

*The Case Against*  
**Article 2 to Article 11**  
**Conversion**

*Presented by*  
*The Committee to Preserve Cadman Towers (CPCT)*



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## Who we are

The Committee to Preserve Cadman Towers (CPCT) has worked diligently since the mid-1990s to keep our housing affordable. We researched and wrote this piece to outline our objections to the Article 2 to Article 11 plan and provide context for the broader issues involved, so that all cooperators understand the consequential choice we face.

CPCT formed in response to the threat of privatization efforts and successfully defeated several attempts to convert Cadman Towers to a market-rate cooperative. We've also joined with other ML residents across the city and state,

forming Cooperators United for Mitchell-Lama (CU4ML) and Mitchell-Lama United (MLU) to enact policy changes and legislation that protects and preserves ML housing and strengthens the rights of shareholders.

CPCT believes that we must be good stewards of our gift of deeply affordable homeownership, and we are committed to stop efforts to “pull the ladder up behind us.” We want to ensure that our homes remain as affordable as possible for current cooperators and future generations of New Yorkers. We welcome you to join us!

*The Committee to Preserve Cadman Towers Steering Committee  
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# INTRODUCTION

This booklet offers cooperators at Cadman Towers a look at why the Committee to Preserve Cadman Towers (CPCT) is opposed to the Article 2 to Article 11 conversion plan, which would reconstitute our Mitchell-Lama (ML) cooperative as a Housing Development Fund Corporation (HDFC) cooperative. We'll try to provide the information that you need to make an informed choice about this plan.

There is no denying that Cadman, like so many other ML co-ops in New York City, is facing the problem of maintaining our aging buildings. Moreover, many of us with moderate incomes, for whom ML was intended, are struggling financially as our maintenance costs have risen dramatically to cover the expense of these repairs. We need help to stay affordable, but the proposal to convert to a much more expensive HDFC cooperative is not a sustainable plan to get us the help we need. In brief, we believe the plan spells trouble for the following reasons:

- We would be the first to attempt this conversion experiment, without full knowledge of the risks and pitfalls that lie ahead. Article 11 has primarily been used to convert rental properties to HDFC co-ops, and has never been used to convert a ML co-op to an HDFC co-op.
- Since this has never been done before, the Proxy Statement should contain full details of all its components. Our Proxy Statement has major omissions, especially the lack of clear budget projections and the absence of a full Regulatory Agreement, a document that will govern us for 99 years.
- It is highly likely that conversion would price out the people who have historically been able to afford to live here. Apartments would then mainly be available to those with inherited wealth but who have a low enough income to qualify, as has occurred in other HDFC co-ops.
- While the Mitchell-Lama Law and regulations protect shareholders' rights, these would be lost with conversion, likely leaving the Board of Directors with much more power.
- The plan's assumption that our regulated housing situation will appeal to buyers on the real estate market is questionable. Buyers may look elsewhere if they are likely to lose money on a Cadman purchase.
- Because the net income gained from the conversion plan will be both insufficient and not long-term, it does not justify all that we would lose.

The issues around the Article 2 to Article 11 conversion proposal are more complex than have been presented by the sponsors of the plan. Over the past year, cooperators at Cadman have been repeatedly reminded that rising costs, if left unchecked, will render our housing unaffordable.

But this narrative of impending crisis is misleading. First, the majority of the capital repair costs listed in the Proxy Statement have already been funded.<sup>1</sup> Second, Mitchell-Lama co-ops across the city face the same issues we do but have not pursued Article 2 to Article 11 conversion. Citywide ML advocacy groups have worked with great success to protect the working NY families who live in these developments. By uniting with them, we can find solutions to our capital repair problems, and in doing so, preserve this deeply affordable housing for all of us.

The Article 2 to Article 11 conversion plan has been **advertised as a cure-all**—a pill to solve all our problems. A closer look at the plan reveals something **much messier, with many unknowns and potential drawbacks.**

<sup>1</sup> Of the \$36,185,674 of repair needs noted in the Proxy Statement, \$25,287,424 are already funded.

# PROBLEMS WITH THE HDFC MODEL

HDFCs have more than their fair share of problems — especially as the original owners begin to sell their apartments. We risk walking into many of these problems with an Article 2 to Article 11 conversion at Cadman.

“...In this extremely tight real estate market, when practically any listing is snapped up instantly, **why are some of the city’s most affordable apartments struggling to find buyers?** It’s because they belong to a small and quirky breed of co-op that requires buyers to meet income caps, yet have significant assets on hand — a tall order for most.

