

# **Whitlock Mills**

## **PILOT**

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Rev. 9-15-03

HMFA: N.J.S.A. 55:14K-1 et seq.

Moderate Income/Market Rate Rental Housing

Re: 160 Lafayette Street  
Block 2057, Lot 18  
Morris Canal Redevelopment Plan

### **PREAMBLE**

**THIS FINANCIAL AGREEMENT**, [Agreement] made this 24th day of November, 2003, by and between **WHITLOCK MILLS, L.P.**, is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency N.J.S.A. 55:14K-1 et seq. having its principal office at c/o Housing Trust of America, 6851 Oak Hall Lane, Suite 100, Columbia, MD 21045, and the **CITY OF JERSEY CITY**, a Municipal Corporation in the County of Hudson and the State of New Jersey, [City], having its principal office at 280 Grove Street, Jersey City, New Jersey 07302.

### **RECITALS**

#### **WITNESSETH:**

**WHEREAS**, the Entity is the Owner of certain property designated as Block 2057, Lot 18, more commonly known by the street address of 160 Lafayette Street, Jersey City, NJ, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

**WHEREAS**, this property is located within the boundaries of the Morris Canal Redevelopment Plan Area; and

**WHEREAS**, the Entity plans to construct certain improvements on the property to create a total of 330 units of rental housing, 132 units of rental market rate housing and 198 units of moderate income rental housing units with a parking garage for approximately 142 cars and a surface parking lot for approximately 108 cars, [Project]; and

**WHEREAS**, on October 8, 2003, the Entity's Application for a HMFA tax exemption for the Project was approved by the City by the adoption of Ordinance 03-139; and

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained,

and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

## **ARTICLE I - GENERAL PROVISIONS**

### **Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., Executive Order of the Mayor, 02-003, Ordinance 02-075 and Ordinance 03-139, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

### **Section 1.2 General Definitions**

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms shall have the following meanings:

- i. Agency- The New Jersey Housing and Mortgage Finance Agency.
- ii. Annual Gross Revenue- The total gross income, including any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, or other services, including any Section 8 certificate revenue derived from the Project, including all rent and other income. It also includes the cost of insurance, gas, electricity, water and sewer charges, other utilities, garbage removal and insurance charges even if paid for directly by the Tenant, if such expense is ordinarily paid for by the Landlord.
- iii. Annual Service Charge - Estimated as follows:
  - A. 4% of Annual Gross Revenue \$173,775 or approximately \$526 per unit for the first 10 years;
  - B. 5% of Annual Gross Revenue for the second 10 years;
  - C. 7.5% of Annual Gross Revenue for the third 10 years;
  - D. 8.6% of Annual Gross Revenue for the final 10 years,

in accordance with the financial plan attached hereto as Exhibit 2, which sum is in lieu of any taxes.

iv. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context). The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholder's equity, statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items reasonably required by the City or its auditors. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

v. Certificate of Occupancy - Document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

vi. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

vii. Entity - The term Entity within this Agreement shall mean Whitlock Mills, L.P., which Entity is formed pursuant to the laws of the State of Maryland and is qualified to do business in the State of New Jersey. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under by Law and the transfer has been duly approved by the City.

viii. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

ix. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

x. Land Taxes - The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements. Land

Taxes are not exempt; however, Land Taxes appear to be exempt; however, if Land Taxes are determined to be due they will be applied as a credit against the Annual Service Charge.

xi. Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes, if any, as determined by the Tax Assessor and the Tax Collector.

xii. Law - Law shall refer to the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; Executive Order of the Mayor 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance 03-139, which authorized the execution of this Agreement and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

xiii. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year preceding the recording of the HMFA mortgage which amount the parties agree is \$90,968.50. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to the Financial Agreement would be less than the Minimum Annual Service Charge.

ix. Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

x. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

xi. Termination - Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

## **ARTICLE II - APPROVAL**

### **Section 2.1 Approval of Tax Exemption**

The City hereby grants its approval for a tax exemption from real estate taxes in accordance with the terms and conditions of this Agreement and the provisions of the Law on certain property known on the Official Tax Assessor's Map of the City as: Block 2057,

Lots 18, more commonly known by the street address of 160 Lafayette Street, Jersey City, New Jersey, and described by metes and bounds in Exhibit 1 attached hereto.

**Section 2.2 Approval of Entity**

Approval is granted to the Entity whose Certificate of Limited Partnership is attached hereto as Exhibit 4. Entity represents that its Certificate has been filed with, as appropriate, the State Treasurer.

**Section 2.3 Improvements to be Constructed**

Entity represents that it will construct certain improvements on the Property to create a total of approximately 330 units of rental housing, (132 units of rental market rate housing, and 198 units of moderate income rental housing units) with a parking garage for approximately 142 cars and a surface parking lot for approximately 108 cars, all of which is more specifically described in the Application attached hereto as Exhibit 3.

**Section 2.4 Construction Schedule**

The Entity agrees to diligently undertake to commence construction, use its best efforts to, and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as Exhibit 5.

**Section 2.5 Ownership, Management and Control**

The Entity represents that it is the owner of the Project to be constructed and that it will manage and control the Project. The City acknowledges that the Entity may enter into a management agreement for the Project and will pay a management fee in accordance with HUD or HMFA regulations, which fee was disclosed in its tax exemption application. The City acknowledges that the Entity may enter into future management agreements so long as such agreements are not used to reduce the City's economic benefits under this Agreement and the management fees to be paid are comparable to those disclosed in the Application.

**Section 2.6 Financial Plan**

The Entity represents that the Improvements shall be financed substantially in accordance with the Financial Plan attached hereto as Exhibit 6. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-

in capital, and the terms of any mortgage amortization.

**Section 2.6 Statement of Rental Schedules and Lease Terms**

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit 7, attached hereto.

**ARTICLE III - DURATION OF AGREEMENT**

**Section 3.1 Term**

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of: 45 years from the date of the adoption of Ordinance 03-139, which approved this exemption or 40 years from the date of Substantial Completion of the Project but in no event beyond the date that the HMFA mortgage is paid in full. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned by a corporation or association formed and operating under the Law.

**ARTICLE IV - ANNUAL SERVICE CHARGE**

**Section 4.1 Annual Service Charge**

In consideration of the tax exemption, the Entity shall make payment to the City of an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Section.

A Minimum Annual Service Charge shall be due beginning on the date this Agreement is executed. The Annual Service Charge or Minimum Annual Service Charge, as the case may be, shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

The amount of the quarterly payment of the Annual Service Charge shall be estimated based on the actual amount of Annual Gross Revenue generated by the project in the

previous tax year, as determined by the auditor's reports of income and expenses. The amount of such payment shall be subject to adjustment based on the City's review of the auditor's reports of income and expenses submitted to the City and a determination of the correct amount due (the Audited Amount). Within ninety (90) days after the Audited Amount is determined and notice thereof is given to the Entity, the Entity shall pay any underpayment or the City shall refund any overpayment of the Annual Service Charge, as the case may be.

#### **Section 4.2 Administrative Fee**

The Entity shall also pay an annual administrative fee to the City in addition to the Minimum or Annual Service Charge. This administrative fee shall equal two (2%) percent of the Annual Service Charge and shall be payable and due on or before December 31st of each year and collected in the same manner as the Annual Service Charge.

#### **Section 4.3 Land Tax Credit**

If the Law requires the Entity to pay Land Taxes in addition to the service charges, then the Entity will be entitled to a land tax credit against the service charges. In order to be entitled to the credit, however, the Entity is obligated to make timely Land Tax payments, in order to be entitled to a Land Tax Credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

#### **Section 4.4 Quarterly Installments**

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to

adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

**Section 4.5 Material Conditions**

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative Fees, and any interest thereon, are Material Conditions of this Agreement.

**ARTICLE V - PROJECT EMPLOYMENT & CONTRACTING AGREEMENT**

**Section 5.1 Project Employment & Contracting Agreement**

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment Agreement, attached hereto as Exhibit 8.

**ARTICLE VI - CERTIFICATE OF OCCUPANCY**

**Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner. The failure to secure the Certificates of Occupancy shall subject the property to full taxation.

**Section 6.2 Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not militate against any action or non-action, taken by the City, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

**Section 6.3 Construction Permits**

The estimated cost basis disclosed by the Entity's application and proposed Financial Agreement may, at the option of the City, be used as the basis for the construction cost in the issuance of any construction permit(s) for the Project.

## ARTICLE VII - ANNUAL REPORTS

### **Section 7.1 Accounting System**

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

### **Section 7.2 Periodic Reports**

A. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that this Agreement shall continue in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the HMFA, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: Rental schedule of the Project, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Disclosure Statement: On the anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the City may request from time to time.

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### **Section 7.3 Mortgage**

Within ninety (90) days after the date the Entity closes on its loan with the Agency, the Entity shall file with the City a fully executed copy of the Note and a recorded copy of the HMFA Mortgage.

### **Section 7.4 Inspection**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the HMFA. It shall also permit, upon

request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

### **ARTICLE VIII- LIMITATION OF PROFITS AND RESERVES**

#### **Section 8.1 Limitation of Profits and Reserves**

During the period of tax exemption as provided herein, the Entity's return on investment shall be limited in accordance with the regulations and conditions imposed by the Agency pursuant to N.J.S.A. 55:14k-7(6) or any other Law applicable.

### **ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION**

#### **Section 9.1 Prior Approval of Sale**

Any change made in the ownership of the Project and sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity is a housing sponsor under the Law; 2) the Entity is not then in default of this Agreement or the Law; and (3) the Entity's obligations under this Agreement are fully assumed by the new Entity.

### **ARTICLE X - COMPLIANCE**

#### **Section 10.1 Operation**

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of Project under this Agreement shall not only be terminable as provided by N.J.S.A. 55:14K-1 et seq., as currently amended and supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

#### **Section 10.2 Disclosure of Lobbyist Representative**

During the term of this Agreement, the Entity must comply with Executive Order 2002-005, and Ordinance 02-075, requiring Written Disclosure of Lobbyist Representative Status. The Entity's failure to comply with the Executive Order or the Ordinance shall

constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

## **ARTICLE XI - DEFAULT**

### **Section 11.1 Default**

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

### **Section 11.2 Cure Upon Default**

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default failure to pay any charges defined as Material Conditions in Section, shall not be subject to the default procedural remedies as provided in Section 5.1 herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein.

### **Section 11.3 Remedies Upon Default**

The City shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI Land Taxes or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein. All of the

remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No determination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge, Annual Service Charge, or Administrative Fees. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no determination. Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, or Administrative Fees, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land. Notwithstanding the foregoing, the Entity does not waive any defense it may have to contest the right of the City to proceed by in rem foreclosure.

## **ARTICLE XII- TERMINATION**

### **Section 12.1 Termination Upon Default of the Entity**

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

### **Section 12.2 Voluntary Termination by the Entity**

The Entity may after the expiration of one year from the Substantial Completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

### **Section 12.3 Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting to the City. For purposes of rendering a final accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

### **Section 12.4 Conventional Taxes**

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

## **ARTICLE XIII - DISPUTE RESOLUTION**

### **Section 13.1 Arbitration**

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article III, Section 4.8 as Material Conditions.

## **ARTICLE XIV - WAIVER**

### **Section 14.1 Waiver**

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions

provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provision of this Agreement.

#### **ARTICLE XV - INDEMNIFICATION**

##### **Section 15.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action (other than an action commenced by the Entity) alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of N.J.S.A. 40A:20-1 et seq., the Entity shall indemnify and hold the City harmless, and the Entity agrees at the option of the City to defend the suit at its own expense or reimburse the City for any fees or costs the City incurs to do so.

#### **ARTICLE XVI- NOTICE**

##### **Section 16.1 Certified Mail**

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

##### **Section 16.2 Sent by City**

When sent by the City to the Entity the notice shall be addressed to:

Whitlock Mills, L.P., c/o Housing Trust of America  
6851 Oak Hall Lane, Suite 100  
Columbia, MD 21045  
Attn.: Wallace L. Scruggs  
New Jersey Housing and Mortgage Finance Agency  
637 South Clinton Avenue  
P.O. Box 18550  
Trenton, NJ 08650-2085

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

In addition, provided the City is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the City agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

##### **Section 16.3 Sent by Entity**

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk

City Hall  
280 Grove Street  
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Entity and the Property's Block and Lot number).

#### **ARTICLE XVII-SEVERABILITY**

##### **Section 17.1 Severability**

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties. However, the City shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the City.

#### **ARTICLE XVIII - MISCELLANEOUS**

##### **Section 18.1 Construction**

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

**Section 18.2 Conflicts**

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

**Section 18.3 Oral Representations**

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

**Section 18.4 Entire Document**

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof.

**Section 18.5 Good Faith**

In their dealings with each other, utmost good faith is required from the Entity and the City.

**ARTICLE XIX - EXHIBITS**

**Section 19 Exhibits**

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds description of the Project;
2. Ordinance of the City authorizing the execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;
7. Initial Rental Schedules and Lease Terms;

8. Project Employment Agreement;
9. Architect's Certification of Actual Construction Costs;
10. Written approval of HMFA mortgage loan, including the amount and term thereof.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

ATTEST:



SECRETARY

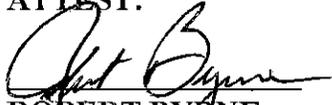
WHITLOCK MILLS, L.P.

BY: HTA Whitlock, LLC, its general partner



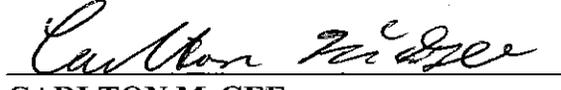
Wallace L. Scruggs, Managing Member

ATTEST:



ROBERT BYRNE  
CITY CLERK

CITY OF JERSEY CITY



CARLTON MCGEE  
BUSINESS ADMINISTRATOR



Engineers  
Architects  
Landscape Architects  
Surveyors  
Planners

Centerpointe at East Gate  
161 Gaither Drive, Suite 105  
Mount Laurel, NJ 08054-1740

Tel: 856.234.0800  
Fax: 856.234.5928

### DESCRIPTION

ALL THAT CERTAIN tract or parcel of land and premises situate in the City of Jersey City, County of Hudson and State of New Jersey, bounded and described as follows:

BEGINNING at the intersection of the center line of Lafayette Street (60 feet wide) with the Southeasterly line of former Manning Avenue (60 feet wide) (vacated 7/19/1955); thence

1. South  $31^{\circ}09'00''$  East, along the center line of Lafayette Street, 100.14 feet to a point; thence
2. South  $61^{\circ}51'00''$  West, 217.97 feet to a point; thence
3. North  $28^{\circ}09'00''$  West, 100.00 feet to a point in the former Southeasterly line of vacated Manning Avenue; thence
4. North  $61^{\circ}51'00''$  East, along same, 15.95 feet to a point; thence
5. North  $30^{\circ}53'45''$  West, 30.04 feet to a point in the former center line of same; thence
6. North  $61^{\circ}51'00''$  East, along same, 15.95 feet to a point; thence
7. North  $30^{\circ}53'45''$  West, 196.84 feet to a point of curve; thence
8. In a general Northerly direction, curving to the right on a radius of 409.05 feet, an arc distance of 66.27 feet to a point of compound curve; thence
9. In a general Northerly direction, curving to the right on a radius of 168.42 feet, an arc distance of 109.80 feet to a point; thence
10. North  $62^{\circ}57'40''$  West, 73.25 feet to a point; thence
11. South  $58^{\circ}04'00''$  West, 32.05 feet to a point; thence



12. North  $31^{\circ}09'00''$  West, 125.03 feet to a point in the Southeasterly line of M.S. Conrail C.R.R. Co. of N.J., Lafayette Branch Main Stem; thence
13. North  $59^{\circ}02'00''$  East, along same, 16.73 feet to a point; thence
14. North  $63^{\circ}02'00''$  East, along same, 83.20 feet to a point; thence
15. North  $67^{\circ}17'16''$  East, along same, 98.47 feet to a point; thence
16. North  $70^{\circ}02'00''$  East, along same, 58.31 feet to a point; thence
17. North  $75^{\circ}02'00''$  East, along same, 28.69 feet to a point; thence
18. North  $76^{\circ}02'00''$  East, along same, 48.45 feet to a point; thence
19. North  $80^{\circ}17'00''$  East, along same, 48.52 feet to a point; thence
20. North  $82^{\circ}47'00''$  East, along same, 37.15 feet to a point; thence
21. South  $86^{\circ}43'00''$  East, along the Southwesterly line of M.S. Conrail C.R.R. Co. of N.J., Lafayette Branch Main Stem, 86.44 feet to a point; thence
22. South  $80^{\circ}58'00''$  East, along same, 67.59 feet to a point; thence
23. South  $75^{\circ}43'00''$  East, along same, 57.63 feet to a point; thence
24. South  $70^{\circ}08'00''$  East, along same, 249.80 feet to a point; thence
25. South  $14^{\circ}29'00''$  West, 75.67 feet to a point; thence
26. South  $28^{\circ}09'00''$  East, 111.44 feet to a point in the former center line of vacated Manning Avenue; thence
27. South  $61^{\circ}51'00''$  West, along same, 166.56 feet to a point; thence
28. North  $28^{\circ}09'00''$  West, 69.88 feet to a point; thence



29. South  $61^{\circ}51'00''$  West, 45.75 feet to a point; thence
30. North  $30^{\circ}22'20''$  West, 17.72 feet to a point; thence
31. South  $59^{\circ}37'40''$  West, 74.60 feet to a point; thence
32. North  $30^{\circ}22'20''$  West, 130.57 feet to a point; thence
33. North  $59^{\circ}37'40''$  East, 46.00 feet to a point; thence
34. North  $30^{\circ}22'20''$  West, 90.52 feet to a point; thence
35. North  $59^{\circ}37'40''$  East, 74.32 feet to a point; thence
36. South  $30^{\circ}22'20''$  East, 240.58 feet to the end of the above 28<sup>th</sup>. course above given; thence
37. South  $28^{\circ}09'00''$  East, along said 28<sup>th</sup>. course, 69.88 feet to a point in the former center line of vacated Manning Avenue; thence
38. South  $61^{\circ}51'00''$  West, along same, 276.06 feet to a point in the extended Northeasterly line of Lafayette Street; thence
39. South  $31^{\circ}09'00''$  East, along same, 30.04 feet to a point in the former Southeasterly line of vacated Manning Avenue; thence
40. South  $61^{\circ}51'00''$  West, along same, 30.04 feet to the place of beginning.

CONTAINING an area of 7.13 Acres.

BEING KNOWN AS Tax Lot 15K, Block 2057

The parcel of land and premises within the above described courses 29 through 36 inclusive is known as Lot 17, Block 2057 and is not included in the above described lands.

BEING SUBJECT TO a nonexclusive ingress and egress easement being described as follows;



BEGINNING at the intersection of the center line of Lafayette Street (60 feet wide) with the Southeasterly line of former Manning Avenue (60 feet wide) (vacated 7/19/1955); thence

1. North  $31^{\circ}09'00''$  West, along the center line of Lafayette Street, 74.08 feet to a point; thence
2. North  $61^{\circ}51'00''$  East, 209.12 feet; thence
3. North  $30^{\circ}22'20''$  West, 41.50 feet to a point in the line of Tax Lot 17, Block 2057; thence
4. North  $59^{\circ}37'40''$  East, along same, 54.50 feet to a point; thence
5. South  $30^{\circ}22'20''$  East, 45.70 feet to a point; thence
6. North  $61^{\circ}51'00''$  East, 40.00 feet to a point; thence
7. South  $28^{\circ}09'00''$  East, 1.92 feet to a point in the former center line of Manning Avenue (vacated 7/19/1955); thence
8. South  $61^{\circ}51'00''$  West, along same, 95.00 feet to a point; thence
9. North  $28^{\circ}09'00''$  West, 18.00 feet to a point; thence

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10. South  $61^{\circ}51'00''$  West, 158.37 feet to a point of curve; thence
11. Terminating in a general Southeasterly direction, curving to the left on a radius of 18.00 feet, an arc distance of 29.22 feet to a point in the extended Northeasterly line of Lafayette Street; thence



12. South  $31^{\circ}09'00''$  East, along same, 30.04 feet to a point in the former Southeasterly line of vacated Manning Avenue; thence

13 South  $61^{\circ}51'00''$  West, along same, 30.04 feet to the place of beginning.

**Edward S. McConnell, LS & PP**  
NJ License No. 17432  
Vollmer Associates LLP #2003-834-50  
May 15, 2003

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City Clerk File No. Ord. 03-139  
Agenda No. 3.H 1st Reading  
Agenda No. 4.F 2nd Reading & Final Passage



## ORDINANCE OF JERSEY CITY, N.J.

COUNCIL AS A WHOLE  
offered and moved adoption of the following ordinance:

CITY ORDINANCE 03-139  
TITLE: ORDINANCE APPROVING A 40 YEAR LONG TERM TAX EXEMPTION FOR MODERATE INCOME AFFORDABLE AND MARKET RATE HOUSING PROJECT TO BE CONSTRUCTED BY THE WHITLOCK MILLS, L.P., A QUALIFIED HOUSING SPONSOR UNDER THE NEW JERSEY MORTGAGE HOUSING FINANCE AGENCY LAW N.J.S.A. 55:14K-1 ET SEQ.

THE MUNICIPAL COUNCIL OF THE CITY OF JERSEY CITY DOES ORDAIN:

WHEREAS, Whitlock Mills, L.P., is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency Law N.J.S.A. 55:14K-1 et seq.; and

WHEREAS, Whitlock Mills, L.P., is the contract purchaser and will become the owner on or about the date the within tax exemption Financial Agreement will be executed, of certain property known as Block 2057, Lot 18, on City's Tax map and more commonly known by the street address of 160 Lafayette Street, Jersey City, New Jersey [Property]; and

WHEREAS, Whitlock Mills, L.P., proposes to construct a housing project to be regulated and financed pursuant to the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq. on the Property; and

WHEREAS, pursuant to N.J.S.A. 55:14K-37(b), Whitlock Mills, L.P. applied for a 40 year tax exemption, to construct certain improvements on the Property to create a total of 330 units of rental housing, 132 units of market rate housing, and 198 units of moderate income housing units, and a 142 car parking garage and 108 space surface parking lot; and

WHEREAS, Whitlock Mills, L.P., has agreed to pay a service charge estimated to be \$173,775 or approximately \$526 per unit, which sum is equal to 4% of annual gross revenue for the first ten (10) years; 5% for the second ten (10) years; 7.5% for the third ten (10) years; and 8.6% for the final ten (10) years; and

WHEREAS Whitlock Mills, L.P. has also agreed to provide employment and other economic opportunities for City residents and businesses in accordance with a Project Employment & Contracting Agreement; and

WHEREAS, the City hereby determines that the relative benefits of the project outweigh the cost of the tax exemption for the following reasons:

1. The City will apply to receive credit for creating 198 units of moderate income family rental housing against the units needed within the City of Jersey City as determined by the New Jersey Council on Affordable Housing;
2. There is an especially compelling need for decent safe and affordable housing for moderate income families who are currently paying over 30% of their income for housing;
3. The Project will create approximately 200 construction jobs and 8 permanent jobs;
4. The construction of the improvements will stabilize the neighborhood and should generate additional tax revenue; and

WHEREAS, the City hereby determines that the tax exemption is necessary to insure the success of the project for the following reasons:

1. The reduced tax payments allow the owner to stabilize its operating budget, allowing a high level of maintenance to the building over the life of the project;

2. The reduction in taxes makes the Project attractive to investors and makes the project eligible for financing from the New Jersey Housing and Mortgage Finance Agency, needed to fund the Project; and

3. The reduced tax payments will allow the owner to maintain the moderate income units at the lowest rents possible within the income guidelines; and

NOW, THEREFORE, BE IT ORDAINED by the Municipal Council of the City of Jersey City that:

1. The application of Whitlock Mills, L.P., a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency Law N.J.S.A. 55:11K-1 et seq.; for a tax exemption is hereby approved subject to the following terms and conditions:

- (a) Term: The earlier of 40 years from the date of the adoption of the Ordinance or 40 years from the date of Substantial Completion of the Project, but in no event beyond the date that the HMFA mortgage is paid in full;
- (b) Service Charge: 4% of Annual Gross Revenue, estimated to be \$173,775 or approximately \$526 per unit for the first ten (10) years, 5% for the second ten (10) years; 7.5% for the third ten (10) years and 8.6% for the final ten (10) years;
- (c) Project: 198 units of rental housing for moderate income families, and 132 units of market rate rental housing for a total of 330 units, with a 142 car parking garage and a 108 space surface parking lot; and
- (d) Property: Block 2057, Lot 18, on the City's Tax map and more commonly known by the street address of 160 Lafayette Street, Jersey City, New Jersey.

2. The Mayor or Business Administrator is authorized to execute a tax exemption Financial Agreement, and a Project Employment Agreement, in substantially the form on file in the Office of the City Clerk, subject to such modification as the Business Administrator and Corporation Counsel deem appropriate or necessary.

3. All ordinances and parts of ordinances inconsistent herewith are hereby repealed.

4. This ordinance shall be part of the Jersey City Code as though codified and fully set forth therein. The City Clerk shall have this ordinance codified and incorporated in the official copies of the Jersey City Code.

5. This ordinance shall take effect at the time and in the manner provided by law.

6. The City Clerk and Corporation Counsel be and they are hereby authorized and directed to change any chapter numbers, article numbers and section numbers in the event that the codification of this ordinance reveals that there is a conflict between those numbers and the existing code, in order to avoid confusion and possible accidental repealers of existing provisions.

NOTE: All material is new; therefore underlining has been omitted. For purposes of advertising only, new matter is indicated by bold face and repealed matter by *italic*.

APPROVED: \_\_\_\_\_  
APPROVED: Curtis McFree  
Business Administrator

APPROVED AS TO LEGAL FORM  
[Signature]  
Corporation Counsel

Certification Required   
Not Required

# Ordinance of the City of Jersey City, N.J.

ORDINANCE NO. Ord. 03-139

TITLE: 3.H SEP 24 2003 4.F OCT 08 2003

Ordinance approving a 40 years long term tax exemption for moderate income affordable and market rate housing project to be constructed by the Whitlock Mills, L. P. a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency Law N. J. S.A. 55:14k-1 et seq.



