



CITY OF NEW YORK

MANHATTAN COMMUNITY BOARD FOUR

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CHRISTINE BERTHET
Chair

JESSE BODINE
District Manager

November 20, 2014

Ms. Vicki Been, Commissioner
Ms. Miriam Colon, Assistant Commissioner
NYC Department of Housing Preservation and Development
100 Gold Street, 5th floor
New York, NY 10038

Re: 505 W. 37th Street – lease rider

Dear Commissioner Been and Assistant Commissioner Colon:

At its October 16, 2014 meeting of Manhattan Community Board 4's Housing, Health and Human Services (HH&HS) committee, a tenant living in one of the low income inclusionary housing units at 505 West 37th Street attended to request assistance understanding the apparently conflicting terms of the lease rider. The concerns raised by this tenant and set forth below, clearly identify the need for greater oversight of the affordable units developed under programs such as the Inclusionary Housing Program and/or the 421-a Program and can be broadly applied to the thousands of low income units located in Community District 4 that have been developed through these programs.

Background

505 West 37 Street, an 835 unit development located in the Hudson Yards District, was developed and financed under the 421-a tax abatement and Inclusionary Housing Programs by Midtown West B. LLC, an affiliate of Rockrose Development Corp. Pursuant to the restrictions set forth in the Lower Income Housing Plan (LIHP) between Midtown West B. LLC and City of New York dated June 5, 2008, 168 units are set aside for lower income households for the lifetime of the development. The tenant who attended the HHHS meeting lives in a lower income unit identified in Exhibit D of the LIHP as an inclusionary housing unit and therefore affordable in perpetuity. Please note that on or about March 2010 the property was transferred to 505 West 37 Street LLC, c/o TF Cornerstone Inc.

We were deeply concerned when we reviewed the terms of the lease rider for what should be, very simply, a permanently affordable, rent stabilized unit for lower income households. Because the unit is financed under both the 421-a program and the inclusionary housing programs, regulations for each of the programs are included in the rider, resulting in a jumbled set of regulations that are oftentimes contradictory, and at best utterly confusing to the lay tenant. Relevant paragraphs from the "421-a Rider to the Stabilized Lease Agreements" are excerpted below (copies of the original and renewal lease riders are attached in their entirety, with the tenant's name redacted for privacy reasons):

1) The “421-a Rider to Stabilized Lease Agreements” attached to Original Lease (copy attached, and marked “With Original Lease”), lists different dates on which the Rent Stabilization benefits will expire, (presumably to comply with different requirements of the varying financing mechanisms) as follows:

(Paragraph 1) “pursuant to Section 421-a, on hundred sixty-eight (168) of the apartments in the buildings are deemed to be substantial governmental assistance affordable units (SGA Affordable Units”) which are to remain rent stabilized for at least thirty-five (35) years. This apartment is an SGA affordable unit (emphasis added).”

(paragraph 2): “Owner has obtained real estate tax exemption benefits pursuant to RPTL Section 421-a. As set forth in the HPD LIHP regulatory agreement, the apartment will be subject to the rent stabilization Law (RSL) and Code indefinitely (emphasis added).”

(paragraph 5): “ Owner in good faith believes that the Section 421-a tax benefits will expire on or about June 30, 2031 and that the rent stabilization requirements for SGA affordable units pursuant to section 421-a will expire on or about June 30, 2046. After such date, the apartment will not be regulated as the amount of rent that may be charged for the apartment nor will the owner be legally obligated to renew the lease, except as required by the HFA Regulatory Agreement or the HPD LIHP regulatory agreement... (emphasis added).”

Since the unit is an inclusionary housing designated unit and therefore affordable in perpetuity, the expiration date of the affordability requirement under the 421-a program is not relevant to the tenant in occupancy and the inclusion of this language is misleading. In fact, the tenant who came to the HHHS meeting had no idea that the apartment was part of the inclusionary housing program and therefore affordable in perpetuity.

