



RAFAEL E. CESTERO  
Commissioner

Office of the Commissioner  
100 Gold Street  
New York, N.Y. 10038

October 4, 2010

**Re: Housing Development Fund Corporation  
(HDFC) Cooperatives**

Dear HDFC Shareholders:

HDFC cooperatives are an essential part of the fabric of New York City's affordable housing stock. HPD has created tens of thousands of affordable homes as shareholder-owned HDFCs and, with your help, these cooperatives thrive as democracies in action.

Inclusive, transparent leadership and the full participation of all shareholders make democratic governing possible. I am taking the opportunity to ask you to be an active participant in your HDFC and to remind you of the important legal requirements that come with enjoying the benefits of living and owning shares in a cooperative. HPD has prepared the enclosed *Fact Sheet for NYC Cooperative HDFC Shareholders* to assist you in understanding the rules and responsibilities that come with being a shareholder in an HDFC.

Because your cooperative is incorporated under Article XI of the Private Housing Finance Law, your governing corporate documents require certain standards in the selling and renting of apartments and careful ethical behavior for board members in carrying out their responsibilities. As a shareholder, you should pay attention to the actions of your board.

One significant benefit of living in an HDFC is an upper limit on the amount of real estate taxes that your cooperative is required to pay. This tax benefit is dependent on: 1) the building being incorporated as an HDFC and 2) the building's board members and shareholders acting in conformity with its rules. We remind you that HPD is authorized to remove this benefit if the agency determines that the HDFC's requirements are being violated.

HPD wants to ensure that your corporation is operating properly as an HDFC and that its physical, financial and organizational conditions are sound. Educate yourselves; check for upcoming Urban Homesteading Assistance Board (UHAB) classes at <http://www.uhab.org/>, and for upcoming HPD classes at <http://www.nyc.gov/html/hpd/html/developers/uil.shtml>.

Because affordable housing is so important to the City, HPD recently created the Division of Asset Management. This new division is responsible for monitoring the health of affordable housing financed by HPD, including HDFC Cooperatives. Help us protect these limited and valuable resources. If you are concerned that your HDFC is not operating properly, contact UHAB at 212-828-2670 (Manhattan and Bronx), 212-479-3300 (Brooklyn and Queens) or the Division of Asset Management at 212-863-7327.

Sincerely,

Rafael E. Cestero

## FACT SHEET FOR NYC COOPERATIVE HDFC SHAREHOLDERS

October 4, 2010

All HDFC cooperatives are incorporated under Article XI of the Private Housing Finance Law (PHFL). Both this law and the cooperative's governing corporate documents require certain behavior. The areas addressed in this fact sheet include the selling of shares (apartments), the renting of apartments, and the fiduciary responsibility of board members.

1. **Sales:** Article 2 of the certificate of incorporation of every HDFC provides that shares (apartments) must be sold only to families of low income. The definition of low income is contained in the cooperative's deed or its certificate of incorporation. In some cases, the specific definition of low income in those documents may have expired. When this occurs, the cooperative should adopt a new standard. The new standard may not exceed 165% of area median income.

Shares may be sold only at prices affordable to families within the applicable income standard. The most common income standards are Section 576 of the PHFL, 120% of area median income, and 165% of area median income. You should check your documents to determine the income standard applicable to your cooperative. If you have questions, you may contact the Urban Homesteading Assistance Board (UHAB) at 212-828-2670 or the Department of Housing Preservation and Development (HPD) at 212-863-7327.

- A. **Section 576** - This income standard is based on a formula which includes the maintenance of the apartment being purchased plus a factor for utilities plus a factor for the cost of the financing for the \$250 purchase price of the apartment at the time of its sale from NYC. Examples of the formula can be found in **Attachment A**.
- B. **120% and 165% area median income** - The United States government calculates area median incomes by family size on an annual basis. HPD posts the current 120% and 165% median incomes for the New York Metro area on its website. The income standards for 2010 can be found in **Attachment B**.

The costs of owning shares in a cooperative include the apartment maintenance, the monthly payments on any loan used to purchase the shares, utilities, and homeowner's insurance. Generally, buyers should not pay more than 30% of their gross income in housing costs. HPD expects boards will set and enforce sales prices that are affordable to people within your HDFC's target income range.

2. **Renting:** The PHFL requires that all apartments in HDFC cooperatives be owner occupied. Although many cooperatives house original non-purchasing tenants and others have benefited from the additional income of renters, all vacant HDFC owned apartments must be sold to new shareholders who have stated their intention to owner-occupy.

