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**VIA FACSIMILE AND EMAIL**

April 23, 2009

Mr. Rich McCurnin  
Assistant Commissioner  
New York State Division of Housing & Community Renewal  
25 Beaver Street  
New York, New York 10004

**RE: Westview Budget Rent Determination Process – Submission of New,  
Up-To-Date Accountant’s Report To Substantiate Legally Required  
Rent Decrease At Westview**

Dear Rich:

I am writing on behalf of my client, Westview Taskforce Inc. (“WTI”) to follow up on a letter I sent to you on WTI’s behalf on February 6, 2009. In that letter, I requested that DHCR permit Westview’s owners and tenants to submit new, up-to-date accountants’ reports as part of Westview’s ongoing BRD process. Due to a significant passage of time since the initiation of the BRD and the onset of a dire recession, the accountants’ original submissions had been rendered obsolete. As a result, DHCR no longer possessed an adequate quality of information and analysis upon which a rent determination could be based. This point was made abundantly clear to Westview’s tenants in a December 2008 report by our accountant, Marc Freedman, in which he determined that, based upon the dramatic drop in energy prices over the preceding several months alone, an 8% rent reduction was now appropriate at Westview (a copy of Mr. Freedman’s report was enclosed with my February 6, 2009 letter). I was very pleased that, in accordance with the law governing the BRD process, DHCR prudently concluded that new submissions were necessary and granted WTI’s request.

Unfortunately, Westview’s owners are now seeking to undermine DHCR’s decision and to prevent the tenants from providing DHCR with an accurate, up-to-date analysis of Westview’s finances that supports a reduction in rents. In a transparent attempt to withhold information that is adverse to their interests, Westview’s owners are refusing to provide critical data that our accountants need to complete a proper analysis of Westview’s financial condition.

Specifically, our accountants are seeking, but have heretofore been denied, the following information: (1) Westview's 2008 income expense reports; and (2) Westview's monthly operating statements for January, February and March 2009. Although in the past Westview's owners afforded our accountants full access to building financials without objection or delay, the owners are now breaking with precedent and refusing to turn over the documents. This refusal has the unfortunate consequence of placing DHCR in violation of 9 NYCRR §1728-1.2(b)(4), which states that "In order to enable residents to more fully and effectively participate in the rent determination process, the division shall: . . . (ii) assure full access on the part of residents or their representatives to the financial records of the company." (Emphasis added).

The owners' present position was set forth by David Hirschhorn in an April 16, 2009 email in which he responded to a tenants' request for financial documents by writing, "you got the electric bills and that is all you are getting (plus the 2008 draft when its ready but that does NOT affect your 4/28/09 FINAL deadline for BRD comments)." (Emphasis in original). The owners' present position is unconscionable and indefensible. In addition to their absolute refusal to provide Westview's January-March 2009 monthly operating statements, the owners' are delaying providing Westview's 2008 income expense reports until after our accountant submits his report – a report that cannot be accurately completed without such information. If DHCR does not intervene to force the owners to provide this critical information, then the owners will have succeeded in turning the submission of updated accountants' reports into a meaningless exercise. Moreover, if DHCR permits the owners to withhold information the tenants need to defend themselves against the owners' baseless factual assertions, then the entire legitimacy and legality of this BRD process will be placed into question.

Westview's owners have engaged in an regrettable pattern of ignoring the laws that govern the Mitchell-Lama program (see, e.g., New York State Inspector General Kristine Hamann, "An In-Depth Review of the Division of Housing and Community Renewal's Oversight of the Mitchell-Lama Program," pp. 45-51 (September 2007); August 28, 2008 letter from Chad Marlow, Esq. to DHCR Deputy Commissioner for Office of Housing Operations David Cabrera, pp. 6-10). Westview's past cannot become prologue with respect to this BRD. DHCR simply cannot stand idly by while Westview's owners unlawfully withhold documents that would enable our accountants to demonstrate that a rent reduction is legally and factually required.

The owners' ongoing, self-serving effort to force DHCR and the tenants' accountants to analyze Westview's finances if it were the September 2008 rather than April 2009 cannot be tolerated. As you know, compared to this time last year, the economy has taken a dramatic turn for the worse, Westview's operating costs have declined sharply and its opportunities for improving efficiency have increased (Westview is one of the most inefficiently operated buildings in the Mitchell-Lama program and, as a result, its rents are among the highest in the state). These changes are of the utmost relevance in this BRD and must be considered as part of any fair and complete analysis by DHCR. To state the point again in unambiguous terms, the tenants' accountants have informed us that if they are provided with the requested documentation, they have every

confidence those figures will demonstrate that a minimum of an 8% rent reduction is now appropriate at Westview. Westview's owners simply do not want to turn over data that will enable the tenants' accountants to make that case before DHCR.

When the tenants requested an opportunity to submit an up-to-date analysis of Westview's financial condition and rent requirements, we only were seeking to place full, accurate and up-to-date information before DHCR, in the manner required by law, so DHCR could ultimately render an appropriate and justifiable rent determination (which, again, we believe should be a decrease in rents at Westview). We are not and have never been interested in submitting an analysis that draws conclusions based upon irrelevant, outdated, pre-recessionary data. As such, we reluctantly find ourselves unable to submit an accountant's report that meets professional standards for accuracy and reliability.

To that end, we respectfully request that DHCR use its legal authority to force Westview's owners to immediately provide the tenants' accountants with full access to up-to-date financials for Westview. Westview's owners, who have an interest in this process, cannot be permitted to determine what information is relevant and what data will be made available to their adversaries. To allow the owners to withhold any available data on Westview's financials would make a mockery of this process.

Let me conclude with a simple analysis of the present situation using rational actor theory. Westview's owners claim that they are interested in rapidly concluding the ongoing BRD process, but they also realize that their refusal to turn over standard financial data to the tenants is delaying a conclusion. Under those circumstances, a rational actor would simply turn over the allegedly innocuous documents in order to secure the goal of rapidly concluding the BRD. The question is then, "why are the owners not turning over the documents?" It is because they are not rational? Hardly. It is because they have a competing, more powerful interest at play; namely, to prevent the tenants from countering the owners' BRD positions and establishing that a rent decrease is required at Westview. In light of this superior interest, a rational actor would still turn the documents over as long as they were not supportive of the tenants' claims and antithetical to their own. And yet, the owners' unwillingness to turn over the documents persists. Here, the Latin phrase *res ipsa loquitur* ("the thing speaks for itself") applies. Clearly, the owners, who are acting rationally, are withholding the requested documents because they are detrimental to the owners' financial interests and support those of the tenants. As advancing their financial interests is the owners' top priority, they are rationally pursuing a course of action that is consistent with that priority. For DHCR to permit the owners to conceal facts in order to manipulate the available data and skew a rent determination in their favor would run counter to DHCR's own, legally-mandated interest of conducting a fair, open and accurate BRD process. Thus, in order to remain consistent with its own legal obligations, DHCR must order the requested documents turned over to the tenants forthwith and, in so doing, thwart this blatant attempt by the owners to improperly distort the BRD process.



I thank you for your attention to this matter and look forward to receiving DHCR's response.

Sincerely,

Chad Marlow

CC: Hon. Deborah VanAmerongen, Commissioner, DHCR (via facsimile and email)  
Hon. Carolyn Maloney, Member of Congress (via facsimile)  
Hon. Jose M. Serrano, State Senator (via facsimile)  
Hon. Micah Kellner, Assembly Member (via facsimile)  
Hon. Jessica Lappin, City Council Member (via facsimile)  
David Hirschhorn, Esq. (via email)