



CITY OF NEW YORK  
**MANHATTAN COMMUNITY BOARD FOUR**

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**LOWELL D. KERN**  
Chair

**JESSE R. BODINE**  
District Manager

December 23, 2020

David I. Pickett  
President & CEO  
Gotham Organization  
432 Park Avenue South, Second Floor  
New York, NY 10016

**Re: Utility Credit/Allowance Dispute  
Nicole at 400 West 55<sup>th</sup> Street,  
Gotham West at 592-608 11th Ave; 507-553 West 44th Street, 508-558 West  
45th Street**

Manhattan Community Board 4 (MCB4) appreciates Gotham's response to our letter dated July 15, 2020, regarding the deletion of a Utility Credit from the leases of multiple tenants of the above referenced buildings. In that response, Gotham indicated its previous property manager erroneously provided residents a Utility Credit and that tenants needed to file a complaint with the Office of Rent Administration regarding their complaints.

MCB4 is alarmed that there continues to be an ongoing lack of effective communication regarding the Utility Credit with the tenants of the above referenced buildings. Tenants continue to report they have not received notification, explanation or guidance regarding why the Utility Credit has been removed from their leases. Some tenants spoke at MCB4's November 19, 2020 Housing Health and Human Services (HHHS) Committee meeting regarding lack of response to these questions and their financial hardship resultant from this change, especially in this period of Coronavirus pandemic.

Considering the lack of trust expressed by tenants at our HHHS meetings, MCB4 at its regularly scheduled Full Board meeting on December 2, 2020, voted by a vote of 36 in favor, 0 opposed, 0 abstaining, and 2 present but not eligible to vote<sup>1</sup> to:

- Request Gotham Organization improve communications with its tenants
- Submit to MCB4, for its review, all Regulatory Agreements and other documents regarding the establishments of rents and utility allowances
- Reinstate the previous Utility Credit for all affordable apartments

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<sup>1</sup> Maria Ortiz, resident of Gotham Properties and Co-Chair of Housing, Health & Human Services Committee voted Present Not Eligible on both Committee and Full Board meetings.

until the issue is resolved by the appropriate City or State regulatory agencies

### **History of Gotham in the Hell's Kitchen Community**

Gotham Organization has done substantial residential development in MCD4. Gotham has a long track record of success in creating mixed market rate and affordable housing<sup>2</sup>. Two such residential developments are The Nicole at 400 West 55th Street and Gotham West at 592-608 11th Ave; 507-553 West 44th Street, 508-558 West 45th Street. Gotham is currently developing another market-rate/affordable housing building in Hell's Kitchen at the Covenant House site at W41st Street and Tenth Avenue.

The Nicole, opened in 2004, has 149 residential units with 30 affordable apartments. Gotham West, opened in 2013, has 1,250 units with 682 affordable apartments.

Gotham West created 1,250 new residential units including 682 permanently affordable apartments. Those affordable apartments, which were committed to in 2005 as part of the Hudson Yards Rezoning through the Hudson Yards Points of Agreement<sup>3</sup>, are targeted to those in the hard-to-reach moderate-and middle-income bands. These affordable apartments are governed by a number of financing programs and capital subsidies, including Inclusionary Housing Zoning, 421a Tax Abatement, and Low-Income Housing Tax Credits.

### **Utility Credit vs Utility Allowance**

A Utility Credit is a monthly credit against rent, normally offered in cases where either the owner provides or the tenant is required to pay the utilities, depending on the conditions as set forth in the lease. A Utility Allowance is set by federal standards from the Department of Housing and Urban Development<sup>4</sup> in establishing rent levels for various income bands. Utility Allowances are published annually and vary, whether for gas, electric or both. Those allowances are determining factors in setting initial rent in affordable housing developments. There is a great deal of confusion whether the matter at hand is a Utility Credit, Utility Allowances or some poorly administered combination of both.

