

CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, February 27, 2013, at 8:00 p.m. in Council Chambers at City Hall. *The meeting will be preceded by a Workshop on Land Use with members of the Board of Appeals, the Board of Architectural Review, the Planning Commission, and the Conservation Commission/Advisory Council beginning at 7:00 p.m.*

AMENDED 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 13, 2013.
5. Mayor's Management Report.
 - Capital Projects Update
 - Legal Update
- 5A. Rye Golf Club Investigation Update and Report.
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.
7. Discussion of the draft Purchase and Sale Agreement for the property located at 1037 Boston Post Road.
8. Residents may be heard on matters for Council consideration that do not appear on the agenda.
9. Discussion on establishing a temporary Technology Committee.
10. One appointment to the Finance Committee to fill a term expiring on January 1, 2014, by the Mayor with Council approval.
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.
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.

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.
14. 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.
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.
16. Miscellaneous communications and reports.
17. Old Business.
18. New Business.
19. Adjournment.

The next regular meeting of the City Council will be held on Wednesday, March 6, 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: February 27, 2013

CONTACT: Dawn Nodarse

AGENDA ITEM Draft unapproved minutes of the Regular Meeting held February 13, 2013, as attached.

FOR THE MEETING OF:

February 27, 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 13, 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 13, 2013 at 8:00
P.M.

PRESENT:

DOUGLAS FRENCH Mayor
LAURA BRETT
RICHARD FILIPPI (Left at 10:05 p.m.)
PETER JOVANOVICH
JULIE KILLIAN
CATHERINE F. PARKER (Arrived at 10:15 p.m.)
JOSEPH A. SACK
Councilmembers

ABSENT: None

The Council convened at 7:00 p.m. Councilman Jovanovich made a motion, seconded by Councilman Sack and unanimously carried to immediately adjourn into executive session to discuss real estate matters related to 1037 Boston Post Road. Mayor French arrived at 7:30 p.m. Councilman Jovanovich made a motion, seconded by Councilwoman Killian and unanimously carried, to adjourn the executive session at 8:40 p.m. The regular meeting convened at 8:45 p.m.

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

There were no announcements made.

4. Draft unapproved minutes of the regular meeting of the City Council held January 23, 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 January 23, 2013, as amended.

In connection with a question raised at the January 23rd meeting regarding Agenda Item 8, Corporation Counsel Wilson confirmed that the City employee who was a principal in a company bidding on the Police Uniform contract is no longer affiliated with that company.

5. Mayor's Management Report
● School Public Safety Update

City Manager Pickup said that there are two pieces to this topic that are interdependent. The primary one is the potential for an additional enhanced presence during the 180 school calendar days. One option being considered is a Civil Service title called "Community Service Worker", that is a current County Civil Service title. If it is an appropriate title, a plan for deployment will come back to the Council. There is also an ongoing discussion with the Traffic and Pedestrian Safety Committee regarding the Midland School crossing areas. When a final proposal is made, it will go back to the School District for consideration and then come back to the Council as a recommendation. There was a discussion among the Council about what the School District is actually looking for regarding police presence at the schools vs. the Community Service Worker title that is being proposed. City Manager Pickup said that an additional benefit to hiring people with the new title is that they could also be used as crossing guards and parking enforcement officers. They will also free up police patrols. Staff is trying to put together a program to bring to the joint meeting of the Council and School Board in April for implementation during the current school year. He added that the School District is not interested in having the City involved in on-campus security.

At this point Mayor French announced that the Council would be going into Executive Session.

Councilman Jovanovich made a motion, seconded by Councilman Filippi and unanimously carried, to adjourn into executive session to discuss a real estate matter related to 1037 Boston Post Road at 9:30 p.m. Councilman Filippi made a motion, seconded by Councilwoman Brett and unanimously carried, to adjourn the executive session at 9:46 p.m. The regular meeting reconvened at 9:50 p.m.

- Capital Projects Update

City Manager Pickup said that the Sluice Gate was still in the acceptance testing phase and has not yet been accepted by the City. The City Engineer is working with the consultants and the contractor. Discussions are beginning regarding design elements and potential issues for the upcoming Central Business District and Locust Avenue projects.

- Legal Update

Corporation Counsel Wilson reported on the following matter:

- *Panetta v. Planning Commission* - in the Article 78 portion of the case, the oral argument for the appeal has been scheduled for February 21st in the Appellate Division in Brooklyn.

This agenda item was taken out of order.

6. Presentation on the Central Avenue Bridge Construction Project: anticipated construction process and schedule

Kenneth Jacques and Nicholas Cavaluzzi from Ammann & Whitney Consulting Engineers, the project managers for the Central Avenue Bridge project, made a presentation regarding the basic construction and schedule issues. The project is broken down into three construction stages. The first stage, which will last about four months, will involve work on the substructures and abutments. The second stage, which will last about a month, will involve the superstructure and include installation of the bridge deck. The final stage, which will last about a month and will overlap with part of stage two, will include work on the roadway. The expected date of completion is August 18th.

Questions were asked regarding logistics of the project and how it will impact the neighborhood; communications with residents; safety precautions; and work hours. City Engineer Ryan Coyne said that the City has created a link on the website for the Central Avenue Bridge Project where residents can register for a listserve that will provide timely updates on the project. Mr. Jacques said that the contractor will construct fencing around the project area. The contractor will not work on Sunday, but as it gets closer to deadline, may work on Saturday. The work hours will be between 7:30 and 5:00. City Manager Pickup said that either he or the City Engineer will be contact points for the City in connection with the project. Additionally, it was noted that the elevation of Central Avenue has dropped and the installation of new curbs and sidewalks should be considered. A suggestion was also made to construct a walkway to allow residents on the opposite side of Blink Brook to have access to the Post Road during the construction period.

Councilman Filippi asked the City Manager about removing the Lowenstein Bridge. Mr. Pickup said that the City could look into this while the contractor is on site.

7. 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.

City Manager Pickup said that the money requested would pay the bills for the investigation into the Golf Club through the end of January. Corporation Counsel Wilson was asked if she could find out what the costs would be for the remainder of the investigation.

Councilman Sack made a motion, seconded by Councilman Filippi, to authorize the transfer of \$77,000 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".

Prior to the completion of the vote on this Resolution, a suggestion was made that the Council wait until the next meeting to authorize transfer of funds in order for the Council to get a better idea of how much additional money will be needed for the investigation.

Councilman Filippi withdrew his second of Councilman Sack's motion and the motion did not go forward.

8. Resolution to appropriate indemnification funding for legal services for City personnel who have been requested to participate in the Council investigation of the Rye Golf Club pursuant to Article 6, Section C6-3 of the City Charter entitled "Investigations"
Roll Call.

Corporation Counsel Wilson said that a request has been received from City staff to pay for attorney's fees that might be incurred by them during the Golf Club investigation. The Council does not have an obligation under state law or City Code to pay for these types of fees since there is no pending litigation. She said the Council could do this if they wanted to, but she recommended that if they choose to do so, it should only be done according to a limited scope that only pertains to City Council led investigations when there is a request by a City employee who is a "fact" witness and not the subject of the investigation. Ms. Wilson said there is no prohibition under state law that would prevent the Council from doing this for City staff who are cooperating with a City Council investigation. When an employee is the target of an investigation there are certain steps based on employment classification to protect their rights, but payment of attorney's fees is not required. It was the consensus of the Council not to adopt a Resolution at this time and no vote was taken.

9. Discussion and Update on the Draft Financial Disclosure Form

Corporation Counsel Wilson said that the discussion on a Financial Disclosure Form began last fall. The City Council expressed a desire to adopt some type of Financial Disclosure Policy and she prepared a draft that was "middle of the road" to begin the discussion that included the range of employees or officials that have decisions making authority over contracts or any type of financial transaction. There are various types of forms in use over the County and there are many ways the Council can address the issue. If the Council adopts a Financial Disclosure Policy, the Ethics Code would also need to be amended. Ms. Wilson said it would be helpful to get input from the Board of Ethics and also City staff since they are the ones who will be most impacted. There was a discussion among the Council about the purpose of the policy; should it be called a "Financial Disclosure" or "Conflict of Interest Disclosure"; who should be

included; how broad it should be; or if it was a “solution in search of a problem”. A suggestion was made to include three areas in any draft: material interests, gifts and employment. Corporation Counsel Wilson will bring a draft back to the Council that will include the City Council, Department Heads and members of standing Boards and Commissions.

