Roadmap to Permanent Affordability

Analysis, Observations and The Future of Subsidized Housing in New York City

anhd
ASSOCIATION FOR NEIGHBORHOOD & HOUSING DEVELOPMENT, INC.

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Contents

Executive Summary 4

Introduction 13

Part I 14
Methods of Achieving Permanence: Purchase Options and Rights of First Refusal

Part II 23
Monitoring and Compliance with Affordability Restrictions

Part III 37
Getting to Permanence

Appendix A 45
Overview of State and Local Initiatives to Establish Purchase Options and Rights of First Refusal

Appendix B 51
Historical Overview of Federal and State Housing Programs

Appendix C 54
Overview of State and Local Initiatives to Establish Alternative Affordability Structures and Incentives

Appendix D 58
Financial Projects and Assumptions

Appendix E 62
Financial Models

Appendix F 83
Interviews

Appendix G 85
Bibliography

Appendix H 86
Protocol for Compliance Interviews

Endnotes 87

Executive Summary

In the spring of 2008, the Association for Neighborhood and Housing Development (ANHD) engaged Evelyn J. Wolff and Duvernay+Brooks to examine the viability of creating a permanently affordable housing policy for New York City. This Executive Summary seeks to highlight what ANHD considers to be its most important findings and conclusions: for ease of comprehension it follows the same format as the full report but omits a number of detailed discussions and analyses.

The past seventy years have seen a proliferation of funding mechanisms and program designs intended to house those who require some assistance in finding decent, safe and affordable housing. And despite the hundreds of millions of dollars which have been dedicated to the creation of such housing, the shortage of decent affordable housing continues to grow. Few if any of the programs have been able to maintain housing affordability over the long term. This is due to many factors including population growth, rising housing costs, decreasing federal investment, functional obsolescence from physical deterioration, and the expiration of use restrictions for subsidized projects. In the current context of limited resources and market challenges, it is appropriate to explore alternative strategies that would be better suited to creating the greatest number of units to serve those most in need over the longest possible term.

While recognizing that there are a number of different methods for providing such permanence, ANHD decided to focus on determining the viability of Purchase Options and Rights of First Refusal (ROFR) to be held by the City of New York or qualified not-for-profit organizations as a requirement for all new projects receiving City capital subsidies or land, and a more robust regulatory environment for all City-subsidized developments. This assessment therefore is limited to an evaluation of the practicality of this approach and seeks to respond to three primary objectives:

- To develop financial models for various affordable housing programs currently being funded to determine how a financially feasible strike price could be achieved given the presence of a Purchase Option or Right of First Refusal.

- To explore the factors leading to effective oversight of affordability restrictions in tax credit projects, and make recommendations for implementation, especially after Year 15.

- To determine how the City monitors non-tax credit projects and make recommendations for improvement, where needed.

This study and the accompanying financial projections, by design, focused on new projects being developed and how to ensure that they remain affordable once the original regulatory periods expire. Many of the same principles can be applied to properties which are at or close to having their regulatory agreements terminate. As these projects are refinanced, Options and/or Rights can be added to the new documents and the valuation techniques are equally applicable for determining fair acquisition pricing which in many cases government agencies have to agree to prior to a sale being consummated.

The report is divided into three distinct parts to analyze and discuss the objectives set forth above. Part I examines Purchase Options and Rights of First Refusal, defining terms and briefly surveying national experiences. It then discusses in detail assumptions and other factors to consider in developing cost projection models for determining a strike price for a Purchase Option or Right of First Refusal. Three financing programs are modeled using three different valuation methodologies. Part II discusses compliance and oversight of affordability restrictions for both tax credit and non-tax credit projects and offers recommendations on how to achieve greater efficiencies going forward.

Part III surveys affordable housing stakeholder responses, both for-profit and nonprofit, to the concept of permanent affordability, scans the regulatory environment and current economic conditions in New York City, and concludes that permanent affordability is achievable if the goal is incorporated into the City's affordable housing programs.

In addition to Options and Rights, several states, as well as the federal government, have attempted to provide "permanent" affordability via statute or regulation, placing restrictive affordability covenants or deed restrictions on properties benefiting from public subsidy, tax abatements, and the like. These are detailed in Appendix C. Appendix D details the financial projections and assumptions used to build the strike price models that are presented in Appendix E. Source materials and persons interviewed for each part are listed in Appendices F and G.

Taken together, the findings of this report and supporting material are intended to provide ANHD and the broader affordable housing community with key information to consider as a roadmap to permanent affordability.

Part I: Methods of Achieving Permanence: Purchase Options and Rights of First Refusal

As noted above, ANHD commissioned this assessment based on its belief that Purchase Options or Rights of First Refusal (ROFR) are key to developing and maintaining permanently affordable housing programs. A Purchase Option is normally used a future real estate transaction. An agreement establishes the Purchase Option as a ***legal possibility*** and presents conditions and terms that preserve this expectation over time. A Purchase Option is triggered by a predetermined event, e.g., expiration of federal tax credit restrictions. A Right of First Refusal gives a nonprofit or for-profit corporation the ***right*** to purchase a property if or when a bona fide offer to purchase is made by a third party. That offer can be made at any time unless specifically prohibited by the underlying legal documents.

Currently, Purchase Options and Rights of First Refusal are most frequently used in the Low Income Housing Tax Credit (LIHTC) program, primarily when properties are developed by nonprofit sponsors or joint ventures of for-profit and nonprofit partners. LIHTC projects have strict guidelines concerning the use of either Options or Rights because of the need to assure that tax benefits conferred through the sale of tax credits are not lost.

National Experience with Purchase Options and Rights of First Refusal

ANHD is not alone in pushing for adoption of either Purchase Options or Rights of First Refusal. The National Preservation Working Group has advocated for legislation to require owners proposing to end participation in federal affordable housing programs (specifically HUD and Rural Development programs) to offer the properties for sale at fair market value to preservation purchasers, at least for a designated notice period. Additionally, in a paper prepared for the Harvard University Joint Center for Housing Studies called "Designing Subsidized Rental Housing Programs: What Have We Learned?", the authors state that were they designing a new federal rental program, they would include a formal Purchase Option, held by government, to facilitate long-term preservation.

States and Municipalities

A number of cities and states have incorporated the Purchase Option and ROFR concepts into their preservation housing strategies. One of the most successful is the program implemented by San Francisco in the 1990s, when the Project-based Section 8 properties began to opt out of the program at the expiration of their contracts for rental subsidies. The City, using both political will and public resources, has been able to preserve every unit of Section 8 housing by granting a Right to Purchase to qualified entities in exchange for a commitment to extend a project's affordability.

There are many lessons to be drawn from San Francisco's experience. One is how San Francisco settled on a formula for the payment of a "fair return price" to owners choosing to leave the program. The "fair return" formulas seek to insure that the sales price provides a minimum return (approximately 10%) on the developer's investment, which enabled the City to facilitate quick closings on properties as it avoided a lengthy appraisal process and negotiation for each property. Second, the City utilized its already strong network of nonprofit housing providers to steer the housing to suitable new owners. Finally, by using a 99-year land lease mechanism, the City further ensured that the housing would remain "permanently" affordable since the City can renew the leases at the end of the 99-year lease period. This is a technique that has never been utilized by New York City and is one which might be considered going forward as part of the overall strategy to ensure "permanent" affordability.

Lessons learned from other practitioners are invaluable in developing recommendations for New York City, and therefore a considerable amount of time was spent researching the experience of others in the use of Purchase Options and Rights. The results of this research can be found in Appendix A.

This review brought up three primary questions that must be considered in proposing an Option/Rights mechanism for New York City:

1. **Right to Purchase or Opportunity to Purchase.** Should a Purchase Option force a sale to the government or a qualified organization or only create an exclusive opportunity for the government or qualified agency to make a non-binding offer?

2. **Triggering Event**. Should a Purchase Option be triggered by the end of a property's affordable housing regulatory period or at another designated point in time, or should it be conditioned on an owner terminating affordable housing restrictions and/or offering a property for sale?

3. **Strike Price Formula.** What is the appropriate formula for determining the Purchase Option price?

In order to test what factors would need to be present in order to achieve a financially feasible strike price, the assessment analyzed three City programs that utilize financing structures that are representative of how the bulk of affordable housing in the City is created. The three programs are HDC LAMP, HDC NewHop, and HPD 9% tax credits. In addition to being the most frequently used, these programs provide substantial amounts of City subsidy and cover a wide range of affordability, from below 30% of Area Median Income (AMI) to 130% AMI.

Based on the review of how Option/Right policies operate in other areas, three Purchase Option or Right of First Refusal strike price methodologies have been used for each of the three project types listed above:

1. **Fair Market Value** – A FMV option price is calculated based on an income valuation of each project.

2. **Fair Return Value** – An option price is calculated using a formula similar to San Francisco's formula for a "fair return" which is intended to provide at least a 10% return to the owner.

1. **IRC Minimum Value** – Although the NewHOP project is not a tax credit project, the IRC Right of First Refusal minimum price (debt + exit taxes) for tax credit developments is calculated for all three projects.

In current dollars, all of the Year 15 and Year 30 Option price formulas that assume affordability restrictions remain in place result in strike prices below the current costs to build these units. When valuations are projected to incorporate the projects' potential conversion to market rents after Year 30, the High FMV strike prices exceed current

construction costs for these units. However, the application of a higher, potentially more realistic, discount rate to the present valuation of the High FMV strike prices yields prices that are far below current development costs. In addition, the Low FMV and other option price formulas result in strike prices below current costs. *Thus, Purchase Options, even at FMV, appear to be financially effective mechanisms for preserving affordable housing.*

Part II: Monitoring of and Compliance with Affordability Restrictions

A by-product of requiring Purchase Options or Rights of First Refusals in a permanently affordable housing program is ascertaining that sufficient regulatory and administrative procedures are in place to assure compliance with the program's objectives.

Oversight of Affordability Restrictions in Tax Credit Properties

More than any other program currently in place, the Low Income Housing Tax Credit (LIHTC) program has instituted and enhanced monitoring and compliance standards that are now considered "state of the art". As a result, an evaluation of the factors that have led to effective oversight of LIHTC affordability restrictions was conducted.

Government's Role

The most essential and basic monitoring of tax credit projects occurs with the public agency responsible for allocating tax credits. In New York City, there are four such "public" agencies all of which have monitoring and compliance procedures in place which clearly derive from the IRS Code. The Guide and the IRS' ability to take action against (or even threaten) the noncompliant is clearly at the heart of the Low Income Housing Tax Credit program's ability to operate as well as it does. The program is now over 20 years old; in that period of time, very few tax credits have been recaptured and extremely few instances of significant noncompliance were noted during numerous interviews conducted for this study. Given this framework, each of the four agencies involved with tax credit projects in NYC has developed similar compliance and monitoring procedures; how compliance monitoring is conducted does differ from agency to agency and is detailed in Part II of the full report.

Intermediaries' Role

The next level of monitoring occurs at the syndication and/or intermediary level. The primary intermediaries in New York are LISC and Enterprise: both of these entities have an extremely close working relationship with HPD and appear to serve as HPD's "eyes and ears", especially on the early transactions done under the NEP and NRP programs with vacant and *in rem* properties. Syndicators operate more independently; their primary responsibility is to their investors and to assure that properties maintain their tax credit eligibility. And of course the final level of monitoring rests with the owners and their managers who are contractually and legally responsible for making sure that the rules and regulations that they have agreed to are in fact followed and followed correctly. The full report discusses each group separately as well as describing the role of for-profit syndicators and management companies in monitoring tax credit compliance.

Post- Year 15 Monitoring

None of the four public agencies in New York City have put any plans in place for monitoring of post year 15 tax credit deals. All are aware of the need to do so. Projects will also need additional money to fix up the structures, as well as new tax abatements, since these were done under J-51.

According to a report published in Housing Policy Debate, the biggest threat to the long-term viability of tax credit housing as a resource for low-income households stems less from the expiration of income and/or rent

restrictions and more from the need for major capital improvements. While New York City may be an exception to this observation, our changing economic picture may in fact make this prediction a reality. It is one we should be prepared to face.

Oversight of Affordability Restrictions in non-LIHTC Properties

New York City housing programs have various compliance periods to which owners agree when accepting subsidies and soft mortgages. However, the City dedicates minimal resources to ensuring these restrictions are followed and there are no additional or ongoing income restrictions other than the rent structures imposed through Rent Stabilization. There are also no ongoing affordability requirements for new tenants as we know them in other subsidized programs. The primary enforcement mechanisms for noncompliant projects are referral to the Department of Investigations and legal remedies when regulatory agreements are violated. For these reasons, there is no replicable monitoring or compliance model in the non-LIHTC programs to be adapted for use with a permanently affordable program going forward.

Recommendations

To be successful, any permanent affordability housing mechanism for projects that do not utilize tax credits would have to provide additional means and staff to assure compliance. Use restrictions alone are insufficient for ensuring units serve intended households during the restricted period; a robust monitoring function and collaboration among stakeholders are also essential. We were unable to ascertain during the interview process exactly how much or how little staff is actually assigned to monitor both tax credit and non-tax credit projects. The State of Washington is at least one step ahead of NYC in its efforts to develop interagency cooperation and sharing. Several years ago, the Washington State Housing Finance Corporation (WSHFC), with 60,000 units and 800 properties in its portfolio, instituted a program of joint monitoring with other funders in the state and they have successfully been sharing information across agency lines.

The ideas presented below, some of which have been utilized at least partially by New York's public agencies, have significant benefits and should be adopted in a more comprehensive way by all four agencies. They include:

- Web Based Data and Compliance Systems
- Previous Participation: Debarment processes, or a previous participation clearance mechanism, are extremely useful as a deterrent to owners who no longer need to worry about the wrath of the IRS.
- Uniformity: To the extent possible, the rules and regulations under the various programs should be made uniform.
- Frequency of Reports: Some reports are required too frequently – for example, occupancy reports. These could easily go to a quarterly reporting format to coincide with financial quarterly reports. If each agency had the same requirements, everyone's efficiency would be improved.
- Tenant Pre-Certification: Assuming sufficient staffing, pre-certifying all tenants prior to move-in, while cumbersome, might eliminate one of the most frequent causes of noncompliance.
- Training: From conversations with those outside the agencies, it appears that the agencies should be providing more training for developers and managers.
- Policy Directives and Manuals: There is concern that very little is put in writing by any of the agencies, leading to inconsistencies in monitoring and in policy.

As decisions are made about how to allocate scarce resources, it is not unusual to see a predominant majority of resources—both dollars and human—be reserved for the development of new affordable housing or the preservation of existing units rather than monitoring and compliance. Although this imbalance is not difficult to understand politically, it is unfortunate from an asset management point of view. As public dollars become

increasingly scarce and lessons are learned from the expiring use crisis, it would appear that, in the long term, the public sector would better serve taxpayers by operating as a steward of these important resources.

Part III: Getting to Permanence

ANHD asked for an evaluation of Purchase Options and Rights of First Refusal as well as a study of monitoring and compliance practice and issues affecting long term affordability when it commissioned this report. In the course of the evaluation, other information and opinions relevant to the consideration of the obstacles to, and opportunities for, permanent affordability were identified. Part III presents these findings and identifies the key issues that must be addressed in order for the concept of permanent affordability to be fully realized.

There are numerous hurdles to permanent affordability including legal (the Rule Against Perpetuities), financial (need for future recapitalization and adequate upfront reserves), and logistical (how to ensure future administrations will make necessary resources available). While it may be easier to defer these issues to the next generation, ANHD has sought to engage the broader affordable housing community to identify challenges, develop solutions, and achieve consensus that it is possible to develop and implement a more appropriate model for the New York City market.

For-Profit Reactions

For-profit developers articulated three primary concerns about the concept of permanent affordability: how to project the price of an Option, how to come to agreement on a sale price, and how to find the right mix of financial incentives so that for-profit developers continue to participate.

<u>Projecting the Costs:</u> Several for-profit developers interviewed feel that there is no realistic way to project the price of an Option. Assuming the purchase occurs at the end of the regulatory period, it is extremely difficult to project what a property in any given neighborhood will be worth. While this is a valid concern if the strike price were determined at Year 0, neither Purchase Options nor ROFRs require setting a sales price upfront. Rather, the sales price would be determined in the future based on some triggering event and a combination of factors such as the project's future cash flow, location, physical condition, presence of rent subsidy, etc.

<u>Valuing a Property and Agreeing on a Price:</u> A second objection raised to Purchase Options and ROFRs hinges on the difficulty of agreeing upon a price. Using an appraisal method to determine value at the end of the regulatory period can be time consuming and could lead to very prolonged and not always successful negotiations. San Francisco's experience with the Fair Return Model, however, shows that there is a precedent for establishing a formula for reasonable pricing that avoids a lengthy appraisal and negotiation process. For the San Francisco model to work in New York, significant dollars would need to be available to allow the City to exercise its Option or ROFR if other incentives proved insufficient.

<u>Financial Incentives:</u> A third point raised by for-profit developers is that Purchase Options create a major disincentive for the developer who is motivated by fees, cash flow *and* residual profit (profit from the sale or capital transactions). This could be overcome by adding a "guaranteed" residual to the developer and other fees that are already built into a given program. Such a guarantee takes the risk, as well as the potential reward, out of the equation since there is no way of truly knowing up front what market and neighborhood values will be in any given location. For developers who are more risk averse, this may be appealing. Additionally, there are for-profit developers who are not concerned with residuals: these are turnkey developers whose business model is different from that of the developer who builds to keep control of the project.

Some developers noted that the fee incentives currently in the tax credit program, such as developer and management fees, are not sufficient by themselves to maintain an interest in affordable housing development. However, it may be possible to induce for-profit developers to participate without residuals if the upfront and ongoing fees were increased. In other words, what the developer is looking for – cash up front or long term residuals – would determine who would continue to "play" in this market.

Other Issues: Another group of developers felt that providing incentives to keep properties affordable would work better than a forced sale at the end of the regulatory period. Those incentives need not be the same for every building in every neighborhood and should be flexible enough to take into account changes in both neighborhood and building conditions to make sense.

Opinions within the for-profit development community on the practicality of permanence ranged from "misguided" to "workable" with the right tools. It is clear that further analysis is required to determine how much upfront development and management fees would need to be enhanced to support removing the upside of residuals. As noted above, developers are not universally driven by residuals, and those that are may be willing to participate even if residuals were capped, as is the case in San Francisco where developers have continued to participate in City programs.

Nonprofit Reactions

Over the past 30 years, community-based, not-for-profit housing developers have labored to meet the housing needs of low, moderate and middle income families across New York City. ANHD pointed out that its members have been responsible for building, renovating, owning, and managing over 35,000 units of affordable housing and are driven by their mission to maximize public subsidy both to achieve the deepest level of affordability and guarantee that affordability will be maintained over the longest possible term. Despite these efforts, New Yorkers—now more than ever—are struggling to find and retain affordable housing; the situation may get worse before it gets better as the New York City economy is facing shaky times.

Thus, in ANHD's and other nonprofits' view, it becomes increasingly important that public resources be used in the most efficient way to maximize public benefit. ANHD is of the opinion that the City needs to transition from the current thinking that time limits affordability restrictions to a different policy that incentivizes developers to keep rents affordable in exchange for fees and/or a fair return, but not unlimited profits on the back end. ANHD believes it is essential to cultivate a market driven strategy that takes advantage of the City's strong affordable housing development community while recognizing that it can no longer afford to continually build units only to see them lost 15, 20 or 30 years down the road.

Moreover, ANHD believes:

- The City must re-evaluate its practice of turning over public land to developers who only pledge short-term affordability. Defensible when the City was burdened by the large "*in rem*" stock, the fee simple sale of public land to private interests no longer makes sense when there is so little developable land remaining under public control. Some jurisdictions ground lease publicly-owned land to developers in exchange for requiring that the project be rented only to low- and moderate-income persons over the very long term.

- More rigorous compliance is part of the solution. ANHD estimates that a considerable number of new staff are needed to monitor just HPD's existing portfolio. The one-time robust Division of Housing Supervision—created to monitor Mitchell Lama projects—can serve as a model for how the City should approach enforce-

ment in a more centralized way. Although greater monitoring will require resources, ANHD is prepared to see fewer units built if the ones that are built remain affordable permanently.

- Achieving permanence is necessary and feasible. To be sure, this report presents a detailed examination of just one approach to achieving permanent affordability: Purchase Options and Rights of First Refusals. Purchase Options are cost effective and provide one final assurance that affordability will not be lost if other efforts to induce stewardship are ineffective. We also acknowledge that any roadmap to long-term affordability could include mechanisms such as deed restrictions, community land trusts, and shared equity homeownership, among others.

Thus, ANHD believes that requiring anything short of permanent affordability when public land, subsidy or other incentives are used is an inefficient, illogical use of taxpayer dollars and works to erode the economic diversity of the City. The implementation of the legislative, regulatory, and administrative changes needed to achieve permanent affordability will take time and innovation: ANHD is committed to working with the affordable housing community to explore all alternatives and achieve these changes for the benefit of the City, its neighborhoods, and low- and moderate- income New Yorkers.

Syndicator Reactions

One nonprofit syndicator felt that there were several different ways to move toward permanent affordability. One is permanence through government mandate, such as NYC's Inclusionary program discussed in Part II of this report. Another way to achieve permanent affordability—and the most effective—is for "low-income housing to be owned by strong, well run nonprofit organizations whose mission is to provide quality, affordable housing." Homeownership with resale restrictions is another way. This allows for profit and build-up of equity at the same time as it creates housing which is permanently affordable.

A for-profit syndicator presented an argument against long term extended use or permanence, at least based on today's tax credit environment, which holds that without extended use agreements, there is more leverage to get new credits when the original restricted period ends to fund needed capital improvements. It was pointed out that states generally want to spread scarce tax credits around – if a project is already permanently low income, why should the state give it more credits? It should be acknowledged, however, that if the state or locality valued permanent affordability, it could easily change its QAP to prioritize permanence of existing buildings needing capital improvements. In addition, the syndicator noted that in strong markets syndicators and investors may increasingly look to residual profits to improve returns.

New York City's Economic and Regulatory Environment

While it is crucial to get the mechanisms right, it is equally important to be aware of the economic conditions facing the City and State, and of the willingness of its public officials to enforce affordability restrictions. The section below provides a brief analysis of both: the full report contains more details.

Mid 2008 Economic Outlook

The full report looked at diverse experiences around the country on a federal, state and local level which give rise to several intriguing questions as to the applicability of these concepts and mechanisms to New York City. As everyone knows, the economic environment, especially as it relates to affordable housing, has shown signs of dramatic change in recent months. The good news is that the astronomical sums offered by large private real estate firms to purchase affordable housing portfolios seems to have dissipated somewhat and the tide seems to be turning in favor of preservation, especially given the recent developments at Starrett City. However, market conditions can change fairly quickly and we need to be cognizant of these trends as they develop and evolve.

While a weakening economy and budget cuts may limit the amount of capital resources available for affordable housing, it should make participation in development programs even more attractive. Not only are these projects less risky for developers, private capital and credit will become increasingly harder to come by thereby making subsidized housing the only game in town. Thus, extended affordability and resale restrictions may be a lot less unattractive if these conditions persist.

Any recommendations and plans put forward in this environment must take these factors into account. Questions asked with increasing frequency by public, nonprofit and private practitioners focus on the need for more public capital – something that does not appear to be available in the foreseeable future. And, as is always the case in New York, the never-ending pressure on the overall housing market with its consistently low vacancy rates, keeps forcing rents to rise, even without the pressures caused by spikes in energy and insurance coverage. On the other hand, the mortgage crisis has produced an unforeseen benefit for affordable housing with the passage of the 2008 Housing and Economic Recovery Act signed into law on July 30, 2008: the bill contains increased volume cap for tax exempt bonds, beneficial changes to the tax credit program, and other important modifications to recycling revenue bonds.

A Unique Moment in New York's Regulatory Environment

In contrast to the somewhat gloomy economic environment, New York City's regulatory environment is more robust today than it has been in several decades. We have a confluence of strong leadership at every level of government – in our federally elected representatives, in our state housing agencies, and in our municipal housing agencies. An interagency working group, chaired by the Commissioner of the New York State Division of Housing and Community Renewal (DHCR) and staffed by the New York City Department of Housing Preservation and Development (HPD), held its first meeting in September to discuss both its goals and its work plan for the coming year. This body promises to create an impetus to attaining real progress in preserving affordable housing and keeping it available for those in need. It would appear that the will is there; however many of the tools to implement these goals still need to be developed.

Both the City and the State recognize that their access to project and program information is seriously deficient. Both are working to update their data bases and to modernize their computer capabilities. In addition to data needs, there is also a pressing need to eliminate, to the extent possible, duplication of efforts, both in monitoring and in data collection from owners and tenants. Further, compliance manuals, to the extent they even exist, are outdated, and data request forms are generally still in paper format and require huge amounts of staff time for computer entry and processing. Finally, the lack of consistency in regulatory agreements and loan documents, even within a given program, make both monitoring and enforcement very difficult.

Conclusion

In sum, the key to any successful affordable housing preservation program is finding a combination of mechanisms and policies for keeping properties affordable as long as possible. It is clear that achieving permanent affordability – whether through Options and/ or Rights, preservation set-asides for funding and subsidies, changes in regulatory requirements, more thorough monitoring with consequences for non compliance – is theoretically possible. The challenge comes with convincing policy makers that, while the needs of all stakeholders should be taken into account, creating and keeping a viable, cost effective and vibrant affordable housing portfolio must be a continuing goal.

Introduction

In the spring of 2008, the Association of Neighborhood and Housing Development engaged Evelyn J. Wolff and Duvernay+Brooks to examine the viability of creating a permanent affordable housing policy for New York City. The underlying premise of this assessment, as articulated by ANHD, is that mandatory permanent affordability financing and enforcement mechanisms are the key to creating and sustaining a portfolio of well maintained and viable housing for low and moderate income people in the City of New York. The past seventy years have seen a proliferation of funding mechanisms and program designs intended to house those who require some assistance in finding decent, safe and affordable housing. But despite the hundreds of millions of dollars which have been dedicated to the creation of such housing, the shortage of decent affordable housing continues to grow.

Population growth has caused the demand for affordable housing to rise even as rising prosperity over the past 25 years has driven up the costs of new affordable housing development. At the same time, affordable housing built over the past decades is maturing and falling victim to gentrification or reaching functional obsolescence. Exacerbated by the failure of federal housing policies, these demographic and economic factors have resulted in a severe shortage of affordable housing, with the most dramatic impact on the neediest of our citizens.

In this environment, ANHD and its members believe that requiring anything short of permanent affordability when public land, subsidy or other incentives/resources are used is an inefficient, illogical use of taxpayer dollars and works to erode the economic diversity of the City. While recognizing that there are a number of different methods for providing such permanence, ANHD has decided initially to focus on determining the viability of an Option to Purchase and a Right of First Refusal (ROFR) held by the City or qualified not-for-profit organizations, which would be and incorporated into the regulatory agreement for a new project receiving City Capital funds or developed on City-owned property, and a more robust regulatory environment for all developments which benefit from any public financing. This assessment therefore is limited to an evaluation of the practicality of this approach and seeks to respond to the three primary objectives set forth in the Request for Proposals:

- To develop financial models for various affordable housing programs currently being funded to determine how a financially feasible strike price could be achieved given the presence of a Purchase Option or Right of First Refusal.

- To explore the factors leading to effective oversight of affordability restrictions in tax credit projects, and make recommendations for implementation, especially after Year 15.

- To determine how the City monitors non-tax credit projects and make recommendations for improvement, where needed.

This study and the accompanying projections, by design, focused on new projects being developed and how to ensure that they remain affordable once the original regulatory periods expire. Many of the same principles can be applied to properties which are at or close to having their regulatory agreements terminate. As these projects are refinanced, Options and/or Rights can be added to the new documents and the valuation techniques are equally applicable for determining fair acquisition pricing which in many cases government agencies have to agree to prior to a sale being consummated.

The report is divided into three distinct parts to analyze and discuss the objectives set forth above. Part I examines Purchase Options and Rights of First Refusal, defining terms and briefly surveying national experience before discussing in detail assumptions and other factors to consider in developing cost projection models for determining a strike price for a Purchase Option or Right of First Refusal. Three programs admin-

istered by the New York City Housing Development Corporation and the New York City Department of Housing Preservation and Development are modeled—LAMP, a 9% LIHTC project, and the mixed-income "NewHOP" program—using three different valuation methodologies. Part II discusses compliance and oversight of affordability restrictions for both tax credit and non-tax credit projects, offers recommendations on how to achieve greater efficiencies going forward, and consolidates the second and third tasks ANHD identified in its original scope of work. Part III of the report surveys affordable housing stakeholder responses, both for-profit and nonprofit, to the concept of permanent affordability, scans the regulatory environment and current conditions in New York City, and concludes that permanent affordability is achievable if the goal is incorporated into the City's affordable housing programs.

