COURT OF APPEALS
OF THE STATE OF NEW YORK
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JOHN R. DENZA, SUSAN GREENBERG, BRETT MACUNE, ANDREW PARSONS, ROBERT P. RICE, CHRISTOPHE RIHET, and NADAV ZEIMER,

Index No. 117673/05

Petitioners-Respondents,

NOTICE OF MOTION

-against-

INDEPENDENCE PLAZA ASSOCIATES, LLC, and WB/STELLAR IP OWNER, L.L.C.,

Defendants-Appellants.
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PLEASE TAKE NOTICE, that upon the annexed affirmation of Jesse Strauss, dated August 10, 2012, and upon all the proceedings heretofore had herein, a motion will be made to this Court, at the Courthouse located at 20 Eagle Street, Albany, New York, on the 20th day of August, 2012, at 9:30 o'clock in the forenoon, for an order pursuant to 22 N.Y.C.R.R. § 500.23(a)(3): (1) granting permission for the proposed Amici Curiae New York State Senator Thomas K. Duane, New York State Senator Daniel L. Squadron, New York State Assemblymember Brian Kavanagh, and New York City Council Member Dan Garodnick ("movants") to appear in support of Petitioners-Respondents' motion for leave to appeal to the Court of Appeals from the ruling of the Appellate Division, First Department; (2) granting permission to submit

the annexed brief in support of Petitioners-Respondents' motion for leave to appeal; and (3) if amicus status is granted on the motion for permission to appeal, and if permission to appeal is granted, granting leave for movants to submit an amicus brief on the appeal.

Dated: August 10, 2012
New York, New York

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Affirmation of Jesse Strauss

COURT OF APPEALS
OF THE STATE OF NEW YORK
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JOHN R. DENZA, SUSAN GREENBERG, BRETT MACUNE, ANDREW PARSONS, ROBERT P. RICE, CHRISTOPHE RIHET, and NADAV ZEIMER,

Index No. 117673/05

Petitioners-Respondents,

AFFIRMATION

-against-

INDEPENDENCE PLAZA ASSOCIATES, LLC, and WB/STELLAR IP OWNER, L.L.C.,

Defendants-Appellants.
----------x

JESSE STRAUSS, an attorney duly licensed to practice law in the Courts of the State of New York, hereby affirms the following under penalty of perjury:

1. Proposed Amici Curiae, New York State Senator Thomas K. Duane, New York State Senator Daniel L. Squadron, New York State Assemblymember Brian Kavanagh, and New York City Council Member Dan Garodnick, are duly elected members of the New York State Senate, New York State Assembly and New York City Council (collectively referred to as "Amici Curiae"). Amici Curiae seek leave to file a brief in support of Petitioners-Respondents motion for leave to appeal from the holding of the Appellate Division below and, if leave to appeal is granted, to serve as amici curiae in support of the appeal and file a brief in support.

2. As members of the State Legislature and New York City Council, Amici Curiae have unique insight into the legislative efforts to mitigate the City of New York's unending housing affordability crisis though the use of tax abatement benefits as incentives for landlords to maintain affordability for a fixed period.

3. Amici Curiae's proposed brief in support of leave to appeal, submitted hereto, explains to this Court the ways in which the First Department's decision misinterprets and disrupts the State's statutory scheme protecting affordable housing by opening up a loophole never intended by the State Legislature. As legislators, Amici Curiae are in a unique position to explain to the Court how the First Department's decision undermines the State's housing affordability protections and renders the provision of tax benefits, an important tool to protect and create affordable housing, much less effective.

4. Moreover, many of Amici Curiae's constituents live in homes whose future affordability may be dependent on a landlord's acceptance of J-51 tax abatement benefits. These constituents are directly affected by the Decision Below.

