

2010

Jennifer Broderick, et al. v. Apartment Management Consultants, LLC; and Canyon Cove, LLC : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH SUPREME COURT

JENNIFER BRODERICK, ET AL., :

Plaintiffs and Appellants, :

vs. :

APARTMENT MANAGEMENT : Appeal No. 20100276-C
CONSULTANTS, LLC; and
CANYON COVE, LLC, :

Defendants and Appellees. :

JOINT BRIEF OF APPELLEES
APARTMENT MANAGEMENT CONSULTANTS, LLC
AND CANYON COVE LLC

On Appeal From Summary Judgment,
By The Second Judicial District Court, Weber County, State of Utah
Judge Ernest W. Jones

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Cove, LLC*

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LIST OF PARTIES

1. Jennifer Broderick, on behalf of her minor sons Tyler and Trevor Foust, plaintiff represented by James Hasenyager and Peter Summerill. Ms. Broderick is a party to this appeal.
2. Kathleen Christensen, plaintiff represented by James Hasenyager and Peter Summerill. Ms. Christensen is a party to this appeal.
3. Shannon Miller, on behalf of her minor children Kiersten and Daniel Miller, plaintiff represented by James Hasenyager and Peter Summerill. Ms. Miller is NOT a party to this appeal.
4. Kevin Miller, plaintiff represented by James Hasenyager and Peter Summerill. Mr. Miller is a party to this appeal.
5. Tyrone Rogers, plaintiff represented by James Hasenyager and Peter Summerill. Mr. Rogers is NOT a party to this appeal.
6. Gertrude Scheidecker, plaintiff represented by James Hasenyager and Peter Summerill. Ms. Scheidecker is a party to this appeal.
7. Veronica Sigua, plaintiff represented by James Hasenyager and Peter Summerill. Ms. Sigua is a party to this appeal.
8. Savannah Brandewie, plaintiff represented by James Hasenyager and Peter Summerill. Ms. Brandewie is a party to this appeal.
9. Lisa Morgan, plaintiff represented by James Hasenyager and Peter Summerill. Ms. Morgan is a party to this appeal.
10. Apartment Management Consultants, LLC ("AMC"), defendant represented by Gregory J. Sanders and Patrick C. Burt of Kipp & Christian, P.C. AMC is a party to this appeal.
11. Howard Schmidt, defendant who is NOT a party to this appeal.
12. David Schmidt, defendant who is NOT a party to this appeal.
13. Colorado Casualty Company, defendant who is NOT a party to this appeal.
14. Jason (Jake) Leoncini, defendant who is NOT a party to this appeal.
15. Canyon Cove, LLC, defendant represented by Scot A Boyd of Christensen & Jensen. Canyon Cove LLC is a party to this appeal.

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JURISDICTION

The Utah Supreme Court has original jurisdiction under U.C.A. 78A-3-102(3)(j) and retained jurisdiction pursuant to its order dated April 26, 2010.

STATEMENT OF ISSUES

The issue presented is whether the district court was correct in granting summary judgment to an apartment complex owner and its management group based on releases of claims for damages sustained by their tenants because of a fire intentionally and maliciously started by defendant arsonist Jake Leoncini. The plaintiff tenants all voluntarily signed releases which specifically prohibit bringing actions for damages caused by (a) fire and/or (b) crime.

As stated in Appellant's brief, summary judgment is appropriate when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Pearce v. Utah Athletic Found*, 2008 UT 13, 179 P.3d 760. The trial court's decision granting a summary judgment is reviewed for correctness, with no deference to the trial court. *Id.*

CONTROLLING CONSTITUTIONAL PROVISIONS, STATUTES OR RULES

None.

STATEMENT OF THE CASE

Plaintiffs/appellants (the “Tenants”) were tenants of an Ogden apartment building that was destroyed by fire. (R. at p. 32). The fire was intentionally started by defendant arsonist Jake Leoncini. (R. at p. 32). The building was owned by Canyon Cove and managed by Apartment Management Consultants (collectively “Ownership and Management”). (R. at p. 32). In their amended complaint, Tenants brought claims primarily for loss of property damage with some tenants claiming emotional distress.

Tenants’ amended complaint listed causes of action for negligence, conversion, bailee/bailor, breach of warranty of habitability and breach of contract. (R. at p. 32). Ownership and Management filed Motions for Partial Summary Judgment on each cause of action and on December 7, 2009 the court granted summary judgment on each of Tenants’ causes of action except for that of negligence. Therefore, Tenants’ sole surviving cause of action was that of negligence. (R. at p. 622).

Each Tenant, upon moving into the apartment complex, signed a Residential Rental Agreement (the “Agreements”). (R. at p. 647). A copy of the typical Agreement is included in the addendum hereto. The Agreements contain a “Limited Liability” provision (the “Release”) that prohibits a Tenant from bringing a claim of negligence. (R. at pp. 647-648).

The following are terms on page 3 of the Agreements, signed by each Tenant:

Limited Liability

Owner shall not be liable for any damages or losses to person or property caused by any Resident or any other person including, but not limited to, any theft, burglary, assault, vandalism or other crimes. Owner shall not be liable for any personal injury to Resident unless caused by gross negligence of Owner. Owner shall not be liable for damage to or loss of Resident's personal property (furniture, jewelry, clothing, etc.) from any cause including but not limited to fire . . . unless such injury or damage is caused by gross negligence of Owner or its agents. OWNER STRONGLY RECOMMENDS THAT RESIDENT SECURE RENTERS INSURANCE TO PROTECT AGAINST ALL OF THE ABOVE OCCURRENCES.

Emphasis in original. *See* Addendum.