Various state and local initiatives to establish Purchase Options and Rights of First Refusal are detailed in Appendix A. In addition to Options and Rights, several states, as well as the federal government, have attempted to provide "permanent" affordability via statute or regulation, placing restrictive affordability covenants or deed restrictions on properties benefiting from public subsidy, tax abatements, and the like. Appendix B is an historical overview of federal and New York State housing programs. Other efforts by state housing finance agencies and selected cities around the country are further discussed in Appendix C. Appendix D details the financial projections and assumptions used to build the strike price models that are presented in Appendix E. Source materials and persons interviewed for each part are listed in Appendices F and G. Finally, the interview protocol used for the compliance interview is contained in Appendix H.

Taken together, the findings of this report and supporting material are intended to provide ANHD and the broader affordable housing community with key information to consider as a roadmap to permanent affordability.

Part I – Methods of Achieving Permanence: Purchase Options and Rights of First Refusal

I. Purchase Options and Rights of First Refusal as a Means to Permanent Affordability: Theories, Concepts and Experience

As noted in the Introduction, ANHD commissioned this assessment based on its belief that Purchase Options or Rights of First Refusal (ROFR) are key to developing and maintaining permanent affordable housing programs. A Purchase Option is normally used a future real estate transaction. An agreement establishes the Purchase Option as a ***legal possibility*** and presents conditions and terms that preserve this expectation over time. A Purchase Option is triggered by a predetermined event, e.g., expiration of federal tax credit restrictions. A Right of First Refusal gives a nonprofit or for-profit corporation the ***right*** to purchase a property if a bona fide offer to purchase is made by a third party. That offer can be made at any time unless specifically prohibited by the underlying legal documents. These terms are often used interchangeably and, depending upon what nuances are attached to the Option or Right, they are sometimes difficult to distinguish. In the context of this assignment, it is important to keep these distinctions in mind.

Currently, Purchase Options and Rights of First Refusal are most frequently used in the Low Income Housing Tax Credit (LIHTC) program, primarily when properties are developed by nonprofit sponsors or joint ventures of for-profit and nonprofit partners. LIHTC projects have strict guidelines concerning the use of either Options or Rights. Under the Internal Revenue Code, Section 42(i)(7)(A), a Right of First Refusal can only be given to a "qualified"[1] nonprofit purchaser. The price can be below fair market value as long as it is at least equal to the property's outstanding debt (which could be assumable) and all Federal, State and local taxes

attributable to the sale.[2] In contrast, Purchase Options in LIHTC transactions must be at fair market value ("FMV") because the investor limited partners have to receive fair market value at exit in order to receive the tax benefits from investing in a tax credit property.

The concept of using a Purchase Option or ROFR can also be found in policies for the preservation of non-LIHTC publicly assisted housing. For such properties, the need to distinguish between Purchase Options and ROFR does not hold because there is no risk of losing tax benefits for selling at less than fair market value (i.e., a "bargain sale"). The principal issues then are determining when the Option or ROFR is triggered and at what price. The table below illustrates how Purchase Options and Rights of First Refusal are utilized in both tax credit and non-tax credit properties and the range of options available for setting a sales price.

	Tax Credit	**Non-tax credit**
Purchase Option (legal possibility)	Both for-profit and nonprofit, but price must = FMV	Distinction between Purchase Option and ROFR doesn't hold because there is no risk of losing tax benefits for selling at less than FMV. The key is setting the terms of the sale so a preservation-minded purchaser is able to acquire the property at a below-market price like SF's Fair Return formula.
Right of First Refusal (right)	Only with nonprofit owner. Price can be below FMV (IRC allows minimum of debt + taxes)	

II. National Experience with Purchase Options and Rights of First Refusal

A. Federal Government

At least one national group, the National Preservation Working Group, has called for enactment of a federal Right of First Refusal**.** The Group notes that for most federally assisted housing, with the exception of Rural Development (RD) properties, federal law establishes no protections for the property when the owner seeks to convert the property to market-rate use. In most converting federally-assisted properties, tenants receive relocation assistance in the form of enhanced or regular vouchers, with subsidies set at comparable market rent and supported wholly by federal appropriations, but the housing itself is lost as an affordable housing resource to the community, despite years of federal investment. For RD properties facing conversion, Congress established a right for preservation entities to purchase properties at fair market value. Congress also established similar preservation buyouts at market value for many HUD-subsidized properties facing prepayment in the Low Income Housing Preservation and Resident Homeownership Act (LIPPRHA) program, but although this program remains on the books it has received no funding for nearly a decade.

The National Preservation Working Group has advocated for legislation to require owners proposing to end participation in federal affordable housing programs (specifically HUD and RD programs) to offer the properties for sale at fair market value to preservation purchasers, at least for a designated notice period. Purchasers would have to assemble the resources to support any purchase, using the existing array of federal, state, and local programs, as well as any made available in the future (e.g., project-based enhanced vouchers)[3].

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In a paper prepared for the Harvard University Joint Center for Housing Studies called "Designing Subsidized Rental Housing Programs: What Have We Learned?", the authors state that were they to create a new property based rental subsidy program, "The program would include a formal option, held by government, for long-term preservation."

"The program would include a formal option, held by government, for long-term preservation. This could be structured as a right (assignable to a purchaser) to purchase the property at the time the affordability restrictions expire. For example, a structure that provided for an option price that is not lower than outstanding debt, and not higher than the appraised value of the property assuming continuation of the affordability requirements, would provide incentives for good ownership and management while still keeping the option price reasonable from a public-purpose viewpoint."[4]

B. States and Municipalities

A number of states and cities have incorporated the Purchase Option and ROFR concepts into their preservation housing strategies. One of the most successful strategies is the program implemented by San Francisco in the 1990s. In response to project-based Section 8 properties threatening to opt out of the program at the expiration of their contracts for rental subsidies, San Francisco "decided as a City to avoid having to deal with the preservation problem ever again."[5]

As a policy matter, San Francisco has adopted and pursued a preservation strategy encompassing permanence that holds that any projects which availed themselves of City funding would remain affordable in perpetuity. In 1990, the City adopted an Assisted Housing Preservation Ordinance to:

"...assist public and private efforts to ensure that housing affordable to very low, low and moderate income households is not permanently removed from the housing stock, to preserve and promote a supply of housing that is affordable to very low, low and moderate income residents in the community, to protect the diversity of the community by preventing displacement of very low, low and moderate income households, and to prevent homelessness."[6]

This Ordinance was a response to the growing scarcity of affordable housing in the City (vacancy was at 1.6%) and an early recognition of what could happen when project-based contracts reached their expiration. Among other things, the Ordinance "...recognizes the rights of owners of such housing units contained in such contracts with the federal government and that the owners of such housing are entitled by law to a fair return on their investment."[7] It does not appear as though this Ordinance has faced any legal challenges.

San Francisco's Ordinance requires 18 months advance notice of intent to prepay or terminate participation in local, state, or federal rental subsidy programs (including prepaying federal or federally-insured mortgages) be given to the City and the tenants, along with an affidavit stating, among other things, the cash investment made by the owner made to the property. For 8 months, the owner must provide qualified entities (the City or a designated not-for-profit) an exclusive opportunity to purchase the development. A public hearing is scheduled by the City Planning Commission for any assisted property and thereafter the Ordinance generally parallels the requirements in the California statute discussed below, with the exception that it contains a formula for calculating the "fair return price."[8]

Buying subsidized properties for a fair return price was enabled by providing monies through the Redevelopment Agency. The City facilitated the purchases on behalf of interested nonprofits by negotiating with the owners and then entering into purchase agreements with the nonprofits which in turn created limited partnerships so that the financing could be done with tax exempt bonds and tax credits. The City retained title to the land and negotiated a lease/purchase arrangement with nonprofit entities which agreed to keep the properties affordable. Often, the Redevelopment

Agency closed without permanent financing in place: it acquired the buildings based upon its preliminary evaluation of physical condition and then after purchase put together the financing including credits and bonds. The agency provided bridge financing so that owners could close quickly. The City used a land lease structure thereby gaining permanent control of the underlying real estate; it leased the land back to the limited partnership for 99 years and based the lease value on the discounted residual receipts value. Annual lease payments are set at 10% of the discounted land value. Payment is required if the property cash flows sufficiently; the City reviews the financial statements of the entity annually to make that determination. If there are insufficient funds, the annual payment is forgiven so as not to adversely impact the syndication. The result of this structure is that the City gains long term affordability, it has control over the asset and it has the responsibility of insuring compliance.

Per Olson Lee, Deputy Executive Director of the San Francisco Redevelopment Authority, this structure has not discouraged the private sector from continuing to participate in the affordable housing programs of the City.[9] Developers continue to receive cash flow as well as developer and manager fees. And since the land is not part of the acquisition price, the development costs are reduced by that amount. Affordability provisions survive prepayment or foreclosure.

There are many lessons to be drawn from San Francisco's experience. By using a combination of political will, economic incentives, available financial resources, a strong economy, and government support, the City was able to preserve every unit of Section 8 housing by granting a right to purchase to qualified entities in exchange for a commitment to extend the affordability of the properties for the remaining useful life of the property. In the financial projections summarized in Section VII below, we have incorporated a valuation formula similar to San Francisco's formula for the payment of a "fair return price" to owners choosing to leave the program. This formula has allowed San Francisco to negotiate with Section 8 owners and quickly arrive at a purchase price which both sides found to be equitable: owners did not have to wait for long periods of time while appraisals were obtained and financing was arranged, thereby minimizing the risk that owners would walk away. Using its already strong network of nonprofit housing providers, the City was able to steer the housing to suitable new owners. And, by using a 99-year land lease mechanism, the City further ensured that the housing would remain "permanently" affordable since the City can renew the leases at the end of the 99-year lease period. This is a technique that has never been utilized by New York City and is one which might be considered going forward as part of the overall strategy to ensure "permanent" affordability.

San Francisco was able to preserve every at-risk unit of Section 8 housing by granting a right to purchase to qualified entities in exchange for a commitment to extend the affordability and by offering current owners a fair return if they sold to a preservation purchaser.

Lessons learned from other practitioners are invaluable in developing recommendations for New York City, and therefore a considerable amount of time was spent by the Consultants researching the experience of others in the use of Rights and Purchase Options. The results of this research can be found in Appendix A.

III. Key Considerations for Implementing a Purchase Option

A review of the Purchase Option strategies undertaken nationwide raises three primary questions that must be considered in proposing a Purchase Option mechanism in New York City:

A. Right to Purchase or Opportunity to Purchase. Should a Purchase Option force a sale to the government or a qualified organization or only create an exclusive opportunity for the government or qualified agency to make a non-binding offer?

Most of the policies surveyed, including New York City Local Law 79 (passed in 2005 but voided by the New York County Supreme Court in 2007), require the sale to a qualified purchaser if all conditions are met. California State statute has a more limited Purchase Option for affordable housing projects. Termination of affordability restrictions triggers an exclusive opportunity - sales to non-qualified purchasers are not permitted for a 180-day period after notification of termination of affordability restrictions—to make an offer to purchase by a qualified buyer, but the offer is non-binding. If no agreement is reached and there is an outstanding offer to purchase the property by a non-qualified organization, the statute provides for a Right of First Refusal requiring sale of an affordable housing project to a qualified purchaser that had made a purchase offer during the exclusive offer period.[10]

A Purchase Option that requires sale to a qualified purchaser would potentially have a much larger housing preservation impact than a provision that only provides an exclusive opportunity to qualified buyer, but could also have could have a greater negative impact on the financial incentives of private developers to participate in affordable housing programs or on the maintenance and operations of affordable housing projects.

B. Triggering Event. Should a Purchase Option be triggered by the end of a property's affordable housing regulatory period or at another designated point in time, or should it be conditioned on an owner terminating affordable housing restrictions and/or offering a property for sale?

The discussion in the Harvard Study referenced above offers a potentially viable model for a nonprofit Purchase Option at the expiration of its affordability restrictions. For example, at the end of a 30-year regulatory period, the government agency or qualified organization holding the Option would be able to choose to purchase the property regardless of whether the owner intends to continue to operate the property as affordable housing.

By contrast, the National Preservation Working Group's proposal, the San Francisco ordinance and the other Purchase Option policies surveyed, including the City of New York's Local Law 79, are triggered by a proposed sale or an announced termination of affordability restrictions—there would be no right or exclusive opportunity to purchase the property if the owner continues participation in the applicable program.

There would clearly be greater impacts on the economics of the transactions with an Option that could be exercised regardless of whether the owner intends to continue to operate its properties as affordable housing compared with an Option that is only triggered by the termination of affordability restrictions. An owner that knows it will lose a property at the end of the affordability period may not have the incentive to maintain the property in good condition throughout the regulatory term. Also, as discussed in Section VI below, the timing of the Option date could have a significant impact on the cost to the City in exercising the Option.

C. Strike Price Formula. What is the appropriate formula for determining the Purchase Option strike price?

As noted elsewhere, for LIHTC projects, investor tax considerations require that Purchase Options be set at fair market value unless the Option is given to a nonprofit entity. For such projects, the Internal Revenue Code allows, but does not require, Rights of First Refusal to a non-profit organization to be at the statutory minimum of outstanding debt and exit taxes.

For non-LIHTC projects with other federal, state and local housing financing or subsidies, sales below FMV are permitted. However, of the Purchase Option policies surveyed, all but the San Francisco ordinance require the government or qualified purchasers to offer at least the FMV as determined by independent appraisals. The San Francisco policy prescribes "fair return" formulas that seek to insure that the sales price provides a minimum return (approximately 10%) on the developer's investment. As discussed below, costs for Purchase Options can vary widely depending on the strike price formula.

IV. Cost Projections for a Purchase Option or Right of First Refusal

After a review of the applicable affordable housing programs administered by the New York City Housing Development Corporation ("HDC") and the New York City Department of Housing Preservation and Development ("HPD") and discussion with ANHD, it was determined that strike price projections would be prepared for a "typical" project using three of the most commonly used affordable housing project financing structures:

A. HDC "LAMP" project – HDC-issued tax-exempt housing revenue bonds, 4% "as-of-right" LIHTC, HDC and HPD subordinate financing. We have assumed that 80% of the units would be affordable to households earning 60% AMI and, to meet HPD program requirements, 20% for households earning 30% AMI.

B. HPD 9% LIHTC project – 9% tax credits allocated by HPD, private bank first mortgage, HPD subordinate financing. 50% of the units would be at 50% AMI, 20% of the units would be at 60% AMI, and 30% at 80% AMI.

C. HDC "NewHOP" project – HDC-issued taxable bonds, HDC and HPD subordinate financing. 80% of the units would be at 100% AMI and 20% at 80% AMI.

These funding programs are among the most frequently used and provide substantial amounts of City subsidy; they cover a wide range of affordability, from below 30% of Area Median Income (AMI) up to 130% AMI . The tenant income mix assumed in the financial projections is based on program guidelines and discussions with HDC and HPD staff and is intended to reflect common and financially feasible income mixes for projects under these programs.

V. Determining a Strike Price Using Different Methodologies

The selection of rent, cost and other assumptions has a significant effect on the financial projections. The selected assumptions are intended to reflect both the most common types of projects developed under these programs, and the most likely projects to be built by ANHD members who may utilize these programs. As such, it is assumed that these developments are new construction, mid-rise projects located in areas outside of the 421-a Geographic Exclusion Area[12], and are of block and plank construction. The LAMP and NewHOP projects are assumed to have 75 units, and the 9% transaction has 50 units.

The development costs, rents, operating expenses, interest rates, inflation rates and other assumptions have been based on information gathered from the interviews listed in Appendix F on comparable projects (assumptions are described in detail in Exhibit D). Projections for the LAMP and NewHOP projections were reviewed by HDC staff, and by HPD staff for the 9% LIHTC project.

Based on our review of Purchase Option policies nationally, three Purchase Option or Right of First Refusal strike price methodologies have been used for each of the three project types listed above.

A. Fair Market Value – A FMV option price is calculated based on an income valuation of each project. The income valuation is determined by applying a capitalization rate to the project's net operating income for the year prior to the projected sales date. For valuations that assume the expiration of affordability restrictions (see Timing discussion below), a "high" and a "low" FMV has been calculated for each project, incorporating higher and lower rents and cap rates in order to reflect wide variances in the strength of housing markets in New York neighborhoods.[13] As described in Section I above, for the 9% LIHTC and LAMP projects, Purchase Options have to be at FMV.

The higher strike prices generated by fair market valuations after the expiration of affordability restrictions could pose a challenge to using Purchase Options as a tool for housing preservation. Purchase Options trig-

gered before the expiration of affordability restrictions or coupled with longer-term affordability periods would reduce the cost of Purchase Options at FMV.

B. Fair Return Value – An option price is calculated using a formula similar to San Francisco's formula for a "fair return" as described in Appendix D. This formula is intended to provide at least a 10% return to the owner.[14] If the result of this calculation exceeds FMV, FMV is used; the result cannot be less than outstanding debt and capital gains taxes (the Internal Revenue Code minimum). For the 9% LIHTC and LAMP projects, because Purchase Options have to be at FMV, the Minimum Return Value could only be used for Rights of First Refusal.

C. Internal Revenue Code Minimum Value – Although the NewHOP project is not a tax credit project, for comparison purposes, the IRC Right of First Refusal minimum for tax credit developments is calculated for all three projects.

The valuations exclude potential costs incurred by tax credit projects in the exit of the investor limited partners from the projects in Year 15.

VI. Timing of Purchase Option and Right of First Refusal

Under HPD and HDC program guidelines, all three projects would have 30-year regulatory periods in which rents are restricted. Income-based valuations have been projected for the end of the fifteenth and thirtieth year of operations. The valuations in Year 15 are based on the maximum rents allowable under the HDC/HPD financing programs for units at the designated AMI levels. Two sets of valuations in Year 30 have been made, one assuming that affordability restrictions remain in place (which would require regulatory changes to extend affordability periods), and the other assuming that affordability restrictions have expired, in which case rents have been projected based on the assumed comparable market rents trended forward by 4.1% to the Purchase Option date.

The Year 15 valuations assume that the subordinate HPD or HDC financing is assumed by the qualified purchaser rather than repaid. Building financial flexibility into long-term affordability policies remains an ongoing challenge. Indeed, the Harvard Study, cited above, concludes by noting that a good framework for long-term preservation would include a series of options to extend affordability and recapitalize the project before the affordability restrictions mature.[15]

VII. Summary of Strike Price Projection Models

The results of the Purchase Option and Right of First Refusal price projections using the formulas described above are shown in the following charts on a per unit basis for each of the three projects (detailed financial projections can be found in Exhibit E). In addition, projected strike prices are discounted to present value at a 3% rate in order to compare the Option prices in current dollars to the construction costs projected for each project.

Year 15 (Restricted Rents)

Per Unit	LAMP	9% LIHTC	NewHOP
High FMV Price	$64,300	$84,300	$194,300
Present Value at 3%	$41,300	$54,100	$124,700
Low FMV Price	$55,100	$72,300	$166,500
Present Value at 3%	$35,400	$46,400	$106,900
Fair Return Price	$21,700	$26,200	$130,400
Present Value at 3%	$14,000	$16,800	$83,700
IRC Minimum Price	$21,700	$26,200	$52,900
Present Value at 3%	$14,000	$16,800	$34,000
Total Development Cost[16]	$325,000	$295,000	$325,000

As the valuations in Year15 are based on the projected income of the projects with affordability restrictions in place, Option prices for all of the scenarios and projects are far below current costs for building these units on both a nominal and present value basis. (As shown in Exhibit E, the projections for the LAMP and the 9% LIHTC project do not show a developer cash equity investment to be required, so the Minimum Return and IRC Minimum prices are the same.)

Year 30 (Restricted Rents)

Per Unit	LAMP	9% LIHTC	NewHOP
High FMV Price	$74,300	$103,100	$262,500
Present Value at 3%	$30,600	$42,500	$108,100
Low FMV Price	$63,700	$88,400	$225,000
Present Value at 3%	$26,200	$36,400	$92,700
Fair Return Price	$237,000	$94,800	$456,200
Present Value at 3%	$97,700	$39,000	$188,000
IRC Minimum Price	$237,000	$94,800	$257,400
Present Value at 3%	$97,700	$39,000	$106,000
Total Development Cost	$325,000	$295,000	$325,000

In current dollars, projections for valuations in Year 30 which assume that the affordability restrictions would remain in place for a significant additional period (which would require extending the current 30-year regulatory periods for the HDC and HPD funding programs assumed for these projects) are all below replacement costs. Given the

assumption of restricted rents, the Fair Return and IRC minimum prices exceed the fair market valuations because those formulas factor in outstanding debt. It is assumed that the Purchase Options would be at the higher of FMV or the Fair Return or IRC Minimum prices, or that sales at FMV would include forgiveness or restructuring of outstanding City subordinate debt.

All of the Year 15 and Year 30 Option price formulas that assume affordability restrictions remain in place result in strike prices below the current costs to build these units.

Year 30 (Unrestricted Rents)

Per Unit	LAMP	9% LIHTC	NewHOP
High FMV Price	$692,300	$665,300	$995,900
Present Value at 3%	$285,200	$274,000	$410,300
Low FMV Price	$452,000	$436,500	$593,400
Present Value at 3%	$186,200	$179,800	$244,500
Fair Return Price	$237,000	$94,800	$456,200
Present Value at 3%	$97,700	$39,000	$188,000
IRC Minimum Price	$237,000	$94,800	$257,400
Present Value at 3%	$97,700	$39,000	$106,000
Total Development Cost	$325,000	$295,000	$325,000

Incorporating the conversion to market rents in Year 30 greatly increases the FMV strike prices for the Options. However, in current dollars only the highest projected value for the NewHOP project exceeds the current construction costs for these units, and discounting at a higher rate than the assumed 3% inflation rate may be required to truly reflect construction cost inflation – at a 5% discount rate, the NewHOP Purchase Option cost in current dollars is $230,000 per unit, significantly below the replacement cost (see Exhibit E for the present value at 5% for all strike prices shown). As the Fair Return formula does not factor in the conversion to market rents at the end of the regulatory periods, the projected Fair Return option prices are far below replacement costs in current dollars.

VIII. Factoring in Refinancing and Capital Improvements

The cost to exercise Purchase Options or Rights of First Refusal could be partially off-set by leveraging new additional first mortgage debt financing through refinancings. Projections of per unit refinancing proceeds for each project are summarized below. The projections assume that the projects would continue as affordable housing, using the same financing programs and assumptions used in the original projections.

New 1st Mortgage Debt and Equity From Refinancing Per Unit	LAMP	9% LIHTC	NewHOP
Year 15	$42,000	$51,000	$117,400
Year 15 Present Value	$27,000	$32,700	$73,400
Year 30	$48,500	$62,300	$158,600
Year 30 Present Value	$20,000	$25,700	$65,300

For example, net of the projected refinancing proceeds, in current dollars the Year 30 Purchase Option strike price for a LAMP project unit valued at the unrestricted rent High FMV amount is reduced from $285,200 to $265,000, $60,000 less than the current replacement value of $325,000 per unit.

The Purchase Option price and refinancing projections do not include estimates for the projects' future capital needs. Additional public investment would likely be needed to rehabilitate the projects after purchase by the qualified non-profit or government agency, and those rehabilitation costs would typically reduce the valuations of the properties and thus the Purchase Option prices. While substantial capital needs would reduce the price the City or its designee pays to preserve the project, the rehabilitation costs will be borne by the City. For LAMP and 9% LIHTC projects, these additional rehabilitation costs could potentially be somewhat off-set by new LIHTC allocations.

IX. Viability of Purchase Options and Rights of First Refusal

As can be seen in the summary charts, in current dollars all of the Year 15 and Year 30 Option price formulas that assume affordability restrictions remain in place result in strike prices below the current costs to build these units. In addition, Purchase Option prices based on Year 30 fair market valuations, when valuations are projected to incorporate the projects' potential conversion to market rents after Year 30, for the LAMP and 9% LIHTC projects are also below development costs in current dollars. Only the Purchase Option price projected for the highest of the range of Year 30 fair market values for the NewHOP project exceeds current construction costs for these units. The NewHOP Low FMV and other option price formulas result in strike prices below current costs. In addition, the application of a higher, potentially more realistic, discount rate to the present valuation of the High FMV strike prices yields prices that are far below current development costs. *Thus, Purchase Options, even at FMV, appear to be financially effective mechanisms for preserving affordable housing.*

However, there would be a significant difference in the costs of Options that could be exercised before the expiration of affordability restrictions and those that would be exercised after the expiration of those restrictions. Consequently, whether the decision to exercise an Option is determined by the buyer (forcing a sale at a date certain) or the seller (triggered by the termination of affordability restrictions or a proposed sale), would have a significant impact on the projected Purchase Option costs. In addition, assuming the projects are able to achieve market rents at the end of their regulatory periods, the large variance between the projected FMV and the Fair Return and IRC Minimum prices increases the likelihood that below-FMV Option prices would have an impact on incentives of for-profit developer participation in these affordable housing development programs.

Part II – Monitoring of and Compliance with Affordability Restrictions

A by-product of a permanently affordable housing program is ascertaining that sufficient regulatory and administrative procedures are in place to assure compliance with the program's objectives. More than any other program currently in use, the Low Income Housing Tax Credit (LIHTC) program has instituted and enhanced monitoring and compliance standards that are now considered "state of the art". As a result, ANHD asked for an evaluation of the factors that have led to effective oversight of LIHTC affordability restrictions.

By its nature, this task and the results reported herein are somewhat anecdotal and represent the Consultant's best efforts to contact appropriate persons and organizations to discuss the methods currently in place in New York City for monitoring compliance with low income housing tax credit projects. Given the timeframe for conducting this task and the many players involved in its execution, it was not possible to do a comprehensive, in

depth review of all of the processes in place at various governmental, nonprofit and for-profit entities. However, enough interviews were conducted and sample documents were reviewed to fairly describe the current tax credit monitoring procedures and their functionality within the various stakeholder organizations. A sample of the protocol used in these interviews can be found in Appendix H.

I. How Compliance is Carried Out For Low-Income Housing Tax Credit Properties

A. Monitoring Procedures During the LIHTC Compliance Period

The most essential and basic monitoring of tax credit projects occurs with the public agency responsible for allocating tax credits. In New York City, there are four (4) such "public" agencies:

- New York City Department of Housing, Preservation and Development (HPD)
- New York City Housing Development Corporation (HDC)
- New York State Division of Housing and Community Renewal (DCHR)
- New York State Housing Finance Agency (HFA)

The next level of monitoring occurs at the syndication and/or intermediary level. The primary intermediaries in New York are LISC and Enterprise: both of these entities have an extremely close working relationship with HPD and appear to serve as HPD's "eyes and ears", especially on the early transactions done under the NEP and NRP programs with vacant and *in rem* properties. Syndicators operate more independently; their primary responsibility is to their investors and to assure that properties maintain their tax credit eligibility. And of course the final level of monitoring rests with the owners and their managers who are contractually and legally responsible for making sure that the rules and regulations that they have agreed to are in fact followed and followed correctly. This report discusses each group separately.

B. Government Monitoring and Compliance

All four governmental agencies have monitoring and compliance procedures in place which clearly derive from the IRS Code. The IRS has issued and periodically revises an extremely comprehensive Guide[17] which serves as the overriding framework within which the low income tax credit projects operate. The Guide itself designates the state and local agencies as the responsible bodies for monitoring compliance and charges them with notifying the IRS whenever there is an instance of noncompliance or a disposition of a tax credit property. The agencies must perform desk audits, conduct site visits, review tenant files and provide owners with summary reports of their findings. If noncompliance is indicated, owners have 90 days to respond and address the issues raised and then the agencies must make a final determination of compliance or lack thereof and issue a final notice to the IRS of the outcome. If found to be out of compliance, the IRS will notify the owners that noncompliance could result in the recapture of previously claimed credits.

The IRS "routinely" analyzes the Forms 8823 (Notices of Noncompliance) and "…without regard to subsequent 'back in compliance' Forms 8823, taxpayers are evaluated to determine whether an audit of the owner's tax return is needed."[18] The Guide goes on to advise owners that it is in their own best interest to address any noncompliance matters immediately and comprehensively: it believes that the speed of the response is a sign of due diligence on the part of the owner. This enforcement tool makes tax credit compliance monitoring particularly effective and is not a tool the State or City have on non-tax credit projects.

The Guide and the IRS' ability to take action against (or even threaten) the noncompliant is clearly at the heart of the Low Income Housing Tax Credit program's ability to operate as well as it does. The program is now over 20 years old; in that period of time, very few tax credits have been recaptured and extremely few instances of signif-

icant noncompliance were noted during numerous interviews conducted for this study. The Guide itself is extraordinarily detailed (approximately 170 pages) and covers virtually every possible violation. In brief, the requirements laid upon the public agencies include:

- Physical inspections at least once every three (3) years
- Physical inspection of at least 20% of the units and tenant certifications, supporting documentation, and rent records
- Reporting any noncompliance of which it becomes aware
- Reporting any change in applicable fractions or eligible basis

It instructs the agencies on how samples are to be derived, on how to judge materiality, depth of investigations, consideration of due diligence by owners, how to evaluate documentary and oral evidence, and retention of data and record keeping.

Given this framework, each of the four agencies involved with tax credit projects in NYC has developed similar compliance and monitoring procedures; how compliance monitoring is conducted does differ from agency to agency and is summarized below.

