

CONFORMED COPY

Original On file with Steve Adnopol, Esq.

CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY

AND

HERRIOT STREET HOUSING, L.P.

PAYMENT IN LIEU OF TAX AGREEMENT

Dated as of March 1, 2004

Affected Tax Jurisdictions:

Westchester County

City of Yonkers

Section: 1

Block: 180

Lot: 100

PAYMENT IN LIEU OF TAX AGREEMENT

THIS PAYMENT IN LIEU OF TAX AGREEMENT (the "Agreement"), dated as of the 1st day of March, 2004, by and between the **CITY OF YONKERS INDUSTRIAL DEVELOPMENT AGENCY**, a public benefit corporation duly existing under the laws of the State of New York with its registered offices located at City Hall, 40 South Broadway, Yonkers, New York 10701 (the "Agency") and **HERRIOT STREET HOUSING, L.P.**, a limited partnership duly organized and validly existing under the laws of the State of New York, with offices located at 1155 Northern Boulevard, Manhasset, New York 11030 (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, on or about the date hereof, the Agency has issued its housing revenue bonds in a principal amount equal to \$16,400,000 (Herriot Street Housing, L.P. Project), Series 2003 (the "Bonds") for the benefit of the Company for the purpose of financing a certain project (the "Project") consisting of: (A) the acquisition of an approximately 1.03-acre parcel of land located at 100 Herriot Street in the City of Yonkers, New York (the "Land") and the existing improvements located thereon consisting principally of (i) an approximately 170,000 square-foot residential rental apartment building containing in the aggregate approximately 181 residential units (the "Building"), (ii) an approximately 32 space, one-level, underground parking garage (the "Underground Parking Garage") and (iii) an approximately 109 space, four-level, parking garage adjacent to the Building (the "Adjacent Parking Garage", and collectively with the Building and the Underground Parking Garage, the "Existing Improvements"); (B) the renovation, reconstruction and upgrading of the Building to accommodate (i) approximately 150,000 square feet of residential space consisting of approximately 11 studio apartments, 12 one-bedroom units, 125 two-bedroom units, and 34 three-bedroom units (the "Residential Units"), of which Residential Units, 100% will be leased to households earning no more than 60% of the area's median gross income; and (ii) approximately 20,000 square feet of common area space consisting principally of a lobby and laundry areas (the "Common Areas" and, collectively with the Residential Units, the "Improvements"); (C) the acquisition and installation in and around the Improvements of certain machinery, equipment and other items of tangible personal property (the "Equipment" and, collectively with the Land, the Existing Improvements, and the Improvements, the "Facility"); (D) the paying of certain costs and expenses incidental to the issuance of the Bonds (the costs associated with items (A) through (D) above being hereinafter referred to as the "Project Costs"); and (E) the acquisition by the Agency of an interest in the Facility and the lease (with an obligation to purchase) or sale of such interest in the Facility back to the Company; and

WHEREAS, in order to induce the Company to acquire, construct and equip the Facility, the Agency is willing to take a leasehold interest to the land, improvements and personal

property constituting the Facility and lease said land, improvements and personal property back to the Company pursuant to the terms and conditions of the Lease Agreement dated on or about the date hereof (the "Lease Agreement"); 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, other than special ad valorem levies, special assessments and service charges against real property which are or may be imposed for special improvements or special district improvements; 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 the City of Yonkers, New York ("City") and Westchester County, New York (the "County" and, collectively with the City, the "Affected Tax Jurisdictions").

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:

