



**REAL ESTATE FINANCE BUREAU
MEMORANDUM**

To: Sponsors of HDFC Cooperatives
Under the Third Party Transfer Program ("TPT")

Date: June 16, 2009

From: New York State Department of Law

Re: Model No-Action Letter Application

Introduction:

The Real Estate Finance Bureau of the Department of Law ("DOL") has developed a model TPT no-action letter application in conjunction with the City of New York Department of Housing Preservation and Development ("HPD") to assist sponsors in completing the conversion process in an efficient and expedient manner, while ensuring that prospective purchasers are given fair and adequate disclosure. The model documents assume that all sponsors under the program will be using the same Regulatory Agreement and form of Certificate of Incorporation. Furthermore, the model no-action information package assumes that the sponsor will utilize a contract of exchange to transfer the building to the Apartment Corporation in exchange for the shares of stock. This transaction has been structured as such to ensure that IRS 216 tax benefits will be available, and a discussion of IRS 216 has been provided courtesy of Joel E. Miller, Esq.

Procedure for Submission:

When submitting a no-action letter application for a TPT conversion, the sponsor should submit the following documents with their application:

- M-10 Form
- Check for \$225.00
- One set of the no action application including all exhibits in Part I and Part II
- One black-lined copy of the Cooperative Information Package Narrative if using Microsoft Word format
- Sponsor Affidavit in compliance with 13 N.Y.C.R.R. §18.9
- Transmittal Letter in compliance with 13 N.Y.C.R.R. §18.4

Once the DOL has received all of the above, an attorney will be assigned to review the no-action letter application within 30 days of receipt.

An acceptance letter will be issued by the DOL. The sponsor will be prohibited from distributing the no-action information package until the application has been accepted for filing.

In the event of any material change to the no-action information package provided to the DOL in the no-action letter application, the sponsor must file an amendment in compliance with 13 N.Y.C.R.R. §18.5. Any changes to the budget, sales price or regulatory agreement must be submitted with a letter of approval from HPD as well. The filing fee for amendments shall be waived.

The sponsor will also be required to submit an effectiveness amendment prior to setting the effective date and prior to having the first apartment closing in compliance with 13 N.Y.C.R.R. §18.5(e). The effectiveness amendment shall be filed once the sponsor has entered into purchase agreements with 80% of the tenants in occupancy and when 80% of the total units in the building are under contract. A model effectiveness amendment has been provided by the DOL. Copies of the purchasing tenant affidavits and the non-purchasing tenant affidavits (models of which are provided by the DOL) must be submitted along with the effectiveness amendment.

The sponsor will also be required to submit a post-closing amendment in compliance with 13 N.Y.C.R.R. §18.5(f) once the building has been transferred to the HDFC and all tenants in occupancy and required outside purchasers have closed.

The following required model documents are available on the New York State Attorney General Website at www.oag.state.ny.us:

- Model Cooperative Information Package Narrative in PDF format*
- Purchasing Tenant Affidavit
- Non-Purchasing Tenant Affidavit
- Effectiveness Amendment

The following additional documents are available through Lawyers Alliance for New York on the probono.net Website at <http://www.probono.net/ny/nonprofit/>:

- Model Cooperative Information Package Narrative in Microsoft Word format
- Model Stock Certificate
- Certificate of Incorporation*
- Model By-Laws
- Model Proprietary Lease
- Model President's Affidavit
- Model Discussion of Reasonable Relationship courtesy of Joel E. Miller, Esq.
- HPD Regulatory Agreement*
- Model Purchase Agreement

*It is assumed that all sponsors will use these documents in the form as provided. Minor deviations to the Cooperative Information Package Narrative are subject to the review and approval of the DOL. The Certificate of Incorporation and HPD Regulatory Agreement are subject to the review and approval of HPD. Any deviations from the models referenced herein will be deemed acceptable to the DOL if approved by HPD.

PURCHASING TENANT AFFIDAVIT

STATE OF NEW YORK)
)ss.:
COUNTY OF)

_____ , being duly sworn, deposes and says:

- 1. I am a tenant at _____ (the "Property"), an individual and a prospective purchaser of shares in the _____ Housing Development Fund Corporation (the "HDFC"), which is being converted to a limited-equity cooperative by _____ ("Sponsor"). I have no/my business address at the Property.
2. I have participated in decision-making meetings with the Sponsor prior to the application made to the Attorney General to convert the Property to a cooperative.
3. I currently reside at the Property, Apartment _____. I have lived at this address for _____ years.
4. I am purchasing my apartment for personal occupancy and do not have the intention of reselling this apartment within two years from the later of the closing date of my purchase or the date of the no-action letter issued by the Office of the Attorney General.
5. I have received and read a copy of the No-Action Cooperative Information Package for the proposed conversion of _____ HDFC.
6. I am well acquainted with the Property.
7. I understand that the sponsor will not file a full offering plan to convert the Property to a cooperative and that no offering literature other than the No-Action Cooperative Information Package will be provided.
8. I am making this affidavit to induce the Office of the Attorney General to accept the effectiveness amendment which would allow the Sponsor to convert the Property to an HDFC.

Agreed to by:

Sworn to before me this _____ day
of _____, 200_

NOTARY PUBLIC

Purchaser

NO NON-PARTICIPATING TENANT WILL BE EVICTED BY REASON OF COOPERATIVE CONVERSION.

COOPERATIVE INFORMATION PACKAGE

NO-ACTION INFORMATION PACKAGE FOR THE CONVERSION OF THE PREMISES TO A HOUSING DEVELOPMENT FUND COMPANY (HDFC) LIMITED-EQUITY COOPERATIVE

_____ Shares allocated to _____ Apartments	\$ _____
Reserve Fund	\$ _____

SPONSOR

THIS NO-ACTION INFORMATION PACKAGE DESCRIBES THE TERMS AND CONDITIONS OF THE OFFERING OF SHARES IN AN HDFC LIMITED-EQUITY COOPERATIVE WHICH HAS NUMEROUS RESTRICTIONS. PURCHASERS ARE STRONGLY ADVISED TO READ THESE MATERIALS IN THEIR ENTIRETY PRIOR TO PURCHASING. SEE PAGE __ FOR SPECIAL RISKS.