Almost all HDFC cooperatives require owner occupancy and limit subletting. Although short-term subletting with board permission is acceptable where the shareholder intends to return to the apartment, long-term sublets are not permissible in any circumstance. Generally, subletting should be limited to no more than 18 months in any 5-year period. In addition, it is not acceptable for shareholders to charge subtenants more than 10% above the monthly maintenance. Any subtenant should meet the applicable income standard of the cooperative.

3. **Fiduciary Responsibility:** Directors are legally required to act in the best interests of the HDFC and its shareholders. We urge shareholders to be aware of some important facts about their HDFCs. Directors are volunteer positions; managers are paid. If your HDFC's directors are being paid, it should be for the management work that they are doing for the corporation, such as collecting rents, paying bills, supervising the janitor, or going to court on behalf of the HDFC. Directors should not be receiving payment for any other reason. In all cases there should be volunteer directors who supervise the work of the manager.

Guidelines for the Board of Directors:

- A director should abstain from voting when the board is considering selling or contracting with that Director's friends or relatives, as it constitutes a conflict of interest.
- Directors should ensure that real estate taxes and water and sewer charges are being paid. This information is publicly available at [NYCServ.nyc.gov](http://NYCServ.nyc.gov). Any open charges can be viewed by entering the building address at this website. Inquiries on open charges can also be made by calling the Department of Finance (DOF) at 212-504-4080 and the Department of Environmental Protection at 718-595-7000.
- Boards should ensure that shareholders receive annual financial reports.
- Corporations should hold annual elections.

HDFCs have a cap on the taxable value of the units that, in most cases, significantly lowers real estate taxes on the property. The Board of Estimate and City Council resolutions that grant these caps stipulate that this exemption is effective only as long as the project is owned and operated by an HDFC that is in conformity with the requirements of Article XI of the PHFL. HPD is authorized to revoke this partial real estate tax exemption if it determines that the HDFC is not properly owned or operated.

Attachment A

**Maximum Income for Section 576 Projects**

Section 576 of the Private Housing Finance Law (PHFL) provides the formula for determining the maximum income for new shareholders. Note that the multiplication factor for maintenance is different for families of two or fewer dependants (6 times maintenance) than for families of three or more dependants (7 times maintenance). Additionally, the factor for financing is based on the cost of purchasing the unit at the time of conversion (\$250.)

**EXAMPLE**

1. Add together the current monthly maintenance for the apartment plus a factor for utilities plus a factor for the financing of the original \$250 purchase price for the apartment.  
\$500 maintenance plus \$125 for utilities plus \$6 for original financing equals \$631.
2. Multiply that sum by 6 for families with two or fewer dependants.  
\$631 times 6 equals \$3,786.
3. Multiply that sum by 12 to account for a year.  
\$3787 times 12 equals \$45,444.

In this example, the maximum income for the incoming shareholder is \$45,444.

**Maximum Sales Price**

Sales prices should be set at levels that do not exceed 30% of the family's gross income. For the purpose of this example, we will presume that the new shareholder will pay 15% as a down payment and will mortgage the rest. We will also presume that the shareholder will carry homeowner's insurance. For the purpose of determining a sales price, the board of directors should add together the costs of home ownership (maintenance, utilities, mortgage and insurance). The board should then set a sales price at a level where the housing expenses of the new shareholder would not exceed 30% of the family income.

**EXAMPLE**

1. Add together home owner's expenses before financing charges. Yearly expenses: maintenance of \$6,000 plus \$1,500 in utilities plus \$225 in home owner's insurance equals \$7,725.
2. Calculate 30% of maximum family income. 30% of \$45,444 is \$13,633.
3. To ascertain the amount available for a mortgage, subtract all other homeowner expenses from 30% of homeowner income. \$13,633 minus \$7,725 equals \$5,908.
4. Using a mortgage table and the current mortgage rate, calculate the maximum mortgage that the homeowner can carry with amount available. At a 5% mortgage rate, the homeowner can carry a loan of \$90,000.
5. Add the maximum loan amount to the down payment for a maximum sales price.  
\$90,000 loan plus a 15% down payment equals \$104,000.

In this example, for an apartment with maintenance of \$500 and a family of two or fewer dependants, the board should set a sales price of not more than \$104,000.

