

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, March 6, 2013, at 8:00 p.m. in Council Chambers at City Hall. *The Council will convene at 7:00 p.m. and it is expected they will adjourn into Executive Session at 7:01 p.m. to discuss personnel matters.*

AGENDA

1. Pledge of Allegiance.
2. Roll Call.
3. General Announcements.
4. Draft unapproved minutes of the regular meeting of the City Council held February 27, 2013.
5. Mayor's Management Report
 - Capital Projects Update
 - Legal Update
6. Authorization for the City Manager to enter into a Purchase and Sale Agreement with 1037 Boston Post Road, LLC for the property located at 1037 Boston Post Road.
7. Discussion and Update on the Draft Financial Disclosure Form.
8. Discussion on establishing a temporary Technology Committee.
9. Residents may be heard on matters for Council consideration that do not appear on the agenda.
10. Resolution to grant permission to the Rye Sustainability Committee, the Conservation Commission/Advisory Commission, and the Rye Arts Center to hold a free public event on the Village Green to commemorate Earth Day 2013 on Saturday, April 20, 2013 from 10:00 a.m. to 4:00 p.m.
11. Consideration of a request by the Rye YMCA for the use of City streets for the 25th Annual Rye Derby on Sunday, April 28, 2013 from 9:00 a.m. to 2:00 p.m.
12. Miscellaneous communications and reports.
13. Old Business.
14. New Business.
15. Adjournment.

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The next regular meeting of the City Council will be held on Wednesday, March 20, 2013 at 8:00 p.m.

** City Council meetings are available live on Cablevision Channel 75, Verizon Channel 39, and on the City Website, indexed by Agenda item, at www.ryeny.gov under "RyeTV Live".

* Office Hours of the Mayor by appointment by emailing dfrench@ryeny.gov.



CITY COUNCIL AGENDA

NO. 4

DEPT.: City Clerk

DATE: March 6, 2013

CONTACT: Dawn Nodarse

AGENDA ITEM Draft unapproved minutes of the Regular Meeting held February 27, 2013, as attached.

FOR THE MEETING OF:

March 6, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council approve the draft minutes.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

Approve the minutes of the Regular Meeting held February 27, 2013, as attached.

DRAFT UNAPPROVED MINUTES of the
Regular Meeting of the City Council of the City of
Rye held in City Hall on February 27, 2013 at 8:00
P.M.

PRESENT:

DOUGLAS FRENCH Mayor
LAURA BRETT
RICHARD FILIPPI
PETER JOVANOVICH
JULIE KILLIAN
JOSEPH A. SACK
Councilmembers

ABSENT: CATHERINE F. PARKER, Councilmember

1. Pledge of Allegiance

Mayor French called the meeting to order and invited the Council to join in the Pledge of Allegiance.

2. Roll Call

Mayor French asked the City Clerk to call the roll; a quorum was present to conduct official city business.

3. General Announcements

Announcements were made regarding various events and activities.

4. Draft unapproved minutes of the regular meeting of the City Council held February 13, 2013

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried, to approve the minutes of the regular meeting of the City Council held on February 13, 2012.

Corporation Counsel Wilson said that at the last meeting she had noted that the police officer who had an interest in a company that bid on the Police Uniforms Contract no longer had that interest. She said it has come to her knowledge since then that an Auxiliary Police Officer currently has an interest in one of the companies that has bid in the past.

5. Mayor's Management Report
● Capital Projects Update

- Legal Update

This agenda item was deferred.

5A. Rye Golf Club Investigation Update and Report

Mayor French said that in October the Council decided to conduct an investigation of the Rye Golf Club based on information given to a Golf Commission member. A final report has been issued which has been posted on the City website. Over a period of six years one individual manipulated the system to his own financial gain. The Council will move forward and look at its civil options and will speak with its insurance carrier. The matter has been referred to the District Attorney. There was no evidence found that any other City employee was involved to their own personal gain. Councilwoman Brett said that when the Council undertook the investigation it did not understand the size and scope of the conduct that had occurred. It has been a lengthy and costly investigation and more complicated than initially anticipated due to the number of entities involved. There are still some documents outstanding from banks but the investigation is nearing completion. It was a thorough, independent investigation that will put the Golf Club in a position to move forward. The Council cannot comment on the District Attorney's investigation going forward. Councilman Jovanovich said the City still has a golf club to run and needs to move forward. The Council must look at several aspects of how this came about including the conduct of controls in the management of the City and the role of present and past Councils. There should be discussions about how the enterprise funds and the Golf Commission should be structured. Councilwoman Killian said she was deeply disturbed by the report because the openness of City government was called into question. The City must focus on identifying where the oversight shortcomings were and what can be done to fix them and needs to adopt an effective Conflict of Interest policy. Rye Golf Club should be restored to the jewel that it is. Councilman Sack said the City must move forward with a reenergized Golf Club Commission, who should continue to stay involved. The subject matter of the report is not a surprise but it is startling not just for the former Club Manager's actions but because City management failed to exercise meaningful oversight over invoices over the years and failed to follow up on items brought to their attention by the City's auditors. It is important that the Council and public can trust City management to be open and transparent. The Council must review the report and take action.

A lengthy discussion ensued between the Council and members of the public including: *Jim Amico, John Duffy, Angela Sposato, Al Vitiello, Chris O'Brien, Mack Cunningham, Anthony Piscione, Leon Sculti and Bob Zahm.* Topics covered included, the investigation report; the cost of the investigation; the scope of the temporary Rye Golf Club Strategic Committee (RFP Committee) and how it is operating; preventing what happened at the Golf Club from happening again; affordability of the Club; giving the Golf Commission more input into operation of the Club; the 2010 audit report; the operation of the Enterprise Funds; the tipping issue; use of professional services contracts and the leasing process; the actions of City Manager Pickup; modifying the City Charter; and levels of staffing and oversight.

6. Resolution to transfer additional funds from the Contingency account to fund legal services for a Council investigation pursuant to Article 6, Section C6-3 of the City Charter entitled "Investigations"
Roll Call.

Corporation Counsel Wilson said that the bills before the Council were current through February 25th. There was a discussion about receiving estimates for legal services that must still be done in connection with the investigation prior to the work being done so the Council can appropriate the money beforehand.

Councilman Jovanovich made a motion, seconded by Councilwoman Brett, to adopt the following Resolution:

WHEREAS, City staff has determined that the amounts required for the cost of legal services performed in January and February 2013 in connection with the investigation into the Rye Golf Club were not anticipated and were not provided for in the adopted 2013 budget by 102,000; and

WHEREAS, the General Fund Contingent Account has a balance of \$300,000; now, therefore, be it

RESOLVED, that the City Comptroller is authorized to transfer \$102,000 from the General Fund Contingent Account to the City Council Legal Services Account.

ROLL CALL:

AYES: Mayor French, Councilmembers Brett, Filippi, Jovanovich, Killian, and Sack
NAYS: None
ABSENT: Councilwoman Parker

The Resolution was adopted by a 6-0 vote

7. Discussion of the draft Contract for Sale for the property located at 1037 Boston Post Road

City Manager Pickup said that the Council had a basic form of a Purchase and Sale Agreement before it. Gene Pride from CBRE, the commercial real estate broker hired by the City, presented an overview of the marketing process for the property, which began in October 2012 and included email notices, a direct telephone campaign and placing notices on a commercial sale internet website. Eight written offers were received. Four bidders who had submitted offers over \$4 million were engaged to revise their offers and three increased their offers to over \$5 million. The contract offer that has been negotiated with a private company from Long Island is for \$5.6 million, all cash. The criteria used to analyze offers was price; method of payment; amount of deposit put down upon signing the contract; and expertise in owning similar real estate properties. City Manager Pickup said the deal will be cash positive to the City overall. Corporation Counsel Wilson said she is working on a license agreement for use

of 10 parking spaces during weekday mornings. Perry Shore, the owner of the current tenant, Lester's, said he did not feel he was being treated fairly by the Council and urged the Council to reconsider his offer to purchase the property, which involves obtaining outside financing. Adam Wolf, the investor who is the purchaser in the subject contract, showed a rendering of the renovations his company proposed to make to the building and indicated that they are looking for a high end retail tenant for the location, and would consider Lester's. Members of the Council indicated their preference for an "all cash" deal.

8. Residents may be heard on matters for Council consideration that do not appear on the agenda

Former City Councilmember *Mack Cunningham*, spoke about the amount of money the City has already spent in "soft costs" on the Central Avenue Bridge prior to work beginning. He also asked if public access from the bridge deck to the Nature Center was included in the bridge project design. City Manager Pickup said that it was included on the Boston Post Road side of the brook.

