



October 6, 2015

Jaime Rubin  
Mark S. Colon  
New York State Homes and Community Renewal  
25 Beaver Street  
New York, New York

Holly M. Leicht  
Stacy Schrager  
United States Department of Housing and Urban Development  
26 Federal Plaza  
New York, New York 10007

Alan Wiener  
Wells Fargo Multi Family Capital  
150 East 42nd Street  
36th Floor  
New York, NY 10017

Richard M. Froehlich  
NYC Housing Development Corporation  
110 William Street  
10th Floor  
New York, New York 10038

**Re: Riverbay Corporation Management**

Dear M. Rubin, Colon, Leicht, Schrager, Wiener and Froehlich:

Thank you for hosting a meeting with Riverbay's representatives on October 2nd, 2015. As a follow up to that meeting I want to present you with the following proposal to ensure that the on-going and future management of Riverbay will be both professional, independent, and subject to meaningful oversight controls and reporting requirements.

I attach the proposed Management Plan previously submitted to you by our interim General Manger, Mr. Noel Ellision, as well as another copy of a Previous Participation Certificate and a HUD Form 9839-a in support of Riverbay's application to transistion away from an Independent Fee Agent to either an Owner/Manager or Identity of Interest Management Agent.

As a supplement to the information set forth in those submittals, Riverbay is proposing the following additional safeguards.

**IOI Management with  
Restricted Board**

Riverbay is proposing the creation of an Identity of Interest (IOI) Managing Agent Entity to manage the Property. The IOI would have a three (3) member governing board consisting of the Riverbay Board President, the Riverbay Board Treasurer, and an Independent Director jointly selected by the regulatory entities (HCR & HUD) and the Lender (Wells Fargo).

No changes in the management team, including specifically the hiring or firing of certain key Riverbay employees such as the Executive Manager (a newly created position which is presently unfilled), the General Manager, the Director of Finance and the Director of Internal Audit, could be made without the prior approval of the Governing Board. Any such changes would require the consent of the Independent Director, providing the Regulatory Agencies and Lender with a veto over any hiring, firing, or change of management.

In addition, Riverbay would enter into a written Management Agreement with the IOI management entity which would require compliance by the IOI with all existing rules and regulations of HUD and HCR, and all Program Obligations under the Loan Documents.

Riverbay would recommend to the IOI Governing Board an individual or entity to fill the newly created position of Executive Manager. The Executive Manager would be at the top of the organizational chart and have final authority to make all decisions relating to the management and operation of the Riverbay complex. The General Manager, and all other management personnel, would report to this newly created position.

The IOI Governing Board would meet at least quarterly. At each such meeting, the Executive Manager, the General Manager, the Director of Finance, the Director of Internal Audit and the outside General Counsel, would attend and report, in writing, to the Board.

The IOI Governing Board would have the authority to direct audits of the financial, operational and legal affairs of the Riverbay Corporation by either Riverbay's Director of Internal Audit, or by Riverbay's outside independent accounting firm (presently O'Connor Davies), or by Riverbay's outside General Counsel (presently Smith, Buss & Jacobs, LLP). The expense of any such audits would be borne by Riverbay.

Riverbay currently provides monthly reports to HUD, HCR and Wells Fargo, consisting of:

- Aged Accounts Receivable;
- Listing of Cash Balances;
- Statement of Cash Flow;
- Income Reports year to date;
- Trial Balance;
- Aged Accounts Payable;
- Expense Distribution Report

The IOI Governing Board would have the authority to order financial audits of the monthly reports by either the Director of Internal Audit, the outside independent Auditor, or by the staff of the applicable regulatory agency or lender. The IOI Governing Board, or the Independent Director acting individually, would also have the authority to require the preparation and submission of such other financial or operating reports that it deemed reasonable and necessary. This would allow the Regulatory Agencies and the Lender to verify that all financial figures and reports are accurate and arms-length.

The existing Loan Documents require an updated Property Condition Assessment by November 2022. Riverbay would voluntarily undertake, and pay for, an updated Property Condition Assessment Report by November 2017. This report would verify not only the accuracy of the initial Property Condition Assessment but also IOI Management's ability to preserve and protect the collateral securing the Loan.

