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Homes and Community Renewal

Division of Housing
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Renewal

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Mr. Adefemi Akingbade
Office of the State Comptroller
Division of State Government Accountability
59 Maiden Lane - 21st Floor
New York, NY 10038

Re: Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments in New York City Report 2024-F-30 (“Report”).

The Division of Housing and Community Renewal (“DHCR” or “Agency”) appreciates the opportunity to respond to the above-referenced Report. The Mitchell-Lama Program (“Program”) represents a critical source of affordable housing for New Yorkers across the State and DHCR values the Office of the State Comptroller’s (“OSC”) continued interest in the program.

Recommendation 1 – Partially Implemented

“Improve monitoring of developments, including but not limited to:

- *Verifying that Management Representatives responsible for oversight at the sampled developments review all items on the Field and Office Visit Report and prepare and send those reports to the developments’ management promptly, as required;*

Agency Response: DHCR agrees that all items on the field and office visit reports should be reviewed and completed. The Agency has reinforced with field unit supervisors and housing management representatives the necessity of reviewing and completing all items on the comprehensive field reports and office visit reports in a timely manner and releasing those reports to the managing agents within reasonable timeframes. In addition, to expedite the delivery of monitoring reports to housing companies and managing agents, field unit supervisors have been empowered to approve and release monitoring reports without additional approvals from senior management. DHCR acknowledges the timeframes noted in OSC’s report and remains committed to the timely release of reports, which can vary depending on the circumstances at a particular housing company and the necessity of collecting follow-up information from the managing agent after the site visit. HCR will continue to evaluate its processes to support its objective to release reports as quickly as possible.

- *Conducting at least one annual site visit to each development;*

Agency Response: DHCR appreciates the Report’s acknowledgement that annual site visits have been conducted to each of the developments included in the follow-up review.

- *Ensuring immediate corrective action is taken when unsafe conditions are identified, and documenting dates of correction;*

Agency Response: DHCR agrees that housing companies, as privately owned and operated entities, must take corrective actions in response to findings documented in the housing management field reports. Management representatives have been directed to request confirmation from the housing companies on when they have corrected exigent health and safety issues. In addition, an added level of supervisory review has been added to further ensure that needed corrective actions have been communicated to housing companies and that the issues are being resolved by the housing company in a timely manner. The Agency has also issued a memorandum to all housing companies reminding them of the requirement that they submit timely responses to field office reports.

In instances when the housing companies cannot immediately address the identified health and safety issues due to insufficient financial resources, DHCR will to the extent possible assist housing companies to identify possible funding sources to address the issues. Since 2017, HCR has helped rehabilitate 24,000 Mitchell-Lama units, investing more than \$265 million to preserve this important supply of affordable housing. For example, DHCR has worked successfully to reposition and secure financing for the comprehensive rehabilitation of 753 Classon Avenue, one of the housing companies that was identified as having unsafe conditions that went uncorrected. Also, it's expected that Findlay House will close on rehabilitation financing later this year. These comprehensive rehabilitations will address all the physical deficiencies noted in the Report. While the report says that during the OSC February 2025 visit the condition of defective self-closing doors still existed, DHCR had in its records as of November 2024, written confirmation provided by the managing agent that the previously identified defective self-closing doors had been repaired. DHCR will continue to monitor this condition as appropriate during regularly scheduled future site visits.

- *Taking action against managing agents who are non-compliant with Regulations.”*

Agency Response: DHCR agrees that appropriate action should be taken with non-compliant managing agents. The New York Codes, Rules, and Regulations (“NYCRR”), specifically 9 NYCRR § 1729-1.5, has several remedies that may be enforced, including but not limited to terminating a managing agent’s agreement immediately or at the end of their current contract term. However, such measures must be balanced with the ongoing needs of the housing companies, the impacts on residents, and in consideration of and in cooperation with an owner or duly elected board of directors. As such, other interim measures, such as issuing letters of non-compliance to agents, are typically the first step undertaken. We will continue to issue notices of non-compliance as we become aware of violations of our regulations in accordance with our established procedures.

