

**IN THE IOWA DISTRICT COURT IN AND FOR JOHNSON COUNTY**

<b>Michael Conroy, et al.,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	<b>No. LACV072840</b>
<b>vs.</b>	)	
	)	<b>RULING</b>
<b>Apts. Downtown, et al.,</b>	)	
	)	
<b>Defendants.</b>	)	

On this 7th day of July, 2015, the above-captioned matter came before the undersigned for review of Plaintiffs' Second Motion for Partial Summary and Declaratory Judgment and of Plaintiffs' Second Motion for Class Certification. These Motions were submitted to the Court for review on May 4, 2015, pursuant to the briefing schedule set forth by the Court in its March 19, 2015 Order. The Court finds a hearing on the Motions is unnecessary. Having considered the file, relevant case law, and written arguments of counsel, the Court hereby enters the following ruling:

**FACTUAL AND PROCEDURAL BACKGROUND**

The Court incorporates as if set forth in full herein the content of Judge Paul D. Miller's May 17, 2012 Ruling on Plaintiffs' Amended and Substituted Motion for Partial Summary Judgment, which sets forth a complete summary of the proceedings up to May 17, 2012. Since the entry of Judge Miller's May 17, 2012 Ruling, Plaintiffs have filed a Fourth Amended and Substituted Petition at Law and Equity. In the Fourth Amended and Substituted Petition, Plaintiffs have added the claim of Kathryn Kelly Olin, a then-current tenant of Defendant Apts. Downtown, Inc. (hereinafter ADI); adding a count alleging a violation of the Iowa Uniform Residential Landlord Tenant Act (IURLTA) due to the charging of penalties, fines, and fees greater than actual damages; withdrawing any individual claims that Plaintiffs do not share with class members; and removing Three Guys Holdings as a Defendant.

ADI has answered, denying the allegations of the Fourth Amended and Substituted Petition that are adverse to it, and setting forth the following affirmative defenses: Plaintiffs have failed to state a cause of action upon which relief can be granted, and Plaintiffs' claims are barred by the statute of limitations.

Trial is scheduled to commence on November 3, 2015.

In the pending Second Motion for Partial Summary and Declaratory Judgment, Plaintiffs rely heavily on the decision of the Iowa Court of Appeals in the case of Staley v. Barkalow, No. 12-1031, 2013 WL 2368825 (Iowa Ct. App. 2013) and of Judge Douglas S. Russell's ruling on remand entered in the Staley case (Johnson County case number LACV073821) on March 18, 2014. Plaintiffs have submitted a copy of Judge Russell's March 18, 2014 Ruling. In the case at bar, Plaintiffs argue that this Court should follow Judge Russell's March 18, 2014 Ruling, and rule that ADI's leases and lease rules violate the IURLTA because the leases include illegal

liability shifting and indemnification clauses; the leases include illegal carpet cleaning provisions; and the leases include illegal repair and maintenance shifting provisions. Plaintiffs further argue that the IURLTA requires proof of actual damages and prohibits liquidated damages. Plaintiffs contend the lease provisions at issue in this case are nearly identical to those considered by Judge Russell in the Staley case, and Plaintiffs seek a ruling from this Court holding that the challenged provisions of the leases in this case are illegal.

Plaintiffs also have filed a Second Motion for Class Certification, arguing that, based on the opinion of the Iowa Court of Appeals in Staley, class certification should be granted in this case because Plaintiffs have met the necessary requirements regarding numerosity; common issues of law and fact; fair and efficient adjudication of the controversy; and fair and adequate representation of the interests of the class.

ADI has resisted the Second Motion for Partial and Declaratory Judgment. ADI argues that Iowa law provides only that lease provisions may be prohibited or unconscionable, and there is no category of “illegal” provisions as Plaintiffs suggest. ADI further argues that Staley does not control the ripeness of the issues in this case, and even if it did, only Plaintiffs’ claims regarding provisions allegedly specifically prohibited under the Iowa Code would be ripe for consideration at this time. ADI contends the mere status of a Plaintiff as a tenant of ADI does not render the entirety of her claims ripe for summary judgment. ADI also contends that the lease provisions Plaintiffs assert are prohibited do not violate the IURLTA, and ADI did not willfully use provisions known to be prohibited.

ADI also resists the Second Motion for Class Certification, arguing that individual issues predominate in this litigation, making class certification inappropriate, and Plaintiffs cannot be proper class representatives for claims they themselves do not possess.

Plaintiffs reply that this Court should follow Staley and not require attempted enforcement of a lease clause before the lease clause is determined to be illegal. Plaintiffs reassert their position that ADI’s lease contains prohibited lease provisions, and Plaintiffs clarify that they are not seeking a declaratory or summary judgment ruling at this time as to whether ADI knowingly and willfully used the challenged lease provisions, or as to whether the lease provisions are unconscionable.

With respect to class certification, Plaintiffs argue that the class in this case should be certified for the same reasons that the class in Staley was certified.

## **CONCLUSIONS OF LAW**

The Court first considers Plaintiffs’ Second Motion for Partial and Declaratory Judgment. “Summary judgment is appropriate if there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law.” Kolarik v. Cory Intern. Corp., 721 N.W.2d 159, 162 (Iowa 2006) (citing Iowa Rule of Civil Procedure 1.981(3)). “Further considerations when reviewing a motion for summary judgment are summarized as follows:

‘A factual issue is material only if the dispute is over facts that might affect the outcome of the suit. The burden is on the party moving for summary judgment to

prove the facts are undisputed. In ruling on a summary judgment motion, the court must look at the facts in a light most favorable to the party resisting the motion. The court must also consider on behalf of the nonmoving party every legitimate inference that can be reasonably deduced from the record.”

Id. (citing Estate of Harris v. Papa John’s Pizza, 679 N.W.2d 673, 677 (Iowa 2004) (quoting Phillips v. Covenant Clinic, 625 N.W.2d 714-717-18 (Iowa 2001))).

“To obtain a grant of summary judgment on some issue in an action, the moving party must affirmatively establish the existence of undisputed facts entitling that party to a particular result under controlling law.” McVey v. National Organization Service, Inc., 719 N.W.2d 801, 802 (Iowa 2006). “To affirmatively establish uncontroverted facts that are legally controlling as to the outcome of the case, the moving party may rely on admissions in the pleadings...affidavits, depositions, answers to interrogatories by the nonmoving party, and admissions on file.” Id. “Except as it may carry with it express stipulations concerning the anticipated summary judgment ruling, a statement of uncontroverted facts by the moving party made in compliance with rule 1.981(8) does not constitute a part of the record from which the absence of genuine issues of material fact may be determined.” Id. at 803. “The statement required by rule 1.981(8) is intended to be a mere summary of the moving party’s factual allegations that must rise or fall on the actual contents of the pleadings, depositions, answers to interrogatories, and admissions on file together with any affidavits.” Id. “If those matters do not reveal the absence of genuine factual issues, the motion for summary judgment must be denied.” Id.

“When two legitimate, conflicting inferences are present at the time of ruling upon the summary judgment motion, the court should rule in favor of the nonmoving party.” Eggiman v. Self-Insured Services Co., 718 N.W.2d 754, 763 (Iowa 2006) (citing Daboll v. Hoden, 222 N.W.2d 727, 733 (Iowa 1974) (“If reasonable minds could draw different inferences and reach different conclusions from the facts, even though undisputed, the issue must be reserved for trial.”)).

“However, to successfully resist a motion for summary judgment, the resisting party must set forth specific evidentiary facts showing the existence of a genuine issue of material fact.” Matter of Estate of Henrich, 389 N.W.2d 78, 80 (Iowa App. 1986). “[The resisting party] cannot rest on the mere allegations or denials of the pleadings.” Id.

