# Mitchell-Lama Preservation Restructuring Guidance

## PURPOSE OF PROGRAM

The Mitchell-Lama program is a critical source of affordable housing for families and seniors, but many Mitchell-Lama buildings require significant capital repairs and investment to assure this affordable housing continues to remain available.

New York State Homes and Community Renewal ("HCR" or the "Agency") developed this Mitchell-Lama Preservation Restructuring Guidance ("MLPRG") to provide current and prospective owners of State-supervised Private Housing Finance Law ("PHFL") Article II rentals opportunities to increase project equity and optimize Returns on Equity ("ROE") in exchange for continued long-term affordability, and additional investment for these capital repairs.

## REQUIREMENTS

The following MLPRG requirements are more fully described below:

- Submission of an integrated physical needs assessment ("IPNA") consistent with HCR standards (available here);
- submission of a plan (the "Preservation Plan") that:
  - satisfies any relevant statutory or regulatory requirements;
  - contains all provisions outlined in the HCR Mitchell-Lama Checklist (copy available here);
  - addresses a schedule of capital needs identified in the IPNA (in accordance with HCR's published design guidelines and sustainability guidelines available here)
  - outlines the proposed sources and uses and initial capital expense budget;
  - commits to the extension of regulatory oversight and supervision for a minimum of 40 years after agency confirmation of capital repair completion; and
  - commits to additional tenant protections for an amount of time no less than the 40-year oversight and supervision extension.
- HCR review and approval of the Preservation Plan; and
- a completed MLPRG application.

## RETURN ON EQUITY

The Project Equity that the ROE may be calculated against may consist of any combination of the following, subject to agency review and approval:

- all or a portion of the owner's equity/capital investment at the time of acquisition;
- all or a portion of capital repairs completed by the owner and confirmed by the Agency;

- a deferred developer's fee;[1] and/or
- such other items that HCR approves.

The Preservation Plans may include, at the Agency's discretion (and depending on the circumstances):

- additional debt taken out by the owner/development;
- repayment of the owner's acquisition equity/capital contribution during a later permanent financing or otherwise; and/or
- elimination of such repaid amounts from Project Equity.

## PRESERVATION PLAN COMPONENTS

MLPRG applications may be actively considered by HCR for the potential for increased Project Equity upon which the ROE is calculated. However, for such consideration, the Preservation Plan must address the following minimum criteria for the Agency to make a fuller review:

### 1. Capital Repairs

a. A 15+ year IPNA must serve as the basis of the Preservation Plan addressing project capital needs.

b. The work scope based off of the IPNA must be reviewed and approved by HCR's Sustainability team in addition to review and approval by HCR DC&E to ensure compliance with HCR's design guidelines, sustainability guidelines (both available here) and any NYS or municipal environmental or decarbonization laws (including but not limited to NYC LL97).

c. All priority capital repair needs, including but not limited to any exigent health and safety findings identified in the IPNA must be addressed with the closing proceeds.

d. Commitment to reserve fund contributions to address the costs of additional work identified in the IPNA and approved Preservation Plan requiring completion within the first ten years, as agreed to by HCR. This contribution cannot be less than $350 per dwelling unit (per year).

### 2. Financing

a. Generally – The Preservation Plan must address financing for the long-term preservation of both the physical development and for the preservation and continuation of affordability of the development. This includes but is not limited to capital repairs noted above.

[1] A developer's fee, to the extent allowed but unpaid at closing, may be added to the project equity or be repaid, subject to available cash flow. If repaid by the housing company to the developer, the annual amount of repayment will be based on an amortization schedule over a period not to exceed 15 years.

b. <u>Temporary Financing</u> - HCR may approve temporary financing (or a bridge loan) for: (i) the purchase of the development; (ii) to complete critical repair work; and/or (iii) to resolve other immediate financial needs.

   Any debt incurred through temporary financing may, only where HCR sees as appropriate, be applied toward the ROE calculation but only when owners (or prospective owners) commit to securing permanent financing and receive approval for a submitted MLPRG application (which includes but is not limited to a Preservation Plan).

c. <u>Permanent Financing</u> - Permanent financing must be used for longer-term financial needs and capital repair work addressed in the Preservation Plan and IPNA. HCR's strong preference is for fixed-rate, self-amortizing loans with a 30-year term.

d. As per the PHFL, all financing requires HCR's pre-approval.

e. As part of an owner's MLPRG application and underwriting needs, HCR may consider a request for a rent increase pursuant to the Budget and Rent Determination ("B/RD") process.

   i. In the case where the property receives state or federal rent subsidies, HCR will look to these limits as set forth by that program as a potential source of increases.

   ii. Given the variable financial ability of residents, applicants must commit to a rental assistance plan or variable adjustments based on tenant ability to pay.

### 3. <u>**Continued Supervision**</u>

Participation in MLPRG requires the housing company to remain subject to the provisions of the PHFL and may also require an executed regulatory agreement with HCR containing affordability provisions to meet and satisfy HCR's preservation initiatives. The following provisions may be included in the regulatory agreement:[2]

a. Tenant protections as noted above.
b. Other specific tenant protections (set forth below), which may continue after the conclusion of the agreed-to affordability term (minimum of 40 years);
c. Debt terms.