—“*Bargains With a ‘But’*”  
*The New York Times*, 2014

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## MORTGAGES

HDFC buyers—like those purchasing Mitchell-Lama co-ops—have historically had difficulty getting mortgages from banks. This is because the bank cannot take over the apartment if a purchaser of an HDFC or a ML defaults on his or her loan.

Usually only credit unions, the UHAB Homeownership Lending Program,<sup>2</sup> and small, local banks give mortgages to HDFC buyers— not big banks with the best rates. Also, most mortgage loans to HDFCs have been for 15- rather than 30-year terms, which means that the monthly payments are higher. Given the lack of decent mortgage terms, moderate- and middle-income buyers simply cannot afford these apartments.

The Cadman Board has previously said that there are no mortgages available for ML buyers. This is not only false,<sup>3</sup> but it misleads cooperators into thinking that conversion to an HDFC model would cure banks’ unwillingness to lend to HDFC co-op buyers. It would not.

As stated above, if we converted, we would almost certainly see continued problems with mortgages at Cadman, compelling moderate- and middle-income buyers to look elsewhere. Cadman units would be unattainable for people who cannot afford to pay both a mortgage payment plus monthly maintenance. This would mean that Cadman would primarily attract those with enough inherited wealth or assets to pay the whole purchase price, but incomes low enough to qualify. This trend—HDFCs becoming havens for “rich kids,” as some recent news articles<sup>4</sup> have put it— could become the norm at Cadman.

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<sup>2</sup> The Urban Homesteading Assistance Board (UHAB) is an organization that has helped many tenants transform their rentals into HDFC cooperatives. UHAB started their own mortgage lending program because of the difficulties faced in getting a mortgage loan from the banks for an HDFC purchase, but the loans have been for 15 years. In our last conversation with UHAB, they told us that they are now offering 30-year mortgages to HDFC purchasers, which should help with this problem.

<sup>3</sup> These UHAB loans (and others) are also available to purchasers of Mitchell-Lama co-ops; the Cadman Towers Board, however, has been unwilling to coordinate with lenders to make the loans available to purchasers.

<sup>4</sup> Melby, C. (2021, October 8). New York’s Real Estate Tax Breaks Are Now a Rich-Kid Loophole. *Bloomberg*. <https://www.bloomberg.com/graphics/2021-nyc-taxes-hdfc-coops/?leadSource=uverify%20wall>; Higgins, M. (2014, June 27). Bargains With a ‘But’. *The New York Times*. <https://www.nytimes.com/2014/06/29/realestate/affordable-new-york-apartments-with-a-catch.html?emc=eta1>.

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## BOARD POWERS

The Mitchell-Lama program is governed both by extensive city rules and regulations and by state law. The law has just been updated by the Mitchell-Lama Reform Act of 2021. This Act helps protect thousands of affordable ML co-op apartments from privatization and includes voting reforms and changes in governance procedures meant to increase board transparency. By converting to an HDFC co-op, we would lose these new protections against Board oversteps. The Board will likely end up with more power, while shareholders end up with less. While all ML cooperatives are governed by these extensive rules, each HDFC cooperative's governing document is its individual Regulatory Agreement, which often conveys broad powers to the Board. It is inexcusable that the full Regulatory Agreement is not included in the Proxy Statement as it could give us more insight into the parameters of Board powers in a Cadman HDFC.

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## RESALE ISSUES FOR HDFC PURCHASERS

Issues with selling HDFC units have been well documented. HDFC owners who try to resell their apartments often complain that the limited profit they are allowed to make due to capped resale prices means that they are effectively losing money when they sell. This is especially true when the owner pays a mortgage, monthly maintenance and does renovations to the apartment. Owners cannot recoup their costs, which has discouraged potential purchasers.

All in all, we can predict that **converting to an HDFC cooperative will leave Cadman vulnerable to all sorts of problems** – some that have already been seen in Article 11 cooperatives, and some that may be unique to Cadman as it undertakes the **experiment** of this never-before-tried Article 2 to Article 11 conversion.

# PROBLEMS WITH THE CADMAN TOWERS ARTICLE 2 to ARTICLE 11 CONVERSION PLAN

With so many unknowns, with rules and procedures yet to be determined, and with more power given to the Board of Directors to work out the flaws of a conversion, our conclusion is that the plan to convert from an Article 2 to an Article 11 is not worth the risks.

## THE PROXY STATEMENT IS INCOMPLETE

Each HDFC has a Regulatory Agreement with the New York City Department of Housing Preservation and Development (HPD). The Regulatory Agreement is a document containing specific information that would govern our cooperative for 99 years should we convert to an HDFC. Some Regulatory Agreements include provisions, such as buyers not being allowed to own other property within 100 miles of the city, loss of tax abatement over short periods of time, or caps on assets for buyers.

