NYC HDC

NEW YORK CITY
HOUSING DEVELOPMENT
CORPORATION

MEMORANDUM

To: The Chairperson and Members

From: Eric Enderlin
President

Date: November 22, 2022

Subject: Approval of Loan to the New York Shelter Acquisition and Predevelopment Fund

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I am pleased to recommend that the Members approve the making of a loan (the "HDC Fund Loan") in an amount not to exceed $5 million with funds granted to the Corporation from the City of New York, acting by and through its Department of Homeless Services ("DHS") to the to-be-formed New York Shelter Acquisition and Predev lopment Fund, LLC (the "Fund" or "Shelter Fund"). The Shelter Fund is an initiative being led by DHS and SeaChange Capital Partners, Inc. ("SeaChange") in coordination with HDC that will provide short-term loans (each, a "Shelter Loan") to non-profit entities that are in negotiations with DHS to build, own and operate homeless shelters. It is anticipated that such loans will enhance the supply of high quality purpose-built homeless shelters with long-term use restrictions by offering a source to pay for predevelopment and acquisition expenses that are required prior to obtaining a construction loan from a private lender. This critical initiative was included in the Mayor's housing blueprint, which takes a holistic view of the City's complex housing challenges and advances a range of strategies to transform and preserve NYCHA, increase and improve our affordable housing supply, and break the cycle of homelessness and housing instability. This memorandum will provide background to the proposal and a discussion of the economics, mechanics, and risks and mitigants.

Background

Due to the homelessness crisis, in recent years the City has been seeking to encourage not-for-profit shelter operators to develop their own shelter sites. These shelters are designed and maintained with service needs in mind, and owned and operated by experienced, mission-driven service providers that are well-equipped to provide residents with a strong platform for stabilization and return to permanent housing. Despite these benefits, shelter development can be difficult for not-for-profit operators to achieve, as they have fewer resources to invest in the significant acquisition and predevelopment costs that must be met well before a City DHS contract is in effect. The upfront financial burden is a barrier for many organizations. SeaChange has been working with a few non-profits that are seeking to develop high quality shelters but are having difficulty securing acquisition and predevelopment financing prior to receiving construction loans. SeaChange approached DHS with a proposal to bring together top-loss City financing with private philanthropy – akin to the New York City Acquisition Fund and the Down Payment Assistance Fund – in order to create the Shelter Fund to provide financing early in the shelter development process.

DHS is now seeking to create a loan fund to provide acquisition and predevelopment financing for non-profit-owned new construction shelter facilities or the acquisition of existing buildings for adaptive re-use as shelter facilities. Because DHS does not have lending authority, it cannot make the $5 million loan directly to the Shelter Fund. HDC has been asked to facilitate this initiative by receiving grant funds from DHS pursuant to Article 12, Section 661 of the New York State Private Housing Finance Law and loaning those funds to the Shelter Fund. DHS and HDC will enter into a Memorandum of Understanding (the "MOU") and grant agreement to effectuate the grant and outline roles and responsibilities.

HDC has the authority to finance a shelter facility if it meets the following criteria, which will be requirements for a project to receive a loan from the Shelter Fund:

- Each family (or single person) must have their own sleeping room or rooms (in other words, there is not more than one family/single person sharing a sleeping room), even if the family/single person neither has its own kitchen facilities (that is, either shares those with others or facility staff prepare meals) nor has its own individual bathroom facilities (that is, shares those with others), and
- DHS must reasonably expect each occupant to stay at least 30 days.

For more project eligibility requirements, see Exhibit A: Shelter Fund Loan Term Sheet.

<u>SeaChange Capital Partners, LLC ("SeaChange")</u>

SeaChange is a 501(c)3 non-profit organization that was founded in 2007 with the mission to support non-profits in working through complex financial and organizational challenges. SeaChange provides grants to support the exploration of mergers and collaborations, impact-first loans and program related investments to address the financing needs of non-profits, and advice and analysis to support the sector as a whole. SeaChange has been lending to non-profits since 2013 and currently manages three lending funds – Contact Fund, the New York Pooled PRI Fund and the SeaChange Special Impact Fund – all of which support non-profit organizations in New York City. In 2013, SeaChange launched the New York Pooled PRI Fund, which is a collective of 11 foundations plus SeaChange, to make program related investments in the form of loans to non-profits that are unable to access credit from traditional sources. The organization is governed by a board of 11 members and staffed by a team of 8, led by Managing Partner John MacIntosh.

Since 2013, SeaChange, through its affiliated funds has made 61 loans to non-profits for a total of $43.5 million. Loans range in size from $50,000 to $2 million with durations of six months to six years. Uses include working capital, bridge financing including predevelopment, acquisition and construction, and expansion capital. SeaChange and its staff manage the sourcing, due diligence, underwriting, and portfolio management of its loan portfolios. The underlying investors in the funds managed by SeaChange include 11 New York City foundations and over 50 socially motivated individuals. All the loans made by SeaChange are in furtherance of its charitable mission and all are below-market.

