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Via email transmission: pmyard@verizon.net
601 West 136 Street HDFC
601 West 136 Street, Suite #1
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Attention: William Palma and
Board of Directors

Re: ***Draft Regulatory Agreement with HPD***

Dear Mr. Palma and Board of Directors:

I was asked to review a draft of a Regulatory Agreement which has been prepared by HPD. The draft Regulatory Agreement would affect numerous changes to the manner in which housing development fund corporations are governed and the obligations of Shareholders and members of the Board of Directors. The following is a *revised* summary of comments on the draft Regulatory Agreement. It is not meant to be a paragraph-by-paragraph analysis or critique, but is a more general comment on the proposed Regulatory Agreement.

The term of the Regulatory Agreement would be for thirty (30) years from the date it is signed, or until an earlier termination. Earlier termination would take place if the tax exemption which is enjoyed by the housing development fund corporation ends, or if all loans with the City of New York are paid or satisfied. However, HPD may extend the term of the restriction period for up to thirty (30) years in the event that HPD determines there has been an uncured breach of the Regulatory Agreement (including uncured breaches of the Monitoring Agreement and the Agreement with the Management Company).

The HDFC would be required to hire a Monitor, as well as a Managing Agent. The identity of the Monitor and the Managing Agent, as well as the contracts with both the Monitor and the Managing Agent must be approved by HPD. At the present time, the only Monitoring agency of which I have knowledge is UHAB. It is unknown whether additional agencies would qualify and be approved as Monitors. It is my understanding that there are numerous Managing Agents that have obtained approval from HPD, but I do not know their identities.

If the Managing Agent currently employed by the HDFC is not on the list of Managers approved by HPD, then the current Management Agreement must be terminated. A HPD-approved Managing Agent would then be hired.

The Monitor would have the authority to approve all sales of Shares allocated to apartments, as well as approving residential leases and subleases. The Monitor would issue Shares to incoming Shareholders (it is not stated, but likely, that the Monitor would act as the Transfer Agent). The Monitor would approve training programs which the HDFC would be required to implement. The Monitor could direct that members of the Board of Directors take specific training courses, on an annual basis. The Monitor would closely supervise the process by which new directors are elected.

The Monitor would have the power to issue Notices to Shareholders when the Shareholder has breached its obligations in connection with apartment transfers and subleasing. After the Monitor issued a Notice to the Shareholder, then it would be the responsibility of the Board of Directors and the Managing Agent to attempt to collect fines (which would be identified as "special assessments") from the defaulting Shareholder. It is unclear how the collection is to occur, but the Monitor could direct how it is to be attempted. HPD would be empowered to issue waivers to Shareholders who could prove to HPD that complying with the provisions of the Regulatory Agreement would be a hardship.

The Managing Agent would approve non-residential leases and non-residential subleases. The Managing Agent would be required to be a manager with a professional management company. If a non-residential lease with a commercial tenant is desired for a period exceeding two (2) years, then HPD approval is required. Such limited commercial leases would have the likely result of lowering the HDFC's income from commercial tenants. The restriction would lower the quality of commercial tenants as well. Most established businesses would decide a two-year lease is far too short.

The Managing Agent or HPD may require that the HDFC establish an escrow account. The escrow account must, however, be held in a checking account at a bank. Withdrawals from the reserve account are only permitted with the written consent of the Monitor and HPD. Apparently, it is expected the reserve fund will be utilized to compensate for shortfalls in meeting operating expenses as well as capital improvements. The flexibility of the Board of Directors to handle unforeseen fiscal events would be severely limited.

The draft Regulatory Agreement proposes significant changes in the manner in which the sale of Shares and Proprietary Leases take place, as well as rentals to non-proprietary tenants. In the first instance, if there is a vacancy, then the draft Regulatory Agreement proposes that such vacant apartments cannot be rented except in connection with the sale of the Shares and Proprietary Lease. The draft Regulatory Agreement would restrict leasing of apartments to persons who were in occupancy at the time that the cooperative corporation was purchased from the City of New York, except to the extent that the Rent Stabilization Law would require a different result. It is unclear how non-proprietary tenants who entered into a rental after the date of purchase from the City of New York would be treated. It is absolutely clear, however, that the

Monitor has the authority to approve or disapprove all rentals (renewal leases are not specifically addressed).