2) The “421-a Rider to Stabilized Lease Agreements” attached to most recent lease renewal (copy of lease rider is attached, marked “Last Renewal”), deletes the sentence in paragraph 5 that extends the affordability to year 2046. The relevant section (with the deletion added) is as follows:

(5th paragraph) “Owner in good faith believes that the Section 421-a tax benefits will expire on or about June 30, 2031 ~~and that the rent stabilization requirements for SGA affordable units pursuant to section 421-a will expire on or about June 30, 2046~~. After such date, the apartment will not be regulated as the amount of rent that may be charged for the apartment nor will the owner be legally obligated to renew the lease, except as required by the HFA Regulatory Agreement or the HPD LIHP regulatory agreement... (emphasis added).”

This building was built just as the Section 421-a of RPTL reforms of 2006 went into effect, with the most notable change being the extension of the affordability restrictions from 20 years to 35 years. We assume that the change in affordability term from year 2046 to 2031 reflects a new interpretation as to whether the building is subject to pre-2006 regulations or the post-2006 reforms under the 421-a provisions. While this discrepancy would be of greater concern if in fact the unit was not also subject to the more stringent regulations of the inclusionary housing program, it reinforces our argument that the language in the rider is misleading.

3) Finally, paragraph 3 of the “421-a Rider to Stabilized Lease Agreements” includes language permitting up to eight annual rent increases above that approved by the Rent Guidelines Board of 2.2% annually during the period that the tax abatement is beginning to be phased out. This provision is contrary to our understanding that the additional 2.2% rent increase(s) do not apply to the affordable units in a building financed under the 421-a program (and particularly if those same units benefit from the inclusionary housing program):

“Under the terms of Section 421-a of the regulation promulgated by the NYC DHPD and the RSL and Code, there is a “gradual diminution” of the 421-a benefit. Effective on the anniversary date of the commencement of the initial lease issued to you for this apartment. During the first year of such “gradual diminution” of benefit (the “anniversary date”) owner will begin to charge and collect from you each month an amount equal to 2.2% of the apartment’s actual monthly rent in effect at the commencement of the “gradual diminution” period (the 2.2% rent increase”). The first year of the gradual diminution” beginning the thirteenth year of the partial tax exemption benefits, which is projected to commence during the City’s July 1, 2023 through June 30, 2024 fiscal year. There after there will be seven (7) 2.2% rent increases on each successive anniversary date. All eight (8) increases on each successive anniversary date. All eight (8) 2.2% rent increases are in addition to any other rent increases that may be permitted under rent stabilization but are subordinate to the rent provision of the HFA regulatory agreement and the HPD LIHP written agreement.”

CB4 was pleased that HPD recently announced that it would actively enforce affordability restrictions on publicly financed projects. As the number of inclusionary housing units developed throughout the city will expand significantly with the introduction of the Mandatory Inclusionary program, it is important that the operational concerns identified by CB4 are addressed in advance. CB4 has a number of recommendations governing proper oversight of the program and tenant education to ensure the continued affordability of the units, as follows:

- 1) Standardized language for lease riders: There should be a standardized lease rider for permanently affordable units developed under the inclusionary housing program that clearly sets forth the length of the affordability, rent stabilization status and tenant rights, and permissible rent increases. It is particularly important that in buildings financed under multiple programs, the language included in the rider reflect only the regulations governing the most restrictive of the programs and be set forth in plain language understandable to the lay person.
- 2) All properties developed with public financing should be maintained in a centralized database that is available to the public that includes information on affordability restrictions, with expiration dates, if any, and type of financing.
- 3) Regular monitoring and enforcement by HPD to ensure that units developed under the inclusionary program and those under the 421-a tax abatement program are in fact used for affordable housing; and,

- 4) Conduct educational workshops for tenants living in affordable units to ensure that they understand their rights and the restrictions governing their unit.

We would welcome the opportunity to discuss these recommendations with you in the near future. Community District 4 has the largest number of units developed under the inclusionary housing and 421-a programs to date in New York City. The inclusionary housing program in particular, has been very successful in our district and increasingly has become a staple in our permanent affordable housing stock. As such, we have a vested interest in ensuring that these units have proper oversight and that tenants are adequately informed so that these units remain an affordable housing resource.