Recommendation 2 – Implemented

“Develop a formal process to obtain and analyze publicly available violations and complaints data and use the information to enhance monitoring of developments.”

Agency Response: DHCR appreciates the Report’s acknowledgement that the Agency has incorporated publicly available HPD and DOB building violations data into its field visit report processing platform. As the Report notes, housing companies are directed to correct Class C violations (immediately hazardous

violations) of receiving notice in writing and to provide a plan for correcting open Class A and B violations within 30 days.

Recommendation 3 – Partially Implemented

“Review expenditures, including all bonus payments, petty cash transactions and reimbursements, at the sampled developments and take appropriate action, including recouping funds, for transactions that are inappropriate or unusual.”

Agency Response: DHCR understands the importance of monitoring financial conditions and enforces compliance with its regulations that provide for the review of contracts and work exceeding \$100,000. The Mitchell-Lama regulations provide for DHCR review of purchases and contracts only when they exceed \$100,000. Prior DHCR approval is not required for purchases and contracts less than \$100,000. This threshold was established in 2009 after completing an extensive rulemaking process under the State Administrative Procedures Act (“SAPA”) that included the opportunity for all affected parties to provide input. As a result, DHCR regulations were amended so that prior DHCR approval was not required for purchases and contracts less than \$100,000. The amendment followed similar thresholds at that time for federal grant-supported procurement of goods and services and small purchase procedures followed by the United States Department of Housing and Urban Development. The intention of the threshold was to allow goods and services totaling no more than \$100,000 to proceed without publishing a formal request for proposals or invitation for bids.

While the Agency disagreed with this recommendation, Integrated Housing Management memorandums (#2023-B-12 and #2024-B-8) were issued to all housing companies and managing agents reminding them of applicable policies and requirements related to bonus payments, gratuity payments, petty cash transactions, operating funds, separately held bank accounts, and conflicts of interest.

Also, the Agency issued a letter of non-compliance in May 2023 to Jamie Towers Housing Company, Inc. identifying specific areas of non-compliance related to inappropriate use of petty cash and debit cards, performance bonuses, procurement policies related to competitive bidding, and non-functioning self-closing doors. The letter demanded a response in 30 days identifying corrective actions and internal controls that have been implemented to address the areas of non-compliance. The housing company responded in writing to the letter of non-compliance and identified corrective actions that have been or will be undertaken and certifying that the non-functioning doors are currently functioning properly.

The Report states that the follow-up review found \$2,966,674 in inadequately supported expenses and \$730,477 in unsupported expenses. Most of these expenses were below \$100,000 and DHCR approval was not required. In the seven instances when the expense was \$100,000 or more, only two were not reviewed and approved by DHCR. In those two instances, the Agency issued a letter of non-compliance in May 2025 to Jamie Towers Housing Company, Inc. stating that these expenses were made in violation of our requirements and reminding them that they must get our approval for purchases and contracts of more than \$100,000.

The Report also states that the review found \$81,507 in “unusual” expenses. Although all these expenses were below the \$100,000 regulatory threshold for DHCR’s review and approval, the Agency will examine these expenses and take appropriate action based on the findings of that examination.

Recommendation 4 – Partially Implemented

“Develop and implement policies and procedures related to bonus payments, requirements such as dollar thresholds for contracts, segregation of duties, and internal controls over purchasing at the developments and monitor compliance with these policies.”

Agency Response: DHCR agrees that appropriate policies and procedures related to bonus payments should be adhered to. The Agency has issued Office of Integrated Housing Management memorandums (#2023-B-12 AND #2024-B-8) Memorandums to housing companies and managing agents reminding them of applicable policies and requirements related to bonus payments and gratuity payments, as well as petty cash transactions, operating funds, separately held bank accounts, and conflicts of interest. Agency staff will continue to work with housing companies to address these matters. As previously noted above in HCR’s response to Recommendation #3, HCR issued a letter of non-compliance in May 2025 to Jamie Towers Housing Company, Inc. with regards to violation of DHCR Mitchell-Lama requirements.