New York City Department of Housing Preservation and Development (HPD)
At HPD, the monitoring and compliance functions for tax credit projects are done by two separate groups which report to different Assistant Commissioners. The physical inspections and tenant reviews are done by the Tax Credit and Compliance Unit which reports to the Assistant Commissioner for Housing Incentives. Since many tax credit projects also benefit from HOME funds, this unit is responsible for monitoring both programs. According to HPD, this represents 12,812 HOME units and 17,800 tax credit units; however, there is substantial double counting of units as acknowledged by the agency. Per IRS rules, physical inspections are done every three years. Owners certify compliance annually and it seemed that much of the staff review time is spent correcting errors on the part of the owners to assure that the certifications are correct. While the initial indication was that more than 80% of certificates were incorrect with initial submission, only 15-20% had "serious" problems, such as missing rent rolls or other documentation. Submissions are paper based and corrections are done manually; very little of this monitoring has been computerized. As noted below, HPD is working on a new system which is expected to operational next year.

Financial review of audits, budgets, financial statements, etc. is the responsibility of the Division of Housing Supervision's Asset Management unit which reports to the Assistant Commissioner for Housing Supervision. This unit is responsible for a variety of affordable housing programs; ensuring compliance with HPD's regulatory and funding and disbursement agreements ("Agreements"), which generally call for financial review, HPD approval of reserve withdrawals and, where applicable, compliance with the allocation of homeless units. According to HPD staff, most noncompliance is picked up through tax delinquencies or budgetary deficiencies. Familiarity with, and constant referral to, the Agreements, which define HPD's oversight authority, are the basis for the monitoring and any enforcement mechanisms that are available. This Asset Management unit also has lead responsibility for financial workouts and often initiates discussions with owners in developing a plan. Asset Management works with other Divisions within HPD and private lenders to find the funding sources needed to resolve issues and work with owners to re-constitute the properties.

HPD has made a commitment to computerizing its compliance monitoring. The Commissioner's Office has been working to improve the data base capabilities so that asset management functions can be centralized and controlled in a more efficient and cost effective way. A single track computer system which would tie the physical and financial

reporting and inspection results together is being developed and should be operational soon. In addition, HPD has recently received a $500,000 grant from the MacArthur Foundation to upgrade the Asset Management unit's technology infrastructure. HPD has already developed an early warning system built in so that incipient problems can be addressed quickly. When the computerized monitoring system is fully implemented, HPD will be able to more efficiently address the myriad compliance issues which arise. As HPD noted, the key is to get the physical, financial and regulatory aspects of asset management integrated into one system which includes risk analysis so that all information about a given property is easily located along with the tools to identify and fix problems as they arise.

New York City Housing Development Corporation (HDC)

HDC, with responsibility to both the IRS for tax credits and to bond holders for tax exempt bond compliance, seems better equipped and better staffed to handle its ever increasing workload. With 500 properties and a staff of 30, Teresa Gigliello oversees all asset management functions except for the actual workout of projects which are handled by a separate group within HDC. HDC does a physical inspection of every property annually. It also approves every resident prior to move-in for every program it supervises. Staff goes through training annually by outside consultants; in-house procedures are in written form and new compliance procedures have just been issued effective April 1, 2008 which are more rigorous than those previously in force.

HDC has seen a major increase in tenant fraud which has prompted the change in compliance procedures; as a result, every suspected incidence of fraud is reported to the Inspector General's (IG) office. Until a determination is made, the unit cannot be rented; this is resulting in a slow down of the rental process and often delays receipt of projected income. Given the sharp increase in fraudulent paperwork however, HDC sees no alternative but to follow this procedure. Performing similar functions as HPD's marketing group, HDC monitors properties during rent up. This oversight has led to this increased emphasis on uncovering fraud by prospective tenants prior to occupancy.

New York State Division of Housing and Community Renewal (DCHR)

To date, physical inspections for all programs (except tax credit projects) are conducted annually, coupled with monthly occupancy reports and annual financial statements. However, given the size of its total portfolio and its generally good experience in most program areas, senior management is now triaging the portfolio and will begin performing inspections on an as-needed basis. Projects which are performing well will be visited every 2-3 years while those which show stress will be inspected more frequently.

Its current portfolio of tax credit transactions is 818 properties with approximately 37,000 units. Similar to HDC, DHCR's asset management staff of 200 people, comprised of architects, accountants, auditors and field representatives, are all housed in the same division. This is contrary to HPD, which has split the compliance functions among various units. DHCR has dedicated 20 staff members to tax credit properties and physical inspections of tax credit properties occur every three years. As with HPD, emphasis is placed on the Regulatory Agreement as the fundamental basis for all monitoring.

The field representatives are located in 4 regional offices and are now being cross trained to monitor all programs supervised by DHCR except for the Section 8 programs. They are using a risk analysis approach which has been in effect for twenty (20) years and is now being updated.

New York State Housing Finance Agency (HFA)

HFA's role in compliance monitoring varies depending on which "hat" it is wearing: HFA could be the lender, the regulator, and/or the asset manager. In all cases, the compliance procedures follow the requirements of the funding source.

HFA also uses the same staff to do both financial and physical reviews and its staff is about equal in numbers to DHCR for those functions. Interviews with HFA staff indicate that very few significant problems have arisen to date.

Most issues which do come up are the result of aging stock – habitability concerns were mentioned frequently – or market/rent up issues, especially on the 80/20s. HFA also has a risk analysis protocol which ranks projects as low, medium or high risk; the analysis is run annually and overall HFA has had little need for direct intervention. Workouts are also handled by the asset management group with the assistance of the legal staff; again actual workouts seem to be few and far between. All staff is trained across the board in all programs and annual training sessions are set up. There is no written compliance manual.

As with HPD, HFA does not review tenant qualifications and eligibility prior to move-in. HFA relies solely on its managers and post occupancy audit reviews which are conducted every three years. Consideration is now being given to changing this methodology.

C. Intermediaries

Both the Local Initiatives Support Corporation (LISC) and Enterprise serve in somewhat dual capacities with respect to tax credit compliance. Both organizations are equal co-managers of The New York Equity Fund Investment Fund which was created to invest directly in the early LIHTC projects which involved the acquisition and renovation of NYC's *in rem* and vacant buildings. The credits were not syndicated to other investors. In effect, the NYEF serves as HPD's eyes and ears for these early projects and works extremely closely with HPD to both monitor and supervise the properties. Many of them are now coming, or have already gotten, to the end of the 15 year compliance and may be in need for substantial renovations. These early projects did not benefit from large reserve funds for either operating or capital needs and will need to have intervention if they are going to continue to provide safe and decent affordable housing.

Local Initiatives Support Corporation/National Equity Fund

Aside from properties in the NYEF, LISC/NEF is an active syndicator of tax credits and serves a predominantly nonprofit owner group. The New York portfolio consists of approximately 200 properties with 10,000 units; most of them (no count available) fall under the older program described above. Notwithstanding IRS requirements, NEF inspects properties annually and reviews tenant files with the same frequency. It also meets annually with sponsors of multiple properties to review their portfolios. NEF has a risk rating system which has a heavy focus on the risk of losing the credits. Because NEF is much closer to the properties, it is much more likely to see problems and try to resolve them before the public agencies become aware of any issues. As a result, its awareness of problems and potential problems is much greater than that seen by the public agencies. According to Lisa Deller, who oversees the Asset Management division at NEF, most problems arise from lack of capacity and financial oversight by sponsors. Properties run through reserves too quickly due to rising operating costs and the need for capital improvements, there is lots of staff turnover in management, and payables tend to accrue and become unmanageable. NEF has been forced to replace managers; only once however has it replaced a general partner.

In NEF's view, the key issue that determines success and compliance is how the property is operated on the ground; in other words, how pro-active and knowledgeable the management staff is. For NEF, providing hands-on assistance, rather than invoking punitive measures, is the most effective tool for getting properties on the right track. The smaller the sponsor, the more difficult it is to keep projects going since smaller groups have no economy of scale in purchasing power, management efficiencies, etc. NEF sees aggregation as an important issue.

Enterprise Asset Management

Enterprise's approach to compliance and monitoring is very similar to NEF's. Its New York portfolio is somewhat bigger (420 properties in NYC of which 150 are in the NYEF) but the ratio of asset managers to properties is about

the same. Jamilah Diallobe, who oversees Enterprise's Asset Management operation, described its modus operandi as "find things first and fix them"; Enterprise also does annual physical inspections and reviews 100% of the project files and owner certifications. It too uses a risk rating chart which is very similar to NEF's; it is currently revising and refining its system. The most significant problems arise from mismanagement as well as construction and lease-up delays which throw budgets off from the get-go. Additionally, underwriting and actual costs often differ, which can lead to major mismatch of needs and funds as the properties age. In Enterprise's experience, the best run properties operate at $6,000 per unit in expenses and the average per unit cost is $7,200; the underwritten operating expense is $5,900—therein lies the crux of the problem.

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Most issues are resolved quickly and without need for punitive action; very few management agents or general partners have been replaced. Pressure from investors is considered one of the primary reasons why most issues get resolved quickly and correctly.[19]

D. Syndicators

In addition to LISC and Enterprise, two for-profit syndicators were also queried about how compliance and monitoring were handled. In one instance, Centerline Capital, the functions were being transferred to a new asset management group in Texas and information was not readily available. However, Centerline's Disposition Group, which is responsible for the sale of properties on behalf of investors at the end of the compliance period, had some interesting insights on what properties look like in year 15 and what kinds of issues are coming up in terms of keeping them affordable. Some of these comments are reflected in Appendix C: what is relevant to this discussion on monitoring, however, is the fact that Centerline is finding itself in the position of making large non-interest bearing loans to keep projects afloat where the General Partner does not have cash to address capital needs and/or walks from the property. (The Richman Group made a similar observation). In Centerline's experience, at least 25% of all deals require workouts and by year 15, virtually all LIHTC properties will need a minimum of $12,000 to $15,000 per d/u in capital repairs. Once the investors get out, there is no ready source of dollars for these projects other than recycling with 4% credits and bonds. Even that becomes problematic because many tenants are over-income by year 15; they can't be evicted and therefore credits cannot be attributed to those units.

The other syndicator interviewed was The Richman Group. Staff functions at Richman are divided along similar lines to HPD; the Compliance Group does the tenant certifications and the Asset Management group looks at financials and monitors the properties through year 15. Physical inspections are annual and 10% of tenant files are reviewed with each visit. Potential problems are identified as a result of thorough review of financial statements on a regular basis – no risk rating system is used.

Asset Management staff noted that in the early years of the program, several management operators were removed and replaced. The major problem uncovered was non payment of rent and the biggest issue was (and is) getting the right management companies in place. Since the demand for units is great and getting units rented quickly is a high priority so that income begins to flow, people are "pushed in" without proper verifications. Often persons who are over income are discovered in the monitoring process and this seems to occur more often with nonprofit than with for-profit owners. Many nonprofit sponsors are concerned about a number of different priorities, especially service provision, and the staff doing the tax credit qualifications may not be getting the right documents. As a result, units don't qualify and equity gets adjusted down, making it imperative to find additional sources of soft money to make up for the loss of equity.[20] Richman estimates that some 10-20% of projects run into problems.

E. Management Companies

Although we did not originally set out to interview management companies, it seemed prudent to speak with the Settlement Housing Fund, one of New York City's pre-eminent sponsors and management consultants of affordable housing properties, both for its own account and for other for-profit and nonprofit sponsors. A general conversation about how affordable properties are monitored led to the observation that the amount of compliance done varies significantly by program. When the IRS, bondholders, or HUD are involved as the funding source, monitoring is intense and scrupulous. For programs funded directly by the City, such as PLP, the monitoring is much less evident to a provider like Settlement Housing.

The new procedures promulgated by HDC are proving to be rather onerous and cumbersome; they apparently emanate from the Investigations Department's emphasis on routing out fraud. Settlement Housing believes that some of the new rules will make it difficult to complete rent up efficiently since any suspected fraud must be reported to the IG's office, rather than just passing over that applicant. Until Investigations makes a determination, the unit must remain vacant and applicants maintain their place in the queue. It effectively will put units on hold which could adversely impact a property's financials.

None of the four public agencies in New York City have put a systematic plan in place for monitoring post-year 15 tax credit deals. All are aware of the need to do so.

F. Accountants and Lawyers

Several accountants and lawyers with whom we spoke indicated that they have not gotten involved in tax credit compliance issues on behalf of their clients. There could be several reasons for why these two groups of professionals, who are so active in helping sponsors wend their way through other compliance matters, are not being sought in connection with tax credit projects. The first hypothesis is that people are much more hesitant about arguing with the IRS than with other governmental agencies, such as HUD. A corollary of this is that compliance in tax credit programs is much more strictly enforced by both the funders and the investors since the consequences of noncompliance are so onerous. Consequently, it seems probable that, in fact, most tax credit projects are either in compliance or are actively working to get into compliance should they have erred in some way. As a partner at the accounting firm, The Reznick Group, pointed out, most LIHTC deals are in compliance: state agencies and investors are making sure of that since the penalties for noncompliance are so severe. Whether these "habits" will persist once the investors and the IRS go away after year 15 remains to be seen. After year 15, state agencies do not have much of a leg to stand on; their only recourse is to sue for non-performance.

II. Post-Year 15 Monitoring

None of the four public agencies in New York City have put a systematic plan in place for monitoring post-year 15 tax credit deals. All are aware of the need to do so. These buildings will need to be repositioned and there is a question as to whether they will continue to serve the homeless. They will also need new money to fix up the structures, as well as new tax abatements, since the projects were done with J-51. Another HPD staffer noted that no decisions have been made on post-year 15 monitoring; in his opinion, HPD will look at best practices of other state agencies. It should be acknowledged, however, that most agencies are wedded to their own procedures, as is probably true of HPD.

NEF believes that the primary issue for post-year 15 deals is that the housing projects achieve positive cash flow so project reserves can be funded thereby ensuring the property's long-term viability. Enterprise believes that in order to do that, projects need to attract Section 8 voucher tenants because they create "added" income. Managers also need to be taught how to maximize operational effectiveness in order to keep costs in check.

It is possible for states to build into their Qualified Allocation Plans more comprehensive compliance and enforcement tools than currently exist. For example, a state could prohibit the sale of tax credit properties allowed by the IRS during the Qualified Contract Period (QCP). Under the current rules, owners have the right in year 14 to ask the public agency to find a qualified buyer at a qualified contract price. If none is found within a one year period, the owner has the right to sell the project and the project is no longer bound by the affordability restrictions, even if the regulatory agreement was initially extended to 40 or more years. HDC has incorporated such a restriction in at least one Regulatory Agreement in response to HPD requiring it in its QAP. Furthermore, many allocating agencies (including HPD) make waiving the QCP a threshold eligibility requirement or give points for extending the QCP to year 27, both effective ways of assuring longer term affordability beyond year 15. The DHCR QAP has no provision for eliminating or extending to some future year the owner's right to request a QCP.

An additional tool at the disposal of public agencies is not doing more deals with a particular sponsor who is significantly out of compliance. It is also possible that a national organization, such as at National Council of State Housing Agencies (NCSHA), might maintain a file on out-of-compliance sponsors against which all new applicants could be checked. To date, NCSHA has not put out a best practices model for post-year 15 compliance, nor does it have a central clearing house for noncompliant sponsors.

Several states have in fact revised their compliance and monitoring procedures to cover post year 15 tax credit properties: ironically, in virtually all cases that were found during the research for this assignment, the requirements have been loosened, rather than maintained or tightened.

- ***Minnesota:*** the HFA has revised its compliance manual to include new procedures for post-year 15 projects. A number of IRS requirements have been eliminated, such as annual recertification, ban on students, etc. Minnesota also plans on extending inspections to every 5 years rather than 3; no inspections have been done yet under these new procedures so there is no evidence that properties are as compliant with a 5 year gap in inspections as they were when inspections were done every third year. The HFA has developed year 15 forms as well, which are electronically available on its website.

- ***Colorado:*** CHFA's Plan for post-year15 monitoring is about to go into effect; it is awaiting legal clearance. Essentially, the Plan will relieve some of the more stringent requirements under the Code:

    - student rule;
    - next available unit rule in mixed income buildings—sponsors will only have to meet set aside requirements;
    - annual recertifications—self certification only will be accepted without detail.

  CHFA's monitoring schedule will remain at three years; staff wants to make sure that projects are in good shape and being well maintained. If sponsors don't comply or bring the buildings into compliance, CHFA will put them into a *Not in Good Standing* status and the owners will not be eligible for future loans from CHFA. CHFA also reserves the right to enforce the use agreement in court but has never needed to do so to date. Staff expects that there will be challenges to their revised policies but does not intend to change its procedures. It believes that by relaxing restrictions and enforcing agreements, properties will be kept affordable.

- ***Washington State:*** New procedures are in place—30 properties are in post year 15—which relax requirements for owners who choose to follow them; sponsors must notify the WSHFC if they so elect. If WSHFC has significant issues with an owner, then the owner will not be allowed to comply with new procedures but will have to follow the old rules until it is "clean" for 3 years.

So far, all projects in this new mode seem to be in compliance. The hardest deals to keep in compliance will be those sponsored by non-repeat users; there is no significant penalty if an owner doesn't plan on doing new projects. WSHFC has debarment procedures in place and could sue noncompliant sponsors; indications are that they wouldn't hesitate to do so but the need has not arisen to date. WSHFC is also willing to sit down with owners in post-year 15 projects and assist where possible when financial hardships arise. For example, it would allow changes to the originally stipulated set asides in order to attract higher income persons capable of paying higher rents, assuming market conditions allow for that, as long as residents did not exceed the 60% of median statutory requirement.

WSHFC has 60,000 units with 800 properties in its portfolio. It is working on web based reporting for all funders to put all requirements together and have owners report to the most restrictive. It has done joint monitoring with other funders for years and has MOU agreements in place with those agencies; they have bi-monthly meetings with other agencies and share inspections. The web based reporting will eliminate a lot of duplication and bring a lot of efficiency to monitoring the various different programs.

- ***Texas:*** The Texas Department of Housing and Community Affairs has adopted formal monitoring procedures for post-year 15 tax credit properties. It is essentially continuing with many pre-year 15 policy requirements, e.g., inspections every 3 years, review of 10% of files and 20% of units, etc. Annual reports are submitted electronically by owners and the agency will continue to collect monitoring fees. Rents remain restricted and owners must complete income certifications annually for all tenants. However, it will no longer require verification of income at recertification; student restrictions are lifted, the available unit rule and building applicable fraction rules will not be followed. Low income occupancy requirements will be monitored development-wide, rather than building by building. According to the compliance person interviewed, Texas is finding the same number of violations pre- and post-year 15, with the most frequent ones being households over income and utility violations.

III. Findings for Monitoring of Tax Credit Projects

It appears that the most serious issues arise with tenant certifications, tenant qualifications, and physical conditions of the buildings. It is therefore these areas which must be addressed and strengthened as the City prepares to enter into a less rigorous enforcement period with the maturing of the tax credit portfolio. We all know that year 15 is a key issue for the long-term affordability and viability of low income tax credit housing. In an interesting article recently published in Housing Policy Debate, the authors note that:

> "After year 15, enforcement of the program's affordability requirements and other regulations shifts from the Internal Revenue Service (IRS) to the states, many of which [including New York] have yet to devise systems to monitor long-term compliance with these requirements or sanctions in the event of violation." Furthermore, "the ownership of most tax credit properties is likely to change after year 15, when the original owners are no longer responsible for maintaining affordability and can sell their interest without being liable for subsequent failure to maintain affordability. Finally, by year 15, many tax credit properties will require major capital improvements. The biggest threat to the long-term viability of tax credit housing as a resource for low-income households *stems less from the expiration of income and/or rent restrictions and more from the need for major capital improvements.* A relatively small segment of the inventory is likely to convert to market-rate occupancy. Far more of this housing will continue to serve low-income households but will need assistance to pay for essential renovations."[21]

While New York City may be an exception to this observation, our changing economic picture may in fact make this prediction a reality. It is one we should be prepared to face.

IV. How Monitoring is Carried Out in Non-Tax Credit Projects

Clearly the backbone of the tax credit program's compliance is that final authority for implementing the rules and regulations rests with the Internal Revenue Service. The possibility and reality of action by the IRS in the event of noncompliance has proven to be the major factor in assuring that projects developed with tax credits maintain the necessary rental and other restrictions for the full 15 year period. Other affordable programs, such as those administered by the US Department of Housing and Urban Development (HUD), while less successful at assuring compliance with program requirements, still have the clout of debarment and other remedies should projects not comply with the standards under which they were developed. New York City housing programs also have various compliance periods to which owners agree when accepting subsidies and soft mortgages. The primary enforcement mechanisms are referral to the Department of Investigations and legal remedies when regulatory agreements are violated. To be successful, any permanent affordable housing mechanism would have to provide additional means and staff to assure compliance.

In order to determine how the NYC Department of Housing Preservation and Development currently conducts monitoring in non-tax credit projects, the assessment looked at the following programs:

- Federal HOME program
- Inclusionary Zoning program
- Article 8A loans
- Participating Loan Program (PLP) loans
- Third Party Transfer program

A. HOME Program

Monitoring of the HOME program is housed within the tax credit unit of HPD since many tax credit projects also benefit from HOME funds. The HOME program was designed to finance construction of new, and rehabilitation of existing, housing. The affordability period varies from 5 to 20 years, depending on the type of project being funded. Income targets vary as well: at least 20% of residents must be at 50% or less of median income; 90% must be at 60% (which includes the 20%), and the balance can go as high as 80%. Rents can vary as well: 20% cannot exceed 30% of 50% of median and are designated as Low HOME Rents; the balance, or High HOME Rents, cannot exceed 30% of 65% of median income.

HPD monitors 12,812 HOME units. The process for monitoring this program is prescribed by HUD and the protocol is carefully followed by the HPD staff. HPD has developed an Owner's Guide which was revised in May, 2007. It spells out what must be done by owners to remain in compliance with federal regulations, particularly as it relates to tenant incomes and rent limits. Owners must do annual tenant income recertifications and HPD must physically inspect units every year. HPD must also undertake compliance monitoring on rent, income and financial matters. In addition, HOME projects are subject to more intensive reviews on a less frequent basis which involve in-depth review of income certification documents, as well as "other procedures" (undefined) used by owners to comply with the HOME Agreement.

B. Inclusionary Zoning

The original inclusionary zoning legislation dates back to 1987. Limited to R-10 or equivalent zoning districts, it allowed a 20% density bonus to projects in those zoning districts in Manhattan and Brooklyn in exchange for providing affordable housing. No permanent debt was permitted on these buildings and the amount of bonus depended on the type of housing being provided. Most developers sold the bonus to off-site developers via certificates and used the proceeds to pay off construction loans. Rents were sized to cover expenses and could float

up to 80% of median. The housing remains affordable as long as the building that purchased the zoning bonus remains in existence. In the first 16 years of the program, 600 units were provided and all were in Manhattan. Since 2005 over 1,700 units have been created through the new Inclusionary program and the bonus has become extremely valuable, in HPD's opinion[22].

The program allows for flexibility in siting the housing: The affordable units can be on- or off-site from the development utilizing the density bonus and can be new construction, substantial rehabilitation or preservation. Buildings which are 100% affordable may be developed by for-profits and then turned over to nonprofit ownership. Where the affordable units are less than 100% of the building and on site, it is assumed that for-profits will keep ownership of the buildings

Beginning in 2005, the Inclusionary Program was expanded to include ten additional areas with active communities looking to increase the supply of affordable housing in their neighborhoods. The bonus was raised to 33% in exchange for 20% affordable housing. The new regulations also allow for permanent debt and use of government subsidies. There are now 2,000 units in construction as a result of this expansion.

This expansion of newly rezoned areas was recently approved and appears to provide more flexibility: Many of these changes increased the use of the preservation option within the program. This option allows an occupied building to generate density bonus for an offsite building. These deals are being underwritten based on 30 year amortization and significant upfront capital reserves are put in to cover projected needs over the life of the loan.[23]Average reserve levels have been approximately $30,000 per DU. The reserves will be held by HPD in a blocked reserve account and will be invested/serviced by HDC; debt is amortized as much as possible. HPD believes that the program is most fruitful when real estate prices are high but even in weaker markets, the Inclusionary Program provides a framework to make sure that affordable housing gets built and that neighborhoods and buildings maintain a mix of incomes.

Compliance monitoring for the affordable units under the Inclusionary Zoning program is done by a nonprofit entity, unless otherwise directly monitored by a government entity, selected by the for-profit developer and is subject to HPD approval. These Administrative Agents make sure that units are properly tenanted and tenants are properly certified as eligible. If the affordable units have government assistance, then a separate Administrative Agent is not required until the term of the government assistance expires.

C. Article 8A Loans, Participation Loans and Third Party Transfer Loans

These three loan programs are administered by the office of the Assistant Commissioner, Division of Preservation and Finance at HPD.

The Article 8A Loan Program provides rehabilitation loans to correct substandard or unsanitary conditions and to prolong the useful life of multiple dwellings in New York City. Rehabilitation is generally limited to the upgrading or replacement of major building systems with an emphasis on energy items. In general, loans cannot exceed the actual cost of rehabilitation. Loans are available in amounts of up to $35,000 per dwelling unit with no maximum per building, subject to the availability of funds. Loans may not be used to refinance existing debt on the property. The interest rate is 3% with repayment in equal monthly installments and there is a prepayment surcharge within the first five years of the loan. The term of the loan may not exceed 30 years or the useful life of the improvements, whichever is less.

The Participation Loan Program (PLP) provides low-interest loans to private residential building owners for the moderate-to-gut rehabilitation or new construction of housing for low-to-moderate income households. These

funds are loaned at a 1% interest rate with a thirty year term; when combined with private bank financing, they produce a below market interest rate loan. Funds may also be used for refinancing or acquisition in conjunction with rehabilitation. After rehabilitation, real property taxes may be eligible for abatement. All apartments are subject to New York State's Rent Stabilization regulations.

The Third Party Transfer program allows the City to transfer buildings which are in default and about to be foreclosed because of failure by the owner to pay taxes and/or because of abandonment. The City can convey a tax delinquent residential property to a qualified third party after a Court-rendered *in rem* judgment. HPD invites qualified individuals, and for-profit and not-for-profit developers, to submit descriptions of their qualifications to acquire, rehabilitate and manage residential properties; tenants may also petition HPD for tenant ownership of their building. This program has been successful in dealing quickly with troubled properties and is a viable alternative to tax lien sales. It gets the properties into private ownership quickly and avoids making the City the landlord of a troubled property with its contingent liabilities. It also keeps the buildings affordable since they come under rent stabilization or rent control once the renovations are complete.

None of these programs have any statutory or regulatory requirements for monitoring or compliance. There are some front end affordability requirements that buildings and residents must meet to qualify for the loans in the first place and most of the properties also benefit from J-51 tax abatement. For example, in the Article 8A loan program, initial rents are capped at or below $244 per room per month. This translates into income eligibility of roughly 67% of median income for a 2 bedroom unit for a family of four. In the Participation Loan Program, the level of affordability for eligibility varies depending on whether the building is vacant or occupied. In a vacant building, rents are set initially around 65% of median which equates to the upper end of the affordability requirements in the HOME program. The Regulatory Agreement stipulates that at initial rent up, the income of tenants cannot exceed six times the initial rent for that unit. HPD monitors compliance with these guidelines during initial rent up. For occupied buildings, there is no income requirement; the amount of subsidy is determined according to the percentage of residents at various income levels and the lenders will consider rent and income factors in underwriting the loans. However, these considerations are subjective; there is no objective income limit on the use of PLP moneys. Once the buildings have been constructed or renovated, they fall under the rent stabilization or rent control regulations. There are no additional or ongoing income restrictions, only the rent structures imposed through rent stabilization, and there are no ongoing affordability requirements for new tenants as we know them in other subsidized programs. For recent regulatory agreements for PLP New Construction, there are rent/ income restrictions dictated by the lesser of rent stabilization/ HUD very low income limit increases.

In terms of ensuring physical and financial stability, the first mortgage lender has primary responsibility for monitoring. Many of the Article 8A loans have been securitized and the underlying mortgages are serviced by the NYC Housing Development Corporation. PLP loans are serviced by the primary lender which has responsibility for site inspections, review of audits and financials, and other standard management oversight. HPD has delegated the use of project reserves to the lenders who maintain control of the capital reserves and oversee contracts for necessary repairs prior to releasing reserve funds. If significant physical problems arise, the lenders will engage in workout discussions and will bring HPD into the negotiations, especially if emergency funds or new monies are needed to resolve the problem or a change in ownership/management is warranted. Servicers are also responsible for assuring that debt service is paid on both the primary and the secondary loans. HPD gets monthly reports on loan payments and has the ability to step in should a default appear imminent. Should foreclosure be necessary, the banks will generally handle the process but more often, the banks and borrowers will come into HPD for a second loan which, if justified and if money is available, will be granted. The only time HPD will re-examine a rent roll to ascertain affordability in connection with an outstanding loan is when an owner wishes to refinance its first mortgage; HPD's permission to refinance is required.