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PART I

1. SPECIAL RISKS TO BE CONSIDERED BY PURCHASERS

1. THE PURCHASE OF A COOPERATIVE APARTMENT HAS MANY SIGNIFICANT LEGAL AND FINANCIAL CONSEQUENCES. THE ATTORNEY GENERAL STRONGLY URGES YOU TO READ THESE OFFERING MATERIALS CAREFULLY AND TO CONSULT WITH AN ATTORNEY BEFORE SIGNING A PURCHASE AGREEMENT.
2. These materials describe the terms and conditions for the offering of Shares in an Apartment Corporation that is to be formed as a housing development fund company (hereinafter "HDFC Apartment Corporation" or sometimes "HDFC"). The HDFC has the sole corporate purpose of providing affordable housing to low-income households at or below 120% of the Area Median Income ("AMI"). For a period of 38 years, the HDFC will be bound by a Regulatory Agreement. For the period of the Regulatory Agreement, the HDFC will be bound by numerous restrictions. Purchasers are strongly advised to review the Regulatory Agreement, which is included herein in Part II.
3. Regardless of whether or not the HDFC is still subject to a Regulatory Agreement, the sole corporate purpose of providing affordable housing to low-income households at or below 120% of the AMI does not change. Purchasers are strongly advised to review paragraph ___ of the Certificate of Incorporation included herein in Part II.
4. The Regulatory Agreement requires the HDFC to enter into a Monitoring Contract with an Agent approved by the City of New York, acting by and through the Department of Housing Preservation and Development ("HPD"). It is anticipated for the first year of operation that the Monitoring Agent will be the Sponsor. Purchasers are strongly advised to review the proposed Monitoring Contract included herein in Part II.
5. The Purchase Prices on future sales of Shares of stock in the HDFC are restricted for a period of 38 years, as set forth in the Regulatory Agreement. The schedule of pre-determined Purchase Prices is listed in the Regulatory Agreement in Part II. These prices are not negotiable or subject to change, unless approved by HPD. Purchasers are advised to review the schedule of future Purchase Prices in the Regulatory Agreement.
6. Each Shareholder will be required to occupy his or her Apartment as their Primary Residence. Shareholders who cease to be Primary Residents may be subject to eviction. The Primary Residency requirements are set forth in the Regulatory Agreement, By-Laws and Proprietary Lease. Purchasers are strongly advised to review all of these documents to fully understand the Primary Residency requirements.
7. Purchasers are advised to review Section ___ of the By-Laws and Section ___ of the Proprietary Lease regarding the responsibility of the HDFC to adopt resale restrictions at the conclusion of the Restriction Period.

8. The Building which will be transferred to the HDFC will be subject to two permanent mortgages (loans) at the time of conversion. The first loan is with _____ (Private Lender) in an amount of \$ _____ for a term of ____ years with a fixed interest rate of ____%. It is anticipated that this loan will be paid in full at the end of the ____ year term. The second loan is with HPD in the amount of \$ _____ for a term of ____ years with a fixed interest rate of ____%. During the ____ year period, interest only payments will be made, which means that the original principal balance of \$ _____ will be due and owing to HPD at the end of the term. This loan was made pursuant to Article XV of the New York Private Housing Finance Law. Therefore, as the law currently stands, the HDFC will have a balloon loan in the amount of \$ _____ in ____ years that will need to be paid or refinanced with a lender other than HPD.

9. Non-purchasing tenants will not be evicted for choosing to remain as a Rental Tenant. Non-purchasing tenants will continue to be subject to Rent Stabilization Laws and will be offered renewal leases subject to permissible rental increases as determined by the Rent Guidelines Board.

10. All Shareholders will be entitled to one vote per Apartment in all decision-making that is reserved for the Shareholders.

11. Pursuant to the terms of the Regulatory Agreement, HPD or the Monitoring Agent shall have the right to terminate the membership of the Board of Directors, or any one or more specific directors, and appoint replacement directors sufficient to constitute 66 2/3% of such board, in the event of a violation of the covenants of the Regulatory Agreement, if said violation is uncured or uncorrected for a period of 30 days after receiving written notice from HPD or Monitoring Agent, or if the condition giving rise to the violation is such that correction cannot be completed within such 30 day period, and the HDFC does not commence to cure or correct the violation within such thirty 30 day period and does not thereafter diligently pursue the cure or correction of such violation. Purchasers are strongly advised to review the Regulatory Agreement in Part II.

2. DEFINITIONS

Area Median Income: (AMI) shall mean the area median income for the primary metropolitan statistical area as determined by the United States Department of Housing and Urban Development (HUD) from time to time for a family of four, as adjusted for family size. "120% of AMI" shall mean 240% of the income levels as modified by household size for the New York metropolitan statistical area for fifty percent (50%) of median income families (a.k.a. as "very low income families") as determined from time to time by HUD under Section 3(b) (2) of the United States Housing Act of 1937 (or, if such program is terminated, under such program as was in effect immediately before such termination).

Apartment: Apartment shall refer to any unit within any building which is legally suitable for residential purposes.

Apartment Closing: The Apartment Closing shall refer to the date that the Sponsor transfers the Shares and issues a Proprietary Lease to a Purchaser pursuant to the terms and conditions of the Purchase Agreement.

By-Laws: The By-Laws shall refer to the organizational document used to govern the operations of the HDFC.

Certificate of Incorporation: The Certificate of Incorporation is the document filed with the Office of the New York State Secretary of State on _____, 200__ creating the HDFC apartment corporation. The Certificate of Incorporation is the document which sets forth the corporate purpose of the HDFC to operate as a limited-equity cooperative and cannot be amended without the approval of a vote of 66 2/3% of all Shareholders of the HDFC and the New York City Department of Housing Preservation and Development.

Closing Date: The Closing Date shall refer to the date that the Sponsor transfers the Building to the HDFC subject to the Contract of Exchange.

Contract of Exchange: The Contract of Exchange shall refer to the document entered into between the Apartment Corporation and the Sponsor whereby the Sponsor agrees to transfer the Building in exchange for the Shares of the Apartment Corporation.

Effective Date: Effective Date shall refer to the date when the Sponsor has received the sufficient number of Purchasing Tenant Affidavits and Purchase Agreements from Insiders in order for the cooperative to become effective.

Effectiveness Amendment: The Effective Amendment shall be filed with the Office of the Attorney General by the Sponsor pursuant to 13 N.Y.C.R.R. §18.5(e).

Escrow Account: The Escrow Account shall refer to the bank account used to hold down payments by the Sponsor in compliance with 13 N.Y.C.R.R. §18.3(p) (2).

Exclusive Period: The Exclusive Period shall refer to the period of time set by the Sponsor, which shall be no less than 90 days, whereby current tenants in occupancy are eligible to purchase the Shares to their Apartments at the insider price of \$2,500. The Exclusive Period may be extended by the Sponsor or HPD.

Good Standing: The tenant must be occupying his/her Apartment as his/her Primary Residence and must be current in rent at the time of delivery of the Purchasing Tenant Affidavit and Purchase Agreement. Any tenant that enters into a payment plan and honors their payment plan will be eligible to purchase as an Insider, so long as the terms and conditions of the payment plan are completed within 6 months from the Effective Date. For purposes of meeting the Effective Date, however, only tenants that are current

in rent, and are not in payment plans (unless the terms of the payment plan have been completed by the expiration of the 90 day Exclusive Period), will be counted towards meeting the 80% threshold needed to set the Effective Date.

HDFC: A Housing Development Fund Company (“HDFC”) shall refer to the corporate entity empowered to act as the limited-equity cooperative pursuant to Article XI of the New York State Private Housing Finance Law and the Business Corporation Law.

Information Package: The Information Package shall refer to this document and all supporting documents which must be distributed to all prospective Purchasers by the Sponsor to comply with 13 N.Y.C.R.R. §18.9.

Insider: Insider shall refer to any tenant in occupancy at the Building on the date the Information Package is distributed. Other Insiders may include permanent relocation tenants from other buildings owned by the Sponsor which are in the TPT program where HPD has consented to the permanent relocation.

Maintenance Charges: Maintenance Charges shall refer to each Shareholder’s proportionate share of the Apartment Corporation’s expenses, as determined annually by the Board of Directors and the Monitoring Agent.

Managing Agent: A Managing Agent shall mean a professional management company contracted by the HDFC.

