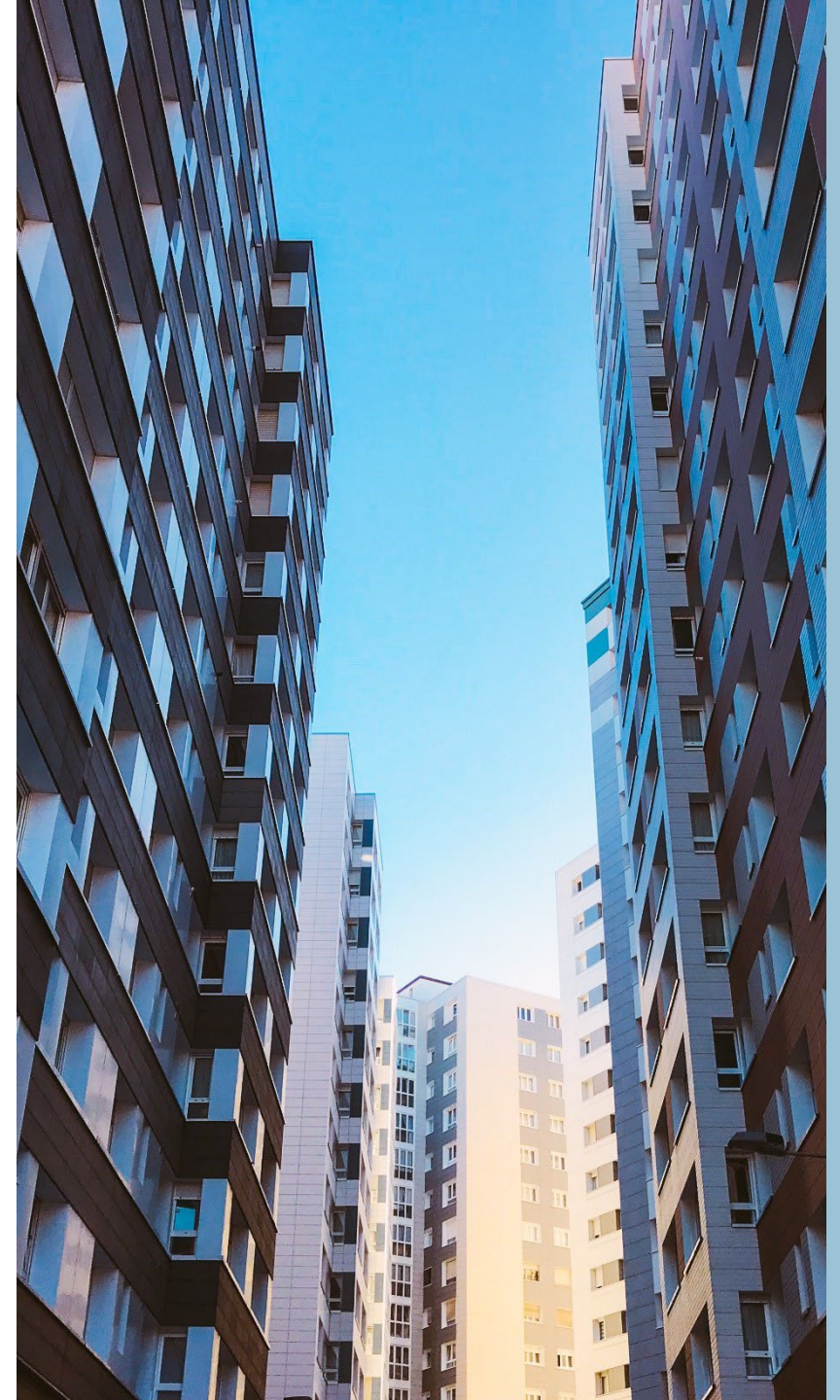


THE CONDOMINIUM IN AFFORDABLE HOUSING TRANSACTIONS

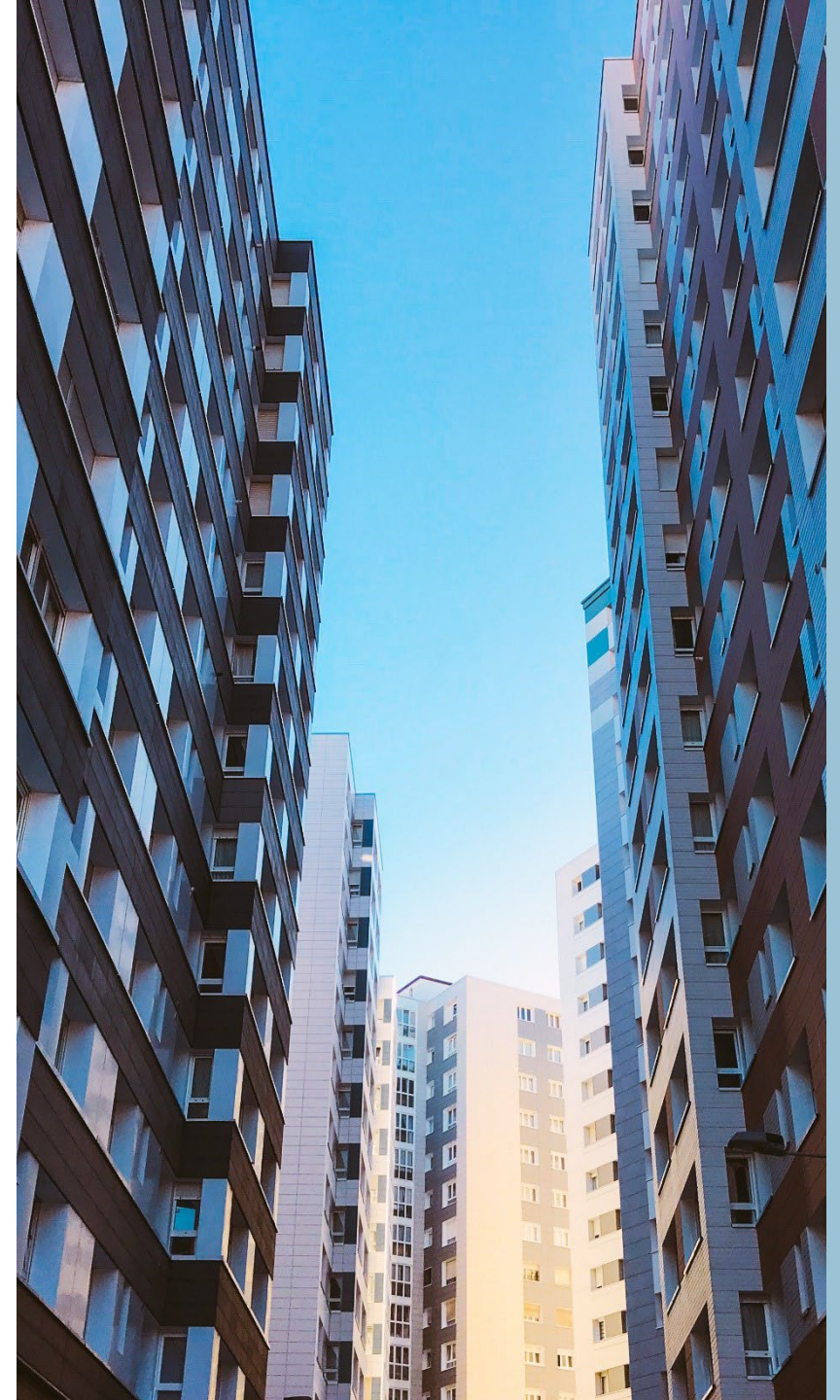
OWNERSHIP INTERESTS

- / There are several ways in which an individual or entity can hold an interest in property.
- / Most commonly:
 - Fee Simple Interest
 - Leasehold Interest



OWNERSHIP INTERESTS

- Fee Simple Interest
 - Most “complete” form of ownership
 - Owner is given title to the property, including the land and improvements, in perpetuity.
- Leasehold Interest
 - Fee simple landowner (the landlord) enters into an agreement with a person or entity (the tenant).
 - Tenant pays landlord for rights to use and enjoy the land.
 - Tenant does not own the land, and rights to use the land are limited in time.
 - At the end of the lease, the property reverts to the landlord.
 - Use, maintenance and alterations are subject to restrictions in the lease.



WHAT IS A CONDOMINIUM?