Attachment B

**Area Median Income Standards - 2010**

<b>Family Size</b>	<b>120% Area Median Income</b>	<b>165% Area Median Income</b>
1 Person	\$66,600	\$91,600
2 Person	\$76,100	\$104,600
3 Person	\$85,550	\$117,650
4 Person	\$95,050	\$130,700
5 Person	\$102,700	\$141,250
6 Person	\$110,300	\$151,650
7 Person	\$117,950	\$162,200
8 Person	\$125,500	\$172,600

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT, made as of this 18<sup>th</sup> day of *November*, 1992 ("Commencement Date"), by and between 487-89 Amsterdam Avenue Housing Development Fund Corporation, a corporation organized pursuant to the laws of the State of New York, having an office for the conduct of business at 487-89 Amsterdam Avenue, New York, New York ("HDFC"), and the City of New York, a municipal corporation, organized pursuant to the laws of the State of New York, acting by and through its Department of Housing Preservation and Development ("HPD"), having an office at 75 Maiden Lane, New York, New York 10038 ("City").

1. For the purposes of this Security Agreement, unless the context otherwise specifies, the following definitions shall apply:
  - A. "Allocable Stock" shall mean and refer to shares in the HDFC which are allocated to an Apartment.
  - B. "Apartment" shall mean and refer to an individual unit in the Property.
  - C. "Apartment Debt" shall mean and refer to the amount of the City Apartment Share which remains due and payable more than thirty (30) days after the anniversary of the Audit Date.
  - D. "Apartment Profit" shall mean and refer to the amount by which the consideration paid by the Purchaser to acquire the Allocable Stock exceeds the consideration paid by the Seller to acquire the Allocable Stock.
  - E. "Audits" shall mean and refer to conduct of audits of Compliance by independent accountants retained by the City.
  - F. "Audit Date" shall mean and refer to the date upon which Audits shall be held, which date shall be agreed to by the City and the HDFC at the closing for the Sale of the Property from the City to the HDFC.
  - G. "Building Debt" shall mean and refer to the amount of the City Building Share which remains due and payable more than thirty (30) days after the sale of the Property pursuant to Section 6A.
  - H. "By-Laws" shall mean and refer to the by-laws of the HDFC.
  - I. "City Apartment Share" shall mean and refer to the forty percent (40%) share of the Seller's Apartment Profit to which the City is entitled.

- J. "City Building Share" shall mean and refer to the forty percent (40%) share of profits from the Sale of the Property to which the City is entitled.
- K. "Compliance" shall mean and refer to the compliance of the HDFC with the provisions of the Note and this Security Agreement.
- L. "Debt" shall mean and refer to, collectively, the Building Debt and/or the Apartment Debt.
- M. "Defrauder" shall mean and refer to a Seller or Purchaser of an Apartment who commits fraudulent acts.
- N. "Institutional Lender" shall mean and refer to a federal or state agency, savings or investment company, pension fund or other entity having assets in excess of \$500,000,000 or whose loans are subject to regulation of a federal or state agency.
- O. "Judgment Proof" shall mean and refer to the lack of sufficient assets to satisfy a judgment awarded by a court of competent jurisdiction, whether due to bankruptcy, insolvency, or any other cause.
- P. "Leases" shall mean and refer to all leases and other agreements now or hereafter entered into affecting use or occupancy of the Property.
- Q. "Note" shall mean and refer to a certain note, of even date herewith, made by the HDFC, as maker, to the City, as payee.
- R. "Notice" shall mean and refer to any notices, demands, certifications, requests, communications or the like.
- S. "Proceeds" shall mean and refer to the total of (1) the full amount of cash paid, (2) the principal amount of any purchase money financing provided by the Seller, and (3) the principal balance of any mortgage or other encumbrance on the property which was incurred by the Seller and which the Purchaser assumed or purchased subject to.
- T. "Property" shall mean and refer to the real property located at the street address 487-89 Amsterdam Avenue, and designated as Block 1214, Lot 4 & 64 on the Tax Map of the City of New York, County of New York:
- (1) Together with the buildings and improvements on the Property.
  - (2) Together with all of the HDFC's right, title and interest in and to any land lying in the bed of the streets in front of and adjoining the Property, to the center lines of such streets.

