CITY OF RYE

NOTICE

There will be a regular meeting of the City Council of the City of Rye on Wednesday, December 16, 2015, at 7:30 p.m. in Council Chambers at City Hall.

AGENDA

1. Pledge of Allegiance

2. Roll Call

3. General Announcements.

4. Draft unapproved minutes of the Regular Meeting of the City Council held December 2, 2015.

5. Issues Update/Old Business.

6. Continuation of the Public Hearing on the proposed 2016 Budget.

7. Resolution to adopt the 2016 Budget and establish the 2016 tax levy and 2016 tax rate.
   Roll Call.

8. Resolution authorizing the City Comptroller to make the necessary year-end closing transfers.
   Roll Call.

9. Resolution authorizing the City Manager to sign the settlement agreement between TessenderloKerley, Inc. (TKI) and the City of Rye.
   Roll Call.

10. Authorization for the City Manager to enter into an Inter-municipal Developer Agreement with Westchester County and Pawling Holdings, LLC for the City to construct the North Street sewer line and other on-site infrastructure improvements for the Theodore Fremd Avenue and North Street affordable senior housing project.
    Roll Call.

11. Resolution to reduce the speed limit in the City of Rye from 30 to 25 miles per hour.

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

13. Resolution for the Rye Golf Club to adopt a Referral Program to offer incentives to existing members of the Club to encourage them to refer friends, family, or neighbors to become new members of the Club.
    Roll Call.

14. Resolution for the Boat Basin Commission to establish a licensing and annual fee agreement for contractors working at the City of Rye Boat Basin.
    Roll Call.

15. Consideration of a resolution to increase the size of the Boat Basin Commission from five to seven members.

16. Resolution to authorize participation in Westchester County contracts.
Roll Call.

17. Resolution authorizing the Mayor to execute an agreement with the Rye Free Reading Room to furnish library services for 2016.
Roll Call.

18. Resolution designating the days and time of regular meetings of the City Council for 2016 setting January 13, 2016 as the first regular meeting.

19. Miscellaneous communications and reports.

20. New Business.

21. Adjournment.

* *

The next regular meeting of the City Council will be held on Wednesday, January 13, 2016 at 7:30 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 jsack@ryeny.gov or contacting the City Manager’s Office at (914) 967-7404.

CITY COUNCIL AGENDA

NO. 4 DEPT.: City Clerk DATE: December 16, 2015

CONTACT: Carolyn D'Andrea, City Clerk

AGENDA ITEM Draft unapproved minutes of the Regular Meeting of the City Council held December 2, 2015.

FOR THE MEETING OF:
December 16, 2015

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 of the City Council held December 2, 2015, as attached.

DRAFT UNAPPROVED MINUTES of the Regular Meeting of the City Council of the City of Rye held in City Hall on December 2, 2015 at 7:30 P.M.

PRESENT:

JOSEPH A. SACK Mayor
LAURA BRETT
KIRSTIN BUCCI
JULIE KILLIAN
TERRENCE McCARTNEY
RICHARD MECCA
RICHARD SLACK
Councilmembers

ABSENT: None

The Council convened at 6:30 P.M. Councilwoman Bucci made a motion, seconded by Councilman McCartney and unanimously carried to immediately adjourn into Executive Session to discuss litigation and personnel matters at 6:33 P.M. Councilwoman Brett made a motion, seconded by Councilman McCartney and unanimously carried, to adjourn the Executive Session at 7:34 PM. The regular meeting convened at 7:39 P.M.

1. Pledge of Allegiance.

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

2. Roll Call.

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

3. Resolution for the Mayor and Council to approve the appointment of the Police Commissioner of the City of Rye.

City Manager Serrano stated that this was a proud moment in his tenure to recommend the appointment of a Police Commissioner. The final candidate recommended, Michael C. Corcoran, was the result of a nation-wide search, narrowed down from 24 candidates. The City interviewed several of Mr. Corcoran's references. One reference was a Lieutenant who trained Mr. Corcoran who conveyed that Mr. Corcoran exhibits a high level of integrity as a leader of internal affairs at his current department. Mr. Serrano stated that Mr. Corcoran not only passed the Lieutenant exam, but also the Bar exam. He believes that Mr. Corcoran will be a tremendous asset to the City. Upon the Council's approval, Mr. Corcoran will be ready to start as Police Commissioner on February 1, 2016.

Mayor Sack made a motion, which was unanimously carried by the Council, to accept City Manager Serrano's recommendation to appoint Michael C. Corcoran as Police Commissioner. No member opposed the motion.

Mr. Corcoran addressed the City Council and City Manager, stating that he is honored to be the next Police Commissioner. He further stated it was a very proud day in his 25 year career to lead the Rye Police Department. Mr. Corcoran has been met with nothing but professionalism from the City. He is looking forward to working with the men and women from the City of Rye Police Department, and is hopeful to learn from the other officers. Mr. Corcoran then introduced his family to the community. Lastly, he thanked the Council for their support.

Mayor Sack made a brief comment on process. He stated that the new CityCharter provision for the City Manager to make a recommendation to the Council worked very well. In this instance, the City Manager allowed the Council to come into the process, which worked exactly the Council envisioned. He felt that the process has been improved by the change to the Charter.

City Manager Serrano thanked Assistant City Manager Eleanor Militana and Personnel Manager Maryann Cianci for their hard work with the appointment.

Mayor Sack stated that the Council and community look forward to Mr. Corcoran leading the Rye Police Department.

4. General Announcements.

Councilman McCartney announced that unfortunately, Rye Resident Betty Nye passed away at 89 years old. Mrs. Nye had 23 grandchildren and 13 great grandchildren. He thanked Mrs. Nye and her family for their contribution to Rye. There was then a moment of silence.

Councilman McCartney then announced that the annual bonfire and holiday sing along is Sunday at RyeRecPark. Registration for the Rye Recreation winter programs opens up at December 7, 2015 at 10:00 A.M. He encouraged residents to sign up and reminded them that the registration fills up quickly.

9. Continuation of Public Hearing to amend local law Chapter 197, "Zoning", of the Rye City Code by amending Section §197-2, "Districts, A: Residence Districts" to change the zoning designation of a property at 120 Old Post Road from the B-4, Office Building, District to a New RA-6, Active Senior Residence, District; and amending Section §197-86, "Tables of Regulations: Table A, Residence Districts – Area Yard, Height and Miscellaneous Regulations" to add the proposed RA-6 zone.

This agenda item was taken out of order.

Mayor Sack announced that the rezoning proposal has been on the Council agenda over many months, and the Council intends to vote on this matter. As the Public Hearing was kept open, Mayor Sack invited any members of the community to speak on this issue.

Robert Van Der Watern, 683 Boston Post Road, thanked the Council for considering his issues and previous letter. He raised two issues for the applicant: first, he expressed concern over landscaping along Boston Post Road, and second, inquired about the probable blasting or rock chipping.

Jonathan Kraut, attorney for the applicant, addressed Mr. Van Der Watern's issues. He stated that the applicant intends on providing a landscape design to the Planning Commission. With regard to rock removal, the applicant plans on any removal well within the confines of the City's new law.

Joseph Murphy, 57 Franklin Avenue, strongly supports the adoption of the zoning change. He is thankful that the Council is entertaining it.

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried, to close the Public Hearing.

Mayor Sack asked Councilwoman Brett to clarify whether all items previously discussed were incorporated into the proposed zoning amendment.

Councilwoman Brett provided background to the Council and community on this particular zoning change. She stated there was very little opposition from the public on the proposed zoning change. By way of background, the Planning Commission took several months with the applicant to provide a recommendation to the City Council. Upon receiving a recommendation, the City Council has been working with applicant on several issues over the past few months, such as traffic. The Council understands there could be additional traffic issues and as a result, the City's traffic engineer performed further study. The City's traffic engineer updated the Council at the previous Council meeting on November 18, 2015. The Council further asked the applicant to increase some of the setbacks which is now reflected in the proposed amendment. The Council further asked the applicant to adjust the Floor Area Ratio (FAR). The maximum FAR will now be 0.75. Further, the minimum size of a lot per family has increased to 2500 square feet.

Corporation Counsel Wilson reminded the Council that as part of the process, in October 2014, the City of Rye declared itself Lead Agent, and the proposed project was declared a Type 1 action. Currently, the next action is for the Council to take a negative declaration to find there are no significant environmental impacts to move forward.

Councilwoman Brett stated that the new zoning will provide for a capital contribution fee on a per-unit basis.

Corporation Counsel Wilson stated that for the Council to move forward there would need to be a motion will be to adopt a negative declaration regarding type 1 action regarding "Zoning", of the Rye City Code by amending Section §197-2, "Districts, A: Residence Districts" to change the zoning designation of a property at 120 Old Post Road from the B-4, Office Building, District to a New RA-6, Active Senior Residence, District; and amending Section

§197-86, "Tables of Regulations: Table A, Residence Districts – Area Yard, Height and Miscellaneous Regulations" to add the proposed RA-6 zone."

Councilwoman Brett made the recommended motion, seconded by Councilman McCartney and unanimously carried, to adopt a negative declaration regarding type 1 action regarding "Zoning", of the Rye City Code by amending Section §197-2, "Districts, A: Residence Districts" to change the zoning designation of a property at 120 Old Post Road from the B-4, Office Building, District to a New RA-6, Active Senior Residence, District; and amending Section §197-86, "Tables of Regulations: Table A, Residence Districts – Area Yard, Height and Miscellaneous Regulations" to add the proposed RA-6 zone."

ROLL CALL

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS: None
ABSENT: None

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried, to adopt an amendment to local law "Zoning", of the Rye City Code by amending Section §197-2, "Districts, A: Residence Districts" to change the zoning designation of a property at 120 Old Post Road from the B-4, Office Building, District to a New RA-6, Active Senior Residence, District; and amending Section §197-86, "Tables of Regulations: Table A, Residence Districts – Area Yard, Height and Miscellaneous Regulations" to add the proposed RA-6 zone."

Prior to the vote, Councilman Slack made a comment. He stated that when the zoning change proposal first came up, he had questions that needed to be answered with respect to the project. Upon considering the tax mix in the City, he is always concerned when we turn commercial property into residential. However, during the site visit, he became convinced that it would be difficult for the current owner to use the property commercially. Councilman Slack recognized Councilwoman Bucci's earlier point that the property would be difficult to rent. He encouraged the Council to consider issues like that when it considers the Master Plan next year. Councilman Slack further stated that the concerns the Council had on this project were more than adequately answered by the applicant. While there could have been a possible negative effect on the schools and children, Councilman Slack felt comfortable because the School Board and school community did not object to the project during the lengthy Public Hearing. He stated that this Council spent a lot of time dealing with any questions or issues prior to moving forward. He felt the applicant has been very accommodating and responsive to the Council. Councilman Slack then thanked the applicant for the way it conducted this project.

Councilwoman Killian stated that she is thrilled that the community will have a place for seniors to stay in Rye. There are lots of terrific people here and the Council would like to keep them as part of the community. She is happy that there will be more alternatives for seniors.

Mayor Sack stated that this Council has been a process-driven Council to try and always end at the right outcome. The process is important. In this case, the Council was issued a

recommendation from the Planning Commission which the Council considered, applied and incorporated public feedback, and ended with a positive outcome. Mayor Sack thanked the applicant for their flexibility through the process.

Alfred Weissman, applicant for this project, stated that he has been around for a long time and served in the Army 71 years ago. He wants the Council to be proud of the project at its opening. The end result will be the best the applicant can possibly give to the City. He wished the Council a Happy New Year.

ROLL CALL

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS: None
ABSENT: None

Mr. Kraut thanked the Council and Deputy Mayor Brett for her work with both the Council and the Planning Commission. He reminded the Council that this project began with a completely different proposal. The original proposal, a hotel, was another idea that did not work for the City, and the current proposal does work.

5. Draft unapproved minutes of the Budget Workshop held November 16, 2015 and the Regular Meeting of the City Council held November 18, 2015.

Councilman McCartney requested an amendment to the minutes of November 18, 2015, to add the word "discussions" to his comments.

Councilwoman Brett made a motion, seconded by Councilman McCartney, and unanimously carried, to approve the minutes of the Budget Workshop held November 16, 2015 and the minutes as amended of the Regular Meeting of the City Council held November 18, 2015.

6. Issues Update/Old Business.

Councilwoman Brett stated that the Landmark Committee is considering historic districts. There is a proposal that she encouraged the Council to consider and review.

7. Mayor and Council amendments to the proposed 2016 City of Rye Budget.

Mayor Sack proposed an amendment to the budget to reflect a reduction to the 2015 appropriation of the general fund for unassigned fund balance to the five point intersection by $100,000 and moved for a salary for a fire administrator.

Councilwoman Bucci explained that she and Councilman Mecca have worked with the Fire Department staff to reach the consensus that the Fire Department is in need of oversight. A Fire administrator would be a step in right direction.

Councilman Mecca added that after many meetings with the department, he and Councilwoman Bucci feel that more oversight would be welcome.

Mayor Sack thanked Councilmembers Mecca and Bucci. With regard to the five points intersection project, the Council does feel that the project has benefit, but at this time there are other priorities that need to be accommodated. With budget planning, the Council must face a balance of competing interests. Mayor Sack further stated that at this point, the fine details about the Fire Department Administrator role have yet to be decided, but there is a need for more oversight.

Councilwoman Bucci, seconded by Councilman Mecca, and unanimously carried, moved to amend the proposed 2016 budget to reflect the changes proposed by Mayor Sack to move the $100,000 appropriation for the five points intersection to that of a salary of Fire Department Administrator.

ROLL CALL

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS: None
ABSENT: None

8. Public Hearing on the proposed 2016 Budget.

Councilwoman Brett made a motion, seconded by Councilman Mecca and unanimously carried, to open the public hearing for the proposed 2016 budget.

Joseph Murphy made a statement to the Council. He reported that the Senior Advocacy Committee is concerned about Rye seniors during the winter months. They support opening the Rye Reading Room on Sundays and suggest that it be considered in the budget for 2016.

Councilwoman Brett made a motion, seconded by Councilwoman Killian and unanimously carried, to continue the Public Hearing to December 16, 2015.

10. Discussion concerning the Pilot Study reducing the speed limit to 25 miles per hour on Stuyvesant Avenue and a recommendation regarding a permanent change in speed limit.

Councilwoman Killian reported as the liaison to the Traffic and Safety Committee. There is a proposal for the City to pursue implementing a Home Rule law to reduce the City-wide speed limit from 30 to 25 miles per hour. The proposed change began when a resident approached the Council about a speed limit reduction on Stuyvesant Avenue. The City proceeded to engage in a pilot study on several roads. The results did not indicate that reducing the speed limit made a difference, but it may have been because it was a test. Councilwoman Killian stated that each resident she has heard from supports this initiative. To implement a lower speed, there would have to be a Home Rule law on the State level. The City has spoken with George Latimer and Steve Otis, who would need to work with the City for the passage of a Home Rule law. Councilwoman Killian further stated that this change may take time, but the

City must decide soon whether this is something to be pursued. Councilwoman Killian stated that she would like to see this change happen in the City. There are many children, pedestrians and bicyclists throughout the City. Councilwoman Killian recommended moving forward support for a speed limit reduction to the State to change the City wide speed limit to 25 miles per hour.

Mayor Sack stated that he would like the Council to vote on a resolution allowing City Manager to pursue this initiative with the State. The City intends on calling on Mr. Latimer and Mr. Otis to help with the speed limit reduction. Mayor Sack suggested that this item be included in the agenda for the next City Council meeting scheduled for December 16, 2015. It is important for there to be public notice that the Council plans on pursuing this.

Councilman Slack stated that there was a memo in the Council packet on this issue. He felt it would be helpful to have a member of the TPS to answer questions raised by the memo.

Mayor Sack suggested putting this matter over to December 16, 2015.

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

Nothing was discussed under this agenda item.

12. Resolution to approve a Memorandum of Agreement between the City of Rye and the City Manager regarding the carryover of accrued sick days.

Councilman Mecca stated that the City Manager requested to carry over sick days from his previous employment. The Counsel asked the Corporation Counsel to draft an agreement loaning City Manager Serrano 36 sick days.

