

Homes and Community Renewal

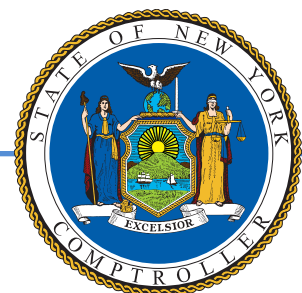
Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments in New York City

Report 2022-S-9 | June 2023

OFFICE OF THE NEW YORK STATE COMPTROLLER

Thomas P. DiNapoli, State Comptroller

Division of State Government Accountability



Audit Highlights

Objectives

To determine whether tenants living in Mitchell-Lama developments supervised by Homes and Community Renewal's (HCR) Division of Housing and Community Renewal (DHCR) are provided safe and clean living conditions, and whether funds are properly accounted for and used for intended purposes. Our audit covered the period from January 2019 through January 2023.

About the Program

The Mitchell-Lama Housing program (Program) was created in 1955 by the Limited Profit Housing Act, to provide affordable rental and cooperative (co-op) housing to middle-income families. A total of 269 State-supervised Mitchell-Lama developments (developments), with over 105,000 apartments, were built under the Program. In exchange for low-interest mortgage loans and real property tax exemptions, the Program required limitations on profit, income limits for tenants, and supervision by DHCR. Developments are owned by private companies and can exit the Program under certain conditions. DHCR works with owners as they near the end of their 20-year affordability requirements to provide low-cost financing tools that help maintain developments while also extending their affordability. As part of the State's commitment to increase and preserve the number of affordable housing opportunities for its residents, HCR makes capital available for the preservation and improvement of these properties.

Development owners often enter into agreements with agents to manage the developments (managing agents). It is the responsibility of the owner to provide safe and habitable housing and to maintain the physical and financial integrity of the development, and it is the function of the managing agent to effectively and efficiently manage the development to ensure that the owner's responsibilities are carried out. Owners and managing agents must agree to manage the development in accordance with local codes and State rules and regulations. A DHCR Housing Management Representative (Management Representative) is assigned to each development and is responsible for supervising and evaluating the management of their assigned projects, and for recommending corrections in a written report, DHCR Management Field and Office Visit Report (Field and Office Visit Report), of any deficiencies or improvements where warranted. Title 9 of the New York Codes, Rules and Regulations (Regulations) outlines specific requirements for Management Representatives when conducting reviews of developments. This audit is based on a sample of four developments located in New York City: 753 Classon Avenue Housing Company (Brooklyn), Cathedral Parkway Towers (Manhattan), Findlay House (Bronx), and Jamie Towers (Bronx).

Key Findings

DHCR does not adequately oversee the physical and financial conditions at the sampled developments. This likely caused management at those developments to misspend funds and fail to provide a safe and clean living environment for their residents.

- We observed hazardous conditions at the four developments, including damaged ceilings and mold-covered playground mats at a preschool located in one of the developments. DHCR officials also identified hazardous conditions during their own visits but often did not share their findings with the developments in a timely manner. Many of the unsafe conditions DHCR observed remained uncorrected, sometimes for years.
- All four developments misspent funds under DHCR's watch. For a sample of 280 transactions

totaling approximately \$1.9 million from the general ledgers of the four developments, we identified 139 transactions totaling approximately \$1.5 million that were either unrelated to normal operations or inadequately supported or for which there were no approvals, competitive analysis, and/or bidding, as required. This included \$155,967 in bonuses and \$21,530 spent for parties.

- DHCR reported inaccurate information to the Legislature, State Comptroller, and Attorney General in the required Annual Report on Mitchell-Lama Housing Companies in New York State.

Key Recommendations

- 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;
 - Conducting at least one annual site visit to each development;
 - Ensuring immediate corrective action is taken when unsafe conditions are identified, and documenting dates of correction; and
 - Taking action against managing agents who are non-compliant with Regulations.
- 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.
- 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.
- 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.



Office of the New York State Comptroller Division of State Government Accountability

June 15, 2023

RuthAnne Visnauskas
Commissioner/Chief Executive Officer
Homes and Community Renewal
Hampton Plaza
38-40 State Street
Albany, NY 12207

Dear Commissioner Visnauskas:

The Office of the State Comptroller is committed to helping State agencies, public authorities, and local government agencies manage their resources efficiently and effectively. By so doing, it provides accountability for the tax dollars spent to support government operations. The Comptroller oversees the fiscal affairs of State agencies, public authorities, and local government agencies, as well as their compliance with relevant statutes and their observance of good business practices. This fiscal oversight is accomplished, in part, through our audits, which identify opportunities for improving operations. Audits can also identify strategies for reducing costs and strengthening controls that are intended to safeguard assets.

Following is a report of our audit entitled *Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments in New York City*. This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

This audit's results and recommendations are resources for you to use in effectively managing your operations and in meeting the expectations of taxpayers. If you have any questions about this report, please feel free to contact us.

Respectfully submitted,

Division of State Government Accountability

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Glossary of Terms

Term	Description	Identifier
HCR	Homes and Community Renewal	<i>Auditee</i>
Annual Reports	Annual Reports on Mitchell-Lama Housing Companies in New York State	<i>Key Term</i>
Board	Mitchell-Lama Board of Directors	<i>Key Term</i>
Cathedral	Cathedral Parkway Towers	<i>Mitchell-Lama Development</i>
Classon	753 Classon Avenue Housing Company	<i>Mitchell-Lama Development</i>
Development, or housing company	Mitchell-Lama development	<i>Key Term</i>
DHCR	HCR's Division of Housing and Community Renewal	<i>Division</i>
DOB	New York City Department of Buildings	<i>Agency</i>
Field and Office Visit Report	DCHR Management Field and Office Visit Report	<i>Key Term</i>
HFA	New York State Housing Finance Agency	<i>Agency</i>
HPD	New York City Department of Housing Preservation and Development	<i>Agency</i>
Management Representative	DHCR Housing Management Representative	<i>Key Term</i>
Managing agent	Agent that manages a Mitchell-Lama development	<i>Key Term</i>
Program	Mitchell-Lama Housing Program	<i>Program</i>
Regulations	Title 9 of the New York Codes, Rules and Regulations	<i>Regulations</i>
TPA	Tenant Participation Agreement	<i>Key Term</i>

Background

The Mitchell-Lama Housing program (Program) was created in 1955 by the Limited Profit Housing Act to provide affordable rental and cooperative (co-op) housing to middle-income families. A total of 269 State-supervised Mitchell-Lama developments (developments), with over 105,000 apartments, were built under the Program. Developments are owned and managed by private companies (owners). In exchange for low-interest mortgage loans and real property tax exemptions, the Program required owners to comply with limitations on profit, income limits for tenants, and supervision by Homes and Community Renewal's (HCR) Division of Housing and Community Renewal (DHCR) and by the New York City (NYC) Department of Housing Preservation and Development (HPD). DHCR works with owners to provide low-cost financing tools that help maintain the developments while also extending their affordability. In addition, as part of the State's commitment to increase and preserve the number of affordable housing opportunities for its residents, HCR makes capital available to owners for the preservation and improvement of their developments.

Oftentimes, owners employ managing agents, the person or entity responsible for managing the developments. When they do so, they are required to enter into an annual agreement with the managing agent, which must include a DHCR-approved Management Plan. The Management Plan is an integral part of the managing agent's contract: it serves, during the term of the contract, as a continuing standard for services that must be met, and outlines the actions the managing agent proposes to follow in managing the development. It is the responsibility of the owner to provide safe and habitable housing and to maintain the physical and financial integrity of the development, and it is the function of the managing agent to effectively and efficiently manage the development to ensure that the owner's responsibilities are carried out. Both the owner and managing agent must agree to manage the development in accordance with local codes and State rules and regulations. The Management Plan should be developed with the following objectives: an efficiently managed, economically maintained and financially viable development; a pleasant, healthy, and secure living environment for the residents; a sound relationship between tenants and management; and a harmonious integration of the project into the surrounding community. Each development has an assigned DHCR Housing Management Representative (Management Representative), who is responsible for monitoring and evaluating the development's management, as outlined in Title 9 of the New York Codes, Rules and Regulations (Regulations). Management Representatives are required to conduct yearly on-site assessments (site visits) of a development's physical condition as well as fiscal reviews and to provide the results, including recommendations, in a written report, DHCR Management Field and Office Visit Report (Field and Office Visit Report), to the development. DHCR requires a development's Board of Directors, or its managing agent, to respond to the Field and Office Visit Report within 30 days describing the plan for corrective action.

This audit is based on a sample of four NYC developments: 753 Classon Avenue Housing Company (Classon), a 142-unit rental development for hospital staff located in Brooklyn; Cathedral Parkway Towers (Cathedral), a 309-unit rental development for families located in Manhattan; Findlay House, a 227-unit rental development

for seniors located in the Bronx; and Jamie Towers, a 620-unit cooperative (co-op) development for families located in the Bronx (see Table 1).

Table 1 – Sample of Developments

Development	Managing Agent	DHCR Risk Assessment Rating*		
		2019	2020	2021
Classon	New Bedford Management	Marginal	Troubled	Troubled
Cathedral	Cathedral Parkway Towers Management	Marginal	Marginal	Troubled
Findlay House	Prestige Management	Marginal	Stable	Not done
Jamie Towers	First Services Residential	Stable	Marginal	Not done

* DHCR’s Risk Assessment Ratings: Excellent – generates one site visit per year and may be eligible for limited supervision; Stable – generates at least one site visit per year; Marginal – generates two site visits per year and qualifies for close monitoring; Troubled – generates more than two site visits per year and requires close monitoring.

Classon and Findlay House are not-for-profit housing companies that lost their not-for-profit sponsors, leaving the housing companies effectively without leadership. Under Private Housing Finance Law section 32(6), DHCR assumed responsibility as the Board of these developments. HCR personnel have been on the Boards of Classon since 1994 and of Findlay House since 2016.

A part of our January 2019–January 2023 audit scope encompasses an unprecedented time of extraordinary conditions and challenges due to the COVID-19 pandemic. According to DHCR officials, the pandemic caused fundamental changes to DHCR’s management of the Program, with in-person operations suspended due to federal mandates and New York State executive orders.

Audit Findings and Recommendations

Tenants at selected DHCR-supervised developments were not provided with a safe and clean living environment, and funds that should have been used for ordinary operations and to correct deficiencies in the developments were misspent. As the oversight agency of the State's housing programs, HCR – and by extension DHCR – should ensure that management at the developments provide tenants with a safe and clean living environment and, furthermore, that funds used for the developments' operations are spent efficiently and effectively. Management Representatives are responsible for overseeing conditions at the developments, and their work, which is documented in Field and Office Visit Reports, is critical to ensuring that developments are being managed properly – that is, in good physical and fiscal condition and in compliance with local and State requirements – and that deficiencies are identified and promptly remediated. However, we determined DHCR officials have not developed the controls, including monitoring of Management Representatives, necessary to ensure that management at the developments are being held accountable for their commitment to standards of living for tenants and for the use of funds to maintain these standards.