Jim Amico said he agrees that civility is needed but said that it should be both ways. He also spoke about police overtime and the need for a police presence around the schools at drop off and dismissal times.

9. Discussion on establishing a temporary Technology Committee

This agenda item was deferred.

10. One appointment to the Finance Committee to fill a term expiring on January 1, 2014, by the Mayor with Council approval

Mayor French made a motion, seconded by Councilman Filippi and unanimously carried, to appoint Bertrand de Frondeville to the Finance Committee to fill a term expiring on January 1, 2014.

The following appointment was added to the agenda:

One appointment to the Board of Architectural Review for a three-year term expiring on January 1, 2016

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried, to appoint Roberta Downing to the Board of Architectural Review for a three-year term expiring on January 1, 2016.

11. Consideration of a request by the Milton Elementary School PTO to approve a parade to precede the Milton Elementary School Fair on Saturday, March 16, 2013 from 9:00 a.m. to 10:15 a.m.

Councilman Jovanovich made a motion, seconded by Councilwoman Brett and unanimously carried, to adopt the following Resolution:

RESOLVED, that the City Council of the City of Rye hereby approves the request of the Milton Elementary School PTO for use of City streets for a parade to precede the Milton Elementary School Fair on Saturday March 16, 2013 from 9:00 a.m. to 10:15 a.m.

12. Consideration of a request by the Rye Little League to approve a parade to kickoff Opening Day of the 56th Little League Season on Saturday, April 13, 2013 beginning at 12:00 p.m.

Councilman Jovanovich made a motion, seconded by Mayor French and unanimously carried, to adopt the following Resolution:

RESOLVED, that the City Council of the City of Rye hereby approves the request of Rye Little League for use of City streets for a parade to kickoff Opening Day of the 56th Little League Season on Saturday, April 13, 2013 beginning at 12:00 p.m.

13. Consideration of a request by the Midland Elementary School PTO to approve a parade to precede the Midland Elementary School Fair on Saturday, April 20, 2013 from 9:00 a.m. to 10:15 a.m.

Councilwoman Killian made a motion, seconded by Councilman Filippi and unanimously carried, to adopt the following Resolution:

RESOLVED, that the City Council of the City of Rye hereby approves the request of the Midland Elementary School PTO for use of City streets for a parade to precede the Midland Elementary School Fair on Saturday, April 20, 2013 from 9:00 a.m. to 10:15 a.m.

14. Resolution to grant permission to the Rye Sustainability Committee, the Conservation Commission/Advisory Council, and the Rye Arts Center to hold a free public event on the Village Green to commemorate Earth Day 2013 on Saturday, April 20, 2013 from 10:00 a.m. to 4:00 p.m.

This item was deferred to the next meeting.

15. Consideration of a request by the Rye YMCA for the use of City streets for the 25th Annual Rye Derby on Sunday, April 28, 2013 from 9:00 a.m. to 2:00 p.m.

This item was deferred to the next meeting.

16. Miscellaneous Communications and Reports

There was nothing reported on under this agenda item.

17. Old Business

Councilman Sack said that he had not received the information he had requested from the City Manager in connection with retaining an outside personnel consultant to review a complaint of workplace harassment filed by a City employee directed against individuals who are not City employees. City Manager Pickup said there were confidentiality issues and he would have to discuss it with the Council in executive session.

Councilwoman Brett asked for an update on the Sluice Gate. City Manager Pickup said all the power to the site is operational and all replacement parts on the actuator are delivered and installed. Final testing will take place and the City will go through a series of dry runs and calibrations. If the gate functions as it should it could be turned over to the City by the end of next week.

18. New Business

There was nothing discussed under this agenda item.

19. Adjournment

There being no further business to discuss, Mayor French made a motion, seconded by Councilman Jovanovich and unanimously carried, to adjourn into executive session to discuss a personnel matter and not return into regular session at 11:50 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk



CITY COUNCIL AGENDA

NO. 5

DEPT.: City Council

DATE: March 6, 2013

CONTACT: Mayor Douglas French

AGENDA ITEM: Mayor's Management Report

FOR THE MEETING OF:

March 6, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Manager provide a report on requested topics.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The Mayor has requested an update from the City Manager on the following:

- Capital Projects Update
- Legal Update



CITY COUNCIL AGENDA

NO. 6

DEPT.: City Manager

DATE: March 6, 2013

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into a Purchase and Sale Agreement with 1037 Boston Post Road, LLC for the property located at 1037 Boston Post Road.

FOR THE MEETING OF:

March 6, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The City entered into a broker agreement with CBRE to market the property located at 1037 Boston Post Road. After reviewing the bids, it has been determined that Wolf Realty (1037 Boston Post Road, LLC) best meets all of the established criteria for the purchase of the property including: price, method of payment, amount of deposit, and expertise and familiarity with this type of building. The environmental due diligence period is expected to end by mid-March.

See attached Purchase and Sale Agreement.

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (“*Agreement*”), dated as of the ____ day of February, 2013, by and between **CITY OF RYE, NEW YORK**, a New York municipal corporation (“*Seller*”), and 1037 Boston Post Road LLC (“*Purchaser*”), recites and provides:

RECITAL

Seller is the owner of fee simple title to certain property located on 1037 Boston Post Road in the City of Rye, Westchester County, New York and identified as Tax Parcel Number(s): 146.11-1-4 (the “*Property*”) as more particularly described on Exhibit A annexed hereto together with all buildings, facilities and other improvements located thereon (collectively, the “**Improvements**”); (a) all right, title and interest of Seller under the Lease and all security deposits (if any) that Seller is holding pursuant to the Lease; (b) all right, title and interest of Seller in all machinery, furniture, equipment and items of personal property owned by Seller and attached or appurtenant to, located on or used in the ownership, use, operation or maintenance of the Property or the Improvements, as listed on Exhibit D (collectively, the “**Personalty**”); (c) subject to the terms of the Lease, all right, title and interest of Seller, if any, to any unpaid award for (1) any taking or condemnation of the Property or any portion thereof, or (2) any damage to the Property or the Improvements by reason of a change of grade of any street or highway; (e) all easements, existing licenses, rights and appurtenances belonging to or inuring the benefit of the Property; and (f) all right, title and interest of Seller in and to any warranties, tradenames, logos (including any federal or state trademark or tradename registrations), or other identifying name or mark now used in connection with the Property and/or the Improvements, but expressly excluding any such property to the extent owned by Tenant (the “**Intangible Property**”) (collectively, the “*Premises*”). Seller wishes to sell the Premises and Purchaser wishes to purchase it on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of their mutual promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the parties hereto covenant and agree as follows:

ARTICLE I **Agreement**

1.1 Purchase Agreement. This Agreement shall constitute a binding contract, on the terms and conditions herein set forth, for the purchase and sale of the Premises.

ARTICLE II **Transfer of Assets**

2.1 Seller agrees to convey, sell, assign and transfer to Purchaser, and Purchaser agrees to purchase from Seller, free and clear of any and all liens, encumbrances, equities,

restrictions, liabilities and claims, other than “Permitted Exceptions” (as hereinafter defined) the Premises.

ARTICLE III **Purchase Price**

3.1 Purchase Price. The purchase price for the Premises shall be Five Million Six Hundred Thousand (\$5,600,000.00) dollars in lawful currency of the United States of America, the “**Purchase Price**” of which the Deposit shall be a part.

3.2 Deposit. At the time this Agreement is fully executed, Purchaser shall deliver in escrow to Harris Beach, PLLC (the “**Escrow Agent**”) a sum equal to two hundred and fifty thousand (\$250,000.00) dollars by check, and an additional two hundred and fifty thousand (\$250,000.00) dollars at the end of the due diligence period (the “**Deposit**”) subject to collection, drawn on a commercial banking institution maintaining branch banking facilities in the State of New York to be held in an interest bearing account for the benefit of Purchaser. The Deposit shall be retained or refunded, as the case may be, in accordance with the terms of the Escrow Agreement attached hereto as Exhibit B. At closing, the Deposit shall be paid to Seller and applied to the Purchase Price or shall be otherwise applied pursuant to the provisions of this Agreement.

ARTICLE IV **Settlement**

4.1 Time and Place. Settlement of the purchase and sale of the Premises shall be made at the offices of Seller’s attorneys, Harris Beach PLLC, 445 Hamilton Avenue, Suite 1206, White Plains, New York 10601, or at Purchaser’s election, at the office designated by its lender or at such other place as the parties may agree to in writing, within thirty (30) of expiration of the Due Diligence Period, as hereinafter defined (“**Settlement**”).