RECORD OF COUNCIL VOTE ON INTRODUCTION <span style="float: right;">SEP 24 2003 8-1</span>											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
BRENNAN	✓			GAUGHAN		✓		HEALY	✓		
DONNELLY	✓			MALDONADO				VEGA	✓		
LIPSKI	✓			RICHARDSON	✓			SMITH, PRES.	✓		

✓ Indicates Vote N.V.--Not Voting (Abstain)

RECORD OF COUNCIL VOTE TO CLOSE PUBLIC HEARING <span style="float: right;">OCT 08 2003</span>											
Councilperson <u>RICHARDSON</u>				moved, seconded by Councilperson <u>BRENNAN</u>				to close P.H.: <u>9-0</u>			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
BRENNAN	✓			GAUGHAN	✓			HEALY	✓		
DONNELLY	✓			MALDONADO	✓			VEGA	✓		
LIPSKI	✓			RICHARDSON	✓			SMITH, PRES.	✓		

✓ Indicates Vote N.V.--Not Voting (Abstain)

YVONNE BALCER     JUNE JONES     MIKE SELENDER     AUSTIN HAROLD  
DANIEL SICARDI     MELISSA HOLLOWAY     VERNON BURKHART     WALLEY SCRUGGS  
ROSALYN BROWNE     JOHN GOMEZ     AL ANTONI     JIM MCCANN  
MIA SCANGA     LEON YOST

RECORD OF COUNCIL VOTE ON AMENDMENTS, IF ANY											
Councilperson _____				moved to amend Ordinance, seconded by Councilperson _____				& adopted			
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
BRENNAN				GAUGHAN				HEALY			
DONNELLY				MALDONADO				VEGA			
LIPSKI				RICHARDSON				SMITH, PRES.			

✓ Indicates Vote N.V.--Not Voting (Abstain)

RECORD OF FINAL COUNCIL VOTE <span style="float: right;">OCT 08 2003 6-3</span>											
COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.	COUNCILPERSON	AYE	NAY	N.V.
BRENNAN		✓		GAUGHAN		✓		HEALY		✓	
DONNELLY	✓			MALDONADO	✓			VEGA	✓		
LIPSKI	✓			RICHARDSON	✓			SMITH, PRES.	✓		

✓ Indicates Vote N.V.--Not Voting (Abstain)

Adopted on first reading of the Council of Jersey City, N.J. on SEP 24 2003

Adopted on second and final reading after hearing on OCT 08 2003

This is to certify that the foregoing Ordinance was adopted by the Municipal Council at its meeting on OCT 08 2003

Sean J. Gallagher, Acting  
Robert Byrne, City Clerk

APPROVED [Signature]  
L. Harvey Smith, Council President

Date OCT 08 2003

\*Amendment(s):

APPROVED [Signature]  
Glenn D. Cunningham, Mayor

Date \_\_\_\_\_

Date To Mayor OCT 10 2003

**EXHIBIT 3  
APPLICATION FOR TAX EXEMPTION  
OF  
WHITLOCK MILLS, L.P.**

In compliance with Executive Order #S-02-003 of the Mayor of the City of Jersey City, the Applicant herewith submits the following information in support of its application for a Tax Exemption under and pursuant to the New Jersey Mortgage Housing Finance Law (N.J.S.A. 55:14K-1, et seq.)

Applicant: Whitlock Mills, L.P.  
c/o Housing Trust of America, L.L.C.  
6851 Oak Hall Lane, Suite 600  
Columbia, MD 21045  
Attn.: Meg A. Manley, Sr. Vice President, Development

Property: Block 2057, Lot 18, commonly known as  
160 Lafayette Street  
Jersey City, New Jersey

Project: Whitlock Mills  
160 Lafayette Street  
Jersey City, New Jersey 07305

Applicant's General Contractor: Magentic Construction Group  
Tony Genovese  
5-44 47<sup>th</sup> Avenue  
Long Island City, NY 11101

Applicant's Architect: John Saracco Architect, LLC  
518 Main Street  
Boonton, NJ 07005

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Applicant's Attorney: James C. McCann, Esq.  
Schumann, Hanlon, Doherty, McCrossin & Paolino  
30 Montgomery Street  
Jersey City, NJ 07302  
(201) 434-2000

LIST OF EXHIBITS:

Exhibit

- A. Description of Property
- B. Description of Leases
- C. Annual Gross Revenue Computation
- D. Total Project Cost
- E. Projected Statement of Property Operations
- F. Project Sketches and Information
- G. Proposed Financial Agreement
- H. Certificate of Formation and Disclosure Statement for Whitlock Mills, L.P.

## APPLICATION

1. Identification of the Property:

The land upon which the Project is located is Block 2057, Lot 18 on the Tax Map of the City of Jersey City and will be commonly known as 160 Lafayette Street, Jersey City, New Jersey (the "Property"). The metes and bounds description of the land where the Project is located is attached hereto as Exhibit A.

2. Type of Project:

The Project will consist of 330 residential rental apartments with parking facilities for 250 cars and a management and resident services center. Sixty (60 %) percent of these apartments or 198 will be affordable housing units. The number, size, and rent for the affordable apartments will be as follows:

Number of Apts	Number of Bedrooms/Baths	Square Footage	Monthly Rent
30	3/2	1275	\$803.00
90	2/2	950	\$707.00
78	1/1	725	\$583.00
Total 198			

The affordable housing units will be available only to those who qualify under the relevant federal and state guidelines which are as follows: Persons/families must have a combined income of less than 60% of the area's median income which is \$60,100.00 annually. The ratio of annual rent to annual income for these persons/families must not exceed 30%. Thus, all of the affordable units are expected to be available to persons/families with annual incomes from a range of approximately \$36,000 to \$22,000 annually. A management company specializing in administrating affordable housing properties will qualify potential residents in accordance with federal and state guidelines and manage the Property.

The Project will also contain approximately 250 parking spaces. Approximately 142 parking spaces will be located in a parking garage and approximately 108 spaces will be located outdoors. Each affordable apartment will be assigned one parking space. There will be no additional charge to the affordable apartment residents for use of the parking space.

The following resident services will be available at no additional charge to tenants:

1. Career counseling;
2. Nutrition counseling;
3. Business services;
4. Business facilities;
5. Shuttles to and from public transportation;
6. A gymnasium/fitness center;
7. Dry cleaning pick up and drop off services;
8. Laundry facilities;
9. Conference rooms; and
10. Community center rooms.
11. Computer lab.

In addition to the affordable housing units, there will be 132 apartments which will be rented at market rates. The size, square footage, and monthly rent for these apartments will be as follows:

Number of Apts.	Number of Bedrooms/Baths	Square Footage	Monthly Rent
20	3/2	1,300	\$2,232.00
60	2/2	1,100	\$1,782.00
52	1/1	780	\$1,532.00
Total 132			

Garage parking for market rate apartments will be available to residents at an additional charge of \$150.00 per month. All resident services will be available to market rate tenants at no charge.

**3. Type of Abatement Requested:**

Major financing for the Project will be provided by the New Jersey Housing and Mortgage Finance Agency Tax Exempt Bond Program and by the proceeds from the syndication of low income housing tax credits (NJHMFA). Secondary financing is planned from the New Jersey Department of Community Affairs Balanced Housing Program.

In light of the above, the Applicant seeks a tax exemption under and pursuant to N.J.S.A. 55:14K-1, et seq. (New Jersey Mortgage Housing Finance Agency Law) (the "NJMHFA Law") based upon the 4% of Annual Gross Revenue (as set forth in the draft Financial Agreement attached hereto). Based upon the Annual Gross Revenue computations set forth in Exhibit B, the Proposed Statement of Stabilized Property Operations set forth in Exhibit B and the Total Project Cost set forth in Exhibit D. The Project will generate an estimated Annual Service Charge of \$173,775.00.

4. Term of Abatement:

The term of the tax exemption being requested by the Applicant is 35 years from the date of the adoption of the ordinance granting the tax abatement or 30 years from the date of substantial completion of the Project or for period not to exceed the period of time by which the Project is encumbered by an eligible loan made to the Applicant by the New Jersey Housing and Mortgage Agency pursuant to the NJMHFA Law commencing from the date of substantial completion of the Project.

5. Description of the Project:

The Property consists of approximately 6.6 acres of land at the foot of Lafayette Street. The Property is located directly adjacent to the new Lafayette Park which is currently under construction.

There are currently eight (8) 19th-20th century factory buildings on the Property, all which were originally part of the Passaic Zinc Works near the Morris Canal. Currently, the Property is commonly referred to as the Safety Pact Terminal formerly used by the Whitlock Cordage Company. All of the eight (8) buildings are abandoned and are in various states of dilapidation and disrepair.

The Jersey City Planning Board has determined that five (5) of these buildings have historic/landmark significance. Thus, five (5) of the buildings cannot be demolished under the Morris Canal Redevelopment Plan. Under the Plan any re-use (i.e., new use) of the Property must preserve the historic/landmark significance of these five (5) buildings through rehabilitation in strict compliance with local historic regulations. As such, the Applicant is rehabilitating these five (5) buildings in a manner that preserves and restores historic features. The cost of the historic rehabilitation adds an estimated 8 million dollars to the Total Project Cost (see Exhibit D). Two (2) of the remaining three (3) buildings on the Property have historic/landmark significance; however, they have deteriorated beyond repair, therefore, the Planning Board has determined that they cannot be restored. As such, these (2) buildings will be demolished. The third and final building did not have historic/landmark significance; therefore, it will be demolished.

A sketch of the Property setting forth the development plan is attached hereto as Exhibit F. The sketch lists the buildings which will be preserved and renovated in compliance with the historic restrictions and regulations as follows:

Historic Rehabilitation:

<b>BUILDING A</b>	8 residential units, management offices and resident community and amenity center
<b>BUILDING C</b>	parking garage
<b>BUILDING F</b>	74 residential units and central laundry facility
<b>BUILDING G</b>	2 residential units

BUILDING H	6 residential units
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In addition to the above renovation, there will be 29 new buildings constructed on the Property. These buildings are listed on Exhibit F as Building Type I. There will be a total of 240 apartment units (an average of 8 units per building) in these newly constructed buildings.

New Construction:

BUILDING TYPE I	240 Residential Units in 29 Buildings
-----------------	---------------------------------------

The Morris Canal Redevelopment Plan requires that any developer of the Property provide increased street access to the Property via Maple Street and Manning Avenue. As such, the Applicant will also be constructing an extension to Maple Street with accompanying sewer lines, water lines, curbs, and other necessary and appropriate infrastructure. In addition, the Applicant will be reconstructing and restoring Manning Avenue as a cobblestone street. A sketch showing the portion of Maple Street and Manning Avenue to be improved by the Applicant is attached hereto as Exhibit F. Upon completion, this portion of Manning Avenue and Maple Street will be offered to the City for re-dedication for \$10.00 nominal consideration, and if accepted, Manning Avenue and Maple Street will again become public rights of way.

The Property has been mostly vacant for approximately 10 years. The current owner is in bankruptcy and has no plans to develop the Property and has lost control thereof to the bankruptcy trustee. The Applicant is the contract purchaser of the Property pursuant to a court ordered and approved purchase contract. The closing of title for the Property is scheduled for November 13, 2003.

6. **Estimated Total Cost of Project:**

The Total Project Cost, as set forth in Exhibit D is estimated to be \$ 56,029,924.00. The construction costs have been estimated based upon information compiled by the Applicant and its consultants. The Total Project Cost has been approved by the NJHMFA. Approximately \$8,000,000.00 of the Total Project Cost is attributable to the historic rehabilitation.

7. **Annual Gross Revenue and Expenses:**

A Schedule of Annual Gross Revenue and Expenses for the Project is attached hereto as Exhibit C. A Projected Statement of Operations is attached hereto as Exhibit E.

8. **Construction Schedule:**

The construction of the Project is scheduled to commence on approximately April 1, 2004 and will be completed within approximately 18-20 months. This construction schedule is subject to modification based upon the time required to obtain the necessary governmental approvals and permits from those local, state and federal governmental agencies involved in the Project.

9. **Real Estate Tax Assessments:**

The tax assessment information for the Property is as follows:

Land	\$1,194,400
Improvements (All Buildings)	\$ 780,600
Total	\$1,975,000

10. **Real Estate Tax Information:**

The Real Estate taxes assessed against the Property are as follows:

The municipal real estate taxes for 2003 for the Property are \$90,968.50.

11. **Certification as to Commencement of the Project.**

The Applicant will not commence construction of the Project prior to the receipt of final approval of the tax abatement and the execution of a Financial Agreement between the City and Whitlock Mills, L.P.

12. **Estimated Jobs to be Created:**

It is projected that the Project will generate approximately 200 full time equivalent construction jobs during the term of construction. In addition, it is projected that the Project will generate approximately 8 direct full time permanent employment opportunities upon the commencement of operations of the Project. This does not take into account any of the secondary employment opportunities which may be created by the residence services programs which will accompany the Project. Currently, the Property is vacant and therefore, this Project will not cause any loss or displacement of current employments opportunities. All of the aforementioned employment opportunities will be immediately created. The Applicant agrees to execute a Project Employment Agreement simultaneously with the execution of a financial agreement.

13. **Compliance with State and Local Redevelopment Laws.**

The Applicant certifies that the Project is located in the Morris Canal Redevelopment Zone. In light of the above, the Project meets the requirements of the laws of the State of New Jersey for consideration of this tax abatement.

The Project will be constructed in accordance with the terms and conditions of any preliminary site plan approval granted by the Jersey City Planning Board and in compliance with any state permits or approvals required for the renovation or new construction. Preliminary site plan approval is expected from the Jersey City Planning Board on September 9, 2003.

14. **Compliance with State and Local Law:**

The Project meets the requirements of the laws of the State of New Jersey and the City of Jersey City to qualify for a tax abatement.

15. Form of Financial Agreement:

Attached hereto as Exhibit G is a proposed Financial Agreement between the City of Jersey City and Whitlock Mills, L.P.

16. Certificate of Formation:

Whitlock Mills, L.P. is a limited partnership formed pursuant to the laws of the State of Maryland and is qualified to do business in New Jersey.

Attached hereto as Exhibit H is a copy of the Certificate of Formation of Whitlock Mills, L.P.

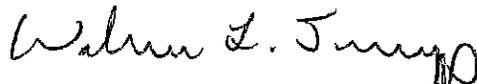
A Disclosure Statement listing the names and address of the partners of the Applicant is attached hereto as Exhibit H.

17. Certification of Accuracy and Due Diligence:

THE APPLICANT CERTIFIES TO THE BEST OF ITS KNOWLEDGE, INFORMATION AND BELIEF THAT ALL OF THE INFORMATION CONTAINED IN THIS APPLICATION IS TRUE AND ACCURATE AND THAT IT HAS MADE A DILIGENT INQUIRY TO CONFIRM THE ACCURACY OF ALL SUCH INFORMATION.

WHITLOCK MILLS, L.P.

By: HTA Whitlock, LLC, its general partner

A handwritten signature in cursive script, appearing to read "Wallace L. Scruggs". The signature is written in black ink and is positioned above the typed name.

By: Wallace L. Scruggs, Managing Member

## EXHIBIT A

### WHITLOCK MILLS, L.P.

#### Description of the Property

Address: 160 Lafayette Street, Jersey City, New Jersey

Block 2057, Lot 18:  
(Formerly known as  
Lot 15 K) A metes and bounds description is attached hereto.



Engineers  
Architects  
Landscape Architects  
Surveyors  
Planners

Centerpointe at East Gate  
161 Gaither Drive, Suite 105  
Mount Laurel, NJ 08054-1740

Tel: 856.234.0800  
Fax: 856.234.5928

## DESCRIPTION

ALL THAT CERTAIN tract or parcel of land and premises situate in the City of Jersey City, County of Hudson and State of New Jersey, bounded and described as follows:

BEGINNING at the intersection of the center line of Lafayette Street (60 feet wide) with the Southeasterly line of former Manning Avenue (60 feet wide) (vacated 7/19/1955); thence

1. South  $31^{\circ}09'00''$  East, along the center line of Lafayette Street, 100.14 feet to a point; thence
2. South  $61^{\circ}51'00''$  West, 217.97 feet to a point; thence
3. North  $28^{\circ}09'00''$  West, 100.00 feet to a point in the former Southeasterly line of vacated Manning Avenue; thence
4. North  $61^{\circ}51'00''$  East, along same, 15.95 feet to a point; thence
5. North  $30^{\circ}53'45''$  West, 30.04 feet to a point in the former center line of same; thence
6. North  $61^{\circ}51'00''$  East, along same, 15.95 feet to a point; thence
7. North  $30^{\circ}53'45''$  West, 196.84 feet to a point of curve; thence
8. In a general Northerly direction, curving to the right on a radius of 409.05 feet, an arc distance of 66.27 feet to a point of compound curve; thence
9. In a general Northerly direction, curving to the right on a radius of 168.42 feet, an arc distance of 109.80 feet to a point; thence
10. North  $62^{\circ}57'40''$  West, 73.25 feet to a point; thence
11. South  $58^{\circ}04'00''$  West, 32.05 feet to a point; thence



12. North  $31^{\circ}09'00''$  West, 125.03 feet to a point in the Southeasterly line of M.S. Conrail C.R.R. Co. of N.J., Lafayette Branch Main Stem; thence
13. North  $59^{\circ}02'00''$  East, along same, 16.73 feet to a point; thence
14. North  $63^{\circ}02'00''$  East, along same, 83.20 feet to a point; thence
15. North  $67^{\circ}17'16''$  East, along same, 98.47 feet to a point; thence
16. North  $70^{\circ}02'00''$  East, along same, 58.31 feet to a point; thence
17. North  $75^{\circ}02'00''$  East, along same, 28.69 feet to a point; thence
18. North  $76^{\circ}02'00''$  East, along same, 48.45 feet to a point; thence
19. North  $80^{\circ}17'00''$  East, along same, 48.52 feet to a point; thence
20. North  $82^{\circ}47'00''$  East, along same, 37.15 feet to a point; thence
21. South  $86^{\circ}43'00''$  East, along the Southwesterly line of M.S. Conrail C.R.R. Co. of N.J., Lafayette Branch Main Stem, 86.44 feet to a point; thence
22. South  $80^{\circ}58'00''$  East, along same, 67.59 feet to a point; thence
23. South  $75^{\circ}43'00''$  East, along same, 57.63 feet to a point; thence
24. South  $70^{\circ}08'00''$  East, along same, 249.80 feet to a point; thence
25. South  $14^{\circ}29'00''$  West, 75.67 feet to a point; thence
26. South  $28^{\circ}09'00''$  East, 111.44 feet to a point in the former center line of vacated Manning Avenue; thence
27. South  $61^{\circ}51'00''$  West, along same, 166.56 feet to a point; thence
28. North  $28^{\circ}09'00''$  West, 69.88 feet to a point; thence



29. South 61°51'00" West, 45.75 feet to a point; thence
30. North 30°22'20" West, 17.72 feet to a point; thence
31. South 59°37'40" West, 74.60 feet to a point; thence
32. North 30°22'20" West, 130.57 feet to a point; thence
33. North 59°37'40" East, 46.00 feet to a point; thence
34. North 30°22'20" West, 90.52 feet to a point; thence
35. North 59°37'40" East, 74.32 feet to a point; thence
36. South 30°22'20" East, 240.58 feet to the end of the above 28<sup>th</sup>. course above given; thence
37. South 28°09'00" East, along said 28<sup>th</sup>. course, 69.88 feet to a point in the former center line of vacated Manning Avenue; thence
38. South 61°51'00" West, along same, 276.06 feet to a point in the extended Northeasterly line of Lafayette Street; thence
39. South 31°09'00" East, along same, 30.04 feet to a point in the former Southeasterly line of vacated Manning Avenue; thence
40. South 61°51'00" West, along same, 30.04 feet to the place of beginning.

CONTAINING an area of 7.13 Acres.

BEING KNOWN AS Tax Lot 15K, Block 2057

The parcel of land and premises within the above described courses 29 through 36 inclusive is known as Lot 17, Block 2057 and is not included in the above described lands.

BEING SUBJECT TO a nonexclusive ingress and egress easement being described as follows:



BEGINNING at the intersection of the center line of Lafayette Street (60 feet wide) with the Southeasterly line of former Manning Avenue (60 feet wide) (vacated 7/19/1955); thence

1. North  $31^{\circ}09'00''$  West, along the center line of Lafayette Street, 74.08 feet to a point; thence
2. North  $61^{\circ}51'00''$  East, 209.12 feet; thence
3. North  $30^{\circ}22'20''$  West, 41.50 feet to a point in the line of Tax Lot 17, Block 2057; thence
4. North  $59^{\circ}37'40''$  East, along same, 54.50 feet to a point; thence
5. South  $30^{\circ}22'20''$  East, 45.70 feet to a point; thence
6. North  $61^{\circ}51'00''$  East, 40.00 feet to a point; thence
7. South  $28^{\circ}09'00''$  East, 1.92 feet to a point in the former center line of Manning Avenue (vacated 7/19/1955); thence
8. South  $61^{\circ}51'00''$  West, along same, 95.00 feet to a point; thence
9. North  $28^{\circ}09'00''$  West, 18.00 feet to a point; thence

---

10. South  $61^{\circ}51'00''$  West, 158.37 feet to a point of curve; thence
11. Terminating in a general Southeasterly direction, curving to the left on a radius of 18.00 feet, an arc distance of 29.22 feet to a point in the extended Northeasterly line of Lafayette Street; thence



12. South  $31^{\circ}09'00''$  East, along same, 30.04 feet to a point in the former Southeasterly line of vacated Manning Avenue; thence

13 South  $61^{\circ}51'00''$  West, along same, 30.04 feet to the place of beginning.

**Edward S. McConnell, LS & PP**  
NJ License No. 17432  
Vollmer Associates LLP #2003-834-50  
May 15, 2003

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## EXHIBIT B

### WHITLOCK MILLS, L.P. DESCRIPTION OF RESIDENTIAL LEASES GOOD FAITH ESTIMATE OF INITIAL RENTS

1. Name of Tenant: Various
2. Term of Lease: Initial term of lease not less than 1 year.
3. Number of Apartments:

Affordable Apartments			
Number of Apts	No. of Bedrooms/Baths	Sq. Footage	Monthly Rent
30	3/2	1275	\$803.00
90	2/2	950	\$707.00
78	1/1	725	\$583.00
Total 198			

Market Rate Apartments			
Number of Apts	No. of Bedrooms/Baths	Sq. Footage*	Monthly Rent*
20	3/2	1,300	\$2,232.00
60	2/2	1,100	\$1,782.00
52	1/1	780	\$1,532.00
Total 132			

\* The exact square footage and rent could vary. The numbers above represent the average square footage and rent for each type of apartment.

5. Premium paid directly by Tenant Annually
  - a. Fire & other insurance NONE
  - b. Real Estate Taxes of Assessments on in project NONE
  - c. Operating and maintenance expenses paid by tenant NONE
6. Special Features: Parking  
Resident Services Program

## EXHIBIT C

### WHITLOCK MILLS, L.P.

#### Total Annual Gross Revenue Computation

<u>Affordable Apartments:</u>	<u>Units</u>		<u>Per*</u> <u>Month</u>	<u>Total per</u> <u>Month</u>	<u>Total</u> <u>Annually</u>
One Bedroom	78	@	\$583.00	\$45,474.00	\$545,688.00
Two Bedrooms	90	@	\$707.00	\$63,630.00	\$763,560.00
Three Bedrooms	30	@	<u>\$803.00</u>	<u>\$24,090.00</u>	<u>\$289,080.00</u>
Subtotal	198		\$2,093.00	\$133,194.00	\$1,598,328.00
<u>Market Rate Apartments:</u>	<u>Units</u>		<u>Per*</u> <u>Month</u>	<u>Total per</u> <u>Month</u>	<u>Total</u> <u>Annually</u>
One Bedroom	52	@	\$1,532.00	\$79,664.00	\$955,969.00
Two Bedrooms	60	@	\$1,782.00	\$106,920.00	\$1,283,040.00
Three Bedrooms	20	@	<u>\$2,232.00</u>	<u>\$44,640.00</u>	<u>\$535,680.00</u>
Subtotal	132		\$5,546.00	\$231,224.00	\$2,774,689.00
Total Rental Income:			\$4,373,016.00		
Less					
Vacancy @ 7%			\$306,111.00		
Total rental income after vacancy adjustment:					\$4,066,905.00
<u>Other Income:</u>			<u>Annual</u>		
Laundry Machines				\$ 15,000.00	
Washer/Dryer/rental/cable				\$ 71,280.00	
Parking Garage	\$211,800				
Less					
Vacancy @ 5%			\$10,590.00	<u>\$201,210.00</u>	
Total Other Income				\$277,490.00	
<b>Total Annual Gross Revenue</b>					<b>\$4,344,395.00</b>

\* The exact square footage and rent could vary. The numbers above represent the average square footage and rent for each type of apartment.

**EXHIBIT D**  
**WHITLOCK MILLS, L.P.**

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**ESTIMATED TOTAL PROJECT COST**

1.	Cost of Land and Improvements to the Urban Renewal Entity	\$	4,000,000.00
2.	Architects, engineers, surveyors, consultants, experts and attorneys fees (paid or payable) in connection with the planning, remediation, construction and financing of the Project.	\$	1,178,430.00
3.	Projected construction cost including site preparation (historic rehabilitation work: \$8,000,000.00)	\$	37,000,000.00
4.	Insurance, interest, finance and carrying costs during construction	\$	7,502,351.00
5.	Commissions and other expenses payable in connection with initial lease or sale of units and marketing	\$	385,000.00
6.	NJMFHA Escrow Requirements	\$	3,964,143 <sup>1</sup>
7.	Developer's Fee (Gross)	\$	2,000,000.00 <sup>2</sup>
	<b>TOTAL</b>	<b>\$</b>	<b>56,029,924.00</b>

<sup>1</sup> Escrows are required by and calculated by the NJHMFA. These are non-negotiable and non-transferrable to other items.

<sup>2</sup> The \$2,000,000 gross developer's fee will be paid to the Applicant over the course of 4 years.