Cadman's Proxy Statement is missing the full Regulatory Agreement. It should have been in the draft Proxy Statement, so that both shareholders and the Attorney General's Office could have vetted it for risks. We've been told we will not see it until after the vote—and there is no back-out clause written into

the Proxy Statement that will allow us to reconsider the plan if the agreement contains onerous provisions. **No one should be asked to vote on a contract that is missing such crucial information.**

The Proxy Statement is also missing multiyear budgetary projections that would show whether the plan would work or not. It has only one year of budget figures.

Additionally, two essential provisions that the Proxy Statement lacks deal with enforcement and amendment of the Regulatory Agreement. We don't know how the Agreement will be enforced, in light of a Term Sheet showing that HPD and HDC are sharing enforcement duties. And we don't know whether the Board, with its likely increased powers, has the ability to amend the Regulatory Agreement with just HPD approval, and without any vote by shareholders.

## TAX EXEMPTION IS UNCERTAIN

Mitchell-Lama's primary government subsidy is an exemption from regular real estate taxes. ML developments pay shelter rent tax instead, which can be four, five, or six times lower than ordinary real estate tax in NYC. This subsidy saves Cadman Towers about \$2 million a year or an average of close to \$5,000 per apartment per year.

**This exemption from regular real estate taxes is written into the ML law, but it is not in Article 11 law.** The Proxy Statement presumes that the City Council will grant Cadman the shelter rent tax exemption that we've had as a Mitchell-Lama cooperative. In fact, **there is no guarantee that Cadman Towers will**

**be granted this tax exemption as an HDFC.** There are also a range of problems that may accompany this precarious arrangement in which the shelter rent tax exemption is not simply automatic, as it is under the Mitchell-Lama program. These include:

- The initial request for a tax exemption is for 35 years, with the provision that at year 33 we must return to the City Council and request another tax exemption for an additional maximum of 40 years. The contract with HPD, however, is for 99 years; during this time the cap for buyers of apartments is set at 125% of Area Median Income (AMI).<sup>5</sup> Should the City Council decide not to grant a tax exemption to Cadman during this time, our monthly maintenance costs would rise astronomically—but Cadman

<sup>5</sup> See the Glossary for more information on Area Median Income (AMI).

would still have to adhere to the 125% AMI cap. Cadman would not be able to sell apartments to anyone who could afford the monthly costs, and would be without a pool of potential buyers.

- Cadman’s attorney indicated in her presentation on March 15 that Cadman could not proceed with the Article 11 plan if the City Council does not grant the shelter rent tax exemption, but this “back-out” clause is not written in the Proxy Statement. It is unclear what would happen if the City Council ended up rejecting our tax exemption request.
- If the HDFC Board is found to have violated the terms of the Regulatory Agreement, the City Council may be able to rescind the tax exemption.<sup>6</sup>

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## DECLINING SURCHARGE INCOME/SURCHARGE FORMULA

The Proxy Statement’s HDFC Certificate of Incorporation does not contain information about the collection of surcharge income, nor does the Proxy Statement describe how and if surcharges will be collected. The only mention of surcharges is in the budget pages. There is also no mention of the requirement to complete and submit annual Income Affidavits, from which the surcharge is calculated. Does this mean that we risk surcharges not being collected, or that someone could mount a legal challenge to stop the collection of surcharge payments? Is this a possible means of getting rid of surcharges? The lack of clarity around this issue is an additional reason for rejecting the plan.

Collection of surcharges to support the operating budget is written in Article 2 (ML Law), but it is not in Article 11 (HDFC Law). To our knowledge, no HDFC collects surcharge income.<sup>7</sup> Cadman Towers has historically gotten more than \$400,000 a year in surcharge income, which helps with our operating expenses.

**If we convert to Article 11 and surcharge income diminishes or disappears altogether, the negative impact on our budget will likely require maintenance increases.**

Why? Because there does not seem to be a provision in the Proxy Statement that would allow money from flip taxes to be used for an operating budget deficit. The Proxy Statement specifies that **all** flip tax monies will go into the building’s reserve fund. If the loss of surcharge income causes a deficit in the operating funds, this operating funds gap may not be able to be filled with money from the reserve fund.