Councilman Slack made a motion, seconded by Councilwoman Brett and unanimously carried, to approve a Memorandum of Agreement between the City of Rye and the City Manager regarding the carryover of accrued sick days.

ROLL CALL

AYES: Mayor Sack, Councilmembers Brett, Bucci, Killian, McCartney, Mecca and Slack
NAYS: None
ABSENT: None

13. Miscellaneous communications and reports.

Nothing was discussed under this agenda item.

14. New Business.

Nothing was discussed under this agenda item.

15. Adjournment.

There being no further business to discuss, Councilwoman Brett made a motion, seconded by Councilman McCartney, to adjourn the meeting at 8:30 P.M.

Respectfully submitted,

Carolyn E. D'Andrea
City Clerk

CITY COUNCIL AGENDA

NO. 5 DEPT.: City Council DATE: December 16, 2015

CONTACT: Mayor Joseph A. Sack

AGENDA ITEM: Issues Update/Old Business

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That an update be provided on outstanding issues or Old Business.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:

CITY COUNCIL AGENDA

NO. 6 DEPT.: City Manager's Office DATE: December 16, 2015

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Continuation of the Public Hearing on the proposed 2016 City Budget.

FOR THE MEETING OF:

December 16, 2015

RYE CITY CODE,

CHAPTER

SECTION

RECOMMENDATION: That the Mayor and the Council conduct the Public Hearing on the proposed 2016 Rye City Budget.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND:

The City Manager presented the budget on November 4th. The Council held Workshops on November 9th and 16th.

The proposed 2016 Budget is available on the City website www.ryeny.gov under City News: 2016 Proposed Budget.

The Budget adoption is scheduled for December 16, 2015.

CITY COUNCIL AGENDA

NO. 7 DEPT.: Finance DATE: December 16, 2015

CONTACT: Joseph Fazzino, Deputy City Comptroller

AGENDA ITEM: Resolution to adopt the 2016 Budget and establish the 2016 City tax levy and 2016 tax rate.

FOR THE MEETING OF: December 16, 2015

RECOMMENDATION: That the City Council adopt the following resolution:

WHEREAS, on November 4, 2015 the 2016 Tentative Budget was presented to the City Council, and,

WHEREAS, since November 4, 2015 the City Council has discussed possible amendments to the 2016 Tentative Budget, now, therefore be it

RESOLVED, that the tentative budgets and fee schedules as amended for the General Fund, Cable TV Special Revenue Fund, K.T. Woods Permanent Fund, Debt Service Fund, Capital Projects Fund, Boat Basin Enterprise Fund, Golf Club Enterprise Fund, Risk Retention Internal Service Fund and Building and Vehicle Maintenance Internal Service Fund, are hereby adopted for the fiscal year ending December 31, 2016, and be it further

RESOLVED, that the City Council does hereby certify to the City Comptroller the 2016 City of Rye tax rate of $157.16 per $1,000 taxable assessed valuation and the 2016 City of Rye tax levy of $22,038,527 and be it further

RESOLVED, that the City Council does hereby direct the City Comptroller to apportion and extend against each taxable property listed upon the assessment roll at the tax rate certified in this resolution to produce the tax levy certified in this resolution, and to render tax notices for, and receive and collect, the several sums so computed and determined, with interest as provided by law, and any special assessments heretofore authorized and approved.

IMPACT: ☐ Environmental ☑ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: On November 4, 2015 the City Manager and City Comptroller presented the 2016 Tentative Budget to the City Council. The tentative budget has since been reviewed and amended by resolutions adopted by City Council at public meetings. The above resolution provides for the adoption of the 2016 Budget.

CITY COUNCIL AGENDA

NO. 8 DEPT.: Finance DATE: December 16, 2015

CONTACT: Joseph Fazzino, Deputy Comptroller

AGENDA ITEM: Resolution authorizing the City Comptroller to make the necessary year-end closing transfers.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the City Council adopt the following resolution:

RESOLVED, that the City Comptroller is hereby authorized to make the necessary 2015 fiscal year-end budget transfers in City accounts, provided a list of such transfers over $10,000 is furnished to the City Council after completion of such transfers.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: While at the fund level total actual expenditures do not exceed the total budgeted amount, there may be several detailed budget lines that show various over and under expended amounts. Funds that are not encumbered or reserved for a specific expense will be moved to Fund Balance from individual financial lines. This resolution authorizes the City Comptroller to make the necessary year-end budget adjustments to ensure that the line item budgets are properly allocated.

CITY COUNCIL AGENDA

NO. 9 DEPT.: Corporation Counsel DATE: December 16, 2015

CONTACT: Kristen K. Wilson, Corporation Counsel

AGENDA ITEM: Resolution authorizing the City Manager to sign the settlement agreement between TessenderloKerley, Inc. (TKI) and the City of Rye.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council authorize the City Manager to sign the settlement agreement with TessenderloKerley, Inc. (TKI).

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The greens at the Rye Golf Club were damaged by a fungicide at the beginning of the 2015 season. The fungicide, ArmorTech ALT 70, was produced by the company Tessenderlo Kerley Inc. (TKI). TKI recalled the fungicide after a number of courses in the country reported deteriorated turf. The City has been in negotiations and has reached a settlement with TKI for the damages. The Council is asked to authorize the City Manager to sign the settlement agreement on behalf of the City.

SETTLEMENT AND RELEASE

This SETTLEMENT AND RELEASE ("RELEASE"), effective as of the date of the last signature below ("EFFECTIVE DATE"), is made by and between Novasource and Tessenderlo Kerley Inc. and their respective past, present and prospective parents, subsidiaries, affiliates, divisions, partners, licensees, officers, directors, shareholders, members, employees, advisors, agents, representatives, and insurers (together "TKI") and TKI's sellers, distributors (including Phoenix Environmental Care, LLC, United Phosphorus, Inc. and United Turf Alliance, LLC and their members), and suppliers (including Max (Rudong) Chemical Company Ltd.) and each of their respective members, predecessors and successors, subsidiaries, affiliates, divisions, partners, licensees, officers, shareholders, directors, employees, distributors, and assigns (collectively with TKI the "RELEASEE") and the CITY OF RYE and the Rye Golf Club and their respective past, present and prospective parents, subsidiaries, affiliates, divisions, partners, licensees, vendors, officers, directors, shareholders, members, lessees, employees, advisors, agents, representatives, insurers and attorneys and each of their respective successors and assigns (collectively "RELEASOR"). Together the RELEASEE and RELEASOR are referred to as the "PARTIES".

RECITALS

WHEREAS, RELEASOR alleges that RELEASEE's fungicide products, ArmorTech® ALT-70 and Viceroy ® (the "PRODUCT") caused damage to the RELEASOR's property located at Rye Golf Club, 330 Boston Post Road, Rye, New York 10580 (the "PROPERTY"), and is thus liable for damages and economic, consequential, and business loss related thereto.

WHEREAS, the PARTIES wish to compromise and fully and finally settle and resolve any and all claims, regardless of the theory of liability, that may be asserted by the RELEASOR against the RELEASEE regarding any damage to the PROPERTY caused by the PRODUCT and all damages, including economic, consequential and business loss related thereto; and

WHEREAS, the PARTIES have agreed to enter into this RELEASE to avoid the further expense, inconvenience, and distraction of litigation, and for the PARTIES to be free of further controversy with respect to the damaged PROPERTY and the PRODUCT.

NOW, THEREFORE, in consideration of the promises herein, the receipt and sufficiency of which are hereby acknowledged, it is hereby agreed as follows:

1. RELEASE

1.01. RELEASOR agrees to absolutely and forever release, acquit and discharge RELEASEE of and from any and all liabilities, actions, claims, counter-claims, subrogation claims, causes of actions, suits, debts, sums of money, attorneys' fees, costs, damages, judgments and demands whatsoever, known or unknown, asserted or unasserted, suspected or unsuspected, in law or in equity, which RELEASOR ever had or may have against RELEASEE concerning damage to the PROPERTY, including any associated economic, consequential and business loss, allegedly caused by the PRODUCT.

2. SETTLEMENT PAYMENT AND ESCROW

2.01. No later than sixty (60) days after the execution of this RELEASE, TKI agrees to deliver one or more negotiable checks in the total sum of Two Million Five Hundred Nineteen Thousand and 00/100 Dollars ($2,519,000.00), made payable to City of Rye and delivered to Marcus Serrano, City Manager, Rye City Hall, 1051 Boston Post Road, Rye, New York 10580.

2.02. In addition to the settlement payment of $2,519,000.00, Releasees agree to escrow $60,000.00 which the City of Rye may draw down, in its sole discretion, in whole or in part, as reimbursement for the cost of sodding one or more of its golf course greens in 2016.

2.03. It is as agreed that TKI will have the right to inspect the Rye Golf Club greens prior to the sodding taking place.

2.04. The City of Rye will submit to Gordon & Rees, LLP, which will hold the escrow in its trust account, invoices showing the purchase of sod for which reimbursement is sought.

2.05. Any escrow funds not used to sod the Rye Golf Club greens by July 1, 2016, will be returned to TKI and/or its insurer, and City of Rye's right to the escrow funds will terminate as of that date, which will be the last date on which City of Rye may submit sod purchase invoices.

3. FURTHER OBLIGATIONS

3.01. In consideration of the RELEASE described above, RELEASOR hereby agrees to indemnify, defend and hold harmless RELEASEE from and against any and all future claims, demands or lawsuits, including, but not restricted to claims for apportionment, contribution and/or indemnity, arising from or related in any way to damage to the PROPERTY, including economic, consequential and business loss associated with damage to the PROPERTY, allegedly caused by RELEASOR'S use of the PRODUCT, but in no event shall this obligation exceed $2,100,000.00.

Notwithstanding the above, the following are excluded from this provision: (1) claims, demands or lawsuits arising from or relating to personal injury, environmental, health, or safety other than for property damages, (2) claims, demands or lawsuits by or on behalf of any governmental entity (including any governmental investigation, penalties, tax and/or administrative), (3) punitive, exemplary or other similar damages; (4) patent or intellectual property claims, demands or lawsuits (5) intentional misrepresentation or fraud, (6) claims, demands or lawsuits other than by Lessing's restaurant, the Rye Golf Club Pro and Rye Golf Club Members which RELEASEE had knowledge of prior to the date of this agreement.

3.02. Notwithstanding the terms of Section 3.01, the City of Rye's obligation to indemnify, defend and hold harmless RELEASEE shall not apply to: (1) claims seeking recovery for personal injury caused by the RELEASEE's PRODUCT; (2) claims of any kind brought by federal, state or local regulatory agencies concerning RELEASOR' use of the PRODUCT; and (3) claims brought by any entity in the PRODUCT's chain of commerce, including without limitation, claims brought by any manufacturer, distributor, supplier or seller of the PRODUCT.

3.03. RELEASOR further agrees that, in the event that RELEASEE is judicially determined to be responsible for any damage to the PROPERTY allegedly caused by the

PRODUCT, including economic, consequential and business loss associated with damage to the PROPERTY, this RELEASE shall operate as a full and complete satisfaction of such responsibility.

3.04 RELEASOR agrees that, in exchange for payment of the settlement funds by RELEASEE, RELEASOR shall to pay, at its sole expense and without any limitation, any and all outstanding invoices submitted to the City of Rye by any seller, dealer, or distributor (including, but not limited to, Seeton Turf) for labor, products and/or equipment used at, or in connection with, the Rye Golf Club as it relates to the use of Releasee's product and the restoration of the greens at Rye Golf Club.

4. NO ADMISSION OF LIABILITY

4.01. The PARTIES each expressly recognize that neither the offer nor the acceptance of the terms and conditions hereof represent an admission by RELEASEE of liability or responsibility or other wrongdoing on its part, and specifically shall not be construed as an admission RELEASEE violated any law in connection with the manufacture, sale and distribution of the PRODUCT or that it is liable to RELEASEE in any respect.

5. SUCCESSORS AND ASSIGNS

5.01. This RELEASE is binding on and shall inure to the benefit of each of the PARTIES and to each of their respective assigns and successors in interest.

6. VOLUNTARY EXECUTION

6.01. Each Party further warrants and represents that it has received advice with respect to this RELEASE from independent counsel of their own choice, and is entering this RELEASE voluntarily and without duress. Each person who signs this RELEASE warrants and represents that he or she has read this RELEASE and understands its contents. Each person who signs this RELEASE on behalf of a corporation, municipality, partnership or other entity further warrants and represents that he or she has full authority to execute this RELEASE on behalf of that entity, and that this RELEASE thereby binds that entity.

7. MISCELLANEOUS

7.01. This RELEASE constitutes and contains the entire agreement of the PARTIES regarding the subject matter hereof, and supersedes and replaces any and all prior or contemporaneous negotiations, proposed agreements, and agreements, whether express or implied. Each of the PARTIES acknowledges that no person has made any promise, representation or warranty (whether express or implied) not contained herein to induce any of them to execute this RELEASE. Each of the PARTIES warrants and represents that in executing this RELEASE he, she or it has not relied upon any promise, representation or warranty (whether express or implied) that is not contained herein.

7.02. This RELEASE may not be modified or amended except by a written agreement signed by each of the PARTIES. No waiver of any breach of any term or provision of this

RELEASE shall be construed to be, or shall be, a waiver of any other or subsequent breach of this RELEASE. All remedies, rights, undertakings, obligations and agreements contained herein shall be cumulative and none of them shall be in limitation of any other remedy, right, undertaking, obligation or agreement by either Party.

7.03. This RELEASE shall be construed as though all PARTIES have participated equally in its drafting and it shall be interpreted, wherever possible, to make it valid and effective. If any part of this RELEASE is invalid or prohibited, only that part should be affected and the rest of the RELEASE shall be enforced as written here.

7.04. The validity, interpretation and legal effect of this RELEASE shall be governed by the laws of the State of New York without respect to its conflict of law principles. In addition, each Party hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this RELEASE, the performance hereof, or enforcement thereof to the exclusive jurisdiction of the courts of New York and consents and agrees to suit being brought in such courts. Each Party hereby waives and agrees not to assert in any such action or proceeding, in each case, to the fullest extent permitted by applicable law (i) any claim of lack of personal jurisdiction; (ii) immunity from any legal process with respect to it or its property; (iii) that any such suit, action or proceeding is brought in an inconvenient forum; or (iv) that the venue of such suit is improper.

8. CONFIDENTIALITY

8.01. The PARTIES understand that confidentiality is of the essence of this RELEASE. Although City of Rye may be required to disclose the amount of the settlement, the PARTIES agree that they will not disclose how the settlement was reached unless required by law or ordered by a court.

8.02. The terms of Section 8.01 of this RELEASE shall not apply to communications between the PARTIES and their respective insurance carriers and counsel; shall not apply to use in any action for indemnity, and further shall not apply to communications between the PARTIES and sellers/distributors of the PRODUCT. The PARTIES acknowledge, understand and agree that, except for the reasons listed above, any disclosure of the terms of this RELEASE (as limited by Section 8.01 above) may result in an action for breach of the terms and conditions of this RELEASE.

9. COUNTERPARTS

9.01. This RELEASE may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument.

SIGNATURE PAGE TO FOLLOW

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

AGREED:

_____
Novasource / Tessenderlo Kerley Inc.

STATE OF)
) ss:
COUNTY OF:)

On this _____ day of November 2015, before me personally appeared _____ _____ of TKI, known to me to be the individual described herein, and who executed the foregoing release and duly acknowledged to me that he executed the same.

_____
Notary Public
My Commission Expires:_____

AGREED:

_____
Novasource / Tessenderlo Kerley Inc.

STATE OF)
) ss:
COUNTY OF:)

On this _____ day of November 2015, before me personally appeared _____ _____ of TKI, known to me to be the individual described herein, and who executed the foregoing release and duly acknowledged to me that he executed the same.

_____
Notary Public
My Commission Expires:_____

AGREED:

_____
City of Rye

STATE OF)
) ss:
COUNTY OF:)

On this _____ day of November 2015, before me personally appeared _____, known to me to be the individual described herein, and who executed the foregoing release and duly acknowledged to me that he executed the same.

