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February 2, 2021 – By ECF

Honorable William Pauley
United States District Court - SDNY
500 Pearl Street
New York, New York 10007

Re: *Baez v. NYCHA*, 13 Civ. 8916 (WHP)

Dear Judge Pauley,

I represent individuals and the organization they created, Fight For NYCHA, which opposed RAD conversions because of their adverse and uneven effects on NYCHA tenants. My clients have requested that I seek leave to submit this letter in light of pending motions before the court in the referenced lawsuit and I request leave now to do so.

1. During oral argument this Court held on 27 January 2021, defendant NYCHA's lead counsel represented that NYCHA's tenants-activists were represented by counsel during the proceedings. That was not entirely accurate, because the undersigned serves as counsel for a group of current and future NYCHA residents affected by current or future RAD/PACT conversion ("my clients"). My Clients include some Manhattan Bundle residents, an individual on the NYCHA waiting list, residents of Fulton Houses and Chelsea Houses who face RAD/PACT conversion or some other form of development or privatization and members of Fight For NYCHA. Before the Court determines the pending motion, we submit this letter to the Court as an *amicus curiae*.

The New York City Housing Authority ("NYCHA") faces an unknown future. Defense Counsel admitted during Court proceedings that NYCHA is contemplating ending all Section 9 housing. The future of public housing in New York City, impacting up to 600,000 residents, hangs in the balance. These are unusual circumstances, and the Court should welcome the input of My Clients, because their knowledge and experience are not

available from the Parties. As a result of this deficiency, the interests of public housing residents facing RAD/PACT conversion are not being adequately represented in Court proceedings. We make this submission to assist the Court to rule on Plaintiff's motion.

2. On behalf of Fight For NYCHA and its members, I have been raising issues about RAD/PACT to Mayor Bill de Blasio, who is responsible for establishing policy at NYCHA, either directly, or through his proxies, namely, the appointments he makes to NYCHA CEO and NYCHA's board of directors. *See* Exh. A, B. To date, Mayor de Blasio has not responded.

3. During oral argument, the Court queried Plaintiffs' counsel concerning the implications of RAD/PACT. To the extent that the Revised Consent Decree fails to reflect concerns or issues with RAD/PACT conversions, I hope to share plaintiffs' combined expertise with the Court and submit the following information about NYCHA's implementation of RAD/PACT.

A. Generally, the Mayor and NYCHA have not been transparent about their intentions with the future of public housing. Current and future NYCHA residents and housing activists have had to go to unusual lengths to obtain information. NYCHA began implementing RAD/PACT at Ocean Bay Apartments in Far Rockaway, Queens. But by the time that the RAD Landlord took control of management, in late 2016, an increasing number of evictions commenced. It took time for data about those evictions to be collected and analyzed for trends. By the time that data analysis was performed by the media, it was not until 2019 that the detrimental aspects of RAD/PACT began to become known. At Ocean Bay, over 80 households were evicted following RAD/PACT conversion. *See* Harry DiPrinzio, *Hundreds of NYCHA Evictions Raise Questions About Process*, City Limits (24 Aug. 2019), <https://citylimits.org/2019/08/14/nycha-evictions-rad-oceanbay/>. As a result, even though NYCHA began implementing RAD/PACT in 2016, plaintiffs' counsel could not have known that NYCHA's implementation of RAD/PACT would have negative consequences for tenants, including, those before this Court.

B. During Oral Argument, many times, defendant's counsel admitted not knowing the answers to several questions. For example, he claimed: (i) he wasn't there for the negotiation of the Revised Consent Decree to explain the typo; (ii) he did not know what happened to work orders following RAD/PACT conversion, (iii) he did not know how NYCHA monitored RAD/PACT landlords for compliance purposes, and (iv) he did not know how NYCHA selected public housing developments for RAD/PACT conversion.

C. My Clients agree with many of the arguments made by the *Baez* Plaintiffs, and can provide the Court with specific information it sought. My Clients have been at the forefront of issues concerning RAD/PACT, and there is no other assembly more knowledgeable to assist the Court. As a result, My Clients offer a unique point of view that is not available to the Court from the Parties. The Court inquired about which public housing developments NYCHA planned on converting under RAD/PACT. This information was obtained and published online by a citizen journalism Web site. *See* Progress New York Staff, *DOCUMENT DROP: Details about Mayor Bill de Blasio's plans to transfer a significant portion of NYCHA's public housing assets to the private sector*, Progress New York (1 Dec. 2019), <https://www.progressnewyork.news/2019/12/01/document-drop-details-about-mayor-bill-de-blasios-plans-to-transfer-a-significant-portion-of-nychas-public-housing-assets-to-the-private-sector/>. Before the Court considers allowing NYCHA to limit the Revised Consent Decree to exclude public housing developments that have been converted under RAD/PACT, my Clients would like to obtain data from NYCHA about the open Mold work orders to assist the Court to determine if, indeed, NYCHA is attempting a wholesale abrogation of its obligations under the Revised Consent Decree.

D. The Court inquired how NYCHA identified which public housing developments to convert under RAD/PACT. At a town hall dedicated to NYCHA issues held on 19 Dec. 2019, the Mayor divulged the location of four specific public housing developments -- Fulton Houses, Chelsea Houses, Chelsea Addition, and Elliott Houses -- and explained why they were selected as a bundle. Specifically, the mayor indicated that the value of their underlying real estate determined their selection. "The fact is that the value that's available here -- I mean this is just real talk -- the value we can get in this area that we can then turn back to fix the developments -- this is the whole ballgame." *See* NYC Mayor's Office, *Mayor de Blasio Holds Town Hall*, YouTube (19 Dec. 2019), <https://youtu.be/o-chMAjmnEE?t=3855> at 1:04:15. This contradicts NYCHA's claim that the need for repairs drove the selection of NYCHA housing for RAD/PACT conversion. Using property value to determine which NYCHA public housing residents get repairs will exclude residents who reside in developments the value of which is too low for RAD/PACT selection.