10. Discussion of the City of Rye’s FOIL procedures

The Council discussion focused primarily on two aspects: who should respond to appeals to FOIL, and if statutory costs should be charged relative to providing information under a FOIL. It was noted that the Corporation Counsel advises City staff regarding FOIL responses and also serves as the FOIL officer and there was a question as to the legality of the dual roles. Corporation Counsel Wilson said that she has spoken with Bob Freeman, Head of the Committee on Open Government about this and that he said this issue does come up in small communities where there are only a certain number of people who can do certain jobs. The discussion touched on the advisability of the Corporation Counsel no longer serving in the role of Appeal’s Officer and the Council again serving as the appellate body in order to separate the functions of FOIL access officer from FOIL appeals officer. There was disagreement about whether fees for time spent in preparing documents responsive to a FOIL request should ever be charged or if it should be enforced no matter who it is. It was also noted that changes were being made to centralize all FOIL requests through the Clerk’s office and staff is working on implementing a program to track FOIL request. A suggestion was made that money be allocated for the people needed to do the work necessary to respond to FOIL requests. City Manager Pickup said that staff will redraft the City’s FOIL regulations and bring it back to the Council for additional discussion.

Leon Sculti also spoke about the role of a Records Access Officer vs. a FOIL Appeal officer and charging for records.

11. Authorization for City Manager to execute an Assumption Agreement transferring Control of franchise agreement between City of Rye and NEON Optica, Inc. to LTS Buyer LLC

Corporation Counsel Wilson said that NEON Optica has transferred majority and minority ownerships throughout the past ten or twelve year and each time the City Manager has signed an Assumption Agreement.

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

RESOLVED, that the City Manager is hereby authorized to execute an Assumption Agreement transferring control of the Franchise Agreement between the City of Rye and NEON Optica, Inc. to LTS Buyer LLC.

ROLL CALL:

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

The Resolution was adopted by a 5-0 vote.

12. Consideration of referral to the Board of Architectural Review and City Consultant, the Special Permit Application submitted by Sprint for modifications to its existing wireless telecommunications facility located at 66 Milton Road

City Manager Pickup said this is an existing location but there are proposals to change the current array on top of the building. Even though there has been prior approval, it must go through a referral and review process, the first step of which is to refer the application to the Board of Architectural Review.

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

RESOLVED, that the Special Permit Application submitted by Sprint for modifications to its existing wireless telecommunications facility located at 66 Milton Road is hereby referred to the Board of Architectural Review and City Consultant in order for them to provide a written assessment to the Council.

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

Bertrand De Frondville, 19 Hook Road asked if the City still had a citizen Financial Advisory Committee because, if so, he would like to be on it. He also spoke about an investigation that had previously been done by the Citizen's Financial Advisory Committee into the Golf Club that he had chaired.

Richard Slack, Grace Church Street spoke about the Andrew Dapolite matter and urged the Council to conduct an independent review of the issue.

Sis D'Angelo, 110 Wappanocca Avenue said people come to the Council because they have been lied to; that nobody in Rye trusts the Council and people want the truth.

Leon Sculti, 10 Bulkley Avenue thanked those who defended him at the last Council meeting and read a prepared statement about "freedom".

John Duffy, member of Golf Commission, thanked the Council for doing the proper job in the Golf Club investigation, even though it has cost more than expected. Councilman Jovanovich said that the City Manager would be holding weekly meetings with a representative from the Golf Commission to keep them up to date with activities.

14. Authorization for Rye Recreation to enter into a license agreement with Post Consumer Textile Waste (PCTW) for the placement of clothing collection/donation containers
Roll Call.

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

RESOLVED, that that Recreation Department is hereby authorized to enter into an Agreement with Post consumer textile Waste (PCTW) for the placement of clothing collection/donation containers at Recreation Park and Nursery Field.

ROLL CALL:

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

The Resolution was adopted by a 6-0 vote.

15. Authorize payment of the balance of the 2012/2013 Rye Neck Union Free School District taxes collected by the City to the School District
Roll Call.

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

RESOLVED that the City Council of the City of Rye hereby authorizes that payment of the balance of \$287,511.94 of unpaid Rye Neck U.F.S.D taxes, on property within the City of Rye as of December 31, 2012, be made to the Treasurer of the Rye Neck UFSD.

ROLL CALL:

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

The Resolution was adopted by a 6-0 vote.

16. One appointment to the Planning Commission for a three-year term expiring on January 1, 2016, by the Mayor with Council approval

Mayor French made a motion, seconded by Councilwoman Brett and unanimously carried, to appoint Peter Olsen to the Planning Commission for a three-year term expiring on January 1, 2016.

17. One appointment to the Finance Committee for a three-year term expiring on January 1, 2016, by the Mayor with Council approval

Councilman Jovanovich made a motion, seconded by Councilwoman Killian and unanimously carried, to appoint David Mullane to the Finance Committee for a three-year term expiring on January 1, 2016.

18. Two appointments to the Rye Town Park Advisory Committee for a three-year term expiring on January 1, 2016, by the Mayor with Council approval

Mayor French made a motion, seconded by Councilman Jovanovich and unanimously carried, to appoint Ann Moller to the Rye Town Park Advisory Committee for a three-year term expiring on January 1, 2016.

Mayor French made a motion, seconded by Councilwoman Brett and unanimously carried, to appoint Stephen P. Kovacs to the Rye Town Park Advisory Committee for a three-year term expiring on January 1, 2016.

19. Miscellaneous Communications and Reports

Councilwoman Parker reported that earlier in the evening she had attended a Public Forum on Playland at the County Center held by the County Board of Legislators. She said that each of the four proposals had a table with a presentation on their vision for Playland. There was a large turnout from Rye supporting the Sustainable Playland option. Written questions were taken and will be posted online. The Board of Legislators will be holding public hearings going forward to allow for more public input.

City Manager Pickup showed the Council letters received from Mrs. Simpson's fourth grade class regarding the health of the Blind Brook. He will respond back to the class on behalf of the Council.

20. Old Business

There was nothing discussed under this item.

21. New Business

Mayor French said that a Land Use Workshop would be held at 7:00 p.m. prior to the February 27th Council meeting and asked if City Planner Miller could help run the meeting. He said he hoped each Board could describe their role followed by a discussion of recommendations of sections of the law that the Council should review.

22. Adjournment

There being no further business to discuss Councilman Jovanovich made a motion, seconded by Mayor French and unanimously carried, to adjourn the meeting at 11:42 p.m.

Respectfully submitted,

Dawn F. Nodarse
City Clerk



CITY COUNCIL AGENDA

NO. 5

DEPT.: City Council

DATE: February 27, 2013

CONTACT: Mayor Douglas French

AGENDA ITEM: Mayor's Management Report

FOR THE MEETING OF:

February 27, 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. 5A

DEPT.: City Council

DATE: February 27, 2013

CONTACT: Mayor Douglas French

ACTION: Rye Golf Club Investigation Update and Report.

FOR THE MEETING OF:

February 27, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION:

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: The Rye City Council declared itself the lead investigative body regarding the events at Rye Golf Club at the City Council meeting of October 10, 2012. The City Council engaged the firms of Brune & Richard LLP, Breen & Associates LLC, and Sher Tremonte LLP to assist in the investigation. Theresa Trzaskoma of Brune & Richard LLP has completed her report on the investigation. The City Council will provide an update on the investigation and the resultant report.

See attached.



**SUMMARY REPORT OF THE CITY COUNCIL'S
INVESTIGATION INTO THE RYE GOLF CLUB**

**City of Rye, New York
February 27, 2013**

INTRODUCTION

Rye Golf Club (“RGC”) is a City-owned non-equity membership club currently operated as an Enterprise Fund. As such, RGC is responsible for all costs associated with its operation and maintenance, including debt service, capital improvements and administrative fees. RGC operates under an approved annual budget and currently has four cost centers – Administration, Golf Course, Pool and Whitby Castle.

The City Manager, the Finance Department, the City Council and the RGC Commission have oversight responsibilities over RGC. The City Manager supervises the RGC general manager and holds periodic meetings with all department heads, including the RGC general manager. The City Manager and City Comptroller oversee the preparation of the annual RGC budget, which the RGC Commission and its Finance Committee also review. The City Council then reviews and approves the budget. The City Manager and City Comptroller are responsible for reviewing and approving purchase orders and invoices.