At the four developments, we found unsanitary conditions, including pest infestations, water leaks, and mold, as well as physical hazards, such as structural damage and collapsed ceilings – all of which pose risks to tenants' health and safety. Despite some of these conditions being cited in the Field and Office Visit Reports, many of the hazardous conditions went uncorrected for lengthy periods, sometimes years. Similarly, we determined that management at the developments did not adhere to Regulations related to the proper use of funds and DHCR officials failed to provide the necessary oversight to ensure the developments were managed in a fiscally responsible way. For a sample of 280 transactions, totaling approximately \$1.9 million, from the general ledgers of the four developments, we found 139 transactions, totaling approximately \$1.5 million, that were either unrelated to normal operations or inadequately supported or for which there was no competitive analysis and/or bidding, as required.

In addition to substandard living conditions and misspent funds, we found other issues, including a long-standing vacant commercial unit at one development and high vacancy rates at another; excessive tenant arrears, which result in limited resources available for maintenance; and reporting of inaccurate information by DHCR officials, which can impact decisions, such as capital funding, that affect developments and ultimately impact their physical and financial conditions.

Inadequate Oversight of Physical Conditions

Based on our observations at the four sampled developments, DHCR officials do not ensure that hazardous conditions at the developments are properly identified and reported timely and/or that management has taken prompt remedial action. As a result, tenants have been forced to live in unsanitary conditions, including pest infestations and water leaks that can lead to – and at one development has led to – mold and other allergens that can adversely affect tenants' health. The risk to health and safety only increases when lengthy neglect leads to further deterioration of the

condition. In the interest of tenants' health and safety, it is imperative that DHCR officials take action to improve their oversight of and attention to physical conditions at the developments.

Furthermore, in many instances, the developments had been issued HPD or NYC Department of Buildings (DOB) violations for hazardous conditions. DHCR officials should establish a process to utilize publicly available information, such as violation data, to identify and monitor conditions. DHCR officials claim they will be looking into incorporating reviews of violations from HPD and DOB databases into their site visit protocol.

Unsafe Conditions Not Timely Addressed

Classon: During our 4-year audit scope period, Management Representatives conducted three site visits – April 2019, August 2021, and April 2022. DHCR officials rated the development as marginal in 2019 and troubled in 2020 and 2021, which should have generated at least two site visits for each year for a total of at least six visits. According to each of the three Field and Office Visit Reports, the Management Representative found the following poor physical conditions during the visits:

- Partially collapsed ceilings in the community room due to major active water leak (Figure 1)
- Front entrance not compliant with Americans with Disabilities Act (ADA) standards
- A ramp from the exterior parking lot to the building that was too steep (Figure 2)
- A jammed emergency exit door that was difficult to open
- Evidence of mold in the basement and/or community room requiring an investigation to determine the extent of infiltration



Figure 1 – Partially collapsed ceilings in the Classon community room due to major active water leak.



Figure 2 – Steep entrance ramp from Classon parking lot where a resident fell.

We visited Classon on August 31, 2022 and October 14, 2022 (more than 4 months after the most recent Field and Office Visit Report and more than 3 years after these conditions were originally reported by DHCR) and found that the unsafe conditions remained uncorrected.

In addition, we observed the following poor conditions:

- Extensive water damage in a vacant unit, which Classon management said was due to a damaged drainage pipe coming from the roof (see Figure 3).
- Extensive water damage in a vacant commercial space (see Figure 3). According to Classon's management, the space requires a complete renovation but the needed funds are not currently available.
- Tenants are unable to access the balconies of their units due to uncorrected Local Law 11-related façade issues and sidewalk sheds/scaffolding that has been up for more than 10 years.
- A trip hazard on the ramp leading to the entrance from the parking lot.

Hazards that go uncorrected can lead to further deterioration of conditions, which increases the risk to safety and health. In fact, Classon's management confirmed they were notified that a tenant fell and broke her arm while using the steep ramp from the parking lot entrance (see Figure 2).

In addition, as of October 3, 2022, there were 102 open violations issued by HPD – 22 were classified as immediately hazardous and 61 were classified as hazardous – for conditions such as non-working self-closing doors, water leaks, mold, pests, and structurally damaged balconies. Further, as of October 21, 2022, there were 22 open DOB violations for the boilers, elevators, and building façade. During our October 2022 site visit, we found several hazardous conditions had not been resolved, including problems with self-closing doors, a water leak in the common areas of the building, and water leaks and pest infestation within individual units. One of the eight open violations for pest infestation has been open and unresolved for over 3 years. According to two tenants with whom we spoke, there is a constant infestation of mice and other pests, and the building's exterminator had not provided services in the last 5 months. The exterminator informed us they stopped providing services because Classon officials refused to pay amounts owed to them. Further, as of February 22, 2023, we found there were 94 open HPD violations that were issued during our 4-year scope period, so it appears management has still not taken action to provide a clean and secure living environment for the residents. Additionally, we observed hazardous conditions within an occupied unit where a water leak from the apartment above caused damage to the tenant's ceiling (see Figure 4) – an issue that, according to the tenant, has been ongoing for over a year.



Figure 3 – Water damage in vacant Classon units.



Figure 4 – Unrepaired water-damaged ceiling posing health and safety hazards to the tenant living in the unit.

According to DHCR officials, they continue to work with management to address hazardous conditions; however, many of these conditions have existed for at least 3 years with no corrective action taken. In February 2021, DHCR officials noted that the managing agent is dismissive of conditions at the development. Although Regulations allow DHCR to terminate the agreement between the development and the managing agent at any time, the same managing agent is still employed at Classon.

Further, DHCR officials directed a comprehensive integrated physical needs assessment that revealed extensive capital repair needs, which, according to DHCR officials, will be addressed as part of the refinancing and redevelopment scheduled to take place in 2023.

Jamie Towers: Management Representatives conducted two visits to Jamie Towers – in November 2019 and June 2022 – during our audit scope period. DHCR officials rated the development as stable in 2019 and marginal in 2020 and therefore should have generated at least one visit in 2019 and at least two visits in 2020, for a total of at least three visits. According to the Field and Office Visit Report for the November 2019 visit, the Management Representative noted the following physical conditions that required corrective action: several non-self-closing stairwell doors and garbage chutes, cracked walkways, and an out-of-service elevator.

During our site visits to Jamie Towers on May 3, 2022 and June 24, 2022 – more than 2½ years after the Field and Office Visit Report – we found that several of the reported issues had not been corrected, including cracks in the walkways surrounding the property and several stairwell doors and garbage chutes that were not fully self-closing, posing fire and other types of health and safety hazards. It is especially critical to immediately address issues related to self-closing doors given that, in 2022, a non-functioning self-closing stairwell door reportedly resulted in the spread of a fire that killed 17 people at an apartment building in the Bronx.

Additionally, during an office visit on August 19, 2022, we observed cockroaches in the management office, which is located within a building that contains occupied apartments. Management officials claimed there was no infestation problem at the time; however, as of August 19, there were at least eight open HPD violations throughout the development for infestations, including bedbugs, water bugs, and roaches.

We also found one of the buildings had extensive roof damage (see Figure 5). According to the management at Jamie Towers, the damage occurred in June 2021. As a result, eight units had to be vacated and the tenants relocated to other vacant units within the development due to mold growing in their units. According to Jamie Towers management, DHCR was notified of the issues at the time but, as of August 2022, still had not approved a contract for the development to begin roof repair work.



Figure 5 – Jamie Towers, Building 2 roof damage.

As of September 13, 2022, there were 11 open violations for visible mold issued by HPD between September 2021 and August 2022, 10 of which were classified as immediately hazardous or hazardous. We also note that, due to the extensive delays, Jamie Towers has lost an estimated \$108,523 in maintenance fees as of September 2022 for the eight affected apartments.

As of February 22, 2023, we found 189 open HPD violations that were issued during our 4-year scope period, including violations for pest infestations and mold. It appears management has still not taken action to provide a safe, clean, and secure living environment for the residents.

Findlay House: DHCR's Management Representatives conducted two visits to Findlay House – in February 2019 and September 2021 – during our 4-year audit scope period. DHCR officials rated the development as marginal in 2019 and stable in 2020 and therefore should have generated at least two site visits in 2019 and one in 2020, for a total of at least three visits. According to the Field and Office Visit Report for the February 2019 visit, the Management Representative did not review several physical conditions that were required, including all items related to health and safety such as mold, lead-based paint, fire exits, and infestation, increasing the risk that Findlay House is not being maintained and repaired to ensure safe and clean conditions. DHCR officials stated that they have already issued a memorandum to Management Representatives reminding them of the necessity of complete reports. We requested a copy of this memorandum but, as of February 22, 2023, DHCR officials have not provided it.

Further, according to the Field and Office Visit Report for the September 2021 visit, corrective action was required to address a malfunction with the self-closing door at the main entrance of the building that did not allow the door to close. During our May 18, 2022 site visit to Findlay House, we found the automatic door was still malfunctioning and remained fully open, which poses security risks for tenants. According to DHCR officials, these conditions have not been corrected because it requires significant capital investment and they are working with the designated new sponsor to prepare a comprehensive redevelopment plan. However, they did not provide us with their recapitalization plan to support that corrective actions are included, nor did they give a time frame for when their capital plans will be implemented and completed. As of August 30, 2022, there were nine open HPD violations classified as immediately hazardous. Four were related to self-closing doors; the remaining five were related to pest infestations (issued between July 2020 and April 2022). Further, as of August 31, 2022, there were two open DOB violations (issued on August 5, 2021) with \$7,500 in penalties related to elevator issues. As of February 22, 2023, we found there were 39 open HPD violations that were issued during our 4-year scope period, including a violation for the broken entrance door, so it appears management has still not taken action to provide a clean and secure living environment for the residents.

Cathedral: Management Representatives conducted one visit to Cathedral – in April 2022 – during our 4-year audit scope period. DHCR officials rated the development as marginal in 2019 and 2020 and troubled in 2021 and therefore should have

generated at least two site visits for each year, for a total of at least six visits. According to the Field and Office Visit Report, the Management Representative found numerous physical conditions that required corrective action, including missing concrete, calcium drips, a trip hazard, pools of water, cracks in the sidewalks, bricks jutting out around flower beds and retaining walls, an unsafe retaining wall, and mold/fungus on the playground mat of the preschool located in the development. We conducted a site visit to Cathedral on August 16, 2022 and found these issues remained uncorrected.

Delayed Reports

Notably, of the seven Field and Office Visit Reports issued to the four developments for the audit period, six were not issued in a timely manner; the lag between when the site was visited and when DHCR reported to the development ranged from 1 to 8 months (see Table 2). It is crucial for DHCR to communicate and follow up on hazardous conditions; otherwise, these conditions can remain uncorrected for long periods of time. Delays in remediation increase the risk of further deterioration, which can pose even greater risks to tenants. Further, DHCR officials do not enforce their 30-day requirement for management at the development to respond. Of the seven Field and Office Visit Reports, only four were responded to: Findlay House management responded 4 months after they received the report; Classon management responded within 1 month after they received one report and sent an undated response to another report; and Cathedral management responded 3 months after they received the report. According to DHCR officials, they will consider making policy changes regarding the drafting, processing, and follow-up of reports and are looking into the creation of a new format for management responses to aid in timely communication on corrective actions.