5. In sum, the issues raised in this appeal effect the affordability protections applicable to thousands of homes in New York City, many within the districts represented by Amici Curiae. The arguments set forth in the annexed brief in support of the motion for leave, made by the very elected officials who are charged with creating the State's housing affordability statutes, including the tax abatement benefits

at issue, may otherwise escape the Court's consideration. The brief will also be of assistance to the Court in understanding the dire consequences that may be wrought if the First Department's decision is not reviewed and ultimately reversed.

6. For all of the above reasons, your affiant respectfully requests that this Court accept the within Memorandum of Law on behalf of the proposed Amici Curiae and, if leave to appeal is granted, allow Amici Curiae to serve as amici curiae in support of the appeal by filing a brief in support.

Dated: August 10, 2012
New York, NY

JESSE STRAUSS

Amici Curiae's Brief in Support of Leave to Appeal

COURT OF APPEALS
OF THE STATE OF NEW YORK

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JOHN R. DENZA, SUSAN GREENBERG, BRETT MACUNE, ANDREW PARSONS, ROBERT P. RICE, CHRISTOPHE RIHET, and NADAV ZEIMER,

Plaintiffs-Respondents-Appellants,

Index No.
117673/05

-against-

INDEPENDENCE PLAZA ASSOCIATES, LLC, and WB/STELLAR IP OWNER, L.L.C.,

Defendants-Appellants-Respondents.

----------x

BRIEF OF AMICI CURIAE NEW YORK STATE SENATOR THOMAS K. DUANE, NEW YORK STATE SENATOR DANIEL L. SQUADRON, NEW YORK STATE ASSEMBLYMEMBER BRIAN KAVANAGH, AND NEW YORK CITY COUNCIL MEMBER DAN GARODNICK IN SUPPORT OF PLAINTIFFS-RESPONDENTS' MOTION FOR LEAVE TO APPEAL

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August 10, 2012

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PRELIMINARY STATEMENT

Amici curiae New York State Senator Thomas K. Duane, representing the 29th Senatorial District, New York State Senator Daniel L. Squadron, representing the 25th Senatorial District, New York State Assemblymember Brian Kavanagh, representing the 74th Assembly District in Manhattan, and New York City Council Member Dan Garodnick, representing Manhattan's 4th Council District ("Amici Curiae") submit this brief in support of Proposed Petitioners Jon R. Denza, Susan Greenberg, Brett Macune, Andrew Parsons, Robert P. Rice, Christophe Rihet, and Nadav Zeimer's ("Proposed Petitioners") motion for permission to appeal the Decision and Order of the Appellate Division, First Department ("Decision Below"), which reversed the Decision and Order of Supreme Court, New York County, and granted Proposed Respondents Independence Plaza Associates, L.L.C and WB/Stekkar IP Owner, L.C.C.'s ("Proposed Respondents") CPLR 3212 motion for summary judgment dismissing Proposed Petitioners' complaint.

The Decision Below allows Proposed Respondents, who are the owners of Independence Plaza North ("IPN"), a 1,331-unit housing development in Lower Manhattan (within the Senatorial District represented by amicus curiae State Senator Daniel L. Squadron) to exit the State's housing affordability programs despite the fact that a prior owner of IPN had applied for, and accepted, a J-51 tax abatement that was to last at least twelve years.

The Decision Below was improperly decided, and must be reviewed. It essentially deregulates IPN and, if left unchecked, will exacerbate the loss of affordable housing in the City of New York by creating an unintended legislative loophole that allows owners of affordable housing developments to repudiate the affordability commitments made by prior owners who knowingly accepted J-51 tax abatement benefits. In so doing, the Decision Below denies policy makers, such as Amici Curiae, the ability to use City of New York's J-51 tax abatement program to protect the affordability of numerous Project Based Section 8 and Mitchell Lama housing developments – consisting of 4,140 homes – which have exited or will become eligible to exit pre-existing affordability programs in the next five years. Mitchell-Lama and Project Based Section 8 housing are home to some of the most economically vulnerable New Yorkers.

