NYC HDC
NEW YORK CITY
HOUSING DEVELOPMENT
CORPORATION

MEMORANDUM

To: The Chairperson and Members

From: Eric Enderlin
President

Date: May 26, 2017

Subject: Mitchell-Lama Restructuring Program (MLRP)

I am pleased to recommend that the Members approve the use of unrestricted funds of the Corporation in an amount not to exceed $100,000,000 to finance or restructure mortgage loans for the rehabilitation, and/or permanent financing of certain projects originally financed under Article II of the New York State Private Housing Finance Law ("Mitchell-Lama") as part the Corporation's Mitchell-Lama Restructuring Program ("MLRP" or the "Program") designed to facilitate the ongoing preservation of assets in the Corporation's portfolio ("Eligible Projects"). The Program is anticipated to preserve thousands of units under one of the most important components of the City of New York's affordable housing stock and will be an important element of the Mayor's plan to preserve over 120,000 units over ten years.

Background

The Mitchell-Lama program was enacted in 1955 as a way to promote and facilitate the construction of affordable housing throughout New York State. The program facilitated the construction of over 140,000 units spanning more than 300 developments, and required projects to remain affordable for a minimum of 20 years. Since 1989 more than 19,600 City supervised units have opted out of the Mitchell-Lama program. Many factors including the challenges associated with an aging housing stock, rising property values, and financial markets led these Mitchell-Lama projects to opt out of affordability.

In 2004 the Corporation created its Mitchell-Lama preservation programs, the Mitchell-Lama Restructuring Program, and the Mitchell-Lama Repair Loan Program, to preserve the remaining

Mitchell-Lama developments as affordable housing by refinancing their existing mortgages and funding critical capital needs. Since December 2004, the Corporation has successfully preserved over 70 Mitchell-Lama properties totaling approximately 39,000 units that were at risk of converting to market rate housing.

The challenges facing the Mitchell-Lama portfolio have only magnified over time with both larger capital needs, and increased pressure to exit affordability. In response, the Corporation has continued to develop creative and competitive financing products and mortgage terms that provide strong incentives to secure the long-term preservation of the Mitchell-Lama portfolio as affordable housing.

Mitchell-Lama Restructuring Program

The Corporation's existing Mitchell-Lama Restructuring Program will be updated with lower cost financing and subsidized fees to maintain affordability and fund critical capital repairs while keeping monthly debt service constant. The MLRP Term Sheet (attached as Attachment "A"), as approved and/or amended by the Corporation's Credit Committee, is consistent with the Corporation's conservative underwriting standards and reflects the strong performance of the Mitchell-Lama portfolio, as well as the Corporation's long history with the underlying properties, owners, management, and residents. To facilitate the preservation of the Corporation's existing investments in Mitchell-Lama, MLRP offers compelling incentives in exchange for an extension of Mitchell-Lama occupancy restrictions for at least 20 years.

MLRP is structured to leverage the Corporation's existing low cost tax-exempt and taxable debt, and raise new funds through a combination of taxable bonds and Corporate Reserves. Corporation staff anticipates the use of an amount not to exceed $100,000,000 in Corporate Reserves or other available funds of the Corporation to initially fund the Program. The proposed programmatic lending authority is an essential component of the updates to the MLRP. It will enable the Corporation to proactively seek out preservation opportunities, quickly address physical and financial distress within the portfolio, and compete with conventional loan products that would otherwise enable Mitchell-Lama developments to exit the program. It is expected that the Corporation's use of unrestricted funds would be replenished through the issuance of new Mitchell-Lama Restructuring Bonds, which would require further authorization by the Members at a later date.

For Mitchell-Lama developments with significant capital needs beyond what can be funded under MLRP, alternative financing executions and bonded loan programs may be considered to the extent that any new debt is supported by rent or maintenance increases. The Corporation will continue to work with HPD's Division of Housing Supervision to leverage other public resources to mitigate any financial burden on residents. It is anticipated that alternative executions would require extended affordability beyond 20 years. The financing of these projects would require further authorization by the Members at a later date.