4.2 Deliveries. At Settlement, as a condition precedent to Seller’s obligation to perform its covenants under this Agreement, Purchaser shall deliver to Seller: (i) payment of the Purchase Price (less the Deposit, which shall be remitted to Seller by the Escrow Agent at Settlement), as the same may be adjusted after taking into account the prorations set forth in Section 5.1 of this Agreement, by, at Purchaser’s option, wire transfer, certified check or bank draft; (ii) such affidavits, or other documents as may be required to record Seller’s closing documents and issue a fee title policy in favor of Purchaser; and (iii) such other instruments customarily executed by Purchaser in transactions of a similar kind and/or required by any governmental authority or agency. At Settlement, as a condition precedent to Purchaser performing its covenants under this Agreement, Seller shall deliver to Purchaser: (a) the “**Deed**” (as hereafter defined); (b) such affidavits of Seller or other documents as may be required to record Seller’s closing document and issue a fee title policy in favor of Purchaser subject only to those exceptions as Purchaser has agreed or been deemed to have agreed to accept pursuant to Section 6.1 of this Agreement; (c) a duly completed and executed Certificate of Non-Foreign Status as required by Section 1445 of the Internal Revenue Code and any other certificates required by any governmental authority or agency; (d) an assignment of the lease and any

security deposit thereunder; (e) a Bill of Sale for the personal property, if any; (f) to the extent assignable an Assignment of Contracts, Permits, Licenses and Warranties; (g) an original Tenant Estoppel Certificate dated no earlier than 30 days prior to the date of Settlement. In addition, the business terms of the Tenant Estoppel Certificate must be in accordance with and not contradict the Lease. If the Lease and any amendments, bearing the original signatures of the landlord and tenant thereunder have not been delivered to Buyer previously, a copy thereof confirming that the copy is true, correct and complete shall be attached to the Tenant Estoppel; (h) all transfer tax statements, declarations and filings as may be necessary or appropriate for purposes of recordation of the deed; (i) good standing certificates and corporate resolutions or member or partner consents, as applicable, and such other documents as reasonably requested by Escrow Agent; (j) an owner's title affidavit as to mechanics' liens and possession and other matters reasonably required by Escrow Agent in customary form reasonably acceptable to Buyer and Escrow Agent; (k) letter to Tenant; and (l) such other instruments as are reasonably required by Escrow Agent to close the escrow and consummate the purchase of the Premises in accordance with the terms hereof. If payment of the Purchase Price is made by wire transfer, payment shall not be deemed to have been made until such time as the institution designated by Seller to receive such funds has confirmed to Seller that such funds have been received and credited to Seller's account. Any certified check or bank draft used to pay any portion of the Purchase Price shall be unendorsed, drawn to the order of Seller on a commercial banking institution having branch bank offices in the State of New York.

4.3 Costs. Seller shall pay for the cost of the UCC searches against Seller, the cost of a new or re-dated map of an instrument survey certified to Purchaser, the title company and the Purchaser's lender, the cost of preparing the Deed, all costs and premiums charged by Seller's title insurance company for all searches and the issuance of a fee owner's title insurance policy in the amount of the purchase price, and any New York State Transfer Tax or any other transfer tax (but only in the event that, by reason of Seller's exemption from the payment thereof, Purchaser is required by law to pay the same). Purchaser shall pay recording/filing fees for recording the deed, any mortgage, assignment of leases and rents, and financing statements, and any mortgage recording taxes. Each party shall pay its own legal, accounting and other expenses incurred in connection with this Agreement or Settlement hereunder.

ARTICLE V

Prorations and Adjustments

5.1 Prorations and Adjustments. (a) Purchaser shall be responsible for the payment of all real estate taxes, water and sewer charges and assessments, installments of assessments for local improvements and special assessments and ad valorem levies payable with respect to the period from and after the Settlement. There shall be no pro-rations for such amounts as between Seller and Purchaser at Settlement and Seller shall pay any due prior to the settlement.

(b) All rents shall be prorated as of the day of Settlement with Purchaser being credited for rent if any paid by Tenant, attributable to the day of Settlement through and including the last day of the calendar month in which the Settlement occurs.

(c) Any other charges or fees which are customarily adjusted and are proratable shall also be prorated at Settlement by and between Purchaser and Seller.

(d) Seller and Purchaser each hereby acknowledge and agree, that the Lease is a triple net lease and the Lease obligates Tenant to pay all real estate taxes, water and/or sewer charges, insurance, and the costs of utilities directly to the appropriate authority and accordingly the same shall not be apportioned by and between the Seller and Purchaser and the Buyer shall look solely to Tenant for the payment thereof and the Property shall be sold subject to any such open charges and/or real estate taxes. At Settlement, (i) Seller shall credit against the Purchase Price, or otherwise transfer to Purchaser, the amount of any cash Security Deposit (to the extent such Security Deposit has not been applied against delinquent Rent or otherwise as provided in the Leases), and (ii) Seller shall be entitled to receive and retain such refundable cash deposits to the extent originally delivered or tendered by Seller.

ARTICLE VI

Title and Survey Objections

6.1 Title and Survey Objections.

(a) Purchaser hereby acknowledges and agrees that, within five (5) days following the date on which Purchaser delivers the Deposit to the Escrow Agent pursuant to this Agreement, Seller shall provide Purchaser with the results of the title search (Seller shall be responsible for the payment of said title search) in order to obtain a commitment (the “*Commitment*”) for an owner’s title insurance policy from a title insurance company licensed to do business in the State of New York (the “*Title Company*”). Seller agrees to sell and convey, and Purchaser agrees to purchase, the Premises subject only to the following “*Permitted Exceptions*”: (i) any state of facts disclosed by the most recent survey of the Premises delivered by Seller to Purchaser provided that such state of facts do not render title unmarketable; (ii) any state of facts arising after the date of the most recent survey delivered to Purchaser, provided such facts do not render title unmarketable and/or uninsurable and do not interfere with the current use of existing buildings and improvements; (iii) omitted; (iv) any installment not yet due and payable of assessments affecting the Premises or any portion thereof; (v) any recorded utility company rights and easements for electricity, water, steam, gas, telephone or other service or the right to use and maintain poles, lines, wires, cables, conduits, pipes, boxes and other fixtures and facilities in, over, under and upon the Premises, provided they are not violated by the existing improvements or the current use thereof; (vi) any real estate taxes and assessments that are a lien but not yet due and payable; (vii) all laws, ordinances and governmental regulations, including all applicable building, zoning, land use and environmental ordinances and regulations, provided that they are not violated by the improvements or the current use thereof; (viii) any matters encumbering title as a result of the acts of Purchaser or its agents; (ix), possible encroachments not shown on any survey of the Premises, of trees, plant life, hedges, fences and sidewalks, and variations between record lines and trees, plant life, hedges, fences and sidewalks (none of which shall be deemed to render title unmarketable, provided such encroachments and variations, if any do not extend onto the Premises more than one foot at any point); and (x) upon the condition that the City of Rye shall provide a zoning letter regarding parking compliance, the right of Seller, for a period of twenty (20) years from the date of Settlement, (to be specifically provided in the

license agreement attached hereto as Exhibit C) to, on a non-exclusive basis and further provided same are available, utilize up to ten (10) parking spaces on the Premises for the parking of automobiles from 9 a.m. to 12 p.m. on weekdays that are not legal holidays in the State of New York (the “*Parking Reservation*”). Upon the mutual agreement of the parties the right of the City of Rye to utilize up to ten (10) parking spaces on the Premises pursuant to the license agreement may be extend beyond the initial twenty (20) year period.

(b) If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this Agreement, Seller shall, within a reasonable period of time following its receipt of all the Title Documents, notify Purchaser of its inability to do so. In such event, or if Purchaser shall have any other grounds under this Agreement for refusing to consummate the purchase provided for herein, Purchaser, nevertheless, may elect, by notice to Seller given within 10 days after receipt of notice from Seller of Seller’s inability to convey title as aforesaid, to accept such title as Seller may be able to convey without any credit against or resolution of the purchase price and without any liability on the part of Seller. If Purchaser shall not so elect, Purchaser may terminate this Agreement and the sole liability of Seller shall be to refund the Deposit to Purchaser. Upon such refund, this Agreement shall be null and void and of no further force or effect and the parties hereto shall be relieved of all further obligations and liability other than as explicitly set forth herein. In the absence of notice from Purchaser of Purchaser’s election to consummate the purchase or terminate this Agreement within 20 days of Seller’s notice, Purchaser shall be deemed to have elected to terminate this Agreement. Notwithstanding anything to the contrary set forth herein, Seller shall be obligated to remove all liens that can be removed or cured any which are of a nature that are capable of being cured with reasonable efforts prior to Closing and/or by the payment of a liquidated sum (other than those caused by Purchaser’s acts), any title encumbrances created by Seller after the date of this Agreement, and any violations for which the Seller as Landlord under the Lease Agreement (as hereinafter defined) is responsible.