In mid-2012, a RGC Commissioner discovered that RGC vendor RM Staffing & Events, Inc. (“RM Staffing”) was negotiating to take over the lease for the restaurant at the Oak Hills Park golf course in Norwalk, Connecticut and that Scott Yandrasevich, then general manager of RGC, was involved in those negotiations on RM Staffing’s behalf. On June 23, 2012, a Rye citizen issued initial FOIL requests to the City for information relating to RGC’s relationship with RM Staffing. Over the next few months, some of the requested documents were made public, including copies of certain RM Staffing invoices to RGC.

During a September 12, 2012 RGC Commission meeting concerning the budget, certain RGC Commissioners and citizens expressed concerns regarding RM Staffing, overtime charges and cost controls.

At the next meeting, held on September 27, 2012 more concerns were raised, including concerns regarding the ownership of RM Staffing and whether RM Staffing was “a shell company.” Mr. Yandrasevich explained that RM Staffing is “a privately held company by a woman. . . . For the record, I have no ownership interest, nor does any of my family or any relative have any ownership interest in the company.” Mr. Yandrasevich acknowledged only that he had consulted for RM Staffing. Mr. Yandrasevich was then specifically asked “what jobs you got paid for, how long you’ve been getting paid for them, and how much you’ve made?” He responded: “I’ve made under a thousand dollars from them.” He described his consulting as

“more like putting a contract together, or discussing, that kind of thing.” He added that his work in connection with Oak Hills was “unpaid.”

At the meeting, current City Manager Scott Pickup said that RGC’s relationship with RM Staffing complied with the City’s requirements. Specifically, Mr. Pickup stated: “We get rate sheets from multiple vendors, in this case there were three; I can’t recall the names of the other two. RM has been a staffing company that Scott [Yandrasevich] has worked with in the past, he makes a recommendation, that proposal is accepted by the city manager, reviewed by the city comptroller, and then reviewed by our independent auditors, and by the state auditors. It’s all above board.” Mr. Pickup went on to say that: “We’ve had the city attorney review these arrangements, the city’s attorney is always looking for conflicts of interest, based on their past opinions on this, there is no conflict of interest.”

On October 18, 2012, pursuant to the City Charter, the City Council authorized an investigation and adopted a resolution retaining counsel from Brune & Richard LLP to assist. Brune & Richard LLP retained the services of Breen & Associates to perform forensic accounting/ investigative consulting services.

Among other things, the City Council’s investigation has included:

- Obtaining and reviewing documents related to RGC, RM Staffing, and Studio Y, including invoices, financial summaries, emails, and other records;
- Searching public records sources regarding various entities and individuals;
- Searching RGC, including Mr. Yandrasevich’s office, for relevant information and records;
- Serving subpoenas for records, including bank records, accounting records, payroll records, and records from RM Staffing, Studio Y, Morris Yacht & Beach Club, and Oak Hills Park Authority;
- Obtaining and reviewing emails to or from Mr. Yandrasevich’s City email address (more than 40,000 emails), and from a City email address “Whitby Admin” (used by Mr. Yandrasevich’s wife, Anna Yandrasevich) for the period October 21, 2009 to October 10, 2012;
- Recovering and reviewing pre-October 2009 emails and other documents retrieved from the hard drive of Mr. Yandrasevich’s City desktop computer;

- Analyzing bank statements, tax returns, financial records, and payroll records; and
- Interviewing 29 witnesses.

Mr. Yandrasevich, through counsel, indicated that he declined to participate in an interview.

What follows are the City Council's principal findings.

FACTUAL FINDINGS

1. The Rye Golf Club Takes Over Catering and Restaurant Operations

In March 2002, Scott Yandrasevich was hired as the General Manager of RGC. His base salary was initially \$72,500. Over the ten years that followed, his salary rose to \$106,080, one of the highest salaries paid to any City employee. In addition to health and pension benefits, Mr. Yandrasevich's compensation package included use of the Superintendent's house at RGC, a benefit valued at more than \$45,000 per year.

Before 2006, the restaurant, snack bar and catering facilities at RGC were operated by Restaurant Associates. In May 2006, when Restaurant Associates' contract expired, RGC took over the administration and operation of these facilities, including the restaurant at Whitby Castle. Mr. Yandrasevich caused the City to hire staff to develop the catering and restaurant business, including hiring Charles Breed as the food and beverage director and Paul Carroll as the executive chef. Initially, Mr. Breed and Mr. Carroll were seasonal City employees.

2. Studio Y Establishes a Relationship with RGC and RM Staffing Is Created

Suzanne Ruggiero-Madeo owns Studio Y, a small graphics design firm located in Rye. Sometime in mid-2006, Mr. Breed asked her whether she would be interested in doing marketing work for the restaurant. Mr. Breed introduced Ms. Ruggiero-Madeo to Mr. Yandrasevich, and Studio Y went on to provide graphic design and printing services, including for the restaurant's opening.

In early 2007, Ms. Ruggiero-Madeo was asked whether she would be willing to start a staffing company in order to employ RGC workers, including Mr. Carroll and Mr. Breed. Ms. Ruggiero-Madeo had no prior experience operating or managing a staffing company. It is not clear who initially proposed this arrangement to Ms. Ruggiero-Madeo, but she has said that she eventually had a meeting with Mr. Yandrasevich to discuss the subject. After checking with her accountant, Ms. Ruggiero-Madeo told Mr. Yandrasevich that she would "do whatever they

needed.” Shortly thereafter, on April 9, 2007, Ms. Ruggiero-Madeo incorporated RM Staffing & Events, Inc. with herself as the sole owner. **(Exhibit 1.)** RM Staffing used the same business address as Studio Y.

The day after it was incorporated, RM Staffing began billing RGC for staffing services. The first invoice, dated April 10, 2007, covered the week ending April 6, 2007 and totaled \$2,700. **(Exhibit 2 at RM Invoice 1.)** This invoice, like all of RM Staffing’s early invoices, lacked even basic details about what staffing services had been provided. There were no names or dates or hours tied to specific workers; instead, the invoices listed only total numbers of staff and total hours.

Over time, the total amounts invoiced increased. By mid-June 2007, RM Staffing was billing RGC tens of thousands of dollars each month based on invoices that continued to lack detail. **(Exhibit 2 at RM Invoice 8.)** On July 3, 2007, “office” workers first appeared on the invoices in addition to restaurant workers. **(Exhibit 2 at RM Invoice 9.)** By July 18, 2007, the RM Staffing invoice had risen to a total of \$29,750 for a one-week period. **(Exhibit 2 at RM Invoice 11.)**

Beginning on August 5, 2007, the RM Staffing invoices identified workers by their first or last name (sometimes with a last initial, sometimes just a nickname) and provided a description of the area where each individual worked, the number of regular and overtime hours, and the regular and overtime rates. **(Exhibit 2 at RM Invoice 12.)**

The City paid each RM Staffing invoice in accordance with the following procedure, which remained in effect more or less from 2007 through 2012. First, RGC submitted to the City a blanket purchase order authorized by Mr. Yandrasevich. Then, the Finance Department and the City Manager approved the purchase order so long as there were sufficient funds in the RGC budget to cover the requested amounts. When the amounts invoiced thereafter went beyond the funds set aside through the purchase order process, Mr. Yandrasevich (or Angela Runco, a City employee and the accounts payable clerk at RGC who acted at Mr. Yandrasevich’s direction) submitted a change order requesting that the purchase order amounts be increased. As with the original purchase order, review of the change order requests was limited to whether the RGC budget had set aside sufficient funds.

Although other RGC vendor invoices typically went to Ms. Runco in the first instance, the RM Staffing invoices went directly to Mr. Yandrasevich, who then forwarded them to Ms.

Runco. Ms. Runco confirmed with Mr. Yandrasevich that he approved the invoices, and then forwarded them to the Finance Department along with a claim form. The Finance Department's accounts payable clerk reviewed each invoice and accompanying claim form, looking to see that there was a purchase order covering the amount of the invoice and that the information on the invoice (*e.g.*, date, amount, vendor name) matched the information on the claim form. The Deputy Comptroller of the Finance Department performed an "audit" on the accounts payable clerk's work for invoices over a set amount, but as with the accounts payable clerk's review, this review did not go beyond what was on the face of the invoice and claim form. For invoices over a certain dollar threshold, the City Manager reviewed as well, but again the review was limited to the face of the invoice and claim form and to whether the payment was within the relevant budget. **(Exhibit 3.)** The reviewers all relied on Mr. Yandrasevich to verify that the services for which the City was being billed had actually been provided.

