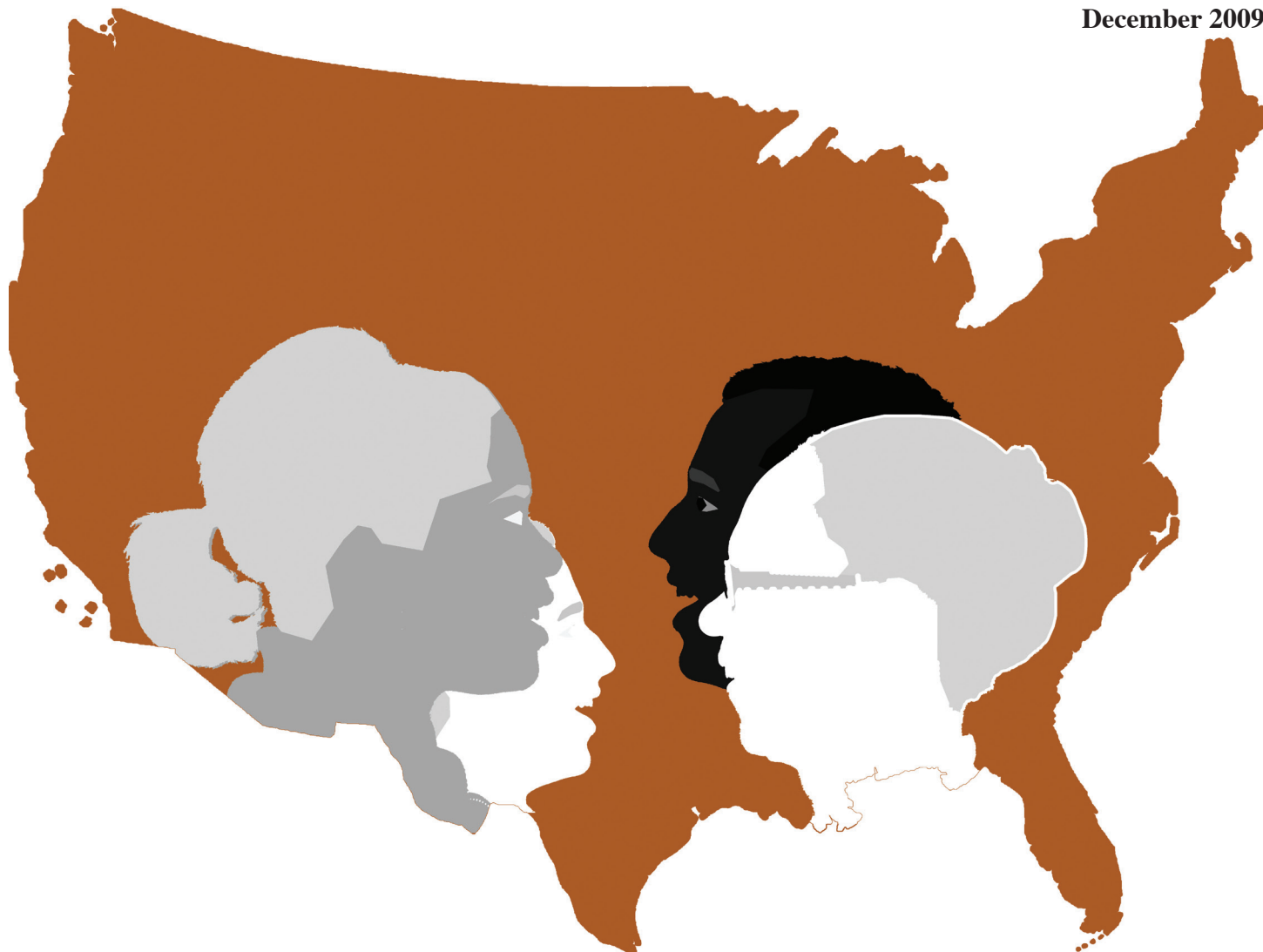


# Permanent Affordability: A National Conversation

December 2009



Prepared by Kelly Anne Johnstone on behalf of  
The Association for Neighborhood and Housing Development

**anhd**  
ASSOCIATION FOR  
NEIGHBORHOOD  
AND HOUSING  
DEVELOPMENT, INC.

# Permanent Affordability:

## A National Conversation



ANHD wishes to thank Capital One Bank, especially Mariadele Priest, and the Ford Foundation, notably George McCarthy and Christina Hong for making this Permanent Affordability convening possible.

Their support of this initiative has been instrumental in building consensus that permanent affordability is smart, sustainable policy. Additionally, we must acknowledge the efforts of all those who attended and participated in the convening from both far-off and nearby locations.

The knowledge of and enthusiasm for this issue is truly overwhelming.

# Table of Contents

<b>I</b>	<b>Introduction</b>	<b>4</b>
<b>II</b>	<b>Permanent Affordability: The Time Is Now</b>	<b>4</b>
<b>III</b>	<b>The Importance of Permanence in Affordable Housing</b>	<b>5</b>
<b>IV</b>	<b>Best Practice Mechanisms to Ensure Permanent Affordability Outcomes</b>	<b>7</b>
	A. Requirement for Public Financing	
	B. Option to Purchase	
	C. Land Leases and Land Trusts	
	D. Sustainable Underwriting	
	E. Request for Proposal and Regulatory Agreements	
	F. Inclusionary Housing	
<b>V</b>	<b>The Role of Stewardship in Permanent Affordability</b>	<b>13</b>
	A. The Critical Nature of Asset Management	
	B. Leadership and Partnerships	
	C. Interagency Cooperation and Community Involvement	
<b>VI</b>	<b>Recommendations and Next Steps</b>	<b>16</b>
	A. Opportunities and Challenges for New York City	
	B. State Role in Permanent Affordability	
	C. Federal Role in Permanent Affordability	
	D. Suggested Areas for Further Consideration	
<b>VII</b>	<b>Conclusion</b>	<b>19</b>
	<b>Appendices</b>	
	<b>A: Convening Agenda</b>	<b>20</b>
	<b>B: List of Participants</b>	<b>22</b>

## I. Introduction

Over the course of two days in October 2009, the Association for Neighborhood Housing and Development (ANHD) brought together key stakeholders from the affordable housing community, including local and national housing agencies, policy experts, not-for-profit developers, and advocates. The purpose of this forum was to engage in a discussion of challenges and opportunities related to ensuring permanent affordability in subsidized housing. Generously sponsored by Capital One and hosted by the Ford Foundation, this forum continued the important conversation initiated by ANHD's groundbreaking 2008 report, "Roadmap to Permanent Affordability: Analysis, Observations and The Future of Subsidized Housing in New York City." (Available at [www.anhd.org/resources](http://www.anhd.org/resources)).

