



REAPPLICATION FOR APPEAL

AUG 08 2022 Saint Paul City Council – Legislative Hearings

CITY CLERK

310 City Hall, 15 W. Kellogg Blvd.
Saint Paul, Minnesota 55102
Telephone: (651) 266-8585

We need the following to process your appeal:

- \$25 filing fee (non-refundable) (payable to the City of Saint Paul) (if cash: receipt number _____)
- Copy of the City-issued orders/letter being appealed
- Attachments you may wish to include
- This appeal form completed
- Walk-In *OR* Mail-In
for abatement orders only: Email *OR* Fax

HEARING DATE & TIME (provided by Legislative Hearing Office) Tuesday, Sept. 8 Thurs. Time: you will be called between 9:00 AM & Location of Hearing: Teleconference due to Covid-19 Pandemic Room 330
--

Address Being Appealed:

Number & Street: 261 5th St. E. City: St. Paul State: Mn Zip: 55101

Appellant/Applicant: Angela Wilhight Email: Angela.Wilhight@mpls.k12.mn.us

Phone Numbers: Business _____ Residence 612-728-5767 Cell _____

Signature: *Angela Wilhight* Date: 08/05/22

Name of Owner (if other than Appellant): Bradbury Apartment Limited Partnership

Mailing Address if Not Appellant's: 261 5th St. E. (management address; none available for owner)

Phone Numbers: Business 651-224-0314 Residence _____ Cell _____

What Is Being Appealed and Why? *Attachments Are Acceptable*

- Vacate Order/Condemnation/
- Revocation of Fire C of O _____
- Summary/Vehicle Abatement _____
- Fire C of O Deficiency List/Correction _____
- Code Enforcement Correction Notice _____
- Vacant Building Registration _____
- Other (Fence Variance, Code Compliance, etc.) Violation of Rent Stabilization ordinance; see attached

MEMORANDUM IN SUPPORT OF ANGELA WILHIGHT'S APPEAL OF RENT
STABILITATION VIOLATION AT RAYETTE LOFTS APARTMENTS

Angela Wilhight brings this appeal to challenge her landlord's violation of the City's Rent Stabilization ordinance and the City's approval of that violation by granting an exception to the ordinance limitation of rent increases to 3% annually. On June 10, 2022 building management presented her with a lease renewal which raises her rent by 3% and additionally shifts the cost of water, sewer, gas, and trash removal from the landlord to the tenant. See, Exhibit 1, the first page of her current lease, running through August 31, 2022, and setting rent at \$1,575 and indicating owner payment of the above utilities and Exhibit 2, a June 10, 2022, email from management increasing the rent to \$1,622, a 2.98% increase and additionally charging tenants with all utility payments. Despite the reference in the June 10 email to charging tenants with utilities as of January 2022, Ms. Wilhight had received no notice of that until the June 10 email. The Housing Justice Center (HJC) sent a July 27 letter to management challenging the shift of utility cost to tenants. See Exhibit 3. In a July 28, 2022, response to the HJC letter, the Landlord's attorney announced, as part of his attempt to justify the utility shift to tenants, that this action has been approved by the City as an exception to the ordinance. See Exhibit 4. This was the only notice Ms. Wilhight has received regarding City approval of the ordinance exception and thus this appeal is timely.

The attorney's letter asserts that the utility payments by the residents are not "rent" under the ordinance because the ordinance definition of rent is "all monetary consideration charged or received by a landlord concerning the use or occupancy of a rental unit." (emphasis in the letter; the quote is from § 193A.03g.). The attorney argues that payments are not received by the landlord but by a third-party provider. Attached as Exhibit 5, finally provided to Ms. Wilhight on July 26, 2022, is the Addendum to the landlord's proposed new lease, to be effective September 1, 2022. For each of the utilities described above, the Addendum provides that utility "bills will be billed by the service provider to us and then allocated to you" based on a formula and then lists "Conservice" as a third-party billing company.