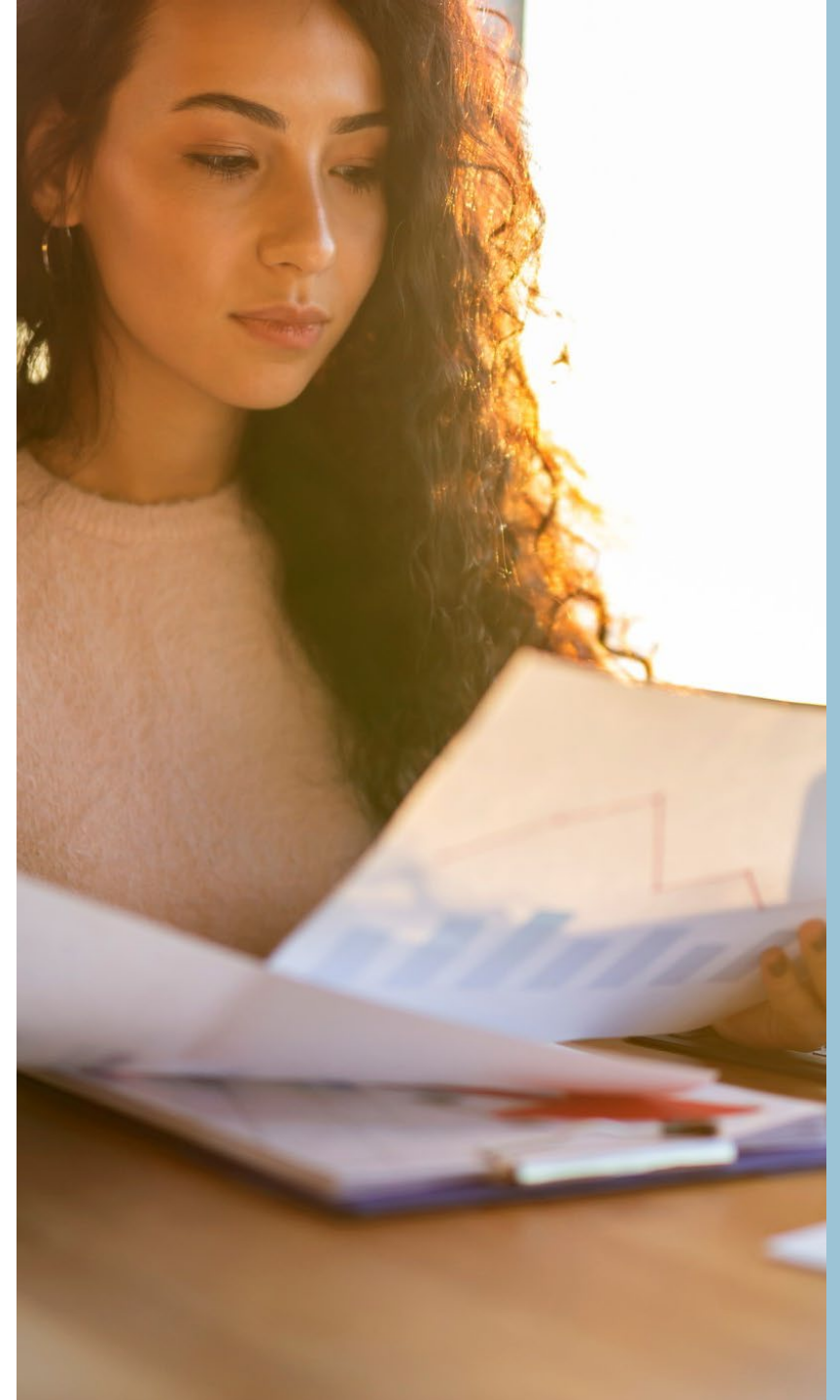
- / Multiple fee owners within the same community or building
- / Splitting of a single tax lot into multiple tax lots for multiple owners or different uses
- / Condominiums can be residential, commercial, or allow for multiple uses within the same building
- / **Governing documents:**
 - Declaration
 - By-Laws
- / Condominium unit owners own their units but share common spaces and pay common charges
- / A condominium is a security, governed by “blue sky” laws

CREATION OF A CONDOMINIUM

- / Highly regulated as a security
- / NY – Martin Act
 - Enforced by New York State Attorney General
- / Seeks to protect “regular” buyers from sophisticated developers
- / Offering Plan vs. No-Action Letter

NO-ACTION LETTER PROCESS

- / Affidavit from fee owner
- / Affidavit from ground lessee, if applicable
- / Affidavit from not-for-profit tenant
- / Form M-10 from declarant
- / 339-i Letter
- / **Timeline:** Approximately 1 month to 6 weeks



OTHER REQUIRED ITEMS/DOF SUBMISSIONS PROCESS

- / Lease/Ground Lease (Recorded Memo of Lease)
- / RP602C
- / PW1
- / Declaration and By-Laws
- / Signed and Sealed Tax Maps
- / Approved No-Action Letter
- / **Timeline:** Approximately 8 to 10 weeks



COSTS

- / Legal fees (Who pays?)
- / Expediting fees
- / Architect fees
- / Filing fees (AG, DOF, DOB)



WHY “AFFORDABLE” CONDOMINIUMS?

- States are issued a certain amount of volume cap from the federal government.
- In most states, there is more volume cap than there are projects available in which to use them.
- In New York, there is competition for the volume cap. It is spread among the IDA, HFA, HPD, and other bond issuers involved in private activity (not only housing).
- If HDC provides tax exempt bond financing for a portion of a building (i.e., one condo unit), the remaining portion will also be financed by HDC, with another type of bond. The entire building remains subject to the applicable regulatory agreements.

