

**CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**

**AND**

**188 Warburton Limited Partnership**

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**TAX AGREEMENT**

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*188-192 Warburton Avenue  
Tax Map No.: 2-2096-33, 34*

*-and-*

*4 Willow Place  
Tax Map No.: 2-2096-38*

*-and-*

*48 Cottage Place  
(Tax Map No.: 2-2094-p/o 1)*

**Dated as of October 16, 2014**

**Affected Tax Jurisdictions:  
Westchester County  
City of Yonkers**

## TAX AGREEMENT

THIS TAX AGREEMENT (the "Agreement"), dated as of the 16<sup>th</sup> day of October, 2014, by and between **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its offices located at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 (the "Agency") and **188 WARBURTON LIMITED PARTNERSHIP**, a New York limited c/o The Community Builders, Inc., 744 Broadway, 3rd Floor, Albany, New York 12207 ("Company").

### WITNESSETH:

WHEREAS, the Agency was created by Chapter 83 of the Laws of 1982 of the State of New York pursuant to Title I of Article 18-A of the General Municipal Law of the State of New York (collectively, the "Act") as a body corporate and politic and as a public benefit corporation of the State of New York; and

WHEREAS, the Company has submitted an application dated September 10, 2012 (the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of (A) the acquisition of title to or a leasehold interest in certain land located at 188-192 Warburton Avenue, 4 Willow Place and a subdivision of 8 Cottage Place, Yonkers, New York (the "Land") and the existing two public housing buildings located thereon (the "Existing Improvements"); (B) the demolition of the Existing Improvements; (C) the construction on the Land of a four-or-more-story, 45,000 square-foot, fifty-one (51) unit family apartment building with seventy-seven parking spaces in a two-level garage to be built into the slope of the Land located beneath the building (the "Building Improvements"); (D) the acquisition, construction and installation at the ground floor level of commercial and community spaces, landscaped terraces, street trees, public benches, private play areas, street lighting and finished sidewalks and related improvements (the "Landscape Improvements" and together with the Building Improvements, the "Improvements"); (E) the acquisition of and installation in and around the Existing Improvements and Improvements of certain items of equipment, machinery and other tangible personal property (the "Equipment", and collectively with the Land, the Existing Improvements, and the Improvements, the "Facility"); and

WHEREAS, in order to induce the Company to acquire, construct, reconstruct, renovate and equip the Facility, the Agency is willing to take title to or a leasehold interest in the Facility pursuant to a certain lease to Agency to be dated as of October 16, 2014 (the "Lease to Agency"); and thereafter the Agency will lease the Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, to be dated as of October 16, 2014 (the "Leaseback Agreement"; the Lease to Agency and the Leaseback Agreement being hereinafter referred to as the "Lease Agreements"); and

WHEREAS, pursuant to Section 874(1) of the Act, the Agency is exempt from the payment of taxes imposed upon real property and improvements owned by it or under its jurisdiction, control or supervision, other than special charges as defined by Section 2.1 which

shall be paid by the Company outside this Tax Agreement as billed by the respective third parties; and

WHEREAS, the Agency and the Company deem it necessary and proper to enter into an agreement making provisions for payments in lieu of taxes by the Company to the Agency for the benefit of Westchester County (the "County") and the City of Yonkers (the "City"), inclusive of the City of Yonkers Dependent School District (the "Dependent School District" and together with the County and the City, the "Affected Tax Jurisdictions"); and

NOW, THEREFORE, in consideration of the covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

Section I - Payment in lieu of Ad Valorem Taxes:

