

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

CPG PHASE III LIMITED PARTNERSHIP

TAX AGREEMENT

Dated as of December 27, 2017

Affected Tax Jurisdictions:

Westchester County
City of Yonkers

Street Address and Tax Map Number:

10 Willow Place
S/B/L: 2-2094-1 (formerly Lots 1 & 2)
-and-
209 Warburton Avenue and 150 Woodworth Avenue
S/B/L: 2-2098-1

TAX AGREEMENT

THIS TAX AGREEMENT (the "Agreement"), dated as of December 27, 2017, 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 **CPG PHASE III LIMITED PARTNERSHIP**, a New York limited partnership having offices at c/o The Community Builders, Inc., 744 Broadway, Albany, New York 12207 (the "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, as amended, dated December 1, 2015 and amended January 1, 2016 (as so amended, the "Application") to the Agency requesting the Agency's assistance with respect to a certain project (the "Project") consisting of: of (i) the acquisition by the Agency of a leasehold interest in certain land located at 8 Cottage Place a/k/a 10 Willow Place, 209 Warburton Avenue and 150 Woodworth Avenue, City of Yonkers, New York (the "Land") and the existing improvements located thereon (collectively, the "Existing Improvements"); (ii) the demolition of fifty-eight (58) existing units of public housing in three (3) walk-up buildings on the 3A Project Site and twenty-one (21) units of Section 8 housing on the 3B Project Site; (iii) the construction and equipping of four (4) four-story row house-style walkup apartment buildings consisting of seventy (70) mixed-income residential units (consisting of twenty-six (26) 2-bedroom units, thirty-five (35) 3-bedroom units, and nine (9) four-bedroom units) comprised of, in the aggregate, approximately 81,314 square feet (the "Apartment Improvements"); (iv) the provision of approximately 20,907 square feet in parking accommodations for approximately seventy (70) vehicles (the "Parking Improvements") (v) the construction of related sitework improvements and amenities including a green space, a children's play area and certain private backyards (collectively, the "Sitework Improvements", and together with the Apartment Improvements and the Parking Improvements, the "Improvements"); and (vi) the acquisition of and installation in and around the Existing Improvements and Improvements of certain items of equipment and other tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements and the Improvements, the "Facility"); and (vii) the lease or sublease of the Facility to the Company; 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 Agreement, dated as of December 27, 2017 (the "Lease to Agency"), by and from the Company to the Agency and **YONKERS ECONOMIC DEVELOPMENT CORPORATION** ("YEDC"); and thereafter the Agency and YEDC will lease the Facility back to the Company pursuant to the terms and conditions of a certain Leaseback Agreement, dated as of December 27, 2017, by and between the Agency and the Company (the "Leaseback Agreement"; and together with the Lease to Agency, 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 and the City of Yonkers, inclusive of the City of Yonkers Dependent School District (collectively, 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. A.) 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, 2018**) (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 parcels are 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 of each year beginning on December 1, 2019 (for the benefit of the Affected Tax Jurisdictions), as an in lieu of tax payment, an amount equal to the Tax Payments as set forth on Schedule A (the "Tax Payments") for the periods described in Section 1.3.

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 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 2020 County tax year through the 2044 County tax year and (ii) the 2019-2020 City tax year through the 2043-2044 City tax year. **This Tax Agreement shall expire on December 31, 2044** (with the understanding that the Company will be making a payment hereunder for 2019 County tax year and the 2018-2019 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). 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 (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; or (iii) the occurrence and continuance of any events of default under the Lease Agreements after the expiration of any applicable notice or cure periods. Upon the occurrence 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 exercising any remedy hereunder, any Mortgagee, as defined in the Leaseback Agreement dated the date hereof, between the Agency and the Company, shall be afforded notice and the cure rights set forth in section 7.1 thereof, as if such section were set forth in full herein.

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: Executive Director

With 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: CPG Phase III Limited Partnership
c/o The Community Builders, Inc.
90 State Street, Suite 602
Albany, New York 12207
Attention: Susan McCann

With Copy To: Nixon Peabody LLP
Tower 46
55 West 46th Street
New York, New York 10036
Attention: Aaron J. Yowell, 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.

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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: Wilson Kimball
Wilson Kimball, Secretary

CPG PHASE III LIMITED PARTNERSHIP, a
New York limited partnership

By: CPG Phase III GP LLC, a New York limited
liability company, its General Partner

By: GBCD Partnership Services, Inc., a
Massachusetts corporation, its Manager

By: Susan M. McCann
Name: Susan M. McCann
Title: Authorized Agent

SCHEDULE A

to

Tax Agreement

dated as of December 27, 2017,

by and between

City of Yonkers Industrial Development Agency
and CPG Phase III Limited Partnership

Pursuant to the terms of Section 1.1 of this Tax Agreement, "Tax Payments" shall mean an amount per annum equal to the following amounts for the period designated:

City Tax Year	County Tax Year	Tax Agreement Year	Tax Agreement Payment *
2027-2028	2028	9	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2028-2029	2029	10	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2029-2030	2030	11	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2030-2031	2031	12	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2031-2032	2032	13	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2032-2033	2033	14	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2033-2034	2034	15	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2034-2035	2035	16	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%

2035-2036	2036	17	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2036-2037	2037	18	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2037-2038	2038	19	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2038-2039	2039	20	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2039-2040	2040	21	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2040-2041	2041	22	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2041-2042	2042	23	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2042-2043	2043	24	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%
2043-2044	2044	25	Greater of (i) 7% Shelter Rent or (ii) 7% Shelter Rent from prior County Tax Year plus 2%

* Does NOT include Special District Charges - City will send separate bill.

¹ Land Tax shall mean Full Taxes assuming unimproved Land at the Facility

² The term "Shelter Rent" shall mean total rents from the occupants of the Facility (paid directly or indirectly on their behalf from all sources) 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.