Making a third party responsible for billing residents for utility services (and then, presumably, paying the bills although that is not clear from the Addendum but implied by the lawyer's letter) does not, under the plain language of the ordinance mean that the tenant's utility payments are anything other than rent. First, Minn. Stat. § 504B.215 Subd. 2 requires every landlord in a single metered building to be the "bill payer responsible" and "customer of record" in contracting with the utility company. It further provides that, while a Landlord may still apportion utility payments among residents, the landlord then has only two options: include them directly in rent or separately bill them to tenants. Either way, the statute requires the owner to be responsible for contracting and paying for utilities and, if apportioned other than as rent, as is proposed in the new lease, billing separately for utility charges. The ordinance defines such apportioned charges as "rent." In doing so, it does not contradict § 504B.215 subd. 2; rather it is simply defining, solely for purposes of the ordinance, what tenant payments are subject to the 3% increase limit. The ordinance defines "landlord" as a building's owner, or a variety of other entities including "agent." Here, Conservice is simply the owner's agent and, as required by § 504B.125 Subd. 2, it is the owner who has contracted for the utilities, is responsible for billing

the tenants, and for paying the bill. Therefore, the tenants' utility payment is "rent" as defined in § 193A.03g.

The owner's proposed new lease violates the ordinance by raising the rent 3% and then additionally imposing substantial additional "rent" in the form of utility fees currently paid by the owner. This violation is particularly troubling in that, while these utility costs are certain to be substantial, there is no way for Ms. Wilhight to have any knowledge of what financial burden they will impose. She is a prospective tenant because her lease ends at the end of August and she has been invited to enter into a new lease. Yet she has not been presented with a "notice of the total utility cost for the building for each month of the most recent calendar year" as required by § 504B.215 Subd. 2a(1). Nor does she have any idea how the allocation formulas set out in the utility addendum, except for the fixed trash payment (which by itself puts the rent increase over 3%), will apply to her because she has no idea how many total residents there are nor how the size of her apartment relates to the building total.

For these reasons, the City must find the owners of the Rayette in violation of Chapter 193A and order Ms. Wilhight's new lease to be brought into conformance with the City Code.

Submitted August 8, 2022

A handwritten signature in black ink, appearing to read "John Cann", written in a cursive style.

John Cann
Attorney for Ms Wilhight
Housing Justice Center
1774 Portland Ave.
St. Paul, MN 55104
651-645-7378
jcann@hjcmmn.org

APARTMENT LEASE CONTRACT



Date of Lease Contract: May 24, 2021 (when the Lease Contract is filled out)

This is a binding document. Read carefully before signing.

Moving In - General Information

1. PARTIES. This Lease Contract (sometimes referred to as the "lease") is between you, the resident(s) (list all people signing the Lease Contract):

Angela Wilhight

and us the owner: Bradbury Apartment Limited Partnership

(name of apartment community or title holder). You've agreed to rent Apartment No. at 604 261 5th St. E.

(street address) in Saint Paul (city), Minnesota, 55101 (zip code) (the "apartment" or the "premises") for use as a private residence only. The terms "you" and "your" refer to all residents listed above. The terms "we," "us," and "our" refer to the owner listed above (or any of owner's successors' in interest or assigns). Written or electronic notice to or from our managers constitutes notice to or from us. If anyone else has guaranteed performance of this Lease Contract, a separate Lease Contract Guaranty for each guarantor is attached.

The person authorized to manage the apartment is:

American Mgmt Services Central

Name 261 5th St E

Street Address Saint Paul, MN 55101 City, State, Zip Code

The owner or agent authorized to accept service of process and receive and give receipts for notices is:

Bradbury Apartment LP

Name 261 5th St E

Street Address Saint Paul, MN 55101 City, State, Zip Code

2. OCCUPANTS. The apartment will be occupied only by you and (list all other occupants not signing the Lease Contract):

No one else may occupy the apartment. Persons not listed above must not stay in the apartment for more than 3 consecutive days without our prior written consent, and no more than twice that many days in any one month. If the previous space isn't filled in, two days per month is the limit.