E. Counsel for NYCHA repeatedly stated that the Revised Consent Decree did not apply to Section 8 residents living in NYCHA housing. But this is not true. One of My Clients, Melanie Aucello, lives at 344 East 28th Street, a NYCHA public housing development, which was included in the Manhattan Bundle of RAD/PACT conversions. Her son lives with her. She formerly received a Tenant-Based, Section 8 voucher. She and her son were third-party beneficiaries of the Revised Consent Decree, even though they were not part

of the class of Plaintiffs certified by the Court; they would have benefited under requirements to replace roof/exhaust fans and other building-wide requirements of the Revised Consent Decree that would have been extended to Section 9 residents in their building. Upon the RAD/PACT conversion of the Manhattan Bundle, Ms. Aucello and her son arbitrarily and wrongly lost the benefit of the Revised Consent Decree. Defendant NYCHA's arguments ignore the third-party, Section 8 residents, who are beneficiaries of the Revised Consent Decree, which unfairly lose those benefits upon RAD/PACT conversion.

This also highlights that there may not be NYCHA public housing developments that are 100% Section 9, because NYCHA public housing developments may be home to a mixture of residents, including residents receiving Section 8 rental assistance. (The same analogy exists for rent-regulated apartments of residential apartment buildings in New York City. Whilst there may be no such thing as a "rent-control building," there are rent-control units. Likewise, there may be no such thing as a "Section 9 building.") Of particular concern to My Clients are the loss of Tenant-Based Section 8 Vouchers, which are replaced with Project-Based Section 8 Vouchers. This makes portability almost impossible for residents of public housing developments that have been converted under RAD/PACT. Tenants of 344 East 28th Street are also concerned with the loss of rights under the Violence Against Women Act, which is critical, since NYCHA provides transitional housing to domestic violence victims, and these rights must not be diminished or be eliminated. We can provide details upon the Court's request.

F. The Court expressed interested in receiving more information about RAD/PACT conversions, generally, and the Manhattan Bundle, in particular. Two of my Clients are the president and the treasurer of the resident association for 344 East 28th Street, which was included in the Manhattan Bundle. A third member of the resident association has presented a mold claim against NYCHA, and she can speak to how RAD/PACT have affected her. We would gladly provide the Court with information to complete the Court's review of facts as they related to RAD/PACT conversions, generally, and the Manhattan Bundle, in particular. For example, when the Court asked counsel to the Parties about controversies over the application of the Revised Consent Decree on RAD/PACT housing, Defense counsel never informed the Court what NYCHA advised its residents undergoing RAD/PACT conversion what kind of rights they would have about mold or lead paint removal. My Clients can uniquely offer the Court this information, which would inform the Court about the representations and promises NYCHA made to its residents in the midst of RAD/PACT conversion.

G. NYCHA's core obligations to provide habitable living conditions that Plaintiffs' counsel referred to in its motion papers are also the subject of the HUD Settlement Agreement. During oral arguments, plaintiffs submitted that the Court cannot create one class of NYCHA public housing tenants, who would receive benefits, and another class, who would not receive benefits. But that's exactly what the Court did when it approved the HUD Settlement Agreement. Under the HUD Settlement Agreement, for example, residents of RAD/PACT-converted housing do not receive the benefit of oversight by the Federal monitor appointed through the HUD Settlement Agreement. As a result, there is no Federal oversight to ensure that the rights or protections said to be conferred upon residents of RAD/PACT-converted housing are enforced.

Before the Court considers permitting Defendant NYCHA to limit the application of the Revised Consent Decree to public housing developments that have been converted under RAD/PACT, My Clients would like to hear from counsel for the Government in the HUD Settlement Agreement about permitting NYCHA to limit its obligations under that agreement. As it is, NYCHA has already violated the HUD Settlement Agreement by suspending inspections due to the Coronavirus pandemic. *See Joe Anuta, Coronavirus wreaks havoc on New York City's public housing*, Politico (10 Apr. 2020), <https://www.politico.com/states/new-york/albany/story/2020/04/10/coronavirus-wreaks-havoc-on-new-york-citys-public-housing-1274821>. NYCHA cannot be allowed to limit its obligations after having violated its obligations.

H. NYCHA's claims that they are no longer involved in public housing developments that have been converted under RAD/PACT are incorrect or misleading. **To the contrary**, NYCHA's leased housing responsibilities after RAD/PACT conversion are quite extensive. To the best knowledge or understanding of My Clients, after conversion, NYCHA continues to process requests to: (i) add/remove tenants from a household; (ii) determine rents, rent increases, and interim rent changes; (iii) determine "right-sized" apartment transfers, all annual recertifications, release vacant units, manage the Section 8 site-based waitlist, schedule and conduct HQS inspections, handle all tenant transfer requests, including possible portability after one year following RAD/PACT conversion (which is unexplained), enforce Section 8 tenant obligations, investigate fraud related to Section 8 subsidies, process grievances regarding tenant share calculations and hold informal conferences regarding subsidy terminations; and (iv) maintain responsibility for paying the Section 8 subsidy and adjustments to RAD/PACT Landlords. NYCHA also exercises some control over resident associations (the "Tenant Association"). NYCHA and the Tenant Association must enter into a written agreement before NYCHA can provide the Tenant Association with funding. NYCHA Resident Engagement is still involved in distribution and processing Tenant Association's TPA funds, although the

“Resident Handbook: A Guide to NYCHA RAD Conversion” (the “RAD Handbook”) states that, “The property manager must fund resident participation at \$25 per occupied unit per year but can keep up to \$10 of this amount to administer participation activities.” See https://ia800904.us.archive.org/16/items/fight_for_nycha/Wyckoff_RAD_Handbook_Merged.pdf at 44.

From the RAD Handbook, we also learned of NYCHA's on-going relationship with RAD/PACT Landlords. “As a partner in the new ownership entity, NYCHA will continue to be involved At the end of the lease, the property will return to NYCHA ownership.” See https://ia800904.us.archive.org/16/items/fight_for_nycha/Wyckoff_RAD_Handbook_Merged.pdf at 2.

