

MARCY PARK STUDENT HOUSING COOPERATIVE, INC.

OCCUPANCY AGREEMENT

PARTIES:

Marcy Park Student Housing Cooperative, Inc.
425 13th Avenue Southeast
Minneapolis, MN 55414

(“Marcy Park”)

(“Residents”)

APARTMENT INFORMATION:

1. Apartment No. _____
2. Starting Date: 4:00 _____
3. Monthly Rent \$ _____; increase _____ effective _____
4. Security Deposit \$ _____
5. Term: Initial term ends _____
6. Utilities included in rent: Water Heat Electricity Cable Internet Parking

MANAGEMENT INFORMATION (REQUIRED BY MINNESOTA STATUTE SECTION 504.181):

1. The premises are owned by Riverton Community Housing, a Minnesota non-profit corporation. The premises are leased from Riverton Community Housing by Marcy Park Student Housing Cooperative, Inc. The premises are managed by Riverton Community Housing.
2. Each of the residents is required to become a member of the Student Housing Cooperative Inc. (“Marcy Park”). Members of the organization annually elect a Board of Directors which has ultimate responsibility for maintaining and preserving Marcy Park. The Board of the Cooperative elects the President, Vice President, Secretary, and Treasurer and hires the management Agent, who carries out Marcy Park’s daily business. The Managing Agent or any officer of the Cooperative is authorized to receive service or process and give receipt for notices and demands.
3. The name of the current Managing Agent and the identity of persons serving on the Board of Directors and as officers will be published from time to time in the Cooperative’s official newsletter. The Managing Agent’s office is on the ground floor of the Marcy Park building at 425 13th Avenue Southeast, Minneapolis, Minnesota 55414. Management (acting as agent for Marcy Park) and Resident agree to the terms of this occupancy agreement as written both above and below the _____ and on any other _____ may be made _____ apartment _____.

MANAGEMENT

by _____ (Date)
Date signed _____ (Date)

GENERAL TERMS AND

- 1. OCCUPANCY AND USE.** The only person(s) permitted to occupy this Apartment without written approval of Marcy Park are those on the Agreement and their minor dependents. This approval may be expressed only on Marcy Park’s standard Change of Roommate form, which must be executed by all persons who are Residents at the time the form is executed, as well as by the new Resident and Marcy Park. Upon execution of a Change of Roommate form, **the new Resident will be bound by all the terms of the Agreement.**
- 2. DEFINITION OF RESIDENTS.** The term “Residents” when used in this Agreement means all of the persons originally named on this Agreement, both individually and collectively, and all persons who become Residents of the Apartment identified on this Agreement by proper execution of a Change of Roommate form.
- 3. DEFINITION OF GUESTS.** The term “Guests” means all persons who enter Marcy Park in response to open invitations issued by any of the Residents and persons who enter Marcy Park as Guests of the Residents’ Guests, whether or not such persons are personally known to any of the Residents.
- 4. USE.** The Apartment and all fixtures and appliances shall be used only for ordinary residential purposes.
- 5. PAYMENT OF RENT.** Rent (“Rent”) is due and payable in advance on **the first calendar day of each calendar month** and shall not be subject to any setoff. **All Residents are responsible for paying Rent and any other money due to Marcy Park under this Agreement or under rules and regulations** which are part of this Agreement (“Marcy Park Rules”, further defined below). **Each and every Resident is individually responsible for paying the entire amount of these debts, not just his or her proportionate share thereof.** All amounts payable by Residents to Marcy Park under this Agreement shall constitute Rent.
- 6. CHARGE FOR LATE PAYMENT RENT.** Rent received after the fifth calendar day of the month will be assessed a late charge in the amount of 8% of the unpaid rent up to a maximum fee of \$50. This fee may be subject to change to comply with Minnesota State Law. A fee of \$20 will be charged for returned or dishonored checks. In the event of a returned or dishonored check all future payments must be in certified funds (cashier’s check or money order). All amounts of Rent, or other damages or fees, owed by Residents to Marcy Park, but not paid when due or on demand, shall bear interest at the rate of the lower of eight percent (8%) per annum and the maximum interest rate permissible by Minnesota law.
- 7. RESPONSIBILITIES OF MARCY PARK.** Marcy Park agrees: (a) that the Apartment and all common areas will be fit for use as a residential premises; (b) to keep the premises in reasonable repair and make the necessary repairs within a reasonable time after written notice by the Residents, except when a disrepair has been caused by the willful or negligent conduct of the Residents or Guests, and (c) to maintain the premises in compliance with applicable health and safety codes, except where a violation of health and safety codes has been caused by the willful or negligent conduct of the Residents or Guests.