V. Findings for Non-Tax Credit Monitoring

Based on the interviews held, there is no replicable monitoring or compliance model in the non-LIHTC programs to be adapted for use with a permanent affordable program going forward. This is not to say that these programs are not effective; it only speaks to the fact that in thinking about compliance methodology for future programs with strong requirements to maintain low income housing, the only foundations from which to build are the low income housing tax credit procedures now in place during the first 15 year regulatory period and the HOME procedures.

VI. Recommendations for Future Implementation

Use restrictions, robust monitoring, and inter-agency coordination are essential for ensuring that units serve intended households during the restricted period. As previously noted, the State of Washington is at least one step ahead of NYC in its efforts to develop interagency cooperation and sharing. Several years ago, the Washington State Housing Finance Corporation (WSHFC), with 60,000 units and 800 properties in its portfolio, instituted a program of joint monitoring with other funders in the state and they have successfully been sharing information across agency lines. There are memos of understanding (MOU) among the agencies which address how the monitoring is to be carried out; WSHFC has bi-monthly meetings with other agencies at which time problems and issues are worked out and experiences are shared. Inspections are available on the web for any agency to access at any time. WSHFC is also working on web based reporting for all funders. It has aggregated all program requirements for each of the programs represented in its portfolio – LIHTC, HOME, Section 8, tax exempt bonds, state funds – and will require that property owners report to the most restrictive set of regulations, rather than using separate reporting forms for each program. Tim Solvold[24] believes that the web based reporting will eliminate a lot of duplication and bring a lot of efficiency to cover the various different programs, e.g., HOME funded by City and state in the same property, and will greatly enhance the ease with which the programs are administered.

> The Washington State Housing Finance Corporation, with 60,000 units and 800 properties in its portfolio, instituted a program of joint monitoring with other funders in the state and has successfully been sharing information across agency lines.

The approach taken by Washington State is one that clearly would be advantageous to New York City, given the number of agencies involved in the affordable housing arena and the often duplicative nature of the funding and review processes. We would encourage the interagency working group to evaluate the possibility of implementing a comparable program which would benefit not only the agencies but also the stakeholders – owners, tenants, advocates – and provide greater regulatory and compliance efficiency and consistency.

Although the mechanisms for maintaining compliance are more rigorous in tax credits projects, there is room for improvement in all subsidized projects. The ideas presented below, some of which have been utilized at least partially by New York's public agencies, have significant benefits and should be adopted in a more comprehensive way by all four agencies. They include:

- *Web Based Data and Compliance Systems:* Washington State seems the most attuned to the benefits to be derived from using the web's capabilities for streamlining compliance and enforcement. All materials are on its website – manuals, forms, instructions, etc. – and the web based reporting concept, in coordination with other monitoring agencies, is especially intriguing. It avoids all of the duplicate reporting that many sponsors now have to do and centralizes results in one place where all who need to know can access information.

- *Previous Participation:* Debarment processes, or a previous participation clearance mechanism, are also extremely useful as a deterrent to owners who no longer need to worry about the wrath of the IRS. HUD's clear-

ance system, generally known as the 2530 Certification process, was established in 1966 and is used to review the manner in which principals, including managers, consultants, and others, have performed their duties and responsibilities on existing projects. This procedure provides a centralized review of the past/present performance of those principals applying for participation in the Department's multifamily housing programs. Principals are reviewed to see if they have carried out their past financial, legal, and administrative obligations in a satisfactory and timely manner. The majority of the review concerns itself with the applicant's past performance in all HUD programs, but it also considers performance in programs of other agencies, including those of the Farmers Home Administration (FmHA) and of State and local housing finance agencies. Approval is granted when the review establishes that the applicant is a satisfactory risk to the mortgage insurance and/or when the review shows that the applicant is responsible. Several of the persons interviewed for this report suggested establishing a similar system in NYC, something which should be investigated. While setting up and automating this type of system is undoubtedly time consuming and expensive, it could possibly be implemented through an interagency agreement with HUD.

- *Uniformity:* To the extent possible, the rules and regulations under the various programs should be made uniform. With all four of the public agencies now in an extremely cooperative mode, it should be possible to bring some consistency and uniformity to them which would greatly improve efficiency and make sponsors lives easier. One area where this might occur is in the release of reserves: not all of the agencies require submission of requests for releases; the importance of maintaining adequate reserves should mandate that all releases be pre-approved by the public agency. Another example is uniformity of Regulatory Agreements; although different funders have different requirements, Regulatory Agreements for the same types of deals from the same agency should at least be standard. Our impression is that agreements vary across the board and that prior to inspections, particularly at HPD, each staff person needs to fully familiarize him/herself with the regulatory requirements applicable to a project in order to properly inspect and monitor. After much back and forth, HUD adopted the policy of uniform Use Agreements and other documents in the Mark to Market program and, despite a good deal of complaining early on, HUD stuck to its guns and the policy seems to be working well at this point.

- *Frequency of Reports:* Some reports are required too frequently – for example, occupancy reports. These could easily go to a quarterly reporting format to coincide with financial quarterly reports. Other reports such as HFA's post-occupancy audit reviews occur only once every three years, which may not be frequent enough. If each agency had the same requirements, everyone's efficiency would be improved. Additionally, DHCR's triage system may help improve efficiencies as less troubled buildings are not reviewed with the same frequency as those with a history of distress.

- *Tenant Pre-Certification:* Assuming sufficient staffing, pre-certifying all tenants prior to move-in, while cumbersome, might eliminate one of the most frequent causes of noncompliance. Especially with the removal of IRS supervision, this could become a critical issue going forward. Depending on market conditions, review of marketing plans and periodic market analyses might also be beneficial in assuring that neighborhoods and projects are well positioned to maintain their tenant base and remain affordable.

- *Training:* From conversations with those outside the governmental agencies, it appears that the agencies do not provide sufficient training for developers and managers. Since nearly every one interviewed identified the quality of the management staff and the owner's interest in providing decent housing as being critical to compliance, more emphasis needs to be placed on proper training for those designated to carry out the programs. Training should be required for at least one senior person from the owner/management staff in addition to training for those who will actually be implementing the policies and procedures.

- *Policy Directives and Manuals:* Finally, there is concern that very little is put in writing by any of the agencies, leading to inconsistencies in monitoring and in policy. Getting a manual out is a first step which the agencies are working on but equally important is getting out policy directives as issues come up in the course of review. Perhaps a FAQ could be set up on each agency's website to facilitate the broadcasting of policy initiatives and changes.

As decisions are made about how to allocate scarce resources, it is not unusual to see a predominant majority of resources—both dollars and human—be reserved for the development of new affordable housing or the preservation of existing units tends rather than monitoring and compliance. Although this imbalance is not difficult to understand politically, it is unfortunate from an asset management point of view. As public dollars become increasingly scarce and lessons are learned from the expiring use crisis, it would appear that, in the long term, tax payers would be better served if the public sector were better equipped to be the steward of these important resources.

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Part III – Getting to Permanence

ANHD asked for an evaluation of Purchase Options and Rights of First Refusal as well as a study of monitoring and compliance practice and issues affecting long term affordability when it commissioned this report. In the course of the evaluation, other information and opinions relevant to the consideration of the obstacles to and opportunities for permanent affordability were identified. They are presented here as well as in the supporting information discussed in the Appendices. The legal and operational challenges of "permanence" are described below, as are the views of New York City development stakeholders including for-profit and nonprofit developers and syndicators. The opportunities and obstacles in the City's economic and regulatory environment are also addressed. Balancing and working through these differences and issues must be part of ANHD's advocacy strategy for achieving permanent affordability.

I. Permanent Affordability: Issues and Obstacles

"Permanence" in the true sense of the word may not realistically be achieved for several reasons. In real estate law, there is the Rule Against Perpetuities, which says that one cannot enter into an agreement that binds others beyond 21 years after the lives and being of those involved in creating the law.[25] This has generally been interpreted to mean 99 years. Consequently, Portland, OR adopted a 60 year policy ten years ago as a means of testing the waters; it is now considering going to 99 years. Portland's requirement applies to any project that has subsidy dollars which pass through the City, e.g., HOME, CDBG or the City's own general funds (tax collections, etc.). It does not apply to projects with tax abatement or to LIHTC deals unless they also have received City money.

Secondly, while permanence or some facsimile thereof is on its surface a worthwhile idea, it is also fraught with several very difficult issues which need to be realistically addressed. According to a 2007 Harvard University Joint Center for Housing Studies Center study, "a 'set it and forget it' strategy under which government would fund a property once, with the expectation of more or less permanent sustainability, has powerful practical drawbacks."[26] For example, all buildings age and owners need to have the opportunity to re-look at them from both a capital and operating needs perspective. Rents will seldom, if ever, move to the extent that expenses do and this creates a problem. As pointed out in the Harvard Study, experience shows that almost every property will benefit from being refinanced at least once every 15-20 years. Whether that refinancing occurs as the result of a sale, partnership transfer, or recapitalization, it is necessary in order to deal with capital needs which were not, and cannot be,

anticipated that far in advance. For properties which are over 50 years old, as many in NYC are, especially those which only went through a moderate rehabilitation at their last financing, capital needs will involve the overhaul of major systems such as electric and plumbing.

Furthermore, it is difficult to anticipate what market features will be desirable in the distant future. Thirty years from now, unit sizes, features and amenities are likely to be outmoded and will either need a complete overhaul or not be preservation-worthy at all, just as we are finding today in buildings that were originally built 30 to 40 years ago. And, as demonstrated in our models, the cost of providing up front funding through reserves for long term capital needs is large.

II. Reactions of Stakeholders

The easiest way to permanent affordability would be for the City to simply mandate that all units receiving public subsidy continue to serve targeted households in perpetuity, as it does for Inclusionary Housing. ANHD has sought to engage the broader affordable housing community to identify issues, develop solutions, and achieve consensus that it is possible to develop and implement a more appropriate model for the New York City market. What follows below are a number of obstacles and ideas raised by for-profit and nonprofit stakeholders in the course of research for this assignment.

A. For-Profit Reactions

For-profit developers articulated three primary concerns to the concept of permanent affordability: how to value the property, how to come to agreement on a sale price, and how to find the right mix of financial incentives so that for-profit developers continue to participate.

Valuing the Property

Several for-profit developers interviewed feel that there is no realistic way to price the Right or the Option. Assuming the purchase occurs at the end of the regulatory period, it is extremely difficult to project what a property in any given neighborhood will be worth. Many for-profit developers suggested considering what property values are today compared to their value 30 years ago. While this is a valid concern if the strike price was determined at Year 0, neither Purchase Options nor ROFRs require setting a sales price upfront. Rather, both models stipulate that the sales price be determined in the future based on a triggering event and the project's future cash flow, location, physical condition, presence of rent subsidy, and many other factors.

Agreeing on a Price

A second objection raised to Options and Rights hinges on the difficulty of setting and agreeing upon a price. Using an appraisal method to determine value at the end of the regulatory period can be very time consuming and could lead to very prolonged and not always successful negotiations. San Francisco's experience with the Fair Return Model, however, shows that there is a precedent for reasonable pricing. As was discussed in Part I, the City essentially guaranteed owners a minimum return of approximately 10% on their investment. Furthermore, once the price was finalized, closings happen quickly due to not having to wait for appraisals and the availability of financing. This quick time line helped ensure owners did not walk away. For the San Francisco model to work in New York, significant dollars would need to be available to allow the City to exercise its Option or Right if other incentives proved insufficient.

Residuals and Fees as Incentive to Participate

Another point raised by for-profit developers is that Purchase Options create a major disincentive for the developer who does these transactions for fees *and* residuals. One interviewee noted that there is an implied bargain between the City and the developer who agrees to build affordable housing on the private land they bring

to the deal—the residual profit at the end of the compliance period. This bargain would be negated by the proposal to attach Rights or Options to affordable projects which would remove the upside.

This could be overcome by giving developers a "guaranteed" residual, e.g., a per unit dollar amount of "profit" in the total development cost in addition to the developer and other fees that are already built into a given program. The guarantee would take the risk, as well as the potential reward, out of the equation since there is no way of truly knowing up front what market and neighborhood values will be in any given location. For developers who are more risk averse, this may be appealing.

There are for-profit developers who are not concerned with residuals: these are turnkey developers whose business model is different from that of the developer who builds to keep control of the project. Indeed, some large for-profit developers are already partnering with nonprofits on a turnkey basis and are satisfied with the construction and partial developer fees. Additionally, at least one prominent nonprofit developer believes that for-profit developers do not need an upside or residual to continue participating in the affordable housing arena; they will continue to build for the fee potential. He also notes that investors are looking for fixed returns, not residuals.

Another developer noted that the fee incentives currently in the tax credit program, such as developer and management fees, are not sufficient by themselves to interest him in development. He noted that developer fees pay for overhead; most of that fee is deferred and only payable if there is sufficient cash flow at the end of the day. The same was stated for management fees – they cover costs and no more. In the NewHOP program, developers receive no fee to cover even overhead and put in hard equity; the residual upside is the only incentive to use the program.[27] Moreover, additional affordability restrictions would reduce liquidity, thereby reducing the market values of the properties. However, it may be possible to induce for-profit developers to participate without residuals if the upfront and ongoing fees were increased.

A similar, but more nuanced opinion, holds that one could make a case that developers would give up residuals for fees and management if they needed cash up front to make the development work. In other words, what the developer is looking for – cash up front or long term residuals – would determine who would continue to "play" in this market.

And a further concern: how to keep incentives in place to operate and maintain the properties without the long term economic benefits? According to some, buildings that are under water are funded by developers because they want to maintain their reputation and good name for future awards. If the upside is taken away, will developers be expected to continue losing money indefinitely as unforeseen costs overwhelm the building's limited income? Many developers pointed out that this would ultimately harm the tenants and physical condition of the project. This is a valid concern and it is clear that the City would have to enter into an agreement to make recapitalization available to all developers who continue to keep rents affordable.

Other Issues

Other for-profits suggested "compromise" positions which might or might not work. For example, one stated that the buyout should occur well before the end of the mandatory compliance period, e.g., if the compliance period is 40 years, then the buyout should occur at year 20 and the property remain affordable permanently thereafter. If it is done at the end of the mandatory period, then we are back where we started from, i.e., at the point today of trying to deal with continuity of affordability and not having the clout or the dollars.

Another felt that providing incentives to developers to keep properties affordable would work better than a forced sale at the end of the regulatory period. Simply building up reserves would not, in his opinion, be sufficient. He

felt that there should be monitoring and enforcement mechanisms in place during the entire compliance period to assure that owners were living up to their end of the deal and would continue to maintain the buildings as affordable. Additionally, owners must be given incentives to maintain affordability after the regulatory period expires. Those incentives need not be the same for every building in every neighborhood and should be flexible enough to take into account changes in both neighborhood and building conditions to make sense.

Opinions within the for-profit development community on the practicality of permanence ranged from "misguided" to "workable" with the right tools. The former argument is predicated on many of the points made above: projecting or building in all of the changes, especially in costs, that will affect the running of a building over a prolonged period of time; having residuals available both for nonprofit and for-profit owners; inability to attract equity dollars up front (joint venture partners who put up equity capital expect some returns on their investment); an opaque process for deciding valuation at some future time as a real deterrent to future development; and finally a buyout option valuation process that creates great political/regulatory risk for developers, who may face changes to the program akin to what is happening in the Mitchell Lama program.

It is clear that further analysis is required to determine how much upfront development and management fees would need to be enhanced to support removing the upside. It must also be acknowledged that developers are not universally driven by residuals and those that are may be willing to participate even if they were capped, which has been the case in San Francisco where developers have continued to participate in City programs.

B. Nonprofit Reactions

Over the past 30 years, community-based, not-for-profit housing developers have labored to meet the housing needs of low, moderate and middle income families across New York City. In partnership with the City, community development lenders and intermediaries, ANHD members have been responsible for building, renovating, owning, and managing over 35,000 units of affordable housing. Community-based developers are driven by their mission to maximize public subsidy both to achieve the deepest level of affordability and guarantee that affordability will be maintained over the very long-term. Many nonprofits have an established track record of building stronger and more stable communities, providing social services to support tenants and local residents, and bringing a community voice to development projects so they respond to the real needs of the particular neighborhood.

Despite these efforts, New Yorkers—now more than ever—are struggling to find and retain affordable housing. Many factors have contributed to this: diminishing real incomes and shrinking federal investment in housing programs, the expiration of use restrictions for subsidized projects, weakened laws governing rent regulated housing, sub-prime lending, the rise of predatory equity investors, skyrocketing construction costs, and the lack of affordable, buildable land have all made affordable housing development more difficult. Unfortunately, the situation may get worse before it gets better as the New York City economy is facing shaky times. Indeed, Mayor Bloomberg has already reduced the City's capital budget by 20 percent and ordered City agencies to cut expenses by 2.5 percent this year and 5 percent in FY 2010. Thus, it becomes increasingly important that public resources are used in the most efficient way to maximize public benefit.

Given these realities, nonprofit housing organizations believe that it is imperative to re-think how the public sector subsidizes the creation and preservation of affordable housing. The City needs to transition from the current thinking that time limits affordability restrictions to a different policy that incentivizes developers to keep rents affordable in exchange for fees and/or a fair return, but not unlimited profits on the back end. ANHD believes it is essential to cultivate a market driven strategy that takes advantage of the City's strong affordable housing development community while recognizing that we can no longer afford to continually build units only to see them lost 15, 20 or 30 years down the road.

Moreover, ANHD believes:

- The City must re-evaluate its practice of turning over public land to developers who only pledge short-term affordability. Defensible when the City was burdened by the large "in rem" stock, the fee simple sale of public land to private interests no longer makes sense when there is so little developable land remaining under public control. Many jurisdictions ground lease publicly-owned land to developers in exchange for requiring that the project be rented only to low- and moderate-income persons over the very long term.

- More rigorous compliance is part of the solution and HPD needs to expand its monitoring staff considerably. The one-time robust Division of Housing Supervision—created to monitor Mitchell Lama projects—can serve as a model for how the City should approach enforcement in a more centralized way. Although increased monitoring will require resources, ANHD is prepared to see fewer units built if the ones that are built remain affordable permanently.

- Achieving permanence is necessary and feasible. To be sure, this report presents a detailed examination of just one approach to achieving permanent affordability: Purchase Options and Rights of First Refusals. Purchase Options are cost effective and provide one final assurance that affordability will not be lost if other efforts to induce stewardship are ineffective. We also acknowledge that any roadmap to long-term affordability could include mechanisms such as deed restrictions, community land trusts, and shared equity homeownership, among others.

> The most effective way to achieve permanent affordability is for "low-income housing to be owned by strong, well run nonprofit organizations whose mission is to provide quality, affordable housing."
>
> Abby Jo Sigal
>
> *Executive Director*, Enterprise Community, NY

Thus, ANHD believes that requiring anything short of permanent affordability when public land, subsidy or other incentives are used is an inefficient, illogical use of taxpayer dollars and works to erode the economic diversity of the City. While the implementation of the legislative, regulatory, and administrative changes to achieve permanent affordability lies ahead, it is committed to working with the affordable housing community to explore all alternatives and achieve these changes for the benefit of the City, its neighborhoods, and low and moderate income New Yorkers.

C. Syndicator Reactions

One nonprofit syndicator felt that there were several different ways to move toward permanent affordability. The first is permanence through government mandate, such as NYC's Inclusionary program discussed in Part II of this report. Another way to achieve permanent affordability—and the most effective—according to the same syndicator, is for "low-income housing to be owned by strong, well run nonprofit organizations whose mission is to provide quality, affordable housing. I believe that such organizations will do what they can, even in tough times, to keep the properties affordable. The challenge for them is to make the tough decision of raising rents and/or finding additional resources to insure that building are maintained."[28]

Homeownership with resale restrictions is another way. With resale restrictions, one of the benefits of homeownership—the build up of equity—is limited; on the other hand, without resale restrictions an owner can flip the property which results in the loss of affordability. It is also important to make sure that the owners, whether of a single family home, a 1-4 family, or a co-op building, have the resources and the capacity to maintain the home and building for the long-term. At a public forum this past spring, Emily Youssouf, former President of the NYC Housing Development Corporation, noted that homeownership is one of the key ways to achieve permanent affordability. HDC's co-op program put a cap on profits, scaled prices to the income of existing tenants who pay 35% of income,

> While a weakening economy and budget cuts may limit the amount of capital resources available for affordable housing, it should make participation in development programs even more attractive… thus, extended affordability and resale restrictions may be a lot more attractive if these conditions persist.

and capped resales at 175% of AMI. This allows for profit and build-up of equity at the same time as it creates housing which is permanently affordable. However, HDC is no longer offering its co-op program due to a lack of demand from developers.

A for-profit syndicator presented an argument against long term extended use or permanence, at least based on today's tax credit environment, which holds that without extended use agreements, there is more leverage to get new credits when the original restricted period ends. He points out that states generally want to spread scarce tax credits around – if a project is already permanently low income, why should the state give it more credits? It should be acknowledged, however, that if the state or locality valued permanent affordability, it could easily change its QAP to prioritize permanence of existing buildings needing capital improvements.

Syndicators agree that residuals do not really impact investors; they are attracted to partnerships because of the tax advantages and depreciation benefits; in other words, removing residuals would not dis-incentivize those investors who are still actively buying tax credits.

V. New York City's Economic and Regulatory Environment

While it is crucial to get the mechanisms right, it is equally important to be aware of the economic conditions facing the City and State, and whether or not a regulatory structure is in place that is willing to enforce affordability restrictions. The section below provides an analysis of both.

A. Mid 2008 Economic Outlook

Having looked at diverse experience around the country on a federal, state and local level, we are left with several intriguing questions as to the applicability of these concepts and mechanisms to New York City. As we all are aware, the economic environment, especially as it relates to affordable housing, has shown signs of dramatic change in recent months. With the subprime mortgage and credit crises rippling through both the mortgage and financial markets, it is difficult to predict just how profoundly affected the affordable market will be. The good news is that the astronomical sums offered by large private real estate firms to purchase affordable housing portfolios seems to have dissipated somewhat as a result of both economic changes and public outcry over the potentially devastating impact on low and middle income housing. The tide seems to be turning in favor of preservation, especially given the recent developments at Starrett City. However, market conditions can change fairly quickly and we need to be cognizant of these trends as they develop and evolve.

In addition, we have recently shifted from a period of economic prosperity to one in which budget cutbacks and general fiscal tightening have become the norm. While we are fortunate that the recently passed New York State budget contains a major increase in dollars available for affordable housing, there can be no assurance that this level of funding will be repeated in future years. And while New York City is fortunate in that much of its housing stock has been recycled, in some cases several times, it also must be acknowledged that much of the stock is quite old, in many cases obsolete, and that previous rehabilitation programs may not have provided sufficient incentives or dollars to do the amount of renovations needed to prolong the useful life of a building by more than a few years.

While a weakening economy and budget cuts may limit the amount of capital resources available for affordable housing, it should make participation in development programs even more attractive. Not only are these projects

less risky for developers, private capital and credit will become increasingly harder to come by thereby making subsidized housing the only game in town. Thus, extended affordability and resale restrictions may be a lot more attractive if these conditions persist.

> The time is right for better coordination around compliance as there is a confluence of strong leadership at every level of government – in our federally elected representatives, in our state housing agencies, and in our municipal housing agencies.

Any recommendations and plans put forward in this environment must take these factors into account. Questions asked with increasing frequency by public, not-for-profit and private practitioners focus on the need for more public capital – something that does not appear to be available in the foreseeable future. On the other hand, the mortgage crisis has produced an unforeseen benefit for affordable housing with the passage of the 2008 Housing and Economic Recovery Act signed into law on July 30, 2008: the bill contains increased volume cap for tax exempt bonds, beneficial changes to the tax credit program, and other important modifications to recycling revenue bonds. However, the lack of dollars for new rental subsidy and public housing programs continues to be a major issue for affordable housing going forward. Environmental concerns, especially green building, have become major issues which impact the affordability as well as the preservation of housing. As costs continue to increase, both in construction and in operations, affordability issues become ever more pressing. We are seeing a rise in homelessness once again – the result of foreclosures and increasing rents. And, as is always the case in New York, the never-ending pressure on the overall housing market with its consistently low vacancy rates, keeps forcing rents to rise, even without the pressures caused by spikes in energy and insurance coverage.

B. A Unique Moment in New York's Regulatory Environment

In contrast to the somewhat gloomy economic environment, New York City's regulatory environment is more robust today than it has been in several decades. We have a confluence of strong leadership at every level of government – in our federally elected representatives, in our state housing agencies, and in our municipal housing agencies. All pressed hard to get legislative relief for additional volume cap and to create more flexibility and consistency in federal programs. The State and City have both created preservation initiatives and are committed to working together to achieve similar goals. An interagency working group, chaired by the Commissioner of the New York State Division of Housing and Community Renewal and staffed by the New York City Department of Housing Preservation and Development, held its first meeting in September to discuss both its goals and its work plan for the coming year. This committee, which includes HUD as well as representatives from DHCR, HFA, HPD and HDC, promises to create an impetus to attaining real progress in preserving affordable housing and keeping it available for those in need. It would appear that the will is there; however many of the tools to implement these goals still need to be developed.

Both the City and the State recognize that their access to project and program information is seriously deficient. Both are working to update their data bases and to modernize their computer capabilities. Both have engaged outside consultants to assist in this effort and most important, they are sharing the information and ideas with each other. In addition to data needs, there is also a pressing need to eliminate, to the extent possible, duplication of efforts, both in monitoring and in data collection from owners and tenants. Almost everyone interviewed for the Compliance part of this study noted the confusion, duplication, and waste of time, effort, and money in meeting the myriad requirements of overlapping programs. Further, compliance manuals, to the extent they even exist, are outdated, and data request forms are generally still in paper format and require huge amounts of staff time for computer entry and processing. Finally, the lack of consistency in regulatory agreements and loan documents, even within a given program, make both monitoring and enforcement very difficult.

Conclusion

In sum, the key to any successful affordable housing preservation program is finding a combination of mechanisms and policies for keeping properties affordable as long as possible. It is clear that achieving permanent affordability – whether through Options and/or Rights, preservation set-asides, changes in regulatory requirements, more thorough monitoring with consequences for non compliance – is theoretically possible. The challenge comes with convincing policy makers that, while the needs of all stakeholders should be taken into account, creating and keeping a viable, cost effective and vibrant affordable housing portfolio must be a continuing goal.

Appendix A

Overview of State and Local Initiatives to Establish Purchase Options and Rights of First Refusal

When national housing policy shifted in the late 1960's from public to private financing of affordable housing, emphasis shifted from keeping housing affordable for long periods of time to building housing in a more economic way. The resulting programs – Section 8 and Low Income Housing Tax Credits – have regulatory agreements for specified periods of time at the end of which the private entities involved are free to exercise various options, including taking the projects to market. Not until the first Section 8 contracts were about to expire did various stakeholders become concerned about the prospect of losing this extensive inventory of affordable housing. Similarly, as early LIHTC projects, with no extended use periods, got to the end of the 15 year compliance period, parallel concerns arose. Several state and local entities have focused on these issues and have come up with various ways of trying to preserve this valuable housing[29]

Right of First Refusal

Illinois

Illinois has at least three different statutes which address the concern of losing affordable housing units. For mortgages financed directly by the Illinois Housing Development Authority[30] (IDHA), owners can only prepay their mortgages if they agree to extend to the full term of the mortgage loan the existing affordability restrictions or to create a comparable number of new units of housing affordable for low income persons and families. If the owner doesn't agree, it must provide notice to the tenants of the intent to prepay the mortgage loan and of the tenants' first right to purchase the development. Tenants have 60 days to form a tenant association. After receiving notice of interest from the tenants, the owners must provide a bona fide offer for sale of the development to the tenant association which contains the essential terms of the sale, including, at a minimum: the price; seller financing, if any, and terms; assumable financing, if any, and terms; and any proposed improvements to the property to be made by the owner in connection with the sale. Tenants have 30 days to notify the owner, in writing, of their intent to purchase the development; there is no legal obligation to purchase, however. The tenant association may also designate a not-for-profit corporation to act on its behalf to purchase the development.

If the owner and the tenant association or its designee are unable to agree to a sale price within the first 60 days of a 90 day negotiation period, the sale price is based upon its fair market value at its highest and best use minus any necessary rehabilitation costs, as determined by two independent appraisers. The determination of the sale price must be completed within the 90 day period specified above and closing must occur within 90 days thereafter. These provisions don't apply to a government taking by eminent domain or negotiated purchase, a forced sale pursuant to a foreclosure, or a transfer by gift, devise or operation of law. Failure to perform in the determination of the Authority gives the owner the right to prepay the mortgage loan and the Authority may accept the prepayment of the mortgage loan.

A second statute[31] is designed to protect tenants and preserve housing assisted by various governmental entities, such as Section 8 and Farmer's Home, including FHA mortgage insurance. An owner may not sell or otherwise dispose of subsidized housing without giving all tenants and IHDA a six-month notice of intent to sell or otherwise dispose of the property. Tenants then have 60 days to form a tenant association. The owner must provide the association a bona fide offer for sale of the property with the same requirements as noted above with the same time constraints. The remaining provisions of this statute parallel those discussed above, except that the tenant

association, or one or more tenants in the subsidized housing, may bring a civil action against an owner who has violated this Act. An owner found to be in violation of any provision of the Act will, in addition to any other damages, pay a civil penalty to each tenant in the subsidized housing in the amount of $500 per tenant, and will also pay the attorney's fees and costs incurred in bringing the suit.

