NYC HDC

NEW YORK CITY
HOUSING DEVELOPMENT
CORPORATION

Marc E. Jahr
President

MEMORANDUM

To: The Chairman and Members

From: Marc Jahr
President

Date: August 1, 2012

Re: HDC Second-Position Top-Loss Guaranty to HUD
Co-op City Refinancing

I am pleased to recommend that the Members approve the issuance by the Corporation of a second-position top-loss payment guaranty to the U.S. Department of Housing and Urban Development ("HUD") in an amount not to exceed $15,000,000 (the "HDC Guaranty" and/or the "Guaranty"). The Guaranty will catalyze a deal which will preserve the affordability of 15,372 units of housing for an additional 35 years at Co-op City -- the largest affordable cooperative housing community in the country. The Guaranty would be triggered in the event that HUD is required to pay insurance benefits on a proposed $625,000,000 loan (the "Loan" and/or the "HUD-insured Loan") made by Wells Fargo Bank, N.A. to Riverbay Corporation (the "Mortgagor"), a co-op corporation (organized pursuant to Article II of the Private Housing Finance Law) which is the owner of Co-op City (the "Project") in the Bronx. The Loan will be secured by a first mortgage on the Co-op City property. The HUD-insured Loan will refinance the existing $555 million loan held by the New York Community Bank ("NYCB") and will result in substantial interest rate savings and better amortization.

The State of New York Mortgage Agency ("SONYMA") will provide the first- and third-position top-loss insurance in the amounts of $20,000,000 and $35,000,000, respectively (the "SONYMA Guaranty").The top-loss guarantees provided by the Corporation and SONYMA are essential to HUD's participation in this deal, not only because the $70,000,000 defrays some of the risk associated with insuring this loan, but primarily because it assures HUD that the City and State of New York will be partners with the Federal government going forward in maintaining the physical and financial health of the Project.

This memorandum will provide a description of the HDC Guaranty, deal structure, the project, the mortgagor, and a discussion of the risks and mitigants of the Guaranty.

110 William Street, New York, NY 10038 tel: 212.227.3600 fax: 212.227.6756
mjahr@nychdc.com www.nychdc.com

The Guaranty

In the event of a default on the mortgage, Wells Fargo would assign the Loan to HUD, and HUD would pay Wells Fargo's claim for the amount then due on the Loan. Simultaneous with any assignment of the Loan to HUD, SONYMA and HDC would pay their respective portions of the top-loss to HUD. Any proceeds realized by HUD in excess of the outstanding loan, plus HUD's expenses, less the amount of the top-loss, would be paid back to HDC and SONYMA in the following top loss order: $20,000,000 first loss by SONYMA, $15,000,000 second loss by HDC and $35,000,000 third loss by SONYMA, reflecting the respective positions of the guarantees. The Corporation's Guaranty will run directly to HUD, and HDC will set aside financial reserves in the full amount of the Guaranty and invest such reserves pursuant to the Corporation's investment guidelines. HDC will maintain such reserves until the Guaranty has been called upon or terminated. Co-Op City will pay HDC a 50 basis point up-front fee ($75,000) plus a 50 basis point annual fee on the amount of the outstanding Guaranty.

This is the second time that the Corporation has been called upon to provide a top-loss guaranty to HUD. The first time relates to the Corporation's issuance of bonds backed by FHA insured mortgages on approximately 80 Mitchell-Lama developments in 1977-78. The Corporation still maintains the Claim Payment Fund (the "Fund"), a reserve account established to cover the top 5% potential loss on the remaining 12 projects, with an outstanding bond balance of approximately $24 million. The Fund was set up in a similar manner to the Guaranty described herein, and the Corporation reserved a set amount of capital to be called upon in case of a default of any of the underlying loans. In its 32-year history no claim has ever been made on the Fund.