Table 2 – Time Between DHCR Site Visit and Report Issuance

Development	DHCR Site Visits (as of 8/10/2022)	Number of Poor Physical Conditions Reported	Report to Development	Time Between Visit and Report Issuance	Date Development Responded
Findlay House	9/22/2021	7	5/23/2022	8 months	9/22/2022
Findlay House	2/20/2019	3	4/26/2019	2 months	No response
Jamie Towers	11/13/2019	6	1/30/2020	3 months	No response
Classon	4/15/2019	28	6/10/2019	2 months	6/14/2022
Classon	8/3/2021	23	8/12/2021	—	No response
Classon	4/19/2022	25	7/6/2022	3 months	Response undated
Cathedral	4/4/2022	28	5/16/2022	1 month	8/16/2022

Recommendations

1. 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;
 - Conducting at least one annual site visit to each development;
 - Ensuring immediate corrective action is taken when unsafe conditions are identified, and documenting dates of correction; and
 - Taking action against managing agents who are non-compliant with Regulations.
2. Develop a formal process to obtain and analyze publicly available violations and complaints data, and use the information to enhance monitoring of developments.

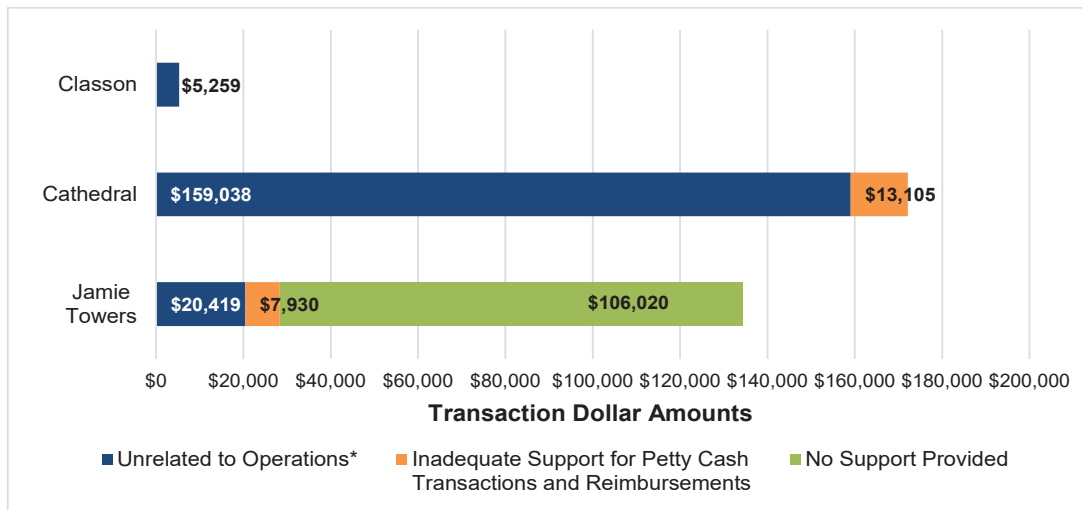
Inadequate Oversight of Financial Conditions

Based on our review of sampled transactions at the selected developments, we determined that DHCR officials' oversight of financial conditions at these developments is weak. We reviewed a sample of 280 transactions, totaling approximately \$1.9 million, from the general ledgers of the four developments and found 139 transactions, totaling approximately \$1.5 million (79%), that were either unrelated to normal operations or inadequately supported or for which there were no approvals, competitive analysis, and/or bidding, as required.

Expenses Unrelated to Normal Operations or Inadequately Supported

According to Section 1728-2.6 of the Regulations, except where approved by DHCR or as otherwise permitted, funds of the housing company are only to be used for the ordinary operations of the developments. Management Representatives should review expenditures to identify any that are inappropriate or unusual and should also review petty cash transactions. Further, Management Representatives must review items related to the developments' fiscal conditions, such as bills and invoices, purchase procedures, contracts, and bank accounts. We identified 80 transactions, at three of the four sampled developments – Classon, Cathedral, and Jamie Towers – that either were inadequately supported or were for items unrelated to ordinary business operations. These expenses totaled approximately \$312,000 (see Figure 6). Additionally, Management Representatives failed to adequately review petty cash transactions and other expenditures that appeared improper or unusual.

Figure 6 – Expenses Unrelated to Normal Operations or Inadequately Supported



*Includes bonuses, parties, and meal reimbursements

Cathedral: We identified 27 transactions, totaling \$159,038, that were unrelated to normal program operations, including 17 bonus payments totaling \$131,000 and another 10 transactions totaling \$28,038 for items such as parties and a youth program. For example, Cathedral paid over \$20,000 in a single year on tent rentals for parties and made payments to the property manager’s family members for items such as baked goods and catering services. While Cathedral’s management spent over \$150,000 on items unrelated to operations, the development reported that, as of September 30, 2022, they owed approximately \$130,000 to 63 vendors.

Additionally, Cathedral officials could not provide adequate documentation to support five transactions, totaling \$13,105, labeled in the general ledger as reimbursements to three individuals (including the property manager) for items such as supplies, telephone services, stone and marble, and repairs. Furthermore, we found that at least one of these transactions was approved by the same individual who received the reimbursement.

Jamie Towers: We identified five transactions, totaling \$20,419, that were unrelated to operations. For example, there were three bonus payments, totaling \$20,084, paid to the development’s management. While Jamie Towers management spent over \$20,000 on items unrelated to operations, the development reported that, as of October 31, 2021, it had outstanding debt of approximately \$690,000 owed to 23 vendors. According to the Field and Office Visit Report, the Management Representative did not review expenditures to identify any that were inappropriate or unusual.

Further, we reviewed 23 petty cash transactions or reimbursements, totaling \$7,930, and found that 17, totaling \$6,387, were for items such as pool parties and Uber rides, for which management at Jamie Towers provided inadequate or no documentation to support. In addition, we did not find there was segregation of duties for 21 of these transactions: for 14, totaling \$4,690, Jamie Towers

management provided no evidence that the transactions were approved; for seven, totaling \$2,290, documentation showed that the payee and the approver were the same person. According to the Field and Office Visit Report, the Management Representative reviewed petty cash in November 2019 and found that Jamie Towers management uses a corporate credit card instead of cash. However, we found that 12 of the 23 petty cash transactions were made during the period that covered the Management Representative's review and, contrary to what the Management Representative stated, the development continued to use petty cash through at least January 2022.

Classon: We identified four transactions totaling \$5,259 – \$4,883 for bonuses to the development's staff and the remainder for payments labeled "birthday" or "personal."

As evidenced by our findings at three of the sampled developments, funds are not properly accounted for or are used for unusual purposes, and DHCR does not adequately oversee the developments' financial conditions, with Management Representatives often failing to identify inappropriate expenses. In particular, there appears to be a lack of clarity related to when bonus payments are appropriate. While DHCR officials stated that end-of-year/holiday bonuses are generally traditional and recommended throughout the industry, there are no policies or procedures related to them. According to DHCR officials, they are reviewing whether to implement additional provisions regarding bonus payments as well as issuing a reminder to developments on the appropriate use of funds. Officials stated they did not review the bonus payments because Regulations only require that DHCR review contracts and work exceeding \$100,000. Officials also informed us they will be exploring a policy to periodically review a sample of invoices. However, according to DHCR's policies and procedures, Management Representatives must review fiscal and budget items, including determining if expenditures are proper and reasonable, regardless of the dollar amount.

In addition, DHCR officials did not monitor development management to ensure they enforced expected standards of conduct, including segregation of duties and internal controls over purchasing. Development management is not exercising appropriate fiduciary care, as evidenced by the lack of controls over payments, resulting in unnecessary or improper payments. The use of petty cash or issuing reimbursements without adequate support for the expenses may result in the development spending funds on unwarranted and improper purchases. When developments make unnecessary or improper payments, it diverts money away from normal operations, including repair of unsafe conditions. Further, if developments continue to make unnecessary or improper payments while operating at a net loss – as was the case for three of the four developments with completed financial statements for fiscal year 2021 – it may result in increased costs for residents. In fact, management at Classon, Cathedral, and Jamie Towers have recently applied for maintenance or rent increases.

Lack of Competitive Bids and DHCR Approvals

According to Section 1728-4.1 of the Regulations, all purchases and contracts will be awarded on the basis of competitive analysis and bidding to the fullest extent possible. While DHCR's Management Plans for developments contain provisions regarding competitive bidding, the terms are inconsistent across developments. For example, the Management Plans for Jamie Towers and Findlay House require competitive analysis and bidding for transactions over \$5,000 while the Management Plan for Cathedral only requires competitive analysis and bidding for transactions over \$100,000. Classon's Management Plan does not include a dollar threshold for when competitive analysis and bidding is required; however, it states that any transaction over \$2,500 must be approved by its Board. We found that DHCR does not have policies or specifying criteria, such as dollar thresholds, for when a contract is required.

Further, under Section 1728-4.3 of the Regulations, prior approval by DHCR is required for purchases or contracts of \$100,000 or more in accordance with various bidding requirements. Also, Section 1728-4.4 of the Regulations states that purchases or commitments for occasional and continuing requirements that, based on the projections for the period of the most recently approved budget, would result in an average annual expenditure of \$100,000 or more must comply with the approval requirements of Section 1728-4.3. Our review of expenditures showed that management at Jamie Towers, Findlay House, and Cathedral did not use competitive bidding and analysis when required, and management at Jamie Towers and Cathedral did not seek DHCR approvals for expenditures that exceeded \$100,000.

Cathedral: We identified 10 transactions, totaling \$238,783, that Cathedral officials paid to a single vendor. Although the average annual expenditure to this vendor exceeded \$100,000, Cathedral did not obtain DHCR approval or provide evidence of competitive analysis and bidding, as required by Regulations. DHCR officials stated that Cathedral was not required to adhere to bidding Regulations because the development entered into a Tenant Participation Agreement (TPA) that provides for tenant management, tenant control over operations, and tenant decision making. Officials also informed us that the TPA gives the United Tenants Association of Cathedral Parkway Towers significant control over operational and budgetary matters. Nevertheless, we noted the TPA explicitly states that, in the case of purchases subject to bidding requirements under DHCR Regulations, Cathedral should solicit bids from selected individuals or firms. Further, DHCR officials subsequently stated the TPA does not waive the Regulations.

In accordance with the TPA, the development makes a payment of \$10,000 each month, totaling \$120,000 per year, to its managing agent. These monies are deposited into a separate account that has no DHCR oversight. Although the payments exceed \$100,000 per year, DHCR officials do not review and approve the transactions, and claim they have limited authority over the payments because the payment is set aside as appropriate within the TPA. However, since the TPA states that such payment shall be accounted for as an operating expense, the expenses

are subject to DHCR review and approval as required by Regulations. We reviewed the transactions from this account and found the monies deposited into the account covered expenditures to individuals and to vendors that totaled over \$100,000 per year. According to Cathedral management, no formal contract exists for these services, and they have not competitively bid these services since 2014.