The Committee to Preserve Cadman Towers (CPCT) members wrote letters to the Assistant Attorney General (AAG) about surcharges, which seems to have resulted in the final Proxy Statement containing a formula by which surcharges would be calculated. This surcharge formula, in the Footnotes to Schedule B in the Proxy Statement, indicates that the purchase price paid would be a component of the calculation — so that someone who paid \$250,000 for their apartment would not reach an income level at which they would have to start paying surcharge as soon as those who paid much lower ML prices for their apartments.

If implemented, **this formula will gradually create a deficit in our operating budget as few, if any, of the new buyers will ever reach the threshold where they must start paying surcharge income—effectively eliminating surcharge income over time.** As current owners stop paying surcharges (when their income goes down with retirement, for example), there will be no new owners to make up this deficit in the budget.

Instead of trying to devise a workaround, the sponsors of the Article 11 plan have avoided all mention of this issue in the Proxy Statement.

In 2013, when Article 2 to Article 11 conversion was first discussed, now deceased CPCT member Joan Meyler, Esq. wrote to the Bureau Chief of the Real Estate Finance Bureau of the Attorney General’s Office (who at the time was Ms. Erica Buckley, and who is now the Cadman Board’s 2 to 11 attorney) about this and other issues related to conversion. She noted that “Section 501(c) of the Business Corporation Law requires that ‘each share shall be equal to every other

<sup>6</sup> The West Village Houses HDFC Regulatory Agreement provided that if the Board even attempted to breach it, the City could revoke the exemption.

<sup>7</sup> Staff from the Urban Homesteading Assistance Board indicated that they knew of no HDFC that collects surcharges.

share of the same class.” In her response to Ms. Meyler, then Assistant Attorney General Buckley wrote:

*Surcharge under Article XI of the PHFL.*

*Article XI of the PHFL does not contain any provisions similar to the surcharge provision contained in Article II of the PHFL. Should the Article XI corporation wish to implement a surcharge akin to the one provided under Article II it would have to include provisions for such surcharges (including a means test) in the Certificate of Incorporation. The surcharge would have to treat all shareholders equally so as to be consistent with § 501(c) of the General Business Law.*

The Proxy Statement’s Certificate of Incorporation does not include provisions for surcharges. It therefore appears, from our 2 to 11 attorney’s previous statement, above, that no surcharges may legally be collected, so we would lose that (approximately) \$400,000 income annually.

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## LOSS OF FIRST SALES/DOUBLE EQUITY INCOME

Since 2009 we have charged new buyers “double equity” (also known as a “first sales assessment”) and used the “double” part of the purchase price to help pay for capital repairs. We will lose this “double equity” if we convert to Article 11. Projections about how much money flip taxes will generate in an HDFC Cadman must first subtract this loss of first sales income, and also subtract the loss of surcharge income—which makes the net gain in monies for capital repairs less than is being promoted.

In addition, following conversion, those cooperators who paid double equity will not make as much profit from the sale of their apartments as those who moved into Cadman Towers before 2009. It seems especially unjust that those cooperators who have been subsidized by the taxpayers of New York City the longest would get disproportionately more in sale proceeds.

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## DIMINISHING FLIP TAXES WILL NOT RAISE ENOUGH REVENUE LONG-TERM

At a Cadman HDFC, any time an apartment changes ownership, the selling shareholder pays a transfer fee, known as a “flip tax,” to Cadman Towers. The shareholder pays 50% to Cadman the first time the apartment is sold. But upon all subsequent sales, the flip tax is only 3%. Any transfers to a resident immediate family member yields no flip tax for Cadman.

Based on the annual turnover at Cadman (14 apartments per year, on average, per the Proxy Statement) and the amount of flip tax money each potential sale would generate, we can determine that this plan will not yield a reliable income stream to fund major capital repairs. For the first few years after conversion, Cadman would make an average of 50% on each sale—roughly \$112,000 from each apartment based on the prices in the Proxy Statement—but as the years pass, an increasingly large portion of apartments turning over will yield only the 3% flip tax rate (roughly \$9,000 per apartment).

In addition, the real estate profession considers flip taxes to be speculative and not “dependable.”<sup>8</sup>

<sup>8</sup> e.g., SIDRANSKY, A. J. (2019, April). Capital Reserve Funds: How Much Do You Really Need? *The Cooperator*. <https://cooperator.com/article/capital-reserve-funds>



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## FEWER SUCCESSION RIGHTS

Mitchell-Lama has extensive rules related to the succession rights of an apartment and its sales.

**Note that succession is different from inheritance.**

To *succeed* to an apartment means your family member will be able to live in the apartment as a shareholder. To *inherit* means that the person named in a will is given the money when the apartment is sold to a qualifying purchaser. Anyone of your choosing can *inherit* the proceeds from your apartment, but there are severe limitations on who can *succeed*, i.e., live in the apartment as a shareholder after you are gone.

