

STATE OF NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

COUNTY OF ORANGE

2013 JUL 22 AM 9:06

SUPERIOR COURT DIVISION

JOHN W. COOPER, O.S.C.

File No. _____

STATE OF NORTH CAROLINA, ~~ex rel.~~)
ROY COOPER, ATTORNEY GENERAL,)

Plaintiff,)

v.)

WARE INVESTMENTS, LLC and)
JAMES WARE KELLEY, III, individually)
and in his capacity as sole owner and)
managing member of WARE)
INVESTMENTS, LLC,)

Defendants.)

COMPLAINT

INTRODUCTION

Plaintiff State of North Carolina, by and through its Attorney General, brings this deceptive trade practices action against defendants, alleging that they regularly have failed to maintain and protect security deposits tendered by their residential tenants in accordance with state law, that they regularly have co-mingled those deposits with personal and business operating funds, and that they routinely have failed to refund those deposits. Plaintiff seeks restitution for tenants, injunctive relief, civil penalties and other remedies available to it under the Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1, *et seq.*

PARTIES

1. Plaintiff is the State of North Carolina, on relation of its Attorney General, Roy Cooper, who brings this action pursuant to authority found in Chapters 75 and 114 of the North Carolina General Statutes.

2. Defendant Ware Investments, LLC is a North Carolina limited liability corporation that was incorporated in 2009. Its principal place of business is located in the town of Chapel Hill in Orange County.

3. Defendant James Ware Kelley, III is, upon information and belief, a resident of Chapel Hill and Orange County.

4. Defendant James Ware Kelley, III is the sole member and managing officer of defendant Ware Investments, LLC. He developed and carried out the business practices of Ware Investments, LLC which form the basis for this action. He is sued both in his individual capacity and in his capacity as owner and managing member of defendant Ware Investments, LLC.

FACTUAL BACKGROUND

5. Since at least January 1, 2007, defendants have been in the business of renting residential rental properties to tenants in the town of Chapel Hill and in the city of Durham. Upon information and belief, most of defendants' tenants are university students.

6. It has been defendants' regular business practice to collect deposits from these residential tenants in order to secure certain of their financial obligations under the lease.

7. Defendants' regular business practice has been to co-mingle the security deposits of their residential tenants with personal funds or regular business operating funds and not to deposit them into a designated tenant security deposit trust account.

8. It has been defendants' regular business practice to withhold all or substantial portions of the aforementioned security deposits at the conclusion of the tenants' lease terms. In addition, defendants regularly have failed to provide their departing tenants with written accountings of charges to which all or portions of their deposits have been applied.

9. When challenged over their refusal to refund a deposit, defendants' regular practice has

been to contrive damage claims against the tenants and cite those supposed damage claims as the basis for refusing to make a refund.

10. Defendant James Ware Kelley III (hereinafter “defendant Kelley”) has been sued repeatedly by tenants in the courts of Orange County for recovery of the aforesaid deposits. Upon information and belief, plaintiffs in those cases always have prevailed. Further upon information and belief, few of those successful plaintiffs have recovered on the money judgments they obtained.

11. In 2010, defendant Kelly filed for Chapter 11 bankruptcy in the United States Bankruptcy Court for the Middle District of North Carolina, thereby thwarting, temporarily, his tenants’ efforts to recover their deposits through the courts of Orange County.

12. Defendant Kelley’s bankruptcy proceeding was dismissed by the court on November 27, 2012 due to his failure to comply with certain rules of the United States Bankruptcy Court.

13. In at least one instance during the past year, a creditor has levied successfully against a bank account of defendant Kelly that contained security deposits tendered by his tenants.

14. In private civil actions filed against them in Orange County, defendant Kelley has refused to respond to discovery requiring him to provide documentation of the proper receipt and handling of his tenants’ security deposit funds and to identify the bank trust accounts or other accounts into which those funds were deposited.

REPRESENTATIVE EXPERIENCES OF INDIVIDUAL TENANTS

Anthony Beard and Ryland Jones

15. As reflected in their attached affidavits (Plaintiff’s Exhibit 1 and 2), Anthony Beard and roommate Ryland Jones rented an apartment from defendants from August 1, 2011 until July 31,

2012. Both men tendered \$550 security deposit checks to defendant Kelley when they executed a lease with defendants in March of 2011. Upon the conclusion of that tenancy in July of 2012, defendants failed to return Beard and Jones' security deposits or otherwise account for them.

16. The attached affidavits of Mr. Beard and Mr. Jones also reflect that defendants' refusals to refund or account for their residential security deposits continued even after they received a demand letter from the two men's attorney, Dorothy C. Bernholz of Chapel Hill. The accompanying photocopy of the security deposit checks Mr. Beard and Mr. Jones tendered to defendants in March of 2011 reflects that defendants deposited them into a regular business checking account rather than a designated trust account for tenant security deposits.