As further set forth herein, the regulations identified by the First Department that allow for the deregulation of IPN actually require the opposite result. The Decision Below misconstrued the numerous statutes that are designed to provide overlapping and complimentary protections to the City's affordable housing stock. The Decision Below also conflicts with this Court's decision in *Roberts v. Tishman Speyer Properties, L.P.*, 13 N.Y.2d 270 (2009) which holds any property receiving J-51 benefits is required to maintain affordability, even if the property subsequently exits other affordability protections.

New York's affordable housing stock is being rapidly depleted, despite the best efforts of policy makers such as Amici Curiae. The Court can arrest that depletion by reviewing the Decision Below and, ultimately, reversing it, because it conflicts with the language and legislative intent of the State's numerous housing affordability statutes and regulations.

INTEREST OF AMICI CURIAE

New York State Senator Thomas K. Duane

New York State Senator Thomas K. Duane represents the 29th Senatorial District, which includes Manhattan's Upper West Side, Hell's Kitchen, Chelsea, Greenwich Village, and part of the East Side, including the East Village, Stuyvesant Town, Peter Cooper Village and Waterside Plaza. Senator Duane proudly represents Stuyvesant Town, Peter Cooper Village and many other buildings that benefit from New York City's J-51 tax abatement. As a fourteen year member of the New York State legislature, and a former New York City Council member, Senator Duane has dedicated his career in public service to fighting for creation and preservation of affordable housing, as well as strengthening policy protections for tenants in his district and throughout New York State. The current ruling of the Appellate Division creates dire consequences not only for Independence Plaza North tenants, but for tenants of every building and complex currently in the J-51 tax abatement program including Stuyvesant Town and Peter Cooper Village.

New York City Council Member Dan Garodnick

Council Member Dan Garodnick is the City Council Member for Manahttan's Fourth Council District. Council Member Garodnick has spent his time on the Council fighting to protect affordable housing, and spearheaded a

multi-billion dollar bid to purchase Stuyvesant Town and Peter Cooper Village on behalf of tenants. He is also a member of the class in the Roberts v. Tishman Speyer case. Council Member Garodnick is also author of the Tenant Protection Act, which gave tenants new legal rights to fight back against harassment by landlords.

New York State Assemblymember Brian Kavanagh

New York State Assemblymember Brian Kavanagh represents the 74th Assembly District in Manhattan, which includes part or all of the Lower East Side, Stuyvesant Town, Peter Cooper Village, East Midtown Plaza, Gramercy, Waterside Plaza, Murray Hill, Kips Bay, and Tudor City. Assemblymember Kavanagh serves on the Assembly Standing Committee on Housing and has introduced numerous bills to strengthen the rent laws and protect tenants from unfair housing practices. He represents thousands of tenants who live in buildings that receive J-51 tax abatement benefits as well as residents of buildings subsidized under the Mitchell-Lama and Project Based Section 8 programs whose ability to access benefits under J-51 or similar programs may be affected by the court's decision.

New York State Senator Daniel Squadron

New York State Senator Daniel Squadron represents the 25th Senatorial District, which includes the Manhattan neighborhoods of Chinatown, the Lower

East Side, Tribeca, Battery Park City, the Financial District, Little Italy, SoHo and the East Village and the Brooklyn neighborhoods of Greenpoint, Williamsburg, Vinegar Hill, DUMBO, Fulton Ferry, Brooklyn Heights, Cobble Hill, Carroll Gardens and Gowanus. Senator Squadron represents Independence Plaza North, as well as other buildings that applied for and accepted J-51 tax abatement benefits. As a member of the New York State legislature, Senator Squadron works to create and preserve affordable housing citywide and in Lower Manhattan, and ensure consistent administration of the Rent Stabilization Law and J-51 regulations. Further, the courts must rely on the previous interpretations of the law, as reasoned in the *Roberts vs. Tishman-Speyer* decision, and Senator Squadron believes this decision merits review.