Representatives from Boston, Chicago, Los Angeles, Minneapolis, San Francisco, and Washington D.C. joined those from New York City to share experiences and best practices from the field. These cities were invited for two reasons. First, all have implemented some form of permanent or long-term affordability policy, which has proven effective while not impeding development. Second, the housing markets and development landscapes in these cities are quite comparable to New York's.

Through this learning across varying geographies and levels of government, ANHD hopes to achieve greater national consensus on the issue and encourage workable policy solutions for New York City. The purpose of this report is to capture key points of discussion and actionable solutions from this convening and identify possible next steps in support of permanently affordable housing.

## II. Permanent Affordability: The Time Is Now

With the strong agreement of those attending the convening, ANHD believes that this is a key moment of opportunity for engaging in discussion and reshaping policy around greater longevity for affordable housing. This is true for a number of reasons:

- Current economic circumstances warrant critical and innovative thinking regarding the best use of public investment dollars.
- A softer real estate market and declining prices in the Low Income Housing Tax Credit (LI HTC) market make participation in public subsidy programs and other development incentives particularly appealing to private sector partners.
- There is a real urgency for preserving current affordable units that are reaching the end of their regulatory periods.
- Lessons learned from recent deregulation of tens of thousands of affordable units underscore the need for permanence in current housing programs.
- The current New York City administration continues to prioritize affordable housing development and preservation, despite budget shortfalls and tough economic times.
- Mechanisms for permanent affordability have been explored and developed over the last few years to coincide with rethinking of the New York City Department of Housing Preservation and Development's (HPD) Inclusionary Housing Program.
- HPD, led by Commissioner Rafael Cestero, has amplified its preservation efforts and acknowledged the City is exploring ways to extend affordability terms for new construction projects. Indeed, a task force at HPD has taken on the question of long-term affordability with serious study and intent.

- The New York State Department of Housing and Community Renewal (NYS DHCR) continues to strongly favor funding projects with extended affordability restrictions via its LIHTC program.
- New leadership at the federal Department of Housing and Urban Development (HUD) has signaled a renewed commitment to affordable housing, especially multi-family rental housing.

The confluence of these factors suggests there is a need and an opportunity to impact affordable housing policy at the local, state and national levels. Although specific mechanisms may need to vary across programs, projects and jurisdictions, it is imperative that both public and private stakeholders are working toward a similar outcome – permanent affordability.

### III. The Importance of Permanence in Affordable Housing

Throughout the October 22-23, 2009, session, much discussion occurred around the definition and implication of “permanence” in affordable housing. Multiple definitions existed among attendees as practitioners considered the right balance between the need for and potential challenge of guaranteeing permanence. However, regardless of definitions or implementation strategies, it was clear that a stated commitment to a permanent affordability outcome at the agency level was paramount to any future progress in this area.

For some, the goal was “as long as possible” given the economic challenges of underwriting a project for the very long term. As expenses increase at a higher rate than rents, the viability of affordability comes in question at some future point in all these projects unless a mechanism is put in place to reassess the project’s needs and financial stability.

Others indicated that the best way to achieve permanence is to partner with mission-driven not-for-profits. Consensus indicated that the idea of permanence has already been embraced by not-for-profits, but that greater challenges exist with for-profit developers and owners whose opposition is based in part on economic interests.

**“Permanently affordable rental housing is a part of a functioning housing system.”**

*-George McCarthy,  
Ford Foundation*

It was acknowledged that general practice among for-profit affordable housing developers is to derive their profits from two basic approaches. The first is to generate profits from upfront development fees, ongoing management fees and cash flow given off by the project. The second is to maximize fees and rental income, but also take a longer-term investment view and put emphasis on the building’s residual value. It should be noted, however, that the thinking behind these approaches generally does not involve expectations of cash flow benefits past the 20- or 30-year mark or relying on valuing the development as a market-rate asset after affordability restrictions have expired. As such, permanent or extended affordability may not disincentivize either for-profit or not-for-profit developers in the long term.

The experience of participating cities seems to confirm this conclusion. In many cases, this is likely due to the fact that the local government has the near absolute authority to set the terms for what developers must provide in order to participate in affordable housing programs. For example, Dalila Sotelo of the Los

Angeles Redevelopment Authority said, “When the state of California adopted its 55 year affordability requirement, the Related Companies as well as other developers accepted the change once they received confirmation that tax abatements would also be extended and have continued to be active partners.” Olson Lee, of the San Francisco Redevelopment Agency, added, “Although 90 percent of San Francisco’s affordable housing is built by not-for-profit developers, permanent affordability policies have been embraced by for-profits as well.” New York City must learn from these experiences and find the right mix of incentives to ensure the city’s various affordable housing goals are met.

HPD currently sees permanence as “the life of the building,” but has attached that standard only in the case of their Inclusionary Housing Program and on some city-owned sites available via a Request for Proposal (RFP). Representatives stated that they speak very carefully about the term “permanent,” as the future is unpredictable and few projects are currently truly permanent. The approach at HPD focuses on working with the longest term feasible and then looking for ways to support and incentivize projects to renew for longer periods and similar terms at the end of the initial commitment. In order to effectively respond to individual project needs, unpredictable economic times, and the changing needs of our communities, HPD feels that future flexibility is a key concern of affordable housing programs.

ANHD views permanence as a condition where control of the affordability stays public for the life of the project. In tandem with that objective, comprehensive assessments need to occur periodically so that the project may be reviewed and evaluated regarding affordability status, financial and physical health of the project, and any need for recapitalization to support continued affordability.

Whether those attending were inclined to use the word “permanent” or “long-term” to represent a commitment to extended affordability, the importance of such requirements was clear for numerous reasons. Key among them were:

- Permanence triggers recognition among public officials and owners that they must see themselves as stewards of these affordable housing resources.
- Permanence represents the highest value for public investment.
- The need for affordable housing has continually been a key problem in New York City. Permanent solutions are needed to a problem that has been a demonstrably significant challenge for well over a century.
- Preservation of existing affordable housing units is at a critical stage across the country.
- The future of affordable housing can only be assured by creating flexible, sustainable initiatives that survive across generations and administrations.