Recommendation 5 – Partially Implemented

“Improve monitoring of financial conditions at the developments by enforcing compliance with Regulations related to the proper use of the developments’ funds, competitive analysis and bidding, and DHCR’s approval requirements for annual expenditures of \$100,000 or more.”

Agency Response: DHCR understands the importance of monitoring financial conditions and enforces compliance with its regulations that provide for the review of contracts and work exceeding \$100,000. In accordance with the State Administrative Procedures Act (“SAPA”), prior DHCR approval is not required for purchases and contracts less than \$100,000, which is aligned with threshold amounts for purchases of goods and services followed by the United States Department of Housing and Urban Development.

In February 2023, DHCR initiated a monthly newsletter titled “Mitchell-Lama Matters” to housing companies and managing agents to communicate statutory and regulatory compliance reminders and other items of interest such as new processes and procedures, upcoming programmatic deadlines, and changes in statute that impact housing companies. To date, the newsletters have focused on a wide range of topics including but not limited to professional services contracts in excess of \$25,000, identities of interest, the appropriate use of housing company funds, and requirements related to purchases and contracts in excess of \$100,000. DHCR will continue to use the newsletter as a platform to communicate with housing companies about relevant compliance issues.

As previously noted above in HCR’s response to Recommendation #3, the Report states that the follow-up review found \$2,966,674 in inadequately supported expenses and \$730,477 in unsupported expenses. Most of these expenses were below \$100,000 and DHCR approval was not required. In the seven instances when the expense was \$100,000 or more, only two were not reviewed and approved by DHCR. In those two instances, the Agency issued a letter of non-compliance in May 2025 to Jamie Towers Housing Company, Inc. stating that these expenses were made in violation of our requirements and reminding them that they must get our approval for purchases and contracts of more than \$100,000.

The Report also states that the review found \$81,507 in “unusual” expenses. Although all these expenses were below the \$100,000 regulatory threshold for DHCR’s review and approval, the Agency will examine these expenses and take appropriate action based on the findings of that examination.

Although the report states that Cathedral Parkway made payments to a vendor during 2024 of approximately \$159,000 which would have subjected to DHCR review and approval, further inquiry of the housing company by the DHCR revealed that the amount actually represented a recurring monthly contractual payment plus purchase of supplies. DHCR will be directing the housing company to separate the two contracts going forward.

Recommendation 6 – Partially Implemented

“Mandate regular training for management at the developments and Board members to ensure they are aware of good governance and their fiduciary responsibilities.”

Agency Response: DHCR disagrees that this recommendation is only partially implemented. DHCR strongly believes that properly trained management is an important component in the oversight of a Mitchell-Lama housing company. DHCR has produced two training videos for cooperative board members: one on “the basics”, and the second focused on “fiduciary responsibilities”. These trainings are available at <https://www.youtube.com/watch?v=JiFhuDuYq7A> (both videos are also embedded on our public website at <https://hcr.ny.gov/ml>). The Agency will continue to work with housing company management to ensure that its rules and regulations are met through ongoing memos, a recently established newsletter, and technical guidance from field unit supervisors and housing management representatives.

In March 2022, §32-a of the Private Housing Finance Law (PHFL) was amended to require boards of directors to complete a training curriculum focusing on: 1) board director financial oversight, accountability and fiduciary responsibilities; and 2) acquainting board directors with the functions and duties of being a director and to understand the powers and duties of other governing and administrative authorities affecting such housing companies. Such training must be completed within the first year of a board director’s term and at least once every three years thereafter. Upon completion of the training, a board director must complete a certificate of completion on a DHCR approved form. Such certificate of completion is to be filed with the cooperative’s board secretary and maintained by the secretary as a corporate record.