- (3) Together with all of the fixtures and personal property, other than household furniture, purchased or installed by the HDFC, the Tenant-Shareholders or any other party which is now or later may be attached to or used or useful in connection with the Property.
  - (4) Together with all condemnation awards for any taking by a government or public authority or agency of the whole or any part of the Property or of any easement in connection with the Property. This includes awards for changes of grade of streets.
  - (5) Together with all right, title and interest of the HDFC in and to all Leases and Rents. This provision shall not be construed to grant the consent of the City to any lease of the Property.
- U. "Purchaser" shall mean and refer to the purchaser of an Apartment in the Property.
- V. "Rents" shall mean and refer to the rents, issues and profits of the Property.
- W. "Resale" shall mean and refer to the resale of the Allocable Stock of an Apartment by a Seller.
- X. "Sale" shall mean and refer to the sale or transfer of the Property or the sale or transfer of Allocable Stock.
- Y. "Seller" shall mean and refer to any individual Tenant-Shareholders who sells his or her portion of the Allocable Stock in the Property.
- Z. "Tenant-Shareholders" shall mean and refer to, collectively, the tenant-shareholders of the HDFC.
- AA. "Termination Date" shall mean and refer to the twenty-fifth (25th) anniversary of the Commencement Date or the date of the voluntary or involuntary dissolution of the HDFC.
- BB. "Unsold Shares" shall mean and refer to shares of the HDFC which have not been purchased by Tenant-Shareholders.
2. This Security Agreement is made to secure the payment to the City of the Debt. The Debt shall be payable in the manner provided in the Note.
  3. The HDFC hereby mortgages, pledges and grants to the City a security interest in all of the estate, right, title and interest of the HDFC in and to the Property.
  4. The HDFC shall insure the buildings and any other improvements on the Property against loss by fire and other property damage for the benefit

of the City as the co-insured party, unless such requirement is waived in writing by the City. In the event that such a loss occurs and the HDFC elects to use the proceeds of such insurance to restore the Property, the City shall assign to the HDFC, for application toward the cost of such restoration, any and all of the proceeds which the City is entitled to receive from the insurer. In the event that such a loss occurs and the HDFC elects not to use the proceeds of such insurance to restore the Property, the City shall receive forty percent (40%) of the amount by which said insurance proceeds exceed the sum of (a) the purchase price paid for the Property by the HDFC, or its successor in interest, and (b) the amount of any mortgages to which the City has subordinated the lien of this Security Agreement. If there is a balance remaining from said insurance proceeds after payment of the restoration costs or the City's forty percent (40%) share, said balance shall be paid by the insurer to the HDFC.

5. This Security Agreement is subject to all of the terms, covenants and conditions of the Note, to the same extent and effect as if fully set forth herein.
6. The City shall be paid as follows, without regard to whether any portion of the Sale price is paid for with notes:
  - A. Within thirty (30) days after each and every Sale of the Property before the Termination Date, the HDFC shall pay to the City forty percent (40%) of the amount by which the Proceeds of such sale exceed the sum of (i) the initial purchase price for the Property paid by the HDFC, in the amount of Four Thousand Dollars (\$4,000.00), and (ii) the outstanding principal balance of any mortgages on the Property which the HDFC incurred, assumed, or purchased subject to and to which the City has subordinated the lien of this Security Agreement.
  - B. The unpaid balance of the Building Debt shall become due and payable in full upon any Sale of the Property.
7. A. Upon each and every Resale of the Allocable Stock of an Apartment before the Termination Date by a Tenant-Seller to a Purchaser, the City Apartment Share of the Apartment Profit shall be collected by the HDFC and shall be payable to the City as follows:
  - (1) The HDFC, as agent for the City, shall collect the City Apartment Share from each Purchaser, and its successors and assigns as owners of the Allocable Stock, and shall submit to the City an Affidavit of Sale signed by the Tenant-Seller and Purchaser as provided in the By-Laws.
  - (2) The HDFC shall pay the City Apartment Share to the City, without regard to whether any portion of the Sale price is paid for with notes, within thirty (30) days after the anniversary of the Audit Date. Payments to the City shall be made each year during the same thirty (30) day period, regardless of whether or not an Audit is conducted that year.