Deal Structure

In addition to refinancing the existing NYCB loan, the HUD-insured Loan will provide $38,430,000 in capital reserves and will also pay for nearly $25,000,000 in needed capital work, plus related soft costs. The Loan made by Wells Fargo will be insured 100% by HUD under Section 207 of the National Housing Act, pursuant to Section 223(f) of the same act.

The proposed Loan is at a significantly lower interest rate than the existing NYCB loan. As set forth in Exhibit B, the interest payments will be reduced by anywhere between $9 million and $16 million dollars annually, depending on the year chosen and the final interest rate on the proposed Loan (which is estimated to be between 2.5 - 3%). Furthermore, while the NYCB loan has a nearly $400 million dollar balloon payment due in 2026, the HUD-insured Loan will self-amortize over its 35 year term. The lower cost loan will facilitate the Mortgagor's efforts to maintain Co-op City's affordability for low and moderate income New Yorkers.

HCR is the supervising agency for Co-op City under Article II of the Private Housing Finance Law and will remain responsible for monitoring the Project under the proposed loan, including periodically setting rents and exercising other responsibilities stemming from the Mitchell-Lama program. HCR will review and approve budgets and maintenance charges on a two-year cycle. HCR will also review and approve all bids for major contracts and renovation work, approve each prospective tenant-shareholder, and provide regular inspections of the property pursuant to HCR's inspection protocol.

The Project and its History

Co-op City is a 15,372-unit Mitchell Lama Cooperative that is located on roughly 220 acres situated in the Baychester section of The Bronx. The complex was completed in 1973 after 7 years of work and includes:

- 35 high-rise buildings in the 'towers-in-the-park' style containing 14,900 cooperative apartments.
- Seven clusters of townhouses with a total of 472 one-bedroom garden apartments and three-bedroom townhouses.
- Eight multi-story parking garages with a total of 10,790 spaces.
- An on-site 40-megawatt cogeneration plant which provides all electricity, heat, hot water and air conditioning for Co-op City and also sells excess power to the grid. The sale of such excess power is a source of meaningful income to Co-op City.
- Three shopping centers containing approximately 300,000 s.f. of space.
- 40 commercial offices, primarily professional offices, located in both the apartment towers and retail centers.

The residential units currently have maintenance charges that range between 39% and 65% of AMI and currently may not be sold for more than $4,500 per room upon resale. Annually, the Project pays approximately $12,450,000 in property taxes and $19,240,000 in water and sewer taxes.

The Project had defaulted on an earlier mortgage with the New York State Housing Finance Agency because of difficulties with expenses outpacing the growth in income and it continued to struggle for some time with physical deterioration and escalating repair bills. To address these problems, the current property manager, Marion Scott Real Estate, Inc (MSI), was hired in 1999 to provide professional third-party management. Over the next five years MSI and HCR helped Co-op City's Board of Directors focus efforts on the deteriorating physical condition of the property. Problems occurred again when emergency repairs began to outpace income, culminating in the forced closure of all 8 parking garages and the subsequent paving of Co-op City's greenways to replace the 10,700 units of parking.

In 2004, NYCB agreed to refinance a relatively small loan from the 1990s and provide additional capital for repairs. NYCB increased the loan in 2011 to pay for additional work, resulting in the current balance. The loan helped finance about $300 million in capital work throughout the property, as well as pay off a previous mortgage.

As a result of these repairs, both the Capital Needs Assessment (the "CNA") and Appraisal consider the project to be in good-to-fair condition and state that relatively few repair needs– estimated to cost $24,685,316 – remain outstanding. These will be financed through the currently proposed loan. The CNA estimates the remaining useful life of the complex to be 47 years.

The Mortgagor

The Mortgagor is run by a tenant-elected 15-member Board of Directors (the "Board"), all of whom have undergone disclosure required by HUD and Wells Fargo. The RiverBay Corporation, a Limited-Equity Cooperative, is organized under Article II of the Private Housing Finance Law (the Mitchell Lama program).

The current Board is well-regarded, but there have, in the past, been problems with financial oversight and the integrity of individual board members. As a result, additional checks and balances in Co-op City's procedures have been implemented in order to guard against future problems of this sort.