Together, as members of the New York State and New York City legislatures, the Amici Curiae urge this Court to grant leave for the Plaintiffs-Respondents to appeal the decision of the Appellate Division below.

ARGUMENT

A. The Decision Below Conflicts With This Court's Determination in *Roberts v Tishman Speyer Props., L.P.* Which Held That N.Y. Real Prop. Tax Law § 489 is Designed to Incentivize Landlords to Commit to Affordability for a Fixed Period in Exchange for Tax Benefits.

In *Roberts v Tishman Speyer Props., L.P.*, 13 N.Y.3d 270 (2009) this Court recognized that J-51 benefits were designed to maintain the affordability of housing developments that apply for them and accept them. Further, this Court determined that developments that are subject to any one of numerous housing affordability statutes can become rent stabilized "a second time" through the receipt of J-51 benefits. *Roberts'* well-reasoned statutory interpretation acceded to the legislative intent of the J-51 program. Moreover, the *Roberts* decision was in conformity with the State's numerous housing affordability statutes and regulations. The Decision Below improperly repudiates these same statutes and must be reviewed.

"The central, underlying purpose of the Rent Stabilization Law is to ameliorate the dislocations and risk of widespread lack of suitable dwellings." *Manocherian v. Lenox Hill Hosp.*, 84 N.Y.2d 385, 395 (1994). The Rent Stabilization Law ("RLS") does not, alone, seek to remedy this pervasive problem. Rather, it works in tandem with numerous other laws and regulations. That statutory scheme is designed by elected policy makers to maintain the City's

affordable housing stock, prevent dislocations of tenants, and preserve the economic diversity of the City of New York. *See e.g. McMurray v. New York State Div. of Housing & Community Renewal*, 135 A.D.2d 235, 238 (1st Dep't. 1988) (noting that protection afforded by [a statute that applies special protections to long-term tenants of rent-regulated apartments] "is a tacit recognition of the devastating impact that evictions can have on such tenants and their communities").

This Court has acknowledged that the full complement of the State's housing affordability statutes create a "maze of relevant rent laws" and a "'patchwork' of legislation that has responded to decades of social, economic and political pressure" on the housing market. *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 70 (N.Y. 1981); *KSLM-Columbus Apts., Inc. v. New York State Div. of Hous. & Cmty. Renewal*, 6 A.D.3d 28, 30 (1st Dep't. 2004) (referring to the City and State rent control laws as a "legislative quagmire"). That "patchwork" statutory scheme is not unintentional. Rather, it is the result of generations of policy makers devising complementary, concurrent and overlapping laws and regulations to maintain affordable housing in spite of unrelenting market pressures.

Policy makers such as Amici Curiae are constantly evaluating the statutory tools at their disposal to seek ways to extend the State's housing affordability protections as far as possible. One such tool is found in N.Y. Real Prop. Tax Law

("RPTL") § 489, which was first enacted by the State legislature in 1955 to authorize localities to provide tax incentives to landlords who rehabilitate properties. *See* N.Y. RPTL § 489(1)(a). New York City used its authority under RPTL § 489 that same year, enacting the ordinance known then (and today) as "J-51." *See* N.Y.C. Admin. Code § 11-243.

Both RPTL § 489 and N.Y.C. Admin. Code § 11-243 have undergone substantial revision in the past sixty years. One of the most substantial changes occurred in 1960 when the State Legislature linked the receipt of tax benefits under RPTL § 498 to the provision of affordable housing – a linkage which expressly remains part of the law. *See* RPTL § 489(7)(b)(1) ("The benefits of this section shall not apply to any multiple dwelling, building or structure . . . which is not subject to the provisions of the emergency housing rent control law or to local law enacted pursuant to the local emergency housing rent control act"). The City's implementing statute, N.Y.C. Admin Code § 11-243, was also amended to add identical language. *See* N.Y.C. Admin Code § 11-243(i)(1) ("The benefits of this section shall not apply . . . to any existing dwelling which is not subject to the provisions of the emergency housing rent control law or to the city rent and rehabilitation law or to the city rent stabilization law or to the private housing finance law or to any federal law providing for supervision or regulation by the United States department of housing and urban development").