3. LEASE TERM. The initial term of the Lease Contract begins on the 1st day of June 2021, and ends at 11:59 pm the 31st day of August 2022. This Lease Contract will automatically renew month-to-month unless either party gives at least 60 days written notice of termination or intent to move-out as required by paragraph 51 (Move-Out Notice). If the number of days isn't filled in, at least 30 days notice is required. At least 15 days before this lease automatically renews, we will send you notice of automatic renewal as required by statute.

4. RENT AND CHARGES. Unless modified by addenda, you will pay \$ 1575.00 per month for rent, payable in advance and without demand:

- at the on-site manager's office, or
at our online payment site, or
at Electronic Money Order Location

Prorated rent of \$ is due for the remainder of (check one): 1st month or 2nd month, on June 1 2021

Otherwise, you must pay your rent on or before the 1st day of each month (due date) with no grace period. Cash is unacceptable without our prior written permission. You must not withhold or offset rent unless authorized by statute. We may, at our option, require at any time that you pay all rent and other sums in cash, certified or cashier's check, money order, or one monthly check rather than multiple checks. At our discretion, we may convert any and all checks via the Automated Clearing House (ACH) system for the purposes of collecting payment. Rent is not considered accepted if the payment/ACH is rejected, does not clear, or is stopped for any reason. If you don't pay all rent on or before the 5th day of the month, you'll pay a late charge. Your late charge will be (check one): a flat rate of \$ 126.00 or % 8 % of your total rent due. The total amount of your late charges shall not exceed eight percent (8%) of your monthly rent payment. You'll also pay a charge of \$ 35.00 for each returned check or rejected electronic payment, plus a late charge. If you don't pay rent on time, you'll be delinquent and all remedies under this Lease Contract will be authorized. We'll also have all other remedies for such violation. All payment obligations under this Lease Contract shall constitute rent under this Lease Contract.

5. SECURITY DEPOSIT. Unless modified by addenda, the total security deposit at the time of execution of this Lease Contract for all residents in the apartment is \$ 150.00 due on or before the date this Lease Contract is signed.

In compliance with Minnesota law, your security deposit will bear simple interest. Interest will be included as part of the security deposit. Within 21 days after termination of your residency and receipt of your mailing address or written delivery instructions, we will return the deposit to you, with interest, or furnish to you a written statement specifying the reasons for the withholding of the deposit or any portion thereof. You may not withhold payment of any portion of any rent on the grounds that the security deposit should serve as payment of the rent. If you fail to pay the rent for the last month of the term after written notice from us, you are liable for damages under Minnesota Statutes Chapter 504B.

6. KEYS. You will be provided 1 apartment key(s), 1 mailbox key(s), 1 FOB(s), and/or other access device(s) for access to the building and amenities at no additional cost at move-in. If the key, FOB, or other access device is lost or becomes damaged during your tenancy or is not returned or is returned damaged when you move out, you will be responsible for the costs for the replacement and/or repair of the same.

7. UTILITIES. We'll pay for the following items, if checked: water gas electricity master antenna wastewater trash cable TV other

You'll pay for all other utilities, related deposits, and any charges, fees, or services on such utilities. You must not allow utilities to be

Exhibit 2

From: Rayette Lofts-Mgr <rayetteloftsmgr@cushwake.com>
Sent: Friday, June 10, 2022 12:22 PM
To: Angela Wilhight <Angela.Wilhight@mpls.k12.mn.us>
Subject: [EXTERNAL] Lease Renewal Proposals are Ready! #604

Angela Wilhight
261 5th Street East #604
Saint Paul, MN 55101

Dear Angela,

We appreciate your decision to live at *Rayette Lofts* and sincerely hope you have enjoyed your experience here during the past year. Residents like you are why so many of your neighbors choose to keep calling *Rayette Lofts* their home, so thank you for being a valuable addition to our community – this place wouldn't be the same without you!