_____
Notary Public
My Commission Expires:_____

CITY COUNCIL AGENDA

NO. 10 DEPT.: City Manager DATE: December 16, 2015

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Authorization for the City Manager to enter into an Inter-municipal Developer Agreement with Westchester County and Pawling Holdings, LLC for the City to construct the North Street sewer line and other on-site infrastructure improvements for the Theodore Fremd Avenue and North Street affordable senior housing project.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Mayor and Council authorize the City Manager to enter into the agreement.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: As part of the approval of the zoning district change to provide for the construction of 40 affordable senior housing units, the City Council required the installation of a new sewer line extending from Nursery Lane to North Street. The City Council adopted a resolution requesting $1,000,0000 in Housing Implementation Funds (HIF) from Westchester County to install the required sewer line. The attached draft agreement outlines responsibilities and obligations for the sewer line project. The agreement also includes requirements for the installation of $1,200,000 in infrastructure improvements on the affordable housing project site. The agreement is between Westchester County, the City of Rye, and the developer Pawling Holdings, LLC. The City will be responsible for designing, bidding and over-seeing the construction of the on-site and off-site infrastructure improvements. The sewer district change was approved by the Westchester County Board of Legislatures.

INTER-MUNICIPAL DEVELOPER AGREEMENT
HOUSING IMPLEMENTATION FUND PROGRAM

THIS AGREEMENT made this_____day of_____, 20____, by and between:

THE COUNTY OF WESTCHESTER, a municipal corporation of the State of New York, having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601 (the "County"),

and

CITY OF RYE, a municipal corporation of the State of New York, having an office and place of business at 1051 Boston Post Road, Rye, New York, 10580 (the "Municipality" or the "City"),

and

NORTH ST. SENIOR HOUSING LLC, a New York limited liability company, having an office and place of business at 211 South Ridge Street, Rye Brook, New York, 10573 (the "LLC" or "Developer").

WHEREAS, the County executed a stipulation and order of settlement and dismissal in connection with United States of America *ex rel.* Anti-Discrimination Center of Metro New York, Inc. v. Westchester County, New York, No. 06 Civ. 2860 (DLC) (the "Settlement Agreement; and

WHEREAS, pursuant to the Settlement Agreement the County is required to develop, in eligible municipalities, seven hundred fifty (750) affordable housing units which affirmatively further fair housing ("AFFH") as set forth in 42 U.S.C. Section 5304(b)(2) and as required pursuant to the Settlement Agreement; and

WHEREAS, pursuant to the Settlement Agreement the City is an eligible municipality; and

WHEREAS, in an effort to encourage the development of fair and affordable housing in Westchester County, the County has established a Housing Implementation Fund ("HIF") to provide funds to assist in the construction of water facilities, sewer facilities, road improvements, and other infrastructure improvements necessary for the development of fair and affordable housing in Westchester County; and

WHEREAS, Pursuant to the provisions of Chapter 298 of the Westchester County Administrative Code, the County agrees to enter into agreements with municipalities and developers pursuant to which the municipalities will construct public improvements in support of the development of affordable housing; and

WHEREAS, in furtherance of the foregoing, the County desires to enter into Intermunicipal and Intermunicipal-Developer Agreements with municipalities and developers in the County in support of affordable AFFH developments; and

WHEREAS, the Developer has agreed to construct certain affordable AFFH housing on the property more particularly described on Schedule "A," attached hereto and made a part hereof (the "Affordable Housing Property"); and

WHEREAS, the Developer is the beneficial owner of the Affordable Housing Property and has agreed to construct forty (40) senior affordable units and one (1) caretaker unit that is not regulated as AFFH or age-restricted (the "Development") on the Affordable Housing Property and North St. Senior Housing Development Fund Corp. (the "HDFC"), is the fee title owner of the Affordable Housing Property as nominee for the Developer; and

WHEREAS, the Municipality and the Developer agree that the County shall fund the Infrastructure Improvements (defined below) which support the Development and, in consideration thereof, acknowledge that the Affordable Housing Property shall be subject to that certain declaration of restrictive covenants (the "Declaration of Restrictive Covenants") dated _____, which has been recorded by the Developer against the Affordable Housing Property in the Office of the Westchester County Clerk under control No._____ and attached hereto as Schedule "C" and the Affordability Restrictions as defined in Schedule "B"

thereto ("Schedule B") all of which is incorporated herein by reference; and

WHEREAS, following construction of the Affordable AFFH Units (as defined in Schedule "B"), the rental of the Units will adhere to the provisions set forth in Schedule "B," including but not limited to the Affordability Requirements for the Period of Affordability set forth therein; and

WHEREAS, the Infrastructure Improvements (collectively defined below), shall be constructed on the City's right of way, property for which the City has legal control, (the "City Infrastructure Improvements Property") and on the Affordable Housing Property as described in Schedule "F" hereto (the "Developer Improvements Property" together with the City Infrastructure Improvements Property are herein referred to collectively as the "Infrastructure Improvements Property"); and

WHEREAS, the City Infrastructure Improvements include but are not limited to, the construction of new sewer lines from Nursery Lane to North Street, curbing, paving, lighting, sidewalks along Theodore Fremd Ave in front of the Affordable Housing Property, engineering and related work in the City Infrastructure Improvements Property (the "City Infrastructure Improvements") all as more fully set forth in Schedule "D" annexed hereto and forming a part hereof ; and

WHEREAS, the Developer Infrastructure Improvements include but are not limited to, paving, new curbing, parking, catch basins, drainage, lighting, new sidewalks, landscaping, sewers, engineering and other related work, on the Developer Infrastructure Improvement Property (the "Developer Infrastructure Improvements") all as more fully set forth in Schedule "D" annexed hereto and forming a part hereof; and

WHEREAS, the County proposes to fund the cost of the construction of the City Infrastructure Improvements and the Developer Infrastructure Improvements (together, the "Infrastructure Improvements") and will use the proceeds of tax exempt general obligation bonds issued by the County for such funding (as defined in Section 5 below); and

WHEREAS, the Municipality is obligated to implement the construction of the Infrastructure Improvements; and

NOW THEREFORE, in consideration of the terms and conditions herein contained, the parties agree as follows:

1. RECITALS: The above recitals are hereby incorporated by reference into the body of this Inter-Municipal Developer Agreement (the "Agreement" and/or "IMDA").

2. PERFORMANCE OF WORK: The Municipality will cause the Infrastructure Improvements necessary in support of the Project to be constructed on the Infrastructure Improvements Property in accordance with the provisions as set forth in this Agreement, including but not limited to, Schedule "D". The Infrastructure Improvements will be constructed in accordance with the Plans (defined in Schedule "D"). Any modification of the Plans (defined in Schedule "D") or change orders, if any, shall require the prior written approval of the Commissioner of the County Department of Planning or his duly authorized designee (the "Commissioner").

As a condition of the Municipality receiving the HIF funding, the Developer will adhere to the provisions set forth in Schedule "B", including but not limited to, meeting the Affordability Requirements for the Units until the expiration of the Period of Affordability. The Developer will comply with Chapter 298 of the Westchester County Administrative Code as applicable to the Units ("Chapter 298").

It is understood and agreed that the Municipality represents that, if required by applicable law, the construction of the Infrastructure Improvements to be performed hereunder has been or will be (within 365 days of the date hereof) bid by two separate public competitive bids ,one for the City Infrastructure Improvements and one for the Developer Infrastructure Improvements pursuant to Section 103 of the General Municipal Law and in accordance with all applicable federal, state and local laws, rules and regulations, ordinances and requirements, including without limitation the terms hereof. In no event will the retention of a contractor to perform work on the Infrastructure Improvements relieve or otherwise discharge the Municipality or Developer, from their respective obligations hereunder or create a third party beneficiary relationship between the County and any such contractors and the parties hereto expressly disclaim any intention to create such a relationship. Notwithstanding the foregoing, a failure of the City to complete the City Infrastructure Improvements work in accordance with this Agreement shall not constitute a default of the Developer.

The County will not reimburse the Municipality with any of the HIF Funds, (as defined in Section "4" hereof) except allowable costs in connection with the preparation of bid documents and plans, and work will not be required to commence on the Infrastructure Improvements until:

(i) evidence has been provided to the County that the Developer owns the Affordable Housing Property (shown on Schedule "A") free of liens, encumbrances, easements and agreements unless such liens, encumbrances, easements and agreements, if any, shall be subordinate to the Declaration of Restrictive Covenants in a manner acceptable to the County and;

(ii) the Municipality has awarded the bids and contracted for construction of the Infrastructure Improvements, provided, however, that in the event the actual cost of completion of the Developer Infrastructure Improvements, the Developer shall contribute said excess;

(iii) the Municipality has received either (a) a performance and payment bond, including without limitation materials and labor, covering one hundred percent (100%) of the work to be performed in connection with the Infrastructure Improvements, in form and content and issued by a surety reasonably satisfactory to the Municipality; or (b); an instrument of credit or guarantee which is acceptable to the City and the County;

(iv) the Declaration of Restrictive Covenants placed on the Affordable Housing Property will be executed and will be submitted for recording, as more fully set forth below, and that Declaration will contain the following language, "the Developer has been granted the appropriate public policy exemption under the New York Human Rights Law, Exec. L. Sec. 296.2-a(e) and the AFFH Affordable Housing Units in the Development shall be developed, marketed and leased exclusively to persons 62 years of age or older, meeting the income qualifications described herein";

(v) the Developer has obtained a firm, unconditional commitment for the necessary construction financing for the Development;

(vi) An indenture from the Developer and the HDFC to the Municipality and to the County granting an easement in the Affordable Housing Property for the construction of any Infrastructure Improvements to be constructed thereon has been executed in substantially the form attached hereto and forming a part hereof as more particularly described in Schedule "G" (the "Required Easement") and such Required Easement will be submitted for recording, as more fully set forth below;

(vii) the Municipality has verified that the Infrastructure Improvements not constructed on the Affordable Housing Property will be constructed in the public right-of-way or within lands under control of the Municipality;

(viii) the Developer has obtained any approvals necessary in connection herewith, including but not limited to receipt of the site plan and State Environmental Quality Review Act ("SEQRA") approvals by the Municipality's governing body; and

(ix) the Developer has obtained any and all approvals necessary in connection herewith, including without limitation, from its members.

The requirements contained in clauses (i), (iv), (v), (vi), (vii), (viii) and (ix) above must be satisfied prior to or concurrent with execution of this Agreement. The requirements contained in clauses (ii) and (iii) above must be satisfied within 365 days following execution of this Agreement.

All of the provisions of this Section "2" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability as defined in Schedule "B".

3. LIENS: Except as provided in the title policy, the Municipality and the Developer will not enter into any mortgage or other financing documents that place a lien on the Infrastructure Improvements, which will be owned by the County, or the Infrastructure Improvements Property, which conflict with or diminish the terms of the Restrictive Covenants recorded against the Affordable Housing Property. In the event any lien is placed on the Infrastructure Improvements or the Infrastructure Improvements Property by a contractor or subcontractor, the Municipality or the Developer that engaged such contractor or subcontractor shall take immediate action to discharge such liens.

4. PAYMENT: The County's sole obligation under this IMDA is to pay an amount not to exceed TWO MILLION TWO HUNDRED THOUSAND ($2,200,000.00) DOLLARS (the "HIF Funds") to the Municipality to fund the construction of the Infrastructure Improvements necessary for the Development, pursuant to the terms hereof. The County HIF Funds will be paid with the proceeds of the Bonds in accordance with the payment provisions of Schedule "D". The County will make such payment to the Municipality only after submission by the Municipality of all requested documentation concerning construction of the Infrastructure Improvements (as specified in Schedule "D") and after audit and approval by the County for expenses properly incurred in the performance of this Agreement. The County will not be liable for any costs or expenses in excess of the HIF Funds incurred in connection herewith. The Municipality will promptly pay for work performed. The County will reimburse the City as work progresses on the Development. In the event the cost of constructing the Developer Infrastructure Improvements exceeds the amount of the HIF Funds, the Developer will pay said excess.

The Municipality and Developer will, and will require any contractor(s) or sub-

contractor(s) to make their books and records available to the County for audit and inspection. The County will not be restricted from withholding payment for cause found in the course of such audit or because of failure of the Municipality or the Developers to cooperate with such audit. The County will, in addition, have the right to audit such books and records subsequent to payment during the period that such books and records are required to be maintained under any applicable law.

County HIF Funds will be expended solely and exclusively for the purchase of materials and labor and related soft costs used in the design and/or construction of the Infrastructure Improvements necessary for the Development, in accordance with this Agreement, as specified in Schedule "D".

Payments hereunder to the Municipality by the County will operate to release the County from any and all obligations or liabilities to the Municipality, the Developer, and their respective contractor(s) or sub-contractor(s) hereunder, for the work associated with those payments. Notwithstanding the foregoing, the County expressly disclaims the existence of any third party beneficiary relationship between the County and any such parties.

The Municipality will furnish the County, whenever requested to do so, satisfactory evidence showing that all monies already paid hereunder have been applied by the Municipality toward the costs of the Infrastructure Improvements. Until such evidence, which shall consist of an affidavit certified by the respective contractor(s) acknowledging receipt of payment from the Municipality, is produced, at the option of the County, no further payments need be made by the County hereunder.

Notwithstanding anything herein contained to the contrary, should the Developer Infrastructure Improvements and/or the Development fail to be fully constructed within three (3) years from execution of this Agreement then the County shall have the right, at its option, to require repayment from the Developer. The three year requirement may be extended due to strikes, acts of God and other unforeseeable delays outside the control of the Developer.

All of the terms of Section "4" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability, provided the County has paid the

HIF Funds to the Municipality.

5. <u>TAX RESTRICTIONS</u>: a) <u>The Bonds</u>. The Municipality and the Developer acknowledge and understand that the funds available for the Infrastructure Improvements hereunder will be made available from tax exempt general obligation bonds issued by the County (the "Bonds"), which have been, or will be, issued to fund construction of the Infrastructure Improvements in accordance with the provisions of this Agreement, the Declaration of Restrictive Covenants to assist and support the development of the Development encumbered by said Declaration of Restrictive Covenants. The Municipality and Developer further acknowledge and understand that in connection with the issuance of the Bonds, the Commissioner of Finance of the County of Westchester has executed or will execute an "Arbitrage and Use of Proceeds Certificate," in compliance with the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder (the "Code"). The Municipality and Developer further acknowledge and agree that the HIF Funds may not be advanced as a loan to the Developer.

b) <u>Commencement of Construction</u>. The Municipality and the Developer expect that the construction of the Infrastructure Improvements will commence within 365 days from execution of this Agreement, and the County HIF Funds made available hereunder will be expended for costs of constructing the Infrastructure Improvements necessary for the Development in accordance with the budget contained in Schedule "D" and the construction of the Infrastructure Improvements will proceed in accordance with said Schedule. The Municipality and the Developer agree to notify the County in the event of changes in the expected schedule for completion of the Infrastructure Improvements.

c) <u>Failure to Complete</u>. The Municipality and Developer agree that should the Infrastructure Improvements fail to be completed in accordance with the completion date set forth in Schedule "D", which completion date shall be extended for unavoidable delays, *force majeure* and other causes beyond the control of the Municipality or the Developer, without limiting any other right or remedy to which it may be entitled, the County will have the right to (i) terminate this Agreement upon thirty (30) days prior written notice to the Municipality and

the Developer and/or (ii) deduct from any remaining payments due hereunder the dollar amount of penalties imposed by the Code for failure to expend the bond proceeds allocable to the Infrastructure Improvements in a timely manner.

d) Termination. Should the County terminate this Agreement pursuant to the terms hereof or should the remaining payments due the Municipality be insufficient to cover the amount of the aforementioned penalty, the Developer will be obligated to immediately pay the County the full amount of any such penalty if caused by the Developer. the City shall pay the full amount if any such penalty if caused by the City.

e) Extensions. Notwithstanding anything to the contrary contained in this Agreement, the Municipality and the Developer will use reasonable best efforts and good faith to meet any and all time periods provided for in this Agreement and in any schedule annexed hereto in connection with any obligation hereunder. If, despite the use of reasonable best efforts and good faith, the Municipality and the Developer are unable to meet any stated time period, then the Municipality or the Developer may request an extension of such time period and all subsequent time periods affected thereby, subject to the consent of the County, which shall not be unreasonably withheld.

f) No Loan. The parties hereto acknowledge and agree that the HIF Funds do not constitute a loan. The HIF Funds are to be paid to Municipality in consideration for causing construction of the Infrastructure Improvements in support of the fair and affordable Development.