Finally, Illinois passed the Federally Assisted Housing Preservation Act of 2004 which increases the situations in which owners of assisted housing must give tenants notice and extends the notice period to 12 months. No further research has been undertaken to determine how widespread the use of these statutes are or how much affordable housing has been preserved.

Maine

In 1993, Maine revised previously adopted preservation legislation (1988) to provide that notice must be made to "the tenants, the Maine State Housing Authority and the municipal housing authority, if any, at least 90 days prior to an owner entering into a contract for the sale or transfer or taking other action in regard to the property that will result in the termination of financial assistance designed to make the rental units affordable to low-income or moderate-income people."[32] The Maine State Housing Authority has the Right of First Refusal to purchase the property at its current appraised value, as determined by appraisers for the owner and the Authority. The Authority holds the Right of First Refusal throughout the 90-day period. Failure to respond to the notice within 90 days constitutes a waiver of that right by the Authority. By stating in writing its intention to pursue its Right of First Refusal during the 90-day period, the Authority has an additional 90 days, beginning on the date of the termination of the first refusal period, to buy or to produce a buyer for the property. This additional 90-day period may be extended by mutual agreement between the Authority and the owner of the property. The Maine State Housing Authority doesn't have any Right of First Refusal when a bona fide buyer, by contract with the seller, agrees to maintain the property as low-income housing.

Maryland

Maryland has a very comprehensive statute covering preservation of all forms of assisted housing—federal, state and local—and amended that legislation several times during the early 1990s. Essentially, as in other Right of First Refusal states, tenants must be given notice and the owner must offer the right of first purchase to: the local housing authority, if any; the applicable local jurisdiction; and, if the following have registered with the State, to a). any group representing any of the existing tenants at the assisted project; b). any low income nonprofit housing developer; and c). any other individual, partnership, or corporation with experience in the ownership or operation of low income housing projects and which is unrelated to the owner.

The owner's offer should include, among other things, terms, e.g., the purchase price; a final date for settlement, which may not be earlier than one year from the later of the date of the owner's offer or the date of the notice of intent; and a requirement that the first $10,000 of any deposit by the purchaser be nonrefundable. If the owner received an offer to purchase the assisted project from an unrelated bona fide purchaser, the owner's offer shall be on substantially the same terms and conditions as offered in a binding purchase contract to the owner by the bona fide purchaser including the purchase price, terms of payment, any financing contingencies, and any assumable or purchase money financing. If the owner has not received an offer, the purchase price of the owner's offer would essentially be the fair market value of the property. The owner's offer shall be accompanied by a written appraisal of the fair market value of the project.

Any of the parties qualified to purchase the property shall have the right to accept the owner's offer within 120 days of the date of the offer. If more than one party submits an acceptance of the owner's offer within the original 120-day period, the Secretary of the Department of Housing and Community Development shall determine

which party shall have the right to accept the owner's offer based upon which party's acceptance, in the Secretary's sole discretion, will most benefit the assisted households. Any such acceptance must be followed by settlement of the purchase of the assisted project by the owner's stated closing date or any extension agreed to by the owner. At the settlement of any purchase of the assisted project under a right of first purchase, the purchaser shall execute and record a covenant running with the land in a form approved by the Secretary that shall restrict the use of all assisted units at the property to residential rental property for assisted households or other approved purposes for at least the greater of: a). the duration of the remaining term as of the date of prepayment of the mortgage; b). the duration of the remaining term as of the date of termination, including all stated renewal terms, of any rental assistance agreement; or c). twenty years.

If there is no acceptance of the owner's offer, the owner may proceed, upon expiration of the applicable acceptance period, with the proposed sale or conveyance of the assisted project to any person on terms and conditions not more favorable to the purchaser than the terms of the owner's offer. If the sale or conveyance is to be on terms and conditions more favorable to the purchaser than the terms of the owner's offer, the owner shall again offer the right of first purchase as required under this section based upon the terms of the new offer.

Rhode Island

Prior to passage in 1988 of federal statutes requiring tenant notification prior to sale of subsidized housing, Rhode Island passed a state law (3445-4) requiring that tenants be notified before any sale of subsidized housing. According to Ray Neirinckx[33], there is some question as to whether this law is still valid or whether it has been superseded by federal law. Rhode Island's statute requires that tenants be provided with any offer received by the owner and tenants have priority to purchase the property, presumably at the price being offered. If tenants don't exercise their right, there is a progression by which the right passes first to nonprofits, then to the housing authority and finally to the municipality in which the housing is situated. Per Neirinckx, the law has never been used because most subsidized housing in the state is well maintained given the Rhode Island HFA's financial programs which make it attractive for developers to stay in the programs. Bonds/credits are used to preserve and/or refinance Section 8 properties in exchange for 40 years' affordability beyond current affordability restriction; pre-1980 deals receive half of the accumulated residual receipts with the remainder paid into a state affordable housing trust fund.

Washington, DC

The Tenant Opportunity to Purchase Act (TOPA) was originally passed in the 1980s as part of the Rental Housing and Conversion Sales Act. According to a FNMA Study[34], TOPA has been critical to the preservation of affordable housing and the expansion of homeownership among the District's low-income residents and has been the catalyst for preserving thousands of affordable homes in Washington, D.C., often in neighborhoods that have been undergoing gentrification. It has enabled residents to remain in their homes and neighborhoods despite pressures to relocate them to other neighborhoods or out of the District altogether and has also made it possible for low-income residents to purchase homes: some have achieved wealth that was inconceivable to them before their TOPA transaction. While the Study goes on to point out some remaining obstacles—financial, technical, organizational and educational—several of the persons interviewed during the course of this study do not consider TOPA that successful, especially from the point of view of preserving affordable housing.

Essentially the Act requires that, before an owner of any housing unit may sell, the owner must give the tenant an opportunity to purchase at a price and terms which represent a bona fide offer of sale. The Act sets forth different rights and obligations of the parties and time periods to respond to an offer of sale and negotiate the purchase of the housing accommodation based upon whether it is a single-family unit, two to four units or a building with five or more units. Tenant(s) may exercise, assign, or sell those rights for any consideration which the

tenants, in their sole discretion, find acceptable. An owner can't require the tenant to waive any right under the Act, except in exchange for consideration which the tenant, in its sole discretion, finds acceptable. To make a contract of sale with an owner, the tenants must (a) form a tenant organization; (b) file articles of incorporation; and (c) deliver an application for registration to the Mayor and the owner within 45 days of receipt of a valid offer. The Owner must deliver a copy of the offer of sale to each tenant and the Mayor and the asking price must be at least as favorable as that given to the third party purchaser. It must also state the tenant rights and sources of technical and loan assistance, including the First Right Purchase Assistance Program from Department of Housing and Community Development, which provides direct short-term and permanent financing loans to low and moderate-income individuals and tenant groups to exercise their rights under TOPA. At any time during the sale process, a tenant may sell or assign its rights to any party. Tenants cannot waive their rights to receive an offer of sale, so owners cannot make such a request.

Time lines are also a critical part of this legislation: from beginning to end the process can take well over one year. If the transaction doesn't go through with the tenants, the owner may then consummate a sale to a third party owner; however if more than 360 days have elapsed since the original notice was sent to the tenants, the owner must re-notice tenants and start the process again.

There is legislation pending—the Section 8 Preservation Act of 2007—with the DC Council[35] which would amend DC's existing right to purchase law by providing tenants an opportunity to purchase federally assisted housing before an owner acts to terminate subsidies. The current law only requires tenants the opportunity to purchase their building when the owner offers to sell the property. However, according to testimony before the Council given by the National Housing Trust[36] the proposed statute has problems which could impede preservation, such as requiring owners to stay with original subsidy programs and language requiring sale based on fair market value as established by highest and best use.

The existing legislation is very pro-tenant which is itself controversial. Advocacy groups contend that it has done little to preserve *affordable* housing. According to Rebecca Lindhurst[37], TOPA is stopping displacement but is depleting the housing stock. She believes that the program should be redirected to funnel housing to nonprofits or for-profits who will commit to preserving it. Too often, TOPA is used as a negotiation tool to provide lifetime tenancy for those who are there at the time of conversion. However, on the plus side, Bread and the City, a nonprofit group, has used TOPA to partner with nonprofit developers who have a commitment to long term affordability and has assisted tenant groups in finding a nonprofit to create a limited equity cooperative. Blanket mortgages are available from the District which have interest rates starting at 1% for first 5 years.

Others active in housing in the District believe that TOPA is not reflective of either tenant or landlord needs today. Rent control in DC is a driving force behind sales today, rather than condo conversions which triggered the original legislation, according to Mark Griffin, an attorney in DC who serves as developer/lawyer/consultant in building conversions under TOPA. Owners want out because they are tired of rent control and can make money by selling their properties. He believes that the biggest issue is the amount of time tenants have to make a decision; it effectively takes properties off the market for well over a year and it becomes punitive to owners, especially since the upside isn't an affordability requirement. The law creates an incentive to convert buildings and get the financial benefit for the tenants; as a result, DC is eating through its housing stock.

Officials at the DC Dept. of Housing and Community Development feel that TOPA promotes home ownership and "sometimes" also affordability; essentially it gives economic parity to tenants. However, takeout financing often has difficult terms for tenant groups to meet which subverts the purpose of the legislation. Roughly seven to eight buildings a year go through this process of which four are financed through the Department with low

interest loans; the rest are done privately. Most owners are willing to endure the long waiting period, knowing that "they are getting top dollar for their buildings"[38].

One loophole for owners was recently closed in that the right to purchase is triggered by the sale of *any* percentage ownership interest, not just a 100% transfer of ownership. When the law only addressed a 100% transfer, sellers bypassed the law by selling 95% of the ownership today and then conveying the other 5% a year and a day later. That loophole no longer exists.

Purchase Options

Other jurisdictions have given various Purchase Options to tenant and nonprofits to step in when owners want to prepay mortgages and/or terminate assistance contracts.

California

California has passed legislation, which remains in effect until January 1, 2011, prohibiting owners of assisted housing developments[39] from terminating a subsidy contract or prepaying the mortgage unless the owner gives 12 months' notice of its intent and has provided qualified entities[40] an opportunity to submit an offer to purchase the development. Interested buyers must agree to maintain the property as affordable for 30 years or the remaining term of the existing federal government assistance, whichever is greater. During the first 180 days from the date of an owner's notice, an owner may accept a bona fide offer to purchase only from a qualified entity. Either the owner or the qualified entity may request that the fair market value of the property as an affordable housing development be determined by an independent appraiser, which is nonbinding on either party. During the next 180-day period, an owner may accept an offer from a person or an entity that is not "qualified", subject to the owner providing each qualified entity that made a bona fide offer during the initial 180 day period the first opportunity to purchase the development at the same terms and conditions as the pending offer to purchase. The qualified entity then has 30 days to submit a bona fide offer to purchase and that offer must be accepted by the owner, unless the nonqualified offerer agrees to maintain the development for persons and families of very low, low, and moderate income in accordance with this statute.

Vermont

Under Vermont law, the Housing Finance Agency secures an Option to Purchase and a commitment to extend the affordability of apartments should any rental assistance be available at the expiration of the Section 8 Housing Assistance Payment contract, in exchange for allowing an increased return on equity and access to cash, including additional loans. Vermont's preservation decisions are guided by a commitment to secure the longest term of affordability in exchange for gaining access to public funds and below market financing.

Massachusetts

Massachusetts Statute[41] defines the term "preserve affordability" as maintaining assisted housing on terms at least as advantageous to current and future tenants as required by existing restrictions with same number of project based subsidy units as required by contract. Where there is no contract and units are occupied by persons at 60% of median, the rents cannot exceed tax credit or voucher rents for at least 30 years. The required notice period is at least two years prior to expiration or termination; a second notice is required not less than one year before the completion of termination. A sale cannot be consummated before offering the Massachusetts Department of Housing and Community Development the opportunity to purchase the property; however the owner is under no obligation to actually sell to the Department. The Department may designate its right to a municipality or another entity which must agree to maintain the property as affordable. The offer must be made within 90 days from receipt of notice; failure to make an offer constitutes a waiver and if no agreement is made within the 90 days,

the owner may sell to a private third party without conditions. However, the Department or its designee has an additional 90 days to match the price and an additional 30 days to enter into a contract. If there is a failure to execute, then the owner has 2 years in which to complete the sale to a third party or the notice periods begin again.

Portland, OR

The intent of Portland's Affordable Housing Preservation Ordinance passed in 1998 is to "protect the availability of publicly assisted affordable housing for low and moderate income households by: providing for notice to the City and tenants when transitions from current assistance programs and/or affordable housing uses are planned; providing purchase opportunities for the City to attempt to preserve the affordable housing while respecting ownership interests of building owners; providing tenant relocation assistance when the affordable housing is converted; and, ensuring long term affordability in future projects that the City assists with public financing designed to create or preserve affordable housing."[42]

For federally funded projects, the Ordinance requires owners to provide 210 days notice of their intentions to opt out of Section 8 (150 days if the owner is opting out of a one-year extension to a long-term contract) and the notice must mention that the City may institute condemnation proceedings to pay the owner fair market value if the City chooses to do so. During the notice periods, the City may pursue preservation of the project through negotiation for purchase or through condemnation; owners may not take action to preclude the City from succeeding in its taking rights. If owners fail to comply with these procedures, a fine may be levied which is calculated in relation to the costs and damages caused by the owner's failure to comply, up to full replacement costs of each project-based Section 8 housing unit lost. Such civil fines are payable into a housing replacement fund established and managed by the City. If the civil fine is not received within the timeframes specified, the City may commence enforcement proceedings. Any civil fines received shall be used only for creating replacement housing serving households at or below 50% MFI.

For projects assisted with local funding, the Ordinance requires the owner to provide a 90-day notice to the City of its intent to sell. During the 90-day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties. Within this period, the City or its designee may make an offer to purchase or attempt to coordinate a purchase by an owner committed to maintaining affordability.
According to Beth Kaye[43], the Ordinance gives the City an opportunity, not an obligation, to exercise its rights: whether the City does or doesn't is based on economics, replacement costs, project location, etc. To effectuate the ordinance, the City has established a Preservation Line of Credit (agreement with a local lender) that provides short term resources to complete the transaction in 120 days. Normally the City and/or the owner have procured appraisals and frequently the properties are flipped to nonprofit ownership. In Portland, said Kaye, many private for-profit owners are willing to sell at less than fair market value to preserve affordable housing; one example mentioned is Clay Towers apartments, purchased by Cedar Sinai Partnership, presumably for less than its fair market value.

Denver, CO

Denver has a preservation ordinance[44] which parallels that of Portland. Adopted in 2000, the ordinance provides that when the owner of a local preservation project takes action which will make the affordable housing no longer affordable, whether the affordability requirements which were established under prior agreement with the City or state have expired or are still in effect, the owner must provide a notice of ninety (90) days to the City. During the 90-day notification period, the owner may not sell or contract to sell the property, but may engage in discussions with other interested parties. Within this period, the City or its designee may make an offer to purchase or attempt to coordinate a purchase by an owner committed to maintaining affordability.

Appendix B

Historical Overview of Federal and State Housing Programs

Over the past decades, there have been a number of programs funded at both the federal and state levels whose objectives were to provide affordable housing for an extended period of time. While none of these programs were officially designated as "permanent", the intent was clearly to provide housing for low and moderate income persons over the long term; this was the public mission under which both state and federal authorities operated.

Federal Programs

The experience of federal housing programs in providing Purchase Options or other permanent affordability mechanisms is minimal. None of the federal housing programs provide for Purchase Options. A few of them do, at least indirectly, provide for permanent affordability. The most obvious is the public housing program. Begun in 1937 as a vehicle for assisting families who could no longer pay rent because of the Depression, public housing was originally designed for the "working poor". It was envisioned to be "temporary" shelter for families during difficult economic times and it was expected that as incomes rose, families would move into permanent housing – either rental or owner – and make way for other families in need of temporary assistance. The housing, itself, however, remained affordable in perpetuity, with the expectation that as public housing bonds matured, the income from the tenants' rents would be sufficient to pay operating costs and the housing would continue to be available to needy working families. While this is not the place to lay out the history of the public housing program and the changes which developed over the ensuing 80 years, there are several reasons why the program failed to live up to its intended uses. A primary one, and the one which is most relevant to this exercise, is that insufficient monies were set aside and/or made available to make necessary capital repairs and to cover operating costs which exceeded at an ever increasing rate the amount of income generated by the projects. While each City's experience is quite different, the aging of the housing stock, coupled with changing requirements to tenant properties with residents at the lowest AMI percentages of income, have caused what is rapidly becoming a crisis in the public housing community. The primary source of operating dollars and capital available to public housing authorities comes from the federal government and that pot shrinks with every passing fiscal year. The needs grow and the dollars decline so that even a housing authority such as NYCHA, once considered the model for housing authorities in the country, is now forced to undertake measures, such as selling off "excess" land and closing community centers, in order to survive. Without a committed and steady source of capital and operating dollars, housing dedicated to persons who cannot afford to pay reasonable rents cannot survive in perpetuity.

Another attempt at permanent affordability within the public housing spectrum was the Turnkey III program under which tenants were encouraged to purchase their units with the dollars they would otherwise have used to pay rent. The concept was that if the residents owned their own units, they would be motivated to care for them more diligently and to generate income through employment, thereby encouraging self-sufficiency through homeownership. The housing units in this program were owned by the housing authority; during the period of tenancy, the family made "mortgage" payments based on their income and maintained their own property. The housing authority compensated the family by crediting certain amounts budgeted for maintenance to family equity accounts. A non-routine maintenance reserve was also established for each unit. When the family's income and equity accounts increased to the point where it could obtain permanent financing for the unit, or when the equity account equaled the unamortized debt and closing costs, ownership passed to the family. Turnkey homes were amortized over a 30-year period. This program never really got off the ground, in part because the few properties which converted to home ownership suffered from the same forms of neglect that properties owned by housing

authorities did – the tenants were not prepared for home ownership and in most cases did not have the financial means to maintain their own units and pay for capital repairs.

Other federal programs which came close to providing permanence have also not generally been able to achieve that goal. Those programs can be broadly described as designed for and/or geared to nonprofit ownership. One such program was Section 202 Housing for the Elderly, a direct loan program originally authorized in the Housing Act of 1959 to provide funds to nonprofit organizations to construct, rehabilitate and own housing specifically for the elderly and handicapped. From 1959 through the early 1990s, HUD lent monies directly to nonprofits at a 3% interest rate; loans were repaid from rental revenues without subsidies. When revenues didn't keep pace with operating expenses, many units received rental assistance payments (RAP), flexible subsidies, or Loan Management Set Aside (LMSA) Section 8. Since 1976, all Section 202 projects funded with direct loans had market rate interest loans but received Section 8 rent subsidy contracts with sufficient funds to cover the loan and operating expenses. Since the early 1990s, the government has made grants, rather than loans, to nonprofits and has provided operating revenues through project rental assistance contracts (PRAC) which are similar to, but funded differently from, the Section 8 HAP contracts. Over the past few years, with the aging of both the housing inventory and its population, Section 202 nonprofit owners with projects funded with direct HUD loans have been faced with an increasing need for additional capital to modernize or upgrade buildings, systems and services. While many have been refinanced successfully either with or without HUD concurrence, depending on their regulatory agreements, they still face issues concerning ongoing operating support and capital dollars. The "day of reckoning" has been moved back in those cases through the term of the new mortgage, which could be as much as 35 years, but again, there is no way of assuring that these projects will remain viable. And as residents age in place, there is a growing need for supportive services and programs which put a strain on most of the nonprofits committed to running these communities.

Federal programs designed for nonprofit or limited dividend ownership include the Section 236 interest subsidy program and the Section 221(d)(3) Below Market Interest Rate (BMIR). Issues here mirror those encountered in the Section 202 direct loan program; both programs subsidized the interest rate on the debt: Section 236 subsidized the rate down to 1% while the BMIR program subsidized loans at 3%. In both programs, income was limited to 80% and 95% of median income respectively. Although rents were not restricted as they are under the LIHTC program to a certain percentage of tenant income, rents were limited to what the "market" could pay. There were no provisions in either program to raise rents as operating costs rose and capital needs arose. Many of these properties fell into disrepair and were originally propped up with rent subsidies in the 1970s, such as Rental Assistance Payments (RAP), LMSA and Section 8. As they have aged further, many have been refinanced using programs available today such as tax exempt bonds and credits. Those that make it to loan maturity, which is generally 40 years, have no further income restrictions and could theoretically go to market, notwithstanding the nonprofit involvement.

In 1997, Congress created, and HUD implemented, a mark to market[45] program whose intent is to extend affordability under the project based Section 8 program for additional periods beyond the initial contract term. Owners have to voluntarily agree to have rents lowered in exchange for FHA mortgage modification and an extended use agreement. Owners whose properties have Section 8 rents below market rates can request rent increases under certain circumstances if they agree to extend the use agreement for a minimum of five years or longer.

New York State Programs

New York State funded housing programs were often based on federal programs and ran into similar issues as discussed above. New York State financed 143 public housing projects with over 66,000 units; about half were federalized and the remaining ones are either being privatized and/or are seeking major capital infusions to continue their operations. The State, under the Urban Development Corporation's auspices, was also responsible for the construction of low and moderate income properties, many using the Section 236 program to reduce the interest rates on state issued debt. Under both programs, insufficient funds were reserved to cover outlying capital needs and public sources for these needed expenditures have dried up. Further, operating expenses far outpaced rental income, compounding the problem of keeping the units in good, operating condition.

In 1985, New York State passed legislation creating the Housing Trust Fund Program to help meet the critical need for decent, affordable housing opportunities for people of low income. HTF provides funding to eligible applicants[46] to construct low-income housing, to rehabilitate vacant or under-utilized residential property (or portions of a property), or to convert vacant non-residential property to residential use for occupancy by low-income persons. The restriction on using funds only for vacant or partially vacant buildings was removed by the legislature just this summer and should make these funds more user friendly for preservation purposes. DHCR issued a Request for Proposals to use up to $25 million of recently allocated HTF dollars to fund projects, specifically including a call for preservation worthy properties; proposals were due in early October and awards should be announced before year end.

Projects must be located in an area which is blighted, deteriorated or deteriorating or an area in which the private sector has demonstrated an inability or unwillingness to participate in the provision of affordable housing without government assistance. Occupancy in HTF projects is limited to low-income persons and families whose incomes do not exceed 80 percent of the median income for the metropolitan statistical area in which a project is located. Funding under the Housing Trust Fund is limited to $125,000 per unit, a major increase which was part of the statutory change last summer allowing for renovation of existing occupied buildings. Project sponsors must ensure long-term (15-30 years) use by low and/or very low-income persons. Operating reserves cannot be capitalized with HTF monies. No more than 50 percent of the annual HTF appropriation may be allocated to any one municipality. Additionally, no more than one-third of the funds appropriated in any one year may be used by private developers.

In 1990, a one time demonstration program was funded for the permanent financing of projects constructed by private developers/contractors who partnered with nonprofits. Called the Turnkey program, $128 million was made available and was used to purchase the properties once construction was complete, fund the reserves and then "grant" the properties to the nonprofit partner for a 99 year period. The income range was from 30%-90% of median and debt service of 1% was due only if there was excess cash flow. About 30 properties were done under this program and often the funds were used to convert hotels and schools into residences. Many of the projects have run into market as well as development problems; the new construction transactions faired better.

In sum, several programs initiated by the federal and state government had elements of permanency; however, for a variety of reasons which have relevance for any future programs seeking to create permanent affordable housing, none of these programs have proven to be totally successful. Lessons learned include the need for properly funded reserves, a tie-in between income and expenses, and an ability to be flexible when market conditions change.

Appendix C

Overview of State and Local Initiatives to Establish Alternative Affordability Structures and Incentives

One of the key questions posed by ANHD in soliciting this study was whether there were alternative ways to structure Purchase Options to maximize their effectiveness and make it more likely that this policy would be accepted in the New York City housing community. Further, ANHD wanted to explore what incentives might be offered to private developers to continue building and maintaining affordable housing. The objective was not to create disincentives to building and maintaining affordable housing but rather to uncover and develop specific concepts which could be applied to make publicly assisted housing affordable for the long term. As the President of ANHD's Board of Directors pointed out at a spring Forum on permanent affordability: "We need a market driven approach to create the end goal—that's what the ANHD study is all about"[47] Ms. Uz pointed out that the City needs to be exploring new approaches and land use reforms, in addition to the 421a changes and the inclusionary zoning program, and she noted that there needs to be a balance between "carrots and sticks", something which does not exist today. Among the various ideas to be considered, she listed:

- Extended regulatory agreements
- Enhanced reserves
- Nonprofits maintaining a vote on the boards of co-ops
- Management/asset management fees as a source of sponsor financing
- Condo-ing out properties
- Deed restrictions
- Land trusts
- Shared equity structures
- Reserve requirements

These concepts, many of which are operational today in New York City as well as various communities and states around the country, should be further explored as part of the ongoing initiative begun by ANHD.

A. Ideas for Consideration

In the course of researching and interviewing for this assignment, a number of significant ideas were put forward which deserve more in depth analysis than can be undertaken at this time. They are presented here in summary form as a challenge to advocates in the field to develop and present to appropriate City officials for possible adoption in future policy initiatives.

- Real estate tax abatements should be tied to affordability, not to the owner or mortgagee.

- Make the provision of real estate abatement the quid pro quo for the Right of First Refusal. Alternatively, provide real estate tax abatements to both for-profit and not-for-profit developers for as long as the property is maintained as affordable housing.

- Currently, soft loans from HPD earn 1% interest on a cash flow basis. A separate fund could be established for deposit of interest payments from these loans and monies in the fund could be dedicated solely for the revi-

talization of affordable housing. Any repayment of principal could also go into such a fund; current policy requires that these moneys go back into the general coffers. All dollars collected would then become a pool available for refinancing and/or capital improvements.

- Add conditions or standards to the regulatory agreements that would allow the City to step in and take action if owners start to "slip". For example, if the building has significant violations, then a Purchase Option could be immediately exercised. Other examples of misdeeds could also be spelled out in the agreement. In other words, the recommendation is to not wait until the end of the regulatory period to exercise Options and/or Rights but rather make it part of the ongoing enforcement procedures.

- A similar recommendation would have the City carry out in depth inspections every 3-5 years to assure not only compliance with the letter, but also the intent, of the regulatory agreement. Owners could be given a period of time to resolve violations or else the Option to Purchase is exercised.

- As restrictions expire, require that some percentage of the units, e.g., half, be maintained as affordable but allow the balance to go to market. The increase in revenue would give owners some profit while also providing an ongoing source for subsidizing the affordable units. Alternatively, one could let the market dictate what percentage should remain affordable.

- Provide a mechanism within the financing structure for dealing with capital needs requirements that will surface between year 10 and year 30. One way of accomplishing this is to front-end fund substantial reserves as is now being done in the Inclusionary Zoning program. Another mechanism would allow debt to amortize rapidly enough to permit refinancing of the property when needed to meet the property's capital needs.

- Require a debt service coverage ratio or an operating expense cushion[48] high enough to withstand income/expense shocks, such as occur from rent losses due to supply/demand imbalance in the local market, bad debt loss, concessions and in operating cost increases, e.g., insurance, utilities.

- Provide more flexibility to the process for changing ownership and management. Ownership and management capacity changes over time, and even the best of owners and managers may need or want to be replaced from time to time. Properties need an efficient, low-cost way of allowing general partners and sponsors who want to leave the program (or who must exit because of program violations or lack of attention) to do so and putting in new providers, without requiring a real estate transfer or acceleration of financing (whether public or private).

- Affordability restrictions should survive financial failure of the property; right now in some programs, default and/or foreclosure trigger the end of the affordability requirements. The restrictions should be stipulated in a covenant running with the land and separate from the property's mortgage, which would make them foreclosure-proof. Some jurisdictions have this structure in place already. However, for projects where private financing is in first position, this strategy may not be feasible.

- Have dedicated staff which knows its portfolio—every single building – and can pick them off one by one as they approach the end of their regulatory periods. Properties need to be prioritized and there has to be an understanding of what resources are available and how much the City is willing to devote to the preservation effort.

B. Some Initiatives From Around the Country

Vermont

Vermont's Qualified Allocation Plan defines the extended use period as perpetual for all projects receiving 9% credits; to the best of our knowledge, this is the only QAP which mandates perpetual affordability.

Portland, OR

Per ordinance, any properties that in the future request and receive a City subsidy from the Portland Development Corporation or other City bureau or agency for the purpose of creating or preserving rental housing affordable to households below 80% of median family income, will be subject to a minimum of 60 year affordability contract requirement. Furthermore, all City bureaus and agencies administering affordable rental housing subsidy programs are responsible for implementing this section. Penalties for noncompliance include record notice of the applicability of the code to affected properties, filing a lien to enforce the provisions of the code, and developing civil penalties or other enforcement provisions necessary or appropriate to enforce the code. The City Attorney's Office may enforce the provisions in any court of competent jurisdiction or City administrative body.