This letter serves as a reminder & written notice that your lease expires at Noon on Wednesday August 31, 2022, however, we hope you will be staying with us much longer! Please find your 2022 renewal options below:

12 Month lease: \$1,622/month*

Month to Month: Current Rate + 450**

Planning to move? Don't forget!

60-day written notice must be provided no later than: July 2nd, 2022

Residents will automatically continue on a month-to-month basis and a \$450/mo. short-term premium will be charged to the resident's ledger on the first day of the month following the expiration date of the current lease if: a) a 60-day written notice is not received by the above-mentioned deadline OR b) a renewed lease contract has not been signed by all leaseholders prior to the current lease expiration date.

As of January 2022, we are charging back utilities for all new leases and renewals. You will begin to see water, sewer, trash, and gas added on your ledger after your new lease begins. Utilities will fluctuate based on square footage, occupancy, and usage. For example: gas will be higher in the winter months, lower in the summer, as the usage goes up with heating.

Please contact our office to inform us as to whether you will be renewing your lease. If there is anything we can do to make your home more enjoyable, please let us know. Thank you again for being an important member of our community. We look forward to keeping you as a resident for years to come!

Sincerely,
Chelsea Dorval
Property Manager
Rayette Lofts

*The rates above reflect your base monthly rent amount only, and do not include any additional considerations such as garage parking, pet rent, utilities, etc. **Month to month premiums reflect the flexibility and benefits of having a short-term, month-to-month lease. 60-day written notice to vacate is required on all leases, regardless of lease status.

Chelsea Dorval

Property Manager

Rayette Lofts

Direct: +1 651-224-0314

rayetteloftsmgr@cushwake.com

Make an appointment with me [HERE](#)



Rayette Lofts

261 5th Street E

St. Paul, MN 55101 | USA

Exhibit 3



July 27, 2022

Chelsea Dorval
Property Manager
Rayette Lofts Apartments
Leasing Office
251 5th St. E.
St. Paul, MN 55101
rayetteloftsmgr@cushwake.com

Re: violation of St. Paul Rent Stabilization ordinance at Rayette Lofts
By U.S. mail and email

Dear Ms Dorval:

We represent Angela Wilhight who lives in apartment 604 at Rayette Lofts and whose current lease expires at the end of August. On June 10, 2022, you emailed her setting out two lease renewal options: a one-year lease with a rent increase from the current rent of \$1,575 to a new rent of \$1,622 plus payment of all utility bills which are currently covered in her rent, or a month to month lease with a \$450 rent increase. Both these options constitute a violation of the St. Paul Rent Stabilization Ordinance, §§ 193A.01-193A.10. The ordinance limits rent increases to 3% annually. The one-year lease option exceeds this amount as the rent increase alone is 3% and the switch to tenant-paid utilities will add substantial additional monthly costs. The \$450 rent increase in the month-to-month option is a 28.6% increase and an obvious violation. Ms. Wilhight sent a complaint to you regarding this violation on July 12. You finally replied on July 25, indicating that your legal team has "directed" that utilities are not included in rent pursuant to Minnesota Statutes Chapter 504B and you are therefore not in violation of the ordinance.

Your legal team is wrong. §193A.03 of the ordinance, adopted by the City Council on April 6, 2022, defines "Rent," which under § 193A.04 may not be raised by more than 3% in any twelve month period, as: "All monetary consideration charged or received by a Landlord concerning the use or occupancy of a Rental Unit pursuant to a Rental Agreement." Under Ms. Wilhight's current lease, all utility costs are included in her rent. Your proposed lease clearly states, in paragraph 7, that for the next term she will pay for all utilities. These payments constitute monetary consideration to be received by the landlord pursuant to a rental agreement. Thus rent, as defined in the ordinance, is increasing by 3% plus the additional cost of water, sewer, gas, and trash pick-up, in clear violation of the ordinance.

The definition of "rent" in the ordinance does not refer to any other definition of rent in any other statute or legal principle. It is simply the definition of the costs that must be paid by the tenant which are set out in a rental agreement and increases in which may not exceed 3%. Thus § 504B is not relevant to whether your proposed new lease violates the rent stabilization ordinance. It is,

Jack Cann, Attorney

1774 Portland Avenue • St. Paul, MN 55104 • 651-645-7378

Dedicated to expanding and preserving the supply of affordable housing in Minnesota and nationwide

however, most definitely relevant to the legality of new lease for a wholly different, and additional, reason. Section 504B.215 Subd. 2a(2) provides that before a landlord may separately bill a tenant in a single-metered building, which the Rayette obviously is, the landlord must "predetermine and put in writing for all leases an equitable method of apportionment and the frequency of billing by the landlord." You have not done so. The provision in paragraph 7 of the proposed lease provide that if you do prorate utility costs to tenants with an allocation formula you will comply with agency rules or city ordinance by lease addendum. But you are renewing the lease, as of Sept. 1, with the tenant immediately responsible for all utility costs. You can obviously not do that without a pro-rated allocation and the state law clearly requires the written statement which you have not provided. The statute requires that an equitable proration method be "predetermined." That means determined **before** burdening the tenant with utility payments in the lease. Compliance with § 504B.125 of course does not cure your violation of the rent stabilization ordinance.

Your June 1 email provided Ms. Wilhight with two lease renewal options both of which violated the law. The month-to-month option involved an absurd rent increase; the annual renewal is an obvious violation of both the city ordinance and the state statute regarding utilities in a single metered building. But even when confronted with the ordinance violation, you insisted that your action was perfectly legal. This effort to use misrepresentation and misleading statements to coerce Ms Wilhight into a lease which violates the city ordinance and state law are violations of Minn.Stat. § 325F.69 Subd. 1, and § 8.31 Subd.3a, which provides for injunctive relief, damages, and attorney fees.

You must immediately provide Ms. Wilhight with a new proposed lease, with the cost of water, sewer, gas, and trash covered in the rent, which may not exceed \$1,622. We expect to have written confirmation of this by Aug. 1 or we will seek appropriate legal relief including attorney fees.

Yours truly,



Jack Cann
Senior Attorney
jcann@hjcmm.org

cc: Joy Habrat, joy.habrat@cushwake.com;
Cushman & Wakefield, 101 Dale St., St Paul, MN 55117;
Kalani Reelitz, Cushman & Wakefield Real Estate Services, 350 American
Blvd. W. #200, Minneapolis, MN. 55431
Andrew McDonald, Cushman & Wakefield of Minnesota, 80 S. 8th St., Minneapolis,
Mn. 55402

Exhibit 4

Malcolm P. Terry
Labor and Employment Law Specialist
Certified by the Minnesota State Bar Association
mterry@bernicklifson.com
Direct No. 763-746-7975

July 28, 2022

Jack Cann
Housing Justice Center
1774 Portland Ave.
St. Paul, MN 55104

Re: Cushman Wakefield – Angela Wilhight

Dear Mr. Cann:

I represent Cushman Wakefield (“CW”) and Rayette Lofts and I will respond to your letter dated July 27, 2022.

CW is not in violation of the St. Paul Rent Stabilization Ordinance. The ordinance defines rent as “All monetary consideration charged or received by a landlord concerning the use or occupancy of a rental unit pursuant to a rental agreement.” The utility payments are not consideration received by the Landlord. That is money received by a third-party provider, as you know. Further, the utility service is not provided by the Landlord, but by the third-party provider. Also, Ms. Wilhight’s current lease does not include utilities in the tenant payment. Those were paid for by the Landlord as overhead, something it chooses not to now do. Nothing in the ordinance, or 504B, stops them from making that choice. Your assumptions and desire to conclude utilities are rent under the ordinance is wrong and unsupported by the ordinance or the law.

Further, the month-to-month fee is not rent either, it is a fee for dealing with month-to-month tenants who refuse to sign a new lease or hold over without permission. Again, also not with the ordinance definition.

Finally, this property has been approved for an exception to the 3% cap in the ordinance. As such, you are also using the wrong measure.