The Report notes that training completion records were provided for only three of the twelve current Board Members at Jamie Towers, implying that DHCR is not adequately enforcing the new training curriculum required by the PHFL. However, the Report fails to note that §32-a of the PHFL mandates that new Board members must complete the training “within the first year of his or her term...” The report also fails to note that the agency sent multiple emails to all members of the Jamie Towers board reminding them of their obligation to complete the required training. DHCR, in addition to the above reminder emails, provided in-person training directly to the Jamie Towers Board on August 20, September 19, and November 14, 2024. At the conclusion of all offered trainings, only one director was found to be non-compliant.

To further assist with matters such as this, HCR has issued an RFP to solicit an outside group to provide training and technical assistance to Mitchell-Lama housing companies and boards of directors.

Recommendation 7 – Partially Implemented

“Monitor residential and commercial rent arrears, and work with development management to take appropriate steps in line with Regulations to collect outstanding rent.”

Agency Response: Enforcing collection procedures involves a delicate balancing of the economic needs of the housing company, residents’ housing needs and their ability to pay rent, and the costs to the housing companies related to any necessary legal actions. Residential rent collection is governed by 9 NYCRR § 1727-4.2. It is at the housing company’s discretion and their responsibility to initiate any necessary summary eviction proceedings against non-paying residents and to pursue any money judgments issued by the court in any plenary action. Moreover, DHCR is not a party to the proprietary lease between the cooperation and shareholder in co-op Mitchell-Lama buildings. Lacking such privity of contract, DHCR cannot initiate summary proceedings on behalf of the cooperative. With regard to commercial rent arrears, commercial spaces are outside of the purview of DHCR oversight and supervision. *See* 9 NYCRR § 1727-6.2.

Despite the limitations on DHCR’s ability to enforce collection of arrears, the Agency implemented arrears and vacancies reporting requirement under which Mitchell-Lama housing companies are required to report specified data on their vacancies and rent arrears. DHCR will continue to work with housing companies to address inaccuracies that are reported.

Recommendation 8 – Not Implemented

“Assist management at Cathedral and Findlay House with filling vacancies.”

Agency Response: DHCR’s role as the supervising agency is limited by the Private Housing Finance Law and the Mitchell-Lama regulations. Pursuant to State statute and regulation, DHCR makes recommendations to housing companies to develop site-specific marketing plans. These marketing plans are a guide for housing companies on areas that include, but are not limited to, filling vacancies and fair housing compliance. However, the responsibility lies with the housing companies to undertake the marketing efforts recommended, including to fill vacancies, along with its private management of the project (i.e., housing companies and their managing agents). Pursuant to our statute and regulations, DHCR does not assist the housing company with undertaking the actual marketing efforts to fill vacancies. This responsibility lies with the management of the project (i.e., housing companies and their managing agents). Despite these limitations, DHCR will continue to work with management on addressing any outstanding vacancy issues throughout our portfolio.

It should be noted that there may be many typical circumstances for such vacancy, such as during a comprehensive rehabilitation of a building, in which housing companies must have units vacant and available to allow for the relocation of tenants while their units are being rehabilitated. For example, at Findlay House, the Comptroller's auditors have been informed that vacancies are related to the comprehensive rehabilitation expected to start before the end of this year.

DHCR has met with the managing agent of Jamie Towers on several occasions to discuss ways in which they could reduce vacancies. Furthermore, DHCR has offered to send a staff member to the site to retrain and assist the leasing agent with reviewing applications.

Recommendation 9 – Not Implemented

“Ensure Program staff maintain a current and accurate list of the DHCR-supervised developments and communicate reliable data to the Legislature, State Comptroller, and Attorney General.”

Agency Response: The Agency disagrees that this Recommendation has not been implemented. Due to an oversight, the Mitchell-Lama Annual Reports had continued to refer to all State-regulated Mitchell-Lama developments as being supervised by “DHCR.” The Annual Report had not been updated to reflect dozens of Mitchell-Lama developments that have been successfully restructured and rehabilitated through the efforts of DHCR’s Mitchell-Lama Program staff. As a result, these Mitchell-Lama developments are now being supervised by the New York State Housing Finance Agency, which is part of New York State Homes and Community Renewal and under the same senior management as DHCR. This oversight was corrected in the 2023 and 2024 Annual Reports.