



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: _____

ii. Other reason (please explain): _____

7. Lease Escalations:

Date	Rent	Date	Rent	Date	Rent	Date	Rent
	\$		\$		\$		\$

8. Additional Charges:

<u>Item</u>	<u>Charge</u>	<u>Item</u>	<u>Charge</u>
_____	_____	_____	_____
_____	_____	_____	_____

9. The following utilities are included in rent:

Electric Gas Cold Water Hot Water Sewer Charges Refuse Removal

10. An escalation clause exists for the following charges:

Taxes Electric Gas Water Sewer Refuse Removal

11. The lease-agreement includes a cost-of-living rent increase: YES NO

12. A security deposit equal to two months rent has been received from tenant: YES NO
 If no, please explain: _____

13. There is approval of the subject proposed lease agreement from the board of directors, housing company, and housing company counsel in accordance with a uniform procedure that has been established by the housing company for review of such rentals to assure compliance with standard real estate practice and that the subject lease is in their judgment and consistent with their responsibilities, in the best interest of the housing company. **If applicable, a board resolution is attached.**

14. The commercial lease is economically feasible for the continuous operation of the housing development as a going concern and, unless otherwise explained in paragraph 6 above, the housing development will receive the maximum return permissible under the current market conditions, equal to or exceeding that of similar enterprises in comparable locations, and the rent is not less than projected as part of the commercial income in the last approved budget.

15. The commercial establishment is compatible with the residential community of which it becomes a part and/or makes available goods or services needed or wanted by tenants and cooperators residing in the development.

16. Execution of the subject commercial lease does not violate the identity of interest (IOI) provisions of Chapter 17 of Title 9 of NYCRR. **If IOI transaction, then DHCR prior approval of the lease is required.**

17. The commercial lease agreement expressly states that the commercial space shall not be used for illegal or otherwise prohibited activities and shall be used in accordance with all federal, state, county, and municipal zoning laws and ordinances.

18. The commercial lease agreement requires the Tenant to maintain the following minimum insurance coverage with a company of good standing and reputation that is licensed to do business in the State of New York (NYS):

- (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, DHCR and NYS; and
 - (iii) that defends and indemnifies DHCR, any State Mortgagee/Mortgagees and NYS from any lawsuit or proceeding brought against either as a result of Tenant's negligence or intentional wrongdoings. (Private mortgagees should be included as additional insured parties, if it is required by their mortgage documents.)
- (b) plate glass insurance covering all exterior plate glass.
- (c) fire insurance.

19. The commercial lease agreement further provides that:

- (a) insurance shall not be canceled without 30 days prior written notice to 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, DHCR and NYS.

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 DHCR.

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 DHCR.

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 Division of Housing and Community Renewal (DHCR) of the State of New York State and the rights and powers of DHCR under the Private Housing Finance Law or any amendments thereto.
- (b) 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 of default or termination received by the tenant 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.
- (c) 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