Iowa Rule of Civil Procedure 1.1101 provides:

Courts of record within their respective jurisdictions shall declare rights, status, and other legal relations whether or not further relief is or could be claimed. It shall be no objection that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form or effect, and such declarations shall have the force and effect of a final decree. The existence of another remedy does not preclude a judgment for declaratory relief in cases where it is appropriate. The enumeration in rules 1.1102, 1.1103, and 1.1104, does not limit or restrict the exercise of this general power.

I.R.Civ.P. 1.1101.

“The purpose of a declaratory judgment is to determine rights in advance.” Bormann v. Board of Sup’rs in and for Kossuth County, 584 N.W.2d 309, 312 (Iowa 1998). “The essential difference between such an action and the usual action is that no actual wrong need have been committed or loss incurred to sustain declaratory judgment relief.” Id. at 312-13. “But there must be no uncertainty that the loss will occur or that the right asserted will be invaded.” Id. “As with a writ of certiorari, the fact that the plaintiff has another adequate remedy does not preclude declaratory judgment relief where it is appropriate.” Id.

“[D]eclaratory judgment is an action in which a court declares the rights, duties, status, or other legal relationships of the parties.” Dubuque Policeman’s Protective Ass’n v. City of Dubuque, 553 N.W.2d 603, 606 (Iowa 1996). “Declaratory judgments are res judicata and binding on the parties.” Id. “The distinctive characteristic of a declaratory judgment is that the declaration stands by itself, that is, no executory process follows as of course. In other words such a judgment does not involve executory or coercive relief.” Id. (citing 22A Am.Jur.2d Declaratory Judgments § 1, at 670 (1988)).

“The burden of proof in a declaratory judgment action is the same as in an ordinary action at law or equity.” Owens v. Brownlie, 610 N.W.2d 860, 866 (Iowa 2000). “The plaintiff bringing the action has the burden of proof, even if a negative declaration is sought.” Id.

The Court has reviewed Judge Russell’s March 18, 2014 Ruling in the Staley case, and the Court notes that it finds Judge Russell’s Ruling to be persuasive. This Court draws, in large part, from Judge Russell’s March 18, 2014 Ruling in addressing the issues currently argued by Plaintiffs.

With the aforementioned legal standards in mind, the Court first addresses Plaintiffs’ argument that ADI’s leases and lease rules violate the IURLTA, specifically with regard to illegal liability and indemnification clauses. Iowa Code § 562A.11 provides:

1. A rental agreement shall not provide that the tenant or landlord:
  - a. Agrees to waive or to forego rights or remedies under this chapter provided that this restriction shall not apply to rental agreements covering single family residences on land assessed as agricultural land and located in an unincorporated area;
  - b. Authorizes a person to confess judgment on a claim arising out of the rental agreement;
  - c. Agrees to pay the other party's attorney fees; or
  - d. Agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith.
2. A provision prohibited by subsection 1 included in a rental agreement is unenforceable. If a landlord willfully uses a rental agreement containing provisions known by the landlord to be prohibited, a tenant may recover actual damages sustained by the tenant and not more than three months' periodic rent and reasonable attorney fees.

Iowa Code § 562A.11 (2015).

In addressing Plaintiffs' argument regarding illegal liability shifting and indemnification clauses, the Court relies on the standard lease agreements submitted as Exhibits 3 and 4 to Plaintiffs' May 12, 2011 Amended and Substituted Motion for Partial Summary Judgment. Specifically, Plaintiffs have challenged the use of clauses in the standard lease dealing with elimination of liability for ADI and indemnification for security (section 15 of the standard lease); elimination of liability for ADI and indemnification for parking (section 32(e) of the standard lease); elimination of liability for ADI and indemnification for refrigerators (section 38 of the standard lease); elimination of liability for ADI and indemnification for laundry equipment (section 39 of the standard lease); and a clause stating that "Tenants shall hold harmless and indemnify the Landlord/Partners for all loss of property or injuries the Tenant sustains through theft, fire, rain, snow, wind or otherwise" (section 70 of the standard lease).

The Iowa Supreme Court has held:

We conclude that a landlord, just as any other actor, owes a duty of due care to protect its tenants from reasonably foreseeable harm and

must act as a reasonable person under all of the circumstances including the likelihood of injury to others, the probable seriousness of such injuries, and the burden of reducing or avoiding the risk.... The questions of control, hidden defects and common or public use, which formerly had to be established as a prerequisite to even considering the negligence of a landlord, will now be relevant only inasmuch as they bear on the basic tort issues such as the foreseeability and unreasonableness of the particular risk of harm.

Sargent v. Ross, 113 N.H. 388, 308 A.2d 528, 534 (1973) (citations omitted). We agree that this "reasonable care in all the circumstances standard will provide the most effective way to achieve an allocation of the costs of human injury which conforms to present community values." Id. (quoting Mounsey v. Ellard, 363 Mass. 693, 297 N.E.2d 43, 52 (1973)). This standard

should help ensure that a landlord will take whatever precautions are reasonably necessary under the circumstances to reduce the likelihood of injuries from defects in his property. "It is appropriate that the landlord who will retain ownership of the premises and any permanent improvements should bear the cost of repairs necessary to make the premises safe...."

Sargent, 308 A.2d at 535 (quoting Kline v. Burns, 111 N.H. 87, 276 A.2d 248, 251 (1971)).

A duty of care arising out of a landlord-tenant relationship, like that of an innkeeper and guest under Restatement section 314A, does not make the landlord an insurer. Nor will the rule of law be equally applicable in every case.

The duty in each case is only one to exercise reasonable care under the circumstances. The defendant is not liable where he neither knows nor should know of the unreasonable risk, or of the illness or injury. He is not required to take precautions against a sudden attack from a third person which he has no reason to anticipate, or to give aid to one whom he has no reason to know to be ill. He is not required to take any action where the risk does not appear to be an unreasonable one....

Restatement (Second) of Torts § 314A cmt. e, at 120.

This rule of liability, which requires reasonable foreseeability, must be distinguished from premises liability under Restatement section 344, which arguably presupposes foreseeability. Martinko, 393 N.W.2d at 323 (Carter, J., dissenting).

Tenney v. Atlantic Associates, 594 N.W.2d 11, 17-18 (Iowa 1999).

With respect to express contracts for indemnification, the Iowa Supreme Court has held:

Under a contract for indemnification, “one party (the *indemnitor*) promises to hold another party (the *indemnitee*) harmless for loss or damage of some kind....” II E. Allan Farnsworth, *Farnsworth on Contracts* § 6.3, at 108 (2d ed.1998). The indemnitor “promises to indemnify ... [the] indemnitee against liability of [the] indemnitee to a third person, or against loss resulting from [the] liability.” 42 C.J.S. *Indemnity* § 2, at 72 (1991). Generally, no particular language is required to support indemnification, and a written agreement can be established without specifically expressing the obligation as indemnification. See Jenckes v. Rice, 119 Iowa 451, 452-53, 93 N.W. 384, 385 (1903); see also Royal Ins. Co. of Am. v. Whitaker Contracting Corp., 242 F.3d 1035, 1041 (11th Cir.2001) (particular language not required as long as intent is clear). An indemnification agreement is created when the words used express an intention by one party to reimburse or hold the other party harmless for any loss, damage, or liability. Robert L. Meyers III & Debra A. Perelman, Symposium, *Risk Allocation Through Indemnity Obligations in Construction Contracts*, 40 S.C. L.Rev. 989, 990 (1989) [hereinafter Meyers & Perelman]. Intent is the controlling consideration. See Bunce v. Skyline Harvestore Sys., Inc., 348 N.W.2d 248, 250 (Iowa 1984); Meyers & Perelman, 40 S.C. L.Rev. at 989. Indemnification is commonly utilized in construction contracts and rental agreements, as well as many other relationships where one party engages in an act at the request of the other or for the benefit of the other, or allows a party to use property belonging to the other. See Meyers & Perelman, 40 S.C. L.Rev. at 990-91; 42 C.J.S. *Indemnity* §§ 1, 2, at 72.