Ownership and Management jointly brought a motion for summary judgment as to Tenants' only remaining cause of action for negligence based on the language of the Agreements. (R. at p. 645). The trial court held oral argument on February 1, 2010 and found the following:

1. Each of the Tenants signed an Agreement that contained the above Release;
2. The language of the Agreements and Release is clear and unambiguous;
3. The Agreements release Ownership and Management from liability for the arson and fire that caused the damage in this case;
4. Tenants did not allege or show facts of gross negligence;
5. The Agreements and Release do not violate public policy; and
6. The Agreements and Release are valid and enforceable.

(R. at pp. 1035 and 1052).

SUMMARY OF ARGUMENTS

Because their arguments and interests are closely related, Appellees AMC and Canyon Cove, LLC jointly submit this brief.

Under Utah law, the Agreements, and the Release therein, are enforceable. Utah law has long held that such limitations of liability are enforceable and will be upheld by the courts as long as the language is clear and unambiguous. In this case, the language of the Agreements is clear and unambiguous. In fact, Tenants do not seem to contest the enforceability of the Agreements on their face.

Instead, Tenants contest the public policy behind allowing such releases and appear to ask this court to change Utah law that has existed for over 45 years. However, even should the court wish to change Utah's long standing law regarding the validity of releases, this case is not the proper case to effectuate such changes. The fire that caused damage to Tenants here was an intentional act of arson and not a result of any alleged negligence of Ownership and Management.

ARGUMENT

I. UNDER UTAH LAW, THE AGREEMENTS ARE ENFORCEABLE BECAUSE THEY ARE CLEAR AND UNAMBIGUOUS.

A. APPLICABLE UTAH LAW

Under Utah law, a contractual covenant releasing a party from liability for negligent actions is enforceable and will be upheld by the courts. *Union Pacific Railroad Company v. El Paso Natural Gas Company*, 408 P.2d 910, 17 Utah 2d 255 (Ut. 1965). Such contractual releases will be upheld as long as the intention for release is clear and unequivocally expressed. *Id.*; *See also Russ v. Woodside Homes, Inc.*, 905 P.2d 901 (Ut. App. 1995) (Provision that held party harmless for any and all claims, damages, loss and expenses and for death, accident or injury clearly and unequivocally established parties' intent to avoid liability and was therefore enforceable). According to *Russ*, such releases are valid even if the word "negligence" is not specifically mentioned, as long as the intention to release is clear. *Id.* at 905. Moreover, the party seeking protection from claims does not have a duty to ensure that the releasing party has complete and accurate understanding of all the terms of the contract; ignorance is no defense for the releasing party. *Id.*

B. THE AGREEMENTS AND RELEASE ARE CLEAR AND UNAMBIGUOUS

The trial court correctly found that the language of the Agreements and Release is clear and unambiguous. The limited liability section of the Agreements clearly reads that the Ownership and Management cannot be held liable for damages or losses sustained due to

crimes (such as arson). Moreover, the Agreements go on to specifically state that the Ownership and Management are not liable for damages or losses due to a fire.

There is no equivocation in this matter and Tenants do not contest the fact that the terms of the Agreements are clear and unambiguous. The intentions of the parties are equally clear. Ownership and Management clearly intended to be released from liability for damages caused by crime or fire and Tenants clearly agreed to assume the risk of same. Because these terms and the parties' intentions are so clearly expressed in the Agreements, the trial court correctly granted summary judgment as to Tenants' cause of action for negligence.

II. THE FACTS OF THIS CASE DO NOT JUSTIFY A PUBLIC POLICY CHANGE TO STANDING UTAH LAW.

Tenants do not seem to contest the validity and enforceability of the Agreements and the Release under current Utah law. Instead, Tenants seem to ask this court to depart from the long-standing Utah law regarding releases and forge new law based on public policy. However, the following examination of the Tenants' arguments shows this case is not the proper case for such a radical departure from time tested law because the facts of this case do not justify a public policy change.

A. TENANTS' "FACTS" REGARDING FIRE SAFETY EQUIPMENT ARE CONTESTED RED HERRINGS

Although Tenants attempt to sway the sympathy of this court by listing issues such as prior fires on the property, problems with fire detectors and the presence of the couch that

arsonist Leoncini set on fire, these issues are red herrings and certainly do not warrant a new public policy departure from long-standing Utah law.

For example, the prior fires mentioned by Tenants took place in a different building on the complex, occurred before Ownership and Management came into possession of the property, and were caused by reasons unknown. (R. at p. 479). Tenants established no evidence to suggest that the prior fires were caused by issues of detectors, fire doors or lack of fire blocking as they allege here. (R. at p. 479). They simply ask this court to assume that because a fire had broken out once before, for unknown causes and prior to possession by Ownership and Management, that these prior fires now implicate negligence in this case.

Similarly, Tenants talk about fire detectors not working, however discovery in this case showed that there was a factual dispute over if the detectors had been tested and working prior to the fire. (R. at p. 478).

Finally, Tenants attempt to show negligence by the presence of the couch in the stairwell which was the source of the fire. Tenants allege Ownership and Management were negligent in failing to remove the couch. However, the trial court record showed that the issue of the presence of couch dealt with issues of egress. (R. at p. 480). In his deposition, the Ogden fire marshal stated that the couch potentially violated the fire code because it was an obstruction in the stairwell but not because it was a combustible object. (R. at p. 481). Tenants do not claim that their injuries were caused by a lack of egress due to the couch. The

couch's only involvement was as the incendiary used by the arsonist Leoncini. In theory, Leoncini could have used anything to start the fire. The presence of the couch was incidental and nothing more.¹

In short, Tenants ask this court to blaze new public policy paths on disputed facts that are tenable at best to tie Ownership and Management to liability. The facts of this case are not the proper champion for groundbreaking public policy case law.