Expenses paid by Developer  
from gross developer's fees:

3 years developer operating overhead @ \$35,000 per month	\$1,260,000.00
Net Developer's Fee	\$ 740,000.00

## EXHIBIT E

### WHITLOCK MILLS, L.P.

#### PROJECTED STATEMENT OF STABILIZED PROPERTY OPERATION

##### RENTAL INCOME:

		<u>Annual Income</u>
Apartments		\$4,373,016.00 (for detail see Exh. C)
Less Vacancy Loss	@ 7%	<u>\$ 306,111.00</u>
<b>Net Apartment Rents</b>		<b>\$4,066,905.00</b>
Garage & Parking		\$ 211,800.00
Parking Garage Vacancy Loss	@5%	\$ 10,590.00
<b>Net Parking Rental Income</b>		<b>\$ 201,210.00</b>
<b>Total Rental Income</b>		<b>\$4,268,115.00</b>

##### OTHER INCOME:

Laundry Machines		\$ 15,000.00
Washer/Dryer/rental/cable		\$ 71,280.00
<b>Total Other Income</b>		<b>\$ 86,280.00</b>
<b>Total Income</b>		<b>\$4,344,395.00</b>

##### OPERATING EXPENSES:

I.	Admin.	\$ 72,600.00
II.	Salaries	\$ 353,624.00
III.	Maint. & Repairs	\$ 66,350.00
IV.	Maint. Contracts	\$ 128,500.00
V.	Utilities (electric & gas)	\$ 110,500.00
VI.	<b>Annual Service Charge</b>	
	(4% of Annual Gross Revenue)	<b>\$ 173,775.00</b>
VII.	Management Fee (4%)	
	(% of Total Rental Income)	\$ 170,378.00
VIII.	Insurance	\$ 165,000.00
IX.	Reserve for Repair & Replacement	\$ 132,000.00
<b>Total Operating Expenses:</b>		<b>\$1,372,727.00</b>

=====  
 Total Income \$4,344,395.00  
 Less Operating Expenses: \$1,372,727.00

NET OPERATING INCOME BEFORE DEBT SERVICE: \$2,971,668.00  
 =====

**DEBT SERVICE:**

- 1. Principal and Interest \$ 2,316,707.00
- 2. Mortgage & Bond Service Fee 0.40% \$ 149,725.00
- 3. MIP 0.50% \$ 187,156.00

Total Agency Debt Service \$ 2,653,587.00

Debt Service on Other Mortgage Loans \$ 200,000.00

Total Debt Service \$2,853,587.00

=====  
 NET OPERATING INCOME BEFORE DEBT SERVICE \$2,971,668.00  
 LESS TOTAL DEBT SERVICE \$2,853,587.00  
 =====

NET INCOME: \$ 118,081.00

**EXHIBIT F**

**WHITLOCK MILLS, L.P.**

**PROJECT SKETCHES AND INFORMATION**

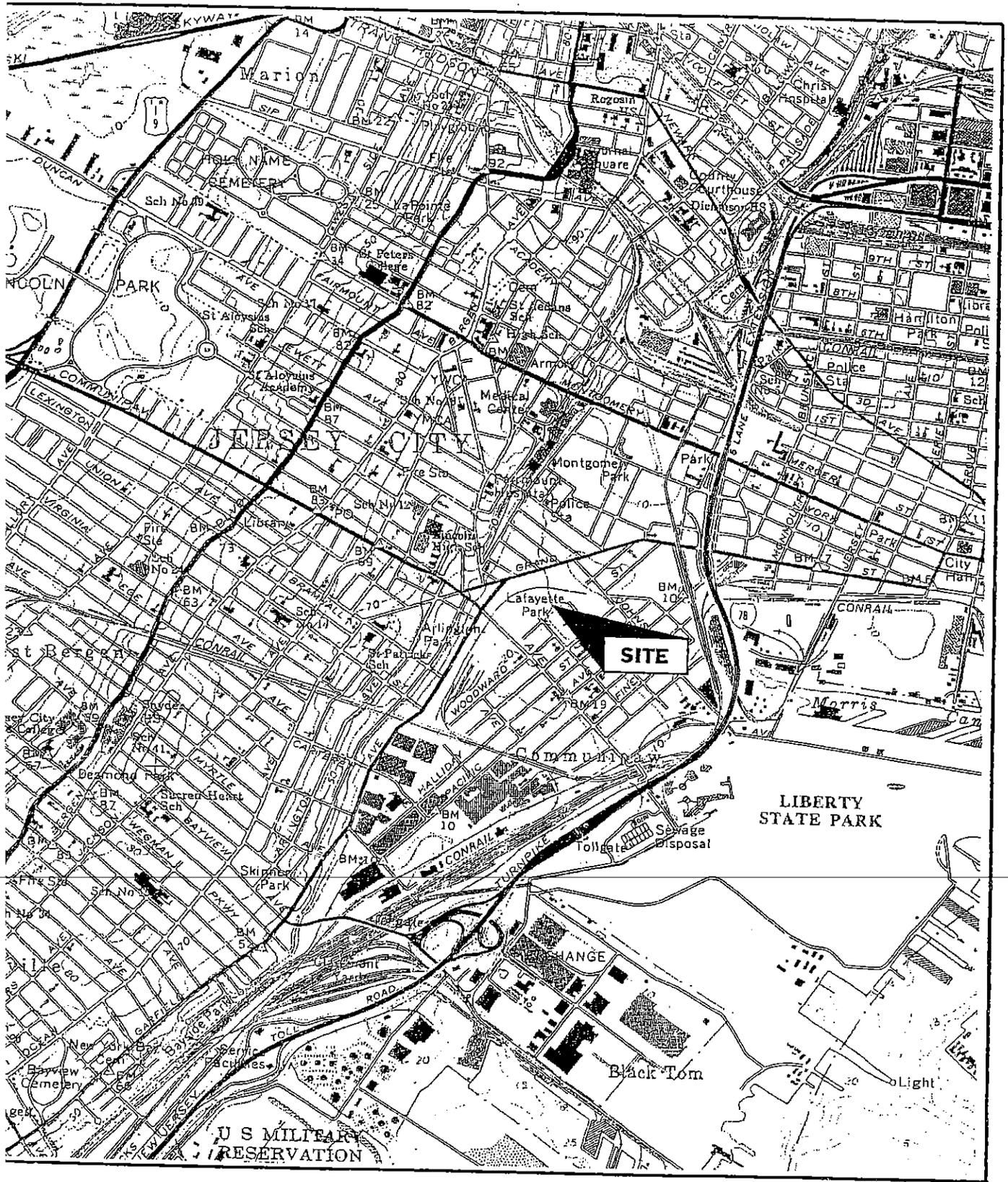
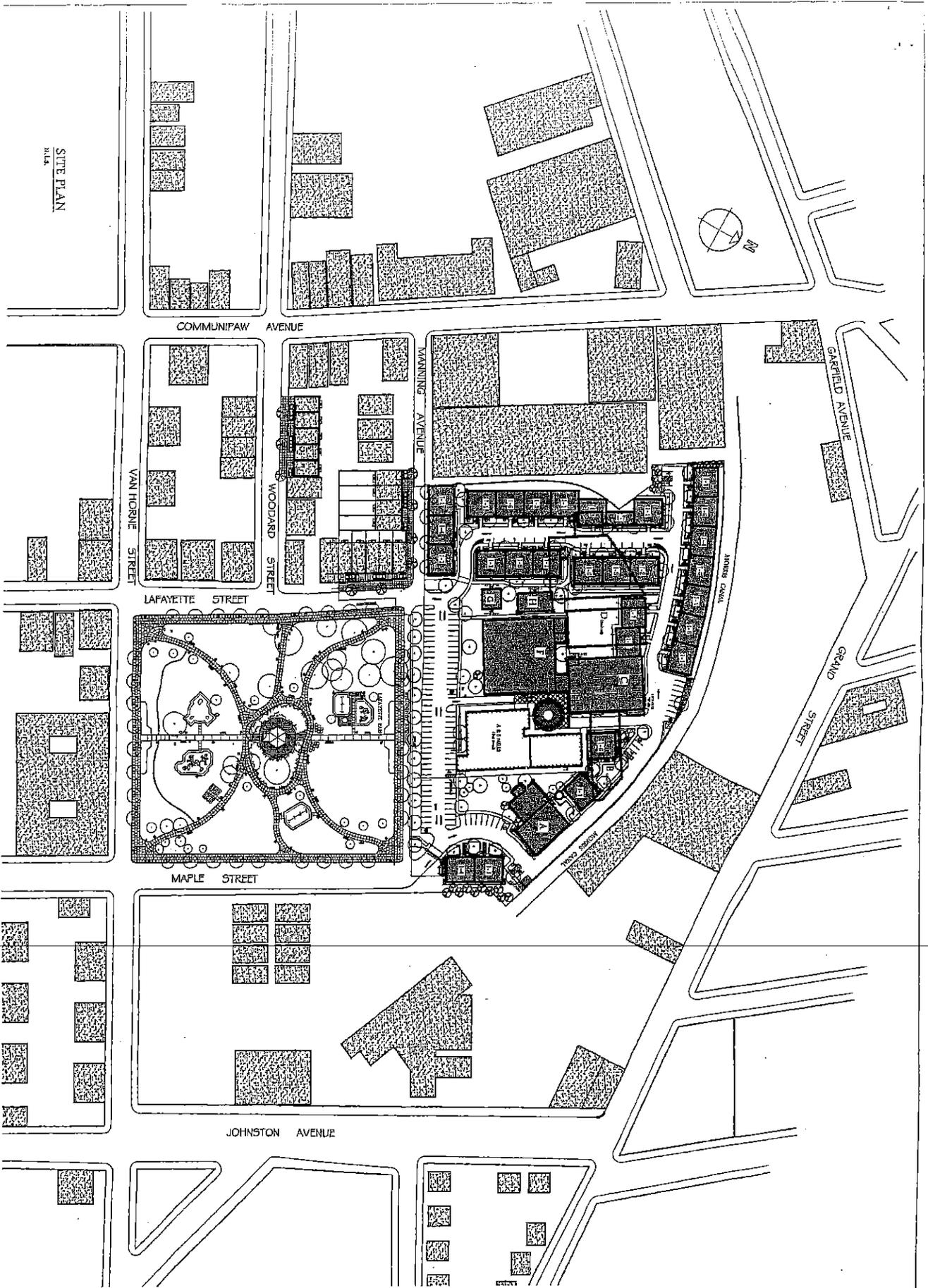


Figure 1  
 Site Location Map  
 160 Lafayette Avenue  
 Jersey City, New Jersey







SITE PLAN  
PLAN



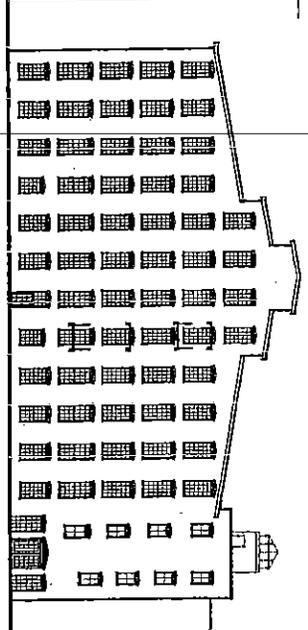
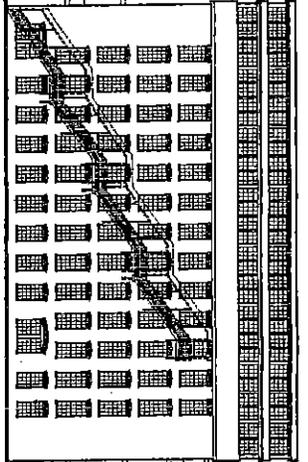
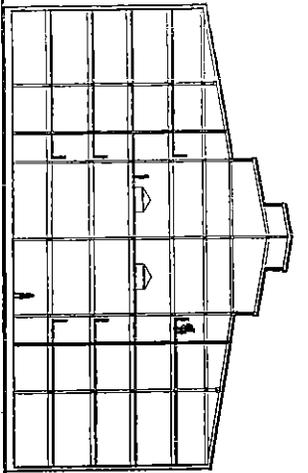
**JOHN SARACC**  
Architect LLC  
213 Main Street  
Roseland, NJ 07068  
973 288-4422  
973 288-7852 fax  
js@johnsaracc.com

**WHITLOC  
MILLS**

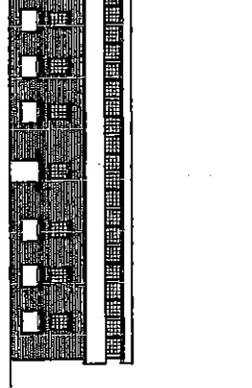
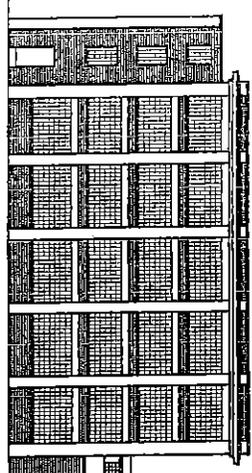
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Jersey City, NJ  
Brook 2057 Lot 18

Context Plan

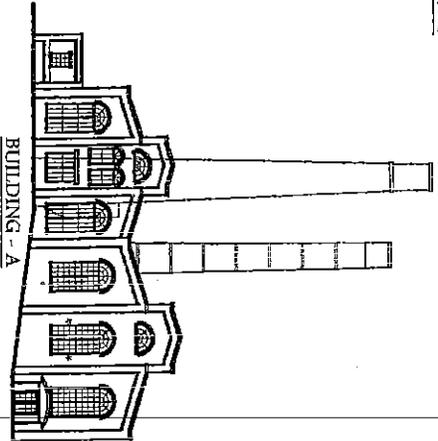
John Saracc  
Architect LLC  
150 Lafayette Street  
Jersey City, NJ  
PB-



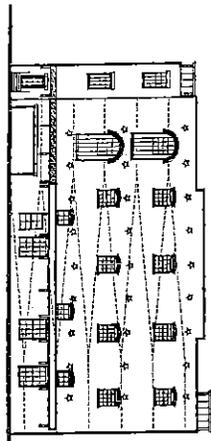
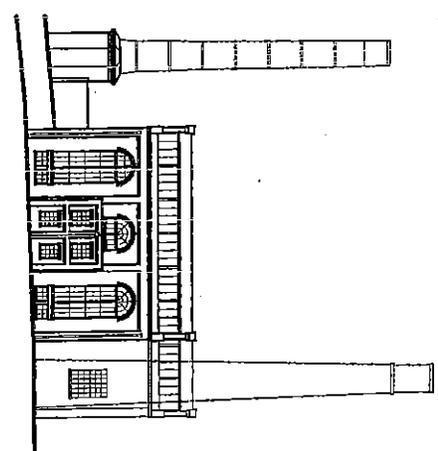
BUILDING - F



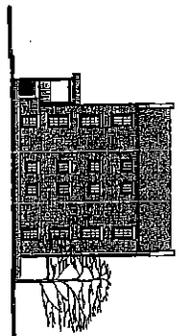
A & S MILLS



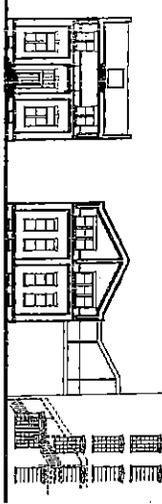
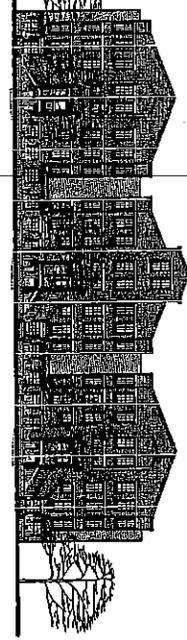
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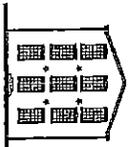
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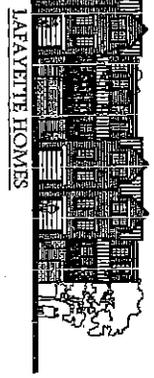
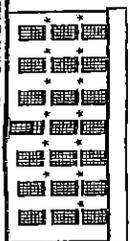
BUILDING - I



BUILDING - G



BUILDING - H



LAFAYETTE HOMES

**JOHN SARAC**  
 Architect L.L.C.  
 915 Main Street  
 P.O. Box 242  
 Jersey City, NJ 07309  
 201.252.7282 Fax  
 www.johnsarac.com

**WHITLOC**  
**MILLS**

1601 Lafayette Street  
 Jersey City, NJ  
 Block 2037 Lot 18

Planning Board	NOV 18 2010
Division Compt	
DATE	NOV 18 2010
TIME	10:00 AM
PROJECT	PJ



**EXHIBIT G**

**WHITLOCK MILLS, L.P.**

**PROPOSED FINANCIAL AGREEMENT**

(SEE ATTACHED)

Rev. 7-24-03  
HMFA  
N.J.S.A. 55:14K-1 et seq.

Re: WHITLOCK MILLS  
Block 2057, Lot 18  
Morris Canal Redevelopment Plan Area

**PREAMBLE**

**THIS FINANCIAL AGREEMENT**, [Agreement] made this \_\_\_ day of \_\_\_\_\_, 2003, by and between Whitlock Mills, L.P., **Limited Liability Company** is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency N.J.S.A. 55:14K-1 et seq., having its principal office c/o Housing Trust of America, Jersey Oak Hall Lane, Suite 7600, Columbia, M.D. 21045 ~~City, New Jersey 07306~~, and the **CITY OF JERSEY CITY**, a Municipal Corporation in the County of Hudson and the State of New Jersey, [City], having its principal office at 280 Grove Street, Jersey City, New Jersey 07302.

**RECITALS**

**WITNESSETH:**

**WHEREAS**, the Entity is the Owner under a dated Deeds \_\_\_\_\_ and \_\_\_\_\_ of certain property designated as Block 2057, Lots 18 ~~Block \_\_\_\_\_, Lots \_\_\_\_\_~~, more commonly known by the street address of 160 Lafayette Street, Jersey City, NJ, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

**WHEREAS**, this property is located within the boundaries of the Morris Canal ~~Journal Square~~ Redevelopment Plan Area; and

**WHEREAS**, the Entity plans to construct certain improvements on the Property to create a total of 330 units of rental housing, [ 130 units of rental market rate housing, and 198 units of moderate income rental housing units] ~~sq. ft. of retail space~~ and a <sup>240</sup> ~~^~~ car parking garage [Project]; and

**WHEREAS**, on \_\_\_\_\_ 2003, the Entity's Application for a tax exemption for the Project was approved by the City by the adoption of Ordinance \_\_\_\_\_; and

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

**ARTICLE I - GENERAL PROVISIONS**

**Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., Executive Order of E.O. 02-003, and Ordinance \_\_\_\_\_, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

**Section 1.2 General Definitions**

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms shall have the following meanings:

i. Agency- The New Jersey Housing and Mortgage Finance Agency.

ii. Annual Gross Revenue- The total gross income, including any and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, or other services, including any Section 8 certificate revenue derived from the Project, including all rent and other income, ~~with an allowable vacancy rate of up to 7%.~~ It also includes the cost of insurance, gas, electricity, water and sewer charges, other utilities, garbage removal and insurance charges even if paid for directly by the Tenant, if such expense is ordinarily paid for by the Landlord.

iii. Annual Service Charge- Estimated Service Charge: ~~\$6,589,248~~ over the 30 year term of the tax exemption, calculated as follows:

~~(1) Years 1 through 10, a total of \$ \_\_\_\_\_~~  
~~each year, based upon:~~ A) 4 % of annual gross revenue of the residential units: \$ 173,775.00  
or approximately \$526.59 per unit; ~~B) \_\_\_\_\_ % of annual gross revenue of the retail space.~~

B)

~~\$\_\_\_\_\_ or \$\_\_\_\_\_ per sq. ft.; and C) \_\_\_\_\_% of annual gross revenue of the parking garage: \$\_\_\_\_\_ or \$\_\_\_\_\_ per parking space;~~

(2) Years 11-20, a total of \$\_\_\_\_\_ each year, based upon: A) \_\_\_\_\_% of annual gross revenue of the residential units: \$\_\_\_\_\_ or approximately \$\_\_\_\_\_ per unit; B) \_\_\_\_\_% ~~of annual gross revenue of the retail space: \$\_\_\_\_\_ or \$\_\_\_\_\_ per sq. ft.; and C) \_\_\_\_\_% of annual gross revenue of the parking garage: \$\_\_\_\_\_ or \$\_\_\_\_\_ per parking space;~~

(3) Years 21-30, a total of \$\_\_\_\_\_ each year, based upon: A) \_\_\_\_\_% of annual gross revenue of the residential units: \$\_\_\_\_\_ or approximately \$\_\_\_\_\_ per unit; B) \_\_\_\_\_% ~~of annual gross revenue of the retail space: \$\_\_\_\_\_ or \$\_\_\_\_\_ per sq. ft.; and C) \_\_\_\_\_% of annual gross revenue of the parking garage: \$\_\_\_\_\_ or \$\_\_\_\_\_ per parking space;~~ in accordance with the financial plan attached hereto as Exhibit 2, which sum is in lieu of any taxes on the Improvements.

iv. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context), ~~which shall also include a certification of Total Project Cost and clear computation of Net Profit.~~ The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholder's equity, statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items reasonably required by the City or its auditors. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

v. Certificate of Occupancy - Document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

vi. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

pursuant to the laws of the State of Maryland

to do business in the State of New Jersey

vii. Entity - The term Entity within this Agreement shall mean LLC, which Entity is formed and <sup>is</sup> qualified pursuant to Law. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under <sup>the</sup> Law and the transfer has been duly approved by the City.

viii. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

ix. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

x. Land Taxes - The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements. Land Taxes are not exempt; however, Land Taxes are applied as a credit against the Annual Service Charge.

xi. Land Tax Payments - If the law requires, payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes as determined by the Tax Assessor and the Tax Collector.

xii. Law - Law shall refer to the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; Executive Order 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance \_\_\_\_\_ which authorized the execution of this Agreement and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

xiii. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes that would have been levied against all real property in the area covered by the Project in the last full tax year preceding the recording of the HMFA mortgage which amount the parties agree is approximately \$ <sup>90,968.50</sup> \_\_\_\_\_. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to the Financial Agreement would be less than the Minimum Annual Service Charge.

xiv. Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

xv. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

xvi. Termination - Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.  
~~SEE INSERT ATTACHED.~~

## ARTICLE II - APPROVAL

### **Section 2.1 Approval of Tax Exemption**

The City hereby grants its approval for a tax exemption <sup>from real estate taxes</sup> for all the Improvements to be constructed and maintained in accordance with the terms and conditions of this Agreement and the provisions of the Law which Improvements shall be constructed on certain property known on the Official Tax Assessor's Map of the City as: Block 2057, Lots 18 and     , more commonly known by the street address of <sup>160 Lafayette</sup>  <sup>Street</sup>, Jersey City, NJ, and described by metes and bounds in Exhibit 1 attached hereto.

### **Section 2.2 Approval of Entity**

Approval is granted to the Entity whose Certificate of <sup>Limited Partnership</sup> ~~Formation~~ is attached hereto as Exhibit 4. Entity represents that its Certificate ~~contains all the requisite provisions of Law; has been reviewed and approved by the Commissioner of the Department of Community Affairs; and has been filed with, as appropriate, the Secretary of State or Office of the Hudson County Clerk.~~ <sup>New Jersey</sup> ~~Secretary of State or Office of the Hudson County Clerk.~~

### **Section 2.2 Improvements to be Constructed**

Entity represents that it will construct certain improvements on the Property to create a total of 330 units of rental housing, [132 units of rental market rate housing, and 198 units of moderate income rental housing units]  ~~sq. ft. of retail space~~ and 250 car parking garage, all of which is more specifically described in the Application attached hereto as Exhibit 3.

### **Section 2.3 Construction Schedule**

**INSERT  
TO PAGE 5**

xvii. Total Project Costs - The sum of all costs incurred in the acquisition, development, construction, improvement or rehabilitation of the Project, as approved by the Agency, which costs shall include, but are not necessarily limited to (1) cost of land acquisition and any buildings thereon, (2) cost of site preparation, demolition and development, (3) architect, engineer, legal, agency and other fees paid or payable in connection with the planning, execution and financing of the Project, (4) interest, financing, tax and assessment costs and other operating and carrying costs during construction, (6) cost of construction, reconstruction, fixtures, and equipment related to the real property, (7) cost of land improvements, (8) necessary expenses in connection with initial occupancy of the Project, (9) a reasonable profit or fee to the Entity, (10) an allowance established by the Agency for working capital and contingency reserves, and reserves for any operating deficits, (11) costs of guarantees, insurance or other additional financial security for the Project and (12) the cost of such other items, including tenant relocation, less any and all net rents and other net revenues received from the operation of the real and personal property on the Project site during construction.

The Entity agrees to diligently undertake to commence construction) and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as Exhibit 5. .

use its best efforts to

**Section 2.4 Ownership, Management and Control**

The Entity represents that it is the owner of the property upon which the Project is to be constructed. Upon construction, the Entity represents that the Improvements will be managed and controlled as follows:

- ~~1. The Entity shall manage the improvements with regard to the residential dwelling units and retail space.~~
2. The parking facility will be operated by a third party Lessee pursuant to and in accordance with the terms of a certain lease between the Entity and third-party Lessee.

**Section 2.5 Financial Plan**

The Entity represents that the Improvements shall be financed) in accordance with the Financial Plan attached hereto as Exhibit 6. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-in capital, and the terms of any mortgage amortization.

substantially

**Section 2.6 Statement of Rental Schedules and Lease Terms**

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit 7, attached hereto.

**ARTICLE III - DURATION OF AGREEMENT**

**Section 3.1 Term**

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of: thirty five (35) years from the date of the adoption of Ordinance \_\_\_ which approved this exemption or thirty (30) years from the date of the recording of the HMFA mortgage as funded and approved by the Agency. The tax exemption shall only be effective only while the Project is owned by an entity formed and operating as a housing sponsor under the Law

and subject to an HMFA mortgage. Thereafter, the tax exemption shall expire and the land and improvements thereon shall be assessed and taxed according to the general law applicable to other non-exempt property in the City.

#### ARTICLE IV - ANNUAL SERVICE CHARGE

##### **Section 4.1 Annual Service Charge**

In consideration of the tax exemption, the Entity shall make payment to the City of an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this ~~Section Agreement.~~

A Minimum Annual Service Charge shall be due beginning on the date this Agreement is executed. The Annual Service Charge or Minimum Annual Service Charge, as the case may be, shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

3 INSERT ATTACHED

##### **Section 4.2 Administrative Fee**

The Entity shall also pay an annual administrative fee to the City in addition to the Minimum or Annual Service Charge. This administrative fee shall equal two (2%) percent of the Annual Service Charge and shall be payable and due on or before December 31st of each year and collected in the same manner as the Annual Service Charge.