Section 1.1 Exemption Application. Subject to the completion and filing by the Agency or its designee at the direction of the Agency on or before the taxable status date (**October 15, 2014**) (the "Taxable Status Date") of New York State Form RP-412-a Application For Real Property Tax Exemption (the "Exemption Application") under Section 412-a of the New York State Real Property Tax Law and Section 874 of the Act and the approval of the Exemption Application by the appropriate assessors or Board of Assessment Review, the Facility shall be exempt from Real Estate Taxes for the periods set forth in Section 1.3. For purposes of the foregoing "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County and City, including Real Estate Taxes levied by the City for its Dependent School District. The Company shall provide the Agency with the information necessary for the completion and filing of the Exemption Application and shall provide such additional information and take such actions as are required by the appropriate assessors or Board of Assessment Review to process and approve the Exemption Application. Notwithstanding anything contained herein or in the Leaseback Agreement to the contrary, in the event the exemption from Real Estate Taxes is denied for any reason, the Company shall pay (and hereby agrees to pay) all Real Estate Taxes levied upon the Facility as they become due, specifically including but not limited to Real Estate Taxes for years prior to and after the tax years covered by this Tax Agreement. After giving written notice to the Agency, the Company may in good faith contest the denial of the Exemption Application, provided that (i) the overall operating efficiency of the Facility is not impaired and the Facility continues to qualify as a "project" under the Act; (ii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; or (iii) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability. The Company hereby waives any claim or cause of action against the Agency, and releases the Agency from any liability to the Company, arising from the denial of an exemption from Real Estate Taxes except to the extent that such denial results solely from the failure of the Agency to file the Exemption Application with the appropriate assessors or Board of Assessment Review by the Taxable Status Date.

B. Agreement to Make Payments. The parties agree and acknowledge that payments made under this Agreement are for purposes of obtaining revenues for public purposes, and to provide a revenue source that the Affected Tax Jurisdictions would otherwise lose because the

subject parcel is exempt from the payment of real property taxes pursuant to Section 412-a of the Real Property Tax Law and Section 874 of the General Municipal Law. The Company shall pay to the Agency on December 1, 2015 and December 1, 2016, the amount of \$10,000 (the "Land Payment"), and thereafter, for the term of this Agreement, on December 1 of each year beginning on December 1, 2017 (for the benefit of the Affected Tax Jurisdictions), as an in lieu of tax payment, an amount equal to seven percent (7%) of Shelter Rent (the "Tax Payments") which Shelter Rent amount shall increase annually by at least two percent (2%) (the "Tax Payments") for the periods described in Section 1.3. Notwithstanding the foregoing, commencing immediately upon the issuance of a Certificate of Occupancy (as defined in the City of Yonkers Zoning Code), the Company shall cease making the Land Payment and shall immediately make the required Tax Payments as set forth herein.

The term "*Shelter Rent*" shall mean total rents from the occupants of the Facility minus the cost of providing electricity, gas, heat and Other Utilities (defined below). Total rents shall include subsidies from the federal government, the state or a municipality on behalf of the Facility's occupants, but do not include interest reduction payments, if any, received under Section 201(a) of the Federal Housing and Urban Development Act of 1968. The term "*Other Utilities*" shall comprise only essential utilities paid by the Company from rent revenues which are necessary to allow Facility tenants to occupy comfortable and sanitary units and shall not include: (i) the cost of any insurance in connection with the Facility or (ii) any utility or related costs incurred by any tenants or other occupants residing at the Facility.

The Company shall submit with each Tax Payment a certificate executed by the Company's general partner together with any applicable audit or other financial statements showing the Company's gross rental income at the Facility for the prior year (the "Tax Certificate"). The Company hereby agrees to provide any additional information requested by the Agency or its counsel not contained in the Company Certificate as of its date of submission. The Company covenants to keep accurate records and books of account in accordance with generally accepted accounting principles consistently applied and to have its financial statements examined annually by an independent public accountant. At the request of the Agency or its counsel, the Company will provide the Agency with any such audited financial statements.

All Tax Payments shall be mailed to the Agency at 470 Nepperhan Avenue, Suite 200, Yonkers, New York 10701 or as otherwise directed by the Agency. The Company hereby agrees to make all such Tax Payments without further notice or invoice from the Agency or the Affected Tax Jurisdictions. **All checks shall be made payable as directed by the Agency from time to time.**

(i) The Company hereby waives any and all rights it may have to any refund of prior tax payments for the periods prior to the periods described in Section 1.3.