8. **RESIDENTS' RESPONSIBILITIES.** Residents agree: (a) Residents shall not damage or misuse the Apartment, the common areas or any other part of the building in which, and grounds on which, the Apartment is located ("Premises"), waste the utilities provided by Marcy Park, or to allow their Guests to commit any such acts; (b) Residents shall not make any alterations or additions to the Apartment or remove any fixtures, screens or windows therefrom, to install any window coverings within the Apartment except those provided, or to paint the Apartment, common areas or any part of the Premises, without the prior written consent of Marcy Park; (c) Residents shall keep the Apartment clean and tidy; (d) Residents shall not litter or cause the common areas or any other portion of the Premises to be unsafe or untidy; (e) Residents shall not conduct themselves, or allow their households or Guests to conduct themselves, in a loud, boisterous, unruly, or thoughtless manner so as to disturb the rights of the other residents to peace and quiet; (f) Residents shall not permit any person not personally known to the Residents to enter through a security door; (g) Residents shall use the Apartment only as private residence and not in a way that is unlawful or dangerous or which could cause a cancellation, restriction or increase in the premium of Marcy Park's insurance; (h) Residents shall not use or store on or near the Apartment, common areas or any other part of the Premises, any flammable, explosive, environmentally hazardous, or other hazardous substance; (i) Residents shall not use any appliances (such as washer, dryers, freezers, refrigerators, dishwashers) other than those furnished with the Apartment without the prior written consent of Marcy Park; (j) Residents shall notify Marcy Park in writing of any conditions that may cause injury, require repairs, or which affect the habitability of the Apartment; (k) Residents, any members of the Residents' household, or a guest or other person under the Residents' control shall not engage in illegal activity, including drug-related illegal activity, on or near the Apartment, whereby "drug-related illegal activity" means the illegal manufacture, sale, barter, trade, exchange, distribution, purchase, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance, or the possession of drug paraphernalia, as prohibited by Minnesota or federal law; (l) Residents, any member of the Residents' household, or a guest or other person under the Residents' control shall not engage in any act intended to facilitate illegal activity, including prostitution, prostitution-related activity, and drug-related illegal activity, on or near the Apartment; (m) Residents and any members of the Residents' household will not permit the Apartment to be used for, or to facilitate, illegal activity, including prostitution, prostitution-related activity, or drug-related illegal activity, regardless of whether the individual engaging in such activity is a member of the Residents' household; (n) Residents or members of the Residents' household will not engage in the manufacture, sale, or distribution of illegal drugs at any locations, whether on, at, or near the Apartment or otherwise; (o) Residents, any member of the Residents' household, or a guest or other person under the Residents' control, shall not engage in illegal act, acts of violence, or threats of violence, including but not limited to the unlawful possession, use, or discharge of firearms, criminal street gang activity, intimidation, or any other breach of the Agreement that otherwise jeopardizes the health, safety, security, or welfare of Marcy Park, its agent(s), or residents. A SINGLE VIOLATION OF ANY OF THE FOREGOING BY ONE OR MORE RESIDENTS, ONE OR MORE RESIDENTS' FAMILY MEMBERS, ONE OR MORE OF RESIDENTS' GUESTS, OR ANY THIRD PERSON AT RESIDENTS' APARTMENT OR COMING TO THE APARTMENT UNDER EXPRESS OR IMPLIED PERMISSION BY ONE OR MORE RESIDENTS MAY BE GROUNDS FOR AN IMMEDIATE EVICTION OF ALL RESIDENTS WITHOUT PRIOR NOTICE. UNLESS OTHERWISE PROVIDED BY LAW, PROOF OF VIOLATION SHALL NOT REQUIRE A CRIMINAL CONVICTION, BUT SHALL BE BY THE PREPONDERANCE OF THE EVIDENCE.