1.1 A. Subject to the completion and filing by the taxable status date (October 15, 2004) (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 commencing with the 2006 County and 2005-2006 City tax year. For purposes of the foregoing, "Real Estate Taxes" means all general levy real estate taxes levied against the Facility by the County and City. The Company shall provide to 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 Lease 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. 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) the Facility is being operated and is in compliance with the provisions of any Housing and Urban development ("HUD") Section 236 use restrictions encumbering the Facility and the Company is in compliance with any and all such HUD use restrictions specifically including but not limited to the HUD Regulatory Agreement dated _____, 2004 (the "HUD Regulatory Agreement"); (iii) neither the Facility nor any part of or interest in it would be in any danger of being sold, forfeited or lost; (iv) neither the Company nor the Agency, as a result of such contest, shall be in any danger of any civil or criminal liability; and (v) the non-inclusion of interest on the Bonds for Federal income tax purposes will not be adversely affected. 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. Payee/Total PILOT Payments. (i) *Payee.* As long as the Facility is leased by the Agency, the Company agrees to pay to the City of Yonkers, Attn: Yonkers Finance Commissioner, City of Yonkers Tax Department, Yonkers City Hall, 40 South Broadway, Room 210, Yonkers, New York 10701, or such other address as designated by the Agency, as a payment in lieu of taxes, on or before January 1 of each calendar year commencing January 1, 2005 (the "Payment Date"), an amount equal to the Total PILOT Payment (as hereinafter defined). The Company hereby agrees to make all such Total PILOT Payments on or before each Payment Date without further notice or invoice from the Agency or the Affected Tax Jurisdictions.

(ii) *Total PILOT Payment.* For purposes of this Agreement, each "Total PILOT Payment" shall be an amount equal to Shelter Rent multiplied by three and one-half percent (3.50%). The term "Shelter Rent" shall mean net rental income received by the Company for the rental of the Residential Units for the calendar year in which the Total PILOT Payment is due less Utility Expenses. The term "Utility Expenses" shall mean all utility and certain insurance charges incurred by the Company for operations at the Facility for the calendar year in which the Total PILOT Payment is due; including, but not limited to, gas, water, sewer, electric and property insurance. Utility Expenses shall not include any utility or related costs incurred by any tenants residing at the Facility. Notwithstanding the foregoing or any other provision contained herein or in the Lease Agreement, the Company shall make a minimum Total PILOT Payment on each Payment Date in an amount equal to \$70,000.

(iii) *Company Certificate.* The Company shall submit with each Total PILOT Payment a certificate executed by the Company's chief financial or other similar officer showing the Company's calculation of the Total PILOT Payment for such year (the "PILOT Certificate"). The PILOT Certificate shall contain detailed information regarding the Shelter Rent, Utility Expenses and such other information as requested by the Agency or its counsel. In addition, the PILOT Certificate shall contain an affirmative representation of the Company that it is in compliance with the Regulatory Agreement and any and all HUD Section 236 use restrictions encumbering the Facility and that the Facility is being operated in compliance with same and include a representation that the HUD Regulatory Agreement has not been amended or, if amended, the consent of Agency was obtained for such amendment. 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.

(iv) *Public Purpose.* The parties agree and acknowledge that payments made hereunder are to obtain revenues for public purposes, and to provide a revenue source that

the Affected Tax Jurisdictions would otherwise lose because the subject parcels are not on the tax rolls.

1.2 Valuation of Future Additions to the Facility: If there shall be a future addition to the Facility 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 Total PILOT Payment. The Agency shall notify the Company of any proposed increase in the Total PILOT 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 Total PILOT payment until a different Total PILOT Payment shall be established. If a lesser Total Annual Payment is determined in any proceeding or by subsequent agreement of the parties, the Total PILOT 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 PILOT payment(s).

1.3 Period of Benefits. The tax benefits provided for herein should be deemed to include (i) the 2006 County calendar tax year through the 2035 County calendar tax year and (ii) the 2005/2006 City tax year through the 2034/2035 City tax year. This PILOT Agreement shall expire on December 1, 2035 (with the understanding that the Company will be making a payment hereunder for County tax year 2036 and City tax year 2035/2036 in the amounts as if the Agency were not in title on the tax status 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"). 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, special assessments, and special ad valorem levies (specifically including but not limited to fire district charges), and pure water charges and sewer charges are to be paid in full in accordance with normal billing practices.

Section III - Transfer of Facility.

3.1 In the event that the Facility is transferred from the Agency to the Company (the Lease Agreement is terminated), and the Company is ineligible for a continued tax exemption under some other tax incentive program, or the exemption results in a payment to the Affected Tax Jurisdictions in excess of the payment described in Section I herein, or 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 or the validity or amount of any tax equivalent provided for herein.

4.2 The Company shall have all of the rights and remedies of a taxpayer with respect to any tax, service charge, special benefit, ad valorem levy, assessment, or special assessment or service charge in lieu of which the Company is obligated to make a payment pursuant to this Agreement, as if and to the same extent as if the Company were the owner of the Facility.

