**USE OF SECURITY DEPOSIT AS RENT AGREEMENT**

This Use of Security Deposit As Rent Agreement (the “Agreement”) dated as of May \_\_\_, 2020, is entered into by and among \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Landlord”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Tenant/Licensee”) (collectively referred to herein as the “Parties”) regarding the

**WHEREAS**, Landlord entered into a Lease Agreement with Tenant, for a term that commenced on \_\_\_\_\_\_\_\_ and ends on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Lease”) for the Apartment located at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Premises”) for a monthly rent of $\_\_\_\_\_\_ (“Rent”);

**WHEREAS**, Tenant represents that Tenant or Licensee is eligible for unemployment insurance or benefits under New York State or Federal law or is facing financial hardship due to the COVID-19 pandemic;

**WHEREAS,** on May 7, 2020, Governor Cuomo, issued Executive Order 202.28 (“Executive Order”) modifying Sections 7-103, 7-107 and 7-108 of the New York General Obligations Law and directed that Landlords shall provide relief to tenants and licensees who are eligible for unemployment insurance or benefits under New York State or Federal law or are otherwise facing financial hardship due to the COVID-19 pandemic by allowing tenants or licensees to use their security deposit and any interest accrued, to pay rent that is in arrears or shall become due and owing to Landlord;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

## Acknowledgement of Security Deposit: The Parties acknowledge and agree that as of \_\_\_\_\_\_\_\_\_\_\_, 2020, the amount of the security deposit held by the Landlord is $\_\_\_\_\_\_\_\_\_\_\_ (“Security Deposit”), which includes any interest accrued as required by New York State law.

## Arrears: Tenant hereby acknowledges and agrees that as of \_\_\_\_\_\_\_\_\_\_, 2020, the outstanding amount of Rent owed by Tenant to Landlord under the terms of the Lease is $\_\_\_\_\_\_\_\_\_\_, (“Arrears”) which is broken down as follows:

|  |  |
| --- | --- |
| MONTH | RENT AMOUNT OWED |
|  |  |

## 

## Or if Tenant is not in arrears use this language and delete paragraph above:

## While Tenant does not have any past due Rent owed to Landlord, Tenant has requested that Landlord apply the Security Deposit to the current month Rent that is due and owing Landlord (“Current Rent Owed”).

## Use of Security Deposit as Rent:

## Pursuant to the terms of the Executive Order and based on the representations of Tenant/licensee made to Landlord and in this Agreement, Tenant understands, acknowledges and agrees that Tenant has requested that the Security Deposit be applied to Arrears or Current Rent Owed.

## Tenant understands, acknowledges and agrees, that Rent remains a contractual obligation owed by Tenant to Landlord and that no Executive Order, statute, or law has waived the requirement for Tenant to pay the Landlord Rent pursuant to the terms of the Lease Agreement.

## Tenant understands, acknowledges and agrees, that if the amount of the Security Deposit represents less than a full month of Rent, the application of the amount held does not constitute a waiver of the remaining Rent due and owing to the Landlord for the month the Security Deposit is applied towards.

## Requirement to Replenish the Security Deposit:

## Tenant/Licensee understands, acknowledges and agrees, that pursuant to the Executive Order, any Security Deposit used as payment of Rent must be replenished by Tenant or Licensee.

## Tenant/Licensee understands, acknowledges and agrees that Tenant shall commence repayment of the Security Deposit used as Rent no later than ninety (90) days from the date the Security Deposit is applied to Arrears or Current Rent Due.

## Tenant/Licensee understands, acknowledges and agrees that Tenant shall repay the Security Deposit at the rate of 1/12 of the Security Deposit amount used, which shall be deemed Rent, per month.

## Tenant or Licensee may at their sole option, retain insurance that provides relief for the Landlord in lieu of monthly security deposit replenishment.

## As such, Tenant, agrees that Tenant shall commence repayment of the 1/12 of the Rent on or before \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_(90th day) and shall make a payment of at least 1/12 of the amount of Rent, which payment shall equal $\_\_\_\_\_\_\_\_\_ on or before the first day of each month with the current month Rent that is owed to Landlord.

## Tenant understands, acknowledges, and agrees that Tenant must repay the entire amount of the Security Deposit no later than \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (15 months from the date of this Agreement).

## At any time, Tenant may prepay the amount of the Security Deposit remaining to the Landlord.

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## 5 Default: In the event Tenant or Licensee defaults under the terms of this Agreement, Landlord reserves the right to pursue all remedies under law and equity for collection of the Rent. In the event this Agreement extends beyond Tenant or Licensee’s term of Lease, then Tenant agrees that this Agreement shall be secured by a Confession of Judgment which shall be held in escrow pending the timely receipts of payments itemized in Paragraph 4(e).

# 7. Entire Agreement. The Parties represent and agree that no promise, inducement, or agreement other than as expressed herein has been made to them and that this Agreement is fully integrated, supersedes all prior agreements and understandings, and any other agreement between the Parties, and contains the entire agreement between the Parties.

# 8. Voluntary and Informed Assent. The Parties represent and agree that they each have read and fully understand this Agreement, that they are fully competent to enter into and sign this Agreement, and that they are executing this Agreement voluntarily, free of any threats, duress or coercion.

# 11. Governing Law and Jurisdiction. The laws of the State of New York shall apply to and control any interpretation, construction, performance or enforcement of this Agreement.

# 12. Attorneys’ Fees and Costs for Breach. The prevailing Party in any action to enforce or interpret this Agreement is entitled to recover from the other Party its reasonable attorneys’ fee as awarded by a court.

# 13. Construction. This Agreement shall be construed as if the Parties jointly prepared it, and any uncertainty or ambiguity shall not be interpreted against any one Party.

# 14. Modification. No oral agreement, statement, promise, undertaking, understanding, arrangement, act or omission of any Party, occurring subsequent to the date hereof may be deemed an amendment or modification of this Agreement unless reduced to writing and signed by the Parties hereto or their respective successors or assigns.

# 15. Severability. The Parties agree that if, for any reason, a provision of this Agreement is held unenforceable by any court of competent jurisdiction, this Agreement shall be automatically conformed to the law, and otherwise this Agreement shall continue in full force and effect.

# 16. Number. Whenever applicable within this Agreement, the singular shall include the plural and the plural shall include the singular.

# 17. Headings. The headings of paragraphs herein are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Agreement.

# 18. Counterparts. This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement binding on all Parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart. Facsimile and e-mailed signatures shall be accepted the same as an original signature. A photocopy of this Agreement may be used in any action brought to enforce or construe this Agreement.

# 19. No Waiver. No failure to exercise and no delay in exercising any right, power or remedy under this Agreement shall impair any right, power or remedy which any Party may have, nor shall any such delay be construed to be a waiver of any such rights, powers or remedies or an acquiescence in any breach or default under this Agreement, nor shall any waiver of any breach or default of any Party be deemed a waiver of any default or breach subsequently arising.

# Dated this \_\_\_ day of \_\_\_\_\_\_, 2020

LANDLORD

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Its: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

TENANT:

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_