STATE OF NEW YORK **DEPARTMENT OF LAW**

REAL ESTATE FINANCE BUREAU

MEMORANDUM

RE: **Re: J-51 Real Estate Tax Benefits and High Rent Deregulation with Attached Disclosure Guidelines** **Date: April 2010**

The Court of Appeals issued a decision on October 22, 2009 in *Roberts v Tishman Speyer,* the much-discussed case involving the Stuyvesant Town and Peter Cooper Village rental apartment complexes. The Court ruled that the landlords in those rent-regulated buildings which received J-51 property tax abatements acted improperly when they deregulated apartments under a state law that allowed for high-rent deregulation (sometimes referred to as luxury decontrol). Under the ruling of this decision, a rent-regulated tenancy cannot be deregulated under the high-rent deregulation provisions of the rent laws while the building receives J-51 benefits.

As a result of this ruling, both tenants and potential purchasers of occupied apartments in a building receiving J-51 benefits must recalculate the cost-benefit ratio of a contemplated purchase. Such recalculation cannot be made without updated disclosure regarding the holding in the *Roberts* case. The following is meant to give guidance to practioners drafting an offering plan or amendment for a tenanted building. Sponsors must include the following disclosure in offering plans for amendments submitted pursuant to Part 18 and 23 and, when applicable, Part 20 and 21.

When a Part 23 or Part 18 plan or amendment is submitted for a building located in New York City, the Special Risk section must disclose any real estate tax abatements currently in place. If J-51 tax benefits are in place, the special risk section must refer to appropriate disclosure contained in §23.3(n)(8) and §23.3(z)(5)(viii) or, in the case of a Part 18 plan, appropriate disclosure contained in §18.3(g)(3) and §18.3(m). If benefits were previously received, the plan must state the period that the benefits were received. If the building currently or previously received such benefits, the plan must disclose whether or

not any unit was deregulated as a result of luxury decontrol while the building received such benefits. If such deregulation occurred, include a statement recommending that potential purchasers of occupied apartments and non-purchasing tenants consult with their respective counsel to determine their rights and obligations under the leases and applicable rent laws regarding deregulation under luxury decontrol.

When J-51 tax benefits are already in place, the offering plan must include all relevant disclosure required by §23.3(z), §18.3(g) (3) (xi) or §18.3(m) with a specific reference to the effective date of the benefit. If there is an option for accelerating the receipt of such benefit, resulting in an earlier expiration date, that must also be disclosed as well. If the benefits are not yet in place, this section must contain a statement that the plan will be amended to disclose the term of the benefit as soon as it is finalized. The amendment must also contain, as an attachment, the building's certificate of eligibility and reasonable cost.

In addition to the disclosure required by §23.3(n) (8) and §18.3(m), the Rights of Existing Tenants section must contain the following statements:

- All tenants become and remain regulated during the term of the rent abatement.
- Previously regulated tenants remain regulated after the expiration of the benefit, unless they are subject to high-rent decontrol.
- Pursuant to the New York City Administrative Code §26-504(c), a unit which was unregulated prior to the benefit remains regulated until the occurrence of the first vacancy after the benefit expires unless the lease and each renewal includes a notice in at least twelve point type stating that the unit shall become subject to deregulation upon the expiration of such tax benefit period and states the approximate date on which such tax benefit period is scheduled or expected to expire.

* See attachment for suggested disclosure

DISCLOSURE REGARDING J-51 REAL ESTATE TAX BENEFITS AND HIGH RENT DEREGULATION

J-51 Tax Abatement and High Rent Deregulation. In October, 2009, the New York State Court of Appeals ruled in the case, Roberts v. Tishman Speyer Properties, L.P.,13 N.Y.3d 270;890 N.Y.S.2d 388(2009) ("Roberts"), that during any period a building is receiving J-51 real estate tax benefits, rent stabilized tenants, whether they were rent stabilized before the building's receipt of J-51 real estate tax benefits, or became rent stabilized as a result of the building's receipt of such benefits, are not subject to deregulation under the high-rent deregulation provisions of the rent laws ("High Rent Deregulation Provisions").

(1) If the building currently receives J-51 tax benefits, in addition to the disclosure required pursuant to Part 23.3(z), Part 18.3(g)(3)(xi) and Part 18.3(m), state the commencement date and the anticipated expiration date of the J-51 tax benefits, including any option to accelerate the receipt of the benefits, resulting in an earlier expiration date.

(2) If the Plan represents that J-51 tax benefits will be obtained, state that the Plan will be amended to disclose the term of such benefits and include, as an exhibit, the building's certificate of eligibility and reasonable cost.

(3) If the building previously received J-51 tax benefits, state the period that the building received such benefits.

(4) State whether or not any of the units were deregulated under the High Rent Deregulation Provisions during any period the building received J-51 tax benefits.

(5) If any of the units were so deregulated, identify the unit, the date of deregulation and whether the unit is occupied or vacant.

(6) If the building has never received J 51 tax benefits, state that if, in the future, the building receives such benefits, rent regulated, non-purchasing tenants (as defined under General Business Law, Section 352- eeee) are entitled to protection from deregulation under the High-Rent Deregulation Provisions while the building receives J-51 tax benefits.

(7) State that New York City Administrative Code Section 26-504 (c) provides that when a building has J-51 tax benefits, if each lease and lease renewal include a notice informing the tenant that the unit will be subject to deregulation upon the expiration of the tax benefit period and the approximate date on which such tax benefit is scheduled to expire, the unit will be deregulated upon the expiration of the tax benefit period, unless the unit would have been subject to rent stabilization in the absence of the receipt of J-51 benefits. With respect to units that are rent stabilized solely by reason of the receipt of J-51 benefits, if no such notice is included in each lease and renewal, such unit will remain rent stabilized and protected from deregulation under the High-Rent Deregulation Provisions until the occurrence of the first vacancy of such unit after the J-51 benefits are no longer being received. With respect to units that were rent stabilized before the receipt of J-51 benefits, it could be argued that if no such notice was included in each lease and renewal, protection from deregulation under the High-Rent Deregulation Provisions will continue for such units until the occurrence of the first vacancy of such unit after such benefits are no longer being received.

(8) State that prospective purchasers of occupied units and non-purchasing tenants should consult with their respective counsels to determine their rights and obligations under the leases and applicable rent laws, including, but not limited to, their respective rights and obligations regarding deregulation under the High Rent Deregulation Provisions.

(9) If any units were deregulated during a period that the building received J -51 tax benefits, in addition to the disclosure required in the preceding sub-paragraph, state that prospective purchasers of occupied units and non-purchasing tenants should consult with their respective counsels regarding possible rent overcharges for improperly deregulated units and the status of tenants who vacated the unit after the unit was improperly deregulated under the High-Rent Deregulation Provisions.

(10) State that the Sponsor will provide written authorization to any prospective purchaser to access the records of the Department of Housing and Community Renewal for any unit which may be affected by the Roberts decision.

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