

ATTORNEY GENERAL OF THE STATE OF NEW YORK

**COMMISSIONER OF THE NEW YORK STATE DIVISION
OF HOUSING AND COMMUNITY RENEWAL**

In the Matter of

PINNACLE GROUP NY, LLC

**ASSURANCE OF DISCONTINUANCE
PURSUANT TO EXECUTIVE LAW § 63 (15)**

PURSUANT to the provisions of Article 22-A of the New York General Business Law and Section 63(12) of the New York Executive Law, Eliot Spitzer, Attorney General of the State of New York ("the Attorney General"), and Judith Calogero, Commissioner of the New York State Division of Housing and Community Renewal ("DHCR"), pursuant to Rent Stabilization Law, Unconsol. Laws Section 26-516, caused an inquiry to be made to determine whether certain persons or entities have been or are engaged in wrongful practices or illegal acts concerning certain rent-stabilized properties and apartments owned or managed directly or indirectly by Pinnacle Group NY, LLC and/or its current or former affiliates and subsidiaries (collectively, "Pinnacle") with respect to the computation of rent increases for vacated apartments based upon the costs of improvements to those properties and apartments during the four-year period between December 15, 2002, and December 15, 2006 ("the Inquiry").

WHEREAS, on or about August 29, 2006, the Attorney General and DHCR served a subpoena on Pinnacle, seeking certain documents in connection with the Inquiry; and

WHEREAS, Pinnacle has cooperated in the Inquiry by producing responsive documents;
and

WHEREAS, Pinnacle is committed to complying with all applicable laws and regulations, and has advised the Attorney General and DHCR of Pinnacle's desire to resolve the Inquiry; and

WHEREAS, Pinnacle has undertaken and will undertake certain actions, set forth below, to ensure that its accounting for and allocation of the expenses it incurs in improving the apartments and properties it owns are accurate, and that any rent increases which are set based on such improvements and/or based on other appropriate factors are correctly and lawfully computed; and

WHEREAS, the Attorney General and DHCR find the actions set forth below to be undertaken by Pinnacle, appropriate and in the public interest; and

WHEREAS, Pinnacle believes that it is, and at all times, has been, in compliance with New York law; and Pinnacle has cooperated fully with the Attorney General and with DHCR throughout this Inquiry; and Pinnacle is entering into this Assurance of Discontinuance ("Assurance") so that this matter may be resolved amicably, without further cost or inconvenience; and

WHEREAS, Pinnacle is willing to enter into this Assurance without admitting that it has violated any law, or that it otherwise committed any wrongful or improper act, and the Attorney General, pursuant to Section 63(15) of the New York Executive Law, is willing to accept this Assurance in lieu of commencing any statutory proceedings, and DHCR is willing to accept this Assurance in lieu of commencing any further overcharge proceedings on its own initiative,

IT IS HEREBY AGREED BY AND BETWEEN THE PARTIES

1. THAT this Assurance shall be binding on, and apply to, Pinnacle Group NY, LLC, its affiliates, subsidiaries and all of their current and former officers, directors, employees,

and agents, and any partners of any of them, as well as any successors in interest to any of them.

2. **THAT** for all rent-stabilized apartments owned or managed by Pinnacle, Pinnacle will comply with all applicable laws including but not limited to the Rent Stabilization Law, Local Law 1969, No. 16 of the Administrative Code of the City of New York ("RSL") and regulations thereto, as they may be from time to time modified, including but not limited to:

(a) RSL §§ 26-511 and 26-512 and 9 N.Y.C.R.R. §§ 2522.1 and 2521.1 in calculating the rents charged for rent-stabilized apartments owned or managed by Pinnacle imposed as a result of individual apartment improvements and major capitol improvements and not imposing rents in excess of the permissible limits;

(b) RSL § 26-517(f) and 9 N.Y.C.R.R. § 2528.3 by registering with DHCR the rent amount for each rent-stabilized apartment owned or managed by Pinnacle each year; and

(c) 9 N.Y.C.R.R. § 2522.5(c) by attaching a rider to the leases of tenants of rent-stabilized apartments owned or managed by Pinnacle who sign a vacancy lease, which rider states, in relevant part, the amount of the prior legal regulated rent, if any, and how any increased rent was calculated, as well as a statement that the increased rent was calculated pursuant to the Guidelines of the Rent Guidelines Board and the Rent Stabilization Code.

3. **THAT** Pinnacle has retained a forensic accounting and investigative firm acceptable to the Attorney General and to DHCR, Forensic Investigative Associates ("FIA"), which will, within one hundred eighty (180) days of the execution of this document by the Attorney General and by DHCR audit all rents set by Pinnacle for the four year period between December 15, 2002, and December 15, 2006, for each rent-stabilized apartment owned or managed by Pinnacle which was vacated within that four year period; and

(a) Should FIA find any rent that cannot be justified based on statutory

increases and/or documented improvements and/or other applicable provisions of law, Pinnacle will credit to the tenant (or refund to the former tenant) the amount of the overcharge plus interest calculated in the manner approved by DHCR, no later than thirty (30) days from completion of the audit;

(b) For each apartment for which a rent overcharge is identified, Pinnacle will, no later than thirty (30) days from completion of the audit, revise Pinnacle's rent records to conform with the correct rent as determined by FIA, provide current tenants of those apartments with written notice of the lawful stabilized rent, amend tenants' leases, as appropriate, and file with DHCR an amended and superceding rent registration statement for each apartment where the rental contained in the current registration statement exceeds the lawful rent as calculated by FIA;