- (3) In the event that the HDFC shall sell Unsold Shares allocated to vacant apartments at a price exceeding the original purchase price of tenants in occupancy at the Commencement Date or shares which it has repossessed, for cash and a promissory note, the City shall receive either: (a) forty percent (40%) of any cash paid to the HDFC at the Sale of the Allocable Stock and a forty percent (40%) interest in any secured note accepted by the HDFC in said sale, or (b) the City Apartment Share. The City shall receive forty percent (40%) of all payments due under the note described in the preceding sentence until the City Apartment Share under the said note is paid in full. Any balance of the City Apartment Share owed by the HDFC to the City at the end of the term of said note shall be paid to the City on the date scheduled in the note for the last payment.
  - B.
    - (1) Audits shall be held no more frequently than once every two (2) years on the Audit Date. Notwithstanding the foregoing, in the event that, in the opinion of the City, an Audit shows substantial defects in Compliance, the City shall thereafter be entitled to conduct Audits more frequently. The City may, but is not required to, waive the requirement of an Audit in the event that the HDFC presents a certified occupancy list and informs the City in writing that no sales of the Property, or of individual units therein, occurred during the year, except sales for which accurate Affidavits of Sale required pursuant to the By-Laws have been previously submitted to the City.
    - (2) Audit determinations shall be final and binding upon the City and the HDFC, subject to review by the Comptroller of the City.
8. The Debt secured by this Security Agreement shall bear interest as follows: (A) with respect to the Building Debt, from the thirtieth (30th) day after the Sale of the Property, and, (B) with respect to the Apartment Debt, from the thirtieth (30th) day after the anniversary of the Audit Date. Interest shall be charged at a rate equal to the rate determined for late income tax payments pursuant to Sections 11-1784(a) and 11-1797(j) of the New York City Administrative Code, as amended.
9. The HDFC agrees that the terms "City Building Share" and "City Apartment Share" in this instrument shall also apply to any transfer of ownership or possession of the Property or any Apartment (including, but not limited, to Leases with purchase options) which results in gross consideration to the transferor which exceeds the consideration paid by the transferor to purchase or use the property being transferred. Notwithstanding the foregoing, the provisions of this Section 9 shall not apply to the lease or sublease of any Apartment unless the monthly rent pursuant to such lease exceeds the monthly maintenance charges with respect to such Apartment by ten percent (10%) or more.

## 10. Default

### A. In General

- (1) The Debt and any accrued interest owing thereon pursuant to Section 6B shall become due and payable in full, and shall be the basis for an action for foreclosure on the lien created hereby, at the option of the City, when the outstanding sum of the Debt which has not been paid to the City pursuant to Sections 6 and 7 equals or exceeds \$5,000, without accrued interest.
- (2) Prior to commencing any foreclosure proceeding, the City shall (i) send written Notice of the default to all Tenant-Shareholders of the HDFC listed in the last previous Audit or on any subsequent list duly prepared and submitted by the HDFC to HPD, and (ii) allow such Tenant-Shareholders thirty (30) days to cure said default or to submit to the City a written plan for such cure which is satisfactory to the City, in its sole discretion. Proof of Notice pursuant to this Section 10A(2) may be provided by an affidavit that Notices have been mailed to all listed tenants, duly executed and acknowledged by the appropriate officer or agent of the City. The execution and acknowledgment of such affidavit shall be deemed conclusive proof of the receipt of all such Notices.

### B. In Event of Fraud by Seller or Purchaser

- (1) The City shall stay collection and/or foreclosure proceedings against the HDFC with respect to any portion of the lien created hereby which, in the opinion of the Commissioner of HPD, is attributable to the fraudulent acts of a Seller or a Purchaser of the Apartment(s), provided that (a) the HDFC serves the Defrauder with a summons and complaint and diligently prosecutes the action to completion, or (b) the HDFC cannot serve the Defrauder with a summons and complaint, but the HDFC pursues its remedies against the Defrauder, commencing within sixty (60) days after discovery of the fraud, and thereafter uses its best efforts to seek collection of the debt from the Defrauder.
- (2) If the HDFC obtains a judgment and the Defrauder is not Judgment Proof, the City will continue said stay of proceedings against the HDFC while the HDFC employs its best efforts to collect the judgment.
- (3) If the HDFC obtains a judgment and the HDFC has used its best efforts to collect such judgment and has failed to do so because the Defrauder is Judgment Proof, the City will accept assignment of judgment as satisfaction of the portion of the Apartment Debt which is attributable to the acts of the Defrauder, provided that the Judgment Proof status of the Defrauder is in no way attributable to any negligence on the part of the HDFC in discovering or litigating the fraud.

