



## Cooperative Description Memorandum

*From:* NYC REIC Steering Committee

*To:* NYC REIC Membership

*Re:* Proposed entity and business model for the cooperative, for Member comment and consideration

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## I. Purpose of Cooperative

The New York City Real Estate Investment Cooperative (the **NYC REIC**) was formed around a set of investment selection criteria, which laid the foundation that we the members organized around. These criteria are (the **Preliminary Criteria**):

- The property to be acquired is in New York City.
- The programming proposed in the property supports culture, small business, cooperative enterprise, and/or provides community benefit.
- The programming in the property benefits populations that have traditionally faced barriers of access to stable places to assemble and/or do their work.

- The proposed property and programming are financially sound, so that we will be able to pay members back; we aim to minimize the risks we are taking with our money and resources.
- The property acquired is restricted from being transferred as a market commodity in the future, through legal mechanisms in its deed (e.g., covenants, conservation easements, community land trusts, etc.).

On September 28, 2015, the interim facilitation team of the NYC REIC issued the following statement of the mission of the NYC REIC (the **Mission Statement**):

We aim to pool our money and power to secure space for **community, small business, cooperative enterprise, and cultural** use in NYC. Consistent with the principles and spirit of the cooperative movement, NYC REIC aims to make long-term, stabilizing, and transformative investments for the benefit of our member-owners and our community.

Following the adoption of the Charter of the Steering Committee (the **SC**) and the election of the SC in January, 2016, the SC exercised its authority under the Charter to adopt a [description of the NYC REIC](#) that builds upon the Mission Statement and the Preliminary Criteria. In relevant part, the description elaborated on the mission statement and investment criteria by laying out the SC's vision of what the NYC REIC should become (the **Vision**):

Our vision is to build a different type of real estate investment platform. We will:

- assist communities in raising the capital they need;
- work with community-based organizations to plan and implement their real estate development projects; and
- support local community activism to ensure that the city emphasizes affordable, community-controlled commercial space in its land use decisions.

The Charter requires the SC to, among other things, form a legal entity and to define a more permanent governance structure for the NYC REIC (see [the Charter](#) at I.A.1., 2. & 3.). The SC has held several meetings and met with our outside legal counsel to discuss legal and business models that would allow us to satisfy these obligations in a manner that is consistent with the Preliminary Criteria, the Mission Statement and the Vision. We summarize our findings in the following sections, and offer them for your consideration. We ask you to give us your comments, questions or concerns regarding any aspect of these proposals. If you, the membership of the NYC REIC, find our conclusions to be satisfactory, we ask that you stand to approve them when they are duly raised at the applicable All-Member Meeting.<sup>1</sup>

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<sup>1</sup> **Note:** We plan to bring to vote aspects of our proposal in a staged manner; Choice of Entity will be brought to a vote on at the July 28, 2016 All-Member Meeting and Business Model will be brought to a vote at a subsequent All-Member Meeting.

## II. Choice of Entity and Justification

### A. *New York Not-for-profit Corporation with limited liability special purpose entity subsidiaries*

We propose that the NYC REIC form a parent company that is a New York Not-for-Profit Corporation (a **NFP**) which is structured as a Member-Controlled NFP. Further, we propose that investments be made through limited liability special purpose entities, such as limited liability companies (**LLCs**). Under this proposal, all the people who are invested in a project (either through contribution of capital or labor or by virtue of their use of the property as community members) will be members of the NFP and a member of the special purpose entity that is formed for that project. The special purpose entities will be the entities that will raise capital and be in direct relationships with the properties that we invest in. The special purpose entities will be the entities that pay dividends to member-investors.

There are a number of benefits to the proposed structure over alternative structures, particularly the existing cooperative corporation entity under New York State law. First, the use of special purpose entities allows us to limit the liability of our membership (and any other investors) to the value of the investments that they put in to a particular project. Second, unlike a New York Cooperative Corporation, a NFP is likely to be considered a tax exempt entity under Federal and New York law. Third, unlike a New York Cooperative Corporation, a charitable NFP is explicitly formed to operate for the benefit of the public (and not just for the benefit of its members).