WHY “AFFORDABLE” CONDOMINIUMS?

- For example, if half the building is occupied by tenants with a 60% Area Median Income (AMI), an owner can receive tax exempt bond financing for the condominium unit encompassing those spaces. A second unit might be financed with recycled bonds (recycling previously-issued bonds that have already been paid off, which do not count against the state’s volume cap).
- Creation of a commercial condominium allows for different types of bond financing for units with certain uses, and other tax benefits (i.e., ICAP and 420-c) for units with other uses.

HDC CONDOMINIUM GUIDELINES

HDC Approval

The Sponsor must obtain HDC's prior written approval for any condominium declaration and by-laws affecting the Project and for all related documents, including the condominium plans.

- / The Sponsor must submit the condominium documents for our review and approval prior to their execution and recording.

TIMING OF ORGANIZATION

Typically, any condominium affecting the Project must be organized prior to the Conversion, unless the financing structure requires that the condominium be organized sooner.

- / For a Project that will meet the 50% test on a low-income “building” only (and use recycled bonds), the condominium must be organized prior to the date that the building is “placed in service” pursuant to Section 42 of the Tax Code. Satisfaction of this requirement will be a condition to the Conversion for such a Project.
- / Generally, a “no action” letter is required as a condition to the Construction Loan Closing. The Sponsor should review the Attorney General’s guidance for affordable housing projects seeking “no action” letters: http://www.ag.ny.gov/pdfs/ref/No-Action_Letter_Guidance_Memorandum_1-26-16.pdf