After the requisite approvals were given, the Finance Department prepared a check. For each check to RM Staffing, the Finance Department held the check at City Hall for pick up. From April 2007 to September 2012, RM Staffing invoiced \$7,413,537 and received payments from the City totaling the same amount. **(Exhibit 4.)**

Studio Y began invoicing RGC in October 2006. The early invoices were sufficiently detailed that it was possible to determine what design work was performed, what marketing services were provided, what advertisements were placed, and how much printing was done. **(Exhibit 5 at SY Invoice 153, 155.)** Over time, however, the invoices became less detailed, and by 2010, many invoices contained very little information. **(Exhibit 5 at SY Invoice 236, 241.)** When asked during her interview why the invoices had changed, Ms. Ruggiero-Madeo said that Mr. Yandrasevich had instructed her to make the invoices less detailed.

Among other things, many of the Studio Y invoices in 2010, 2011, and 2012 include charges for unspecified "in-house printing." For example, a September 5, 2010 invoice contains a \$1,800 charge for "Printing (in-house)." An invoice dated May 22, 2011 has a \$2,020 "In-House Printing" charge, and the September 11, 2012 invoice shows a \$1,200 "Printing" charge. **(Exhibit 5 at SY Invoice 222, 239, 262.)** Between April 20, 2010 and September 11, 2012, Studio Y invoiced a total of approximately \$30,570 for "printing." **(Exhibit 6.)** Ms. Ruggiero-Madeo acknowledged that she did not keep track of what and how many copies Studio Y made for RGC and that many of the "printing" charges were based on nothing more than a guess.

The Studio Y invoices went through the same limited review process as the RM Staffing invoices did and were paid based on Mr. Yandrasevich's approval of the charges.

From January 2007 to October 2012, the City paid Studio Y invoices totaling more than \$690,000.

3. RM Staffing Charges Substantial Markups, But Does Not Perform the Usual Functions of a Staffing Company

RM Staffing billed RGC at hourly rates that generally ranged from a 10% markup to more than double what it had actually paid each worker. This built-in profit margin grew over time as RM Staffing increased the hourly rates it charged RGC for each worker.

- “Susanna,” for example, was billed in January 2011 at a rate of \$15 per hour, 67% higher than her pay rate \$9 per hour. By January 2012, RM Staffing was billing “Susanna” at \$18 per hour, exactly double her pay rate of \$9 until the end of April, when her pay rate slightly increased to \$9.50 per hour. **(Exhibit 7A.)**
- In September 2008, “Lidia” was billed by RM Staffing at a rate of \$13 per hour, 30% more than her pay rate of \$10 per hour. In May 2010, RM Staffing increased its billing rate for “Lidia” to \$15 per hour, 50% more than what she was actually paid, and in February 2012 the rate again increased to a rate of \$18 per hour, 80% more than the \$10 per hour she continued to be paid. **(Exhibit 7B.)**
- “Godfrey” was paid at a rate of \$19.10 per hour in January 2010, but RM Staffing’s billing rate was 32% higher at \$25.25 per hour. By January 2012, “Godfrey” was still being paid at a rate of \$19.10 per hour, but RM had increased its billing rate to \$33 per hour, a 73% markup that continued through at least September 2012. **(Exhibit 7C.)**
- In June 2011, “Rey” was paid at a rate of \$10 per hour, but RM Staffing billed RGC at a rate 75% higher, at \$17.50 per hour. By May 2012, RM Staffing was billing RGC \$22 per hour for “Rey”, 120% more than his continued pay rate of \$10 per hour. This continued into at least September 2012. **(Exhibit 7D.)**

Despite the fact that RM Staffing’s billing rates incorporated significant markups for each worker, RM Staffing did not perform most of the functions that one would expect of a staffing company. RM Staffing did not recruit employees or screen candidates. It did not conduct

background checks. It did not supervise or train employees. Instead, RGC performed these functions. When RM Staffing advertised for open positions, RGC drafted the ads, screened the prospective candidates and even paid the charges for running the ads. **(Exhibit 8.)** During her interview, Ms. Ruggiero-Madeo acknowledged that RM Staffing’s principal function with respect to RGC was to process payroll and that that was accomplished primarily using the outside service Paychex.

The Council will continue to analyze the amount that RM Staffing profited from the City of Rye, but the analysis to date reflects that this amount is substantial.

Although Mr. Yandrasevich has stated publicly that his “consulting” work for RM Staffing was limited to reviewing contracts, the evidence shows that Mr. Yandrasevich was deeply involved in the details of RM Staffing’s business. Ms. Ruggiero-Madeo confirmed that Mr. Yandrasevich was responsible for most if not all material aspects of the relationship between RM Staffing and its employees. He instructed Ms. Ruggiero-Madeo regarding which employees to hire, what to pay them and what to charge RGC for them. He determined which employees would have employer-paid health insurance coverage. He directed Ms. Ruggiero-Madeo on when to raise the rates that RM Staffing charged RGC. Ms. Ruggiero-Madeo also confirmed that she did not raise the hourly rate that RM Staffing paid to certain of its workers because Mr. Yandrasevich instructed her not to.

Documents confirm Mr. Yandrasevich’s controlling role at RM Staffing:

- Early draft RM Staffing invoices retrieved from Mr. Yandrasevich’s desk at RGC bear Mr. Yandrasevich’s handwritten notes. **(Exhibit 9.)**
- In an email dated May 18, 2010, Ms. Ruggiero-Madeo asked Mr. Yandrasevich to “let me know what to invoice.” **(Exhibit 10.)** Shortly thereafter, she sent a draft RM Staffing invoice asking “Like this?” **(Exhibit 11.)** The draft invoice she sent was for approximately \$2,700. The final invoice submitted that day was for \$18,575. **(Exhibit 12.)**
- In an email dated October 18, 2010, Ms. Ruggiero-Madeo asked Mr. Yandrasevich whether RM Staffing could change its billing procedures because she was having trouble making employee payroll. **(Exhibit 13.)**

4. RM Staffing’s Invoices Include Charges for Individuals Not Paid by RM Staffing

Certain management workers (*e.g.*, Paul Carroll, Andrew Richter, Megan Hayes, Greg Colica) were paid a regular salary by RM Staffing. As Mr. Yandrasevich acknowledged in a September 26, 2012 statement to the City Manager and RGC Commission regarding the overtime issue, there was no direct correlation between the hours invoiced for the management

workers and the hours they actually worked. **(Exhibit 14.)** The payroll records are consistent with this.

For the hourly employees, the Paychex payroll records are consistent with the RM Staffing invoices. In numerous instances, RM Staffing employees accumulated a large amount of overtime hours, but the hourly workers generally got paid for the same number of hours that RGC was billed for. For example, RM Staffing billed RGC for more than 2,100 overtime hours for “Miguel” between June 2009 and January 2012, and RM Staffing paid him for at least that same number of overtime hours. **(Exhibit 15A.)** RM Staffing billed for more than 2,500 hours of overtime for “Alberto” from September 2007 to December 2010, and again the number of overtime hours is generally consistent with the number of hours for which RM Staffing paid him. **(Exhibit 15B.)** The same is true for “Avilia,” for whom RM Staffing billed RGC for more than 3,000 overtime hours during the period of June 2008 to December 2011. **(Exhibit 15C.)** Given the general consistency between the number of hours billed by RM Staffing versus the hours paid to each employee, there does not appear to have been any pattern or systematic effort to overbill RGC by overstating the number of overtime hours.