4.3 The Company shall (i) cause the appropriate real estate tax assessment office and tax levy officers to assess the Facility and apply tax rates to the respective assessments as if the Facility were owned by the Company, (ii) file any accounts or tax returns required by the appropriate real estate tax assessment office and tax levy officers.

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 (or any authorized assignee hereunder) 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; (iii) the occurrence and continuance of any events of

default under the Lease Agreement after any applicable cure periods; or (iv) operate the Facility in compliance with the provisions of the HUD Regulatory Agreement or amendments to the HUD Regulatory Agreement upon consent of the Agency. 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 as defined in Section 6.1 herein, the 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.

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. Notwithstanding the foregoing, however, this Agreement may be assigned, without further Agency approval, to the Bank of America, N.A., or its successors (the "Bank") upon a foreclosure sale of the Facility, provided the Bank shall agree to be bound and comply with the provisions of the HUD Regulatory Agreement and any HUD Section 236 use restrictions encumbering the Facility and the other terms and conditions contained herein.

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.

8.5 Notwithstanding anything contained herein to the contrary, upon the occurrence of (i) the sale or closure of the Facility, (ii) a significant change in use of the Facility, (iii) a significant reduction in employment at the Facility (iv) or an Event of Default hereunder or the Leaseback Agreement, the Agency shall have the right to recapture all real property tax abatements provided hereunder pursuant to the following schedule:

YEAR OF RECAPTURE	PERCENT OF RECAPTURE
1	100%
2	100%
3	50%
4	50%
5	25%
6	25%
After Year 6	At Agency Discretion

The above referenced periods begin on the effective date of this Agreement. Any such recapture is at the sole and exclusive discretion of the Agency. The Agency shall notify the Company in writing within thirty (30) days of any such Event of Default of its intent to recapture the PILOT Benefits (or any portion thereof).

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

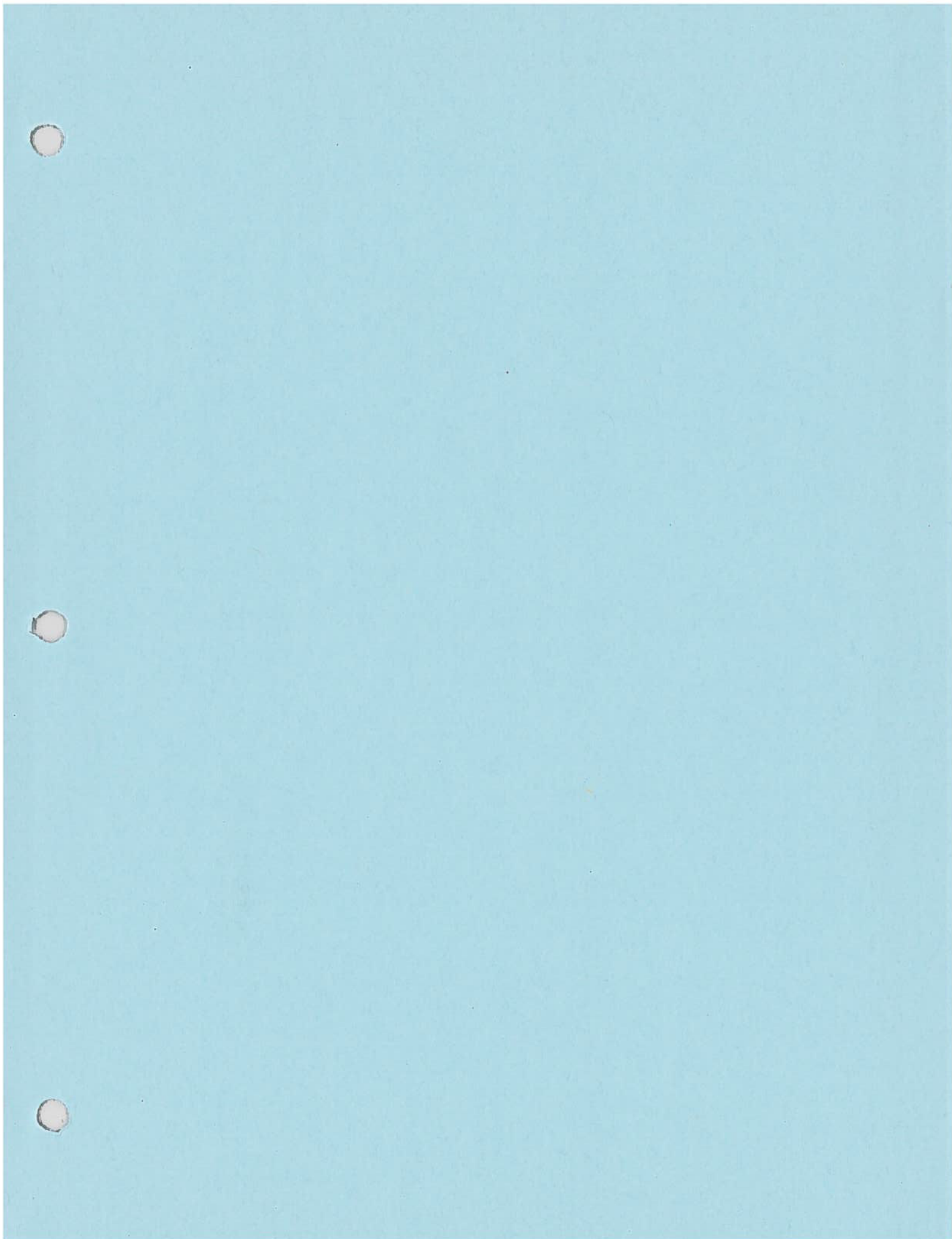
By: /s/ Edward A. Sheeran
Edward A. Sheeran, Executive Director

