate payable on the Series 2005 Bonds to the Bank Purchase Rate, the Series 2005 Bonds were purchased by Key Bank as of November 30, 2010 and bear interest from that date on the unpaid principal amount at the rate set forth therein and in the Indenture; and

WHEREAS, the Series 2005 Bonds are subject to redemption prior to maturity, in the manner and upon the terms and conditions set forth in the Indenture and in the Series 2005 Bonds; and

WHEREAS, the Company, the Hospital, the Obligors (as defined in the Intercreditor Agreement and First Forbearance Agreement) and Key Bank (and other Lenders) have agreed to enter into a Second Forbearance Agreement (the “Second Forbearance Agreement”); and

WHEREAS, the Second Forbearance Agreement provides for additions to the Indenture and the Lease Agreement in connection with the Series 2005 Bonds as provided for therein; and

WHEREAS, in order to facilitate the Second Forbearance Agreement, the Issuer has determined that certain modifications and amendments must be made to the Series 2005 Bond Documents, as modified by the 2010 Conversion Documents, to continue the tax-exempt status of the Series 2005 Bonds as set forth in such amended documents, including, without limitation, the Series 2005 Indenture and the Series 2005 Bonds; and

WHEREAS, the Agency and its counsel have also determined that those certain modifications and amendments to the Series 2005 Bond Documents require a reissuance of the Series 2005 Bonds pursuant to regulations promulgated by the Internal Revenue Service; and

WHEREAS, the Agency authorized the reissuance of the Series 2005 Bonds (the “Reissued Bonds”) and the execution of certain documents required for such action by resolution dated June 21, 2021; and

WHEREAS, the Second Forbearance Agreement now requires certain payments (the “Sinking Fund Payments”) to be made in advance of the Reissued Bonds and in connection therewith, certain determinations to be made by the Agency; and

WHEREAS, after the making of the Sinking Fund Payments, the amount outstanding under the Reissued Bonds will be less than \$10 million.

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

Section 1. The Agency hereby determines and declares that the Reissued Bonds, after taking into account the Sinking Fund Payments made at the closing of the Reissued Bonds, are hereby designated as bank qualified bonds under Section 265 of the Internal Revenue Code.

Section 2. This Resolution shall take effect immediately.

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

Austin DuBois	VOTING	Absent
Nancy Thomas	VOTING	Yes
Marlon Ramos	VOTING	Yes
Christina Amato	VOTING	Yes
Michael Kelly	VOTING	Absent
Gregory Nato	VOTING	Yes
Adam Pollick	VOTING	Yes

The foregoing Resolution was thereupon declared duly adopted