McNally & Nimergood v. Neumann-Kiewit Constructors, Inc., 648 N.W.2d 564, 570-71 (Iowa 2002).

The Iowa Legislature has stated that a rental agreement shall not provide that the tenant or landlord agrees to the exculpation or limitation of any liability of the other party arising under law or to indemnify the other party for that liability or the costs connected therewith. The Iowa Supreme Court has held that a landlord owes a duty of care to protect tenants from reasonably

foreseeable harm. Based on the definition of express contracts for indemnification set forth by the Iowa Supreme Court in McNally, the Court concludes that the aforementioned sections of the standard lease that have been challenged by Plaintiffs (i.e., sections 15, 32(e), 38, 39, and 70) allow exculpation or limitation of any liability arising under the law and/or indemnify the landlord for liability or costs connected therewith. This is a purely legal question, and the Court finds no disputed issues of material fact in the record. Further, Plaintiffs have met their burden of proving they are entitled to declaratory relief on these sections of the standard lease. Therefore, the Court concludes that the challenged clauses of the standard lease agreement providing for exculpation and/or indemnification are provisions that shall not be included in the landlord's standard lease. Plaintiffs' Motion for Summary Judgment should be granted on this issue.

The Court next addresses Plaintiffs' argument that ADI's leases contain illegal automatic carpet cleaning provisions. Iowa Code § 562A.12(3) provides:

3. a. A landlord shall, within thirty days from the date of termination of the tenancy and receipt of the tenant's mailing address or delivery instructions, return the rental deposit to the tenant or furnish to the tenant a written statement showing the specific reason for withholding of the rental deposit or any portion thereof. If the rental deposit or any portion of the rental deposit is withheld for the restoration of the dwelling unit, the statement shall specify the nature of the damages. The landlord may withhold from the rental deposit only such amounts as are reasonably necessary for the following reasons:

(1) To remedy a tenant's default in the payment of rent or of other funds due to the landlord pursuant to the rental agreement.

(2) To restore the dwelling unit to its condition at the commencement of the tenancy, ordinary wear and tear excepted.

(3) To recover expenses incurred in acquiring possession of the premises from a tenant who does not act in good faith in failing to surrender and vacate the premises upon noncompliance with the rental agreement and notification of such noncompliance pursuant to this chapter.

b. In an action concerning the rental deposit, the burden of proving, by a preponderance of the evidence, the reason for withholding all or any portion of the rental deposit shall be on the landlord.

Iowa Code § 562A.12(3) (2015).

Plaintiffs have specifically challenged section 37(e) of the standard lease, which the Court incorporates by reference as if set forth in full herein. This clause automatically imposes on tenants certain fees for carpet cleaning regardless of whether the carpet is clean or not. Iowa Code § 562A.12(3) requires a landlord to provide the tenant with a specific reason for withholding any of the rental deposit, and also requires the landlord to prove, by a preponderance of the evidence, the reason for withholding any of the rental deposit, with ordinary wear and tear

excepted. This is a purely legal question, and the Court finds no disputed issues of material fact in the record. Further, Plaintiffs have met their burden of proving they are entitled to declaratory relief on this section of the standard lease. Section 37(e) of the standard lease may not be included in the landlord's standard lease because inclusion of section 37(e) permits the landlord to avoid its obligations as defined by the Iowa Legislature in § 562A.12(3). Plaintiffs' Motion for Summary Judgment should be granted on this issue.

The Court next addresses Plaintiffs' argument regarding illegal repair and maintenance shifting provisions. Specifically, Plaintiffs assert that the language of the lease requiring tenants to pay for common area damages is illegal. This language is found at sections 30 and 33(a) of the standard lease. The version of Iowa Code § 562A.15 that was in effect at the time this action was filed provides:

1. a. The landlord shall:

- (1) Comply with the requirements of applicable building and housing codes materially affecting health and safety.
  - (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition.
  - (3) Keep all common areas of the premises in a clean and safe condition. The landlord shall not be liable for any injury caused by any objects or materials which belong to or which have been placed by a tenant in the common areas of the premises used by the tenant.
  - (4) Maintain in good and safe working order and condition all electrical, plumbing, sanitary, heating, ventilating, air-conditioning, and other facilities and appliances, including elevators, supplied or required to be supplied by the landlord.
  - (5) Provide and maintain appropriate receptacles and conveniences, accessible to all tenants, for the central collection and removal of ashes, garbage, rubbish, and other waste incidental to the occupancy of the dwelling unit and arrange for their removal.
  - (6) Supply running water and reasonable amounts of hot water at all times and reasonable heat, except where the building that includes the dwelling unit is not required by law to be equipped for that purpose, or the dwelling unit is so constructed that heat or hot water is generated by an installation within the exclusive control of the tenant and supplied by a direct public utility connection.
- b. If the duty imposed by paragraph "a", subparagraph (1), is greater than a duty imposed by another subparagraph of paragraph "a", the landlord's duty shall be determined by reference to paragraph "a", subparagraph (1).
2. The landlord and tenant of a single family residence may agree in writing that the tenant perform the landlord's duties specified in subsection 1, paragraph "a",



subparagraphs (5) and (6), and also specified repairs, maintenance tasks, alterations, and remodeling, but only if the transaction is entered into in good faith.

3. The landlord and tenant of a dwelling unit other than a single family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations, or remodeling only:

a. If the agreement of the parties is entered into in good faith and is set forth in a separate writing signed by the parties and supported by adequate consideration;

b. If the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises.

4. The landlord shall not treat performance of the separate agreement described in subsection 3 as a condition to an obligation or performance of a rental agreement.

Iowa Code § 562A.15 (2009). Iowa Code § 562A.17 provides:

The tenant shall:

1. Comply with all obligations primarily imposed upon tenants by applicable provisions of building and housing codes materially affecting health and safety.

2. Keep that part of the premises that the tenant occupies and uses as clean and safe as the condition of the premises permit.

3. Dispose from the tenant's dwelling unit all ashes, rubbish, garbage, and other waste in a clean and safe manner.

4. Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits.

5. Use in a reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air-conditioning and other facilities and appliances including elevators in the premises.

6. Not deliberately or negligently destroy, deface, damage, impair or remove a part of the premises or knowingly permit a person to do so. If damage, defacement, alteration, or destruction of property by the tenant is intentional, the tenant may be criminally charged with criminal mischief pursuant to chapter 716.

7. Act in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.

Iowa Code § 562A.17 (2015).

Iowa Code § 562A.15 requires the landlord, not the tenant, keep all common areas of the premises in a clean and safe condition, and the landlord is required to maintain a fit premises.

Pursuant to Iowa Code § 562A.17, the tenant's responsibility is to maintain, in a clean and safe condition, that part of the premises occupied by the tenant. The Iowa Supreme Court has construed § 562A.17(6) as providing that "the landlord may keep the rental deposit only if the damages beyond ordinary wear and tear result from the deliberate or negligent acts of the tenant, or the tenant knowingly permits such acts." Mastland, Inc. v. Evans Furniture, Inc., 498 N.W.2d 682, 687 (Iowa 1993). This is a purely legal question, and the Court finds no disputed issues of material fact in the record. Further, Plaintiffs have met their burden of proving they are entitled to declaratory relief on these sections of the standard lease. The Court concludes that the provisions found at sections 30(a) and 33(a) of the standard lease form utilized by the landlord may not be included in the landlord's standard lease because the provisions allow the landlord to avoid his responsibility to keep all common areas of the premises in a clean and safe condition and to maintain a fit premises. Absent a showing that the tenant caused damages beyond ordinary wear and tear resulting from deliberate or negligent acts of the tenant, or the tenant knowingly permitted such acts, the landlord may not shift these repair and maintenance responsibilities to the tenants. Plaintiffs' Motion for Summary Judgment should be granted as to this issue.