With the particular definitions and the above principles providing a larger context, the group explored a number of mechanisms currently in practice or under consideration in the field.

## IV. Best Practice Mechanisms to Ensure Permanent Affordability Outcomes

### A. Requirement for Public Financing

A number of jurisdictions have taken a quid pro quo approach to projects funded with public monies. As public investment has become a larger part of initial development and/or recapitalization needs for affordable housing, so too has the commitment and requirement for longer-term affordability increased.

Recently, the City of Boston has made extending affordability a top priority. Remarkably, a policy has been adopted that requires that all city-subsidized rental properties remain affordable in perpetuity. Prior to this, the term was set at 30 years. City-sponsored homeownership projects have a 50-year affordability covenant, with an option to renew for another 20 years at the end of the term. Boston is also leveraging longer-term regulatory concessions for market-driven projects that are not city-subsidized, but require other types of city approvals and support. A number of other cities employ these types of restrictions on bonds and other planning entitlements as well.

**“We must approach these deals with the goal of maximizing every public dollar.”**

*- Matt Schwartz,  
California Housing  
Partnership Corporation*

In San Francisco, affordability requirements evolved from standard 15- or 30-year agreements to a 55-year commitment as the city’s monetary contribution increased in size. The state’s Community Redevelopment Law (CRL) legally requires that any new rental project financed with tax increment funds commit to a 55-year affordability period (45years for homeownership). This is also a standard with the state’s Tax Credit Allocation Committee when issuing their allocation of LIHTCs. With such a priority set at the state level, local agencies have a solid precedent in place to require the 55-year commitment through their own affordable housing programs.

This commitment to longer-term affordability has also extended to programs offered in Los Angeles, and in California’s rural housing programs as well. Later in this report we will see that in California the 55-year covenant is viewed as the new “minimum” and some programs have even longer affordability periods attached. Dalila Sotelo, Deputy Chief of Operations for the Los Angeles Redevelopment Authority (LARA) stated that in Los Angeles they view redevelopment law as the largest, best tool for ensuring long-term affordability in the state.

In New York City, most of HPD’s current regulatory agreements are set at the 30-year mark for new construction, with less consistency across preservation and rehabilitation agreements. However, at this time the city is considering requiring the continuation of affordability restrictions if certain resources are available and specific requirements are met. As the agency continues to explore other options for longer covenants, it is aware that some measures would need approval from the state legislature.



## ***B. Option to Purchase***

One of the most significant risks to current affordable housing projects is that at the end of the regulatory periods, owners may exercise a number of options that could prove detrimental to the affordable units. They may 1) leave the program and sell the property on the open market or 2) prepay the mortgage amount early, and either sell the units at market-rate prices or convert the units to market-rate rentals while retaining ownership. In city after city, tens of thousands of affordable housing units have been lost this way. Nowhere has this been more clearly an issue than in New York's Mitchell-Lama program, which encompasses rental and co-op apartments for low, moderate, and middle-income families. It has also proven critical for projects built before 1990 when the LIHTC extended use regulations went into effect, mandating 30-year instead of 15-year affordability restrictions and for Section 8 housing reaching contract expiration dates.

A number of jurisdictions have determined that a clearly defined "Option to Purchase" mechanism can put the fate of these units back in the hands of the public agencies that helped create them. Implementing this course of action as an option rather than a mandate gives city agencies the flexibility they need to make timely, appropriate decisions sensitive to communities, budgets, and political environments.

In San Francisco, the Redevelopment Agency (SFRA) has utilized its Option to Purchase to acquire thousands of units of project-based Section 8 housing, extend their affordability, and transfer ownership to not-for-profit owners. Although San Francisco has seen significant success in preserving its Section 8 properties, the city's housing officials acknowledge that there are often back-end issues, including how to set the price for purchase, what to do with reserves, and if other payments need to be made to the Limited Partner upon exit.

The city's housing agencies generally have an expectation that in most tax credit projects the Managing General Partner (often a not-for-profit) will exercise the standard tax credit "Right of First Refusal" to acquire the property – an expectation which has been born out in practice. In addition, the agency does have Right of First Refusal agreements on some 100 percent affordable bond deals that do not have soft loans. Seldom do they have Right of First Refusal in addition to loans or leases.

Research conducted for the aforementioned ANHD report "Roadmap to Affordability" showed that in California, current legislation prohibits owners of assisted housing developments from terminating a subsidy contract or prepaying the mortgage unless the owner gives a one-year notice of intent and provides "qualified entities" the opportunity to submit an offer. Qualified entities must agree to maintain the property as affordable for 30 years or the remaining term of the existing federal government assistance, whichever is greater. In the first 180 days the owner may only consider offers from these qualified entities.

That same report illustrates that Massachusetts' state law requires owners of assisted developments to provide a two-year notice of intent prior to expiration or termination. A second notice is then required not less than one year prior to completion of termination. Owners must first provide the Massachusetts Department of Housing and Community Development (MDHCD) the opportunity to purchase the property. While the owner is not obligated to take the MDHCD offer, the agency has the ability to extend its option to another entity such as a not-for-profit or other owner who will commit to keeping the units



affordable. If no offer is made within 90 days the owner may sell to a third party without conditions. However, the department or their designee may counteroffer within 90 days to match the price.

To date, New York City has not employed a Purchase Option. However, HPD Commissioner Cestero agreed that Purchase Options may appeal because they recognize nuance, put control in the hands of the city, and allow for ongoing evaluation and flexibility. In addition, Mark Jahr, President of the New York City Housing Development Corporation (HDC) told the group that he found the San Francisco model promising, keeping the option in the hands of the city instead of the developer. While more careful investigation is needed, it appears this mechanism could have strong potential for New York City going forward.

Although both Options to Purchase and Rights of Refusal are aimed at the same objective, most at the convening agreed that a Right of First Refusal is not as strong a mechanism as an Option to Purchase, which exhibits a more specific intent and procedure for keeping these projects affordable.

### ***C. Land Leases and Land Trusts***

In any housing project, land represents both significant cost and significant value for the developer and owner. And where land is scarce, land means leverage. A number of jurisdictions have been able to use this leverage to their advantage in securing longer-term affordability and generating additional cash flow to be reinvested in affordable housing.