All of the provisions of this Section "5" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability provided that the County has paid the HIF Funds to the Municipality.

6. OWNERSHIP OF INFRASTRUCTURE IMPROVEMENTS: The Municipality and the Developer acknowledge and agree that the Infrastructure Improvements shall be owned by the County for so long as the Bonds are outstanding. The Municipality and the Developer agree to execute or cause to be executed any and all such documents as are necessary and appropriate to effectuate such County ownership. Upon maturity or redemption of the Bonds,

the County's ownership interest in the County Easement and Infrastructure Improvements will automatically terminate. Upon request the County will provide notification of such maturity or redemption in recordable form.

Notwithstanding the foregoing the Municipality and the Developer have the right to utilize the Infrastructure Improvements in such manner as they may deem necessary or desirable so long as those uses do not adversely impact the Development or violate and/or diminish the Declaration of Restrictive Covenants.

All of the provisions of this Section "6" will survive the expiration or other termination of this Agreement until and for so long as the Bonds are outstanding provided that the County has paid the HIF Funds to the Municipality.

7. <u>MAINTENANCE AND REPAIRS</u>: The Infrastructure Improvements located in the City's right of way, except for the sewer line from Nursery Lane to North Street which shall be maintained by the Municipality (as defined in Schedule "D"), shall be kept in good order and repair by the Developer at the Developer's sole cost and expense, and the Developer shall make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, which may be necessary or required so that at all times the Infrastructure Improvements shall be in thorough good order, condition and repair.

The Developer Infrastructure Improvements located in the Affordable Housing Property shall be kept in good order and repair by the Developer at the Developer's sole cost and expense, and the Developer shall make all repairs and replacements, ordinary as well as extraordinary, foreseen and unforeseen, structural or otherwise, which may be necessary or required so that at all times the Infrastructure Improvements shall be in thorough good order, condition and repair.

All of the provisions of this Section "7" will survive the expiration or other termination of this Agreement for so long as the Bonds are outstanding provided that the County has paid the HIF Funds to the Municipality.

8. <u>REPORTS</u>: The Municipality will furnish, or will cause to be furnished to the County, progress reports detailing the progress of the construction of the Infrastructure Improvements. The Municipality will prepare, or will cause to be prepared, a final report describing the work performed, together with such supporting information and documentation in such form and at such times as the County may reasonably require. The Developer shall assist the Municipality in the preparation of the progress reports and final report as required by the County, to the extent that the Developer has information on the Developer Infrastructure Improvements.

9. <u>MAINTENANCE OF RECORDS</u>: The parties will, each at their sole cost and expense, keep, maintain, and preserve at their respective principal offices throughout the term of this Agreement, full and detailed books, accounts, and records pertaining to its performance pursuant to this Agreement. Such books, accounts and records will include, without limitation, all bills, invoices, payrolls and other data evidencing, or in any material way relating to, the direct and indirect costs and expenses incurred in connection herewith. The County will have the right to inspect and audit, at reasonable times and upon reasonable notice, any and all such books, accounts and records at the office or offices where they are then being kept, maintained and preserved.

All of the provisions of this Section "9" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability provided that the County has paid the HIF Funds to the Municipality.

10. <u>COUNTY'S RIGHT TO WITHHOLD PAYMENTS</u>: If at any time the Municipality or Developer neglect or fail to perform properly any of their respective material obligations under this Agreement, including without limitation, failure in a material way to complete the Development or the Infrastructure Improvements in accordance herewith, as more fully set forth in Schedule "B" hereto, then the County, in addition to any other rights hereunder, including without limitation to terminate the Agreement, will have the right, in its sole discretion subject to the Cure Period (defined in Section 22), to withhold, in whole or in part, any payments otherwise due or to become due to the Municipality hereunder until such neglect or failure will have been remedied to the satisfaction of the County.

11. REPRESENTATIONS, WARRANTIES AND GUARANTEES:

A. The Municipality expressly represents, warrants and guarantees to the County that:

(a) it is a municipal corporation duly organized, validly existing and in good standing under the laws of the State of New York; the execution and performance of this Agreement by the Municipality has been duly authorized by its governing body; this Agreement, and any other documents required in connection herewith, when so delivered, will constitute legal, valid and binding obligations of the Municipality enforceable against the Municipality in accordance with their respective terms; and the Municipality will deliver to the County at the time of execution of this Agreement a resolution adopted by its governing body authorizing the execution of this Agreement, and any other documents required to be delivered by the Municipality, including without limitation the Required Easement;

(b) the person signing this Agreement on behalf of the Municipality has full authority to bind the Municipality to all of the terms and conditions of this Agreement;

(c) it is financially and technically qualified to perform its obligations hereunder, including construction of the City Infrastructure Improvements; however all other which obligations relating to the Developer Infrastructure Improvements will be assumed by the Developer pursuant to this Agreement;

(d) it has received no information or documentation indicating that the Developer is not otherwise financially capable of completing the Development;

(e) it is familiar and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(f) the design, supervision and workmanship furnished with respect to the construction of the Infrastructure Improvements will be in accordance with sound and currently accepted scientific standards and best engineering practices;

(g) it will use its reasonable best efforts to assure and shall require in any contract documents with its contractors and sub-contractors that all materials, equipment and workmanship furnished by contractors and subcontractors of the Municipality in performance of the work or any portion thereof shall be free of defects in design, material and workmanship, and all such materials and equipment shall be of first-class quality, shall conform with all applicable codes, specifications, standards and ordinances and shall have service lives and maintenance characteristics suitable for their intended purposes in accordance with sound and currently accepted scientific standards and best engineering practices;

(h) to the best of the Municipality's current knowledge and information the budget proposal attached in Schedule "D" lists the anticipated true and correct costs for the Infrastructure Improvements;

(i) the consummation of the transactions contemplated by this Agreement and the performance of the Municipality's obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Municipality is a party or by which it may be bound or affected; and

(j) construction of the Infrastructure Improvements is necessary to support the Development.

The Municipality expressly acknowledges that the County is materially relying on the above representations.

B. The Developer expressly represents, warrants and guarantees to the County that:

(a) It is duly organized, validly existing and in good standing under the laws of the State of New York. The Developer is duly qualified to do business and is in good standing in each jurisdiction where the conduct of their business requires them to be so qualified. The Developer has the corporate power, authority and legal right to execute and perform this transaction and to execute this Agreement; the execution and performance of this Agreement by the Developer has been duly authorized by its governing bodies; this Agreement constitutes, and any other documents required to be delivered by the Developer, when so delivered will constitute, the legal, valid and binding obligations of the Developer enforceable against the Developer in accordance with their respective terms; and the Developer will deliver to the County at the time of execution of this Agreement separate resolutions adopted by their governing bodies authorizing the execution of this Agreement, and any other documents required to be delivered by the Developer;

(b) The persons signing this Agreement on behalf of the Developer have full authority to bind the Developer to all of the terms and conditions of this Agreement pursuant to the authority granted by the Developer, as noted above;

(c) It is financially and technically qualified to perform its obligations hereunder including construction of the Development;

(d) It is familiar and will comply with all general and special Federal, State, municipal and local laws, ordinances and regulations, if any, that may in any way affect the performance of this Agreement;

(e) Consummation of the transactions contemplated by this Agreement and the performance of the Developer obligations hereunder will not result in any breach of or constitute a default under other instruments or documents to which the Developer is a party or by which it may be bound or affected; and

(f) Construction of the Infrastructure Improvements is necessary to support the Development;

The Developer expressly acknowledges that the County and Municipality are materially relying on the above representations.

12. <u>INSURANCE; INDEMNIFICATION</u>:

A. In addition to, and not in limitation of the insurance requirements contained in Schedule "E" entitled "Standard Insurance Provisions, Municipality", attached hereto and made a part hereof, the Municipality agrees:

(a) that except for the amount, if any, of damage contributed to, caused by or resulting from the negligence, or intentional conduct of the County, the Municipality will indemnify and hold harmless the County, its officers, elected officials, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of the acts or omissions hereunder by the Municipality and contractors or third parties under the control of the Municipality; and

(b) that except for the County's wrongful conduct as described above, to provide defense for and defend, at its sole expense, any and all claims, demands or causes of action against the County directly or indirectly arising out of this Agreement and to bear all other costs and expenses related thereto.

(c) The aforementioned defense and indemnification of the County by the City, as detailed above, shall apply only to any and all liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising directly or indirectly out of this agreement including but not limited to, the construction work, contractor payments and the completed Infrastructure Improvements contemplated under this Agreement in accordance with Schedule "D" herein.

The Municipality may provide proof of self-insurance in lieu of the required insurance policies.

B. In addition, Developer shall provide defense for and defend, indemnify and hold harmless the County and the Municipality, their officers, employees and agents from and against any and all liability, damage, claims, demands, costs, judgments, fees, reasonable attorneys' fees or loss arising directly or indirectly under this Agreement as a result of any cause whatsoever with regards to the Developer Infrastructure Improvements and Developer Infrastructure Improvements Property, except for any liability, damage, claims, demands, costs, judgments, fees, attorneys' fees or loss arising from the negligence of the County or the Municipality. Notwithstanding anything to the contrary, nothing herein shall relieve the Municipality of its obligations to indemnify and hold harmless the County pursuant to Section 12A, above; and

C. The Developer agrees to provide the County with proof of and agrees to comply with the County's insurance requirements contained in Schedule "E(ii)" entitled "Standard Insurance Provisions, Developer," attached hereto and made a part hereof.

This Paragraph 12 shall survive termination or expiration of this Agreement.

13. ENVIRONMENTAL INDEMNIFICATION:

A. The Developer represents and warrants and guarantees to the County and the Municipality as follows:

(a) Except as described in the Phase I ESA Update & Database Report titled: *The Courtyard at Theodore Fremd 150 North Street, Rye, New York, 10580*, prepared by Team Environmental Consultants, Inc., 30 Industrial Drive, Middletown, NY dated October 16, 2015 (the "Environmental Reports") which have been provided to the County and the Municipality, the Developer has no knowledge of, and has not received any notice of any condition at, on, under or related to either of the Affordable Housing Property, the City Infrastructure Improvements Property or the Developer Infrastructure Improvements Property (together the "Properties") or ground or surface waters associated therewith or migrating or threatening to migrate to or from the Properties which may have a material effect on the value of the Properties or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements (as defined below); and

(b) Except as described in the Environmental Reports, the Developer has no knowledge of, and has not received any notice of any condition at, on, under, or related to the Properties (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Properties presently or potentially posing a significant hazard to human health or the environment; such conditions being defined as "Hazardous Materials" below; and

(c) The Developer hereby acknowledges and agrees that it will defend and indemnify the County and Municipality for any Environmental Damages (as defined below) whether or not disclosed in the Environmental Reports arising out of or in any way connected with the Affordable Housing Property and the Developer Infrastructure Improvements Property that arise after the Closing of title of the Affordable Housing Property from the County to the HDFC and the Developer (the "Closing"), whether or not caused by the Developer. Environmental Damages will mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Materials" at, on, under or related to the Affordable Housing Property and the Developer Infrastructure Improvements Property (or ground or surface water associated therewith) or migrating or threatening to migrate to or from the Affordable Housing Property and the Developer Infrastructure Improvements Property, or the existence of a violation of Environmental Requirements pertaining to the Affordable Housing Property and the Developer Infrastructure Improvements Property, for Hazardous Materials or the violation of Environmental Requirements that arise after the Closing, whether or not caused by the Developer , including without limitation:

(i) damages for personal injury, death or injury to property or natural resources occurring on or off the Affordable Housing Property and the Developer Infrastructure Improvements Property, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, the cost of demolition or rebuilding of any improvements of real property, interest and penalties;

(ii) fees incurred for the service of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make the full use of the Affordable Housing Property and the Developer Infrastructure Improvements Property or any other related property or otherwise expended in connection with such conditions;

(iii) liability to any third person or governmental agency to indemnify such person or agency the costs expended in connection with the items referenced in subsection (ii) herein; and

(iv) diminution in the value of the Affordable Housing Property and the Developer Infrastructure Improvements Property and damages for loss of business from restriction on the use of the Affordable Housing Property and the Developer Infrastructure Improvements Property or any part thereof.

B. The County represents and warrants and guarantees to the Municipality as follows:

(a) Except as described in the Environmental Reports, which have been provided to the Municipality, the County has no knowledge of, and has not received any notice of any condition at, on, under or related to either of the Affordable Housing Property, the City Infrastructure Improvements Property or the Developer Infrastructure Improvements Property (together the "Properties") or ground or surface waters associated therewith or migrating or threatening to migrate to or from the Properties which may have a material effect on the value of the Properties or subject the owner thereof to potential liabilities in accordance with the Environmental Requirements (as defined below); and

(b) Except as described in the Environmental Reports, the County has no knowledge of, has and has not received any notice of any condition at, on, under, or related to the Properties (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Properties presently or potentially posing a significant hazard to human health or the environment; such conditions being defined as "Hazardous Materials" below;

C. The Municipality represents and warrants and guarantees to the County as follows:

(a) Except as described in the Phase I ESA Update & Database Report titled: *The Courtyard at Theodore Fremd 150 North Street, Rye, New York, 10580*, prepared by Team Environmental Consultants, Inc., 30 Industrial Drive, Middletown, NY dated October 16, 2015 (the "Environmental Reports") which have been provided to the County and the Municipality, the Municipality has no knowledge of, and has not received any notice of any condition at, on, under or related to the Properties or ground or surface waters associated therewith or migrating or threatening to migrate to or from the Properties which may have a material effect on the value of the Properties or subject the owner thereof to potential liabilities in accordance with the

Environmental Requirements (as defined below); and

(b) Except as described in the Environmental Reports, the Municipality has no knowledge of, and has not received any notice of any condition at, on, under, or related to the Properties (or ground or surface waters associated therewith) or migrating or threatening to migrate to or from the Properties presently or potentially posing a significant hazard to human health or the environment; such conditions being defined as "Hazardous Materials" below; and

(c) The Municipality hereby acknowledges and agrees that it will defend and indemnify the County for any Environmental Damages (as defined below) whether or not disclosed in the Environmental Reports arising out of or in any way connected with the City Infrastructure Improvements Property. Environmental Damages will mean all claims, damages, losses, penalties, fines, liabilities (including strict liability), encumbrances, liens, costs and expenses of investigation and defense of any, whether or not such claim is ultimately defeated, and any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys' fees and disbursements and consultants' fees, any of which are incurred as the result of the existence of "Hazardous Materials" at, on, under or related to the City Infrastructure Improvements Property (or ground or surface water associated therewith) or migrating or threatening to migrate to or from the City Infrastructure Improvements Property, or the existence of a violation of Environmental Requirements pertaining to the City Infrastructure Improvements Property, regardless of when the existence of such Hazardous Materials or the violation of Environmental Requirements arose, including without limitation:

(i) damages for personal injury, death or injury to property or natural resources occurring on or off the City Infrastructure Improvements Property, foreseeable or unforeseeable, including without limitation, lost profits, consequential damages, the cost of demolition or rebuilding of any improvements of real property, interest and penalties;

(ii) fees incurred for the service of attorneys, consultants, contractors, experts, laboratories and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials violation of Environmental Requirements including, but not limited to, the preparation of any feasibility studies or reports or the performance of any cleanup, remediation, removal, response, abatement, containment, closure, restoration or monitoring work required by any federal, state or local governmental agency or political subdivision, or reasonably necessary to make the full use of the City Infrastructure Improvements Property or any other related property or otherwise expended in connection with such conditions;

(iii) liability to any third person or governmental agency to indemnify such person or agency the costs expended in connection with the items referenced in subsection (ii) herein; and

(iv) diminution in the value of the City Infrastructure Improvements Property and damages for loss of business from restriction on the use of the Properties or any part thereof.