New York Shelter Acquisition and Predevelopment Fund LLC ("Shelter Fund")

The initial Shelter Fund total is expected to be approximately $15 million: $5 million funded by the City through DHS and granted to HDC to be loaned to the Shelter Fund as first loss monies and $10 million in program related investment capital from various foundations that has been raised by SeaChange.

The Shelter Fund will make Shelter Loans to eligible non-profits for the acquisition and predevelopment of high-quality shelters in New York City. The Fund's below-market loans are expected to significantly reduce the capital costs related to the acquisition and predevelopment of shelters, allowing a portion of the savings to be reallocated toward the non-profit's services. Non-profits partnering with the Fund will own the shelters and associated land, ensuring that these assets remain available to serve people experiencing homelessness. Shelter Loans are expected to range in size from $250,000 to $3,000,000 with a duration of up to 18 months. The legal structure of the Fund is expected to be a stand-alone limited liability company, managed by SeaChange with oversight in the form of credit committee participation from DHS, HDC, and SeaChange's New York Pooled PRI Fund.

Mechanics and Economics

The HDC Fund Loan will have a seven-year term and occupy a top loss position in the Shelter Fund. Interest on the HDC Fund Loan will accrue at 1% and will be deferred until maturity. Pursuant to the MOU expected to be entered into between DHS and HDC, HDC will be required to use repayments of the HDC Fund Loan solely for future affordable housing projects, approved by and on terms and conditions acceptable to HPD and the City's Office of Management and Budget, that requires a minimum of 30% of the units to be reserved for formerly homeless households.

In addition to the HDC Fund Loan, the Shelter Fund is being funded with $10 million in program related investments that have been raised by SeaChange for this purpose. The Shelter Fund will be governed by a credit committee of up to five members to approve program guidelines and lending standards, and to authorize individual Shelter Loans (the "Credit Committee"). Each of HDC, DHS and SeaChange will appoint a member of the Credit Committee; each member shall be required for a quorum; and each shall have a veto right on the Credit Committee for Shelter Loan approvals. All Shelter Loans require the written approval of the HDC, DHS and SeaChange members of the Credit Committee, each at their sole and absolute discretion.

Shelter Loans will only be made to special purpose entities created by non-profit shelter providers who have been awarded a request for proposal ("RFP") by DHS for a long-term DHS contract. A registered DHS contract would include rent payments set-aside for the amortization of a senior loan on the property, and such loan would be the take-out source of financing for a Shelter Loan.

Interest on the Shelter Loans will accrue at 7% and will be deferred until repayment or Shelter Loan maturity. If the project is not able to close on construction financing, then the accrued interest will be forgiven. No single Shelter Loan will represent more than 25% of the Fund capital (i.e., $3.75 million). No non-profit borrower will have more than one loan outstanding at any time unless the loans, when aggregated, represent less than 25% of the Fund capital. Further details and a description of the permitted use of proceeds for the Shelter Loans are on Exhibit A: Shelter Loan Term Sheet.

Fund Manager

SeaChange, as Fund Manager, will review Shelter Loan applications, proceed with due diligence (as necessary, appraisals, environmental review, financial review of prospective borrower, review of title issues raised by Fund counsel for acquisition loans, review of zoning analysis, review of draft purchase and sale agreement for acquisition loans, site visits, meetings with the non-profit's leadership, etc.) and make formal recommendations to the Shelter Fund Credit Committee. It is expected that the Fund will begin accepting loan applications in the first quarter of 2023.

Risks and Risk Mitigation

The primary risks associated with the HDC Fund Loan are repayment risk, top-loss guarantee risk and borrower risk. These risks and their mitigants are discussed below.

Repayment Risk
Shelter Loans will be secured or unsecured, short-term loans and will be repaid upon receipt of a construction or rehabilitation loan. Shelter Loans will be underwritten by SeaChange to comply with the requirements of the attached term sheet as well as the expected requirements of future construction or rehabilitation lenders. Only sponsors that have received an RFP award from DHS and are currently in negotiations to set up a shelter will be considered; income that is expected from a contract with DHS will provide assurance that the project will be able to receive a construction or permanent loan from a private lender. The Shelter Fund Credit Committee will assess construction financing takeout prospects for any Shelter Loan prior to the making of any loan. Shelter Loans will be (i) 100% recourse to the Shelter Loan borrower entity and any for-profit JV partner guarantor; (ii) 25% recourse to the non-profit sponsor of a borrower entity; and (iii) interest free and repayable over five years in the event the project does not move forward with construction financing (after any proceeds are repaid from the sale of the property in the case of an acquisition project).