San Francisco has balanced upfront costs and future preservation needs by purchasing land from developers and then leasing it back in lieu of providing a loan for acquisition. They began this practice after discovering that many of the projects in their Federal Housing Authority (FHA) and Section 8 programs nearing their opt out periods were in fact built on city land initially sold to developers at considerably lower per unit costs. As the value of the land grew, the cost per unit had increased significantly, leading to higher preservation costs. The new Land Lease structure has placed greater control in the hands of the agency and generated a number of positive results for affordable housing, including:

- An initial affordability term of 55 years, with a 45-year additional extension. This additional extension automatically renews if improvements remain affordable.
- The developer owns the improvements but the city controls the land.
- Base and residual rents allow the city to sweep excess cash out of the transaction while still having increasing debt based on a soft loan.

Base land rents are determined by calculating 10 percent of the land value and considering the nature of the building. For instance, a base rent for buildings serving homeless people can be as little as \$1, whereas rent for a project-based Section 8 building could be between \$15,000 and \$20,000. Base rent is paid prior to any soft loans. Residual rent is paid annually, based on what the building's cash flow can support.

In this scenario, lenders have been willing to finance these types of deals because of the lender protections that San Francisco has built in. For instance, an uncured default on the leasehold would

result in market-rate housing in the leasehold and the land lease payment would increase to market value. Here, the agency could subsidize as many units as it wished. The city has also been able to negotiate with lenders for no encumbrances on the fee, only on the leasehold.

In the area of affordable homeownership, Chicago's Department of Community Development (CDCD) shared their experience with the use of the country's first citywide Land Trust as a mechanism to assure long-term affordability. Launched in 2005, the Chicago Community Land Trust was created to preserve affordability in what were then "hot market" neighborhoods where land values were likely to increase. The land parcels held in the trust come with a 99-year affordability covenant and are used as an integral part of the city's Inclusionary Housing initiatives. The city was able to successfully negotiate with the Tax Assessor's Office to assess the properties as affordable units, and not at the standard market values. While now facing a "down" real estate market, Chicago is still committed to harnessing new affordability with this program.

New York City does not yet have a legacy of Land Lease agreements. Commissioner Cestero responded to questions as to why the city would oppose ground leases by saying that some of it was likely due to historical factors and some is a question of statutory limits, insurance issues and the like. Since the days of extensive in rem holdings, the city has had a strategic goal of divesting itself of property ownership. However, the commissioner did say that HPD should look at the model as part of their ongoing policy work in this area.

As a unique NYC-based project that does include a Land Lease component, Adam Weinstein from Phipps Houses presented their Hobbs/Ciena project. This development was a result of a joint RFP issued by the New York City Housing Authority (NYCHA) and HPD for two adjacent sites in East Harlem – one new construction and one gut rehab. Phipps and their partner Urban Builders Collaborative have leased the property from NYCHA with a 99-year covenant for affordability. This supports NYCHA's preference for leasing rather than selling their land and losing the opportunity to create more affordable units. In addition, NYCHA has committed a significant number of individual Section 8 vouchers to help keep the building affordable and provide guaranteed cash flow for the project. HPD's extension of the project's 420c tax incentive, which provides a 100 percent Real Estate Tax abatement for the life of the regulatory agreement or 60 years (whichever is greater), also supports the financial viability and longer term of affordability in this particular project.

The majority of the reactions to the Land Lease mechanism were positive among the attendees, although it was agreed that priorities, specifics and opportunities are distinct among cities, and sometimes even among neighborhoods

#### ***D. Sustainable Underwriting***

The underwriting process represents a key phase in the consideration of policies that support permanent affordability. Project pro formas should look for ways to set up the project for long-term financial and physical stability, including investments in energy efficiencies and green building techniques. The willingness to underwrite the marginally higher upfront expense for this future benefit supports a commitment to making the project work even beyond the initial regulatory period and can provide savings at the point of recapitalization or preservation. Including more substantial upfront replacement

reserves also serves this same goal when incorporated in the underwriting process.

One of Minneapolis' greatest challenges with affordable projects has been the substantial recapitalization needs they face. Owners who need these resources, sometimes more than once during their regulatory periods, do not have reserves or rent increases to rely upon and so call upon city funds to finance these recapitalizations. While investing in preservation efforts reduces what they have available to spend on new projects, the city recognizes the need and value of recapitalizing these projects. Wesley Butler, Director of the Minneapolis Department of Multi-Family Housing Policy and Development states, "It's like a car that you have to keep filling up with gas."

Another upfront investment that could have a positive impact in the long run would be allowing for asset management resources to appear as an expense above the line in the project's maintenance and operations budget. A number of developers and/or property managers in attendance stated that resources for asset management are critical for effective sustainability for their projects, and yet rarely is an allowance made in the initial underwriting. Due to its importance and prominence as a discussion topic at the meeting, asset management will be discussed in greater detail later in this report.

In the majority of affordable housing deals, tax exemptions and abatements are powerful incentives for developers. As cities and agencies develop their strategies for permanent affordability, it is worth investigating the possibility of setting terms for these incentives to match affordability restrictions. Property tax incentives are one of the most powerful tools a locality has and provide substantial leverage to ensure affordability.

## ***E. Request for Proposal and Regulatory Agreements***

Beginning with the RFP process, jurisdictions can make clear to developers who wish to access scarce public subsidies that a partnership that embraces long-term and permanent affordability is the type of collaboration that is desired.

The resulting regulatory agreements provide a key opportunity for agencies to implement their agendas and policies in support of the longest affordability term possible.

In New York, HPD has been engaging with local developers to determine new point structures for their RFP process. As a result they have structured a system that provides additional points for developers willing to push beyond their standard 30-year window. Michelle de la Uz, Executive Director of the Fifth Avenue Committee in Brooklyn, spoke to this issue as well. In seeking for-profit partners to respond to the RFP for the Gowanus Green project, the organization looked to those who would commit to permanent affordability in a significant number of units to give them a distinct point advantage in responding to the RFP. Ultimately, they won the contract and are now in development of this 5.8 acre parcel of city-owned land where 70 percent of the units will remain permanently affordable.

Community involvement in the development of RFPs has also supported the inclusion of permanent affordability in awarding of public funds. Jay Marcus from Hope Community Inc. presented his experience with 5.5 acres of land in the 125th Street corridor in Harlem slated for mixed-use development. Prior to the issuing of an RFP by the New York City Economic Development Corporation (NYC EDC) in 2006,

Hope Community worked as part of a two-year community-based planning process to ensure that the development would incorporate a substantial number of permanently affordable units. The final result is a project that will support permanent affordability in 82 percent of the units.