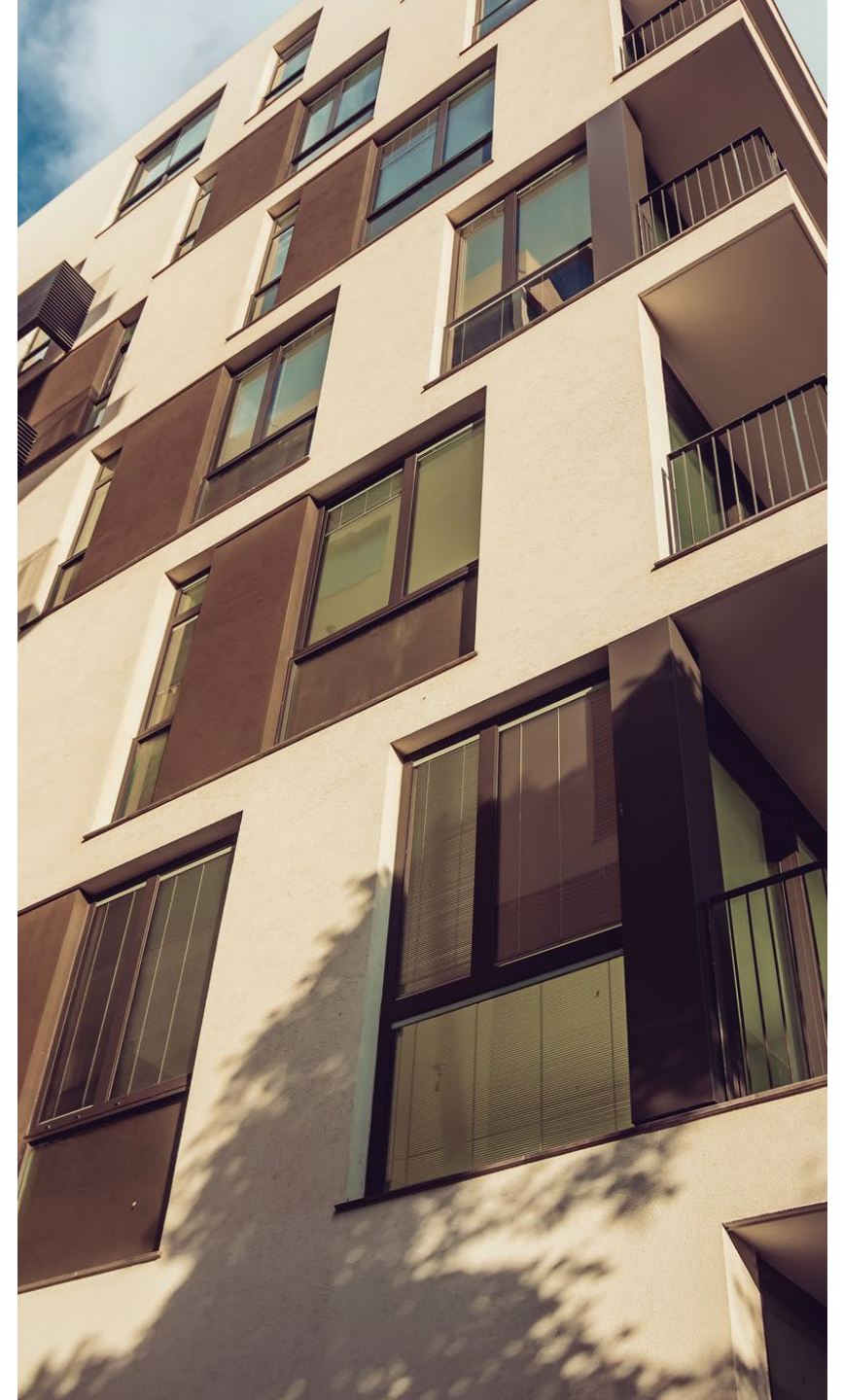
SUBORDINATION OF MORTGAGES

We will subordinate the lien of our mortgages to the condominium regime established by an approved condominium declaration, provided that any mortgages subordinate to our mortgages similarly subordinate to the condominium regime.

- / Please note, however, that we are subordinating the mortgages to the condominium regime only—our mortgages must retain their intended priority as encumbrances (first lien, etc.) on the condominium units that comprise the Project. Please see the first bullets under “HDC Mortgage Provisions” and “Requirements for Condominium Documents” below

REGULATORY AGREEMENT ISSUES

- ✓ The Regulatory Agreement is not subordinated to the condominium regime. The condominium declaration must expressly recognize that the condominium regime is subject and subordinate to the Regulatory Agreement (including any future amendments to the Regulatory Agreement).
- ✓ Under appropriate circumstances and with satisfactory protections for the Project, we may release a condominium unit from the Regulatory Agreement if all parties have agreed to the release and the release is documented in the terms of our financing for the Project.
- ✓ Compliance issues that may be affected by a condominium regime include the Project's Tax Code Unit Percentage (Section 4.03(b)), annual tenant certification requirements (Section 4.06(c)), next available unit rules (Section 4.08) and the Applicable Fraction (Section 6.04). Please see the Regulatory Agreement for more details.



HDC MORTGAGE PROVISIONS

Where a condominium is planned for the Project (or is in place at the Construction Loan Closing), our mortgages will include the following provisions:

Condominium Units as Mortgaged Property.

The mortgaged property will include the condominium units and any interest of the Sponsor and any related entity in the condominium association, board of managers or similar entity.

- / The “Mortgaged Property” granting clause at the beginning of the mortgage will include appropriate language, in addition to language in a “Condominium Provisions” section.

Compliance with Condominium Documents and Law; Payment of Common Charges.

The Sponsor and the unit owners will comply with the terms of the approved condominium documents and the Condominium Act and will give HDC notice of any default or similar event. HDC may cure any default under the condominium documents, and may pay any delinquent common charges or other required amounts, and the Sponsor and unit owners, jointly and severally, will reimburse HDC for any amount spent (including interest at HDC’s default rate) to cure a default or pay such amounts.

- / A failure to comply with the condominium documents will also be an event of default under our mortgages.

Permitted Uses.

The Sponsor and the unit owners will use the condominium units and common elements in accordance with applicable law, the HDC mortgages, the Regulatory Agreement and any other applicable requirements.

TAX EXEMPTION APPROVAL PROCESS

- / “Condo in a condo” or leasehold condominium unit deed
- / Fill out and submit 420-a application
 - https://www1.nyc.gov/assets/finance/downloads/pdf/08pdf/not_for_profit_appl.pdf
- / Not regulated. 3 weeks to 9 months
- / Application states a short time will be given to rectify if application is incomplete; this is not always true
 - Appeals process can be lengthy
 - Get it right the first time
- / Annual filings are required
- / Filings required due to a material change
- / Revocation due to Class 1 NYC DOB Violations



HDC MORTGAGE PROVISIONS CONT.

Subdivision; Amendments; Termination.

The Sponsor and the unit owners will obtain the prior written consent of HDC for any subdivision of a condominium unit and for any amendment, modification or termination of the condominium documents. Any such action taken without the required consent will not be binding on us and will be voidable by us.

Remedies upon Default.

Upon the occurrence of an event of default under our mortgages, HDC may appoint and direct the managers representing the condominium units that are subject to our mortgages. The Sponsor will grant HDC a power of attorney to this effect.

Insurance; Condemnation

The Sponsor, unit owners or board of managers may satisfy the insurance requirements of our mortgages by procuring the required coverage through the condominium. HDC or a party approved by HDC must be the condominium's insurance trustee, and all casualty and condemnation proceeds must be paid to the insurance trustee, to be held and disbursed in accordance with the terms of our mortgages.