Finally, Plaintiffs challenge the inclusion in the standard lease of a variety of fees, fines, penalties and charges that Plaintiffs claim violate the requirement that landlords can only recover actual damages for a tenant's breach of a lease or violation of chapter 562A. In support of this argument, Plaintiffs have submitted Attachment 3 to their Motion. Plaintiffs generally argue that Defendants cannot recover anything other than actual damages for a tenant's breach of a lease or violation of chapter 562A. Further, Plaintiffs contend that a residential lease cannot include liquidated damages provisions. The Iowa Supreme Court has held that a landlord is not entitled to recover if no evidence substantiates that actual damage has been sustained. D.R. Mobile Home Rentals v. Frost, 545 N.W.2d 302, 306 (Iowa 1996). Considering the language utilized by the Iowa Legislature in chapter 562A in conjunction with the Iowa Supreme Court's holding that actual damage must be sustained in order for a landlord to recover, the Court concludes that a landlord may only recover actual damages that are proven to be owed to the landlord under the standards espoused in chapter 562A. Therefore, Plaintiffs' Motion for Summary Judgment should be granted on this issue.

Therefore, Plaintiffs' Second Motion for Partial Summary and Declaratory Judgment should be granted in its entirety, and as to the legality of the challenged provisions of ADI's lease.

Next, the Court considers Plaintiffs' Second Motion for Class Certification. The Iowa Court of Appeals has determined that certification of a class is appropriate under nearly identical facts. See Staley, 2013 WL 2368825, at \*12. Therefore, based on Staley, this matter should be and is certified as a class action. Plaintiffs' counsel shall take all appropriate steps to effectuate this certification pursuant to the Iowa Rules of Civil Procedure.

## **RULING**

**IT IS THEREFORE ORDERED** that Plaintiffs' Second Motion for Partial Summary and Declaratory Judgment is granted as to Plaintiffs' request for a finding regarding the legality

of the challenged lease provisions. The Court hereby declares that the lease provisions challenged by Plaintiffs, as described in their Second Motion for Partial Summary Judgment & Declaratory Judgment, are illegal and should not have been included in the standard lease utilized by Defendants.

**IT IS FURTHER ORDERED** that Plaintiffs' Second Motion for Class Certification is **GRANTED**. This matter is certified as a class action.

Dated this 7<sup>th</sup> day of July, 2015.

Clerk to notify.

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**CHAD A. KEPROS, JUDGE**  
**Sixth Judicial District of Iowa**

RESIDENTIAL DWELLING UNIT LEASE

It is agreed, this 9 day of March, 20 10 by and between Apartments Downtown, Landlord, and Tenants

Molly Burke

that Landlord leases to Tenants, and Tenants lease from Landlord, the following described premises, herein after referred to as "apartment" "premises" "dwelling unit" or "unit."

UNIT CODE #: QQ-8 1 rooms (unfurnished) 215 Iowa Avenue, Iowa City, Iowa 52240

1. Term. The term of this Lease is from 1:00 PM on the 5th day of August, 2010,  
to 7:00 AM on the 31st day of July, 2011 (approximately 360 days).

2. Rent. Tenants agree to pay rent to Landlord 12 EQUAL MONTHLY PAYMENTS of: \$ 799.00 (approximately 360 days).  
for said term and the same amount on or before the first day of each month thereafter during the term of this Lease.

**\*ALL RENT IS DUE ON OR BEFORE THE 1<sup>ST</sup> OF EACH MONTH IN THE FORM OF ONE (1) SINGLE PAYMENT PER UNIT.**

**\*\*ALL RENT PAYMENTS RECEIVED AFTER 1:00 PM WILL BE CONSIDERED LATE AND DEPOSITED THE NEXT BUSINESS DAY.**

Options for payment of August 2010 Rent:

(1) NEW TENANTS - Pay with a postdated check dated July 1, 2010. \$ 799.00 Ck# 466  
(2) CURRENT TENANTS - Pay with a postdated check dated August 1, 2010. \$ \_\_\_\_\_ Ck# \_\_\_\_\_

MAKE RENT CHECKS PAYABLE TO APTS/DTA Three Guvs Holdings, LLP AND PAY RENT AT 414 E. Market Street, Iowa City, IA 52245.

3. Security Deposit. Tenants shall pay to Landlord \$ 799.00 as a security deposit for the full and faithful performance by Tenants of each and all of the terms and conditions of this Lease. The Security Deposit Holder listed below is the one Tenant designated by all other Tenants to receive the security deposit at the expiration of the lease.

(a) Paid in full with a check dated today. \$ 799.00 Ck# 465 Deposit Holder Molly Burke

(b) Transferring deposit from previous year \$ \_\_\_\_\_ (AT LEAST 50% OF SAME TENANTS MUST RE-LEASE SAME APARTMENT) Deposit Holder: \_\_\_\_\_

The deposit will be returned by Landlord to the single designated Tenant (Deposit Holder) within thirty (30) days after expiration of the Lease, less amounts properly withheld by Landlord. Tenants shall provide to Landlord in writing by July 15 a forwarding address of the deposit holder. Determination of the amount of security deposit returned is final unless written objection is received prior to September 19. The security deposit cannot be used by the Tenants to pay rent or accumulated charges.

4. Manager. Bern O'Brien, 414 E Market Street, Iowa City, IA 52245-2627, is the person designated by Landlord to manage the premises and to receive notices and demands upon the owner of the premises.

5. Occupancy. Tenants shall occupy and use the premises only as a residential dwelling unit. No persons who have not signed this Lease as Tenants shall occupy the premises.

a. There is an additional charge of \$75 per month for each additional Tenant in excess of the number of bedrooms in the unit.

b. Any person who is not a Tenant signed on the Lease and who moves their possessions into the unit without the Landlord's prior written consent, or uses the apartment mailbox for delivery, is an additional Tenant for purposes of this Lease. Units found having Tenants not signed on the Lease are subject to the following charges and conditions: a one time charge of \$500; an additional charge of \$200 per month retroactive to the beginning of lease; the lease modified to require 2 months rent deposit; and, Tenants may face legal action for theft of services or fraud.

6. Utilities. Tenants acknowledge the Landlord has posted utility responsibility in the office and fully explained the utilities which the Tenants will be required to pay. Landlord generally supplies boiler heat (Tenants pay electric heat), water, sewer, trash, basic internet access, and expanded basic cable; but at some properties does not supply these utilities. Tenants must contact utility providers at least one month in advance to schedule utility hookup. If Tenants do not have all Tenant paid utilities in their name from the first day of the lease through the last, a \$10 per day penalty and a \$50/mo. service charge will be imposed. Tenants pay electric

b. Tenants agree to comply with any solid waste removal requirements and to pay an additional monthly amount equal to the per unit increase in disposal costs imposed on Landlord by service providers or the City. Tenants required to:

7. Access. Landlord shall have the right to enter the dwelling unit with 24 hour notice in order to inspect the premises, make necessary repairs or services, decorations, alterations, improvements, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workmen, or contractors; provided, however, that Landlord may enter the dwelling without 24 hour notice, in case of emergency, abandonment, to make agreed or requested repairs/services, and as otherwise provided by law. Tenants agree to allow all remodeling changes scheduled during the term of the lease with appropriate notice from the Landlord.

8. Fixtures and Improvements. Tenants shall make no alteration (including paint) without Landlord's prior written consent. Tenants shall leave with the premises at the termination of this Lease all alterations, additions, or improvements made by Tenants, without any payment therefore. Costs to return the unit to its prior condition will be charged to Tenants.

9. Tenants Obligation. Tenants shall, in addition to any other obligations in this Lease, comply with all applicable building, housing, and zoning codes, and with Chapter 562A of the Code of Iowa (Residential Landlord Tenant Act), and conduct himself/herself in a manner that will not disturb a neighbor's peaceful enjoyment of the premises.