9. **RIGHT OF ENTRY.** All Residents are subject to having their Apartments inspected on a regular basis upon reasonable notice. Repair persons, exterminators, and the like authorized by Marcy Park may enter the Apartment: (a) in response to request for work by any of the Residents; (b) at any time during emergencies; (c) at reasonable times for inspection and/or treatment for pest control; or (d) at reasonable time after reasonable notice to Residents, for the purposes of maintaining, repairing, inspecting, improving, or showing the Apartment after notice of vacate has been given, and in all such circumstances, Residents must comply with Marcy Park's instructions concerning movement of furniture and other items for the kitchen area or other area of the Apartment in order to facilitate the effective performance of this work.
10. **PETS.** Residents may not have any pet in the Apartment or anywhere on the premises unless the pet is registered and approved by Marcy Park, Marcy Park may direct immediate removal of any pets which disturb neighbors or damage Marcy Park property in the Apartment, common areas, or anywhere on the premises.
11. **WATERBEDS.** Waterbeds and any other water-filled furniture are not permitted.
12. **DAMAGE OR INJURY TO RESIDENTS OR THEIR PROPERTY.** Marcy Park is not responsible for any damage or injury to the Residents or their property, or Guests or their property, or to the person or property of any other person, which is not caused by willful misconduct on the part of any employee or other authorized agent or representative of Marcy Park. Each of the Residents agrees to indemnify and hold Marcy Park harmless with respect to any liabilities, damages, or expenses (including reasonable attorneys' fees) arising from injury, death, damage or loss to the person or property of the Residents, any members of his or her families, his or her Guests, or any other person who any of the Residents permits to enter or remain in the Apartment upon the premises or grounds. Marcy Park urges Residents to obtain renter's insurance to protect themselves against injuries or damages to person and property.
13. **ACTS OF THIRD PARTIES.** Marcy Park is not responsible for any damage or injury to person or property caused by any act or failure to act on the part of any third person (such as Resident, Guests, intruders, outside repair person and the like) who is not under direct supervision and control of Marcy Park.
14. **SUBLETTING.** The Residents shall not sublet the Apartment or any part of it, nor assign this Agreement without the prior written consent of Marcy Park, and no such sublease or assignment shall be binding in any respect in the absence of such written permission nor shall any sublease or assignment consented to by Marcy Park release or relieve any of the Residents from liability hereunder.
15. **ABANDONMENT OR SURRENDER OF THE APARTMENT BEFORE TERMINATION OF THIS OCCUPANCY AGREEMENT.** The Residents understand that they are responsible for paying the full Rent each and every month during the term of this Agreement and extensions or renewals, along with all additional Rent required hereunder. If the Residents abandon or surrender the Apartment before the end of the term, they shall be responsible for all cleaning and repair costs necessary to place the Apartment in the condition it was in on the Starting Date
16. **RESIDENTS' LIABILITY TO RIVERTON.** The Residents agree to indemnify and hold Marcy Park harmless with respect to any liability, damage, loss, or expense (including reasonable attorneys' fees and the costs of repairs of service, including plumbing and electrical) arising out of any damage, loss or injury to persons or property caused by the willful or negligent acts or improper use of Marcy Park property or facilities by any of the Residents, their agents, families or Guests. The Residents also shall reimburse Marcy Park for any cost, including effort by Marcy Park to exercise its remedies under Paragraph 22 of this Agreement.