The RM Staffing invoices, though, do not consistently and accurately describe the area of the club in which some RGC workers were deployed. In particular, the catering manager Andrew Richter was sometimes described as working in “Restaurant” (*e.g.*, March 18, 2009 invoice), sometimes in “Operations” (*e.g.*, May 12, 2010 invoice), and sometimes in “Maintenance” (*e.g.*, November 24, 2010 invoice). The description field on the invoices appears to have been changed, depending on whether funds remained available in the blanket purchase order for each RGC cost center. **(Exhibit 16.)**

In addition, there are charges for individuals who did not receive any paycheck from RM Staffing. **(Exhibit 17.)** In particular, beginning on the invoice dated January 21, 2008, RM Staffing billed RGC for a worker identified only as “Lisa.” **(Exhibit 18.)** “Lisa” – who is usually described as working in “Administration” but also in “Restaurant” and “Operations” – appeared on each subsequent invoice until August 2012. Most of these invoices reflected that “Lisa” worked at least 40 hours per week. Initially, the rate for “Lisa” was \$27 per hour, but the rate increased to \$29 per hour on the May 26, 2010 invoice, to \$31 per hour on the November 9, 2010 invoice, and to \$32 per hour on the February 8, 2011 invoice. In 2011, RM Staffing even billed overtime for “Lisa” at a rate of \$48 per hour.

“Lisa” did not work at RGC and no one named Lisa received an RM Staffing paycheck. “Lisa” appears to have been a reference to Lisa Wheeler, a Studio Y contract employee who confirmed that she had never worked at RGC and had never received a paycheck from RM Staffing. In her interview, Ms. Ruggiero-Madeo acknowledged that “Lisa” was not an RGC worker. Ms. Ruggiero-Madeo stated that “Lisa” was a “place marker” for services that Studio Y provided to RGC. According to Ms. Ruggiero-Madeo, Mr. Yandrasevich told her that although Studio Y could bill RGC for production and printing costs, it could not bill for design services. Ms. Ruggiero-Madeo said that Mr. Yandrasevich instructed her to charge RGC for such Studio Y “design services” by adding “Lisa” on the RM Staffing invoices.

From 2008 to 2012, RM Staffing invoiced RGC and was paid more than \$250,000 for “Lisa”.

In April 2009, certain other charges began appearing on the RM Staffing invoices for individuals who did not receive a paycheck from RM Staffing. On the April 15, 2009 invoice, for example, RM Staffing billed for five individuals – Carl, Mike M, Mike, Tom and Jose – for whom there are no corresponding records of payroll payments, either through Paychex or from the RM Staffing bank accounts. Similar charges appeared on the next three invoices. And on four invoices in June and July 2009, RM Staffing billed sizeable lump sums for “labor” (\$34,150, \$31,500, \$32,750, \$19,500). **(Exhibit 2 at RM Invoice 58-65.)**

Ms. Ruggiero-Madeo stated that these charges were for capital projects at RGC, such as the deck extension off Whitby Castle, repaving the golf cart paths and certain improvements to the Superintendent’s house at RGC where Mr. Yandrasevich lived, and said that RM Staffing provided labor for these projects. When asked how RM Staffing obtained the labor, Ms. Ruggiero-Madeo stated that she simply contacted a contractor, primarily Adelphi Construction or Casa Bella Kitchen & Bath, made an appointment for the contractor to meet Mr. Yandrasevich at RGC, but then had no further involvement with the work. Mr. Yandrasevich dealt directly with the contractors and oversaw the contractors’ work. Rather than billing RGC directly, however, these contractors billed RM Staffing and RM Staffing paid their invoices.

RM Staffing’s bank records and general accounting ledger reflect payments from RM Staffing to Adelphi, Casa Bella and other third-party contractors but there is little correlation, either by date or amount, between the charges on the RM Staffing invoices and the payments made by RM Staffing to the contractors. For example, in April and May 2009, RM Staffing

invoiced more than \$50,000 for workers who did not receive paychecks, but only \$2,610 was paid to contractors during that same period. **(Exhibit 19.)**

In late 2009, the RM Staffing invoices contained charges for “Nature C” (\$7,500 on December 8, 2009, and \$7,500 on December 21, 2009), which may have been for work done on the house at the Rye Nature Center. And in early 2010, the RM Staffing invoices reflected charges for “Roof” (\$5,500 on January 6, 2010) and “Bldg” (\$4,800 on January 20, 2010 and \$1,700 on February 3, 2010). **(Exhibit 2 at RM Invoice 75-9.)** Again, however, these RM Staffing invoices do not appear directly connected to any payroll or contractor payments made by RM Staffing.

After February 2010, RM Staffing’s invoices did not contain any additional lump-sum charges for labor or projects. But according to Ms. Ruggiero-Madeo, RM Staffing continued to bill for this kind of work by including charges for various individuals. The March 30, 2010 invoice, for example, contained charges (including overtime) for “Joe lab” (\$2,310) and “Chris lab” (\$2,467.50). **(Exhibit 2 at RM Invoice 83.)** Ms. Ruggiero-Madeo stated that invoices for “John” reflected work performed by Adelphi.

The practice of billing for capital projects by charging for individuals continued through at least May 2012. **(Exhibit 17.)**

A spreadsheet found in the “Deck Project” file in Mr. Yandrasevich’s desk at RGC reflected that a profit was to be generated from the deck project, on both labor and materials, and that this profit would go to Mr. Yandrasevich as “my \$.” **(Exhibit 20.)**

5. RM Staffing Expands to Morris Yacht & Beach Club and Oak Hills, Using Staff Paid for by the City of Rye

Morris Yacht & Beach Club (“Morris” or “MY&BC”) is a private yachting and social club on City Island in the Bronx.

In January 2010, Mr. Yandrasevich and Mr. Carroll took note of an announcement regarding Morris’s search for a vendor to operate its newly rebuilt restaurant and bar facility. On January 13, 2010, Mr. Carroll, writing as “the food and beverage representative of Whitby Castle at Rye Golf Club,” asked that he be sent a copy of the request for proposal (“RFP”). **(Exhibit 21.)** On February 25, 2010, Mr. Yandrasevich submitted a response to the RFP on behalf of RGC. **(Exhibit 22.)** In the response, Mr. Yandrasevich described the “seasoned management team” at RGC, which he said included himself, Mr. Carroll, Andrew Richter (Director of Sales), Megan Hayes (Senior Sales Associate) and Ben Coyne (Executive Chef), and offered a proposal

to have RGC operate the food and beverage services at Morris. The response was accompanied by sample catering menus and other promotional materials for Whitby Castle.

On March 26, 2010, Mr. Yandrasevich met with representatives of Morris and submitted a revised proposal on behalf of RGC. **(Exhibit 23.)** This proposal noted that RGC would provide use of certain RGC equipment “to reduce MY&BC initial costs,” including a dance floor, kitchen equipment, tables and chairs, china and glassware.

On May 13, 2010, Mr. Yandrasevich sent a revised proposal to Morris. This version came from RM Staffing instead of RGC. **(Exhibit 24.)** Representatives of Morris were unable to recall what precipitated the change from RGC to RM Staffing. Notes from a meeting around that time reflected the understanding by representatives of Morris: “The catering operation would be managed by Scott D. Yandrasevich (the caterer), who is the GM of the Rye Golf Club. He will be using the staffing and event management capabilities of RM Staffing and Events, based in Rye, NY. Scott has been using them successfully for his catering and event operations at the RGC, and has been quite successful there. Scott also ran our recent ‘Into Commission’ event at the Club, which was a resounding success.” **(Exhibit 25.)**

In September and October 2010, Mr. Yandrasevich negotiated the contract with Morris on behalf of RM Staffing. **(Exhibits 26, 27.)** Once it was in place, Mr. Carroll and Ms. Hayes began working at Morris, setting up restaurant operations and handling catered special events. **(Exhibits 28, 29.)** Ms. Ruggiero-Madeo set up a phone number and email address for RM Staffing that could be used for Morris events, but had the emails forwarded to Ms. Hayes at her RGC email address. **(Exhibits 30, 31.)** Mr. Yandrasevich played a significant role in the operation of the Morris business, supervising many of the operational details and giving direction to Mr. Carroll, Ms. Hayes, and Ms. Ruggiero-Madeo. **(Exhibit 32.)** Mr. Yandrasevich was particularly responsible for financial aspects of the business. **(Exhibit 33.)** RGC equipment was used for events at Morris. **(Exhibit 34.)**

In January 2012, Mr. Yandrasevich and Mr. Carroll started looking into an opportunity to operate the restaurant facility at Oak Hills Park Golf Course in Norwalk, Connecticut. **(Exhibit 35.)**

Mr. Yandrasevich drafted a “letter of introduction” for RM Staffing that identified himself as part of the “supporting management team” with the title “Business Development Consultant.” **(Exhibits 36, 37.)** That letter also identified several other RGC workers as part of

the RM Staffing management team, including Mr. Carroll, Mr. Richter, Ms. Hayes and Gregory Colica, who was the new chef at RGC. Mr. Yandrasevich represented RM Staffing in negotiations with Oak Hills. **(Exhibits 38, 39.)** At some point in this process, Mr. Yandrasevich began using a Gmail account and on June 13, 2012, he directed Mr. Carroll, Ms. Yandrasevich and Ms. Ruggiero-Madeo to use that email address when communicating with him. **(Exhibit 40.)** Although RM Staffing continued to negotiate an agreement to assume the restaurant lease at Oak Hills throughout the summer of 2012, RM Staffing took over operations of the restaurant on July 1, 2012 pursuant to a sublease.