11. All terms and provisions of the Note and this Security Agreement shall be subject and subordinate to the lien of any construction or permanent mortgage issued by a mortgagee which appears on a list of Institutional Lenders approved by HPD, for the improvement of the Property hereafter made. The mortgage held by such Institutional Lender shall contain a provision stating that if any action or proceeding of foreclosure shall be instituted by the Institutional Lender, the Institutional Lender shall simultaneously deliver to the City and the HDFC a true copy of each notice, petition, summons or paper, howsoever designated, served in such action or proceeding or in any such action or proceeding.
12. Upon the Termination Date, unless the HDFC shall be in default of any of its obligations pursuant hereto, this Security Agreement shall be deemed of no further force and effect, and neither party hereto shall have any further rights or obligations pursuant hereto against the other. The City shall, on or after such date, unless the HDFC shall be in default of any of its obligations pursuant hereto, upon written request by the HDFC, execute a satisfaction or discharge of this Security Agreement.
13. The HDFC shall, within ten (10) days after request by the City and at the sole cost and expense of the HDFC, furnish the City with a statement, duly acknowledged and certified, setting forth whether any offsetting claims or defenses exist against the Debt. The City shall not be bound by any position taken by the HDFC in said statement.
14. Any Notices required or permitted to be given pursuant to this Security Agreement, unless otherwise specifically provided in this Security Agreement, shall be in writing and shall be delivered personally or given by regular, certified, or registered mail, correct postage prepaid, to the addresses first set forth above, or to such other addresses as the parties may for themselves designate in writing for the purpose of receiving Notices hereunder. Notices to the City shall be marked "Attention: Deputy Commissioner, Office of Property Management". Notice shall be deemed given when actually, personally delivered and receipted or five (5) days after deposit with a post office registry clerk.
15. The terms, covenants and conditions of this Security Agreement shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of New York, without regard to principles of conflict of laws.
16. All of the terms, covenants and conditions of this Security Agreement shall run with the land and shall apply to, bind and inure to the benefit of the HDFC and the City and their respective heirs, personal representatives, successors and permitted assigns, tenants and subtenants of the Property or any part thereof or interest therein.
17. This Security Agreement may not be modified, amended, changed, discharged or terminated orally, but only by a written agreement signed by both the President or Chairman of the HDFC and the Commissioner of HPD.

18. The HDFC warrants and represents that the HDFC (and the undersigned representatives of the HDFC, if any) has full power, authority and legal right to execute and deliver this Security Agreement and the Note and to pledge and encumber all of the estate, right, title and interest of the HDFC in and to the Property pursuant to the terms hereof and to keep and observe all of the terms, covenants and conditions of this Security Agreement and the Note on the part of the HDFC to be performed.
19. This Security Agreement may be executed in one or more duplicate originals bearing the same date.
20. The HDFC agrees to comply with the provisions of the Investigation Clause annexed hereto as Exhibit A and made a part hereof.

The HDFC warrants and represents that the HDFC has read this Security Agreement, has received a completely filled in copy of this Security Agreement and has duly signed this Security Agreement as of the Commencement Date.

487-89 AMSTERDAM AVENUE HOUSING  
DEVELOPMENT FUND CORPORATION

By: Mildred Allen  
MILDRED ALLEN, TREASURER

APPROVED AS TO FORM BY STANDARD  
TYPE OF CLASS FOR USE UNTIL:  
November 1, 1993

/s/ Daniel Muller  
Acting Corporation Counsel

EXHIBIT A

Investigations

The parties to this agreement agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (State) or City of New York (City) governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

A. If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or;

B. If any person refuses to testify for a reason other than the assertion of his or her privilege against self-incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental agency that is a party in interest in, and is seeking testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then;

C. The commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

D. If any non-governmental party to the hearing requests an adjournment, the commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any

contract, lease, permit, or license pending the final determination pursuant to paragraph F below without the City incurring any penalty or damages for delay or otherwise.

F. The penalties which may attach after a final determination by the commissioner or agency head may include but shall not exceed:

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(ii) The cancellation or termination of any and all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this agreement, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

F. The commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in paragraphs (i) and (ii) below. He or she may also consider, if relevant and appropriate the criteria established in paragraphs (iii) and (iv) below in addition to any other information which may be relevant and appropriate;

(i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under paragraph F above, provided that the party or entity has given actual notice to the commissioner or agency head upon the acquisition of the interest, or at the hearing called for in paragraph C above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

G.- (i) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(ii) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(iii) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(iv) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

H. In addition to and notwithstanding any other provision of this agreement, the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three (3) days written notice in the event contractor fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the contractor, or affecting the performance of this agreement.

