

Workshop Minutes of May 26, 2009

1. River Pool.

The City Council discussed the River pool, which a revised agreement by River pool was presented to the Council. The revision was to remove any linkages to their lifeguards and vice versa for the City of Beacon. They will pay for their own lifeguards as it was a liability and it took away additional insured. It was noted by City Administrator that they will keep the City as additional insured, but the City will not name the River Pool name them as additional insured. River Pool will be a separate entity which excuses the City of Beacon from any liability.

To be forwarded to the Council Meeting of Tuesday, June 1st for a vote to approve.

2. Clearwater Agreement

City Council has been working on this Agreement since 2008. The Council sent back the Agreement for the Clearwater and City Attorney to look it over while making revisions, and this was all complete at the March 9th Workshop.

The Blue Highlight on the document is the changes the City made significant changes.

The regular text is what Clearwater would like to consider after the City sent it back for further review.

The green highlight since it came back City Administrator, Mayor Gold, and Jeff Rumpf again looked over the document, with additional changes, Clearwater did accept our changes.

There are changes that the City Council has not seen as of yet, the goal is, to review the Green Highlight along with the text that has no highlight the then send back to Clearwater with desire to change verbiage within the Agreement.

If Clearwater agrees to the changes that the City Council has suggested then this Agreement can go to the Council Meeting to vote on this Agreement. Below is the complete agreement which is highlighted in different places:

Green Highlight is City Administrator Meredith Robson's Comments.

Blue Highlight is the from the March 9th Workshop Meeting.

**AGREEMENT
BETWEEN
THE CITY OF BEACON
AND
HUDSON RIVER SLOOP CLEARWATER, INC.
FOR THE USE AND OCCUPANCY OF THE WHITE HOUSE AT UNIVERSITY
SETTLEMENT CAMP**

This Agreement (this "Agreement") is made as of the - day of, 2009 between the City of Beacon, a municipal corporation having its principal offices at One Municipal Plaza, Beacon, New York 12508

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("City"), and Hudson River Sloop Clearwater, Inc., a [-----New York State "not for profit" corporation having its principal office at 112 Market Street, Poughkeepsie, New York 12601 ("Clearwater").

WHEREAS, pursuant to that certain Cooperative Operation and Maintenance Agreement dated November 21, 2007 (the "Parks Agreement"), between the City and the People of the State of New York, acting by and through the Commissioner of Parks, Recreation and Historical Preservation ("Parks"), the City has the right to use, occupy and possess the "Property" described in the Parks Agreement, including, without limitation, the Premises and the Additional Facilities (each as hereinafter defined);

WHEREAS, pursuant to the Parks Agreement, the City may, subject to the consent of Parks, sublease the area shown on Exhibit A attached hereto and made a part hereof (the "Premises"), which Premises are located in the structure known as the White House facility (the "White House") at the former University Settlement Camp (the "University Settlement Camp") in the City of Beacon, County of Dutchess, State of New York;

WHEREAS, Clearwater has responded to the City's general "Request for Expressions of Interest" with a plan for the proposed use of the Premises and the Additional Facilities;

WHEREAS, Clearwater is an internationally renowned organization promoting and undertaking environmentally sound projects, environmental education and leadership training, and local job opportunities in the environmental field;

WHEREAS, Clearwater operates a sailing vessel known as the "Clearwater" (the "Clearwater Vessel") for training and participation in environmental activities and sailing on the Hudson River at and near the City;

WHEREAS, Clearwater's use of the Premises and the Additional Facilities will provide enhanced environmental, educational and related benefits for the City's residents, and Clearwater shall endeavor to beautify and improve the Premises;

“Additional facilities” for this agreement include only the garden area and shed for storage, and it is recognized that the areas themselves may change after the USC planning process is complete, but Clearwater would be provided with a similar garden area and shed for storage.

Mayor Gold wanted to explain what Additional facilities mean. This paragraph deals with the beautification and improvement of the premises, in addition additional facilities.

WHEREAS, the City desires to lease to Clearwater, and Clearwater desires to lease from the Premises, together with the non-exclusive right to use the facilities set forth on Exhibit B attached hereto and made a part hereof (the "Additional Facilities"), the White House and the University Settlement Camp, on the terms and conditions set forth herein;

WHEREAS, Parks has approved this Agreement pursuant to that certain {letter dated _____, 2009, a copy of which is attached hereto} as Exhibit C; and

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WHEREAS, the Beacon City Council has approved this Agreement pursuant to that certain Resolution dated _____, 2009, a copy of which is attached hereto as Exhibit D.

NOW, THEREFORE, in consideration of the mutual covenants and conditions hereinafter set the City, Parks and Clearwater agree as follows:

1. The City, in consideration of the Rent (as hereinafter defined) to be paid and the Work (as hereinafter defined) to be performed by Clearwater, hereby demises and grants exclusive occupancy rights to Clearwater, and Clearwater hereby accepts such grant and exclusive right to occupy, and takes from the City, the Premises, for general office and classroom use ~~and~~. In addition, the Premises may be used for any other lawful use which may further Clearwater's mission, upon the covenants and conditions set forth herein and upon the approval of the City's Administrator, which approval is not to be unreasonably withheld or delayed.