##### **Section 4.3 Land Tax Credit**

If the Law requires the Entity to pay Land Taxes in addition to the service charges, then the Entity will be entitled to a land tax credit against the service charges. <sup>In</sup> order to be entitled to the credit, however, the Entity is obligated to make timely Land Tax Payments, in order to be entitled to a Land Tax credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the

**INSERT  
TO PAGE 7**

The amount of the quarterly payment of the Annual Service Charge shall be estimated based on the actual amount of Annual Gross Revenue generated by the Project in the previous tax year, as determined by the auditor's reports of income and expenses. The amount of such payment shall be subject to adjustment based on the City's review of the auditor's reports of income and expenses submitted to the City pursuant to Paragraph \_\_\_\_\_ and a determination of the correct amount due (the "Audited Amount"). Within ninety (90) days after the Audited Amount is determined and notice thereof is given to the Entity, the Entity shall pay any underpayment or the City shall refund any overpayment of the Annual Service Charge, as the case may be.

Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

**Section 4.4 Quarterly Installments**

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

**Section 4.5 Material Conditions**

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative Fees, and any interest thereon, are Material Conditions of this Agreement.

**ARTICLE V - PROJECT EMPLOYMENT & CONTRACTING AGREEMENT**

**Section 5.1 Project Employment Agreement**

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment & Contracting Agreement, attached hereto as Exhibit 8.

**ARTICLE VI - CERTIFICATE OF OCCUPANCY**

**Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner. The failure to secure the Certificates of Occupancy shall subject the property to full taxation.

**Section 6.2 Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not mitigate against any action or non-action, taken by the City, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

### **Section 6.3 Construction Permits**

The estimated cost basis disclosed by the Entity's application and proposed Financial Agreement may, at the option of the City, be used as the basis for the construction cost in the issuance of any construction permit(s) for the Project.

## **ARTICLE VII - ANNUAL REPORTS**

### **Section 7.1 Accounting System**

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

### **Section 7.2 Periodic Reports**

A. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that this Agreement shall continue in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the NJHMFA ~~Division of Local Government Services in the Department of Community Affairs,~~ its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: Rental schedule of the ~~urban renewal~~ Project, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Total Project Cost Audit: Within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be

advised, an audit of Total Project Cost, certified as to actual construction costs by an independent and qualified architect, utilizing the form attached hereto as Exhibit 9, and as to all other costs, certified its conformance with generally accepted accounting principles, by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

C. Disclosure Statement: On the anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the City may request from time to time.

### **Section 7.3 Mortgage**

Within ninety (90) days after the date the Entity closes on its loan with the Agency, the Entity shall file with the City a fully executed copy of the Note and a recorded copy of the HMFA Mortgage.

### **Section 7.4 Inspection**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the <sup>HMFA</sup>~~NJ Division of Local Government Services in the Department of Community Affairs~~. It shall also permit, upon request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

## **ARTICLE VIII- LIMITATION OF PROFITS AND RESERVES**

### **Section 8.1 Limitation of Profits and Reserves**

During the period of tax exemption as provided herein, the Entity's return on investment shall be limited in accordance with the regulations and conditions imposed by the Agency pursuant to N.J.S.A. 55:14K-7(6) or any other Law applicable.

## **ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION**

**Section 9.1 Prior Approval of Sale**

Any change made in the ownership of the Project and sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity is ~~formed and eligible to operate~~ <sup>a housing sponsor</sup> under the Law; 2) the Entity is not then in default of this Agreement or the Law; and 3) the Entity's obligations under this Agreement is fully assumed by the new Entity. **SEE INSERT ATTACHED**

**Section 9.2 Transfer or Lease to Tax Exempt Organization or Public Body.**

In the event that the Entity transfers, sells, demises, conveys, or in any manner relinquishes ownership or title, including a lease to the land or improvements, covered by this tax exemption agreement, to a tax exempt non-profit organization or institution, including any public body, during the term of the tax exemption agreement, that would adversely impact the City's anticipated economic interests by reducing in any way taxes or the service charge due the City under this agreement or by law, it is understood and agreed by the Entity that it first obtain the consent of the City to the transfer or lease. It is further understood that it may be grounds for the City to withhold its approval if the City's economic interests are adversely effected thereby.

**Section 9.3 Severability.**

It is an express condition of the granting of this tax exemption that during its duration, the Entity shall not, without the prior consent of the Municipal Council by Ordinance, convey, mortgage or transfer, all or part of the Project so as to sever, disconnect, or divide the improvements from the lands which are basic to, embraced in, or underlying the exempted improvements.

**ARTICLE X - COMPLIANCE**

**Section 10.1 Operation**

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of Project under this Agreement shall not only be terminable as provided by N.J.S.A. 55:14K-1, et seq., as currently

**INSERT  
TO PAGE 11**

The City recognizes and acknowledges that the Entity may be awarded an allocation of tax credits. In this event, the Entity intends to syndicate the tax credits by admitting an equity investor as a limited partner. The City agrees and consents to such admission of a limited partners.

amended and supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

## ARTICLE XI - DEFAULT

### **Section 11.1 Default**

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

### **Section 11.2 Cure Upon Default**

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default failure to pay any charges defined as Material Conditions in Section 4.5, shall not be subject to the default procedural remedies as provided in Section 5.1 herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein.

### **Section 11.3 Remedies Upon Default**

The City shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, Additional Consideration or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI Land Taxes or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI herein but

shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein. All of the remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No determination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge, Annual Service Charge, Administrative Fees or Additional Consideration. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no determination. Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, Administrative Fees or Additional Consideration, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land. ~~Notwithstanding the foregoing, the Entity does not waive any defense it may have to contest the right of the City to proceed by in rem foreclosure.~~

## ARTICLE XII- TERMINATION

### **Section 12.1 Termination Upon Default of the Entity**

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

### **Section 12.2 Voluntary Termination by the Entity**

The Entity may after the expiration of one year from the Substantial Completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes

its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

**Section 12.3 Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting to the City. For purposes of rendering a final accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

**Section 12.4 Conventional Taxes**

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

**ARTICLE XIII - DISPUTE RESOLUTION**

**Section 13.1 Arbitration**

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article III, Section 4.8 as Material Conditions.

**ARTICLE XIV - WAIVER**

**Section 14.1 Waiver**

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver

or relinquishment by the City of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provision of this Agreement.

#### ARTICLE XV - INDEMNIFICATION

##### **Section 15.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action (other than an action commenced by the Entity) alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of the Law, the Entity shall indemnify and hold the City harmless, and the Entity agrees to defend the suit at its own expense. However, the City maintains the right to intervene as a party thereto, to which intervention the Entity consents; the expense thereof to be borne by the Entity.

#### ARTICLE XVI- NOTICE

##### **Section 16.1 Certified Mail**

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

##### **Section 16.2 Sent by City**

When sent by the City to the Entity the notice shall be addressed to:

Whitlock, L.P., c/o Housing Trust of America  
6851 Oak Hall Lane, Suite 7600  
Columbia, MD 21045

Attn.: ~~Meg A. Manley, Sr. Vice President of Development~~  
and

New Jersey Housing and Mortgage Finance Agency  
637 South Clinton Avenue  
P.O. Box 18550  
Trenton, NJ 08650-2085

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

In addition, provided the City is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the City agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

Notwithstanding anything herein to the contrary, the Entity's liability under this Agreement shall be limited to its interest in the Project.

**Section 16.3 Sent by Entity**

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk  
City Hall  
280 Grove Street  
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Urban Renewal Entity and the Property's Block and Lot number).

**ARTICLE XVII-SEVERABILITY**

**Section 17.1 Severability**

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties. However, the City shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the City.

**ARTICLE XVIII - MISCELLANEOUS**

**Section 18.1 Construction**

This Agreement shall be construed and enforced in accordance with the laws of the

State of New Jersey, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

**Section 18.2 Conflicts**

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

**Section 18.3 Oral Representations**

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

**Section 18.4 Entire Document**

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof.

**Section 18.5 Good Faith**

In their dealings with each other, utmost good faith is required from the Entity and the City.

**ARTICLE XIX - EXHIBITS**

**Section 19 Exhibits**

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds description of the Project;
2. Ordinance of the City authorizing the execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of the Entity;

5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;
7. Initial Rental Schedules and Lease Terms;
8. Project Employment & Contracting Agreement;
9. Architect's Certification of Actual Construction Costs;
10. Written approval of HMFA mortgage loan, including the amount and term thereof.

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

ATTEST: **WHITLOCK MILLS, L.P.**  
BY: HIA Whitlock, LLC, its general partner

By:

\_\_\_\_\_  
SECRETARY

\_\_\_\_\_  
Wallace L. Scruggs, Managing Member  
~~MEMBER MANAGER~~

ATTEST:

CITY OF JERSEY CITY

\_\_\_\_\_  
ROBERT BYRNE  
CITY CLERK

\_\_\_\_\_  
CARLTON McGEE  
BUSINESS ADMINISTRATOR

**EXHIBIT H**  
**WHITLOCK MILLS, L.P.**  
**Disclosure Statement**

NAME OF ENTITY: Whitlock Mills, L.P.

PRINCIPAL OFFICE: c/o Housing Trust of America, L.L.C.  
6851 Oak Hall Lane, Suite 100  
Columbia, MD 21045

NAME OF REGISTERED AGENT: Stephen A. Goldberg, Esq.

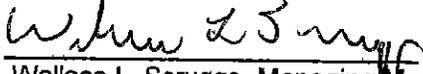
ADDRESS: 218 North Charles Street, Suite 400  
Baltimore, MD 21201

I CERTIFY THAT THE FOLLOWING LIST REPRESENTS THE NAMES OF ALL MEMBERS OWNING A 10% OR GREATER INTEREST IN THE ABOVE ENTITY (IF ONE OR MORE OF THE ABOVE NAMED IS ITSELF AN ENTITY, THE NAMES OF ANY ENTITY OWING A 10% OR GREATER INTEREST THEREIN) IS SET FORTH ON THE RIDER ATTACHED.

NAME	ADDRESS	PERCENT OWNED
HTA Whitlock, L.L.C. (See Rider attached hereto for Membership)	6851 Oak Hall Lane Suite 100 Columbia, MD 21045	.1% Ownership General Partner
Wachovia Securities	c/o Housing Trust of America, L.L.C. 6851 Oak Hall Lane, Suite 100 Columbia, MD 21045	99.9% Ownership Limited Partner

WHITLOCK MILLS, L.P.

By: HTA Whitlock, LLC, its general partner

By:   
Wallace L. Scruggs, Managing Member

## RIDER TO DISCLOSURE STATEMENT

Members of HTA Whitlock, L.L.C. are:

- 1) Wallace L. Scruggs  
50% Managing Member
- 2) JAG Ventures, Ltd.  
50%

Partners of JAG Ventures, Ltd. are:

- 1) Stewart Marcus  
Limited Partner 40.5%
- 2) Jane Marcus  
Limited Partner 49.5%
- 3) Gift Trust for Benefit of Marcus Family Members  
Limited Partner 9.0%
- 4) Jag Investors, Inc.  
General Partner 1.0%

Shareholders of Jag Investors, Inc. are:

- 1) Stewart Marcus 49.5%
- 2) Jane Marcus 49.5%
- 3) Wallace Scruggs 1.0%

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State of Maryland

**Department of  
Assessments and Taxation**

Charter Division

FAX NO.



P. 02/02

Robert L. Ehrlich, Jr.  
*Governor*

Ronald W. Winholt  
*Director*

Paul B. Anderson  
*Administrator*

GALLAGHER, EVELIUS & JONES  
STE 400  
218 N CHARLES ST  
BALTIMORE

MD 21201-4021

Date: 08-26-2003

This letter is to confirm acceptance of the following filing:

ENTITY NAME : WHITLOCK MILLS L.P.  
DEPARTMENT ID : MO7546997  
TYPE OF REQUEST : CERTIFICATE OF LIMITED PARTNERSHIP  
DATE FILED : 08-22-2003  
TIME FILED : 02:50-PM  
RECORDING FEE : \$100.00  
EXPEDITED FEE : \$50.00  
FILING NUMBER : 1000361988766477  
CUSTOMER ID : 0001191231  
WORK ORDER NUMBER : 0000780157

PLEASE VERIFY THE INFORMATION CONTAINED IN THIS LETTER. NOTIFY THIS DEPARTMENT IN WRITING IF ANY INFORMATION IS INCORRECT. INCLUDE THE CUSTOMER ID AND THE WORK ORDER NUMBER ON ANY INQUIRIES. EVERY YEAR THIS ENTITY MUST FILE A PERSONAL PROPERTY RETURN IN ORDER TO MAINTAIN ITS EXISTENCE EVEN IF IT DOES NOT OWN PERSONAL PROPERTY. A BLANK RETURN WILL BE MAILED BY FEBRUARY OF THE YEAR FOR WHICH THE RETURN IS DUE.

301 West Preston Street, Baltimore, Maryland 21201  
Telephone (410) 767-1350  
MRS (Maryland Relay Service) (800) 735-2258 TT/Voice  
Fax (410) 333-7097

0002498135

ehhcc

CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
WHITLOCK MILLS L.P.

WHITLOCK MILLS L.P., a Maryland limited partnership having its principal office in Howard County, Maryland (the "Partnership") certifies:

1. Name. The name of the Partnership is "Whitlock Mills L.P."
2. Principal Office and Resident Agent. The address of the principal office of the Partnership is 6851 Oak Hall Lane, Suite 100, Columbia, Maryland 21045. The name and address of the resident agent of the Partnership is Stephen A. Goldberg, Esquire, Gallagher Evelius & Jones LLP, 218 North Charles Street, Suite 400, Baltimore, Maryland 21201.
3. General Partner. The name and the business address of the General Partner of the Partnership are as follows:

HTA Whitlock, LLC  
6851 Oak Hall Lane, Suite 100  
Columbia, Maryland 21045

4. Partnership Affairs. The affairs of the Partnership shall be governed by the Limited Partnership Agreement, which may be amended from time to time as provided therein.

---

5. Dissolution. The latest date upon which the Partnership is to dissolve is December 31, 2055.

[SIGNATURE PAGE FOLLOWS]

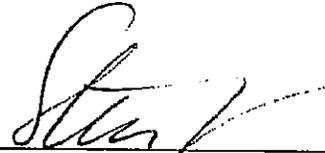
IN WITNESS WHEREOF, the General Partner of the Partnership has executed this Certificate of Limited Partnership on this 22 day of August, 2003.

**GENERAL PARTNER:**

HTA WHITLOCK, LLC

By: [Signature] (SEAL)  
Name: Walter L. Sawyer  
Title: Managing Member  
HTA Whitlock, LLC

I hereby consent to act as resident agent in Maryland for Whitlock Mills L.P.

  
\_\_\_\_\_  
Stephen A. Goldberg

Rev. 9-15-03

HMFA: N.J.S.A. 55:14K-1 et seq.

Moderate Income/Market Rate Rental Housing

Re: 160 Lafayette Street  
Block 2057, Lot 18  
Morris Canal Redevelopment Plan

### **PREAMBLE**

**THIS FINANCIAL AGREEMENT**, [Agreement] made this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by and between **WHITLOCK MILLS, L.P.**, is a qualified housing sponsor under the New Jersey Mortgage Housing Finance Agency N.J.S.A. 55:14K-1 et seq. having its principal office at c/o Housing Trust of America, 6851 Oak Hall Lane, Suite 100, Columbia, MD 21045, and the **CITY OF JERSEY CITY**, a Municipal Corporation in the County of Hudson and the State of New Jersey, [City], having its principal office at 280 Grove Street, Jersey City, New Jersey 07302.

### **RECITALS**

#### **WITNESSETH:**

**WHEREAS**, the Entity is the Owner of certain property designated as Block 2057, Lot 18, more commonly known by the street address of 160 Lafayette Street, Jersey City, NJ, and more particularly described by the metes and bounds description set forth as Exhibit 1 to this Agreement; and

**WHEREAS**, this property is located within the boundaries of the Morris Canal Redevelopment Plan Area; and

**WHEREAS**, the Entity plans to construct certain improvements on the property to create a total of 330 units of rental housing, 132 units of rental market rate housing and 198 units of moderate income rental housing units with a parking garage for approximately 165 cars and a surface parking lot for approximately 115 cars, [Project]; and

**WHEREAS**, on October 8, 2003, the Entity's Application for a HMFA tax exemption for the Project was approved by the City by the adoption of Ordinance 03-139; and

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained,

and for other good and valuable consideration, it is mutually covenanted and agreed as follows:

## ARTICLE I - GENERAL PROVISIONS

### **Section 1.1 Governing Law**

This Agreement shall be governed by the provisions of the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq., Executive Order of the Mayor, 02-003, Ordinance 02-075 and Ordinance 03-139, which authorized the execution of this Agreement. It being expressly understood and agreed that the City expressly relies upon the facts, data, and representations contained in the Application, attached hereto as Exhibit 3, in granting this tax exemption.

### **Section 1.2 General Definitions**

Unless specifically provided otherwise or the context otherwise requires, when used in this Agreement, the following terms shall have the following meanings:

- i. Agency- The New Jersey Housing and Mortgage Finance Agency.
- ii. Annual Gross Revenue- The total gross income, including any

and all revenue derived from or generated by the Project of whatever kind or amount, whether received as rent from any tenants or income or fees from third parties, including but not limited to fees or income paid or received for parking, laundry, or other services, including any Section 8 certificate revenue derived from the Project, including all rent and other income. It also includes the cost of insurance, gas, electricity, water and sewer charges, other utilities, garbage removal and insurance charges even if paid for directly by the Tenant, if such expense is ordinarily paid for by the Landlord.

- iii. Annual Service Charge - Estimated as follows:

- A. 4% of Annual Gross Revenue \$173,775 or approximately \$526 per unit for the first 10 years;
- B. 5% of Annual Gross Revenue for the second 10 years;
- C. 6% of Annual Gross Revenue for the final 10 years,

in accordance with the financial plan attached hereto as Exhibit 2, which sum is in lieu of any taxes.

iv. Auditor's Report - A complete financial statement outlining the financial status of the Project (for a period of time as indicated by context). The contents of the Auditor's Report shall have been prepared in conformity with generally accepted accounting principles and shall contain at a minimum the following: a balance sheet, a statement of income, a statement of retained earnings or changes in stockholder's equity, statement of cash flows, descriptions of accounting policies, notes to financial statements and appropriate schedules and explanatory material results of operations, cash flows and any other items reasonably required by the City or its auditors. The Auditor's Report shall be certified as to its conformance with such principles by a certified public accountant who is licensed to practice that profession in the State of New Jersey.

v. Certificate of Occupancy - Document, whether temporary or permanent, issued by the City authorizing occupancy of a building, in whole or in part, pursuant to N.J.S.A. 52:27D-133.

vi. Default - Shall be a breach of or the failure of the Entity to perform any obligation imposed upon the Entity by the terms of this Agreement, or under the Law, beyond any applicable grace or cure periods.

vii. Entity - The term Entity within this Agreement shall mean Whitlock Mills, L.P., which Entity is formed pursuant to the laws of the State of Maryland and is qualified to do business in the State of New Jersey. It shall also include any subsequent purchasers or successors in interest of the Project, provided they are formed and operate under by Law and the transfer has been duly approved by the City.

viii. Improvements or Project - Any building, structure or fixture permanently affixed to the land and to be constructed and tax exempted under this Agreement.

ix. In Rem Tax Foreclosure or Tax Foreclosure - A summary proceeding by which the City may enforce a lien for taxes due and owing by tax sale, under N.J.S.A. 54:5-1 to 54:5-129 et seq.

x. Land Taxes - The amount of taxes assessed on the value of land, on which the project is located and, if applicable, taxes on any pre-existing improvements. Land

Taxes are not exempt; however, Land Taxes appear to be exempt; however, if Land Taxes are determined to be due they will be applied as a credit against the Annual Service Charge.

xi. Land Tax Payments - Payments made on the quarterly due dates, including approved grace periods if any, for Land Taxes, if any, as determined by the Tax Assessor and the Tax Collector.

xii. Law - Law shall refer to the New Jersey Housing and Mortgage Finance Agency Law, N.J.S.A. 55:14K-1 et seq.; Executive Order of the Mayor 02-003, relating to long term tax exemption, as it may be amended and supplemented; Ordinance 03-139, which authorized the execution of this Agreement and all other relevant Federal, State or City statutes, ordinances, resolutions, rules and/or regulations.

xiii. Minimum Annual Service Charge - The Minimum Annual Service Charge shall be the amount of the total taxes levied against all real property in the area covered by the Project in the last full tax year preceding the recording of the HMFA mortgage which amount the parties agree is \$90,968.50. The Minimum Annual Service Charge shall be paid in each year in which the Annual Service Charge, calculated pursuant to the Financial Agreement would be less than the Minimum Annual Service Charge.

ix. Pronouns - He or it shall mean the masculine, feminine or neuter gender, the singular, as well as the plural, as context requires.

x. Substantial Completion - The determination by the City that the Project, in whole or in part, is ready for the use intended, which ordinarily shall mean the date on which the Project receives, or is eligible to receive any Certificate of Occupancy for any portion of the Project.

xi. Termination - Any act or omission which by operation of the terms of this Financial Agreement shall cause the Entity to relinquish its tax exemption.

## **ARTICLE II - APPROVAL**

### **Section 2.1 Approval of Tax Exemption**

The City hereby grants its approval for a tax exemption from real estate taxes in accordance with the terms and conditions of this Agreement and the provisions of the Law on certain property known on the Official Tax Assessor's Map of the City as: Block 2057,

Lots 18, more commonly known by the street address of 160 Lafayette Street, Jersey City, New Jersey, and described by metes and bounds in Exhibit 1 attached hereto.

**Section 2.2 Approval of Entity**

Approval is granted to the Entity whose Certificate of Limited Partnership is attached hereto as Exhibit 4. Entity represents that its Certificate has been filed with, as appropriate, the State Treasurer.

**Section 2.3 Improvements to be Constructed**

Entity represents that it will construct certain improvements on the Property to create a total of approximately 330 units of rental housing, (132 units of rental market rate housing, and 198 units of moderate income rental housing units) with a parking garage for approximately 165 cars and a surface parking lot for approximately 115 cars, all of which is more specifically described in the Application attached hereto as Exhibit 3.

**Section 2.4 Construction Schedule**

The Entity agrees to diligently undertake to commence construction, use its best efforts to, and complete the Project in accordance with the Estimated Construction Schedule, attached hereto as Exhibit 5.

**Section 2.5 Ownership, Management and Control**

The Entity represents that it is the owner of the Project to be constructed and that it will manage and control the Project. The City acknowledges that the Entity may enter into a management agreement for the Project and will pay a management fee in accordance with HUD or HMFA regulations, which fee was disclosed in its tax exemption application. The City acknowledges that the Entity may enter into future management agreements so long as such agreements are not used to reduce the City's economic benefits under this Agreement and the management fees to be paid are comparable to those disclosed in the Application.

**Section 2.6 Financial Plan**

The Entity represents that the Improvements shall be financed substantially in accordance with the Financial Plan attached hereto as Exhibit 6. The Plan sets forth estimated Total Project Cost, the amortization rate on the Total Project Cost, the source of funds, the interest rates to be paid on construction financing, the source and amount of paid-

in capital, and the terms of any mortgage amortization.

**Section 2.6 Statement of Rental Schedules and Lease Terms**

The Entity represents that its good faith projections of the initial rental schedules and lease terms are set forth in Exhibit 7, attached hereto.

**ARTICLE III - DURATION OF AGREEMENT**

**Section 3.1 Term**

So long as there is compliance with the Law and this Agreement, it is understood and agreed by the parties hereto that this Agreement shall remain in effect for the earlier of: 40 years from the date of the adoption of Ordinance 03-139, which approved this exemption or 35 years from the date of Substantial Completion of the Project but in no event beyond the date that the HMFA mortgage is paid in full. The tax exemption shall only be effective during the period of usefulness of the Project and shall continue in force only while the Project is owned by a corporation or association formed and operating under the Law.

**ARTICLE IV - ANNUAL SERVICE CHARGE**

**Section 4.1 Annual Service Charge**

In consideration of the tax exemption, the Entity shall make payment to the City of an amount equal to the greater of: the Minimum Annual Service Charge or an Annual Service Charge. The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue as set forth in its Financial Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Section.

A Minimum Annual Service Charge shall be due beginning on the date this Agreement is executed. The Annual Service Charge or Minimum Annual Service Charge, as the case may be, shall be due on the first day of the month following the Substantial Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on land until paid.

The amount of the quarterly payment of the Annual Service Charge shall be estimated based on the actual amount of Annual Gross Revenue generated by the project in the

previous tax year, as determined by the auditor's reports of income and expenses. The amount of such payment shall be subject to adjustment based on the City's review of the auditor's reports of income and expenses submitted to the City and a determination of the correct amount due (the Audited Amount). Within ninety (90) days after the Audited Amount is determined and notice thereof is given to the Entity, the Entity shall pay any underpayment or the City shall refund any overpayment of the Annual Service Charge, as the case may be.

**Section 4.2 Administrative Fee**

The Entity shall also pay an annual administrative fee to the City in addition to the Minimum or Annual Service Charge. This administrative fee shall equal two (2%) percent of the Annual Service Charge and shall be payable and due on or before December 31st of each year and collected in the same manner as the Annual Service Charge.

**Section 4.3 Land Tax Credit**

If the Law requires the Entity to pay Land Taxes in addition to the service charges, then the Entity will be entitled to a land tax credit against the service charges. In order to be entitled to the credit, however, the Entity is obligated to make timely Land Tax payments, in order to be entitled to a Land Tax Credit against the Annual Service Charge for the subsequent year. The Entity shall be entitled to credit for the amount, without interest, of the Land Tax Payments made in the last four preceding quarterly installments against the Annual Service Charge. In any year that the Entity fails to make any Land Tax Payments when due and owing, such delinquency shall render the Entity ineligible for any Land Tax Payment credits against the Annual Service Charge for that year. No credit will be applied against the Annual Service Charge for partial payments of Land Taxes. In addition, the City shall have, among this remedy and other remedies, the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or declare a Default and terminate this Agreement.

**Section 4.4 Quarterly Installments**

The Entity expressly agrees that the Annual Service Charge shall be made in quarterly installments on those dates when real estate tax payments are due; subject, nevertheless, to

adjustment for over or underpayment within thirty (30) days after the close of each calendar year. In the event that the Entity fails to pay the Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid.