Sincerely,

[signed 11/19/2014]

Barbara Davis, Co-Chair
Housing, Health &
Human Services Committee



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



Christine Berthet
Chair
Community Board 4

CC: Brad Hoylman, NYS Senator
Richard Gottfried, NYS Assemblymember
Corey Johnson, NYC Councilmember
Gale Brewer, Manhattan Borough President

Enclosure: 505 West 37th Street – 421-a rider stabilized lease agreement

With Original Lease

§ 421-A RIDER TO
STABILIZED LEASE AGREEMENTS (AFFORDABLE UNITS)
FOR 505 WEST 37TH STREET

LEASE DATED: _____	Owner: 505 West 37 L.L.C.
Apartment _____	in Building at 505 West 37 th Street, New York, NY 10018
TENANT(S): _____	

Tenant ("You") is about to sign and deliver to Owner a Lease or a Lease Renewal (the "Lease") for the Apartment in the Building indicated above, dated as of the date shown above. In order to induce Owner to sign the Lease and rent the Apartment to You, You acknowledge and agree that:

I: NOTICE REGARDING EXPIRATION OF RENT STABILIZATION - § 421-A 2.2% RENT INCREASES.

THIS RIDER IS SUBORDINATE TO: (1) THE TERMS OF THE REGULATORY AGREEMENT ENTERED INTO BETWEEN OWNER AND THE NEW YORK STATE HOUSING FINANCE AGENCY (THE "HFA REGULATORY AGREEMENT"); AND (2) THE TERMS OF THE LOWER INCOME HOUSING PLAN REGULATORY AGREEMENT ENTERED INTO BETWEEN OWNER AND THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT ("HPD LIHP REGULATORY AGREEMENT"). ADDITIONALLY, PURSUANT TO § 421-A, ONE HUNDRED SIXTY-EIGHT (168) OF THE APARTMENTS IN THE BUILDING ARE DEEMED TO BE SUBSTANTIAL GOVERNMENTAL ASSISTANCE AFFORDABLE UNITS ("SGA AFFORDABLE UNITS") WHICH ARE TO REMAIN RENT STABILIZED FOR AT LEAST THIRTY-FIVE (35) YEARS. THIS APARTMENT IS AN SGA AFFORDABLE UNIT.

OWNER HAS OBTAINED REAL ESTATE TAX EXEMPTION BENEFITS PURSUANT TO REAL PROPERTY TAX LAW SECTION 421-A ("§ 421-A"). AS SET FORTH IN THE HPD LIHP REGULATORY AGREEMENT, THE APARTMENT WILL BE SUBJECT TO THE RENT STABILIZATION LAW ("RSL") AND CODE ("CODE") INDEFINITELY.

UNDER THE TERMS OF § 421-A, THE REGULATIONS PROMULGATED BY THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT AND THE RSL AND CODE, THERE IS A "GRADUAL DIMINUTION" OF THE § 421-A BENEFITS. EFFECTIVE ON THE ANNIVERSARY DATE OF THE COMMENCEMENT OF THE INITIAL LEASE ISSUED TO YOU FOR THIS APARTMENT. DURING THE FIRST YEAR OF SUCH "GRADUAL DIMINUTION" OF BENEFITS (THE "ANNIVERSARY DATE"), OWNER WILL BEGIN TO CHARGE AND COLLECT FROM YOU EACH MONTH AN AMOUNT EQUAL TO 2.2% OF THE APARTMENT'S ACTUAL MONTHLY RENT IN EFFECT AT THE COMMENCEMENT OF THE "GRADUAL DIMINUTION" PERIOD ("THE 2.2% RENT INCREASE"). THE FIRST YEAR OF "GRADUAL DIMINUTION" BEGINS IN THE THIRTEENTH YEAR OF PARTIAL TAX EXEMPTION BENEFITS, WHICH IS PROJECTED TO COMMENCE DURING THE CITY'S JULY 1, 2023 THROUGH JUNE 30, 2024 FISCAL YEAR. THUS THE FIRST 2.2% RENT INCREASE IS PROJECTED TO START ON THE ANNIVERSARY DATE DURING THE 2023-2024 FISCAL YEAR. THEREAFTER, THERE WILL BE SEVEN (7) 2.2% RENT INCREASES ON EACH SUCCESSIVE ANNIVERSARY DATE. ALL EIGHT (8) 2.2% RENT INCREASES ARE IN

ADDITION TO ANY OTHER RENT INCREASES THAT MAY BE PERMITTED UNDER RENT STABILIZATION BUT ARE SUBORDINATE TO THE RENT PROVISIONS OF THE HFA REGULATORY AGREEMENT AND THE HPD LIHP REGULATORY AGREEMENT.