/ HDC will require the Sponsor and the unit owners (i) to waive, to the fullest extent permitted by law, any right to require HDC (or the insurance trustee approved by HDC) to apply such proceeds otherwise, and (ii) to agree to make elections, provide direction or take any other action that may be required under the Condominium Act (including Section 339-cc) or the condominium documents to carry out the intent of this provision.

REQUIREMENTS FOR CONDOMINIUM DOCUMENTS

The condominium documents must include the following provisions:

- / *Recital of Ownership, Regulatory Agreement and Mortgages.* The condominium documents will recite the ownership of the condominium units and that the applicable condominium units are subject to the Regulatory Agreement, our mortgages and any subordinate mortgages.
- / If all of the condominium units will be owned by the same or a related owner, the condominium documents will include a statement that the condominium's board of managers, or any similar entity, and all unit owners will comply with all requirements of our mortgages.
- / *Control of Condominium.* The condominium units that are subject to our mortgages and the Regulatory Agreement will collectively control the condominium, including control of the condominium's board of managers or any similar entity.
- / Please note, however, that if the condominium units that are subject to our mortgages and the Regulatory Agreement include any non-residential condominium units (e.g., a commercial, community facility or parking unit), then the residential condominium unit or units must control the condominium. In addition, if the Project includes a market-rate residential condominium unit, the affordable residential condominium unit or units must control the condominium.
- / Please note also that investor members or partners may not have separate approval rights in the condominium documents. Such rights must be contained in the applicable operating or partnership agreement.

REQUIREMENTS FOR CONDOMINIUM DOCUMENTS CONT.

- / *Insurance Coverage and Escrow.* During the term of our financing, the condominium will maintain insurance as required by HDC, will appoint HDC or a party approved by HDC as the insurance trustee for the condominium, and will pay to HDC or the approved insurance trustee an insurance escrow as required by HDC (with no liability on the part of HDC for funds in its possession, except in cases of gross negligence or willful misconduct).
- / The following paragraph must appear in all condominium by-laws (please review and adjust defined terms, etc. if necessary):

“At the conversion of the HDC loans to permanent financing, and for so long as any HDC loan is outstanding, the Board of Managers shall pay to HDC an insurance escrow reserve equal to approximately six months of insurance premiums and thereafter on a monthly basis a sum equal to 1/12 of the anticipated annual premiums, as reasonably determined by HDC, for any insurance policies required under these By-Laws or any HDC mortgage. Such amounts shall be expended by HDC to reimburse the Condominium for, or to pay directly when due, the premiums of any insurance policies required by these By-Laws or any HDC mortgage. The Unit Owners and the Board of Managers agree that the amount of any deficiency in the insurance escrow reserve (as determined at any time by HDC in its sole discretion) shall be paid by the Unit Owners to HDC within 20 days after written notice and demand. All amounts in the insurance escrow reserve may be commingled with the general funds of HDC. Absent gross negligence, willful misconduct or bad faith, HDC shall be protected and shall incur no liability for or in respect of any action taken or omitted with respect to this escrow reserve.”

REQUIREMENTS FOR CONDOMINIUM DOCUMENTS CONT.

- / *Casualty and Condemnation Proceeds.* During the term of our financing, any casualty or condemnation proceeds will be paid to HDC or the approved insurance trustee and will be disbursed in accordance with our mortgages.
- / Please see the “Insurance; Condemnation” note under “HDC Mortgage Provisions” above.
- / *Water and Sewer and Real Estate Taxes.* During the term of our financing, water charges and sewer rents and any real estate taxes for the entire Project will be escrowed with and paid by HDC pursuant to our mortgages, unless otherwise agreed to by us.
- / *Material Work.* During the term of our financing, the condominium will obtain the prior written consent of HDC for any work that is structural, that materially alters the appearance of the Project, that requires a change in the certificate of occupancy or that costs in excess of \$100,000, or such other amount as may be provided in our mortgages (including all related projects).
- / *Prohibited Uses.* Certain uses of any condominium unit (whether or not subject to our financing) will be prohibited, including liquor stores, massage parlors, stores selling pornographic material or drug paraphernalia, nightclubs and entertainment facilities, houses of worship or other religious uses, pawn shops, and other uses that may create a nuisance or hazard to the tenants of the Project.

REQUIREMENTS FOR CONDOMINIUM DOCUMENTS CONT.

- / *Transfers and Leases of Condominium Units.* During the term of our financing, we must approve in writing all transfers of any condominium unit (whether or not subject to our financing), and all non-residential leases (including master leases) and subleases affecting any condominium unit, in any case prior to the transfer or lease. Our approval is also required for any change of permitted use or other material amendment of a previously approved lease. These approvals will not be unreasonably withheld.
- / *Subdivision; Amendments; Termination.* During the term of our financing, the condominium will obtain the prior written consent of HDC for any subdivision of a condominium unit and for any material amendment or modification of, or for any termination of, the condominium documents.
 - / Any such change must not materially adversely affect the bonds or our rights under the condominium documents or our loan documents.
- / *Reports and Notices; Records.* During the term of our financing, HDC will receive copies of all financial reports, notices of default and similar items required under the condominium documents, without any separate request required, and will have access to the condominium's records.