#### CONFLICT OF INTEREST

Consultant covenants that he presently has no interest, and that he shall not acquire any interest, which would directly or indirectly conflict in any manner or degree with the performance of his services hereunder.



487-89 Amsterdam Avenue  
HOUSING DEVELOPMENT FUND CORPORATION

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CERTIFICATE OF  
INCORPORATION

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DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT  
LEGAL AFFAIRS  
150 Williams Street  
New York, New York 10038

240-5351

CERTIFICATE OF INCORPORATION

OF

487-89 Amsterdam Avenue

HOUSING DEVELOPMENT FUND CORPORATION

under Section 402 of the Business Corporation Law and Article XI of the Private Housing Finance Law

The undersigned, acting as incorporator of a corporation under Section 402 of the Business Corporation Law and Article XI of the Private Housing Finance Law, hereby adopts the following Certificate of Incorporation for such Corporation:

I

The name of the corporation is the 487-89 Amsterdam Avenue HOUSING DEVELOPMENT FUND CORPORATION (referred to in this Certificate as the "Corporation").

II

The Corporation is organized exclusively for the purpose of developing a housing project (the "Housing Project") for persons of low income located at 487-89 Amsterdam Avenue, New York New York (the "Building"). The Corporation is empowered, subject to the provisions of that certain resolution, calendar number 56, adopted by the Board of Estimate on November 18, 1982 (the "Resolution"), to do and perform all acts necessary to accomplish the above mentioned corporate purposes, including, but not limited to: (a) the purchase or lease of real property and the execution of such instruments and undertakings as may be required by any governmental body giving assistance to or selling real property to the Corporation and (b) making available to shareholders of the Corporation apartments, space and facilities located in such property for residential purposes ("Individual Units") under leases commonly known as proprietary leases. Said proprietary leases provide that shareholders of the Corporation shall be entitled, solely by reason of their ownership of shares of the Corporation, to occupy the Individual Units, pursuant to such proprietary leases.

III

The principal office of the Corporation is to be located in the County of New York, State of New York and all meetings of the Board of Directors are to be held in the State of New York.

IV

The Secretary of the State of New York is designated the agent of the Corporation on whom process against the Corporation may be served. The post office address to which the Secretary of State shall mail a copy of any process served against the Corporation is 487-89 Amsterdam Avenue, H.D.F.C.

DISK: 60/40 PLAN  
CERT/INCORP-2/86

487-89 Amsterdam Avenue  
New York, New York 10024

V

The Corporation is authorized to issue only one class of stock. The total number of shares which the Corporation shall have authority to issue is 4,000 with a par value of One Dollar (\$1.00) per share.

VI

The Housing Project of the Corporation shall be operated exclusively for the benefit of persons or families who are entitled to occupancy in the Housing Project by reason of ownership of shares in the Corporation, and the Corporation may issue shares for home owners' purchase notes if the purchase transaction has received the written endorsement of the Commissioner of the Division of Housing and Community Renewal of the State of New York and if at least two hundred dollars in money or property is received by the Corporation toward the issuance of such shares.

VII

If the Corporation receives a temporary loan or advance from the Municipal Housing Development Fund, as established by or pursuant to Article XI of the Private Housing Finance Law, it shall be authorized to enter into an agreement ("Regulatory Agreement") with the Department of Housing Preservation and Development of the City of New York ("HPD") providing for the regulation of rents, profits, dividends and the disposition of property or franchises for the term during which the mortgage or advance remains unpaid; and that during the term of a Regulatory Agreement, the property or franchises of the Corporation may be disposed of only with the consent of HPD; and HPD shall have the power, if it determines that any such temporary loan or advance is in jeopardy of not being repaid, or that the proposed Housing Project for which such temporary loan or advance was made is in jeopardy of not being constructed, to appoint to the Board of Directors of the Corporation as many new directors as will be sufficient to constitute a majority of the Board, and which directors need not be shareholders of the Corporation or meet other qualifications enumerated in the Certificate of Incorporation or the By-Laws of the Corporation.

VIII

Notwithstanding any other provision contained herein, the Corporation is authorized to enter into a contract (the "Contract") with the Secretary of the United States Department of Housing and Urban Development (the "Secretary") and shall be bound by the terms thereof to enable the Secretary to carry out the provisions of the National Housing Act and the United States Housing Act of 1937 as amended. Upon execution, the Contract shall be binding upon the Corporation, its successors and assigns, so long as a mortgage is outstanding, unpaid and insured, or held by the Secretary, or any rent subsidy pursuant to the United States Housing Act of 1937 as amended is payable.