10. Rent. Rent is due in a single payment no later than the 1<sup>st</sup> of each month, even if the 1<sup>st</sup> is on a holiday or weekend. There is a \$10 per day late charge, up to \$40 per month, for rent received after the 1<sup>st</sup> of the month.

a. Rent paid by a mailed check is deemed paid upon receipt, not postmark. Unit number and address must be on checks. There is a \$35 charge for all returned checks in addition to late fees. Rents and fees paid in more than one payment will be charged \$10 per payment. Late fees/extra payments will be automatically added to the rent due balance.

b. Postdated checks must have prior written consent from the Landlord and include the appropriate late fees.

c. Rent should be paid by check or money order. Any payment made via phone or with one of our property management consultants will be subject to a convenience fee.

d. If rent is not paid when due, Landlord may terminate this Lease and seek damages for the remaining months of rent and fees due. The charge for service of 3-day for non-payment of rent is \$40. If an eviction action is initiated by Landlord, Tenants will be charged a fee of \$250, plus any costs incurred.

e. All charges incurred on the rental account (including but not limited to maintenance charges, service charges, fees, penalties, etc.) shall be paid immediately or they will be added to the rent due balance and collected as late rent with late fees.

f. Failure to make required prepayments of rent by the dates set forth in this Lease entitles Landlord to terminate the Lease and seek damages for the balance of rent due.

11. Present and Continuing Habitability. Tenants shall inspect the unit within three (3) days of the start of the lease and acknowledge within those three days that the premises are in a reasonable and acceptable condition of habitability for their intended use. Tenants shall give written notice to Landlord within those three days of any deficiency in condition. Landlord shall have thirty days to mitigate the deficiency. Tenants must also give written notice within those three (3) days if additional cleaning is required. The apartment will be deemed accepted "as is" if no written notice of deficiency or cleaning is received.

Tenants acknowledge that Landlord has provided a copy of the "Check-In Inspection Form" at signing of this Lease. Tenants shall inspect the premises, note prior damages on the check-in form (paying special attention to damaged doors, walls, and carpet), make a copy for their records, and return it to Landlord within three (3) days of obtaining possession of the premises. Tenants accept the consequences of failing to accurately complete, copy, and return this form to Landlord within three (3) days.

12. Delay in Possession. If Landlord is unable to give possession, Landlord shall make reasonable efforts to correct any problems in a timely manner. Rent will not abate unless the unit is declared uninhabitable by the City.

13. Holding Over. If Tenants remain in possession after expiration of this Lease, Landlord may bring action for possession. If the holdover is not in good faith, Landlord may bring on action for actual damages; provided, however, that if Landlord consents to such holdover, the same shall constitute a renewal of this Lease for the same term as is herein set forth.

a. A penalty of \$100 per hour will be assessed to all apartments not ready at their checkout inspection.

b. A Tenant Altered Lease Dates (TALD) form must be signed by both the new and current tenants at the management office for either party to move in/move out early/late. The following fees must be paid upon completion of a TALD form: 1 bdrm=\$100, 2 bdrm=\$200, 3 bdrm=\$300, 4/5 bdrm=\$400. TALD forms will not be accepted after July 23. Items left in the apartment without a completed TALD will be disposed of at the final inspection at the Tenants cost.

**Keys and Security**

14. Keys can be picked up at the office between 1-4 PM the day your lease starts only AFTER THE RENT DUE HAS BEEN PAID AND UTILITIES ARE CONNECTED IN TENANTS NAME. Weekend key pickup is allowed only if arrangements are made with the office at least 48 hours in advance.

a. Lost Key: A 24-hour notice must be given to the office to obtain a copy of an original key that has been lost. Cost per key is \$10, plus \$100 for lock change at end of lease. Duplicate keys must be obtained from the Landlord.

b. Locks: No locks shall be placed upon any door/window without the written consent of the Landlord. Key locks are not allowed on interior doors.

c. Entry Lock Change: Contact the office to arrange a time for lock change. There is a minimum charge of \$100 per lock that will be billed to the unit.

d. Lock Out: There is a minimum charge of \$70 if Tenant contacts the office to be let into a unit during office hours, and a minimum charge of \$90 if Tenant contacts the office after office hours. (CALLS AFTER MIDNIGHT WILL NOT BE ACCEPTED).

15. Landlord does not provide any form of security. Landlord does not guarantee and is not liable to Tenants or guest of Tenants for damage or loss to person or property caused by other persons, including but not limited to theft, burglary, assault, vandalism or other crimes. Each Tenant or guest is responsible for protecting his or her own person and property.

a. The video cameras in the buildings (if present) may periodically record activities. They are not live monitored and not all are recording. The video cameras are for protection of the building, not people, and should not be relied upon as any guarantee of personal safety. They may aid in the apprehension of vandals or other criminal acts. Tenants should not rely on any devices or measures which may be provided by Landlord and shall protect themselves and their property as if these devices or measures did not exist.

b. Restricted entry system may or may not be in use or operative at this time, but is no guarantee of safety or security if operating.

### Care of Property

16. Tenants agree to use the highest degree of care in maintaining rented premises and common areas throughout the lease term. Any alteration to the apartment by the Tenants which causes a violation of City Ordinances or which necessitates repairs, will be charged to Tenants.
17. The Iowa City Housing Code requires that the **fire extinguisher and smoke detector be operational at all times** and this responsibility belongs to the Tenants.
- a. If the fire extinguisher is discharged, the Tenants shall have it recharged immediately at the Tenant's cost.
  - b. Tenants shall check smoke detector and fire extinguisher at the first of every month and report to the Landlord any necessary maintenance.
18. Tenants are responsible for replacing any light bulbs that burn out during their tenancy. \$10 per bulb may be charged to replace burned out bulbs discovered at inspection.
19. Wall and Ceiling Holes: Tenants agree to pay \$10 per nail hole in the walls plus \$70 per hour per person plus materials for painting charges at the expiration of the lease. Do not spackle nail holes. No tape-on hangers or ceiling hooks of any type are allowed. Tenants agree to pay a minimum of \$175 per drywall hole larger than a small nail hole.
20. No acids or abrasive cleaners shall be used on any of the bathtubs, sinks, plumbing, or tile work. Damp mops and swiffers shall be the only cleaners used on wood floors.
21. Shower curtains are to be provided by Tenants (for sanitary reasons). Make sure it is inside the tub and tightly pulled to each end when showering. Water damage to the floor and ceiling below is the Tenants responsibility and will be charged accordingly.
22. If Tenants wish to replace the furnished window coverings, they must store the provided curtains in the apartment and re-hang them before they move-out.
23. Basements and attics (where present) may not be used as sleeping rooms or storage. Roofs and fire escapes are off limits for Tenants and guests (except during emergencies).
24. Bicycles are not allowed in the building, on entrance rails, or balconies. Use bike racks.
25. Items outside the building, on window ledges, or in the hallways will be disposed of at the Tenants cost, including items attached to rails such as bikes, tires, etc.
26. Balconies and porches, where present, are mainly ornamental and are functional for limited use only. Balconies are not guaranteed at all locations.
- a. No more than 2 people may use the balcony/porch at a time and only light patio furniture of 2 chairs and 1 table are allowed (absolutely no indoor furniture).
  - b. After a heavy snowfall, Tenants shall clear balcony/porch of snow & ice.
  - c. Absolutely no parties are allowed on the balcony or porch. Tenants will not use the balcony/porch after consumption of alcohol. No grills are allowed.
  - d. NOTHING MAY BE STORED ON DECKS (This includes kegs, garbage, bikes, and grills). A fee of \$150 PLUS clean up charges will be billed for any violations
  - f. If no balcony exists, Tenants agree to allow a possible upgrade to the unit by installing a balcony during the lease term without compensation.
27. Cooking or doing anything else in such a way as to allow offensive odors to penetrate into public halls is forbidden.
28. The exterior back steps and door, where present, are for fire exit only, and are not to be used especially after a snowfall or during bad weather, as they will not be cleared.
29. Tenants agree to reimburse the Landlord for damages arising out of destructive acts of their visitors. Any debris or mess caused by Tenants or their visitors that is not immediately cleaned up by the apartment responsible will cause the apartment to be billed a minimum charge of \$100. Any damages caused by the foregoing will be charged to the Tenants of that apartment. The responsible apartment is liable for any damages in the common areas of the building from gatherings extending beyond the confines of the apartment.
30. Tenants agree to pay for all damages to the apartment windows, screens, and doors, including exterior unit doors (including random acts of vandalism). Tenants further agree to be responsible for a 15 foot area around the apartment entry door, and for the cost to repair damage in the common areas of the building as follows:
- a. Tenants agree to be responsible for damage in the common areas, as the tenants are the only lawful occupants of the building. The lease includes reasonable use of the common areas and Tenants share responsibility for its care. If Landlord and tenants are unable to determine who caused damage in common areas within 7 days after the damage comes to the attention of Landlord, then each apartment in the building shall pay an equal pro-rata share of costs to repair the damage. Damages can include but are not limited to doors, windows, drywall, carpet, lights, smoke detectors, etc. Such charges are due immediately.
31. No sign, advertisement, notice, doorplate, or similar device shall be inscribed, painted, or affixed to any part of the outside or inside of the premises.