D. Definitions. For the purposes of this Agreement and this Section "13", the following definitions will apply:

(1.) "Hazardous Materials" will mean any substance:

(i) the presence of which requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy or common law; or

ii) which is or becomes defined as a hazardous waste, hazardous substance, pollutant or contaminant under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto including, without limitation, the United States Comprehensive Environmental Response,

Compensation and Liability Act, as amended, 42 USC §9601 (14) 42 USC §9602, and any "hazardous waste" as defined in or listed under the United States Solid Waste Disposal Act, as amended, 42 USC §6901(5), 42 USC §6921; or

(iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous, and is or becomes regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States, the State of New York or any political subdivision thereof; or

(iv) the presence of which, on the Infrastructure Improvements Property, causes or threatens to cause a nuisance on the Properties or to nearby properties, or poses or threatens to pose a hazard to the health and safety of persons on, about or nearby the Infrastructure Improvements Property;
or

(v) the presence of which on nearby properties would constitute a trespass by the owner of the Infrastructure Improvements Property; or

(vi) which contains, without limitation, gasoline, diesel fuel, or other petroleum hydrocarbons; or

(vii) which contains, without limitation, polychlorinated bipheynols (PCBs), asbestos, or urea formaldehyde foam insulation.

(2.) "Environmental Requirements" will mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, concessions, franchises, and similar items, of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, the State of New York and the political subdivisions thereof; and all applicable judicial, administrative, and regulatory decrees, judgments, and orders relating to the protection of human health or the environment.

All of the provisions of this Section "13" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability provided that the County has paid the County Funds to the Municipality.

14. <u>ASSIGNMENT OF RIGHTS</u>: Any purported delegation of duties or assignment of rights under this Agreement without the prior express written consent of the County is void. The

Municipality shall not subcontract any part of the work to be performed hereunder without the written consent of the County, provided, however, that the foregoing shall not be deemed to apply to contracts entered into by the Municipality to implement construction of the Infrastructure Improvements. All subcontracts shall provide that subcontractors are subject to all terms and conditions set forth in this Agreement. All work performed by a subcontractor shall be deemed work performed by the Municipality.

The County's consent to the assignment of the responsibility for or delegation of the duty hereunder shall not release the Municipality or Developer from their respective obligations under this Agreement. The Municipality and Developer shall remain liable to the County for the performance of all respective obligations under this Agreement.

15. <u>ENTIRE AGREEMENT; AMENDMENT</u>: This Agreement, including without limitation all Schedules and attachments constitute the entire Agreement between the parties with respect to the funding of the Infrastructure Improvements and will supersede all previous negotiations, commitments and writings. It will not be released, discharged, changed or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.

16. <u>INDEPENDENT CONTRACTOR</u>: The status of the Municipality and Developer under this Agreement will be that an independent contractor and not that of an agent, and in accordance with such status, the Municipality and Developer, and their respective officers, agents, employees, representatives, contractors and sub-contractors, will at all times during the term of this Agreement conduct themselves in a manner consistent with such status, and by reason of this Agreement will neither hold themselves out as, nor claim to be acting in the capacity of, officers, employees, agents, representatives or servants of the County, nor make any claim, demand or application for any right or privilege applicable to the County, including without limitation, rights or privileges derived from workers' compensation coverage, unemployment insurance benefits, social security coverage and/or retirement membership or credit.

17. <u>COMPLIANCE WITH LAW</u>: The Municipality and Developer will comply, each at their sole cost and expense, with all applicable federal, state and local laws, rules and regulations, ordinances and requirements affecting the conduct of their activities in connection with the performance of this Agreement herewith, including without limitation the fair housing laws, including but not limited to24 CFR Subtitle B, Chapter 1 Sec. 100.304, Section 807(b)(2)(C) of the Federal Fair Housing Act (42 U.S.C. 3607(b)), and 24 CFR 100.305, 100.306, 100.307 and the New York State New York Human Rights Law, Exec. L. Sec. 296.2-a(e) and, as applicable to the parties, as an employer. In addition to and not in limitation of the foregoing, the Municipality, as a condition of the receipt of the HIF funds will use reasonable best efforts to require that the work hereunder must be performed in good workmanlike manner and that all permits, approvals and consents necessary for the proper conduct of such activities in connection with this Agreement will be obtained.

All of the provisions of this Section "17" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability provided that the County has paid the HIF Funds to the Municipality.

18. <u>NOTICES:</u> All notices of any nature, requests, approvals and other communications which may be given by either party to the other under this Agreement will be in writing and sent by registered or certified mail postage pre-paid, or sent by hand or overnight courier or sent by facsimile (with acknowledgement received and a copy of the notice sent by overnight courier) to the respective addresses set forth below or to such other addresses as the respective parties hereto may designate in writing. Notice will be effective on the date of receipt:

To the County:

Mr. Edward Buroughs
Commissioner of Planning
148 Martine Avenue
Room 432
White Plains, New York 10601

with a copy to:

County Attorney
Michaelian Office Building, Room 600
148 Martine Avenue
White Plains, New York 10601

To the Municipality:
City of Rye
1051 Boston Post Rd
Rye, New York 10580

with a copy to:
Office of the City Attorney
1051 Boston Post Rd
Rye, New York 10580

To the Developer:

North St. Senior Housing LLC

c/o Pawling Holdings, LLC
211 South Ridge Street
Rye Brook, NY
10573Attn: Lou Larizza

with a copy to:
John Colangelo, Esq.
211 South Ridge Street
Rye Brook, NY 10573

19. <u>TERM OF AGREEMENT</u>: The term of this Agreement shall commence upon execution of this Agreement, and shall continue for five (5) years, unless the Agreement is terminated sooner in accordance with the term of this Agreement.

(a) In the event the County determines that there has been a material breach by either of the Parties of any of the terms of the Agreement and such breach remains uncured for forty-eight (48) hours after service on the Party of written notice thereof, the County, in addition to any other right or remedy it might have, may terminate this Agreement and the County shall have the right, power and authority to complete the Work provided for in this Agreement, or contract for its completion, and any additional expense or cost of such completion of the City Infrastructure Improvements shall be charged to and paid by the Developer and any additional expense or cost of such completion of the Developer Infrastructure Improvements shall be charged to and paid by the Developer Without limiting the foregoing, upon written notice to the Parties, repeated breaches by either of the Parties of duties or obligations under this Agreement shall be deemed a material breach of this Agreement justifying termination for cause hereunder without requirement for further opportunity to cure.

20. <u>NON-DISCRIMINATION</u>: The Municipality and Developer each agree that neither they, nor any contractor, subcontractor, employee, or other person acting on their

respective behalf will discriminate against or intimidate any employee or other individual on the basis of race, creed, religion, color, gender, age, national origin, ethnicity, alienage or citizenship status, disability, marital status, sexual orientation, familial status, genetic predisposition or carrier status during the term of or in connection with this Agreement, as those terms may be defined in Chapter 700 of Laws of Westchester County. The Municipality and Developer acknowledge and understand that the County maintains a zero tolerance policy that prohibits all forms of harassment or discrimination against its employees by co-workers, supervisors, vendors, contractors, or others.

Pursuant to Section 308.01 of the Laws of Westchester County, it is the goal of the County to use its best efforts to encourage, promote and increase the participation of business enterprises owned and controlled by persons of color or women in contracts and projects funded by all departments of the County. Attached hereto and forming a part hereof as Schedule "H" is a Questionnaire entitled Business Enterprises Owned and Controlled by Persons of Color or Women. The Developer agrees to complete the questionnaire attached hereto as Schedule "H", as part of this Agreement.

21. VALIDITY: If any term or provision of this Agreement is held by a court of competent jurisdiction to be invalid or void or unenforceable, the remainder of the terms and provisions of this Agreement will in no way be affected, impaired, or invalidated, and to the extent permitted by applicable law, any such term, or provision will be restricted in applicability or reformed to the minimum extent required for such to be enforceable. This provision will be interpreted and enforced to give effect to the original written intent of the parties prior to determination of such invalidity or unenforceability.

22. LEGAL AND EQUITABLE RELIEF. The injury to the County arising from noncompliance with any of the material terms of this Agreement and the Schedules hereto, including without limitation failure to complete the Development or noncompliance with the Affordability Requirements until expiration of the Period of Affordability, as more fully set forth in Schedule "B" to the Declaration or the Developer Infrastructure Improvements in accordance herewith, on the part of the Developer or the completion of the City Infrastructure Improvements on the part of the City would be great and the amount of consequential damage would be difficult to ascertain and may not be compensable by money alone. Therefore, in the event of any such noncompliance, which remains uncured for thirty (30) days after service on the Municipality and/or the Developer as the case may be, of written notice thereof (the "Cure

Period"), the County, at its option, may terminate this Agreement and/or apply to any state or federal court for: (A) specific performance of this Agreement and the Schedules hereto; (B) an injunctive relief against any noncompliance; and/or (C) seek any and all appropriate legal and/or equitable remedies, including, but not limited to, damages, reasonable attorney's fees, disbursements and court costs in such amounts as shall be allowed by the court. The City's liability under the foregoing paragraph is limited solely to the construction work and Infrastructure Improvements contemplated under this agreement in accordance with Schedule "D" herein and will terminate upon the maturity or redemption of the Bonds.

The Commissioner of Planning, in his sole discretion, may agree to stay any such enforcement beyond the Cure Period, provided however that the County determines that the Municipality and/or Developer is diligently and continuously acting to cure said noncompliance. Without limiting the foregoing, upon written notice to the Municipality and/or Developer, repeated non-compliance by the Municipality or Developer of any particular duty or obligation under this IMDA will be deemed a material breach of this IMDA justifying termination for cause hereunder without requirement for further opportunity to cure. Notice will be effective as set forth herein.

All of the provisions of this Section "22" will survive the expiration or other termination of this Agreement until the expiration of the Period of Affordability provided that the County has paid the HIF Funds to the Municipality.

23. <u>COUNTY APPROVALS</u>: It is hereby acknowledged that any request by the Municipality or Developer for any modification of the terms hereof which requires consent of the County will be subject to the receipt of any and all necessary County approvals. It is further acknowledged that in no event, will any delay or failure of the Westchester County Board of Legislators and/or Westchester County Board of Acquisition and Contract to appoint or approve any action be deemed to be unreasonable.

24. <u>EXECUTION</u>: This Agreement may be executed simultaneously in several identical copies, each of which will be an original and all of which will constitute but one and the same agreement.

25. <u>GOVERNING LAW</u>: This Agreement will be construed and enforced in accordance with the laws of the State of New York. In addition, the parties hereby agree that any cause of action arising out of this Agreement will be brought in the County of Westchester.

26. <u>NO WAIVER</u>: Failure of the County to insist, in any one or more instances, upon strict performance of any term or condition herein contained will not be deemed a waiver or

relinquishment for the future of such term or condition, but the same will remain in full force and effect.

27. <u>THIRD PARTIES:</u> Nothing herein is intended or will be construed to confer upon or give to any third party or its successors and assigns any rights, remedies or basis for reliance upon, under or by reason of this Agreement, except in the event that specific third party rights are expressly granted herein.

28. <u>REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY</u>: Attached hereto and forming a part hereof as Schedule "I" is a questionnaire entitled "Required Disclosure of Relationships to County." The Municipality and Developer each agree to complete said questionnaire as part of this Agreement. In the event that any information provided in the completed questionnaire changes during the term of this Agreement, Municipality and Developer, as appropriate, each agree to notify County in writing within ten (10) business days of such event.

29. <u>ENFORCEMENT</u>: This Agreement shall not be enforceable until signed by all parties and approved by the Office of the County Attorney.

30: **<u>ELECTRONIC FUNDS TRANSFER</u>**: All payments made by the County to the Municipality will be made by electronic funds transfer ("EFT") pursuant to the County's Vendor Direct program. Contractors doing business with Westchester County, who are not already enrolled in the Vendor Direct Program, will be required to fill out and submit an EFT Authorization Form in order to receive payment. The EFT Authorization Form and related information are annexed hereto as Schedule "J". The completed Authorization Form must be returned by the Municipality to the Commissioner prior to execution of the contract. In rare cases, a hardship waiver may be granted. For a Hardship Waiver Request Form, please contact the Westchester County Finance Department.

All payments made by the Municipality to the contractors selected to perform work described herein shall also be made by electronic transfer of funds as may be required by the Municipality.

31. <u>CAPTIONS:</u> The captions are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of

any provision thereof.

32. CONFLICT OF INTEREST: The Municipality and Developer shall each use all reasonable means to avoid any conflict of interest with the County and shall immediately notify the County in the event of a conflict of interest. The aforementioned parties shall also use all reasonable means to avoid any appearance of impropriety.

33. **JOINT AND SEVERAL LIABILITY:** The obligations of the HDFC and the LLC. to the County under this Agreement are joint and several.

NO FURTHER TEXT ON THIS PAGE.

IN WITNESS WHEREOF, the County of Westchester, the Municipality and the Developer have caused this Agreement to be executed.

THE COUNTY OF WESTCHESTER

By: _____

Name: Edward Buroughs
Title: Commissioner of Planning

CITY OF RYE

By: _____

Name:_____
Title:_____

NORTH ST. SENIOR HOUSING LLC

By: Theo. Fremd Management LLC
its Managing Member

By:_____
Name: Louis Larizza
Title: Managing Member

Approved by the Board of Legislators on September 8, 2015 by Act No. 158-2015
Approved by the Board of Legislators on September 21, 2015 by Bond Act No. 170-2015
Approved by the Westchester County Board of Acquisition & Contract at a meeting duly held on the 10th day ofOctober, 2015.

Approved as to form and manner of execution:

_____
Assistant County Attorney

Approved as to form:

_____
City of Rye

CITY OF RYE ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the day of_____in the year 20 before me, the undersigned, a Notary Public in and for said State, personally appeared_____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

_____

Signature and Office of individual
taking acknowledgment

CITY OF RYE CERTIFICATE OF AUTHORITY

I,_____,
(Officer other than officer signing contract)

certify that I am the_____of
(Title)
the _____
(the "Municipality")

a municipal corporation duly organized and in good standing under the _____
(Law under which organized, e.g., the New York Business Corporate Law)

named in the foregoing agreement; that_____
(Person executing agreement)
who signed said agreement on behalf of the Municipality was, at the time of execution

_____
(Title of such person)

of the Municipality and that said agreement was duly signed for and on behalf of said Municipality by authority of its Board of_____, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

(Signature)

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On this_____day of_____, 20 , before me personally came _____, whose signature appears above, to me known, and known to me to be the_____of _____
(Title)
_____, the Municipality described in and which executed the above certificate, who being by me duly sworn did depose and say that he/she, the said _____ of said Municipality resides at

_____, and that he/she signed his/her name hereto by order of the Board of _____ of said Municipality.

_____
Signature and Office of individual
taking acknowledgment

DEVELOPER
ACKNOWLEDGMENT

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On the_____day of_____in the year 20 before me, the undersigned, a Notary Public in and for said State, personally appeared Louis Larizza, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument; and, acknowledged if operating under any trade name, that the certificate required by the New York State General Business Law Section 130 has been filed as required therein.

_____

Signature and Office of individual
taking acknowledgment

DEVELOPER CERTIFICATE OF AUTHORITY

I,_____,
(Officer other than officer signing contract)

certify that I am the_____of
(Title)
the _____
(the "Corporation")

a corporation duly organized and in good standing under the (Law under which organized, e.g., the New York Business Corporate Law) named in the foregoing agreement; that

(Person executing agreement)

who signed said agreement on behalf of the Corporation was, at the time of execution

(Title of such person)

of the Corporation and that said agreement duly signed for and on behalf of said Corporation by authority of its Board of Directors, thereunto duly authorized and that such authority is in full force and effect at the date hereof.

_____
(Signature)

STATE OF NEW YORK)
) ss.:
COUNTY OF WESTCHESTER)

On this_____day of_____, 20___, before me personally came _____, whose signature appears above, to me known, and known to me to be the _____of

(Title)
_____, the Corporation described in and which executed the above certificate, who being by me duly sworn did depose and say that he/she, the said _____ of said Corporation resides at _____
_____, and that he/she signed his/her name hereto by order of the Board of Directors of said Corporation.