Denver, CO

Properties that in the future request and receive a City subsidy for the purpose of creating or preserving rental housing affordable to households below 80% of median family income, will be subject to a minimum 20-year affordability contract requirement. Again this parallels the Portland Ordinance but provides for a much shorter affordability requirement. It also obligates all City agencies to implement and compliance procedures are identical to those described above.

Texas

Texas State Statute[49] requires an owner of any housing development who intends to prepay an FHA insured loan, opt out of a housing assistance payments contract under Section 8, sell or lease public housing built under the 1937 Housing Act, or otherwise dispose of a federally assisted development, to provide notice to the Department at least 12 months before the proposed action to enable the Department to attempt to locate a buyer who will conform to the development restrictions provided by the statute, which include: maintenance of affordability for the greater of a 30-year period from the date the recipient takes legal possession of the housing; or the remaining term of the existing federal government assistance. In addition, the agreement between the Department and the recipient shall require the renewal of rental subsidies, if available, and sufficient to maintain the economic viability of the multifamily development.

Massachusetts

For 9% tax credit projects, applicants who commit to affordability in perpetuity receive 6 points in the competitive process; projects which commit to 50 years of affordable rents get 3 points.

Communities can adopt a Community Preservation Act which allows them to increase local property taxes to help support and create affordable housing. An incentive for passing a CPA is the availability of matching state funds collected from document recording fees.

Maine

Maine's QAP includes a 90 year affordability period as a threshold requirement.

Oregon

The State has pending legislation to spur preservation of assisted affordable homes by relieving owners of exit tax burdens if they sell to nonprofits committed to keeping the units affordable.

Minnesota

The Minnesota Housing Finance Agency has a program designed to save projects with federal subsidies in jeopardy of being lost. Called the Preservation Affordable Rental Investment Fund Program (PARIF), it is a $9 million program subject to biennial appropriations which provides low interest-deferred loans to cover costs of preserving permanent affordable rental housing. Funds can be used for acquisition, rehabilitation, debt restructuring, as well as for equity take-out of deferred loans. Eligible projects are those with project based federal subsidies which are at risk of loss within two years due to owner cancellation, a failing REAC and/or diminishing ownership capacity.

Washington, DC

The Affordable Housing Clearinghouse Act of 2007, if enacted,[50] would be one of the nation's first comprehensive and legislatively mandated preservation data systems. The system would contain three elements that the National Low Income Housing Coalition has identified as integral to a comprehensive local affordable housing preservation data system:

- An affordable housing locator to match clients with available or soon-to-be available affordable housing.
- An affordable housing pipeline to identify units proposed, planned, under construction or vacant and ready for occupancy by location, price, and program eligibility requirements.
- A preservation catalog, similar to a pipeline that identifies and tracks all existing affordable housing units, vacant and occupied, for policy and preservation purposes.

Appendix D

Financial Projections and Assumptions

After a review of the applicable affordable housing programs administered by the New York City Housing Development Corporation ("HDC") and the New York City Department of Housing Preservation and Development ("HPD") and discussion with ANHD, it was determined that strike price projections would be prepared for a "typical" project using three of the most commonly used affordable housing project financing structures:

- **A. HDC "LAMP" project** – HDC-issued tax-exempt housing revenue bonds, 4% "as-of-right" LIHTC, HDC subordinate financing, and HPD Housing Trust Fund ("HTF") and Participation Loan Program ("PLP") subordinate financing. We have assumed that 80% of the units would be affordable to households earning 60% AMI and 20% for households earning 30% AMI.

- **B. HPD 9% LIHTC project** – 9% tax credits allocated by HPD, private bank first mortgage, HPD PLP subordinate financing. 50% of the units would be affordable to households at 50% AMI, 20% of the units would be for households earning 60% AMI, and 30% at 80% AMI.

- **C. HDC "NewHOP" project** – HDC-issued taxable bonds, HDC subordinate financing, and HPD PLP and HTF subordinate financing. 80% of the units would be at 100% AMI and 20% at 80% AMI.

Detailed financial projections for each of the three financing structures are in Appendix E. Each set of projections includes an assumptions page that shows cost and financing assumptions and a page summarizing the projected purchase option prices assuming various valuation methodologies. The primary cost and financing assumptions are summarized below.

Development Costs

Acquisition Costs
Given the financing, development and operating cost assumptions discussed below, the LAMP and LIHTC projects are projected to not be financially feasible if acquisition costs are included. The sites for these projects are assumed to have been under prior ownership of the developer or to be City-owned property.

Based on input from interviews, for the NewHOP project acquisition costs of $3 million, approximately $41.00 per buildable square foot, are included in the development budget.

Construction Costs
Based on input from interviews, construction costs are projected to be $230 per square foot (including owner's contingency, $219 per SF without).

Soft Costs
Soft costs are based on comparable projects, industry standards and program requirements. For the LAMP and NewHOP projects, estimated interest costs for the first priority loans are based on the current rates assumed by HDC for underwriting purposes: for the tax-exempt bond LAMP project, 4.5% and 5.5% for short and long-term construction loan rates, respectively (a portion of the bonds are short-term bonds retired after construction completion); and a 6.2% all-in permanent loan rate, including 0.20% annually for HDC servicing and 0.50% annually for REMIC mortgage insurance. For the taxable bond NewHOP project, a construction rate of 6.25% and a per-

manent rate of 6.95%, including the same annual servicing and mortgage insurance costs. Interest costs in the LAMP and NewHOP budgets are shown net of interest earnings on bond proceeds at a projected 2.25% rate. The first priority loan for the 9% LIHTC project, which would come from a conventional bank, is also assumed to be a 6.25% construction loan and a 6.95% permanent loan (the permanent loan is assumed to have SONYMA insurance at the rate includes 0.20% for servicing and 0.50% for SONYMA mortgage insurance). All HDC and HPD subordinate loan interest costs assume a 1.25% interest rate, including servicing costs.

Developer fees are projected to be the maximum allowed under the assumed HDC and HPD financing programs — 15% of tax credit eligible costs (excluding the fee itself) for the LAMP project, 10% of development costs (excluding developer fee and reserves) for the 9% LIHTC project, and 10% of non-subsidized costs for the NewHOP project.

For the LAMP project, operating reserves are projected to equal six months of operating expenses (exceeding HDC requirements but based on typical LIHTC investor requirements); for the 9% LIHTC project, operating reserves are projected to equal six months of operating expenses and debt service. Operating reserves for the NewHOP project are projected to be the HDC minimum amount of $1,000 per unit.

Subsidies, Deferred Fee and Equity

In most cases, the maximum allowable amount of HDC or HPD subordinate loans for projects with these assumed unit affordability mixes are projected assumed.

LAMP: HDC subsidy of $55,000 per unit; $50,000 per unit of HPD HTF funds; $70,000 per unit of HPD PLP funds.

9% LIHTC: $70,000 per unit of HPD PLP funds in addition to an award of $1.1 million of annual tax credits.

NewHOP: HDC subsidy of $65,000 per unit; HTF funds of $50,000 per unit for the units at 80% AMI, PLP funds of $85,000 per unit.

The HDC subordinate loans are assumed to have a 1% interest-only rate, with unpaid interest accruing. For the LAMP project, a 0% rate is assumed for the HPD subsidies (HPD will allow a 0% rate on a case-by-case basis if insufficient cash flow for debt service is available). For the 9% LIHTC and NewHOP projects, a 1% interest-only rate is assumed for the HPD subordinate loans.

Approximately 1/3 of the developer fee for the LAMP project and approximately 1/2 of the developer fee for the 9% LIHTC is projected to have to be deferred. For the NewHOP project, the entire developer fee is projected to be deferred and additional developer equity equal to approximately 15% of TDC is required.

Rents and Income Projections

As all projects are assumed to be entirely rent restricted under the applicable HDC or HPD programs for 30-year regulatory periods. Initial rents are the program 2008 maximum allowable rents for the assumed income levels, and are trended at 2.5% annual inflation. Utility allowances are the HPD 2008 limits assuming tenants pay their own electricity costs and all other utility costs are paid by the building owner.

For Year 30 “High” and “Low” valuations of unrestricted rents, 2038 market rents are projected based on the projected 2008 market rents shown below trended at a 4.1% inflation rate to Year 30.

LAMP and 9% LIHTC High Market Rents

Year 30 Market Rents High	Per Month	Per SF
Studio	$1,100	$26.40
1 BR	$1,400	$28.00
2 BR	$1,700	$25.50
3 BR	$1,900	$22.80
Total		**$25.44**

LAMP and 9% LIHTC Low Market Rents

Year 30 Market Rents Low	Per Month	Per SF
Studio	$1,000	$24.00
1 BR	$1,200	$24.00
2 BR	$1,400	$21.00
3 BR	$1,700	$20.40
Total		**$21.37**

NewHOP High Market Rents

Year 30 Market Rents	Per Month	Per SF
Studio	$1,400	$33.60
1 BR	$1,800	$36.00
2 BR	$2,200	$33.00
3 BR	$2,500	$30.00
Total		**$32.95**

NewHOP Low Market Rents

Year 30 Market Rents	Per Month	Per SF
Studio	$1,100	$26.40
1 BR	$1,400	$28.00
2 BR	$1,700	$25.50
3 BR	$1,900	$22.80
Total		**$25.44**

A 4.1% inflation rate is used to trend market rents for these projects to Year 30 as this is the average annual increase between 1990 and 2006 by the Rent Guidelines Board Rent Index.[51] Given the NewHOP project's higher initial rents, its potential market rents are projected to be higher than the 9% LIHTC and LAMP projects.

Operating Expense Projections

Based on data from ANHD, total operating expenses are projected to be $6,650 per unit annually in the initial operating year (2008) for the NewHOP and LAMP projects, including $250 for required HDC replacement

reserves. The 9% LIHTC project's total per unit annual operating expense amount is projected to be $6,700, including $300 for the HPD required replacement reserve. Expenses are trended at a 3% inflation rate. It is assumed all of the projects would qualify for 25-year 421-tax exemptions, which begin to expire in Year 21 and expire entirely in Year 26.

Loan Underwriting Criteria

As required by HDC and HPD, loans are underwritten to a 1.15 debt coverage ratio on all debt in the first stabilized year.

Building Valuations/Purchase Option Strike Prices

Purchase Option strike prices are estimated for Year 15 and Year 30 for each project based on four different valuation methodologies: High and Low Fair Market Valuations ("FMV"), a "Fair Return Valuation" formula, and a valuation based on the minimum allowable Right of First Refusal amount in the federal tax code for LIHTC properties.

High Fair Market Valuations are projected based on the net operating income in Year 15 or Year 30 for each project divided by capitalization rate of 6%. Two different Year 30 High FMV projections have been made: 1) assuming affordability restrictions have expired at the end of the HDC and HPD regulatory periods, and 2) assuming the continuation of affordability restrictions (which would require changes to current HDC and HPD policies). For the valuations assuming affordability restrictions have ended, project income has been estimated based on the High 2008 market rents trended to 4.1% inflation are used to calculate residential income.

Low Fair Market Valuations are projected based on the net operating income in Year 15 or Year 30 for each project divided by capitalization rate of 7%. Two different Year 30 Low FMV projections have been made: 1) assuming affordability restrictions have expired at the end of the HDC and HPD regulatory periods, and 2) assuming the continuation of affordability restrictions (which would require changes to current HDC and HPD policies). For the valuations assuming affordability restrictions have ended, project income has been estimated based on the Low 2008 market rents trended to 4.1% inflation are used to calculate residential income.

Fair Return Valuations use a formula adapted from one of the "fair return" formulas in the City and County of San Francisco's Assisted Housing Preservation Ordinance: a 10% return on cash investment for each year the owner has owned the development, reduced, as applicable, by any loan proceeds received subsequent to placing in service or the owner's purchase, plus the total amount of debt on the development, plus the federal and state capital gains tax liability resulting from the sale. Outstanding HDC and HPD loans in Year 15 are projected to be assumed by the purchaser and are excluded from the calculation.[52]

The IRC Minimum Valuations is calculated as the outstanding debt and all Federal, State and local taxes attributable to the sale.[53] The HDC and HPD subordinate debt outstanding in Year 15 is projected to be assumed and excluded from the IRC Minimum calculation. Outstanding HDC and HPD loans in Year 20 are projected to be assumed by the purchaser and are excluded from the calculation.

The Summary pages for each set of projections include present valuations of the strike prices at 3% and 5% discount rates.

Refinancing Proceeds

The projections of new first mortgages in Year 15 and Year 30 are based on the assumption that the projects would continue as affordable housing, using the same interest rates and affordability limitations, as used in the original projections. Debt coverage ratios of 1.25 for all debt have been used for the refinancing projections. Projections of the future capital needs in those years have not been prepared.

Appendix E
Financial Models

LAMP Project

Purchase Option Cost Projections Summary

Year 15 Valuations	Total Project	Per SF	Per Unit	PV Per Unit (3%)	PV Per SF (3%)	PV Per Unit (5%)	PV Per SF (5%)	Private Debt Refinancing	Purchase Option Funding Gap	Funding Gap Per Unit	PV of Funding Gap Per Unit
High	$4,823,132	$66	64,308	41,277	43	30,933	32	$3,150,000	1,673,132	22,308	14,319
Low	$4,134,113	$57	55,122	35,380	36	26,514	27	$3,150,000	984,113	13,122	8,422
Fair Return	$1,626,658	$22	21,689	13,921	14	10,433	11	$3,150,000	n/a	n/a	n/a
IRC Minimum	$1,626,658	$22	21,689	13,921	14	10,433	11	$3,150,000	n/a	n/a	n/a

Year 30 Valuations	Total Project	Per SF	Per Unit	PV Per Unit (3%)	PV Per SF (3%)	PV Per Unit (5%)	PV Per SF (5%)	Private Debt Refinancing	Purchase Option Funding Gap	Funding Gap Per Unit	PV of Funding Gap Per Unit
High -- Affordability Restrictions Expired	$51,922,784	$714	692,304	285,220	294	160,183	165	$3,640,000	48,282,784	643,770	265,225
Low -- Affordability Restrictions Expired	$33,903,841	$466	452,051	186,239	192	104,594	108	$3,640,000	30,263,841	403,518	166,244
High -- Affordability Restrictions in Place	$5,571,069	$77	74,281	30,603	32	17,187	18	$3,640,000	1,931,069	25,748	10,608
Low -- Affordability Restrictions in Place	$4,775,202	$66	63,669	26,231	27	14,732	15	$3,640,000	1,135,202	15,136	6,236
Fair Return	$17,777,813	$244	237,038	97,656	101	54,845	57	$3,640,000	14,137,813	188,504	77,661
IRC Minimum	$17,777,813	$244	237,038	97,656	101	54,845	57	$3,640,000	14,137,813	188,504	77,661

LAMP Project

Project Assumptions

Construction Sources	
Tax-Exempt Bond-Financed Loan	$12,530,000
HDC Second Mortgage	$4,125,000
Low-Income Housing Tax Credit Equity 4%	$5,573,354
Deferred Costs	$2,142,378
Developer Equity	$0
Total Construction Sources	**$24,370,732**

Unit Type	Number	% of Total
Total 30% AMI Units	15	20%
Total 60% AMI Units	59	79%
Total 80% AMI Units	0	0%
Total 130% AMI Units	0	0%
Manager's Unit (60% AMI)	1	1%
Total Units	**75**	**100%**

Permanent Sources	
Tax-Exempt Bond-Financed Loan	$2,270,000
HDC Second Mortgage	$4,125,000
HPD PLP	$5,250,000
HPD HTF	$3,750,000
Low-Income Housing Tax Credit Equity 4%	$7,961,934
Deferred Developer's Fee	$1,013,797
Developer Equity	$0
Funding Gap	$0
Total Permanent Sources	**$24,370,732**

LIHTC Units	75	100%
NewHOP Units	0	0%
Market Units	0	0%
Total	**75**	**100%**

Permanent Uses	
Acquisition	$0
Hard Costs	$16,699,081
Soft Costs	$4,645,377
Developer's Fee	$3,026,273
Total Uses	**$24,370,732**

Unit Size	Number	Rooms Per Unit	% of Total
Studio	4	2	5%
1 BR	11	3	15%
2 BR	52	4	69%
3 BR	8	5	11%
4 BR	0	6	0%
Total Units	**75**	**289**	**100%**

Project Assumptions

Square Feet

Item		Value
Total Net Residential Square Fee		58,200
Total Gross Residential Square Feet		72,750
Other Non-Residential Gross Square Feet		0
Gross Commercial Square Feet		0
Total Gross Square Feet		72,750
Square Feet Per Unit (average)	Avg. Net Rental SF	776

Tax Credits

Item	Value
Net Raise per Dollar for State Tax Credits	$0.00
Net Raise per Dollar for Low Income Housing Tax Credits	$0.80
Annual 4% Tax Credit Rate	3.30%
Annual 9% Tax Credit Rate	9.00%
% of Tax Credit Eligible Units	100%
% of Tax Credit Eligible Square Feet	100%
Applicable Fraction	100%
Tax Exempt Bond Financing	Y

Rental Income Calculation @ 60% AMI

Item		Value
Area Median Income		$59,700
Maximum Tax Credit % of AMI		60.00%
Studio Monthly Rent	0 BR	$807
1 BR Monthly Rent	1 BR	$864
2 BR Monthly Rent	2 BR	$1,036
3 BR Monthly Rent	3 BR	$1,197
4 BR Monthly Rent	4 BR	$1,336
5 BR Monthly Rent	5 BR	$1,474

Financing

Item	Value
Construction Loan Rate (short term)	4.50%
Construction Loan Rate (long term)	5.50%
Construction Period until Conversion (months)	30
Construction Period until Completion (months)	24
Construction Loan Origination Fees / HDC	0.75%
Bank Commitment Fees	1.50%
Credit Enhancement Fees (annual during const)	1.00%
Bond Underwriting Fees and Cost of Issuance	1.50%
Other Fees	n/a
Permanent Loan Origination Fees	n/a
Permanent Loan	6.20%
Permanent Loan Term (years)	30
Permanent Loan Amortization (years)	30
Minimum Overall DCR	1.15
Subordinate Mortgage Interest Rate	1.0%
Subordinate Loan Servicing	0.25%

Operating Proformas

Item	Value
First Year of Stabilized Occupancy	2008
Management Fee	6.00%
Vacancy Allowance	5.00%
Rent Inflation Rate	2.50%
Other Income Inflation Rate	2.50%
Operating Expense Inflation Rate	3.00%
Replacement Reserves (Unit/Annually)	$250
Market Rent Inflation Rate to Yr. 30	4.10%

LAMP Project

Residential Proforma

	infl. %	vac. %	2008 Year 1	2009 Year 2	2010 Year 3	2011 Year 4	2012 Year 5	2013 Year 6	2014 Year 7	2015 Year 8	2016 Year 9	2017 Year 10	2018 Year 11	2019 Year 12	2020 Year 13
INCOME															
Residential Income[1]															
Rental Income	2.5%		768,600	787,815	807,510	827,698	848,391	869,600	891,340	913,624	936,464	959,876	983,873	1,008,470	1,033,682
Other Income	2.5%		9,000	9,225	9,456	9,692	9,934	10,183	10,437	10,698	10,966	11,240	11,521	11,809	12,104
Less: Vacancy Allowance		5.0%	(38,880)	(39,852)	(40,848)	(41,870)	(42,916)	(43,989)	(45,089)	(46,216)	(47,372)	(48,556)	(49,770)	(51,014)	(52,289)
Residential Effective Gross Income			*738,720*	*757,188*	*776,118*	*795,521*	*815,409*	*835,794*	*856,689*	*878,106*	*900,059*	*922,560*	*945,624*	*969,265*	*993,496*
Total Effective Gross Income			**738,720**	**757,188**	**776,118**	**795,521**	**815,409**	**835,794**	**856,689**	**878,106**	**900,059**	**922,560**	**945,624**	**969,265**	**993,496**
EXPENSES															
Residential Expenses		Per Unit													
Residential Operating Expenses	3.0%	(6,000)	(450,000)	(463,500)	(477,405)	(491,727)	(506,479)	(521,673)	(537,324)	(553,443)	(570,047)	(587,148)	(604,762)	(622,905)	(641,592)
Residential Real Estate Taxes	3.0%	(400)	(30,000)	(30,900)	(31,827)	(32,782)	(33,765)	(34,778)	(35,822)	(36,896)	(38,003)	(39,143)	(40,317)	(41,527)	(42,773)
Residential Replacement Reserves	3.0%	(250)	(18,750)	(19,313)	(19,892)	(20,489)	(21,103)	(21,736)	(22,388)	(23,060)	(23,752)	(24,464)	(25,198)	(25,954)	(26,733)
Total Residential Expenses		*(6,650)*	*(498,750)*	*(513,713)*	*(529,124)*	*(544,998)*	*(561,348)*	*(578,188)*	*(595,534)*	*(613,400)*	*(631,802)*	*(650,756)*	*(670,278)*	*(690,387)*	*(711,098)*
Total Expenses			**(498,750)**	**(513,713)**	**(529,124)**	**(544,998)**	**(561,348)**	**(578,188)**	**(595,534)**	**(613,400)**	**(631,802)**	**(650,756)**	**(670,278)**	**(690,387)**	**(711,098)**
Net Operating Income			**239,970**	**243,476**	**246,994**	**250,523**	**254,061**	**257,606**	**261,155**	**264,706**	**268,257**	**271,804**	**275,346**	**278,878**	**282,398**
Operating Reserve Draws/Operating Deficit Loans															
First Mortgage Debt Service		6.20%	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)
HDC Subordinate Mortgage Debt Service		1.00%	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)
HPD Subordinate Mortgage Debt Service		0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash Flow after First Mortgage Debt Service		**$0**	**31,883**	**35,389**	**38,907**	**42,437**	**45,975**	**49,519**	**53,069**	**56,620**	**60,170**	**63,718**	**67,259**	**70,791**	**74,311**
		Developer Equity Net of Fee													
First Mortgage Loan Balance End of Year			**2,243,149**	**2,214,585**	**2,184,199**	**2,151,874**	**2,117,488**	**2,080,908**	**2,041,994**	**2,000,598**	**1,956,561**	**1,909,715**	**1,859,880**	**1,806,867**	**1,750,471**
Subordinate Loan Balance End of Year			**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**
DSC on First Mortgage			1.44	1.46	1.48	1.50	1.52	1.54	1.57	1.59	1.61	1.63	1.65	1.67	1.69
DSC on First and Subordinate			1.15	1.17	1.19	1.20	1.22	1.24	1.26	1.27	1.29	1.31	1.32	1.34	1.36
Income to Expense Ratio			1.05	1.05	1.05	1.06	1.06	1.06	1.07	1.07	1.07	1.07	1.08	1.08	1.08

LAMP Project

Residential Proforma

	infl. %	*vac. %*	2021 *Year 14*	2022 *Year 15*	2023 *Year 16*	2024 *Year 17*	2025 *Year 18*	2026 *Year 19*	2027 *Year 20*	2028 *Year 21*	2029 *Year 22*	2030 *Year 23*	2031 *Year 24*	2032 *Year 25*	2033 *Year 26*
INCOME															
Residential Income[1]															
Rental Income	2.5%		1,059,524	1,086,012	1,113,162	1,140,991	1,169,516	1,198,754	1,228,723	1,259,441	1,290,927	1,323,200	1,356,280	1,390,187	1,424,941
Other Income	2.5%		12,407	12,717	13,035	13,361	13,695	14,037	14,388	14,748	15,116	15,494	15,881	16,279	16,685
Less: Vacancy Allowance		5.0%	(53,597)	(54,936)	(56,310)	(57,718)	(59,161)	(60,640)	(62,156)	(63,709)	(65,302)	(66,935)	(68,608)	(70,323)	(72,081)
Residential Effective Gross Income			*1,018,334*	*1,043,792*	*1,069,887*	*1,096,634*	*1,124,050*	*1,152,151*	*1,180,955*	*1,210,479*	*1,240,741*	*1,271,759*	*1,303,553*	*1,336,142*	*1,369,546*
Total Effective Gross Income			**1,018,334**	**1,043,792**	**1,069,887**	**1,096,634**	**1,124,050**	**1,152,151**	**1,180,955**	**1,210,479**	**1,240,741**	**1,271,759**	**1,303,553**	**1,336,142**	**1,369,546**
EXPENSES															
Residential Expenses		Per Unit													
Residential Operating Expenses	3.0%	(6,000)	(660,840)	(680,665)	(701,085)	(722,118)	(743,781)	(766,095)	(789,078)	(812,750)	(837,133)	(862,247)	(888,114)	(914,757)	(942,200)
Residential Real Estate Taxes	3.0%	(400)	(44,056)	(45,378)	(46,739)	(48,141)	(49,585)	(51,073)	(52,605)	(54,183)	(67,722)	(139,508)	(215,540)	(296,008)	(381,111)
Residential Replacement Reserves	3.0%	(250)	(27,535)	(28,361)	(29,212)	(30,088)	(30,991)	(31,921)	(32,878)	(33,865)	(34,881)	(35,927)	(37,005)	(38,115)	(39,258)
Total Residential Expenses		*(6,650)*	*(732,431)*	*(754,404)*	*(777,036)*	*(800,347)*	*(824,358)*	*(849,088)*	*(874,561)*	*(900,798)*	*(939,735)*	*(1,037,682)*	*(1,140,659)*	*(1,248,880)*	*(1,362,569)*
Total Expenses			**(732,431)**	**(754,404)**	**(777,036)**	**(800,347)**	**(824,358)**	**(849,088)**	**(874,561)**	**(900,798)**	**(939,735)**	**(1,037,682)**	**(1,140,659)**	**(1,248,880)**	**(1,362,569)**
Net Operating Income			**285,902**	**289,388**	**292,851**	**296,287**	**299,692**	**303,063**	**306,394**	**309,681**	**301,005**	**234,078**	**162,895**	**87,262**	**6,977**
Operating Reserve Draws/Operating Deficit Loans													45,192	120,825	201,110
First Mortgage Debt Service		6.20%	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)
HDC Subordinate Mortgage Debt Service		1.00%	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)
HPD Subordinate Mortgage Debt Service		0.00%	0	0	0	0	0	0	0	0	0	0	0	0	0
Cash Flow after First Mortgage Debt Service		**$0**	**77,816**	**81,301**	**84,764**	**88,200**	**91,606**	**94,976**	**98,307**	**101,594**	**92,919**	**25,991**	**0**	**0**	**0**
		Developer Equity Net of Fee													
First Mortgage Loan Balance End of Year			**1,690,478**	**1,626,658**	**1,558,766**	**1,486,544**	**1,409,714**	**1,327,983**	**1,241,038**	**1,148,547**	**1,050,156**	**945,488**	**834,143**	**715,695**	**589,691**
Subordinate Loan Balance End of Year			**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**
DSC on First Mortgage			1.71	1.73	1.76	1.78	1.80	1.82	1.84	1.86	1.80	1.40	1.25	1.25	1.25
DSC on First and Subordinate			1.37	1.39	1.41	1.42	1.44	1.46	1.47	1.49	1.45	1.12	1.00	1.00	1.00
Income to Expense Ratio			1.08	1.08	1.09	1.09	1.09	1.09	1.09	1.09	1.08	1.02	1.00	1.00	1.00

LAMP Project

Residential Proforma						Affordability Restrictions in Place	Market Low	Market High
			2034	2035	2036	2037	2037	2037
	infl. %	*vac. %*	*Year 27*	*Year 28*	*Year 29*	*Year 30*	*Year 30*	*Year 30*
INCOME								
Residential Income[1]								
Rental Income	2.5%		1,460,565	1,497,079	1,534,506	1,572,869	4,094,058	4,875,214
Other Income	2.5%		17,103	17,530	17,968	18,418	18,418	18,418
Less: Vacancy Allowance		5.0%	(73,883)	(75,730)	(77,624)	(79,564)	(205,624)	(244,682)
Residential Effective Gross Income			*1,403,784*	*1,438,879*	*1,474,851*	*1,511,722*	*3,906,852*	*4,648,950*
Total Effective Gross Income			**1,403,784**	**1,438,879**	**1,474,851**	**1,511,722**	**3,906,852**	**4,648,950**
EXPENSES								
Residential Expenses		Per Unit						
Residential Operating Expenses	3.0%	(6,000)	(970,466)	(999,580)	(1,029,567)	(1,060,454)	(1,060,454)	(1,060,454)
Residential Real Estate Taxes	3.0%	(400)	(392,544)	(404,320)	(416,450)	(72,818)	(428,943)	(428,943)
Residential Replacement Reserves	3.0%	(250)	(40,436)	(41,649)	(42,899)	(44,186)	(44,186)	(44,186)
Total Residential Expenses		*(6,650)*	*(1,403,446)*	*(1,445,549)*	*(1,488,916)*	*(1,177,458)*	*(1,533,583)*	*(1,533,583)*
Total Expenses			**(1,403,446)**	**(1,445,549)**	**(1,488,916)**	**(1,177,458)**	**(1,533,583)**	**(1,533,583)**
Net Operating Income			**338**	**(6,671)**	**(14,065)**	**334,264**	**2,373,269**	**3,115,367**
Operating Reserve Draws/Operating Deficit Loans			207,748	214,757	222,152			
First Mortgage Debt Service		6.20%	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)	(166,837)
HDC Subordinate Mortgage Debt Service		1.00%	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)	(41,250)
HPD Subordinate Mortgage Debt Service		0.00%	0	0	0	0	0	0
Cash Flow after First Mortgage Debt Service		**$0**	**0**	**0**	**0**	**126,178**	**2,165,182**	**2,907,280**
		Developer Equity Net of Fee						
First Mortgage Loan Balance End of Year			**455,649**	**313,056**	**161,366**	**0**	**0**	**0**
Subordinate Loan Balance End of Year			**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**	**13,125,000**
DSC on First Mortgage			1.25	1.25	1.25	2.00	14.23	18.67
DSC on First and Subordinate			1.00	1.00	1.00	1.61	11.41	14.97
Income to Expense Ratio			1.00	1.00	1.00	1.09	2.24	2.67