### Parking

32. Landlord may have parking available at additional cost, but does not guarantee specific stalls. The Landlord reserves the right to put into effect or discontinue any parking system and/or make any changes as deemed necessary or desirable.
- a. Visitor parking is NOT provided. Violators will be towed at the vehicle owner's expense.
  - b. Advance full year payment is required at the time a permit is purchased and costs will vary. Pricing information is posted at the management office. Current tenant status must be maintained for obtaining a parking permit at listed price. If tenant's occupancy of the Landlord's premises ends (voluntarily or otherwise), all parking privileges are terminated.
  - c. NO REFUNDS will be given under any circumstances. It is the tenant's responsibility to find another tenant to sublease the parking spot if they can no longer use it.
  - d. Only one vehicle permit will be issued per tenant signed on the lease (based upon availability). A parking permit is issued for specific vehicle whose registration has been verified by the office. It is not transferable between vehicles or roommates. All permits must be visibly hung from the inside rear view mirror at all times.
  - e. Tenants park at their own risk and are responsible for keeping stalls clear of trash. Vehicles must only park in designated areas - not on grass, sidewalks or any other areas not expressly intended for a parked vehicle. Fees will be assessed for each violation. Tenants shall hold harmless and indemnify the Landlord for all loss of property, damages to vehicle, or personal injury sustained through theft, vandalism, or otherwise.
  - f. Tenants are not allowed to ticket/tow from 7:00 AM, July 24 through 7:00 AM August 9 (parking guidelines may not apply to some properties)
  - g. In the winter, it is highly recommended Tenants have snow tires or studded tires. After a snowfall it is sometimes impossible to remove snow from the parking areas if vehicles park haphazardly in the lots. Tenants are responsible for removal of snow/ice from their assigned stall after each snowfall.
  - h. Landlord clears only the center lane and only when Landlord deems it necessary. No plowing will be done unless over 2" of snow has accumulated. Landlord does not plow the alleys, as they are City property. Landlord does not plow around vehicles.

### Maintenance

33. Tenants are obligated to report any problems in the apartment to the maintenance department during regular business hours Monday through Friday.
- a. IOWA CITY MAINTENANCE PHONE NUMBER IS 351-6000 and will be answered by a telephone recorder. Unless the Landlord is negligent, Tenants are responsible for the cost of all damages/repairs to windows, screens, doors, carpet, and walls, regardless of whether such damage is caused by residents, guests or others.
  - b. EMERGENCIES: An emergency is a heat outage, an electrical outage, no water, or a sewer back up (meaning sewage is backed up in the tub or sink). In the event of an emergency, first call the office: 351-8391. If no answer, call the Emergency Phone Number: 338-0209. In case of a fire, notify the fire department at 911.
  - c. Iowa City Maintenance will do all repairs to an apartment unless written authorization is secured from Landlord. Iowa City Maintenance charges \$70/hour during regular business hours, and \$90/hour on nights and weekends for services performed (minimum of 1 hour will be billed for each service call).
  - d. Once reported, Tenants may not necessarily be contacted before maintenance is done and need not be present. Maintenance may be entering your apartment each year between July 26 and August 31 for necessary repairs for apartment turnover. A preventative maintenance crew will be entering apartments during summer months to repair any damages caused by tenants throughout the leasing year. All charges associated with these damages must be paid immediately or they may be subtracted from deposits.
  - e. The following are estimated amounts for maintenance repairs or replacements during the lease (prices include a minimum of 1 hour labor): pre-hung entry door=\$452-\$690, pre-hung hollow core door=\$386, window=\$135-\$325, window screen=\$110, patio screen=\$125, mini blinds=\$85, towel bar=\$85, mirror=\$105, light cover=\$80, t-stat=\$95, fire extinguisher=\$115, smoke detector=\$115, carpet replacement=\$875-\$2600. Depending upon the time and materials used, charges could exceed these amounts.
  - f. All charges must be paid immediately or they are added to the account's rent due balance and accumulate late fees. Tenants will be charged \$70 per hour plus materials for any maintenance calls (e.g. could have plunged toilet themselves).
  - g. Tenants must obtain a ball type plunger to avoid unneeded service calls. A minimum charge will be assessed for lighting pilot lights. Tenants are responsible for changing furnace filters every six months (where applicable).
34. Landlord reserves the right to periodically remove the mailboxes for cleaning, to change and do repairs. The Postal Service requires the names of all occupants of the apartment be listed on the exterior of the mailbox. It is the Tenants responsibility to replace their names in front of their mailbox. Any damages sustained to mailboxes throughout tenancy will be charged to the Tenants.
35. Pest Control is performed at apartments quarterly. The pest control company will enter every apartment around the 20<sup>th</sup> of the month to spray. No further notice will be posted.
- a. If a bug problem exists, the Pesticide Company requires a sample of the bug found in the unit to know which chemical to use.
  - b. On occasion, Tenants may be notified to empty all the cabinets in the apartment (there are no exceptions); all apartments must cooperate to avoid charges related to pest control.

### Inspections

36. At the end of the lease, or when the summer sublessee signs the next year's lease for an apartment, and when all tenants from the apartment move out, consult the "Cleaning Guideline" form which can be picked up at the office or downloaded prior to the final inspection.
37. Tenants will be notified of final inspection date and time in July and may choose to be present. All dates and times are final and cannot be changed by the Tenants.
- a. Failure to be moved out by the inspection appointment constitutes holdover and incurs a penalty of \$100 for each additional hour.
  - b. Tenants will be charged a \$100 per lock charge for failure to hand in all keys at the inspection. Copies of original keys will not be accepted.
  - c. Tenants will be charged \$40/hour per person (6-8 people on each cleaning crew) plus a \$40 service charge for general cleaning if the rental unit is not cleaned to an "A" standard according to the "Clean, Clean, Clean" form and vacant of all belongings at the expiration of the lease. The minimum fee for cleaning by Landlord's crews starts at \$150.
  - d. Tenants must have electricity on and in Tenant's name at the time of inspection. Do not disconnect electricity until the day after the lease expires. A \$150 fee will be charged if utilities are turned off prematurely.
  - e. The carpets throughout the building are professionally cleaned each time apartments turn over occupancy. Tenants agree to a charge starting at \$95 (efficiency) not to exceed \$225 (6+ bedrooms) being deducted from the deposit for professional cleaning at the expiration of the Lease. Hardwoods and decorative concrete floors are polished or cleaned upon turn over of occupancy each year. Tenants agree to a charge not to exceed \$195 being deducted from the deposit for polishing or cleaning the floors.
  - f. Stove drip pans must be completely cleaned and undamaged at the final inspection. Tenants will be charged \$40 for necessary replacement.
  - g. Tenants will be charged for painting, drywall damages, corner bead damages, etc that exceeds normal wear and tear. General paint touch up will be billed out to each unit at \$70 per hour per person plus materials.