Paragraph 1 – should include the “Building Inspector, if applicable” and not just the Administrator for approvals just in case there’s a Code issue involved

*So to sum this paragraph up, the City would like the Building Inspector (if applicable) along with the City Administrator for approvals in case there is a Code issue involved. This is to make the premises safe. Council Member Thompson wanted clarification that the White House will be used for classroom space, so this building will be commercial space? City Administrator stated that it is not intended for commercial space, but there will be administrator and office space, classroom. The assessor classified this building as residential and not commercial. City Administrator will have to check into this for Council Member Thompson. Further, Council Member Thompson stated that this space needs to be classified either residential or commercial for the purpose of Zoning. **Majority of the Council Agreed.***

2. The term of the occupancy rights contained in this Agreement (the "Term") shall commence on the date upon which the City ~~and Parks~~ shall have delivered to Clearwater a fully executed counterpart of this Agreement, and shall expire without the necessity of any notice on the tenth (10th) anniversary of the Commencement Date (the "Termination Date"), unless extended pursuant to Paragraph 3 below.
3. Clearwater shall have the right, at its election, to extend the Term for two (2) additional successive periods of five (5) years each (each, a "Renewal Term" and collectively, the "Renewal Terms"), upon notice to the City and Parks of such election given at least thirty (30) days prior to the expiration of the original Term or the first Renewal Term, as applicable, provided Clearwater shall not be in default, beyond lapse of any applicable notice and/or cure at the time of the expiration of the Term or the Renewal Term, as the case may be.

The term of this sublease shall be for ten years and may be extended for two five year terms based the requirements outlined herein.

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Paragraph 3 and 30 – concerned that the City’s interests may not fully be protected in terms of our ability to terminate the lease for Clearwater’s failure to abide by the terms. Not clear to me whether or not we need additional language to protect us vs. the inherent protections of a lease itself.

There was a question whether or not this Agreement will protect the City of Agreement, verses the inheritance to the lease itself. We have resolved this which will be explained later on in the agreement.

4. Except for the City's Work (as hereinafter defined), Clearwater agrees to maintain and operate the Premises at Clearwater's expense, including utilities, under the overall supervision of the City.

Clearwater agrees to renovate, maintain and operate the White House at Clearwater’s expense, including utilities, and White House infrastructure, equipment, grounds and parking area under the overall supervision of the City. Clearwater shall not have the exclusive use of the commercial kitchen at the site. Clearwater’s improvements to this site shall include but not be limited to its “Revamp the Camp” programs. Clearwater shall also comply at its expense with the State Environmental Quality Review Act.

5. The City shall be responsible for (i) ~~[who "does" this?] snow plowing the Premises, the Additional Facilities, the White House, maintain~~ the University Settlement Camp and ~~any outdoor grounds and parking areas,~~ (ii) ~~maintaining~~ the pool, kitchen, amphitheater, outdoor grounds and all facilities at the White House and the University Settlement Camp ~~that~~ which Clearwater is not required to maintain pursuant to this Agreement) in ~~an~~ reasonable attractive, useable, neat, clean, sanitary and safe condition in compliance with all applicable laws (collectively, the "City's Work"). The City shall have no obligation to provide "snow plowing" services for the Premises and/or the Additional Premises.

Paragraph 5 – think we should have some reference to the fact that we’ll do reasonable repairs and maintenance limited by whatever budgetary restrictions we may have.

*NOTE: the cross outs are what the City changes and double underlines indicate the changes the Clearwater would like to change within this document. **Council Agreed with these changes.***

6. Clearwater shall have the non-exclusive right to use the Additional Facilities in common with other occupants and users of the Additional Facilities, subject to compliance with use requirements then applicable to City residents.
7. Clearwater acknowledges and agrees that an important incentive for the City to enter into this Agreement ~~are~~ is Clearwater's obligation to perform the improvements and renovations which shall constitute the Work. Clearwater intends to perform the work set forth on ~~Exhibit CE~~ attached hereto and made a part hereof ("Clearwater's Work"). Prior to the commencement of any additional work (the "Additional Work") to be performed by Clearwater, Clearwater will consult with the City to identify the additional improvements and renovations to be undertaken. Clearwater's Work and the Additional Work are referred to herein as the "Work". No Work shall

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be performed without the prior consent of the City, and Clearwater shall submit plans and specifications for all Work to the City for approval, which approval shall not be unreasonably withheld, delayed or conditioned. All plans and specifications for the Work shall, to the extent required by applicable law, be prepared by a licensed engineer, architect or landscape architect in accordance with the requirements of the New York State Education Law, Section 5501 — 7499. Clearwater shall be permitted, from time to time, to use unlicensed volunteers to perform Work which does not affect building systems and/or structures in compliance with reasonable rules and regulations which may be promulgated by the City. The Work shall be performed in a good and workmanlike manner consistent with the standards applicable to the White House and in accordance with all applicable laws, including the requirements of the City's Building Department Inspector or Administrator, as applicable. Clearwater assumes all responsibility for compliance with all applicable codes, laws and regulations in connection with the performance of the Work. The City agrees to cooperate with Clearwater ~~and to give all necessary consents in connection with the filing and prosecution in Clearwater's efforts to obtain all permits,~~ licenses and approvals (collectively, the "Permits") and to execute such documents and applications, and ~~to~~ shall furnish such information as may be reasonably requested by Clearwater in connection with such Permits. The City shall use its reasonable commercial efforts to obtain any required consents and/or approvals respecting the performance of the Work pursuant to the Parks Agreement.