LAMP Project

Rent Worksheet

Unit Type[1]	Unit Size	Net Square Feet	Number of Units	SF	Gross Rent	Per Sq. Ft.	Utility Allowances[1]	Net Rent (Net Utility Allowance)	Total Monthly Rent	Total Annual Rent
60% AMI	Studio	500	3	1,500	$807	$19.37	$48.00	$759	$2,277	$27,324
60% AMI	1 BR	600	9	5,400	$864	$17.28	$53.00	$811	$7,299	$87,588
60% AMI	2 BR	800	41	32,800	$1,036	$15.54	$59.00	$977	$40,057	$480,684
60% AMI	3 BR	1,000	6	6,000	$1,197	$14.36	$68.00	$1,129	$6,774	$81,288
30% AMI	Studio	500	1	500	$451	$10.82	$48.00	$403	$403	$4,836
30% AMI	1 BR	600	2	1,200	$485	$9.70	$53.00	$432	$864	$10,368
30% AMI	2 BR	800	10	8,000	$577	$8.66	$59.00	$518	$5,180	$62,160
30% AMI	3 BR	1,000	2	2,000	$666	$7.99	$68.00	$598	$1,196	$14,352
Total 30% AMI Units		*11,700*	15	20%					$7,643	$91,716
Total 60% AMI Units		*45,700*	59	79%					$56,407	$676,884
Manager's Unit (60% AMI)		*800*	1	1%					$0	$0
Total		***58,200***	***75***	*100%*		***$13.21***			***$64,050***	***$768,600***

Other Income Projections

Retail/Commercial Income	Assumes	$0	per square foot
Laundry and Other Income	Assumes	$120	per unit annually
Parking Income	Assumes	$0	per unit

[1]Tenant pays electric only

Year 30 Market Rents Low	Per Month	Per SF	Project Total
Studio	$1,000	$24.00	$48,000
1 BR	$1,200	$24.00	$158,400
2 BR	$1,400	$21.00	$856,800
3 BR	$1,700	$20.40	$163,200
Total		$21.37	$1,226,400
Trended 30 Yrs @ 4.1%			**$4,094,058**

Year 30 Market Rents High	Per Month	Per SF	Project Total
Studio	$1,100	$26.40	$52,800
1 BR	$1,400	$28.00	$184,800
2 BR	$1,700	$25.50	$1,040,400
3 BR	$1,900	$22.80	$182,400
Total		$25.44	$1,460,400
Trended 30 Yrs @ 4.1%			**$4,875,214**

9% LIHTC Project

Purchase Option Cost Projections Summary

Year 15 Valuations	Total Project	Per SF	Per Unit	PV Per Unit (3%)	PV Per SF (3%)	PV Per Unit (5%)	PV Per SF (5%)	Private Debt Refinancing	Purchase Option Funding Gap	Funding Gap Per Unit	PV of Funding Gap Per Unit
High	$4,216,246	$88	84,325	54,125	56	40,562	42	$2,550,000	1,666,246	33,325	21,390
Low	$3,613,925	$75	72,278	46,393	48	34,767	36	$2,550,000	1,063,925	21,278	13,658
Fair Return	$1,311,285	$27	26,226	16,833	17	12,615	13	$2,550,000	n/a	n/a	n/a
IRC Minimum	$1,311,285	$27	26,226	16,833	17	12,615	13	$2,550,000	n/a	n/a	n/a

Year 30 Valuations	Total Project	Per SF	Per Unit	PV Per Unit (3%)	PV Per SF (3%)	PV Per Unit (5%)	PV Per SF (5%)	Private Debt Refinancing	Purchase Option Funding Gap	Funding Gap Per Unit	PV of Funding Gap Per Unit
High -- Affordability Restrictions Expired	$33,264,245	$691	665,285	274,089	285	153,932	160	$3,115,000	30,149,245	602,985	248,422
Low -- Affordability Restrictions Expired	$21,825,172	$454	436,503	179,834	187	100,997	105	$3,115,000	18,710,172	374,203	154,167
High -- Affordability Restrictions in Place	$5,156,626	$107	103,133	42,489	44	23,863	25	$3,115,000	2,041,626	40,833	16,822
Low -- Affordability Restrictions in Place	$4,419,965	$92	88,399	36,419	38	20,454	21	$3,115,000	1,304,965	26,099	10,753
Fair Return	$4,740,750	$99	94,815	39,063	41	21,938	23	$3,115,000	1,625,750	32,515	13,396
IRC Minimum	$4,740,750	$99	94,815	39,063	41	21,938	23	$3,115,000	1,625,750	32,515	13,396

9% LIHTC Project

Project Assumptions

Construction Sources	
Construction Loan	$3,500,000
HPD PLP	$3,500,000
Low-Income Housing Tax Credit Equity 9%	$6,159,384
Deferred Costs	$1,573,884
Developer Equity	$0
Total Construction Sources	**$14,733,268**

Unit Type	Number	% of Total
Total 50% AMI Units	25	50%
Total 60% AMI Units	9	18%
Total 80% AMI Units	15	30%
Manager's Unit (60% AMI)	1	2%
Total Units	**50**	**100%**

Permanent Sources	
SONYMA First Mortgage	$1,775,000
HPD PLP	$3,500,000
Low-Income Housing Tax Credit Equity 9%	$8,799,120
Deferred Developer's Fee	$659,147
Developer Equity	$0
Funding Gap	$0
Total Permanent Sources	**$14,733,267**

LIHTC Units	50	100%
NewHOP Units	0	0%
Market Units	0	0%
Total	**50**	**100%**

Permanent Uses	
Acquisition	$0
Hard Costs	$11,047,223
Soft Costs	$2,375,236
Developer's Fee	$1,310,809
Total Uses	**$14,733,267**

Unit Size	Number	Rooms Per Unit	% of Total
Studio	2	2	4%
1 BR	14	3	28%
2 BR	28	4	56%
3 BR	6	5	12%
4 BR	0	6	0%
Total Units	**50**	**188**	**100%**

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Project Assumptions

Square Feet		
Total Net Residential Square Fee		38,500
Total Gross Residential Square Feet		48,125
Other Non-Residential Gross Square Feet		0
Gross Commercial Square Feet		0
Total Gross Square Feet		48,125
Square Feet Per Unit (average)	Avg. Net Rental SF	770

Tax Credits	
Net Raise per Dollar for State Tax Credits	$0.00
Net Raise per Dollar for Low Income Housing Tax Credits	$0.80
Annual 4% Tax Credit Rate	3.30%
Annual 9% Tax Credit Rate	9.00%
% of Tax Credit Eligible Units	70%
% of Tax Credit Eligible Square Feet	70%
Applicable Fraction	70%
Tax Exempt Bond Financing	Y

Financing	
Construction Loan Rate	6.25%
Construction Period until Conversion (months)	24
Construction Period until Completion (months)	18
Construction Loan Origination Fees / HPD	1.50%
Bank Commitment Fees	1.50%
Credit Enhancement Fees (annual during const)	n/a
Bond Underwriting Fees and Cost of Issuance	n/a
Other Fees	n/a
Permanent Loan Origination Fees	n/a
Permanent Loan	6.95%
Permanent Loan Term (years)	30
Permanent Loan Amortization (years)	30
Minimum Overall DCR	1.15
Subordinate Mortgage Interest Rate	1.0%
Subordinate Loan Servicing (Construction)	0.25%

Rental Income Calculation @ 60% AMI		
Area Median Income		$59,700
Maximum Tax Credit % of AMI		60.00%
Studio Monthly Rent	0 BR	$807
1 BR Monthly Rent	1 BR	$864
2 BR Monthly Rent	2 BR	$1,036
3 BR Monthly Rent	3 BR	$1,197
4 BR Monthly Rent	4 BR	$1,336
5 BR Monthly Rent	5 BR	$1,474

Operating Proformas	
First Year of Stabilized Occupancy	2008
Management Fee	6.00%
Vacancy Allowance	5.00%
Rent Inflation Rate	2.50%
Other Income Inflation Rate	2.50%
Operating Expense Inflation Rate	3.00%
Replacement Reserves (Unit/Annually)	$300
Market Rent Inflation Rate to Yr. 30	4.10%

Development Budget			
General Requirements (%HC)	5.00%	Total Construction Cost Per SF	$230
Contractor Overhead (%HC)	10.00%	Architecture (% HC)	5.00%
Contractor Profits (%HC)	7.00%	Soft Cost Contingency	5.00%
Bond Premium (%HC)	1.00%	Developer Fee/Overhead (% TDC less reserves, fee)	9.96%
Hard Cost Contingency (%HC)	5.00%	Operating Reserve (years)	0.50

9% LIHTC Project

Residential Proforma

	infl. %	vac. %	2008 Year 1	2009 Year 2	2010 Year 3	2011 Year 4	2012 Year 5	2013 Year 6	2014 Year 7	2015 Year 8	2016 Year 9	2017 Year 10	2018 Year 11	2019 Year 12	2020 Year 13
INCOME															
Residential Income[1]															
Rental Income	2.5%		559,950	573,949	588,297	603,005	618,080	633,532	649,370	665,605	682,245	699,301	716,783	734,703	753,070
Other Income	2.5%		6,000	6,150	6,304	6,461	6,623	6,788	6,958	7,132	7,310	7,493	7,681	7,873	8,069
Less: Vacancy Allowance		5.0%	(28,298)	(29,005)	(29,730)	(30,473)	(31,235)	(32,016)	(32,816)	(33,637)	(34,478)	(35,340)	(36,223)	(37,129)	(38,057)
Residential Effective Gross Income			*537,653*	*551,094*	*564,871*	*578,993*	*593,468*	*608,304*	*623,512*	*639,100*	*655,077*	*671,454*	*688,241*	*705,447*	*723,083*
Total Effective Gross Income			**537,655**	**551,096**	**564,874**	**578,996**	**593,470**	**608,307**	**623,515**	**639,103**	**655,080**	**671,457**	**688,244**	**705,450**	**723,086**
EXPENSES															
Residential Expenses		Per Unit													
Residential Operating Expenses	3.0%	(6,000)	(300,000)	(309,000)	(318,270)	(327,818)	(337,653)	(347,782)	(358,216)	(368,962)	(380,031)	(391,432)	(403,175)	(415,270)	(427,728)
Residential Real Estate Taxes	3.0%	(400)	(20,000)	(20,600)	(21,218)	(21,855)	(22,510)	(23,185)	(23,881)	(24,597)	(25,335)	(26,095)	(26,878)	(27,685)	(28,515)
Residential Replacement Reserves	3.0%	(300)	(15,000)	(15,450)	(15,914)	(16,391)	(16,883)	(17,389)	(17,911)	(18,448)	(19,002)	(19,572)	(20,159)	(20,764)	(21,386)
Total Residential Expenses		*(6,700)*	*(335,000)*	*(345,050)*	*(355,402)*	*(366,064)*	*(377,045)*	*(388,357)*	*(400,008)*	*(412,008)*	*(424,368)*	*(437,099)*	*(450,212)*	*(463,718)*	*(477,630)*
Total Expenses			**(335,000)**	**(345,050)**	**(355,402)**	**(366,064)**	**(377,045)**	**(388,357)**	**(400,008)**	**(412,008)**	**(424,368)**	**(437,099)**	**(450,212)**	**(463,718)**	**(477,630)**
Net Operating Income			**202,655**	**206,046**	**209,472**	**212,932**	**216,425**	**219,950**	**223,507**	**227,095**	**230,712**	**234,358**	**238,032**	**241,731**	**245,456**
Operating Reserve Draws															
First Mortgage Debt Service		6.95%	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)
HPD Subordinate Mortgage Debt Service		1.00%	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)
Cash Flow after First Mortgage Debt Service		**$0**	**26,660**	**30,051**	**33,477**	**36,937**	**40,430**	**43,955**	**47,512**	**51,100**	**54,717**	**58,363**	**62,037**	**65,737**	**69,461**
		Developer Equity Net of Fee													
First Mortgage Loan Balance End of Year			**1,756,795**	**1,737,284**	**1,716,372**	**1,693,960**	**1,669,940**	**1,644,196**	**1,616,605**	**1,587,034**	**1,555,341**	**1,521,373**	**1,484,969**	**1,445,952**	**1,404,135**
Subordinate Loan Balance End of Year			**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**
DSC on First Mortgage			1.44	1.46	1.49	1.51	1.53	1.56	1.59	1.61	1.64	1.66	1.69	1.71	1.74
DSC on First and Subordinate			1.15	1.17	1.19	1.21	1.23	1.25	1.27	1.29	1.31	1.33	1.35	1.37	1.39
Income to Expense Ratio			1.05	1.06	1.06	1.07	1.07	1.08	1.08	1.09	1.09	1.10	1.10	1.10	1.11

9% LIHTC Project

Residential Proforma

	infl. %	*vac. %*	2021 *Year 14*	2022 *Year 15*	2023 *Year 16*	2024 *Year 17*	2025 *Year 18*	2026 *Year 19*	2027 *Year 20*	2028 *Year 21*	2029 *Year 22*	2030 *Year 23*	2031 *Year 24*	2032 *Year 25*	2033 *Year 26*
INCOME															
Residential Income[1]															
Rental Income	2.5%		771,897	791,195	810,975	831,249	852,030	873,331	895,164	917,543	940,482	963,994	988,094	1,012,796	1,038,116
Other Income	2.5%		8,271	8,478	8,690	8,907	9,130	9,358	9,592	9,832	10,077	10,329	10,588	10,852	11,124
Less: Vacancy Allowance		5.0%	(39,008)	(39,984)	(40,983)	(42,008)	(43,058)	(44,134)	(45,238)	(46,369)	(47,528)	(48,716)	(49,934)	(51,182)	(52,462)
Residential Effective Gross Income			*741,160*	*759,689*	*778,681*	*798,148*	*818,102*	*838,554*	*859,518*	*881,006*	*903,031*	*925,607*	*948,747*	*972,466*	*996,778*
Total Effective Gross Income			**741,163**	**759,692**	**778,685**	**798,152**	**818,106**	**838,558**	**859,522**	**881,010**	**903,035**	**925,611**	**948,752**	**972,470**	**996,782**
EXPENSES															
Residential Expenses		Per Unit													
Residential Operating Expenses	3.0%	(6,000)	(440,560)	(453,777)	(467,390)	(481,412)	(495,854)	(510,730)	(526,052)	(541,833)	(558,088)	(574,831)	(592,076)	(609,838)	(628,133)
Residential Real Estate Taxes	3.0%	(400)	(29,371)	(30,252)	(31,159)	(32,094)	(33,057)	(34,049)	(35,070)	(36,122)	(44,799)	(92,286)	(142,582)	(195,813)	(252,109)
Residential Replacement Reserves	3.0%	(300)	(22,028)	(22,689)	(23,370)	(24,071)	(24,793)	(25,536)	(26,303)	(27,092)	(27,904)	(28,742)	(29,604)	(30,492)	(31,407)
Total Residential Expenses		*(6,700)*	*(491,959)*	*(506,718)*	*(521,919)*	*(537,577)*	*(553,704)*	*(570,315)*	*(587,425)*	*(605,047)*	*(630,792)*	*(695,859)*	*(764,262)*	*(836,143)*	*(911,649)*
Total Expenses			**(491,959)**	**(506,718)**	**(521,919)**	**(537,577)**	**(553,704)**	**(570,315)**	**(587,425)**	**(605,047)**	**(630,792)**	**(695,859)**	**(764,262)**	**(836,143)**	**(911,649)**
Net Operating Income			**249,204**	**252,975**	**256,766**	**260,575**	**264,402**	**268,243**	**272,098**	**275,963**	**272,243**	**229,752**	**184,490**	**136,327**	**85,133**
Operating Reserve Draws														39,668	90,862
First Mortgage Debt Service		6.95%	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)
HPD Subordinate Mortgage Debt Service		1.00%	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)
Cash Flow after First Mortgage Debt Service		**$0**	**73,210**	**76,980**	**80,771**	**84,580**	**88,407**	**92,248**	**96,103**	**99,968**	**96,249**	**53,758**	**8,495**	**0**	**0**
		Developer Equity Net of Fee													
First Mortgage Loan Balance End of Year			**1,359,318**	**1,311,285**	**1,259,805**	**1,204,631**	**1,145,498**	**1,082,122**	**1,014,198**	**941,400**	**863,378**	**779,757**	**690,136**	**594,084**	**491,140**
Subordinate Loan Balance End of Year			**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**
DSC on First Mortgage			1.77	1.79	1.82	1.85	1.88	1.90	1.93	1.96	1.93	1.63	1.31	1.25	1.25
DSC on First and Subordinate			1.42	1.44	1.46	1.48	1.50	1.52	1.55	1.57	1.55	1.31	1.05	1.00	1.00
Income to Expense Ratio			1.11	1.11	1.12	1.12	1.12	1.12	1.13	1.13	1.12	1.06	1.01	1.00	1.00

9% LIHTC Project

Residential Proforma						Affordability Restrictions in Place	Market Low	Market High
			2034	2035	2036	2037	2037	2037
	infl. %	*vac. %*	*Year 27*	*Year 28*	*Year 29*	*Year 30*	*Year 30*	*Year 30*
INCOME								
Residential Income[1]								
Rental Income	2.5%		1,064,069	1,090,671	1,117,937	1,145,886	2,675,960	3,168,689
Other Income	2.5%		11,402	11,687	11,979	12,278	12,278	12,278
Less: Vacancy Allowance		5.0%	(53,774)	(55,118)	(56,496)	(57,908)	(134,412)	(159,048)
Residential Effective Gross Income			*1,021,697*	*1,047,240*	*1,073,421*	*1,100,256*	*2,553,826*	*3,021,919*
Total Effective Gross Income			**1,021,702**	**1,047,244**	**1,073,425**	**1,100,261**	**2,553,831**	**3,021,924**
EXPENSES								
Residential Expenses		Per Unit						
Residential Operating Expenses	3.0%	(6,000)	(646,977)	(666,387)	(686,378)	(706,970)	(706,970)	(706,970)
Residential Real Estate Taxes	3.0%	(400)	(259,672)	(267,463)	(275,487)	(48,545)	(283,751)	(283,751)
Residential Replacement Reserves	3.0%	(300)	(32,349)	(33,319)	(34,319)	(35,348)	(35,348)	(35,348)
Total Residential Expenses		*(6,700)*	*(938,999)*	*(967,169)*	*(996,184)*	*(790,863)*	*(1,026,069)*	*(1,026,069)*
Total Expenses			**(938,999)**	**(967,169)**	**(996,184)**	**(790,863)**	**(1,026,069)**	**(1,026,069)**
Net Operating Income			**82,703**	**80,076**	**77,242**	**309,398**	**1,527,762**	**1,995,855**
Operating Reserve Draws			93,292	95,919	98,753			
First Mortgage Debt Service		6.95%	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)	(140,995)
HPD Subordinate Mortgage Debt Service		1.00%	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)	(35,000)
Cash Flow after First Mortgage Debt Service		**$0**	**0**	**0**	**0**	**133,403**	**1,351,767**	**1,819,860**
		Developer Equity Net of Fee						
First Mortgage Loan Balance End of Year			**380,809**	**262,561**	**135,827**	**-**	**-**	**-**
Subordinate Loan Balance End of Year			**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**	**3,500,000**
DSC on First Mortgage			1.25	1.25	1.25	2.19	10.84	14.16
DSC on First and Subordinate			1.00	1.00	1.00	1.76	8.68	11.34
Income to Expense Ratio			1.00	1.00	1.00	1.14	2.12	2.51

9% LIHTC Project

Rent Worksheet

Unit Type	Unit Size	Net Square Feet	Number of Units	SF	Gross Rent	Per Sq. Ft.	Utility Allowances[1]	Net Rent (Net Utility Allowance)	Total Monthly Rent	Total Annual Rent
60% AMI	Studio	500	1	500	$807	$19.37	$48.00	$759	$759	$9,108
60% AMI	1 BR	650	3	1,950	$864	$15.95	$53.00	$811	$2,433	$29,196
60% AMI	2 BR	800	4	3,200	$1,036	$15.54	$59.00	$977	$3,908	$46,896
60% AMI	3 BR	1,000	1	1,000	$1,197	$14.36	$68.00	$1,129	$1,129	$13,548
50% AMI	1 BR	650	7	4,550	$720	$13.29	$53.00	$667	$4,669	$56,028
50% AMI	2 BR	800	15	12,000	$863	$12.95	$59.00	$804	$12,065	$144,780
50% AMI	3 BR	1,000	3	3,000	$998	$11.97	$68.00	$930	$2,789	$33,462
80% AMI	Studio	500	1	500	$921	$22.10	$48.00	$873	$873	$10,476
80% AMI	1 BR	650	4	2,600	$1,152	$21.27	$53.00	$1,099	$4,396	$52,752
80% AMI	2 BR	800	8	6,400	$1,382	$20.73	$59.00	$1,323	$10,584	$127,008
80% AMI	3 BR	1,000	2	2,000	$1,597	$19.16	$68.00	$1,529	$3,058	$36,696
Total 50% AMI Units		*19,550*	25	50%					$19,523	$234,270
Total 60% AMI Units		*6,650*	9	18%					$8,229	$98,748
Total 80% AMI Units		*11,500*	15	30%					$18,911	$226,932
Manager's Unit (60% AMI)		*800*	1	2%					$0	$0
Total		***38,500***	***50***	***100%***		***$14.54***			***$46,663***	***$559,950***

Other Income Projections

Retail/Commercial Income	Assumes	$0	per square foot
Laundry and Other Income	Assumes	$120	per unit annually
Parking Income	Assumes	$0	per unit

[1]Tenant pays electric only

Year 30 Market Rents Low	Per Month	Per SF	Project Total
Studio	$1,000	$24.00	$24,000
1 BR	$1,200	$22.15	$201,600
2 BR	$1,400	$21.00	$453,600
3 BR	$1,700	$20.40	$122,400
Total		$20.82	$801,600
Trended 30 Yrs @ 4.1%			**$2,675,960**

Year 30 Market Rents High	Per Month	Per SF	Project Total
Studio	$1,100	$26.40	$26,400
1 BR	$1,400	$25.85	$235,200
2 BR	$1,700	$25.50	$550,800
3 BR	$1,900	$22.80	$136,800
Total		$24.65	$949,200
Trended 30 Yrs @ 4.1%			**$3,168,689**

NewHOP Project

Purchase Option Cost Projections Summary

Year 15 Valuations	Total Project	Per SF	Per Unit	PV Per Unit (3%)	PV Per SF (3%)	PV Per Unit (5%)	PV Per SF (5%)	Private Debt Refinancing	Purchase Option Funding Gap	Funding Gap Per Unit	PV of Funding Gap Per Unit
High	$14,568,681	$200	194,249	124,681	129	93,437	96	$8,805,000	5,763,681	76,849	42,549
Low	$12,487,440	$172	166,499	106,870	110	80,089	83	$8,805,000	3,682,440	49,099	27,185
Fair Return	$9,781,554	$134	130,421	83,712	86	62,735	65	$8,805,000	976,554	13,021	7,209
Debt + Exit Taxes	$3,967,099	$55	52,895	33,951	35	25,443	26	$8,805,000	n/a	n/a	n/a

Year 30 Valuations	Total Project	Per SF	Per Unit	PV Per Unit (3%)	PV Per SF (3%)	PV Per Unit (5%)	PV Per SF (5%)	Private Debt Refinancing	Purchase Option Funding Gap	Funding Gap Per Unit	PV of Funding Gap Per Unit
High -- Affordability Restrictions Expired	$74,693,146	$1,027	995,909	410,301	423	230,431	238	$11,895,000	62,798,146	837,309	344,960
Low -- Affordability Restrictions Expired	$44,505,243	$612	593,403	244,474	252	137,300	142	$11,895,000	32,610,243	434,803	179,133
High -- Affordability Restrictions in Place	$19,685,529	$271	262,474	108,136	111	60,731	63	$11,895,000	7,790,529	103,874	42,795
Low -- Affordability Restrictions in Place	$16,873,311	$232	224,977	92,688	96	52,055	54	$11,895,000	4,978,311	66,377	27,347
Fair Return	$34,216,895	$470	456,225	187,959	194	105,560	109	$11,895,000	22,321,895	297,625	122,618
Debt + Exit Taxes	$19,301,625	$265	257,355	106,027	109	59,546	61	$11,895,000	7,406,625	98,755	40,686

NewHOP Project

Project Assumptions

Construction Sources	
Taxable Bond-Financed Loan	$5,370,000
HDC Second Mortgage	$4,875,000
HPD HTF	$3,000,000
Deferred Costs	$1,079,505
Developer Equity	$3,595,547
Total Construction Sources	**$24,295,053**

Unit Type	Number	% of Total
Total 30% AMI Units	0	0%
Total 60% AMI Units	0	0%
Total 80% AMI Units	59	79%
Total 100% AMI Units	15	20%
Manager's Unit (80% AMI)	1	1%
Total Units	**75**	**100%**

Permanent Sources	
Taxable Bond-Financed Loan	$5,370,000
HDC Second Mortgage	$4,875,000
HPD HTF	$3,000,000
HPD PLP	$6,375,000
Deferred Developer's Fee	$1,004,505
Developer Equity	$3,670,547
Capital Gap	$0
Total Permanent Sources	**$24,295,053**

LIHTC Units	75	100%
NewHOP Units	0	0%
Market Units	0	0%
Total	**75**	**100%**

Permanent Uses	
Acquisition	$3,012,000
Hard Costs	$16,699,081
Soft Costs	$3,579,466
Developer's Fee	$1,004,505
Total Uses	**$24,295,053**

Unit Size	Number	Rooms Per Unit	% of Total
Studio	4	2	5%
1 BR	11	3	15%
2 BR	52	4	69%
3 BR	8	5	11%
4 BR	0	6	0%
Total Units	**75**	**289**	**100%**

Project Assumptions

Square Feet		
Total Net Residential Square Fee		58,200
Total Gross Residential Square Feet		72,750
Other Non-Residential Gross Square Feet		0
Gross Commercial Square Feet		0
Total Gross Square Feet		72,750
Square Feet Per Unit (average)	Net Rental SF	776

Financing	
Construction Loan Rate (long term)	6.25%
Construction Period until Conversion (months)	30
Construction Period until Completion (months)	24
Construction Loan Origination Fees / HDC	0.75%
Bank Commitment Fees	1.50%
Credit Enhancement Fees (annual during const)	1.00%
Bond Underwriting Fees and Cost of Issuance	1.00%
Other Fees	n/a
Permanent Loan Origination Fees	n/a
Permanent Loan	6.95%
Permanent Loan Term (years)	30
Permanent Loan Amortization (years)	30
Minimum Overall DCR	1.15
Subordinate Mortgage Interest Rate	1.0%
HPD Subordinate Loan Servicing (Construction)	0.25%

Tax Credits	
Net Raise per Dollar for State Tax Credits	n/a
Net Raise per Dollar for Low Income Housing Tax Credits	n/a
Annual 4% Tax Credit Rate	n/a
Annual 9% Tax Credit Rate	n/a
% of Tax Credit Eligible Units	0%
% of Tax Credit Eligible Square Feet	0%
Applicable Fraction	0%
Tax Exempt Bond Financing	N

Rental Income Calculation @ 60% AMI		
Area Median Income		$59,700
Maximum Tax Credit % of AMI		60.00%
Studio Monthly Rent	0 BR	$807
1 BR Monthly Rent	1 BR	$864
2 BR Monthly Rent	2 BR	$1,036
3 BR Monthly Rent	3 BR	$1,197
4 BR Monthly Rent	4 BR	$1,336
5 BR Monthly Rent	5 BR	$1,474

Operating Proformas	
First Year of Stabilized Occupancy	2008
Management Fee	6.00%
Vacancy Allowance	5.00%
Rent Inflation Rate	2.50%
Other Income Inflation Rate	2.50%
Operating Expense Inflation Rate	3.00%
Replacement Reserves (Unit/Annually)	$250
Market Rent Inflation Rate to Yr. 30	4.10%