MSI, the managing agent, was formed in 1990, and currently manages nearly 25,000 units in just four New York City developments. Marion Scott and Herb Freedman are the principals of MSI. Mr. Scott has over 45 years of experience in real estate development and management. Mr. Freedman has as his primary focus the oversight of Co-op City. MSI has seven other staff coordinating the management of the roughly 1,000 people who are employed by the cooperative corporation. Working closely with HCR, MSI has played a pivotal role in the turnaround of Co-op City since the late 1990's.

Risks and Risk Mitigation

The primary risk associated with the Guaranty stem from the possibility that Co-op City might default on the Loan, either through a monetary or regulatory default. This risk and its mitigants are discussed below. The Corporation's staff believes that either scenario is unlikely, primarily due to the oversight of the project by HCR.

The regulatory structure for Mitchell Lama projects makes it less likely that the mortgagee holding a mortgage on a housing company formed under Article II would seek to foreclose such mortgage. Under Article II, the supervising agency (in this case, HCR) reviews the annual budgets of the cooperative corporation and is charged with ensuring that the co-op meets all its financial and regulatory obligations. While HCR will work with the Board to ensure an acceptable budget, HCR has the ability to institute mandatory maintenance charge increases if the budget as proposed appears inadequate and to take control of the Board of Directors of the housing company and direct its operations when the Project's mortgage is in default.

It is expected that Wells Fargo, HUD, SONYMA and HDC will enter into a Top-Loss Agreement under which, amongst other things, the Mortgagor may be granted up to 60 days to cure monetary defaults if HUD determines that progress is being made to avoid assignment of the loan to HUD. In addition, the Corporation and the State of New York will have the opportunity (but not an obligation) to cure any non-monetary default prior to the assignment of the loan to HUD.

In any event, the fundamentals of the underwriting of this project have been designed to ward off a cash-flow crisis that might cause a monetary default. A debt service reserve of approximately $15 million, equal to 6 months of debt service, will be established over five years to fund payments in case of cash flow problems and a $2,500 per-unit capital reserve in the amount of $38,430,000 will be established at the closing to pay for any capital needs that might arise in the near future.

Lastly, in a worst-case scenario, the appraisal found that the value of the underlying property, if unencumbered by Article II restrictions or any financing restrictions, would be $3,317,000,000.

Action by Members

The Members are requested to approve the HDC Guaranty to HUD in an amount to exceed $15,000,000 and the execution by the President or any authorized officer of the Corporation of any and all documents necessary to issue such Guaranty.

"Exhibit A"

Co-op City
Bronx, New York

Project Location: 2049 Bartow Avenue, Bronx NY

Project Description: A 15,372-unit, 330-acre campus that includes 35 high-rise apartment buildings (24-33 stories each), 472 townhouse units in seven clusters, approximately 330,000 s.f. of commercial and community space in three shopping centers, 44 professional offices, 8 parking garages and a 40-megawatt cogeneration power plant.

Apartment Distribution:

	# of Units
One Bedroom	5,536
Two Bedroom	5,720
Three Bedroom	4,116
Total	**15,372**

Expected Wells Fargo Loan: $625,000,000
Expected HUD Insurance: $625,000,000
SONYMA Top-Loss Insurance: $55,000,000
HDC Top-Loss Guaranty Amount: $15,000,000

Owner: Riverbay Corporation, a Limited-Equity Cooperative, is organized under Article II of the Private Housing Finance Law (the Mitchell Lama program) The Mitchell Lama program was designed to provide affordable housing to the State's low and middle-income level residents by providing low interest loans and real estate tax exemption, resulting in affordable rent and maintenance charge levels for residents initially meeting specific statutory income requirements.

Developer: N/A

Underwriters: Wells Fargo Bank, N.A.

