CITY OF NEW YORK
MANHATTAN COMMUNITY BOARD FOUR
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Delores Rubin
Chair

Jesse Bodine
District Manager

December 18, 2017

Anne-Marie Hendrickson
Deputy Commissioner for Asset and Property Management
Department of Housing Development and Preservation
100 Gold Street
New York, NY 10038

Re: Hell's Kitchen/Chelsea HDFC Committee
Community Response to Proposed HDFC Regulatory Agreement

Dear Commissioner Hendrickson:

At the November 16, 2017 meeting of Manhattan Community Board 4's (MCB4) Housing, Health and Human Services Committee, the Hell's Kitchen/Chelsea HDFC Committee ("HK/Chelsea HDFC Committee") presented its comments on HPD's proposed changes to the HDFC Regulatory Agreement. By vote of 36 in favor, 3 opposed, 3 abstaining, and 1 present but not eligible to vote[1], MCB4 voted to support the recommendations made by the HDFC Committee.

Background--History of HDFC Co-ops in MCB4

During the 1970s and 1980s, building owners across New York City, including many in Manhattan Community District 4 (MCD4), were abandoning multifamily residential buildings and failing to pay real estate taxes that were due to the City. In an effort to stabilize these neglected buildings and the neighborhoods around them, the City took ownership of these properties and established the Division of Alternative Management Programs (DAMP). Two of the programs under that division, the Tenant Interim Lease (TIL) and the Community Management Program (CMP), were established to create affordable tenant cooperatives.

Citywide, many of the buildings were sold to tenants at $250 per unit—a nominal price that was intended to ensure shareholders' commitment to maintaining the units affordability. In 1978, HPD promised to extend that sale price to MCD4. By 1982, however, HPD had reneged on its promise and the community organized to demand that HPD allow MCD4 tenants to purchase their units for $250. Those organization efforts were successful. In 1982, the City's Board of Estimate reconfirmed the $250 price, along with a 40% recapture on apartment sale profits to be

[1] Joe Restuccia, a member of MCB4 who is Co-Chair of the Housing Health and Human Services Committee is Executive Director of the Clinton Housing Development Company, which has applied to become a monitoring agent for HDFC co-ops. Mr. Restuccia recused himself from voting.

paid back to the City. From 1981 until 2003, 949 apartments in 92 buildings were established as affordable tenant owned cooperatives through TIL and CMP in MCD4.

The presence of HDFC co-ops in MCD4 has brought stability to many blocks in our community and has provided a reliable affordable housing resource for our district's long-term residents. HDFC co-ops in MCD4 have maintained strong record of preserving affordability and ensuring their own fiscal health.

HPD Proposed Changes to HDFC Regulatory Agreement

The DAMP cap tax abatement legislation is set to expire in June 2029. In February 2017, HPD proposed a new HDFC Regulatory Agreement for HDFC co-ops throughout the City. Both MCB4 and the HK/Chelsea HDFC Committee are opposed to any repeal of the DAMP cap tax abatement legislation.

To ensure continued affordability, HPD proposed a deeper, extended tax abatement than the current DAMP abatement. However in exchange for that further benefit, that agreement would include required monitoring and compliance of HDFC co-ops as detailed below:

- *Duration of Agreement:* 40 years
- *Tax Exemption*: duration would last as long as the Agreement—40 years—and would account for the added costs associated with compliance with the new HDFC Regulatory Agreement
    - Co-ops that have "high rates of financial distress" would be exempt from paying any residential property taxes
    - "High-value co-ops" would also be eligible to receive tax abatement
- *Maintenance Fees*: must be increased by 2% every year to keep pace with inflation
- *Compliance and Monitoring*: HDFCs will be required to have a monitoring agent to ensure compliance with HDFC Regulatory Agreement as well as the fiscal health of the co-op
- *Residency*: Shareholders must live in their unit at least 270 days per year
- *Resale Restrictions:* Current shareholders would have to sell their units at prices affordable to households earning 110% AMI or below. New Shareholders would have to earn 120% AMI or below and assets at or below 175% AMI.
    - Allows a "carve-out" for units that were purchased at a price higher than 110% AMI the year the unit was sold
        - Subsequent purchasers of the "carved-out" units would have a household income of 165% AMI or below
        - No more than one-third of the units in an HDFC can be "carve-out" units
    - Resale prices would be based on the number of bedrooms in a given unit
    - New Shareholders would not be allowed to own property within 100 miles of New York City
    - *Flip Tax:* 30% tax on sales of units. This tax will go to the HDFC reserve fund.