ARTICLE VII
The Deed

7.1 The Deed. At Settlement, Seller shall deliver to Purchaser a statutory form of Bargain and Sale Deed with Covenant against Grantor’s Acts, and the covenant required by Section 13 of the Lien Law, in proper form for recording, conveying the Premises, together with the buildings and/or improvements located thereon, subject only to the Permitted Exceptions and such other matters as Purchaser shall be required to and/or agree or be deemed to have agreed to take subject.

ARTICLE VIII
Representations and Warranties

8.1 Seller’s Representations and Warranties. Seller represents and warrants as of the date hereof and by appropriate certificate delivered at Settlement will, as a condition to closing, represent and warrant as of the date hereof and as of Settlement that:

(a) Non-contravention. The execution and performance of this Agreement and Settlement hereunder will not conflict with any provision of law applicable to Seller, nor result in the breach of any provisions of, or constitute a default under, any agreement, instrument or judgment to which Seller is a party or by which Seller is bound.

(b) Organization, Good Standing and Power. Seller is duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite and legal right, power and authority to own its property and to enter into this Agreement and perform its obligations hereunder.

(c) Authorization and Execution. This Agreement has been duly authorized by all necessary action on the part of Seller, has been duly executed and delivered by Seller, constitutes the valid and binding agreement of Seller and is enforceable against Seller in accordance with its terms, subject to (i) general principles of equity and public policy (regardless of whether considered in a proceeding in equity or at law), and (ii) any and all bankruptcy, avoidance, reorganization, moratorium, fraudulent conveyance, preferential transfer, insolvency, or other similar laws relating to or affecting the enforcement of creditors' rights.

(d) Authority to Sell. Seller owns the Premises in fee simple absolute free and clear of all liens and encumbrances except for Permitted Exceptions and Seller is the sole owner of the entire lessor's interest in the Lease. The individual signing on behalf of the Seller confirms that he or she has the authority to enter into this Agreement and that no third party approvals are needed.

(e) Condemnation. Seller has received no written notices, and has no knowledge of any pending or threatened condemnation or eminent domain proceedings or any litigation or administrative proceedings affecting any portion of the Premises.

(f) Litigation. There is no litigation or other proceedings pending or, to the best of Seller's knowledge, threatened or contemplated against the Premises or any part thereof.

(g) Leases. Other than the Lease Agreement, there are no leases or rights of use or occupancy with respect to the Premises. The Lease forwarded to Buyer under this Agreement is a true, correct and complete copy of the Lease. The Lease is in full force and effect and there is no default of any material obligation thereunder which remains uncured beyond applicable notice and cure periods. No brokerage or leasing commissions or other compensation is or will be due or payable to any person, firm, corporation or other entity with respect to or on account of the current term of the Lease or any extension or renewal thereof. Except as set forth in Lease, Tenant is not entitled to an allowance to construct any tenant improvements.

(h) Contractual Obligations. There are no service, maintenance or other contractual obligations with respect to the Premises that will be binding on the Purchaser after the Settlement (other than those entered into by Purchaser).

(i) Violations. Except for violations cured or remedied on or before the date hereof or required to be cured or remedied by Tenant pursuant to the terms of the Lease, Seller has not received any written notice from (or delivered any notice to) any governmental authority regarding any violation of any law applicable to the Property and Seller does not have knowledge of any such violations.

(j) There are no occupancy rights, leases or tenancies affecting the Property other than the Lease. Neither this Agreement nor the consummation of the transactions contemplated hereby is subject to any first right of refusal or other purchase right in favor of any other person or entity; and apart from this Agreement, Seller has not entered into any written agreements for the purchase or sale of the Property, or any interest therein which has not been terminated.

(k) Seller has delivered to Purchaser the complete copies of all environmental reports in its possession with respect to the Premises. Other than the information in such reports, Seller has no knowledge of any hazardous materials on or under the Premises or that the Premises is in violation of applicable environmental laws.

8.2 Additional Matters Relating to Seller's Representations. Seller makes no representations or warranties to Purchaser other than as specifically set forth in this Agreement. The Premises will, at Settlement, be transferred "as is, where is and with all faults on the date hereof without warranty or representation of any kind or character except as specifically set forth in this Agreement. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THERE IS NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR A SPECIFIC PURPOSE OR AS TO THE CONDITION OF THE PREMISES, EXCEPT AS SET FORTH IN THIS AGREEMENT. Purchaser has not received any representations or warranties of any kind, whether written or oral, except as specifically set forth in this Agreement. Purchaser's sole remedy for material breaches or violations of the foregoing representations or warranties which are uncovered by Purchaser and remain uncured by Seller after its receipt of notice of the same on or prior to Settlement shall be to terminate this Agreement whereupon the Deposit shall be forthwith paid to Purchaser.

For purposes of this Agreement, the term "**AS IS, WHERE IS AND WITH ALL FAULTS**" shall mean the following:

PURCHASER ACKNOWLEDGES AND AGREES THAT UPON CLOSING SELLER SHALL SELL AND CONVEY TO PURCHASER AND PURCHASER SHALL ACCEPT THE PREMISES "AS IS, WHERE IS AND WITH ALL FAULTS" CONDITION ON THE DATE HEREOF, EXCEPT TO THE EXTENT EXPRESSLY PROVIDED OTHERWISE IN THIS AGREEMENT. EXCEPT TO THE EXTENT EXPRESSLY SET FORTH IN THIS AGREEMENT, PURCHASER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLERS ARE NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTIES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE PREMISES OR RELATING THERETO OR ANY REAL ESTATE BROKER OR AGENT REPRESENTING OR PURPORTING TO REPRESENT SELLERS, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING.

UPON SETTLEMENT, EXCEPT FOR THE OBLIGATIONS OF SELLER THAT SHALL EXPRESSLY SURVIVE SETTLEMENT HEREUNDER, PURCHASER, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED AND RELEASED SELLER (AND SELLER'S OFFICERS, OFFICIALS, EMPLOYEES, AGENTS, LEGAL REPRESENTATIVES AND ASSIGNS) FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION (INCLUDING CAUSES OF ACTION IN TORT), LOSSES, DAMAGES, LIABILITIES, COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, WHICH PURCHASER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER (AND SELLER'S OFFICERS, OFFICIALS, EMPLOYEES, AGENTS, LEGAL REPRESENTATIVES AND ASSIGNS) AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES OR MATTERS REGARDING THE PREMISES. PURCHASER AGREES THAT THE TERMS OF THIS SECTION SHALL BE BINDING UPON ANY AND ALL SUCCESSORS IN INTEREST TO PURCHASER.

PURCHASER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SELLER HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PREMISES, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM THE PREMISES, (C) THE SUITABILITY OF THE PREMISES FOR ANY AND ALL ACTIVITIES AND USES WHICH PURCHASER MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PREMISES OR ITS OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES, OR (F) ANY OTHER MATTER WITH RESPECT TO THE PREMISES, AND, EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SELLERS SPECIFICALLY DISCLAIM ANY REPRESENTATIONS REGARDING ANY ENVIRONMENTAL CONDITIONS.

8.3 Purchaser's Representations and Warranties. Purchaser represents and warrants to Seller that:

(a) Non-contravention. The execution and performance of this Agreement and Settlement hereunder will not conflict with any provision of law applicable to Purchaser, nor, to Purchaser's knowledge, result in the breach of any provisions of, or constitute a default under, any agreement, instrument or judgment to which Purchaser is a party or by which Purchaser is bound.

(b) Organization, Good Standing and Power. Purchaser is duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite and legal right, power and authority to own its property and to enter into this Agreement and perform its obligations hereunder.

(c) Authorization and Execution. This Agreement is enforceable against Purchaser in accordance with its terms, subject to (i) general principles of equity and public policy (regardless of whether considered in a proceeding in equity or at law), and (ii) any and all bankruptcy, avoidance, reorganization, moratorium, fraudulent conveyance, preferential transfer, insolvency, or other similar laws relating to or affecting the enforcement of creditors' rights.