This ongoing set of responsibilities implies that NYCHA should not be excused from any obligations it assumed before RAD conversions, including for mold and/or lead remediation. This is consistent with **precedents that establish the ongoing liability of a prior owner of real property for toxic conditions passed to a successor owner.**

Further to the Court's discovery that NYCHA CEO Gregory Russ' Mold Memo indicated that NYCHA seeks to apply *Baez* and the HUD Settlement Agreement on RAD/PACT Landlords, My Client, Ms. Aucello, received the attached Memorandum, dated 10 Dec. 2019, sent by NYCHA CEO Gregory Russ to various individuals, setting out “Lead-Based Paint Procedures for NYCHA's PACT Projects” (the “Lead Paint Memo”). See Exh. C. The Lead Paint Memo, like the Mold Memo, extends NYCHA's obligations to RAD/PACT Landlords. See, e.g., the Lead Paint Memo at 4 (where NYCHA admits that the Lead Paint Memo was “intended for consistency with NYCHA procedures in compliance with the HUD [Settlement] Agreement...”). Taken in its totality, NYCHA admits RAD/PACT Landlords must comply with NYCHA procedures in a consistent manner. Consistent is not the same as inferior.

The Court raised a concern that extending the application of the Revised Consent Decree to RAD/PACT Landlords, suggesting that might disincentivize RAD/PACT conversions. That should not be a consideration for the Court, because the Government created RAD/PACT to repair public housing. If RAD/PACT Landlords believe that they don't have to make the same repairs that would be required of NYCHA, then that would mean that the Court would accept NYCHA residents living in substandard living conditions, an unacceptable outcome. As it is, My Clients can provide material information for the Court's consideration in two important areas. For the RAD/PACT conversion of Warren Street Houses in Brooklyn, NYCHA used a residential Lease Agreement that forced residents to accept their apartments “as is,” implying a waiver of the warranty of

habitability. *See*

https://ia800904.us.archive.org/16/items/fight_for_nycha/Wyckoff_RAD_Lease_Merged.pdf at 2. Furthermore, when NYCHA presents RAD/PACT to public housing residents, NYCHA will inevitably provide residents with a copy of the RAD Handbook, which discloses that one risk of RAD/PACT conversions is that the RAD/PACT Landlord “may not complete renovations to quality standards” due to “investors’ incentives to protect their investment.” *See*

https://ia800904.us.archive.org/16/items/fight_for_nycha/Wyckoff_RAD_Handbook_Merged.pdf at 5. When Defense counsel assert that RAD/PACT residents have rights and protections, NYCHA does not disclose the risks and dangers. Both the "as is" Lease Agreement provision and the RAD Handbook show that NYCHA is trying to craft loopholes that use or rest on RAD/PACT documentation to abandon its core obligations to provide residents habitable living conditions. During Oral Argument, lead counsel for Defendant NYCHA admitted that the Lease Agreements used by RAD/PACT Landlords are "bespoke," leading to situations where public housing residents, who receive Section 8 rental assistance in public housing developments that have been converted under RAD/PACT, will receive different treatment under the law. These risks require some kind of oversight.

My Clients agree with Plaintiffs' arguments that NYCHA's obligations to provide habitable living conditions don't stem from the Revised Consent Decree. Plaintiffs' argue that NYCHA's core obligations to provide public housing residents with habitable living conditions give rise to the Revised Consent Decree. But My Client respectfully request that the Court consider that HUD regulations also govern NYCHA's obligations, and that would require that the Court hear from counsel to the Government in the HUD Settlement Agreement before rendering an Opinion on the pending motion before the Court.

I. The Coronavirus pandemic has made it difficult for NYCHA residents to meet and confer and to have meaningful dialogue about RAD/PACT conversions. Prior to my representation, My Clients have been very vocal complaining about the undemocratic methods used by the de Blasio administration to privatize public housing through RAD/PACT conversions. Their complaints have gone unanswered. Notwithstanding, Ms. Aucello and others made attempts to slow the RAD/PACT conversion of the Manhattan Bundle, at least for her building, due to the Coronavirus pandemic without success, resulting in an undemocratic and unhealthy situation forced upon them when they lacked adequate legal representation. (This was prior to my representation.) Now that we are in the midst of the Coronavirus pandemic, My Clients have concerns that the Coronavirus pandemic has rendered the holding of meetings unsafe, and the pandemic has caused suspension of the few democratic functioning of Government that were

available to them. This was one of the concerns My Clients brought to the mayor's attention, but the mayor has not responded. During the Coronavirus pandemic, NYCHA has suspended inspections of public housing apartments, as required by the HUD Settlement Agreement, presumably due to risks to the health of inspectors and residents. NYCHA has also suspended the holding of elections for resident associations. *See, e.g., Jackie Lara*, Twitter (30 Jan. 2021 2:58 PM EST), <https://twitter.com/JackieL69918724/status/1355606271127400448>. To compensate for the lack of in-person meetings, NYCHA has been holding virtual meetings and distributing documents and materials digitally. However, many NYCHA residents do not maintain home offices, equipped with computers, scanners, or printers. There are many senior citizens and residents living on low- or fixed-incomes. They most often lack smartphone or tablet technology, or, if they possess a tablet, they are not proficient to optimize its use. Many of the documents or materials distributed by NYCHA have failed to include translations in foreign languages, as required by Title VI of the Civil Rights Act. Furthermore, when translations services were provided for some virtual meetings, NYCHA tenants speaking in languages other than English were denied opportunities to ask NYCHA officials questions. Some of these complaints were the subject of a 31 July 2020 letter sent to a RAD/PACT developer included in the Manhattan Bundle. That letter was signed by U.S. Rep. Carolyn Maloney (D-NY 12), Borough President Gale Brewer (D-Manhattan), State Sen. Brad Hoylman (D-NY 27), New York City Councilmember Carlina Rivera (D-02), and Assemblyman Harvey Epstein (D-NY 74). No known response was ever made by the RAD/PACT developer. During the lead-up to the RAD/PACT conversion of Ms. Aucello's building, one resident complained about sexual harassment from a RAD/PACT contractor, and nobody took the complaint seriously. Now that Ms. Aucello's apartment building has been converted under RAD/PACT, none of the residents has received a copy of their signed lease, despite promises by the RAD/PACT Landlord that a copy would be mailed. Due to these conditions, being able to come before the Court gives My Clients some modicum of justice.