- *Subletting:* New and existing shareholders would be required to:
  - Obtain approval from the co-op board and the monitoring agent prior to subletting their unit
  - Sublet their apartment for no more than 18 months in a 5 year period
- *Commercial Leasing:* HDFC co-op would be required to have commercial leases reviewed and approved by a monitor to ensure commercial space is being rented at market based terms.

Community Meetings Regarding Proposed HDFC Regulatory Agreement

In response to HPD's proposed HDFC Regulatory Agreement, MCB4 held a town hall on March 7, 2017. Over 200 HDFC co-op shareholders representing more than 35 HDFCs were in attendance. Among their key concerns about HPD's proposed HDFC Regulatory Agreement were a lack of flexibility given the wide range of HDFCs that exist in MCB4, the ability of well-run HDFCs to maintain control of their operations, and a lack of consideration for those HDFCs that have a 165% AMI cap.

MCB4 encouraged shareholders to organize into a group in order to have a measured and effective response to HPD's proposal. Under the name Hell's Kitchen/Chelsea HDFC Committee, the group met with MCB4 on April 5th, June 28th and August 1st to discuss HPD's proposal and the needs of HDFCs in our district.

The HK/Chelsea HDFC Committee subsequently held outreach meetings on September 9th, September 30th, November 8th, and November 11th. Additionally, the group met on a weekly basis to discuss and develop their response to HPD's proposal.

Some HDFC's in MCD4 have yet to participate, others have agreed only with certain elements of this planning process. In all, the HK/Chelsea HDFC Committee has had representatives from XX buildings comprising XX apartments at its planning meetings seeking to develop a neighborhood consensus.

Recommendations from the Hell's Kitchen/Chelsea HDFC Committee

The majority of HDFCs in MCB4 are in regulatory compliance and fiscally healthy. The Hell's Kitchen/Chelsea HDFC Committee focused on these healthy co-ops during their meetings and developed a proposal that establishes a series of threshold qualifications and that would allow HDFCs to opt out of the monitoring agent requirement proposed by HPD. In lieu of that requirement, HDFCs would submit an annual filing to HPD or a designated monitoring agent in order to demonstrate that it is in compliance and financially stable. This alternative allows HDFCs to maintain control while also allowing HPD to ensure the stability and long-term affordability of these cooperatives.

<u>Threshold Qualifications for Reporting Instead of Monitoring</u>

The proposed requirements, for which HDFCs would have to provide proof of compliance for the previous two years, are as follows:

- All shareholders must use their cooperative units as a primary residence
- HDFC must be current on all water and sewer charges and real estate taxes
- HDFC must be current on mortgage payments
- HDFC must hold annual shareholder meetings, have an approved annual budget, and hold board elections
- At least 2/3 of the units sold since initial title closing must have been sold at affordable prices; affordability threshold will correspond to each HDFC's designated income restrictions.

Additionally, if an HDFC has been, based on the above criteria, found to not be in compliance and is not meeting its obligations, the HDFC will be assigned a monitor and can continue using those same criteria as a measure for determining when the monitor is no longer required.