### **Deletion of Utility Credit**

This deletion of the prior Utility Credit impacts 712 affordable apartments in MCB4.

From its presentation, it is unclear when Gotham noticed a discrepancy in the Utility Credit or Utility Allowance. According to the tenants, a Utility Credit began to be revoked during 2019. Instead of managing this matter in overall public and transparent manner, Gotham responded to tenants individually, creating confusion and ill will. Gotham confirmed the tenants reports of no notice of deletion of the Utility Credit until the receipt of lease renewal. Some tenants applied to New York State Housing Community Renewal, under rent stabilization, with a Petition for Administrative Review (PAR), challenging the Utility Credit deletion.

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<sup>2</sup> Inclusionary 80-20 and 70-30 projects

<sup>3</sup> West Chelsea Rezoning [Points of Agreement](#)

<sup>4</sup> [Utility Allowances](#), NYC Housing Preservation and Development, Subsidy and Payment Standards; [Utility Allowances](#), U.S. Department of Housing and Urban Development

Tenants who had previously received a Utility Credit of anywhere from \$50 to \$80 per month depending on household size are now facing an unexpected financial hardship. Particularly disheartening is this abrupt adjustment is occurring in the midst of the COVID-19, which has created financial disruption for so many.

Housing Conservation Coordinators (HCC), a community-based non-profit housing advocacy organization, began receiving notification of this issue in October of 2019 by residents of Gotham West. Subsequently tenants from The Nicole contacted HCC. As a result, HCC wrote a letter to the NYS Housing Finance Agency and has yet to receive a response.

In the November HHHS meeting, MCB4 questioned Gotham regarding the regulatory oversight of rents levels, utility credits and allowances at both Gotham West and the Nicole. It is clear there are multiple regulatory agreements and regulatory agencies involved in both these developments, NYS Housing Finance Agency, NYC Housing Development Corporation, and NYC Department of Housing Preservation & Development.

### **Conclusion**

MCB4 recognizes the complicated regulatory mechanisms and agencies involved in order to produce the much-needed affordable housing. Despite Gotham's claim of an error by a previous management company, it is critical to confirm all the facts and effectively communicate this information to the impacted tenants. In order to have an informed public discussion leading to a recommendation for resolution, MCB4 requests that Gotham submit all Regulatory Agreements and other pertinent documents regarding rent levels, utility allowances and utility credits MCB4, for its review. Further, MCB4 requests the Gotham Organization to no longer revoke the Utility Credit from any further tenants until there is a resolution to this matter by the appropriate State or City agencies. MCB4 will have members of HHHS Committee review all documentation prior to its January 2021 meeting.

Our District represents a diverse community with households with a range of income. We believe in keeping the community diversified and welcome developers who will build high quality affordable housing. Gotham Organization has worked with this community and been a good partner in ensuring that diversity.

We look forward to collaborating with the Gotham Organization to rectify this situation and ensure future transparency with tenants of the affordable apartments regarding the Utility Credit or Allowances in these and future developments.

Sincerely,



Lowell Kern  
Manhattan CB4, Chair



Joe Restuccia, Co-Chair  
Housing, Health & Human Services Committee

cc: Hon. Corey Johnson, New York City Council Speaker  
Hon. Gale A. Brewer, Manhattan Borough President  
Hon. Jerrold Nadler, U.S Congressman  
Hon. Brad Hoylman, New York State Senate  
Hon. Richard Gottfried, New York State Assembly  
Hon. Linda B. Rosenthal, New York State Assembly  
Hon. Jerry Nadler, U.S. Congress  
Leslie Thrope, Executive Director, Housing Conservation Coordinators  
Commissioner/CEO, RuthAnne Visnauskas, Homes & Community Renewal - Office of Rent  
Administration  
Chairman - Kenneth G. Adams, NYS Housing Finance Agency  
President, Eric Enderlin, NYC Housing Development Corporation  
Commissioner, Louise Carroll, NYC Housing Preservation & Development