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Gale A. Brewer, Borough President

Testimony of Gale A. Brewer, Manhattan Borough President On the Proposed Rent Increases of Independence House March 4, 2015

Good afternoon. My name is Gale A. Brewer and I am the Manhattan Borough President. I thank the NYC Department of Housing Preservation and Development for the opportunity to testify today on behalf of tenants residing in 176 West 94th Street (i.e., 168 West 94th Street, Block 1224, Lot 58), also known as Independence House.

I have known Independence House for many years. Not only is it one of the few Mitchell-Lama developments remaining on the Upper West Side, it is also the home to many seniors who have lived in the building for years — 76 of Independence House's 120 residential units are set aside for seniors. This is a population that lives on fixed income, and I am here today to urge HPD to take this as well as other factors into consideration in light of the owner's request to steeply increase tenants' rents over the next three years.

I first learned about Independence House's pending rent increases on November 2, 2014. Mr. Charles P. Gendron of Low Income Housing Corp., LLC of Portland, Maine (LIHC), the new owner of Independence House, informed the Tenants Association (TA) of his intention to increase residential rent from the current per-room rate of $192.03 per month to a proposed $278.83 per month over a three-year period — a 45.2% rent hike. This figure was detailed in Mr. Gendron's rent increase proposal dated September 3, 2014.

My office obtained and reviewed several documents to consider the proposed rent increases, including:

- Mr. Gendron's draft rent increase proposal for Independence House, dated September 3, 2014 (Appendix 1);
- Minutes from the October 7, 2014 meeting between Mr. Gendron, L+M, C+C Management, and Independence House tenant leaders (Appendix 2);
- A summary of Independence House's historical rent increases provided by the Tenants Association (Appendix 3);
- Independence House's full-year revenues and expenses ending December 31, 2013 (Appendix 4);
- Independence House's rent roll as of October 4, 2014 with a full listing of the 120 residential units, unit type, and unit square footage (Appendix 5);
- Independence House's FY2012 financial statements for the year ending December 31, 2012; and
- A document titled "Tenant Proposal and Justification + Index of Category Schedules" dated November 17, 2014, drafted by Independence House's Tenants Association and

submitted to HPD as part of a request to postpone the initial scheduled hearing date on December 4, 2014.

My office also reached out to HPD, the NYC Department of Finance, and the NYU Furman Center for Real Estate and Urban Policy on various occasions to gain clarity on procedural matters such as a TA's eligibility to retain a CPA upon an owner's decision to propose a rent increase, and on tax and financial matters concerning Independence House as a Mitchell-Lama rental development that currently pays Payment In Lieu of Taxes (PILOT) in the form of shelter rent. Finally, staff from my office have attended Independence House's TA meetings in November and December 2014 and in February 2015.

After comparing the above-listed documents to Mr. Gendron's proposal, I do not find it justifiable that increasing rent by 45% is the only way to finance the purported gap between projected income and projected expenses for FY2015, FY2016, and FY2017. Such a steep increase, which would come on the heel of three previous 40% rent increases over the past 15 years, does not honor the spirit of the Mitchell-Lama program to provide affordable housing for New York City's low and middle-income families. **I urge HPD to deny the owner's proposed rent increase so that tenants can continue to afford to live in their units.**

Mr. Gendron provided several reasons for his proposed rent increases: 1) higher building maintenance/operating cost, 2) higher utilities cost, and 3) a substantial expected increase in real estate taxes for 176 West 94th Street.[1] Mr. Gendron also indicated the need for repairing infrastructure problems such as the building's courtyard and roof as an additional reason for the proposed increase. These projected expenses, based on page "Supplement 1/2" of Mr. Gendron's proposal (see Appendix 1), would result in a fiscal year-end deficit of $324,358 at the end of FY2017.

Mr. Gendron's solution to the projected deficit is to increase the residential rent: an 18% rent increase for FY15 will bring in an additional $174,417; a 15% increase for FY16 will bring in an additional $345,927 (FY15 increases plus FY16 increases); and a 7% increase for FY17 will bring in an additional $437,971 (FY15 increases plus FY16 increases plus FY17 increases).[2]

I understand that the TA has engaged Mr. Richard B. Montanye of Marin and Montanye, LLP as its CPA to review the soundness of Mr. Gendron's financial projections. I am confident that Mr. Montanye will speak to any structural, methodological, or accounting errors that he flags in reviewing Mr. Gendron's proposal and Independence House's financial records. Beyond financial accounting, however, there are policy and equity implications to Mr. Gendron's "solution" that should be raised and that HPD must consider behind the rent increase proposal.

Capital Improvements Determination

Prior to Mr. Gendron's acquisition of Independence House, the property has undergone three other rent increases in the past 15 years: 2001–2004, 2005–2009, and 2010–2013. Each of these past increases raised the per-room rent by 40% over three years according to the TA's calculation (see Appendix 3). Since the prospect of a substantial expected increase in real estate taxes did not apply at that time to those past increases, then how were the revenues from *three*

[1] Minutes from October 3, 2014 meeting.
[2] See Appendix 1, page Supplement 1/2.

40% increases used? My office reached out to Independence House's then-owner Mr. Ron Moelis in December 2014 to inquire about the use of past income from rent increases, but did not receive any answer. HPD should not approve any further rent increases until we know how past increases were applied, especially since Mr. Gendron now claims the need for major capital improvements as one of his reasons for increasing rent. It may be that past increases did not go toward upkeep of the building or that Mr. Gendron is overestimating capital improvement needs. Either situation is problematic for the tenants. HPD must strengthen oversight over Independence House and put a moratorium on future rent increases for the residents until the use of revenue from past increases is fully accounted for.

