

**Project Name:** \_\_\_\_\_  
**Project Location:** \_\_\_\_\_  
**Building ID No.:** \_\_\_\_\_ **Apartment #:** \_\_\_\_\_  
**Tenant:** \_\_\_\_\_ **(and Co-Tenant):** \_\_\_\_\_

**RIDER TO LEASE**  
**For Low Income Unit Tenancy in a Project**  
**Financed by New York State Housing Finance Agency**  
**Using Tax Exempt Bond Proceeds**  
**and Benefitting from Low-Income Housing Tax Credits**

**Definitions**<sup>1</sup>

**Agency:** the New York State Housing Finance Agency.

**Apartment:** the rental income unit leased to Tenant as Tenant’s principal place of residence.

**Area Median Income (“AMI”):** the area gross median income, as defined from time to time by the United States Department of Housing and Urban Development (“**HUD**”), applicable to the \_\_\_\_\_, adjusted for family size.

**Fee Owner:** \_\_\_\_\_.

**HFA:** the New York State Housing Finance Agency.

**Initial Qualifying Household Income:** Tenant’s initial household income must be at or below \_\_\_\_\_ % of AMI for Low Income Unit Tenancy.

**Landlord:** \_\_\_\_\_.

**Low Income Unit:** a dwelling Unit regulated by a Regulatory Agreement between (and among) Landlord (, Fee Owner) and HFA, dated as of \_\_\_\_\_, 200\_\_\_\_, such that its tenant pays no greater than the Tenant’s Maximum Rent.

\_\_\_\_\_

<sup>1</sup> Insert appropriate data or “N/A” if not applicable.

<sup>2</sup> Refer to the Regulatory Agreement for the appropriate HUD MSA or PMSA. etc.

**Low Income Unit Tenancy:** qualification to reside in a Low Income Unit, for which Tenant shall be required to pay no more than the Tenant's Maximum Rent.

**Mortgage:** The mortgage dated as of \_\_\_\_\_, 200\_ granted by Landlord and (Fee Owner) to the Agency.

**Tenant's Maximum Rent:** an amount calculated by taking not to exceed 30% of % of AMI<sup>3</sup> as adjusted for the number of individuals assumed to be occupying Tenant's Apartment, as follows: if the Apartment is a Unit that does not have a separate bedroom, one person; if the Apartment is a Unit having one or more separate bedrooms, 1.5 individuals for each separate bedroom (the "Maximum Rent Calculation"). *Included in the calculation of the maximum gross rent payable by Tenant for the Apartment shall be any utility allowance determined by the Secretary of the United States Department of Housing and Urban Development, or, the cost of any utilities that would be covered by such utility allowance, as determined by the Agency, if the Units were receiving Federal Section 8 assistance.* If at any time during the period of the Lease, the applicable utility allowance for the Apartment changes the new utility allowance will be used to compute the maximum rent beginning with any rent payment due ninety (90) days after the date of such change in the applicable utility allowance. Landlord will furnish Tenant with written notice, at least thirty (30) days in advance of the change in the utility allowance, explaining the basis for such change and specifying any consequent increase or decrease in the rent payable by Tenant. If Tenant is the holder of a Section 8 voucher or certificate, or the Apartment is subsidized by project based Section 8 assistance payments, then the utility allowance applicable for the Apartment will be the utility allowance established by the local Public Housing Authority for the Section 8 Existing Housing Program for Units comparable to Tenant's Apartment. Tenant's Maximum Rent shall not include such payments or fees excluded from the definition of gross rent in Section 42(g)(2)(B) of the United States Internal Revenue Code ("Code"). The maximum rents shall be trended upward for inflation or downward for deflation annually pursuant to the calculations of AMI made by HUD in accordance with the Code (the "HUD Calculations"), but in no case to any level less than the Gross Rent Floor applicable to the Unit pursuant to §42(g)(2)(A) and (B) unless required by §142(d) of the Code. Any increase or adjustment in the rent for the Apartment shall not exceed the least of the increases or adjustments permitted with respect to the Apartment under the applicable provisions of the Code and the Regulatory Agreement. Notwithstanding anything herein to the contrary, if Tenant resides in a Low Income Unit and is the beneficiary of Section 8 rental assistance or any comparable rental assistance program ("Federal Rental Assistance") and such Federal Rental Assistance payments decrease as Tenant's income increases, then if, as of the

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<sup>3</sup> Insert the maximum initial qualifying income for Low Income Unit Tenancy in the Tenant's Apartment.

most recent recertification, Tenant's income exceeds % of AMI<sup>4</sup>, such Tenant may be required to pay rent in an amount higher than that determined by the Maximum Rent Calculation, but only if Tenant's Apartment meets the requirements set forth in Section 42(g)(2)(E) of the Code.

**New York State Housing Finance Agency ("HFA" or the "Agency"):** a public benefit corporation existing pursuant to Article III of the Private Housing Finance Law, with its principal offices at 641 Lexington Avenue, New York, New York 10022.

**Project:** the project referred to in the heading of this rider.

**Regulatory Agreement:** Agreement entered into as of \_\_\_\_\_, 200 between (and among Fee Owner,) Landlord and HFA.

**Tenant:** the Tenant referred to in the heading of this rider.

**Household:** includes all occupants of Tenant's Unit, whether or not related to Tenant, as determined under Section 8 guidelines.

**Unit:** a dwelling unit designed for rental occupancy.

### **Term**

The lease to which this rider is attached shall be for a term of at least one year.

### **Tenant Certifications**

Tenant must certify Tenant's initial Household composition and Household income level, and annually recertify Tenant's Household income prior to the commencement or renewal of the Lease's term. Tenant is obligated to provide subsequent recertifications of Household composition and Household income as HFA or Landlord may require. Tenant's initial Household income must be at or below the Initial Qualifying Household Income, as above defined. Tenant must provide Landlord with such certification or recertification of Household income or Household composition, and, as applicable, any third-party income verification or other proof reasonably required by Landlord under applicable law and program rules for the purpose of

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<sup>4</sup> Insert the maximum initial qualifying income for Low Income Unit Tenancy in the Tenant's Apartment.

verifying income or determining Household composition. Tenant authorizes Landlord to verify all sources of income in the Household. Tenant certifies that such certifications and proofs are true and accurate, and that the total annual income of all the members of Tenant's Household who occupy the Apartment subject to this rider to the Lease ("Rider") does not exceed the amount set forth in such certification. Tenant agrees to notify Landlord immediately in the event that there is any change in the identity or number of persons occupying the Apartment. TENANT ALSO ACKNOWLEDGES THAT A HOUSEHOLD CONSISTING ENTIRELY OF FULL-TIME STUDENTS AS DEFINED IN SECTION 151(c)(4) OF THE INTERNAL REVENUE CODE IS PROHIBITED FROM LOW INCOME UNIT TENANCY, REGARDLESS OF INCOME, UNLESS SUCH FULL-TIME STUDENT HOUSEHOLD MEETS AN ALLOWABLE EXEMPTION.

### **False Certification**

The lease to which this rider is attached shall be terminated and the Tenant may be evicted for failure to qualify for a Unit if Tenant has falsely certified (whether intentionally or unintentionally) Household income or Household composition. False certification constitutes material noncompliance under the lease, and Landlord has the right to terminate the Lease, evict Tenant, and recover possession of the Unit, if Tenant has obtained Low Income Unit Tenancy by falsely certifying Household income or Household composition.

### **Noncompliance**

Tenant's refusal to comply with a request for information related to income and eligibility requirements shall be deemed a violation of a substantial obligation of tenancy and constitute cause for immediate termination of the lease.

### **Increases in Income**

Tenant agrees that if, as of Tenant's most recent annual income recertification, but prior to the next annual income recertification, Tenant's income exceeds 140% of the Initial Qualifying Household Income, and a different Low Income Unit is established in place of the Low Income Unit occupied by Tenant, Tenant may be disqualified from Low Income Unit Tenancy and Tenant's rent may be raised to a higher amount higher than the Tenant's Maximum Rent, as defined herein.

### **Unit Reassignment**

Since the monthly rent for the Apartment is calculated on the basis of the size of the unit, Tenant may, upon expiration of the Lease, be reassigned to a different unit if: (a) an increase or decrease in the number of Tenant's family members residing in the Apartment warrants such a change under applicable statutes and regulations and (b) Tenant would be eligible for Low Income Unit Tenancy upon such transfer to another unit in the Project (that is, Tenant's annual Household income at the time of such transfer would not exceed the Initial Qualifying Household Income for the Unit to which Tenant would be transferred). In the event of such reassignment, Tenant's monthly rent shall be based upon the size of the new unit occupied.

### **Inspection**

Landlord and/or the Agency and their representatives or agents shall have the right to inspect Tenant's Unit for the purpose of allowing the Agency to fulfill its responsibilities under the Internal Revenue Code of 1986, as amended, and the Treasury Regulation applicable thereunder (the "Code"). Advance notice of at least two (2) weeks will be sent to Tenant for scheduling and arranging access into the Apartment for such inspections. Inspection by the Agency or its representatives may take place irrespective of whether Tenant is present in Tenant's apartment at the time of inspection, provided that the Agency or its representative is accompanied by a Project Manager, as that term is used in the Regulatory Agreement.

### **No Subletting, Assignment or Extended Occupancy**

Subletting Tenant's Unit or any part of Tenant's Unit, and/or the assignment of Tenant's lease, are prohibited. Notwithstanding anything in the Lease to the contrary, the Apartment may not be occupied by anyone other than Tenant and his/her Household members for a period of more than 31 days at any time, and if Tenant permits any such occupancy for a longer period, without Landlord's prior consent, such occupancy will be a material breach of the Lease, which breach shall be grounds for termination of the Lease by Landlord, and shall subject Tenant to eviction.

### **Rent Increases**

IN THE EVENT THAT TENANT'S UNIT IS NOT RECEIVING A FEDERAL SECTION 8 SUBSIDY, upon the date that Tenant's Unit is no longer regulated in accordance with the New York State Housing Finance Agency regulatory agreement, the landlord's right to increase rent for Tenant over the maximum rent permitted by the regulatory agreement shall be conditioned upon Landlord furnishing Tenant with notice of at least six months prior to such increase in a

form acceptable to the Agency. If such notice is not given, Tenant shall be entitled to lease renewals at the rents provided for in the regulatory agreement until such notice has been given and six months has elapsed. Notwithstanding anything to the contrary, if the “Extended Use Period” (as defined in the regulatory agreement and the Code) is terminated early (“Early Termination”), the eviction or the termination of Tenant’s tenancy (other than for good cause) or any increase in the gross rent with respect to Tenant’s Unit shall not be permitted for, at minimum, three years following such Early Termination.

### **Subordination**

The lease to which this rider is attached is expressly subordinate to the Mortgage, as above defined.

### **Conflict**

In the event of any conflict between the terms of this Rider and the terms of the Lease, the provisions of this Rider shall supersede, prevail over, and control such other provisions of the Lease.

### **Fees**

In the event that any Rent is due on Tenant’s Apartment is not paid to Landlord by the fifth day of the month in which it is due, the late fee owed by Tenant as Additional Rent shall not exceed the twenty-five dollars (\$25.00) or 5% of the monthly rent, whichever is less per month for each such month. Any late fee, payment or charge, shall not be considered additional rent. As provided in the Regulatory Agreement, other than such late fee and a bounced check fee not to exceed the actual amount charged by the bank, Landlord shall not impose any fee or charge upon Tenant without the prior express written consent of HFA.

**Signature Page To Follow – No Additional Text On This Page**

In witness whereof the parties hereto have executed this Rider to the Lease Agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 200 .

LANDLORD: \_\_\_\_\_  
BY:

BY:  
PRINT NAME: \_\_\_\_\_  
TITLE: \_\_\_\_\_

TENANT:<sup>5</sup>

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

\_\_\_\_\_  
<sup>5</sup> All adults (persons eighteen years of age and older) residing in the Apartment must sign this Rider.