Development Budget			
General Requirements (%HC)	5.00%	Total Construction Cost Per GSF	$230
Contractor Overhead (%HC)	10.00%	Architecture (% HC)	5.00%
Contractor Profits (%HC)	7.00%	Soft Cost Contingency	5.00%
Bond Premium (%HC)	1.00%	Developer Fee/Overhead (% TDC less reserves, fee)	4.33%
Hard Cost Contingency (%HC)	5.00%	Operating Reserve (per unit)	$1,000

NewHOP Project

Residential Proforma

	infl. %	vac. %	2008 Year 1	2009 Year 2	2010 Year 3	2011 Year 4	2012 Year 5	2013 Year 6	2014 Year 7	2015 Year 8	2016 Year 9	2017 Year 10	2018 Year 11	2019 Year 12	2020 Year 13
INCOME															
Residential Income[1]															
Rental Income	2.5%		1,204,212	1,234,317	1,265,175	1,296,805	1,329,225	1,362,455	1,396,517	1,431,430	1,467,215	1,503,896	1,541,493	1,580,030	1,619,531
Other Income	2.5%		9,000	9,225	9,456	9,692	9,934	10,183	10,437	10,698	10,966	11,240	11,521	11,809	12,104
Less: Vacancy Allowance		5.0%	(60,661)	(62,177)	(63,732)	(65,325)	(66,958)	(68,632)	(70,348)	(72,106)	(73,909)	(75,757)	(77,651)	(79,592)	(81,582)
Residential Effective Gross Income			*1,152,551*	*1,181,365*	*1,210,899*	*1,241,172*	*1,272,201*	*1,304,006*	*1,336,606*	*1,370,021*	*1,404,272*	*1,439,379*	*1,475,363*	*1,512,247*	*1,550,053*
Total Effective Gross Income			**1,152,551**	**1,181,365**	**1,210,899**	**1,241,172**	**1,272,201**	**1,304,006**	**1,336,606**	**1,370,021**	**1,404,272**	**1,439,379**	**1,475,363**	**1,512,247**	**1,550,053**
EXPENSES															
Residential Expenses		Per Unit													
Residential Operating Expenses	3.0%	(6,000)	(450,000)	(463,500)	(477,405)	(491,727)	(506,479)	(521,673)	(537,324)	(553,443)	(570,047)	(587,148)	(604,762)	(622,905)	(641,592)
Residential Real Estate Taxes	3.0%	(400)	(30,000)	(30,900)	(31,827)	(32,782)	(33,765)	(34,778)	(35,822)	(36,896)	(38,003)	(39,143)	(40,317)	(41,527)	(42,773)
Residential Replacement Reserves	3.0%	(250)	(18,750)	(19,313)	(19,892)	(20,489)	(21,103)	(21,736)	(22,388)	(23,060)	(23,752)	(24,464)	(25,198)	(25,954)	(26,733)
Total Residential Expenses		*(6,650)*	*(498,750)*	*(513,713)*	*(529,124)*	*(544,998)*	*(561,348)*	*(578,188)*	*(595,534)*	*(613,400)*	*(631,802)*	*(650,756)*	*(670,278)*	*(690,387)*	*(711,098)*
Total Expenses			**(498,750)**	**(513,713)**	**(529,124)**	**(544,998)**	**(561,348)**	**(578,188)**	**(595,534)**	**(613,400)**	**(631,802)**	**(650,756)**	**(670,278)**	**(690,387)**	**(711,098)**
Net Operating Income			**653,801**	**667,653**	**681,775**	**696,174**	**710,854**	**725,818**	**741,073**	**756,622**	**772,470**	**788,623**	**805,085**	**821,861**	**838,955**
First Mortgage Debt Service		6.95%	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)
HDC Subordinate Mortgage Debt Service		1.00%	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)
HPD Subordinate Mortgage Debt Service		1.00%	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)
Cash Flow after First Mortgage Debt Service		**$3,670,547**	**84,742**	**98,593**	**112,716**	**127,115**	**141,794**	**156,759**	**172,013**	**187,563**	**203,411**	**219,564**	**236,026**	**252,801**	**269,896**
		Developer Equity Net of Fee													
First Mortgage Loan Balance End of Year			**5,314,923**	**5,255,894**	**5,192,630**	**5,124,826**	**5,052,156**	**4,974,272**	**4,890,798**	**4,801,336**	**4,705,453**	**4,602,690**	**4,492,554**	**4,374,514**	**4,248,004**
Subordinate Loan Balance End of Year			**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**
DSC on First Mortgage			1.53	1.57	1.60	1.63	1.67	1.70	1.74	1.77	1.81	1.85	1.89	1.93	1.97
DSC on First and Subordinate			1.15	1.17	1.20	1.22	1.25	1.28	1.30	1.33	1.36	1.39	1.41	1.44	1.47
Income to Expense Ratio			1.08	1.09	1.10	1.11	1.13	1.14	1.15	1.16	1.17	1.18	1.19	1.20	1.21

NewHOP Project

Residential Proforma

	infl. %	vac. %	2021 Year 14	2022 Year 15	2023 Year 16	2024 Year 17	2025 Year 18	2026 Year 19	2027 Year 20	2028 Year 21	2029 Year 22	2030 Year 23	2031 Year 24	2032 Year 25	2033 Year 26
INCOME															
Residential Income[1]															
Rental Income	2.5%		1,660,020	1,701,520	1,744,058	1,787,659	1,832,351	1,878,160	1,925,114	1,973,242	2,022,573	2,073,137	2,124,965	2,178,089	2,232,542
Other Income	2.5%		12,407	12,717	13,035	13,361	13,695	14,037	14,388	14,748	15,116	15,494	15,881	16,279	16,685
Less: Vacancy Allowance		5.0%	(83,621)	(85,712)	(87,855)	(90,051)	(92,302)	(94,610)	(96,975)	(99,399)	(101,884)	(104,432)	(107,042)	(109,718)	(112,461)
Residential Effective Gross Income			*1,588,805*	*1,628,525*	*1,669,238*	*1,710,969*	*1,753,743*	*1,797,587*	*1,842,527*	*1,888,590*	*1,935,804*	*1,984,200*	*2,033,805*	*2,084,650*	*2,136,766*
Total Effective Gross Income			**1,588,805**	**1,628,525**	**1,669,238**	**1,710,969**	**1,753,743**	**1,797,587**	**1,842,527**	**1,888,590**	**1,935,804**	**1,984,200**	**2,033,805**	**2,084,650**	**2,136,766**
EXPENSES															
Residential Expenses		Per Unit													
Residential Operating Expenses	3.0%	(6,000)	(660,840)	(680,665)	(701,085)	(722,118)	(743,781)	(766,095)	(789,078)	(812,750)	(837,133)	(862,247)	(888,114)	(914,757)	(942,200)
Residential Real Estate Taxes	3.0%	(400)	(44,056)	(45,378)	(46,739)	(48,141)	(49,585)	(51,073)	(52,605)	(54,183)	(67,722)	(139,508)	(215,540)	(296,008)	(381,111)
Residential Replacement Reserves	3.0%	(250)	(27,535)	(28,361)	(29,212)	(30,088)	(30,991)	(31,921)	(32,878)	(33,865)	(34,881)	(35,927)	(37,005)	(38,115)	(39,258)
Total Residential Expenses		*(6,650)*	*(732,431)*	*(754,404)*	*(777,036)*	*(800,347)*	*(824,358)*	*(849,088)*	*(874,561)*	*(900,798)*	*(939,735)*	*(1,037,682)*	*(1,140,659)*	*(1,248,880)*	*(1,362,569)*
Total Expenses			**(732,431)**	**(754,404)**	**(777,036)**	**(800,347)**	**(824,358)**	**(849,088)**	**(874,561)**	**(900,798)**	**(939,735)**	**(1,037,682)**	**(1,140,659)**	**(1,248,880)**	**(1,362,569)**
Net Operating Income			**856,374**	**874,121**	**892,202**	**910,622**	**929,386**	**948,498**	**967,965**	**987,792**	**996,069**	**946,518**	**893,146**	**835,769**	**774,197**
First Mortgage Debt Service		6.95%	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)
HDC Subordinate Mortgage Debt Service		1.00%	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)
HPD Subordinate Mortgage Debt Service		1.00%	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)
Cash Flow after First Mortgage Debt Service		$3,670,547	287,314	305,062	323,143	341,562	360,326	379,439	398,906	418,732	427,010	377,459	324,087	266,710	205,138
		Developer Equity Net of Fee													
First Mortgage Loan Balance End of Year			**4,112,416**	**3,967,099**	**3,811,354**	**3,644,433**	**3,465,535**	**3,273,799**	**3,068,305**	**2,848,065**	**2,612,021**	**2,359,040**	**2,087,905**	**1,797,315**	**1,485,872**
Subordinate Loan Balance End of Year			**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**
DSC on First Mortgage			2.01	2.05	2.09	2.13	2.18	2.22	2.27	2.32	2.34	2.22	2.09	1.96	1.81
DSC on First and Subordinate			1.50	1.54	1.57	1.60	1.63	1.67	1.70	1.74	1.75	1.66	1.57	1.47	1.36
Income to Expense Ratio			1.22	1.23	1.24	1.25	1.26	1.27	1.28	1.28	1.28	1.23	1.19	1.15	1.11

NewHOP Project

Residential Proforma						Affordability Restrictions in Place	Market Low	Market High
			2034	2035	2036	2037	2037	2037
	infl. %	*vac. %*	*Year 27*	*Year 28*	*Year 29*	*Year 30*	*Year 30*	*Year 30*
INCOME								
Residential Income[1]								
Rental Income	2.5%		2,288,355	2,345,564	2,404,203	2,464,308	4,875,214	6,313,342
Other Income	2.5%		17,103	17,530	17,968	18,418	18,418	18,418
Less: Vacancy Allowance		5.0%	(115,273)	(118,155)	(121,109)	(124,136)	(244,682)	(316,588)
Residential Effective Gross Income			*2,190,185*	*2,244,940*	*2,301,063*	*2,358,590*	*4,648,950*	*6,015,172*
Total Effective Gross Income			**2,190,185**	**2,244,940**	**2,301,063**	**2,358,590**	**4,648,950**	**6,015,172**
EXPENSES								
Residential Expenses		Per Unit						
Residential Operating Expenses	3.0%	(6,000)	(970,466)	(999,580)	(1,029,567)	(1,060,454)	(1,060,454)	(1,060,454)
Residential Real Estate Taxes	3.0%	(400)	(392,544)	(404,320)	(416,450)	(72,818)	(428,943)	(428,943)
Residential Replacement Reserves	3.0%	(250)	(40,436)	(41,649)	(42,899)	(44,186)	(44,186)	(44,186)
Total Residential Expenses		*(6,650)*	*(1,403,446)*	*(1,445,549)*	*(1,488,916)*	*(1,177,458)*	*(1,533,583)*	*(1,533,583)*
Total Expenses			**(1,403,446)**	**(1,445,549)**	**(1,488,916)**	**(1,177,458)**	**(1,533,583)**	**(1,533,583)**
Net Operating Income			**786,739**	**799,390**	**812,147**	**1,181,132**	**3,115,367**	**4,481,589**
First Mortgage Debt Service		6.95%	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)	(426,559)
HDC Subordinate Mortgage Debt Service		1.00%	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)	(48,750)
HPD Subordinate Mortgage Debt Service		1.00%	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)	(93,750)
Cash Flow after First Mortgage Debt Service		**$3,670,547**	**217,680**	**230,331**	**243,088**	**612,073**	**2,546,308**	**3,912,530**
		Developer Equity Net of Fee						
First Mortgage Loan Balance End of Year			**1,152,082**	**794,339**	**410,926**	**-**	**-**	
Subordinate Loan Balance End of Year			**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**	**14,250,000**
DSC on First Mortgage			1.84	1.87	1.90	2.77	7.30	10.51
DSC on First and Subordinate			1.38	1.40	1.43	2.08	5.47	7.88
Income to Expense Ratio			1.11	1.11	1.12	1.35	2.21	2.86

NewHOP Project

Rent Worksheet

Unit Type	Unit Size	Net Square Feet	Number of Units	SF	Gross Rent	Per Sq. Ft.	Utility Allowances[1]	Net Rent (Net Utility Allowance)	Total Monthly Rent	Total Annual Rent
80% AMI	Studio	500	3	1,500	$921	$22.10	$48.00	$873	$2,619	$31,428
80% AMI	1 BR	600	9	5,400	$1,152	$23.04	$53.00	$1,099	$9,891	$118,692
80% AMI	2 BR	800	41	32,800	$1,382	$20.73	$59.00	$1,323	$54,243	$650,916
80% AMI	3 BR	1,000	6	6,000	$1,597	$19.16	$68.00	$1,529	$9,174	$110,088
100% AMI	Studio	500	1	500	$1,152	$27.65	$48.00	$1,104	$1,104	$13,248
100% AMI	1 BR	600	2	1,200	$1,440	$28.80	$53.00	$1,387	$2,774	$33,288
100% AMI	2 BR	800	10	8,000	$1,728	$25.92	$59.00	$1,669	$16,690	$200,280
100% AMI	3 BR	1,000	2	2,000	$1,996	$23.95	$68.00	$1,928	$3,856	$46,272
Total 80% AMI Units		*45,700*	59	79%					$75,927	$911,124
Total 100% AMI Units		*11,700*	15	20%					$24,424	$293,088
Manager's Unit (80% AMI)		*800*	1	1%					$0	$0
Total		***58,200***	***75***	*100%*		***$20.69***			***$100,351***	***$1,204,212***

Other Income Projections

Retail/Commercial Income	Assumes	$0	per square foot
Laundry and Other Income	Assumes	$120	per unit annually
Parking Income	Assumes	$0	per unit

[1]Tenant pays electric only

Year 30 Market Rents Low	Per Month	Per SF	Project Total
Studio	$1,100	$26.40	$52,800
1 BR	$1,400	$28.00	$184,800
2 BR	$1,700	$25.50	$1,040,400
3 BR	$1,900	$22.80	$182,400
Total		$25.44	$1,460,400
Trended 30 Yrs @ 4.1%			**$4,875,214**

Year 30 Market Rents High	Per Month	Per SF	Project Total
Studio	$1,400	$33.60	$67,200
1 BR	$1,800	$36.00	$237,600
2 BR	$2,200	$33.00	$1,346,400
3 BR	$2,500	$30.00	$240,000
Total		$32.95	$1,891,200
Trended 30 Yrs @ 4.1%			**$6,313,342**

Appendix F

Interviews

Been, Vicki, *Director*
NYU Furman Center

Bouton, Paul, Esq.
Nixon Peabody (Boston)

Cohen, Alan, Esq., *Partner*
Paul, Hastings, Janofsky & Walker LLP

Deller, Lisa, *Director of Asset Management*
NEF

Chiaia, Joyce, Asset Management
The Richman Group

Diallobe, Jamilah, *Managing Director, Asset Management*
Enterprise Community Partners

Esrapour, Robert, *Developer*
Artemis Construction

Garrido, Tonya, *Asset Manager*
Enterprise Asset Management

Greilsheimer, James, Esq., *Partner*
Kramer Leven

Griffin, Mark, Esq.
Griffin & Murphy

Hahn, Jonette, *Principal*
Reznick Group

Heiss, Korbin
Centerline Capital

Levy, Dina, *Project Director*
UHAB

Lindhurst, Rebecca, *Associate*
"Bread In Our City", Washington, Dc

McCarthy, John, *Executive Vice President*
CPC

McDonough, Brian, Esq.
Stearns Weaver, Miami, Florida

Moelis, Ron, *Developer*
L&M Equity

Reiman, Garth, *Director of Policy & Government Affairs*
NCSHA

Restuccia, Joseph, *Executive Director*
Clinton HDC

Richardson, Karl, *Accountant*

Roger, Stephen
Centerline Capital

Ross, Jaimie, *Affordable Housing Director*
1000 Friends of Florida

Salama, Jerry, *Developer*
Janus Property Company

Schorr, Wendy, Asset Management
Settlement Housing Fund

Shkury, Shimon, *Partner*
Massey, Knakal Realty Services

Sigal, Abby Jo, *Executive Director*
Enterprise Community, New York

Suarez, Arturo, *Housing Director*
LISC NYC

Traylor, William, *President*
Richman Housing Resources

Veloza, Lauren, *Compliance Monitoring*
The Richman Group

Weinberg, Michael, *Appraiser*

Willis, Mark, *Chairman*
Housing First!

New York City Department of Housing Preservation and Development

- Becky Koepnick, Commissioner's Office
- Christopher Allred, *Director*, Tax Credits and Compliance Unit
- Nayana Saraiya, *HOME Coordinator*
- Robert King,
  Tax Credit Compliance Monitoring Coordinator
- Gary Sloman, Asset Management
- Steve Selzer, Asset Management
- Arden Sokolow, Inclusionary Zoning
- Elaine Calos, PLP,
  Article 8A and TPT loan programs
- Louis Johnson, PLP Loans
- Barbara Udell, PLP Loans

New York City Housing Development Corporation

- Teresa Gigliello, *Director of Asset Management*
- Richard Froelich, *Executive VP/General Counsel* (not full interview)
- Joan Tally, *Senior Vice President*

New York State Division of Housing and Community Renewal

- David Cabrera, *Deputy Commissioner* for Office of Housing Operations
- Rich McCurnin, *Assistant Commissioner*, Office of Housing Operations
- Dominic Cardillo, *Assistant Director*, Asset Management

New York State Housing Finance Agency

- Joy Willig, *General Counsel*
- Daniel Murphy, *VP*, Housing Portfolio Management (not full interview)
- Roger Harry, *Staff*, formerly in
  Housing Portfolio Management

Washington State HFA

- Tim Sovold, *Compliance and Preservation Division Director*

Minnesota HFA

- Megi Devoe, *Compliance Division*
- Susan Thompson, *Housing Director*

Colorado HFA

- Tasha Weaver, Compliance Division

Texas DHCA

- Wendy Quackenbush, Compliance Division

Rhode Island Housing Resources Commission

- Ray Neirinckx, Office of Policy And Planning

Portland, OR Bureau of Housing and Community Development

- Beth Kaye, *Program Manager*, Policy Planning and Communications

San Francisco Redevelopment Authority

- Olsen Lee, *Deputy Executive Director of Housing*

Washington D.C. Dept. of Housing and Community Development

- Lauren Pair, *Rental Conversion and Sale Administrator*
- Robert Simon, *Director*,
  First Right to Purchase Program
- Anita Visser, *Housing Regulation Administrator*

Appendix G

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Part I

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12. **Designing Subsidized Rental Housing Programs: What Have We Learned? –** Jill Khadduri and Charles Wilkins, Harvard University Joint Center for Housing Studies, March 2007

Part II

1. Regulatory Agreement – NYC HPD and XXXXX (Bonds, 4% LIHTC)
2. Regulatory Agreement –NYSHFA and XXXXX (Bonds, 4% LIHTC)
3. Regulatory Agreement – NYCHDC and Albany Crossings (LIHTC/Section 8)
4. *NYHomes* on line instructions to owners for managing and reporting on properties financed with bonds/credits
5. *Guide for Completing Form 8823 LIHTC Agencies Report of Noncompliance of Building Disposition* – IRS, Revised January 2007
6. *MOU Among Dept of Treasury, Dept of Justice and HUD on LIHTC* – 2000
7. *Revisions and Clarifications to the Marketing, Lottery and Application Screening Process for HDC Financed Low-Income Housing Programs* – April 2008
8. *Minnesota HFA Post Year 15 Compliance Manual* – January 2008 (on computer).
9. *Washington State HFC Post Year 15 Compliance Manual* – April 2008
10. *Texas Administrative Code*: *Monitoring Procedures for Housing Tax Credit Properties After the Compliance Period*
11. *NYS DHCR 2008 QAP* – February 2008
12. ESIC Physical Property Condition Guidelines
13. ESIC Portfolio Risk Rating Criteria
14. ESIC Risk Rating
15. NYC Housing, Preservation and Development Web Site
16. *Home Program Requirements, Year 2007 – Owner's Guide* – NYCHPD 5/25/07
17. Regulatory Agreement—NYCHDC and 2238 Creston Ave (NHOP)
18. *Assessing Property Management for Affordable Housing* – NeighborWorks, Sept. 2004
19. *Audit Report on the Monitoring of the Award, Transfer and Succession of Mitchell-Lama Apartments by the Department of HPD* – Office of the Comptroller, NYC, March 24, 2008

Appendix H

Protocol for Compliance Interviews

Interview with:
Organization: Date:

1. How many properties do you supervise? How many units?
2. What programs do they fall under?
3. What is the staff to property ratio?
4. Do you use the same methods for all programs?
a. Frequency of inspections
b. Frequency of receipt and review of financial data
5. Do you use the same standards for all financing programs?
6. How do you identify properties which have potential problems?
7. How do you handle workouts?
8. What differences do you see between LIHTC and non LIHTC properties in terms of compliance?
9. Who does your compliance training? How often is it done?
10. Are your procedures in writing – how often are they updated?
11. What kinds of issues is your staff encountering?
12. How do you deal with non-compliance? Who are violations referred to? What is the average time required to resolve non-compliance cases?
13. How do you handle monitoring of properties with multiple subsidy sources?
Other Comments:

End Notes

[1] Tenants, resident management corp. of building, not-for-profit organization (501c3 or 4 organizations) or govt. agency.

[2] IRC 42(i)(7)(B)

[3] Legislative Provisions to Support the Preservation of Affordable Housing, April 2007; Compiled by the National Preservation Working Group (Knowledgeplex)

[4] Designing Subsidized Rental Housing Programs: What Have We Learned? Jill Khadduri and Charles Wilkins, Harvard University Joint Center for Housing Studies, March 2007

[5] Olson Lee, Deputy Executive Director, San Francisco Redevelopment Agency

[6] Chapter 60.2 Purposes of the Administrative Code of the City and County of San Francisco. (Added by Ord. 332-90, App. 10/3/90)

[7] SEC. 60.3. FINDINGS., paragraph (i).

[8] This formula is more fully described in Appendix D.

[9] Olson Lee, Deputy Executive Director, San Francisco Redevelopment Authority; City and County of San Francisco The City has preserved approximately 1,800 units. Not counting bonds, the City has invested $51 million to preserve these units.

[10] California State Government Code Sections 65863.10-12

[11] Although New York's AMI is $59,700 for a family of four in 2008, LIHTC rents are calculated against an assumed AMI of $76,800.

[12] Article 11 of the Administrative Code of the City of New York, amended by Act 486-A in 2006. The exclusion area, which was negotiated by the State, includes Manhattan south of 136th Street and west of 5th Avenue, as well as south of 117th Street in East Harlem and an area between 124th and 126th streets in Central/East Harlem. Also includes Downtown Brooklyn, Carroll Gardens, Cobble Hill, Boerum Hill, Park Slope and most of Fort Greene, Prospect Heights, Williamsburg and Greenpoint and parts of Sunset Park and Bushwick, and parts of Queens.

[13] Based on discussions with developers, brokers and appraisers (see Appendix F), capitalization of net operating income was selected as the most commonly used valuation methodology, although typically also used in concert with gross rent multiples, supportable debt projections and comparable costs per square foot. A cap rate of 6% is used for the low FMV and a cap rate of 7% for the high FMV. It should be noted that cap rates are a function of market conditions and can change dramatically as markets change. Rents, which are subject to rent stabilization law, for the high and low scenarios are shown for each project in Appendix D.

[14] The formula used for the Minimum Return Value is similar to one of the formulas in the City and County of San Francisco's Assisted Housing Preservation Ordinance, Administrative Code Chapter 60.8 (i)(2): a 10% return on cash investment for each year the owner has owned the development, reduced by any loan proceeds received subsequent to placing in service or the owner's purchase, plus the total amount of debt on the development, plus the federal and state capital gains tax liability resulting from the sale.

[15] Harvard University Joint Center for Housing Studies

[16] The total development costs for the NewHOP project include land acquisition costs; the LAMP and 9% LIHTC projects are assumed to be developed on City-owned property transferred to the developer at nominal cost.

[17] Guide for Completing Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance or Building Disposition, Revised January 2007

[18] Page 1-1 of the Guide

[19] This leads to an interesting question in terms of what will occur once investors go away in year 15.

[20] The Richman Group is very active with sponsors of supportive housing projects and it is possible that this problem is somewhat localized to that particular population. This point was not raised by any other parties interviewed.

[21] "After Year 15: Challenges to the Preservation of Housing Financed with Low-Income Housing Tax Credits" by Alex Schwartz, Milano The New School for Management and Urban Policy and Edwin Melendez, City University of New York. Housing Policy Debate Volume 19 Issue 2 © 2008 Metropolitan Institute At Virginia Tech

[22] Inclusionary Housing Program, HPD

[23] Ibid.

[24] Compliance and Preservation Division Director, Washington State HFC

[25] Beth Kaye, City of Portland. Program Manager, Policy Planning and Communications, Bureau of Housing and Community Development

[26] Harvard University Joint Center for Housing Studies, March 2007

[27] Per HDC, projects being done today often require nearly $200,000 in subsidy in addition to cash investments and no developer fee.

[28] Sigal, Abby Jo. Executive Director, Enterprise Community, New York.

[29] There was no follow up done with any of the state and city officials responsible for these programs to determine how effective they have proved to be or whether there have been legal challenges to any of these statutes.

[30] Illinois Housing Development Act 20 ILCS 3805/8

[31] Section 7.19 of the Illinois Housing Development Act [20 ILCS 3805/7.19] and the Federally Assisted Housing Preservation Act [310 ILCS 60]

[32] 1993, c. 175, §11 (amd)

[33] Rhode Island Housing Resources Commission, Office of Policy and Planning

[34] Study commissioned by the Fannie Mae Foundation and conducted by the Georgetown University Law Center's Harrison Institute for Public Law, Summer 2006.

[35] Secretary of DC City Council, Cynthia Brock-Smith, stated on May 19, 2008 that this bill has not yet come up for vote

[36] National Housing Trust testimony on April 14, 2008

[37] Bread in our City, a nonprofit advocacy group

[38] Bob Simon, DCHR

[39] Project Based Section 8, Section 221(d)(3)BMIR, Section 236, Section 202, Section 515, LIHTC.

[40] Tenant associations; local, regional or national nonprofits and public agencies; profit motivated organizations or individuals.

[41] Chapter 40T, Preservation of Publicly Assisted Housing of Mass. General Laws

[42] Chapter 30.01 Affordable Housing Preservation - Portland, Oregon (New Title added by Ordinance No. 172844, effective November 4, 1998)

[43] City of Portland

[44] Ordinance No. 757-00, § 1, 9-25-00

[45] Limited to project based Section 8's with FHA insurance whose rents are above market.

[46] not-for-profit corporations or charitable organizations or their wholly-owned subsidiaries; housing development fund companies (pursuant to Article 11 of the PHFL); municipalities; counties (counties with their own department of assessment may be direct recipients; other counties are eligible only as local program administrators); housing authorities (for properties owned after July 1, 1986 only); private developers who make equity investments in a project and who limit their profits or rate of return to investors; or partnerships in which the nonprofit partner has at least a 50 percent controlling interest.

[47] Michelle de la Uz, The New School – March 26, 2008: "How Can New York Preserve Housing Affordability"

[48] HUD's Mark-to-Market program introduced an important conceptual innovation: the operating expense cushion. This measurement is calculated by dividing cash flow after debt service by total operating expenses. The resulting percentage is the increase in operating expenses that the property could sustain without incurring negative cash flow. Compared to the traditional debt service coverage ratio, the operating expense cushion is a more direct way of measuring the ability of a property to withstand economic shocks and is particularly appropriate in affordable rental housing that often has minimal debt service.

[49] Sec. 2306.185. Long-Term Affordability And Safety Of Multifamily Rental Housing Developments

[50] First vote passed the DC City Council on May 6, 2008; second vote was scheduled for June.

[51] "2008 Income and Expense Study," New York City Rent Guidelines Board.

[52] City and County of San Francisco's Assisted Housing Preservation Ordinance, Administrative Code Chapter 60.8 (i)(2)

[53] IRC 42(i)(7)(B).

The Association for Neighborhood and Housing Development

The Association for Neighborhood and Housing Development (ANHD) is a membership organization of New York City not-for-profit neighborhood housing groups. Our mission is to ensure flourishing neighborhoods and decent, affordable housing for all New Yorkers. We pursue this mission by supporting the programs and advancing the priorities of our member organizations engaged in community development and community organizing is low- and moderate-income neighborhoods throughout the city.

We have 97 member organizations composed of CDCs, community organizing groups and supportive housing providers. Our members have successfully rebuilt blighted neighborhoods and have preserved poor and working class communities as safe and decent places to live. The New York City not-for-profit housing sector has developed over 100,000 units of low- and moderate-income housing; the ANHD membership directly operates over 35,000 units, providing housing for over 100,000 people. In addition to housing programs, our membership has also sponsored exciting and innovative commercial revitalization projects, engaged in workforce development initiatives and obtained substantial improvements in quality of life in the areas of public safety, education, child care, and open spaces for the neighborhood people they serve.

Visit www.anhd.org for more information about ANHD and our Permanent Affordability campaign.

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