Risks to the Corporation

The Program presents little financial risk to the Corporation. Many of the projects have been in the Corporation's portfolio for over thirty years with no history of defaults, or delinquencies. In very limited cases, delayed payments from the Department Housing and Urban Development have caused temporary delinquencies. These short-term delinquencies were quickly remediated, and characteristic of the Corporation's experience on other developments benefiting from Federal assistance. New financing under MLRP is supported by existing debt service payments and will not require maintenance increases, equity assessments, or rent increases thus mitigating the risk of non-payment. For certain loans, this risk is partially mitigated by the Corporation's use of mortgage insurance, including Fannie Mae and REMIC. Finally, the Corporation's ongoing asset management and partnership with the City, as the supervisory agency, will help ensure the long- term viability and performance of the portfolio.

Request for Approval

The Members are requested to approve i) the use of unrestricted funds available to the Corporation in an amount not to exceed $100,000,000, to finance or restructure mortgage loans for the rehabilitation, and/or permanent financing of MLRP Projects and ii) the execution by an Authorized Officer of the Corporation of mortgage-related documents and any other documents necessary to accomplish the financing.

Attachments

A. MLRP Term Sheet

NYC Housing Development Corporation (HDC) Term Sheet

Mitchell-Lama Restructuring Program

(Taxable and Tax-Exempt Financing)

Program Description	HDC's Mitchell-Lama Restructuring Program (MLRP) provides taxable or tax exempt, fixed-rate, first-position mortgage financing for the preservation of existing Mitchell-Lama developments in HDC's portfolio. Senior and subordinate debt would be refinanced at a lower cost to the owner and for an extended term. Owners may take advantage of lower cost financing and subsidized HDC fees to maintain affordability and fund critical capital repairs without the need to increase monthly debt service payments.
Eligible Projects	Eligible projects must be a Mitchell-Lama owner, limited partnership, or a co-operative board with existing HDC financing or an HDC regulatory agreement. Property occupancy cannot be less than 93% over the past 12 months. HDC Regulatory Agreements require that the borrower remain in the Mitchell-Lama program through the term of the loan, and in no event less than 20 years. More restrictive occupancy restrictions of other public subsidy programs may apply.
First Mortgage	Loan Amount: Debt Coverage: Rental Housing - 1.15 on all financing, or greater as required by permanent credit enhancer. Cooperative Housing - 1.0 on all financing, or greater as required by permanent credit enhancer. Loan to Value: 80% maximum. Value will be determined using a capitalization rate that does not consider the value below market financing. Value based on an independent MAI appraisal acceptable to HDC. Income-to-Expense Ratio: 1.0 on all financing, or greater as required by permanent credit enhancer. Interest Rate: 4.75% 30-year Fixed Rate. Interest rates are subject to change based on market conditions. Interest rate is inclusive of servicing and mortgage insurance fees. Term: 30 year term with a 30 year amortization schedule. A 35 year amortization schedule may be considered on a case by case basis. Loan Prepayment: 10 year prepayment lockout. Prepayment during the 11th or 12th year shall be subject to a prepayment premium of 2% and 1%, respectively. HDC Financing Fees (Waived for MLRP Participants): Commitment Fee: 0.75% of first mortgage amount. Costs of Issuance: 1.5% of bonds issued. Construction Monitoring: $2,500-$5,000 per month based on total number of units, buildings and scattered sites.