Erin Hawley

17. As shown by her attached affidavit (Plaintiff's Exhibit 3), Erin Hawley and her two roommates entered into a lease agreement with defendants in November of 2011 and tendered a security deposit of \$1,410.00. The rental term under that lease agreement commenced August 1, 2012 and concludes July 31, 2013.

18. Ms. Hawley's affidavit reflects that her \$1,410.00 tenant security deposit check was deposited into one of defendants' regular business checking accounts rather than a trust account for tenant security deposits.

Kennan Eiler

19. As shown by his attached affidavit (Plaintiff's Exhibit 4), Kennan Eiler and his roommates rented an apartment from defendants from August 1, 2006 through July 31, 2007. They tendered \$1,050.00 to defendant Kelley as a security deposit.

20. At the conclusion of Mr. Eiler's tenancy, defendant Kelley tried to withhold most of that deposit, claiming that Eiler and his roommates owed a water bill for \$995.35. Also, according to

Mr. Eiler's affidavit, defendant Kelley charged against their tenant security deposit costs and claims relating a group of tenants who resided in a different rental unit. Mr. Eiler and his roommates sued defendant Kelley for a full refund of their tenant security deposit in 2008. On April 1, 2008, in case number 08 CVD 198, the Orange County District Court entered a judgement in favor of Mr. Eiler and his roommates and against defendant Kelley for a full refund of their tenant security deposit monies.

21. A duplicate original copy of Mr. Eiler's aforementioned judgement against defendant Kelley is attached hereto as Plaintiff's Exhibit 5.

Daniel Keller

22. Daniel Keller and Rebecca Martin rented an apartment in Chapel Hill from defendant Kelley from June 1, 2007 through May 31, 2008. As shown by Mr. Keller's affidavit, attached hereto as Plaintiff's Exhibit 6, at the conclusion of the tenancy, defendant Kelley tried to withhold approximately half of their deposit, claiming damage to the premises.

23. Mr. Keller and his roommate sued defendant Kelley for the return of their deposit in Orange County District Court. The Orange County Clerk of Court filing number for that action was 08 CVD 1458. As shown by the documents attached to Mr. Keller's affidavit, their attorney requested of defendant Kelley in paragraph nine of their written interrogatories, the name and address of the bank where Keller and Martin's security deposit funds had been deposited into a trust account and the date of that deposit. As shown further by Mr. Keller's affidavit and defendant Kelley's written responses to paragraph nine of the written interrogatories, defendant Kelley, objected to and refused to answer those questions.

24. According the final paragraph of Mr. Keller's attached affidavit, "[t]he matter was resolved in our favor in a negotiated settlement."

**Defendants' Inability to Document Proper Handling of Tenant
Security Deposits for The Attorney General**

25. On February 1, 2013, the Attorney General invited defendant Kelley to answer questions and present documentation concerning defendants' handling of the security deposits of their North Carolina residential tenants.

26. Defendant Kelley and his attorney appeared in the offices of the Attorney General in response to that invitation on February 28, 2013. Defendant Kelley acknowledged that defendants had for several years failed to deposit and maintain in a trust account at a North Carolina bank or savings institution the security deposits of their North Carolina residential tenants, as required by the North Carolina Tenant Security Deposit Act, N.C. Gen. Stat. § 42-50, et seq.

27. Defendant Kelley also could not produce requested business records that would have substantiated the charges he had made to the security deposits of departing tenants during the preceding four years.

28. Defendant Kelley also could not produce business records that documented who his tenants even were during the preceding four years, what their payment histories had been, the conditions of their rental units when they moved in, or the conditions of their rental units when they moved out.

29. Documentation and verbal confirmation provided to the Attorney General's Office by defendant Kelley on February 28, 2013 confirmed that for years defendants regularly co-mingled tenant security deposits with the defendants' regular operating funds and defendant Kelley's personal funds.

30. Upon information and belief, defendants committed the aforesaid acts, practices and

omissions as a regular and recurring practice in their apartment rental business.

31. Defendants have engaged in the aforesaid acts, practices and omissions knowingly and intentionally and with full knowledge that they violate the North Carolina Tenant Security Deposit Act.

32. Defendants' aforesaid acts, practices and omissions have been in and affecting commerce in the State of North Carolina and have had a substantial and negative impact thereon.