Despite the concerns of My Clients, the de Blasio administration has proceeded with the disposition of Section 9 housing through RAD/PACT conversions without subjecting RAD/PACT through the Uniform Land Use Review Procedure process, as some of My Clients assert, is required. The disposition of Section 9 continues, amidst a pandemic during which inspections of apartments and the election of officers of resident associations have been suspended. We seek the Court's permission to raise these issues, as well.

In conclusion, depending on the Court's response to this letter and the Court's ruling on the pending motion before the *Baez* docket, My Clients are prepared to seek the Court's

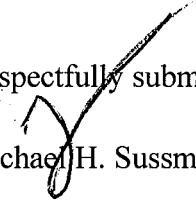
permission to raise these issues in a hearing concerning the status of the HUD Settlement Agreement. We anticipate making a request for the extension of the oversight of the Federal monitor to explicitly include residents of RAD/PACT-converted housing and ensure that NYCHA meets its core obligations to provide habitable living conditions. Before the Court makes any determination in *Baez*, counsel to the Government should be asked to address NYCHA's violation of its obligations under the HUD Settlement Agreement, particularly since NYCHA CEO Greg Russ admitted in the Mold Memo that NYCHA expects RAD/PACT Landlords to comply with the Revised Consent Decree and the HUD Settlement Agreement.

My Clients are not seeking rights to alter the Revised Consent Decree. Rather, My Clients agree with Plaintiffs' counsel's arguments. Because the Court concluded Oral Arguments by saying that the issues facing the Court were much more complex than the question of whether or not the Revised Consent Decree applied to Section 8 residents living in RAD/PACT housing, the role of My Clients would only serve to resolve the complexities faced by the Court and the Parties when it comes to understanding RAD/PACT. Moreover, because of the Parties' admitted lack of knowledge and experience with RAD/PACT, the interests of My Clients are not adequately being represented, and those interests could not be and are not adequately being represented when the Court lacks the very information that My Clients can provide. I can assure the Court that My Clients' participation, if permitted by the Court, shall be structured through filings or appearances made by the undersigned with the Court's permission to keep the proceedings from becoming unnecessarily complex. Because Defendant's counsel admitted during Oral Arguments that less than six (6%) per cent. of Section 9 housing has been converted to RAD/PACT, now is the right time for the Court to hear from My Clients. No undue delay can be caused by hearing from My Clients when they possess knowledge and experience that is valuable to the Court. Besides RAD/PACT, NYCHA has the possibility of receiving Federal funding from legislation. U.S. Rep. Nydia Velázquez has promised to reintroduce the Public Housing Emergency Response Act in Congress (first introduced during the last legislative session), which would fully-fund all outstanding capital repairs.

The timing of this filing was made as soon as it became clear from the Oral Arguments that the Court would benefit from My Clients' knowledge and experience and that My Clients' interests were not adequately being represented by the Parties.

Please let me know if you would like to receive Declarations from My Clients and/or NYCHA residents to affirm any of the statements, attachments, or documents referenced in this letter.

Respectfully submitted,


Michael H. Sussman [3497]

Enc/

cc: All counsel with enclosures by ECF

EXHIBIT A

SUSSMAN & ASSOCIATES

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11/2/20

Hon. Bill De Blasio,
Mayor, City of New York
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New York, NY 10007

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sussman1@frontiernet.net

Re: RAD conversions

Dear Mr. Mayor,

Fight For NUCHA has retained our services and I write to ensure that you are fully aware of the groups' critical agenda:

1. Your administration has sought to obtain funding for NYCHA housing by alienating some units to private developers in exchange for capital investment. This strategy derives from a recognition that capital needs at NYCHA projects far outstrips the available governmental resources and that deferred maintenance and repair has created a habitability crisis for tenants.
2. FFN does not believe that selling valuable assets and thereby jeopardizing tenants is the solution to this long-developing capital deficiency. Rather a new national level commitment to appropriately funding public housing must be the principal component of any strategy to improve such conditions. Implementing RAD now will cause evictions of tenants at a time when city policy-makers have implemented strong anti-eviction policies in deference to COVID-19. Inconsistent messaging on this issue will cause anxiety to thousands of tenants.
3. In sponsoring many RAD conversions, your administration has failed to include stakeholders in working groups of the sort used at Fulton Homes. Such working groups should be convened for each of the 16 other developments at which you propose to implement RAD. Those working groups should have broad community representation, including from FFN.
4. In providing legal documents to tenants, it is critical that the City afford translated versions to those for whom English is not the primary language. I have reports that many tenants are left out of any meaningful review process because of language barriers.
5. Finally, the working groups should have open meetings so that all tenants and community members interested in proposed conversions can attend and be informed. Transparency produced greater trust in outcomes and this is critical where peoples' housing is at stake.

I look forward to receiving your response.

Sincerely,

Michael H. Sussman, Esq.

EXHIBIT B

mailed
11.23.2020

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11/23/20

To: Honorable Bill De Blasio

From: Michael Sussman, Esq. 

Re: **RAD Conversions**

I recently wrote you on behalf of tens of thousands of tenants whose NYCHA units you have supported converting through the RAD program. As closing date for on such project remains set for next week, I am again appealing to you to intervene and slow down this process, allowing your successor to bring fresh eyes to this important and, we believe, wrong-headed initiative.

The group I represent, Fight For NYCHA, has been very vocal in opposing RAD conversions based on its members belief that Section 9 public housing is irreplaceable. It submits that RAD conversions represent an end to public housing as we know it, and asserts that changes of this magnitude, at the very least, must be subjected to the ULURP Process.