In both ML and HDFC, only immediate family members who have lived in the apartment for two years can succeed, but there are important differences in the definition of “immediate family member” between ML and the proposed Cadman HDFC. There is also conflicting information in different places in the Proxy about this:

Mitchell-Lama Rules	In Proxy for HDFC (p.24)	In Reg. Agr. Term Sheet
Spouse or domestic partner, and their children, step-children, parents, brother, sister, grandchildren, nephew, niece, uncle, aunt, grandparents, father- or mother-in-law, son- or daughter-in-law	Spouse or legal domestic partner and their children, step-children, parents, brother, sister, grandchildren	Spouse or domestic partner, children, and step-children

The discrepancies between the definitions in the Proxy Statement and those in the Regulatory Agreement Term Sheet (Exhibit 1 of the Proxy Statement) make the need for the *full* Regulatory Agreement even more important.

**Also, it is important to note that in an HDFC Cadman, succession rights can only be claimed one time, while there are no limits in a Mitchell-Lama.**

So, if you and your children live with your shareholder parent, after conversion, you could remain as a shareholder without paying a flip tax when your parent leaves, but your children will not be able to stay in their home without paying a flip tax when you leave.

The ML rules are also more generous to seniors: an “immediate family member” who is over 62 or disabled has only to live with a shareholder for one year to gain succession rights. In an HDFC Cadman, that person must not only qualify as an “immediate family member,” according to the more stringent HDFC rules, but also have lived with the shareholder for two years and have been listed on the Income Affidavit.

## CAN YOU CHOOSE YOUR OWN BUYER?

The question of whether you can sell your apartment to a family member (or another person) who does not live with you (or has lived with you for less than the required two years)—but who would pay the flip tax—is unclear. The Proxy Statement contains conflicting information on this question. In one place it appears as if this might be possible, and in another place, it indicates that all sales, other than transfers to those who have succession rights or are on the proposed internal waiting list, must go through Housing Connect, which operates via a lottery system.

## INTERNAL TRANSFER CONFUSION

Policies on upsizing and downsizing apartments are written into the ML rules, but not into Article 11 law. This is one of the exceptional features of ML: you can move easily when your family size changes, and cooperators spend very little time having to pay for both apartments. This ability to upsize and downsize relatively easily would be lost if we converted to Article 11.

How an internal transfer process and list will work is a cause of concern since it is not spelled out in the Proxy Statement. What appears likely is that it will be more complicated and much more costly as an HDFC Cadman. For example, current ML shareholders who move to a larger apartment when their family size changes can use some of their equity to pay for the larger apartment and those downsizing can apply most of their equity towards the smaller apartment. All of this appears to be lost with a conversion from Article 2 to Article 11, and the cost to purchase a different apartment will be much higher.



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## NO MITCHELL-LAMA PROTECTIONS

The Mitchell-Lama program is governed by extensive rules and regulations. The Mitchell-Lama Reform Act of 2021 contains provisions to protect shareholder rights in Mitchell-Lama cooperatives, including the use of secret ballots for voting, and measures to increase transparency in Board of Directors operations. These legally mandated shareholder rights would be lost if we convert to an HDFC.

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## RENTER RISKS

There are a wide range of risks and problems with staying as a renter if Cadman converts to an HDFC. Renters give up the right to have any say in the governance of the development, have no rights of succession, give up their garage space, and will have automatic 3% annual rent increases—starting at the current maintenance cost and increasing rapidly thereafter. Note that those staying as renters are offered only one-year leases, rather than two-year leases. Two-year leases are more economical because the rent increases do not compound as quickly as those in one-year leases.

Additionally, the Proxy Statement budget does not include a line item for paying back the equity to those who choose to become renters. This poses a financial risk if a large number of people decide to stay as renters.

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## SALES PRICES CONFUSION

The rules for sales prices are clear in ML law. But the Proxy Statement does not state whether the sales prices listed for apartments are the **maximum** (so apartments could be sold for less) or the **only** price that someone must pay. Separately, the Board has indicated that the prices listed in the proxy are the firm prices. If there is no flexibility on pricing an apartment, will buyers invest in apartments that have few or no renovations? It is unclear what the pricing protocol will be in cases where some shareholders have spent a lot of money on renovations, while others have not.

...those staying as renters are offered only one-year leases, rather than two-year leases. **Two-year leases are more economical** because the rent increases do not compound as quickly as those in one-year leases.