Subordinate Mortgages	Existing HDC subordinate mortgages may be restructured and extended to be coterminous with the First Mortgage.
Credit Enhancement	HDC will provide primary credit enhancement, supplementary security may be considered
Closing Conditions	Conditions precedent to loan closing include (but are not limited to): • Approval from HUD for pre-payment, if applicable. • Completed and satisfactory Integrated Physical Needs Assessment ("IPNA"). Please refer to the Pre-qualified list for IPNA vendors. • Completed and satisfactory disclosure documents for principals and known investors in the project, as required by HDC. • Completed and satisfactory State Environmental Quality Review Act (SEQRA) review. • Completed and satisfactory third party reports with reliance letters to HDC. • Financial statements and credit reports. • Historic building operating statements. • Final construction plans reviewed and approved by HPD or HDC, as applicable. • Commitment letter from other subordinate lenders, if applicable. • Evidence of all other required funding. • Note, mortgage, assignment of leases and rents, and UCC's. • Certifications and attorney opinion letters. • Satisfactory organizational documents for the borrower and related entities. • Property and liability insurance in form and substance acceptable to HDC. • Good and marketable title, free and clear of encumbrances except as permitted by HDC. • Title insurance and survey in form and substance acceptable to HDC. • Evidence of real estate tax benefits. • All other conditions as required by the mortgage insurance provider. Documentation will require that HDC be named a beneficiary on a number of documents, including but not limited to insurance certificates and completion guarantees.
Other	Design Guidelines: If applicable, projects must meet HPD's Design Guidelines for New Construction and Substantial Rehabilitation. Building Green: If applicable, projects must meet Enterprise Green Communities (EGC) standards. HDC encourages all projects to comply. All projects will be required to retain an HDC pre-qualified benchmarking service provider to track utility usage for heating, electric and water. Benchmarking expense may vary by project. Maximum Developer Fee: A developer's fee is only allowed when tax credits are used or funds are combined with other public subsidy programs allowing such fees, as approved by HDC. As described in the HPD Qualified Allocation Plan (QAP), total developer fee is not to exceed 15% of improvement costs (excluding developer fee, reserves, syndication and partnership expenses) and 10% of acquisition costs for tax credit projects. Consultant fees should be paid from the developer fee. The total fee should be deferred during

	rehabilitation and paid from cash flow during the permanent period, as allowable by IRS rules and the governing QAP. Marketing: Marketing plan to be approved by HDC and HPD on jointly financed projects. Marketing process and income certification overseen by HDC. Must comply with HDC Marketing Guidelines and HUD's Affirmative Fair Housing Marketing Plan. Guidelines are available online, or by contacting HDC's Asset Management Department: E-mail: hdcmarketing@nychdc.com or Phone: 212-227-5500. Recourse: HDC permanent loans are generally non-recourse to Borrower, except for environmental indemnity and standard non-recourse "carve out" Guaranty for fraud and related misrepresentation. Collateral: First mortgage on land and improvements. Subordinate Financing: Other subordinate liens permitted with HDC approval of terms. Reserves/Ongoing Fees: Capitalized Operating Reserve: Minimum of $1,000 per unit collected at loan closing. Replacement Reserve: Minimum of $250/unit/year increased with CPI. Smaller projects may require higher replacement reserves.
Items Required for Project Review	For consideration, submit project information, including: • Location and description of site and proposed development (including address, borough, block and lots). • Project history including existing mortgages, use restrictions, tax exemptions and rental assistance including status of any Section 8 HAP or other contracts. • Preliminary pro-forma including hard and soft costs, unit distribution, current rents and income levels, projected rents, outstanding debt balance and rate, estimated rehabilitation costs, and other financing sources. • Development team (borrower, contractor, management company) and listing of experience and principals. • Identification of tax credit investor, if applicable. • Identification of current tax exemption. • Statement of required HUD approvals, if applicable (HUD approval required if original project was financed by HUD after 1983). Documentation will require that HDC be named a beneficiary on a number of documents, including but not limited to insurance certificates and completion guarantees.
Contact Information	Preservation Finance Group Phone: (212) 227-9139 E-Mail: hdcpreservation@nychdc.com

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HDC, in its sole discretion, may, at any time and without prior notice, terminate the program, amend or waive compliance with any of its terms, or reject any or all proposals for funding.

Updated 5/19/2017