(d) Authority to Purchase. The individual signing on behalf of Purchaser confirms that he has the authority to enter into this Agreement and that no third party approvals are needed.

8.4 Survival of Representations and Warranties. All representations, warranties and agreements made by either party in this Agreement shall survive Settlement and transfer of title.

ARTICLE IX

Mortgages and Contracts

9.1 Mortgages and Contracts. Seller agrees that from the date of this Agreement to Settlement, it will (i) not mortgage, voluntarily place, or permit to be placed, a lien or encumber any part of the Premises, except if the same shall be discharged at Settlement; and (ii) not become a party to any licenses, leases, options, rights of first refusal, contracts, declarations, restrictions or agreements of any kind or nature relating to the Premises. Seller further agrees that it: (a) shall continue to operate and manage the Property in the same manner in which Seller has previously operated and managed the Property; (b) shall, subject to reasonable wear and tear, maintain the Property in the same (or better) condition as exists on the date hereof; and (c) shall not, without Purchaser's prior written consent, which, after the expiration of the Due Diligence Period may be withheld in Purchaser's sole discretion: (i) amend the Lease in any manner, nor enter into any new lease, license agreement or other occupancy agreement with respect to the Property; (ii) consent to an assignment of the Lease or a sublease of the premises demised thereunder or a termination or surrender thereof; (iii) terminate the Lease nor release any guarantor of or security for the Lease unless required by the express terms of the Lease; and/or (iv) cause or consent to an alteration of the premises demised thereunder (unless such consent is non-discretionary). Seller shall promptly inform Purchaser in writing of any material event adversely affecting the ownership, use, occupancy or maintenance of the Property, whether insured or not.

ARTICLE X

Default

10.1 Default by Purchaser. The parties agree that, in the event of a default by Purchaser under this Agreement, the damages suffered by Seller would be difficult to ascertain. Seller and Purchaser agree that in the event of a default by Purchaser in closing pursuant to this Agreement, which is not cured within ten (10) business days of notice from the Seller, Seller may retain the Deposit as liquidated damages as and for Seller's sole remedy (plus reasonable attorneys' fees incurred in connection with such action, provided that Seller prevails thereon). Upon such termination, neither Purchaser nor Seller shall have any further rights, obligations or liabilities hereunder, except as otherwise expressly provided herein. Seller and Purchaser agree that (a) actual damages due to Purchaser's default hereunder would be difficult and inconvenient to ascertain and that such amount is not a penalty and is fair and reasonable in light of all relevant circumstances, (b) the amount specified as liquidated damages is not disproportionate to the damages that would be suffered and the costs that would be incurred by Seller as a result of having withdrawn the Property from the market, and (c) Buyer desires to limit its liability under this Agreement to the amount of the Deposit paid in the event Purchaser fails to complete Closing. Seller hereby waives any right to recover the balance of the Purchase Price, or any part thereof, and the right to pursue any other remedy permitted at law or in equity against Purchaser. In no event under this Section or otherwise shall Purchaser be liable to Seller for any punitive, speculative or consequential damages.

10.2 Default by Seller. In the event that Seller defaults hereunder, Purchaser's remedies shall be (a) the cancellation of this Agreement by written notice to Seller, and the return of the Deposit and any interest earned thereon plus pay to Purchaser all of the actual out-of-pocket costs and expenses incurred by Purchaser in connection with its title examination but in no event to exceed the net amount which would be charged by a title company in the county where the Property is located for title examination of the Property without issuance of policy, or (b) specific performance (plus reasonable attorneys' fees incurred in connection with such action, provided that Purchaser shall prevail thereon) under this Agreement, or (c) any other remedies available in law or in equity.

ARTICLE XI

Risk of Loss

11.1 Risk of Loss. The risk of loss or damage to the Premises by fire or other casualty prior to Settlement shall be on Seller. If prior to Settlement, any material loss or damage occurs to all or any portion of the Premises by fire or other casualty, Purchaser shall be entitled to elect either to (a) terminate this Agreement and have the Deposit refunded, in which event the parties hereto shall have no further obligations or liabilities to one another hereunder except as otherwise expressly set forth in Section 20.1 hereof, or (b) proceed to Settlement, in which event all claims, insurance proceeds and other payments arising from any such loss, and all right, title and interest of Seller in and to the same, shall be paid or assigned to Purchaser, and the amount of the deductible shall be credited to the Purchase Price, with no other adjustment of the Purchase Price paid at Settlement. In all other cases, the parties shall proceed to Settlement with no other adjustment to the Purchase Price and all claims, insurance proceeds and other payments from such loss shall be paid or assigned to Purchaser.

ARTICLE XII
Condemnation

12.1 Condemnation. If, prior to Settlement, any material taking pursuant to the power of eminent domain is proposed or occurs as to all or any portion of the Premises intended to be acquired at Settlement by Purchaser, or sale occurs in lieu thereof, Purchaser shall be entitled to elect either to (i) terminate this Agreement, or (ii) proceed to Settlement, in which event, all proceeds, awards and other payments arising from any such taking or sale shall be paid to Purchaser, with no adjustment of the Purchase Price paid at Settlement. If Purchaser elects to terminate this Agreement, the Deposit shall be refunded to Purchaser and the parties hereto shall have no further obligations or liabilities to one another hereunder except as otherwise expressly set forth in Section 20.1 hereof. In all other cases, the parties shall proceed to Settlement with no adjustment to the Purchase Price and all claims, awards and other payments arising from such taking, and all of Seller's right, title and interest in and to the same, shall be paid or assigned to Purchaser at Settlement.

ARTICLE XIII
Agents and Brokers

14.1 Agents and Brokers. The City has engaged a broker and shall be solely responsible for any fees or commissions associated with the broker. The City agrees to indemnify and hold harmless the other party from all liability, expense, loss, cost or damage, including reasonable attorneys' fees, that may arise by reason of any claim, demand or suit of any agent or broker arising out of facts constituting a breach of the foregoing representations and warranties.

ARTICLE XIV
Binding Agreement

15.1 Binding Agreement. This Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns and is not intended to confer upon any other person any rights or remedies hereunder.

ARTICLE XV
Notices

16.1 Notices. All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or made only if sent by prepaid overnight carrier, with a record of receipt, and sent via electronic mail to the parties at the following addresses:

If to Purchaser: 1037 Boston Post Road LLC

125 Jericho Turnpike
Suite 401
Jericho, NY 11753
Email: awolf@bwpetroleum.com

And to: Salamon, Gruber, Blaymore & Strenger, P.C.
97 Powerhouse Road
Suite 102
Roslyn Heights, NY 11577
Email: cgruber@sgnblaw.com

If to Seller: The City of Rye
City Hall
Attn: Scott Pickup
1051 Boston Post Road
Rye, New York 10580
e-mail: manager@ryeny.gov

And to: Harris Beach, PLLC
Attn: Kristen Kelley Wilson, Esq.
445 Hamilton Avenue, Suite 1206
White Plains, New York 10601
e-mail: kwilson@ryeny.gov

Each communication shall be deemed to have been given on the date received.

ARTICLE XVI
Applicable Law

17.1 Applicable Law. This Agreement shall be construed, performed and enforced in accordance with the laws of the State of New York without regard or reference to its conflict of laws principles. THE PARTIES HERETO AGREE THAT VENUE IN ANY AND ALL ACTIONS AND PROCEEDINGS RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT SHALL BE IN THE STATE COURTS IN AND FOR WESTCHESTER COUNTY, NEW YORK OR THE FEDERAL COURTS IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK, WHICH COURTS SHALL HAVE EXCLUSIVE JURISDICTION FOR SUCH PURPOSE.

ARTICLE XVII
Interpretation

18.1 Interpretation. When the context in which words are used in this Agreement indicates that such is the intent, words in the singular number shall include the plural, and vice

versa, and words in the masculine gender shall include the feminine and neuter genders, and vice versa.

ARTICLE XVIII
Title and Headings; References

18.1 Title and Headings; References. Titles and headings to sections and subsections herein are inserted for convenience or reference only, and are not intended to be a part of or to affect the meaning or interpretation of this Agreement. All section and subsection references in this Agreement are to the sections or subsections of this Agreement unless expressly stated to the contrary.

ARTICLE XIX
Entire Agreement; Modification

19.1 Entire Agreement; Modification. This Agreement contains the entire agreement between the parties hereto relating to the Premises and supersedes all prior and contemporaneous negotiations, understandings, memoranda and agreements, written or oral, between the parties hereto. This Agreement shall not be amended or modified and no waiver of any provision hereof shall be effective unless set forth in a written instrument executed with the same formality as this Agreement.