Monitoring Agent: The Monitoring Agent shall refer to the Agent designated in the Regulatory Agreement.

Monitoring Contract: A Monitoring Contract shall mean the contract between the HDFC and the Monitoring Agent.

New York State Department of Law: The New York State Department of Law shall refer to the New York State Office of the Attorney General, Real Estate Finance Bureau.

Non-Eviction Plan: Non-Eviction Plan shall mean that any tenant in occupancy on the Effective Date who chooses not to purchase shall not be evicted solely because they have elected to remain as a rent stabilized tenant in the Building.

Non-Purchasing Tenant Affidavit: The document signed and notarized by any tenant wishing to remain a rent-stabilized tenant at the Building instead of becoming a Shareholder in the HDFC.

Outsider: An Outsider shall refer to a Purchaser who is not a tenant in occupancy of the Building or a permanent relocation tenant who is purchasing Shares in the HDFC. Outsiders must agree to occupy the Apartment as his/her Primary Residence and must be income eligible which is defined as having an income that does not exceed 120% of AMI.

Primary Residents/Primary Residence: Primary Residence shall be defined as (a) being domiciled at the HDFC Apartment and (b) residing more than 183 days in the preceding calendar year at the Apartment, unless such individual proved to the Board, by providing documentation, that their inability is based on hospitalization, institutionalization, or active service in the Armed Forces of the United States, or unless the Shareholder began occupancy of the Apartment during the preceding calendar year.

Proprietary Lease: The Proprietary Lease shall refer to the occupancy agreement issued to each Shareholder permitting use and occupancy of the Apartment associated with the Shares issued in the HDFC, which shall be for a term of 99 years.

Purchase Agreement: The Purchase Agreement shall refer to the agreement entered into by a tenant in occupancy, permanent relocation tenant or Outsider that wishes to purchase the Shares in the HDFC.

Purchasers: The term Purchasers shall be used to refer to both Insiders and Outsiders who are purchasing Shares in the HDFC.

Purchasing Tenant Affidavit: The document signed and notarized by any tenant wishing to purchase Shares in the HDFC. The Purchasing Tenant Affidavit shall be submitted to the Office of the Attorney General along with the Effectiveness Amendment.

Regulatory Agreement: Regulatory Agreement shall refer to the agreement entered into between the City of New York, acting by and through the Department of Housing Preservation and Development and the HDFC as a condition precedent of transfer of any properties to the HDFC which shall require the HDFC to abide by certain terms, conditions and restrictions for a period of time as defined therein.

Rent Guidelines Board: The NYC Rent Guidelines Board adopts guidelines for rent stabilized apartments, lofts and hotels in NYC, and approves any and all permissible rental increases for rent stabilized tenants.

Rent Stabilization Laws: Rent Stabilization Laws shall refer to (i) the New York City Rent Stabilization Laws and the Code adopted thereto, (ii) the New York State General Business Law, Section 352-eeee, (iii) the Rent Regulation Reform Act of 1997 and (iv) any codes, rules and regulations promulgated thereunder and any administrative and/or judicial determinations and/or interpretations thereof, to the extent that any and all of the same shall apply to the Building.

Rental Tenant: Rental Tenant shall refer collectively to any non-purchasing tenant or other tenant occupying an Apartment where the Shares are owned by the HDFC as Unsold Shares.

Reserve Accounts: The Reserve Accounts shall refer to the accounts which must be maintained by the HDFC pursuant to the Regulatory Agreement.

Rooms: For purposes of allocating Shares and setting Maintenance Charges, the following rooms shall be counted: living room (1 Room), bedroom (1 Room), kitchen or kitchenette (1 Room), dining room (1 Room). Any other room that does not have a window shall not be counted for purposes of allocating Shares and setting Maintenance Charges.

Shares: When used herein, Shares shall refer to the shares of stock in the HDFC which shall be evidenced by Certificate of Shares.

Shareholder: Shareholder shall refer to the holder of Shares evidenced by Certificate of Shares in the HDFC.

Sponsor: The Sponsor is _____, an organization that has been designated by the City of New York to oversee the rehabilitation of the Building and complete the cooperative conversion process.

Unsold Shares: Unsold Shares shall refer to the Shares allocated to the Apartments that are occupied by non-purchasing tenants in occupancy who have chosen to remain as a rent stabilized tenant or vacant Apartments that have not been sold on the Effective Date.

3. INTRODUCTION

_____ (“Sponsor”), which currently owns the building you live in (“Building”), is attempting to convert your Building to cooperative ownership by transferring the Building to an HDFC Apartment Corporation (“HDFC”), which shall be wholly owned and controlled by the Shareholders under the conditions described below. **PLEASE READ THIS INFORMATION CAREFULLY.** Your Tenant Association should consult with an attorney to assist in your understanding of all options. Each tenant may also wish to hire their own attorney.

GENERAL DESCRIPTION OF TPT

Under the Third Party Transfer (TPT) Program, the City of New York offers existing Building tenants the opportunity to petition HPD to form a limited-equity cooperative and become the new owner of the Building. Tenants who chose this option were required to choose a Sponsor to acquire, manage and rehabilitate the Building with the intention of assisting the tenants in becoming the new responsible owner.

In _____, the existing tenants of the Building chose _____ to act as the Sponsor of this cooperative conversion. The initial transfer of the Building and the 40 year Article XI tax exemption were approved by the City Council and Mayor of the City of New York pursuant to City Council Resolution Number _____.

In _____, the Building was initially transferred to Neighborhood Restore Housing Development Fund Corporation (“RESTORE”). During the time that RESTORE owned

the Building, Sponsor conducted initial emergency repairs and stabilized the Building. Sponsor hired an architect to develop a scope of work to renovate the Building. The scope of work which was completed at the Building is included herein in Part II on Page _____.

In _____, the Sponsor purchased the Building from RESTORE. The Sponsor also borrowed _____ from _____ and _____ (Lenders) to cover the cost of renovations.

Renovations to the Building are now substantially complete, and therefore Sponsor now wishes to transfer the Building to the HDFC and offer Shares to all existing tenants in occupancy and eligible Outsiders who are eligible to purchase.

THE HDFC APARTMENT CORPORATION

The HDFC Apartment Corporation has been formed under Article XI of the New York Private Housing Finance Law and Section 402 of New York Business Corporation Law. The HDFC will have the authority to buy, own and operate the Building for low-income residents, which has been defined as households at or below 120% of AMI. The Sponsor will sell Shares allocated to each Apartment in the Building, except for Shares allocated to Apartments occupied by non-purchasing tenants, which will be held by the HDFC as rent stabilized rental units until the tenant in occupancy vacates. All tenants who agree to purchase will become Shareholders of the HDFC.

The Shareholders will elect members ("Directors") of a board of directors ("Board") that will be responsible for making decisions for the HDFC. The Board will elect Officers of the HDFC (similar to the Tenant Association) who will be responsible for carrying out the decisions of the Board and for making decisions on matters that arise between Board meetings. The Monitoring Agent monitors the books, records, accounts, documents, and other documentation of the management, operations, and activities of the HDFC including an annual physical inspection of the books, records, accounts and Building and receives and reviews such other documents and records as the Monitoring Agent shall reasonably request in order to assure compliance with the Regulatory Agreement. The HDFC will operate according to a set of By-Laws (attached herein in Part II) that outline the responsibilities of the Officers and the Board, specify how meetings and elections are held and determine which matters are decided by a vote of the Shareholders. All Shareholders will be entitled to one vote per Apartment in all decision-making that is reserved for the Shareholders.

