

FOR CONSIDERATION

September 14, 1010

TO: The Directors

FROM: Dennis M. Mullen

SUBJECT: City of Utica (Oneida County)
Kennedy Plaza Apartments Residential Project – UDC Loan No.1

REQUEST

FOR: Authorization to: (i) Sell, Convey Title, and Dispose of Real Property to Liberty Affordable Housing, Inc. (“Liberty”); (ii) Forgive All Outstanding Mortgage Indebtedness; and (iii) Take All Related Actions.

PROJECT SUMMARY

Location: City of Utica, County of Oneida

Improvements: 17 story high-rise and two 5-story apartment buildings currently containing 303 residential units situated on approximately 6 acres.

BACKGROUND

Legal title to the Kennedy Plaza Residential Project (“ Project” or “Kennedy Plaza”) is held by Kennedy Plaza I Corporation, a subsidiary of the New York State Urban Development Corporation (“UDC”) d/b/a the Empire State Development Corporation (“ESDC”) which was organized as a limited profit housing company under Article 2 of the Private Housing Finance Law. Kennedy Plaza is currently owned by Kennedy Plaza I Corporation and is operated as a Mitchell-Lama Project.

PRIOR BOARD ACTION

The UDC and New York State Mortgage Loan Enforcement and Administration Corporation (“MLC”) boards of directors, and the members of the New York State Project Finance Agency (“PFA”), where applicable, previously approved the Loan Restructuring Agreement and its amendments, several Section 32 advances, foreclosure on the mortgage lien, and authorized the formation of a UDC subsidiary housing company to take title to the project. In 2009, the UDC Board approved Liberty Affordable Housing Inc. (“Liberty” as the Designated Developer and prospective purchaser of Kennedy Plaza.

FINANCIAL

The Project's current capital structure consists of a UDC mortgage in the amount of \$8,179,000, a Third Additional Note of \$957,579 and a Second Building Replacement Note of \$500,000. Both the Third Additional Note and the Second Building Replacement Note were created under a Loan Restructuring Agreement in 1985 to consolidate debt service arrears. The Project has also received Section 32 mortgage advances of \$483,514. As of August 31, 2010, the Project's total outstanding principal indebtedness to ESDC is \$9,725,699 and accrued interest arrears total \$4,679,152

The Project has received additional financial assistance in the form of a Project Improvement Program ("PIP") loan of \$ 1,540,287. The Project is subsidized under Section 236 of the National Housing Act and receives annual interest reduction payments ("IRP") from HUD in the amount of \$538,381. The Project's IRP contract expires on April 30, 2022. The Project also receives a rental subsidy under a Rent Supplement Contract with HUD which covers 70 units representing 24% of the Project's total. The current annual amount of the Rent Supplement Contract is \$147,000.

CURRENT STATUS

The prior owner of Kennedy Plaza and ESDC were involved in bankruptcy proceedings and foreclosure actions from 2003 through 2007. After the bankruptcy proceedings were dismissed and ESDC was successful in its foreclosure action, an ESDC subsidiary housing company was formed in July 2008 to take title to Kennedy Plaza and facilitate the disposition of the Project through the Request For Proposals ("RFP") process. The RFP, which was published in September 2008, specified that ESDC's minimum purchase price was \$6.5 million and that the Project was to be sold in its as-is condition and subject to all unpaid taxes.

In response to the RFP, Liberty agreed to pay \$6.5 million for the Project and to satisfy all unpaid taxes. Based upon Liberty's purchase price offer, qualifications, financial capability, financing and development plan, the Board authorized Liberty as the Designated Developer and prospective purchaser of the Project. The Project is being successfully managed by CRM Rental Management, an affiliate of Liberty.

REDEVELOPMENT PLAN

Constructed and occupied in the early 1970s, the Project is currently in need of major rehabilitation and modernization. Liberty's contemplated acquisition and rehabilitation plan includes site-work, roof replacement, renovated balconies, electrical and plumbing upgrades, new elevators, new sprinkler and fire alarm systems, new windows, new doors, new kitchens including energy-efficient appliances, new bathrooms, painting, paving and landscaping. The Project which currently contains 303 units will be reduced to 292 units by combining 22 efficiency units to create 11 Americans with Disabilities Act ("ADA")

compliant one bedroom units. Total construction costs are anticipated to be approximately \$19.0 million.