"Exhibit B"

Co-op City
Interest Payment Comparison

	Existing NYCB Loan	Wells loan at 3%	Savings (annual)	Wells loan at 2.5%	Savings (annual)
Principal*	$555,000,000	$597,542,000		$597,542,000	
Annual Interest Payments**					
2012-2013	$38,870,472	$29,808,743	$9,061,729	$25,634,209	$13,236,263
2013-2016	$39,634,973	$29,808,743	$9,826,230	$25,634,209	$14,000,764
2016-2021	$40,841,101	$29,808,743	$11,032,358	$25,634,209	$15,206,892
2021-2026	$41,659,206	$29,808,743	$11,850,463	$25,634,209	$16,024,997
Total Payments by 2026	$566,719,626	$444,647,083	$122,072,543	$382,376,947	$184,342,679
Balloon	**$398,430,605**	**Self-Amortizing in 35 years**		**Self-Amortizing in 35 years**	

*Principal does not include J-51 segment of loan, as it is based on nine different amortizations ranging from 2.3 years to 10.6

**Exclusive of MIP fees

Capital One N.A.
404 Fifth Avenue, 3rd Fl.
New York, NY 10018

Disnalda Cuevas
Community Development Finance
973-439-4140
973-439-7597 Fax

July 24, 2012

Attn: Ms. Paulette Todman
New York City Housing Development Corporation
110 William Street
New York, NY 10038

Re: Stand-by Letter of Credit No. 30002213 dated June 25, 2009 issued for the account of UDC Cornerstone, LLC

Ladies and Gentlemen:

Reference is hereby made to the Servicing and Release Agreement by and among UDC Cornerstone, LLC (the "Borrower"), Capital One National Association (the "Bank"), The City of New York, acting by and through its Department of Housing Preservation and Development ("HPD") and New York City Housing Development Corporation ("HDC") dated June 25, 2009 (the "Servicing Agreement") and to irrevocable letter of credit No. 30002213 dated June 25, 2009 issued by the Bank (the "Letter of Credit") in connection with same. Paragraph 15 (a) of the Servicing Agreement provides in part that HDC shall have the right to file a "Notice of Intent to Draw Letter" with the Bank in the event that the Letter of Credit has not been extended on terms and conditions satisfactory to HDC at least thirty (30) days prior to the scheduled expiration of the Letter of Credit. The Letter of Credit is scheduled to expire on August 26, 2012 (the "Expiration Date") and HDC has not delivered a Notice to Intent to Draw Letter of Credit to the Bank.

Please be advised that the Bank hereby agrees and the Borrower consents that if the Bank has not delivered an extension of the Letter of Credit on the terms required by the Servicing Agreement to HDC by August 3, 2012, HDC shall thereafter have the right to draw on the Letter of Credit at any time, up to and including the Expiration Date and prior to delivery to HDC by the Bank of an extension of the Letter of Credit on terms and conditions satisfactory to HDC. Such drawing shall be made in accordance with the Servicing Agreement, except that the Bank hereby waives the requirement to deliver a Notice of Intent to Draw Letter to the Bank.

The foregoing shall not be deemed to modify or amend the Servicing Agreement, except to the extent specifically set forth herein; and the Servicing Agreement accordingly remains unmodified, except as aforesaid, and in full force and effect.

If you have any questions, please contact the Capital One Portfolio Manager, Angela Littlejohn-Swan (in Disnalda Cuevas' absence), at 212-216-8934.

Very Truly Yours,

[Capital One National Association]

By: ____________________

Printed Name: Fran M. Nuchims
(CONA Authorized Signatory)

Consented and agreed to:
UDC CORNERSTONE LLC, a New York limited liability company
By: UDC Cornerstone Managing Member LLC, a New York limited liability company, its managing member

By: UDC Cornerstone MM Owner, LLC, a New York limited liability company, its managing member

By: UDC Partners, LLC, a New York limited liability company, its managing member

By: BRP UDC Partners Member, LLC, a New York limited liability company, its managing member

By: BRP UDC Manager, LLC, a New York limited liability company, its managing member

By ____________________
Name: Geoffrey Flournoy
Title: Managing Member