Jamie Towers: DHCR officials did not review individual expenses at Jamie Towers to ensure the development adhered to its Management Plan's requirement to competitively bid purchases over \$5,000. For example, DHCR did not note any non-compliance with bidding requirements, even though a Field and Office Visit Report indicated the Management Representative reviewed invoices for a period in which there were at least 10 payments totaling \$236,586, which required competitive analysis and bidding.

Additionally, the Management Representative failed to adequately review payment information to identify purchases or commitments that result in average annual expenditures of \$100,000 or more, which require DHCR approval. Jamie Towers procured services from five companies with expenditure totals over \$100,000 for one or more fiscal years during our scope period. There was no evidence of DHCR approvals or competitive analysis and bidding for these payments.

Findlay House: DHCR officials did not review individual expenses at Findlay House to ensure the development adhered to its Management Plan's requirement to competitively bid on purchases over \$5,000. We identified 13 transactions, totaling \$186,798, for which there was no evidence of competitive analysis and/or bidding. For example, Findlay House management did not provide evidence that a transaction for apartment maintenance and painting, totaling \$48,320, was competitively bid to secure the most cost-effective prices. Further, according to the managing agent's Initial Property Assessment Report, the contractor did not have any written service agreements with Findlay House, was not a licensed contractor, and did not have any insurance. Despite this information, we did not see evidence that DHCR officials instructed Findlay House management to stop using this contractor.

As DHCR officials did not review or approve expenditures when required, developments may have overpaid for services. Further, hiring a company without a contract and/or competitive bidding not only can result in higher prices but can also lead to the selection of unqualified vendors, including friends and family.

As noted above, Management Representatives failed to adequately review invoices and vouchers to identify purchases or commitments that result in average annual expenditures of \$100,000 or more, which require DHCR approval. Further, they did not note or address non-compliance with rules and/or Regulations related to competitive analysis and bidding at these developments. Moreover, inconsistencies in the requirements for competitive bidding between the Management Plans and the Regulations can result in confusion for the developments' management and Management Representatives.

Although Regulations require DHCR approval for purchases or contracts of \$100,000 or more, we note that DHCR policies do not specify when a contract agreement is required. DHCR should develop clear criteria, such as dollar thresholds, to determine when a formal contract is necessary. DHCR officials stated they will be exploring regulatory and/or policy changes for purchasing and contracting to clarify the circumstances for which competitive bidding and DHCR reviews would be required.

Other Matters

We found developments have high tenant arrears that DHCR does not address, nor does DHCR assist developments with filling vacancies. We found one development with a long-standing vacant commercial space and another with a high number of vacant residential units. Additionally, we found action is warranted by DHCR officials to improve transparency as we found DHCR reported inaccurate information to the public, including the Legislature, State Comptroller, and Attorney General.

Excessive Tenant Arrears and High Vacancy Rates

At all four sampled developments, we found excessive tenant arrears (see Table 3).

Table 3 – Tenant Arrears at Selected Developments

Development	Date of Tenant Arrears Report	Number of Units in Arrears	Total Arrears
Classon	8/30/2022	47	\$206,208
Cathedral	7/31/2022	128	\$1,179,951
Findlay House	3/1/2022	118	\$424,640
Jamie Towers	2/1/2022	584	\$1,687,911

According to Cathedral’s management, they try not to evict tenants due to a long-standing and familial relationship between management and tenants. However, we noted that one tenant owes over \$175,000 in rent and another, who the manager confirmed is a relative, owes over \$55,000. While we acknowledge the importance of minimizing the displacement of tenants, given the current financial state of these developments, we encourage DHCR officials to take steps in line with their Regulations to collect outstanding rents or provide rental assistance opportunities to tenants in arrears. The high arrears lead to negative working capital, which ultimately results in limited resources for upkeep of common spaces and correction of poor physical conditions, as well as limited funds available to pay vendors and potential rent/maintenance increases.

In addition to the high tenant arrears, we found there were issues with vacancies at two of our sampled developments. We identified a long-standing vacant commercial space at Findlay House that could be generating approximately \$54,000 in revenue annually. This commercial space has been vacant since at least 2019. Although DHCR controls the Findlay House Board, DHCR officials have failed to fulfill their fiduciary responsibility as a Board and oversight agency as they continue to wait for a new sponsor to fill the space, which has taken years.

In an April 2022 report, DHCR officials commented that Cathedral management is encouraged to rent apartments as they become vacant and keep the vacancies low. However, as of September 30, 2022, there were 17 vacant units despite a lengthy waiting list. DHCR officials are aware of the high vacancies but have not assisted Cathedral management with filling vacant units, and claim their role as the supervising agency is limited by the Mitchell-Lama Statutes and Regulations; however, DHCR has agreed to continue to work with management on addressing the outstanding vacancy issues. Developments with high vacancies continue to lose income that is needed to maintain operations and to meet residents' needs. Given the lack of affordable housing throughout New York State, it is unfortunate for a development to have so many vacancies.

Inaccurate Reporting of Developments Under DHCR Supervision

According to Section 32-b of Article 2 of Private Housing Finance Law, DHCR officials must submit a report to the Legislature, State Comptroller, and Attorney General on the implementation of Article 2 developments.

DHCR officials have been reporting inaccurate information to the public, including the Legislature, State Comptroller, and Attorney General, in the Annual Reports on Mitchell-Lama Housing Companies in New York State (Annual Reports). We found DHCR officials lack a thorough understanding about the developments under their supervision, as evidenced by DHCR's contradictory statements related to the information provided and/or published. For example, on March 30, 2022, DHCR's public website showed there were 148 DHCR-supervised developments; however, by June 9, 2022, the website was updated to show there were 92 DHCR-supervised developments. Despite making this update, a few months later, in January 2023, DHCR officials claimed the 2022 Annual Report, which listed 121 DHCR-supervised developments, was accurate. Officials explained that the Annual Report includes developments supervised by DHCR as well as developments supervised by the New York State Housing Finance Agency (HFA). However, contrary to DHCR officials' claim, the Annual Report does not disclose that any of the developments are supervised by HFA and incorrectly states a number of HFA-supervised developments are supervised by DHCR. Further, DHCR officials provided the audit team with a list of developments they say are under their supervision, which only included 86 developments despite their claims that the Annual Report, with 121 developments, is accurate. Regardless, we selected a development that was listed in both the Annual Report and the agency-provided list of 86 developments and were told that this development was no longer under DHCR supervision. DHCR officials subsequently provided documents to show that this development was moved to HFA's supervision in 2013. However, according to a list of Field and Office Visit Reports and risk assessments provided by DHCR officials, they conducted a site and office visit to this development in October 2019 and conducted risk assessments for the development in both 2019 and 2020. It is unclear why DHCR would be visiting and assessing a development that is not under its supervision.

DHCR management does not ensure that Program officials maintain a current and accurate listing of the DHCR-supervised developments. Therefore, there is no assurance DHCR officials are aware of the developments they are required to supervise, which may lead to developments operating with limited or no oversight. This lack of adequate oversight may not identify misuse of funds, fraudulent activities, and unsafe living conditions. Furthermore, the Legislature, State Comptroller, and Attorney General may be relying on inaccurate information when making decisions related to the Mitchell-Lama Program.

Recommendations

3. 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.
4. 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.
5. 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.
6. Mandate regular training for management at the developments and Board members to ensure they are aware of good governance and their fiduciary responsibilities.
7. Monitor residential and commercial rent arrears, and work with development management to take appropriate steps in line with Regulations to collect outstanding rent.
8. Assist management at Cathedral and Findlay House with filling vacancies.
9. 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.

Audit Scope, Objectives, and Methodology

To determine whether persons living in Mitchell-Lama developments supervised by DHCR are provided safe and clean living conditions, and whether funds are properly accounted for and used for intended purposes. Our audit covered the period from January 2019 through January 2023.

To achieve our objectives and evaluate the relevant internal controls, we reviewed the Private Housing Finance Law, the Regulations, and DHCR's policies and procedures, including the Housing Management Representative Guidelines, Field and Office Visit Reports, and Annual Financial Review Forms. We met with DHCR officials to obtain an understanding of their rules, policies, and procedures and their oversight of the Program. From a list of 93 DHCR-supervised developments, provided by DHCR officials, we selected a judgmental sample of four developments (Cathedral, Classon, Findlay House, and Jamie Towers) located in NYC to review during the audit. Our judgment was based on various factors, including development type and location, resident type, and public complaint and violation data. We visited all four sampled developments to observe physical conditions and met with the developments' management to obtain an understanding of how they oversee conditions. We also interviewed managing agents for the four housing developments.

Further, for the four developments, we reviewed DHCR records, including Field and Office Visit Reports, Annual Financial Review Forms, risk assessments, budgets, financial statements, contracts, complaints filed, violations issued, and other relevant documents related to the physical and financial conditions. We selected and reviewed a sample of 280 transactions, totaling approximately \$1.9 million, from the four developments' general ledgers for the period January 2019 through October 2022. We selected the sampled transactions from a population of expenditures totaling \$68 million, which consists of the following: \$23.5 million of Cathedral expenses for the period January 2019 through October 2022; \$6.1 million of Classon expenses for the period January 2019 through March 2022; \$7.1 million of Findlay House expenses for the period January 2019 through March 2021; and \$31.3 million of Jamie Towers expenses for the period January 2019 through March 2022. Our judgment was based on various factors, including dollar amount, vendor name, and transaction type. The 280 sampled transactions consisted of the following: 70 transactions totaling \$537,342 from Cathedral, 55 transactions totaling \$189,419 from Classon, 40 transactions totaling \$244,981 from Findlay House, and 115 transactions totaling \$962,399 from Jamie Towers. We conducted office visits at each development and reviewed documents such as invoices, contracts, and written approvals related to the sample we selected. We determined that the data used to pull our samples and perform our analyses was sufficiently reliable for use in accomplishing our audit objectives. None of our samples were designed to be projected to the entire population.

Statutory Requirements

Authority

The audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law.

We conducted our performance audit in accordance with generally accepted government auditing standards. These standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained during our audit provides a reasonable basis for our findings and conclusions based on our audit objectives.

In addition to being the State Auditor, the Comptroller performs certain other constitutionally and statutorily mandated duties as the chief fiscal officer of New York State. These include operating the State's accounting system; preparing the State's financial statements; and approving State contracts, refunds, and other payments. These duties could be considered management functions for purposes of evaluating organizational independence under generally accepted government auditing standards. In our professional judgment, these duties do not affect our ability to conduct this independent performance audit of DHCR's supervision of selected Mitchell-Lama developments in New York City.

Reporting Requirements

We provided a draft copy of this report to DHCR officials for their review and formal comment. Their comments were considered in preparing this final report and are attached in their entirety at the end of it. In their response, DHCR officials generally agreed with most of the report's recommendations and indicated actions they have taken or will take to implement them. Our responses to certain DHCR comments are embedded within DHCR's response as State Comptroller's Comments.

