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Statement of Matthew Schmelzer, President, Tryax Realty Management, Inc.

Dear members of the Senate and Assembly Insurance Committee. I am Matthew Schmelzer, President of Tryax Realty Management, an owner-manager of moderate income rent stabilized apartment housing in The Bronx and Harlem founded in 1969 by my late father, Michael Schmelzer. I would like to use my time to discuss our experience with the dramatic increase in cost to insure our buildings that began with our 2019 renewal, 6 years ago. As the members of the committee are likely aware, property owners carry several types of insurance: Liability, Property, Environmental, and Umbrella coverage. Besides being a good business practice, lenders require that property owners maintain liability and property coverage and specify the limits of coverage, deductible limits, insurance company ratings, and requirements for any trades performing work on the insured's premises.

Our company takes a very proactive approach to risk management and ensuring our tenants' health and safety. We strive to maintain violation free properties and respond to tenant issues immediately. We conduct inspections of all of our apartments once annually at a minimum. Our company works diligently to comply with lead regulations. All maintenance employees attend EPA mandated lead training courses. Our Director of Compliance is an EPA Lead Based Paint Supervisor, and I hold EPA Lead Based Paint Supervisor and Inspector designations. We spend considerable time and economic resources on maintaining the sidewalks that abut our buildings.

We have installed a highly sophisticated camera system in the public areas of all of our buildings. Over 750 cameras are operating continuously, and data is stored in DVRs with several years of storage capacity. The system was designed specifically for our properties by a company which has created security systems for large public buildings and national monuments and sites.

Yet, despite all of our efforts to reduce our exposure to liability claims, Bronx property owners are regularly targeted by plaintiffs' firms with exaggerated and fraudulent claims of injuries. We have video and other evidence that some of the alleged "defects" that purportedly led to accidents were due to "runners" sent by plaintiff's attorneys to actually create the defects. We have video evidence that accidents did not occur at all or did not occur as alleged. We retain medical and other professionals that dispute with scientific evidence that the all-too-common surgeries we are seeing in lawsuits are medically unnecessary or unrelated to the accident.

The cost to defend these claims drives up the cost of housing and siphons away money that can be better spent on building operations and maintenance. To help put this in perspective, in 2019 the cost to insure our portfolio of 30 mid-rise buildings was approximately $475/yr/unit or $40/mo./unit. In 2024 the cost to insure our portfolio was approximately $1,700/yr/unit or $142/mo./unit. In this short 6-year period our insurance cost has more than tripled. While it would be easy to blame the insurance industry, we are grateful to have coverage at all. Many owners are finding that coverage is not available at any price or are having to take bare bones policies to remain in business.

The cost of defending liability claims is largely the culprit for this increase. A 2024 ABC News Story exposed fraudulent claims in the construction industry. Bronx property owners are subject to the same fraudulent practices. As briefly mentioned above, we would like to share our experience defending these claims. Over the past 6 years, we received notice of 34 claims. Of those, 24 were for slip and falls. Five claims were brought by the same law firm at various properties we own in the Bronx, and all were for alleged sidewalk defects that led to injuries. Due to a 2003 law change implemented under Mayor Bloomberg, NYC shifted the responsibility for sidewalk hazards from the City of New York to the adjacent property owner. Our staff reviewed the video from these 5 events, and it became clear that the circumstances were highly suspect. In one event, two individuals drove their scooter on the sidewalk and stopped in front of our building. They dismounted and appeared to use an object to break the corner of a sidewalk flag (a flag is the term used to refer to each rectangular segment of the sidewalk). One of the individuals sweeps the broken chipped away concrete into the street. They proceed to take measurements of the depth and distance to the wall. They take photographs of the address of the building and then drive away. Hours later an individual falls in the area of the alleged sidewalk defect and then waits for an ambulance to be transported to the hospital. Several months later we received a letter from this law firm alleging that their client was injured due to our negligence.

This is not an isolated incident; it is a pattern that is repeated across the Bronx. These fraudulent or partially fraudulent claims, depending on the alleged injuries, can easily go for several hundred thousand dollars or higher. We were lucky in some of these instances – we have video and will fight to prove our innocence. However, even if we win at summary judgement – a rare occurrence in the Bronx, it will still take tens of thousands of dollars to prepare our defense – depositions, expert witnesses, motions, and investigative work. We have four other cases with this same law firm with a similar fact pattern. The remaining 19 of the 24 slip and fall claims occur on sidewalks or the interior stairs of our buildings. Nearly all have been captured by our video system. The circumstances of stairway slip and falls usually are similar – an individual fails to use the handrail, is looking at their phone, or carrying packages and misses a step. In nearly all cases the plaintiff's attorney alleges that there was a liquid on the steps or a very minor chip and we had prior notice of the condition. In one case the plaintiff demanded $7.5 million to settle the claims, in another $2.5 million. According to expert witnesses retained by our insurance carrier, the injuries are usually exaggerated and surgeries unnecessary, solely performed to inflate the settlement value of the case. This clogs the courts with frivolous claims, depriving legitimately injured parties from seeking timely adjudication of their claims and causing the crisis we now face with insurance carriers abandoning the Bronx.

While the root cause of the challenges we face stem from exaggerated claims or outright fraud, a subject which this committee should examine is the urgent need for an affordable state backed liability insurance product to provide a backstop if carriers continue to abandon the Bronx or charge premiums that are simply untenable. This committee has the power to save our housing stock before it is too late.

Thank you for your time and attention to the pressing matter.

Sincerely,

Matthew Schmelzer
President, Tryax Realty Management