To ensure that J-51 benefits were only provided to units that were under some form of affordability protection, the City's Rent Stabilization Law and the RPTL were amended in 1985 to make it clear that only units not receiving J-51 benefits could be outside of rent regulations, and then only if the landlord provided notice that the benefits would be ending. *See* RPTL § 489(7)(b)(2) (describing the process that a landlord must go through to terminate the applicability of the RSL to a unit in a building previously receiving J-51 tax abatement benefits); N.Y. Admin Code § 26-504(c) (same). The City's rules governing the J-51 program make clear that "[i]n order to be eligible to receive tax benefits under the Act and for at least so long as a building is receiving the benefits of the Act" the building must be in one of five affordability programs. 28 RCNY § 5-03(f)(1). Importantly, there is no mechanism for recipients of J-51 benefits to waive the benefits once accepted. They can foreshorten the minimum period of regulation only by using the entire abatement as quickly as possible (which is 12 years at 8.33% percent of the abatement per year). *See* N.Y. RPTL § 489(4-b); N.Y. Admin Code § 11-244(bb) and 28 RCNY § 5-06(d)(5); *State v. Fashion Place Assocs.*, 224 A.D.2d 280, 281 (1st Dep't. 1996) (unilateral waiver of J-51 benefits not permitted). And if an owner chooses to exhaust the entire abatement in the shortest possible period, it must still provide notice to tenants of the end of the abatement; otherwise the apartment remains regulated until vacated. N.Y. RPTL § 489(7)(b)(2); N.Y.

Admin Code § 26-504(c); *254 PAS Prop. LLC v. Gamboa*, 16 Misc. 3d 131A (N.Y. App. Term 2007) (affordability protections required to continue even after the expiration of J-51 benefits where a landlord did not provide proper notice).

The statutory scheme so favors affordability that one provision, 28 RCNY §5-07(f)(3), punishes landlords who receive J-51 benefits on properties that are not subject to any affordability program. *Id.* Oddly, because the punishment is the cessation of benefits, the First Department misconstrued the statute to require owners who voluntarily terminate their participation in affordability programs (such as those required of properties financed through Public Housing Finance Law ("PHFL")), to terminate J-51 tax abatement benefits and terminate all affordability protections even though they have previously committed to affordability by accepting J-51 tax abatement benefits. That was clearly not the intent of 28 RCNY §5-07(f)(3) when read in conjunction with the affordability protection statutes outlined above.

The clear intent of the statutory scheme is to allow tax incentives, in the form of tax abatements for qualifying rehabilitation projects, only to be provided to properties whose owners commit to affordability for at least as long as the benefit period, and longer unless the owner provides express notice to tenants of the lapse of benefits. *Riley v County of Broome*, 95 N.Y.2d 455, 463 (2000) ("When presented with a question of statutory interpretation, our primary consideration is

to ascertain and give effect to the intention of the Legislature" (Internal quotation marks and citation omitted). As the Court in *Riley* noted, statutory interpretation also requires an analysis of "the history of the times, the circumstances surrounding the statute's passage, and ... attempted amendments." (*quoting* McKinney's Cons Laws of NY, Book 1, Statutes § 124, at 253).