Within 180 days after final release of this report, as required by Section 170 of the Executive Law, the Commissioner of Homes and Community Renewal shall report to Governor, the State Comptroller, and the leaders of the Legislature and fiscal committees, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons why.

Agency Comments and State Comptroller's Comments



KATHY HOCHUL
Governor

Homes and
Community Renewal

Division of Housing
and Community
Renewal

RUTHANNE VISNAUSKAS
Commissioner/CEO

May 12, 2023

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

Re.: 2022-S-9, Division of Housing and Community Renewal: Physical and Financial Conditions at Selected Mitchell-Lama Developments in New York City

Mr. Sifontes:

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

DHCR values performance audits conducted by OSC and has gained insights into its supervision of the Mitchell-Lama developments from this audit. DHCR’s highest priority is the safety and welfare of the low- and moderate- income tenants it serves. While DHCR, for the reasons discussed below, takes issue with several of the draft Audit Report’s findings, DHCR will consider many of the draft Audit Report’s recommendations.

Our response begins by summarizing several overarching concerns about the draft Audit Report’s portrayal of DHCR’s supervision of the Program, including the draft Audit Report’s misunderstanding of DHCR’s regulatory role, its unrepresentative sample of projects, its insufficient recognition of DHCR’s commitment to preserving Mitchell-Lama housing, and its inadequate accounting for the extraordinary impact that the COVID pandemic had on the Program.

State Comptroller’s Comment – DHCR’s concerns are not warranted. We are aware of DHCR’s regulatory role and accurately reflected it in our report. In addition, as stated in the Audit Scope, Objectives, and Methodology section of the audit report, our sample of developments was selected judgmentally based on various factors including development type and location, resident type, and public complaint and violation data. Additionally, the results of our sample were not designed to be projected to the entire population. Further, we disagree with DHCR’s contention that our report inadequately recognized DHCR’s commitment to preserving Mitchell-Lama housing and the impact that the COVID-19 pandemic had on the Program. Our audit report notes both efforts and deficiencies of DHCR and acknowledges the impact of the COVID-19 pandemic. It is also important to note that our audit scope period encompassed a full year pre-pandemic.

This is followed by DHCR’s responses to each of the recommendations made in the draft Audit Report. Our response concludes with an Appendix that provides background and historical context on each of the Mitchell-Lama developments that were included in the audit.

The draft Audit Report fails to fully accurately characterize the DHCR’s oversight of the Mitchell-Lama Program (“Program”) in several ways.

State Comptroller’s Comment – Our report accurately characterizes DHCR’s oversight, including references to sections of the Regulations and DHCR’s own policies and procedures, which require DHCR supervision over a portfolio of Mitchell-Lama developments.

As OSC staff observed during the audit, there are inherent economic challenges in managing this form of affordable housing, other challenges that emerged due to the COVID-19 pandemic during the period under review, and further building-specific issues often based on the original configuration of the property. More specifically, the draft Audit Report:

1. does not sufficiently recognize the limited regulatory role DHCR has in overseeing the day-to-day management of Mitchell-Lama housing;

State Comptroller’s Comment – Our report sufficiently recognizes DHCR’s regulatory role. Contrary to DHCR’s assertion, our report does not state that DHCR should oversee day-to-day management of Mitchell-Lama developments. In fact, it accurately attributes this role to development owners and management. The report references sections of the Regulations and DHCR’s own policies and procedures, which require the DHCR Management Representative to make detailed reviews as deemed necessary to determine if the assigned project is being operated efficiently and in accordance with applicable laws and Regulations.

2. focuses on an exceptionally challenging sample of Mitchell-Lama developments that are not representative of the Mitchell-Lama portfolio as a whole;

State Comptroller’s Comment – In the Audit Scope, Objectives, and Methodology section of the audit report, we clearly describe our sample selection methodology: that our sample of four developments was judgmentally selected based on various factors, including development type and location, resident type, and public complaint and violation data, and that the results of our samples were not designed to be projected to the entire population. Moreover, each sampled development is part of DHCR’s Mitchell-Lama portfolio and should be held to the same standards as any of the other developments under DHCR’s supervision.

3. understates the investment of time and resources DHCR has made to rehabilitate and preserve these and other valuable housing resources in the Mitchell-Lama portfolio;
4. does not adequately appreciate the extraordinary impact that the COVID pandemic had on DHCR’s management of the Program; and

State Comptroller’s Comment – We disagree that the audit report understates DHCR’s investment to rehabilitate and preserve housing resources in the Mitchell-Lama portfolio or does not adequately appreciate the impact of the COVID-19 pandemic on DHCR’s management of the Program. The audit report notes that it was a time of extraordinary conditions and challenges. However, it is also important to note that our audit scope period encompasses calendar year 2019 – a full year before the onset of the pandemic.

-
5. does not fully acknowledge the structural challenges posed to DHCR supervision considering the financial and ownership conditions under which Mitchell-Lama developments operate.

State Comptroller's Comment – Our report acknowledges that Mitchell-Lama developments are privately owned. Despite the ownership structure of these developments, the Regulations require DHCR to supervise them.

1. DHCR's Limited Role

In 1955, legislation sponsored by Senator MacNeil Mitchell and Assemblyman Alfred Lama created what is now known as the Mitchell-Lama housing program. Among its innovations, the legislation created financial incentives to encourage private owners into developing and managing housing for middle income New Yorkers. Prior to then, government investments in affordable housing went primarily to government owned and managed public housing.

This fundamentally different approach to providing affordable housing has created both opportunities and challenges for New York State. While the Program was successful in leveraging substantial private investment and management expertise, this type of private ownership and operation conversely limited the State's role in the day-to-day oversight of these developments. The draft Audit Report appears to misunderstand the limited managerial role of DHCR in the state-supervised Mitchell-Lama portfolio. Private Housing Finance Law ("PHFL") § 17 broadly tasks DHCR with supervising the entire Mitchell-Lama portfolio, not with directly overseeing the day-to-day management of individual buildings.

State Comptroller's Comment – The audit report does not misunderstand DHCR's role, nor does it state that DHCR officials should manage the day-to-day operations at developments.

The draft Audit Report acknowledges that it is the responsibility of the Mitchell-Lama owners and managing agents to provide safe and habitable housing and ensure the physical and financial integrity of their projects. Yet, the draft Audit Report contains recommendations that suggest that DHCR should manage even the smallest of financial transactions and minor repairs at the reviewed Mitchell Lama properties.

State Comptroller's Comment – The audit report's recommendations do not suggest that DHCR should manage even the smallest of financial transactions and minor repairs. Rather, the report contains recommendations to help DHCR improve its supervision of developments and adhere to its own policies, which require that DHCR Management Representatives supervise developments' management and conduct detailed reviews as necessary, including determining if expenditures are proper and reasonable, regardless of dollar amount.

For example, all of the 139 financial transactions described in the draft Audit Report were under \$100,000, but the Mitchell-Lama Regulations require DHCR's review only of individual purchases when they exceed \$100,000 in a single year.

State Comptroller's Comment – The Regulations require DHCR approval of any purchases, commitments, and contracts that would result in an average annual expenditure of \$100,000 or more, based on the projections of the most recently approved budget. As stated in our report, our sample included transactions at both Jamie Towers and Cathedral, which had average annual expenditures that exceeded \$100,000.

See Agency Management's Response to Recommendation 3 below for explanation of why the \$100,000

regulatory threshold was adopted and the benefits thereof. The regulations contemplate DHCR approval when the total purchase of a single contract or service exceeds the \$100,000 monetary threshold. However, the clustering of separate and distinct transactions for contracts and purchases exceeding \$100,000 is not envisaged by the regulations.

2. Challenging Sample of Mitchell-Lamas

The developments included in the sample are not representative of the Mitchell-Lama portfolio as a whole.

State Comptroller's Comment – In the Audit Scope, Objectives, and Methodology section of the audit report, we clearly describe our sample selection methodology: that our sample of four developments was judgmentally selected based on various factors, including development type and location, resident type, and public complaint and violation data, and that the results of our samples were not designed to be projected to the entire population. Moreover, each sampled development is part of DHCR's Mitchell-Lama portfolio and should be held to the same standards as any of the other developments under DHCR's supervision.

To generate additional private investment, subsequent amendments to the Mitchell-Lama statute (Article 2 of the PHFL) allowed private owners to buy out of the Program by paying off the government-held mortgages that helped finance their developments. Beginning in the 1980s, Mitchell-Lama developments with strong balance sheets, particularly those that were located in robust housing markets, began exiting the Program. This trend often left behind economically challenged and difficult to manage properties, and the sample selected for audit includes several of the most challenging Mitchell-Lama properties in the state.

State Comptroller's Comment – DHCR's assertion that the sample includes several of the most challenging properties further confirms their need for adequate oversight, which DHCR did not provide.

3. DHCR's Preservation Investment

At this time, all the Mitchell-Lamas that remain under DHCR's supervision today were constructed over 45 years ago, leaving many with outdated building systems in need of upgrades, repairs, or replacements. The draft Audit Report correctly notes that most of the properties in the audit sample have pressing physical needs. Yet in most cases, the housing companies responsible for the management of these properties lack the financial and development expertise needed to effectively address the extensive structural needs in their developments. As a result, DHCR frequently has undertaken the difficult and time-consuming work of fully restructuring and rehabilitating troubled Mitchell-Lama developments. Instead of taking a band aid approach to addressing some of the physical needs at these properties, these comprehensive rehabilitations replace entire building systems and preserve the units in such developments as affordable housing for generations to come. Just since 2017, HCR has rehabilitated or extended affordability of over 24,000 units of Mitchell-Lama housing throughout the State and invested more than \$265 million of Agency resources in rehabilitation efforts.

State Comptroller's Comment – We are not suggesting a "band-aid" approach. Rather, we maintain that DHCR officials should prioritize working with building management to fix hazardous conditions in a timely manner.

DHCR is currently working to restructure and rehabilitate two projects included in the audit sample, 753 Classon Avenue and Findlay House, with plans to begin similar work at a third, Cathedral Parkway. 753 Classon has already received State subsidy loans and is close to closing on a broad-based rehabilitation and repositioning plan with a return to not-for-profit sponsorship. DHCR has worked to bring on board an

experienced professional consultant at 753 Classon to establish and implement a full scope of physical plans that address the necessary upgrades for efficient building operation systems, as well as interior and exterior repairs and replacements. Findlay House has begun a similar restructuring and rehabilitation process. DHCR has worked diligently during the past 24 months to secure a not-for-profit sponsor to take control of Findlay House. DHCR has also remained engaged with the onsite managing agent who is experienced in working with the residents and the community. A proposed scope of rehabilitative work for Findlay House has been prepared and is anticipated to kick off before the end of 2023. DHCR is also in preliminary discussions with the Board of Cathedral Parkway to restructure the development and convert it to a true tenant-owned cooperative, replacing its unique rental structure that involves partial tenant association management. This new operational structure would facilitate timely repairs and proper upkeep of the property.