HERRIOT STREET HOUSING, L.P., a New York
limited partnership

By: Herriot Street Partners, LLC, a New York
limited liability company, its General
Partner

By: Marathon Development Group, LLC,
A New Jersey limited liability
company, its Managing Member

By: /s/ Mark Soja
Mark Soja, Managing Member



Date: 03-23-2004

Title No.: 3004-3282
Owner: Jackson Terrace Associates TO
Herriot Street Housing, L.P.

PREMISES: 100 Herriot Street, Yonkers, New York
Section: 1 Block: 180 Lot: 100

County of: Westchester

Dear Sir or Madam:

With regard to the above mentioned matter, you will find enclosed the following:

CHECK OF: First American Title Insurance Company

CHECK NUMBER: 160671

PAYABLE TO: City of Yonkers

AMOUNT: \$38,503.45

COVERING: Pilot Payments

Please send the receipted bill to this office.

Thank you in advance for your cooperation.

Very truly yours,

Barbara Carroll
First American Title Insurance Company
of New York, Hudson Valley Region

[illegible]

Department of FINANCE

To: City Of Yonkers- Finance Department - Head Cashiers

From: LARRY

Date: 3/24/04

Re: Daily Cash and Check Receipts for Departments

Please complete the following and enclose it with the day's cash and check receipts and return it to the Cashier's Office.

AFIN Account Number

1) Fund Name: JACKSON TERRACE

FUND	AGCY	ORG	REVENUE SOURCE	BALANCE SHEET	OBJ	Total Cash	Total Check
020	026		1062				38,503.45
<u>FYE 12/31/03</u>							

2) Fund Name:

FUND	AGCY	ORG	REVENUE SOURCE	BALANCE SHEET	OBJ	Total Cash	Total Check

3) Fund Name:

FUND	AGCY	ORG	REVENUE SOURCE	BALANCE SHEET	OBJ	Total Cash	Total Check

First American Title Insurance Company of New York

Hudson Valley Region - Exchange Account

188 East Post Road

White Plains, New York 10601

Bank of New York
138 Mamaroneck Avenue
White Plains, NY 10601

50-235 743
219

PAY TO THE ORDER OF

City of Yonkers

CHECK NO.	DATE	AMOUNT OF CHECK
160671	03-23-2004	\$38,503.45**

Title No. 3004-3282

Paula Z. Klein

⑈ 160671 ⑈ ⑈ 021902352 ⑈ ⑈ 6701336540 ⑈

Total Amount Submitted

\$0.00