One issue raised was the need to develop a regulatory structure that is both strong and flexible, effectively mandating affordability while retaining the flexibility needed to meet future fiscal challenges. In addressing the challenges of achieving long-term affordability, Commissioner Cestero posed an important question for the group to consider: “How do you put a regulatory structure in place that doesn’t disincentivize owners and managers in a way that means the housing will not be well run? What incentives promote long-term sustainability of buildings?” These are the questions that will certainly drive further discussion of the promise of regulatory agreements in moving toward permanent affordability.

## ***F. Inclusionary Housing***

Most major cities, including New York, have incorporated an inclusionary housing component into their affordable housing development strategy. Such programs provide developers with additional Floor Area Ratio (FAR) density bonuses in exchange for a commitment to build specific numbers of affordable units and to maintain them as such for the long term or in perpetuity. The length of such terms, amount of additional density awarded, the levels of affordability, the required number of units, and particulars such as a requirement that the units can be built on- and/or off-site, differ from city to city and project to project.

One central way that New York has gone further than many other jurisdictions is its requirement that all units developed under the Inclusionary Program remain permanently affordable. However, it is important to note that the number of units created has been undermined by the city’s policy of making this a voluntary program. In this way, New York lags behind most other cities, whose inclusionary requirements are mandatory.

Attendees offered these examples:

- Across the state of California, almost 50 percent of inclusionary housing rental projects currently require 50+ years of affordability, with 15 percent now requiring affordability in perpetuity.
- San Francisco requires that affordability is for the life of the project or 75 years, whichever is longer.
- In Boston, 13 percent of their rental projects with units at 80 percent AMI or less are affordable for 50 years.

In redevelopment areas, and in cities where land is scarce, inclusionary housing programs have built thousands of units of affordable housing. But while attendees recognized the value of this program, they have also encountered challenges, especially the voluntary nature of some programs. Community opposition can also be an obstacle, in that even if the developer wants greater density, communities may not.

In addition, because it relies on leveraging demand for market-rate housing, the success of inclusionary housing programs in developing affordable units is highly dependent on the current real estate market, leading to the same “boom and bust” cycle for developing affordable units as for market-rate units. However, it should be acknowledged that many of these programs were the first place where longer-term and permanent affordability were incorporated as a requirement.

## V. The Role of Stewardship in Permanent Affordability

The issue of stewardship raised a number of important questions during the convening:

- Where should the stewardship for permanent affordability lie?
- Whose responsibility is it to make sure that our cities have enough affordable housing and projects will remain financially viable and physically sound on a permanent basis?
- Can public agencies be both stewards and enforcers?

### A. The Critical Nature of Asset Management

As a tool for achieving the goal of permanent affordability, the agencies, developers, and advocates attending strongly supported a new commitment to asset management on all fronts. Whether the entity is a public agency, a not-for-profit property manager or a private owner, solid asset management provides the opportunity for any necessary early interventions for funding or other support. It lets the entity know when a project is at risk, and proactively addresses such risk.

**“The Redevelopment Agency recognizes that if the goal is to preserve these buildings for the long-term, we must invest in the organizations carrying out the asset management as well as the properties themselves.”**

*- Dalila Sotelo,  
Los Angeles Redevelopment Agency*

Matt Schwartz from the California Housing Partnership Corporation (CHPC) characterized the need for asset management in this way: “Public agencies in particular have a duty to invest in asset management at multiple levels – in their own staff as well as their not-for-profit developers’ staff capacity. Without that, all the regulatory protections and stewarding becomes worthless because you don’t know what’s going on at the properties – what’s happening, who is getting served or how to enforce it.”

Commissioner Cestero named asset management as the number one challenge in achieving long-term affordability. He stated that while HPD has had a great deal of experience in property management, the agency had not invested resources in asset management in the past. Recently, HPD has taken an important step forward by creating a new Office of Asset and Property Management that will focus exclusively on this area. The group will be engaging those in the field in order to gain perspective and set the agenda moving forward. At the New York City Housing Development Corporation (HDC), possibly HPD’s closest partner, one quarter of the staff is already dedicated to asset management and it is a very important part of what they do. With 125,000 units of housing to manage and audit, it is a



key component of HDC's work.

Boston has also made a significant investment in asset management with a database for at-risk projects. Using specifically developed criteria, projects are assessed and prioritized for additional investment where needed. The system is used collaboratively among agencies to work with individual developers to create a strategy that will extend affordability. To date this process has been very successful in preserving the current stock of assisted affordable housing. Agencies and advocates are now engaged in conversations with the State of Massachusetts to extend the system to include state-sponsored projects as well.

## ***B. Leadership and Partnerships***

Numerous discussions highlighted the notion that leadership for progress in reaching permanent affordability needs to begin with our public agencies – the policies they make and the practical requirements they regulate. And the partnerships created with private-sector entities require a longer view than the short-term gains sought by for-profit developers who often do not think beyond 20 to 30 years. The long-term view can only be protected and enforced by the public agencies that control the subsidies and assets that support permanent affordability. While the potential conflict in the dual role of steward and enforcer was raised, Commissioner Cestero commented that he had not considered it a conflict, because it has worked at HPD thus far, and enhancing the agency's asset management function should only strengthen the ability to do both. Jurisdictions will need to look to their own experiences to determine the level of concern they may need to address around this question.

While control and responsibility for maximization of public investment may lie with public agencies, the realization of the outcome of permanently affordable housing is most necessarily achieved through flexible, thoughtful and sustainable partnerships with lenders and not-for-profit and for-profit developers.

Participants placed a great deal of stock in the abilities of not-for-profit developers, owners and property managers. The mission-driven nature of these organizations puts them most directly in sync with the public responsibility for affordable housing. In Los Angeles, agencies see themselves more as partners with not-for-profit developers than just a source for funding. They look to sustain organizations as well as buildings. One way is by providing \$10,000 in operating grants for project manager staff support and allowing not-for-profit organizations to take that same amount out before the city takes any money so they can conduct proper asset management. In addition they award \$50,000 annually to the top 10 organizations for general operating support. (In the past, this commitment was as much as \$100,000 for three years combined with capacity training from LISC). They also assist with not-for-profit efforts to obtain recapitalization dollars from other agencies as well. In Boston, local government actively supports the work of not-for-profits by allocating 5 percent of their HOME dollars to support local Community Development Corporations (CDCs), who have developed 65 percent of the city's new affordable units. Advocates are currently working for a similar commitment from the state, but have met with resistance thus far.