Given the extensive time and resources required for these thorough restructuring and rehabilitation processes, DHCR is only able to undertake a certain number at any given time. However, DHCR is committed to ensuring all Mitchell Lama properties are well positioned to make critical investments and to assisting as many distressed properties as it can.

4. COVID Pandemic

As the draft Audit Report acknowledges, the period it covers “encompasses an unprecedented time of extraordinary conditions and challenges due to the COVID-19 Pandemic.” We appreciate the draft Audit Report’s note that DHCR officials explained to the Comptroller’s staff that “the pandemic caused fundamental changes to DHCR’s management of the Program, with in-person operations suspended due to federal mandates and New York State executive Orders.” The conclusions in the draft Audit Report, however, do not appear to take these challenges into account.

State Comptroller’s Comment – As recognized by DHCR officials, our audit report acknowledged the challenges that the COVID-19 pandemic presented. However, it is important to note that our audit scope period encompassed 2019 – a full year before the onset of the pandemic.

From 2020 to 2022, the Agency was limited in its ability to perform field visits due to the ongoing Covid-19 state of emergency travel restrictions, federal mandates, and New York State Executive Orders. Restrictions that generally prohibited on-site inspections by DHCR staff began in March 2020 and lasted until the expiration of the Governor’s Executive Order 11 in September 2022. Even through such restrictions, DHCR still performed a limited number of field visits in 2021 during the state of emergency and while field work was temporarily halted across the Agency.

State Comptroller’s Comment – DHCR officials did not provide any documentation to support that visits were conducted in 2021. Furthermore, they indicated that Management Representatives began conducting desk reviews in lieu of site visits during the pandemic, but also explained that the results of these desk reviews were internal and not communicated to development management. The list of desk reviews that DHCR officials provided showed reviews were conducted at only two of our sampled developments (Findlay House and Cathedral) and, further, DHCR provided a report for only one of these reviews (Cathedral).

In addition to these structural challenges, Mitchell-Lama daily operations were significantly affected by the unprecedented economic impact of the COVID-19 pandemic followed by a period of unusual inflation, both of which added extra stresses and responsibilities on the housing companies, DHCR, and the residents. As a result of these substantial oversight and operational difficulties, the challenges at these properties deepened and the

housing management companies and DHCR faced significant obstacles to addressing them. As the state has emerged from the pandemic, DHCR has intensified its efforts to provide support within the bounds of its limited supervisory role to distressed properties.

State Comptroller's Comment – The Regulations task DHCR with supervising its Mitchell-Lama portfolio; we maintain this should be done efficiently and effectively.

5. Structural Financial and Ownership Conditions

The Mitchell-Lama Program is designed to provide either limited profit or no profit to the housing companies, with costs often being covered solely by the carrying costs paid by shareholders or residents without other sources of subsidy. For rental buildings, the rents are shouldered by a tenant population statutorily restricted to limited income households who generally have limited ability to pay for rent increases. Further, Mitchell-Lama housing is owned by private housing companies with independent authority to exit the Mitchell-Lama program under certain statutory conditions. These unique factors make managing and operating these affordable housing developments challenging even under normal circumstances and forces DHCR to balance the interests of low- and moderate-income tenants with the operational needs of privately owned Mitchell-Lama properties.

It is also worth highlighting that while DHCR has supervisory responsibilities associated with its Mitchell-Lama portfolio, as the draft Audit Report notes, “It is the responsibility of the owner to provide safe and habitable housing and to maintain the physical and financial integrity of the development, and it is the function of the managing agent to effectively and efficiently manage the development to ensure that the owner’s responsibilities are carried out. Both the owner and managing agent must agree to manage the development in accordance with local codes and State rules and regulations.”

The following are DHCR’s responses to the draft Audit Report’s recommendations:

Recommendation 1: 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
- Conducting at least one annual site visit to each development
- Ensuring immediate corrective action is taken when unsafe conditions are identified and documenting dates of correction
- Taking action against managing agents who are non-compliant with Regulations

Agency Management’s Response: DHCR agrees that all items on the field and office visit reports should be reviewed and completed. DHCR has reinforced with field unit supervisors and housing management representatives the necessity of completing comprehensive field reports in a timely manner and releasing those reports to the managing agents within reasonable timeframes.

DHCR agrees with the importance of conducting annual site visits. However, the Agency was extremely limited in its ability to perform annual visits due to the ongoing Covid-19 state of emergency travel restrictions, federal mandates, and New York State Executive Orders. Restrictions that generally prohibited on-site inspections by DHCR staff began in March 2020 and lasted until the expiration of the Governor’s Executive Order 11 in September 2022. Even through such restrictions, DHCR still performed a limited number of field

visits in 2021 during the state of emergency while field work was temporarily halted across the Agency.

State Comptroller's Comment – DHCR officials did not provide any documentation to support that visits were conducted in 2021.

Otherwise, all housing companies are scheduled for annual site visits in accordance with established policy as directed by DHCR's housing assessment rating criteria. The one exception to this requirement is that housing companies that are rated as "excellent" may be eligible for limited DHCR supervision due to maintaining excellent performance. Accordingly, they may have an annual visit waived at the discretion of the field unit supervisor and with the consent of the director of DHCR's Mitchell-Lama unit.

State Comptroller's Comment – As noted in DHCR's response and within our report, DHCR officials did not adhere to their established policy to conduct annual site visits. It is worth noting that none of the sampled developments were rated as "excellent."

DHCR agrees that corrective action must be taken in response to findings documented in the housing management field reports. The Agency will be issuing a Housing Management Bulletin that will provide additional guidance for internal use among the field unit supervisors and housing management representatives. A separate memorandum will be issued to our external housing company partners reminding them to submit timely responses to field office reports.

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 the managing agent's agreement immediately or at the end of their current contract term. However, such measures must be balanced with the on-going 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 notices of non-compliance to agents, are typically the first step undertaken. For example, after DHCR issued non-compliance notices to Jamie Towers, the managing agent was subsequently replaced by the board of directors.

State Comptroller's Comment – We note that the managing agent was replaced about 4 months after our audit scope ended.

Recommendation 2: Develop a formal process to obtain and analyze publicly available violations and complaints data and use the information to enhance monitoring of developments.

Agency Management's Response: DHCR has undertaken a comprehensive review of the current field and office report formats to improve their utility for monitoring developments, and revisions are underway. DHCR expects a final, updated version of the report to be available for release and used for field and office reports within the next 60 days. Further, while DHCR performs its own onsite reviews, it is incorporating information of open violations from the New York City Department of Housing Preservation and Development ("HPD") and Department of Buildings ("DOB") databases into its site visit protocol.

Recommendation 3: 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 Management’s Response: DHCR disagrees with this recommendation. 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.

State Comptroller’s Comment – The Regulations require DHCR approval of transactions that aggregate an expected \$100,000 for the year. As stated in our report, our sample included transactions at both Jamie Towers and Cathedral, which had average annual expenditures that exceeded \$100,000. Our recommendation is also in line with DHCR’s current policies (Management Representative Guidelines), which require that Management Representatives spot-check vouchers to determine that expenditures are proper and reasonable, and review paid bills to identify any expenditure that is inappropriate or unusual and any that will require repayment to the housing development. Our audit found that DHCR officials did not adhere to their policies. DHCR should review selected expenses, including all bonus payments, petty cash transactions, and reimbursements, regardless of the dollar amount, at the sampled developments, and take appropriate action, including recouping funds for transactions that are inappropriate or unusual, particularly the transactions that the audit team found to be against the Regulations.

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.

State Comptroller’s Comment – The Regulations require DHCR approval of any purchases, commitments, and contracts that would result in an average annual expenditure of \$100,000 or more, based on the projections of the most recently approved budget. As stated in our report, our sample included transactions at both Jamie Towers and Cathedral, which had average annual expenditures that exceeded \$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 to allow goods and services totaling no more than \$100,000 to proceed without publishing a formal request for proposals or invitation for bids. The amendment allows for a reduction in administrative costs, promotes efficiency and economy in contracting, avoids unnecessary hurdles in requiring DHCR approval for small contracting amounts, and improves opportunities for minority and women owned business enterprises to obtain a fair proportion of contracts and to make certain that their bids receive full consideration. Furthermore, it allows staff to focus on those transactions which provide highest risk to the portfolio in terms of financial management and stability.

State Comptroller’s Comment – We disagree that DHCR is able to identify the riskiest transactions by reviewing only those over \$100,000, as we found several questionable transactions not related to normal operations under \$100,000.

The draft Audit Report appears to suggest that DHCR management representatives should be responsible for reviewing all expenditures, bills, invoices, contracts, and bank accounts, regardless of the dollar amount. The primary purpose of 9 NYCRR § 1728-2.6 is to advise the housing company of what their accounting and financial obligations are. Its intention is not to require that DHCR management representatives review every invoice and expense, no matter the amount. For example, the prior sections of this subpart require the housing company (not DHCR) to take proactive steps with managing their financial and accounting affairs (i.e., keep books and records, file reports, pay salaries, etc.). These requirements help ensure the housing company uses its funds for the ordinary operation of the Mitchell Lama development.

State Comptroller's Comment – Section 1728-2.6 of the Regulations states “funds of the housing company shall not be used for any purpose other than the ordinary operation of the project, without the prior written approval of the division” and does not specify a dollar amount for such. While it is the responsibility of the housing company to ensure funds are used appropriately, it is the responsibility of DHCR, as the oversight agency, to ensure housing companies are adhering to the Regulations.

DHCR disagrees with the draft Audit Report’s statement that DHCR officials lacked proper oversight over selected transactions since the PHFL and Program regulations do not make DHCR responsible for the overwhelming percentage of the companies’ transactions (those under \$100,000, for the reasons discussed above). Again, all of the 139 financial transactions described in the draft Audit Report were under \$100,000.

State Comptroller's Comment – The Regulations require DHCR approval of any purchases, commitments, and contracts that would result in an average annual expenditure of \$100,000 or more, based on the projections of the most recently approved budget. As stated in our report, our sample included transactions at both Jamie Towers and Cathedral, which had average annual expenditures that exceeded \$100,000.

According to the PHFL, a housing company is granted specific power to make and execute contracts and other instruments necessary or convenient in the exercise of its powers. Housing Companies, as private entities, can implement a threshold lower than DHCR’s regulation requires for internal review purposes.

State Comptroller's Comment – While development management may implement lower thresholds, this does not eliminate the need for DHCR officials to carry out their responsibilities.

Recommendation 4: 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 Management's Response: The Agency agrees that appropriate policies and procedures related to bonus payments should be adhered to. The Agency agrees that appropriate policies and internal controls are a necessary component to the proper functioning of a Mitchell-Lama development. Agency staff will continue to work with housing companies to address this matter. As noted above, the Agency has regulations in place addressing dollar thresholds for contracts that include purchasing. As discussed above, these regulations were introduced in order to implement operational efficiencies and developed pursuant to the SAPA process, which allowed ample opportunity for public commentary. The Agency will be issuing a reminder memo to housing companies on these topics. Furthermore, board director financial oversight is part of the training curriculum that will be developed as described below.