Each Shareholder will be issued a lease known as a proprietary lease ("Proprietary Lease") which entitles the Shareholder to occupy his or her Apartment (attached herein in Part II). The Proprietary Lease defines the rights and responsibilities of the Shareholder and the Apartment Corporation. The Proprietary Lease requires, among other things, that the Shareholder use the Apartment as his or her Primary Residency.

Once the HDFC purchases the Building, each Shareholder will pay a monthly maintenance charge ("Maintenance Charge") which is based upon the number of Rooms in his or her Apartment. The Maintenance Charge will replace the rent presently being paid and, in most cases, will be the same amount as the current rent. The proposed Maintenance Charges and current rents are listed in Schedule A in Part I. The Maintenance Charges are based on an estimate of operating and debt service costs for the first year of operation of the HDFC, as listed in Schedule B in Part I. Maintenance charges will be adjusted as needed to provide for all of the expenses of the HDFC.

THE OFFER OF SHARES IN THE HDFC APARTMENT CORPORATION

This Information Package sets forth the full terms and conditions of Sponsor's offer to sell Shares in the HDFC. Each tenant in occupancy (also referred to as "Insiders") of an Apartment will have the exclusive right, for a period of 90 days from the receipt of this Information Package, to purchase the Shares allocated to their Apartment ("Exclusive Period"). The Exclusive Period may be extended by HPD or the Sponsor by the Sponsor providing written notice to every tenant of any additional time period to be afforded to Insiders to purchase shares in the HDFC. The Insider Purchase Price is \$2,500 and the number of Shares allocated to each Apartment is listed in Schedule A. Vacant Apartments will be offered for sale to eligible Outsiders by Sponsor, at prices set forth in Schedule A.

4. DESCRIPTION OF PROPERTY AND IMPROVEMENTS

The Building is located at _____. The Building has ____ (#) Residential Apartments and ____ (#) Commercial Units. The Building and the Apartments have been renovated pursuant to a Scope of Work which is included in Part II. The renovation included an upgrade of major systems such as _____ and _____ and individual Apartment renovations including new bathrooms and kitchens. The Building and the Apartment are being offered in their "as is" condition.

(Insert Schedule A)

5. FOOTNOTES TO SCHEDULE A

- (1) Apartment Number: This list includes all Apartments in the Building at the time of conversion.
- (2) Unit Size: Apartment sizes are based upon Rooms. For purposes of allocating Shares and setting Maintenance Charges, the following Rooms shall be counted: living room (1 Room), bedroom (1 Room), kitchen or kitchenette (1 Room), dining room (1 Room). Any other Room that does not have a window shall not be counted for purposes of allocating Shares and setting Maintenance Charges.
- (3) Status: The status of Apartments shall be indicated as either R/S for rent stabilized or V for vacant. The superintendent's Apartment shall be designated as S.
- (4) Number of Shares: Shares are allocated on a Room basis multiplied by 10. Studio Apartments shall have 20 Shares, one-bedrooms shall have 30 Shares, two-bedrooms shall have 40 Shares, three-bedrooms shall have 50 Shares and four-bedrooms shall have 60 Shares. Regardless of the number of Shares allocated to each Apartment, all Shareholders are given one vote per Apartment.
- (5) Insider Purchase Price: The insider purchase price for all eligible tenants in occupancy, regardless of Apartment size, has been set at \$2,500 by HPD.
- (6) Outsider Purchase Price: The outsider purchase prices have been set by HPD and are included in the Regulatory Agreement in Part II of these materials.
- (7) Monthly Rent: The rents herein are the current rental charges for all tenants in occupancy. These are the rents each non-purchasing tenant will continue to pay in the event they choose not to purchase.
- (8) Estimated Maintenance: The estimated annual Maintenance Charges are based upon the projections included in Schedule B of these materials. Maintenance Charges are established by taking the total number of Rooms divided by the total operating expenses and debt service listed in Schedule B of the Information Package. Maintenance Charges are allocated per Apartment based upon the number of Shares per Apartment.

6. SCHEDULE B-PROJECTED BUDGET

Estimated Schedule of Income and Expenses

For the First Full Year of Operation Commencing on or around _____,
200__.

I. Projected Income

(a)	Maintenance Charges	\$ _____
(b)	Rental Income	\$ _____
(c)	Commercial Income	\$ _____
	Total	\$ _____

II. Projected Expenses

(d)	Management	\$ _____
(e)	Administrative, Legal, Audit	\$ _____
(f)	Payroll	\$ _____
(g)	Security	\$ _____
(h)	Fuel	\$ _____
(i)	Utilities	\$ _____
(j)	Water & Sewer	\$ _____
(k)	Repair & Maintenance	\$ _____
(l)	Insurance	\$ _____
(m)	Real Estate Taxes	\$ _____
(n)	Training/Monitoring Agent Fee	\$ _____
(o)	Mortgage Payments	\$ _____
(p)	Other	\$ _____
	Total	\$ _____

III. Reserves

(q)	General Operating Reserve	\$ _____
(r)	Replacement Reserve	\$ _____
	Total	\$ _____

6. FOOTNOTES TO SCHEDULE B

I. Income

(a) Maintenance Charges

\$ _____ represents the Building's projected annual income from Maintenance Charges from Shareholders. Maintenance Charges have been calculated on a per Room basis and are allocated to each Apartment on Schedule A.

(b) Residential Income

\$ _____ represents an estimated amount of income received from non-purchasing tenants, assuming that ___% do not purchase and remain as rent-stabilized tenants.

(c) Commercial Income

The Building has _____ (#) commercial unit(s). The commercial unit is currently _____. The commercial lease is for a term of _____ years at a rate of _____ per month (if applicable).

The commercial tenant _____ responsible for the payment of utilities and _____ which _____ separately metered. The commercial tenant is responsible for payment of real estate taxes.

II. Projected Expenses

(d) Management Fee

The Building will be transferred to the HDFC subject to a management agreement with _____ ("Managing Agent"). The current agreement with the Managing Agent is for a term of _____ years at a rate of \$ _____ per month for the first year of operation.

(e) Administrative, Legal, Audit

An amount of \$ _____ has been projected to cover administrative and legal expenses associated with the first year of operation.

(f) Payroll

During the first year of operation, the Building's staff is projected to be _____-time employee. Total salary costs for the first year of operation is projected to be _____.

\$ _____. This projection includes wages, benefits and additional payroll expenses such as Disability Benefits Insurance and Social Security.

(g) Security: _____

(h) Fuel: _____

The Building is currently heated with # ___ fuel _____.

The estimate for heating costs during the first year of operation is based on the projected consumption of _____ gallons of fuel per Room. This projection allows for a possible increase in consumption in the event of significantly colder weather. This projected price per gallon allows for a possible price increase and is estimated at \$ _____. The total projected cost of heating is \$ _____. These figures _____ include sales tax.

(i) Utilities

Utility charges include the costs of electricity in the public areas of the Building (unless mastered metered). Utility costs for individual Apartments will be the responsibility of the individual Shareholder or tenant.

(j) Water and Sewer

Water consumed by the Building is measured by a single meter. The projected total costs are based upon an estimated water consumption of _____ gallons per day per person plus 10% for miscellaneous usage.