B. TENANTS FAIL TO SHOW THE RELEVANCE OF THE ABOVE DISPUTED FACTS TO THE DAMAGES THEY SUFFERED

Even assuming the accuracy of Tenants' statements about the inadequacy of the fire safety equipment, this case is not proper for new public policy law because Tenants seek to invoke consumer sympathy in this case based on assumptions alone. As discussed above, the issues of adequacy of fire alarms, fire extinguishers, fire doors and the presence of the couch are factually disputed. However, what is not disputed is that Tenants have not established anywhere in the record that even if the above safety items were inadequate that this contributed to their loss. There is not a single instance in the record where a Tenant states "If there had been a working fire alarm I could have saved my property from the fire's

¹ It must be noted that discussion of these factual disputes does not affect the correctness of the trial court's granting the motion for summary judgment. The "undisputed factual debate" of the summary judgment deals purely with the validity of the Release. The fact disputes regarding fire alarms, the couch etc. are only relevant to show that the facts of this case do not merit a radical departure from current Utah law due to public policy.

destruction.” Neither is there anywhere in the record that states “I could have mitigated my damages had the couch not blocked my egress”. In other words, Tenants simply point to miscellaneous things they contend were inadequate and ask this court to make the unbridged leap to negligence. This is a bold request, but to make it even more bold, Tenants ask the court to take this unbridged leap into new public policy law despite long standing Utah law.

C. NOTHING IN THE RECORD SHOWS THE AGREEMENTS AND RELEASE WERE CONTRACTS OF ADHESION

Tenants try to get around the negative facts above and ask for consumer sympathy. They point to a laundry list of out of state case law intending to protect tenants against landlord releases due to the disparate relationship. Tenants make an emotional appeal that public policy must protect them in the rental of a “shelter, a basic necessity of life”. Tenants’ Brief at p. 9.

An adhesion contract is one forced upon another party by one who has superior bargaining power. However, the presence of a release or the fact that the terms of the contract are standard and required by one party does not automatically render it a contract of adhesion. *Russ v. Woodside Homes, Inc.*, 905 P.2d 901 (Utah 1995).

This case again fails to be a proper champion to usher in such new case law. Tenants wish to give the impression that they are poor and oppressed and were forced into the Agreements by adhesion thus creating an emotional appeal to invalidate the otherwise valid Release. However, there is nothing in the record to support these insinuations. Tenants have

produced nothing to show issues of income or economic standing. Tenants establish nothing in the record to show that the Agreements were forced upon them such that they constitute agreements of adhesion. Surely, Tenants could have rented apartments at any of the other numerous apartment complexes in the area.

Moreover, the Agreements were not the sole vehicle for protection from damages incurred in this case. As shown above, the Agreements, in clear terms, recommend that individual tenants obtain renters' insurance to protect against damages that would not be covered by Ownership and Management. Instead of being coerced into a contract of adhesion, the Agreements pro-actively recommended that Tenants protect themselves through the individual purchase of renters' insurance.

As with listing the fire safety equipment, Tenants simply point to issues hoping to elicit emotional fanfare without creating any bridge between those issues and this case. Nothing in the record shows the Agreements were contracts of adhesion, therefore, public policy cannot attach to this case and justify departure from current Utah law.

D. THE FIRE WAS CAUSED BY LEONCINI'S INTENTIONAL ACT OF ARSON AND NOT OWNERSHIP AND MANAGEMENT'S NEGLIGENCE

The final and perhaps most important reason this case cannot stand as the forerunner for creating new law based on public policy is defendant arsonist Jake Leoncini. Curiously, the couch has made it into this appeal, but Leoncini, who intentionally set the couch on fire, did not. Tenants pursue this appeal and throw out buzz words such as inadequate fire alarms

and extinguishers and contracts of adhesion (none of which is established in the record) and ignore the giant elephant in the room which is that this fire was a result of deliberate and calculated arson. Tenants wish to point to Ownership and Management's negligence as the cause of this fire when, in fact, it was defendant Leoncini who intentionally and maliciously set fire to a couch located in the stairwell of an occupied apartment complex.

Tenants ask this court to make leaps in logic to find Ownership and Management liable despite the clear enforceability of the Agreements and Release, and they ask the court to do so in a case where the fire was clearly not the fault of Ownership and Management, but the fault of an arsonist. This case cannot be the public policy champion Tenants want it to be.

CONCLUSION

Tenants all voluntarily signed the Agreements and Release. The language of the Release is clear and unambiguous. It clearly protects Ownership and Management from liability for damages caused by (1) fire and (2) crime. Tenants do not seem to contest the validity of the Release under existing Utah law. Instead, they ask this court to forge new ground and create new, public policy based case law invalidating the Release. However, they ask the court to step out onto that ledge with a case that factually is not appropriate for such radical departure from long standing Utah law.

The trial court correctly upheld the enforceability of the Release and properly dismissed Tenants' cause of action for negligence. Given the facts of this case, this court should uphold that decision.

DATED this 14 day of October, 2010.

KIPP AND CHRISTIAN, P.C.

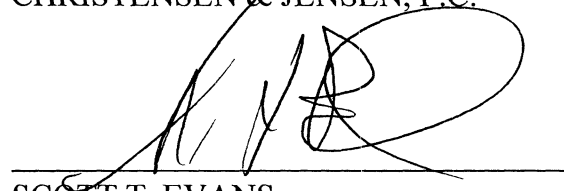
A handwritten signature in black ink, appearing to read "Gregory J. Sanders", is written over a horizontal line.