### Appliances and Utilities

38. REFRIGERATOR: If the refrigerator should break down, first call maintenance. Then, please make arrangements with friends or neighbors to store your food. Landlord will not be responsible for any loss, as the result of the refrigerator not working properly.
- a. When defrosting the freezer, do NOT use any sharp instruments to remove frost and ice from the freezer.
  - b. Whenever the unit's electricity is turned off, make sure the refrigerator door is left open and the breaker switch is turned OFF. Failure to do so may result in ruining the refrigerator, which will be replaced at Tenants cost.
39. LAUNDRY EQUIPMENT (if present) is for the use of the Tenants and provided as a convenience. Use machines at your own risk. Laundry facilities are not part of the lease agreement. Landlord is not responsible for the articles that may be damaged or stolen. No laundry work shall be done in the apartment.
- a. After each use, return the room and equipment to a clean and orderly condition and turn off the lights. Dryer lint traps should be cleaned after every use by Tenants.
  - b. Any laundry machine not working should be reported to the maintenance recorder (351-6000). Please place an "OUT OF ORDER" sign on the machine immediately.
  - c. Inside apartments washers/dryers are not supplied by Landlord but may remain in the unit from previous tenants. Tenants shall hold harmless/indemnify Landlord for all losses sustained due to such laundry equipment.
40. DISPOSAL: Do not throw bones, celery, popcorn, gravy, grease, etc., into the garbage disposal or sinks. Make sure the garbage disposal is cleared before running the dishwasher. Before leaving for extended period, turn on disposal and flush two sinks full of water through the running disposal.
41. VENT FANS: Any damage to the apartment as a result of Tenants not using the vent fans in the kitchen or in the bathroom will be charged to the Tenants.



42. If Tenants will be away from the apartment for a few days, make certain the thermostat is kept above 65 degrees to guard against pipes freezing.
- DO NOT TURN YOUR HEAT OFF IN THE WINTER.**
- A fee of \$150 will be charged to all apartments with open windows while the heat is on.
  - Tenants shall protect pipes to prevent freezing and bursting of the water pipes and keep the faucets closed to prevent waste or flooding of said premises and shall be responsible for all damages to the premises and for any loss, damage, or injury occasioned by the neglect or failure to properly look after the water pipes or faucets.
  - Maintenance may be periodically entering apartments during the cold months to check heating systems, and may turn up heat if necessary.
43. Tenants are liable for excessive utility costs (dripping faucets, running toilets, broken windows, etc.) due to Tenants failure to report maintenance problems. Tenants are obligated to mitigate losses (shutting off water supply, covering broken window, etc.) and calling emergency maintenance until problem is resolved.
44. The fixed utilities package (if applicable) includes pro rata shares of estimated costs of utility consumption (heat, water, sewer & refuse removal). If excessive utilities are used or the actual cost of utilities increases from the provider, the Landlord will charge such increases to the Tenants on a monthly basis. Boiler heat (if applicable) generally will be turned on from November 1 to March 1. Any additional days the boiler heat is used will be billed to the Tenants on a pro rated basis. Tenants pay all electric heat.
45. Most units are responsible to include Expanded Basic Cable with Mediacom. Most units include Basic Internet services assigned to one of the following ISP: Mediacom, TTS LLC, or Dynamic Broadband/X-wires. All costs (hookup, wiring, upgraded services, etc.) associated with Expanded Basic Cable TV or Basic Internet services are the Tenants responsibility. Tenants may need to purchase additional equipment at their expense based upon their ISP specifications.
46. The apartment may be equipped with the modular telephone jacks. The Tenants should handle any phone line work with the telephone company at their expense. It is recommended Tenants acquire insurance from the telephone company to insure against any damages or repairs to the wiring. All costs associated with telephones (hookup, wiring, service, monthly, etc.) shall be the Tenants responsibility.
47. Apartment refuse must be in plastic bags and placed inside the dumpster provided. Additional policies on separation of refuse may be implemented as required by City Codes.
- Units will be charged \$100 for trash left in the laundry rooms, hallways, decks, front lawns, etc. Tenants are responsible for cleaning the area outside their entry door.
  - Disposal of appliances, furniture, tires, wood products, oil, batteries, etc. are not allowed in or around the dumpsters. Please take directly to the City landfill.
  - Upon move-out, all furniture and excess trash must be taken to the City landfill. A fee of \$150 per item will be assessed if items are put in or around the dumpsters.
- Rules of Occupancy**
48. No grilling, parties, or events of any kind are allowed in the common areas. The roof and fire escape are off limits for all activities. Tenants shall hold harmless and indemnify the Landlord/Partners for all loss of property or injuries the Tenant sustains through improper use. A fee of \$150 plus actual damages will be charged out for each occurrence.
49. All loud noise and boisterous conduct are strictly prohibited at all hours.
- Doors, patio doors, and windows must be kept closed, if necessary, to prevent your stereo, TV, etc. noise from penetrating hallways or other apartments.
  - All social gatherings are to be held within the confines of the apartment so that the stereo and noise does not filter into the halls or any other apartment. No kegs are allowed in any unit or common area. Violations of this rule will result in a \$100 penalty.
  - If the office receives noise complaints regarding an apartment, corrective legal remedies will be pursued as provided by law.
50. All social gatherings/parties must be registered at the management office at least 24 hours in advance.
- A \$150 party non-compliance fee will be charged for unregistered parties.
  - A disorderly house fee of \$150 will be charged if complaints are lodged with the landlord or law enforcement.
  - The apartment will be charged a \$150 fee if any citations are issued for illegal drugs, alcohol, etc.
  - For safety reasons the maximum number of people in the apartment at one time is fifteen (15).
51. Smoking is prohibited on the premises anywhere. This includes the entire apartment, balcony, all common areas and garage/courtyard. Please inform visitors of smoking policy.
- Tenant found in non-compliance with smoking regulations will be assessed a fine of \$200 per incident plus any damages. Any discoloration or smell due to smoking is considered damage to the property and remedies will be charged to the Tenants accordingly. Remedies include replacing the flooring and painting of the unit.
  - Tenants choosing to use candles inside the apartments will be held responsible for paint and carpet damages at the expiration of the lease.
52. Natural evergreen trees and pumpkins are not allowed in the apartments or on balconies for safety reasons. A violation may result a \$50 penalty plus clean up charges.
53. Any damage to the premises, attempts to enter the premises, or vandalism to the premises by unknown persons should be promptly reported to the Police Department. Any information that may lead to the apprehension of the party responsible for the damage should be reported to the Police Department and to the Landlord immediately.
54. No animals are allowed in the building or on the premises (including visitors). Tenants agree to a fee of \$600 per pet plus \$20 per day for each violation.
55. The Landlord reserves the right to adopt additional or revised rules, as it may deem advisable from time to time, for the safety, care, and cleanliness of the premises and for the preserving of good order therein.