(k) Repair and Maintenance

The budgeted amounts for repair and maintenance include the costs associated with the upkeep and maintenance of building-wide systems such as the boiler and other major systems. The estimates have been provided by the Managing Agent who has extensive experience in managing newly renovated buildings of the same size and quality.

(l) Insurance

The budget amounts for insurance assume that the HDFC will be insured with _____ and the following coverage will be provided:

A. Property Insurance

Total Insured Value: _____

Deductibles: _____

B. Primary Liability

Limits: _____

C. List others such as Boiler, etc.

(m) Real Estate Taxes

The initial sale of the Building was approved by the City Council and Mayor of the City of New York in pursuant to City Council Resolution Number _____. On the date the Building was transferred to RESTORE, a 40 year real estate tax exemption was granted to the Building. For the entire 40 year term, the Building will not owe real estate taxes, provided it remains an HDFC and continues to follow all of the terms and conditions of the Regulatory Agreement.

(n) Training and Monitoring

Under the TPT Program, HPD requires the HDFC to hire the services of a Monitoring Agent familiar with the management of a limited-equity cooperative to assist with complying with the terms and conditions of the Regulatory Agreement. For the first year of operation, the Monitoring Agent will be _____ and the yearly fee for these services are \$ _____.

(o) Mortgage Payments

(A) Monthly Payments for the first mortgage are \$ _____

(B) Monthly Payments for the second mortgage are \$ _____

7. CHANGES IN PRICES AND UNITS

Purchase Prices for both Insiders and Outsiders have been set by HPD and are listed in Schedule A. Therefore, Purchase Prices may not be changed without approval from HPD.

8. RIGHTS OF EXISTING TENANTS

Tenants who are listed on the Building rent roll on the date that this Information Package is delivered are eligible to purchase Shares in the HDFC as Insiders during the Exclusive Period, which shall be 90 days from receipt of the Information Package. The Exclusive Period may be extended by HPD or the Sponsor by providing written notice to every tenant of any additional time period to be afforded to Insiders to purchase shares in the HDFC. The only other Insider may consist of permanent relocation tenants from other projects owned by Sponsor which are a part of the TPT Program. All Insiders must be in Good Standing in order to exercise the right to purchase, as required by HPD as a condition for participation in the TPT Program. Good Standing is defined as follows: The tenant must be occupying his/her Apartment as his/her Primary Residence and must be current in rent at the time of delivery of the Purchasing Tenant Affidavit and Purchase Agreement. Any tenant that enters into a payment plan and honors their payment plan will be eligible to purchase as an Insider, so long as the terms and conditions of the payment plan are completed within 6 months from the Effective Date. For purposes of meeting the Effective Date, however, only tenants that are current in rent, and are not in payment plans (unless the terms of the payment plan have been completed by the expiration of the 90 day Exclusive Period), will be counted towards meeting the 80% Insider threshold needed to set the Effective Date.

9. RIGHTS OF NON-PURCHASING TENANTS

All cooperative conversions under the TPT Program shall be treated as Non-Eviction Plans. Under a Non-Eviction Plan, all non-purchasing tenants, including senior citizens and persons with disabilities, are protected from being evicted as a result of deciding to forgo purchasing the Shares allocated to their Apartment. All non-purchasing tenants will remain rent-stabilized tenants and will be subject to permissible rent increases as determined from time to time by the Rent Guidelines Board. However, all non-purchasing tenants may still be evicted if they are in breach of their lease. Rents for non-purchasing tenants may be higher than the monthly charges for tenants who purchase, as they will remain rent-stabilized tenants, and therefore the permissible increases for rent-stabilized tenants may be more than the projected 2% per year increase for maintenance fees.

The Shares allocated to Apartments of non-purchasing tenants will be held by the HDFC as Unsold Shares. The HDFC will be the landlord to the non-purchasing tenants. During

the time non purchasing tenants reside in the Building as renters, they must be provided with all the services and facilities required by law in a non-discriminatory manner. Leases should be issued by the Apartment Corporation within ___ days after the Closing Date. The initial rents for non-purchasing tenants at the time of conversion are listed in Schedule A in Part I of the Plan.

In order to ensure that all non-purchasing tenants are in fact giving up their right to purchase, the Sponsor is required to obtain a Non-Purchasing Tenant Affidavit from each tenant who chooses to remain as a tenant and forgo purchasing. The Non Purchasing Tenant Affidavit is in Part I of the Plan. The Sponsor will be required to submit the Non-Purchasing Tenant Affidavits along with the Effectiveness Amendment to the Office of the Attorney General.

10. INTERIM LEASES

Any Outsider who signs a Purchase Agreement which is accepted by the Sponsor prior to the Closing Date under this Plan may, at Sponsor's option, enter into an Interim Lease on the terms set forth in this Section, which lease shall be signed simultaneously or after the Purchase Agreement is executed and delivered to Sponsor with the 10% down payment.

The Interim Lease shall be subject to Rent Stabilization Laws. The monthly rent shall be the proposed monthly maintenance, as set forth in Schedule A. The term of the lease shall be for a period of one or two years, and shall expire at the time of purchase of the Apartment. Subletting is strictly prohibited by any Outsider during the term of the Interim Lease.

In the event the Effective Date does not occur, the Outsider shall remain a Rental Tenant of the Building, and will be able to continue in occupancy.

Outsiders are advised that an uncured default under the Interim Lease shall be treated as a default under the Purchase Agreement, and an uncured default under the Purchase Agreement shall be a default under the Interim Lease. Outsiders are advised to clearly read the Purchase Agreement and Interim Lease to understand their rights.

11. PROCEDURE TO PURCHASE

TENANTS IN OCCUPANCY/INSIDERS

Tenants in occupancy (also referred to as "Insiders") wishing to purchase Shares in the HDFC will be required to execute a Purchase Agreement and Purchasing Tenant Affidavit in the form contained in Part II of the Plan and return to Sponsor within 90 days of receipt of the Information Package. The Purchase Agreement and Purchasing Tenant Affidavit should be either mailed or hand-delivered to Sponsor at _____ . Along with the Purchase Agreement and Purchasing Tenant Affidavit, the Insider must also include a certified bank check or money order for the purchase price, which is \$2500. All certified bank checks or money

orders should be made payable to _____. Upon execution of the Purchase Agreement, the Insider will be afforded an additional 7 day period of time to review the Information Package. Insiders will also be afforded the right to rescind their Purchase Agreement during this 7 day period of time. In order to exercise the right of rescission, the Insider must deliver to the Sponsor a written notice of rescission, addressed to Sponsor, which must be received within the 7 day period. In the event the Insider rescinds, the down payment will be returned within a reasonable period of time.

OUTSIDERS

Each Sponsor is required to market and sell Shares allocated to vacant Apartments to Outsiders in a manner deemed acceptable by HPD. The Sponsor must take affirmative marketing steps to attract eligible persons from all racial, ethnic, and gender groups and to solicit applications from persons who are not likely to apply for housing without special outreach by the Sponsor. The Sponsor must submit the Marketing plan to HPD for review and approval.