(c) If there are tenants to whom refunds are owed as a result of this audit who cannot be readily located, Pinnacle will take all reasonable steps, as agreed by the Attorney General and DHCR, to locate the tenants. At a minimum, these efforts shall include Pinnacle sending each such former tenant at his or her last known address a copy of the notice that a refund is due the tenant and of the procedures for obtaining the refund. Pinnacle shall pay the refund due a former tenant within 30 days of receiving a request from such former tenant or his authorized representative or within 30 days of learning of the former tenant's current whereabouts. In the event that any of these tenants cannot be located, Pinnacle will maintain the monies for their refunds in an escrow account for one year. After that time has elapsed, if the tenants' whereabouts remain unknown, these funds will be disbursed in a manner agreeable to the Attorney General and DHCR; and

(d) Within 90 and 180 days from the date of the execution of this Agreement,

Pinnacle shall provide the Attorney General and DHCR with verified compliance reports in the form of an affidavit stating in detail the steps and procedures taken or instituted by Pinnacle to comply with the terms of this Assurance. The compliance report shall include the following:

- i. the amount of rent overcharges refunded to each current and former tenant;
- ii. copies of all letters or notices sent to tenants pursuant to this Assurance and a description of all efforts made to locate tenants entitled to refunds;
- iii. copies of all revised rent records showing the correct rent amounts as calculated by FIA;
- iv. copies of all notices provided current tenants of those apartments of the lawful stabilized rent;
- v. copies of leases amended as provided in para. 3(b) above;
- vi. copies of all superseding rent registration statements filed with DHCR pursuant to paragraph 3(b) above;
- vii. such additional supporting documentation as the Attorney General requests to demonstrate that FIA's calculation of revised rents and/or overcharges was justified;
- h. the name of the financial entity holding the escrow account and an accounting of the funds contained therein; and
- i. a copy of FIA's audit report (included in the second compliance report).

The compliance reports shall be sent to Assistant Attorney General Herbert Israel,

Consumer Frauds Bureau, Office of the Attorney General, 3rd Floor, New York, New York 10271 or such other person as may be designated by the Attorney General; and Office of General Counsel, Division of Housing and Community Renewal, 25 Beaver Street, 7th Floor, New York, New York 10004 or such person as may be designated by the Commissioner.

4. **THAT** FIA will also review and approve Pinnacle's current procedures for computing rents on newly vacated apartments:

(a) If any of Pinnacle's procedures are found not to be in compliance with applicable law and DHCR regulations, Pinnacle will promptly implement the recommendations of FIA for revised procedures; and

(b) For a period of one year from the date of the signing of this Assurance, FIA will monitor Pinnacle's ongoing compliance with the approved procedures for tracking the costs of renovating individual apartments and for setting rents on newly vacated apartments.

5. **THAT** this Assurance concludes the Inquiry brought by the Attorney General and by DHCR and any action that the Attorney General or DHCR could commence against Pinnacle or any of its current affiliates or subsidiaries, or any of their current or former officers, directors, shareholders, employees, and agents, and any partners of any of them, arising from or relating to the subject matter of this Assurance; provided however, that nothing contained in this Assurance should be construed to preclude claims by the Attorney General or by DHCR to enforce Pinnacle's obligations arising from or relating to the provisions contained in this Assurance.

6. **THAT** no amendments, modifications or variations of the terms of this Agreement shall be valid unless made in a writing executed by both Parties.

7. **THAT** this Agreement shall apply to and inure to the benefit of the Parties and their respective successors and assigns, parents, subsidiaries, affiliates, predecessors, present and

former directors, officers, shareholders, members, partners, employees, representatives and agents.

8. **THAT** this Agreement contains the entire agreement and understanding concerning the subject matter hereof between the Parties, and supersedes and replaces all prior negotiations, representations, promises, proposed agreements and agreements, written or oral

9. **THAT** nothing contained herein shall be construed so as to deprive any individual of any remedy under the law including the right of any tenant or former tenant to file an overcharge complaint with DHCR with respect to the subject matter of the Inquiry and for DHCR to adjudicate it in accordance with the RSL and Rent Stabilization Code. This Assurance shall not confer on any person any rights as to a third party beneficiary or otherwise against Pinnacle.

10. **THAT** the parties represent and warrant that their signatories to this Assurance have authority to act for and bind the respective parties.

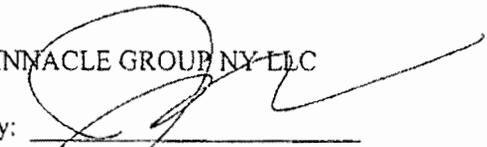
11. **THAT** the acceptance of this Assurance by the Attorney General and by DHCR shall not be deemed or construed as an approval by either of any of Pinnacle's past practices.

12. **IT IS FURTHER UNDERSTOOD AND AGREED THAT** Pinnacle shall pay to the Attorney General the sum of \$ 100,000.00 as costs of this investigation pursuant to Executive Law § 63(15).

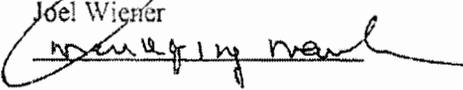
WHEREFORE, the following signatures are affixed hereto this 18 day of December,

2006.

PINNACLE GROUP NY LLC

By: 

Joel Wiener

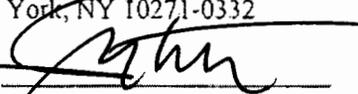


ELIOT SPITZER

Attorney General of the State of New York

120 Broadway

New York, NY 10271-0332

By: 

Francine James

Assistant First Deputy Attorney General

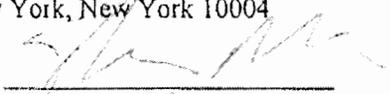
JUDITH CALOGERO

Commissioner of the New York State Division of

Housing and Community Renewal

25 Beaver Street, 7th Floor

New York, New York 10004

By: 

Principal Attorney