Paragraph 7 – about a third of the way down: should say No work shall be performed without the prior consent of the City Administrator so it's clear. Also, only that work that does not require a license can be done by unlicensed volunteers. Not sure what is meant by "standards applicable to the White House" – maybe use "generally accepted standards".

City Administrator was replaced with the word the City throughout this paragraph. In addition volunteers do not need to be licensed. There was much discussion with the phrase reasonable commercial efforts, and decided to remove this from the Agreement. Council Agreed

Clearwater acknowledges and agrees that an important incentive for the City to enter into this Agreement, are the improvements and renovations to the White House site to be undertaken by Clearwater. It is agreed that Clearwater will consult frequently with the City to identify the proposed improvements and renovations to be undertaken and carry out such work in a timely and high quality manner. All improvements must be approved by the City prior to commencement of the work and shall be completed by licensed, certified and otherwise qualified contractors as required by the City's Building Officials. Clearwater assumes all responsibility for compliance with all applicable codes, laws and regulations.

8. Subject to Paragraph 9 below, the rent (the "Rent") for the Premises shall be One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) per month, payable to the City on the first day of each month during the Term, which Rent shall increase by ten percent (10%) every five (5) years during the Term, including the Renewal Terms, if any.

The rent for the White House premises shall be in a monthly amount as determined by the City's Assessor payable to the City on the first day of each month during the term of this lease. The

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monthly rental amount shall increase by ten (10) percent every five (5) years including option periods.

9. The City and Clearwater hereby acknowledge and agree that the Rent shall be reduced (and deemed paid) by and to the extent of the Fair Market Value (as hereinafter defined) of the Work. In furtherance of the foregoing, Clearwater and the City shall establish and maintain a fictitious "Account" on behalf of Clearwater, which Account shall be increased by an amount equal to (x) the Fair Market Value of the Work as of the date of the substantial completion of each item of Work, (y) the agreed upon percentage of the Fair Market Value of any and all Beautification Work (as hereinafter defined), as determined accordance with Paragraph 10 below, and (z) the value of the programs conducted by Clearwater at the Premises to City residents, as mutually agreed upon by the City and Clearwater, and shall be decreased by (i) the monthly Rent, and (ii) the costs of any other charges payable by Clearwater to the City under this Agreement. The City and Clearwater hereby acknowledge and agree that the Fair Market Value of each item of Clearwater's Work shall be the amount (shown as the "Fair Market Value") listed next to each such item on Exhibit C attached hereto. For purposes of this Agreement, the "Fair Market Value" shall mean the amount shown on Exhibit C attached hereto, and if none is so specified, the greater of the actual cost of such Work, evidenced by third-party receipts, and an amount mutually agreed upon by the City and Clearwater in respect of the then-current fair market value of such improvement, or, failing such agreement, (A) if the value of such improvements is less than \$5,000, as ~~reasonably~~ determined by the City's Administrator in his or her sole but reasonable discretion (based upon third party estimates and other available criteria, and (B) if the value of such improvements is \$5,000 or more, by an appraiser selected by the chapter of the American Arbitration Association or its successor organization located in the area in which the Premises is located. The determination of the Fair Market Value of each item of Work rendered in accordance with the provisions of this Paragraph shall be final and binding.

Paragraph 9 – not a big deal but don't particularly like the term "fictitious" account. Does use of American Arbitration Association conflict with dispute resolution process identified?

*It was agreed to change the term fictitious and replace it with Clearwater account. Council Member Thompson brought up "Fair Market Value" does this mean for the work or the space? That is why she brought up the Real Estate and how it is determined, residential or commercial. For the Record Council Member Thompson has a conflict with this paragraph. **Majority of the Council agreed.***

The monthly rent shall be reduced by the value of Clearwater's renovations and improvements at the site which shall be documented by invoices and detailed receipts submitted to the City showing such payments. The City's engineering consultant shall determine the value of such renovations and improvements after consultation with the City Administrator. The value of such renovations will include in kind services and goods and reflect industry bid standards. Further, provided it is pre-approved by the City, Clearwater may make improvements to the University Settlement Camp which is not appurtenant to the White House premises and the value of such improvements will also be applied to rent owned or be credited to Clearwater. The final

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determination of the value of work performed will be determined by the City Administrator. Any appeal shall be submitted to and decided by the City Council.