Throughout this time, Mr. Yandrasevich continued to direct Ms. Ruggiero-Madeo and others concerning various administrative and financial matters related to RM Staffing. **(Exhibit 41.)** In one such email, Ms. Ruggiero-Madeo referred to Mr. Yandrasevich as her “Boss.” **(Exhibit 42.)**

Mr. Carroll and Ms. Hayes acknowledged that beginning in October 2010, Morris occupied at least 40 to 50% of their time, if not more. By March 2012, Mr. Yandrasevich instructed others at RGC that all emails to Mr. Carroll should be sent to their RM Staffing email addresses instead of their RGC email addresses. **(Exhibit 43.)**

Despite the significant time that these ventures took, RM Staffing continued for years to bill RGC as if Mr. Carroll and Ms. Hayes remained full-time RGC workers. There is no record of any additional paycheck or wire transfer payments that would suggest that RM Staffing paid Mr. Carroll or Ms. Hayes separately for their work at the other clubs.

Specifically, from October 2010 through the end of 2011, RM Staffing billed RGC for 50 hours a week for Mr. Carroll. The first 40 hours were at a regular rate of \$45 hour and the next ten hours were at an overtime rate of \$67.50 per hour. In January 2012, RM Staffing dropped Mr. Carroll’s hours at RGC to 25 hours per week, but made up much of the difference by increasing his base hourly rate to \$50 per hour. RM Staffing further reduced Mr. Carroll’s hours only at the beginning of July 2012. **(Exhibit 44.)**

For Ms. Hayes, RM Staffing billed RGC for 40 hours per week from October 2010 through the end of June 2012, and over that time increased her hourly rate from \$33.25 to \$36. **(Exhibit 45.)**

6. As Money Flows In, Significant Amounts Are Funneled to Mr. Yandrasevich and His Wife

a. Cash

From 2007 to 2011, there were multiple sizeable cash withdrawals from RM Staffing's account. **(Exhibit 46.)**

b. Payments to Mr. Yandrasevich's Company for "Consulting"

In January 2010, Mr. Yandrasevich formed a company, Ansko Inc. ("Ansko"). **(Exhibits 47, 48.)** Contemporaneous emails reflect that Ms. Ruggiero-Madeo was involved in the incorporation of Ansko and that, at her suggestion, Mr. Yandrasevich used the same accounting firm that Ms. Ruggiero-Madeo had used for RM Staffing and Studio Y. **(Exhibit 49.)** Ms. Ruggiero-Madeo also suggested that Mr. Yandrasevich use the RM Staffing/Studio Y address rather than obtain a post office box so that there would be no record of Ansko's having a post office box. **(Exhibit 50.)** It appears, however, that Ansko ultimately used Mr. Yandrasevich's home address at RGC.

From January 2010 through May 2012, Ansko submitted monthly invoices to Studio Y (on letterhead bearing a logo designed by Studio Y). **(Exhibit 51.)** Many of these invoices referred only to unspecified "consulting" work.

During her interview, Ms. Ruggiero-Madeo was generally unable to identify the nature of the consulting. One exception concerned the May 11, 2010 and May 14, 2010 invoices. For these invoices, which totaled nearly \$17,000, Ms. Ruggiero-Madeo said that she had become the president of her homeowners' association and that Mr. Yandrasevich had provided "advice" concerning how to conduct association meetings in accordance with Roberts Rules of Order.

Ms. Ruggiero-Madeo said that, irrespective of the fact that the invoices were all directed to Studio Y, they were paid from RM Staffing's account or from Studio Y's, depending on which account had enough money. From 2010 to 2012, RM Staffing and Studio Y paid more than \$211,000 to Ansko.

c. Payments to Mr. Yandrasevich's Wife

In her interview, Ms. Ruggiero-Madeo stated that Mr. Yandrasevich's wife Anna had acted as a "bookkeeper" and "office manager" at RM Staffing. Emails reflect that Ms. Yandrasevich was involved in processing employee hours, payroll and other financial transactions. **(Exhibit 52.)** Early on, Ms. Yandrasevich worked on-site at RGC and used an RGC email address: "Whitby Admin."

According to 1099 Forms from RM Staffing, during 2007, 2008 and 2009, Ms. Yandrasevich received payments for \$16,000, \$20,500 and \$21,000 respectively, for a total amount of \$57,500. (Exhibit 53.)

In late 2009, Ms. Yandrasevich began receiving a regular salary from RM Staffing. Initially, she received biweekly paychecks of \$1,000, but by late 2010 the biweekly paychecks increased to more than \$2,000. In 2011, Ms. Yandrasevich's biweekly paychecks were up to \$3,030.77. In 2012, Ms. Yandrasevich continued to receive \$3,030.77 every two weeks through May 4, 2012, but on May 18, 2012 her biweekly paycheck increased to \$4,200. That amount dropped to \$2,884.62 on June 29, 2012 – after Mr. Yandrasevich had been publicly questioned about RM Staffing and after the initial FOIL request.

From November 2009 to September 2012, RM Staffing paid Ms. Yandrasevich a salary totaling nearly \$175,000. (Exhibit 54.) Ms. Yandrasevich also received other payments from RM Staffing, including several checks and wire transfers in excess of \$70,000. (Exhibit 53.)

d. Personal Debt

In April 2010, Mr. Yandrasevich used an RM Staffing check in the amount of \$6,891.01 to pay off a personal debt. (Exhibit 55.)

e. The Rental Apartment for RGC Lifeguards

Also in 2010, Mr. Yandrasevich arranged for the RGC lifeguards hired through a third-party vendor called American Pool Management to live together at a small apartment beneficially owned by his friend, Joe Pacelle. The apartment was above Fairway Auto, Mr. Pacelle's business in Mamaroneck, New York. From 2010 to 2012, RM Staffing paid the rent, \$1,500 per month plus utilities, to NCD Holdings, an LLC Mr. Pacelle owned. (Exhibit 56.) But AnSCO invoiced American Pool for the same apartment, initially charging \$4,140 a month. (Exhibit 57.) The next year, AnSCO raised the rent to \$4,750 a month. (Exhibits 58, 59.) In 2010 and 2011, American Pool paid AnSCO a total of \$40,310.

For 2012, RM Staffing entered into an agreement with American Pool to rent Mr. Pacelle's apartment for the lifeguards for \$4,750 per month. American Pool paid RM Staffing \$23,750. (Exhibits 58, 60.)

f. Two Boats and a House

During the years that Mr. Yandrasevich and his wife received these payments, Mr. Yandrasevich purchased, among other things, two boats and a house for his mother in North Carolina. **(Exhibits 61, 62, 63.)**

* * * * *

The financial institution where RM Staffing and Studio Y held accounts has not yet fully complied with the subpoena that was served upon it. If appropriate, the Council will release updated schedules laying out any additional relevant transactions. In addition, from 2008 to 2012, RM Staffing made payments in excess of \$145,000 to American Express. The records underlying RM Staffing's American Express account have not yet been obtained.

7. Opportunities to Prevent or Shut Down the Scheme Are Missed

Current City Manager Scott Pickup recalled that in 2005 he had been involved in discussions with Corporation Counsel regarding potential labor issues that might arise from RGC using staffing companies, but he did not recall any discussions regarding which staffing company would be used and did not recall hearing the name RM Staffing until later. Former City Manager Frank Culross, former City Comptroller Michael Genito and then-Deputy Comptroller (now Acting Comptroller) Joseph Fazzino each recalled a brief discussion during which Mr. Yandrasevich stated that RGC was going to use a staffing agency to provide workers to RGC. Some of them thought that Mr. Yandrasevich may have mentioned RM Staffing, but none of them was aware that RM Staffing had been established at Mr. Yandrasevich's behest.