GREGORY J. SANDERS

PATRICK C. BURT

Attorneys for Apartment Management
Consultants, LLC

CHRISTENSEN & JENSEN, P.C.

A large, stylized handwritten signature in black ink is written over a horizontal line.

SCOTT T. EVANS

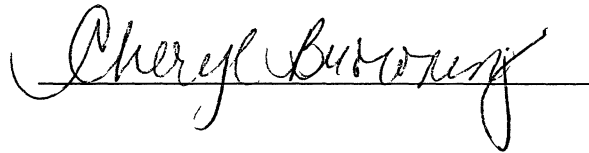
SCOT A. BOYD

Attorneys for Canyon Cove, LLC

CERTIFICATE OF MAILING

The undersigned hereby certifies that on the 15th day of October, 2010, two true and correct copies of the foregoing **BRIEF OF APPELLEES** was mailed, first class, postage pre-paid to:

James R. Hasenyager
Peter W. Summerill
Hasenyager & Summerill
1004 24th Street
Ogden, Utah 84401
Attorneys for Plaintiffs

A handwritten signature in cursive script, reading "Cheryl Burrows", is written over a horizontal line.

ADDENDUM
Residential Lease Agreement

ADDENDUM A

Canyon Cove

Apartments
1455 Valley Drive
Ogden, Utah 84401
(801) 621-1521

Residential Rental Agreement

This is a legally binding contract. Read the entire document carefully before signing.

Parties

Kathleen Christensen being
all the Occupants of the Premises eighteen years of age or older (hereinafter collectively referred to as "Resident"); and

being all the Occupants of the Premises under the age of eighteen; and the below named rental unit owner (hereinafter referred to as "Owner").

THIS AGREEMENT, entered into the date first written below is between the parties listed herein for the Premises located as follows:

Premises

1463 Canyon Cove Lane # 23, Ogden Utah 84401 located in Weber County,
State of Utah (herein referred to as the "Premises") is for use as a private residence only, according to terms set forth herein. No other occupants shall reside in the Premises except as listed above. Occupancy by guests remaining over three consecutive days will be considered to be a violation of this provision unless prior written consent is given by Owner.

Rent and Fees

Monthly rent \$ 495.00 Monthly Cable Fee \$20.00 Monthly Pet Rent \$ Utility \$4.00 Trash \$ 25.00 \$ Total 544.00

Pro-rata rent for move-in \$ 478.50 for 3/2/05 to 3/31/05

Late Fee \$ 50.00 plus \$ 10.00 per day after and inclusive of the 6th day of each month

Lease Initiation Fee \$ 150.00 Month to Month Fee \$ 150.00 Service of Notice Fee \$30.00

Security Deposit \$ 0 Pet Deposit (refundable) \$ 0 Pet Deposit (non Refundable) \$ 0

Lease Buy-Out Amount \$ 1100.00 (If applicable)

Term

The initial term shall commence on the 2nd day of March, 2005 and will end on the last day of March 06. Occupancy will start on the commencement date unless the premises are not ready for occupancy. Owner shall not be liable for any damages in the event the premises are not available for occupancy on the commencement date. This agreement will automatically renew on a month-to-month basis unless written notice of termination is given by either party at least sixty (60) days 60 before the initial term ends. The above month to month fee shall be added to the Monthly Rent in the event Resident remains in the Premises after the expiration of the Term. Additionally, Owner may increase the rent on a month to month tenancy upon thirty (30) days written notice. In the event this agreement extends beyond the term above on a month to month tenancy, such tenancy shall then terminate only on the last day of a month. The Lease Initiation Fee above shall be paid upon execution of this agreement and shall be deemed consideration for the institution of this agreement.

Security Deposit

1. Resident agrees that security deposit above shall be payable on/or before signing of this agreement. Any sums due or owing by Resident to Owner may at any time be deducted from said deposit; deductions shall be used to pay non-rent items first. Resident agrees to promptly reimburse the security deposit within five (5) days after notice is given and Resident may not apply any portion of the security deposit to any month's rent. Resident's security deposit will be refunded in full, if all of the conditions of this agreement are fulfilled, including:

a. The full agreement term has expired or the agreement has been terminated without default of Resident and Resident has not "held over". "Held over" means the Resident is still in possession of the Premises after either party has given the other notice of termination.

b. Resident has provided a written sixty (60) day 60 notice of intent to vacate to Owner prior to the original date of termination or original expiration and/or sixty (60) days prior to the last day of the month Resident intends upon vacating. This provision does not allow Resident to terminate the lease prior to the expiration of the initial term.

c. Resident has no other monies due pursuant to any term or condition of this agreement or any other amounts due to Owner from any other agreement, arrangement, or indebtedness.

d. Resident has thoroughly cleaned the Premises, appliances, and fixtures. Resident acknowledges that there are specific charges that Owner may charge for cleaning and damages. Those charges are agreed to by Resident and Resident does affirmatively agree to have Owner's agents inspect the premises prior to move-out. The Owner will be entitled to and may deduct from the security deposit monies due pursuant to the Owner's cleaning charge list and all

other reasonable charges to accomplish cleaning or repair from damage to allow the premises to be rented.

e. Resident supplies the Owner with a forwarding address, in writing, stating where the deposit, if any, is to be sent.

f. All individuals using or occupying the Premises have surrendered the Premises to Owner, and all keys to the mailbox, storage room, Premises, and all other keys related to the Premises are turned in to the Owner.

2. Within sixty (60) days following Resident's surrender of said Premises to Owner and Resident providing forwarding address for the purpose of refunding the security deposit, Owner will forward the balance of the security deposit less all deductions with an itemized statement of any deductions made.