The sale process would be significantly altered as well. The maximum household income for an incoming Shareholder would be 120% of median income. Apparently, there is meant to be a limit on the amount of assets that an incoming Shareholder would have as well; however, the definition for the asset limit is incomprehensible. Apparently, it will be up to the Monitor to make determinations about whether a proposed incoming Shareholder is eligible to become a Shareholder. The proposed process is that the Board of Directors would first determine whether a proposed purchaser is acceptable and, if the Board decides that the proposed purchaser is acceptable, then the Monitor would decide whether or not the proposed purchaser may purchase.

An exhibit to the draft Regulatory Agreement contains maximum sale prices for each of the next thirty (30) years. Said sale prices vary, depending upon the size of the apartment, as well as the year of the sale. Proposed purchasers who currently own Shares in a co-op apartment, or own a condominium or own a home, are all excluded as potential purchasers unless such proposed purchaser owns Shares allocated to an apartment within the building owned by the HDFC, in which case the proposed purchaser must simultaneously sell said Shares to be eligible to purchase Shares in a different apartment in the building. Note should be made as well that the sale process would exclude the HDFC itself as a purchaser of Shares.

An unexplained anomaly in the sale process indicates that the Monitor would issue Shares to an approved purchaser, but the HDFC would issue the Proprietary Lease. The particular logistical steps to be followed is left unexplained. It is possible, however, that it is contemplated that the Monitor would be the Transfer Agent.

The flip tax payable to the HDFC upon each sale of Shares is set at thirty percent (30%) of the profit; however, if the sale of the Shares is within three (3) years of the purchase date of the Shares, then one hundred percent (100%) of the profit shall be the amount of the flip tax payable to the HDFC. An exception is made for Shares acquired by inheritance or through foreclosure, in which case the flip tax would be thirty percent (30%) of profit, rather than one hundred percent (100%) of profit, even if there were a sale within three (3) years of acquisition.

The draft Regulatory Agreement proposes that the maintenance would be increased by at least two percent (2%) per annum. In addition, numerous reports would be required from the HDFC. Such reports would be delivered to the Monitor and to HPD.

Conflicts of interest are specifically proscribed, including any contracts between a member of the Board of Directors and the co-op. Proscribed as well would be leasing of space to the Monitor or the Managing Agent. Such contracts or relationships could be entered into, however, with the written approval of HPD.

If HPD believes that the HDFC has violated any of the terms of the Regulatory Agreement or of the Monitoring Contract, or the Management Contract, then HPD can issue a thirty (30) day Notice to Cure. If the violation is uncured, then HPD may direct and authorize the manager to prosecute a lawsuit against the HDFC. HPD may terminate the membership of the entire Board and appoint replacement directors. HPD may direct or authorize the manager to perform repairs and recoup the cost thereof from the HDFC. HPD may extend the term of the Regulatory Agreement. HPD also reserves to itself, the right to seek any other remedy at law. Notices, such as the Notice to Cure, are to be addressed to "the Board". Please note, however, that mail addressed to "the Board" is not likely to be delivered, as the address would be insufficient.

This letter has been meant as a summary and survey of the draft Regulatory Agreement. It has not been meant to address or comment upon specific deficiencies in any particular provisions or paragraphs of it. There are additional comments which may be made, and there are additional comments that could be addressed to specific provisions of the draft Regulatory Agreement. The general comments of this letter should be sufficient to show that the draft Regulatory Agreement, if implemented, would affect significant and severe changes in the ability of the Board of Directors to operate, manage and govern the building which the cooperative corporation owns. To accept the draft Regulatory Agreement would, in effect, be transferring the discretion to operate the building owned by the cooperative corporation to HPD and the Monitor. The Board of Directors would have no recourse if it disagreed with the decisions of HPD. The only recourse that the Board of Directors would have if it disagreed with decisions of the Monitor or of the Managing Agent would be to request HPD to permit a change of the designated Monitor and/or Managing Agent.

On a final note, it appears that the basis for requiring execution of the Regulatory Agreement is the existence of a loan from the City of New York to the HDFC, or a tax exemption/abatement given by the City of New York to the HDFC. If there is neither a loan nor a tax exemption/abatement, then the basis for requiring the HDFC to enter into the Regulatory Agreement would not be present.

At this time, the real estate tax the HDFC must pay is limited by an exemption known as the "DAMP Exemption". The value of the exemption for the current fiscal year is $298,081. Without the DAMP Exemption, the assessed value of the building would be $289,081 higher. The current assessed value for the building is $487,779. The real estate taxes are based on the assessed value. The actual real estate taxes due in each year are determined by multiplying the assessed value by the tax rate. The tax rate is determined by the New York City Council each year and may vary from year to year.

I am available to discuss or comment upon the draft Regulatory Agreement at greater length, if desired.

Yours,

Edward Filemyr

Edward Filemyr

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