(ii) The Agency and the Company intend to establish a fixed payment schedule of Tax Payments that are in lieu of real estate taxes with respect to the Facility that, absent a default by the Company or a change in law, shall provide tax certainty for the Company and revenue certainty for the Affected Tax Jurisdictions. The parties hereto acknowledge that the Company shall have all of the rights and remedies of a taxpayer, including the

right to institute a grievance with respect to Real Estate Taxes. The Company hereby agrees for the benefit of the Affected Tax Jurisdictions to not seek a refund of any taxes paid or to be paid for periods prior to the periods described in Section 1.3. Any grievance the Company institutes shall only cause an adjustment in the Special Charges (as defined in Section 2.1) and the Company shall have the right to any refunds related to grievances involving Special Charges.

(iii) Allocation. The Agency shall remit to the Affected Tax Jurisdictions amounts received hereunder, if any, within thirty (30) days of receipt of said payment and shall allocate said payments among the Affected Tax Jurisdictions in the same proportion as ad valorem taxes would have been allocated but for the Agency's involvement, unless the Affected Tax Jurisdictions have consented in writing to a specific allocation.

1.2 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility that has not been described in the Application constructed or added in any manner after the date of this Agreement, the Company shall notify the Agency of such future addition ("Future Addition"). The notice to the Agency shall contain a copy of the Application for a building permit, plans and specifications, and any other relevant evidence that the Agency may thereafter request. Upon the earlier of substantial completion, or the issuance of a certificate of occupancy for any such Future Addition to the Facility, the Company shall become liable for payment of an increase in the Tax Payment. The Agency shall notify the Company of any proposed increase in the Tax Payment related to such Future Addition. If the Company shall disagree with the determination of assessed value for any Future Additions made by the Agency, then and in that event that valuation shall be fixed by a court of competent jurisdiction. Notwithstanding any disagreement between the Company and the Agency, the Company shall pay the increased Tax Payment until a different Tax Payment shall be established. If a lesser Tax Payment is determined in any proceeding or by subsequent agreement of the parties, the Tax Payment shall be re-computed and any excess payment shall be refunded to the Company or, in the Agency's sole discretion, such excess payment shall be applied as a credit against the next succeeding Tax payment(s).

1.3 Period of Benefits. The tax benefits provided for herein shall be deemed to include: (i) the 2016 County tax year through the 2045 County tax year and (ii) the 2015-16 City tax year through the 2044-45 City tax year. This Tax Agreement shall expire on **December 31, 2045** (with the understanding that the Company will be making a payment hereunder for the 2015 County tax year and the 2014-15 City tax year in the amounts as if the Agency were not in title on the tax lien date with respect to said tax years). The Company acknowledges that, as the period of benefits will not begin until the 2016 County tax year and 2015-16 City tax year, tax bills for the 2015 County tax year as well as the 2014-15 City tax year will be generated by the Affected Tax Jurisdictions, and the Company shall be responsible for and shall pay those taxes when due. In no event shall the Company be entitled to receive tax benefits relative to the Facility for more than the periods provided for herein, unless the period is extended by amendment to this Agreement executed by both parties after any applicable public hearings. The Company agrees that it will not seek any tax exemption for the Facility which could provide benefits for more than the periods provided for herein and specifically agrees that the exemptions provided for herein, to the extent actually received (based on the number of lease years elapsed),

supersede and are in substitution of the exemptions provided by Section 485-b of the New York Real Property Tax Law ("RPTL"); provided, the foregoing shall not be interpreted to limit the Company and Agency from subsequently agreeing to additional benefits based upon commitments to make additional improvements or changes in use from time to time between the Agency and the Company. It is hereby agreed and understood that the Affected Tax Jurisdictions can rely upon and enforce the above waiver to the same extent as if they were signatories hereto.

## Section II - Special District Charges, Special Assessments and other charges.

2.1 *Special District Charges and other payments:* Special district charges, special assessments, special ad valorem levies specifically including but not limited to charges imposed by the City of Yonkers for frontage fees ("CC001"); Housing Units ("CC002"); ETPA Charge ("CC003"); and a Safety Inspection Fee ("CC004") and district charges including but not limited to pure water charges and Westchester County sewer district charges (collectively the "Special Charges"), are not included in the amount of the Tax Payment and are to be paid in full in accordance with normal billing practices.