ARTICLE XX
Miscellaneous

20.1 Survival. The provisions of Section 6.3 and Articles V, VIII, XI, XII and XIII through XX of this Agreement shall survive Settlement hereunder.

20.2 Assignment. Seller may not assign this Agreement and all of its rights, duties and obligations hereunder to any person or entity. Purchaser may assign this Agreement and all of its rights, duties and obligations hereunder to a newly formed limited liability company of which Purchaser, or the principals of Purchaser, shall own controlling interest. No party shall be relieved of any liability arising hereunder in respect of any assignment pursuant to this Section, unless such assignor has received a written release expressly excepting such assignor from any liability that may arise hereunder.

20.3 Counterparts. This Agreement may be executed in two or more counterparts which together shall constitute a single agreement.

20.4 OFAC/Patriot Act Representations; Indemnity.

(a) Neither Seller nor Purchaser nor any owner of a direct or indirect interest in either (i) is listed on any Government Lists (as defined below), (ii) is a person who has been determined by competent authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC (as defined below) or in any enabling legislation or other Presidential

Executive Orders in respect thereof, (iii) has been previously indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense (as defined below), or (iv) is currently under investigation by any governmental authority for alleged criminal activity.

(b) For purposes hereof, the term “***Patriot Act Offense***” means any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (i) the criminal laws against terrorism; (ii) the criminal laws against money laundering, (iii) the Bank Secrecy Act, as amended, (iv) the Money Laundering Control Act of 1986, as amended, or the (v) Patriot Act (as defined below). For purposes hereof, the term “***Patriot Act***” means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as the same may be amended from time to time, and corresponding provisions of future laws. The term “***Patriot Act Offense***” also includes, without limitation, the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term “***Government Lists***” means (x) the Specially Designated Nationals and Blocked Persons Lists maintained by Office of Foreign Assets Control (“***OFAC***”), (y) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC, or (z) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other government authority or pursuant to any Executive Order of the President of the United States of America.

(c) Each of Seller and Purchaser hereby agrees to indemnify, defend and hold the non-breaching party harmless from and against any and all claims (including, without limitation, court costs and reasonable attorneys’ fees actually incurred in connection with any such claims) for its breach of the foregoing representations contained in subsection (a) above. The representations, warranties and indemnity obligations contained in this Section 21.4 shall survive termination of this Agreement and/or closing under and delivery of the Deed pursuant to this Agreement.

20.5 Binding On Successors. This Agreement shall be binding upon and shall insure to the benefit of Purchaser and Seller and their respective representatives, successors and permitted assigns.

20.6 Fees and Other Expenses. Except as otherwise provided herein, each of the parties hereto shall pay its own fees and expenses in connection with this Agreement. In any dispute or action between the parties arising out of this Agreement, or in connection with the Premises, the prevailing party shall be entitled to have and recover from the other party all losses, direct compensatory damages, costs and expenses (including without limitation court costs and reasonable attorneys’ fees) related thereto, whether by final non-appealable judgment or by out-of-court settlement.

20.7 Captions. Title and captions are inserted for convenience only and shall not define, limit or construe in any way the scope or intent of this Agreement. References to

Paragraphs are to Paragraphs as numbered in this Agreement unless expressly stated otherwise.

20.8 Modifications. Any alteration, change or modification of or to this Agreement, in order to become effective, must be made in writing and in each instance signed on behalf of each party.

ARTICLE XXI **Lease Agreement**

21.1 Lease Agreement. The parties acknowledge that a tenant currently occupies and uses the Premises pursuant to a lease agreement dated October 23, 2006 an Assignment and Assumption agreement, dated July 1, 2008 and as amended by an Amendment to Lease acknowledged October 10, 2007 and an Amendment to Lease dated April 13, 2011 and again on September 14, 2012 by and between Seller, as lessor, and Lester's of Rye LLC , as lessee (the "***Lease Agreement***"), the term of which is scheduled to expire on December 31, 2013. Seller shall request an Estoppel Certificate from Tenant certified to Purchaser, its successors and assigns (and simultaneously provide Purchaser with a copy of such request). It shall be a condition of Closing that Seller shall have obtained an estoppel certificate from Tenant in the form reasonably acceptable to Purchaser (the "**Tenant Estoppel Certificate**"). Seller shall promptly deliver to Purchaser photocopies or pdf files of the executed estoppel certificate when Seller receives the same.

ARTICLE XXII **Environmental Contingency**

23.1 Environmental Contingency. Purchaser shall have a period of 30 (thirty) days to have environmental reports and/or tests performed with respect to the Premises. Such environmental due diligence period shall commence upon signing this Agreement and shall end 30 (thirty) days from the signing. If such environmental reports or tests reveal that the Premises contain any hazardous materials or is not in compliance with environmental laws, Seller shall have the right to cure any identified environmental issues. If Seller fails to properly cure any environmental issues, Purchaser shall have the right to terminate this Agreement, in which case any Deposit paid hereunder shall be returned to Purchaser. Purchaser may elect to cause a Phase II environmental assessment to be performed, at the sole cost and expense of Purchaser, upon the Premises by an inspection company. Such Phase II environmental assessment may involve the taking and testing of soil and liquid samples from the Premises as well as other invasive testing procedures, provided that Purchaser gives to Seller at least two business days' prior written notice before starting the Phase II environmental assessment. If the Premises are damaged by such testing procedures, the Premises shall be repaired at the sole cost and expense of Purchaser.

23.2 Definitions:

- (a) As used herein, “Hazardous Substances” shall include but not be limited to any and all substance (whether solid, liquid or gas) defined, listed or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including, but not limited to petroleum and petroleum byproducts, asbestos and asbestos-containing materials, polychlorinated biphenyls, lead, radon, radioactive materials, flammables and explosives, mold, mycotoxins, microbial matter and air borne pathogens (naturally occurring or otherwise), but excluding substances of kinds and in amounts ordinarily and customarily used or stored in similar properties for the purposes of cleaning or other maintenance or operations and otherwise in compliance with all Environmental Laws.
- (b) As used herein, “Environmental Laws” shall include, but may not be limited to, the following statutes, as amended, any successor thereto, and any regulations promulgated pursuant thereto, and any state or local statutes, ordinances, rules, regulations and the like addressing similar issues: the Comprehensive Environmental Response, Compensation and Liability Act; the Emergency Planning and Community Right-to-Know Act; the Hazardous Substances Transportation Act; the Resource Conservation and Recovery Act (including but not limited to Subtitle I relating to underground storage tanks); the Solid Waste Disposal Act; the Clean Water Act; the Clean Air Act; the Toxic Substances Control Act; the Safe Drinking Water Act; the Occupational Safety and Health Act; the Federal Water Pollution Control Act; the Federal Insecticide, Fungicide and Rodenticide Act; the Endangered Species Act; the National Environmental Policy Act; and the River and Harbors Appropriation Act. The term “Environmental Law” shall also include, but not be limited to, any present and future federal, state and local laws, statutes ordinances, rules, regulations and the like, as well as common law: conditioning transfer of property upon a negative declaration or other approval of a governmental authority of the environmental condition of the Premises; requiring notification or disclosure of Releases of Hazardous Substances or other environmental condition of the Premises to any governmental authority or other person, whether or not in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with transfer of title to or interest in property; imposing conditions or requirements in connection with permits or other authorization for lawful activity; relating to nuisance, trespass or other causes of action related to the Premises; and relating to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Premises.

Signature Page Follows

IN WITNESS WHEREOF, each of the parties hereto has caused this Purchase and Sale Agreement to be executed in its name pursuant to due authority as of the dates set forth below.

SELLER:

PURCHASER:

CITY OF RYE, NEW YORK

1037 Boston Post Road LLC

By: _____

By: _____

Scott D. Pickup

Its: _____

Its: City Manager

Date: February ____, 2013

Date: February ____, 2013

EXHIBIT A

Description of Premises

EXHIBIT B

Escrow Agreement

ESCROW AGREEMENT, made as of the ____ day of February, 2013 between CITY OF RYE, NEW YORK, a New York municipal corporation hereinafter referred to as "Seller"), and _____ (hereinafter referred to as "Purchaser") and HARRIS BEACH, PLLC, having an address at 445 Hamilton Avenue, Suite 1206, White Plains, New York, 10601 (hereinafter referred to as "Escrow Agent").