_____
Signature and Office of individual
taking acknowledgment

SCHEDULE "A"
AFFORDABLE HOUSING PROPERTY

NEW YORK TITLE RESEARCH CORPORATION

As Agent for

Stewart Title Insurance

Company SCHEDULE A

(Description)

Title Number:
NYT17967

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of Rye, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the northeasterly side of North Street, distant as measured along same, 100 feet northwesterly from the northerly side of Theodore Fremd Avenue formerly Railroad Avenue;

THENCE RUNNING along said northeasterly side of North Street, North 49 degrees 43 minutes 00 seconds West, 190.30 feet to land of the New York New Haven and Hartford Railroad Company;

THENCE RUNNING along said last mentioned land, North 58 degrees 13 minutes 30 seconds East,
431.80 feet to land now or formerly of Westchester
Lighting Company;

THENCE RUNNING along said last mentioned land, South 31 degrees 46 minutes 30 seconds East,
173.33 feet to land now or formerly of Elizabeth
A. Tilley;

THENCE RUNNING along said last mentioned line, South 74 degrees 57 minutes 00 seconds West,
64.90 feet and South 28 degrees 57 minutes 00 seconds East,200 feet to the northerly side of Theodore Fremd Avenue;

THENCE RUNNING along said northerly side of Theodore Fremd Avenue, South 74 degrees 57 minutes 00 seconds West, 135.60 feet to land now or formerly of Sibarco Corp. at a point distant as measured along said northerly side of Theodore Fremd Avenue, 136.20 feet easterly from the northeasterly side of North Street;

THENCE RUNNING along said last mentioned land, North 28 degrees 57 minutes 00 seconds West, 130 feet and South 59 degrees 45 minutes 30 seconds West, 167.71 feet to the point and place of BEGINNING.

SCHEDULE "B"

(will be Schedule B to the Declaration)

Schedule "C"

Declaration of Restrictive Covenants
(to be inserted)

SCHEDULE "D"
INFRASTRUCTURE IMPROVEMENTS PROJECT

A. SCOPE OF SERVICES

The infrastructure improvements include, but are not limited to, sewer and main replacements, curbing, paving, parking, grading and any ancillary related work (the "Infrastructure Improvements"). The Infrastructure Improvements shall be constructed in accordance with the following plans:_____and may be amended from time to time subject to the approval of the City and which the Developer must provide to the Commissioner of the Westchester County Department of Planning (the "Plans").

B. PAYMENT

The County will make progress payments to the City for expenses incurred in constructing the Infrastructure Improvements associated with the construction of 150 North Street in the City of Rye, in accordance with the Plans in an amount not to exceed $2,200,000.00, as set forth pursuant to the Developer Infrastructure Improvement Budget attached hereto as Attachment "A" and the City Infrastructure Improvement Budget attached hereto as Attachment "B" (collectively the "Budgets"). All quantities are approximate, and the total amount shall not be exceeded.

Any and all requests for payments to be made, including any partial payment made in proportion to the work completed, shall be submitted on properly executed payment vouchers of the County and paid within 30 days after approval by the Commissioner, which approval shall not be unreasonably withheld and subject to the terms of the Agreement. The Municipality acknowledges and agrees that the New York State prevailing wage shall be paid. In the event prevailing wage is not paid the County's Department of Planning shall recalculate and reduce the below Budget. All payment vouchers must be accompanied by a numbered invoice and must contain the invoice number where indicated. All invoices submitted during each calendar year shall utilize sequential numbering and be non-repeating.

Payment requires compliance with the following procedures, noting that the County reserves the right to require additional documentation and approval:

1. documentation for the payment of work completed shall include verification from the architect or engineer responsible for the work to a) verify that the work was done, and b) that it was done properly;

2. a signed AIA form approving the work, materials and workmanship and the amount to be invoiced by the contractor shall be included along with a County voucher and lien release from the Contractor;

3. the municipality submits the invoice, AIA form, lien release and a County voucher to the County for payment;

4. the County reviews the request, if approved submits it for payment & prepares a check to the Municipality, provided however, that the County shall retain not more than five per centum

(5%) of each payment which amount shall be held until final payment upon the certified completion of the Infrastructure Improvements.

BUDGET (County Funds):

ATTACHMENT "A"

All quantities are approximate and the total amount shall not be exceeded.

Estimated Budget for Developer Infrastructure Improvements and in ROW along Theodore Fremd Ave.
The Developer is responsible for funding the costs of construction of the Developer Infrastructure Improvements not funded through the County HIF Funds.

Theodore Fremd Senior Housing Development Costs	11/13/2015				HIF
	est quantity	unit	unit cost		
Rough grade fill in place,	83000	CY or lu	0.5		$41,500
Concrete curbs	2346	LF	27		$63,342
Retension System		lump sum			$148,000
8" Item 4,	570	CY	50		$28,500
Binder,	23000	SF	2.5		$57,500
Aspahalt top course	23000	SF	2.5		$57,500
Storm Drain 140 ft. SDR 8" gravel, labor & material	140	LF	60		$8,400
Sanitary Manholes	4	each	4500		$18,000
Dog House installed on Theodore Fremd, restoration, K-crete, trench box		lump sum			$25,000
Sanitary Sewer tied into Theodore Fremd from new buildings SDR 35 8 inch	240	lf	70		$16,800
Confined space for tie-in to existing sanitary manhole for temporary sanitary sewer					$10,000
(8) catch basins	8	Each	4500		$36,000
Pipe HDPE, 24"	470	lf	65		$30,550
Pipe HDPE, 15"	240	lf	55		$13,200
Drain Manholes 48 inch	2	each	3500		$7,000
Headwall	1	each			$5,000
Entrance Apron	200	SF	30		$6,000
Sidewalks	2300	SF	20		$46,000
Concrete Sidewalks	1400	SF	10		$14,000
Site Lighting	13	each	5000		$65,000
Trenching for site lighting	1400	lf	10		$14,000
Landcaping,					$46,000
Sediment and Erosion control					$50,000
Engineer Inspection and Testing		lumps sum			$10,000
				TOTAL	$817,292
				Mobilization 2%	$16,346
				Bonds & insurance 3%	$24,519
				Misc Additional Work	$90,000
				Total construction	$948,157
	Bid engineering & Bid prep / Const Mngt.				$250,000
					$1,198,157
	Total Not To Exceed HIF Amount				**$ 1,200,000**

ATTACHMENT "B"

Estimated Sewer Construction Budget:

All quantities are approximate and the total amount shall not be exceeded.

Engineer's Estimate for Theo Fremd Site Sewer Relocation

Pay Item	Quantity	Units	Unit Price	Bid Price
Mobilization/Demobilization	1	Lump Sum	$20,000.00	$20,000.00
Maintenance and Protection of Traffic	1	Lump Sum	$20,000.00	$20,000.00
8" PVC SDR-35 Sanitary Sewer	900	Linear Feet	$60.00	$54,000.00
Manholes < 10 feet deep	2	Each	$5,000.00	$10,000.00
Manholes 10-15 feet deep	2	Each	$10,000.00	$20,000.00
Excavation, open cut, bracing	300	Cubic Yards	$50.00	$15,000.00
Excavation, Rock removal (50% rock assumed)	300	Cubic Yards	$150.00	$45,000.00
Backfill with acceptable spoils (50% assumed)	300	Cubic Yards	$40.00	$12,000.00
Removal of unacceptable material (50% assumed)	300	Cubic Yards	$40.00	$12,000.00
Controlled Low Strength Material Backfill	300	Cubic Yards	$150.00	$45,000.00
Pipe bedding, crushed stone	60	Cubic Yards	$50.00	$3,000.00
Sawcut pavement	1100	Linear Feet	$5.00	$5,500.00
Pavement restoration, County Road	2200	Square Feet	$30.00	$66,000.00
Pavement restoration	7000	Square Feet	$20.00	$140,000.00
Cut and Cap Existing	9	Each	$500.00	$4,500.00
Connect to Existing Structure	1	Each	$2,000.00	$2,000.00
Dewatering	1	Lump Sum	$10,000.00	$10,000.00
Cleaning and Televising Sewer Lines	1	Lump Sum	$5,000.00	$5,000.00
Erosion and sediment control	1	Lump Sum	$5,000.00	$5,000.00
				$494,000.00

Direct Construction Costs	
Overhead and Profit (21%)	$103,740.00
Contingency (25%)	$123,500.00
Total Construction	$721,240.00
Total Construction Budget	$725,000.00
Design and Construction Administration (20%)	$145,000.00
Legal (15%)	$108,750.00
Total Budget	$978,750.00
say	$980,000.00

Note: Easement costs, if needed, are not included.

Assumes that 8" PVC sewer from Summit Street on North Street installed in 2001 is adequate to accept flow.

Total HIF Amount Not-To-Exceed $1,000.000

C. CONSTRUCTION SCHEDULE FOR INFRASTRUCTURE IMPROVEMENTS

Commencement Date for Construction of Infrastructure Improvements: 365 days as of date hereof

Completion Date for Infrastructure Improvements: 3 years as of date hereof

SCHEDULE "E"

STANDARD INSURANCE PROVISIONS
(MUNICIPALITY)

1. Prior to commencing work, the Municipality shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester, as may be required and approved by the Director of Risk Management of the County. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Municipality and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County, the Municipality shall upon notice to that effect from the County, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester for approval and submit a certificate thereof. Upon failure of the Municipality to furnish, deliver and maintain such insurance, the Agreement, at the election of the County, may be declared suspended, discontinued or terminated. Failure of the Municipality to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Municipality from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with or otherwise limit the contractual obligations of the Municipality concerning indemnification. All property losses shall be made payable to and adjusted with the County.

In the event that claims, for which the County may be liable, in excess of the insured amounts provided herein are filed by reason of Municipality's negligent acts or omissions under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Municipality until such time as the Municipality shall furnish such additional security covering such claims in form satisfactory to the County of Westchester.

2. The Municipality shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers' Compensation Law. State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: http://www.wcb.ny.gov/.

If the employer is self-insured for Worker's Compensation, he/she should present a certificate from the New York State Worker's Compensation Board evidencing that fact (Either SI-12, Certificate of Workers' Compensation Self-Insurance, or GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance).

(b) Employer's Liability with minimum limit of $100,000.00.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of $1,000,000.00 for bodily injury and $100,000.00 for property damage or a combined single limit of $1,000,000.00 (c.s.l.), naming the County of Westchester as an additional insured. This insurance shall indicate the following coverages:

(i) Premises - Operations.
(ii) Broad Form Contractual.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of $1,000,000.00 per occurrence for bodily injury and a minimum limit of $100,000.00 per occurrence for property damage or a combined single limit of $1,000,000.00 unless otherwise indicated in the contract specifications. This insurance shall i clude for bodily injury and property damage the following coverages:

(i) Owned automobiles.
(ii) Hired automobiles.
(iii) Non-owned automobiles.

3. All policies of the Municipality shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester (including its employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester is named as an insured, shall not apply to the County of Westchester.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester or the City (including its agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Municipality.

SCHEDULE "E(ii)"

STANDARD INSURANCE PROVISIONS
(DEVELOPER)

1. Prior to commencing work, the Developer shall obtain at its own cost and expense the required insurance from insurance companies licensed in the State of New York, carrying a Best's financial rating of A or better, and shall provide evidence of such insurance to the County of Westchester and The City of Rye, as may be required and approved by the Director of Risk Management of the County. After approval of such insurance by the Director of Risk Management of Westchester County, the Developer shall provide evidence of such insurance to the City of Rye. The policies or certificates thereof shall provide that thirty days prior to cancellation or material change in the policy, notices of same shall be given to the Director of Risk Management of the County of Westchester and to the City Manager of the City of Rye by registered mail, return receipt requested, for all of the following stated insurance policies. All notices shall name the Developer and identify the Agreement.

If at any time any of the policies required herein shall be or become unsatisfactory to the County or to the City, as to form or substance, or if a company issuing any such policy shall be or become unsatisfactory to the County or the City, the Developer shall upon notice to that effect from the County or the City, promptly obtain a new policy, submit the same to the Department of Risk Management of the County of Westchester or the City Manager, as the case may be, for approval and submit a certificate thereof. Upon failure of the Developer to furnish, deliver and maintain such insurance, the Agreement, at the election of the County or the City, may be declared suspended, discontinued or terminated. Failure of the Developer to take out, maintain, or the taking out or maintenance of any required insurance, shall not relieve the Developer from any liability under the Agreement, nor shall the insurance requirements be construed to conflict with otherwise limit the contractual obligations of the Developer concerning indemnification. All property losses shall be made payable to and adjusted with the County and/or the Village as their interests may appear.

In the event that claim, for which the County or the City may be liable, in excess of the insured amounts provided herein are filed by reason of any operations under the Agreement or by virtue of the provisions of the labor law or other statute or any other reason, the amount of excess of such claims or any portion thereof, may be withheld from payment due or to become due the Developer until such time as the Developer shall furnish such additional security covering such claims in form satisfactory to the County of Westchester or the City, as the case may be.

2. The Developer shall provide proof of the following coverage (if additional coverage is required for a specific agreement, those requirements will be described in the "Special Conditions" of the contract specifications):

(a) Workers' Compensation. Certificate form C-105.2 or State Fund Insurance Company form U-26.3 is required for proof of compliance with the New York State Workers'

Compensation Law.

NOTE: Other generally recognized forms/certificates may be substituted for the above at the sole discretion of the Director of Risk Management.

(b) State Workers' Compensation Board form DB-120.1 is required for proof of compliance with the New York State Disability Benefits Law. Location of operation shall be "All locations in Westchester County, New York."

Where an applicant claims to not be required to carry either a Workers' Compensation Policy or Disability Benefits Policy, or both, the employer must complete NYS form CE-200, available to download at: http://www.wcb.ny.gov/

If the employer is self-insured for Worker's Compensation, he should present a certificate from the New York State Worker's Compensation Board evidencing that fact.

Employer's Liability with minimum limit of $100,000.

(c) Commercial General Liability Insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and $100,000 for property damage or a combined single limit of $1,000,000 (c.s.1), naming the County of Westchester and the City of Rye as additional insureds. This insurance shall include the following coverages:

(i) Premises - Operations.
(ii) Broad Form Contractual.
(iii) Independent Contractor and Sub-Contractor.
(iv) Products and Completed Operations.

All Contracts involving the use of explosives and demolition shall provide the above coverage with elimination of the XCU exclusion from the policy, or proof that XCU is covered.

(d) Automobile Liability Insurance with a minimum limit of liability per occurrence of $1,000,000 for bodily injury and a minimum limit of $100,000 per occurrence for property damage or a combined single limit of $1,000,000 unless otherwise indicated in the contract specifications, naming the County of Westchester and the City of Rye as additional insureds. This insurance shall include for bodily injury and property damage the following coverages:

(i) Owned automobiles.
(ii) Hired automobiles.
(iii) Non-owned automobiles.

3. All policies of the Developer shall be endorsed to contain the following clauses:

(a) Insurers shall have no right to recovery or subrogation against the County of Westchester or the City of Rye (including either of their employees and other agents and agencies), it being the intention of the parties that the insurance policies so effected shall protect both parties and be primary coverage for any and all losses covered by the above-described insurance.

(b) The clause "other insurance provisions" in a policy in which the County of Westchester or the City of Rye is named as an insured, shall not apply to the County of Westchester or the City of Rye.

(c) The insurance companies issuing the policy or policies shall have no recourse against the County of Westchester or the City of Rye (including either of their agents and agencies as aforesaid) for payment of any premiums or for assessments under any form of policy.

(d) Any and all deductibles in the above described insurance policies shall be assumed by and be for the account of, and at the sole risk of, the Developer.

As per the attached written agreement, and where indicated with a check mark below, the following insurance(s) will also be required:

	(e) Environmental Liability with a minimum limit of liability per occurrence of $1,000,000.00. Policy shall be kept in full force and effect for three (3) years from the date the project is completed and the County and City shall be provided with the endorsement naming the County of Westchester and City of Rye as an additional insured.
	(f) Property Insurance – Replacement Cost basis with County of Westchester named as loss payee as its interest may appear
	(g) Builder's Risk --Developer at their own cost and expense shall provide and maintain a Builder's Risk Form, All Risk Insurance Contract. The coverage shall be written for 100% of the completed value, with the County of Westchester named as loss payee as its interest may appear.

SCHEDULE "F"
Affordable Housing Infrastructure Improvements Property Description

[Metes and Bounds Description To Be Inserted].