At such time as the value of the renovations and improvements as described in paragraph five (5) for any given month is equal to or less than the rent due, Clearwater shall meet with the City Administrator within ten (10) days of such calculation to discuss the timing and value of planned future work. Based on such discussions the Administrator shall determine whether rent owed and future rent shall be paid in cash or as credit for work to be performed or a combination thereof.

At the time of such discussion referred to in paragraph six (6), the City Administrator shall determine the value of Clearwater programs conducted at the site to City of Beacon residents and others and apply such value to the rent owed or to be credited to Clearwater.

10. The City and Clearwater recognize the importance of an attractive environment at the University Settlement Camp. Well-landscaped grounds are in keeping with the aesthetics of a park and will provide enjoyment to the public. The City understands that Clearwater will endeavor to act on the City's behalf to secure grants, receive donations and work to perform landscape maintenance on property contiguous to the Premises, the Additional Facilities, the White House, the University Settlement Camp and/or the surrounding outdoor grounds thereof (collectively, the "Beautification Work"). In connection with any Beautification Work, Clearwater's Account shall be credited in an amount greater than seventy-five percent (75%), but not to exceed one hundred percent (100%), of the Fair Market Value of each item of Beautification Work performed at the site, which percentage shall be an amount mutually agreed upon (in good faith) by the City and Clearwater. The Beautification Work does not include work outside the White House that is necessary for its actual operations, such as, but not limited to, the driveway and parking area, and all such necessary work shall be deemed "Clearwater's Work" or "Additional Work" for purposes of this Agreement.

The City and Clearwater recognize the importance of an attractive environment for the University Settlement Camp. Well-landscaped grounds are in keeping with the esthetics of a park and will provide enjoyment to the public. The City understands that Clearwater will act on the City's behalf to secure grants, receive donations and work to perform improvements that the City would otherwise have to perform or secure. Although such work is not essential for the integrity of the White House building, Clearwater will receive from 75% to 100% of the value of esthetic work performed at the site. The percentage of credit given to Clearwater will be based on the determination of the City Administrator. This does not include work outside the White House that is necessary for its actual operations such as but not limited to the driveway and parking area.

11. Clearwater will provide the City with monthly accountings of the Work performed, and the costs and expenses incurred by Clearwater in connection with the performance of such Work.

Clearwater will provide the City with quarterly accountings of the renovations and costs Clearwater makes to the White House during the term of this lease.

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12. Upon reasonable advance notice to Clearwater and at such times so as to be of minimal interference with Clearwater's business at the Premises, the City shall have the right to inspect the Premises and adjacent area at any time to assure compliance with City health, safety and building codes and regulations before and during Clearwater's occupancy.

City shall have the right to inspect the White House facility and adjacent area at any time to assure compliance with City health, safety and building codes and regulations before and during Clearwater's occupancy.

13. The City shall have the right to require reasonable maintenance and repair to the Premises at Clearwater's expense as and when needed to preserve the Premises in good working order and condition, except for reasonable wear and tear and damage for which Clearwater is not responsible.

City shall have the right to require reasonable maintenance and renovations to the White House facility at the Clearwater's expense at least annually during the term of this Lease.

City shall have the right to conduct an appraisal of the value of the White House facility prior to the occupancy by Clearwater and every three years thereafter.

14. The City agrees to provide Clearwater with reasonable signage rights at the Premises, and Clearwater shall be permitted to erect, install and/or maintain signs, awnings, marquees, canopies, banners, flags, pennants, aerals or the like in connection with its business operations at the Premises, ~~as reasonably determined by the City's Administrator~~ in accordance with Planning Board review and all applicable law and/or regulations.

15. Clearwater agrees to publicize that a "homeport" of the Clearwater Vessel is the City of Beacon. The City shall use reasonable efforts to obtain any and all required approvals to secure the elements required to establish the homeport, including the use of the ferry dock, slip and a land-based, water dependent facility, subject to applicable law and/or regulations and in accordance with the Harbor Management Plan, as amended from time to time.

Paragraph 15 – do not feel this agreement should be tied to riverfront, and certainly not allow any work to be done at the riverfront until such time as the Harbor Management Plan is ready to be implemented.

*The City does want to be a position where the City is forced to have the work done **If the Council has a problem with this section, it was agreed to come and revisit this section.***

Clearwater agrees to represent and publicize that a home port of its sloop *Clearwater* is the City of Beacon, and the City of Beacon agrees to support in principle Clearwater's goals to secure the elements required to establish the Homeport, including the use of the ferry dock, slip and a land-based, water dependent facility.

16. Clearwater shall maintain administrative offices at the White House.

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Clearwater shall locate its primary administrative office and headquarters at the White House.

17. Clearwater shall endeavor to provide Environmental Leadership opportunities services to the City of Beacon youth at the White House facility.

Clearwater agrees to provide Environmental Leadership opportunities services to the City of Beacon youth at the White House facility.

18. Clearwater shall use reasonable efforts to employ residents of the City and create new jobs and "green job" training opportunities at and from the Premises for the benefit of residents of the City of Beacon and others, commencing on the first year of this lease and continuously during its term.

Clearwater shall create new jobs and "green job" training opportunities at and from the White House facility for the benefit of Beacon residents and others, commencing on the first year of this lease and continuously during its term.