3. It is the Resident's obligation to provide Owner with all required notices prior to move-out and arrange for an inspection of the Premises by Owner using the Move-In and Move-Out Inventory and Condition Form. Resident agrees to the charges as stated and as may be amended on the Move-out Form. In the event there are charges in excess of the security deposit, Resident agrees to pay such amount upon demand.

Move-Out Notice In a month-to-month residency or end of lease term termination, at least sixty (60) days written notice of intent to vacate must be given to Owner's representative by Resident prior to move-out. In the event of a month to month extension, the agreement term shall extend to, and the rent shall be paid through the last day of the calendar month; in other words, the last month's rent must be a full month without any prorations. This lease may only terminate on the last day of a month.

Lease Buy-Out In the event, Resident desires to terminate the lease prior to the end of the initial term or any extension thereon, Resident may do so by giving sixty days written notice, paying all amounts due or which would fall due prior to move-out (including paying back to Owner any and all Move-In discounts or lease concessions), and paying the Lease Buy-Out Amount above. Such amounts to be paid at the time of giving the notice. Resident shall still be responsible for damages and cleaning of the premises. If no amount is stated or the amount is \$0, it shall be deemed to be the full amount due through the end of the initial term of this agreement. **The lease may only terminate on the last day of a month unless otherwise agreed by Owner or due to default.**

Rules & Regulations Resident, its guests and other occupants shall comply with all written rules and regulations which shall be considered part of this lease. Such rules and regulations shall be available for review from Owner upon request during normal business hours. Owner may make reasonable rule changes if made in writing and notice is given to all Residents. Resident agrees that the conduct of Resident, his guests or other occupants shall not be disorderly, boisterous or unlawful and shall not disturb the rights, comforts, or convenience of other persons. Resident shall be liable to Owner for damages caused by Resident, its guests or other occupants. Sidewalks, steps, entrance halls, walkways and stairs shall not be obstructed or used for any purpose other than ingress or egress. The Premises and other areas which are reserved for Resident's private use shall be kept clean and sanitary by Resident. Garbage shall be disposed of only in appropriate receptacles. Swimming pools, storage rooms, laundry rooms and other facilities are to be used wholly at the user's risk and any person including Resident may be restricted from usage at Owner's sole discretion. All written rules may be enforced through Owner's representatives or agents and Residents shall hold same harmless for reasonable enforcement. Owner may regulate the manner, time and place of all parking. Owner may regulate, limit, or prohibit from the premises and the areas owned by Owner the following: motorcycles, bicycles, tricycles, skateboards, recreational vehicles, boats, trailers, inoperable vehicles, furniture movers, delivery men, solicitors, guests who have lived or stayed in Resident's Premises more than three consecutive days without Owner's prior written permission, former tenants, and guests who, in the Owner's reasonable judgement, have been disturbing the peace, disturbing other residents, may cause a threat to other tenants or who have or may be violating rules and regulations. Resident acknowledges the review of such rules and regulations and agrees to be bound by them. Such rules may be changed or modified at any time with thirty days notice to Resident.

Release of Resident Resident will be subject to the same release standards as imposed by savings and loan and mortgage companies, (i.e., Resident will not be released on grounds of voluntary or involuntary school withdrawal or transfer, voluntary or involuntary business transfer, marriage, divorce, loss of co-residents, bad health, voluntary enlistment into the Armed Services, problems with other tenants, or any other reasons, unless otherwise provided in this agreement) Upon vacating prior to the expiration of the term, this Agreement shall remain enforced in full, with all monies and future rent immediately due and payable. In the event Resident files a bankruptcy during its tenancy, this agreement shall be deemed to be a tenancy at will with rent payable daily and calculated at the monthly rate divided by 30, all other obligations shall remain in effect.

Premises Condition Resident has the right to inspect the Premises prior to signing this agreement and Resident agrees to conduct whatever inspection of the Premises is needed prior to signing this lease. Resident acknowledges that the Premises have been inspected, are satisfactory in condition, and all existing damages have been acknowledged by Owner. Resident by taking possession of the Premises evidences the fact that the Premises (including appliances, furnishings, and fixtures) are in clean, safe, sanitary and good-working condition and that any exception has been delivered to Owner in writing within 48 hours of taking of possession of the Premises. Owner makes no warranty of any kind, expressed or implied, and relies upon the fact that Resident has inspected the Premises. Resident agrees to maintain the Premises, appliances, furnishings, and fixtures in good condition throughout the term of this agreement (excepting normal wear and tear). Resident will return the Premises to the Owner in the same condition as when Resident moved in (subject to normal wear and tear). Resident agrees to make no alteration to the Premises (including painting, wallpapering, stickers, new locks, etc.) without first obtaining the prior written consent of the Owner.

Repairs Resident agrees to request all repairs and services in writing from Owner's designated representative. Owner shall have the right to temporarily turn off equipment and interrupt utilities to avoid damage to property or to perform repairs or maintenance which require such interruption. In case of malfunctions of equipment or utility damage by fire, water, or other cause, Resident shall notify Owner's representatives immediately. Owner shall act with due diligence in making repairs, the lease shall continue, and rent shall not abate during such periods. Resident will also be responsible for, and will reimburse Owner for, any damages or loss caused by the negligence, carelessness, abuse or intentional misconduct of Resident, Resident's family, occupants, pets, or guests. If the damage to the Premises is substantial in the reasonable judgment of Owner, Owner may terminate this lease by giving written notice to Resident. The costs of repairs, restorations and replacements shall be paid for by the Owner if rendered necessary by normal wear and tear or by the elements. Otherwise, if such repairs, alterations or replacements are rendered necessary by the negligence, carelessness, accident or abuse of Resident and/or Resident's guests then all such costs shall be paid by Resident. Resident agrees to reimburse Owner for all such costs within ten (10) days of notice. Such reimbursement shall be a priority payment over all other obligations of Resident to Owner. Owner may periodically deduct such costs from Resident's security deposit and Resident agrees to promptly reimburse security deposit to its original amount. It is agreed that Owner carries insurance for its protection and that Resident is not a beneficiary of such insurance. **Resident shall be responsible to Owner for all costs of**

repair for damages as stated herein regardless of Owner's insurance.