SUBJECT TO THE HFA REGULATORY AGREEMENT AND THE HPD LIHP REGULATORY AGREEMENT, THE APARTMENT WILL BE SUBJECT TO STANDARD RENT INCREASES ON LEASE RENEWALS, AS APPROVED BY THE RENT GUIDELINES BOARD. ANY RENT INCREASES GRANTED BY THE RENT GUIDELINES BOARD SHALL BE MADE TO THE RENT SHOWN IN THE ORIGINAL LEASE OR THE MOST RECENT LEASE RENEWAL NOTICE AS APPLICABLE.

OWNER IN GOOD FAITH BELIEVES THAT THE § 421-A TAX BENEFITS WILL EXPIRE ON OR ABOUT JUNE 30, 2031 AND THAT THE RENT STABILIZATION REQUIREMENTS FOR SGA AFFORDABLE UNITS PURSUANT TO § 421-A WILL EXPIRE ON OR ABOUT JUNE 30, 2046. AFTER SUCH DATE, THE APARTMENT WILL NOT BE REGULATED AS TO THE AMOUNT OF RENT THAT MAY BE CHARGED FOR THE APARTMENT NOR WILL THE OWNER BE LEGALLY OBLIGATED TO RENEW THE LEASE, EXCEPT AS REQUIRED BY THE HFA REGULATORY AGREEMENT OR THE HPD LIHP REGULATORY AGREEMENT. IF THE OWNER SHOULD ELECT TO RENEW THE LEASE AT THAT TIME, THE OWNER WILL NOT BE LEGALLY BOUND BY ANY GOVERNMENTAL RENT GUIDELINES AND MAY CHARGE AN UNREGULATED RENT, EXCEPT AS REQUIRED BY THE HFA REGULATORY AGREEMENT OR THE HPD LIHP REGULATORY AGREEMENT.

TENANT ACKNOWLEDGES THAT HE OR SHE HAS BEEN INFORMED OF OWNER'S RIGHT TO INCLUDE THIS PROVISION IN THE LEASE.

II. YOUR CONFIRMATION.

By signing this Rider below, You confirm that You have read and understand this Rider, and that you agree to all of its terms and requirements. If more than one person is a tenant under the Lease, each of us signing below, acknowledges, represents and agrees with the foregoing.

TENANT(S) (Please print your name beneath your signature):

OWNER: 505 West 37 L.L.C

By: TF Cornerstone Inc., as Agent

By:

Margaret Nieves

Margaret Nieves

Director of Leasing

LAST RENEWAL

§ 421-A RIDER TO
TF CORNERSTONE STABILIZED LEASE AGREEMENT
(AFFORDABLE UNIT)
FOR 505 WEST 37TH STREET

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LEASE DATED:	Owner: 505 West 37 LLC
Apartment:	in the Building at 505 West 37 th Street, New York, NY
TENANT(S):	

Tenant ("You") is about to sign and deliver to Owner a Lease or a Lease Renewal (the "Lease") for the Apartment in the Building indicated above, dated as of the date shown above. In order to induce Owner to sign the Lease and rent the Apartment to You, You acknowledge and agree that:

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OWNER HAS OBTAINED REAL ESTATE TAX EXEMPTION BENEFITS PURSUANT TO REAL PROPERTY TAX LAW SECTION 421-A ("§ 421-A"). AS SET FORTH IN THE HPD LIHP WRITTEN AGREEMENT, THE APARTMENT WILL BE SUBJECT TO THE RENT STABILIZATION LAW ("RSL") AND CODE ("CODE") INDEFINITELY.