For the entire term of the Regulatory Agreement, the Sponsor and the HDFC must incorporate the Equal Housing Opportunity logotype or slogan in its advertisements for the initial sale of vacant Apartments. The Sponsor and the HDFC must create and maintain a list of applications solicited through affirmative marketing actions and retain a written record of these actions. The applications must be placed on the list in the chronological order that they are received and Outsiders must be selected in the order of the list. Purchasers who are not selected must be given prompt written notice of the grounds for their rejection.

The Sponsor and the HDFC must obtain a completed income certification form from each Outsider upon initial sale and upon each subsequent sale during the entire term of the Regulatory Agreement.

Once an Outsider has been selected by the Sponsor, and has been determined to meet the eligibility and income requirements, the Outsider must be provided with a Purchase Agreement and a copy of the Information Package. Outsiders will be given 3 business days to execute and return the Purchase Agreement along with a down payment of 10% of the Purchase Price.

Upon execution of the Purchase Agreement, the Outsider will be afforded an additional 7 day period of time to review the Information Package. Outsiders will also be afforded the right to rescind their Purchase Agreement during this 7 day period of time. In order to exercise the right of rescission, the Outsider must deliver to the Sponsor a written notice of rescission, addressed to Sponsor, which must be received within the 7 day period. In the event the Outsider rescinds, the down payment will be returned within a reasonable period of time.

DOWN PAYMENTS

The Sponsor is required to hold all down payments, including the purchase price paid by any Insider upon signing the Purchase Agreement, in a separate bank account known as an Escrow Account. In order to deposit the down payment in the Escrow Account, each Purchaser must also complete the W-8 or W-9 form which is attached to the Purchase Agreement. Once the Sponsor receives the fully executed Purchase Agreement and the W-8 or W-9 form, the down payment will be deposited into the Escrow Account within 10 business days.

The Sponsor will be required to hold all down payment funds in the Escrow Account until one of the following things takes place: 1) the Apartment was transferred from the Sponsor to the Purchaser at a closing; 2) the Purchaser and the Sponsor both agree to the release of the funds; 3) the Office of the Attorney General reached a determination as to who was entitled to keep the down payment, in the event of a dispute; or 4) a court decided the monies could be released.

In the event of a dispute between the Sponsor and a Purchaser regarding the down payment, the Sponsor must and the Purchaser may apply to the Office of the Attorney General a determination on which party is entitled to keep the down payment. Either party will be required to complete the Escrow Trust Fund Application which is in Part II of this Plan.

ESTIMATED CLOSING COSTS

At the time of each individual Apartment Closing, Purchaser will be required to pay certain costs and expenses. The following is a list of the estimated closing costs and expenses that each Purchaser will be expected to pay:

	Insiders	Outsiders
1. NYC Real Property Transfer Taxes:	\$ _____	\$ _____
2. NYS Real Property Transfer Taxes:	\$ _____	\$ _____
3. Preparation of ACRIS Documents:	\$ _____	\$ _____
4. Recording Fees:	\$ _____	\$ _____

12. EFFECTIVE DATE

The Sponsor's offer to create the HDFC and sell Shares allocated to each Apartment is subject to the occurrence of the Effective Date. Under TPT, HPD requires that at least 80% of the Insiders sign Purchasing Tenant Affidavits and enter into Purchase Agreements to purchase the Shares allocated to their Apartment and that 80% of the total Apartments in the Building be in contract with Purchasers prior to setting the Effective

Date. For purposes of meeting the Effective Date, however, only Insiders that are current in rent, and are not in payment plans (unless the terms of the payment plan have been completed by the expiration of the Exclusive Period), will be counted towards meeting the 80% threshold needed to set the Effective Date.

In the Building, there are a total of _____ (#) Apartments, _____ (#) of which are occupied, _____ (#) which are vacant Apartments, and the superintendent's Apartment which is _____ being offered. (Sponsor may include the superintendent's Apartment if it's occupied by an Insider that intends to purchase). The total number of Insiders needed to purchase Shares equals _____ (#), which is reached by taking the total number of Insiders, minus the superintendent's Apartment (if applicable), and multiplying that number times 80%. In addition, prior to setting the Closing Date, the Sponsor must have fully executed Purchase Agreements from at least _____ Purchasers to ensure that at least 80% of the Apartments in the Building will be occupied by Shareholders. While it is anticipated that the Sponsor will make a good faith effort to market and sell all vacant Apartments to Outsiders, the Sponsor may fill any unsold vacant Apartments with Rental Tenants within 30 days of the Closing Date.

The Effective Date will be set once the Sponsor has received and accepted the required Purchasing Tenant Affidavits and Purchase Agreements from 80% of the Insiders and once 80% of the Apartments in the Building are in contract with Purchasers. The Sponsor will send a notice to Purchasers that the Effective Date has been set, along with filing an Amendment to the Office of the Attorney General.

Once the Effective Date has been set, the Sponsor will set a Closing Date. The Closing Date will be set within a reasonable period of time after the Effective Date. The Closing Date will not take place until the Sponsor files the Effectiveness Amendment with the Office of the Attorney General and said Effectiveness Amendment has been accepted for filing by the Attorney General. The Closing Date shall be the date that the Sponsor transfers the Building to the Apartment Corporation. Once this closing has taken place, individual Apartment closings will be scheduled within 30 days.

13. TERMS OF MORTGAGES

On the Closing Date, the Building will be transferred to the HDFC and will be subject to two permanent mortgages (loans). The first loan is with _____ (Private Lender) in an amount of \$ _____ for a term of _____ years with a fixed interest rate of ____%. Monthly payments of principal and interest are equal to \$ _____. It is anticipated that this loan will be paid in full at the end of the _____ year term. The second loan is with HPD in the amount of \$ _____ for a term of _____ years with a fixed interest rate of ____%. Monthly payments of interest only are equal to \$ _____. During the _____ years, interest only payments will be made, which means that the original principal balance of \$ _____ will be due and owing to HPD at the end of the term.

14. SUMMARY OF PROPRIETARY LEASE

Each Shareholder will be issued a lease known as a Proprietary Lease. The form of Proprietary Lease is in Part II. The Proprietary Lease gives the Shareholder the right to occupy his or her Apartment. It sets out the responsibilities of the Shareholder. The Apartment must be the Primary Residence of the Shareholder, which means that the Shareholder must live in his or her Apartment at least 183 days per year. The HDFC may evict Shareholders who do not live in their Apartments for at least 183 days per year. The Proprietary Lease also requires that Shareholders perform or pay for repairs within their Apartments. Repairs of Building systems (such as elevators, heating and the roof) are the responsibility of the HDFC. The HDFC must make sure that the Proprietary Lease is in compliance with the Certificate of Incorporation and the Regulatory Agreement.

15. SUMMARY OF BY-LAWS

The HDFC will operate in accordance with its By-Laws. The Shareholders will adopt the By-Laws after the sale of the Building to the HDFC. A form of By-Laws is in Part II. The By-Laws outline the responsibilities of the Board and Officers, specify how meetings and elections are held, and determine which matters can be decided only by a vote of the Shareholders (as opposed to a vote of the Board). The Shareholders elect the Board annually. The Board makes most decisions for the HDFC and shall be responsible for keeping a fair and democratically controlled waiting list and shall be responsible for the approval of future shareholders on the waiting list. The By-Laws must be in compliance with both the Certificate of Incorporation and the Regulatory Agreement.