**Section 4.5 Material Conditions**

It is expressly agreed and understood that the timely payments of Land Taxes, Minimum Annual Service Charges, Annual Service Charges, including adjustments thereto, Administrative Fees, and any interest thereon, are Material Conditions of this Agreement.

**ARTICLE V - PROJECT EMPLOYMENT & CONTRACTING AGREEMENT**

**Section 5.1 Project Employment & Contracting Agreement**

In order to provide City residents and businesses with certain employment and other economic related opportunities, the Entity is subject to the terms and conditions of the Project Employment Agreement, attached hereto as Exhibit 8.

**ARTICLE VI - CERTIFICATE OF OCCUPANCY**

**Section 6.1 Certificate of Occupancy**

It is understood and agreed that it shall be the obligation of the Entity to obtain all Certificates of Occupancy in a timely manner. The failure to secure the Certificates of Occupancy shall subject the property to full taxation.

**Section 6.2 Filing of Certificate of Occupancy**

It shall be the primary responsibility of the Entity to forthwith file with both the Tax Assessor and the Tax Collector a copy of each Certificate of Occupancy.

Failure of the Entity to file such issued Certificate of Occupancy as required by the preceding paragraph, shall not militate against any action or non-action, taken by the City, including, if appropriate retroactive billing with interest for any charges determined to be due, in the absence of such filing by the Entity.

**Section 6.3 Construction Permits**

The estimated cost basis disclosed by the Entity's application and proposed Financial Agreement may, at the option of the City, be used as the basis for the construction cost in the issuance of any construction permit(s) for the Project.

## ARTICLE VII - ANNUAL REPORTS

### **Section 7.1 Accounting System**

The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with generally accepted accounting principles.

### **Section 7.2 Periodic Reports**

A. Auditor's Report: Within ninety (90) days after the close of each fiscal or calendar year, depending on the Entity's accounting basis that this Agreement shall continue in effect, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, and the HMFA, its Auditor's Report for the preceding fiscal or calendar year. The Auditor's Report shall include, but not be limited to: Rental schedule of the Project, and the terms and interest rate on any mortgage(s) associated with the purchase or construction of the Project and such details as may relate to the financial affairs of the Entity and to its operation and performance hereunder, pursuant to the Law and this Agreement. The Report shall clearly identify and calculate the Net Profit for the Entity during the previous year.

B. Disclosure Statement: On the anniversary date of the execution of this Agreement, if there has been a change in ownership or interest from the prior year's filing, the Entity shall submit to the Municipal Council, the Tax Collector and the City Clerk, who shall advise those municipal officials required to be advised, a Disclosure Statement listing the persons having an ownership interest in the Project, and the extent of the ownership interest of each and such additional information as the City may request from time to time.

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### **Section 7.3 Mortgage**

Within ninety (90) days after the date the Entity closes on its loan with the Agency, the Entity shall file with the City a fully executed copy of the Note and a recorded copy of the HMFA Mortgage.

### **Section 7.4 Inspection**

The Entity shall permit the inspection of its property, equipment, buildings and other facilities of the Project and, if deemed appropriate or necessary, any other related Entity by representatives duly authorized by the City and the HMFA. It shall also permit, upon

request, examination and audit of its books, contracts, records, documents and papers. Such examination or audit shall be made during the reasonable hours of the business day, in the presence of an officer or agent designated by the Entity.

### **ARTICLE VIII- LIMITATION OF PROFITS AND RESERVES**

#### **Section 8.1 Limitation of Profits and Reserves**

During the period of tax exemption as provided herein, the Entity's return on investment shall be limited in accordance with the regulations and conditions imposed by the Agency pursuant to N.J.S.A. 55:14k-7(6) or any other Law applicable.

### **ARTICLE IX - ASSIGNMENT AND/OR ASSUMPTION**

#### **Section 9.1 Prior Approval of Sale**

Any change made in the ownership of the Project and sale or transfer of the Project, shall be void unless approved in advance by Ordinance of the Municipal Council. It is understood and agreed that the City, on written application by the Entity, will not unreasonably withhold its consent to a sale of the Project and the transfer of this Agreement provided 1) the new Entity is a housing sponsor under the Law; 2) the Entity is not then in default of this Agreement or the Law; and (3) the Entity's obligations under this Agreement are fully assumed by the new Entity.

### **ARTICLE X - COMPLIANCE**

#### **Section 10.1 Operation**

During the term of this Agreement, the Project shall be maintained and operated in accordance with the provisions of the Law. Operation of Project under this Agreement shall not only be terminable as provided by N.J.S.A. 55:14K-1 et seq., as currently amended and supplemented, but also by a Default under this Agreement. The Entity's failure to comply with the Law shall constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

#### **Section 10.2 Disclosure of Lobbyist Representative**

During the term of this Agreement, the Entity must comply with Executive Order 2002-005, and Ordinance 02-075, requiring Written Disclosure of Lobbyist Representative Status. The Entity's failure to comply with the Executive Order or the Ordinance shall

constitute a Default under this Agreement and the City shall, among its other remedies, have the right to terminate the tax exemption.

## **ARTICLE XI - DEFAULT**

### **Section 11.1 Default**

Default shall be failure of the Entity to conform with the terms of this Agreement or failure of the Entity to perform any obligation imposed by the Law, beyond any applicable notice, cure or grace period.

### **Section 11.2 Cure Upon Default**

Should the Entity be in Default, the City shall send written notice to the Entity of the Default [Default Notice]. The Default Notice shall set forth with particularity the basis of the alleged Default. The Entity shall have sixty (60) days, from receipt of the Default Notice, to cure any Default which shall be the sole and exclusive remedy available to the Entity. However, if, in the reasonable opinion of the City, the Default cannot be cured within sixty (60) days using reasonable diligence, the City will extend the time to cure.

Subsequent to such sixty (60) days, or any approved extension, the City shall have the right to terminate this Agreement in accordance with Section 12.1.

Should the Entity be in default failure to pay any charges defined as Material Conditions in Section, shall not be subject to the default procedural remedies as provided in Section 5.1 herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein.

### **Section 11.3 Remedies Upon Default**

The City shall, among its other remedies, have the right to proceed against the property pursuant to the In Rem Tax Foreclosure Act, N.J.S.A. 54:5-1, et seq. and/or may declare a Default and terminate this Agreement. Any default arising out of the Entity's failure to pay Land Taxes, the Minimum Annual Service Charge, Administrative Fees, or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI Land Taxes or the Annual Service Charges shall not be subject to the default procedural remedies as provided in Article XI herein but shall allow the City to proceed immediately to terminate the Agreement as provided in Article XII herein. All of the

remedies provided in this Agreement to the City, and all rights and remedies granted to it by law and equity shall be cumulative and concurrent. No determination of any provision of this Agreement shall deprive the City of any of its remedies or actions against the Entity because of its failure to pay Land Taxes, the Minimum Annual Service Charge, Annual Service Charge, or Administrative Fees. This right shall apply to arrearages that are due and owing at the time or which, under the terms hereof, would in the future become due as if there had been no determination. Further, the bringing of any action for Land Taxes, the Minimum Annual Service Charge, the Annual Service Charge, or Administrative Fees, or for breach of covenant or the resort to any other remedy herein provided for the recovery of Land Taxes shall not be construed as a waiver of the rights to terminate the tax exemption or proceed with a tax sale or Tax Foreclosure action or any other specified remedy.

In the event of a Default on the part of the Entity to pay any charges set forth in Article IV, the City among its other remedies, reserves the right to proceed against the Entity's land and property, in the manner provided by the In Rem Foreclosure Act, and any act supplementary or amendatory thereof. Whenever the word taxes appear, or is applied, directly or impliedly to mean taxes or municipal liens on land, such statutory provisions shall be read, as far as is pertinent to this Agreement, as if the charges were taxes or municipal liens on land. Notwithstanding the foregoing, the Entity does not waive any defense it may have to contest the right of the City to proceed by in rem foreclosure.

## **ARTICLE XII- TERMINATION**

### **Section 12.1 Termination Upon Default of the Entity**

In the event the Entity fails to cure or remedy the Default within the time period provided in Section 11.2, the City may terminate this Agreement upon thirty (30) days written notice to the Entity [Notice of Termination].

### **Section 12.2 Voluntary Termination by the Entity**

The Entity may after the expiration of one year from the Substantial Completion of the Project notify the City that as of a certain date designated in the notice, it relinquishes its status as a tax exempt Project. As of the date so set, the tax exemption, the Annual Service Charges and the profit and dividend restrictions shall terminate.

### **Section 12.3 Final Accounting**

Within ninety (90) days after the date of termination, whether by affirmative action of the Entity or by virtue of the provisions of the Law or pursuant to the terms of this Agreement, the Entity shall provide a final accounting to the City. For purposes of rendering a final accounting the termination of the Agreement shall be deemed to be the end of the fiscal year for the Entity.

### **Section 12.4 Conventional Taxes**

Upon Termination or expiration of this Agreement, the tax exemption for the Project shall expire and the land and the Improvements thereon shall thereafter be assessed and conventionally taxed according to the general law applicable to other nonexempt taxable property in the City.

## **ARTICLE XIII - DISPUTE RESOLUTION**

### **Section 13.1 Arbitration**

In the event of a breach of the within Agreement by either of the parties hereto or a dispute arising between the parties in reference to the terms and provisions as set forth herein, either party may apply to the Superior Court of New Jersey by an appropriate proceeding, to settle and resolve the dispute in such fashion as will tend to accomplish the purposes of the Law. In the event the Superior Court shall not entertain jurisdiction, then the parties shall submit the dispute to the American Arbitration Association in New Jersey to be determined in accordance with its rules and regulations in such a fashion to accomplish the purpose of the Long Term Tax Exemption Law. The cost for the arbitration shall be borne equally by the parties. The parties agree that the Entity may not file an action in Superior Court or with the Arbitration Association unless the Entity has first paid in full all charges defined in Article III, Section 4.8 as Material Conditions.

## **ARTICLE XIV - WAIVER**

### **Section 14.1 Waiver**

Nothing contained in this Financial Agreement or otherwise shall constitute a waiver or relinquishment by the City of any rights and remedies, including, without limitation, the right to terminate the Agreement and tax exemption for violation of any of the conditions

provided herein. Nothing herein shall be deemed to limit any right of recovery of any amount which the City has under law, in equity, or under any provision of this Agreement.

#### **ARTICLE XV - INDEMNIFICATION**

##### **Section 15.1 Defined**

It is understood and agreed that in the event the City shall be named as party defendant in any action (other than an action commenced by the Entity) alleging any breach, default or a violation of any of the provisions of this Agreement and/or the provisions of N.J.S.A. 40A:20-1 et seq., the Entity shall indemnify and hold the City harmless, and the Entity agrees at the option of the City to defend the suit at its own expense or reimburse the City for any fees or costs the City incurs to do so.

#### **ARTICLE XVI- NOTICE**

##### **Section 16.1 Certified Mail**

Any notice required hereunder to be sent by either party to the other shall be sent by certified or registered mail, return receipt requested.

##### **Section 16.2 Sent by City**

When sent by the City to the Entity the notice shall be addressed to:

Whitlock Mills, L.P., c/o Housing Trust of America  
6851 Oak Hall Lane, Suite 100  
Columbia, MD 21045  
Attn.: Wallace L. Scruggs  
New Jersey Housing and Mortgage Finance Agency  
637 South Clinton Avenue  
P.O. Box 18550  
Trenton, NJ 08650-2085

unless prior to giving of notice the Entity shall have notified the City in writing otherwise.

In addition, provided the City is sent a formal written notice in accordance with this Agreement, of the name and address of Entity's Mortgagee, the City agrees to provide such Mortgagee with a copy of any notice required to be sent to the Entity.

##### **Section 16.3 Sent by Entity**

When sent by the Entity to the City, it shall be addressed to:

City of Jersey City, Office of the City Clerk

City Hall  
280 Grove Street  
Jersey City, New Jersey 07302,

with copies sent to the Corporation Counsel, the Business Administrator, and the Tax Collector unless prior to the giving of notice, the City shall have notified the Entity otherwise. The notice to the City shall identify the Project to which it relates, (i.e., the Entity and the Property's Block and Lot number).

### **ARTICLE XVII-SEVERABILITY**

#### **Section 17.1 Severability**

If any term, covenant or condition of this Agreement or the Application, except a Material Condition, shall be judicially declared to be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

If a Material Condition shall be judicially declared to be invalid or unenforceable and provided the Entity is not in Default of this Agreement, the parties shall cooperate with each other to take the actions reasonably required to restore the Agreement in a manner contemplated by the parties. This shall include, but not be limited to the authorization and re-execution of this Agreement in a form reasonably drafted to effectuate the original intent of the parties. However, the City shall not be required to restore the Agreement if it would modify a Material Condition, the amount of the periodic adjustments or any other term of this Agreement which would result in any economic reduction or loss to the City.

### **ARTICLE XVIII - MISCELLANEOUS**

#### **Section 18.1 Construction**

This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, and without regard to or aid of any presumption or other rule requiring construction against the party drawing or causing this Agreement to be drawn since counsel for both the Entity and the City have combined in their review and approval of same.

**Section 18.2 Conflicts**

The parties agree that in the event of a conflict between the Application and the language contained in the Agreement, the Agreement shall govern and prevail. In the event of conflict between the Agreement and the Law, the Law shall govern and prevail.

**Section 18.3 Oral Representations**

There have been no oral representations made by either of the parties hereto which are not contained in this Agreement. This Agreement, the Ordinance authorizing the Agreement, and the Application constitute the entire Agreement between the parties and there shall be no modifications thereto other than by a written instrument approved and executed by both parties and delivered to each party.

**Section 18.4 Entire Document**

This Agreement and all conditions in the Ordinance of the Municipal Council approving this Agreement are incorporated in this Agreement and made a part hereof.

**Section 18.5 Good Faith**

In their dealings with each other, utmost good faith is required from the Entity and the City.

**ARTICLE XIX - EXHIBITS**

**Section 19 Exhibits**

The following Exhibits are attached hereto and incorporated herein as if set forth at length herein:

1. Metes and Bounds description of the Project;
2. Ordinance of the City authorizing the execution of this Agreement;
3. The Application with Exhibits;
4. Certificate of the Entity;
5. Estimated Construction Schedule;
6. The Financial Plan for the undertaking of the Project;
7. Initial Rental Schedules and Lease Terms;

8. Project Employment Agreement;
9. Architect's Certification of Actual Construction Costs;
10. Written approval of HMFA mortgage loan, including the amount and term thereof.

**IN WITNESS WHEREOF**, the parties have caused these presents to be executed the day and year first above written.

**ATTEST:**

**WHITLOCK MILLS, L.P.**  
**BY: HTA Whitlock, LLC, its general partner**

\_\_\_\_\_  
**SECRETARY**

\_\_\_\_\_  
**Wallace L. Scruggs, Managing Member**

**ATTEST:**

**CITY OF JERSEY CITY**

\_\_\_\_\_  
**ROBERT BYRNE**  
**CITY CLERK**

\_\_\_\_\_  
**CARLTON McGEE**  
**BUSINESS ADMINISTRATOR**

AUG-28-03 THU 12:56 PM

FAX NO.

P. 02/02

State of Maryland  
Department of  
Assessments and Taxation



Robert L. Ehrlich, Jr.  
Governor

Ronald W. Winholt  
Director

Paul B. Anderson  
Administrator

Charter Division

GALLAGHER, EVELLIUS & JONES  
STE 400  
218 N CHARLES ST  
BALTIMORE

MD 21201-4021

Date: 08-26-2003

This letter is to confirm acceptance of the following filing:

ENTITY NAME : WHITLOCK MILLS L.P.  
DEPARTMENT ID : MO7546997  
TYPE OF REQUEST : CERTIFICATE OF LIMITED PARTNERSHIP  
DATE FILED : 08-22-2003  
TIME FILED : 02:50-PM  
RECORDING FEE : \$100.00  
EXPEDITED FEE : \$50.00  
FILING NUMBER : 1000361988766477  
CUSTOMER ID : 0001191231  
WORK ORDER NUMBER : 0000780157

PLEASE VERIFY THE INFORMATION CONTAINED IN THIS LETTER. NOTIFY THIS DEPARTMENT IN WRITING IF ANY INFORMATION IS INCORRECT, INCLUDE THE CUSTOMER ID AND THE WORK ORDER NUMBER ON ANY INQUIRIES. EVERY YEAR THIS ENTITY MUST FILE A PERSONAL PROPERTY RETURN IN ORDER TO MAINTAIN ITS EXISTENCE EVEN IF IT DOES NOT OWN PERSONAL PROPERTY. A BLANK RETURN WILL BE MAILED BY FEBRUARY OF THE YEAR FOR WHICH THE RETURN IS DUE.

CERTIFICATE OF LIMITED PARTNERSHIP  
OF  
WHITLOCK MILLS L.P.

WHITLOCK MILLS L.P., a Maryland limited partnership having its principal office in Howard County, Maryland (the "Partnership") certifies:

1. Name. The name of the Partnership is "Whitlock Mills L.P."
2. Principal Office and Resident Agent. The address of the principal office of the Partnership is 6851 Oak Hall Lane, Suite 100, Columbia, Maryland 21045. The name and address of the resident agent of the Partnership is Stephen A. Goldberg, Esquire, Gallagher Evelius & Jones LLP, 218 North Charles Street, Suite 400, Baltimore, Maryland 21201.
3. General Partner. The name and the business address of the General Partner of the Partnership are as follows:

HTA Whitlock, LLC  
6851 Oak Hall Lane, Suite 100  
Columbia, Maryland 21045
4. Partnership Affairs. The affairs of the Partnership shall be governed by the Limited Partnership Agreement, which may be amended from time to time as provided therein.
5. Dissolution. The latest date upon which the Partnership is to dissolve is December 31, 2055.

[SIGNATURE PAGE FOLLOWS]

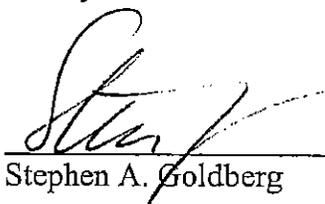
IN WITNESS WHEREOF, the General Partner of the Partnership has executed this Certificate of Limited Partnership on this 22 day of August, 2003.

**GENERAL PARTNER:**

HTA WHITLOCK, LLC

By: Wallace L. Scripps (SEAL)  
Name: Wallace L. Scripps  
Title: Managing Member  
HTA Whitlock, LLC

I hereby consent to act as resident agent in Maryland for Whitlock Mills L.P.

  
\_\_\_\_\_  
Stephen A. Goldberg

## **EXHIBIT 5**

### **WHITLOCK MILLS, L.P.**

#### **CONSTRUCTION SCHEDULE**

It is currently projected that construction of the building will commence during April 2004. Once commenced, it is projected that construction will take approximately eighteen to twenty (18-20) months to complete with occupancy projected January 2006. This construction schedule is subject to force majeure and the time required to obtain the necessary governmental approvals and permits.

## EXHIBIT 6

### WHITLOCK MILLS, L.P. FINANCIAL PLAN

The financing of the acquisition of the Property will be provided via an acquisition loan from Valley National Bank. It is anticipated that the acquisition financing will be for approximately \$4,500,000 with the Entity contributing the balance of funds from its own capital. It is anticipated that the acquisition loan will be for a term of 15 months at market rate interest with other market rate financing terms.

The financing of the construction of the Project will be provided via the following sources:

1. It is anticipated that approximately \$35,200,000 will be provided through New Jersey Housing Mortgage Financing Agency bonds and will be secured by a forty (40) year NJHMFA mortgage.
2. It is anticipated that approximately \$4,000,000 will be provided from the New Jersey Balanced Housing Funds. Pursuant to this program, the Entity will pay the City interest on the aforementioned funds at an annual rate of one (1%) percent. The entire principal amount of these funds will be re-paid to the City of Jersey City at the expiration of the NJHMFA Mortgage.
3. It is anticipated that approximately \$1,300,000 will be provided from the Home Loan Program. Pursuant to this program, the Entity will pay the City interest on the aforementioned funds at an annual rate of one (1%) percent. The entire principal amount of these funds will be re-paid to the City of Jersey City at the expiration of the NJHMFA Mortgage.
4. It is anticipated that approximately that \$9,900,000 will be provided through the Federal Tax Credit Program.
5. It is anticipated that approximately that \$5,600,000 will be contributed by the Entity

All of the aforementioned financing is provided either through a grant or conventional debt financing the payment for which is by way of interest and fees. No proprietary or ownership interest will be conveyed to any lender as consideration for the financing. The Entity's equity will be contributed from the Entity's own capital funds.

A computation of the estimated annual service charges that will be rendered by the project will be contained in Exhibit B of the Tax Abatement Application which is attached to this Financial Agreement as Exhibit 3.

A projection of total project costs is contained in Exhibit C of the Tax Abatement Application which is attached to the Financial Agreement as Exhibit 3.

A projected statement of property operations is contained in Exhibit D of the Tax Abatement Application which is attached to the Financial Agreement as Exhibit 3.

A Good Faith Estimate of Initial Lease Terms including anticipated rents is attached to the Financial Agreement as Exhibit 7.

**EXHIBIT 7  
WHITLOCK MILLS, L.P.  
DESCRIPTION OF RESIDENTIAL LEASES  
GOOD FAITH ESTIMATE OF INITIAL RENTS**

1. Name of Tenant: Various
2. Term of Lease: Initial term of lease not less than 1 year.
3. Number of Apartments: 330

<b>Affordable Apartments</b>			
Number of Apts.	No. of Bedrooms/Baths	Sq. Footage	Monthly Rent
30	3/2	1275	\$803.00
90	2/2	950	\$707.00
78	1/1	725	\$583.00
Total 198			

<b>Market Rate Apartments</b>			
Number of Apts.	No. of Bedrooms/Baths	Sq. Footage*	Monthly Rent*
20	3/2	1,300	\$2,232.00
60	2/2	1,100	\$1,782.00
52	1/1	780	\$1,532.00
Total 132			

\* The exact square footage and rent could vary. The numbers above represent the average square footage and rent for each type of apartment.

5. Charges paid directly by Tenant Annually
  - a. Fire & other insurance NONE
  - b. Real Estate Taxes of Assessments on in project NONE
  - c. Operating and maintenance expenses paid by tenant NONE
6. Special Features: Parking  
Resident Services Program

**PROJECT EMPLOYMENT & CONTRACTING AGREEMENT**

This Project Employment & Contracting Agreement is made on the 27th day of November 2003, between the **CITY OF JERSEY CITY** [City] and **WHITLOCK MILLS, L.P.**, having its principal office at c/o Housing Trust of America, 6851 Oak Hall Lane, Suite 100, Columbia, MD 21045. Recipient agrees as follows:

**I. Definitions:**

The following words and terms, when used in this agreement, shall have the following meanings unless the context clearly indicates otherwise.

1. "City" means the Business Administrator of the City of Jersey City, or his designee, including any person or entity which enters into a contract with the City to implement, in whole or in part, this agreement.
2. "Construction Contract" means any agreement for the erection, repair, alteration or demolition of any building, structure, bridge, roadway, or other improvement on a Project Site.
3. "Contractor" means any party performing or offering to perform a prime contract on behalf of the Recipient.
4. "DEO" refers to the Department of Economic Opportunity located at 121-125 Newark Avenue, Jersey City, NJ 07302.
5. "Economic Incentive" means a tax abatement or exemption for a property or project which requires approval of the Municipal Council and which reduces the annual amount of taxes otherwise due, by \$25,000 or more in the aggregate;
6. "Employment" means any job or position during the construction and operational phase of the project. It includes positions created as a result of internal promotions, terminations, or expansions within the Recipient's work force which are to be filled by new employees. However, positions filled through promotion from within the Recipient's existing work force are not covered positions under this agreement.
7. "HEDC" means the Jersey City Department of Housing, Economic, Development and Commerce, located at 30 Montgomery Street, Room 901, Jersey City, NJ 07302, (201)-547-5070. HEDC is in charge of Project Employment & Contracting coordination and monitoring on projects receiving abatements.
8. "Local Business" means a bona fide business located in Jersey City.
9. Mayor Cunningham's Business Cooperative Program means the group within HEDC responsible for collecting local and minority business contracts and capability information.

This group operates the Supplier Alert service which is to be used by the Recipient to meet their good faith business contracting and construction subcontracting goals.

10. "Minority" means a person who is African, Hispanic, Asian, or American Indian defined as follows:
  - a) "African-American" means a person having origins in any of the black racial groups of Africa.
  - b) "Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Latino culture or origin, regardless of race, excluding, however, persons of European origin.
  - c) "Asian" means a person having origins in any of the original people of the Far East, Southeast Asia, and subcontinent India, Hawaii or the Pacific Islands.
  - d) "American Indian" means a person having origins in any of the original people of North America who maintains cultural identification through tribal affiliation or community recognition.
11. "Minority or Woman Owned Local Business" means a bona fide business located in Jersey City which is fifty-one (51%) percent or more owned and controlled by either a Minority or woman.
12. "Non-Traditional Jobs" means jobs which are held by less than twenty (20%) percent women, as reported by the New Jersey Department of Labor, Division of Labor Market, and Demographic Research for Jersey City, which report shall be on file with the City Clerk.
13. "Permanent Jobs" mean newly created long term salaried positions, whether permanent, temporary, part time or seasonal.
14. "Project or Project Site" means the specific work location or locations specified in the contract.
15. The "Project Employment & Contracting Coordinator" is a member of the HEDC staff who is in charge of coordinating Project Employment & Contracting projects. Contractors and developers engaged in projects covered by Project Employment & Contracting Agreements will direct inquiries to the Project Employment & Contracting Coordinator.
16. The "Project Employment & Contracting Monitor" or "Monitor" is a member of the HEDC staff directly under the command of the Project Employment & Contracting Coordinator, who is in charge of monitoring the site, collecting the reports and documentation, and other day-to-day Project Employment & Contracting housekeeping as stipulated by this agreement.
17. The "Project Employment & Contracting Officer" or "Officer" is an employee of the recipient who is designated by the recipient to make sure the recipient is in compliance with

the recipient's Project Employment & Contracting agreement.