PROPOSED FINANCING PLAN

The proposed acquisition and rehabilitation plan is to be financed by an HFA first mortgage loan funded through its issuance of tax exempt bonds. Such issuance will allow the transaction to receive proceeds from syndication of 4% as-of-right Low Income Housing Tax Credits (“LIHTC”). The Project will also receive proceeds from syndication of 9% low income housing tax credits awarded by the New York State Division of Housing and Community Renewal (“DHCR”). Other sources include mortgage financing from Community Preservation Corporation (“CPC”); National Stabilization Program funds; City of Utica HOME Funds; Federal Home Loan Bank Funds; and Weatherization Assistance Program funds. The Section 236 Interest Reduction Payment (IRP) contract will be decoupled from the existing UDC mortgage so that the new owners continue to receive the benefits of the Section 236 contract. In connection with the contemplated LIHTC acquisition and the issuance of tax exempt bonds, the project will continue to provide affordable housing to the residents of Utica for an additional 40 years. Eligible current tenants will receive enhanced Section 8 vouchers allowing the property to receive higher rents while at the same time ensuring the continued affordability for current tenants.

ESDC will receive \$6.5 million in cash at closing representing payment in full of the minimum purchase price as specified in the RFP. After receipt of the \$6.5 million, the remaining balance of total indebtedness of approximately \$9.4 million which includes debt service interest arrears of \$4.7 million and the \$1.5 million PIP will be forgiven.

PUBLIC PURPOSE

The Public Purpose to be served by the sale and conveyance of the Project to Liberty Affordable Housing will be the rehabilitation and modernization of a vital affordable housing asset in the Mohawk Valley region. In addition to preserving quality affordable housing units, the rehabilitation of Kennedy Plaza will positively impact the revitalization of downtown Utica.

NON-DISCRIMINATION

ESDC's non-discrimination policy shall apply.

ENVIRONMENTAL REVIEW

Pursuant to the State Environmental Quality Review Act (“SEQRA”), Article 8 of the Environmental Conservation Law, and its implementing regulations (6 NYCRR Part 617), and in connection with the approval of Liberty as the Designated Developer and prospective purchaser of Kennedy Plaza, the Directors made a Determination of No Significant Effect on the Environment at their meeting of January 15, 2009. This

determination addressed all aspects of the proposed action. Therefore, no further environmental review is required in connection with this action.

REQUESTED ACTION

The Directors are requested to adopt the attached resolution authorizing (i) the sale, conveyance of title, and disposition of real property to Liberty Affordable Housing, Inc., (ii) the forgiveness of all outstanding mortgage indebtedness, and (iii) the taking of all related actions.

RECOMMENDATION

Based on the foregoing, I recommend approval of the attached resolution.

ATTACHMENT:

Resolution
Summary Approval Sheet

September 14, 2010

CITY OF UTICA – KENNEDY PLAZA RESIDENTIAL PROJECT – UDC LOAN NO. 1 - AUTHORIZATION TO (i) SELL, CONVEY TITLE, AND DISPOSE OF REAL PROPERTY TO LIBERTY AFFORDABLE HOUSING, INC., (ii) FORGIVE ALL OUTSTANDING MORTGAGE INDEBTEDNESS, AND (iii) TAKE ALL RELATED ACTIONS.

RESOLVED, that based on the materials presented to this meeting and ordered filed with the records of the New York State Urban Development Corporation, relating to the Kennedy Plaza Residential Project (UDC Loan No. 1), the Corporation be and hereby is authorized to (i) sell, convey title, and dispose of real property to Liberty Affordable Housing, Inc., (ii) forgive all outstanding mortgage indebtedness, and (iii) take all related actions; and be it further

RESOLVED, that the Officers of the Corporation be, and each of them hereby is, authorized and directed to take any and all action necessary to carry out the foregoing resolution and to carry out any authority or delegation granted to the Corporation in conjunction with such authorizations, including, but not limited to, the preparation and execution of any agreements, instrumentation and/or documents as such authorized officer may deem necessary or appropriate.