<u>SCHEDULE "G</u>"

Required Easement from Developer to County and Municipality

[form of attached hereto]

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INFRASTRUCTURE IMPROVEMENTS EASEMENT

THIS EASEMENT, made by

NORTH ST. SENIOR HOUSING DEVELOPMENT FUND CORP., organized pursuant to the Not-For-Profit Corporation Law of the State of New York and Article XI of the Private Housing Finance Law of the State of New York having an office and place of business at c/o Housing Action Council, Inc., 55 S Broadway Suite 2, Tarrytown, NY 10591-4000 (the "HDFC"), as fee title holder and nominee of **NORTH ST. SENIOR HOUSING LLC** (the "LLC") a New York limited liability company, having an office and place of business at 211 South Ridge Street, Rye Brook, New York, 10573, the beneficial owner (the LLC together with the HDFC, herein designated as the "Grantor", the **COUNTY OF WESTCHESTER,** a municipal corporation of the State of New York having an office and place of business in the Michaelian Office Building, 148 Martine Avenue, White Plains, New York 10601, (the "County") and the **CITY OF RYE**, a municipal corporation of the State of New York, having an office and place of business at 1051 Boston Post Road, Rye, New York , 10580 (the "Municipality" and, together with the County, collectively referred to as the "Grantees"),

W I T N E S S E T H:

WHEREAS, Grantor is the owner of the fee title of that certain parcel of real property located at 150 North Street, City of Rye, County of Westchester, State of New York, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Developer Infrastructure Improvements Property"):

The Grantor in consideration of the sum of One ($1.00) Dollar lawful money of the United States, paid by the Grantees, receipt of which is hereby acknowledged, does hereby grant and release unto the Grantees, its successors and assigns forever, a non-exclusive easement (the "Easement") in, on, over, under and through the Developer Infrastructure Improvements Property for the purpose of operating and accessing certain County owned public improvements, including, but not be limited to topsoil, sewer lines, drainage, curbing, paving, parking, lighting, grading, landscaping, (the "Infrastructure Improvements").

It is acknowledged that the foregoing shall not diminish the terms and conditions of that certain Declaration of Restrictive Covenants dated _____. The Grantor has received any approval necessary in connection herewith and the grant of the Easement will not result in any breach of or constitute a default under other instruments or documents to which the Grantor is a party or by which it may be bound or affected.

The Easement granted herein is subject to the following restrictions:

The Grantor further Covenants that neither it, nor its successors or assigns shall do anything, or allow anything to be done, which in the reasonable opinion of the Grantees would injure, endanger or impair the Infrastructure Improvements contained within the Easement or the

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operation thereof.

This non-exclusive Easement is granted on the following terms and conditions:

The Grantees, its employees, agents and contractors, shall have the right at any time of access, ingress, egress and regress into and from the Easement at any time during normal business hours (except in the case of an emergency) for the purpose of excavating, grading, constructing, reconstructing, enlarging, repairing, monitoring and maintaining the Infrastructure Improvements without becoming or being held liable for trespass.

The Grantor acknowledges that the Developer Infrastructure Improvements constructed in, on, over, under or through the Easement shall be owned by the County for so long as the bonds of the County (the "Bonds"), which made funds available for said Infrastructure Improvements, are outstanding, pursuant to the terms of the certain Inter-Municipal/Developer Agreement of even date herewith by and between the Grantor, the Municipality and the County. Upon maturity or full redemption of the aforesaid Bonds, title to the Developer Infrastructure Improvements will vest in the Grantor, and this Indenture and the Easement granted herein to the Grantees shall terminate.

The exercise of any rights hereunder shall be done in compliance with all applicable laws, ordinances, rules, regulation, orders and requirements of any governmental authority having jurisdiction thereof, while undertaking such measures as may reasonably be required to protect against personal injury and/or property damage.

The Easement granted herein shall be nonexclusive, and Grantor and/or its successors or assigns, at its sole discretion, may use or permit other parties to use the Developer Infrastructure Improvements Property for any purpose that does not prevent the exercise of the rights granted to Grantee herein.

This Indenture may not be modified or amended unless by written instrument signed by the parties hereto.

The non-exclusive Easement shall run with the land and the provisions contained herein shall be binding upon and inure to the benefit of and be enforceable by the Grantees, their successors and assigns.

This Indenture contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral or other written understandings, agreements and negotiations between the parties shall be of no force and effect.

No waiver by either party of any failure or refusal by the other party to comply with its respective obligations under this Indenture shall be valid unless in writing and signed by the party to be charged and no such waiver shall be deemed a waiver of any other or subsequent failure or refusal to so comply.

TO HAVE AND TO HOLD the Easement granted herein unto the Grantees, their

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successors and assigns until such time as the Bonds have matured or have been fully redeemed.

IN WITNESS WHEREOF, the Grantor has executed this instrument the day and year first above written.

NORTH ST. SENIOR HOUSING LLC

By: Theo. Fremd Management LLC
its Managing Member

By:_____

Name: Louis Larizza
Title: Managing Member

NORTH ST. SENIOR HOUSING LLC

By:

By: _____
Name:
Title:

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

John Paul Iannace, Esq.
Assistant County Attorney
148 Martine Avenue, Room 600
White Plains, New York 10601

UNIFORM ACKNOWLEDGMENT
(HDFC)

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STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

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

_____
Notary Public

UNIFORM ACKNOWLEDGMENT
(LLC)

STATE OF NEW YORK)
)ss.:
COUNTY OF WESTCHESTER)

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

_____
Notary Public

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EXHIBIT "A"

"Developer Infrastructure Improvements Property"

NEW YORK TITLE RESEARCH CORPORATION

As Agent for
Stewart Title Insurance

Company SCHEDULE A

(Description)

Title Number:
NYT17967

ALL that certain plot, piece or parcel of land, situate, lying and being in the City of Rye, County of Westchester and State of New York, bounded and described as follows:

BEGINNING at a point on the northeasterly side of North Street, distant as measured along same, 100 feet northwesterly from the northerly side of Theodore Fremd Avenue formerly Railroad Avenue;

THENCE RUNNING along said northeasterly side of North Street, North 49 degrees 43 minutes 00 seconds West, 190.30 feet to land of the New York New Haven and Hartford Railroad Company;

THENCE RUNNING along said last mentioned land, North 58 degrees 13 minutes 30 seconds East,
431.80 feet to land now or formerly of Westchester Lighting
Company;

THENCE RUNNING along said last mentioned land, South 31 degrees 46 minutes 30 seconds East,
173.33 feet to land now or formerly of Elizabeth A.
Tilley;

THENCE RUNNING along said last mentioned line, South 74 degrees 57 minutes 00 seconds West,
64.90 feet and South 28 degrees 57 minutes 00 seconds East,200 feet to the northerly side of Theodore Fremd Avenue;

THENCE RUNNING along said northerly side of Theodore Fremd Avenue, South 74 degrees 57 minutes 00 seconds West, 135.60 feet to land now or formerly of Sibarco Corp. at a point distant as measured along said northerly side of Theodore Fremd Avenue, 136.20 feet easterly from the northeasterly side of North Street;

THENCE RUNNING along said last mentioned land, North 28 degrees 57 minutes 00 seconds West, 130 feet and South 59 degrees 45 minutes 30 seconds West, 167.71 feet to the point and place of BEGINNING.

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SCHEDULE "H"

For Informational Purposes Only

QUESTIONNAIRE REGARDING BUSINESS ENTERPRISES OWNED AND CONTROLLED BY WOMEN OR PERSONS OF COLOR

As part of the County's program to encourage the meaningful and significant participation of business enterprises owned and controlled by persons of color or women in County contracts, and in furtherance of Section 308.01 of the Laws of Westchester County, completion of this form is required.

A "business enterprise owned and controlled by women or persons of color" means a business enterprise, including a sole proprietorship, limited liability partnership, partnership, limited liability corporation, or corporation, that either:

1.) meets the following requirements:
a. is at least 51% owned by one or more persons of color or women;
b. is an enterprise in which such ownership by persons of color or women is real, substantial and continuing;
c. is an enterprise in which such ownership interest by persons of color or women has and exercises the authority to control and operate, independently, the day-to-day business decisions of the enterprise; and
d. is an enterprise authorized to do business in this state which is independently owned and operated.

2.) is a business enterprise certified as a minority business enterprise ("MBE") or women business enterprise ("WB pursuant to Article 15-a of the New York State Executive Law and the implementing regulations, 9 New York Code Rules and Regulations subtitle N Part 540 et seq., **OR**

3.) is a business enterprise certified as a small disadvantaged business concern pursuant to the Small Business Act, 15 U.S.C. 631 et seq., and the relevant provisions of the Code of Federal Regulations as amended.

Please note that the term "persons of color," as used in this form, means a United States citizen or permanent resident alien who is and can demonstrate membership of one of the following groups:
(a) Black persons having origins in any of the Black African racial groups;
(b) Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race;
(c) Native American or Alaskan native persons having origins in any of the original peoples of North America; or
(d) Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian subcontinent or the Pacific Islands.

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1. Are you a business enterprise owned and controlled by women or persons of color in accordance with the standards listed above?

_____ No

_____ Yes

Please note: If you answered "yes" based upon certification by New York State and/or the Federal government, official documentation of the certification must be attached.

2. If you answered "Yes" above, please check off below whether your business enterprise is owned and controlled by women, persons of color, or both.

_____Women

_____ Persons of Color (*please check off below all that apply)*

_____Black persons having origins in any of the Black African racial groups
_____ Hispanic persons of Mexican, Puerto Rican, Dominican, Cuban, Central or South American descent of either Indian or Hispanic origin regardless of race
_____Native American or Alaskan native persons having origins in any of the original peoples of North America
_____Asian or Pacific Islander persons having origins in any of the Far East countries, South East Asia, the Indian sub-continent or the Pacific Islands

Name of Business Enterprise: _____

Address: _____

Name and Title of person completing questionnaire:

Signature: _____

_____ _____
Notary Public Date

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SCHEDULE "I"

REQUIRED DISCLOSURE OF RELATIONSHIPS TO COUNTY

(Prior to execution of a contract by the County, a potential County contractor must complete, sign and return this form to the County)

Contract Name and/or ID No.:
(To be filled in by County)
Name of Contractor:
(To be filled in by Contractor)

A.) Related Employees:

1. Are any of the employees that you will use to carry out this contract with Westchester County also an officer or employee of the County, or the spouse, or the child or dependent of such County officer or employee?

Yes _____ No _____

If yes, please provide details:_____

B.) Related Owners:

1. If you are the owner of the Contractor, are you or your spouse, an officer or employee of the County?

Yes _____ No _____

If yes, please provide details:_____

To answer the following question, the following definition of the word "interest" shall be used:

Interest means a direct or indirect pecuniary or material benefit accruing to a county officer or employee, his or her spouse, child or dependent, whether as the result of a contract with the county or otherwise. For the purpose of this chapter, a county officer or employee shall be deemed to have an "interest" in the contract of:

i. His/her spouse, children and dependents, except a contract of employment with the county;
ii. A firm, partnership or association of which such officer or employee is a member or employee;
iii. A corporation of which such officer or employee is an officer, director or employee; and
iv. A corporation of which more than five (5) percent of the outstanding capital stock is owned by any of the aforesaid parties.

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2. Do any officers or employees of the County have an **interest** in the Contractor or in any subcontractor that will be used for this contract?

Yes _____ No _____
If yes, please provide details:_____
_____
_____
_____

Authorized Company Official shall sign below and type or print information below the signature line:

_____

Name:

Title:

Date:

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SCHEDULE "J"

Westchester County • Department of Finance • Treasury Division

Electronic Funds Transfer (EFT) Vendor Direct Payment Authorization Form

Authorization is: *(check one)*
☐ New
☐ Change

INSTRUCTIONS: Please complete both sections of this Authorization Form and attach a voided check. See the reverse side for more information and instructions.

Mail to: Westchester County, Department of Finance, Treasury Division, 148 Martine Avenue, White Plains, NY 10601
Attention: Vendor Direct

Section I - Vendor Information

1. Vendor Name:

2. Taxpayer ID Number or Social Security Number:

3. Vendor Primary Address

4. Contact Person Name: | Contact Person Telephone Number:

5. Vendor E-Mail Addresses for Remittance Notification:

6. Vendor Certification: *I have read and understand the Vendor Direct Payment Program and hereby authorize payments to be received by electronic funds transfer into the bank that I designate in Section II. I further understand that in the event that an erroneous electronic payment is sent, Westchester County reserves the right to reverse the electronic payment. In the event that a reversal cannot be implemented, Westchester County will utilize any other lawful means to retrieve payments to which the payee was not entitled.*

Authorized Signature | Print Name/Title | Date

Section II- Financial Institution Information

7. Bank Name:

8. Bank Address:

9. Routing Transit Number:

10. Account Type: (check one) ☐ Checking ☐ Savings

11. Bank Account Number: | 12. Bank Account Title:

13. Bank Contact Person Name: | Telephone Number:

14. FINANCIAL INSTITUTION CERTIFICATION (required **ONLY** if directing funds into a Savings Account **OR** if a voided check is not attached to this form): *I certify that the account number and type of account is maintained in the name of the vendor named above. As a representative of the named financial Institution, I certify that this financial Institution is ACH capable and agrees to receive and deposit payments to the account shown.*

Authorized Signature | Print Name / Title | Date

(Leave Blank - to be completed by Westchester County) - Vendor number assigned

CITY COUNCIL AGENDA

NO. 11 DEPT.: City Manager's Office DATE: December 16, 2015

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Resolution to reduce the speed limit in the City of Rye from 30 to 25 miles per hour.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council consider a Resolution to reduce the speed limit in the City of Rye from 30 to 25 miles per hour.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

BACKGROUND: The City conducted a Pilot Program reducing the speed limit along the length of Stuyvesant Avenue to 25 mph. There is interest to reduce the speed limit throughout the City of Rye from 30 to 25 miles per hour similar to the reduction of speed in New York City.

Assemblyman Steve Otis introduced statewide legislation, based on the NYC model, to allow local governments outside of New York City the authority to have a general speed limit of 25 mph in their community. Opposition to this proposed legislation has been raised citing the need for uniform speeds around the state, noting that the 30 mph speed limit is the expectation of motorists. Assemblyman Otis and Senator Latimer support this legislation and will continue to raise the issue in 2016.

See attached information from the Traffic and Pedestrian Safety Committee

CITY COUNCIL AGENDA

NO. 13 DEPT.: City Manager DATE: December 16, 2015

CONTACT: Scott Pickup, City Manager

AGENDA ITEM: Resolution for the Rye Golf Club to adopt a Referral Program to offer incentives to existing members of the Club to encourage them to refer friends, family, or neighbors to become new members of the Club.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council approve the request to adopt a Referral Program for existing members of the Rye Golf Club.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: A proposal has been put forward by the Rye Golf Club Commission to adopt a Referral Program to offer incentives to existing members of the Club to encourage them to refer friends, family, or neighbors to become new members of the Club. The Referral Program was adopted by the Rye Golf Club Commission at their meeting on December 9, 2015.

See attached.

Memo

To:	**Marcus Serrano, City Manager**
From:	**Jim Buonaiuto, Golf Club Manager**
Re:	**Membership Referral Program**
Date:	**December 10, 2015**
CC:	**City Council**

RYE GOLF CLUB

330 BOSTON POST ROAD

RYE, NEW YORK 10580

T 914-835-3200

F 914-835-3229

Marcus,

Historically, the Rye Golf Club has offered incentives to existing members of the club to encourage them to refer friends, family, or neighbors to join the club. Although this has been a long standing practice of the club, it has not been formally approved as a policy by the City Council. Most recently, in 2014 and 2015 the club offered the following "Referral Program":

"Refer a new member to us (RGC) and you will receive a reward based upon the type of membership that your referee purchases for the season:

- Comprehensive $300 RGC Gift Card
- Individual Daily Golf $200 RGC Gift Card
- Weekday Golf $125 RGC Gift Card
- Family Pool $100 RGC Gift Card
- Individual Pool $50 RGC Gift Card

Eligibility requirements are as follows:

- A referral rewards card must be filled out by the member making the referral when they submit their application for the new season.
- The referee must never have held any type of membership at Rye Golf Club before.
- The referee must pay-in-full when joining the club.

This referral program is an excellent direct-advertising opportunity for the club where any expense associated with the campaign (the gift cards) is only expended when the club has successfully sold a new membership. In 2015 the club awarded $3,125 in RGC Gift Cards to 20 members who successfully referred 20 new members to the club resulting in additional revenue to the club of $63,300.