18. "Recipient" means any individual, partnership, association, organization, corporation or other entity, whether public or private, or for profit or non-profit, or agent thereof, which receives an Economic Incentive and shall include any Contractor, Subcontractor or agent of the Recipient.
19. "The Registry" or "Jersey City Employment Registry" means a list maintained by the City or its designee of Jersey City residents seeking employment and Local Businesses, including Minority or Woman Owned Local Businesses, seeking contracts.
20. "Subcontract" means a binding legal relationship involving performance of a contract that is part of a prime contract.
21. "Subcontractor" means a third party that is engaged by the prime Contractor to perform under a subcontract all or part of the work included in an original contract.

## II. Purpose:

The City wishes to assure continuing employment opportunities for City residents, particularly residents who are Minorities, and business opportunities for Local Businesses, especially Minority and Women Owned Local Businesses, with employers located in or relocating to the City who are the recipients of Economic Incentives. The City has determined to accomplish that goal by requiring the Recipient of an Economic Incentive to act in Good Faith, as defined herein, and discharge its obligations under this Agreement. To the extent mandated by State and Federal law and so long as the Entity discharges its Good Faith obligations under this agreement, the City acknowledges that the Recipient and its contractors are free to hire whomever they choose.

## III. Good Faith Goals:

In the event the Recipient is able to demonstrate that its work force already meets the goals set forth below or is able to meet such goals during the term of this agreement, the Recipient will not be required to comply with the interviewing or reporting obligations set forth in Section VI I., A-L (Construction Jobs) and Section VI, 2., A-J (Permanent Jobs).

1. **Employment:** The Recipient shall make a Good Faith effort to achieve the goal of a work force representing fifty-one (51%) percent City residents, fifty-one (51%) percent of whom are residents who are Minorities and, in Non-Traditional Jobs, six point nine (6.9%) percent of whom are residents who are women, it being understood that one employee may satisfy more than one category.
2. **Business Contracting:** The Recipient shall make a Good Faith effort to achieve the goal of awarding twenty (20%) percent of the dollar amount of its contracts to Local Businesses, fifty-one (51%) percent of which shall be Minority or Women Owned Local Businesses. If fifty-one (51%) percent of Minority or Women Owned Local Businesses cannot be obtained, that percentage of contracts must still be applied to local vendors.

**IV. Recipient Designee:**

The Recipient shall designate a principal officer of its firm to be responsible for administering the agreement detailed herein and to report to and confer with the City in order to discharge its Good Faith obligations as defined in this agreement. This officer should be designated as the Project Employment & Contracting Officer.

\*\*\*The Recipient should send a letter of introduction regarding the "Project Employment & Contracting compliance officer" to the Project Employment & Contracting Coordinator prior to any preconstruction meetings. An example of this letter can be found in Appendix A. This principle officer should also be present for all preconstruction meetings.

The Recipient should send a letter regarding the "Project Employment & Contracting Compliance Officer" to the employees of the Recipient's company. An example of this letter can be found in Appendix AZ

**V. Term:**

This agreement shall be in effect for a period co-terminus with the effective period of the tax exemption [the Economic Incentive]. Thus, it will commence on the date the City Council adopted Ordinance \_\_\_\_\_ approving the tax exemption and terminate the earlier of 45 years thereafter or 40 years from the date of recording of the HMBA mortgage, but in no event beyond the date that the HMFA mortgage is paid in full.

**VI. Good Faith Defined:**

**1. Construction Jobs:** Good Faith shall mean compliance with all of the following conditions:

**A. Initial Manning Report:**

- i) Prior to the commencement of their work on the Project, each Contractor /Subcontractor shall prepare an Initial Manning Report.
- ii) The initial manning report should contain an estimate of the total work force to be used at the Project Site, including the work force of any and all Contractors and Subcontractors. It should also describe the specific construction trades and crafts, and indicate the projected use of City residents, City resident Minorities and City resident women. Attached hereto as Appendix B is the Recipient's Initial Manning Report.
- iii) The Initial Manning Report shall be filed with the Project Employment and Contracting Monitor, who must accept said Report prior to the Recipient entering into any construction contract. An example of this acceptance letter is given in Appendix C.

B. Developer's Contracting Obligations

- I) Once the developer submits the project's initial manning report, he/she must forward a letter with requests for quotation or bid to Mayor Cunningham's Business Cooperative Program for local and minority vendors for any construction or building operating goods, services and sub-contracting opportunities. An example of this letter is given in Appendix D.
- ii) The developer shall make a good faith effort to contact those businesses and individuals who submit bids. This effort must be documented by letter, which will be sent to Mayor Cunningham's Business Cooperative Program at HEDC. An example of this letter can be found in Appendix D2.

C. Contractor's/Subcontractor's Compliance Statement

Prior to commencement of their work on the Project, each Contractor or Subcontractor must agree in writing to comply with this agreement and the employment goals elaborated herein. An example of this Compliance Statement can be found in Appendix E.

D. Union Statement of Using Its Best Efforts

- i) Prior to commencement of their work on the Project, the contractor/subcontractor must submit a statement expressing its adherence to the Project Employment & Contracting Agreement to each union with which he/she has a collective bargaining agreement covering workers to be employed on the project.
- ii) The Compliance Statement shall include a union statement for the particular union to sign, which claims the union will use its best efforts to comply with the employment goals articulated in the Project Employment & Contracting agreement. This compliance statement is detailed in Appendix F. A copy of the signed compliance statement must be sent to the Project Employment & Contracting Monitor in HEDC before work starts in order for a developer to be in compliance.
- iii) The Recipient will require the Contractor or Subcontractor to promptly notify the City of any refusal or failure of a union to sign the statement. If a particular union refuses to sign a statement, the Recipient will document its efforts to obtain such statement and the reasons given by the union for not signing such statement, and submit such documentation to the Project Employment & Contracting Monitor in HEDC.

E. Sub-Contractors

The developer shall require that each prime contractor be responsible for the compliance of his/her subcontractors with the aforementioned Project Employment & Contracting requirements during the performance of the contract. Whenever the contractor sub-contracts a portion of the work on the project, the contractor shall bind the subcontractor to the obligations contained in these

supplemental conditions to the full extent as if he/she were the contractor.

F. Union Apprentices

The contractor is responsible for assuring that resident and minority apprentices account for at least fifty (50%) percent of the total hours worked by union apprentices on the job in each trade listed in which apprentices are employed, according to the apprentice-to-journey-worker ratio contained in the collective bargaining agreement between the various unions, and shall hold each of his/her subcontractors to this requirement. The Recipient will require the contractor or subcontractor to promptly notify the City of any refusal of a union to utilize resident and minority apprentices.

G. Monthly Manning Report

- i) The Recipient will cause the Contractor to complete and submit Monthly Project Manning Reports to the Project Employment & Contracting Monitor in HEDC by the seventh day of the month following the month during which the work is performed, for the duration of the contract.
- ii) The report will accurately reflect the total work hours in each construction trade or craft and the number of hours worked by City residents, including a list of minority resident and women resident workers in each trade or craft, and will list separately the work hours performed by employees of the Contractor and each of its Subcontractors. The Monthly Manning Report shall be in the form attached hereto as Appendix G.
- iii) The Recipient is responsible for maintaining or causing the Contractor to maintain records supporting the reported work hours of its Contractors or Subcontractors.

H. Monthly Certified Payroll Report

- i) The Recipient will cause the Contractor to furnish the Project Employment & Contracting Monitor with copies of its weekly Certified Payroll reports. The reports will specify the residency, including gender and ethnic/racial origin of each worker. The Certified Payroll report shall be in the form attached hereto as Appendix H.
- ii) Payroll reports must be submitted on a monthly basis with the Monthly Manning Report or the recipient is no longer in compliance.

I. Equal Employment Opportunity Reports

Prior to commencement of work on the Project, the Recipient will request copies of the most recent Local Union Report (EEO-3) and Apprenticeship Information Report (EEO-2) which are required to be filed with the US Commission of Equal Employment Opportunity Commission by the collective bargaining unit. These reports will be forwarded to the Project Employment & Contracting Monitor within one month of the signing of the Project Employment & Contracting Agreement.

J. Other Reports

In addition to the above reports, the Recipient shall furnish such reports or other documents to the City as the City may request from time to time in order to carry out the purposes of this agreement.

K. Records Access

The Recipient will insure that the City will have reasonable access to all records and files reasonably necessary to confirm the accuracy of the information provided in the reports.

L. Work Site Access For Monitor

- i) The City will physically monitor the work sites subject to this agreement to verify the accuracy of the monthly reports. Each work site will be physically monitored approximately once every two weeks, and more frequently if it is deemed reasonably necessary by the City. The City's findings shall be recorded in a "Site Visit Report." An example of a bi-weekly site visit report can be found in Appendix I.
- ii) The Recipient shall require the Contractor and Sub-contractor to cooperate with the City's site monitoring activities and inform the City as to the dates they are working at the Project site. This includes specifically instructing the on-site construction manager about the monitoring process, and informing him/her that the monitor will contact him/her to set up an initial meeting. In the case of projects with multiple locations, the Recipient shall inform the City of the dates they are working at each site location(s) where they are working, in order to facilitate the monitoring.

2. **Permanent Jobs:** Good Faith shall mean compliance with all of the following conditions:

A. Pre-hiring Job Awareness: At least eight (8) months prior to the hiring of a recipient's permanent workforce, the Project Employment & Contracting officer for the Recipient will sit down with the head of the Registry to discuss how the Recipient plans to hire its permanent workforce.

The following issues should be covered in this meeting:

- i) whether subcontractors will be used in the hiring process.
- ii) the specific types of jobs that need to be filled.
- iii) the qualifications needed for these particular jobs.
- iv) possible training programs offered by the permanent employer.
- v) the Recipient's goals and how it plans to meet these goals.
- vi) any other issues which need to be addressed by the Registry.

1. Subcontractor Notification -- If the Recipient decides to subcontract any portion or all of its permanent workforce, then the Recipient must receive a signed acknowledgment from the subcontracting party that it will abide by the Project Employment & Contracting Agreement before said subcontractor begins staffing permanent employees. The Recipient must forward a copy of the signed acknowledgment to the Project Employment & Contracting Monitor. An example of this

signed acknowledgment can be found in Appendix E.

2. Subcontractor Pre-Hiring Job Awareness Meeting -- Each subcontractor hired to staff permanent job positions must appoint a Project Employment & Contracting Officer to meet with the head of the Registry to discuss the same issues presented above in VI 2.A(I-vi).

3. Subcontractors of Subcontractors--Subcontractors of subcontractors are subject to the same requirements for the initial subcontractors above in Section VI 2.A.

B. Documentation of Hiring Plan--Once the Pre-Hiring Job Awareness Meeting has taken place, the Recipient must put together a document with goals and totals for future permanent employment needs. This plan should summarize all that was discussed in the Pre-Hiring Awareness Meeting, list estimates for manpower needs, set residential and minority employment goals commensurate with the Project Employment & Contracting Agreement, and show how the recipient plans to meet these goals. An example of this plan is found in Appendix J.

C. Pre-Hiring Notification: At least ten (10) working days prior to advertising for any employees, the Recipient or the Recipient's subcontractor shall provide the Registry with a written notice, which shall state the job title, job description and minimum qualifications, rate of pay, hours of work and the hiring date for each position to be filled, in qualitative and objective terms which will enable the Registry to refer qualified applicants to the Recipient.

D. Advertisement: At the request of the City, or because the City does not have qualified applicants to refer to the Recipient, the Recipient will place an advertisement for the jobs in a newspaper which is regularly published in Jersey City. The Recipient must furnish the Project Employment & Contracting Coordinator in HEDC with a copy of this advertisement.

E. Pre-Hiring Interview: The Recipient shall interview any qualified applicants referred to it from the Registry, to be maintained by the City or its designee. In the event advertisement is required, the Recipient agrees to interview any qualified persons responding to the advertisement.

F. Semi-Annual Employment Reports: The Recipient will submit written semi-annual employment reports to the Project Employment & Contracting Monitor in the form to be provided by the City. The report will describe the job, whether the job is held by a City resident, minority resident or woman resident. The report will explain in writing the reasons why any qualified applicant referred by the Registry (or in the event advertisement is required, any qualified person responding to the advertisement) was not hired. An example of this report is found in Appendix K.

G. Record Access: The Recipient shall provide the City with reasonable access to all files and records including payroll and personnel information reasonably necessary to confirm the accuracy of the information set forth in the semi-annual reports.

H. Work Place Access: The Recipient shall provide the City with reasonable access to the site to physically monitor the work site to verify the accuracy of the information set forth in the semi-annual reports.

I. Other Reports. Documents: In addition to the above reports, the Recipient shall furnish such reports or other documents that the City may request from time to time in order to implement the purposes of this agreement.

J. Incorporation of Agreement: The Recipient shall incorporate the provisions of this Agreement in all contracts, agreements and purchase orders for labor with any service, maintenance, security or management agent or Contractor engaged by the Recipient whose personnel will be assigned to the Recipient project.

**3. Business Contracting**

Good Faith shall mean compliance with all of the following conditions:

1) Solicitation of Businesses:

a) One month before accepting bids for goods and services, the Recipient must forward a letter with requests for quotation or bid to Mayor Cunningham's Business Cooperative Program for local and local minority vendors for any construction or building operating goods, services and subcontracting opportunities. An example of this letter can be found in Appendix D.

b) After submission of bids, the Recipient will document whether the bid was accepted or rejected, and state the reason why. An example of this documentation can be found in Appendix D2.

i) Semi-Annual Purchasing Reports: The Recipient will submit written semi-annual purchasing reports which will include a list of all contracts awarded over a six month period and the dollar amounts of these contracts. The reports will specify the number and dollar amount of contracts awarded to Local Businesses and Minority or Women Owned Local Businesses. An example of these reports can be found in Appendix L.

ii) No Utilization of Local and Local Minority Vendors As Conduits For Vendors That Are Not Local Or Minority Owned:

The Recipient pledges not to use local and local minority vendors solely as conduits for vendors that are not local and minority owned. Any discovery by HEDC of a recipient, either knowingly or unknowingly, using the masthead of a local or minority owned business as a way to get credit for local or minority employment when it should not, will immediately subject the recipient to the penalties listed in Section VIII (d) below.

**4. Summation of Documentation Needed For Compliance with Agreement**

1. Letter Designating Project Employment & Contracting Officer (Appendix A)
2. Letter designating Project employment & Contracting Officer to Recipient's Employees (App.) AZ

3. Example of Initial Manning Report (Appendix B)
4. Letter Of Acceptance of Initial Manning Report (Appendix C)
5. Letter From Developer Forwarding Requests for Quotation or Bid for Minority and Residential Vendors from Mayor Cunningham's Business Cooperative Program (Appendix D)
6. Documentation of Bid Submission (Appendix D2)
7. Letter Expressing Project Employment & Contracting Obligations to Contractors/ Subcontractors (Appendix E)
8. Union Statement of Best Efforts (Appendix F)
9. Example of Monthly Manning Report (Appendix G)
10. Example of Monthly Certified Payroll Report (Appendix H)
11. Example of Bi-Weekly Site Visit Report (Appendix I)
12. Example of Documentation of Hiring Plan (Appendix J)
13. Example of Semi-Annual Employment Report (Appendix K)
14. Example of Semi-Annual Purchasing Report (Appendix L)

**VII. Notices of Violation:**

1. **Advisory Notice:** The City will issue a written Advisory Notice to the Recipient if there is non-compliance with a Good Faith requirement as defined in this agreement. The Advisory Notice shall explain in sufficient detail the basis of the alleged violation. The Recipient shall have four (4) working days to correct the violation. An example of an Advisory Notice can be found in Appendix M.
2. **Violation Notice:** If the alleged violation set forth in the Advisory Notice has not been corrected to the satisfaction of the City within four (4) working days, the City shall then issue a Violation Notice to the Recipient. The Violation Notice shall explain in sufficient detail the basis of the alleged, continuing violation. The Recipient will have three (3) working days to correct the violation. An example of a Violation Notice can be found in Appendix N.
3. **Correcting the Violation:** Either or both the Advisory Notice or the Violation Notice may be considered corrected if the Recipient satisfies the requirements of this agreement and so advises the City in writing, subject to confirmation by the City.
4. **Extension of Time to Correction:** Either the Advisory Notice or the Violation Notice may be held in abeyance and the time for correction extended if the Recipient enters into satisfactory written agreement with the City for corrective action which is designed to achieve compliance. If Recipient fails to abide by the terms of such agreement the violation will be considered not corrected.
5. **Meetings Concerning Violations:** The City may provide an opportunity for a meeting with the Recipient, his Contractors or Subcontractors in an effort to achieve compliance; or may respond to Recipient's request for a meeting after the Recipient has made timely submission of a written explanation pursuant to the above. The meeting shall be requested no later than two days after the alleged violator has submitted the written explanation.

6. Interviews Relating to Violations: The City may conduct interviews and may request additional information from appropriate parties as is considered necessary to determine whether the alleged violation has occurred.
7. Determination of Violation: The City shall issue a determination of whether the Recipient is in violation of this agreement as soon as possible but not later than thirty days after the delivery of the Violation Notice to the Recipient. If the City determines that the Recipient is in violation, the City shall be entitled to the liquidated damages provided below.

**VIII. Damages:**

While reserving any other remedies the City may have at law or equity for a material breach of the above terms and conditions, the parties agree that damages for violations of this agreement by the Recipient cannot be calculated within any reasonable degree of mathematical certainty. Therefore, the parties agree that upon the occurrence of a material breach of any of the above terms and conditions and after notice and expiration of any period to correct the violation, the City will be entitled to liquidated damages from the Recipient in the following amounts:

- a) failure to file Initial Manning Reports (Construction Jobs) or Pre-Hiring Notification (Permanent Jobs) or Pre-Contracting Notification (Business Contracting): Five (5%) percent increase in the annual payment in lieu of taxes;
- b) failure to conduct Pre-hiring Interviews or submit Compliance Statement (Construction Jobs) or Solicit Bids (Business Contracting): Three (3%) percent increase in the annual payment in lieu of taxes;
- c) failure to allow record or work place access or submit any other required reports (all categories): Two (2%) percent increase in the annual payment in lieu of taxes.
- d) the use of the local or local minority business' masthead for labor or work supplied by a non local or local minority vendor: Five (5%) percent increase in the annual payment in lieu of taxes.

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**IX. Commercial Tenants at the Project Site:**

1. The Recipient shall send all tenants of commercial space within the Project Site a letter and a Tenant Employment Services Guide in the form attached as Appendix O.
2. The Recipient shall solicit information from tenants of commercial space about the composition of the work force of each tenant. The information solicited will be submitted to the Project Employment & Contracting Monitor, which shall provide the Recipient with a questionnaire in the form attached as Appendix P.
3. The Recipient will send the results of its solicitation to the Project Employment & Contracting Monitor no later than October 31 of each year.

4. The Recipient shall send all tenants of commercial space within the Project Site a Supplier Alert Service Registration Package in the form attached as Appendix Q.

**X. Notices**

Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, addressed as follows:

1. When sent by the City to the Recipient it shall be addressed to:
2. When sent by the Recipient to the City, it shall be addressed to:

Melvin Robinson  
Project Employment & Contracting Monitor  
Department of Housing, Economic Development & Commerce  
30 Montgomery Street, Suite 404  
Jersey City, New Jersey 07302

with separate copies to the Mayor and the Business Administrator; unless prior to giving of such notice, the City or the Recipient shall have notified the other in writing.

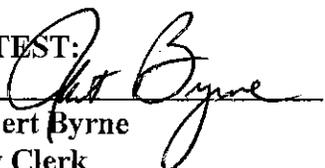
**XI. Adoption, Approval, Modification:**

This agreement shall take effect on the date that the Economic Incentive is approved by the Municipal Council.

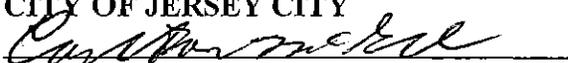
**XII. Controlling Regulations and Laws:**

To the extent required by State and Federal Law and so long as the Entity discharges its Good Faith obligations under this agreement, the City agrees and acknowledges that the Recipient and its contractors are free to hire whomever they choose. If this agreement conflicts with any collective bargaining agreement, the City agrees to defer to such agreements so long as the Recipient provides the City with a copy of the offending provision in the collective bargaining agreement.

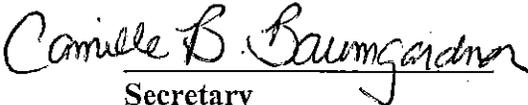
ATTEST:

  
Robert Byrne  
City Clerk

CITY OF JERSEY CITY

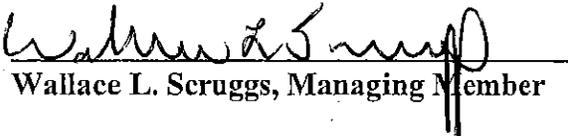
  
Carlton McGee  
Business Administrator

ATTEST:

  
Secretary

WHITLOCK MILLS, L.P.

BY: HTA Whitlock, LLC, its general partner

  
Wallace L. Scruggs, Managing Member

**PROJECT EMPLOYMENT & CONTRACTING AGREEMENT**

This Project Employment & Contracting Agreement is made on the \_\_\_ day of \_\_\_\_\_, 2003, between the **CITY OF JERSEY CITY** [City] and **WHITLOCK MILLS, L.P.**, having its principal office at c/o Housing Trust of America, 6851 Oak Hall Lane, Suite 100, Columbia, MD 21045. Recipient agrees as follows:

**I. Definitions:**

The following words and terms, when used in this agreement, shall have the following meanings unless the context clearly indicates otherwise.

1. "City" means the Business Administrator of the City of Jersey City, or his designee, including any person or entity which enters into a contract with the City to implement, in whole or in part, this agreement.
2. "Construction Contract" means any agreement for the erection, repair, alteration or demolition of any building, structure, bridge, roadway, or other improvement on a Project Site.
3. "Contractor" means any party performing or offering to perform a prime contract on behalf of the Recipient.
4. "DEO" refers to the Department of Economic Opportunity located at 121-125 Newark Avenue, Jersey City, NJ 07302.
5. "Economic Incentive" means a tax abatement or exemption for a property or project which requires approval of the Municipal Council and which reduces the annual amount of taxes otherwise due, by \$25,000 or more in the aggregate;
6. "Employment" means any job or position during the construction and operational phase of the project. It includes positions created as a result of internal promotions, terminations, or expansions within the Recipient's work force which are to be filled by new employees. However, positions filled through promotion from within the Recipient's existing work force are not covered positions under this agreement.
7. "HEDC" means the Jersey City Department of Housing, Economic, Development and Commerce, located at 30 Montgomery Street, Room 901, Jersey City, NJ 07302, (201)-547-5070. HEDC is in charge of Project Employment & Contracting coordination and monitoring on projects receiving abatements.
8. "Local Business" means a bona fide business located in Jersey City.
9. Mayor Cunningham's Business Cooperative Program means the group within HEDC responsible for collecting local and minority business contracts and capability information.

This group operates the Supplier Alert service which is to be used by the Recipient to meet their good faith business contracting and construction subcontracting goals.

10. "Minority" means a person who is African, Hispanic, Asian, or American Indian defined as follows:
  - a) "African-American" means a person having origins in any of the black racial groups of Africa.
  - b) "Hispanic" means a person of Mexican, Puerto Rican, Cuban, Central or South American or other Latino culture or origin, regardless of race, excluding, however, persons of European origin.
  - c) "Asian" means a person having origins in any of the original people of the Far East, Southeast Asia, and subcontinent India, Hawaii or the Pacific Islands.
  - d) "American Indian" means a person having origins in any of the original people of North America who maintains cultural identification through tribal affiliation or community recognition.
11. "Minority or Woman Owned Local Business" means a bona fide business located in Jersey City which is fifty-one (51%) percent or more owned and controlled by either a Minority or woman.
12. "Non-Traditional Jobs" means jobs which are held by less than twenty (20%) percent women, as reported by the New Jersey Department of Labor, Division of Labor Market, and Demographic Research for Jersey City, which report shall be on file with the City Clerk.
13. "Permanent Jobs" mean newly created long term salaried positions, whether permanent, temporary, part time or seasonal.
14. "Project or Project Site" means the specific work location or locations specified in the contract.

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15. The "Project Employment & Contracting Coordinator" is a member of the HEDC staff who is in charge of coordinating Project Employment & Contracting projects. Contractors and developers engaged in projects covered by Project Employment & Contracting Agreements will direct inquiries to the Project Employment & Contracting Coordinator.
16. The "Project Employment & Contracting Monitor" or "Monitor" is a member of the HEDC staff directly under the command of the Project Employment & Contracting Coordinator, who is in charge of monitoring the site, collecting the reports and documentation, and other day-to-day Project Employment & Contracting housekeeping as stipulated by this agreement.
17. The "Project Employment & Contracting Officer" or "Officer" is an employee of the recipient who is designated by the recipient to make sure the recipient is in compliance with

the recipient's Project Employment & Contracting agreement.

18. "Recipient" means any individual, partnership, association, organization, corporation or other entity, whether public or private, or for profit or non-profit, or agent thereof, which receives an Economic Incentive and shall include any Contractor, Subcontractor or agent of the Recipient.
19. "The Registry" or "Jersey City Employment Registry" means a list maintained by the City or its designee of Jersey City residents seeking employment and Local Businesses, including Minority or Woman Owned Local Businesses, seeking contracts.
20. "Subcontract" means a binding legal relationship involving performance of a contract that is part of a prime contract.
21. "Subcontractor" means a third party that is engaged by the prime Contractor to perform under a subcontract all or part of the work included in an original contract.

## **II. Purpose:**

The City wishes to assure continuing employment opportunities for City residents, particularly residents who are Minorities, and business opportunities for Local Businesses, especially Minority and Women Owned Local Businesses, with employers located in or relocating to the City who are the recipients of Economic Incentives. The City has determined to accomplish that goal by requiring the Recipient of an Economic Incentive to act in Good Faith, as defined herein, and discharge its obligations under this Agreement. To the extent mandated by State and Federal law and so long as the Entity discharges its Good Faith obligations under this agreement, the City acknowledges that the Recipient and its contractors are free to hire whomever they choose.

## **III. Good Faith Goals:**

In the event the Recipient is able to demonstrate that its work force already meets the goals set forth below or is able to meet such goals during the term of this agreement, the Recipient will not be required to comply with the interviewing or reporting obligations set forth in Section VI 1., A-L (Construction Jobs) and Section VI, 2., A-J (Permanent Jobs).