Top-Loss Guarantee Risk
DHS has requested that the HDC Fund Loan occupy a top-loss position in the Shelter Fund, wherein any losses sustained by the Shelter Fund would be attributed to the HDC Fund Loan before the rest of the Shelter Fund lenders suffer losses. This commitment enables risk averse foundations to be able to make program related investments into the Shelter Fund that might otherwise be too risky for foundations to take on.

Borrower Risk
SeaChange is expected to prequalify non-profits with the aim to qualify high-capacity non-profits who have a team with development experience, a record of compliance with municipal obligations, and sufficient financial capacity to make the guaranty on the Shelter Loan that is required. All borrowers will have also undergone review and approval by DHS prior to applying for a Shelter Loan.

Fees

The Corporation is expected to earn an annual return equal to 1% of the $5 million loan amount, which will accrue and be paid at the maturity of the HDC Fund Loan term.

Action by Members

The Members are requested to approve the making of a loan with grant proceeds from DHS in the amount of $5,000,000 to the New York Shelter Acquisition and Predevelopment Fund, LLC that will be in a top loss position in relation to other loans to the Fund; and the execution by an authorized Officer of the Corporation of related documents and any other documents necessary to accomplish this loan.

Attachments

A. Draft Shelter Fund Loan Term Sheet

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New York Shelter Acquisition and Predevelopment Fund / Shelter Fund

November, 2022

Name:	New York Shelter Acquisition and Predevelopment Fund, LLC ("Fund" or "Shelter Fund")
Summary:	Acquisition and pre-development financing for high quality, purpose-built or rehabilitated, nonprofit-owned shelters during the period before a registered, long-term DHS contract is in place against which conventional financing can be raised.
Parties:	SeaChange Capital Partners, Inc. (a 501(c)3) ("SeaChange"), NYC Department of Homeless Services ("DHS"), New York City Housing Development Corporation (HDC"), and a group of third-party funders lending through a SeaChange entity.
Ownership:	SeaChange is the sole member and manager of the Fund.
Fund Manager:	SeaChange
Source of Capital (each, a "Fund Loan"):	$5.0 million in "Top-Loss" debt ("Subordinated Debt") from HDC, provided pursuant to a grant by DHS to HDC; $10.0 million in PRI debt ("PRI Debt") from SeaChange, Reed Community Capital, the Jennifer and Jonathan Allan Soros Foundation, and other private foundations.[1]
Funding:	The Subordinated Debt and the PRI Debt will both be fully-funded upfront and held in the Fund Lending Account and invested pursuant to program documents until needed for Shelter Loans; HDC will be under no obligation to make a loan with DHS grant funds to the Fund and until it has done so, SeaChange and the other funders will be under no obligation to contribute the PRI Debt.
Shelter Loans:	The Fund will delegate the underwriting of the Shelter Loans to SeaChange, the Fund Manager. Interest Rate: For Shelter Loans (as defined below), 7% accrued until the Shelter Loan is repaid (inclusive of accrued interest) with construction/permanent financing. If the project is not able to close on construction/permanent financing, then the accrued interest will be forgiven.
Fund Loan Interest Rate:	Subordinated Debt interest will accrue at 1% and will be deferred until Fund Loan maturity

[1] The PRI funders may make directly loans to the fund or participate through the New York Pooled PRI Fund, an affiliate of SeaChange.

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	PRI Debt interest will accrue at 4% and will be deferred until Fund Loan maturity.
Origination Period:	Four (4) years unless otherwise extended by the mutual agreement of the Parties.
Term of Capital (Subordinated Debt and PRI Debt):	After the Origination Period, no new Shelter Loans will be made by the Fund and capital will be repaid as the outstanding underlying Shelter Loans are repaid; repayments of Shelter Loans can be re-lent within the Origination Period provided repayment is expected within the initial seven (7)-year term of the Fund Loans. The repayment waterfall will be: PRI Debt (principal), then Subordinated Debt (principal), then accrued interest on both PRI Debt and Subordinated Debt (pro-rata). No principal payments will be made on the Subordinated Debt until all of the PRI Debt (principal) has been repaid.
Governance:	A Credit Committee of up to five members will be formed to approve program guidelines and lending standards, and to authorize individual Shelter Loans. Each of HDC, DHS and SeaChange will appoint a member of the Credit Committee; each member shall be required for a quorum; and each shall have a veto right on Credit Committee for Shelter Loan approvals. All Shelter Loans require the written approval of the HDC, DHS and SeaChange members of the Credit Committee, each at their sole and absolute discretion. Given the nature of the projects, the Parties will (i) be in regular contact about Shelter Loans in the pipeline and (ii) use their reasonable best efforts to approve (or not) Shelter Loans within 10 business days' of receiving a formal recommendation by the Fund Manager.
Reporting:	Quarterly and annual reporting distributed between 60 and up to 150 days respectively after the end of the reporting period; and Quarterly project-level status reports on the portfolio.
Surplus:	Any surplus remaining in the Fund after the repayment of all the debt and accrued interest (both PRI and Subordinated) will be reinvested in the Fund or any successor to the Fund. At the end of the Fund activity, any surplus will be distributed to HDC in accordance with an MOU between DHS and HDC to make loans for OMB-approved supportive housing projects in the HDC/HPD pipeline.
Payments to HDC	HDC will use all payments from the Fund (both the return of the Subordinated Debt (principal) and accrued interest) in accordance with an MOU between DHS and HDC to make loans for OMB-approved supportive housing projects in the HDC/HPD pipeline.