It does not appear that any current or former employee in the Finance Department or at City Hall ever questioned Mr. Yandrasevich or RGC regarding any of the RM Staffing invoices. There appears to have been no effort on the part of the Finance Department or by any current or former City Manager to scrutinize the accuracy of the invoices or review them for potential fraud. Instead, each current and former employee who reviewed the invoices relied on Mr. Yandrasevich to confirm that the invoices should be paid. Ms. Runco recalled that on occasion she asked Mr. Yandrasevich about certain items on RM Staffing invoices, but recalled that in each instance she passed the invoice on for payment after Mr. Yandrasevich stated that the invoice was proper.

In early 2010, the City's independent auditors from O'Connor Davies Munns & Dobbins, LLP were onsite at RGC in connection with their audit for year-end 2009. **(Exhibit 64.)** As

reflected in the Independent Auditors' Report on Communication of Internal Control Matters Identified in the Audit for 2009, the outside auditors stated that they had not identified "any fraud or illegal acts," but they identified a number of issues, including with respect to RGC and relating to RGC's use of staffing companies to provide labor. **(Exhibit 65.)** In particular, the auditors expressed concern regarding the fact that these staffing services were not subject to a competitive bidding process and that there were no written contracts.

On June 17, 2010, Mr. Pickup met with Mr. Yandrasevich and then-City Comptroller Jean Gribbins to discuss the auditor's findings. In their interviews, Mr. Pickup and Ms. Gribbins both stated that they had little recollection of this meeting beyond a discussion of the need for RGC to provide at least three rate sheets for staffing companies before processing a purchase order for a vendor like RM Staffing.

During the 2010 audit in early 2011, O'Connor Davies made some effort to follow up on their findings from the 2009 audit by asking Mr. Yandrasevich to provide an update on the RGC-related issues. **(Exhibit 66.)** Mr. Yandrasevich provided a written response, but that response did not address the fact that there still was no written contract between RGC and RM Staffing. **(Exhibit 67.)** There appears to have been no further follow up on any of these issues.

Further, although in early 2010 former City Manager Frank Culross expressed a concern to the City's outside auditors regarding a potential ownership relationship between Mr. Yandrasevich's wife and RM Staffing, it does not appear that the outside auditors or anyone else were able to substantiate the concern.

When asked about his public statements on September 27, 2012 suggesting that the relationship between RM Staffing and Mr. Yandrasevich had been sanctioned by the City, Mr. Pickup said that at the time he made the statements, he was aware only that Mr. Yandrasevich had recently admitted to consulting for RM Staffing and admitted to being paid "less than \$1,000." Mr. Pickup further acknowledged that he understood at the time of the meeting that the Corporation Counsel had not reviewed or approved even the limited relationship with RM Staffing that Mr. Yandrasevich had disclosed at the meeting.¹ When Mr. Pickup was asked during his interview why then he had stated during the meeting that the relationship between RM

¹ Current Corporation Counsel Kristen Wilson stated during her interview that she did not review or approve the relationship between RGC or Mr. Yandrasevich and RM Staffing.

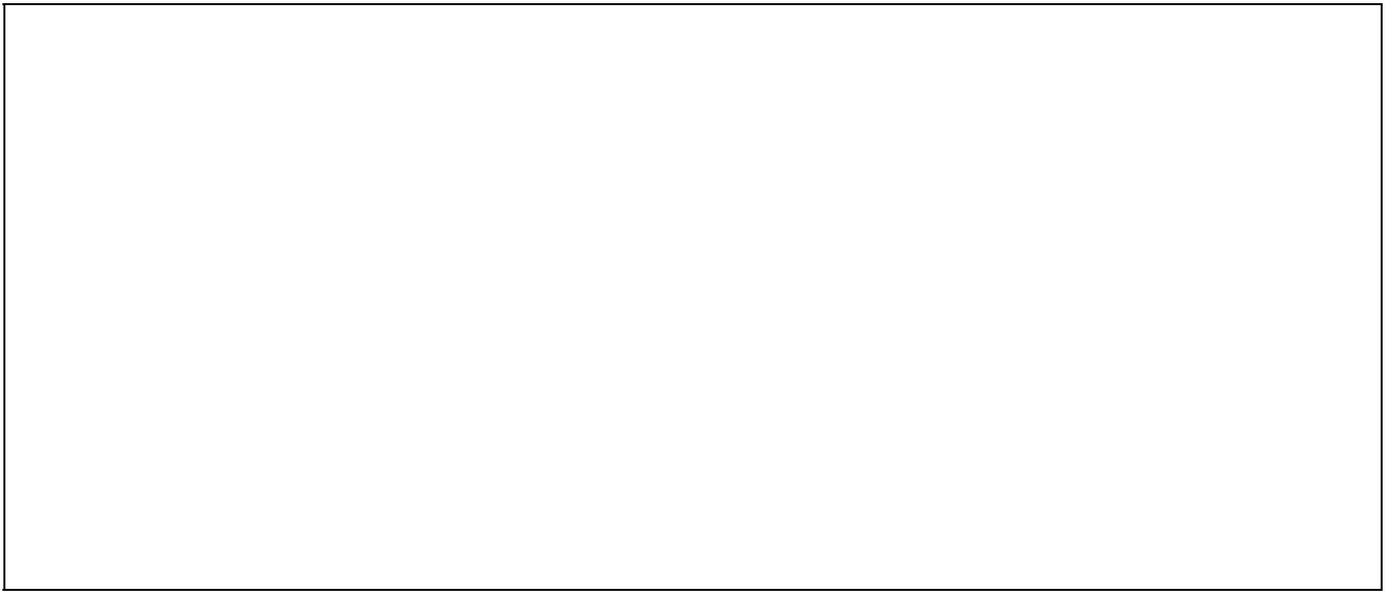
Staffing and Mr. Yandrasevich had been “reviewed” and was “all above board,” Mr. Pickup stated that he was trying “to calm everyone down.”

CONCLUSION

Based on these factual findings, the Council has concluded that the former General Manager of the RGC Scott Yandrasevich had a significant and undisclosed conflict of interest with respect to two RGC vendors, RM Staffing and Studio Y, in violation of Section 15.2 of the City of Rye Code of Ethics. The Council has further determined that Mr. Yandrasevich controlled RM Staffing, and that, over a six-year period, he used RM Staffing and its affiliated business Studio Y to steal many hundreds of thousands of dollars from the City of Rye.

To date, the investigation has not uncovered evidence that any current or former City of Rye employee other than Mr. Yandrasevich received improper financial benefits in connection with RGC’s relationship with RM Staffing and Studio Y.

The City Council has referred this matter to the Westchester District Attorney’s Office. The City Council will continue to consider additional appropriate remedial measures, including but not limited to implementing enhanced financial controls and procedures, pursuing civil claims and seeking to recover on the City’s employee theft insurance policy.





CITY COUNCIL AGENDA

NO. 6

DEPT.: Finance

DATE: February 27, 2013

CONTACT: Joseph S. Fazzino, Acting City Comptroller

AGENDA ITEM: 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".

FOR THE MEETING OF:
February 27, 2013

RECOMMENDATION: That the City Council 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.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND: Use and status of the Contingent Account in 2013:

01/01/2013 Beginning balance	\$300,000
02/27/2013 Transfer to City Council Legal Services Account	<u>(102,000)</u>
02/27/2013 Balance	<u>\$198,000</u>



To: Scott Pickup, City Manager

From: Eleanor M. Militana

Date: February 25, 2013

Re: Rye Golf Club Investigation Bills

Below please find the costs associated with the investigation at the Rye Golf Club to date, including the months of January and February:

12/31/2012 Total Bills paid in 2012 **(\$178,897.33)**

01/31/2013 Invoice # 20130000 from Brune & Richard LLP
for services rendered through 01/31/13 (\$26,045.00)

01/31/2013 Invoice # 92311 from Breen and Associates, LLC
for services rendered through 01/31/13 (\$28,143.75)

01/31/2013 Invoice # 734 from Michael Tremonte, Esq.
for services rendered through 01/31/13 (\$ 22,345.00)

01/31/2013 Total Bills for January, 2013 **(\$ 76,533.75)**

02/25/2013 Invoice #20130052 from Brune & Richard LLP
for services rendered through 02/21/13 (\$15,296.55)

02/22/2013 Invoice # 92347 from Breen and Associates, LLC
for services rendered through 02/28/13 (\$ 8,032.50)

02/25/2013 Total Bills for February, 2013 **(\$ 23,329.05)**

Total cost of the RGC Investigation to date **\$278,760.13**



CITY COUNCIL AGENDA

NO. 7

DEPT.: City Manager

DATE: February 27, 2013

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Discussion of the draft Purchase and Sale Agreement for the property located at 1037 Boston Post Road.