By carefully drafting the bylaws of the NFP we can ensure that the NFP operates in accordance with the cooperative principles and the purpose of the NYC REIC. For these reasons, we believe the proposed structure is flexible enough to allow us to interact with different communities in a number of different ways and secure enough to give our member-owners and other investors the comfort we need to entrust the NYC REIC with our savings.

### B. *Tax-exempt status under 501(c)(3) of the Internal Revenue Code*

As noted above, a significant benefit of a NFP is the fact that it is likely to be able to be recognized by the IRS as a tax-exempt entity. This allows us to avoid paying taxes until we have an investment opportunity. Further, charitable tax-exempt entities (501(c)(3)s) can access a large pool of capital that is available in NYC - foundation/institutional grants and charitable donations. We believe this may be a beneficial source of operating capital for the NYC REIC during the startup phase of the cooperative.

### C. *Can we achieve our purpose with this structure?*

The Mission Statement establishes that the NYC REIC's operations must be "to make long-term, stabilizing, and transformative investments for the benefit of our member-owners and our community" (emphasis added). A NFP, unlike a New York Cooperative Corporation, is explicitly formed to operate for the benefit of the public (and not just for the benefit of its members), which allows us to operate for the benefit of our communities. Further, by carefully drafting the bylaws of the NFP, we can ensure that the NFP's operations remain loyal to the business plan that we define, which itself will be designed to ensure that we remain loyal to the purpose of the NYC REIC.

Finally, while we do not address matters of governance in detail in this memo, we can say that the use of these special purpose entities allows us to localize democratic control so that the people who are invested in a project (either through contribution of capital or labor or by virtue of their use of the property as community members) are the ones who make the important decisions about that project. This is done by recognizing that the subset of our membership that invest in a project (both existing members and new ones from the community connected to that project) are the membership of that project. Everyone who is a member of these projects would also be a part of the NYC REIC family; legally, they must first be members of the NYC REIC not-for-project corporation before they can be members of each project sponsored by the NYC REIC.<sup>2</sup> The use of the proposed structure also allows us to centralize decisions that are best made on an all-NYC REIC basis (uniting the voices of all communities that are connected to our projects), so that general assembly (all-member) meetings become spaces for discussion and decision-making that impact all of us.

*D. Can we ensure that this structure allows us to operate on a cooperative basis?*

The Mission Statement establishes that the NYC REIC's operations must be "consistent with the principles and spirit of the cooperative movement". Can we achieve this requirement with a not-for-profit parent company and limited liability special purpose entity subsidiaries?

As noted above, we do not address matters of governance in detail in this member. However, we can say that as a Member-Controlled NFP, we, the members of the NYC REIC, will have final authority over the activities of the cooperative. This is an alternative way to structure a NFP than the typical Board-governed structure that those of us (especially those from the non-profit sector) may be most familiar with. We can draft the bylaws to accommodate the democratic governance that we have come to know and love in the NYC REIC as it currently exists, and to ensure that the NYC REIC continues to operate democratically in the future.<sup>3</sup>

*E. Can we still call ourselves a "cooperative" if we are a Not-for-Profit Corporation?*

The law prevents us from forming a non-profit entity with "cooperative" in the legally-filed name. However, nothing prevents us from forming the non-profit entity as "NYC REIC, Inc." and using the full name "New York City Real Estate Investment Cooperative" on our website, in our public discussions and on our public materials. Many cooperatives that choose to use the non-profit legal entity form do this.

### III. Business Model<sup>4</sup>

As noted above, the Charter requires the SC to define a more permanent governance structure for the NYC REIC. In order to do so, the SC believes that we must first develop a conception of the NYC REIC's business model.

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<sup>2</sup> **Note:** This allows us more flexibility under Federal and State securities law and regulations.

<sup>3</sup> **Note:** Please see below in the "Business Model" section for a discussion of how each of the cooperative principles will be met through the proposed structure.

<sup>4</sup> **Note:** This section will be developed after June 12 to contain a proposal regarding the NYC REIC's business model.