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Loans Made by the Fund (each, a "Shelter Loan"):

Eligible Project Types: Purpose built or rehabilitated nonprofit owned and operated shelters where:

- Each household or single person has its own sleeping room(s);
- All occupants are reasonably expected to stay for a minimum of 30 days;
- Evidence of site control;
- An award of a request for proposal from DHS was received;
- A "negotiation letter" from DHS was received and an indication that the project is actively in negotiations with DHS
- It is in partnership with a nonprofit, 501(c)3 service provider pre-approved by the Fund[2];
- It is in association with at least two (2) of the following: a public amenity; an evidence-based program design; a proposed affordable housing development;
- Construction is expected to begin within 12-18 months of the making of the Shelter Loan;
- As-of-right under zoning (including appropriate use group to allow residency for 30 days or more), no additional discretionary approvals required except on a case-by-case basis dependent on evidence of support for discretionary approval;
- JVs with for-profit developers permitted on exceptional, case-by-case basis provided long-term nonprofit ownership of the shelter.

Eligible Sponsors: Pre-qualified, non-profit developers of shelters in New York City.

Eligible Use of Proceeds: Acquisition costs, appraisal, architectural/engineering, environmental site assessments, CEQR/SEQR/NEPA, geotech, green engineering, insurance, legal fees, origination fees, permits, expediting, carrying costs, e.g., property taxes or other municipal charges, Shelter Loan fees, and applications for take-out financing. For the avoidance of doubt, Proceeds cannot be used for salaries, working capital or development consultants.

PRI Considerations: Compliance with IRS charitability regulations requires that the Fund provide loans that would not otherwise be available on similar terms, if at all, from commercial lenders. Borrowers will confirm this in the Shelter Loan Agreement.

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[2] Pre-approval can be sought in conjunction with a loan application. The Fund Manager will also invite potential borrowers to apply for pre-qualification. Pre-qualification is largely about governance, leadership, and overall financial health.

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Collateral:	For acquisition loans, a first lien mortgage on the property, otherwise unsecured.
Recourse:	A minimum of 25% recourse to the nonprofit sponsor of the borrower; interest free and repayable over five years in the event that the project does not move forward (after any proceeds from the sale of the property in the case of an acquisition project). Shelter Loans are 100% recourse to the Shelter Loan borrower entity and any for-profit JV partner guarantor.
Term of Shelter Loans:	12-18 months, with a 90-day extension. All Shelter Loans shall become due on the date of the borrower's construction financing.
Fees:	(i) A closing fee of 1%, and (ii) reimbursement for any third-party out of pocket costs pre-agreed with HDC and subject to a cap of 0.5% of the Shelter Loan. SeaChange does not expect meaningful 3rd party costs in most cases.
Rights of Fund:	As defined in the Shelter Loan Agreement; including approval rights with respect to developer, contractors, events of defaults, etc. If a project does not begin construction within 18 months, the Fund may require that the property be sold (if it is an acquisition) and the proceeds used to repay the Shelter Loan.
Geography:	New York City
Documents:	In the interest of efficiency, the Fund will strive to use a common loan agreement for each Fund Loan and a common loan agreement for each Shelter Loan and will seek pro-bono counsel where possible.
Shelter Loan Amounts:	Maximum Loan Amount: $3.75 million per below limitations.
Diversification:	No single Shelter Loan will represent more than 25% of the Fund capital (i.e., initially $3.75 million). No nonprofit sponsor of a borrower will have more than one Shelter Loan outstanding at any time unless the Shelter Loans, when aggregated, represent less than 25% of the Fund capital
Co-Investors	The Fund may seek co-investors for Shelter Loans that are larger than the Maximum Loan Amount and will work to coordinate due diligence to the extent possible including joint meetings, information sharing, etc. The Fund expects to be subordinate to these lenders.
External Affairs:	DHS, HDC and SeaChange will mutually agree on press release to be issued on the date the Fund is launched. SeaChange will not make any statement to the press or other external parties concerning the policies and procedures of the Fund without first consulting with DHS and HDC, as provided in the Fund Manager Agreement.