[2] This is not an exhaustive list and DHCR retains discretion to add or remove provisions consistent with the unique nature of each MLPRG preservation transaction.

d. ROE provisions (please note that as a matter of general guidance, HCR will look to apply longer affordability terms in exchange for increased ROE requests/rates); as well as resolving matters of duplicative regulatory compliance which may be tied to favorable preservation terms.
e. Restrictions on future rent increases to avoid unduly burdening tenants (for example, rents should not exceed 30% of a tenant's income) and accounting for subsidy programs when setting out of pocket payments of increases.
f. In addition, corresponding rent increases may need to be phased in (e.g. two-step B/RD increases).
g. Owners must maintain affordability for residents that do not qualify for rent reductions or subsidies under a federal, state, or local governmental rental assistance program.
h. An annual monitoring fee, if applicable, for extraordinary oversight responsibilities.

## 4. Available Project Property May be Approved for Development

At HCR's sole discretion and approval, an owner may sell or convey excess land for development of affordable or mixed income housing as part of the Preservation Plan and preservation. Such request must be made within Owner's Preservation Plan in addition to the MLPRG application (and any other required documents) to apply to the Agency for tentative approval of the sale or development of any such real property.

## 5. Federal Housing and Other Program Requirements

a. If the Mitchell-Lama operates under the provisions of a Federal program, for example a HUD Section 236 IRP or its decoupling agreement, the annual ROE will be limited to the amount permitted by the relevant program/agreement until its expiration. Thereafter, the amounts will be in accordance with amounts permitted by a regulatory agreement attendant to this transaction.

b. Mitchell-Lamas benefitting from tax credits or HCR first mortgage loans or subsidy loans will remain subject to the terms of those programs' applicable laws, regulatory requirements and agreements.

## EXAMPLES OF MLPRG TRANSACTIONS

**EXAMPLE #1**
Owner purchased a development for $12 million. Capital repairs are required for the development to remain in a habitable condition. Owner conducts an IPNA and submits the findings in a Preservation Plan as well as an MLPRG application to HCR. HCR approves the

Preservation Plan and Application. Owner is permitted to enter into a regulatory agreement with HCR setting forth specific provisions set forth herein and is also permitted to take out a $3 million loan to address the capital needs addressed in the Preservation Plan.

Assuming Owner satisfies the MLPRG's requirements for continuing to provide affordable housing, performs the necessary rehabilitation and redevelopment capital repairs, and ensures that the Development's rents remain affordable (as approved by HCR).

Subject to agency approval, owner may be entitled to an increased project equity of $15 million, constituting an annual ROE increase of $900,000.

**EXAMPLE #2**
Owner purchased a Mitchell-Lama in 1995 for $4 million. The housing company owns an unused and vacant parcel of land. Owner intends to sell the parcel for $6 million and use the funds for future capital improvements at the housing company.

Subject to the agency's approval, if the owner commits to capital improvements totaling $6 million then the development's project equity may be increased by: (i) the $6 million in capital improvements; and (ii) the $4 million purchase price. This would result in an annual ROE increase of $600,000.

However, the Owner must satisfy the other MLPRG requirements and enter into a regulatory agreement with HCR setting forth the specific provisions described herein.

## RESTRUCTURING APPLICATION

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| 1. Provide the requested Return on Equity rate for HCR's approval | Click or tap here to enter text. |
| 2. State the anticipated timing of Return on Equity withdrawals | Click or tap here to enter text. |
| 3. What is the desired Project Equity amount to calculate future ROEs? | Click or tap here to enter text. |
| 4. State whether you are seeking retroactive increases to Project Equity and provide details and information in support of such retroactive increases. | Click or tap here to enter text. |
| 5. Explain how current Project Equity has been calculated and provide all supporting documentation. | Click or tap here to enter text. |
| 6. Identify the types of Project Equity and their corresponding amounts that you claim are entitled to a higher rate of return than permitted under PHFL 22-a. | Click or tap here to enter text. |
| 7. Provide a complete set of audited financial statements for the fiscal year ending within the last six months. | Click or tap here to enter text. |
| 8. Provide pro-forma income and expense statements and statements of cash flows for the next ten years. | Click or tap here to enter text. |
| 9. Identify the total number of residential units within the project. | Click or tap here to enter text. |
| 10 Identify and describe all governmental programs (federal, state, local) that are providing rental assistance to the tenants of such housing accommodations. | Click or tap here to enter text. |
| 11 Specify the number of units currently vacant within the Project. | Click or tap here to enter text. |

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| 12 | Specify what requirements the Project must meet for tenants to continue receiving governmental rental assistance. | Click or tap here to enter text. |
| 13 | Identify any governmental rental assistance programs the Project is entering or anticipating entering. | Click or tap here to enter text. |
| 14 | Describe any assistance that you are willing and able to provide to tenants not receiving governmental rental assistance. | Click or tap here to enter text. |
| 15 | Provide a recent (completed within the past 6 months) Integrated Physical Needs Assessment ("IPNA") report. | Click or tap here to enter text. |
| 16 | A completed Mitchell-Lama Refi Proposer Checklist | Click or tap here to enter text. |
| 17 | Identify capital work that must be performed within the next: (a) six months; (b) two years; (c) five years; and (d) ten years. | Click or tap here to enter text. |
| 18 | Identify the current balances (as of the date of this application) of any reserves maintained by the Project for capital repairs. | Click or tap here to enter text. |
| 19 | Identify whether you anticipate selling or, is in the process of selling, any part of the real property and/or improvements owned by the Project. | Click or tap here to enter text. |
| 20 | If refinancing will be undertaken, provide a Statement of Sources and Uses, in addition to a Commitment Letter and Loan Documents, including, but not limited to, and as applicable, Mortgage, Note Payable, Security Agreement, Escrow Agreement, and Construction Loan Agreement. | Click or tap here to enter text. |