Before you continue with any more RAD conversions, we are requesting that you fulfill on the promise that you made on 19 Dec 2019 to hold a meeting with Fight For NYCHA and U.S. Representative Nydia Velazquez. See <https://youtu.be/aiMCiOb2e6g>. Many elected officials have pending legislation to save NYCHA, and it is dishonest to move forward with RAD as the sole solution when other solutions are within reach. This is particularly true when one recognized that, in 2018, the National Affordable Housing Management Association noted that the private sector leverage ratio from RAD conversions was only \$1.23 : \$1 and given all of the negatives we have noted (including the observed high eviction rates at Ocean Bay Apartments in Far Rockaway Queens, which was your "model" for RAD), we submit that maintaining the status quo whilst pursuing options being created by U.S. Rep. Velazquez and others will better support tenants.

A review of the Transaction documents that will give rise to the RAD conversion of 344 East 28th Street, for example, requires that, should the HAP Contract or the Section 8 program be terminated, the Owner will continue to provide housing exclusively to low-income households for the duration of the term of the Transaction documents. Since we have seen a lack of appetite in Washington to fully-fund rental assistance, how can you justify moving all of NYCHA public housing under Project-Based Vouchers with RAD and the new State Trust structure, when Government shutdowns or ideological shifts in Washington risk turning off funds for Section 8 housing? Under the Transaction documents, various (albeit overlapping) periods requiring the provision of housing exclusively to low-income households have termination dates. This puts at risk strategic, public assets may one day cease to provide housing to low-income households.

Moreover, as we have seen during your administration, restrictive covenants in real property deeds have been lifted by the Department of Citywide Services without public scrutiny or a public approval process. How can you guarantee that the sites in the Manhattan Bundle will truly provide housing for low-income tenants, particularly since a review of the Transaction documents shows that in its sole discretion, HUD may reduce the number of rental units in your RAD bundles to protect the financial viability to the RAD Landlord and/or Owner?

In light of the fact you seem hell bent on going forward with RAD conversions despite strong opposition, I wanted to further elaborate on issues tenants have raised about the conversion, specifically onerous new provisions in the leases they have been directed to sign. The below derives from discussions with these tenants and a review of the leases NYCHA offers tenants and those tenants are being directed to sign as part of the conversion.

1. There are numerous additional charges which the new leases allow the owner to pass through to tenants. See Section 4. The vague authorization for these charges concerns the low-income residents.
2. Similarly, section 6 permits an increase in security deposits when tenants' leases are renewed.
3. Section 8 allows the new owners to defray utility costs to tenants, a major change and cause of concern for obvious reasons.
4. Section 9 provides too easy an out for landlords with respect to their provision of basic standards of habitability.
5. More generally, RAD conversion entails a shift from tenant-based vouchers [which are portable] to project-based vouchers which are specifically conditioned upon a tenant retaining residency in the project. This makes onerous section 12 which ends a tenant's right to subsidy should fire or other form of damage make a unit uninhabitable. Absent adequate sprinkler systems, such provisions are even more troubling.
6. Tenants express concern that the RAD lease will more easily enable building owners to evict tenants for violations of house rules and that this will allow selective enforcement and retaliation through the enforcement process. Sections 13 and 20 highlight the loosening of grounds for terminations of tenancies.
7. Section 14 suggests that tenants will have no say in renewal leases.
8. Current leases have a grievance procedure, which is eliminated in RAD leases.
9. The new lease expands the owner's right to unilaterally evict based on non-adjudicated criminal activity, as it defines those terms. This again provides great new leeway to owners.
10. The new lease contemplates owners ceasing to provide facilities for tenant engagement.
11. None of the documents we have seen mentions the future of the parking garage at 344 East 28th Street. What are NYCHA's plans for the parking garage? Will the RAD Landlord take the parking garage?

In my view, these many lease changes [and others] adverse to the interests of tenants need to be the subject of negotiation, not imposition. A designated group of representative and informed

tenants should be empowered to work with NYCHA and new owners to improve and make more balances these leases.

Finally, I have also spoken with Fight for NYCHA leaders about the implementation city-wide of capital improvements at NYCHA buildings, either already implemented or contemplated by the funds raised through RAD conversions. These leaders describe a lack of transparency in identifying these program benefits. I would strongly suggest including tenants directly in the process of prioritizing capital improvements enabled by the RAD conversions. Tenants know their projects better than new owners and will be living with the consequences. A process to gain such input and ensure respect for its outcomes would make this entire process more palatable to tenants and more likely to meet shared objectives. Given the Coronavirus pandemic, any process should begin after the wide availability of a vaccine.

Happy Holidays.

EXHIBIT C

Search | maslowsneeds@protonmail.com | ProtonMail

https://mail.protonmail.com/search/YEV0Dif7ihewGlcFE...

Fwd: Lead/Mold

Received: **Sunday, January 31, 2021 7:48 PM**

From: **Mel maucello43@gmail.com**

To: **Louis Flores louisflores@louisflores.com**

lead/mold

----- Forwarded message -----

From: **Honan, Brian** <Brian.Honan@nycha.nyc.gov>

Date: Thu, Mar 5, 2020 at 2:00 PM

Subject: Lead/Mold

To: **Maucello43@gmail.com** <Maucello43@gmail.com>

Cc: Harvey Epstein <epsteinh@nyassembly.gov>, Harvey Epstein <harvey.district74@gmail.com>, Gale Brewer (gab@pipeline.com) <gab@pipeline.com>, Aura Olavarria <olavarriaa@nyassembly.gov>, Rodriguez, Rosalba (ManhattanBP) <rrodriguez@manhattanbp.nyc.gov>, Loeb, Katie <KLoeb@council.nyc.gov>, Carrillo, Pedro <PCarrillo@council.nyc.gov>, Martinez, Monica <Monica.Martinez@nycha.nyc.gov>, astokes@monadnockdevelopment.com <astokes@monadnockdevelopment.com>

Hi Melanie:

Thank you for sharing your perspective today on what is happening on East 28th Street. There is no question that communication needs to be better and a true partnership needs to be formed if we are going to be successful. I look forward to working together to make that happen.