Recommendation 5: 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 Management's Response: DHCR understands the importance of monitoring of financial conditions and enforces its compliance with its regulations that provide for the review of contracts and work exceeding \$100,000.

State Comptroller's Comment – The Regulations require DHCR approval of any purchases, commitments, and contracts that would result in an average annual expenditure of \$100,000 or more, based on the

projections of the most recently approved budget. As stated in our report, our sample included transactions at both Jamie Towers and Cathedral, which had average annual expenditures that exceeded \$100,000.

It is important to note that there are instances where this threshold is too low for some of the large complexes and can be subject to additional review for efficacy pursuant to DHCR's regulations. DHCR will consider additional requirements for invoice and expense reviews and reporting on conflicts of interest.

State Comptroller's Comment – We strongly encourage DHCR officials to improve monitoring of financial conditions at all developments under their supervision, regardless of the size of the complex.

Recommendation 6: Mandate regular training for management at the developments and Board members to ensure they are aware of good governance and their fiduciary responsibilities.

Agency Management's Response: DHCR agrees that properly trained management is an important component in the oversight of a Mitchell-Lama housing company. DHCR has produced two training videos for board members: one on general responsibilities and duties and the second focused on fiduciary responsibilities. These trainings are available at <https://youtu.be/JiFhuDuYq7A> and <https://youtu.be/puwCmoW1QPs> (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 on-going memos, a recently established newsletter, and technical guidance from field unit supervisors and housing management representatives.

Board of director trainings were not mandated during the audit covered period. Nevertheless, DHCR staff did perform trainings during Covid-19 for board members at cooperative corporations. Topics included board director fiduciary responsibilities, identity of interests, board meetings, and functions of hired professionals (i.e., managing agents, counsel, accountants). Board directors were provided additional resources to maintain proper governance as a board director.

In March 2022, PHFL §32-a 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. Board directors would have to certify completion of the training on a form created by DHCR and maintained by the secretary of the cooperative board. Trainings would need to occur for all current board members and every three years thereafter for board directors continuing in their capacity. DHCR has training modules for board directors that touch upon the statutory requirements. In addition, DHCR is creating a more comprehensive curriculum and certification procedure. DHCR expects to have these changes in place shortly to further satisfy the new statutory obligations.

Recommendation 7: Monitor residential and commercial rent arrears and work with development management to take appropriate steps in line with Regulations to collect outstanding rent.

Agency Management's Response: DHCR agrees that timely collections are necessary for the proper financial health and functioning of a development. The Agency notes, however, that the audit's sampled period covered a time of unprecedented job loss and financial strain that impacted both residential and commercial tenants. These hardships, coupled with eviction moratoria, made landlord/tenant legal processes regarding rent

collection difficult, if not impossible. Accordingly, DHCR issued guidance to Mitchell-Lama developments that government funding was available through the Housing Assistance Fund, Emergency Rental Assistance Program and the Emergency Rent Relief programs to assist with maintenance and rental payments for residents who had experienced a loss of income. In fact, the Emergency Rental Assistance program received an infusion of \$356 million in the state budget which will address arrears for many tenants of affordable housing across the state. 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. Lastly, commercial spaces are outside of the purview of DHCR oversight and supervision. *See* 9 NYCRR § 1727-6.2.

State Comptroller's Comment – We understand the need to balance the economic needs of the housing company, as well as residents' housing needs and their ability to pay rent, and the costs to the housing companies related to any necessary legal actions. However, as the oversight agency, DHCR should work with management at the developments to ensure outstanding rents are collected, thereby preventing continued loss of income and further financial hardships on the development and the residents who actually pay. Further, 9 NYCRR § 1727-6.2 does not state that commercial spaces are outside the purview of DHCR oversight and supervision. Rather, it references the conditions under which such space can be leased without DHCR's approval. Regardless, our report recommends the monitoring of arrears – and does not suggest that DHCR approval is required for the leasing out of commercial space.

Recommendation 8: Assist management at Cathedral Parkway Towers and Findlay House with filling vacancies.

Agency Management's Response: DHCR's role as the supervising agency is limited by the PHFL and the Mitchell-Lama regulations. DHCR makes recommendations to housing companies to develop site-specific marketing plans. These marketing plans are a guide for housing companies on areas which include, but are not limited to, filling vacancies and fair housing compliance. 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 identified through existing housing company reporting.

State Comptroller's Comment – Our report did not suggest that DHCR undertake actual marketing efforts but, rather, as the oversight agency, that it assist management at developments where we identified high vacancy rates. Furthermore, vacancies are a mandatory review item on DHCR's Field and Office Visit Report, and DHCR officials should ensure housing companies adhere to the Regulations to promptly fill vacant units, especially given the current need for affordable housing in New York City.

Recommendation 9: 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 Management's Response: DHCR is cognizant of the Mitchell-Lama developments it is required to supervise.

State Comptroller's Comment – Our audit demonstrates that DHCR is not fully cognizant of the Mitchell-Lama developments it is required to supervise. As noted in the audit report (p. 20), we found that DHCR officials conducted site and office visits and risk assessments for a development they claim is not under their supervision.

Due to an oversight, the Mitchell-Lama Annual Reports have continued to refer to all State-regulated Mitchell-Lama developments as being supervised by DHCR. The Annual Reports were not 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 ("HFA"), which is part of New York State Homes and Community Renewal and under the same senior management as DHCR. This oversight will be corrected starting with the 2023 Annual Report.

Please contact Sean Fitzgerald, Audit Coordinator, at (518) 473-3112 if you have any questions or require anything further.

Sincerely,



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APPENDIX

753 Classon Avenue

753 Classon Avenue Housing Company a/k/a Jewish Hospital (“753 Classon” or the “housing company”) is a not-for-profit housing company formed in 1965 to provide housing for staff members, employees and/or students of the Jewish Hospital of Brooklyn. The Jewish Hospital of Brooklyn, the company’s original not-for-profit sponsor, declared bankruptcy, leaving the housing company without a legal sponsor. Subsequently in 1994, pursuant to PHFL § 32(6), DHCR assumed control of the board of directors to ensure there was a legally constituted board of directors that could effectuate decisions for the management and operation of the housing company and work to secure a new not-for-profit sponsor. Replacing the housing company’s corporate structure has been extremely challenging. The original sponsor is no longer viable as a basic corporate entity or as a financial entity, which has made finding replacement, active sponsorship difficult. DHCR was required to assume wholly new responsibilities and acquire new skills to undertake the difficult process of bringing in a new sponsor, which is ongoing. DHCR has made time-consuming and resource-heavy efforts to preserve this development as affordable housing under these very difficult circumstances. Nonetheless, as a result of DHCR’s work, the housing company will be returned to a new not-for-profit sponsor later this year, will be refinanced with HFA, and will commence a significant building rehabilitation.

State Comptroller’s Comment – As DHCR officials stated, they assumed control of the Board at 753 Classon in 1994 – almost 30 years ago – and was therefore entrusted with the custody of assets and the administrative control of expenditures of the development. For the last 30 years, it has been DHCR’s responsibility to ensure that buildings, grounds, and other assets are kept up to high standards so that their value is not impaired and that the annual operating expenditures are spent effectively and economically.

Specifically, between 2018 and 2019, DHCR worked with Interfaith Medical Center (“Interfaith”), the successor-in-interest to Jewish Hospital of Brooklyn, to begin transitioning board of Director control and oversight to Interfaith board members. As part of this transition, the board agreed that a refinancing and redevelopment of 753 Classon was necessary to address the physical and financial needs of the development.

This transition, oversight of capital work, and planning for the refinancing and redevelopment has required many of hours of DHCR staff time. Under DHCR’s control, the following transformative steps have taken place:

- a \$1,000,000 Housing Finance Agency loan was secured to address the development’s roof;
- a Housing Trust Fund Corporation Preventative Troubled Asset Program (“PTAP”) loan was secured for an emergency boiler repair;
- a full set of construction drawings were prepared for the upcoming Local Law 11 façade work, with DHCR working closely with the architect who will be overseeing the work; and
- an experienced affordable housing development consultant was brought in to oversee the upcoming refinancing and redevelopment.

In addition to the aforementioned challenges, the housing company has experienced severe financial strain in recent years. This is due to multiple factors, including increasing operating costs, ongoing capital needs, and a global pandemic that precluded reasonably increasing rents on health care staff during an almost two-year

health emergency. Many of these factors could not have been anticipated by DHCR or the housing company management during the most recent Mitchell-Lama Budget/Rent Determination cycle. As a result, the last rent increase was not sufficient to cover the increased and unforeseen financial needs of the development. Additionally, due to the pandemic, the anticipated refinancing has been delayed.

State Comptroller's Comment – Many of the ongoing capital needs were apparent before the most recent Mitchell-Lama Budget/Rent Determination cycle in 2020. According to DHCR's Field and Office Visit Report for a visit conducted in April 2019, there were multiple physical conditions that required repair, including a tripping hazard at the front of the building and hazardous balconies.

Also, according to the Mitchell-Lama statute as interpreted by the Courts, there are no income limits for staff housing, and its residents do not participate in the annual income affidavit/verification process. See *Beth Israel North Housing Company v. Berman*, 114 Misc.2d 440, *aff'd* 92 A.D2d 531. DHCR has never sought to apply the statutory and regulatory income limitations to shareholders at 753 Classon Avenue. This also meant that the housing company never collected surcharge rent which is used as an additional form of a revenue stream for over-income residents. Pursuant to the Mitchell Lama regulations, surcharge rent is the rent graduations established above admission rent, based on income. DHCR agrees with the preliminary report's conclusion that the development requires physical upgrades. DHCR directed a comprehensive integrated physical needs assessment ("IPNA") that revealed extensive capital repair needs, including the need for façade and interior work. The selected contractors have already begun some work and are delving into their own assessment of needs, refining even further the IPNA. These efforts are coming to fruition as part of the refinancing and redevelopment that is presently anticipated to close by the end of 2023.

Cathedral Parkway

It is important to understand the unique history of Cathedral Parkway Towers (the "Project") and the relationship between Cathedral Parkway Associates ("CPA" or "housing company") and the United Tenants Association of Cathedral Parkway ("Tenant Association" or "UTACPT"). UTACPT's membership is made up of the Project's residents. Cathedral Parkway's original corporate structure and governance were under the auspices of the New York State Urban Development Corporation ("UDC"). The UDC, at the time of the late 60s and early 70s, had additional authority (separate from the authority granted to DHCR) to create Mitchell-Lama housing. UDC's mission was not simply to create additional affordable housing as fast as possible, but to empower the residents to have similar rights as the owners.

Cathedral Parkway Towers is a 309 unit, two building development in Harlem. Its initial occupancy commenced in 1975 but because of issues that arose during its construction, it was placed under DHCR supervision as a PHFL Article 2 limited profit housing development. Several years after its initial occupancy, DHCR, the builder, and the tenants acting through UTACPT entered into a Tenant Participation Agreement ("TPA"). The TPA provided for tenant management, tenant control over operations, tenant decision making at the Project, and eventual tenant ownership of the two buildings.