1. **Employment:** The Recipient shall make a Good Faith effort to achieve the goal of a work force representing fifty-one (51%) percent City residents, fifty-one (51%) percent of whom are residents who are Minorities and, in Non-Traditional Jobs, six point nine (6.9%) percent of whom are residents who are women, it being understood that one employee may satisfy more than one category.
2. **Business Contracting:** The Recipient shall make a Good Faith effort to achieve the goal of awarding twenty (20%) percent of the dollar amount of its contracts to Local Businesses, fifty-one (51%) percent of which shall be Minority or Women Owned Local Businesses. If fifty-one (51%) percent of Minority or Women Owned Local Businesses cannot be obtained, that percentage of contracts must still be applied to local vendors.

**IV. Recipient Designee:**

The Recipient shall designate a principal officer of its firm to be responsible for administering the agreement detailed herein and to report to and confer with the City in order to discharge its Good Faith obligations as defined in this agreement. This officer should be designated as the Project Employment & Contracting Officer.

\*\*\*The Recipient should send a letter of introduction regarding the "Project Employment & Contracting compliance officer" to the Project Employment & Contracting Coordinator prior to any preconstruction meetings. An example of this letter can be found in Appendix A. This principle officer should also be present for all preconstruction meetings.

The Recipient should send a letter regarding the "Project Employment & Contracting Compliance Officer" to the employees of the Recipient's company. An example of this letter can be found in Appendix AZ

**V. Term:**

This agreement shall be in effect for a period co-terminus with the effective period of the tax exemption [the Economic Incentive]. Thus, it will commence on the date the City Council adopted Ordinance \_\_\_\_\_ approving the tax exemption and terminate the earlier of 45 years thereafter or 40 years from the date of recording of the HMBA mortgage, but in no event beyond the date that the HMFA mortgage is paid in full.

**VI. Good Faith Defined:**

**1. Construction Jobs:** Good Faith shall mean compliance with all of the following conditions:

**A. Initial Manning Report:**

- i) Prior to the commencement of their work on the Project, each Contractor /Subcontractor shall prepare an Initial Manning Report.
- ii) The initial manning report should contain an estimate of the total work force to be used at the Project Site, including the work force of any and all Contractors and Subcontractors. It should also describe the specific construction trades and crafts, and indicate the projected use of City residents, City resident Minorities and City resident women. Attached hereto as Appendix B is the Recipient's Initial Manning Report.
- iii) The Initial Manning Report shall be filed with the Project Employment and Contracting Monitor, who must accept said Report prior to the Recipient entering into any construction contract. An example of this acceptance letter is given in Appendix C.

B. Developer's Contracting Obligations

- I) Once the developer submits the project's initial manning report, he/she must forward a letter with requests for quotation or bid to Mayor Cunningham's Business Cooperative Program for local and minority vendors for any construction or building operating goods, services and sub-contracting opportunities. An example of this letter is given in Appendix D.
- ii) The developer shall make a good faith effort to contact those businesses and individuals who submit bids. This effort must be documented by letter, which will be sent to Mayor Cunningham's Business Cooperative Program at HEDC. An example of this letter can be found in Appendix D2.

C. Contractor's/Subcontractor's Compliance Statement

Prior to commencement of their work on the Project, each Contractor or Subcontractor must agree in writing to comply with this agreement and the employment goals elaborated herein. An example of this Compliance Statement can be found in Appendix E.

D. Union Statement of Using Its Best Efforts

- i) Prior to commencement of their work on the Project, the contractor/subcontractor must submit a statement expressing its adherence to the Project Employment & Contracting Agreement to each union with which he/she has a collective bargaining agreement covering workers to be employed on the project.
- ii) The Compliance Statement shall include a union statement for the particular union to sign, which claims the union will use its best efforts to comply with the employment goals articulated in the Project Employment & Contracting agreement. This compliance statement is detailed in Appendix F. A copy of the signed compliance statement must be sent to the Project Employment & Contracting Monitor in HEDC before work starts in order for a developer to be in compliance.
- iii) The Recipient will require the Contractor or Subcontractor to promptly notify the City of any refusal or failure of a union to sign the statement. If a particular union refuses to sign a statement, the Recipient will document its efforts to obtain such statement and the reasons given by the union for not signing such statement, and submit such documentation to the Project Employment & Contracting Monitor in HEDC.

E. Sub-Contractors

The developer shall require that each prime contractor be responsible for the compliance of his/her subcontractors with the aforementioned Project Employment & Contracting requirements during the performance of the contract. Whenever the contractor sub-contracts a portion of the work on the project, the contractor shall bind the subcontractor to the obligations contained in these

supplemental conditions to the full extent as if he/she were the contractor.

F. Union Apprentices

The contractor is responsible for assuring that resident and minority apprentices account for at least fifty (50%) percent of the total hours worked by union apprentices on the job in each trade listed in which apprentices are employed, according to the apprentice-to-journey-worker ratio contained in the collective bargaining agreement between the various unions, and shall hold each of his/her subcontractors to this requirement. The Recipient will require the contractor or subcontractor to promptly notify the City of any refusal of a union to utilize resident and minority apprentices.

G. Monthly Manning Report

- i) The Recipient will cause the Contractor to complete and submit Monthly Project Manning Reports to the Project Employment & Contracting Monitor in HEDC by the seventh day of the month following the month during which the work is performed, for the duration of the contract.
- ii) The report will accurately reflect the total work hours in each construction trade or craft and the number of hours worked by City residents, including a list of minority resident and women resident workers in each trade or craft, and will list separately the work hours performed by employees of the Contractor and each of its Subcontractors. The Monthly Manning Report shall be in the form attached hereto as Appendix G.
- iii) The Recipient is responsible for maintaining or causing the Contractor to maintain records supporting the reported work hours of its Contractors or Subcontractors.

H. Monthly Certified Payroll Report

- i) The Recipient will cause the Contractor to furnish the Project Employment & Contracting Monitor with copies of its weekly Certified Payroll reports. The reports will specify the residency, including gender and ethnic/racial origin of each worker. The Certified Payroll report shall be in the form attached hereto as Appendix H.
- ii) Payroll reports must be submitted on a monthly basis with the Monthly Manning Report or the recipient is no longer in compliance.

I. Equal Employment Opportunity Reports

Prior to commencement of work on the Project, the Recipient will request copies of the most recent Local Union Report (EEO-3) and Apprenticeship Information Report (EEO-2) which are required to be filed with the US Commission of Equal Employment Opportunity Commission by the collective bargaining unit. These reports will be forwarded to the Project Employment & Contracting Monitor within one month of the signing of the Project Employment & Contracting Agreement.

J. Other Reports

In addition to the above reports, the Recipient shall furnish such reports or other documents to the City as the City may request from time to time in order to carry out the purposes of this agreement.

K. Records Access

The Recipient will insure that the City will have reasonable access to all records and files reasonably necessary to confirm the accuracy of the information provided in the reports.

L. Work Site Access For Monitor

- i) The City will physically monitor the work sites subject to this agreement to verify the accuracy of the monthly reports. Each work site will be physically monitored approximately once every two weeks, and more frequently if it is deemed reasonably necessary by the City. The City's findings shall be recorded in a "Site Visit Report." An example of a bi-weekly site visit report can be found in Appendix I.
- ii) The Recipient shall require the Contractor and Sub-contractor to cooperate with the City's site monitoring activities and inform the City as to the dates they are working at the Project site. This includes specifically instructing the on-site construction manager about the monitoring process, and informing him/her that the monitor will contact him/her to set up an initial meeting. In the case of projects with multiple locations, the Recipient shall inform the City of the dates they are working at each site location(s) where they are working, in order to facilitate the monitoring.

2. **Permanent Jobs:** Good Faith shall mean compliance with all of the following conditions:

A. Pre-hiring Job Awareness: At least eight (8) months prior to the hiring of a recipient's permanent workforce, the Project Employment & Contracting officer for the Recipient will sit down with the head of the Registry to discuss how the Recipient plans to hire its permanent workforce. The following issues should be covered in this meeting:

- i) whether subcontractors will be used in the hiring process.
- ii) the specific types of jobs that need to be filled.
- iii) the qualifications needed for these particular jobs.
- iv) possible training programs offered by the permanent employer.
- v) the Recipient's goals and how it plans to meet these goals.
- vi) any other issues which need to be addressed by the Registry.

1. Subcontractor Notification -- If the Recipient decides to subcontract any portion or all of its permanent workforce, then the Recipient must receive a signed acknowledgment from the subcontracting party that it will abide by the Project Employment & Contracting Agreement before said subcontractor begins staffing permanent employees. The Recipient must forward a copy of the signed acknowledgment to the Project Employment & Contracting Monitor. An example of this

signed acknowledgment can be found in Appendix E.

2. Subcontractor Pre-Hiring Job Awareness Meeting -- Each subcontractor hired to staff permanent job positions must appoint a Project Employment & Contracting Officer to meet with the head of the Registry to discuss the same issues presented above in VI 2.A(I-vi).

3. Subcontractors of Subcontractors--Subcontractors of subcontractors are subject to the same requirements for the initial subcontractors above in Section VI 2.A.

B. Documentation of Hiring Plan--Once the Pre-Hiring Job Awareness Meeting has taken place, the Recipient must put together a document with goals and totals for future permanent employment needs. This plan should summarize all that was discussed in the Pre-Hiring Awareness Meeting, list estimates for manpower needs, set residential and minority employment goals commensurate with the Project Employment & Contracting Agreement, and show how the recipient plans to meet these goals. An example of this plan is found in Appendix J.

C. Pre-Hiring Notification: At least ten (10) working days prior to advertising for any employees, the Recipient or the Recipient's subcontractor shall provide the Registry with a written notice, which shall state the job title, job description and minimum qualifications, rate of pay, hours of work and the hiring date for each position to be filled, in qualitative and objective terms which will enable the Registry to refer qualified applicants to the Recipient.

D. Advertisement: At the request of the City, or because the City does not have qualified applicants to refer to the Recipient, the Recipient will place an advertisement for the jobs in a newspaper which is regularly published in Jersey City. The Recipient must furnish the Project Employment & Contracting Coordinator in HEDC with a copy of this advertisement.

E. Pre-Hiring Interview: The Recipient shall interview any qualified applicants referred to it from the Registry, to be maintained by the City or its designee. In the event advertisement is required, the Recipient agrees to interview any qualified persons responding to the advertisement.

F. Semi-Annual Employment Reports: The Recipient will submit written semi-annual employment reports to the Project Employment & Contracting Monitor in the form to be provided by the City. The report will describe the job, whether the job is held by a City resident, minority resident or woman resident. The report will explain in writing the reasons why any qualified applicant referred by the Registry (or in the event advertisement is required, any qualified person responding to the advertisement) was not hired. An example of this report is found in Appendix K.

G. Record Access: The Recipient shall provide the City with reasonable access to all files and records including payroll and personnel information reasonably necessary to confirm the accuracy of the information set forth in the semi-annual reports.

H. Work Place Access: The Recipient shall provide the City with reasonable access to the site to physically monitor the work site to verify the accuracy of the information set forth in the semi-annual reports.

I. Other Reports. Documents: In addition to the above reports, the Recipient shall furnish such reports or other documents that the City may request from time to time in order to implement the purposes of this agreement.

J. Incorporation of Agreement: The Recipient shall incorporate the provisions of this Agreement in all contracts, agreements and purchase orders for labor with any service, maintenance, security or management agent or Contractor engaged by the Recipient whose personnel will be assigned to the Recipient project.

### 3. **Business Contracting**

Good Faith shall mean compliance with all of the following conditions:

1) Solicitation of Businesses:

a) One month before accepting bids for goods and services, the Recipient must forward a letter with requests for quotation or bid to Mayor Cunningham's Business Cooperative Program for local and local minority vendors for any construction or building operating goods, services and subcontracting opportunities. An example of this letter can be found in Appendix D.

b) After submission of bids, the Recipient will document whether the bid was accepted or rejected, and state the reason why. An example of this documentation can be found in Appendix D2.

i) Semi-Annual Purchasing Reports: The Recipient will submit written semi-annual purchasing reports which will include a list of all contracts awarded over a six month period and the dollar amounts of these contracts. The reports will specify the number and dollar amount of contracts awarded to Local Businesses and Minority or Women Owned Local Businesses. An example of these reports can be found in Appendix L.

ii) No Utilization of Local and Local Minority Vendors As Conduits For Vendors That Are Not Local Or Minority Owned:

The Recipient pledges not to use local and local minority vendors solely as conduits for vendors that are not local and minority owned. Any discovery by HEDC of a recipient, either knowingly or unknowingly, using the masthead of a local or minority owned business as a way to get credit for local or minority employment when it should not, will immediately subject the recipient to the penalties listed in Section VIII (d) below.

### 4. **Summation of Documentation Needed For Compliance with Agreement**

1. Letter Designating Project Employment & Contracting Officer (Appendix A)
2. Letter designating Project employment & Contracting Officer to Recipient's Employees (App.) AZ

3. Example of Initial Manning Report (Appendix B)
4. Letter Of Acceptance of Initial Manning Report (Appendix C)
5. Letter From Developer Forwarding Requests for Quotation or Bid for Minority and Residential Vendors from Mayor Cunningham's Business Cooperative Program (Appendix D)
6. Documentation of Bid Submission (Appendix D2)
7. Letter Expressing Project Employment & Contracting Obligations to Contractors/ Subcontractors (Appendix E)
8. Union Statement of Best Efforts (Appendix F)
9. Example of Monthly Manning Report (Appendix G)
10. Example of Monthly Certified Payroll Report (Appendix H)
11. Example of Bi-Weekly Site Visit Report (Appendix I)
12. Example of Documentation of Hiring Plan (Appendix J)
13. Example of Semi-Annual Employment Report (Appendix K)
14. Example of Semi-Annual Purchasing Report (Appendix L)

**VII. Notices of Violation:**

1. Advisory Notice: The City will issue a written Advisory Notice to the Recipient if there is non-compliance with a Good Faith requirement as defined in this agreement. The Advisory Notice shall explain in sufficient detail the basis of the alleged violation. The Recipient shall have four (4) working days to correct the violation. An example of an Advisory Notice can be found in Appendix M.
2. Violation Notice: If the alleged violation set forth in the Advisory Notice has not been corrected to the satisfaction of the City within four (4) working days, the City shall then issue a Violation Notice to the Recipient. The Violation Notice shall explain in sufficient detail the basis of the alleged, continuing violation. The Recipient will have three (3) working days to correct the violation. An example of a Violation Notice can be found in Appendix N.
3. Correcting the Violation: Either or both the Advisory Notice or the Violation Notice may be considered corrected if the Recipient satisfies the requirements of this agreement and so advises the City in writing, subject to confirmation by the City.
4. Extension of Time to Correction: Either the Advisory Notice or the Violation Notice may be held in abeyance and the time for correction extended if the Recipient enters into satisfactory written agreement with the City for corrective action which is designed to achieve compliance. If Recipient fails to abide by the terms of such agreement the violation will be considered not corrected.
5. Meetings Concerning Violations: The City may provide an opportunity for a meeting with the Recipient, his Contractors or Subcontractors in an effort to achieve compliance; or may respond to Recipient's request for a meeting after the Recipient has made timely submission of a written explanation pursuant to the above. The meeting shall be requested no later than two days after the alleged violator has submitted the written explanation.

6. Interviews Relating to Violations: The City may conduct interviews and may request additional information from appropriate parties as is considered necessary to determine whether the alleged violation has occurred.
7. Determination of Violation: The City shall issue a determination of whether the Recipient is in violation of this agreement as soon as possible but not later than thirty days after the delivery of the Violation Notice to the Recipient. If the City determines that the Recipient is in violation, the City shall be entitled to the liquidated damages provided below.

#### **VIII. Damages:**

While reserving any other remedies the City may have at law or equity for a material breach of the above terms and conditions, the parties agree that damages for violations of this agreement by the Recipient cannot be calculated within any reasonable degree of mathematical certainty. Therefore, the parties agree that upon the occurrence of a material breach of any of the above terms and conditions and after notice and expiration of any period to correct the violation, the City will be entitled to liquidated damages from the Recipient in the following amounts:

- a) failure to file Initial Manning Reports (Construction Jobs) or Pre-Hiring Notification (Permanent Jobs) or Pre-Contracting Notification (Business Contracting): Five (5%) percent increase in the annual payment in lieu of taxes;
- b) failure to conduct Pre-hiring Interviews or submit Compliance Statement (Construction Jobs) or Solicit Bids (Business Contracting): Three (3%) percent increase in the annual payment in lieu of taxes;
- c) failure to allow record or work place access or submit any other required reports (all categories): Two (2%) percent increase in the annual payment in lieu of taxes.
- d) the use of the local or local minority business' masthead for labor or work supplied by a non local or local minority vendor: Five (5%) percent increase in the annual payment in lieu of taxes.

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#### **IX. Commercial Tenants at the Project Site:**

1. The Recipient shall send all tenants of commercial space within the Project Site a letter and a Tenant Employment Services Guide in the form attached as Appendix O.
2. The Recipient shall solicit information from tenants of commercial space about the composition of the work force of each tenant. The information solicited will be submitted to the Project Employment & Contracting Monitor, which shall provide the Recipient with a questionnaire in the form attached as Appendix P.
3. The Recipient will send the results of its solicitation to the Project Employment & Contracting Monitor no later than October 31 of each year.

4. The Recipient shall send all tenants of commercial space within the Project Site a Supplier Alert Service Registration Package in the form attached as Appendix Q.

**X. Notices**

Any notice required hereunder to be sent by either party to the other, shall be sent by certified mail, return receipt requested, addressed as follows:

1. When sent by the City to the Recipient it shall be addressed to:
2. When sent by the Recipient to the City, it shall be addressed to:

Melvin Robinson  
Project Employment & Contracting Monitor  
Department of Housing, Economic Development & Commerce  
30 Montgomery Street, Suite 404  
Jersey City, New Jersey 07302

with separate copies to the Mayor and the Business Administrator; unless prior to giving of such notice, the City or the Recipient shall have notified the other in writing.

**XI. Adoption, Approval, Modification:**

This agreement shall take effect on the date that the Economic Incentive is approved by the Municipal Council.

**XII. Controlling Regulations and Laws:**

To the extent required by State and Federal Law and so long as the Entity discharges its Good Faith obligations under this agreement, the City agrees and acknowledges that the Recipient and its contractors are free to hire whomever they choose. If this agreement conflicts with any collective bargaining agreement, the City agrees to defer to such agreements so long as the Recipient provides the City with a copy of the offending provision in the collective bargaining agreement.

**ATTEST:**

**CITY OF JERSEY CITY**

\_\_\_\_\_  
**Robert Byrne**  
City Clerk

\_\_\_\_\_  
**Carlton McGee**  
Business Administrator

**ATTEST:**

**WHITLOCK MILLS, L.P.**  
**BY: HTA Whitlock, LLC, its general partner**

\_\_\_\_\_  
**Secretary**

\_\_\_\_\_  
**Wallace L. Scruggs, Managing Member**

**EXHIBIT 9**

**WHITLOCK MILLS, L.P.**

**CERTIFICATION OF FINAL CONSTRUCTION COST**

I, \_\_\_\_\_, A.I.A. do certify to the following:

That to the extent that our firm has been involved in the design and construction of the Land and Improvements, as more fully described in that certain Financial Agreement dated \_\_\_\_\_ as between Whitlock Mills, L.P. and the City of Jersey City, and based on those records and contracts that have been supplied to us by Whitlock Mills, L.P., we certify that the total construction cost for the above referenced project is \$ \_\_\_\_\_.

Certified by: \_\_\_\_\_  
A.I.A.

Date: \_\_\_\_\_

State of: \_\_\_\_\_

County of: \_\_\_\_\_

Sworn before me this \_\_\_\_\_  
Day of \_\_\_\_\_,

\_\_\_\_\_  
Notary

Susan Bass Levin  
Chairman

C. Sean Gloskey  
Executive Director

November 3, 2003

Whitlock Mills, MD  
c/o Wallace L. Scruggs, Partner  
Housing Trust of America, L.L.C.  
6851 Oak Hall Lane  
Suite 100  
Columbia, Maryland 21045

**DRAFT COPY**

Re: HMFA #1388, Whitlock Mills  
Mortgage Commitment

Dear Mr. Scruggs:

I am pleased to advise you that the members of the New Jersey Housing and Mortgage Finance Agency at the public meeting of October 16, 2003 approved a mortgage commitment for construction and permanent financing for the above-captioned project. At the time of the meeting, the mortgage was estimated to be \$34,337,852 at an interest rate of 5.80% fully amortized over a term not to exceed 40 years with a construction period interest of 4.75%. The Agency Board also approved a second mortgage estimated to be \$739,038 at an interest rate of 7.05% with a 30 year term and construction period interest at 5.30%. (The "Board Item" attached).

The Executive Director has been authorized to establish the loans' actual amounts and interest rates pursuant to the parameters set forth below, to be fully amortized over a term of 40 years (First Mortgage) and 30 years (Second Mortgage), using a debt service ratio of a minimum of 1.15.

The mortgage loan amount which a project can sustain is derived from a combination of the following factors: 1) debt service ratio, 2) term of mortgage, 3) interest rate, 4) income and expense projections, and 5) sources and uses of project development funds. Using a debt service ratio of 1.15, a term of 40 years, an interest rate of 5.80%, and the income and expense projections and the sources and uses of project development funds set forth on the attached Form-10, the project can sustain a first mortgage amount of \$34,337,852. Using a debt service ratio of 1.15, a term of 30 years and an interest rate of 7.05%, and the income and expense projections and the sources and uses of project development funds set forth on the attached Form 10, the project can sustain a second mortgage of \$739,038. While Item 2 is a factor which remains constant, Items 1, 3, 4, and 5 are variable factors, which can change between mortgage commitment and closing. As such changes impact the mortgage amounts the project can sustain, the Executive Director is authorized to adjust the mortgage amounts stated above to reflect changes to the variable factors. If projected net operating income changes due to increases or decreases in income and/or expenses or due to changes in the sources and uses of project development funds, or final risk assessment dictates a revised debt service coverage ratio, the mortgage amounts shall be adjusted commensurately to amounts which would keep the debt service ratio at the Agency determined appropriate ratio. Any gap resulting from the lowering of the mortgage amount is the sole responsibility of the borrower.

HMFA #1388, Whitlock Mills  
Mortgage Commitment  
Page 2

Further, this commitment is subject to the terms and conditions of the Agency's Underwriting Guidelines and Financing Policy dated October 25, 2001 and enclosed herein. These guidelines and policies address such issues as the payment of negative arbitrage, the owner's responsibility with regard to interest rate risk, the cost of bond issuance and the indemnification of the Agency.

In accordance with those guidelines, you are hereby requested to submit a commitment fee to the Agency in the amount of one percent of the anticipated mortgage amount or \$50,000 in the form of cash or letter of credit acceptable to the Agency. This letter and payment must be returned to the Agency within 10 business days.

The borrower is responsible for satisfaction of the conditions set forth in the commitment. *In addition, the borrower is responsible for advising the Agency of any increases in project development costs not covered in the projected costs at the time of commitment and any changes to sources of funds other than Agency financing.* This commitment letter summarizes the terms and conditions of the mortgage loan commitment being offered by the Agency. The full terms and conditions are set forth in the attached Request For Action By Members of the New Jersey Housing and Mortgage Finance Agency, which was approved by a Resolution of the Members at its October 16, 2003 meeting. Your execution of this commitment as adopted signifies acceptance of the mortgage commitment as adopted by that Resolution.

If you have any questions regarding the above, please do not hesitate to contact John A. Fuhrmann of my staff at (609) 278-7582.

Sincerely,

C. Sean Closkey  
Executive Director

DRAFT COPY

Enclosures

Terms and Conditions Accepted by:

\_\_\_\_\_  
Sponsor's Signature

\_\_\_\_\_  
Date

*John Fuhrmann*

Whitlock Mills  
Jersey City, Hudson  
HMFA # 1388

October 16, 2003

**BOARD APPROVED  
AGENDA ITEM**

**REQUEST FOR ACTION BY MEMBERS OF  
THE NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

**Action Requested:**

Approval of a mortgage commitment for an estimated \$34,337,852 in construction and permanent financing for a project known as Whitlock Mills, HMFA #1388, upon the terms and conditions set forth below.

Approval for a second mortgage for an estimated \$739,038 in construction and permanent financing upon the terms and conditions set forth below.

Approval to insure the mortgage loan for a project known as Whitlock Mills, HMFA #1388, pursuant to the Housing Finance Agency Risk Sharing Program offered by the U.S. Department of Housing and Urban Development. The mortgage loan to be insured shall be in an amount currently estimated to be \$34,337,852 for a term of forty years. The New Jersey Housing and Mortgage Finance Agency shall assume 25% of this risk of any loss due to mortgage default and the Federal Housing Administration shall assume 75% of any loss.

**Issues, Comments and Related Actions:**

*Prior Board Approval*

At its July 10, 2003 meeting, the Agency Board approved a Declaration of Intent for construction and permanent financing.

*The Sponsor*

The sponsors of the project have or will form a Limited Partnership known as Whitlock Urban Renewal, LP. HTA Whitlock, LLC is the general partner. The principals of the general partnership include Wallace L. Scruggs (47.5%), Stewart I. Marcus' family limited partnership known as JAG Ventures Ltd. (47.5%) and Episcopal Community Development an affiliate of Jersey City Episcopal Community Development, Inc (5%). Messrs. Scruggs and Marcus are the principals of Housing Trust of America, LLC. Together they have developed 12-multi families residential communities including 2,500 affordable apartments along with 1,000 assisted living units and over 20,000 single family homes in the United States, Puerto Rico and Canada.

### *The Project*

Whitlock Mills will improve a 6.66 acre site in the Morris Canal Redevelopment Area of Jersey City. Commencing after the Civil War and lasting into the 20th Century, the site was home to a manufacturing complex that produced navel ropes (cordage). Five of the original buildings remain. Two will be razed and the remainder will be gutted and renovated to house living units and parking.

Known as 160 Lafayette Avenue the site also fronts on Manning Avenue and overlooks Lafayette Park currently undergoing a \$1.8 million renovation. Located in close proximity to Lafayette Village, an Agency funded project, the subject property is within walking distance of both the Hudson County Light Rail System and Liberty State Park. One can also walk to Communipaw Avenue a main city artery with viable mass transit accessibility.

Whitlock Mills will provide 330 rental units: 130 one-bedroom apartments, 150 two-bedroom apartments and 50 three-bedroom apartments. 119 units will be for low-income families, 71 units will be for moderate-income families and 132 units will be market units. Each type of apartment will enjoy various designs because of the renovation aspects of the project. Most apartments will have two baths.