As to Minn. Stat. § 504B.215, subd. 2(a)(2), you are again wrong. The Utility and Services Addendum to the new lease sets out that information as required by the statute. The statute does not require tenant approval or agreement at all and does not even give the tenant any options to object to what the breakdown is or how it is calculated. The statute clearly just says it needs to be done and told to the tenant, which has occurred.

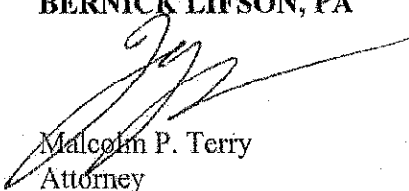
There is nothing in either lease that violates the ordinance or any law. Your attempts to create claims where none exist and threatening litigation to force a result that is not supported by any law is a violation of Rule 11 if carried out.

Mr. Cann
July 28, 2022
Page 2

If you have any questions or want clarification for anything, don't hesitate to call me.

Sincerely,

BERNICK LIFSON, PA



Malcolm P. Terry
Attorney

MPT/mas

cc: Client

UTILITY AND SERVICES ADDENDUM



This Utility Addendum is incorporated into the Lease Contract (referred to in this Addendum as "Lease Contract" or "Lease") dated July 26, 2022 between Bradbury Apartment Limited Partnership

("We" and/or "we" and/or "us") and Angela Wilhight

("You" and/or "you") of Apt. No. 604 located at 261 5th St. E. Saint Paul, MN 55101 (street address) in

This Addendum constitutes an Addendum to the above described Lease Contract for the above described premises, and is hereby incorporated into and made a part of such Lease Contract. Where the terms or conditions found in this Addendum vary or contradict any terms or conditions found in the Lease Contract, this Addendum shall control.

1. Responsibility for payment of utilities, and the method of metering or otherwise measuring the cost of the utility, will be as indicated below.

- a) Water service to your apartment will be paid by you either:
b) Sewer service to your apartment will be paid by you either:
c) Gas service to your apartment will be paid by you either:
d) Trash service to your apartment will be paid by you either:
e) Electric service to your apartment will be paid by you either:
f) Stormwater service to your apartment will be paid by you either:
g) Cable TV service to your apartment will be paid by you either:
h) Master Antenna service to your apartment will be paid by you either:
i) Internet service to your apartment will be paid by you either:
j) Pest Control service to your apartment will be paid by you either:
k) (Other) service to your apartment will be paid by you either:

- 1) (Other) _____ service to your apartment will be paid by you either:
- directly to the utility service provider; or
 - bills will be billed by the service provider to us and then allocated to you based on the following formula: _____
 - If flat rate is selected, the current flat rate is \$ _____ per month.
 - 3rd party billing company if applicable _____

METERING/ALLOCATION METHOD KEY

- "1" - Sub-metering of all of your water/gas/electric use
 - "2" - Calculation of your total water use based on sub-metering of hot water
 - "3" - Calculation of your total water use based on sub-metering of cold water
 - "4" - Flat rate per month
 - "5" - Allocation based on the number of persons residing in your apartment
 - "6" - Allocation based on the number of persons residing in your apartment using a ratio occupancy formula
 - "7" - Allocation based on square footage of your apartment
 - "8" - Allocation based on a combination of square footage of your apartment and the number of persons residing in your apartment
 - "9" - Allocation based on the number of bedrooms in your apartment
 - "10" - Allocation based on a lawful formula not listed here
- (Note: if method "10" is selected, a separate sheet will be attached describing the formula used)

2. Allocation formulas are used when the apartment has no sub-meter. The formula may be based on factors such as, the interior square footage of the apartment, number of bedrooms, number of occupants, number of bathrooms, presence of washing machine, and average water usage for that floor plan. The allocation is an estimate of usage by the resident. If an allocation method is used, we or our billing company will calculate your allocated share of the utilities and services provided and all costs in accordance with state and local statutes. Under any allocation method, Resident may be paying for part of the utility usage in common areas or in other residential units as well as administrative fees. Both Resident and Owner agree that using a calculation or allocation formula as a basis for estimating total utility consumption is fair and reasonable, while recognizing that the allocation method may or may not accurately reflect actual total utility consumption for Resident. Where lawful, we may change the above methods of determining your allocated share of utilities and services and all other billing methods, in our sole discretion, and after providing written notice to you. More detailed descriptions of billing methods, calculations and allocation formulas will be provided upon request.