The contribution of not-for-profits was without question, but it was noted that without the availability of resources, and the adequate dedication of these resources to asset management capacity, it is difficult

to adequately monitor the physical and fiscal health of a property.

In addition to public money for production and preservation of affordable housing, private financing is also a key component of affordable housing's future. Learning how to leverage private capital for public good while protecting tenants remains a critical challenge in looking at permanent affordability. On the for-profit side of the discussion, value was placed in the resources and experience these entities can bring to bear, and on examples, especially in New York City, of successful endeavors in affordable housing development. However, it was made clear that we cannot forget that we are working in a market-driven world. Private-sector players have a profit motivation that cannot be ignored. But it was also equally acknowledged that public agencies have the ability to impact marketplace actions and that the market will respond to strong leadership. This reinforces the notion that stewardship starts with our public entities which shape – through policy and practice – the future of permanence in affordable housing.

### ***C. Interagency Cooperation and Community Involvement***

In city after city, it was clear that collective discussion and cooperation is critical to supporting policy and practices that ensure the long-term viability of assisted projects.

Chicago's Department of Community Development actively engages colleagues and advocates working together in the development of their five-year affordable housing plans. The agency reports quarterly to the City Council to assess progress and revisit goals. In addition, they have worked collaboratively with other city agencies to create their "Troubled Buildings Initiative" in places where blight and crime were on the rise. While these are private-market projects without city subsidy, their long-term viability provides much needed affordable housing for low-income families living in those neighborhoods. Using code enforcement and tools of receivership, Chicago has been able to persuade these owners to care for their buildings more responsibly or sell to an owner who will.

Earlier examples of projects from Hope Community in East Harlem and Fifth Avenue Committee in Brooklyn show the importance and impact of community involvement in setting priorities for neighborhoods that can translate into RFP issues and responses with a heavy focus on longer-term and permanent affordability, as well as other benefits to the community. Kevin Jackson from Chicago Rehab Network sees two important principles and contributions that not-for-profits have made in this area: 1) the fact that they are place-based and; 2) that they can organize and include constituent voices in how permanent affordable housing gets created in their communities. It is worth keeping in mind a sentiment shared at the convening – that the conversation cannot just focus on the pieces of the deal, but must also remember that people are involved.

Stewardship remains a key consideration as the policy and mechanisms that support permanence in affordable housing develop and move forward. The future of permanent affordability lies in strong leadership and innovative thinking at the public level; support for the passionate commitment of not-for-profit entities; inclusion of affordable housing advocates and community involvement in the planning development process; and initiatives that create strong and effective partnerships with private-sector players. Everyone has a role to play in achieving this important outcome.



## VI. Recommendations and Next Steps

Throughout the two-day convening, presentations, roundtables, question and answer periods, and informal conversations brought together the country's best thinking around how we can achieve permanence in affordable housing. Each example showed practices unique to particular locations and projects, but more importantly illuminated areas that may provide promising solutions for other jurisdictions as well.

In New York, HPD has already shown some leadership on the issue. The agency's task force has been working cooperatively with entities inside and outside New York to find the right solutions for our communities. And the recent creation of an Office of Asset and Property Management is an important initiative to address one of the key aspects of this issue. However, as HPD moves forward, it is necessary to recognize that there is still much work to be done in order to ensure the city effectively capitalizes on the opportunity to achieve permanence at scale.

### A. Opportunities and Challenges for New York City

**"The federal government must set standards but not preempt those that go further."**

*- Jim Grow  
National Housing Law Project*

The current landscape provides both opportunities and challenges for New York City's affordable housing community as we continue to tackle the question of permanent affordability.

As previously noted, factors such as the soft real estate market and strong leadership locally and in Washington have created an environment ripe for change. Developers are seeking subsidies to complete projects in this tough market and that provides leverage for longer commitments of affordability. In addition, high construction costs and the threat of losing

currently affordable units in New York can assist HPD in making a financial case for preservation. It also assists in advocating for the creation of programs that keep new units in the program for longer periods of affordability while supporting additional upfront investments for long-term gains.

Implementation of any new policy can be a complicated process, especially when action is required at multiple levels of government. However, the best practices and models developed in other jurisdictions can provide a clear path for New York City for adapting its own programs to move a permanent affordability policy forward.

The flexibility and nuance that HPD is striving for in its work need not be at odds with a vision for permanent affordability. In fact, many presenters stressed that "permanent" need not mean a lack of evolution over time. But the stated intention of keeping affordable units in the market, and creating programs that begin upfront with a commitment to the longest affordability term possible goes a long way to reaching the ultimate outcome of permanent affordability. Similar to the city's solid commitment to green building initiatives, affordable housing programs would benefit from an overarching principle of permanent affordability as the standard we strive for.

Representatives from HPD made reference to inconsistency across programs and a dedication to finding areas for improvement in securing longer-terms of affordability. The convening group as a whole was motivated by Commissioner Cestero's commitment to integrated and more productive programs toward that end. He stated, "There has got to be a better way to do this. There's got to be a better way to ensure that the money that's invested by government today remains in the government's control to ensure that housing at the end of its initial regulatory period serves the needs of the community at that time." ANHD and its membership look forward to continuing their work with HPD in trying to find that better way.

## ***B. State Role in Permanent Affordability***

As discussed earlier, partnerships are vital, and one of the most important is of that between state and city agencies. We saw this play out powerfully in examples from California.

Three areas where the state can make significant contributions to supporting the outcome of permanent affordability in New York City are:

- A commitment to making permanence a threshold requirement in the state's Qualified Action Plan (QAP) and Notices of Funding Availability (NOFA);
- Continued availability of tax abatements for developer/owner incentives and;
- The use of redevelopment laws to tie public investment to long-term affordability requirements wherever possible. State law also has the discretion to dictate Purchase Option structures that support local control of assisted projects.

A commitment to longer affordability terms at the state level can only strengthen the work of local jurisdictions.

## ***C. Federal Role in Permanent Affordability***

Jim Grow of the National Housing Law Project (NLHP) stressed that policy and funding that emanates from Washington has the power either to support or hinder state and local efforts toward permanent affordability. With new leadership in Washington, the hope is that the former will be the case. On day two of the convening, participants engaged in a theoretical discussion of the steps necessary to move toward permanent affordability at the federal level. One of the most encouraging aspects of this discussion was the participation of key leadership at the Department of Housing and Urban Development (HUD). Becky Koepnick, Senior Advisor to HUD Secretary Shaun Donovan, assured the group that the agency is in the process of rethinking the nation's housing policy, which some participants had classified earlier as "totally dysfunctional." Most importantly, they are looking to achieve better balance between ownership and rental housing in the agency's programs and policies.