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## USE OF HOUSING CONNECT AND APARTMENT SALES UNCLEAR

As a Mitchell-Lama, apartments at Cadman are sold to the next person on the waiting list and the management office processes the sale. The Proxy Statement asserts that all future sales (excluding those involving succession or the “Insider Waiting List”) will take place through Housing Connect should we convert to an HDFC. The plan indicates that Housing Connect is governed by a lottery system, but the Proxy Statement does not explain how this will work at Cadman.

From our reading, when a vacancy comes up on Housing Connect, a lottery is conducted of all potential buyers registered with Housing Connect who match the criteria for the apartment, and then only those who get picked in the lottery are offered the apartment. This would seem to make the process much more complex, time consuming, and nearly impossible for the management office to provide an

appropriate amount of support through the process. How or if this would work if you had a specific person you wish to sell your apartment to, for flip tax payment only, is unclear. This should have been made clear in the Proxy Statement.

Additionally, in ML, the maximum time that a ML shareholder or the heirs are responsible for the apartment maintenance is three months after the key is returned. Will sellers have to continue to pay the maintenance for more than three months in an HDFC Cadman while the Housing Connect process plays itself out? There is no language in the Proxy Statement that clarifies this potential expense for selling shareholders.




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## SHRINKING POOL OF WILLING, INCOME-ELIGIBLE BUYERS

As the prices of our units quadruple upon an Article 2 to Article 11 conversion, we cut out a large swath of people who would be able to afford to purchase a Cadman apartment if we stayed a ML. MLs have a broad range of affordability and are affordable to those households making between about 40% of AMI and 125% of AMI.

Simply put, this plan makes our development no longer affordable to the moderate-income, working New Yorkers who have always lived here and considered this their “forever home.” The diversity and stability of our community would change.

The Proxy Statement claims that HDFC sales prices are set to be affordable to those at 80% of AMI (and up to 125% of AMI), but by our calculations (using the sales prices in the Proxy Statement and current mortgage rates) most apartments will be affordable only to households with incomes higher than about 90% of AMI, assuming the buyer has to take a mortgage. (*See the Appendix for an illustration of the difference in prices and affordability.*)

This leads to another potential problem related to sales of apartments:

Over time, the pool of eligible buyers will shrink since, according to the Proxy Statement, our HDFC purchase prices will increase by 3% each year.

If AMI rates don't rise as fast as HDFC purchase prices, the pool of potential buyers will shrink even further. There is a hard cap of 125% of AMI for an individual or family to be eligible to purchase an apartment at an HDFC Cadman. If the AMI does not go up as much as 3% a year, or AMI goes down, then the pool of potential buyers for HDFC apartments will get smaller and smaller and could disappear.

The Proxy Statement indicates that if the apartments are not affordable to people/families at 125% of AMI or lower, then the prices of the apartments will be lowered. In 5 of the past 10 years, the AMI increase was lower than 3%. Since AMI data is 3 years behind, we have yet to see the impact of the pandemic. Those in the small pool of potential buyers may look elsewhere when they understand that they may take a loss on their purchase of an HDFC Cadman. Lack of sales would mean a financial crisis for an HDFC Cadman.

In addition to limitations on their potential for making a profit, buyers in the regular real estate market tend to be dissuaded by high flip taxes, strict income requirements, and extensive regulatory terms.

...this plan makes our development no longer affordable to the moderate-income, working New Yorkers who have always lived here and considered this their “forever home.” **The diversity and stability of our community would change.**

# ALTERNATIVES TO ARTICLE 2 TO ARTICLE 11 CONVERSION

Asking what we should do about capital repair needs if we do not do 2 to 11 is **asking the wrong question.** The right question is **will 2 to 11 actually work?** It certainly doesn't work for those of low- and moderate-income who will be priced out, and it **certainly comes with many unknowns and potentially messy consequences.**

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## THE PENN SOUTH MODEL

Penn South is an Article V (5) not-for-profit cooperative in the Chelsea area of Manhattan. Like Cadman, they've needed repairs and improvements for their aging buildings and infrastructure. Instead of privatizing or converting to an HDFC model, they chose to stay not-for-profit by implementing an increase in equity for all apartments. Under this plan, new buyers pay the equity up-front for the apartment, similar to our double equity/first sales program, but with a much larger assessment. Their initial purchase prices are now about half of what new buyers would be charged if Cadman converted to an HDFC. No one is taking money out of the building, and Penn South remains a not-for-profit.