## Section III - Transfer of Facility.

3.1 In the event this Agreement terminates and the property is not timely transferred back to the Company, the Company agrees to pay no later than the next tax lien date (plus any applicable grace period), to each of the Affected Tax Jurisdictions, an amount equal to the taxes and assessments which would have been levied on the Facility if the Facility had been classified as fully taxable as of the date of transfer or loss of eligibility of all or a portion of the exemption described herein or date of termination.

## Section IV - Assessment Challenges.

4.1 The Company shall have all of the rights and remedies of a taxpayer as if and to the same extent as if the Company were the owner of the Facility, with respect to any proposed assessment or change in assessment with respect to the Facility by any of the Affected Tax Jurisdictions and likewise shall be entitled to protest before and be heard by the appropriate assessors or Board of Assessment Review, and shall be entitled to take any and all appropriate appeals or initiate any proceedings to review the validity or amount of any assessment.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any Special Charges as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers and provide information to the Agency as requested from time to time.

## Section V - Changes in Law.

5.1 To the extent the Facility is declared to be subject to taxation or assessment by an amendment to the Act, other legislative change, or by final judgment of a Court of competent jurisdiction, the obligations of the Company hereunder shall, to such extent, be null and void.

#### Section VI - Events of Default.

6.1 The following shall constitute "Events of Default" hereunder. The failure by the Company to: (i) make the payments described in Section I within thirty (30) days of the Payment Date and such failure continues and remains uncured for a period of fifteen (15) days after written notice thereof is sent to the Company (the "Delinquency Date"); (ii) make any other payments described herein on or before the last day of any applicable cure period within which said payment can be made without penalty and such failure continues and remains uncured for a period of fifteen (15) days after written notice thereof is sent to the Company; or (iii) the occurrence and continuance of any events of default under the Lease Agreements after the expiration of any applicable cure periods. Upon the occurrence and during the continuance of any Event of Default hereunder, in addition to any other right or remedy the Agency and/or the Affected Tax Jurisdictions may have at law or in equity, the Agency and/or Affected Tax Jurisdictions may, immediately and without further notice to the Company (but with notice to the Agency with respect to actions maintained by the Affected Tax Jurisdictions) pursue any action in the courts to enforce payment or to otherwise recover directly from the Company any amounts so in default. The Agency and the Company hereby acknowledge the right of the Affected Tax Jurisdictions to recover directly from the Company any amounts so in default pursuant to Section 874(6) of the General Municipal Law and the Company shall immediately notify the Agency of any action brought, or other measure taken, by any Affected Tax Jurisdiction to recover any such amount.

6.2 If payments pursuant to Section I herein are not made by the Delinquency Dates, or if any other payment required to be made hereunder is not made by the last day of any applicable cure period within which said payment can be made without penalty, the Company shall pay penalties and interest as follows. With respect to payments to be made pursuant to Section I herein, if said payment is not received by the Delinquency Date defined in Section 6.1 herein, Company shall pay, in addition to said payment, (i) a late payment penalty equal to five percent (5%) of the amount due and (ii) for each month, or any part thereof, that any such payment is delinquent beyond the first month, interest on the total amount due plus the late payment penalty, in an amount equal to one percent (1%) per month. With respect to all other payments due hereunder, if said payment is not paid within any applicable cure period, Company shall pay, in addition to said payment, the greater of the applicable penalties and interest or penalties and interest which would have been incurred had payments made hereunder been tax payments to the Affected Tax Jurisdictions.

6.3 Prior to the Agency's exercise of any remedy hereunder, any Mortgagee or holder of a Permitted Mortgage (as each are defined in the Leaseback Agreement), shall have the right but not the obligation to cure any Event of Default hereunder on the same terms and conditions afforded to the Company. Any cure prosecuted by a Mortgagee or a holder of a Permitted Mortgage shall be accepted by the Agency as if the same had been made by the Company.

Section VII - Assignment.

7.1 No portion of any interest in this Agreement may be assigned by the Company, nor shall any person other than the Company be entitled to succeed to or otherwise obtain any benefits of the Company hereunder without the prior written consent of the Agency, which shall not be unreasonably withheld or delayed.

Section VIII – Miscellaneous.