<u>Proposed HDFC Regulatory Agreement Modifications</u>

The HDFC Committee stated that its focus on HDFC co-ops that have been in compliance and are fiscally healthy. The HK/Chelsea HDFC Committee presented the following modifications to the HPD proposed regulatory agreement:

- *Duration of Agreement :* up to 40 years;
- *Tax Exemption*: would be consistent with an Article XI exemption
  - Additional exemption would be made available to HDFCs with price caps lower than the ones currently proposed by HPD
- *Compliance and Monitoring*: fiscally healthy and compliant HDFCs would not be required to have a monitoring agent and would instead be required to submit an annual report to HPD or its agent
  - HPD or its agent would have the right to audit filings or reports. If a violation found during the course of the audit is not cured within a reasonable amount of time, HPD may impose a monitoring agent
  - Shareholders would have a channel for reporting non-compliance directly to HPD
- *Residency*: New and existing shareholders would be required to live in their units for at least 183 days of each calendar year (with the exception of the year of purchase)
  - Requirement would have exemptions for residents in the military service, or who take sabbaticals
- *Resale Restrictions:* Current shareholders would have to sell their units at prices affordable to households earning 120% AMI or below, except for HDFCs with a current 165% AMI threshold.
  - Carved-out units, which are high priced sales, would be allowed to have price caps that increase at a slower rate than other co-op units in the HDFC. Over time, the price caps would equalize and carved-out units would be allowed to increase their price caps at the same rate as the other co-op units

    - New shareholders would earn 120% AMI or below and assets would be limited to three times the applicable income limit (with the exclusion of retirement accounts). Proof of compliance with these terms would be submitted to HPD or its agent prior to any closing
        - New shareholders would be required to complete an HDFC orientation training class prior to closing; classes should be scheduled so as not to delay closing.
        - New shareholders would not be allowed to own property within 100 miles of New York City
    - Resale prices would be dictated by either a co-op board-approved formula or by fixed prices. Square footage or bedroom count would be used as a basis
    - Flip tax should be a minimum of 20% and will be set by the co-op Board
- *Subletting and Roommates:* Subleases must be approved by the Board
    - Income limited to 120% AMI, or 165% for HDFCs with a 165% AMI restriction
    - Rent would be no more than maintenance plus 5% to the HDFC and 10% to the shareholder. Board may make allowances for special circumstances
    - Limited to 18 months in any 5 year period
    - Roommates would be limited to one adult plus any dependent children
        - Board should be notified 30 days prior to commencement of co-habitation
        - Rent should be no more than 55% of maintenance plus 50% of utilities
- *HDFC-held Residential Shares:* HDFCs would continue holding shares to residential units if they demonstrate a specific financial need (such as major repairs or capital improvements)
    - Shares shall not be retained for the purpose of subsidizing shareholders' maintenance payments
    - HDFCs that retain any shares must establish a plan for financial stability without the income generated by the rental of these commercial units
    - All tenants renting HDFC-retained units would need to income-qualify
    - Rent would not exceed 30% of the qualified income limit
- *Commercial Leasing*: New leases should be certified by an independent licensed realtor to ensure that the lease is for an amount and term that is appropriate for the space and neighborhood. HDFC co-op will be required to submit documentation to HPD or its agent prior to commencement of lease.

All matters discussed above represent the current positions of the HK/Chelsea HDFC Committee. MCB4 understands that during negotiations with HPD, such positions may be modified. MCB4 requests the HK/Chelsea HDFC Committee return to the Board and report on a periodic basis as this process progresses.

Conclusion

HDFC co-ops vary widely throughout the City in their skills of management and operation. MCB4 is pleased that the majority of HDFC's in MDC4 are well managed, financially healthy and continue to maintain affordability. A new HDFC Regulatory Agreement cannot be implemented one blanket solution will work for HDFC's on a citywide basis. MCB4 commends the HK/Chelsea HDFC Committee in its seriousness and diligence in developing a consensus position regarding HPD's proposed HDFC Regulatory Agreement and endorses its continued efforts.

MCB4 therefore requests a meeting with representatives of HPD and the HK/Chelsea HDFC Committee to discuss these proposals. The Board looks forward to working with all parties to arrive coming to a solution to meet the needs of the HDFCs in our community.

Sincerely,

Delores Rubin
MCB4 Chair

[signed 12/18/17]
Barbara Davis, Co-Chair
Housing, Health &
Human Services Committee

cc: