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New York State Division of Housing and Community Renewal

25 Beaver Street
New York, NY 10004

HOUSING MANAGEMENT BUREAU MEMORANDUM # 2009-B-08

To: All Housing Companies
Owners, Managing Agents and Site Managers

From: Robert Damico, Downstate Director
Housing Management Bureau

Date: June 8, 2009

Subject: Procedure for Certification of Commercial Leases

DHCR has streamlined its commercial lease review procedure and revised and renamed the attached transmittal form, "Certification of Commercial Lease" (HM-59 [5/09]), in order to expedite the leasing of commercial space at State-supervised housing companies. The revised form enables the housing company to self-certify that the lease conforms to a number of outlined conditions and requirements, thereby eliminating the need for prior DHCR approval in most cases.

Previously, all proposed commercial leases required DHCR approval prior to commencement. Under the new procedure, housing companies must continue to submit commercial leases to DHCR for record purposes along with a completed "Certification of Commercial Lease" form; however, prior DHCR approval is only required in the following cases:

- a) if there is an identity of interest (IOI), as defined in DHCR regulations, or the lease is with a former principal, member or employee or the housing company or its managing agent;
- b) if the rent is less than projected as part of the commercial income in the last approved budget; or
- c) if the lease involves the installation of roof top antennas, communication equipment, or other building appenditures.

Effective immediately, the certification procedure on the reverse should be followed for all proposed commercial or professional leases and related assignment and assumption agreements, amendments and extensions.

Procedure for Certification of Commercial Leases

1. Access the “Certification of Commercial Lease” (HM-59) form in a fillable pdf format on DHCR’s website @ <http://nysdhcr.gov/Forms/HousingManagementBureau/> and follow the instructions.
2. Complete the certification in its entirety, indicating whether or not prior DHCR approval is required. If required, sufficient time for DHCR review and approval must be allocated.

(Note that a commercial space may be rented to a not-for-profit organization for less than market rent if in the judgment of the housing company it will enhance the quality of life for its residents. The anticipated benefit must be explained in section 6,c,i of the HM-59. Prior DHCR approval of the lease is not required unless one or more of the three conditions necessitating such approval apply.)

3. Have the certification form signed by an authorized agent of the housing company and examined and approved by its legal counsel. The approval by counsel shall include a review to assure that DHCR and any state mortgagee are additionally insured in the amounts required by DHCR and that they would be defended and indemnified.
4. Maintain a copy of the certification for housing company records and submit the original to DHCR along with an executed copy of the lease, including riders and addenda, and an authorizing board resolution, where applicable.

Should you have any questions concerning this procedure, please contact your assigned Housing Management Representative.



Robert Damico



New York State Division of Housing and Community Renewal
 Housing Management Bureau
 25 Beaver Street
 New York, NY 10004

CERTIFICATION OF COMMERCIAL LEASE

Housing Company _____ **DHCR#** _____

(Instructions: A completed HM-59 form must be submitted to DHCR for record purposes for all proposed commercial/professional leases and related assignment and assumption agreements, amendments, and extensions. DHCR review and prior approval is not required unless: (a) an identity of interest exists; (b) the rent is less than projected in the last approved budget; or (c) the lease involves the installation of roof top antennas, communication equipment, or other building appenditures.)

I, _____ (print/type name), have examined and approved the attached executed lease (including riders/addenda) as identified and described below and attest that it (check one):

does not require DHCR approval does require DHCR approval because: _____

1. Type of Agreement (check one):

Lease Lease Assignment and Assumption Amendment of Lease Extension of Lease

2. Identification of Space:

a. Street Address: _____
 b. Size (Sq. Ft.): _____
 c. Location in relation to Mitchell Lama residential units: _____

3. Name of Tenant: _____

4. Business to be conducted on the leased premises: _____

Are similar establishments located on the housing development grounds? YES NO

5. Lease Start Date: _____ Expiration Date: _____ Renewal Dates: _____ - _____

6. a. Monthly Rent: \$ _____ Fixed, Percentage-of-Income, or Both

b. Is rent less than projected in the last approved budget? YES NO

If yes, explain: _____

c. Is rent below current market rate? YES NO

If yes, indicate reason by checking and completing box i or ii below:

i. This space is being rented to a not-for-profit organization (no officer or member of which is a former principal, member or employee of the housing company or its managing agent or is identified as having an identity of interest per the provisions of Chapter 17 of Title 9 of NYCRR) for less than market rental because it is in the judgment of the board of directors that such a rental will enhance the quality of life for its cooperators or tenants by virtue of the following: _____

- (a) a comprehensive general liability insurance policy:
 - (i) in the amount of \$2 million for bodily injury and \$100,000 for property damage; and
 - (ii) that includes as additional insureds: Landlord, the Mortgagee/Mortgagees, the New York State Division of Housing and Community Renewal, and the State of New York; and
 - (iii) that defends and indemnifies the division, any State Mortgagee/Mortgagees and the State of New York from any lawsuit or proceeding brought against either as a result of Tenant's negligence or intentional wrongdoings.
- (b) plate glass insurance covering all exterior plate glass.

19. The commercial lease agreement further provides that:

- (a) insurance shall not be canceled without 30 days prior written notice toward all insured parties; and
- (b) Tenant shall be responsible for any increase in fire insurance premiums as a result of its occupancy of the demised premises; and
- (c) Tenant shall include in its fire insurance a waiver of subrogation in favor of landlord, Mortgagee/ Mortgagees, the Division and the State of New York.

20. The commercial lease agreement provides that in the event of any loss or destruction of part or all of the leased premises by condemnation or fire or otherwise, any rebuilding/repair shall be conditioned upon the prior approval of the Commissioner of the New York State Division of Housing and Community Renewal, as provided for in the mortgage/loan agreement (hereinafter referred to as "Commissioner").

21. The commercial lease agreement **prohibits** the installation of roof top antennas, communication equipment, or other building appenditures, unless and until permission is received from the New York State Division of Housing and Community Renewal.

22. The commercial lease is subject to the liens of the housing development's Mortgagee/Mortgagees.

23. The commercial lease agreement prohibits assignment and subletting of the subject premises that would be deemed to cause a violation of this certification and fails to maintain recourse to the original sublessor or assignor unless DHCR approves such assignment or subletting; or a separate certification is executed with respect to such sublease or assignment.

24. The commercial lease identifies the areas permitted to be used for the loading and unloading of merchandise, as applicable.

25. The following clauses have been made a part of the subject lease:

- (a) This lease is subject to the powers, rights and privileges, and the restrictions and limitations thereon, of the landlord as a Limited-Profit/Limited Dividend Housing Company under the supervision and control of the Commissioner of Housing and Community Renewal of the State of New York and the rights and powers of the Commissioner under the Private Housing Law or any amendments thereto.
- (b) In the event the Mortgagee/Mortgagees or a designee of the Mortgagee/Mortgagees shall become the owner of the premises demised by the lease on which the said mortgage is a lien, by reason of the foreclosure of said mortgage or otherwise, the tenant will attorn to the Mortgagee/Mortgagees or its designee, and the Mortgagee/Mortgagees or its designees shall accept such attornment by the tenant and there upon the Mortgagee/Mortgagees or its designee and tenant shall be bound by all of the terms, covenants and provisions of the said lease.
- (c) As long as a mortgage/loan agreement or any renewal or extension thereof shall be a lien on the premises demised by the lease, any notice required by the lease to be given by the tenant to the landlord, shall also be given to the Mortgagee/Mortgagees/DHCR/NYS; and any right of the tenant, effective after notice, shall take effect only after notice is given to the Mortgagee/Mortgagees/DHCR/NYS, and performance by the Mortgagee/Mortgagees/DHCR/NYS shall satisfy any condition of the lease requiring performance by the landlord, but nothing herein

contained shall obligate the Mortgagee/Mortgagees/DHCR/NYS to perform any act required to be performed by the landlord by such lease.

(d) Neither the landlord, the tenant, nor the successors or assigns of either of them will in any way modify the lease or any extension or renewal thereof so as to: (i) reduce the rent or additional rent payable pursuant thereto; (ii) reduce the term of years granted by the lease; or (iii) surrender or accept a surrender of the term of years granted by the lease or otherwise extinguish the leasehold estate, except in accordance with the terms of the lease, without first obtaining the consent of the holder of said mortgage in writing, and any such purported reduction, modification of surrender thereof, without such holder's consent, shall be void as against such holder.

I CERTIFY THAT THE ABOVE STATEMENTS ARE TRUE TO MY KNOWLEDGE:

Signature: _____ Date: _____
(Authorized by and Acting for the Housing Company)

Title: _____

EXAMINED AND APPROVED BY ME AS TO BOTH CONTENT AND FORM WITHIN THE PURVIEW OF MY RESPONSIBILITY AS COUNSEL:

Signature: _____ Date: _____
(Legal Counsel for Housing Company)

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FOR DHCR PURPOSES ONLY

ACCEPTED/APPROVED, subject to comments below, if any.

DENIED for the following reasons:

Reviewed by: _____ Date: _____