IX

All income and earnings of the Corporation shall be used exclusively for corporate purposes, and no part of the net income or net earnings of the Corporation shall inure to the benefit or profit of any private individual, firm, corporation or association.

X

Notwithstanding any other provision contained herein, the following restrictions upon the use, sale, transfer, assignment or other exchange of the Building and upon the use, sale, transfer, assignment or other exchange of the cooperative shares allocated to Individual Units shall apply:

- A. The Housing Project shall provide housing for persons and families of low income as defined in Section 576 of Article XI of the Private Housing Finance Law of the State of New York;
- B. For a period of twenty-five (25) years from the date of the conveyance of title of the Building to the Corporation by the City of New York (referred to in this Certificate as the "Resale Period"), the Building shall not be sold, transferred, exchanged, encumbered, mortgaged, subjected to a lien or otherwise disposed of, without the prior written approval of the Commissioner of HPD. The Commissioner, in addition to any other condition, shall not approve any resale, disposition or other change of ownership of the Building unless HPD receives forty (40%) percent ("City Building Share") of the profits of such a disposition (referred to in this Certificate as the "Building Profit"). Building Profits hereunder shall be defined as the gross sales price less the sum of (i) the initial cash consideration paid by the seller of the Building and (ii) the outstanding principal balance of any mortgages on the Building which the seller incurred, assumed or took subject to and to which HPD has subordinated its lien for the City Building Share and which are to be paid from the sales proceeds.
- C. During the Resale Period, HPD shall receive forty (40%) percent ("City Unit Share") of the profits of each and every resale, disposition or other change of ownership of shares in the Corporation which are allocated to Individual Units in the Building. The remaining sixty (60%) percent of the profits from each disposition of shares which are allocated to Individual Units shall accrue to the selling tenant cooperator and the Corporation pursuant to the specific provisions set forth in the By-Laws of the Corporation. Unit Profits hereunder shall be defined as the gross sales price less the sum of the consideration paid by the selling tenant-cooperator upon his or her prior acquisition of the shares allocated to such Individual Unit.

XV

This Certificate may not be altered or amended without the written consent of HPD; and may not be amended without the written approval of the Secretary so long as a mortgage on any real property of the Corporation is outstanding, unpaid and held by the United States Department of Housing and Urban Development.

XVI

A copy of this Certificate of Incorporation and a copy of the filing receipt issued by the Department of State, Division of Corporations, shall be delivered to the Commissioner of HPD when such filing receipt is received.

XVII

The organizational meeting shall be held within ninety days of the date on which the Corporation acquires title to the real property on which the Housing Project is located.

XVIII

The subscriber to this Certificate is at least eighteen years of age and is a resident of the State of New York.

IN WITNESS WHEREOF, for the purpose of forming the Corporation under the laws of the State of New York, I, the undersigned, the incorporator of this Corporation, have personally executed this Certificate of Incorporation on 15 day of August, 1988.

Edward P. York  
Edward P. York  
150 William Street, 5th Floor  
New York, New York 10038

STATE OF NEW YORK     )  
                                  ) ss.:  
COUNTY OF NEW YORK    )

On the 15 day of August 1988, before me personally came Edward P. York, to me known to be the person described in and who executed the foregoing Certificate of Incorporation and he thereupon duly acknowledged that he executed the same.

*Mahalia King*  
NOTARY PUBLIC  
STATE OF NEW YORK  
Notary Public  
No. 12758  
Residing in New York County  
Commission Expires January 1, 1991



DEPARTMENT OF HOUSING PRESERVATION  
AND DEVELOPMENT

ABRAHAM BIDERMAN, Commissioner

Office of Property Management  
75 MAIDEN LANE, NEW YORK, N.Y. 10038

William Spiller, Acting Deputy Commissioner

CERTIFICATE OF HPD APPROVAL  
AND CONSENT

I, William Spiller, Acting Deputy Commissioner of the Department of Housing Preservation and Development of The City of New York, for the purpose of, and as provided by, Article XI of the Private Housing Finance Law of the State of New York have made the required findings pursuant to Section 573(5) of said Law: and pursuant to said Article XI, hereby certify that I approve the Certificate of Incorporation of 487 - 89 Amsterdam Avenue Housing Development Fund Corporation and consent to its filing with the Secretary of State of the State of New York.

William Spiller, Acting  
Deputy Commissioner  
Department of Housing  
Preservation and Development