8.1 This Agreement may be executed in any number of counterparts each of which shall be deemed an original but which together shall constitute a single instrument.

8.2 Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by certified mail, postage prepaid, or to a nationally recognized courier such as Federal Express, addressed as follows:

***To the Agency:***

City of Yonkers Industrial Development Agency  
470 Nepperhan Avenue, Suite 200  
Yonkers, New York 10701  
Attention: Kenneth Jenkins, President

***With a copy to:***

Gregory Young, Esq.  
566 Westchester Avenue  
Rye Brook, New York 10573

***And to:***

Harris Beach PLLC  
99 Garnsey Road  
Pittsford, New York 14534  
Attention: Shawn M. Griffin, Esq.

***To the Company:***

188 Warburton Limited Partnership  
c/o The Community Builders, Inc.  
744 Broadway, 3rd Floor  
Albany, New York 12207  
Attn: Susan McCann



***With a Copy To:***

DelBello, Donnellan, Weingarten, Wise & Wiederkehr, LLP  
One North Lexington Avenue  
White Plains, New York 10601  
Attn: Albert B. DelBello, Esq.

***And to:***

Cannon Heyman & Weiss, LLP  
54 State Street, 5<sup>th</sup> Floor  
Albany, New York 12207  
Attn: Geoffrey J. Cannon, Esq.

***With a Copy to:***

First Sterling Investor 123 LLC  
c/o First Sterling Financial, Inc.  
111 Great Neck Road, Suite 500  
Great Neck, New York 11021  
Attn: Victor J. Sostar

***And To:***

Holland & Knight LLP  
10 St. James Avenue  
Boston, Massachusetts 02116  
Attn: Jennifer Whalen, Esq.

or at such other address as any party may from time to time furnish to the other party by notice given in accordance with the provisions of this Section. All notices shall be deemed given when mailed or personally delivered in the manner provided in this Section. Any notice hereunder may be given by counsel for a party with the same force and effect as if given by such party.

8.3 This Agreement shall be governed by, and all matters in connection herewith shall be construed and enforced in accordance with, the laws of the State of New York applicable to agreements executed and to be wholly performed therein and the parties hereto hereby agree to submit to the personal jurisdiction of the federal or state courts located in Westchester County, New York.

8.4 Notwithstanding any other term or condition contained herein, all obligations of the Agency hereunder shall constitute a special obligation payable solely from the revenues and other monies, if any, derived from the Facility and paid to the Agency by the Company. Neither member of the Agency nor any person executing this Agreement on its behalf shall be liable personally under this Agreement. No recourse shall be had for the payment of the principal or interest on amounts due hereunder or for any claim based upon or in respect of any modification of or supplement hereto against any past, present or future member, officer, agent, servant, or employee, as such, of the Agency, or of any successor or political subdivision, either directly or through the Agency or any such successor, all such liability of such members, officer, agents,

servants and employees being, to the extent permitted by law, expressly waived and released by the acceptance hereof and as part of the consideration for the execution of this Agreement.

8.5 Notwithstanding anything to the contrary contained in this Agreement, transfers of or in the limited partner interests in the Company and/or removal and replacement of the general partner of the Company in accordance with the terms of the First Amended and Restated Agreement of Limited Partnership of the Company dated as of the date hereof, as the same may be amended from time to time, shall not require the prior consent of the Agency.

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[Signature Page to Tax Agreement]

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

CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY

By: 

Kenneth Jenkins, President

188 Warburton Limited Partnership

By: 188 Warburton GP LLC, its General Partner

By: GBCD Partnership Services, Inc., its Manager

By: \_\_\_\_\_

Susan M. McCann, Authorized Agent

[Signature Page to Tax Agreement]

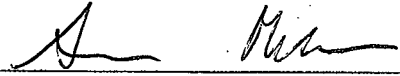
IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

CITY OF YONKERS INDUSTRIAL  
DEVELOPMENT AGENCY

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By: \_\_\_\_\_  
Kenneth Jenkins, President

188 Warburton Limited Partnership  
By: 188 Warburton GP LLC, its General Partner  
By: GBCD Partnership Services, Inc., its Manager

By:  \_\_\_\_\_  
Susan M. McCann, Authorized Agent