WITNESSETH:

WHEREAS, Seller and Purchaser are the parties to a Purchase and Sale Agreement dated as of the date hereof with respect to the sale and purchase of property located at 1037 Boston Post Road, Rye, New York (the "Agreement"; defined terms used herein shall have the same meanings set forth in the Agreement); and

WHEREAS, Seller and Purchaser desire that Escrow Agent act as escrow agent with respect to the Deposit in accordance with the terms and conditions set forth below; and

WHEREAS, Escrow Agent is willing to act in such capacity.

NOW, THEREFORE, Seller, Purchaser and Escrow Agent hereby agree as follows:

1. Escrow Agent is hereby appointed as Escrow Agent to hold and distribute the Deposit in accordance with the terms hereof and Escrow Agent hereby acknowledges receipt of the Deposit and agrees to act in such capacity.

2. The Deposit shall be placed in a separate interest-bearing trust account at an FDIC-insured bank. At Closing all accrued interest on the Deposit shall be applied as a credit toward the Purchase Price, or upon termination of this Agreement by Purchaser, all accrued interest on the Deposit shall be promptly paid to Purchaser.

3. Escrow Agent will deliver the Deposit and any interest earned thereon to Purchaser or Seller, as the case may be, upon the following terms and conditions:

- (i) To Seller upon the consummation of the Closing contemplated herein, or
- (ii) To Purchaser if Purchaser has terminated the Agreement as set forth in Paragraph 23.1, or
- (iii) To Seller, upon receipt of a written notice from Seller stating that Seller is entitled under the Agreement to the Deposit and demanding payment of the same; provided,

however, that Escrow Agent will not honor such demand until not less than ten (10) days after the date on which Escrow Agent shall have delivered a copy of such notice and demand to Purchaser, nor thereafter, if during such ten (10) day period, Escrow Agent shall have received written notice of objection from Purchaser in accordance with the provisions of Section 10 below.

(iv) To Purchaser, upon receipt of a written notice from Purchaser stating that Purchaser is entitled under the Agreement to the return of the Deposit and demanding return of the same; provided, however, that Escrow Agent will not honor such demand until not less than ten (10) days after the date on which Escrow Agent shall have delivered a copy of such notice and demand to Seller, nor thereafter, if during such ten (10) day period, Escrow Agent shall have received written notice of objection from Seller in accordance with the provisions Section 10 below.

4. Upon receipt of a written demand for the Deposit pursuant to the provisions of subsections 3(iii) or 3(iv) above, Escrow Agent shall promptly deliver a copy thereof to the other party. The other party shall have the right to object to the delivery of the Deposit by delivery to and receipt by Escrow Agent of written notice of objection within ten (10) days after the receipt of Escrow Agent's mailing of such copy to the other party, but not thereafter. Upon receipt of such notice of objection, Escrow Agent shall promptly deliver a copy thereof to the party who made the written demand.

5. If Escrow Agent shall have received a notice of objection as provided above, within the time therein prescribed, or any disagreement or dispute shall arise between or among any of the parties hereto resulting in adverse claims and demands being made for the Deposit whether or not litigation has been instituted, then, except for Purchaser's sole right to terminate pursuant to Section 3(ii) above, in which event (x) Purchaser's sole notice shall be adequate and acceptable to Escrow Agent (whether protested by Seller or not), and (y) the Deposit and all interest thereon shall be promptly paid to Purchaser in full, Escrow Agent shall continue to hold the Deposit subject to such adverse claims and Escrow Agent shall not be or become liable in any way or to any person for its refusal to comply with such claims or demand, and (i) in the event of any joint written direction from Seller and Purchaser, Escrow Agent shall then disburse the Deposit in accordance with said direction, or (ii) in the event Escrow Agent shall receive a written notice advising that a litigation over entitlement to the Deposit has been commenced, Escrow Agent may deposit the Deposit with the clerk of the court in which said litigation is pending, or (iii) Escrow Agent may but shall not be required to) take such affirmative steps as it may, at its option, elect in order to substitute another impartial party reasonably acceptable to Seller and Purchaser to hold the Deposit in accordance with this Agreement subject to such adverse claims including the commencement of an action for interpleader in a court of competent jurisdiction, the cost thereof to be borne by whichever of Seller and Purchaser is the losing party, and thereupon Escrow Agent shall be released of and from all liability hereunder. Seller and Purchaser jointly and severally agree to reimburse Escrow Agent for any and all expenses incurred in the discharge of its duties under this Article, including, without limitation, attorneys' fees. Nothing herein, however, shall affect the liability of a defaulting party to another party for reimbursement of any amount paid to Escrow Agent under this subsection.

6. It is expressly understood that Escrow Agent acts hereunder as an accommodation to

Seller and Purchaser and as depository only and is not responsible or liable in any manner whatever for the sufficiency, correctness, genuineness or validity of any instrument deposited with it, or for the form or execution of such instruments or for the identity, authority or right of any person executing or depositing the same, or for the terms and conditions of any instrument pursuant to which Escrow Agent or the parties may act. The Escrow Agent shall have no liability other than for its gross negligence or actual malfeasance and shall, in all instances, act in accordance with the terms and provisions of this Escrow Agreement.

7. Escrow Agent shall not have any duties or responsibilities except those set forth in this Escrow Agreement and shall not incur any liability in acting upon any signature, notice, request, waiver, consent, receipt or other paper or document believed by Escrow Agent to be genuine, and Escrow Agent may assume that any person purporting to give it any notice on behalf of any party in accordance with the provisions hereof has been duly authorized to do so.

8. In the event of a dispute between the parties regarding the disposition of the Deposit, except for Purchaser's sole right to terminate pursuant to Section 3(iii) above, in which event (x) Purchaser's sole notice shall be adequate and acceptable to Escrow Agent (whether protected by Seller or not) and (y) the Deposit and all interest thereon shall be promptly paid to Purchaser in full, Escrow Agent shall take one of the actions described in paragraph 5 above, and upon delivery of the Deposit in accordance therewith, Escrow Agent shall be relieved of all liability, responsibility or obligation with respect to or arising out of the Deposit and any and all of its obligations therefrom.

9. In the event of any conflict between the provisions of this Escrow Agreement and the provisions of the Agreement, the provisions of the Agreement shall control as between Seller and Purchaser.

10. All notices required or permitted hereunder shall be given in accordance with the notice provision of the Agreement. Seller's and Purchaser's respective addresses for notices are as set forth in the Agreement. Escrow Agent's address for notices is as follows:

Harris Beach, PLLC
445 Hamilton Avenue, Suite 1206
White Plains, New York 10601
Attention: Kristen Kelley Wilson, Esq.
E-mail: kwilson@harrisbeach.com

11. This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

12. This Escrow Agreement may not be amended or modified, nor can any provision hereof be waived, except by a written instrument signed by the party against whom enforcement of any such amendment, modification or waiver is sought.

13. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which constitute one and the same instrument.

14. This Agreement is to be governed by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

SELLER:

CITY OF RYE, NEW YORK

By: _____

Name:

Title:

PURCHASER:

1037 Boston Post Road LLC

By: _____

Name:

Title:

ESCROW AGENT:

HARRIS BEACH, PLLC

By: _____

Authorized Signatory

EXHIBIT C

License Agreement



CITY COUNCIL AGENDA

NO. 7

DEPT.: City Council

DATE: March 6, 2013

CONTACT: Mayor Douglas French

AGENDA ITEM: Discussion and Update on the Draft Financial Disclosure Form.

FOR THE MEETING OF:

March 6, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The City is reviewing the policy of financial disclosure with respect to public officials and selected City employees. The Corporation Counsel has drafted a proposed Financial Disclosure Statement which would be filed yearly by public officials and selected employees within the City; the information would be confidential.

See attached.

CONFLICT OF INTEREST FORM FOR THE CITY OF RYE – 2013

Instructions: Please answer each question legibly and with blue or black ink only. “Not Applicable” is not an acceptable answer for any question. “No” or “None” may be used to answer a question. This form shall be filled out annually and returned to the City Clerk in a sealed envelope.

Applicability: The following classes of officers or employees of the City of Rye shall be deemed “reporting officials” and shall be required to file this Conflict of Interest Form as provided under this section:

- (1) All Elected Officials;
 - (2) All Commissioners and Deputy Commissioners;
 - (3) All Department heads and Assistant Department heads;
 - (4) Members of the Board of Appeals, Planning Commission, Board of Ethics, Board of Assessment Review, Architectural Review Board, Conservation Commission Advisory Council.
- ** No person shall be deemed to be a municipal officer or employee solely by reason of being a volunteer firefighter or auxiliary police.

DEFINITIONS:

Relative - a spouse, domestic partner, child, step-child, sibling, half-brother, half-sister, parent, step-father, step-mother and shall also include any person claimed as a dependent on the New York State individual tax return of the disclosing City officer or employee.