16. SUMMARY OF REGULATORY AGREEMENT

As a requirement of the TPT Program, all HDFC's will be required to enter into a Regulatory Agreement with HPD. The Regulatory Agreement will be a lien on the Building and will be in full force and effect for a period of 38 years from the date the HDFC enters into the Regulatory Agreement. The Regulatory Agreement is a very important document and should be read very closely by all Purchasers. Some of the requirements of the Regulatory Agreement include, but are not limited to: (1) restricting sales to households at or below 120% of the AMI; (2) restricting all sales prices to the agreed upon prices included in Schedule I of the Agreement; (3) implementing a mandatory maintenance increase of 2% annually; (4) maintaining accurate books and records which are subject to HPD audit; (5) hiring the services of a management company to assist in maintaining the Building and the HDFC, when applicable; (6) developing a training program for all Directors and Officers of the HDFC; (7) maintaining the Reserve Account; (8) maintaining waiting lists for future sales; (9) Requiring Shareholders to maintain their Apartment as their Primary Residence; and (10) prohibiting subletting for the first three years of operation.

In order to ensure compliance with the Regulatory Agreement, HPD also requires that the HDFC hire the services of a Monitoring Agent. For the first year of operations, the Monitoring Agent will be _____. After the first year of operation, the HDFC may choose a different Monitoring Agent with the consent of HPD.

17. SUMMARY OF CERTIFICATE OF INCORPORATION

The Certificate of Incorporation for the HDFC Apartment Corporation known as _____ Housing Development Fund Corporation is in Part II. The Certificate of Incorporation is meant to put the public on notice of the existence of the HDFC and the purpose it serves. Paragraph ___ of the Certificate of Incorporation specifically states that it was formed to provide housing for persons of low-income, not to exceed 120% of the AMI. The Certificate of Incorporation may only be amended with the approval of HPD, any lenders with a loan on the Building and a 66 2/3% vote of all Shareholders.

18. HDFC APARTMENT CORPORATION

On the Closing Date the Building will be transferred to the HDFC. The initial Board of the HDFC will be _____, _____, _____. The initial Board is affiliated with the Sponsor.

Within 180 days from the Closing Date, the Sponsor must conduct the first annual meeting of the Shareholders to elect a new Board, which shall be comprised solely of Shareholders. Pursuant to Section ___ of the Certificate of Incorporation, the HDFC must have at least ___ but no more than ___ Directors, all of whom must be Shareholders in Good Standing. Therefore, after the Closing Date, the Sponsor must relinquish control of the Board.

The initial non-Sponsor controlled Board shall be comprised of ___ Directors. At the first annual meeting of the Shareholders, each Shareholder in Good Standing shall cast one vote per Apartment for the election of the ___ Directors. Once the Directors are elected, there shall be a meeting of the Directors within 10 days from the first annual meeting, at which time the Board shall elect Officers. The new Officers will carry out the decisions of the Board and make decisions on matters that arise between Board meetings.

The HDFC will operate according to the By-Laws. The By-Laws describe how the HDFC will be governed, how Directors and Officers will be elected, the duties and powers of Directors and Officers, how meetings of the Shareholders are conducted and how Proprietary Leases are issued to Shareholders. The By-Laws also specify the procedures for issuing shares of the Apartment Corporation and transferring Shares when sales occur in the Building.

19. HOLDER OF UNSOLD SHARES

Pursuant to the terms of the Plan, the only Shares that will not be offered by Sponsor under this Plan are Shares allocated to the Apartments occupied by Rental Tenants. Additionally, Shares will not be offered to the Apartment which is set aside to be used as the superintendent's Apartment. At the Closing Date, the Shares allocated to the Apartments of Rental Tenants and the superintendent's Apartment will be retained by the Apartment Corporation as Unsold Shares. The HDFC will hold the Unsold Shares and act as the landlord for any Rental Tenant. It must provide Rental Tenants with all the services and facilities required by law on a non discriminatory basis. Rental Tenants will pay rent directly to the HDFC as allowed by this Plan and the applicable laws and regulations. The unsold Apartments will be subject to Rent Stabilization Laws.

The HDFC is prohibited from the selling the Unsold Shares allocated to the Apartment of a Rental Tenant during the entire period of time the Rental Tenant remains in occupancy. The Apartment Corporation shall continue to offer rent-stabilized renewal leases to all Rental Tenants, subject to the permissible rental increases permitted by the Rent Guidelines Board.

Once the Apartment of a Rental Tenant is vacated, the Apartment Corporation will be required to sell the Shares allocated to the Apartment, subject to the terms and restrictions of the Regulatory Agreement.

The Administrative Code of the City of New York, §27-2052, et seq., which applies to cooperatives, requires one of the following when a building has nine or more (rental) Apartments: (1) that the owner performs the janitorial services; or (2) that there be a full time superintendent who resides in the building or within 200 feet of the building; or (3) that there be a janitorial service approved by the Department of Buildings available 24 hours per day. Because of this requirement, the HDFC shall be prohibited from selling the Shares allocated to the superintendent's Apartment, unless it is confident that the requirements above can be adequately met.

20. RESERVE FUND

The Sponsor must establish a reserve account in the amount of \$_____ for the HDFC prior to the Closing Date. The Reserve Fund is meant to be used for capital expenditures such as capital improvements and other renovations to the Building. The HDFC must seek approval from HPD and any private lender prior to withdrawing any funds from the Reserve Account. Moreover, the HDFC must also inform the Shareholders of any withdrawal made from the Reserve Account, as required by the Regulatory Agreement.

After the Closing Date, the HDFC will also be required to deposit a certain percentage of the Profit from the sale of Apartments into the Reserve Account, at a percentage which is set forth in the Regulatory Agreement in Part II of the Plan.

21. CONTRACT OF EXCHANGE

The Sponsor has entered into an agreement known as a Contract of Exchange to transfer the Building to the HDFC, in simultaneous exchange for the Shares in the Apartment Corporation and the Proprietary Leases allocated to all of the vacant Apartments and Apartments occupied by Insiders wishing to purchase. Once the Effective Date has occurred, the Sponsor will complete the Contract of Exchange by transferring the Building to the Apartment Corporation, subject to the Regulatory Agreement, Mortgages and other terms and conditions described in the Contract of Exchange. A copy of the Contract of Exchange is in Part II of the Plan.

22. MANAGEMENT AGREEMENT

Upon transfer of the Building to the HDFC, a management contract with _____ (Managing Agent) will be in full force and effect for a term of _____ years. The Managing Agent's contract is in Part II of the Plan. HPD must approve the Managing Agent in writing.

23. MONITORING CONTRACT

Pursuant to the requirements of the Regulatory Agreement between HPD and the HDFC, the HDFC must employ the services of a Monitoring Agent to assist in carrying out the duties and responsibilities of the HDFC under the Regulatory Agreement. These duties and responsibilities include, but are not limited to, ensuring compliance with the Primary Residency requirements; Insider and Outsider Waiting List requirements; adherence to the restrictions on sales and subletting; implementation of annual maintenance increases; ensuring proper use of non-residential spaces, if applicable; maintaining adequate books and records; and anything else deemed necessary to ensure compliance with the Regulatory Agreement.

The Monitoring Contract for the first year of operation shall be with _____. The term of the initial Monitoring Contract is for _____ year (s) and at an annual fee of \$ _____. At the expiration of the initial Monitoring Contract, the HDFC may either retain _____ as the Monitoring Agent or may choose a new Monitoring Agent, subject to HPD approval.