FOR THE MEETING OF:

February 27, 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. The City has received several competitive bids for the City-owned property and is finalizing a purchase and sale agreement. The environmental due diligence period is still on-going but is expected to end by mid-March.

See attached draft 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 _____ (“*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 ____ (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.

Deleted: (collectively, the “*Premises*”).

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.

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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.

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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) days of expiration of the Due Diligence Period, as hereinafter defined~~, ("Settlement").

Deleted: sixty (60) days
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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

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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.

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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, as long as the property on the side of the Premises is used by the City (to be specifically provided in the easement agreement attached hereto as Exhibit C) to have its officers, officials and employees (who shall be required to display a permit) utilize ten (10) parking spaces on the

Premises for the parking of automobiles only situated closest to the dumpster along the Blind Brook behind the building located as shown on the site plan and easement agreement annexed hereto on the Premises from 9 a.m. to 12 p.m. on weekdays that are not legal holidays in the State of New York (the "**Parking Reservation**"); provided, however, that Purchaser shall have the right to reserve such parking spaces from 9 a.m. to 12 p.m. on such weekdays during Purchaser's special events provided that Purchaser gives notice to Seller no less than twenty four (24) hours in advance of the day(s) of any such special event(s).

NOTE: Parking needs to be discussed. Purchaser is willing to discuss alternatives that meet the needs of both the City and tenant

(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.

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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 reconsidered 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).

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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: c/o Bill Wolf Petroleum Corporation
125 Jericho Turnpike
Suite 401
Jericho, NY 11753
Email: awolf@bwpetroleum.com

Field Code Changed

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

Formatted: Double underline

Deleted: And to:

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.

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ARTICLE XXII
Environmental Contingency

23.1 Environmental Contingency. Purchaser shall have a period of 30 (thirty) (sixty) 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

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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

By: _____

Scott D. Pickup

Its: City Manager

Date: February ____, 2013

By: _____

Its: _____

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:

By: _____

Name:

Title:

ESCROW AGENT:

HARRIS BEACH, PLLC

By: _____

Authorized Signatory

EXHIBIT C

License Agreement

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CITY COUNCIL AGENDA

NO. 9

DEPT.: City Council

DATE: February 27, 2013

CONTACT: Mayor Douglas French

ACTION: Discussion on establishing a temporary Technology Committee.

FOR THE MEETING OF:

February 27, 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 Council DATE: February 27, 2013
CONTACT: Mayor French

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

FOR THE MEETING OF:
February 27, 2013
RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council approve the appointment of Bertrand de Frondeville.

IMPACT: Environmental Fiscal Neighborhood Other:

<u>Current Committee Members</u>	<u>Expiration Date</u>
Warren Keegan, Co-Chair	1-1-15
Paula Schaefer, Co-Chair	1-1-16
Frederic Dunn	1-1-16
Scott Florio	1-1-15
Michael Guarnieri	1-1-16
Laura Leach	1-1-14
John Monaghan	1-1-14
David Mullane	1-1-16
Dean Neely	1-1-15
VACANCY	1-1-14



CITY COUNCIL AGENDA

NO. 11

DEPT.: City Manager

DATE: February 27, 2013

CONTACT: Scott D. Pickup

AGENDA ITEM: 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.

FOR THE MEETING OF:

February 27, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council consider granting the request.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The Milton Elementary School PTO is requesting the Council 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.

See attached request from the Milton Elementary School PTO.

**Milton Elementary School PTO
11 Hewlett Avenue
Rye, NY 10580**

February 7, 2013

OK,
SDP

Mr. Scott D. Pickup
City Manager
1051 Boston Post Road
Rye, NY 10580

Dear Mr. Pickup,

The Milton Elementary School PTO would like to request that the City Council approve a parade route to precede the annual Milton Elementary School Fair on Saturday, March 16, 2013. The parade lineup is scheduled to begin at 9:00 am at the Rye Town Park and will end at approximately 10:15 am. At that time, the Milton School Fair will begin.

The parade participants will gather at Rye Town Park and proceed through Seaside Johnny's parking lot, exiting right onto Dearborn Avenue. The parade will continue by turning left onto Forest Avenue at the first intersection and then turning right onto Green Avenue. At the intersection of Green and Fairway Avenues, the parade will turn right onto Fairway Avenue and proceed to Hewlett Avenue, where the parade will turn left and end at the front of Milton School.

Please contact me at 914-481-4087 or lauraandted@optonline.net if you have any questions. Thank you for your help with this important fundraiser.

Sincerely,

Laura Kelleher

Laura Kelleher

cc: Dr. Joanne Nardone, Milton School Principal
Mindy Grigg, Milton School PTO Co-Presidents
Dawn Yardis, Milton School PTO Co-Presidents
Heather Patterson, Milton School Fair Co-Chair



CITY COUNCIL AGENDA

NO. 12

DEPT.: City Manager

DATE: February 27, 2013

CONTACT: Scott D. Pickup

AGENDA ITEM: 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.

FOR THE MEETING OF:

February 27, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council consider granting the request.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

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

See attached request from Nancy Lavelle, Parade Coordinator.

January 28, 2013

Dear Mr. Pickup,

The Rye Little League has designated Saturday, April 13th, 2013 as Opening Day of the 56th Little League Season.

We are planning to do what we have done for the past 55 years; a parade beginning at noon that originates at the Rye Train Station and ends at Grainger Field at Disbrow Park.

The parade will likely have upwards of 500 participants, including the Rye Little League, Rye Girls Sports League, marching bands, several vehicles and a variety of emergency vehicles(ambulance and fire trucks)

We respectfully request that you issue the League a permit to hold the parade on Saturday the 13th of April at noon and in addition, permission to reschedule for Sunday the 14th of April at noon in the event of rain on Saturday. We understand that the City's permission is conditioned upon the League furnishing a certificate evidencing \$1,000,000 liability insurance with the City of Rye named as additional insured and a hold harmless clause indemnifying the City against claims and judgements resulting from the use of City property.

The certificate is forthcoming.

Upon the City's approval, the assistance and cooperation of the City of Rye Police will be requested directly through the Police Commissioner.

Very Truly Yours,

Nancy Lavelle
Parade Coordinator



CITY COUNCIL AGENDA

NO. 13

DEPT.: City Manager

DATE: February 27, 2013

CONTACT: Scott D. Pickup

AGENDA ITEM: 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.

FOR THE MEETING OF:

February 27, 2013

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Council consider granting the request.

IMPACT: Environmental Fiscal Neighborhood Other:

BACKGROUND:

The Midland Elementary School PTO is requesting the Council 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.

See attached request from Cara Puzzuoli, Co-Chair, Midland Fair 2013

December 3, 2012

Diane Moore
Deputy City Clerk
City of Rye
City Hall
Rye, NY 10580

Dear Diane,

I am respectfully requesting the use of the streets of Rye for the Midland School Parade from 9:00 a.m. to 10:15 a.m. on Saturday, April 20th, 2013. This event will be hosted by the Midland School PTO.

Normally, the parade vehicles assemble at the train station, proceed along Purchase Street to Midland School via Palisade Avenue and Midland Avenue.

Sincerely,

Cara Puzzuoli
Co-Chair
Midland Fair 2013



CITY COUNCIL AGENDA

NO. 14

DEPT.: City Manager

DATE: February 27, 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:

February 27, 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. 15

DEPT.: City Manager

DATE: February 27, 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:

February 27, 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

EXECUTIVE COMMITTEE

Mark Doran
President

Kevin Tice
VP/President-Elect

Suzanne Kelly
Vice President

Eugene P. Lynch
Vice President

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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