19. Clearwater shall use reasonable efforts to conduct environmental education programs at the Premises, which shall be available to City community and school groups and others.

Clearwater shall conduct environmental education programs at the White House which shall be available to City community and school groups and others.

20. Clearwater shall use reasonable efforts to conduct environmental conferences from time to time at the site, ~~including invitations to~~ in accordance with all legal requirements, and shall (as appropriate) invite City residents to participate ~~therein~~.

Clearwater shall conduct environmental conferences from time to time at the site including invitations to City residents to participate therein.

21. Clearwater shall use reasonable efforts to cooperate with the City, at no cost or expense to Clearwater, to encourage tourism in the City.

Clearwater shall cooperate with the City to encourage tourism in the City.

- ~~22. In the event asbestos and/or asbestos containing materials are located on, in or under the Premises, and additional Facilities, the White House and/or the University Settlement Camp, the City and Clearwater shall, in good faith, determine who shall pay the cost of removal [; provided, however that in no event shall Clearwater be responsible for more than 50% of such costs]~~

- ~~22.~~ 23. Clearwater and its employees, agents, invitees and licensees shall be permitted to park in designated parking areas at the White House provided however, that not more than forty (40)

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such parking spaces must be available at the White House within the areas designated as “parking areas” on Exhibit A attached hereto.

23. ~~24.~~ In addition to the Premises and the Additional Facilities, Clearwater shall have the right to use, in accordance with the applicable City program, the facilities located at the University Settlement Camp. Clearwater shall be charged the ~~“Resident & Not for Profit Long Term Use Fee then “regular park use fee”~~ then “regular park-use fee” in connection with Clearwater's use of all University Settlement Camp facilities (the "USC Facilities") for the Term of this Agreement, which fee shall be deducted from Clearwater's Account in accordance with Paragraph 9 of this Agreement. Clearwater shall have the right to the {temporary} use of Cabin 16 for storage purposes during the term of this Agreement.

Paragraph 23 – do not agree that park use fees should be deducted from the rent due. Think we’re complicating matters the more things we add to a lease that’s supposed to deal with one facility. This could potentially have a significant impact on our revenue projections from year to year.

All Council agreed with this change in the Agreement.

24. ~~25.~~ Clearwater acknowledges that (i) this Agreement is subject to the terms of the Parks Agreement and (ii) Clearwater has been provided with a copy of the Parks Agreement. Parks and the City each understand that this Agreement shall govern if there is any conflict between the Parks Agreement and this Agreement.

Clearwater acknowledges that this sublease is subject to the terms of the Cooperative Operation and Maintenance Agreement, dated November 21, 2007, between the City and the State of New York that Clearwater has been provided with a copy of the Agreement, and understands that the City-State Agreement shall govern if there is any conflict between the Agreement and this sublease

25. ~~26.~~ Clearwater will maintain (a) workers' compensation as required by law, (b) property and casualty insurance covering the Premises, and (c) commercial general liability insurance covering its use of the Premises, the Additional Facilities, the White House and the University Settlement Camp, with limits of not less than \$2,000,000 each occurrence and \$4,000,000 in the aggregate. All such policies shall name the City and Parks as an Additional Insured.

Clearwater will maintain a Commercial General Liability policy covering its use of the White House facility and accessory uses, with the City and the State of New York, named as an Additional Insured, with limits of not less than \$1,000,000 each occurrence and \$3,000,000 in the aggregate and will also maintain an Umbrella Liability policy of not less than \$1,000,000 each occurrence and \$1,000,000 in the aggregate for a total of \$2,000,000 each occurrence and \$4,000,000 in aggregate

26. ~~27.~~ Except to the extent set forth in Paragraph ~~27~~ 26 below or otherwise caused by an act or omission by the City, its agents and/or employees, to the fullest extent permitted by law Clearwater shall indemnify, defend and hold harmless the City and its agents, employees and

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invitees from and against all claims, damages, losses or expenses, including, but not limited to, reasonable attorneys' fees, incurred by the City and its agents, employees and/or invitees arising out of or resulting from any gross negligence and/or willful misconduct of Clearwater, its agents, employees and/or invitees or anyone directly employed by Clearwater.

To the fullest extent permitted by law, Clearwater shall indemnify, hold harmless and defend City of Beacon, and agents and employees of any of them from and against all claims, damages, losses or expenses including but not limited to attorney's fees arising out of or resulting from the performance of the agreement, provided any such claim, damage, loss or expense (a) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting there from, and (b) is caused in whole or in part by any act or omission or violation of statutory duty or regulation of the Clearwater or anyone directly or indirectly employed by it or anyone for whose acts it may be liable pursuant to the performance of the agreement. Notwithstanding the foregoing, Clearwater's obligation to indemnify City of Beacon, and agents and employees of any of them for any judgment, mediation or arbitration award shall exist to the extent caused in whole or in part by (a) negligent acts or omissions, or (b) violations of regulatory or statutory provisions of the New York State Labor Law, OSHA, or other governing rule or applicable law; by the Clearwater or anyone directly or indirectly employed by it or anyone for whose acts it may be liable in connection to such claim, damage, loss and expense. The obligation of the Clearwater to indemnify any party under this paragraph shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits including worker's compensation or other employee benefit acts provided by the Clearwater.