17. **TERMINATION WITH SPECIFIED END DATE:** If the Residents wish to move out of the Apartment on the date this Agreement ends, the Residents must give Marcy Park prior written notice at least equal to the "Resident Notice Period," defined herein as **fifty-eight (58) days**, provided that Residents' notice to vacate shall specify a lease termination date on the last day of a month. If the Residents fail to give proper notice, Marcy Park may a) extend this Agreement for one Resident Notice Period and b) raise the Rent. If the Residents stay in the Apartment after the date that this Agreement ends, with the approval of Marcy Park, and the Residents and Marcy Park have not renewed this Agreement or entered into a new Agreement, this Agreement shall be extended under its original terms except that (a) the duration shall be changed to month-to-month; and (b) Marcy Park may raise the Rent.
18. **TERMINATION AND ALTERATION OF MONTH-TO-MONTH OCCUPANCY AGREEMENTS:** When the Agreement is month-to-month, Marcy Park and Residents may terminate this Agreement only by giving the other party notice equal to their respective **Notice Periods**, whereby Marcy Park's Notice Period is defined as 30 days, and **Residents' Notice Period is defined as 58 days**. A notice to terminate this Agreement is effective on the last day of a month. Marcy Park may change any of the terms of a month-to-month Agreement, including the amount of Rent, by giving Resident written notice at least equal to Marcy Park's Notice Period.
19. **VACATING.** The Residents agree to vacate the Apartment on or before the termination of this Agreement. If the Residents fail to vacate on or before the required date, each of them shall be liable to Marcy Park for any and all resulting losses and expenses incurred by Marcy Park including court costs and attorneys' fees, as additional Rent. The Rent for any period of holding over shall be two hundred percent (200%) of the daily pro-rated Rent in effect on the termination date. Upon vacating, the Residents agree to leave the Apartment in the same condition it was at the time the Agreement commenced, except for ordinary wear and tear, except as provided in Paragraph 26(a). The Residents shall reimburse Marcy Park for the cost of any cleaning or repairs necessary to return the Apartment to such condition.
20. **DESTROYED OR UNTENABLE PREMISES.** If the Apartment or the premises as a whole is destroyed or so damaged as to be unfit for occupancy due to fire, refusal/inability to pay utility bills or other cause, Marcy Park may terminate this Agreement immediately upon written notice. If the destruction or damage was not caused by the fault and negligence of any of the Residents, Rent shall be pro-rated upon termination of the Agreement under this section, and any overpayment shall be refunded to the Residents.
21. **DEFAULT.** Each and all of the Residents shall be in default ("Default") under this Agreement upon the occurrence of any of the following events: (a) the Residents fail to pay in full any monthly Rent when due (b) the Residents fail to pay in full any amount due as additional Rent under this Agreement or under applicable Marcy Park Rules by 8 a.m. on the fifth (5th) calendar day following the date on which notice of amount of such additional Rent due is sent to any of the Residents; (c) any of the Residents breaches or fails to observe and perform any other obligation under this Agreement or under the applicable Marcy Park Rules; (d) any of the Residents in any application or other statement furnished to Marcy Park omits or misrepresents a material fact, the omission or misrepresentation of which was relied upon by Marcy Park in evaluating such application or other statement; or (e) any misrepresentation made by Residents in the certification of anticipated adjusted income.
22. **REMEDIES FOR DEFAULT.** Upon the occurrence of any Default, Marcy Park may exercise any one or more of the following remedies: (a) any remedy provided at law or equity; (b) Marcy Park immediately may evict any or all of the Residents, and if the evicted Residents do not vacate the Apartment voluntarily, Marcy Park may commence legal action to evict those Residents and without prior notice; (c) Marcy Park may notify all of the Residents that this Agreement is terminated effective immediately or at any other time after the occurrence of the Default. (d) Marcy Park may keep this Agreement in force, and the Residents shall be liable for all Rent accruing for the remaining term of this Agreement, or until the Apartment is re-rented, whichever first occurs, in which case Marcy Park shall make a good faith effort to re-rent the Apartment, provided that Marcy Park shall not be deemed to have waived or acquiesced in any Default or breach of this Agreement by means of Marcy Park's delay or failure to bring an eviction action.
23. **SUBORDINATION.** This Occupancy Agreement is subject and subordinate to all present or future mortgages or deeds of trust affecting the premises, and the Residents hereby appoint Marcy Park as their attorney in fact which appointment is coupled with an interest (and is not revocable by any of them for any reason) to execute and deliver any and all necessary documents to effect provisions of this paragraph.
24. **NO ELECTION OF REMEDIES.** Marcy Park may exercise any one or more of its legal rights and remedies without waiving the right to exercise any other remedy or remedies at the same time or any other time.
25. **NOTICES.** Whenever this Agreement provides for notice to be given or sent to any of the Residents, the notice shall be deemed to have been given or sent upon deposit hereof in the United States mail, certified or registered mail, addressed to the proper party at the apartment number identified in this Agreement, or at the time such notice is personally delivered to any adult person living in the Apartment, or at the time such notice is placed under the door of the Apartment or posted on bulletin boards throughout the building. Notices to Marcy Park will be sufficient if they are signed by the prepared and delivered in writing to the Marcy Park office, except when a specific form is prescribed by Marcy Park.
26. **SECURITY DEPOSIT.** Marcy Park and the Residents acknowledge that the sum identified on the face of this Agreement has been deposited as a Security Deposit, subject to the following terms: (a) The Security Deposit will be applied to the costs of unpaid obligations under this Agreement and the cost of cleaning and repainting the Apartment after it is vacated by all of the Residents. If the Residents vacate the Apartment prior to the expiration of the term of this Agreement, Marcy Park will charge the Residents for shampooing the carpets, waxing floors and washing the windows, and Residents shall pay such charges to Marcy Park upon demand. All other costs incurred in connection with repairing and cleaning the Apartment in order to leave it in the condition in which it originally was rented to the Residents except ordinary wear and tear will be deducted from the security deposit. (b) The balance of the security deposit, if any, remaining after the deduction of the charges provided for in paragraph 26(a), herein, will be made in the form of a check payable to the Residents. In the event that the costs to restore the Apartment to its original state exceed the amount in the Security Deposit, or in the event that the Residents owe Marcy Park any additional amounts under this Agreement, the Residents shall pay the additional amounts to Marcy Park on demand.
27. **CONDITION OF APARTMENT.** Residents acknowledge that the Apartment has been inspected by Residents prior to signing this Agreement, and that Residents have accepted the Apartment leased hereunder and are satisfied with the state of repair, operation, and condition thereof, including all present decorating, fixtures, and appliances in the Apartment. Residents have provided Marcy Park with a move-in inspection for the purpose of noting any damages or deficiencies to the Apartment. Residents' failure to provide such form to Marcy Park within forty-eight (48) hours of Residents' taking possession of the Apartment shall constitute conclusive evidence that the Apartment was received and accepted by Residents in good condition, with no damages or deficiencies. The approval by any one of the Residents as to the condition of the Apartment at move-in or move-out may and shall be relied upon by Marcy Park as constituting the approval of all Residents who sign this Agreement.