As promised, attached please find the lead and mold procedures and guidelines that PACT developers must adhere to post conversion.

I shared my cell phone with you, so please feel free to call me or text me any time (even after hours) to discuss this or any other concern.

I will work on getting you a memo that speaks to the difference between a traditional RAD and non funded conversion and the other information that you requested.

Thank you so much.

Brian

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 Exhibit C - PACT Lead-Based Paint Procedures.pdf
1.89 MB

 2019.12.10 - Memo - Mold Moisture Control Procedures for NYCHA's PACT Projects - Executed by Chair.pdf
967.09 KB



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To: Gregory Russ– Chair and CEO

From: Daniel Greene, Acting Chief Compliance Officer, Compliance Department
Sara Kobocow, Associate General Counsel
Jennifer Hiser, Senior Advisor, Real Estate Development
Digser Abreu, Environmental Coordinator, Real Estate Development

CC: Vito Mustaciuolo, General Manager
Jonathan Gouveia, Senior Vice President, Real Estate Development

Date: December 10, 2019

Subject: Lead-Based Paint Procedures for NYCHA's PACT Projects

INTRODUCTION

In January 2019, the U.S. Department of Housing and Urban Development ("HUD") and the New York City Housing Authority ("NYCHA") entered into an agreement ("HUD Agreement") to establish specific requirements and milestones to address the serious health and safety hazards at NYCHA properties, including lead-based paint. The obligations of the HUD Agreement apply to any converted properties that closed more than six months after the Effective Date per the requirements listed in Section III.15.

NYCHA's Real Estate Development Department ("REDD") is responsible for managing the conversion of assistance under HUD. NYCHA requests the approval of the following policy recommendations regarding the evaluation and control of lead-based paint in all public housing developments converting to Section 8 under PACT after July 31, 2019.

PERMANENT AFFORDABILITY COMMITMENT TOGETHER (PACT)

The U.S. Department of Housing and Urban Development's ("HUD") Rental Assistance Demonstration ("RAD") is a program created by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55) and the corresponding HUD Notice H 2019-09/PIH-2019-23 REV-4 (September 5, 2019) ("RAD Notice"), as both may be amended, for the conversion of public housing to long-term Section 8 assistance to enable public housing authorities, to make necessary repairs and ensure long term affordability of units. NYCHA also implements the conversion of public housing to Section 8 housing using Section 18 of the U.S. Housing Act of 1937, as may be amended (the "Housing Act") and retention pursuant to 24 C.F.R Part 200 ("Part 200"). All such conversions are implemented under NYCHA's Permanent Affordability Commitment Together ("PACT") program.

The Real Estate Development Division of NYCHA ("REDD") is responsible for the conversion of assistance under the PACT program. As part of PACT conversions, NYCHA maintains fee ownership of the public housing developments that convert to Section 8 assistance (as converted, collectively, the "Project Site"), while entering into long-term ninety-nine (99) year leases of both the land and the improvements comprising the Project Site to the selected development teams and/or their affiliated entities (collectively, the



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"Developer"). The Developer performs rehabilitation activities and oversees day-to-day management of the Project Site. New capital investments facilitated by PACT projects allow for a range of repairs and renovations to both exterior and interior components of PACT converted Project Site.

RECOMMENDATION

NYCHA requests the approval of the following policy recommendations regarding the evaluation and control of lead-based paint in all public housing developments converting to Section 8 under PACT after July 31, 2019 that were built prior to January 1, 1978 and are not exempt because of recent inspection or abatement as per 24 C.F.R. § 35.115.

1. The Developer must conduct paint testing and risk assessment according to the random sampling requirements of the multi-family protocol defined by HUD.
2. The Developer shall abate all lead-based paint during the construction period even if it does not meet the definition of a lead-based paint hazard.
3. Appropriate methods of abatement will be reported by a certified individual(s) in the risk assessment report and may include building component replacement, enclosure or encapsulation systems, onsite and offsite paint removal, and soil removal or covering.
4. The Developer must establish an electronic disclosure portal for residents to access all materials required to be disclosed by the Lead Disclosure Rule.

2019 HUD AGREEMENT

On the 31st day of January 2019, HUD, U.S. Attorney for the Southern District of New York, NYCHA and the City of New York entered into that certain agreement that establishes a framework by which NYCHA will continue to evaluate and progress towards compliance with federal requirements in connection with the physical condition of its properties including deficiencies in physical conditions relating to lead (the "HUD Agreement"). The obligations of the HUD Agreement apply to apartment units, common areas (both interior and exterior), residential buildings, and building sites consisting of public housing owned or operated by NYCHA and receiving funding through Section 9 of the Housing Act. The HUD Agreement also sets forth specific requirements for abating lead-based paint for Project Site(s) that have converted to Section 8 funding under the PACT program if such conversions have occurred more than six (6) months after January 31, 2019, the effective date of the HUD Agreement.

LEAD-BASED PAINT STANDARDS

The HUD Agreement sets forth different abatement standards for public housing developments and converting developments ("PACT Projects"). The HUD Agreement supplements the obligations of the RAD Notice with respect to controlling lead-based paint hazards. Of the three standards, the standard established for public housing developments in the HUD Agreement is the most stringent because it requires full abatement of all lead-based paint surfaces. The standard established in the HUD Agreement for PACT Projects is the second most stringent because it requires abatement of lead-based paint hazards regardless of the dollar value of rehabilitation. The general RAD notice standard of performing interim controls during renovation is the least stringent standard.