In order to grant appropriate authority to the IOI Governing Board, the Riverbay Board of Directors would amend Article X of Riverbay's By-Laws, entitled Special HUD Provisions, adopted on August 22, 2012, to restrict the authority of the Riverbay Board to hire or fire the Executive Manager, the General Manager, the Director of Finance and the Director of Internal Audit, or to interfere with the reporting and auditing requirements of the IOI Governing Board. These amendments would remain effective as long as the Corporation is subject to a mortgage loan insured, guaranteed or held by HUD, its successors or assigns.

Riverbay would continue to pay down the loan principal in accordance with the present amortization structure which provides for approximately \$1,000,000 in principal reduction per month. [As of the date of this proposal, the loan has been reduced from \$621,500,000 to \$584,000,000, a total of \$37,500,000].

Presently Riverbay has approximately \$60,000,000 in restricted reserves on deposit with Wells Fargo. In the event of a financial default, Wells Fargo has the legal right under the loan documents to immediately seize those funds and to apply them to the Loan.

**Additional Audit and Financial Protections**

As referenced at our meeting, Riverbay has added a Director of Internal Audit to its staff together with a Director of Procurement. Both individuals have impressive credentials and bring new perspectives, and professionalism, to Riverbay's existing 1,068 employee work force.

Riverbay's August 31, 2015 financial report shows approximately \$9M dollars in free operating cash. Riverbay is projecting a year end cash balance of \$10M. Riverbay is current with all of its payables, has paid the full amount necessary to settle the employment related class action and the related re-classification audit, has reduced the principal balance of its outstanding mortgage by approximately \$37.5M, and has increased its reserve account by over \$5M. In addition, Riverbay presently has a 98.4% occupancy rate and a five (5) year waiting list of qualified applicants for new apartments.

Upon Riverbay's failure to comply or cure any Declaration of Default by HUD under the Regulatory Agreement, or to cure any Monetary Default or a Covenant Event of Default under the Security Agreement, or under any other Loan Document, the IOI Management Agreement would require the IOI Management Entity to collect and pay over all rents, shareholder maintenance, and other income of the Corporation to the entity designated by the Guarantors. These funds would be used to cure any monetary default, and to pay Riverbay's monetary obligations under the Note and Security Instrument, together with the necessary expenses of preserving and operating the Mortgaged Property.

As additional financial security for the Loan, Riverbay would, if requested, place its payroll account (presently at Amalgamated Bank) and its operating account (presently at New York Community Bank) with Wells Fargo. This offer is conditioned upon Wells Fargo agreement to i) match the existing fees of said banking institutions; ii) print and mail monthly maintenance bills for the Corporation (a service currently provided by NYCB); and iii) provide an on-site branch for the cashing of payroll checks ( a service currently provided by Amalgamated Bank for Riverbay's employees).

In addition, Riverbay, and the IOI Managing Agent, will continue to provide Wells Fargo, and the Guarantors, with all required insurance and fidelity bonds.

Under the Loan Agreement, Riverbay has consented to annual site inspections, as well as an annual Management Review by HUD. In the IOI Management Agreement between Riverbay and the IOI, Riverbay will incorporate language providing for an adjustment of the IOI management teams compensation to reflect the annual HUD Management Review.

Further, Riverbay has provided, and will continue to provide training for its Board members. Currently, seven (7) Board members are RAM Certified and RAM courses are being offered to all remaining Board members. Counsel has also provided training to the Board on the fiduciary obligations of Board members, and on various topics such as the Fair Housing Act. In addition, 394 of Riverbay's employees have attained OSHA safety certification appropriate to their trade and job responsibility.

### **Power Plant Management**

In accordance with the Loan Documents, Riverbay has maintained a Long Term Service Agreement [LTSA] to ensure proper maintenance of the existing power plant equipment. However, Riverbay has determined that the overall management and operation of the central heating and cooling plant, together with the 40 megawatt co-generation facility, requires management expertise which transcends traditional housing management capabilities. This need was confirmed during Riverbay's interview of the various applicants for the position of managing agent. As such, Riverbay has drafted an RFP for an O & M Operator for the Power Plant.

It is Riverbay's intention, subject to the approval of the Regulatory Agencies, to bid for and contract with an Independent Fee Agent, with expertise in the operation of electric power plants, to provide the necessary operational and management controls for the safe and efficient operation of the existing Power Plant.