If a flat fee method for trash or other utility service is used, Resident and Owner agree that the charges indicated in this Agreement (as may be amended with written notice as specified above) represent a fair and reasonable amount for the services provided and that the amount billed is not based on a monthly per unit cost.

3. When billed by us directly or through our billing company, you must pay utility bills within _____ 30 _____ days of the date when the utility bill is issued at the place indicated on your bill, or the apartment will be late. If a payment is late, you will be responsible for a late fee as indicated below. The late payment of a bill or failure to pay any utility bill is a material and substantial breach of the Lease and we will exercise all remedies available under the Lease, up to and including eviction for nonpayment. To the extent there are any new account, monthly administrative, late or final bill fees, you shall pay such fees as indicated below.

New Account Fee:	20.00	(not to exceed \$ _____)
Monthly Administrative Billing Fee:	4.50	(not to exceed \$ _____)
Late Fee:		(not to exceed \$ _____)
Final Bill Fee:	5.00	(not to exceed \$ _____)

If allowed by state law, we at our sole discretion may amend these fees, with written notice to you.

4. You will be charged for the full period of time that you were living in, occupying, or responsible for payment of rent or utility charges on the apartment. If you breach the Lease, you will be responsible for utility charges for the time period you were obliged to pay the charges under the Lease, subject to our obligation of damages. In the event you fail to timely establish utility services, we may charge you for any utility service billed to us for your apartment and may charge a reasonable administration fee for billing for the utility service in the amount of \$ _____ 50.00 _____.

5. When you move out, you will receive a final bill which may be estimated based on your prior utility usage. This bill must be paid at the time you move out or it will be deducted from the security deposit.

6. We are not liable for any losses or damages you incur as a result of outages, interruptions, or fluctuations in utility services provided to the apartment unless such loss or damage was the direct result of negligence by us or our employees. You release us from any and all such claims and waive any claims for offset or reduction of rent or diminished rental value of the apartment due to such outages, interruptions, or fluctuations.

7. You agree not to tamper with, adjust, or disconnect any utility sub-metering system or device. Violation of this provision is a material breach of your Lease and may subject you to eviction or other remedies available to us under your Lease, this Utility Addendum and at law.

8. Where lawful, all utilities, charges and fees of any kind under this lease shall be considered additional rent, and if partial payments are accepted by the Owner, they will be allocated first to non-rent charges and to rent last.

9. You represent that all occupants that will be residing in the Unit are accurately identified in the Lease. You agree to promptly notify Owner of any change in such number of occupants.

10. You agree that you may, upon thirty (30) days prior written notice from Owner to you, begin receiving a bill for additional utilities and services, at which time such additional utilities and services shall for all purposes be included in the term Utilities.

11. This Addendum is designed for use in multiple jurisdictions, and no billing method, charge, or fee mentioned herein will be used in any jurisdiction where such use would be unlawful. If any provision of this Addendum or the Lease is invalid or unenforceable under applicable law, such provision shall be ineffective to the extent of such invalidity or unenforceability only without invalidating or otherwise affecting the remainder of this Addendum or the Lease. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control.

12. The following special provisions and any addenda or written rules furnished to you at or before signing will become a part of this Utility Addendum and will supersede any conflicting provisions of this printed Utility Addendum and/or the Lease Contract.

Billed trash expense may include, but is not limited to, actual trash invoices, internal trash-related expense, porter service, consulting/management expense, equipment rental, trash management costs, trash-related cleaning costs, odor control, trash auditing costs, and recycling charges.