To develop this conception we have set forth below a series of questions that will guide our thinking in a more structured manner. Further, we have put together a [matrix](#) that will allow us to evaluate in a detailed manner different scenarios of our interaction with potential partner community groups and/or properties, and a [diagram](#) to help us think about the vetting and investment process might look under these different scenarios. We propose to use these tools to develop our business model.

*What problem does the REIC try to solve?*

The REIC's goal is to preserve or create permanently affordable commercial/industrial/cultural/social spaces, while adhering to the cooperative principles in our organization, decision making process, and governance.

Our beneficiaries are:

- The communities where we will make our investments, which will retain or gain commercial/industrial/cultural/social spaces.
- Our investors, who will receive a modest return on their investment.
- Cooperatives, small businesses, cultural groups and community-based organizations, which will utilize the spaces we activate or preserve.
- Other investment cooperatives that will learn from the REIC, and scale our model.

*What does the REIC invest in?*

NYC REIC is a financial investment vehicle, which makes investments to preserve or create permanently affordable commercial/industrial/cultural/social spaces. The REIC will invest only in those real estate projects where we have the opportunity to ensure permanent affordability. We will not invest in project teams, or provide small business loans.

NYC REIC will play a role in matching tenants to properties, in investment scenarios identified by our membership where there is not a clear tenant interested in or already utilizing a property. We will work with vetted local partners (community groups or local REIC members) to identify appropriate tenants for the site.

All NYC REIC tenants will have to meet the tenant-focused portions of the NYC REIC underwriting criteria.

For cases where there are multiple tenants interested in utilizing a property, we will design and adhere to a community oriented decision-making mechanism for selecting a tenant for the property.

*How do we define permanent affordability'?*

All NYC REIC investments must contain a mechanism for securing permanent affordability of the property, which we define as a multi-generational commitment to ensuring continued access to the property for groups with limited resources, and high social/community value. In addition, the affordability of all NYC REIC investments must be ensured by a dedicated and sustainable enforcement body.

The NYC REIC will invest in properties that:

- Are located on land owned by a community land trust;
- Include a deed restriction that stipulates the permanent affordability of the property, with a clearly defined enforcement body, or;
- Are directly owned by the REIC, and managed by a vetted community-based organization.

*What role will the REIC play in organizing communities?*

NYC REIC will not play a direct role in organizing communities. As an organization that will, ideally, invest in properties across the five boroughs, we will not have the capacity to successfully organize residents around commercial affordability issues. At the same time, community control is a core component of the NYC REIC. To ensure meaningful community participation, the NYC REIC will:

- Develop a process for vetting community based organizations, and work with those local organizations that are representative of the neighborhood.
- Work with development partners/property managers/affordability stewards that incorporate community control into their long term management plan for the property.
- At the time when we are ready to make an investment in a neighborhood, heavily recruit new REIC members from that neighborhood. Our membership base will make the ultimate decisions about the property.
  - To facilitate the recruitment process, we will rely on local institutions (faith based organizations, CBOs, libraries). At the same time, we will make an effort to reach residents who are not engaged by institutions.
  - Create an onboarding process, to build member knowledge about cooperatives.

*How do we define participation, and what mechanisms should we put in place to encourage?*

The NYC REIC is a cooperative, and our governance structure and business model are informed by the 7 cooperative principles:

**Principle #1: Voluntary and Open Membership**

The NYC REIC is an investment cooperative that is open to all New Yorkers who are interested in our mission, and willing to accept the responsibilities of membership. Our membership fee is, and will remain, low (\$10). We will develop a scholarship fund for those who cannot afford the fee.

**Principle #2: Democratic Member Control**

The NYC REIC is a horizontally-governed and transparent entity, where members are able to actively participate in governance, set policies, and make decisions. We have a democratically elected steering committee, a series of open workgroups, and quarterly meetings to ensure member control. Once we are ready to make investments, and our work becomes geographically-grounded, we will develop a system for ensuring meaningful engagement of the communities where we invest, through strategic partnerships, active member recruitment, and member education.

**Principle #3: Members' Economic Participation**

Members contribute to, and democratically control, NYC REIC's capital. Members' participation in the cooperative is not dependent on the amount that they have invested in the NYC REIC.