Right of Entry

Owner may enter the premises during reasonable hours with or without notice in order to inspect, make repairs, provide general or preventive maintenance, replace filters, leave any notices or other reasonable business purposes while Resident is present in the Premises. If resident is not present at the Premises, then owner will have the same right to make such entries by duplicate or master key but will leave written notice of and the reason for any such entry made. If, in Owner's opinion, there exists an emergency or a violation of this agreement, Owner may enter without notice at any time for any inspection, repair, or to determine the condition or occupancy of the premises. It is the intent of the parties hereto that this provision grant to Owner immediate access if Resident is in default of any term of this agreement and that this provision be interpreted with the existing law to grant as broad and timely access as possible and permissible.

Mold & Mildew

Resident agrees to defend, indemnify and hold harmless Owner against any and all claims, actions, causes of action, demands, liabilities, losses, damages, and expenses of any kind, including but not limited to, attorney's fees and court costs, that may be made as against Owner (its officers, directors, employees, agents, managers, and affiliates) as a result of or arising out of the growth or proliferation of mold or mildew caused by actions or negligence of Resident or any guest or occupant living within the premises. Resident further agrees that Owner shall not be liable for any damages caused to Resident or any property within the premises resulting from mold or mildew. Resident shall indemnify Owner from any liability relating to mold or mildew resulting from damages to any person or property within Resident's premises regardless of the source of the mold or mildew.

Molds and mildews are microscopic organisms found virtually everywhere in our environment, both indoors and outdoors, which spread through the dispersal of airborne spores. When excess moisture is present inside a home, mold and mildew can accumulate and grow. If not addressed, accumulations of mold and mildew can lead to adverse health effects, such as allergy symptoms or respiratory problems in some people. Lessee is hereby notified that mold can grow if the premises are not properly maintained or ventilated. If moisture is allowed to accumulate in the unit, it can cause mildew and mold to grow. It is important that Lessee regularly allow air to circulate in the apartment, it is also important that Lessee keeps the interior of the unit clean and that they promptly notify Lessor of any leaks, moisture problems, and/or mold growth. Lessee agrees to maintain the premises in a manner that prevents the occurrence of an infestation of mold or mildew in the apartment. Lessee agrees to uphold this responsibility in part by complying with the following list of responsibilities:

- Lessee shall take all reasonable measures to control the moisture level of the interior of the premises by immediately reporting any water intrusion, such as plumbing leaks, window/door leaks, drips or "swelling" pipes.
- Lessee agrees to keep the unit free of dirt and debris that can harbor mold and mildew.
- Lessee shall limit the sources of indoor humidity by ventilation through operation of HVAC system and/or by opening windows and doors to increase fresh air when outdoor air is humid and warming cold surfaces where condensation occurs.
- Lessee shall use bathroom fans and open interior bath windows while showering or bathing and immediately report to Lessor any non-working fan or inoperable windows.
- If lessee has a fish tank, water is evaporating within your apartment and Lessee shall make sure there is enough air circulation.
- Lessee shall use all reasonable care to close all windows and other openings in the Premises to prevent outdoor water from penetrating into the interior of the unit.
- Lessee shall use exhaust fans whenever cooking, dishwashing, cleaning or when clothes dryers are in use.
- Lessee shall clean and dry any visible moisture on windows, walls, and other surfaces, including personal property, as soon as reasonably possible. (Note: mold can grow on damp surfaces within 24 to 48 hours).
- Lessee understand that air circulation and temperature are the most important factors in avoiding mold and mildew and will circulate fresh air and keep a satisfactory temperature within the Lessees' apartment.
- Lessee shall conduct a visual inspection of the premises for the presence of mold growth inside the premises at least once per month, including but not limited to: a) window frames and on carpets; b) on ceiling tiles, and on any currently or formerly damp material made of cellulose (such as wall paper, books, papers and newspapers); c) all indoor plants; and d) personal property.
- Lessee agrees to not bring any personal property into the unit that may contain mold, especially "soft possessions" such as sofas, mattresses, and pillows.
- Lessee hereby agrees to indemnify and hold harmless the Owner and Lessor from any actions, claims, losses, damages, and expenses, including, but not limited to, attorneys' fees that the Owner/Lessor may sustain or incur as a result of the negligence of Lessee or any guest or other person living in, occupying or using the premises.
- In the event Lessor has knowledge of or reasonably believes that there may be mold inside the Premises, Lessee agrees upon demand of Lessor to temporarily vacate the Premises for a reasonable period, to allow for mold investigation and remediation, to control water intrusion, or to allow other repairs to the Premises.
Lessee agrees to comply with all instruction and requirements necessary to prepare Premises to control water intrusion, mold growth, or other work or to accommodate mold investigation and remediation, including storage, cleaning, removal, or replacement at Lessee's expenses of contamination or potential contaminated personal property.

Limited Liability

Owner will not be liable for any damages or losses to person or property caused by any Resident or any other person including, but not limited to, any theft, burglary, assault, vandalism or other crimes. Owner shall not be liable for personal injury or for damage to or loss of Resident's personal property (furniture, jewelry, clothing, etc.) or Resident from fire, flood, water leaks, theft, rain, hail, ice, snow, smoke, structural problems, explosions, interruptions of utilities or acts of God or negligent behavior of Owner or its agents unless such injury or damage is caused by gross negligence of Owner or its agents. **OWNER STRONGLY RECOMMENDS THAT RESIDENT SECURE RENTERS INSURANCE TO PROTECT AGAINST ALL OF THE ABOVE OCCURRENCES.** Resident agrees to indemnify and hold harmless Owner and its representatives from any and all liability for actions or inactions of Resident which cause damage or injury to any party or person. Resident agrees that locks and latches are acceptable subject to Owner's duty to make needed repairs upon request of Resident. Upon payment of a reasonable charge, Resident shall have the right to require Owner to change (re-key) a doorlock. Resident may not place its own locks on the Premises. Resident shall pay for and replace smoke detector batteries as needed. If Owner's employees are requested to render services not contemplated in this agreement, Resident agrees to hold Owner harmless for all

liability regarding the same. This agreement is subordinate to all present or future mortgages or security interests placed on the property of which these premises are a part; and subject to provisions of any regulatory agreement with any Housing Authority and others that burden such property. Owner may provide security patrols for the purpose of protecting the property. However, Owner will not provide any security for residents. Each Resident is responsible for its own personal security and this provision shall apply to such.

Disability

It is the policy of Owner to reasonably accommodate all handicaps and disabilities as defined under state and federal laws. It is agreed that Resident shall notify Owner of any need relating to a disability or handicap in writing to insure the proper procedures are implemented to comply with existing laws. In the event Resident fails to notify Owner in writing, Owner shall not be liable for damages suffered by Resident. It is agreed that Owner is under no obligations to accommodate Resident until proper notification with supporting documentation is necessary.

Default by Resident

The following events shall constitute events of default (a) failure to pay any rent including first month or any other sums due or owing by Resident to Owner pursuant to any terms of this agreement; (b) failure to perform all or any part of this agreement or a violation of this agreement or any of the rules and regulations adopted by Owner or of any law; (c) Resident's abandonment of the premises—abandonment is hereby agreed to mean Resident's absence from the premises for fifteen (15) consecutive days without first notifying Owner and with the rent unpaid and no reasonable evidence that Resident is occupying premises other than items of personal belongings left in said Premises; (d) if Resident holds over and fails to vacate on or before the required move-out date (i.e., the end of current lease term, the end of the month or any renewal or extension period, or the move-out date agreed to by both parties) Resident shall be liable to pay rent for the hold-over period and to indemnify Owner and/or prospective Resident for damages including rental loss, lodging expenses and attorney's fees. Hold-over rent shall be immediately due on a daily basis and delinquent without notice or demand. Resident shall be liable to Owner for any and all costs incurred as a result of any breach by Resident.

General

No oral agreements have been made. Nor shall any oral agreements be allowed between the parties during the term of Resident's occupancy. This agreement is the entire agreement between the parties and it may be modified only in writing signed by all parties except for reasonable rule changes or additions to the Owner's "Rules and Regulations." This agreement integrates all previous agreements except those entered into concurrently. All of Resident's statements in the rental application were relied upon by Owner in executing this agreement, and any misinformation therein shall be considered cause for immediate termination by Owner of Resident's right of occupancy. **Resident may not withhold rent or offset against rent.** In the event of more than one Resident, each Resident is jointly and severally liable for each provision of this agreement. In addition, each Resident shall be jointly and severally liable for any treble damages assessed pursuant to State law, even if one Resident vacates the premises appropriately. No Resident shall be released from this agreement unless in writing and such liability continues until all occupants and Residents vacate or a new lease is signed. In the event any Resident transfers to another premises, any amounts due for rent or damages shall automatically transfer as rent to the new premises and shall be immediately due. All obligations are to be performed in the County where the Premises is located. Owner's past delay or non-enforcement of rent payment due date or any other provision hereof shall not be a waiver thereof under any circumstances. To enforce any breach or in any lawsuit involving statutory or contractual obligations of Owner or Resident, the prevailing party shall be entitled to recover costs of collection, attorney's fees and all other costs of litigation from the non-prevailing party. All amounts past due and/or in any lawsuit judgment shall bear interest from due date at the rate of twenty four percent (24%) per annum compounded daily. Any clause declared invalid by law shall not invalidate the remainder of this agreement. In the event Resident brings a claim against Owner or its agents with a state or federal agency, Owner shall be entitled to recover any attorney fees or costs and damages for its time (including an hourly rate for Owner or its agents time) if the agency fails to make a finding against Owner.

Miscellaneous

Monthly Rent is due on or before the first day of each month by close of the business office. Rent paid after such date is delinquent. If all rent and other accrued fees are not paid on or before the date stated in Rent And Fees above, before 5:00 p.m., Resident agrees to pay a late charge as stated above. Any check returned shall accrue such additional charges as allowed by law which shall be in addition to the late fees. In the event, Owner determines to serve any notice upon Resident due to Resident's failure to pay rent or for Resident's violation of the rules and regulations, Resident shall be liable to Owner for the Service of Notice Fee stated above. Owner may without notice require payments in money orders or cash. Acceptance of personal checks is not required. As used in this agreement, rent shall mean all obligations of this agreement owed to Owner including but not limited to monthly rent, late fees, service fees, attorney fees, damages, month to month fees, court costs, and security deposits. However, for accounting purposes only, payments shall be applied in the following order, first to damages, security deposits, late fees, services fees, month to month fees, court costs, attorney fees, any and all other amounts due, and lastly to rent. The lease initiation fee provided herein shall be deemed to apply to the operational costs of Owner in preparation of documents, files, credit and historical verification, and such other costs incident to the leasing of the premises. It is in addition to any application fee which may be charged. The above rental rate is for an unfurnished Premises. Resident's right to possession and all Owner's obligations are expressly contingent on prompt payment of rent, and use of the premises by Resident is obtained only on the condition that the rent is paid on time. Payment of rent shall be an independent covenant and all monies received by Owner shall be applied first to non-rental obligations of Resident, then to the oldest rental amounts due, regardless of notations on checks. After the term above, at least thirty (30) days prior written notice is required for any rent increase or changes in any other fees.