ADDITIONAL NOTES

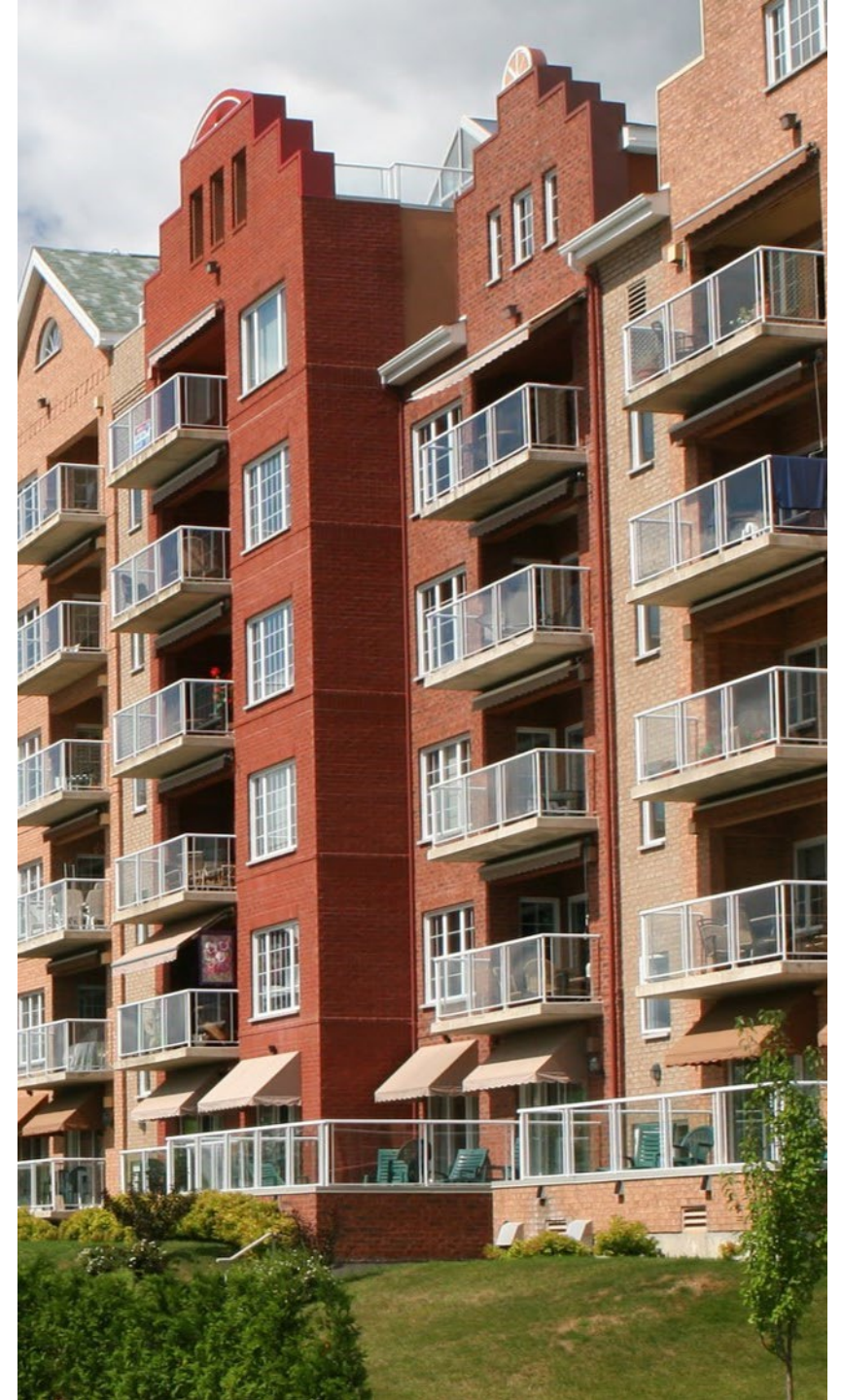
/ A bank providing credit enhancement for the HDC financing may have different or additional rights during such period as its credit enhancement is outstanding.

/ HPD may require additional rights and review additional matters with respect to the condominium when it is involved in a Project.

/ Section 339-m of the Condominium Act provides that common charges do not have to be based on ownership percentages where a condominium unit is subject to a regulatory agreement restricting the incomes of its residents upon initial occupancy.