27. ~~28.~~ Except to the extent set forth in Paragraph above or otherwise caused by an act or omission by Clearwater, its agents and/or employees, to the fullest extent permitted by law, the City shall indemnify, defend and hold harmless Clearwater and its agents, employees and invitees from and against all damages, losses or expenses, including, but not limited reasonable attorney's fees, incurred by Clearwater, its agents, employees and/or invitees, arising out of or resulting from the gross negligence and/or willful misconduct of the City, its agents, employees and/or invitees.

28. ~~29.~~ Upon written notice to the contact parry set forth herein, any party may give any other party (30) days written notice to cure any asserted non-compliance with the terms of this Agreement. If the noticed party fails to substantially cure the asserted non-compliance within thirty (30) days (or if such failure is of a nature that it cannot be completely cured within thirty (30) days following written notice by the other failure by the non-complying party to commence to remedy such failure within thirty (30) days following written notice by the other party, and thereafter diligently prosecute to completion all steps necessary to remedy such failure), this Agreement shall be subject to cancellation upon no less than thirty (30) days' written notice to the non-complying party.

Upon written notice to the contact set forth herein, either party may give the other ninety (90) days written notice to cure any asserted non-compliance with the terms of this sublease. If the noticed party fails to substantially cure the asserted non-compliance within

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ninety (90) days, this lease shall be subject to cancellation upon further written notice to the non-complying party.

29. ~~30.~~ Any notice, request, demand, approval or consent given or required to be given under this Agreement shall be in writing and shall be given by a nationally recognized overnight delivery service, with all delivery and/or postage charges prepaid, shall be deemed to have been given on the day such notice is actually received or refused, or if unclaimed, on the day following the day on which the same shall have been sent by a nationally recognized overnight delivery service. Any such communication, if intended for the City, shall be addressed to the City Administrator, Meredith Robson, One Municipal Plaza, Beacon, New York 12508, or such other address as shall be designated by the City in writing, ~~or if intended for Parks, shall be addressed to [~~
~~_____],~~ or if intended for Clearwater, shall be addressed to Jeff Rumpf, Executive Director, 112 Market Street, Poughkeepsie, New York 12601, with a copy to Tannenbaum Helpert Syracuse & Hirschtritt LLP, 900 Third Avenue, New York, New York 10022, Attention: Roger M. Roisman, Esq.

This Agreement is subject to the approval of the City Council of the City of Beacon and the State of New York.

The contact for the City of Beacon for this Agreement is the City Administrator, Meredith Robson, whose office is located at One Municipal Plaza, Beacon, New York 12508.

The contact for Hudson River Sloop Clearwater, Inc. is Jeff Rumpf, Executive Director, whose office is located at 112 Market Street, Poughkeepsie, New York 12601.

30. In the event of the repeated and intentional breach by Clearwater of the obligations of Clearwater under this Agreement, as to which notice shall have been given to Clearwater by or on behalf of the City within five (51 business days of each such breach (a "Reheated Offense", the City may seek to terminate this Agreement in a court of competent jurisdiction or refuse to permit a renewal pursuant to paragraph 3 above. For noses hereof "repeated" breaches shall mean more than five (51 or more such breaches as to which notice is given which occur in a twelve (121 month period. Any questions or issues regarding a breach by Clearwater shall be determined in accordance with the Dispute Resolution Process described on Exhibit F attached hereto and made a part hereof.

Paragraph 30 – see #3 above.

Paragraph 3 and 30 – concerned that the City's interests may not fully be protected in terms of our ability to terminate the lease for Clearwater's failure to abide by the terms. Not clear to me whether or not we need additional language to protect us vs. the inherent protections of a lease itself.

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In summary if party A does not follow the contract, and then Party B has the right to cancel Agreement. City Attorney read the insert that will replace Paragraph thirty. Council Member Leake wanted clarification regarding "City", that it would be changed to City Administrator and/or Building Inspector. Council Member Thompson brought up that we are giving Clearwater a twenty year agreement, and we the City are we going to change this with the State also. Twenty year leases are appropriate in some cases, but with this property a twenty year lease when there is still a question regarding what type of property this is "Commercial" or Residential". In addition, what happens in ten years when a new board is now in place and they have different plans for the City? The Council job is to protect the City of Beacon. Council Member Kelly stated that New York State has the ultimate authority regarding upholding the contract. Council Member Casale had a question with the lease of 10 years, then 5 years and then another five years (20 Years) and the rate increase for these years. The most the rent can go up in twenty years is two hundred and forty dollars. In Summary we are giving Clearwater a twenty year lease for one thousand, two hundred dollars, for the first five years and then twenty percent after the next first five years and then ten percent after the next five years. Council Member Kelly stated that the City is not a business enterprise; the City is here to provide services to our citizens. Meredith Robson, clarified that the rent is per month, it will not be an annual increase but a yearly increase.