The Rye Golf Club Commission is in support of the referral program. It is my request the City Council formally approve of this policy and also grant the City Manager the authority to make changes after an annual review of the performance of this program.

Thank you for your consideration;

Jim Buonaiuto
Rye Golf Club General Manager

CITY COUNCIL AGENDA

NO. 14 DEPT.: City Manager's Office DATE: December 16, 2015

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Resolution for the Boat Basin Commission to establish a licensing and annual fee agreement for contractors working at the City of Rye Boat Basin.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council consider adopting a Resolution to establish a licensing and annual fee agreement for contractors working at the City of Rye Boat Basin.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: At the Boat Basin Commission meeting held on November 30, 2015, the Commission members voted unanimously to establish a licensing and annual fee agreement for contractors working at the City of Rye Boat Basin. The fee for 2016 would be $250.00 per year fee for all contractors. Valid certificates of liability insurance naming the City of Rye Boat Basin as additionally insured, as well as proof of Workmen's Compensation would also be required. The permits would be issued by the City Clerk's office.

See attached memo from Boat Basin Supervisor Peter Fox.

City of Rye Boat Basin
Memorandum

Memo To: Marcus Serrano, City Manager

From: Peter T. Fox, Supervisor

Subject: Boat Basin Items for City Council

Date: December 4, 2015

As per your request, the following items were discussed at the November 30, 2015 Boat Basin Commission meeting:

1. All Commissioners were in attendance along with a majority of the marine contractors that frequent the Boat Basin property providing various services to Boat Basin permit holders.

The first item for discussion was the establishing of a contractor licensing and annual fee agreement. This was also discussed at the November 23, 2015 Boat Basin Workshop meeting held at Rye Recreation. All Contractors were contacted and invited to attend.

After lengthy discussion between the Boat Basin Commissioners and the Contractors, the Boat Basin Commission proposed a $250.00 per year fee for all contractors. As is currently the case, valid certificates of liability insurance naming the City of Rye Boat Basin as additionally insured would continue to be required, and proof of Workmen's Compensation would also be required.

All Commissioners voted in favor of the contractor licensing/fee proposal.

2. It was further requested by Chairman Gavlik that the membership of the Boat Basin Commission be increased from 5 to a total of 7 members.

The current Boat Basin Commission consists of 5 members. They are all City of Rye Resident permit holders. They are elected for two year terms commencing January 1st. Elections are held the previous August with current slip holders returning a valid ballot to the City Clerk's Office.

After brief discussion, an additional proposal was made by Commission member George Szczerba to have one member of the Commission be a Non-Resident. The motion to increase the Commission membership with one Non-Resident member was passed unanimously by the Commission.

3. The Boat Basin Commission recommends the mooring fee be increased in 2016 to $250.00 per mooring. The $100 increase from 2015 fee will be dedicated funds for the Marina Dredging. Additionally the moorings with a float/dock permanently attached will be charged a total mooring fee of $500.00.

CITY COUNCIL AGENDA

NO. 15 DEPT.: City Manager's Office DATE: December 16, 2015

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Consideration of a resolution to increase the size of the Boat Basin Commission from five to seven members.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Council consider adopting a Resolution to increase the size of the Boat Basin Commission.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☒ Other:

BACKGROUND: The Boat Basin Commission was first established by a Resolution adopted by the City Council at their meeting on January 2, 1985. It stipulated that the Commission consist of 5 residents of the City of Rye who have a permit to moor a boat at the facility to be appointed by the City Council from persons elected by mooring permit holders at the De Pauw Municipal Boat Basin. Member terms are for 2 years; the members of the Commission elect a chairman from its members.

At the Boat Basin Commission meeting held on November 30, 2015, the Commission members voted unanimously to (1) increase the size of the Boat Basin Commission from five to seven members, and (2) to stipulate that one member of the Commission be a Non-Resident.

See attached 1985 Resolution establishing the Boat Basin Commission.

R E S O L U T I O N

establishing

THE DE PAUW MUNICIPAL BOAT BASIN COMMISSION

WHEREAS, the City of Rye owns and operates the De Pauw Municipal Boat Basin in Milton Harbor, and

WHEREAS, the City Council of the City of Rye has determined that the DePauw Municipal Boat Basin should be operated as a municipal enterprise and has established the De Pauw Municipal Boat Basin Enterprise Fund for such purpose, and

WHEREAS, the City Council of the City of Rye has determined that it is in the best interests of the City that a new municipal Commission be established to advise the City Council and the City Manager on the operation of said Boat Basin and related matters, now, therefore, be it

RESOLVED, that the De Pauw Municipal Boat Basin Commission be and the same hereby is established as follows:

Section 1. Commission; Appointment

(a) There shall be a De Pauw Municipal Boat Basin Commission, to consist of five residents of the City of Rye who have a permit to moor a boat at the facility, to be appointed by the City Council from persons elected by mooring permit holders at the De Pauw Municipal Boat Basin. The members of the Commission shall elect a Chairman from its members.

(b) Initially, three of the members of the Commission shall be appointed for a term of office ending December 31, 1986, and two shall be appointed for a term of office ending December 31, 1987. All successors thereof shall be appointed for a term of two years from and after the expiration of the term of their predecessors. The terms of the members shall commence on January 1, except that the original members shall take office upon appointment and that if a vacancy shall occur otherwise than by expiration of a term, it shall be filled by appointment by the City Council for the unexpired term.

Section 2. Nominating Committee; Election

(a) The City Council shall appoint a Nominating Committee of three mooring permit holders at the Municipal Boat Basin.

(b) The Nominating Committee shall, for the first election, submit to the permit holders a ballot containing the name of seven resident permit holders at the Municipal Boat Basin for the election of five persons therefrom, for submission to the City Council for appointment to the Commission. Thereafter, the Nominating Committee shall submit to the membership a ballot containing the names of one more permit holder than the number of vacancies to be filled for the election of the resident permit holders to fill the vacancies. The names of the nominees receiving the highest number of votes for the vacancies

to be filled, including anyone with a tie vote, shall be submitted to the City Council for appointment.

(c) Any person who is 18 years of age or over that age and has a permit to moor a boat at the De Pauw Municipal Boat Basin at the time of the election shall be entitled to vote. However, only one vote will be permitted per mooring permit.

(d) The Nominating Committee shall prepare a ballot containing the required number of names selected by them as candidates to be elected for appointment by the City Council, and the City Clerk shall conduct an election by the mooring permit holders by mail and/or any other method designated by the Committee for returning the ballot, so that the results of the election are received by the Committee no later than September 1, except that for the initial election the results are to be received by the Committee no later than April 1, 1985.

(e) The Nominating Committee shall submit a list of the elected nominees to the City Council by September 10, except that for the initial election the results will be submitted to the City Council by April 10, 1985.

(f) The City Council shall appoint the members to the Commission no later than the third Wednesday in September for terms of office beginning the following January 1, except that in the case of the initial appointments the members of the Commission shall be appointed on April 17, 1985, and shall assume office immediately.

Section 3. Responsibilities

(a) The Commission shall adopt rules and regulations relating to the recreational use of the Municipal Boat Basin, which are not inconsistent or in conflict with any agreement of the City of Rye or any declared policy of the City Council and subject to the approval of the City Manager.

(b) It may make recommendations to the City Council and City Manager with respect to future programs and activities of the De Pauw Municipal Boat Basin and any other important related policy matter.

(c) It shall approve annual budget estimates prepared by staff personnel, including mooring categories and proposed fee schedules prior to submission of such estimates to the City Manager. Such budget estimates are to be consistent with the City Council's policy on the self-sufficiency of Enterprise Funds.

(d) The City Manager is responsible for implementation of the City Council's policy, the rules and regulations of the Municipal Boat Basin and the supervision and direction of employees assigned to the Municipal Boat Basin.

Adopted Jan 2, 1985

DE PAUW MUNICIPAL BOAT BASIN COMMISSION NOMINATION PROCEDURES, ELECTIONS AND TERMS

Section 1. Commission; Appointment

(a) There will be a De Pauw Municipal Boat Basin Commission to consist of five resident members who have a permit to moor a boat at the facility. The members will be appointed by the City Council after election by the resident and non-resident permit-holders of the Boat Basin. The members of the Commission will elect a Chairman each year from their group. The Chairman may serve only three terms in succession.

(b) The term of the members will be two years, commencing on January 1. There is no limit to the number of terms a member may serve.

(c) Vacancies will be filled within 45 days by appointment of the City Council until the next election, at which time the unexpired term will be filled by the candidate elected with the least number of votes.

Section 2. Nominating Committee

(a) The City Council will designate a three-member nominating committee to consist of one current Commission member who is not standing for re-election at that time, one permit-holder recommended by the Commission and one person elected to the nominating committee during the previous year's election.

(b) The nominating committee will not be restricted in the maximum number of people it can name and it must name at least two more candidates than there are open seats.

(c) The Chair shall be appointed by the City Council.

(d) The nominating committee may not name any of its members as candidates.

(e) Other permit-holders who wish to serve on the Commission and who are not named by the nominating committee may secure a place on the ballot by obtaining signatures of 25 qualified voting permit-holders on a designating petition.

Section 3. Election

(a) Voting will take place by mail over a three-week period.

(b) One ballot will be allowed per mooring permit.

(c) Resident and non-resident permit-holders will have equal voting rights.

(d) Ballots will be tabulated by the City Clerk and the results will be prominently posted at the Boat Basin.

(e) The City Clerk will submit a list of the elected nominees to the City Council by September 10.

CITY COUNCIL AGENDA

NO. 16 DEPT.: Finance DATE: December 16, 2015

CONTACT: Joseph Fazzino, Deputy Comptroller

AGENDA ITEM: Resolution to authorize participation in Westchester County contracts.

FOR THE MEETING OF:
December 16, 2015

RECOMMENDATION: That the City Council adopt the following resolution:

WHEREAS, by Act No. 8-1983, The County Board of Legislators authorized the County Purchasing Agent to act as Purchasing Agent for any city, town, village, school district or other unit of local government within the County of Westchester County, provided that said unit of local government by act, ordinance or resolution authorizes the County Purchasing Agent to act as its Purchasing Agent for items purchased by the County, and empowering designated officers and employees to sign requisitions, and further directing the proper official of local government to audit and pay County bills for the cost of County services within thirty (30) days after the receipt of said bill by the local government, and to provide the County with such insurance coverage as may be required by the County's Director of Risk Management, NOW, THEREFORE, be it

RESOLVED, that the County Purchasing Agent is hereby authorized to act as Purchasing Agent for the City of Rye, New York on a continuing basis, and be it further

RESOLVED, that the City Manager, the Assistant City Manager, the City Comptroller, and/or the City Engineer are hereby authorized to sign appropriate requisitions, and be it further

RESOLVED, that the City Comptroller is hereby authorized and directed to audit and pay County bills for the cost of County services within thirty (30) days after receipt of said bills, and be it further

RESOLVED, that the City Comptroller is hereby authorized to secure and provide to the County of Westchester any and all insurance required by the County's Director of Risk Management, in Accordance with County Act No. 8-1983.

IMPACT: ☐ Environmental ☑ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The City of Rye participates in contracts awarded by the County of Westchester. The County of Westchester requires a resolution of our governing board for our continued participation in County purchase contracts.

CITY COUNCIL AGENDA

NO. 17 DEPT.: City Manager's Office DATE: December 16, 2015

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Resolution authorizing the Mayor to enter into an agreement with the Rye Free Reading Room to furnish library services for 2016.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the City Council approve the following resolution:

RESOLVED, that the Mayor be and hereby is authorized to execute an agreement with the Rye Free Reading Room to furnish library services for 2016.

IMPACT: ☐ Environmental ☒ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: Each year the City of Rye financially supports the operations of the Rye Free Reading Room (RFRR). In FY 2015, the contribution was in the amount of $1,195,000. The attached agreement for FY 2016 includes an appropriation of $1,195,000. The agreement stipulates the specific rights and obligations of both parties, pursuant to section 256 of the Education Law of the State of New York.

THIS AGREEMENT, made as of the ____ day of December, 2015, by and between the CITY OF RYE, a municipal corporation located within the County of Westchester and State of New York, party of the first part, and RYE FREE READING ROOM, a free library association duly registered by the Regents of the University of the State of New York at a meeting thereof on January 24-25, 1917, and maintaining a free library in the City of Rye, County of Westchester and State of New York, party of the second part:

WITNESSETH, that the parties hereto, pursuant to section 256 of the Education Law of the State of New York, do hereby mutually covenant and agree as follows:

1. The party of the second part does hereby agree to furnish library privileges to the people of the City of Rye, under reasonable rules and regulations of the party of the second part, during the terms of this agreement.

2. The party of the second part does hereby agree that the Rye Free Reading Room will make all best efforts to offer service to the public a minimum of 43.5 hours in the winter and 43.5 hours in the summer. The Library will make all best efforts to ensure that within its hours of operation that Saturday is open**.** In addition, the Rye Free Reading Room will guarantee that they will be open for "special events" in accordance with the policies and procedures of the library as they occur throughout the year.

3. The party of the second part does hereby agree to submit to the City of Rye a financial report within two months of the close of its fiscal year and to provide copies of an annual narrative report prepared for association members. Copies of all audit reports prepared by independent audit firms or the State of New York will be filed, within 30 days of receipt, with the City Comptroller and the City Council's Audit Committee.

4. In consideration of the foregoing the party of the first part does hereby agree to pay the sum of One Million One Hundred Ninety Five Thousand Dollars ($1,195,000) to the party of the second part during the calendar year: Five Hundred Ninety Seven Thousand Five Hundred Dollars ($597,500) to be paid in January, and Five Hundred Ninety Seven Thousand Five Hundred Dollars ($597,500) to be paid in July.

5. Pursuant to said statute, such total sum shall be a charge upon the City of Rye and shall be raised, appropriated and paid in the same manner as other City charges.

6. If the capital improvements that were part of the 2012 bond resolution are installed in 2016, the Rye Free Reading Room will be responsible for all maintenance and repair costs of same.

7. This agreement shall be effective and continue for the calendar year 2016.

IN WITNESS WHEREOF, the parties hereto have duly executed this agreement as of the day and year first above written.

CITY OF RYE

By_____
Mayor

RYE FREE READING ROOM

Attest:

By_____
President

_____
City Clerk

CITY COUNCIL AGENDA

NO. 18 DEPT.: City Manager's Office DATE: December 16, 2015

CONTACT: Marcus Serrano, City Manager

AGENDA ITEM: Resolution designating the days and time of regular meetings of the City Council for 2016 setting January 13, 2016 as the first regular meeting.

FOR THE MEETING OF:
December 16, 2015

RYE CITY CODE,
CHAPTER
SECTION

RECOMMENDATION: That the Mayor and City Council schedule the 2016 meeting dates.

IMPACT: ☐ Environmental ☐ Fiscal ☐ Neighborhood ☐ Other:

BACKGROUND: The Rye City Charter stipulates that the City Council meet within the first two weeks of January in each year and shall hold stated meetings at least twice a month, except for the months of June through September when only one stated meeting per month need be held.

See attached schedule for regular meetings of the City Council for 2016.

2016 City Council Meetings Calendar

January 2016

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

February 2016

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29					

March 2016

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

April 2016

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

May 2016

Su	Mo	Tu	We	Th	Fr	Sa
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

June 2016

Su	Mo	Tu	We	Th	Fr	Sa
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30		

July 2016

Su	Mo	Tu	We	Th	Fr	Sa
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

August 2016

Su	Mo	Tu	We	Th	Fr	Sa
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30	31			

September 2016

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	

October 2016

Su	Mo	Tu	We	Th	Fr	Sa
						1
2	3	4	5	6	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29
30	31					

November 2016

Su	Mo	Tu	We	Th	Fr	Sa
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30			

December 2016

Su	Mo	Tu	We	Th	Fr	Sa
				1	2	3
4	5	6	7	8	9	10
11	12	13	14	15	16	17
18	19	20	21	22	23	24
25	26	27	28	29	30	31

Council Meeting Dates
Joint Meeting: City Council & RCSD Board of Education

February 15 – 19	School Mid-Winter Recess
March 21 – March 25	School Spring Break
November 8	Election Day