RENT STABILIZATION CODE

Subchapter B of Chapter VIII of Subtitle S of Title 9 NYCRR

The Rent Stabilization Code as amended and adopted pursuant to the powers granted to the Division of Housing and Community Renewal by section 26-511(b) of the Administrative Code of the City of New York, as recodified by Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.0[b] as amended by Laws of 1985, Chap. 888, section 2), and section 26-518(a) of such Code, as recodified by Laws of 1985, Chap. 907, section 1 (formerly section YY51-6.1[a] as added by Laws of 1985, Chap. 888, section 8), is amended to read as follows:

PART 2520 SCOPE

Section 1

Subdivision (c) of section 2520.6 of this Part is amended to read as follows:

(c) Rent. Consideration, charge, fee or other thing of value, including any bonus, benefit or gratuity demanded or received for, or in connection with, the use or occupation of housing accommodations or the transfer of a lease for such housing accommodations. Rent shall not include surcharges authorized pursuant to section 2522.10 of this Title.

Section 2

Subdivision (e) of section 2520.6 of this Part is repealed, and a new subdivision (e) is adopted to read as follows:

(e) Legal Regulated Rent. The rent charged on the base date set forth in subdivision (f) of this section, plus any subsequent lawful increases and adjustments.

Section 3

Subdivision (f) of section 2520.6 of this Part is repealed, and a new subdivision (f) is adopted to read as follows:

(f) Base date. For the purpose of proceedings pursuant to sections 2522.3 and 2526.1 of this Title, base date shall mean the date which is the most recent of:

(1) The date four years prior to the date of the filing of such appeal or complaint; or

(2) The date on which the housing accommodation first became subject to the RSL; or

(3) April 1, 1984, for complaints filed on or before March 31, 1988 for housing accommodations for which initial registrations were required to be filed by June 30, 1984, and for which a timely challenge was not filed.

Section 4

Subdivision (i) of section 2520.6 of this Part is amended to read as follows:

(i) Owner. A fee owner, lessor, sublessor, assignee, net lessee, or a proprietary lessee of a housing accommodation in a structure or premises owned by a cooperative corporation or association, or an owner of a condominium unit or the sponsor of such cooperative corporation or association or condominium development, or any other person or entity receiving or entitled to receive rent for the use or occupation of any housing accommodation, or an agent of any of the foregoing, but such agent shall only commence a proceeding pursuant to section 2524.5 of this Title, in the name of such foregoing principals. Any separate entity that is owned, in whole or in part, by an entity that is considered an owner

pursuant to this subdivision, and which provides only utility services shall itself not be considered an owner pursuant to this subdivision. Except as is otherwise provided in sections 2522.3 and 2526.1(f) of this Title, a court-appointed Receiver shall be considered an owner pursuant to this subdivision.

Section 5

Subdivision (n) section 2520.6 of this Part is amended to read as follows:

(n) Immediate family. A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, grandfather, grandmother, grandson, [or] granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the owner.

Section 6

Paragraph (1) of subdivision (o) of section 2520.6 of this Part is amended to read as follows:

(1) A husband, wife, son, daughter, stepson, stepdaughter, father, mother, stepfather, stepmother, brother, sister, [nephew, niece, uncle, aunt,] grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law or daughter-in-law of the tenant or permanent tenant; or

Section 7

Subdivision (s) of section 2520.6 of this Part is amended to read as follows:

(s) Documents. Records, books, accounts, correspondence, memoranda and other documents, and copies, including microphotographic or electronically stored or transmitted copies, of any of the foregoing.

Section 8

Subdivision (t) of section 2520.6 of this Part is amended to read as follows:

(t) Final order. A final order shall be an order of a rent administrator not appealed to the commissioner within the period authorized pursuant to section 2529.2 of this Title, or an order of the commissioner, unless such order remands the proceeding for further consideration.

Section 9

Section 2520.6 of this Part is amended by adopting a new subdivision (u) to read as follows:

(u) Primary residence. Although no single factor shall be solely determinative, evidence which may be considered in determining whether a housing accommodation subject to this Code is occupied as a primary residence shall include, without limitation, such factors as listed below:

(1) Specification by an occupant of an address other than such housing accommodation as a place of residence on any tax return, motor vehicle registration, driver’s license or other document filed with a public agency;

(2) Use by an occupant of an address other than such housing accommodation as a voting address;

(3) Occupancy of the housing accommodation for an aggregate of less than 183 days in the most recent calendar year, except for temporary periods of relocation pursuant to section 2523.5(b)(2) of this Title;

(4) Subletting of the housing accommodation.

Section 10

Subdivision (c) of section 2520.11 of this Part is amended to read as follows:

(c) housing accommodations for which rentals are fixed by the DHCR or HPD, unless, after the establishment of initial rents, the housing accommodations are made subject to the RSL pursuant to applicable law, or housing accommodations subject to the supervision of the DHCR or HPD under other provisions of law or the New York State Urban Development Corporation, or buildings aided by government insurance under any provision of the National Housing Act to the extent the RSL or any regulation or order issued thereunder is inconsistent with such act. However, housing accommodations in buildings completed or substantially rehabilitated prior to January 1, 1974, and whose rentals were previously regulated under the PHFL or any other State or Federal law, other than the RSL or the City Rent Law, shall become subject to the ETPA, the RSL, and this Code, upon the termination of such regulation. [An owner of such housing accommodations shall not be eligible for a rent adjustment pursuant to section 2522.4(b) or (c) of this Title, for a period of three years, where such owner would not qualify for such rent adjustment in the absence of a voluntary dissolution, termination, or reconstitution pursuant to the PHFL or other State or Federal laws;]

Section 11

Subdivision (e) of section 2520.11 of this Part is amended to read as follows:

(e) housing accommodations in buildings completed or buildings substantially rehabilitated as family units on or after January

1, 1974, except such buildings which are made subject to this Code by provision of the RSL or any other statute that meet the following criteria, which, at the DHCR's discretion, may be effectuated by Operational Bulletin:

(1) a specified percentage, not to exceed 75%, of listed building-wide and individual housing accommodation systems, must have been replaced;

(2) for good cause shown, exceptions to the criteria stated herein or effectuated by Operational Bulletin, regarding the extent of the rehabilitation work required to be effectuated building-wide or as to individual housing accommodations, may be granted where the owner demonstrates that a particular component of the building or system has recently been installed or upgraded, or is structurally sound and does not require replacement, or that the preservation of a particular component is desirable or required by law due to its aesthetic or historic merit;

(3) the rehabilitation must have been commenced in a building that was in a substandard or seriously deteriorated condition. The extent to which the building was vacant of residential tenants when the rehabilitation was commenced shall constitute evidence of whether the building was in fact in such condition. Where the rehabilitation was commenced in a building in which at least 80% of the housing accommodations were vacant of residential tenants, there shall be a presumption that the building was substandard or seriously deteriorated at that time. Space converted from non-residential use to residential use shall not be required to have been in substandard or seriously deteriorated condition for there to be a finding that the building has been substantially rehabilitated;

(4) except in the case of extenuating circumstances, the DHCR will not find the building to have been in a substandard or seriously deteriorated condition where it can be established that the owner has attempted to secure a vacancy by an act of arson resulting in criminal conviction of the owner or the owner's agent, or the DHCR has made a finding of harassment, as defined pursuant to any applicable rent regulatory law, code or regulation;

(5) in order for there to be a finding of substantial rehabilitation, all building systems must comply with all applicable building codes and requirements, and the owner must submit copies of the building's certificate of occupancy, if such certificate is required by law, before and after the rehabilitation;

(6) where occupied rent regulated housing accommodations have not been rehabilitated, such housing accommodations shall remain rent regulated until vacated, notwithstanding a finding that the remainder of the building has been substantially rehabilitated, and therefore qualifies for exemption from regulation;

(7) where, because of the existence of hazardous conditions in his or her housing accommodation, a tenant has been ordered by a governmental agency to vacate such housing accommodation, and the tenant has received a court order or an order of the DHCR that provides for payment by the tenant of a nominal rental amount while the vacate order is in effect, and permits the tenant to resume occupancy without interruption of the rent stabilized status of the housing accommodation upon restoration of the housing accommodation to a habitable condition, such housing accommodation will be excepted from any finding of substantial rehabilitation otherwise applicable to the building. However, the

exemption from rent regulation based upon substantial rehabilitation will apply to a housing accommodation that is subject to a right of reoccupancy, if the returning tenant subsequently vacates, or if the tenant who is entitled to return pursuant to court or DHCR order chooses not to do so;

(8) an owner may apply to the DHCR for an advisory prior opinion that the building will qualify for exemption from rent regulation on the basis of substantial rehabilitation, based upon the owner's rehabilitation plan;

(9) specified documentation will be required from an owner in support of a claim of substantial rehabilitation;

Section 12

Subdivision (l) of section 2520.11 of this Part is hereby amended to read as follows:

(l) housing accommodations contained in buildings owned as cooperatives or condominiums on or before June 30, 1974; or thereafter, as provided in section 352-eeee of the General Business Law in accordance with section 2522.5(h) of this Title, provided, however, and subject to the limitations set forth in subdivisions (e), (o) and (p) of this section, that:

(1) Where cooperative or condominium ownership of such building no longer exists ("deconversion"), because the cooperative corporation or condominium association loses title to the building upon a foreclosure of the underlying mortgage or otherwise, or where the conversion of the building to cooperative or condominium ownership is revoked retroactively by the New York State Attorney General to the date immediately prior to the effective date of the Conversion Plan on the basis of fraud or on other grounds, such housing accommodations shall revert to

regulation pursuant to the RSL and this Code, and the regulated rents therefor shall be as follows:

(i) Housing accommodations not occupied at the time of deconversion.

(a) Where deconversion occurs four years or more after the effective date of the Conversion Plan, the initial regulated rent shall be as agreed upon by the parties and reserved in a vacancy lease.

(b) Where deconversion occurs within four years after the effective date of the Conversion Plan, or where deconversion occurs four years or more after the effective date of the Conversion Plan, but a rent stabilized tenant remained in occupancy to a date less than four years prior to the deconversion, the initial regulated rent shall be the most recent legal regulated rent for the housing accommodation increased by all lawful adjustments that would have been permitted had the housing accommodation been continuously subject to the RSL and this Code.

(c)(1) Where the rent, as agreed upon by the parties and paid by the tenant is $2,000 or more per month, pursuant to subdivision (r) of this section, such accommodation and the rent therefor shall not revert to regulation under this Code.

(2) Initial regulated rents established pursuant to clause (a) of this subparagraph (i) shall not be subject to challenge under section 2526.1(a)(2)(iii) of this Title.

(d)(1) Within 30 days after deconversion, the new owner taking title upon deconversion shall offer a vacancy lease, at an initial regulated rent established pursuant to this subparagraph (i), to the holder of shares formerly allocated to the housing accommodation in the case of cooperative ownership, or the former unit owner in the case of condominium

ownership. Such shareholder or former unit owner shall have 30 days to accept such offer by entering into the vacancy lease. Failure to enter into such lease shall be deemed to constitute a surrender of all rights to the housing accommodation.

(2) This clause (d) shall not apply where deconversion was caused, in whole or in part, by a violation of any material term of the proprietary lease by the shareholder or former unit owner.

(3) No individual former owner or proprietary lessee shall be entitled to occupy more than one housing accommodation.

(ii) Housing accommodations occupied at the time of deconversion and not subject to regulation under this Code at such time.

(a) Where the housing accommodation is occupied by a holder of shares formerly allocated to it in the case of cooperative ownership, or by the former owner of such unit in the case of condominium ownership, such shareholder or former unit owner shall be offered a new vacancy lease, subject to regulation under this Code, by the new owner taking title upon deconversion, which lease shall be subject to all of the terms and conditions set forth in subparagraph (i) of this paragraph (1) pertaining to the establishment of initial regulated rents, lease offer, and deregulation, including subclause (2) of clause (d).

(b) Where the housing accommodation is occupied by a current renter pursuant to a sublease with the holder of shares formerly allocated to it in the case of cooperative ownership, or to the former owner of such unit in the case of condominium ownership, the new owner shall offer a vacancy lease to such holder of shares or former unit owner pursuant to all of the terms and conditions set forth in subparagraph (i) of this paragraph (1).

(c) All shareholders or former unit owners described in this subparagraph (ii) shall be offered a vacancy lease within 30 days after the deconversion, and shall have 30 days to accept such offer. However, in the event such shareholder or former unit owner does not enter into the vacancy lease, he or she shall be deemed to have surrendered all rights to the housing accommodation effective 120 days after the deconversion.

(iii) Housing accommodations occupied pursuant to regulation under this Code or the City Rent and Eviction Regulations by non-purchasing tenants immediately prior to deconversion.

The regulated rents for such housing accommodations shall not be affected by the deconversion, and such accommodations shall remain fully subject to all provisions of this Code or the City Rent and Eviction Regulations, whichever is applicable.

(iv)(a) Where it determines that the owner taking title at deconversion caused, in whole or in part, the deconversion to occur, the initial legal regulated rent shall be established by the DHCR pursuant to sections 2522.6 and 2522.7 of this Title. In such cases, if the rent so established and paid is $2,000 or more per month, subdivision (r) of this section shall not apply.

(b) Upon deconversion, housing accommodations which were last subject to regulation pursuant to the City Rent and Eviction Regulations shall become subject to regulation under this Code pursuant to this paragraph (1). In such cases, the initial legal regulated rent shall be established by the DHCR pursuant to sections 2522.6 and 2522.7 of this Title.

(2) Housing accommodations that were subject to regulation under this Code or the City Rent and Eviction Regulations immediately prior

to conversion to cooperative or condominium ownership by virtue of the receipt of tax benefits pursuant to applicable law shall revert to regulation under this Code pursuant to paragraph (1) of this subdivision only for such period of time as is required by such applicable law;

Section 13

Subdivision (r) of section 2520.11 of this Part is renumbered subdivision (t), and new subdivisions (r) and (s) are adopted to read as follows:

(r) housing accommodations which:

(1) became vacant on or after July 7, 1993 but before April 1, 1994 where, at any time between July 7, 1993 and October 1, 1993, inclusive, the legal regulated rent was two thousand dollars or more per month; or

(2) became vacant on or after April 1, 1994 but before April 1, 1997, with a legal regulated rent of two thousand dollars or more per month; or

(3) became vacant on or after April 1, 1997 but before June 19, 1997, where the legal regulated rent at the time the tenant vacated was two thousand dollars or more per month; or

(4) became or become vacant on or after June 19, 1997, with a legal regulated rent of two thousand dollars or more per month;

(5) exemption pursuant to this subdivision shall not apply to housing accommodations which became or become subject to the RSL and this Code:

(i) solely by virtue of the receipt of tax benefits pursuant to section 421-a of the Real Property Tax Law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of such section

421-a, section 11-243 (formerly J51-2.5) or section 11-244 (formerly J51-5) of the Administrative Code of the City of New York, as amended; or

(ii) solely by virtue of article 7-C of the MDL;

(6) exemption pursuant to this subdivision shall not apply to or become effective with respect to housing accommodations for which the Commissioner determines or finds that the owner or any person acting on his or her behalf, with intent to cause the tenant to vacate, engaged in any course of conduct (including, but not limited to, interruption or discontinuance of required services) which interfered with or disturbed or was intended to interfere with or disturb the comfort, repose, peace or quiet of the tenant in his or her use or occupancy of the housing accommodations. In connection with such course of conduct, any other general enforcement provision of the RSL and this Code shall also apply;

(7) during the period of effectiveness of an order issued pursuant to section 2523.4 of this Title for failure to maintain required services, which lowers the legal regulated rent below two thousand dollars per month during the time period specified in this subdivision, a vacancy shall not qualify the housing accommodation for exemption under this subdivision;

(8)(i) where an owner installs new equipment or makes improvements to the individual housing accommodation qualifying for a rent increase pursuant to paragraph (1) of subdivision (a) of section 2522.4 of this Title, while such housing accommodation is vacant, and where the legal regulated rent is raised on the basis of such rent increase, or as a result of any rent increase permitted upon vacancy or succession as provided in section 2522.8 of this Title, or by a combination of rent increases, as applicable, to a level of two thousand dollars per month or more, whether

or not the next tenant in occupancy actually is charged or pays two thousand dollars per month or more for rental of the housing accommodation, the housing accommodation will qualify for exemption under this subdivision;

(ii) subparagraph (i) of this paragraph (8) to the contrary notwithstanding, where the housing accommodation became vacant after March 31, 1997, upon the next re-renting of the housing accommodation between April 1, 1997 and June 18, 1997, where the legal regulated rent at the time the tenant vacated was less than two thousand dollars per month, rent increases resulting from new equipment or improvements made during that vacancy will not result in exemption under this subdivision;

(9) where, pursuant to section 2521.2 of this Title, a legal regulated rent is established by record within four years before a rent lower than such legal regulated rent is charged and paid by the tenant, and where, pursuant to such section, upon the vacancy of such tenant, a legal regulated rent previously established by record within four years prior thereto, as lawfully adjusted pursuant to the RSL or this Code, may be charged, and where such previously established legal regulated rent, as so adjusted, is two thousand dollars or more per month, such vacancy shall qualify the housing accommodation for exemption under this subdivision;

(10) where an owner substantially alters the outer dimensions of a vacant housing accommodation, which qualifies for a first rent of $2,000 or more per month, exemption pursuant to this subdivision shall apply.

(s) Upon the issuance of an order by the DHCR pursuant to the procedures set forth in Part 2527-A of this Title, including orders resulting from default, housing accommodations which:

(1) have a legal regulated rent of two thousand dollars or more per month as of October 1, 1993, or as of any date on or after April 1, 1994, and which are occupied by persons who had a total annual income in excess of two hundred fifty thousand dollars per annum for each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and in excess of one hundred seventy-five thousand dollars, where the first of such two preceding calendar years is 1996 or later, with total annual income being defined in and subject to the limitations and process set forth in Part 2527-A of this Title;

(2) exemption pursuant to this subdivision shall not apply to housing accommodations which became or become subject to the RSL and this Code:

(i) solely by virtue of the receipt of tax benefits pursuant to section 421-a of the Real Property Tax Law, except as otherwise provided in subparagraph (i) of paragraph (f) of subdivision two of such section 421-a, section 11-243 (formerly J51-2.5) or section 11-244 (formerly J51-5) of the Administrative Code of the City of New York, as amended; or

(ii) solely by virtue of article 7-C of the MDL;

(3) in determining whether the legal regulated rent for a housing accommodation is two thousand dollars per month or more, the standards set forth in subdivision (r) shall be applicable; to be eligible for exemption under this subdivision, the legal regulated rent must continuously be two thousand dollars or more per month from the owner’s service of the income certification form provided for in section 2527-A.2 of this Title upon the tenant to the issuance of an order deregulating the housing accommodation.

Section 14

Section 2520.13 of this Part is amended to read as follows:

Section 2520.13 Waiver of benefit void.

An agreement by the tenant to waive the benefit of any provision of the RSL or this Code is void; provided, however, that based upon a negotiated settlement between the parties and with the approval of the DHCR, or a court of competent jurisdiction, or where a tenant is represented by counsel, a tenant may withdraw, with prejudice, any complaint pending before the DHCR. Such settlement shall be binding upon subsequent tenants. However, where the settlement encompasses surrender of occupancy by the tenant or the tenant is no longer in possession of the housing accommodation as of the date of the settlement, such settlement shall not be binding upon any subsequent tenant, except to the extent that the complaint being settled is subject to the time limitations set forth in the RSL and this Code.

PART 2521 LEGAL REGISTERED AND REGULATED RENTS

Section 1

The Title of Part 2521 is amended to read as follows:

LEGAL [REGISTERED AND] REGULATED RENTS

Section 2

Subdivision(a) of section 2521.1 of this Part is amended to read as follows:

Section 2521.1 Initial legal [registered] regulated rents for housing accommodations.

(a)(1) For housing accommodations which on March 31, 1984 were subject to the City Rent Law, and became vacant after that date, and which are no longer subject to the City Rent Law, and are rented thereafter

subject to the RSL, the initial legal [registered] regulated rent shall be the rent agreed to by the owner and the tenant and reserved in a lease or provided for in a rental agreement subject to the provisions of this Code, [provided that such rent is registered with the DHCR pursuant to Part 2528 of this Title,] and subject to a tenant's right to a Fair Market Rent Appeal to adjust such rent pursuant to Section 2522.3 of this Title.

(2) For housing accommodations which on March 31, 1984 were subject to the penalties provided in former section YY51-4.0 of the Administrative Code of the City of New York, and which became vacant thereafter, the initial legal [registered] regulated rent for the first rent stabilized tenant shall be the rent established by the DHCR for the prior tenant, increased by the guidelines rate of rent adjustments applicable to the new lease plus such other rent increases as are authorized pursuant to section 2522.4 of this Title, and shall not be subject to a Fair Market Rent Appeal pursuant to section 2522.3 of this Title.

Section 3

Subdivisions (b) and (c) of section 2521.l of this Part are repealed.

Section 4

Subdivision (d) of section 2521.1 of this Part is renumbered subdivision (b), and amended to read as follows:

[(d)](b) (1) [Notwithstanding the provisions of subdivision (c) of this section, the] The initial legal [registered] regulated rent for a housing accommodation for which an overcharge complaint or a Fair Market Rent Appeal was filed by a tenant prior to April 1, 1984, and not finally determined prior thereto, shall be the April 1, 1984 rent as subsequently

determined by the DHCR. Such determination will be based upon the law or code provision in effect on March 31, 1984.

(2) Upon determination of the initial legal [registered] regulated rent in paragraph (1) of this subdivision, legal regulated rents subsequent to April 1, 1984 shall be determined in accordance with section [2521.2(a)] 2520.6(e) of this [Part] Title.

Section 5

Subdivision(e) of section 2521.1 of this Part is renumbered subdivision(c), and amended to read as follows:

[(e)] (c) The initial legal [registered] regulated rent for a housing accommodation first made subject to the RSL and this Code pursuant to article 7-C of the MDL shall be the rent established by the Loft Board under section 286(4) of the MDL applicable to a lease offered pursuant to MDL section 286(3). Such rent shall not be subject to the proceedings described in section 2522.3 of this Title. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal [registered] regulated rent, the owner may request that the next lease rental be the initial legal [registered] regulated rent plus the allowable increase established by the Rent Guidelines Board, and such other rent increases as are authorized pursuant to section 2522.4 of this Title.

Section 6

Subdivision (f) of section 2521.1 of this Part is renumbered subdivision (d), and amended to read as follows:

(f)(d) Notwithstanding the provisions of any outstanding lease or other rental agreement, the initial legal [registered] regulated rent for a housing accommodation in a multiple dwelling for which a loan is

made under the PHFL shall be the initial rent established pursuant to such law. Such rent, whether or not the housing accommodation was previously subject to the RSL, shall not be subject to the proceeding described in section 2522.3 of this Title. Such rent for housing accommodations occupied prior to the granting of the loan made pursuant to the PHFL shall take effect on the date specified in the order establishing the rent. Notwithstanding any other provision of the RSL or this Code, the owner of such housing accommodation shall offer any tenant in occupancy on such effective date or upon initial occupancy a one- or two-year lease at the tenant's option at such rent, which offer shall be made as soon as practicable after such rent is established, whether or not the rent has taken or is then permitted to take effect; and refusal of such tenant to sign such lease, at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following the tenant's receipt of the offer of such lease at such rent as lawfully established, a tenant in occupancy on such date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pays the rent established pursuant to law for such month and for any extended period, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such offer. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal [registered] <u>regulated</u> rent, the owner may request that the next lease rental be the initial legal [registered] <u>regulated</u> rent plus the allowable increase established by the Rent Guidelines Board.

Section 7

Subdivision (g) of section 2521.1 of this Part is renumbered subdivision (e), and amended to read as follows:

[(g)]<u>(e)</u> Notwithstanding any other provision of this Code, the initial legal [registered] <u>regulated</u> rent for a housing accommodation first made subject to the RSL and this Code pursuant to article XIV of the PHFL or section 2429 of article 8 of the Public Authorities Law shall be the rent established pursuant to law which reflects the improvements or rehabilitation and shall be subject to subsequent adjustment by the DHCR. Such rent shall not be subject to the proceedings described in section 2522.3 of this Title. Notwithstanding any other provision of the RSL or this Code: the owner of such housing accommodation shall offer a tenant in occupancy who first became subject to the RSL and this Code on the effective date of such rent a one or two-year lease at the tenant’s option at such rent, which offer shall be made as soon as practicable after such rent is effective; and refusal of such tenant to sign such lease at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following tenant’s receipt of the offer of such lease at such rent, a tenant in occupancy on such effective date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pay the rent established pursuant to law while in occupancy, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such offer. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal

[registered] regulated rent, the owner may request that the next lease rental be the initial legal [registered] regulated rent plus the allowable increase established by the Rent Guidelines Board.

Section 8

Subdivision (h) of section 2521.1 of this Part is renumbered subdivision (f), and amended to read as follows:

[(h)](f) If a housing accommodation is rehabilitated pursuant to either article XIV of the PHFL or section 2429 of article 8 of the Public Authorities Law, and article XV of the PHFL, the provisions in subdivision [(f)] (d) shall apply, rather than the provisions of subdivision [(g)] (e), if HPD elects to establish rents for the housing accommodation pursuant to article XV of the PHFL.

Section 9

Subdivision (i) of section 2521.1 of this Part is renumbered subdivision (g), and amended to read as follows:

[(i)](g) The initial legal [registered] regulated rent for a housing accommodation constructed pursuant to section 421-a of the Real Property Tax Law shall be the initial adjusted monthly rent charged and paid but not higher than the rent approved by HPD pursuant to such section for the housing accommodation or the lawful rent charged and paid on April 1, 1984, whichever is later.

Section 10

Subdivision (j) of section 2521.1 of this Part is renumbered subdivision (h), and amended to read as follows:

[(j)](h) The initial legal [registered] regulated rent for housing accommodations subject this Code solely as a condition of receiving or continuing to receive benefits pursuant to section 11-243 (formerly J51-

2.5) or 11-244 (formerly J51-5.0) of the Administrative Code, as amended, shall be the rent charged the initial rent stabilized tenant or the lawful rent charged and paid on April 1, 1984, whichever is later, and shall not be subject to a Fair Market Rent Appeal pursuant to section 2522.3 of this Title. However, as to any housing accommodation which previously received tax benefits pursuant to section 11-243 (formerly J51-2.5) or 11-244 (formerly J51-5.0), was not covered by the provisions of the RSL on June 18, 1985, and was made subject to such law by the provisions of chapters 288 and 289 of the Laws of New York for the year 1985 (as amended), the initial legal [registered] regulated rent shall be the rent charged and paid on May 30, 1985, or the maximum rent which could have been charged if the housing accommodation had been continuously subject to the RSL for the entire tenancy of the tenant in occupancy on May 30, 1985, whichever is greater.

Section 11

Subdivision (k) of section 2521.1 of this Part is renumbered subdivision (i), and amended to read as follows:

[(k)](i) Notwithstanding the provisions of the RSL or any other provision of this Code, the initial legal [registered] regulated rent upon completion of the rehabilitation of a Class B multiple dwelling, Class A multiple dwelling used for single-room occupancy purposes, lodging house or a substantially vacant building intended to be used after rehabilitation for single-room occupancy purposes for which a loan is made for such rehabilitation on or after September 1, 1985, under article VIII or VIII-A of the PHFL, shall be the initial rent established by HPD pursuant to such law. Such rent, whether or not the housing accommodation was previously subject to the RSL, shall not be subject to the proceeding described in

section 2522.3 of this Title. Such rent shall take effect on the date specified in the order establishing the rent. Notwithstanding the provisions of the RSL or any other provision of this Code, the owner of such housing accommodation shall offer any tenant in occupancy on such effective date a one- or two-year lease, at the tenant's option, at such rent, which offer shall be made as soon as practicable after such rent is established. Refusal of such tenant to sign such lease at such rent, and otherwise upon the same terms and conditions as the expiring lease, if any, shall constitute grounds for an action or proceeding to evict and recover possession of the housing accommodation; provided, however, that following the tenant's receipt of the offer of such lease at such rent as lawfully established, a tenant in occupancy on such date shall be allowed 30 days to sign such lease and, if during such 30-day period, such tenant gives the owner written notice of an intention to terminate such tenancy and pay the rent established pursuant to law for such month and for any extended period, the tenant shall not be required to surrender the housing accommodation until 60 days after receipt of such lease offer. Notwithstanding that the rent charged and paid during the first lease term may have been less than such initial legal [registered] regulated rent, the owner may request that the next lease rental be the initial legal [registered] regulated rent plus the allowable increase established by the Rent Guidelines Board, and such other rent increases as are authorized pursuant to section 2522.4 of this Title.

Section 12

Subdivision (l) of section 2521.1 of this Part is renumbered subdivision (j), and amended to read as follows:

[(l)](j) For housing accommodations whose rentals were previously regulated under the PHFL, or any other State or Federal law, other than the RSL or the City Rent Law, upon the termination of such regulation, the initial legal [registered] regulated rent shall be the rent charged to and paid by the tenant in occupancy on the date such regulation ends. For housing accommodations which are vacant on the date the building first [became] becomes subject to the RSL and this Code, such rent shall be the most recent rent [charged and paid by the most recent tenant, in addition to rental subsidies, if any] approved by the supervising agency, which shall be subject to [vacancy guidelines] all increases permitted by law and this Code, and which shall not be subject to a Fair Market Rent Appeal pursuant to section 2522.3 of this Title.

Section 13

Subdivision (m) of section 2521.1 of this Part is renumbered subdivision (k), and amended to read as follows:

[m](k) Notwithstanding any other provision of this Code, except as provided in paragraph (2) of this subdivision, governmental agencies or public benefit corporations may enter into an agreement with the DHCR, which shall be incorporated into an order of the DHCR, setting forth the conditions under which:

(1) projects receiving assistance or financing from such agencies may register higher and lower initial legal rents for units subject to occupancy and rent restrictions by such agencies, which rents may then be adjusted pursuant to the RSL and this Code, and shall not be

subject to the proceedings described in section 2522.3 of this Title; or

(2) projects whose rentals were previously regulated under the PHFL or any other State or Federal law, other than the RSL or the City Rent Law, upon the date when such regulation ends, may register higher and lower initial legal rents for units which have been subject to occupancy and rent restrictions pursuant to such laws, which rents may then be adjusted pursuant to the RSL and this Code, and shall not be subject to the proceedings described in section 2522.3 of this Title. Where the DHCR was the agency regulating rentals pursuant to the PHFL, such terms and conditions shall be incorporated into an order of the DHCR.

Such agreement or order shall also set forth the conditions under which the higher and lower legal regulated rents may be charged, with due consideration of equities as set forth in section 2522.7 of this Title. No further agreements shall be entered into pursuant to this subdivision on and after January 1, 2000.

Section 14

The title of section 2521.2 of this Part is amended to read as follows:

Section 2521.2 [Legal regulated rents for housing accommodations] Preferential Rents.

Section 15

Subdivision (a) of section 2521.2 of this Part is repealed.

Section 16

Subdivision (b) of section 2521.2 of this Part is amended to read as follows:

[(b)] Where the legal regulated rent is established and documented in a manner prescribed by the DHCR, and a rent lower than [the

legal regulated] such rent is charged and paid by the tenant, [upon] such lower rent shall be a preferential rent, which shall be subject to all adjustments provided by law and this Code. Upon vacancy of [such] the tenant who pays a preferential rent, the legal regulated rent shall be the legal regulated rent previously established by record within four years prior thereto, plus [the most recent applicable] all intervening guidelines increases, plus such other rent increases as are authorized [pursuant to section 2522.4 of this Title, may be charged a new tenant] by law and this Code.

PART 2522 RENT ADJUSTMENTS

Section 1

Section 2522.2 of this Part is amended to read as follows:

Section 2522.2 Effective date of adjustment of legal regulated rents.

The legal regulated rent shall be adjusted effective the first rent payment date occurring 30 days after the filing of the application, unless otherwise set forth in the order, [or as set forth in a Notice of Eligibility pursuant to section 2522.4(a)(3)(ii) of this Part,] or on the effective date of a lease or other rental agreement providing for the Rent Guidelines Board annual rate of adjustments, or upon vacancy or succession as provided in section 2522.8 of this Part. No rent adjustment may take place during a lease term unless a clause in the lease authorizes such increase, or as otherwise provided by law and this Code.

Section 2

Subdivision (a) of section 2522.3 of this Part is amended to read as follows:

(a)(1) Except as provided in section 2521.1(a)(2) of this Title, an appeal of the initial [legal registered] rent on the ground that it exceeds the fair market rent for the housing accommodation may be filed with the DHCR by the tenant of a housing accommodation which was subject to the City Rent Law on December 31, 1973. [If the housing accommodation was registered in accordance with Part 2528 of this Title, this] This right is limited to the first tenant taking occupancy on or after April 1, 1984, except where such tenant had vacated the housing accommodation prior to the service by the owner of the Notice of Initial Legal [Registered] Regulated Rent as required by section 2523.1 of this Title. In such event, any subsequent tenant in occupancy shall also have a right to file a Fair Market Rent Appeal until the owner mails the required notice and 90 days shall have elapsed without the filing of an appeal by a tenant continuing in occupancy during said 90-day period. Once a Fair Market Rent Appeal is filed, no subsequent tenant may file such appeal. Notwithstanding the above, where the first tenant taking occupancy after December 31, 1973, of a housing accommodation previously subject to the City Rent Law, was served with the notice required by section 26 of the former code of the Rent Stabilization Association of New York City, Inc., the time within which such tenant may file a Fair Market Rent Appeal is limited to 90 days after such notice was mailed to the tenant by the owner by certified mail. However, no Fair Market Rent Appeal may be filed after four years from the date the housing accommodation was no longer subject to the City Rent Law.

(2) In the case of a jurisdictional appeal, where a housing accommodation that was subject to the City Rent Law on December 31, 1973 is rented pursuant to an unregulated lease, pursuant to subparagraph (k) of paragraph (2) of subdivision (e) of section 26-403 of the City Rent Law, the first tenant to take occupancy upon such renting shall only file an appeal pursuant to this section within 90 days of such occupancy.

Section 3

Subdivision (b) of section 2522.3 of this Part is amended to read as follows:

(b)(1) [The] For an appeal filed pursuant to paragraph (1) of subdivision (a) of this section, the tenant [need only] must allege in such appeal:

[(1)]i that the initial [legal registered] rent is in excess of the fair market rent; and

[(2)]ii [such] facts which, to the best of his or her information and belief, support such allegation.

(2) For an appeal filed pursuant to paragraph (2) of subdivision (a) of this section, the tenant may only allege that allowable adjustments to the rent do not satisfy the minimum rent level requirements for decontrol pursuant to section 26-403(e)(2)(k) of the City Rent Law.

Section 4

Subdivision (c) of section 2522.3 of this Part is repealed, and a new subdivision (c) is adopted to read as follows:

(c) Such appeal shall be dismissed where:

(1) for appeals filed pursuant to paragraph (1) of subdivision (a) of this section, (i) the appeal is filed more than 90 days after the certified mailing to the tenant of the Initial Apartment

Registration, together with the Notice pursuant to section 2523.1 of this Title; or

(ii) the appeal is filed more than four years after the vacancy which caused the housing accommodation to no longer be subject to the City Rent Law.

(2) for appeals filed pursuant to paragraph (2) of subdivision (a) of this section, the appeal is filed more than 90 days after the date of occupancy of the first tenant to take occupancy of the housing accommodation pursuant to an unregulated lease pursuant to subparagraph (k) of paragraph (2) of subdivision (e) of section 26-403 of the City Rent Law.

Section 5

Subdivision (d) of section 2522.3 of this Part is amended to read as follows:

(d)(1) The order shall direct the affected owner to make the refund of any excess rent to the tenant in cash, check or money order, and to the extent the present owner is liable for all or any part of the refund, such present owner may credit such refund against future rents over a period not in excess of six months. In the absence of collusion between the present owner and any prior owner, where no records sufficient to establish the Fair Market Rent were provided at a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, an owner who purchases upon or subsequent to such sale shall not be liable for excess rent collected by any owner prior to such sale. An owner who did not purchase at such sale, but who purchased subsequent to such sale shall also not be liable for excess rent collected by any prior

owner subsequent to such sale to the extent that such excess rent is the result of excess rent collected prior to such sale. If the refund exceeds the total rent due for six months, the tenant at his or her option may continue to abate his or her rent until the refund is fully credited, or request the present owner to refund any balance outstanding at the end of such six-month period.

(2) Court-appointed Receivers. A Receiver who is appointed by a court of competent jurisdiction to receive rent for the use or occupation of a housing accommodation shall not, in the absence of collusion or any relationship between such Receiver and any owner or other Receiver, be liable for excess rent collected by any owner or other Receiver, where records sufficient to establish the Fair Market Rent have not been made available to such Receiver.

Section 6

Subdivision (e) of section 2522.3 of this Part is amended to read as follows:

(e) In determining Fair Market Rent Appeals filed pursuant to paragraph (1) of subdivision (a) of this section, consideration shall be given to the applicable guidelines promulgated for such purposes by the Rent Guidelines Board and to rents generally prevailing for [substantially similar] comparable housing accommodations in buildings located in the same area as the housing accommodation involved. In addition, consideration of the rental history of the subject housing accommodation for the period prior to the four-year period preceding the filing of the Fair Market Rent Appeal is precluded. The rents for these comparable housing accommodations may be considered where such rents are:

(1) [legal regulated] unchallenged rents[, for which the time to file a Fair Market Rent Appeal has expired and no Fair Market Rent Appeal is then pending, or the Fair Market Rent Appeal has been finally determined, charged pursuant to a lease commencing within a four-year period prior to, or a one-year period subsequent to, the commencement date of the initial lease for the housing accommodation involved; and] in effect for housing accommodations subject to this Code on the date the tenant filing the appeal took occupancy; or

(2) at the owner's option, market rents in effect for other comparable housing accommodations on the date [of] the [initial lease for the housing accommodation involved] tenant filing the appeal took occupancy, as submitted by the owner.

Section 7

Subdivision (f) of section 2522.3 of this Part is repealed.

Section 8

The opening paragraph of paragraph (2) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(2) An owner may file an application to increase the legal regulated rents of the building or building complex on forms prescribed by the DHCR, [which the DHCR shall serve upon all affected tenants,] on one or more of the following grounds:

Section 9

Clause (d) of subparagraph (i) of paragraph (2) of subdivision (a) of section 2522.4 of this Part is repealed, and a new clause (d) is adopted to read as follows:

(d) the item being replaced meets the requirements set forth on the following useful life schedule, except with DHCR approval of a waiver, as set forth in clause (e) of this subparagraph.

USEFUL LIFE SCHEDULE FOR MAJOR CAPITAL IMPROVEMENTS

Replacement Item or Equipment

Years - Estimated Life

1) Boilers and Burners

(a) Cast Iron Boiler ..... 35

(b) Package Boiler ..... 25

(c) Steel Boiler ..... 25

(d) Burners ..... 20

2) Windows

(a) Aluminum ..... 20

(b) Wood ..... 25

(c) Steel ..... 25

(d) Storm ..... 20

(e) Vinyl ..... 15

3) Roofs

(a) 2-Ply (asphalt) ..... 10

(b) 3-4 Ply (asphalt) ..... 15

(c) 5-Ply (asphalt) ..... 20

(d) Shingle ..... 20

(e) Single-ply Rubber ..... 20

(f) Single-ply Modified Bitumen ..... 10

(g) Quarry Tile ..... 20

4) Pointing ..... 15

5) Rewiring ..... 25

6) Intercom System ..... 15

7) Mailboxes ..... 25

8) Plumbing/Repiping

(a) Galvanized Steel ..... 25

(b) TP Copper ..... 30

(c) Brass cold water ..... 15

(d) Fixtures ..... 25

9) Elevators

(a) Major Upgrade ..... 25

(b) Controllers and Selector ..... 25

10) Doors

(a) Apartment Entrance ..... 25

(b) Lobby/Vestibule ..... 15

11) Bathroom Upgrading

(a) Toilets and Valves ..... 20

(b) Bathroom and Sinks ..... 20

(c) Vanity ..... 20

12) Kitchen Upgrading

(a) Metal/Wood Cabinets ..... 20

(b) Ranges ..... 20

(c) Refrigerators ..... 15

(d) Sinks ..... 20

13) Water Tanks

(a) Metal ..... 25

(b) Wood ..... 20

14) Waste Compactors ..... 10

15) Air Conditioners

(a) Individual Units/Sleeves ..... 10

(b) Central System ..... 15

(c) Branch Circuitry Fixtures ..... 15

16) Aluminum Siding ..... 25

Vinyl Siding ..... 15

17) Catwalk ..... 25

18) Chimney

(a) Steel ..... 25

(b) Brick ..... 25

19) Courtyards / Walkways / Driveways

Cement ..... 15

Asphalt ..... 10

20) Fire Escapes ..... 25

21) Fuel Oil Tanks

(a) In Vaults ..... 25

(b) Underground ..... 20

22) Water Heating Units

(a) Hot Water/Central Heating ..... 20

(b) Hot Water Heater (Domestic) ..... 10

23) Parapets

Brick ..... 25

24) Resurfacing Exterior Walls ..... 25

25) Solar Heating System ..... 25

26) Structural Steel ..... 25

27) Television Security ..... 10

For major capital improvements not listed above, the owner must submit with the application evidence that the useful life of the item or equipment being replaced has expired.

Section 10

A new clause (e) of subparagraph (i) of paragraph (2) of subdivision (a) of section 2522.4 of this Part is adopted to read as follows:

(e)(1) An owner who wishes to request a waiver of the useful life requirement set forth in clause (d) of this subparagraph (i) must apply to the DHCR for such waiver prior to the commencement of the work for which he or she will be seeking a major capital improvement rental increase. Notwithstanding this requirement, where the waiver requested is for an item being replaced because of an emergency, which causes the building or any part thereof to be dangerous to human life and safety or detrimental to health, an owner may apply to the DHCR for such waiver at the time he or she submits the major capital improvement rent increase application.

(2) If waiver is denied, the owner will not be eligible for an MCI increase. If it is granted, the useful life requirement will not be a factor in the determination of eligibility for the major capital improvement rent increase. However, approval of the waiver does not assure that the application will be granted, as all other requirements set forth in this paragraph must be met.

(3) An owner may apply for, and the DHCR may grant, a waiver of the useful life requirements set forth in the Useful Life Schedule, if the owner satisfactorily demonstrates the existence of one or more of the following circumstances:

(i) The item or equipment cannot be repaired and must be replaced during its useful life because of a fire, vandalism or other emergency, or "act of God" resulting in an emergency;

(ii) The item or equipment needs to be replaced because such item or equipment is beyond repair, or spare parts are no longer available, or required repairs would cost more than 75 percent of the cost of the total replacement of the item or equipment. Certification by a duly licensed engineer or architect, where there is no common ownership or other financial interest with the owner, shall be considered substantial proof of such condition(s). The owner may also be required to submit proof that the item or equipment was properly maintained. Such proof may include receipts for repairs and parts or maintenance logs;

(iii)(A) An appropriate New York State or local governmental agency has determined that the item or equipment needs to be replaced as part of a government housing program;

(B) For the owner to qualify for a New York State or local government long-term loan or insured loan, the governmental lender or insurer requires the remaining useful life of the building or building complex, as well as the component parts of such building or building complex, to be as great as or greater than the term of the loan agreement.

(iv) The replacement of an item or equipment which has proven inadequate, through no fault of the owner, is necessary, provided that there has been no major capital improvement rent increase for that item or equipment being replaced.

(4) In the event that the DHCR determines that an installation qualifies for a waiver of the useful life requirements, the DHCR may:

(i) where no previous increase was granted within the useful life of the item or equipment being replaced and the cost of repair would equal or exceed the cost of replacement, approve 100 percent of the substantiated cost of the item or equipment, including installation;

(ii) where no previous increase was granted within the useful life of the item or equipment being replaced and the cost of repair is more than 75 percent of the cost of replacement, grant a prorated increase based upon the remaining useful life;

(iii) where it is determined that an item is eligible to be replaced during its useful life, grant an increase based upon the difference between the substantiated cost of the item or equipment, including installation, and (a) the amount reimbursed from other sources, such as insurance proceeds or any other form of commercial guarantee, and (b) the amount of any increase previously granted for the same item or equipment either as a major capital improvement, or pursuant to other governmental programs, if such item or equipment has not exhausted at least 75 percent of its useful life at the time of the installation;

(iv) where it is determined that an item is eligible to be replaced even though it has not exhausted 75 percent of its useful life and that it was installed as part of a substantial rehabilitation or the new construction of a building for which the owner set initial building-wide rents, the DHCR may reduce the increase granted for a major capital improvement by a proportion of the remaining useful life of such item or equipment.

(5) Notwithstanding the provisions of subclause (4) of this clause, where an owner had substantially commenced work on the major capital improvement installation before September 26, 1990, based on prior

DHCR decisions and policies, and where adherence to useful life requirements or to the conditions of the waiver would create an undue hardship, the owner's application will be determined in accordance with those prior decisions and policies.

Section 11

Clause (a) of subparagraph (ii) of paragraph (2) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(a) improve, restore or preserve the quality of the structure and the grounds; and

Section 12

Paragraph (3) of subdivision (a) of section 2522.4 of this Part is repealed, and a new paragraph (3) is adopted to read as follows:

(3) Improvements or installations for which the DHCR may grant applications for rent increases based upon major capital improvements pursuant to paragraph (2) of this subdivision are described on the following Schedule. Other improvements or installations that are not included may also qualify, where all requirements of paragraph (2) of this subdivision have been met.

SCHEDULE OF MAJOR CAPITAL IMPROVEMENTS

l. AIR CONDITIONER:

- new central system; or individual units set in sleeves in the exterior wall of every housing accommodation; or, air conditioning circuits and outlets in each living room and/or bedroom (SEE REWIRING).

2. ALUMINUM SIDING:

- installed in a uniform manner on all exposed sides of the building (SEE RESURFACING).

3. BATHROOM MODERNIZATION:

- complete renovation including new sinks, toilets, bathtubs, and/or showers and all required trims in every housing accommodation; or any individual component or fixture if done building-wide.

4. BOILER AND/OR BURNER:

- new unit(s) including electrical work and additional components needed for the installation.

5. BOILER ROOM:

- new room where none existed before; or enlargement of existing one to accommodate new boiler.

6. CATWALK:

- complete replacement.

7. CHIMNEY:

- complete replacement, or new one where none existed before, including additional components needed for the installation.

8. COURTYARD, DRIVEWAYS AND WALKWAYS:

- resurfacing of entire original area within the property lines of the premises.

9. DOORS:

- new lobby front entrance and/or vestibule doors; or entrance to every housing accommodation, or fireproof doors for public hallways, basement, boiler room and roof bulkhead.

10. ELEVATOR UPGRADING:

- including new controllers and selectors; or new electronic dispatch overlay system; or new elevator where none existed before, including additional components needed for the installation.

11. FIRE ESCAPES:

- complete new replacement including new landings.

12. GAS HEATING UNITS:

- new individual units with connecting pipes to every housing accommodation.

13. HOT WATER HEATER:

- new unit for central heating system.

14. INCINERATOR UPGRADING:

- including a new scrubber.

15. INTERCOM SYSTEM:

- new replacement; or one where none existed before, with automatic door locks and pushbutton speakerbox and/or telephone communication, including security locks on all entrances to the building.

16. KITCHEN MODERNIZATION:

- complete renovation including new sinks, counter tops and cabinets in every housing accommodation; or any individual component or fixture if done building-wide.

17. MAILBOXES:

- new replacements and relocated from outer vestibule to an area behind locked doors to increase security.

18. PARAPET:

- complete replacement.

19. POINTING AND WATERPROOFING:

- as necessary on exposed sides of the building.

20. REPIPING:

- new hot and/or cold water risers, returns, and branches to fixtures in every housing accommodation, including shower bodies, and/or new hot and/or new cold water overhead mains, with all necessary valves in basement.

21. RESURFACING OF EXTERIOR WALLS:

- consisting of brick or masonry facing on entire area of all exposed sides of the building.

22. REWIRING:

- new copper risers and feeders extending from property box in basement to every housing accommodation; must be of sufficient capacity (220 volts) to accommodate the installation of air conditioner circuits in living room and/or bedroom.

23. ROOF:

- complete replacement or roof cap on existing roof installed after thorough scraping and leveling as necessary.

24. SOLAR HEATING SYSTEM:

- new central system, including additional components needed for the system.

25. STRUCTURAL STEEL:

- complete new replacement of all beams including footing and foundation.

26. TELEVISION SYSTEM:

- new security monitoring system including additional components needed for the system.

27. WASTE COMPACTOR:

- new installation(s) serving entire building.

28. WASTE COMPACTOR ROOM:

- new room where none existed before.

29. WATER SPRINKLER SYSTEM (FOR FIRE CONTROL PURPOSES):

- new installation(s).

30. WATER TANK:

- new installation(s).

31. WINDOWS:

- new framed windows.

Section 13

Paragraph (4) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(4) The increase in the monthly stabilization rent for the affected accommodations when authorized pursuant to paragraph (1) of this subdivision (a) shall be 1/40th of the total cost, including installation but excluding finance charges; and any increase pursuant to paragraph[s] (2) [and (3)] shall be [1/60th] 1/84th of the total cost, including installation but excluding finance charges as allocated in accordance with paragraph (12) of this subdivision (a). For increases pursuant to subparagraphs (2)(iii) and (iv) of this subdivision (a), in the discretion of the DHCR, an appropriate charge may be imposed in lieu of an amortization charge when an amortization charge is insignificant or inappropriate.

Section 14

Paragraph (7) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(7) [Except for applications made pursuant to paragraph (3) of this subdivision, an] An owner may apply for the DHCR's advisory prior

opinion pursuant to section 2527.11 of this Title, as to whether the proposed work qualifies for an increase in the legal regulated rent.

Section 15

Paragraph (8) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(8) No increase pursuant to paragraph[s] (2) [and (3)] of this subdivision (a) shall be granted by the DHCR, unless an application is filed no later than two years after the completion of the installation or improvement unless the applicant can demonstrate that the application could not be made within two years due to delay, beyond the applicant's control, in obtaining required governmental approvals for which the applicant has applied within such two-year period. No increase pursuant to paragraph[s] (2) [and (3)] of this subdivision (a) shall be granted within the useful life of an improvement or installation for which an increase was previously granted except with DHCR prior approval for required improvements. In addition, an increase pursuant to paragraph[s] (2) [and (3)] shall not be collectible from a tenant to whom there has been issued a currently valid senior citizen rent increase exemption pursuant to section 26-509 of the Administrative Code of the City of New York, to the extent such increase causes the legal regulated rent of the housing accommodation to exceed one third of the aggregate disposable income of all members of the household residing in the housing accommodation. The collection of any increase in the legal regulated rent for any housing accommodation pursuant to paragraph[s] (2) [and (3)] of this subdivision (a) shall not exceed six percent in any year from the effective date of the [Notice of Eligibility or of the] order granting the increase over the rent set forth in the schedule of gross rents with collectibility of any dollar excess above set

sum to be spread forward in similar increments and added to the legal regulated rent as established or set in future years. In no event shall more than one six-percent increase in the legal regulated rent pursuant to paragraph[s] (2) [and (3)] of this subdivision (a) be collected in the same year [for the permanent, prospective rent increase, and no more than an additional six-percent increase for the temporary retroactive portion of such rent increase].

Section 16

Paragraph (9) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(9) An increase for an improvement made pursuant to paragraph[s] (2) [and (3)] of this subdivision (a) shall not be granted by the DHCR to the extent that, after a plan for the conversion of a building to cooperative or condominium ownership is declared effective, such improvement is paid for out of the cash reserve fund of the cooperative corporation or condominium association. However, where prior to the issuance of an order granting the increase, the funds taken from the reserve fund are returned to it by the sponsor or holder of unsold shares or units or through a special assessment of all shareholders or unit owners, the increase may be based upon the total cost of the improvement. Nothing in this paragraph (9) shall prevent an owner from applying for, and the DHCR from granting, an increase for such improvement to the extent that the cost thereof is otherwise paid for by an owner.

Section 17

Paragraph (10) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(10) The DHCR shall not grant an application pursuant to this subdivision (a) for an increase for any improvement made pursuant to paragraph[s] (2) [and (3)] of this subdivision (a) to the extent that the cost of such improvement is paid for by an owner with funds received pursuant to a grant from any governmental agency or entity. A low interest loan or subsidy shall not be considered a grant for the purposes of this paragraph (10). Nothing in this paragraph (10) shall prevent an owner from applying for, and the DHCR from granting, an increase for such improvement to the extent that the cost thereof is otherwise paid for by an owner.

Section 18

Paragraph (12) of subdivision (a) of section 2522.4 of this Part is amended to read as follows:

(12) Rent adjustments pursuant to paragraph[s] (2) [and (3)] of this subdivision (a) and subdivisions (b) and (c) of this section shall be allocated as follows: The DHCR shall determine the dollar amount of the monthly rent adjustment. Such dollar amount shall be divided by the total number of rooms in the building. The amount so derived shall then be added to the rent chargeable to each housing accommodation in accordance with the number of rooms contained in such housing accommodation.

Section 19

Subdivision (a) of section 2522.4 of this Part is amended by adopting a new paragraph (15) to read as follows:

(15) Where during the processing of a rent increase application filed pursuant to paragraph (2) of this subdivision, tenants interpose answers complaining of defective operation of the major capital improvement, the complaint may be resolved in the following manner:

(i) Where municipal “sign-offs” (other than building permits) are required for the approval of the installation, and the tenants’ complaints relate to the subject matter of the sign-off, the complaints may be resolved on the basis of the sign-off, and the tenants referred to the approving governmental agency for whatever action such agency may deem appropriate;

(ii) Where municipal sign-offs are not required, or where the alleged defective operation of the major capital improvement does not relate to the subject matter of the sign-off, the complaint may be resolved by the affidavit of an independent licensed architect or engineer that the condition complained of was investigated and found not to have existed, or if found to have existed, was corrected. Such affidavit, which shall be served by the DHCR on the tenants, will raise a rebuttable presumption that the major capital improvement is properly operative. Tenants may rebut this presumption only on the basis of persuasive evidence, for example, a counter affidavit by an independent licensed architect or engineer, or an affirmation by 51 percent of the complaining tenants. Except for good cause shown, failure to rebut the presumption within 30 days will result in the issuance of an order without any further physical inspection of the premises by DHCR.

(iii) General Requirements.

There must be no common ownership, or other financial interest, between such architect or engineer and the owner or tenants. The affidavit shall state that there is no such relationship or other financial interest. The affidavit must also contain a statement that the architect or engineer did not engage in the performance of any work, other than the investigation, relating to the conditions that are the subject of the

affidavit. The affidavit submitted must contain the original signature and professional stamp of the architect or engineer, not a copy. DHCR may conduct follow-up inspections randomly to ensure that the affidavits accurately indicate the condition of the premises. Any person or party who submits a false statement shall be subject to all penalties provided by law.

Section 20

Paragraph (3) of subdivision (d) of section 2522.4 of this Part is renumbered paragraph (4), and a new paragraph (3) is adopted to read as follows:

(3) such decrease results from a change from rent inclusion of any public utility charge (including, but not limited to, electricity, gas, cable, or telecommunications) to direct payment by the tenant to the utility provider in accordance with a schedule of rent decreases for both rent controlled and rent stabilized housing accommodations based upon an Operational Bulletin as authorized by Section 2527.11 of this Title; or

Section 21

Paragraph (4) of subdivision (d) of section 2522.4 of this Part is amended to read as follows:

(4) in the case of a vacancy lease, where an application for a rent adjustment pursuant to section 2522.4(a)(2)[or 3], (b) or (c) of this Part is pending before the DHCR, such lease also recites that such application is pending before the DHCR and the basis for the adjustment, and that the increase which is the subject of such application, if granted, may be effective during the term of the lease.

Section 22

Subdivision (f) of section 2522.5 of this Part is amended to read as follows:

(f) Vacancy prior to expiration of lease term.

[Where] (1) For leases entered into on or before June 15, 1997, where the tenant vacates prior to the expiration of the term of the lease, and the housing accommodation is rented to a new tenant pursuant to a lease commencing during the same guidelines period as the prior lease, the rental provided in the new lease shall: [(1)](i) be in accordance with and at the guidelines rate of rent adjustment applicable to the new lease; and [(2)](ii) shall be computed upon the legal regulated rent charged and paid on the last day of the immediately preceding guidelines year; and [(3)](iii) may include such other rent increases as are authorized pursuant to [section 2522.4 of this Part] the RSL or this Code.

(2) For leases entered into after June 15, 1997, the rental provided in the new lease shall be in accordance with Section 2522.8 of this Part. The length of the occupancy by the tenant vacating prior to the expiration of the lease term shall have no bearing on the availability of lawful rent increases.

Section 23

Subdivision (g) of section 2522.5 of this Part is amended to read as follows:

(g) Same terms and conditions.

(1) The lease provided to the tenant by the owner pursuant to subdivision (b) of this section shall be on the same terms and conditions as the expired lease, except where the owner can demonstrate that the change is necessary in order to comply with a specific requirement

of law or regulation applicable to the building or to leases for housing accommodations subject to the RSL, or with the approval of the DHCR. Nothing herein may limit the inclusion of authorized clauses otherwise permitted by this Code or by order of the DHCR not contained in the expiring lease. Notwithstanding the foregoing, the tenant shall have the right to have his or her spouse, whether husband or wife, added to the lease or any renewal thereof as an additional tenant where said spouse resides in the housing accommodation as his or her primary residence.

(2) Where an owner has filed an Owner's Petition for Decontrol (OPD) with the DHCR, as provided for in section 2527-A.3 of this Title, and the period during which the owner must offer a renewal lease pursuant to subdivision (a) of section 2523.5 of this Title has not expired, and the proceeding for decontrol is pending, the owner shall be permitted to attach a rider to the offered renewal lease, on a form prescribed or a facsimile of such form approved by the DHCR, containing a clause notifying the tenant that the offered renewal lease, if accepted, shall nevertheless no longer be in effect after 60 days from the issuance by the DHCR of an order of decontrol, or, in the event that a petition for administrative review (PAR) is filed against such order of decontrol, after 60 days from the issuance by the DHCR of an order dismissing or denying the PAR.

Section 24

Section 2522.6 of this Part is amended to read as follows:

2522.6 Orders where the legal regulated rent or other facts are in dispute, in doubt, or not known, or where the legal regulated rent must be fixed.

(a) Where the legal regulated rent or any fact necessary to the determination of the legal regulated rent, or the dwelling space, required services or equipment required to be provided with the housing accommodation is in dispute between the owner and the tenant, or is in doubt, or is not known, the DHCR at any time upon written request of either party, or on its own initiative, may issue an order in accordance with the applicable provisions of this Code determining the facts, including the legal regulated rent, the dwelling space, required services, and equipment required to be provided with the housing accommodations.

(b) Such order shall determine such facts or establish the legal regulated rent in accordance with [section 2521.2] the provisions of this [Title] Code. Where such order establishes the legal regulated rent, it shall contain a directive that all rent collected by the owner in excess of the legal regulated rent established under this section for such period as is provided in section 2526.1(a) of this Title, or the date of the commencement of the tenancy, if later, either be refunded to the tenant, or be enforced in the same manner as prescribed in section 2526.1(e) and (f) of this Title. Orders issued pursuant to this section shall be based upon the law and Code provisions in effect on March 31, 1984, if the complaint was filed prior to April 1, 1984. However, in the absence of collusion or any relationship between an owner and any prior owner, where such owner purchases the housing accommodations upon a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, and no records sufficient to establish the legal regulated rent were made available to such purchaser, such orders shall establish the legal regulated rent [with due consideration of equities pursuant to

section 2522.7 of this Part] on the date of the inception of the complaining tenant's tenancy, or the date four years prior to the date of the filing of an overcharge complaint pursuant to section 2526.1 of this Title, whichever is most recent, based on either:

(1) documented rents for comparable housing accommodations, whether or not subject to regulation pursuant to this Code, submitted by the owner, subject to rebuttal by the tenant; or

(2) if the documentation set forth in paragraph (1) of this subdivision is not available or is inappropriate, data compiled by the DHCR, using sampling methods determined by the DHCR, for regulated housing accommodations; or

(3) in the event that the information described in both paragraphs (1) and (2) of this subdivision is not available, the complaining tenant's rent reduced by the most recent guidelines adjustment.

This subdivision shall also apply where the owner purchases the housing accommodations subsequent to such judicial or other sale. Notwithstanding the foregoing, this subdivision shall not be deemed to impose any greater burden upon owners with regard to record keeping than is provided pursuant to RSL section 26-516(g). In addition, where the amount of rent set forth in the rent registration statement filed four years prior to the date the most recent registration statement was required to have been filed pursuant to Part 2528 of this Title is not challenged within four years of its filing, neither such rent nor service of any registration shall be subject to challenge any time thereafter.

Section 25

Section 2522.7 of this Part is amended to read as follows:

Section 2522.7 Consideration of equities.

In issuing any order adjusting or establishing any legal regulated rent, [or in determining any applications by tenants pursuant to section 2523.5(f) of this Title,] or in determining when a higher or lower legal regulated rent shall be charged pursuant to an agreement between the DHCR and governmental agencies or public benefit corporations, the DHCR shall take into consideration all factors bearing upon the equities involved, subject to the general limitation that such adjustment, establishment or determination can be put into effect with due regard for protecting tenants and the public interest against unreasonably high rent increases inconsistent with the purposes of the RSL, for preventing imposition upon the industry of any industry-wide schedule of rents or minimum rents, and for preserving the regulated housing stock.

Section 26

A new section 2522.8 of this Part is adopted to read as follows:

Section 2522.8 Rent adjustments upon vacancy or succession.

(a) The legal regulated rent for any vacancy lease entered into after June 15, 1997 shall be as hereinafter provided in this subdivision. The previous legal regulated rent for such housing accommodation shall be increased by the following: (1) if the vacancy lease is for a term of two years, twenty percent of the previous legal regulated rent; or (2) if the vacancy lease is for a term of one year, the increase shall be twenty percent of the previous legal regulated rent less an amount equal to the difference between (i) the two year renewal lease guideline

promulgated by the Rent Guidelines Board applied to the previous legal regulated rent and (ii) the one year renewal lease guideline promulgated by the Rent Guidelines Board applied to the previous legal regulated rent. In addition, if the legal regulated rent was not increased with respect to such housing accommodation by a permanent vacancy allowance within eight years prior to a vacancy lease executed on or after June 15, 1997, the legal regulated rent may be further increased by an amount equal to the product resulting from multiplying such previous legal regulated rent by six-tenths of one percent and further multiplying the amount of rent increase resulting therefrom by the greater of (a) the number of years since the imposition of the last permanent vacancy allowance, or (b) if the rent was not increased by a permanent vacancy allowance since the housing accommodation became subject to the RSL and this Code, the number of years that such housing accommodation has been subject to the RSL and this Code. Provided that if the previous legal regulated rent was less than three hundred dollars, the total increase shall be as calculated above, plus one hundred dollars per month. Provided further, that if the previous legal regulated rent was at least three hundred dollars and no more than five hundred dollars, in no event shall the total increase pursuant to this subdivision be less than one hundred dollars per month.

All such increases shall be in lieu of any allowance authorized for the one or two year renewal component of the guideline promulgated by the Rent Guidelines Board, but shall be in addition to any other increases authorized pursuant to the RSL and this Code, including adjustments pursuant to subdivision (a) of section 2522.4 of this Part, and any applicable vacancy allowance authorized by the Rent Guidelines Board.

(b) Any provision of this Code to the contrary notwithstanding, where all tenants named in a lease have permanently vacated a housing accommodation, and a primary-resident family member of such tenant or tenants (first successor) is entitled to and executes a renewal lease for the housing accommodation, as provided in section 2523.5 of this Title, and thereafter permanently vacates the housing accommodation, if such housing accommodation continues to be subject to the RSL and this Code after such first successor vacates, and a primary-resident family member (second successor) is entitled to and executes a renewal lease for the housing accommodation as provided in section 2523.5 of this Title, the legal regulated rent shall be increased by a sum equal to the allowance then in effect for vacancy leases, including the amount allowed by subdivision (a) of this section. Such increase shall be in addition to any other increases provided for in the RSL and this Code, including adjustments pursuant to subdivision (a) of section 2522.4 of this Part, and any applicable vacancy allowance authorized by the Rent Guidelines Board, and shall be applicable in like manner to the renewal lease of each second subsequent succeeding family member.

Section 27

A new section 2522.9 of this Part is adopted to read as follows:

Section 2522.9 Surcharge for the installation and use of washing machines, dryers and dishwashers.

(a) Where a tenant requests permission from the owner to install a washing machine, dryer or dishwasher, whether permanently installed or portable, and the owner consents, the owner may collect surcharges, without notification to or approval by the DHCR in an amount

specified in an Operational Bulletin to be issued by the DHCR pursuant to subdivision (b) of section 2527.11 of this Title. The surcharges authorized by this section shall not be part of the legal regulated rent.

(b)(1) Where a prior installation by a tenant of a washing machine, dryer or dishwasher comes to the attention of the owner and the owner consents to the continued use of the washing machine, dryer or dishwasher, the surcharges provided for in this section shall only be available prospectively;

(2) Under no circumstances shall servicing or replacement of such washing machine, dryer or dishwasher become a service required to be provided by the owner pursuant to this Code;

(3) Where there is in effect a prior practice of charging for installation of a tenant-owned washing machine, dryer or dishwasher, the owner may continue the charge, which may also continue to be included in the legal regulated rent, if such was the prior practice.

Section 28

A new section 2522.10 of this Part is adopted to read as follows:

Section 2522.10 Surcharges for submetered electricity or other utility service.

Where an owner acts as a provider of a utility service (including, but not limited to electricity, gas, cable, or telecommunications), the owner may collect surcharges which shall not be part of the legal regulated rent, and shall not be subject to this Code.

PART 2523 NOTICES AND RECORDS

Section 1

Section 2523.1 of this Part is amended to read as follows:

Section 2523.1 Notice of initial legal [registered] regulated rent.

Every owner of housing accommodations previously subject to the City Rent Law and thereafter rented to a tenant on or after April 1, 1984, shall within 90 days after the [housing accommodations become] commencement of the first tenancy subject to the RSL, give notice in writing by certified mail to the tenant of each such housing accommodation on a form prescribed by the DHCR for that purpose, reciting the initial legal [registered] regulated rent for the housing accommodation and the tenant's right to file an application for adjustment of the initial legal [registered] regulated rent within 90 days of the certified mailing to the tenant of the notice pursuant to section 2522.3 of this Title.

Notwithstanding the foregoing, where such application is filed four years or more after the first date the housing accommodation was no longer subject to the City Rent Law, the application shall be dismissed pursuant to section 2522.3(c) of this Title.

Section 2

Section 2523.3 of this Part is amended to read as follows:

Section 2523.3 Failure to file a certification of services.

No owner shall be entitled to collect a rent adjustment pursuant to a Rent Guidelines Board Order as authorized under section 2522.5 of this Title, until the owner has filed a proper certification as required by section 2523.2 of this Part, nor shall any owner be entitled to a rent restoration based upon a restoration of services unless such

[certification is filed together with his or her application for rent] restoration of services has been determined by the DHCR in a proceeding commenced by an owner's application to restore rent or a proceeding commenced pursuant to section 2526.2 of this Title, or in another proceeding pursuant to this Code. Such restoration shall take effect, where restoration of services has been determined in a proceeding commenced by an owner's application for rent restoration, in accordance with section 2522.2 of this Title and, where restoration of services has been determined by the DHCR in a proceeding commenced pursuant to section 2526.2 of this Title, or in another proceeding pursuant to this Code, on the date specified in the order of the DHCR issued in such proceeding.

Section 3

Subdivision (a) of section 2523.4 of this Part is amended to read as follows:

(a)(1) A tenant may apply to the DHCR for a reduction of the legal regulated rent to the level in effect prior to the most recent guidelines adjustment, subject to the limitations of subdivisions (c) through (h) of this section, and the DHCR shall so reduce the rent for the period for which it is found that the owner has failed to maintain required services. The Order reducing the rent shall further bar the owner from applying for or collecting any further increases in rent until such services are restored or no longer required pursuant to an order of the DHCR. If the DHCR further finds that the owner has knowingly filed a false certification, it may, in addition to abating the rent, assess the owner with the reasonable costs of the proceeding, including reasonable attorney's fees, and impose a penalty not in excess of $250 for each false certification.

(2) Where an application for a rent adjustment pursuant to section 2522.4(a)(2) of this Title has been granted, and collection of such rent adjustment commenced prior to the issuance of the rent reduction order, the owner will be permitted to continue to collect the rent adjustment regardless of the effective date of the rent reduction order, notwithstanding that such date is prior to the effective date of the order granting the adjustment. In addition, regardless of the effective date thereof, a rent reduction order will not affect the continued collection of a rent adjustment pursuant to section 2522.4(a)(1) of this Title, where collection of such rent adjustment commenced prior to the issuance of the rent reduction order.

Section 4

New subdivisions (c), (d), (e), (f), (g) and (h) of section 2523.4 of this Part are adopted to read as follows:

(c) Before filing an application for a reduction of the legal regulated rent pursuant to subdivision (a) of this section, a tenant must have first notified the owner or the owner's agent in writing of all the service problems listed in such application. A copy of the written notice to the owner or agent with proof of mailing or delivery must be attached to the application. Applications may only be filed with the DHCR no earlier than 10 and no later than 60 days after such notice is given to the owner or agent. Prior written notice to the owner or agent is not required for complaints pertaining to heat or hot water, or other conditions requiring emergency repairs. Applications based upon a lack of adequate heat or hot water must be accompanied by a report from the appropriate city agency finding such lack of adequate heat or hot water.

(d)(1) In the event notice of any inspection is given by the DHCR in a proceeding commenced pursuant to this section, the inspection shall be conducted on notice to both the owner and tenant.

(2) Upon receipt of a copy of the tenant's complaint from the DHCR, an owner shall have forty-five days in which to respond. If during this period of time, an owner has attempted, but been unable to obtain access to the subject housing accommodation to correct the service or equipment deficiency, the owner should set forth such facts in the response. Upon receipt thereof, in order to facilitate the resolution of the complaint, the DHCR may direct an inspector to accompany the owner or the owner’s agent to the housing accommodation to determine whether such access is being provided. In order for DHCR to coordinate the inspection, the owner should indicate that access has been denied in the response submitted to the DHCR and should include copies of two letters to the tenant attempting to arrange for access. Each of the letters must have been mailed at least eight days prior to the date proposed for access, and must have been mailed by certified mail, return receipt requested. Exceptions to such requirements for inspection may be permitted under emergency conditions, where special circumstances exist, or pursuant to court order. The service complaint, or objection to a rent restoration application, by a tenant who fails to provide access at the time arranged by the DHCR for the inspection will be denied.

(e) Certain conditions complained of as constituting a decrease in a required service may be de minimis in nature, and therefore do not rise to the level of a failure to maintain a required service for the purposes of this section. Such conditions are those that have only a minimal impact on tenants, do not affect the use and enjoyment of the

premises, and may exist despite regular maintenance of services.

The following schedule sets forth conditions that will generally not constitute a failure to maintain a required service. However, this schedule is not intended to be exclusive, and is not determinative in all cases and under all circumstances. Therefore, it does not include all conditions that may be considered de minimis, and there may be circumstances where a condition, although included on the schedule, will nevertheless be found to constitute a decrease in a required service.

SCHEDULE OF DE MINIMIS CONDITIONS

BUILDING-WIDE CONDITIONS

1. AIR CONDITIONING:

Failure to provide in lobby, hallways, stairwells, and other non-enclosed public areas.

2. BUILDING ENTRANCE DOOR:

Removal of canopy over unlocked door leading to vestibule; changes in door-locking devices, where security or access is not otherwise compromised.

3. CARPETING:

Change in color or quality under certain circumstances; isolated stains on otherwise clean carpets; frayed areas which do not create a tripping hazard.

4. CLOTHESLINES:

Removal of, whether or not dryers are provided.

5. CRACKS:

Sidewalk cracks which do not create a tripping hazard; hairline cracks in walls and ceilings.

6. DECORATIVE AMENITIES:

Modification (e.g., fountain replaced with rock garden); removal of some or all for aesthetic reasons.

7. ELEVATOR:

Failure to post elevator inspection certificates; failure to provide or maintain amenities (e.g., ashtray, fan, recorded music).

8. FLOORS:

Failure to wax floors; discrete areas in need of cleaning or dusting, where there is evidence that janitorial services are being regularly provided and most areas are clean (See JANITORIAL SERVICES, item 12).

9. GARAGE:

Any condition that does not interfere with the use of the garage or an assigned parking space (e.g., peeling paint where there is no water leak).

10. GRAFFITI:

Minor graffiti inside the building; any graffiti outside the building where the owner submits an "affidavit of on-going maintenance" indicating a reasonable time period when the specific condition will be next addressed.

11. LANDSCAPING:

Modification; failure to maintain a particular aspect of landscaping where the grounds are generally maintained.

12. JANITORIAL SERVICES:

Failure to clean or dust discrete areas, where there is evidence that janitorial services are being regularly provided because most areas are, in fact, clean.

13. LIGHTING IN PUBLIC AREAS:

Missing light bulbs where the lighting is otherwise adequate.

14. LOBBY OR HALLWAYS:

Discontinuance of fresh cut flowers; removal of fireplace or fireplace andirons; modification of furniture; removal of some furnishings (determined on a case by case basis); removal of decorative mirrors; reduction in lobby space where reasonable access to tenant areas are maintained; elimination of public area door mat; failure to maintain a lobby directory that is not associated with a building intercom; removal or replacement of window coverings (See DECORATIVE AMENITIES, item 6).

15. MAIL DISTRIBUTION:

Elimination of door-to-door or other methods of mail distribution where mailboxes are installed in a manner approved by the U.S. Postal Service.

16. MASONRY:

Minor deterioration; failure to point exterior bricks where there is no interior leak damage.

17. PAINTING:

Change in color in public areas under certain circumstances (e.g., not in violation of the New York City Housing Maintenance Code); replacement of wallpaper or stenciling with paint in the public areas; isolated or minor areas where paint or plaster is peeling, or other similarly minor areas requiring repainting, provided there are no active water leaks; any painting condition in basement or cellar areas not usually meant for or used by tenants; any painting condition that is limited to the

top-floor bulkhead area provided there is no active water leak in such area.

18. RECREATIONAL FACILITIES:

Modifications, such as reasonable substitution of equipment, combination of areas, or reduction in the number of items of certain equipment where overall facilities are maintained (See ROOF, item 19).

19. ROOF:

Discontinuance of recreational use (e.g., sunbathing) unless a lease clause provides for such service, or formal facilities (e.g., solarium) are provided by the owner; lack of repairs where water does not leak into the building or the condition is not dangerous.

20. SINKS:

Failure to provide or maintain in compactor rooms or laundry rooms.

21. STORAGE SPACE:

Removal or reduction of, unless storage space service is provided for in a specific rider to the lease (not a general clause in a standard form residential lease), or unless the owner has provided formal storage boxes or bins to tenants within three years of the filing of a tenant's complaint alleging an elimination or a reduction in storage space service.

22. SUPERINTENDENT/MAINTENANCE STAFF/MANAGEMENT:

Decrease in the number of staff, other than security, provided there is no decrease in janitorial services; elimination of on-site management office; failure to provide an on-site superintendent, provided there is no decrease in janitorial services.

23. TELEVISION:

Replacement of individual antennas with master antenna; visible cable; television wires; or other technologies.

24. TOILET IN PUBLIC AREAS:

Removal of (except in buildings containing Class B units).

25. WINDOWS:

Sealed, vented, basement or crawl space windows, other than in areas used by tenants (e.g., laundry rooms); cracked fire-rated windows; peeling paint or other non-hazardous condition of exterior window frames.

INDIVIDUAL APARTMENT CONDITIONS

1. APPLIANCES AND FIXTURES:

Chips on appliances, countertops, fixtures or tile surfaces; color-matching of appliances, fixtures or tiles.

2. CRACKS:

Hairline cracks; minor wall cracks, provided there is no missing plaster, or no active water leak.

3. DOORS:

Lack of alignment, provided condition does not prevent proper locking of entrance door or closing of interior door.

4. FLOOR:

Failure to provide refinishing or shellacking.

5. NOISE:

Caused by another tenant.

6. WINDOW FURNISHINGS:

Failure to re-tape or re-cord venetian blinds.

(f) In determining whether a condition is de minimis, the DHCR may consider the passage of time during which a disputed service was

not provided and during which no complaint was filed by any tenant alleging failure to maintain such disputed service, as evidencing that such service condition is de minimis, and therefore does not constitute a failure to maintain a required service, provided that:

(1) for purposes of this subdivision, the passage of four years or more shall be considered presumptive evidence that the condition is de minimis, with such four-year period to be measured without reference to any changes in building ownership or the tenancy of the subject housing accommodation;

(2) services required to be provided by laws or regulations other than the RSL and this Code shall not be subject to this subdivision.

(g)(1) Except as to complaints of inadequate heat and/or hot water, or applications relating to the restoration of rents based upon the restoration of such services, whenever a complaint of building-wide reduction in services, or an owner's application relating to the restoration of rents based upon the restoration of such services is filed, the tenants or owner may submit with the complaint, answer or application, the contemporaneous affidavit of an independent licensed architect or engineer, substantiating the allegations of the complaint, answer, or application. The affidavit shall state that the conditions that are the subject of the complaint, answer or application were investigated by the person signing the affidavit and that the conditions exist (if the affidavit is offered by the tenants) or do not exist (if the affidavit is offered by the owner). The affidavit shall specify what conditions were investigated and what the findings were with respect to each condition. The affidavit shall state when the investigation was conducted, must be submitted within a reasonable time after the completion of the

investigation, and when served by DHCR on the opposing party, will raise a rebuttable presumption that the conditions that are the subject of the complaint, answer or application exist (if the affidavit is submitted by the tenants), or do not exist (if the affidavit is submitted by the owner).

(2) The presumption raised by the affidavit may be rebutted only on the basis of persuasive evidence, including a counter affidavit by an independent licensed architect or engineer, or a report of a subsequent inspection conducted, or a subsequent violation imposed by a governmental agency, or an affirmation signed by 51 percent of the complaining tenants. Except for good cause shown, failure to rebut the presumption within 30 days will result in the issuance of an order without any further physical inspection of the premises by DHCR.

(3) There must be no common ownership, or other financial interest, between such architect or engineer, and the owner or tenants, and the affidavit shall state that there is no such relationship or other financial interest. The affidavit must also contain a statement that the architect or engineer did not engage in the performance of any work, other than the investigation, relating to the conditions that are the subject of the affidavit, and must contain the original signature and professional stamp of the architect or engineer, not a copy. DHCR may conduct follow-up inspections randomly to ensure that the affidavits accurately indicate the conditions of the premises. Any person or party who submits a false statement will be subject to all penalties provided by law.

(h) The amount of the reduction in rent ordered by the DHCR pursuant to this section shall be reduced by any credit, abatement or

offset in rent which the tenant has received pursuant to section 235-b of the Real Property Law, that relates to one or more conditions covered by such order.

Section 5

Subdivision (a) of section 2523.5 of this Part is amended to read as follows:

(a) On a form prescribed or a facsimile of such form approved by the DHCR, dated by the owner, every owner, other than an owner of hotel accommodations, shall notify the tenant named in the expiring lease not more than 150 days and not less than [120] 90 days prior to the end of the tenant's lease term, by mail or personal delivery, of the expiration of the lease term, and offer to renew the lease or rental agreement at the legal regulated rent permitted for such renewal lease and otherwise on the same terms and conditions as the expiring lease. The owner shall give such tenant a period of 60 days from the date of service of such notice to accept the offer and renew such lease. The tenant's acceptance of such offer shall be entered on the designated part of the prescribed form, or facsimile thereof, and returned to the owner by mail or personal delivery. Pursuant to the provisions of section 2522.5(b)(1) of this Title, the owner shall furnish to such tenant a copy of the fully executed renewal lease form bearing the signatures of the owner and tenant within 30 days of the owner's receipt of the renewal lease form signed by the tenant. Upon execution by the owner and delivery to the tenant, such form shall constitute a binding renewal lease. Upon failure of the owner to deliver a copy of the fully executed renewal lease form to the tenant within 30 days from the owner's receipt of such form signed by the tenant, such tenant shall not be deprived of any of his or her rights under the RSL

and this Code and the owner shall be barred from commencing any action or proceeding against the tenant based upon nonrenewal of lease, pursuant to section 2524.3(f) of this Title. In the event that such notice is given to the tenant after the expiration of the lease, the provisions of subdivision (c) of this section shall govern.

Section 6

Subdivision (c) of section 2523.5 of this Part is amended to read as follows:

(c)(1) Where the owner fails to timely offer a renewal lease or rental agreement in accordance with subdivision (a) of this section, the one- or two-year lease term selected by the tenant shall commence at the tenant's option, either [(1)](i) on the date a renewal lease would have commenced had a timely offer been made, or [(2)](ii) on the first rent payment date occurring no less than [120] 90 days after the date that the owner does offer the lease to the tenant. In either event, the effective date of the increased rent under the renewal lease shall commence on the first rent payment date occurring no less than [120] 90 days after such offer is made by the owner, and the guidelines rate applicable shall be no greater than the rate in effect on the commencement date of the lease for which a timely offer should have been made.

(2) Where the tenant fails to timely renew an expiring lease or rental agreement offered pursuant to this section, and remains in occupancy after expiration of the lease, such lease or rental agreement may be deemed to have been renewed upon the same terms and conditions, at the legal regulated rent, together with any guidelines adjustments that would have been applicable had the offer of a renewal lease been timely accepted. The effective date of the rent adjustment under the "deemed" renewal lease

shall commence on the first rent payment date occurring no less than 90 days after such offer is made by the owner.

(3) Notwithstanding the provisions of paragraph (2) of this subdivision, an owner may elect to commence an action or proceeding to recover possession of a housing accommodation in a court of competent jurisdiction pursuant to sections 2524.2(c)(1) and 2524.3(f) of this Title, where the tenant, upon the expiration of the existing lease or rental agreement, fails to timely renew such lease in the manner prescribed by this section.

Section 7

The opening paragraph of subdivision (e) of section 2523.5 of this Part is amended to read as follows:

On a form prescribed or a facsimile of such form approved by the DHCR, a tenant may, at any time, advise the owner, or an owner may request from the tenant at [the time a renewal lease is offered pursuant to subdivision (a) of this section] any time, but no more often than once in any twelve months, the names of all persons other than the tenant who are residing in the housing accommodation, and the following information pertaining to such persons:

Section 8

Subdivision (f) of section 2523.5 of this Part is repealed, and a new subdivision (f) is adopted to read as follows:

(f) For the purpose of determining whether an owner may charge the rent increases authorized pursuant to subdivision f of section 26-512 of the RSL, every owner who enters into a renewal lease pursuant to subdivision (b) of this section shall notify the DHCR, in a manner prescribed by the DHCR, whether the tenant named on the lease in effect for

the housing accommodation at the time such notice is given was so named as the result of the exercise of rights pursuant to subdivision (b) of this section, together with the commencement date of the first renewal lease for the housing accommodation on which such tenant was named. Such notice shall create a rebuttable presumption that the owner is entitled to collect such sum.

Section 9

Subdivision (a) of section 2523.7 of this Part is repealed, and subdivisions (b), (c) and (d) are renumbered subdivisions (a), (b) and (c), respectively.

Section 10

Renumbered subdivisions (a), (b) and (c) of section 2523.7 of this Part are amended, respectively, to read as follows:

[(b)] (a) Except as provided in subdivision [(c)] (b) of this section, every owner subject to this Code shall [also] keep, preserve, and make available for examination, records from the date immediately prior to the date the housing accommodation became subject to the RSL, showing [the rents received for each housing accommodation, the particular term and number of tenants for which such rents were charged, and the name of each tenant, and] the individual housing accommodation services and building-wide services provided or required to be provided on the applicable base date.

[(c)](b) [Any] An owner [who has duly registered a housing accommodation pursuant to Part 2528 of this Title] shall [not be required to] maintain [or produce any] records relating to [rentals] rents of [such accommodation] housing accommodations [more than] for four years prior to the [initial or] date the most recent [annual] registration for such

accommodation was required to have been filed. An owner shall not be required to produce any rent records in connection with proceedings under sections 2522.3 and 2526.1 of this Title relating to a period that is prior to the base date. Notwithstanding the above, such owner shall continue to maintain such records for all housing accommodations for which a complaint of overcharge or a Fair Market Rent Appeal [was] has been filed by a tenant [prior to April 1, 1984, or a challenge to an initial registration is filed], until a final order of the DHCR is issued.

[(d)](c)(1) In the absence of collusion or any relationship between a prior owner and an owner who purchases upon a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, such purchaser shall not be required to [comply with the provisions of subdivisions (a) and (b) of this section] provide records for the period prior to such sale, except where records sufficient to establish the legal regulated rent are available to such purchaser. This subdivision shall apply to an owner who purchases subsequent to such judicial or other sale.

(2) Court-appointed Receivers. A Receiver who is appointed by a court of competent jurisdiction to receive rent for the use or occupation of a housing accommodation shall not, in the absence of collusion or any relationship between such Receiver and any owner or other Receiver, be required to provide records for the period prior to such appointment, except where records sufficient to establish the legal regulated rent are available to such Receiver. This subdivision (c) shall not be construed to waive the purchaser's obligation to register pursuant to Part 2528 of this Title.

Section 11

Section 2523. 8 of this Part is amended to read as follows:

Section 2523.8. Notice of change of ownership or address.

(a) Within 30 days after a change in ownership, the new owner shall notify the DHCR of such change on a form prescribed by the DHCR. Such form shall be signed by the new owner, listing the address of the building or complex, the name, address and telephone number of the new owner, and the date of the transfer of ownership.

(b) Within thirty (30) days after a change in the address of the managing agent, such managing agent, or, if there is no managing agent, the owner of a building or group of buildings or development shall give written notice to the DHCR and to all tenants of the new address.

PART 2524 EVICTIONS

Section 1

Subdivision (c) of section 2524.2 of this Part is amended to read as follows:

(c) Every such notice shall be served upon the tenant:

(1) in the case of a notice based upon subdivision (f) of section 2524.3 of this Part, at least 15 days prior to the date specified therein for the surrender of possession; or

(2) in the case of a notice on any other ground pursuant to section 2524.3, at least [seven] 7 calendar days prior to the date specified therein for the surrender of possession, or in the case of a notice pursuant to subdivision (c) of section 2524.4 of this Part, at least [120] 90 and not more than 150 days prior to the expiration of the lease term; or

(3) in the case of a notice pursuant to subdivision (a) of sections 2524.4 and 2524.5 of this Part, at least [120] 90 and not more than 150 days prior to the expiration of the lease term, or in the case of a hotel permanent tenant without a lease, at least [120] 90 and not more than 150 days prior to the commencement of a court proceeding; or

(4) in the case of a notice pursuant to subdivision (b) of section 2524.4 of this Part, at least [120] 90 and not more than 150 days prior to the expiration of the lease term, or within [120] 90 days of the expiration of the tenant's lease term, provided no summary proceeding can be commenced until the expiration of [120] 90 days from the service of such notice, accompanied by a form prescribed by the DHCR advising the tenant of the penalties set forth in section 2524.4(b) of this Part for failure to use the housing accommodation for the charitable or educational purposes for which recovery is sought.

Section 2

Section 2524.2 of this Part is amended by adopting a new subdivision (e) to read as follows:

(e) All notices served pursuant to section 2524.5 (a)(2) of this Part shall state:

(1) that the owner will not renew the tenant's lease because the owner has filed an application pursuant to section 2524.5(a)(2) for permission to recover possession of all of the housing accommodations in the building for the purpose of demolishing them, for which plans and financing have been obtained, or are in the process of being obtained, as stated in the application;

(2) that while the application is pending, the tenant may remain in occupancy;

(3) that the tenant shall not be required to vacate until DHCR has issued a final order approving the application and setting forth the time for vacating, stipends and other relocation conditions; and

(4) that the tenant must be offered a prospective renewal lease if the application is withdrawn or denied.

Section 3

Subdivision (b) of section 2524.3 of this Part is repealed, and a new subdivision (b) is adopted to read as follows:

(b) The tenant is committing or permitting a nuisance in such housing accommodation or the building containing such housing accommodation; or is maliciously, or by reason of gross negligence, substantially damaging the housing accommodation; or the tenant engages in a course of conduct, the primary purpose of which is intended to harass the owner or other tenants or occupants of the same or an adjacent building or structure by interfering substantially with their comfort or safety. The exercise by a tenant of any rights pursuant to any law or regulation relating to occupancy of a housing accommodation, including the RSL or this Code, shall not be deemed a ground for eviction pursuant to this subdivision (b); or

Section 4

Subdivision (c) of section 2524.4 of this Part is amended to read as follows:

(c) Primary residence.

The housing accommodation is not occupied by the tenant, not including subtenants or occupants, as his or her primary residence, as determined by a court of competent jurisdiction; provided, however, that no action or proceeding shall be commenced seeking to recover possession on the ground that the housing accommodation is not occupied by the tenant as his or her primary residence unless the owner or lessor shall have given 30 days' notice to the tenant of his or her intention to commence such action or proceeding on such grounds. Such notice may be combined with the notice required by section 2524.2(c)(2) of this Title. [For the purposes of this subdivision, where a housing accommodation is rented to a not-for-profit hospital for residential use, affiliated subtenants authorized to use such accommodations by such hospital shall be deemed to be tenants for primary residence purposes.]

Section 5

Paragraph (2) of subdivision (a) of section 2524.5 of this Part is repealed, and a new paragraph (2) is adopted to read as follows:

(2) Demolition.

(i) The owner seeks to demolish the building. Until the owner has submitted proof of its financial ability to complete such undertaking to the DHCR, and plans for the undertaking have been approved by the appropriate City agency, an order approving such application shall not be issued.

(ii) Terms and conditions upon which orders issued pursuant this paragraph authorizing refusal to offer renewal leases may be based:

(a) The DHCR shall require an owner to pay all reasonable moving expenses and afford the tenant a reasonable period of time within

which to vacate the housing accommodation. If the tenant vacates the housing accommodation on or before the date provided in the DHCR's final order, such tenant shall be entitled to receive all stipend benefits pursuant to clause (b) of this subparagraph. In addition, if the tenant vacates the housing accommodation prior to the required vacate date, the owner may also pay a stipend to the tenant that is larger than the stipend designated in a Demolition Stipend Chart to be issued pursuant to an Operational Bulletin authorized by section 2527.11 of this Title. However, at no time shall an owner be required to pay a stipend in excess of the stipend set forth in such schedule. If the tenant does not vacate the housing accommodation on or before the required vacate date, the stipend shall be reduced by one-sixth of the total stipend for each month the tenant remains in occupancy after such vacate date.

(b) The order granting the owner's demolition application shall provide that the owner must either:

(1) relocate the tenant to a suitable housing accommodation, as defined in subparagraph (iii) of this paragraph, at the same or lower legal regulated rent in a closely proximate area, or in a new residential building if constructed on the site, in which case suitable interim housing shall be provided at no additional cost to the tenant; plus in addition to reasonable moving expenses, payment of a five thousand dollar stipend, provided the tenant vacates on or before the vacate date required by the final order; or

(2) where an owner provides relocation of the tenant to a suitable housing accommodation at a rent in excess of that for the subject housing accommodation, in addition to the tenant's reasonable moving expenses, the owner may be required to pay the tenant a stipend equal to

the difference in rent, at the commencement of the occupancy by the tenant of the new housing accommodation, between the subject housing accommodation and the housing accommodation to which the tenant is relocated, multiplied by seventy-two months, provided the tenant vacates on or before the vacate date required by the final order; or

(3) pay the tenant a stipend which shall be the difference between the tenant's current rent and an amount calculated using the Demolition Stipend Chart, at a set sum per room per month multiplied by the actual number of rooms in the tenant's current housing accommodation, but no less than three rooms. This difference is to be multiplied by seventy-two months.

(c) Wherever a stipend would result in the tenant losing a subsidy or other governmental benefit which is income dependent, the tenant may elect to waive the stipend and have the owner at his or her own expense, relocate the tenant to a suitable housing accommodation at the same or lower legal regulated rent in a closely proximate area.

(d) In the event that the tenant dies prior to the issuance by the DHCR of a final order granting the owner's application, the owner shall not be required to pay such stipend to the estate of the deceased tenant.

(e) Where the order of the DHCR granting the owner's application is conditioned upon the owner's compliance with specified terms and conditions, if such terms and conditions have not been complied with, the order may be modified or revoked.

(f) Noncompliance by the owner with any term or condition of the Administrator's or Commissioner's order granting the owner's application shall be brought to the attention of the DHCR's Compliance Unit

for appropriate action. The DHCR shall retain jurisdiction for this purpose until all moving expenses, stipends, and relocation requirements have been met.

(iii) Comparable housing accommodations and relocation.

In the event a comparable housing accommodation is offered by the owner, a tenant may file an objection with the DHCR challenging the suitability of a housing accommodation offered by the owner for relocation within 10 days after the owner identifies the housing accommodation and makes it available for the tenant to inspect and consider the suitability thereof. Within 30 days thereafter, the DHCR shall inspect the housing accommodation, on notice to both parties, in order to determine whether the offered housing accommodation is suitable. Such determination will be made by the DHCR as promptly as practicable thereafter. In the event that the DHCR determines that the housing accommodation is not suitable, the tenant shall be offered another housing accommodation, and shall have 10 days after it is made available by the owner for the tenant's inspection to consider its suitability. In the event that the DHCR determines that the housing accommodation is suitable, the tenant shall have 15 days thereafter within which to accept the housing accommodation. A tenant who refuses to accept relocation to any housing accommodation determined by the DHCR to be suitable shall lose the right to relocation by the owner, and to receive payment of moving expenses or any stipend.

"Suitable housing accommodations" shall mean housing accommodations which are similar in size and features to the respective housing accommodations now occupied by the tenants. Such housing accommodations shall be freshly painted before the tenant takes occupancy, and shall be provided with substantially the same required services and

equipment the tenants received in their prior housing accommodations. The building containing such housing accommodations shall be free from violations of law recorded by the City agency having jurisdiction, which constitute fire hazards or conditions dangerous or detrimental to life or health, or which affect the maintenance of required services.

The DHCR will consider housing accommodations proposed for relocation which are not presently subject to rent regulation, provided the owner submits a contractual agreement that places the tenant in a substantially similar housing accommodation at no additional rent for a period of six years, unless the tenant requests a shorter lease period in writing.

Section 6

Subdivision (b) of section 2524.5 of this Part is amended to read as follows:

(b) Election not to renew.

Once an application is filed under this section, with notification to all affected tenants [pursuant to section 2524.2 of this Part (Termination Notices)], the owner may refuse to renew [the affected tenant's lease] <u>all tenants' leases</u> until a determination of the owner's application is made by the DHCR. [In such event, the owner may not increase the rent charged in excess of the rent provided in the expiring lease.] <u>For the purposes of paragraph (2) of subdivision (a) of this section, service of the application at any time shall be considered sufficient compliance with section 2524.2(c)(3) of this Part.</u> If such application is denied, or withdrawn, prospective renewal leases must be offered to all affected tenants within such time and at such guidelines rates as directed in the DHCR order of denial or withdrawal.

Section 7

Subdivision (c) of section 2524.5 of this Part is amended to read as follows:

(c) Terms and conditions upon which orders authorizing refusal to offer renewal leases may be based.

[The] Except as otherwise provided in paragraph (2) of subdivision (a) of this section, the DHCR shall require an owner to pay all reasonable moving expenses and shall further condition the order upon the payment of a reasonable stipend and/or the relocation of the tenant by the owner to a suitable housing accommodation at the same or lower regulated rent in a closely proximate area. If no such housing accommodation is available at the same or lower regulated rent, the owner may be required to pay the difference in rent between the subject housing accommodation and the new housing accommodation to which the tenant is relocated for such period as the DHCR determines, commencing with the occupancy of the new housing accommodation by the tenant.

PART 2525 PROHIBITIONS

Section 1

Subdivision (e) of section 2525.6 of this Part is amended to read as follows:

(1) Upon the consent of the owner to a sublet [or an assignment of any lease], the legal regulated rent payable to the owner effective upon the date of subletting [or assignment] may be increased by the vacancy allowance, if any, provided in the Rent Guidelines Board Order in effect at the time of the commencement date of the lease, provided the lease is a renewal lease. [Such increase in the case of] Upon the consent of an owner to an assignment, regardless of whether or not the lease is a

renewal lease, the legal regulated rent payable to the owner effective upon the date of such assignment may be increased by (i) the increase provided for in section 2522.8 of this Title; and (ii) which may be further increased by the vacancy allowance, if any, provided in the Rent Guidelines Board order in effect at the time of the commencement date of the lease. Such increases shall remain part of the legal regulated rent for any subsequent renewal lease[; however]. However, in the case of a subletting, upon termination of the sublease, the legal regulated rent shall revert to the legal regulated rent without the sublet vacancy allowance.

Section 2

Subdivision (g) of section 2525.6 of this Part is repealed, and subdivision (h) is renumbered subdivision (g).

Section 3

A new section 2525.7 of this Part is adopted to read as follows:

Section 2525.7 Occupancy by persons other than tenant of record or tenant’s immediate family.

(a) Housing accommodations subject to the RSL and this Code may be occupied in accordance with the provisions and subject to the limitations of section 235-f of the Real Property Law.

(b) The rental which a tenant may charge a person in occupancy pursuant to section 235-f of the Real Property Law shall not exceed such occupant’s proportionate share of the legal regulated rent for the subject housing accommodation. The charging of a rental to such occupant that exceeds that amount shall be deemed to constitute profiteering in violation of section 2520.3 of this Title.

PART 2526 ENFORCEMENT

Section 1

The title of section 2526.1 of this Part is amended to read as follows:

Section 2526.1 [Overcharge] Determination of legal regulated rents; penalties; fines; assessment of costs; attorney's fees; rent credits.

Section 2

Paragraph (1) of subdivision (a) of section 2526.1 of this Part is amended to read as follows:

(a)(1) Any owner who is found by the DHCR, after a reasonable opportunity to be heard, to have collected any rent or other consideration in excess of the legal regulated rent shall be ordered to pay to the tenant a penalty equal to three times the amount of such excess, except as provided under subdivision (f) of this section. In no event shall such treble damage penalty be assessed against an owner based solely upon the owner's failure to file any timely or proper rent registration statement. If the owner establishes by a preponderance of the evidence that the overcharge was not willful, the DHCR shall establish the penalty as the amount of the overcharge plus interest, which interest shall accrue from the date of the first overcharge on or after [April 1, 1984] the base date, at the rate of interest payable on a judgment pursuant to section 5004 of the Civil Practice Law and Rules, and the order shall direct such a payment to be made to the tenant.

Section 3

Paragraph (2) of subdivision (a) of section 2526.1 of this Part is amended to read as follows:

(2) A complaint pursuant to this section must be filed with the DHCR within four years of the first overcharge alleged, and no determination of an overcharge and no award or calculation of an award of the amount of an overcharge may be based upon an overcharge having occurred more than four years before the complaint is filed[, provided that]; additionally:

(i) a penalty of three times the overcharge may not be based upon an overcharge having occurred more than two years before the complaint is filed or upon an overcharge which occurred prior to April 1, 1984; [and]

(ii) [any complaint based upon overcharges occurring prior to the date of filing of the initial rent registration for a housing accommodation pursuant to Part 2528 of this Title shall be filed within ninety days of the mailing of notice to the tenant of such registration] an overcharge complaint with respect to a housing accommodation which, at the time of the filing of such complaint, is rented pursuant to an unregulated lease pursuant to subdivision (r) of section 2520.11 of this Title, may only be filed by the first tenant to take occupancy upon such renting, and shall be filed within 90 days of such tenant taking occupancy;

(iii) the rental history of the housing accommodation prior to the four-year period preceding the filing of a complaint pursuant to this section, and section 2522.3 of this Title, shall not be examined. This subparagraph shall preclude examination of a rent registration for any year commencing prior to the base date, as defined in section 2520.6(f) of this Title, whether filed before or after such base date. Except as

provided in subparagraph (ii) of this paragraph (2) and section 2522.3(a)(2) of this Title, nothing contained herein shall limit a determination as to whether a housing accommodation is subject to the RSL and this Code, nor shall there be a limit on the continuing eligibility of an owner to collect rent increases pursuant to section 2522.4 of this Title, which may have been subject to deferred implementation, pursuant to paragraph (8) of subdivision (a) of such section 2522.4 in order to protect tenants from excessive rent increases.

Section 4

Subparagraph (i) of paragraph (3) of subdivision (a) of section 2526.1 of this Part is amended to read as follows:

(3)(i) [Except as to complaints filed pursuant to subparagraph (ii) of this paragraph, the] The legal regulated rent for purposes of determining an overcharge shall be deemed to be the rent [shown in the annual registration statement filed four years prior to the most recent registration statement, (or, if more recently filed, the initial registration statement)] charged on the base date, plus in each case any subsequent lawful increases or adjustments.

Section 5

Subparagraph (ii) of paragraph (3) of subdivision (a) of section 2526.1 of this Part is repealed, and new subparagraphs (ii) and (iii) are adopted to read as follows:

(ii) Where the rent charged on the base date cannot be established, the rent shall be determined by the DHCR in accordance with section 2522.6 of this Title.

(iii) Where a housing accommodation is vacant or temporarily exempt from regulation pursuant to section 2520.11 of this Title on the base date, the legal regulated rent shall be the rent agreed to by the owner and the first rent stabilized tenant taking occupancy after such vacancy or temporary exemption, and reserved in a lease or rental agreement; or, in the event a lesser amount is shown in the first registration for a year commencing after such tenant takes occupancy, the amount shown in such registration, as adjusted pursuant to this Code.

Section 6

Paragraph (2) of subdivision (f) of section 2526.1 of this Part is amended to read as follows:

(2)(i) For overcharge complaints filed or overcharges collected on or after April 1, 1984, a current owner shall be responsible for all overcharge penalties, including penalties based upon overcharges collected by any prior owner. However, in the absence of collusion or any relationship between such owner and any prior owner, where no records sufficient to establish the legal regulated rent were provided at a judicial sale, or such other sale effected in connection with, or to resolve, in whole or in part, a bankruptcy proceeding, mortgage foreclosure action or other judicial proceeding, [a current] an owner who purchases upon or subsequent to such [judicial] sale shall not be liable [only] for [his or her portion of the] overcharges collected by any owner prior to such sale, and [shall not be liable for] treble damages upon [such portion resulting] overcharges that he or she collects which result from overcharges [caused] collected by any [prior] owner prior to such sale. An owner who did not purchase at such sale, but who purchased subsequent to such sale, shall also not be liable for overcharges collected by any prior

owner subsequent to such sale to the extent that such overcharges are the result of overcharges collected prior to such sale. (ii) Court-appointed Receivers. A Receiver who is appointed by a court of competent jurisdiction to receive rent for the use or occupation of a housing accommodation shall not, in the absence of collusion or any relationship between such Receiver and any owner or other Receiver, be liable for overcharges collected by any owner or other Receiver, and treble damages upon overcharges that he or she collects which result from overcharges collected by any owner or other Receiver, where records sufficient to establish the legal regulated rent have not been made available to such Receiver. [Such penalties] Penalties pursuant to this paragraph shall be subject to the time limitations set forth in paragraph (a)(2) of this section.

Section 7

Paragraph (2) of subdivision (c) of section 2526.2 of this Part is amended to read as follows:

(2) to have harassed a tenant to obtain a vacancy of a housing accommodation, the DHCR may impose, by administrative order after holding a hearing, a penalty in the amount of:

(i) where the offense was committed prior to July 19, 1997, up to $1000 for a first such offense and up to $2500 for each subsequent offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation or;

(ii) where the offense is committed on or after July 19, 1997, not less than $1000 nor more than $5000 for each such offense or for a violation consisting of conduct directed at the tenants of more than one housing accommodation.

Such order shall be deemed a final determination for the purposes of judicial review pursuant to Part 2530 of this Title. Such penalty may, upon the expiration of the period for seeking review pursuant to article 78 of the Civil Practice Law and Rules, be docketed and enforced in the manner of a judgment of the [Supreme Court] supreme court; or

PART 2527 PROCEEDINGS BEFORE THE DHCR

Section 1

Subdivision (a) of section 2527.3 of this Part is amended to read as follows:

(a)(1) [Where] Except as provided by paragraph (2) of this subdivision, where the application or complaint or any answer or reply thereto is made by an owner or tenant, the DHCR shall serve all parties adversely affected thereby with a copy of such application, complaint, answer or reply.

(2) Where an application is filed, pursuant to section 2522.4(a)(2) of this Title, to increase the legal regulated rent, the DHCR shall notify all parties adversely affected thereby that such application has been filed, and shall afford such parties the opportunity to submit written responses thereto. The owner shall maintain a copy of the application, with supporting documentation, on the premises so that tenants may examine it, or in the alternative, a copy of the application, with supporting documentation, shall be made available by the DHCR for tenant examination upon prior request. Tenants' written responses shall be considered by the DHCR prior to a final determination of the application.

Section 2

Subdivision (a) of section 2527.9 of this Part is amended to read as follows:

(a) [Except as otherwise provided by section 2529.2 of this Title, notices] Notices, orders, answers and other papers may be served personally [or], by mail, or electronically, as provided in an Operational Bulletin issued pursuant to section 2527.11 of this Title. [When] Except as otherwise provided by section 2529.2 or Part 2527-A of this Title, when service, other than by the DHCR, is made personally or by mail, [an] a contemporaneous affidavit providing dispositive facts by the person making the service or mailing shall constitute sufficient proof of service. When service is by registered or certified mail, the stamped post-office receipt shall constitute sufficient proof of service. Once sufficient proof of service has been submitted to the DHCR, the burden of proving nonreceipt shall be on the party denying receipt.

Part 2527-A

Section 1

A new Part 2527-A of this Title is adopted to read as follows:

PART 2527-A PROCEDURES FOR HIGH INCOME RENT DECONTROL

Section 2527-A.1 Definitions.

(a) Annual income. For the purposes of this section, annual income shall mean the federal adjusted gross income as reported on the New York State income tax return.

(b) Total annual income. For the purposes of this section, total annual income means the sum of the annual incomes of all persons whose names are recited as the tenant or co-tenant on a lease who occupy the housing accommodation and all other persons that occupy the housing accommodation as their primary residence on other than a temporary basis, excluding bona fide employees of such occupants residing therein in

connection with such employment and excluding bona fide subtenants in occupancy pursuant to the provisions of section 226-b of the Real Property Law. Where a housing accommodation is sublet, the annual income of the tenant or co-tenant recited on the lease who will reoccupy the housing accommodation upon the expiration of the sublease shall be considered.

Section 2527-A.2 Income Certification Form (ICF).

On or before the first day in May in each calendar year, commencing with May 1, 1994, the owner of each housing accommodation for which the legal regulated rent is two thousand dollars or more per month may provide the tenant or tenants residing therein with an income certification form (ICF) prepared by the DHCR on which such tenant or tenants shall identify all persons referred to in subdivision (b) of section 2527-A.1 of this Part, and shall certify whether the total annual income is in excess of two hundred fifty thousand dollars in each of the two preceding calendar years, where the first of such two preceding calendar years is 1992 through 1995 inclusive, and one hundred seventy five thousand dollars where the first of such two preceding calendar years is 1996 or later. Such ICF shall not require disclosure of any income information other than whether the aforementioned threshold has been exceeded.

(a) Such ICF form shall state that:

(1) the income level certified to by the tenant may be subject to verification by the Department of Taxation and Finance (DTF) pursuant to section 171-b of the Tax Law;

(2) only tenants residing in housing accommodations which have a legal regulated rent of two thousand dollars or more per month are required to complete the certification form;

(3) tenants have protections available to them which are designed to prevent harassment;

(4) tenants are not required to provide any information regarding their income except that which is requested on the form.

(b) Such ICF form may:

(1) require tenants to state whether an occupant, such as a minor child, is not required to file a New York State income tax return;

(2) provide that the operative date for the determination of who is a tenant, co-tenant or occupant who must be identified on the ICF, and whose income, if any, will be included in total annual income, will be the date of service of the ICF upon the tenant;

(3) require the tenant to list all tenants, co-tenants, and other occupants whose incomes may be included in total annual income, and who vacated the housing accommodation within the calendar year in which the ICF is served, or within the two calendar years preceding the service of the ICF, and the dates on which such persons vacated the housing accommodation;

(4) require the tenant to include in total annual income the income of any such person who vacated the housing accommodation temporarily;

(5) contain such other information as the DHCR deems appropriate.

(c) Section 2527.9 of this Title to the contrary notwithstanding, the owner must serve the ICF by at least one of the following methods: personal delivery, certified mail, regular first class mail, or as otherwise provided in an Operational Bulletin issued pursuant

to section 2527.11 of this Title. The owner shall obtain and retain, the following proofs of service:

(1) for personal delivery, a copy of the ICF signed and dated by the tenant acknowledging receipt; or

(2) for certified mail, a United States Postal Service receipt stamped by the United States Postal Service; or

(3) for regular first class mail, a United States Postal Service Certificate of Mailing stamped by the United States Postal Service.

(d) The tenant or tenants shall return the completed certification to the owner within 30 days after service upon the tenant or tenants.

Section 2527-A.3 Procedure where total annual income as certified on ICF exceeds threshold.

In the event that the total annual income as certified is in excess of two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each such year, whichever applies, as provided in section 2527-A.2 of this Part, the owner may file an owner’s petition for deregulation (OPD), accompanied by the ICF, with the DHCR on or before June 30 of such year. The DHCR shall issue within 30 days after the filing of such OPD, an order providing that such housing accommodation shall not be subject to the provisions of the RSL upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be mailed to the owner. Service shall be deemed to be complete upon mailing by the DHCR.

Section 2527-A.4 Procedure where tenant fails to return ICF or owner disputes certification.

(a) In the event that the tenant or tenants either fail to return the completed ICF to the owner on or before the date required by subdivision (d) of section 2527-A.2 of this Part or the owner disputes the certification returned by the tenant or tenants, the owner may, on or before June 30 of such year, file an owner's petition for deregulation (OPD) which petitions the DHCR to verify, pursuant to section 171-b of the Tax Law, whether the total annual income exceeds two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each of the two preceding calendar years, whichever applies, as provided in section 2527-A.2 of this Part.

(b) Within 20 days after the filing of such request with the DHCR, the DHCR shall notify the tenant or tenants named on the lease that such tenant or tenants must provide the DHCR with such information as the DHCR and the DTF shall require to verify whether the total annual income exceeds two hundred fifty thousand dollars or one hundred seventy-five thousand dollars, whichever applies, in each such year.

(1) The tenant or tenants are required to submit a photocopy of either the preprinted mailing labels used on the New York State income tax returns for the applicable years, or the first page of the New York State income tax returns for the applicable years, for each tenant or occupant whose income is to be included in the total annual income pursuant to subdivision (b) of section 2527-A.1 of this Part, or in the event neither is available, a written explanation indicating why such income tax returns were not filed for the applicable years.

(2) The tenant or tenants shall delete all social security numbers and income figures from all preprinted mailing labels or tax returns submitted. For any tenant or occupant who the tenant reports did not file a New York State income tax return for any applicable year, the tenant or occupant's name and address must be supplied on an appropriate form prescribed by the DHCR as it would have appeared had that tenant or occupant filed such return.

(3) The tenant or tenants shall provide the information to the DHCR within 60 days of service of the notice upon such tenant or tenants, which notice shall include a warning in bold faced type setting forth the requirement that failure to respond by not providing any information requested by the DHCR shall result in an order being issued by the DHCR providing that such housing accommodation shall not be subject to the provisions of the RSL and this Code. Section 2527.9 of this Title to the contrary notwithstanding, the tenant or tenants shall be required to retain proof of the delivery of such information to the DHCR, which proof shall consist of either, where delivery is made personally, a copy of the response with a timely DHCR date stamp acknowledging receipt, or where delivery is made by certified mail, a United States Postal Service receipt stamped by the United States Postal Service, or where delivery is made by regular first class mail, a United States Postal Service Certificate of Mailing stamped by the United States Postal Service; or as otherwise provided in an Operational Bulletin issued pursuant to section 2527.11 of this Title. Service shall be deemed to be complete upon mailing in accordance with section 2527-A.7 of this Part.

Section 2527-A.5 Determination by Department of Taxation and Finance (DTF).

If the DTF determines that the total annual income is in excess of two hundred fifty thousand dollars or one hundred seventy-five thousand dollars in each of the two preceding calendar years, whichever applies as provided in section 2527-A.2 of this Part, the DHCR shall, on or before November 15 of the year in which DTF makes such determination, notify the owner and tenants of the results of such verification. Both the owner and the tenants shall have 30 days within which to comment on such verification results. Within 45 days after the expiration of the comment period, the DHCR shall, where appropriate, issue an order providing that such housing accommodation shall not be subject to the provisions of the RSL upon the expiration of the existing lease. A copy of such order shall be mailed by regular and certified mail, return receipt requested, to the tenant or tenants and a copy thereof shall be sent to the owner. Where the DTF determines that the income threshold has not been met, the DHCR shall issue an order denying the OPD. If the DTF cannot ascertain whether the threshold has been met, the DHCR may issue an order denying the OPD, or request additional information.

Section 2527-A.6 Procedure where tenant fails to provide information for determination by Department of Taxation and Finance (DTF).

In the event the tenant or tenants fail to provide the information required pursuant to section 2527-A.4 of this Part, the DHCR shall, on or before the next December 1, issue an order providing that such housing accommodation shall not be subject to the provisions of the RSL and this Code upon the expiration of the current lease. A copy of such order of decontrol shall be mailed by regular and certified mail, return receipt

requested, to the tenant or tenants and a copy thereof shall be sent to the owner.

Section 2527-A.7 Mailing of submissions relating to high-income decontrol.

Where a deadline for submission is specified in this Part for submissions by owner or tenant to the DHCR, such submission must be filed in person or by mail, or as otherwise provided in an Operational Bulletin issued pursuant to section 2527.11 of this Title, by such deadline. If the submission is filed by mail, it must be postmarked no later than such deadline. If the prepaid postage on the envelope in which the submission is mailed is by private postage meter, and the envelope does not have an official United States Postal Service postmark, then the submission will not be considered timely filed unless received by such deadline, or other adequate proof that the submission was mailed by the date specified, such as an official Postal Service receipt or certificate of mailing, is submitted.

Section 2527-A.8 Lease riders regarding high-income decontrol.

Where a lease rider regarding decontrol on the basis of high income, as provided for in subdivision (g)(2) of section 2522.5 of this Title is used, an order of decontrol shall take effect upon the date specified in such rider.

Section 2527-A.9 Jurisdictional authority.

The expiration of the time periods prescribed in this Part for action by the DHCR shall not divest the DHCR of its authority to process petitions filed pursuant to this Part in accordance with the above procedures, and to issue final determinations pursuant to this Part.

PART 2528 REGISTRATION OF HOUSING ACCOMMODATIONS

Section 1

Subdivision (d) of section 2528.2 of this Part is amended to read as follows:

(d) one copy of the Initial Apartment Registration form which pertains to the tenant's housing accommodation shall be sent by the owner to the tenant by certified mail. Service of such form pursuant to this subdivision together with the Notice of Initial Legal [Registered] Regulated Rent shall constitute proper service of such Notice of Initial Legal [Registered] Regulated Rent under section 2523.1 of this Title. Provided, however, that for registrations served prior to the effective date of this subdivision, any method of service permitted by the DHCR at the time of service shall be deemed to have the same effect as service by certified mail.

Section 2

Section 2528.4 of this Part is amended to read as follows:

Section 2528.4 Penalty for failure to register.

(a) The failure to properly and timely comply, on or after the base date, with the [initial or annual] rent registration [as required by] requirements of this Part shall, until such time as such registration is completed, bar an owner from applying for or collecting a rent increase in excess of[:

(a) if no initial registration has taken place, the legal regulated rent in effect on the date that the housing accommodation became subject to the registration requirements of this Part; or

(b) the legal regulated rent in effect on April first of the year for which an annual registration was required to be filed, or such other date of that year as may be determined by the DHCR pursuant to section 2528.3 of this Part] the base date rent, plus any lawful adjustments allowable prior to the failure to register.

The late filing of a registration shall result in the elimination, prospectively, of such penalty, and for proceedings commenced on or after July 1, 1991, provided that increases in the legal regulated rent were lawful except for the failure to file a timely registration, an owner, upon the service and filing of a late registration, shall not be found to have collected a rent in excess of the legal regulated rent at any time prior to the filing of the late registration.

Nothing herein shall be construed to permit the examination of a rental history for the period prior to four years before the commencement of a proceeding pursuant to sections 2522.3 and 2526.1 of this Title.

(b) The failure to pay any administrative fees imposed by the RSL shall constitute a charge due and owing the City of New York, and no penalty for such failure to pay shall be imposed pursuant to this Code.

PART 2529 ADMINISTRATIVE REVIEW

Section 1

Section 2529.2 of this Part is amended to read as follows:

Section 2529.2 Time for filing a PAR.

A PAR against an order of a rent administrator must be filed in person [or], by mail, or otherwise as provided by Operational Bulletin, with the DHCR within 35 days after the date such order is issued. A PAR served by mail must be postmarked not more than 35 days after the date of

such order, to be deemed timely filed. If the prepaid postage on the envelope in which the PAR is mailed is by private postage meter, and the envelope does not have an official U.S. Postal Service postmark, then the PAR will not be considered timely filed unless received within the aforementioned 35 days or the petitioner submits other adequate proof of mailing within said 35 days, such as an official Postal Service receipt or certificate of mailing.

Section 2

Section 2529.12 of this Part is amended to read as follows:

The filing of a PAR against an order, other than an order adjusting, fixing or establishing the legal regulated rent, shall stay such order until the final determination of the PAR by the commissioner. Notwithstanding the above, that portion of an order fixing a penalty pursuant to section 2526.1(a) of this Title, that portion of an order resulting in a retroactive rent abatement pursuant to section 2523.4 of this Title, that portion of an order resulting in a retroactive rent decrease pursuant to section 2522.3 of this Title, and that portion of an order resulting in a retroactive rent increase pursuant to section 2522.4(a)(2),(3), (b) and (c) of this Title, shall also be stayed by the timely filing of a PAR against such orders until 60 days have elapsed after the determination of the PAR by the commissioner. However, an order granting a rent adjustment pursuant to paragraph (2) of subdivision (a) of section 2522.4 of this Title, against which there is no PAR filed by a tenant that is pending, shall not be stayed. [nothing] Nothing herein contained shall limit the commissioner from granting or vacating a stay under appropriate circumstances, on such terms and conditions as the commissioner may deem appropriate.

PART 2530 JUDICIAL REVIEW

Section 1

Section 2530.1 of this Part is amended to read as follows:

Section 2530.1 Commencement of proceeding.

A proceeding for judicial review pursuant to article 78 of the Civil Practice Law and Rules may be instituted only to review a final order of the DHCR pursuant to section 2526.2(c)(2) of this Title; or to review a final order of the commissioner pursuant to section 2529.8 of this Title; or after the expiration of the 90-day or extended period within which the commissioner may determine a PAR pursuant to section 2529.11 of this Title, and which, therefore, may be "deemed denied" by the petitioner. The petition for judicial review shall be brought in the [Supreme Court] supreme court in the county in which the subject housing accommodation is located and shall be served upon the DHCR and the Attorney General. A proceeding for judicial review of an order issued pursuant to section 2526.2(c)(2), or section 2529.8 of this Title shall be brought within 60 days after the issuance of such order. A party aggrieved by a PAR order issued after the 90-day or extended period of time within which the petitioner could deem his or her petition "denied" pursuant to section 2529.11 of this Title, shall have 60 days from the date of such order to commence a proceeding for judicial review, notwithstanding that 60 days have elapsed after such 90-day or extended "deemed denial" period has expired. Service of the petition upon the DHCR shall be made by personal delivery of a copy thereof to Counsel's Office at the DHCR's [principal]

office, [One Fordham Plaza, Bronx, New York 10458] 25 Beaver Street, New York, New York 10004, or such other address as may be designated by the commissioner, and to an Assistant Attorney General at an office of the New York State Attorney General in the City of New York.