This model would undeniably exclude some of the moderate-income people on our waiting list who would not be able to afford an apartment at higher costs, but not nearly as many as would occur if we reconstituted as an HDFC. An adaptation of this type of plan would be, in our opinion, far superior to an Article 2 to Article 11 conversion, as we would remain ML and avoid being the first in an experiment littered with potential pitfalls. **There is simply no reason to convert to an HDFC except to give a profit to outgoing shareholders.**

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## UNITING TO DEMAND TRULY AFFORDABLE SOLUTIONS TO OUR CAPITAL REPAIR NEEDS

ML cooperatives around the city and state are facing the dual challenge of maintaining aging buildings and affordability at the same time. Those developments that were not mired in privatization battles are doing better than those, like Cadman, that wasted so much time, energy, and money pursuing privatization.

Why? Because these developments, by accepting very low cost refinancing offers from the government as soon as they were available (2004), were able to accomplish their capital repairs in a timely way without burdening shareholders with costly assessments and maintenance increases.

In the late 1990s and early 2000s, there were a few failed attempts at Cadman Towers to develop a "feasibility study" about privatization. Eventually cooperators voted, by a small margin, to give the Board permission to hire a lawyer to conduct the study. At around the same time, in 2004, under the Bloomberg administration, the city devised a plan to help ML developments: the Mitchell-Lama Preservation Program. Cadman Towers received a generous offer from the city, including a \$5 million grant for repairs and an offer to refinance our mortgages so that there would be no increase in mortgage payments.

When the Cadman Board would not consider this low-cost refinancing offer and instead chose to continue to pursue privatization, the Committee to Preserve Cad-

man Towers organized a campaign and vote to accept this offer and won the vote. But rather than accept this democratic decision, the Board ignored the vote and continued to pursue privatization. Imagine how much cheaper our roof, garage, and third floor repairs would have been had they started in 2005 instead of recently. It was only after it was clear that there were not enough shareholders interested in privatization that the Board finally refinanced our mortgages and started the repairs we needed, at much higher costs.

2 to 11 is a diversionary and temporary tactic that does little to solve the underlying problem of long-term funding for affordable housing either for our very own affordable housing—Cadman—or for the affordable housing crisis throughout New York City. Article 2 to Article 11 conversion enables HPD to relinquish the responsibility of devising a sustainable plan to keep Mitchell-Lama affordable to low- and moderate-income New York families.

CPCT believes that we can fight to remain affordable to working people by joining together with other ML co-ops in the same position to secure the funding we need to fix our aging buildings. Cooperators and elected officials across the city are already working together to address our common issues, and they have yielded substantive results: most recently, a coalition of Mitchell-Lama advocacy groups successfully organized to pass the Mitchell-Lama Reform Act of 2021, signed into law by Governor Hochul in March 2022.

We have a winning and time-tested model in Mitchell-Lama. We must organize to keep it and improve it rather than plunge into an untried and risky plan that will change the fundamental nature of our community.

Instead of privatizing or converting to an HDFC, **Penn South managed to meet its repair needs while still remaining not-for-profit.**



## APPENDIX: COMPARING SALES IN ML VS. HDFC



Buyers for an HDFC Cadman will be those people whose household incomes are at or below 125% of AMI, and who can afford to pay the monthly costs. With the much higher sales prices of an HDFC co-op versus a ML co-op, this potential pool of HDFC purchasers will be much smaller than for a ML. While those who have family wealth or substantial savings can pay cash for the purchase, most moderate- and middle-income working people, for whom this subsidized housing is intended, will have to get a mortgage.

To illustrate why it may be hard to find buyers for an HDFC Cadman, other than those who are asset wealthy but lower income, we'll compare two sample apartments. For this comparison we will assume each buyer:

- is taking a 30-year mortgage at a 5.5% interest rate with a 10% down payment, and
- we will use a common definition of “affordable housing,” in which an occupant pays no more than 30% of their gross income for housing.

### Cadman Towers in the Mitchell-Lama program

Apartment type & household size	ML purchase price	Monthly maintenance	Monthly mortgage	Total monthly cost	Minimum annual income needed to afford at 30% spent on housing
1-bedroom, E line, 1 person:	\$49,261	\$1,143	\$252	\$1,395	<b>\$55,789</b> (59.7 % of AMI)
2-bedrooms, C line, 2 adults and one child	\$61,123	\$1,411	\$312	\$1,723	<b>\$68,924</b> (57.4% of AMI)

### Cadman Towers as an HDFC

Apartment type & household size	HDFC purchase price	Monthly maintenance	Monthly mortgage	Total monthly cost	Minimum annual income needed to afford at 30% spent on housing
1-bedroom, E line, 1 person:	\$193,408	\$1,143	\$988	\$2,131	<b>\$85,253</b> (91.3% of AMI)
2-bedrooms, C line, 2 adults and one child	\$253,960	\$1,411	\$1,298	\$2,709	<b>\$108,304</b> (90.2% of AMI)

When someone says that Cadman will still be “affordable” as an HDFC, you can see that we would be much less affordable and available to only those potential buyers with a much higher income. Of course, if a buyer is only able to get a 15-year mortgage at the increasing borrowing costs of late, then the cost per month would be even higher. While the plan claims that prices are set to be affordable to those making 80% of AMI, we see that this is misleading when we view the actual numbers.

