RESEARCH MEMORANDUM

FROM: John Edward Dallas  
TO: MHA Board, Val Orselli
CC: Steve Herrick
DATE: October 8, 2010
RE: Review of Co-op Information Package

INTRODUCTION

Below are my comments on the co-op information package, or the Plan, based on my review of the draft e-mailed to me by Val on October 5. The comments in this memorandum focus on Sections A and B of Part I. I will send you any comments I might have on the other sections of Parts I and II next Tuesday, next Wednesday morning at the latest.

CO-OP INFORMATION PACKAGE

A. Special Risks to Be Considered by Shareholders

1. General

The legal correctness of the many references throughout the Bylaws to housing for low and moderate income individuals and households is questionable. Regarding the relationship between a corporation’s bylaws and its certificate of incorporate, state law mandates: “The bylaws may contain any provision relating to the business of the corporation... not inconsistent with...the certificate of incorporation.” BCL § 601(b). The Certificate of Incorporation for MHA II, also known as the Apartment Corporation, mentions at the outset that the corporation was formed pursuant to Article XI of the Private Housing Finance Law. Accordingly, as an HDFC, in compliance with the statutory requirements of Private Housing Finance Law 573(3)(a), MHA II is a “company [that] has been organized exclusively to develop a housing project for persons of low income.” (Emphasis added.) This fact is reiterated in Section III (A)(iii) of the Certificate of Incorporation, which lists among the charitable purposes for which MHA II was organized: “To lease dwelling accommodations in such Project to eligible persons and families of low income....”

Cooper Square Community Development Committee and Businessmen’s Association

"Here Today...Here to Stay!"
2. Future Purchase Prices

This section states: "Under the Ground Lease, the Purchase Price on future sales of Shares in the Apartment Corporation must remain affordable to low and moderate income purchasers with AMI of not more than 80%." HUD, which promulgates AMIs and determines the various income levels, as noted under "AMI" in the Definitions section of the Information Package, defines 80% as low income, strictly.

7. Non-Purchasing Tenants

"Non-purchasing tenants will be offered renewal leases...." Question: Will renewal leases be for one or two years? Moreover, this passage might be reworded as "Non-purchasing-tenants, or Rental Tenants..." to include the defined term "Rental Tenant."

10. Right of Rescission

"In addition, the Plan will not be declared effective based on a Purchase Agreement...(ii) with any Purchaser who is Sponsor or is a principal of Sponsor or is related to Sponsor or to any principal of Sponsor by blood, marriage or adoption as a business associate, an employee, a shareholder or a limited partner...."

This passage is confusing. The Sponsor, as defined in the Information Package, is MHA II or the Apartment Corporation. Therefore, how can the Apartment Corporation be a purchaser before the Effective Date? In addition, under what present circumstances would any principal of the Sponsor, such as the Executive Director, be a purchaser? Furthermore, since the Sponsor is the Apartment Corporation, a legal entity rather than a natural person, how could it have someone related to it by blood, marriage or adoption?

B. DEFINITIONS

AMI

To make the very important concept of AMI more comprehensible and fully useful to potential purchasers, HUD’s AMI-based low-income limits for the various household compositions for New York County should be cited in their entirety. (The prevailing tendency is to cite only the figure corresponding to a family of four.) For 2010, $44,350 for one person, $50,700 for two, $57,050 for three, $63,350 for four, $68,450 for five, $73,500 for six, $78,600 for seven, and $83,650 for eight.
Board

"Upon conversion, as required by the Certificate of Incorporation and outline in the By-Laws, there must be ten cooperative shareholders of the Apartment Corporation Board and five non-residents (chosen by CLT). The resident members of the CLT Board must be all Cooperative shareholders, not renters."

This might be rephrased as follows: "After the Cooperative Conversion and following the first annual meeting of the shareholders, as required by the Certificate of Incorporation and outlined in the By-laws, the current MHA II board of directors will be replaced by a new board of directors consisting of 15 members, 10 of whom will be shareholders elected by shareholders and five of whom will be non-shareholders appointed by the CLT. Following this election, the three MHA resident members of the CLT board will thereafter be shareholders, not renters." (Cooperative Conversion is capitalized because it is defined.)

Conversion Period

"From the date of receipt by Tenants of this Information Package, for the following six months, during which the Original Purchase Price of $250.00 will be in effect. After that, the Purchase Price will go up."

This should be reworded as follows, provided that each tenant will be receiving the Information Package at a different time: "For the six months following the date of receipt by a Tenant of the Information Package...."

Effective Date

"The date when the Sponsor has received 66% of Offeree Affidavits and Purchase Agreements from Insiders in order for the Cooperative to be formed." Perhaps, in light of Section A.8. ("Tax Abatements") of the Information Package, the following should be added: "However, the Sponsor may not declare the Cooperative effective or formed, until tax exemptions/abatements are place for all the Buildings."

Enforcement Mortgages

Question: If the Hope 2 or HUD Grant was extinguished on June 28, 2000, why is it still one of two Enforcement Mortgages to which both the Land and Buildings are subject? According to an earlier cooperative offering plan issued by MHA (Phase I - Cooperative Offering Plan, Volume V): "Assuming compliance with the Regulatory Agreements the City mortgage and the indebtedness it secures shall otherwise be extinguished on the
expiration date, June 28, 2021 of the mortgage, with no further liability on the part of the MHA or any of its shareholders. Similarly the [HOPE 2 Grant or HUD Mortgage] assuming similar compliance during the mortgage term shall be extinguished following compliance, on June 21, 2000, unless the term is extended by HPD until a date not later than June 21, 2004.” In any event “land” and “buildings” in the first sentence of the definition “Enforcement Mortgages” should be replaced by “Land” and “Buildings,” since these are defined terms.

**Family Members**

This definition is incomplete. It was agreed by MHA board members at their August 5, 2010 special meeting, at which the then current draft of the Information Package was reviewed and revised, that incorporated into the Information Package’s definition of “Family Members” would be “family member” as defined by DHCR for succession rights to rent-stabilized and rent-controlled apartments. DHCR defines a “family member” as either a husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant. (DHCR Fact Sheet #30 – Succession Rights.)

Since succession rights in the Information Package involve shareholders, not tenants, the definition of “Family Members” might be reworded as follows: “The husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of a Shareholder, or any person residing with a Shareholder in his or her Apartment as a primary or principal residence who can prove emotional and financial commitment and interdependence between such herself or himself and a Shareholder.”

**Good Standing**

The definition for this term mentions the 90-day Exclusive Period. “Exclusive Period” should be included among the other definitions.

**Non-Purchasing Tenant Affidavit**

The definition for this term reads: “The document signed and notarized by any tenant wishing to remain a tenant at the Building instead of becoming a Shareholder.” “At the Building” should be rephrased as “at one of the Buildings.”
Life Partner

Article V, Section 4(c)(ii) of the Proprietary Lease, which covers transfers of shares to a Family Member, mentions spouse or life partner. Family Member is a defined term and I believe “life partner” should be as well, because of its susceptibility to multiple interpretations, some of which might conflict with policy intended for the cooperative. For example, is a life partner the equivalent of a registered domestic partner? Or is it a Family Member, as defined in the Plan, simply an individual who lives with a Shareholder and shares with him or her a financial and emotional commitment and interdependence? A definition is warranted here because of the uniqueness, and long-term implications, of the circumstances: an assignment of the lease and a transfer of Shares without Board consent.

Restriction Period

For clarity's sake, the entire span of the Restriction Period for each of the Buildings should be given.