Projected Substantial Increase in Real Estate Taxes

Mr. Gendron's proposal also includes an expected increase in real estate tax expenses in future years, from $90,739 paid in FY2013 to a projected $190,406 for FY2017. This is a projection based on changes to the 10% shelter rent PILOT that Independence House has been paying — the NYC Department of Finance now separates the residential and commercial calculations of shelter rent taxes. For Independence House, this means real estate taxes on the commercial portion of the property are based on 50% of that portion's assessed value.[3]

I do not contest that Independence House will see a property tax increase — the property's tax bill was $18,290.25 for the quarter ending November 21, 2014 and has increased to $91,717.75 for the quarter ending February 20, 2015 (see Appendix 6). This is an additional expense that Mr. Gendron must pay for. However, the increase reflects an adjustment to shelter rent calculations for commercial spaces. ***Residential*** **tenants should not be penalized for this increase.**

In fact, the two commercial tenants that currently lease a combined 11,288 sq. ft. of commercial space are able to generate sufficient rental income to both cover the expected real estate tax increases and other additional operating expenses that Mr. Gendron is claiming in his proposal. The commercial spaces generated $187,262 in commercial rental income in FY2013. Mr. Gendron's proposal estimates a similar level of commercial rental income for FY15–FY17. By doing a straightforward division of FY2013 rental income by the total square footage of commercial space, the two commercial tenants were charged at a rate of $16.59 per square foot for leasing their spaces. This is an unusually low rate in a prime real estate neighborhood of the Upper West Side, where average commercial rental rates are closer to the $125 to $150 per square foot range.[4] In addition, according to Mitchell-Lama regulations, §1727-6.2(b):

> Commercial spaces may be rented to not-for-profit organizations for less than market rental if in the judgment of the board of directors such a rental will enhance the quality of life for its cooperators or tenants. A housing company must establish a uniform procedure for review of such rentals to assure their overall fairness. Any rental will require division approval where an officer or a member of such not-for-profit is a person who is identified in the identity of interest provisions of this chapter, or a former principal, member or employee of the housing company or its managing agent.

[3] See the Notes section of Independence House's FY12 audited financial statements.
[4] Based on searches conducted in 2014 from websites such as realtor.com and by the TA.

Because neither of the two commercial tenants of Independence House is a not-for-profit organization, they do not meet the eligibility criteria for less-than-market rent. Any exceptions should follow a uniform review procedure as outlined in the regulation above.

Mr. Ricciardi of the Independence House Tenants Association has calculated that if the commercial tenants are charged $100 per square foot, this would generate $1.129 million of commercial rental income per year, or over $900,000 more in commercial rental income than Independence House received in FY2013. This would cover the $437,971 projected deficit that Mr. Gendron cites in his proposal. I strongly urge HPD to examine the terms of Independence House's commercial tenancy. I do support Independence House's current commercial tenants, a soccer store and an ice-cream store, which are appreciated by the neighborhood, though I believe they or any other local enterprises could pay more rent.[5]

Role of Government Subsidy

I understand that Mr. Gendron reassured tenants that many tenants can qualify for Senior Citizen Rent Increase Exemption (SCRIE) to protect themselves from being priced out of their apartments. I have been a long-time supporter of SCRIE and expanding SCRIE and DRIE eligibilities. I understand the value of these subsidy programs to ensure the elderly and disabled receive the assistance they need to remain in their homes.

However, Mr. Gendron's reasoning is flawed. He is requesting HPD to approve a rent increase proposal that he intends to be paid for, ultimately, by government subsidies in the form of foregone tax revenues. To expect Independence House's majority-senior tenant population to remain in their housing via government subsidy when additional revenues can be found in commercial rents is not only unfair to seniors and tenants with disabilities, but also burdens tax payers.

Mitchell-Lama as Affordable Housing

Finally, I must speak to the larger issue of affordability. Mitchell-Lama was originally designed to be an affordable housing program to allow low and middle-income families to live and thrive in neighborhoods where they can afford their housing, raise their families, and ensure generational stability. Independence House has seen its affordability eroded relentlessly over the past 15 years with *three 40% rent increases*. Market rate housing is rarely subjected to this level of steep increases. Another rent increase will violate the principle of affordable housing.

Independence House is also one of the few Mitchell-Lama developments remaining in the program. Its future affordability will be jeopardized upon the expiration of the property's HUD loan which currently makes it ineligible to exit from Mitchell-Lama. Unfortunately, my experience with Mr. Gendron at another Mitchell-Lama development leads me to believe that he is seeking to take Independence House out of the program. We could lose 120 units of affordable housing.

It is imperative that while Independence House remains a Mitchell-Lama development focused on providing affordable housing to a majority of seniors and vets, that HPD takes

[5] To cover $437,971 of projected deficit, commercial rent would need to be $38.8 per square foot, still well below the neighborhood average of $100–$125 per square foot.

responsibility for its role as the oversight agency and fulfills its *primary duty* to ensure affordability is preserved for all tenants living under an *affordable housing program*. HPD should review and monitor the soundness of Independence House's past and current accounting and financial documentation. HPD must also allow sufficient time for the TA's legal counsel to review Independence House's operating and regulatory compliance.

I am disappointed that HPD denied the request for a hearing adjournment that I and my colleagues from the federal, state, and city level proposed last week. The TA's counsel should be given sufficient time to evaluate any issues uncovered by the CPA's financial analysis. Since Mr. Gendron had repeatedly delayed providing the CPA with the requested financial documents, there simply has not been enough time for the Legal Aid Society to complete its legal analysis.

I strongly urge HPD to **deny Mr. Gendron's rent increase application for Independence House**. Thank you for the opportunity to testify today. I look forward to continue working with you to ensure that every tenant in Independence House can live in their home at an affordable rent.