**Principle #4: Autonomy and Independence**

NYC REIC is an autonomous entity, organized to provide an investment platform for New Yorkers to preserve or create permanently affordable commercial/industrial/cultural/social spaces. If the NYC REIC enters into agreements with other organizations or raises capital from external sources, it will do so based on terms that ensure democratic control by the members, and maintain the cooperative's autonomy.

**Principle #5: Education, Training, and Information**

The NYC REIC will provide education and training for members, workgroups, and the steering committee, so they can contribute effectively to the development of the NYC REIC.

Further, the NYC REIC will develop an onboarding procedure, and a member training process, to inform the members/general public about the nature and benefits of cooperatives.

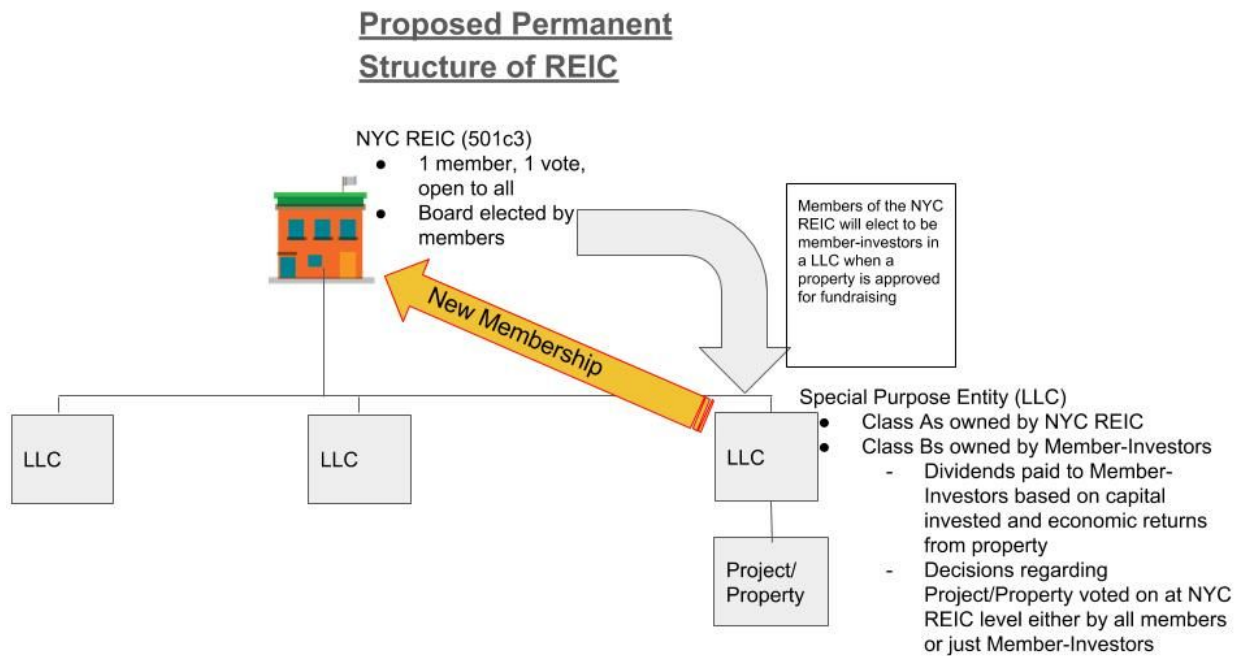
**Principle #6: Cooperation among Cooperatives**

The NYC REIC’s underwriting criteria encourages the utilization of the spaces that we invest in by consumer and worker cooperatives.

**Principle #7: Concern for Community**

While focusing on member needs, the REIC will promote sustainable development in the communities where we invest, by partnering with vetted community-based organizations, and stewarding permanent affordability in the spaces where we invest.

## IV. Organizational Structure Chart<sup>5</sup>



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### Appendix

[To be added following June 12]

<sup>5</sup> **Note:** As of June 2016, this does not reflect discussions regarding business model and only reflects proposed entity choice (discussed above).