Financial Benefit - any pecuniary or material benefit including, but not limited to any money, stock, security, service, license, permit, contract, authorization, loan, travel, entertainment, discount not available to general public, real or personal property, or anything of value.

Outside Employer - (1) any person from whom or from which a City officer or employee receives a financial benefit for services rendered or goods sold or produced; (2) any business in which the City officer or employee has an ownership interest of five percent (5%) or more; (3) any business in which the City officer or employee has a value in excess of fifty thousand dollars (\$50,000.00); or (4) any business corporation for which the City officer or employee is an uncompensated member of the board of directors or is an uncompensated corporate officer.

Interest – A pecuniary or material benefit accruing to a municipal officer or employee, or a pecuniary or material benefit accruing to: (1) the municipal officer’s or employee’s spouse, minor children and dependents; (2) a firm, partnership or association of which such officer or employee is a member or employee; (3) a corporation of which such officer or employee is an officer, director or employee; and (4) a corporation, any stock of which is accrued or controlled directly or indirectly by such officer or employee.

GENERAL INFORMATION

Name: (Last Name, First Name, M.I.): _____

Home Address: _____

Home Telephone No.: _____

Title of Position: _____ Salaried: Yes _____ No _____

Council, Department, Board, or Commission: _____: Term Ending: _____

REAL ESTATE OWNERSHIP

List the address of each piece of property in the City of Rye that you or your spouse own or have a financial interest in, including your primary residence.

GIFTS/FINANCIAL BENEFITS

To the best of your knowledge, state the names of **Relatives** who have received or solicited a **Financial Benefit** from the City of Rye or appeared before the City of Rye on behalf of another person. Attach additional paper if necessary (only list those gifts/benefits received within the past year).

While in your position with the City of Rye, have you received a gift valued in excess of seventy five dollars (\$75.00) within the last year?

Yes _____ No _____

OUTSIDE EMPLOYER/CONSULTING/OTHER BUSINESS

Do you have an **Outside Employer** or business? Yes _____ No _____

If yes, state the name, address, and telephone number of your **Outside Employer** or business. Attach additional paper if necessary.

During the past year, has your **Outside Employer** or business solicited a **financial benefit** or appeared before the City of Rye on behalf of another person?

Yes _____ No _____

If yes, state the nature of such activities or matters. Attach additional paper if necessary.

Identify any **interest** in any contract involving the City of Rye held by you, your Spouse, Household Member(s), or Children. Attach additional paper if necessary.

Vendor

Nature of Contract

During the past year, have you been an officer of any political party or political committee?

Yes _____ No _____

If yes, please describe. Attach additional paper if necessary.

AMENDMENTS/MODIFICATIONS

If, at any time subsequent to filing this form, I become aware that any of the above information is inaccurate, incomplete or otherwise no longer applicable, I will notify the City Clerk of same immediately by filing an amended form.

CODE OF ETHICS

I HAVE RECEIVED, READ AND UNDERSTAND THE CITY OF RYE CODE OF ETHICS AND WILL ABIDE BY SUCH REQUIREMENTS.

Yes _____ No _____

I _____ (print name) HEREBY CERTIFY UNDER THE PENALTY OF PERJURY THAT THE FOREGOING INFORMATION IS TRUE TO THE BEST OF MY KNOWLEDGE.

Signature of Reporting Individual

Sworn before me this
____ day of _____, 2013

NOTARY PUBLIC



CITY COUNCIL AGENDA

NO. 8

DEPT.: City Council

DATE: March 6, 2013

CONTACT: Mayor Douglas French

ACTION: Discussion on establishing a temporary Technology Committee.

FOR THE MEETING OF:

March 6, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: A recommendation has been put forward to establish a five member temporary Committee to explore how technology can enhance services to residents.

Proposed improvements include:

- Expand the use of the existing City listserv to broadcast important notifications to Rye residents
- Exploration of how social media can be used to provide information and services
- The establishment of a City WiFi network providing open access to the Internet at select areas within Rye
- Update the City website to provide comprehensive information on Rye suitable for new residents
- Identify technology trends that are happening with other local governments



CITY COUNCIL AGENDA

NO. 10

DEPT.: City Manager

DATE: March 6, 2013

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Resolution to grant permission to the Rye Sustainability Committee, the Conservation Commission/ Advisory Commission, and the Rye Arts Center to hold a free public event on the Village Green to commemorate Earth Day 2013 on Saturday, April 20, 2013 from 10:00 a.m. to 4:00 p.m.

FOR THE MEETING OF:

March 6, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the City Council approve the resolution.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The Rye Sustainability Committee, the Conservation Commission/ Advisory Commission, and the Rye Arts Center has requested use of the Village Green to hold a free public event on the Village Green to commemorate Earth Day 2013 on Saturday, April 20, 2013 from 10:00 a.m. to 4:00 p.m.

See attached.



A community-wide celebration to commemorate Earth Day will take place in Rye on Saturday April 20th, from 10:00 a.m. to 4:00 p.m. (Rain date: Sunday, April 21st) Earth Day is Monday, April 22nd.

Centering around the exhibit Geodes: Nature's Art opening at The Rye Arts Center, this community-wide celebration includes numerous participants and locations in Rye.

The theme for this year's celebration is Rye Rocks eARTh Day: Protect the Earth and the art within it. Residents are encouraged to visit events and activities and appreciate the natural beauty of the sites and sights in Rye

Earth Day sponsors and participants include:

- *The Rye Arts Center*
- *The Rye YMCA*
- *The Rye Nature Center*
- *The Rye Sustainability Committee*
- *The Rye Conservation Committee*
- *Rye Town Park*
- *The Wainwright House*
- *Edith Read Sanctuary*
- *Jay Heritage Center*
- *Rye Free Reading Room*
- *Down to Earth Farmers Market*
- *Reach out Rye—middle school community service group*

There will be additional information regarding specific activities at all these locations

Events on the Village Green

Display tables and exhibit posters will be set up providing information on green practices in general and promoting the City's commitment to sustainable grounds maintenance by providing relevant information about the City's green practices.

Event at Rye Arts Center Gallery

April 16th to May 24th: Nature's Art: Geodes from the Collection of Robert R. Wiener



CITY COUNCIL AGENDA

NO. 11

DEPT.: City Manager

DATE: March 6, 2013

CONTACT: Scott D. Pickup

AGENDA ITEM: Consideration of a request by the Rye YMCA for the use of City streets for the 25th Annual Rye Derby on Sunday, April 28, 2013 from 9:00 a.m. to 2:00 p.m.

FOR THE MEETING OF:

March 6, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council consider granting the request.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The Rye YMCA is requesting the Council approve their use of City streets for the 25th Annual Rye Derby on Sunday, April 28, 2013 from 9:00 a.m. to 2:00 p.m.

See attached letter from Gregg Howells, YMCA Executive Director



FOR YOUTH DEVELOPMENT
FOR HEALTHY LIVING
FOR SOCIAL RESPONSIBILITY

January 16, 2013

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VP/President-Elect

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Gregg R. Howells
Executive Director

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Werner E. Tietjen

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Nancy J. Haneman
Joseph T. Raho
Michael T. Tokarz

Ms. Dawn Nordarse, City Clerk
City of Rye
1051 Boston Post Road
Rye, New York 10580

RE: Rye Derby

Dear Ms. Nordarse:

We are writing to request permission from the City of Rye for use of city streets on Sunday, April 28, 2013 for the 25th Anniversary of the Rye Derby sponsored by the Rye YMCA.

The one-mile "Family Fun Run" will begin at 12:15 pm and the five-mile run and 5K will start at 10:15 am, using the same course used last year. As always, the Rye Y will be the focal point of festivities before and after the race. This is a community event that attracts as many as 800 participants and several hundred spectators. (Racecourse from last year enclosed).

Prior to race day, the Rye Y will provide a certificate of insurance naming the City of Rye as additionally insured for that day. We also have instructed our race advisors not to use paint or chalk on city streets and we will follow the course that has been agreed upon with the Rye City Police department for this race. Sally Wright, our Race Director, will be coordinating her efforts with Lt. Falk.

Thank you in advance for your cooperation.

Sincerely,

Gregg Howells
Executive Director

OK - SDP

CC: Lt. Falk, Eleanor Militana

GRH:pec

The Rye YMCA is a 501 c3 non-profit organization dedicated to strengthening the foundation of families and community.

RYE YMCA

21 Locust Avenue, Rye, New York 10580
P 914 967 6363 F 914 967 0644 www.ryeymca.org