- 28 DOOR KEYS AND LOCKS.** Each of the Residents will be furnished with keys to the Apartment. If one of the Residents fails to return all keys Apartment, mailbox, and other keys upon move-out, Residents agree to pay Marcy Park as additional Rent upon demand for the cost for replacement of all locks to the Apartment. Residents shall not change the locks and shall not install any locks on interior doors within the Apartment. If Marcy Park deems it necessary to replace locks to the Apartment, Residents shall pay Marcy Park such charges as additional Rent upon demand.
- 29 PAYMENT FOR DAMAGES.** Residents agree to pay Marcy Park within five (5) days after written demand from Marcy Park, as additional Rent, the amount of any loss, property damage, or cost of repairs or service to the Apartment, common areas, or facilities, caused by any of the Residents, or any of the Residents' Guests, invitees, pets, or third person coming to the Apartment or the common areas with the implied or express consent of any of the Residents. Property damage shall include, but is not limited to waste water stoppages caused by improper objects, damage from windows and/or doors left open, damage to doors, windows, or screens, and repairs due to use beyond ordinary wear and tear. Residents' failure to pay Marcy Park for such damages within the stated time period shall constitute a breach of this Agreement and a Default and shall be grounds for an immediate eviction without prior notice.
- 30 NO WAIVER BY MARCY PARK.** No payment by Residents or receipt by Marcy Park of a lesser amount than the monthly installments of Rent herein stipulated shall be deemed to be other than on account of the earliest stipulated Rent, nor shall any endorsement or statement on any check or letter accompanying a check for payment of Rent be deemed an accord and satisfaction, nor shall Marcy Park's acceptance of Rent with knowledge of a breach by any of the Residents, or after Marcy Park has provided Residents with a notice to vacate, constitute a waiver of such breach, and Marcy Park may accept such check or payment without prejudice to Marcy Park's right to recover the balance of such Rent, to terminate this Agreement, to repossess the Apartment, to evict the Residents for nonpayment of Rent or for any other Default or breach of this Agreement, or to pursue any other remedy provided in this Agreement. Marcy Park shall not be deemed to have waived its right to bring an eviction action or any other legal action, or to pursue a pending eviction or other pending legal action, unless such waiver or agreement by Marcy Park is set forth in writing and signed by Marcy Park. No re-entry by Marcy Park, and no acceptance by Marcy Park of keys from the Residents, shall be considered an acceptance of a surrender of the Agreement. No waiver by Marcy Park of any Default or other breach of any provision herein contained shall operate as a waiver by Marcy Park of such Default or provision itself, or of any subsequent Default or breach thereof.
- 31 ATTORNEYS' FEES.** In the event that Marcy Park brings any legal action against any of the Residents, or in the event that Marcy Park incurs any legal fees in the enforcement of this Agreement, Residents shall pay Marcy Park, as additional Rent upon demand, all attorneys' fees, court costs, costs for any Writ of Recovery, and fees for service of process and sheriff's fees incurred by Marcy Park with respect to such action, even if Rent is paid after the legal action is commenced or the legal action is dismissed. In the event that any of the Residents brings any court or administrative action against Marcy Park and Marcy Park successfully defends or prevails on such action, Marcy Park shall be entitled to its actual attorneys' fees and costs incurred by Marcy Park in such action, as additional Rent upon demand.
- 32 ATTENDANCE AT ORIENTATION SESSION.** All Residents must attend an official Marcy Park orientation session in accordance with the rules set forth by the Co-op. The Residents will be notified of the date, time and place for such session. Failure to attend within 90 days of move-in may result in a fine.
- 33 MARCY PARK BYLAWS, RULES, REGULATIONS AND GENERAL POLICIES.** The terms and conditions of this Agreement are subject to and shall be deemed to include the Bylaws, Rules, Regulations and General Policies of the Marcy Park Housing Cooperative, Inc., and Riverton Community Housing as amended from time to time ("Marcy Park Rules"). Residents acknowledge receipt of the Marcy Park Rules in effect on the Starting Date, and amendments thereto as communicated to the Residents from time to time. In the event of a conflict between the Marcy Park Rules and this Occupancy Agreement, this Agreement shall prevail.
- 34 LENGTH OF MEMBERSHIP/RESIDENCY.** Residents may only stay in the Marcy Park for seven years. After seven years, the Occupancy Agreement and membership will terminate.
- 35 PEST CONTROL.** All Residents are required to assist Marcy Park in pest control procedures. All Residents' participation in Marcy Park's pest control treatment program is MANDATORY. If the Residents' Apartment is not ready when Marcy Park's pest control vendor is scheduled to treat the Apartment, the Residents may be required to pay for extermination re-treatment (s) or a second exterminator visit fee as additional Rent. Residents are required to comply with all requests by Marcy Park for readying their Apartment unit for pest control treatments which may include emptying cupboards, removing materials from under sinks or vanities, and other requests. Residents also are required to follow any recommendations or treatment control requests of Marcy Park's pest control vendor. Some pests, such as bedbugs, may require Residents to dispose of or professionally clean (at high temperatures or with chemical treatments) personal property and fabrics. Residents are responsible for all costs of treating or removing their personal property, furniture, mattresses, and fabrics needed, in the opinion of Marcy Park's pest control vendor, to achieve effective pest control. Marcy Park will not reimburse or replace personal property that must be treated or eliminated. Failure to follow the requirements of Marcy Park's pest control vendor is a breach of this Agreement and constitutes a Default. A Resident's failure to promptly notify Marcy Park of pests in the Resident's Apartment is a serious violation of and Default under this Agreement. Prompt notification to Marcy Park is necessary to prevent pest infestation and to keep pests from spreading. In the event of a routine inspection that discloses that the Apartment has had an ongoing pest problem that has not been reported by the Residents, this Agreement may be terminated or non-renewed. In ordinary circumstances of pest control, Marcy Park will pay for the pest control treatment. In circumstances where Marcy Park's professional pest control provider determines that the pests have been brought into the apartment by a Resident or Resident's guests, where the Resident has failed to notify Marcy Park of a pest problem, or where the unit has been treated in the past and there is a re-infestation or a failure to take all steps required to eliminate the infestation, then Marcy Park shall be entitled to charge Resident for the cost of the initial service, or repeat service to the apartment, common areas or other units where an unreported problem has spread, in accordance with paragraph 29 herein.