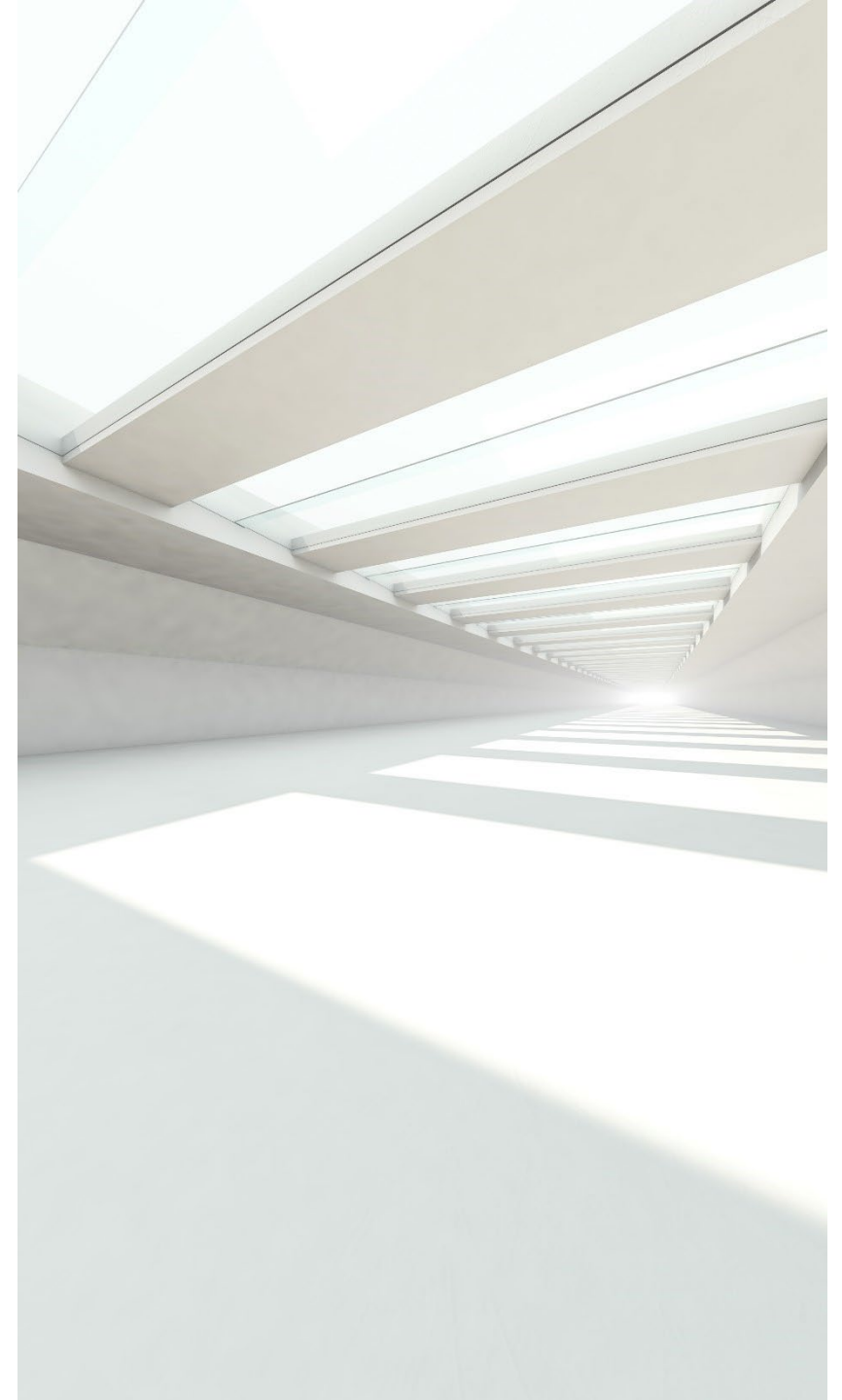
TITLE INSURANCE ISSUES

At the Conversion, in addition to HDC's standard title insurance requirements, the title insurance policies for HDC's mortgages must be updated (i) to change the insured legal description to include a description of the condominium, and (ii) to add the standard condominium endorsement.



LEASEHOLD CONDOMINIUM/420-A REQUIREMENTS

- / Underlying leasehold interest in the land of 30+ years upon Not-for-Profit's acquisition of the leasehold condominium units
- / Lease must be for non-residential purposes
 - Dormitory is non-residential per New York City Zoning Resolution
 - Homeless shelter is non-residential per New York City Zoning Resolution
 - "Condo in a condo" if residential use is present in the building
- / Not-for-Profit must be responsible for the land and building tax assessed with respect to its unit
- / Not-for-Profit must be eligible for an exemption under 420-a (or another eligible category)



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