#### Subleasing

56. Tenants shall not sublet the dwelling unit, or any portion thereof, without the written consent of Landlord. If consent is given, the forms provided by Landlord for subleases must be used or the Sublease will not be recognized by Landlord.
57. It is the subleasing Tenant's sole responsibility to find someone to assume the Rental Agreement. Subleasing does not release the original Tenant from liability under the Lease. The Landlord reserves the right to accept or reject any sublease.
- Individual Subleasing: If one roommate leaves and is replaced by another person during the lease term, both the original Tenant and the new Tenant must come to the management office with written confirmation of acceptance of the new tenant by all roommates (use the "Individual Sublease Permission Form" available in the office) to sign the sublease provisions of the original lease. Roommates may not unreasonably withhold consent to a sublease.
  - Whole Apartment Subleasing: All original and all new Tenants must come to the office to sign the sublease provisions of the original lease. When whole apartment subleasing takes place, the Tenants agree to pay a deposit increase of one month rent to the Landlord. For summer/fall subleasing a new deposit must be paid to the management office by the sublessee at the time the sublease is signed.
  - Only apartments whose rental accounts are in good standing may sublease. All rent/fees on the account must be paid before Landlord consents to a sublease.
  - All subleased units are required to sign a sublease addendum at the management office. Any subleased apartment not doing so will be charged one month rent.
58. Arrangements must be made between the sublessor and sublessee regarding the exchanging of keys, apartment cleaning, additional deposit, and prepaid rent for the current Rental Agreement. These arrangements are not the responsibility of the landlord.
59. The fee for a complete release from this Rental Agreement prior to June 1, 2010 is 25% of the total annual rent and is contingent upon the Landlord's written approval. Landlord reserves the right to accept or reject any requested release. There will be no release from this rental Agreement after June 1 and at that point Tenants can sublease.
60. The following fees are due upon the execution of a sublease:

Type of Sublease:	1BR	2BR	3BR	4 & 5BR
Entire House Sublease prior to Oct. 1 <sup>st</sup>	\$350.00	\$550.00	\$750.00	\$950.00
Entire House Sublease after Oct. 1 <sup>st</sup>	\$125.00	\$200.00	\$275.00	\$350.00
Individual Sublease	\$125.00	\$125.00	\$125.00	\$125.00

#### Renewals

61. Prior to rental season, Tenants will receive the new rental rates for the coming year and/or they will be posted in the management office. If Tenant does not give a written affirmative answer before rental season of their intent to re-lease, it means Tenant does not intend to lease the apartment for the next year. If an affirmative answer is received, a new Rental Agreement must be signed by the posted date, or all rights/options to the apartments for the next lease year are relinquished.

#### House, Duplex & Townhouse Tenants

- The following provisions apply to lease where a house, duplex or townhouse is rented as one unit (section 62 through 66):
- House Tenants are responsible for maintaining the washer/dryer (if present) throughout the term of the Lease.
  - House Tenants are responsible for their own extermination of any insects, rodents, or pests on the premises throughout the lease term.
  - House Tenants are responsible for shoveling and salting/sanding the sidewalks, driveways (detached dwelling units), and entry into the dwelling unit by 8 AM following each snowfall. Failure to do so may result in a minimum \$95 charge assessed to the Tenant per snowfall.
  - House Tenants are responsible for mowing the lawn on a weekly basis. Yards must be neat and clear of trash and debris at all times. Vines, rubbish, trees & shrubs shall be maintained by the Tenant. Failure to comply may result in a minimum \$150 charge each time a violation occurs. Tenants must mow on the last day of the lease each year.
  - House Tenants must purchase two 30-gallon trash cans and place at the side of the curb once a week for pickup. Contact the City for your trash collection day. (Townhouses may not apply)

#### Miscellaneous

- This writing, including any addendum(s) attached, constitutes the entire agreement between the parties with respect to the subject matters; and no statement, representation or promise with reference to this Lease, shall be binding upon either of the parties unless in writing and signed by both Landlord and Tenants. All Tenants must sign this Lease.
  - Words and phrases herein shall be construed as in the single or plural number, and as masculine, feminine, or neuter gender. The invalidity or unenforceability of any provision hereof shall not affect or impair any other provision in the Lease agreement. All addendums hereto are by this reference incorporated in this Lease, and made a part hereof.
  - Tenants grant permission to Landlord to release their phone number to incoming or outgoing Tenants for general questions or for the purposes of negotiating lease dates. Tenants agree all information regarding the lease may be shared with the parent/guardian or emergency contact listed on the Tenant information sheet.
  - Tenants acknowledged that the Landlord is not responsible for lost, stolen or damaged personal property. Tenants should purchase renter's insurance prior to occupancy to be protected from theft, vandalism, fire/water damages, etc. Landlord is not responsible for a loss should Tenants choose not to purchase insurance. Tenants shall hold harmless and indemnify the Landlord/Partners for all loss of property or injuries the Tenant sustains through theft, fire, rain, wind or otherwise.
- TENANTS AGREE TO BE SEVERALLY AND JOINTLY LIABLE FOR RENT, FEES, DAMAGES, CHARGES AND ALL OTHER OBLIGATIONS UNDER THIS LEASE. SUBLEASES DO NOT RELEASE TENANTS FROM THEIR LIABILITY.** Tenants represent and warrant that as of the date of signing this Lease that all tenants have reached their majority age and are legally competent to enter into this Lease. Tenants younger than 18 years of age must have a guarantor sign the lease.

This agreement is a legally binding contract and may not be terminated once it is signed. All Tenants living in the dwelling unit must be signed on the lease.

Signature

Date

Signature

Date

Signature

Date

Signature

Date

Signature

Date

Landlord's Representative Sign Here

Date

## Attachment Three

### Listing of Lease Charges in Excess of Actual Damages in 2010-2011 Standard Lease

- 5a. \$75 additional charge for additional tenants
- 5b. \$500 one time charge; additional \$200 per month charge for additional tenants
- 6. \$10 a day penalty and \$50 per month service charge for not having utilities in tenants' name
- 10.d \$40 charge for service of 3 day notice, \$250 fee for eviction
- 13.a. \$100 per hour penalty for not being ready at checkout time
- 13b. fees for altering move/in or move/out date, 1 bedroom =\$100, 2 bedroom=\$200, 3 bedroom = \$300, 4/5 bedrooms = \$400
- 14c. \$100 entry lock charge
- 14d. \$70 minimum charge for lockout during business hours, \$90 minimum charge for lockout during non-business hours
- 18. \$10 charge per replacement lightbulb
- 19. \$10 per nail hole, \$70 per hour plus materials for painting charges, \$175 per drywall hole larger than small nail hole
- 26d \$150 fee plus clean up charges for storing items on decks
- 29. \$100 minimum clean up charge for visitors
- 33c \$70 per hour for repairs during business hours, \$90 per hour for repairs during non-business hours
- 37a \$100 penalty per hour for not being ready for inspection
- 37b \$100 per lock for failing to return all keys
- 37c \$40 per hour per person (6-8 people on each cleaning crew) plus \$40 service charge for general cleaning. \$150 minimum fee for cleaning by crew.
- 37d \$150 fee for turning off utilities prematurely
- 37g \$70 per hour per person plus materials for general paint touch up
- 42a \$150 fee for apartment with windows open while heat is on
- 49 \$150 fee plus actual damages for improper use of common areas, roof or fire escape
- 49b \$100 penalty for noisy social gatherings or kegs

50a \$150 party non-compliance fee  
50b \$150 fee for disorderly house  
50c \$150 citations for illegal drug or alcohol use

51a \$200 per occurrence fine for smoking

52 \$50 natural evergreen and pumpkin penalty plus cleanup charges

54. \$600 pet fee plus \$20 per day

60. Sublease fees, complete release before June 1 is 25% of total annual rent.

	1BR	2BR	3BR	4 & 5 BR
Entire house sublease prior to October 1 <sup>st</sup>	\$350	\$550	\$750	\$950
Entire house sublease after October 1 <sup>st</sup>	\$125	\$200	\$275	\$350
Individual sublease	\$125	\$125	\$125	\$125

64. \$95 snow removal charge

65. \$150 minimum lawn and landscaping charge per violation