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Office of Rent Administration
New York State Division of Housing
& Community Renewal
Gertz Plaza
92-31 Union Hall Street
Jamaica, New York 11433

Re: *Overcharge Complaints and Requests
for Administrative Determination
Independence Plaza North*

Dear Rent Administrator:

This firm represents the interests of the Independence Plaza North Tenant Association Incorporated (IPNTA), and each of the tenants filing an overcharge complaint that accompany this letter. Each tenant is also requesting an administrative determination of the regulatory status of the premises. Attached is copy of the first page and signature pages of the retainer agreement.

It is the tenants' position that the premises are subject to rent stabilization due to the receipt of J-51 tax abatements for the Premises.

This letter is attached to and forms part of each overcharge complaint by the tenants of Independence Plaza North (the "premises"), a 1332 unit housing development in the Tribeca neighborhood of Manhattan consisting of three 39-story towers at 40 Harrison Street, 80 North Moore Street, and 310 Greenwich Street, and townhouses at 312-372 Greenwich Street and 43-55 Greenwich Street.

Independence Plaza North formerly operated under the Mitchell Lama Program. On March 12, 2004 the IPNTA entered into an agreement with Independence Plaza Associates LP wherein IPNTA agreed not to oppose the owner's withdrawal from the Mitchell-Lama program. The agreement (Exit Agreement") purported to establish the rents and tenure rights of all legal tenants

living in Independence Plaza North at the time that the Owner was scheduled to leave the Mitchell Lama program. However, the IPNTA did not know about the J-51 tax abatements when it entered into the Exit Agreement.

In exchange for a promise by IPNTA that at least two-thirds of Independence Plaza North (“IPN”) tenants would apply for government subsidized enhanced vouchers (“sticky vouchers”) the owner promised that the initial rents payable by tenants who did not qualify for the vouchers (“Qualified Non-Sticky Voucher Tenants”) during the 60 day Period shall be the “last Mitchell-Lama rent charged”...plus an increase tied to the Rent Guidelines Board increases under rent stabilization programs. The Landlord subsequently breached that agreement for many of the tenants.

As defined in the Exit Agreement the “Exit Date” from the Mitchell-Lama program was the date the owner prepaid the property mortgage. This date was projected in the Agreement to be June 28, 2004.

Subsequently, the IPNTA discovered that the Premises had been receiving a tax abatement pursuant to New York City Administrative Code §§ 11-243 and 11-244, popularly known as a “J-51” tax abatement. The landlord then got The Department of Housing Preservation and Development to accept repayment in April of 2006.

Because of the J-51 tax abatement on the Premises, pursuant to, *inter alia*, Real Property Tax Law §49(7), New York City Administrative Code §§ 26-504(c), 11-243(d)(2), 11-243(i) and 11-244(d), and 28 RCNY §5-03(f), on the Exit Date, when the Premises was withdrawn from the Mitchell-Lama program, they immediately became subject to rent stabilization.

Pursuant to New York City Administrative Code § 26-512(b)(3) and 9 N.Y.C.R.R. 2521.1(j), the initial rent stabilized rent for each apartment at the Premises as of the Exit Date is the “rent charged to and paid by the tenant in occupancy on the date” that regulation under the Mitchell Lama program ends (“last Mitchell Lama rent”).

The owner has failed to register the Premises, or any of the tenants’ apartments therein, with the New York State Division of Housing and Community Renewal (“DHCR”) as rent stabilized.

Because of the owners’ failure to register the Premises or any of the tenants’ apartments therein, the tenants’ legal rent was, from the Exit date of June 28, 2004, frozen at the Last Mitchell Lama Rent, pursuant to New York City Administrative Code §26-517(e) and 9 N.Y.C.R.R. 2528.4.