### **Performance to Date**

Since the suspension of the managing agent in November of 2014, Riverbay's existing staff of 1068 employees has successfully managed and resolved a series of extraordinary crises while improving its financial position. Those events included an outbreak of legionella, a multi-million dollar employment class action litigation, a re-classification audit, and the discovery of significant contracting and bidding errors relating to the power plant.

Riverbay voluntarily imposed a maintenance increase on its shareholders, settled the class action litigation, re-classified its work force, retained the leading expert in the country on legionella, implemented industry standard construction contracts, regained control over a dysfunctional multi-million dollar boiler replacement project, instituted a body camera program for its Public Safety Department, attained the lowest crime rate in the Bronx, and hired additional staff to provide necessary auditing and procurement controls.

In addition, with regard to the four capital repair items set forth in your letter, please note that Riverbay has completed the installation of GFCI outlets and smoke detectors in 15,363 of its 15,372 units. The 9 units in which the required installations were not completed had refused access. Riverbay has commenced the process of obtaining Court orders to compel forced access to those units.

With regard to the retail storefronts, Riverbay's architects have completed a series of schematic drawings for the proposed work. I attach copies of the drawings to this letter since we did not have time to review them at our meeting. These schematics are scheduled to be reviewed by the Board at its October 9th, 2015 meeting.

Third, with regard to the removal of the garage beams, an independent, outside engineering firm, O & S Associates, has performed a code review and a zoning review. The engineer has issued a written recommendation against the removal of these beams. The engineer recommended that the beams be repaired rather than replaced. The engineer's recommendation has been submitted to Wells, HUD and HCR as part of the routine loan reporting. A copy is also attached to this letter.

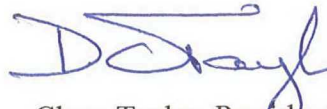
Fourth, with regard to the accessibility of the lobby entrances, the process is underway. Riverbay initially renovated one lobby in Building 15A to comply with a Court order and to assess design feasibility and shareholder acceptance. Although the completed work resulted in compliance with the Court order, the finished project was unacceptable to all shareholders in the building. Shareholders noted significant problems with the intercom system, operational difficulties with the door opening motor, repeated failures of the mechanical locking device, and unsatisfactory performance of the access doors in various weather conditions. As a result, Riverbay engaged in a series of shareholder meetings, resulting in a number of design changes to address shareholder concerns. A different contractor, IJZ, started work on July 7, 2015 (Contract #2981). Simultaneously the lobby design architect, WASA, went bankrupt. A replacement architect, Architectural Preservation Studios (APS) started work on August 11, 2015 (Contract #3011). The new architect, APS, is presently reviewing shop drawings from IJZ. Upon final approval of the shop drawings, it is estimated that the work will be completed within 3 months. Assuming a satisfactory result, Riverbay will then implement this solution project wide. In the interim, Riverbay has established a committee of shareholders, composed of residents with various disabilities, to review and implement on going improvements in accessibility and in the provision of housing services.

Summary

Riverbay intends to fully comply with its obligations under the Loan Documents and to be a good partner with the Lender and Guarantors. Riverbay has no interest in taking any action which would jeopardize the existing Loan, or which would diminish the value of its property or decrease the level of services provided to its resident-owners. The property securing the loan is our home. As such, our primary motivation is the provision of safe, quality housing at an affordable price. We understand and respect the concerns of the Guarantors. It is our belief that the management solution we are suggesting is the best vehicle to provide the comfort you require. The proposal provides transparency, detailed reporting, verification of financial information, and accountability. In addition, Riverbay estimates that the above proposal for an IOI manager would generate net savings of approximately \$1,000,000 per year

We look forward to a prompt and amicable resolution of this issue. In order to expedite this dialogue I have instructed and authorized our General Counsel to speak directly with you concerning this matter.

Respectfully,



Cleve Taylor, President  
Riverbay Board of Directors

Enclosures:

Management Plan  
HUD 2530 & HUD 9839-A  
Architectural Renderings of Retail Store Upgrade  
Engineer's Recommendation Re: Garage Beams

cc: Riverbay Board of Directors  
Hon. Eliot Engel  
Hon. Ruth Hassel Thompson  
Hon. Michael Benedetto  
Hon. Andrew King  
Jeffrey D. Buss, Esq.