HUD Agreement- Project Site Converted to Section 8 after July 31, 2019



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For Project Site(s) that convert to Section 8 under the PACT Program after July 31, 2019, the HUD Agreement requires the Developer to abate all lead-based paint during the construction period "in compliance with the lead abatement standards of 24 C.F.R. §35.390(d) regardless of the dollar value of rehabilitation. Following abatement, NYCHA shall provide to the Monitor a clearance report pursuant to 24 C.F.R. §35.1340(c)." See HUD Agreement, Section III. According to 24 C.F.R. §35.930(d)(3), the Project Owner (which is the "Developer" in this context) shall "abate all lead-based paint hazards identified by the paint testing or risk assessment conducted in accordance with §35.1325, except that interim controls are acceptable on exterior surfaces that are not disturbed by rehabilitation and on paint-lead hazards that have an area smaller than the de minimis limits of §35.1350(d). **If abatement of a paint-lead hazard is required, it is necessary to abate only the surface area with hazardous conditions** (emphasis added)." Thus, only lead-based paint hazards require abatement during the construction period for PACT Projects.¹

The standard for the PACT converted Project Site should be compared with the standard for public housing under the HUD Agreement.

HUD Agreement – Public Housing Developments

Exhibit A of the HUD Agreement sets forth NYCHA's ongoing obligations with respect to lead based paint in public housing. Notably, Exhibit A requires NYCHA to abate, in accordance with 40 C.F.R. Part 745, Subpart L, all lead-based paint in units and interior common areas over a 20-year period. NYCHA shall also abate lead-based paint in exterior common areas according to an appropriate timeline that prioritizes area posing a higher risk of exposure to children. See HUD Agreement, Exhibit A, ¶¶ 8 – 12. Under Exhibit A, NYCHA must abate lead-based paint even if it does not meet the definition of a lead-based paint hazard.

RAD Requirements

The Developer must evaluate and control lead-based paint hazards in the PACT Project pursuant to 24 C.F.R. Part 35 subpart H, including, among other things, completing a risk assessment if the multifamily property will receive more than \$5,000 per unit in rental assistance subsidy." See RAD Notice, at 38 and 24 C.F.R. §35.715. Under 24 C.F.R. §35.715(b), "each owner shall conduct interim controls in accordance with §35.1330 to treat the lead-based paint hazards identified in the risk assessment. Interim controls are considered completed when clearance is achieved in accordance with §35.1340..." Thus, under RAD, abatement is not necessarily required. The Developer are required to provide Operation and Maintenance (O&M) Plans for a Project Site that continues to have lead-based paint surfaces following renovation activities, even if these surfaces have been abated through enclosure or encapsulation and will be required to perform interim controls if any new hazards are identified. See RAD Notice, at 116.

¹ Pursuant to HUD Regulations, lead-based paint hazards are defined as "any condition that causes exposure to lead from dust-lead hazards, soil-lead hazards, or lead-based paint that is deteriorated or present in chewable surfaces, friction surfaces, or impact surfaces, and that would result in adverse human health effects." See 24 C.F.R. 35.110.



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PROPOSED PACT LEAD-BASED PAINT REQUIREMENTS

To be consistent with the most stringent standard established by the HUD Agreement, PACT projects will abate all lead-based paint during the construction period even if it does not meet the definition of a lead-based paint hazard. This section provides the most current guidance for lead-based paint identification, assessment, and abatement for PACT Projects. It is intended for consistency with NYCHA procedures in compliance with the HUD Agreement, RAD Notice, HUD Lead Safe Housing Rule, and Environmental Protection Agency's requirements for lead-based paint activities.

1. **Paint Inspection** - The Developer must conduct paint testing or presume the presence of lead-based paint on all painted surfaces in units and common areas. Paint testing must be performed by a certified lead-based paint inspector or risk assessor according to the Environmental Protection Agency's ("EPA's") Work Practice Standards and HUD's Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing ("HUD's Guidelines for LBP Hazards")
 - a. **Historical Records** - NYCHA shall provide any documentation available to the Authority regarding lead-based paint and lead-based paint hazards to both the firm preparing the Capital Needs Assessment and the PACT Developer. See *RAD Notice Section 1.4.A.16*. Typically, NYCHA's reports are not considered current by HUD's standards² and therefore PACT Developers must complete their own inspections prior to closing.³
 - b. **Unit Sampling** - The certified inspector will select the housing units, common areas, and exterior site areas that require lead-based paint inspection according to the random sampling requirements of the multi-family protocol defined by HUD. See *HUD's Guidelines for LBP Hazards, Chapter 7, Section V*.
 - c. **Lead-Based Paint** - HUD defines lead based paint as a surface coating that contains lead equal to or exceeding 1.0 milligram per square centimeter or 0.5 percent by weight or 5,000 parts per million (ppm) by weight. See *24 C.F.R. §35.110*.
 - d. **Unsampled Units** - If a component type in the sampled unit is classified as positive, that same component type in the unsampled unit is also classified as positive, except where the number of positive components is small (less than 5%) and further analysis is required. See *HUD's Guidelines for LBP Hazards, Chapter 7, Section V*.
2. **Risk Assessment** - The Developer must perform a risk assessment in the dwelling units, interior common areas, and exterior public spaces in accordance with the EPA's Work Practice Standards. See *24 C.F.R. §35.1320 and HUD's Guidelines for LBP Hazards*. Background information regarding the physical characteristics of the dwelling and occupant use patterns that may cause lead-based paint exposure to one or more children age 6 years and under shall be collected. HUD considers a risk assessment to be valid for 12 months.

² If the PHA has provided the report of a current risk assessment (less than 12 months old), or an older risk assessment and reports of all subsequent periodic re-evaluations, that documentation shall satisfy the Developer's requirement to have completed a risk assessment under subpart H.

³ NYCHA's XRF initiative may produce data for certain developments that will obviate the need for additional testing or assessments. NYCHA will consult with the Developer on the availability of this data on a project by project basis.