# GLOSSARY

## Affordable Housing Formula = 30% of Gross Income

Although widely used in the housing field, the formula that 30% of gross income equals affordable housing is deeply flawed. When low- and moderate-income people pay 30% of their budget for housing, they simply do not have enough money left over for other expenses. Mitchell-Lama co-ops do not use this formula. Instead, we use a more realistic calculation for affordability.

## Area Median Income (AMI)

Each year the government publishes the Area Median Income (AMI) for the NYC Metropolitan Region (and other areas around the country). AMI is 3 years behind—so the recently published AMI percentages for 2022 are based on 2019 data. The calculation takes every household with an income in the region and finds the one that is right in the middle—so 50% of the households earn less and 50% earn more.

AMI calculations are used to determine eligibility for many 'affordable' housing projects but have not historically been used for ML co-ops. ML co-ops determine who is eligible based on who can afford to pay the maintenance.

## Decommodified Housing

Many housing policy experts and affordable housing advocates are promoting "social housing," or "decommodified housing," to respond to the housing crisis. "Decommodified" housing is insulated from the whims of the speculative market and is meant to be permanently and deeply affordable. ML co-ops are the premiere example of this kind of housing, as they cannot be bought or sold for a profit or for a loss.

## NYS Private Housing Finance Law (PHFL): Article II (2) & Article XI (11)

The PHFL is made up of parts called "articles." Article 2 describes the Mitchell-Lama Program and the program's statutory provisions. Article 11 describes the statutory provisions for the type of housing known as Housing Development Fund Corporations (HDFCs).

## Operating/Capital Budgets

The operating budget includes the funds needed to pay for the day-to-day operation of the building (e.g., staff salaries, insurance, etc.). The capital budget reflects the repair needs of the building.

## Proxy Statement

This is the semi-privatization plan for Cadman Towers. The Proxy Statement is

in lieu of (or is a proxy for) an Offering Plan that would be required with a plan for full privatization.

With full privatization, a Mitchell-Lama cooperative interested in dissolving (leaving the Mitchell-Lama program) and reconstituting (becoming a market rate cooperative) must, under the Martin Act, develop an Offering Plan. Before a vote, the plan is submitted to the Attorney General's office, who reviews it to make sure that all the risks of the plan are disclosed to shareholders.

With semi-privatization, the Attorney General's office issued an exemption from this full vetting process, instead requiring only an abbreviated Proxy Statement. But the Cadman Proxy Statement is missing much of the information that we need to decide if we want to accept the plan.

## Semi-privatization

This term describes the plan under consideration at Cadman to dissolve as a Mitchell-Lama cooperative and reconstitute as a Housing Development Fund Corporation cooperative. These conversions are also known as 2 to 11, going to Article 11, or ML to HDFC. Elsewhere, Roman numerals are used (Article II to Article XI). We use these terms interchangeably throughout this booklet.

## WHAT'S SO GREAT ABOUT MITCHELL-LAMA?

Inspired by New Deal thinking, Mitchell-Lama developments were modeled on the cooperative housing movement spearheaded by the United Housing Foundation, which created equitable, integrated, permanently affordable, nonprofit, shared equity cooperative developments. Brilliantly designed as an affordable place to live rather than as real estate speculation, ML cooperatives have been called one of the great successes in housing policy:

- we buy our 'limited equity' apartments for prices far below market value;
- we pay shelter rent tax instead of regular real estate taxes (our main government subsidy);
- we can get government-sponsored mortgage packages with extremely favorable terms, and have access to low-cost loan programs;

- apartments are sold through a lottery and a waiting list that help to insure diversity and equal opportunity; and
- those whose incomes go up after they move in pay a surcharge to help support our operating costs.

When we no longer want or need to live in our not-for-profit government-subsidized housing, we get all the money back that we paid for the apartment from the next family on our waiting list. This includes:

- the limited equity we initially paid;
- the amortization (money we paid toward the building mortgages over the years);
- the money that we paid for any assessments (windows and façade assessments);
- those who paid the "double equity/first sales assessment" also get this amount back from the next family on the waiting list.



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