Marcy Park Student Housing Cooperative - Addendum to Occupancy Agreement

Marcy Park Student Housing Cooperative Members (“Residents”) and all members of Resident’s family or household are parties to a written Occupancy Agreement (“Agreement”). This Addendum states the following additional terms, conditions and rules which are hereby incorporated into the Agreement.

A breach of this Addendum shall give each party all the rights contained herein, as well as the rights in the Agreement.

1. Purpose of No-Smoking Policy. The parties desire to mitigate (i) the irritation and known health effects of secondhand smoke; (ii) the increased maintenance, cleaning, and redecorating costs from smoking; (iii) the increased risk of fire from smoking; and (iv) the higher costs of fire insurance for a non-smoke-free building;

2. Definition of Smoking. The term “smoking” means inhaling, exhaling, breathing, or carrying any lighted cigar, cigarette, or other tobacco product or similar lighted product in any manner or in any form.

3. Smoke-Free Complex. Resident agrees and acknowledges that the premises to be occupied by Resident and members of Resident’s household have been designated as a smoke-free living environment. Resident and members of Resident’s household shall not smoke anywhere in the unit rented by Resident, or the building where the Resident’s dwelling is located or in any of the common areas or adjoining grounds of such building or other parts of the cooperative community, nor shall Resident permit any guests or visitors under the control of Resident to do so. Smoking is permitted outdoors at least 25 feet from any entrance or window. An ashtray is provided on the east side of the building near the railing.

4. Resident to Promote No-Smoking Policy and to Alert Marcy Park of Violations. Resident shall inform Resident’s guests of the no-smoking policy. Further, Resident shall promptly give Marcy Park a written statement of any incident where tobacco smoke is migrating into the Resident’s unit from sources outside of the Resident’s apartment unit.

5. Marcy Park to Promote No-Smoking Policy. Marcy Park shall post no-smoking signs at entrances and exits, common areas, hallways, and in conspicuous places adjoining the grounds of the apartment complex.

6. Marcy Park Not a Guarantor of Smoke-Free Environment. Resident acknowledges that Marcy Park’s adoption of a smoke-free living environment, and the efforts to designate the cooperative complex as smoke-free, do not make the Marcy Park or any of its managing agents the guarantor of Resident’s health or of the smoke-free condition of the Resident’s unit and the common areas. However, Marcy Park shall take reasonable steps to enforce the smoke-free terms of its Occupancy Agreements and to make the complex smoke-free.

Marcy Park is not required to take steps in response to smoking unless Marcy Park knows of said smoking or has been given written notice of said smoking.

7. Other Residents are Third-Party Beneficiaries of Resident’s Agreement. Resident agrees that the other Residents at the complex are the third-party beneficiaries of Resident’s smoke free addendum agreements with Marcy Park. (In layman’s terms, this means that Resident’s commitments in this Addendum are made to the other Residents as well as to Marcy Park.) A Resident may sue another Resident for an injunction to prohibit smoking or for damages, but does not have the right to evict another Resident. Any suit between Residents herein shall not create a presumption that the Marcy Park breached this Addendum.

8. Effect of Breach and Right to Terminate Occupancy Agreement. A breach of this Addendum shall give each party all the rights contained herein, as well as the rights in the Agreement. A material breach of this Addendum shall be a material breach of the Agreement and grounds for immediate termination of the Agreement by the Marcy Park.

9. Disclaimer by Marcy Park. Resident acknowledges that Marcy Park’s adoption of a smoke free living environment and the efforts to designate the cooperative complex as smoke-free do not in any way change the standard of care that the Marcy Park or managing agent would have to a Resident household to render buildings and premises designated as smoke free any safer, more habitable, or improved in terms of air quality standards than any other cooperative premises. Marcy Park specifically disclaims any implied or express warranties that the building, common areas, or Resident’s premises will have any higher or improved air quality standards than any other cooperative property. Marcy Park cannot and does not warranty or promise that the cooperative premises or common areas will be free from secondhand smoke. Resident acknowledges that Marcy Park’s ability to police, monitor, or enforce the agreements of this Addendum is dependent in significant part on voluntary compliance by Resident and Resident’s guests.

Residents with respiratory ailments, allergies, or any other physical or mental condition relating to smoke are put on notice that Marcy Park does not assume any higher duty of care to enforce this Addendum than any other Marcy Park obligation under the Agreement.

MANAGEMENT

RESIDENT(S)

_____ Date _____

_____ Date _____

_____ Date _____