Additional Comments from M. Robson:

The ability of Clearwater to actually move in to the White House should be contingent upon the completion by them of a structural analysis and any remediation work required. Our consultant and building inspector have expressed concern over the structural integrity of the White House.

References in the actual contract should be checked to ensure consistency with the exhibits.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and date set forth above.

Mayor Gold, stated to Jeff Rumpf that if he would like to make the appropriate changes and have the Clearwater Board approve it, then bring it make to the Council, by Thursday, so the Council would have this document before Monday's Council Meeting.

3. TOD Traffic Study

Michael Galante from Fredericks P. Clarks wanted to give the Council an overview of the Proposed Transit Oriented Development (TOD) Zone. In January there was a traffic study, particularly by the Riverfront. The Council Members were referring to the Traffic Study Report. After Mr. Galante reviewed the entire document Council Members had questions:

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Council Member Thompson asked if there was going to be grade separate roads. Mr. Galante responded with "no". If there is an emergency and all from Beacon had to leave, the residents have limited access.

Council Member Kelly – Having two lanes on Route 9D heading north, seems to him that it will cause a problem going south. Mr. Galante stated there is no need for "a no left turn" So there will be four lanes going south towards Verplanck including a left hand turn onto Verplanck.

Council Member Casale stated it took thirty years to build the 9D Arterial because people complained about going from a two lane road to a three lane road. Now you are going to ask the same people if they are going to widen those roads again.

Suggestion from Council Member Casale is to build a roadway along the River one way in the morning, and one way in the evening for the commuters. This roadway will spill out onto Route 9D up by the bridge, instead of adhering to this plan that was presented this evening. Mayor Gold stated with the backup of City Administrator that they have talked to MTA and they will not do that, as it would cost too much money. It was suggested that the Council reads this Traffic Analysis and to contact David Stolman email address or Mayor if they have any questions.

4. TOD Ordinance

David Stolman, from Frederick and Clark spoke to the Council regarding the Proposed Local Law Creating a Transit Oriented Development TOD Zoning District and Rezoning Certain Properties to this New District. Going back to April 20th there was a powerful presentation, in which there were very brief remarks about the traffic study. Mr. Stolman stated that he was asked to put together a DRAFT of the Proposed Local Law for the TOD Zoning District... Due to the length of the Proposed Local Law (22 pages, dated May 15, 2009, he wanted just to point out a few items to review with the Council. On the top of page 2 is the purpose of this district, which is worth going through.

Council Member Casale wanted to assure that there would be limited restaurants by the waterfront, so it would not hurt the business on Main Street. It was suggested to change the language on page 3 section 6. which reads: Restaurants and other eating and drinking establishments located on the ground floor and second floor of the buildings facing street rights-of-way. Mr. Stolman stated that eventually there will be a concept plan, with a special permit approval, as well. Mayor Gold asked David Stolman as the City Planner can a City limit the amount of restaurants in the TOD District. Mr. Stolman stated that he believes you can

Council Member Kelly brought to the attention of the other Council Members that there is a free enterprise and thought a City cannot say you cannot have x amount of restaurants.

*Due to the fact this document is large, Mr. Stolman wanted to go over some of the very important issues such as on page 18 regarding the Bulk regulations. It was noted on page 18 footnote number 3 it should read: This would result in a maximum of ~~115,000~~ square feet of commercial floor area on MNR property. It should read **119,790** square feet of commercial.*

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Mr. Stolman stated in terms of the Comprehensive Plan talks about a certain amount of density, and he believes the City will need to tweak the Comprehensive Plan, to accommodate this level of density. The Council will have a first reading, set a public hearing, in four to five weeks, as it is a zoning change and the Dutchess County Planning, and the City of Beacon Planning would need to make recommendations, or state that it is a matter of local law. We would supplement with a SEQRA with the new traffic study.

Council Member Thompson asked how much it will cost to tweak the Master Plan. Answer "not much"

Mayor Gold asked if there is anything else the City would need to move forward with the Proposed Local Law. David Stolman stated that the City would have to wait for another draft, with very few substantial changes. Meredith Robson, City Administrator suggested to put this on the next workshop.

David Stolman stated that by time the next workshop comes along we will have the environmental assessment form, the changes to the Comprehensive Plan which will not be significant, a packet of SEQRA recommendations.

5. Long Dock Approval Process:

It was noted that Scenic Hudson is still working on the financing. Scenic Hudson would like to move forward on the development of the park. In order to move forward we would like to start the approval process. The planning board adopted this at their last meeting and the Planning Board will be the SEQRA and the lead agency. This is the same document that the Planning Board approved.

Suggestion is at the next Council Meeting schedule the reconvening the Public Hearing and re-notice them the Waterfront Concept Plan, the Special Use Permit, also entertain the finding statement.

6. Community Development Block Grant for 2010

City Administrator suggested continuing with the CDBG for another three years. We get an allotment through the County. Mayor Gold suggested that the City should get check out other programs and be able to opt out in the future, as other entities are receiving more money. City Administrator stated if this is signed, the City will be obligated for three years.