Early Vacate

If Resident does not fulfill the entire term above (even if such failure is due to eviction by Owner), Resident shall be liable to Owner for the costs incurred by Owner as a result of the early termination. These costs are in addition to the other damages and rent (including future rent) that may be assessed pursuant to this agreement. They may include, but are not limited to: leasing agent costs, advertising expenses, turnover expenses, and such other costs incidental to re-renting the premises. If Resident vacates prior to the end of the initial term, all future rents under this Agreement shall accelerate and become immediately due.

Illegal Activity

Resident may be evicted from the Premises without further notice or opportunity to cure for any illegal activity conducted by Resident, any occupant, or guest whether or not such activity is cited by a police authority.

Military Clause

In the event Resident is or becomes a member of the Armed Forces on extended active duty and receives change of station orders to permanently depart the local area, then resident may terminate this agreement by giving sixty (60) days written notice provided Resident is not otherwise in default. Resident agrees to furnish Owner a certified copy of his official orders which warrant termination of this agreement. Permission for base housing does not constitute a permanent order.

Credit Checks Resident agrees that Owner may conduct background, criminal history, and credit checks at any time after application, during the term of this agreement or thereafter so long as Resident has an outstanding balance due to Owner.

Utilities Utilities shall be used for ordinary household purposes only. Owner will provide and pay for all utilities except those listed below or those for which a separate agreement is entered into concurrently. All utility services whether provided by Owner or Resident, are subject to interruption or temporary termination for the purpose of repairs, alterations, or improvements to the Premises or for emergency reasons. Any such interruption or temporary termination of utility service shall not constitute a default by Owner, nor is Owner liable for interruption or termination. In any event, Resident shall be responsible for its own telephone service, cable service (unless specifically stated otherwise), and any other optional service which may be deemed a utility.

Utilities to be paid and established by Resident: Gas, Electricity, (Water, Sewage, Trash, Phone, Cable)

Pets Resident may not keep a pet of any kind on or near the premises without the prior written consent of Owner. For any violation of this provision, in addition to Owner's other remedies, Owner may charge and collect the sum of \$50 per day, per violation. All costs of cleaning, de-fleing or other damage or loss suffered on account of a violation of this section shall be promptly paid to Owner by Resident. Violation of this provision will allow Owner to commence eviction on the basis of nuisance without any further notice or opportunity to cure.

Lien By this agreement, Resident grants to Owner a security interest in any and all property which is placed on the property of Owner pursuant to the Resident's occupancy of the Premises. This shall include any and all property in the Premises, storage areas, parking lots, common areas, or other Premises of Owner. This security interest shall become effective upon any rent or fees being due and unpaid. Owner shall have the right to retain such property and utilize it to satisfy any monies due under this agreement. This security interest shall be deemed effective against all property in the premises and shall be in addition to the Landlord's Lien. Owner may inspect the Premises at any time that there is an unpaid balance due for purposes of preparing an inventory of the secured items.

Smoking Smoking may be allowed on the premises. Resident waives any right to a cause of action for a nuisance pursuant to Utah Code 78-38-1 (3) (smoke and second hand smoke). Resident acknowledges that smoke from outside the premises or from adjoining premises may drift into Resident's premises. Resident specifically agrees to abide by the smoking policies of Owner which may prohibit smoking. This waiver shall apply to all occupants and minors. Second hand smoke is defined as a nuisance and may be a cause for eviction.

Default by Owner Owner agrees to act with diligence to: (a) keep common areas reasonably clean, (b) maintain fixtures, furniture, hot water, heating and/or air conditioning equipment; (c) remain in substantial compliance with accepted federal, state and local laws regarding safety and sanitation; and (d) make all reasonable repairs subject to Resident's obligation to pay for damages caused by Resident, its guests or other occupants.

Move in Discounts Subject to completion of the terms of this lease, Owner shall grant to Resident the following discounts:

Rent is \$ 495.00 per month with a discount of \$ 24.00 per month making rent \$ 471.00 per month. Prorated amount of \$478.50 discounted \$428.50 to \$50.00

Cable of \$20.00, Water Sewer Trash of \$25.00, and billing fee of \$4.00 due with rent every month. Gas charges will vary with usage.

In the event Resident fails to complete the entire term (regardless of the reason even eviction by Owner) or violates any other term of this agreement, Owner shall be entitled to recover the amounts stated above that were discounted to Resident. **THE CONTENTS OF THESE MOVE-IN SPECIALS ARE TO BE KEPT CONFIDENTIAL. IF SUCH ARE DISCLOSED ALL MOVE-IN SPECIALS WILL BECOME VOID AND RESIDENT IS SUBJECT TO ALL COSTS INCURRED.**

Other Conditions
Received Rules and Regulations:

This is a binding legal document. Resident acknowledges reading all of this agreement and any addendums carefully before signing.

RESIDENT OR RESIDENTS: (All Residents Must Sign)

OWNER OR OWNER'S REPRESENTATIVE

Kathleen Christensen Date 3-2-05

M. KR

____ Date _____

____ Date _____