UNDER THE TERMS OF § 421-A, THE REGULATIONS PROMULGATED BY THE NEW YORK CITY DEPARTMENT OF HOUSING PRESERVATION AND DEVELOPMENT AND THE RSL AND CODE, THERE IS A "GRADUAL DIMINUTION" OF THE § 421-A BENEFITS. EFFECTIVE ON THE ANNIVERSARY DATE OF THE COMMENCEMENT OF THE INITIAL LEASE ISSUED TO YOU FOR THIS APARTMENT. DURING THE FIRST YEAR OF SUCH "GRADUAL DIMINUTION" OF BENEFITS (THE "ANNIVERSARY DATE"), OWNER WILL BEGIN TO CHARGE AND COLLECT FROM YOU EACH MONTH AN AMOUNT EQUAL TO 2.2% OF THE APARTMENT'S ACTUAL MONTHLY RENT IN EFFECT AT THE COMMENCEMENT OF THE "GRADUAL DIMINUTION" PERIOD ("THE 2.2% RENT INCREASE"). THE FIRST YEAR OF "GRADUAL DIMINUTION" BEGINS IN THE THIRTEENTH YEAR OF PARTIAL TAX EXEMPTION BENEFITS, WHICH IS PROJECTED TO COMMENCE DURING THE CITY'S JULY 1, 2023 THROUGH JUNE 30, 2024 FISCAL YEAR. THUS THE FIRST 2.2% RENT INCREASE IS PROJECTED TO START ON THE ANNIVERSARY DATE DURING THE 2023-2024 FISCAL YEAR. THEREAFTER, THERE WILL BE SEVEN (7) 2.2% RENT INCREASES ON EACH SUCCESSIVE ANNIVERSARY DATE. ALL EIGHT (8) 2.2% RENT INCREASES ARE IN ADDITION TO ANY OTHER RENT INCREASES THAT MAY BE PERMITTED UNDER RENT STABILIZATION BUT ARE SUBORDINATE TO THE RENT PROVISIONS OF THE HFA REGULATORY AGREEMENT AND THE HPD LIHP WRITTEN AGREEMENT.

SUBJECT TO THE HFA REGULATORY AGREEMENT AND THE HPD LIHP

WRITTEN AGREEMENT, THE APARTMENT WILL BE SUBJECT TO STANDARD RENT INCREASES ON LEASE RENEWALS, AS APPROVED BY THE RENT GUIDELINES BOARD. ANY RENT INCREASES GRANTED BY THE RENT GUIDELINES BOARD SHALL BE MADE TO THE RENT SHOWN IN THE ORIGINAL LEASE OR THE MOST RECENT LEASE RENEWAL NOTICE AS APPLICABLE.

OWNER IN GOOD FAITH BELIEVES THAT THE § 421-A TAX BENEFITS WILL EXPIRE ON OR ABOUT JUNE 30, 2031. AFTER SUCH DATE, THE APARTMENT WILL NOT BE REGULATED AS TO THE AMOUNT OF RENT THAT MAY BE CHARGED FOR THE APARTMENT NOR WILL THE OWNER BE LEGALLY OBLIGATED TO RENEW THE LEASE, EXCEPT AS REQUIRED BY THE HFA REGULATORY AGREEMENT OR THE HPD LIHP WRITTEN AGREEMENT. IF THE OWNER SHOULD ELECT TO RENEW THE LEASE AT THAT TIME, THE OWNER WILL NOT BE LEGALLY BOUND BY ANY GOVERNMENTAL RENT GUIDELINES AND MAY CHARGE AN UNREGULATED RENT, EXCEPT AS REQUIRED BY THE HFA REGULATORY AGREEMENT OR THE HPD LIHP WRITTEN AGREEMENT.

TENANT ACKNOWLEDGES THAT HE OR SHE HAS BEEN INFORMED OF OWNER'S RIGHT TO INCLUDE THIS PROVISION IN THE LEASE.

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By signing this Rider below, You confirm that You have read and understand this Rider, and that you agree to all of its terms and requirements. If more than one person is a tenant under the Lease, each of us signing below, acknowledges, represents and agrees with the foregoing.

TENANT(S) (Please print your name beneath your signature):

OWNER: 505 WEST 37 LLC

By: TF Cornerstone Inc., as Agent

By: _____

Margaret Nieves
Director of Residential Leasing