The above issues were first raised in both *Denza v. Independence Plaza Associates*, Supreme Court, New York County, Index No. 117673/05, and *Independence Plaza North Tenants’ Association et al. v. Independence Plaza Associates, LP et al*, Supreme Court New York County, index no. 113831/04. Discovery is pending in the *Denza* case, as well as a motion to refer the case to the DHCR. In *IPNTA*, the deadline for summary judgment motions is approaching.

However, the complainants herein are not parties to the above referenced litigation. In *Denza* the Plaintiffs are limited to seven tenants that moved into the Premises after the Exit Date under free-market leases. In the *IPNTA* case, the Plaintiffs are the Tenants Association of individuals who have been denied proper leases under the Exit Agreement, and are seeking declaratory and injunctive relief.

None of the tenants that are herewith filing an overcharge complaint and request for administrative determination are parties to either of the above cases. The tenants are filing these overcharge complaints in order to preserve their claims. They cannot wait until further proceedings, as their claims would be barred by the four-year statute of limitation.

Through the pending litigation and discussions with counsel for the landlord, the owner has been on notice for several years of the tenants' claims.

The base date rent is that paid in June, 2004. As at that time, the Premise were under the Mitchell-Lama program, the base date rent is the last Mitchell-Lama rent. Each rent is set forth in detail in the annexed complaints.

It is the last Mitchell-lama rent on which the overcharges must be determined for each tenant. However, the degree of overcharge of each tenant varies depending upon the following categories of tenants:

Free-Market Tenants - those tenants who moved into the premises after the Exit Date and were issued leases falsely representing the status of their apartments to be "not subject to any form of rent regulation" and without the required notice that of the existence and expiration date of the J-51 tax abatements for the Premises.

LAP Tenants - those tenants who did not qualify for enhanced vouchers and received "Landlord Assistance Program" leases providing for the tenants to pay their last Mitchell-Lama rent plus increases tied to the Rent Guidelines Board increases. Those increases were unlawful because the landlord failed to register the premises.

Sticky Voucher Tenants - those tenants who applied for and received enhanced vouchers (a/k/a "sticky vouchers") under 42 USC 1437f (t)(1)(a), a Section 8 program in which the owners are able to recover rents at close to market levels with eligible tenants paying up to a third of their incomes in rent, and the federal taxpayer making up the remainder. The rents that the tenants pay are 30% of their income or the Last Mitchell-lama rent. Most of the tenants' rents were increased. Additionally, some underhoused tenants moved to more expensive apartments.

In addition, some tenants have been charged illegal rents for their parking spaces. Some of the tenants have filed claims concerning only their parking spaces. Those complaints are marked “garage only”.

Parking spaces provided to the tenants “are subject to the rent limitation guidelines of the Rent Stabilization Law (see, Rent Stabilization Code §§ 2520.6[r][3] and [r][4][x]; see also, *Matter of Netherland Operating Corp. v. Eimicke*, 135 A.D.2d 352, 521 N.Y.S.2d 245, lv. denied 71 N.Y.2d 802, 527 N.Y.S.2d 768, 522 N.E.2d 1066).” *Lyndonville Properties v. New York State Division of Housing, Community Renewal*, 287 A.D.2d 413, 732 N.Y.S.2d 331 (App. Div. 1st Dept., 2001).

The tenants are each entitled to a recovery of overcharges including treble damages. The owner was at all relevant times, on notice of public information that showed that the Premises received J-51 tax abatements that requires, in exchange, that the Premises be subject to rent stabilization. On information and belief, the owner was, at all relevant times, on notice of information in its own records from which the tenants’ lawful rents could be calculated, and which show that tenants’ rents were and are above the legal regulated rent for their apartments.

The owner cannot sustain its burden of demonstrating that the overcharges were not willful. Pursuant to NYC Admin. Code § 26-516(a), The tenants are entitled to treble damages equal to three times the difference between their monthly rent payments and security deposits, and the Last Mitchell Lama Rent.

The tenants stand ready to supply any further information as the DHCR may require.

Very truly yours,

Seth A. Miller