In part because of this legislative history, Courts have noted the link between the receipt of J-51 benefits and a commitment to affordable housing. *Roberts,* 13 N.Y.3d at 280 (2009) (noting that "[r]ental units in buildings receiving these exemptions and/or abatements must be registered with the State Division of Housing and Community Renewal (DHCR), and are generally subject to rent stabilization for at least as long as the J-51 benefits are in force); *Gersten v 56 7th Ave. LLC*, 88 A.D.3d 189, 194 (1st Dep't. 2011) ("The City's J-51 tax incentive program allows property owners who complete qualifying multiple dwelling improvements to receive tax exemptions and abatements for a period of years. In exchange for receiving such benefits, the landlords subject their properties to the RSL"); *Bleecker St. Mgmt. Co. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 284 A.D.2d 174, 175 (1st Dep't. 2001) (describing the statutory scheme and linking receipt of J-51 benefits to coverage under rent regulation statutes); *Fashion Place Assocs.*, 224 A.D.2d at 281 (finding that a sponsor of a building being converted from a rental to a coop could not unilaterally waive J-51 real property tax benefits

in the middle of a benefit period because allowing such a waiver would "permit a sponsor to reap substantial tax benefits and then escape its concomitant obligations"); *111 Fourth Ave. Associates v. Finance Administration of New York*, 101 Misc. 2d 950, 952 (N.Y. Sup. Ct. 1979) (describing the purpose of the J-51 tax abatement program as to "increase the supply of moderate rental housing with satisfactory standards").

The Decision Below wholly ignores this statutory scheme and case law and rejects the reasoning of numerous courts, including this Court, that the receipt of J-51 tax abatements requires that the development remain under some form of rent regulation for the duration of benefits, if not longer. This Court recognized that intent in *Roberts* but the Court below appears to have rejected it. Review is therefore necessary.

B. The Decision Below Created an Unintended Legislative Loophole That Forecloses Amici Curiae's Ability to Use of J-51 Tax Abatement Benefits as an Incentive to Maintain Affordability.

Prior to the Decision Below, the J-51 program (or any tax abatement) could be used as an incentive to maintain the affordability of housing developments whose exit from other affordability programs was imminent. For example, prior to the Decision Below, by increasing funding for the J-51 program (or other tax abatement programs) a proactive legislature that foresees the loss of affordable housing stock could provide generous incentives to landlords to keep

developments affordable after they exit from the pre-existing affordability program. Such a situation may arise where, for example, a Mitchell-Lama development that is on the cusp of exiting PHFL affordability protections is offered a large J-51 tax abatement. Prior to the Decision Below, the receipt of that abatement required that owner and subsequent owners to maintain the development's affordability for the benefit period (12 to 20 years). Such proactive governance provides stability in the housing status of the tenants of that development for at least the period of benefits.

The Decision Below forecloses the use of this policy tool: upon removing a development from the PHFL or from Project Based Section 8 programs, a landlord (or successor landlord) must also repudiate its commitment to affordability despite previously accepting J-51 tax abatement benefits. Thereafter, the landlord can increase rents to market levels and displace existing tenants, all without warning the tenants of the impeding end of benefits. That is clearly not the statutory intent and creates added instability in the lives of thousands of lower and middle income New Yorkers.

Like numerous other affordable housing developments, IPN's participation in the Mitchell-Lama program provided for a temporary exemption from other affordability programs because the PHFL itself contains strong affordability protections. *See* PHFL § 31 (outlining the eligibility requirements and rental rates

for developments funded by the PHFL); *see also KSLM-Columbus Apts., Inc. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 5 N.Y.3d 303, 315 (2005) (holding that pre-1974 Mitchell-Lama developments were only temporarily exempt from the RSL and, upon the expiration of the exemption, revert to regulation, even if they had never been regulated before); *Federal Home Loan Mortg. Corp. v. New York State Div. of Hous. & Community Renewal*, 87 N.Y.2d 325 (1995) (same result for a co-op that dissolved and became rental apartments). Before IPN's exemption ended, the legislative scheme allowed the landlord to accept J-51 tax abatement benefits in exchange for continuing affordability protections into the future, now under the RSL instead of the PHFL. And the prior owner of IPN did just that knowing full well that in exchange for the tax abatement, it was committing to continued affordability. *See* 28 RCNY § 5-03(f)(1).