7. Capital Plan

This is being discussed this evening, as the Charter denotes this and should be done in June. City Administrator has composed a document to reflect the Capital Plan for 2009. Note it is not required to perform any of the suggestion in the Capital Plan, it is just a way to try to project what might or needs to happen or whether or not the City would like to pursue any of the Capital Plan. In addition, this list is not limited to, and the City can add projects at any time. Capital Plan for 2009-2014 is attached at the end of the Minutes.

Council Member Casale questioned the Mountain Lane Waterline. It is not the waterline, as they get water but no pressure. Mayor Gold suggested replacing the piping from a 6 inch to maybe an 8 or larger if needed to assure the pressure will be ok.

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8. Acting Administrator

There was some qualification added to the existing law. It was noted that the qualification are not needed if it will be for a short period of time. Below is the actual resolution, which coincides with the Charter

*Taking the wording from the Charter now the qualifications of an acting administrator, we added to it so we have an acting administrator **may** have to perform more than three months, or will perform this position for more than three months than the acting administrator will have to have the same qualifications as the City Administrator, so what the City Council will have to consider is to replace the word "and" with "or" so it would basically provide for anyone to step into the Acting Administrator position.*

*Council Member Kelly stated that after this is approved that the Council should look at the responsibilities, of the City Administrator. City Administrator would not be able to get a job without a Masters Degree in Business Administration **This will be brought to the Council on Monday.***

9. Acting Mayor

With the Council permission the Mayor decided to discuss this at a later date, due to time constraints.

10. Noise Ordinance

There was some change to the noise ordinance that shows the discussion about the comments that the Building Inspector Tim Dexter has suggested. The Mayor noted that there are few items that we will accept and others not too. City Administrator asked the Chief and the Building Inspector to go over the latest version of this ordinance. The comments were passed on to the City Attorney, based on latest version. City Attorney questioned when City Administrator shared the information. City Attorney stated that the comments received regarding decimal levels needed to be clarified.

How do you know what 65 decimals really mean? Council Member Casale stated that he spoke to the Building Inspector regarding the decimal levels and how it is determined.

*The Mayor suggested since this ordinance is lengthily that the Council should review and should be brought back to a future Workshop for further discussions. The items added are: **closed door, closed window, and property line, which is incremental changes, in addition, a decision would need to be made regarding wind chimes, limited one set of chimes per household.***

11. Ability Beyond Disability

The Mayor asked Catherine Jordan, Project Director for Ability beyond Disability to join the Council to explain what their organization objectives are. They are an agency who provides services that have disabilities. Recently they received approvals from New York Office of Mental Retardation and Development Disabilities to provide comprehensive rehabilitative residential services to individuals who are aging. They were giving approval for sixty individuals in their homes or in residential homes. At this time Catherine introduced Tom Fanning, CEO to elaborate on what we hope to provide.

Tom Fanning, CEO is a non-profit organization which has been in existence since 1993 and served over a thousand people with various disabilities. Before this organization was founded people with disabilities did not live longer than twenty five years. Over the past years people with disabilities

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life span has increased dramatically. Our mission is to provide homes for people as they age and becoming frail, no longer have natural caregivers so they can live their lives as comfortable as possible. There wish is to develop two homes for aging individuals. They have looked at two homes in two different locations, one on Howland Avenue and the other on Pocket. There is a state law on how these houses are developed. The ideal place would to develop two homes on Pocket Road.

The Council can approve the process, or deny, which there is an appeal process though the Office of Mental Retardation. We do not want to appeal your decision but work with you.

Council Member Kelly, asked if they would be willing to pay in lieu of taxes? Mr. Fanning stated that they are a tax exempt organization; unfortunately we do not have the means to pay in lieu of taxes.

Council Member Leake asked if there were any homes presently in this area. Mr. Fanning stated that there are three newer homes probably a quarter of a mile down the hill and he made a notation that there is nothing behind the two lots on Pocket Road. Further Council Member Leake needed to know if this organization will notify the homes in the adjacent areas.

The Mayor explained the procedure, which is to have a public forum, invite the neighbors in the surrounding area, and ask that the organization also be present to answer any questions.

Council Member Casale stated that this organization wants to use the City's facilities but not pay taxes or in lieu of.

Mayor Gold asked if a Resolution is needed and if so, would you like a resolution, there is no need for a resolution.

If the organization sends a letter, then the City would have 40 days to respond and if the City does not respond, if the City votes this down, than the appeal process will begin.

Mayor Gold suggested to Mr. Fanning to come on June 8th to give a presentation to the neighborhood where these homes will be located so the Council can hear their thoughts.

12. Budget Amendment

Amend the General Fund Balance for the Attorney expense for the Hiddenbrooke Property (Code: A1420.450422) in the amount of \$58,441. These funds are required to pay Zarin and Steinmetz for legal services through March 31, 2009. **City Administrator stated that we should be reimbursed eventually from the escrow fund. Council Member Casale asked how much have they been paid already. For the litigation, and the City Administrator stated that she will have to check on that.**

Respectfully submitted,
Colleen Swift