Following a review of federal historical experience with affordability, it was suggested that lessons learned in HUD-Assisted and Public Housing history show that any market with failing assets will need resolution entities and strategies for ensuring affordability, whether this comes from the federal or local level. The need for a steady flow of resources for both upfront capital and ongoing operating support is critical to ensure the viability of affordable housing in the long-term.

A discussion of the fate of affordable housing would not be complete without a look at the current state of the federal Low Income Housing Tax Credit program. Many in the group strongly supported continued review of the tax implications of the LIHTC to both attract new investors and create stronger affordability protections beyond the initial or extended terms. These include mechanisms to create a Right of First Refusal and greater protections for projects where first-lender foreclosures put affordable units, and the public investment, at risk. Many in the group would also advocate for less back-end incentives for owners on tax credit projects.

Leadership on the issue needs to come from the administration. It was noted that although affordable housing exists everywhere, outside of large cities and states there is no real concern for preserving the affordable housing stock. There is also lack of political will among many in Congress on this issue. Therefore, the executive branch must take the lead in protecting this investment and make affordable housing a national priority.

Indeed, federal pre-emption is an ongoing concern among those in the advocacy community who have been working on local measures to protect affordable housing resources. Furthermore, there is growing consensus that although Washington must take the lead on setting national minimum standards, states and local agencies must be authorized and encouraged to require longer-term affordability and/or housing that responds to the needs of their particular communities.

As affordable housing policy continues to be debated and created on the national level, many suggested that public housing intentions and experiences could offer new lessons about how to better ensure permanent affordability in assisted projects. As was noted, when first developed, Public Housing was meant to be permanently affordable. But challenges through its history have been largely about who controls it and where the sustainable operating funding will come from. Similar challenges shape the discussion of permanent affordability in private market-assisted housing as well.

#### ***D. Suggested Areas for Further Consideration***

ANHD encourages further consideration of a number of the mechanisms and practices highlighted here that show solid potential for replication or adaptation in New York.

##### Purchase Options

Attaching a clearly defined Purchase Option for future HPD projects solidifies the agency's commitment to the longest term of affordability possible, and makes it known to developers and owners upfront. Unlike Right of First Refusal Options, which tend to slip by, this mechanism makes excellent use of the new investment in asset management and triggers the agency to plan for the discussion well in advance. It also keeps ultimate control of the asset in the hands of the city, and allows for flexibility in decision-making based on the financial realities and community needs at the time the Option comes up for discussion.

## Land Leases

Nowhere is land more valuable and scarce than in New York City. As we look to the disposition of current holdings and the need for new building sites, the city would benefit from considering the use of Land Leases in their dealings with affordable housing developers. The San Francisco model provides an excellent starting point for discussion that could shed light on the opportunity for permanent affordability and possible financial resources and cash flow through base and residual rent structures.

As New York City and other jurisdictions continue to advance new housing policies in support of permanent affordability it is clearly not a solo effort. And while the substance of this report has primarily focused on local innovation and initiative, the importance of collaboration between all levels of government should not be underestimated. It is these partnerships that have created the most successful housing programs from our past, and will ensure new successes in the future.

## **VII. Conclusion**

As stated at the beginning of this report, today's political and economic environment has offered those in the affordable housing field a valuable opportunity to greatly advance the discussion and solutions around the goal of permanent affordability. ANHD is hopeful that this convening has been productive in moving the debate forward for those who attended, and ultimately for our other colleagues around the country who continue to address this complex and important issue.

Nationally, ANHD looks forward to an ongoing dialogue with our colleagues and the power of our combined thinking and efforts to advance the agenda of permanent affordability

Locally, ANHD values and supports HPD's strong leadership on the permanent affordability issue and its commitment to open conversation and continued learning from the successes of other municipalities. We are proud to have, as Commissioner Cestero reminded us, "the largest and most successful housing agency in the country" as a partner in the pursuit of the longest term of affordability possible for all existing and future projects. New York City has always been a leader in innovation and successful implementation of progressive affordable housing policy. Although the city is behind the curve when it comes to permanent affordability, we are confident that the city will soon be a national leader on this issue and take bold steps to implement solutions that will be both comprehensive and effective.

## Appendix A

*Permanent Affordability Convening: Agenda*  
*October 22-23, 2009*  
*Ford Foundation, 320 E. 43rd St, 11th Floor Conference Room*

### **Day One: October 22    Context, Tools, and How Policies Are Being Implemented Now**

- 10:30 – 11:00 AM    Registration
- 11:00 – 11:15 AM    Welcome and Convening Overview
- 11:15 – 12:30 PM    Presentations from Housing Officials on Current Policies / Programs: Part I (SF, LA, CA, and Chicago)
- Olson Lee, Deputy Director, SF Redevelopment Authority
  - Dalila Sotelo, Deputy Chief of Operations, LA Redevelopment Authority
  - Rob Wiener, CA Coalition for Rural Housing
  - Ellen Sahli, First Deputy Commissioner, Chicago Dept. of Community Development
- 12:30 – 1:15 PM    LUNCH (presentations by three New York City CDCs with permanently affordable projects in development)
- Fifth Avenue Committee, Public Place / Gowanus Green (Brooklyn)
  - Hope Community, East Harlem Community Land Trust
  - Phipps Houses, Hobbs Court / Ciená
- 1:15 – 2:30 PM    Presentations from Housing Officials: Part II (New York, Boston, and Minneapolis)
- Holly Leicht, Deputy Commissioner for Development, NYC HPD
  - Don Bianchi, MACDC, presenting on behalf of the City of Boston
  - Wesley Butler, Minneapolis Dept. of Multi-Family Housing Policy and Development
- 2:30 – 3:30 PM    Roundtable Discussion: Lessons Learned from Effective Local Policies
- Moderated by Jim Grow, National Housing Law Project
  - Michelle de la Uz, ANHD Board Chair and ED, Fifth Ave Committee
  - Doug Shoemaker, Director, SF Mayor's Office of Housing
  - Kevin Jackson, Executive Director, Chicago Rehab Network
  - Don Bianchi, Senior Policy Advocate, MA Association of CDCs
  - Marc Jahr, President, NYC Housing Development Corporation
- 3:45 – 4:30 PM    Keynote Speech from Rafael Cestero, Commissioner, NYC Dept. of Housing Preservation and Development