24. DISCUSSION OF REASONABLE RELATIONSHIP

Provided that, for the taxable year in question, both (1) the HDFC is a "cooperative housing corporation" as defined by §216(b)(1) of the Internal Revenue Code and (2) the shareholder in question is a "tenant-stockholder" as defined by §216(2)(2) of the Internal Revenue Code, that shareholder will be entitled to a deduction on his or her income tax return (if he or she itemizes deductions) equal to that portion of the maintenance paid by him or her that represents his or her proportionate share of (a) the amount of real estate taxes incurred by the HDFC for that year on its property and (b)

the amount of interest expense incurred by the HDFC for that year on indebtedness taken on for the acquisition, construction, alteration, rehabilitation or maintenance of its land and building.

REQUIREMENTS TO BE A “COOPERATIVE HOUSING CORPORATION”

Section 216(b) (1) of the Internal Revenue Code defines a “cooperative housing corporation” as follows:

- (1) Cooperative housing corporation. The term “cooperative housing corporation” means a corporation-
- (A) having one and only one class of stock outstanding,
 - (B) each of the stockholders of which is entitled, solely by reason of his ownership of stock in the corporation, to occupy for dwelling purposes a house, or an apartment in a building, owned or leased by such corporation,
 - (C) no stockholder of which is entitled (either conditionally or unconditionally) to receive any distribution not out of earnings and profits of the corporation except on a complete or partial liquidation of the corporation, and
 - (D) meeting 1 or more of the following requirements for the taxable year in which the taxes and interest described in subsection (a) are paid or incurred:
 - (i) 80 percent or more of the corporation’s gross income for the taxable year is derived from tenant-stockholders.
 - (ii) At all time during such taxable year, 80% or more of the total square footage of the corporation’s property is used or available for use by the tenant-stockholders for residential purposes or purposes ancillary to such residential use.
 - (iii) 90 percent or more of the expenditures of the corporation paid or incurred during such taxable year are paid or incurred for the acquisition, construction, management, maintenance, or care of the corporation’s property for the benefit of the tenant-stockholders.

ANALYSIS OF WHETHER THE HDFC WILL BE A “COOPERATIVE HOUSING CORPORATION”

As indicated above, in order for the HDFC to qualify as a “cooperative housing corporation” for a given taxable year, it must satisfy four separate requirements. Those four requirements are referred to below as “the one-class-of-stock” requirement, “the entitled-to-occupy” requirement, “the entitled-to-only-certain-distributions” requirement, and the “one-of-three-percentages” requirement. Based on the Certificate of Incorporation of the HDFC and the proposed budget of its first year of operation, it appears that it will be a “cooperative housing corporation” for that year and, provided that it satisfies the one-of-three-percentages requirement for the taxable year in question, each subsequent year as well.

The one-class-of-stock requirement. Paragraph 11 of the HDFC’s Certificate of Incorporation provides that it is authorized to issue only one class of stock. Therefore, this requirement is satisfied.

The entitled-to-occupancy requirement. Paragraph 13 of the HDFC's Certificate of Incorporation provides that it shall be operated exclusively for the benefit of low-income persons or families who are entitled to occupancy in the Building by reason of ownership of shares in the HDFC. Therefore, this requirement is satisfied.

The entitled-to-only-certain-distributions requirement. Paragraph 4 of the HDFC's Certificate of Incorporation provides that (i) that all income and earnings of the HDFC shall be used exclusively for corporate purposes, (ii) that no part of the net income or net earnings of the HDFC shall inure to the benefit or profit of any private individual, shareholder, firm, corporation, or association, and (iii) that the HDFC shall pay no dividends on its stock. Therefore, this requirement is satisfied.

The one-of-three-percentages requirement. This requirement can be satisfied in any one of the three different ways, the first of which is that, for the taxable year in question, at least 80% of the corporation's "gross income" must be "derived from tenant-stockholders." Based on the projected budget for the first year of operation (which is set forth in Part I of this Plan), and assuming that a sufficient number of the shareholders of the HDFC will then be "tenant-stockholders" as defined in §216(b)(2) of the Internal Revenue Code (which subject is discussed below), it appears that this requirement will be met for that year. It should be noted that this requirement must be satisfied, in any of the three enumerated ways, for each taxable year for the HDFC to be a "cooperative housing corporation" for that year.

REQUIREMENTS TO BE A "TENANT-STOCKHOLDER"

Section 216(b)(2) of the Internal Revenue Code defines a "tenant-stockholder" as follows:

(2) Tenant-stockholder. The term "tenant-stockholder" means a person who is a stockholder in a cooperative housing corporation, and whose stock is fully paid-up in an amount not less than an amount shown to the satisfaction of the Secretary as bearing a reasonable relationship to the portion of the value of the corporation's equity in the houses or apartment building and the land on which situated which is attributable to the house or apartment which such person is entitled to occupy.

ANALYSIS OF WHETHER A SHAREHOLDER WILL BE A "TENANT-STOCKHOLDER"

As indicated above, in order for a shareholder to qualify as a "tenant-stockholder" for a given taxable year, his or her stock must satisfy two separate requirements. Those two requirements are referred to below as "the paid-in-full" requirement and "the right-amount" requirement. Based on the provisions of the Plan, it appears that each person to whom shares are transferred by the Sponsor will be a "tenant-stockholder."

Under the Plan, a number of the HDFC's shares will be allocated to each apartment in the Building (as described below), and, except for the shares allocated to apartments occupied by non-purchasing tenants, which will not initially be issued (as more fully set forth in Part I of this Plan), all of the shares will be issued to the Sponsor in exchange for the Building subject to a mortgage thereon, which mortgage will be in an amount less than the free-and-clear value of the project. Accordingly, all the shares issued to the Sponsor will satisfy the paid-in-full requirement. In addition, inasmuch as the Sponsor will initially be supplying all of the net assets of the HDFC in exchange for all of its then-issued shares, the amount paid for all of these shares *in the aggregate* will at least be equal to the portion of the HDFC's equity in the Building attributable to the apartments that the owner of those shares will be entitled to occupy.

However, this is another aspect. Each block of shares must by itself satisfy the right-amount requirement. Under the Plan, each Room will be allocated 10 shares. For example, an apartment that has 2 Rooms (a studio apartment) will be allocated 20 shares, an apartment that has 3 Rooms (a one-bedroom apartment) will be allocated 30 shares, and so on. Thus, considering each block of shares, it appears that the right-amount requirement will be satisfied.

CONCLUSION

Based upon the foregoing discussion, the Sponsor believes (A) that the HDFC will be a "cooperative housing corporation" for the first year of operation and for each subsequent year in which the one-of-three percentages requirement is satisfied and (B) that each shareholder of the HDFC who receives his or her shares from the Sponsor will be a "tenant-stockholder." However, this belief must not be taken as a guarantee. Purchasers and the Tenant Association are strongly advised to seek the advice of an independent qualified tax professional regarding this matter.

25. IDENTITY OF PARTIES

Sponsor:

The Sponsor is _____

Management Company:

The Management Company is _____

Architect:

The Architect is _____

General Contractor:

The General Contractor hired by the Sponsor to complete the renovations at the building
is _____