The First Department opened up a loophole not intended by the legislative scheme when it held that because IPN was subject to the PHFL due to its temporary participation in the Mitchell-Lama program, it was never subject to the RSL and, therefore, receipt of J-51 benefits, alone, did not subject IPN to the RSL after its withdrawal. The unintended loophole is possible because affordability protections through the PHFL and the federal laws providing for rent supervision (Section 8) are the only two types of affordability protections which allow a development to qualify for J-51 tax abatements that can voluntarily be terminated

by the owner. *See* PHFL § 35 and 42 U.S.C.A. 1437(f)(C)(8) (allowing for the non-renewal of federal housing contracts). Indeed, had the PHFL not applied (or had the PHFL lapsed sometime prior to the acceptance of J-51 tax benefits), and IPN's former owner accepted a J-51 tax abatement, there would be no question that because of the acceptance of the J-51 tax abatement benefit, affordability protections applied to the development for at least the benefit period. *See* 28 RCNY § 5-03(f)(1). And there would be no way for a subsequent owner of IPN to voluntarily terminate the benefit, which it would have been fully aware of when they purchased the development.

The regulation that the First Department found to terminate affordability protections when IPN left the Mitchell-Lama program (and therefore the protections of the PFHL), 28 RCNY 5-07(f)(3), actually requires no such thing. When read together with other provisions of the City's rules, such as 28 RCNY § 5-03(f)(1), that require any development receiving J-51 tax abatements to be subject to one of five forms of rent regulation, the true intent of 28 RCNY 5-07(f)(3) becomes clear: it was meant to safeguard the public treasury by ensuring that J-51 tax abatement benefits are only provided to rent regulated housing and are not provided to non-affordable housing. *Id; see also KSLM-Columbus Apts., Inc.*, 5 N.Y.3d at 315 (2005) (finding that when choosing between different forms of rent regulation (or no regulation) courts should follow the intent of the legislature "that

such an accommodation be regulated"). Because housing affordability statutes are remedial in nature (protecting tenants against a shortage in affordable housing) the statutes are required to be construed broadly. *McMurray v. DHCR*, 135 A.D.2d 235. Conversely, any exemption from affordability protections must be strictly construed. *Pape v. Doar*, 160 A.D.2d 213 (1st Dep't. 1990). Instead, the First Department used one of the affordability protection statutes to create an unintended legislative loophole.

The impact of the Decision Below is especially unfortunate because Section 8 Project Based Housing and Mitchell-Lama developments are home to some of the most economically vulnerable New Yorkers. Many tenants of Mitchell-Lama developments and Section 8 Project Based Housing would surely be displaced but for those affordability programs. Review is, therefore, necessary to close the unwelcome loophole in the State's housing affordability statutes created by the Decision Below.

CONCLUSION

In these times of fiscal constraints, the State of New York rarely builds new moderate and low income housing. Rather, the State's housing policy has shifted toward the renovation and rehabilitation of existing affordable housing or the provision of tax incentives to encourage current housing to maintain affordability protections. It is imperative that policy makers, like Amici Curiae, be able to

provide robust incentives to landlords to rehabilitate affordable housing that then remains affordable. The J-51 tax abatement benefit, whose effectiveness in circumstances similar to those of IPN was gutted by the Decision Below, is one such incentive.

The issues to be raised in the appeal of the Decision Below are by no means unique to this case. In fact, IPN is just one of numerous affordable housing developments threatened by the City's unending affordable housing shortage. That housing shortage continues to cause the displacement of middle income New Yorkers as fewer and fewer housing units are protected by the State's housing affordability statutes. Policy makers need every tool at their disposal to maintain the City's affordable housing stock, including granting J-51 tax abatement benefits that do not terminate when an affordable housing development's other affordability protections cease.

This Court should, therefore, review the Decision Below.

Dated: August 10, 2012

RESPECTFULLY SUBMITTED,

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