The TPA was designed to give residents control of the development after a period of investor control. The TPA pre-dates the creation of the Mitchell-Lama regulations dealing with issues such as identity of interest. Although the TPA contemplates the eventual creation of statutory and regulatory provisions dealing with the subject matter covered by the TPA and a good faith effort of adopting the same, it goes on to say that both the CPA and UTACPT would not be required to accept any modifications less favorable than the terms of the TPA.

Therefore, any requirement for the Project to adhere to the rules of the statute and regulations creates a tension with the terms laid out in the TPA.

State Comptroller's Comment – While we understand that Cathedral's structure is unique, DHCR officials should stress the importance of proper fiduciary practices related to purchasing, and work with Cathedral's management to ensure they make an effort to avoid identity of interest transactions as this type of structure with limited oversight lends itself to abuse.

As explained in more detail below, the TPA provided broad rights to UTACPT and its resident tenant membership.

The TPA gave UTACPT significant control over the following operational and budgetary matters at Cathedral Parkway:

- 1) Selection and Retention of Managing Agents – The TPA provides residents with powers similar to private cooperative boards when selecting building management. A proposed managing agent could not be brought to DHCR for approval without UTACPT approval or an arbitration decision against a UTACPT decision. To overrule a UTACPT decision on a managing agent, an arbitrator would have to find the UTACPT decision to be arbitrary, capricious or without any justification in fact. Also, any conflicts between DHCR's standard management contracts and the TPA would be held in favor of the TPA contract. DHCR is not aware of any other housing company within its Mitchell-Lama portfolio with such broad decision-making ability given to the residents through its tenant association.
- 2) Employment of Building Residents – An affirmative action plan was established and instituted pursuant to the TPA to provide for, to the extent practicable, training and employment of residents of Cathedral Parkway for all positions involved in the maintenance and management of the development.
- 3) Purchasing Power Given to Residents – In accordance with the TPA, the management company and housing company hired and contracted with residents at Cathedral Parkway for supplies and services related to the maintenance, repair, and operation of the premises. UTACPT acted as a consultant and advisor to suggest or refer Cathedral Parkway residents who could assist with the purchasing needs of the complex.
- 4) Tenant Selection – UTACPT has more discretion in selecting and denying applicants than other Mitchell-Lama housing companies due to the TPA. Pursuant to the TPA, UTACPT receives notice of vacancies and applications for tenancy. If UTACPT serves a "Notice of Interest" in a proposed application, the apartment cannot be rented until UTACPT formally approves the new tenant in writing. In deciding whether to approve or deny an applicant, UTACPT acts as an authorized designee of the Housing Company. This authorization allows UTACPT to interview applicants and make determinations as to their eligibility. The UTACPT is limited in making inquiries into matters deemed confidential under DHCR regulation or prevailing practice, and must approve rental applications upon such terms and procedures as are customary or required by law and which are subject to DHCR statutory and regulatory requirements. This obligation to fulfill both the TPA and our tenant selection requirements can be a contributing factor to delays in filling vacancies.
- 5) Tenant Eviction or Refusal to Renew Leases – When the housing company and management determine to evict or refuse to renew a lease, written notice must be provided to UTACPT. If UTACPT serves a Notice of Interest upon the housing company and/or the management company, an eviction cannot proceed further until UTACPT is provided with the basis of the eviction and the underlying reason for the eviction or refusal to

renew a lease. Even when the reason for the eviction is the failure to pay timely rent, if the tenant can prove there is “just cause” in their failure to pay rent (or the UTACPT finds the eviction not in the best interests of the Project), the UTACPT can decide to disapprove the eviction. Evictions are still to be brought upon such procedures as are customary in the industry and provided for in the lease.

6) Termination Of a Managing Agent –UTACPT has discretion to have an interest and role when deciding to terminate a managing agent. If the matter cannot be resolved between the Housing Company and the UPACPT, then an arbitrator may issue a decision.

7) Fees - The TPA provided for the payment of annual fees to UTACPT even before UTACPT’s full assumption of all its responsibilities.

The TPA thus has a number of specific control overlays regarding operation and management of Cathedral Parkway that diminish DHCR’s already statutorily and regulatorily limited role in oversight of the development.

State Comptroller’s Comment – As DHCR officials noted in their response, they are tasked with supervising developments and, therefore, should ensure management at developments, including Cathedral, are adhering to the Regulations. DHCR’s role in overseeing Cathedral should not be diminished.

Nonetheless, DHCR and the housing company have begun discussions on both addressing financial needs and turning the development toward true tenant ownership to consolidate ultimate management authority with the tenants and streamline operational decision-making.

Findlay House

Findlay House has historically been a project with physical and financial issues due to changes in the developments’ purpose and management. It was originally created to serve as adjunct housing to a nursing home where, although separate, the corporate entities would provide some synergy of services. There was a bridge connecting the two structures allowing recovering patients to find housing close by and allowed for aging residents to transition to the nursing home. In light of the populations being served, the project was built with only one-bedroom units and efficiency kitchens. Over time, the nursing home moved (and later closed) and the purpose of the housing company functionally transitioned to permanent senior housing. The erosion of the original project sponsor as a functioning entity left Findlay House with an insufficiently constituted board of directors (as board members were to be selected by the project sponsor), an outdated design, a lack of amenities typically associated with permanent senior housing, as well as increasing financial and capital needs.

As noted above, Agency personnel had seats on the board of this housing company since 2016, but in 2019, DHCR assumed full control of the board. Under DHCR’s control, the following actions have been taken to help rectify issues at the development:

- the housing company retained landlord/tenant counsel to assist with collections issues;
- a new managing agent familiar with Mitchell-Lama rules and requirements was retained;
- after working with local elected officials, a food service, free to residents and community members, was secured to reduce food insecurity for this vulnerable population; and
- a new sponsor solicitation was issued with a new sponsor expected to come on board following the conclusion of their due diligence review.

While this is not an exhaustive list of DHCR actions, these efforts alone have consumed hundreds of hours of DHCR staff time.

The PHFL contemplates public private partnerships with limited DHCR supervision to allow for the benefits of private ownership. The PHFL does not contain a procedure for resuscitating a private not-for-profit corporation that has lost its main business. In the case of Findlay House, DHCR was tasked with reviving a management structure and creating an entirely new corporate financial model. There was no rubric to follow for doing so. Assuming control over a corporate entity required acquiring a thorough understanding of the corporation's history and searching for retired employees and board members to satisfy legal requirements and understand the corporation's liabilities.

Replacing the corporate structure has not been easily managed. The original sponsor is no longer viable as a basic corporate entity or as a financial entity. Therefore, finding replacement ownership has not been readily accomplished. DHCR was required to acquire wholly new responsibilities and acquire new skills to move toward completion of this process. The draft Audit Report does not adequately appreciate the magnitude of difficulty and degree of staff effort involved in DHCR's supervision of Findlay House.

State Comptroller's Comment – The audit report notes both efforts and deficiencies of DHCR.

DHCR agrees that the building needs physical upgrades. The property manager's initial property assessment was directed by DHCR and a more extensive IPNA was required as part of the solicitation of a new sponsor. It should be noted that the current apartment setup (e.g., two-burner stove without an oven) was not unusual at the time of construction based on the population served and the nature of support services that were then integrated into the project. It is intended that this issue (and others identified in the IPNA) will be addressed by both the Agency and the new sponsor as part of the comprehensive redevelopment plan for Findlay.

Each of these outlays for physical upgrades requires significant capital investment. To the extent the draft Audit Report suggests that such money would be available if there were no rental arrears, this unfortunately is not the case. Even if all arrears were collected, sufficient funding would still not be available for the required upgrades, especially if DHCR were also to implement the report's recommendation that it enforce timely and proper payments of debt service.

State Comptroller's Comment – The audit report did not recommend that Findlay House enforce timely and proper payments of debt service. Furthermore, timely collection of rents would significantly improve Findlay House's financial position and stability.

Jamie Towers

Jamie Towers is a 620-unit cooperative development in the Bronx with an operating budget of approximately \$7,000,000. According to the Agency's review, this project is rated "marginal," meaning the development has distressed operations requiring close Agency monitoring.

The Agency has made a concerted effort in the past three years to increase supervision of the project and to work collaboratively with the board of directors and the managing agent to address issues and concerns regarding the operation and health of the project.

For instance, despite an approximately two year-long moratorium on field work, the Agency made six visits to

Jamie Towers since 2019. This included four visits in 2019 alone. In October 2021, although field visits were still on hold due to ongoing health and safety concerns around the COVID-19 pandemic, the DHCR's program director, unit supervisor, assigned housing management representative, and an architect from the Agency's engineering team made an unscheduled visit to Jamie Towers to ascertain physical and financial conditions that had been brought to our attention.

State Comptroller's Comment – DHCR officials provided documentation to support that they conducted only one visit to Jamie Towers in 2019. Officials did not provide any documentation to support they conducted any visits to the development in 2021.

During the October 2021 visit, senior DHCR staff requested to see certain physical conditions at the development and requested to tour several vacant apartments. After the Agency made its findings, the onsite property manager was replaced due to his inability to effectively manage and maintain the property.

State Comptroller's Comment – Poor physical conditions remained uncorrected at the time of our site visit to the development in June 2022 – 8 months after the on-site property manager was replaced.

Regularly scheduled, recurring meetings have taken place since May 2022 between DHCR, the housing company's board of directors, and the managing agent to discuss the financial conditions and recommendations for greater accountability and improvements to the cash position of this housing company. As a result of these meetings, the Agency intends to issue formal findings to the housing company in the coming weeks.

It was noted that the collection of carrying charges was significantly impacted during the COVID-19 pandemic. To assist the company, HCR provided the managing agent with information on the Housing Assistance Fund, the Emergency Rental Assistance Program and the Emergency Rent Relief Program established to aid renters, homeowners and co-op shareholders, including those residing in Mitchell-Lama middle income developments. Moreover, in June 2022, Jamie Towers was awarded a \$2 million capital funding grant from the New York City Council for elevator modernization. This grant will allow the housing company to forgo requesting an increase in carrying charges attributed to this required capital work.

In addition, on September 14, 2022, the Agency provided a training for the board of directors (whose election was on June 8, 2022) to provide in-depth information on their duties and responsibilities.

The Agency also hosted a rent conference on October 4, 2022 to address the necessary increases in carrying charges to alleviate the current financial strain of the project. It should be noted that the project has not requested an increase to carrying charges since 2017.

Jamie Towers, like the rest of the Mitchell-Lama portfolio, has seen unprecedented stressors on its finances including, but not limited to, increased operating costs and loss of revenue. As noted above, DHCR has worked closely with Jamie Towers (and our other portfolio co-ops) to identify emergency and stimulus sources of income to mitigate shortfalls. Jamie Towers also has recently decided to replace its prior managing agent firm.

State Comptroller's Comment – We note that the managing agent at Jamie Towers was replaced in May 2023, 4 months after our audit scope ended.

Contributors to Report

Executive Team

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