## Appendix A continued

4:30 – 5:00 PM      Wrap-up and Review of Day 2 Agenda

### **Day Two: October 23    Bringing Permanent Affordability to Scale Locally and Nationally**

8:15 – 9:00 AM      Sign-In and Breakfast

9:00 – 11:30 AM    Neighborhood Tour and Site Visit of Permanently Affordable Housing Project  
(St. Nicks Alliance in Williamsburg, Brooklyn)

11:30 – 12:30 PM   Panel Discussion: Why Permanent Affordability is Timely and Best Practices for  
Localities Interested in Bringing Permanence to Scale

- Moderated by George McCarthy, Ford Foundation
- Matt Schwartz, CA Housing Partnership Corporation
- Don Bianchi, Senior Policy Advocate, MA Association of CDCs
- Kevin Jackson, Chicago Rehab Network
- Benjamin Dulchin, Executive Director, ANHD

12:30 – 1:30 PM    Lunch and Networking

1:30 – 2:45 PM      Panel Discussion: Opportunities to Realize Permanent  
Affordability in Washington: A Policy Discussion

- Moderated by Becky Koepnick, Senior Advisor to the Secretary, HUD
- Vince O'Donnell, LISC
- Jim Grow, NHLP
- Matt Schwartz, CA Housing Partnership Corporation

2:45 – 3:00 PM      Closing Remarks and Next Steps

## Appendix B

### Permanent Affordability Participation List

NAME	ORGANIZATION	LOCATION	INDUSTRY
Rafael Cestero	NYC Dept. of Housing Preservation and Development	New York	Government
Holly Leicht	NYC Dept. of Housing Preservation and Development	New York	Government
Kerim Odekon	NYC Dept. of Housing Preservation and Development	New York	Government
Peter Madden	NYC Dept. of Housing Preservation and Development	New York	Government
Thehbia Walters	NYC Dept. of Housing Preservation and Development	New York	Government
Leora Jontef	NYC Dept. of Housing Preservation and Development	New York	Government
Bea De La Torre	NYC Dept. of Housing Preservation and Development	New York	Government
Mark Jahr	NYC Housing Development Corporation	New York	Government
Denise Scott	LISC	New York	Non-Profit
Shola Olatoye	Enterprise Community Partners	New York	Non-Profit
Martin Dunn	Dunn Development	New York	Development
George McCarthy	Ford Foundation	New York	Foundation
Christina Hong	Ford Foundation	New York	Foundation
Maridele Priest	Capital One Bank	New York	Bank
Dorothy Broadman	Capital One Bank	New York	Bank
Joe Weisbord	Fannie Mae	New York	Government
Marilyn Rovira	Fannie Mae	New York	Government
Amy Armstrong	NYU Furman Center	New York	Academia
Vincent Reina	NYU Furman Center	New York	Academia
Vic Bach	Community Service Society	New York	Non-Profit
Pat Swann	New York Community Foundation	New York	Private
Dina Levy	UHAB	New York	Non-Profit
Evelyn Wolff	Self-Help	New York	Non-Profit
Karen Rosa	Altman Foundation	New York	Foundation
Alan Epstein	Hirschen, Singer, and Epstein LLP	New York	Legal
Sarah Rosen	Booth Ferris Foundation	New York	Foundation
Laura Wolf	Robert Sterling Clark Foundation	National (NYC)	Non-Profit
Vince O'Donnell	LISC National	(Boston)	Non-Profit
Don Bianchi	Massachusetts Association of CDCs	Boston	Non-Profit
Matthew Schwartz	California Housing Partnership Corporation	California	Non-Profit
Olson Lee	San Francisco Redevelopment Agency	San Francisco	Government
Douglas Shoemaker	San Francisco Mayor's Office of Housing	San Francisco	Government
Rob Wiener	CA Rural Housing Coalition	Sacramento	Non-Profit
Jim Grow	National Housing Law Project	Oakland	Non-Profit
Wesley Butler	Minneapolis Dept. of Multi-Family Housing Policy & Dev.	Minneapolis	Government
Becky Koepnick	U.S. Dept. of Housing and Urban Development	Washington, DC	Government
Kevin Jackson	Chicago Rehab Network	Chicago	Non-Profit
Ellen Sahli	City of Chicago Dept. of Community Development	Chicago	Government
Becca Goldstein	City of Chicago Dept. of Community Development	Chicago	Government
Delila Sotelo	Los Angeles Redevelopment Agency	Los Angeles	Government
Nancy Biberman	WHEDCo	New York	Non-Profit



## Appendix B continued

NAME	ORGANIZATION	LOCATION	INDUSTRY
Michelle de la Uz	Fifth Avenue Committee	New York	Non-Profit
Drew Kiriakides	Pratt Area Community Council	New York	Non-Profit
Deb Howard	Pratt Area Community Council	New York	Non-Profit
Frank Lang	St. Nick's NPC	New York	Non-Profit
Cathy Herman	Goddard Riverside	New York	Non-Profit
Dena Davis	Manhattan Valley Development Corp.	New York	Non-Profit
Adam Weinstein	Phipps Houses	New York	Non-Profit
Stephanie Green	Westside Federation for Senior and Supportive Housing	New York	Non-Profit
Barbara Lowry	Northern Manhattan Improvement Corp.	New York	Non-Profit
Javier Valdez	Make the Road NY	New York	Non-Profit
Gladys Puggla	Make the Road NY	New York	Non-Profit
Sheena Wright	Abyssinian Development Corp.	New York	Non-Profit
Jay Marcus	Hope Community	New York	Non-Profit
Stephen Sarensier	Hope Community	New York	Non-Profit
Joe Restuccia	Clinton Housing Development Corp.	New York	Non-Profit
Deb Thomas	Altman Foundation	New York	Foundation
Kathleen Parisi	Consultant	New York	Civilian
Benjamin Dulchin	ANHD	New York	Non-Profit
Moses Gates	ANHD	New York	Non-Profit
Dave Hanzel	ANHD	New York	Non-Profit
Emily Goldstein	ANHD	New York	Non-Profit
Karen Gellen	ANHD	New York	Non-Profit
Hector Soto	ANHD	New York	Non-Profit



50 Broad Street  
Suite 1125  
New York, NY 10004  
(212) 747.1117  
[www.anhd.org](http://www.anhd.org)