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- a. **Reporting** - The certified risk assessor shall prepare a risk assessment report that includes a description of the location, type, and severity of any identified lead-based paint; a description of abatement options for each component; and a suggested prioritization for addressing each component. See *HUD's Guidelines for LBP Hazards, Chapter 5*.
 - b. **Operations and Maintenance** - If the use of an encapsulant or enclosure is recommended, the risk assessment report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure. See *40 C.F.R. §745.227*. Prior to conversion, the Developer must provide NYCHA with an Operations and Maintenance ("O&M") plan that includes training and certifying personnel who abate or maintain surfaces with lead-based paint in accordance with EPA's Work Place Standards. See *40 C.F.R. §745, Subpart E, L, and Q*.
3. **Notification and Reporting** – According to the Lead Disclosure Rule, HUD and EPA require the disclosure of known information on lead-based paint and lead-based paint hazards to occupants of most housing built before 1978.
- a. **Lease Signing** – Per the RAD Notice, the Developer shall provide residents signing leases with information about the presence of lead-based paint and lead-based paint hazards in their apartments and developments in accordance with the Lead Disclosure Rule. See *24 C.F.R. §35* and *40 C.F.R. §745*.
 - b. **Evaluation Disclosure** - When evaluation is undertaken or if a presumption is made that lead-based paint is present, the Developer shall provide a notice to occupants within 15 calendar days of the date when the Authority receives the report or makes the presumption. See *24 C.F.R. §35.125*.
 - c. **Children with Elevated Blood Lead Levels**
 1. **Pre-Conversion** – In the case of dwellings where a child under the age of 6 has an elevated blood lead level (EBLL) and lead-based paint hazards are identified in the unit and/or common area servicing the unit, the Developer shall inform NYCHA within 5 business days.
 2. **Post-Conversion** - The Developer is responsible for providing all notifications to HUD *24 CFR §35.730* and copying NYCHA on the notifications. The Developer must, upon request, provide NYCHA with all documentation concerning responses EBLLs under *24 CFR §35.730*, including copies of risk assessment reports, hazard reduction activities and notifications to residents.
 - d. **Electronic Copies** - The HUD Agreement requires that NYCHA ensure that electronic copies of all materials required to be disclosed by the Lead Disclosure Rule are available to residents through an internet-based portal. Thus, the Developer must establish an electronic disclosure portal for residents to access.
4. **Abatement of Lead-Based Paint** – The Developer shall abate all lead-based paint during the construction period. Abatement shall be performed by certified individual(s) in accordance with methods and standards established by HUD and EPA per *40 C.F.R. §745*.
- a. **Types of Abatement** – Abatement refers to a group of measures that can be expected to eliminate or reduce exposures to lead hazards for at least 20 years under normal conditions, in accordance with standards established by the EPA. There are four typical methods of abatement, including building component replacement, enclosure or



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- encapsulation systems, onsite and offsite paint removal, and soil removal or covering. See HUD's *Guidelines for LBP Hazards, Chapters 12 and 13*.
- b. **Budget** – If a project requires abatement, the Developer must account for the cost of abatement in the up-front rehabilitation scope of work.
 - c. **Occupant Protection Plan** - A certified abatement supervisor must prepare occupant protection plans ("OPP") prior to abatement that are unique for each residential dwelling unit. The OPPs shall describe the procedures that will be taken during abatement to protect the building occupants from exposure to any lead-based paint. See 40 C.F.R. §745.227
5. **Clearance** - Following abatement, clearance examinations by a certified risk assessor shall include a visual inspection, dust sampling analysis, and preparation of a report in accordance with 24 C.F.R. § 35.1340.
- a. **Sampling** - If clearance is being performed for more than 10 dwelling units of similar construction and maintenance, random sampling may be conducted in accordance with 40 C.F.R. 745.227(e)(9).
 - b. **Reports** – The Developer must provide clearance reports according to the EPA's regulations at 40 CFR 745.227(e) to NYCHA in an electronic format within 5 business days after receipt of each clearance report. NYCHA reserves the right to perform onsite monitoring of all clearance activities. The Developer must provide all clearance reports to NYCHA, including clearance reports indicating failed clearance.
 - c. **Exemption** - Following abatement, the Developer must apply for either a Lead Safe or Lead-Free exemption from the New York City Department of Housing Preservation and Development (HPD) pursuant to 28 RCNY §11-08. The Developer must respond to any information requests or revisions required by HPD. If this request is denied for failing to identify or abate lead-based paint, the Developer must perform all work necessary to receive the exemption. The Developer must provide NYCHA with documentation of the exemption granted by HPD, and all documentation regarding the exemption and exemption application.

Additional lead-based paint abatement requirements may be imposed by NYCHA. All notification requirements resulting from lead-based paint testing or abatement under federal, state, or local laws shall be the sole responsibility of the Project Team(s). The Project Team(s) shall provide NYCHA with all documents regarding abatement activities, including records, reports, testing results, contractor and worker certifications, notices, filings, occupant protection plans, abatement reports, and any other project-related documents.

NYCHA shall have a right to observe all abatement activities, including any pre-and post-abatement activities, and, upon request, review all project documentation. NYCHA shall notify the Project Team in writing of any deficiencies regarding compliance with this paragraph and any applicable legal requirements to abatement activities, and shall specify a period in which the Project Team must correct such deficiencies, or provide adequate documentation, to the satisfaction of NYCHA, of compliance with the requirements of this paragraph and all applicable legal requirements.

Upon conversion, the PACT developments will remain subject to the HUD Lead Safe Housing Rule under 24 C.F.R. Part 35, Subpart H. The Lead Safe Housing Rule applies to all target housing that is federally



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owned and target housing receiving Federal assistance. The Lead Safe Housing Rule requirements for conversions include: provision of EPA Lead pamphlet, paint testing of surfaces to be disturbed or presume lead based paint, risk assessment, abatement of lead based paint hazards, notice to occupants and ongoing lead based paint maintenance. NYCHA will ensure that the Developer adheres to the requirements through the collection of clearance reports which HUD requires after abatement.


Gregory Russ
NYCHA Chair and Chief Executive Officer

12-11-19
Date

CC:
Vito Mustaciolo
Jonathan Gouveia