Interior finish will be painted dry wall, carpeted floors, and tile wainscot in the baths. Each apartment will have its own gas fired heating and air conditioning unit. Utility cost will be the responsibility of the tenants.

There will be a parking garage with a 125-car capacity and on-site parking for an additional 33 autos.

### *Agency Financing*

The Agency anticipates providing construction and permanent financing in an estimated amount of \$34,337,852 at an estimated interest rate of 5.80% for the permanent term of 40 years. This mortgage will be secured by a first mortgage lien on the property.

The Agency anticipates providing a second mortgage in the amount of \$739,038 at an interest rate of 7.05% for the permanent term of 30 years. The mortgage will be secured by a second mortgage lien on the property.

### *Other Funding Sources*

#### **Tax Credits**

The sponsor is applying for 4% tax credits and anticipates the sale of federal low-income housing tax credits at 78 cents on the dollar. In exchange for the tax credits, the investor is expected to generate equity in the amount of \$10,013,000.

DCA The developer will apply for Balanced Housing Program funds in the amount of \$4,000,000.

Sponsor Equity The Sponsor will provide cash, letter of credit, deferred developer fee, and/or evidence that costs have been incurred and paid in the aggregate amount of \$7,976,549.

Jersey City The sponsor anticipates receiving \$1,300,000 in HOME Funds from the City of Jersey City. This is based on indications from municipal officials.

Terms and Conditions:

Borrower: Whitlock Urban Renewal LP, such entity to be called below the "Sponsor." This commitment includes authorization for changes to the name and/or organizational structure of the Sponsor, provided such changes are acceptable to Agency staff and the Attorney General's Office.

Use of loan funds: Funds will be used to rehab 90 units and construct 240 new units. The project is a multifamily rental housing project known as Whitlock Mills, HMFA #1388 (the "Project").

Principal: A \$34,337,852 first mortgage and a \$739,038 second mortgage, provided, however, that the Executive Director is authorized to adjust this amount pursuant to the Underwriting Parameters set forth below.

Interest: The first mortgage construction period interest is 4.75%. The permanent interest is 5.80. The second mortgage construction period interest is 5.30%. The permanent interest is 7.05%.

Provided, however, that the Executive Director is authorized to adjust these rates pursuant to the Underwriting Parameters set forth below.

Term: First Mortgage: 40 years.

Second mortgage: 30 years.

Collateral: First mortgage lien on Project real estate; security interest in personal property included in the Project; and second mortgage lien on Project real estate.

Repayment: The first and second mortgages will be repaid from project revenues.

Source of loan funds:

First mortgage: Tax-exempt bonds or other funds available to the Agency.

Second mortgage: Taxable bonds or other funds available to the Agency.

Underwriting parameters:

The first mortgage loan amount that a project can sustain is derived from a combination of the following factors: 1) debt service ratio, 2) term of mortgage, 3) interest rate, 4) income and expense projections, and 5) sources and uses of project development funds. Using a debt service ratio of 1.15, a term of 40 years, and interest rate of 5.80% per annum, and the income and expense projections and the sources and uses of project development funds set forth on the attached Form 10, the project can sustain a mortgage amount of \$34,337,852. While Item 2 is a factor that remains constant, Items 1, 3, 4, and 5 are variable factors, which can change between mortgage commitment and closing. As such changes impact the mortgage amount the project can sustain, the Executive Director is authorized to adjust the mortgage amount stated above to reflect changes to the variable factors. If projected net operating income changes due to increases or decreases in income and/or expenses or due to changes in the sources and uses of project development funds, or final risk assessment dictates a revised debt service coverage ratio, the mortgage amount shall be adjusted commensurately to an amount that would keep the debt service ratio at the Agency determined appropriate ratio.

The second mortgage loan amount is determined by: 1) the interest rate, 2) the term of the second mortgage, 3) income and expense projections, and 4) the amount of funds that can be re-paid using a debt service ratio of 1.15 over the total of the first and second mortgage debt service payments. The project can sustain a second mortgage loan amount of \$739,038 as set forth on the attached form 10. Items 1, 2, 3 and 4 are variable factors, which can change between mortgage commitment and closing. If the projected net operating income changes due to increases or decreases in income and/or expenses or due to changes in the sources and uses of project Development funds, the mortgage amount shall be adjusted commensurately to an amount, which will meet the 1.15 debt service ratio.

The working capital amount is derived through a projection of the 1) completion date of the project, 2) the number of units to be occupied at the time the Agency closes its permanent loan, 3) the actual rents, other income, debt service and operating expenses at that time, 4) the projected amount of time to rent up the remaining units to reach sustaining occupancy and 5) market conditions as reflected in the appraisal/market study. Using these factors, the Agency estimates that 17 units will be pre-leased at time the Agency makes its loan and that based upon the underwriting assumptions set forth in the Form 10, \$2,846,243 will be needed for an estimated 12 months of working capital reserve. If the actual factors at the time the Agency makes its loan are different from what is projected in this commitment, Agency staff is authorized to adjust the working capital to reflect the actual factors.

Commitment expiration date:

June 30, 2004, however, the Executive Director is authorized to extend the commitment for two additional consecutive three-month periods, if deemed appropriate in his sole discretion.

Closing conditions:

1. Satisfactory compliance with the Agency's Multifamily Underwriting Guidelines and Financing Policy dated October 25, 2001, as amended.
2. Submission, verification and compliance with all Agency closing requirements including, but not limited to, insurance coverage naming the HMFA.
3. Approval by the Attorney General's Office of any documents needed to implement any action requirements, as requested.
4. The receipt of all necessary environmental and municipal approvals satisfactory to the Agency staff and the Attorney General's Office including, but not limited to, zoning variances, site plan and a tax abatement agreement pursuant to N.J.S.A. 55:14K-37 or the Long Term Tax Exemption Law, if applicable. In the event a tax abatement is obtained under the Long Term Tax Exemption Law, the Agency reserves the right to request a tax abatement under N.J.S.A. 55:14K-37 as a further condition of commitment, and reserves the right to require the sponsor to relinquish its status as an urban renewal entity.
5. Receipt of firm commitments from the funding sources needed to complete the project in form and substance satisfactory to the Agency staff. They are: Balanced Housing, Jersey City Home Funds, Tax Credit Investor contributions and firm approval of Risk Share credit enhancement, all in form and substance satisfactory to the Agency.

6. The ability of the project and the developer to comply with federal tax laws and/or other applicable state and federal statutory and regulatory requirements.
7. Evidence of HUD risk-share commitment.
8. Evidence of a Pilot agreement with Jersey City acceptable to the Agency.
9. Repay period is subject to confirmation in the appraisal/market study report.
10. Funding of HMFA Operating Deficit Escrow Account (ODEA) satisfactory to the Agency. The HMFA will have exclusive control of the ODEA account.
11. The Whitlock Mills construction contract will include a Summary Trade Payment Breakdown signed by the contractor. In addition, the Agency will require a contingency representing 7% of the contract price along with a 2% soft cost contingency.
12. At closing the sponsor will provide an irrevocable letter of credit in an amount determined by the Agency in its sole discretion to provide the necessary funds to fulfill the project's sources and uses requirement.

New Jersey Housing and Mortgage Finance Agency  
 Multifamily Programs Division  
 Project Report  
 Whitlock Mills, HMFA# 1388  
 Jersey City, Hudson County

Block No. 2057 Lot No. 18

Legislative District: 31 Congressional District: 13  
 Census Tract: 33

Project Description: A 330-rental unit complex combining existing former industrial buildings to be renovated with new construction on a 6.66 acre site in the Morris Canal Redevelopment District in Jersey City. There will be 119 units of low-income housing, 79 units of moderate-income housing and 132 market units.

Site Location: 160 Lafayette Street, Jersey City is within walking distance of the Hudson County Light Rail Line and Liberty State Park. The site is also within walking distance of Communipaw Avenue and its access to public transportation. The Whitlock Mills 6.66 acre site overlooks Lafayette Park that is experiencing a \$1.8 million face-lift.

Development Team:

Sponsor: Whitlock Urban Renewal, LP  
 Meg Manley  
 c/o Housing Trust of America, L.L.C.  
 6851 Oak Hall Lane  
 Suite 100  
 Columbia, Maryland 21045

Principals: Wallace L. Scruggs, JAG Ventures, Episcopal Community Development  
 Contact Person and Address same as Sponsor.

Architect: John Saracco Architecture  
 John Saracco  
 518 Main Street  
 PO Box 245  
 Boonton, New Jersey 07005  
 973-299-4428

Attorney: Ballard Spahr Andrews and Ingersol  
 David Prior  
 1735 Market Street  
 51<sup>st</sup> Floor  
 Philadelphia, Pennsylvania 19103  
 215-864-8500

General Contractor: The AJ Group Inc.  
 Scott Hill, VP  
 460 Park Avenue South  
 New York, New York 10016  
 212-889-9200

Managing Agent: Shelter Properties, LLC  
 Patrick Duffy, SVP  
 218 N. Charles Street  
 Suite 220  
 Baltimore, Maryland 21201  
 410-962-0595

Clearances and Disclosures: All required disclosures will be submitted prior to project funding.

Site Control: The Sponsor has entered into an Agreement of Sale for the subject property. The United States Bankruptcy Court, New Jersey District, is supervising the \$4,000,000 purchase.

Zoning: The property is properly zoned for the proposed use.

Utilities: All utilities are available to the site.

Land Valuation: Was determined in accordance with Agency standards.

Taxes: Tax abatement will be granted in accordance with a Pilot agreement satisfactory to the Agency.

Environmental: To be completed in accordance with Agency underwriting standards.

DEVELOPMENT COSTS

Financial Information:

Acquisition	\$4,000,000	(\$12,121/DU)	(\$11/SF)
Construction Costs (Including Contractor Fee)	\$35,960,000	(\$108,969/DU)	(\$96/SF)
Carrying, Financing and Other Charges	\$16,916,439	(\$51,262/DU)	(\$46/SF)
Professional Fees	<u>\$1,090,000</u>	<u>(\$3,303/DU)</u>	<u>(\$3/SF)</u>
<b>TOTAL DEVELOPMENT COST</b>	<b>\$57,966,439</b>	<b>(\$175,656/DU)</b>	<b>(\$156/SF)</b>

LESS PROCESSED SOURCES

Balanced Housing Program	\$ 3,600,000	(\$12,121/DU)
LIHTC Equity	\$10,013,000	(\$30,342/DU)
Sponsor's Equity	\$ 1,226,549	(\$3,783/DU)
Deferred Developer Fee	\$ 6,750,000	(\$20,454/DU)
Jersey City HOME Funds	\$ 1,300,000	(\$3,939/DU)

MORTGAGES REQUIRED

First Mortgage	\$34,337,852	(\$105,390/DU)
Second Mortgage	\$ 739,038	(\$7,256/DU)

Affordability Overview  
Rental Housing

<u># Units</u>	<u>Unit Type</u>	<u>Net Monthly Rent</u>	<u>Utility Allowance</u>	<u>Range of Affordability</u>
78	1 Bdrm	\$643	\$60	Mod 57.5%
93	2Bdrm	\$785	\$78	Mod 57.5%
27	3 Bdrm	\$898	\$95	Mod 57.5%
23	1 Bdrm	\$1,350	0	Mkt.
53	2Bdrm	\$1,600	0	Mkt.
15	3 Bdrm	\$2,100	0	Mkt.
18	1 Bdrm	\$1,350	0	Mkt.
8	2 Bdrm	\$1,600	0	Mkt.
1	3 Bdrm	\$2,100	0	Mkt.
8	1 Bdrm	\$1,350	0	Mkt.
1	2 Bdrm	\$1,600	0	Mkt.
4	3 Bdrm	\$2,100	0	Mkt.
1	2 Bdrm	Supt	0	Mkt.

330 Units

Attachment:

1. Form 10

**NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY  
MULTI-FAMILY PROGRAMS DIVISION**

**SCHEDULE 10- PROJECT DESCRIPTION**

Inductment  
 Commitment  
Re-Commitment  
Bond Sale  
Closing

HMFAM # 1388  
Date: 10/6/03  
Prepared by: John A. Fubermann  
Reviewed by: *[Signature]*

Whitlock Mills  
Name of Housing Development  
160 Lafayette Avenue  
Project Street Address  
Zip Code: 07204  
Municipality: Jersey City  
County: \_\_\_\_\_ Block No.: 2057 Lot No.: 18

**Type of Development**  
(Select either Family or Sen)  
Family   
Senior Citizens  
Provide the following:  
Legislative District: 31  
Congressional District: 13  
Census Tract: 33

**Citizens (NOT BOTH)**

**Type of Construction**  
New Construction   
Modular  
Moderate Rehabilitation  
Substantial Rehab.   
Conversion   
Rehabilitation/Occupied

No. of dwelling units: 330  
No. of currently occupied DU's  
Construction Term: 24 (mos.)  
Rent-up Period: 12 (mos.)

**Parking**  
Total Number of Parking Spaces: 278  
Ratio of parking to D.U.'s: 1 : 1

**Type of Loan**  
Construction Loan  
Construction & Permanent L  
Permanent Loan Only

**Type of Financing**  
Tax Exempt   
Taxable

**Type of Subsidy**  
City Living  
Affordable Rental Housing

**Cost Summary**  
Cost of Land and/or Improvements  
Construction Cost  
Total Project Cost

\$12,121 per DU  
\$108,363 per DU  
\$170,696 per DU  
\$11 per Sqft.  
\$96 per Sqft.  
\$152 per Sqft.

Types of Residential Structures*	No. of Bldgs.	No. of Stories Each	Unit Type (No. of BR's)	Unit Size in Sq. Ft.	No. of x Units	Net Rentable Area	Rental Revenue Per Unit	Total		
Low-Rise	3	1	2&3	534	4	2,136	4	16		
		1		684	1	684	4	4		
		1		690	3	2,070	4	12		
		2		828	1	828	6	6		
		2		800	1	800	5	5		
		2		817	1	817	5	5		
		2		835	2	1,670	6	12		
		2		880	2	1,680	6	12		
		3		1,200	1	1,200	7	7		
		Mid-Rise	30	1		725	62	44,950	4	248
2				910	144	131,040	6	864		
3				1,190	35	38,300	7	245		
1				700	57	39,900	4	228		
2				950	5	4,750	6	30		
3				1,250	11	13,750	7	77		
Garage						70,572				
Gymnasium, Laundry, Commca						16,184				
<b>Totals</b>						<b>330</b>	<b>371,531</b>	<b>1,771</b>		

\*Low - Rise (1 - 3), Mid/Hi - Rise (4 + stories), Townhouse or Semi-detached  
rev. 07/26/01LB, 11/05/01 MR, 03 AMA, 5/19/03 MRK, 5/20/03 AMA

**SCHEDULE 10: EST. DEVELOPMENT COSTS AND CAPITAL REQUIREMENTS**

Inducement	
X Commitment	
Re-Commit	
Good Sale	
Closing	

HMFA# 1388  
Prepared by: John A. Fuhrmann  
Reviewed by: *[Signature]*  
(Director of Technical Services)  
(Director of Credit)

10/14/03  
Date

Will loan/s be repaid from project revenues?  
(If Source is a grant, enter "G")  
Y or N or G

**1. SOURCES OF FUNDS DURING CONSTRUCTION:**

a) HMFA First	note
b) HMFA Sec	Note (30 year; 7.05%)
c) Balanced H	ing Fund w/10% Holdback (Total BHP \$4,000,000)
d) 4% Tax Crie	@ 75% (Total Tax Credits \$10,013,600)
e) Deferred De	ferred Fee
f) Jersey City	ie Fund
g) Sponsor Eq	
h)	
<b>TOTAL SQ</b>	<b>CES OF CONSTRUCTIONS FUNDS:</b>

Y	\$ 34,337,852
N	\$ 799,038
G	\$ 3,600,000
	\$ 7,509,750
	\$ 6,750,000
	\$ 1,300,000
	\$ 900,815
	\$ 54,437,495

**2. USES OF FUNDS DURING CONSTRUCTION:**

**A. ACQUISITION COSTS:**

a) Land 7.00 @ (\$ 214,285.71 per Acre)

- b) Building Acquisition
- c) Relocation
- d) Other:

**B. CONSTRUCTION COSTS:**

- a) Demolition
- b) Off-site Improvements
- c) Residential Structures
- d) Community Service Fa
- e) Environmental Cleanu
- f) Surety & Bonding
- g) Building Permits
- h) Garage Parking
- i) Utility Connection Fees
- j) General Requirements
- k) Contractor Overhead &
- l) Other: FR&E
- m) Other:

**C. DEVELOPERS FEE**

**D. CONTINGENCY**

- a) Hard Costs 7.000%
- b) Soft Costs 2.000%

**E. PROFESSIONAL FEES:**

- a) Appraisal & Market Stu
- b) Architect
- c) Engineer
- d) Attorney
- e) Cost Certification/Audit
- f) Environmental Consulta
- g) Historical Consultant
- h) Soil Investigation
- i) Surveyor
- j) Other:
- k) Other:

**F. PRE-OPERATIONAL EXPENSES:**

- a) Operator fees (pre-constr
- b) Advertising and Promoti
- c) Staffing and Start-up Sup
- d) Housing Affordable Serv
- e) Other:

**G. CARRYING AND FINANCING COSTS DURING CONSTRUCTION:**

- a) Interest @ 4.7500 % for ( 24 mos.) on
- b) R.E. Tax \$ 88,000 (per annum) x 2.00 Yrs.
- c) Insurance \$ 35,000 (per annum) x 2.00 Yrs.
- d) Title Insurance and Recor
- e) HMFA Folate(Cons'l. & Perm
- f) HMFA Second Note Finan
- g) HMFA Const. Loan Serv.Fe
- h) Other Lender Constructi
- i) Tax Credit Fees
- j) Negative Arbitrage
- k) Interest @ 4.3000 % for ( 24 mos.) on
- l) Other: Bridge Loan Fee

	\$ 1,500,000
	2,500,000
	4,000,000
	\$ 300,000
	300,900
	28,000,000
	500,000
	75,000
	1,000,000
	150,000
	3,000,000
	185,000
	2,000,800
	250,000
	35,960,000
	6,750,000
	102,163
	2,619,363
	\$ 20,000
	300,000
	30,890
	400,000
	25,000
	30,000
	25,000
	35,000
	25,000
	1,090,000
	\$ 75,000
	50,000
	25,000
	90,000
	240,000
	\$ 17,168,926
	1,631,048
	176,000
	70,000
	25,000
	35,076,890
	701,538
	35,076,890
	350,769
	100,800
	200,000
	395,440
	78,338
	50,000
	3,778,133
	\$ 54,437,495
	\$ 0

**3. USES OF FUNDS DURING CONSTRUCTION:**

**4. BALANCE OF FUNDS NEEDED FOR CONSTRUCTION (overage / shortage):**



**SCHEDULE 10 OPERATING EXPENSES**

Sponsor: Whitlock U n Renewal LP  
Dev. Name: Whitlock U

HMFA# 1388  
Prepared by: John A. Fuhrmann  
Reviewed by: [Signature]  
(Management Division)

10/06/03  
10/14/03  
Date

**I. ADMINISTRATIVE EXPENSE**

Stationery & Impl.	2,400
Telephone	10,000
Dues & Sub.	
Postage	1,800
Insp. & Other Fees	
Advertising	30,000
Legal Services	2,400
Auditing (Year End)	9,200
Soc. Serv. & Ind.	
Bookkeeping & Accounting	
Misc. Admin. Expenses	7,800
Computer Charges	9,000
Other:	
<b>TOTAL \$</b>	<b>72,600</b>

**II. SALARIES & RELATED CHARGES**

	# of Employees	Total Wages Inc. benefit
Superintendent	1.00	38,769
Juniorial		
Grounds & Landscaping	1.00	21,120
Security		
Social Services		
Site Office & Admin	3.00	90,450
Maintenance	3.00	113,619
Other Salaries		
Empl. Benefits		41,965
Empl. Payroll Taxes		27,525
Worker's Comp.		8,108
Other:		
<b>TOTAL \$</b>	<b>8.00</b>	<b>353,624</b>

**III. MAINTENANCE AND REPAIRS**

Masonry	2,500
Carpentry	2,500
Plumbing	2,400
Electrical	2,400
Kitchen Equipment	
Elevator	3,000
Windows & Doors	2,400
Vehicles & Equipment	2,500
Snow Removal	9,800
Grounds & Landscaping	3,000
Paint & Decorating	28,050
Small Equipment Tools	1,200
Jan. Sup. & Materials	5,000
HVAC Supplies	2,500
Misc. Maint. & Impl.	2,400
Other:	5,300
<b>TOTAL \$</b>	<b>73,850</b>

**IV. MAINTENANCE CONTRACTS**

Security	
Elevator	10,000
Rubbish Removal	30,000
Heating & AC Maint.	5,000
Grounds, Parking & Landscaping	53,000
Externizing	5,000
Cyclical Apt. Painting	38,500
Other:	
<b>TOTAL \$</b>	<b>143,500</b>

**V. UTILITY EXPENSE**

Water Charges	93,000
Sewer Charges	20,000
Electricity	44,500
Gas	36,500
Fuel	
<b>TOTAL \$</b>	<b>114,000</b>

**VI. REAL ESTATE TAX CALCULATION FOR TAX ABATEMENT**

Gross Rents	\$	4,083,072
Less Vacancy	(-)	204,154
Less Utilities (if applicable)	(-)	114,000
Gross Sheltered Rents	\$	3,764,918
x Rate	x	4.00 %
Real Estate Taxes	\$	150,597

**SCHEDULE 10 : ANTICIPATED GROSS RENTS**

Mortgage Amount  
Mortgage Interest Rate  
Term (years)  
Amortization (Y,S,M)  
FMR Area

34,337,852  
5.80 %  
40  
3d  
Hudson

HMPA # 1388  
Prepared by: John A. Fuhrmann  
Reviewed by: (Management Division)

10/06/03  
Date

**ANTICIPATED GROSS RENTS**

No. of Bedrooms	No. of Units	Target **	Gross Rent	Allowance for Tenant Paid Utilities***	Net Rent	Monthly	Annual
1	78	Mod 57.5%	643	60	583	45,474	545,688
2	93	Mod 57.5%	785	78	707	55,751	789,012
3	27	Mod 57.5%	898	95	803	21,681	260,172
	23	Market	1,350		1,350	31,050	372,600
	53	Market	1,600		1,600	84,800	1,017,600
	15	Market	2,100		2,100	31,500	378,000
	18	Market	1,350		1,350	24,300	291,600
	8	Market	1,600		1,600	12,800	153,600
	1	Market	2,100		2,100	2,100	25,200
	8	Market	1,350		1,350	10,800	129,600
	1	Market	1,600		1,600	1,600	19,200
	4	Market	2,100		2,100	8,400	100,800
	4	Market					
Super's apt							
<b>TOTALS</b>	<b>330</b>					<b>340,254</b>	

Anticipated Annual Gross Rents 4,083,872

- \* Indicate on a separate line which apartment is for the Superintendent. If it's rent-free, list \$0 in the Rent column.
- \*\* Indicate "Low", "Mod" or "Mkt" AND the percentage of median income.  
Low Income - 30% or less of median income  
Moderate Income - 30% to 50% of median income  
Market Income - 50%+ of median income
- \*\*\* Where tenants have their own utilities, a "utility allowance" must be subtracted from the market rate chargeable rent when determining their rental charge.

**EQUIPMENT AND SERVICES**

(a) Equipment:	(b) Services:	Gas, Electric or Oil	Paid by Tenant
Ranges	Heat	Gas	X
Refrigerator	Hot Water	Gas	X
Air Conditioning	Cooking	Electric	X
Laundry Facilities	Air Conditioning	Electric	X
Disposal	Household Electric		X
Dishwasher	Water		X
Carpet	Sewer		
Drapes	Parking		
Swimming Pool	Other:		
Tennis Court			X
Fitness Center			

**COMMERCIAL SPACE**

(Include all utility costs associated with the commercial space in your description)


**SCHEDULE 1: SUMMARY OF ANTICIPATED ANNUAL INCOME AND EXPENSES**

Sponsor: Whitlock LP Renewal LP  
Dev. Name: Whitlock M

HMFAM 1386

Prepared by: John A. Fuhrmann

Reviewed by: *[Signature]*  
(Management Division)

10/06/03

*[Handwritten]*  
Date: 10/14/03  
Page: 3

**RENTAL INCOME**

Apartment Rental \$ 4,083,072  
Vacancy Loss ( 5.00 % ) 204,154  
NET APT. RENTALS 3,878,918

Commercial Rental \$  
Garage & Parking 211,800  
Garage & Parking Vacancy 5 % 10,590  
NET COMMERCIAL RENTALS 201,210

TOTAL RENTAL INCOME \$ 4,080,128

**OTHER INCOME**

Laundry Machine 35,000  
Other Rental Washer/Dryers & Cable Hook-up Fee 71,280  
TOTAL OTHER INCOME \$ 86,280

**TOTAL REVENUE**

\$ 4,166,408

**EXPENSES**

Administrative (Schedule I) \$ 72,600  
Salaries (Schedule II) 253,624  
Maint. & Repairs (Schedule III) 73,850  
Maint. Contracts (Schedule IV) 143,500  
Utilities (Schedule V) 114,000  
Management Fee ( 4.00 % )  
(% of Total Rental Income) 163,205  
Real Estate Tax (Schedule VI) 150,597  
Insurance \$930 per Unit 115,500  
Reserve for Repairs and Replacement  
400.00 per unit 132,000

**TOTAL EXPENSES**

\$ 1,318,576

**NET OPERATING INCOME**

\$ 2,847,833

**DEBT SERVICE**

1. Principal and Interest \$ 2,209,997  
2. Mortgage Bond Issue Fee 0.40 % 137,351  
3. MIP 0.3750 % 128,767

**AGENCY DEBT SERVICE**

\$ 2,476,115

**DEBT SERVICE (OTHER MORTGAGE LOANS)**

\$ 51,786.00

**TOTAL DEBT SERVICE**

\$ 2,527,901

**NET INCOME**

\$ 319,631

Less Return on Equity ( % on \$ 7,509,750 ) \$

**Project Profit/(Loss)**

\$ 319,631

**DEBT SERVICE RATIO CALCULATION:**

DSR =  $\frac{\text{NET OPERATING INCOME}}{\text{AGENCY DEBT SERVICE}}$  = 1.15000

New Mortgage Amount

34,337,852