CLAIM FOR RELIEF: VIOLATION OF THE NORTH CAROLINA UNFAIR AND DECEPTIVE TRADE PRACTICES ACT; N.C. GEN. STAT. § 75-1.1, *et seq.*

33. Plaintiff incorporates herein by reference paragraphs one through thirty-two, above, and alleges further that defendants' above alleged and longstanding rental practices violate the North Carolina Tenant Security Deposit Act in the following ways:

- a. Defendants regularly and for a lengthy period of time failed to place tenants' security deposits in a tenant security deposit trust account, designated as such, with a North Carolina licensed and insured bank or savings institution, as required by N.C. Gen. Stat. § 42-50; instead, they co-mingled the deposits with their own personal or business operating funds;
- b. Defendants regularly and for a lengthy period of time debited funds from departing tenants' security deposits for expenses that the tenants did not cause, expenses that pertained to other rental units and not to the tenants whose deposits were debited, or for expenses in addressing normal wear and tear to the tenants' apartments, none of which is permitted by N.C. Gen. Stat. § 42-51 and 52;
- c. Defendants regularly and for a lengthy period of time failed to provide departing tenants with itemized and accurate written accountings of all charges made to

their security deposits, as required by N.C. Gen. Stat. § 42-52;

34. During a significant portion of the time that these violations occurred, defendant Kelley was traveling and working in other parts of the country where he had other business interests and rental properties, he did not have regular employees managing his North Carolina rental properties, and he did not utilize a licensed real estate professional to manage those properties. He lacked personnel, systems or procedures for determining whether tenants had committed some act or omission warranting deductions to their deposits.

35. In addition to the foregoing, defendants regularly converted their tenants' security deposits into business operating funds and sources of revenue.

36. Each of defendants' above alleged practices acts, omissions and violations of rental statutes violate the North Carolina Unfair and Deceptive Trade Practices Act, N.C. Gen. Statute § 75-1.1, *et seq.* Plaintiff is therefore entitled to the relief prayed for below.

WHEREFORE, PLAINTIFF RESPECTFULLY PRAYS THE COURT FOR THE FOLLOWING RELIEF:

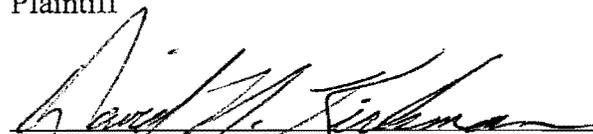
- a. That the Court grant plaintiff injunctive relief, including a Temporary Restraining Order and a Preliminary Injunction should either defendant continue to engage in conduct in violation of the aforesaid statutes, as allowed in N.C. Gen. Stat. § 75-14;
- b. That defendants be required to refund in full all North Carolina tenant security deposits that were not received, held or processed in accordance with the Tenant Security Deposit Act, as allowed in N.C. Gen. Stat. § 75-15.1;
- c. That defendants be ordered to pay civil penalties to the State of North Carolina in the amount of \$5000.00 for each Tenant Security Deposit Act violation, as provided in N.C. Gen. Stat. § 75-15.2;

- d. In the alternative to the preceding subparagraph, and in the event that it cannot be determined how many violations of the Tenant Security Deposit Act defendants committed, that each week that the aforesaid acts, practices, misrepresentations and omissions persisted be considered a separate violation for purposes of calculating civil penalties, as provided in N.C. Gen. Stat. § 75-8;
- e. That the defendants be ordered to reimburse plaintiff's legal costs, pursuant to N.C. Gen. Stat. § 75-16.1;
- f. That all other costs of this action be taxed to defendants; and
- g. That plaintiff receive such other and further relief as the Court deems just and appropriate.

This the 22nd day of July, 2013.

STATE OF NORTH CAROLINA, *ex rel.*
ROY COOPER, ATTORNEY GENERAL,
Plaintiff

By:



David N. Kirkman, Bar No. 8858
Special Deputy Attorney General
Consumer Protection Division
North Carolina Department of Justice
114 West Edenton Street, P.O. Box 629
Raleigh, NC 27602-0629
Tel. 919-716-6033
Fax 919-716-6050
dkirkman@ncdoj.gov

NORTH CAROLINA

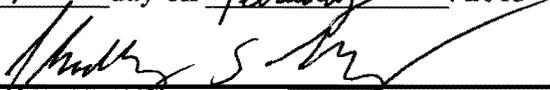
ORANGE COUNTY AFFIDAVIT OF ANTHONY BEARD

Anthony Beard, being first duly sworn, deposes and says the following:

1. My name is Anthony Beard. I reside in Orange County, North Carolina at Apartment 12 D, 425 Hillsborough Street, Chapel Hill, NC 27514.
2. For the term of August 1, 2011, through July 31, 2012, I resided at 101 B Isley Street, Chapel Hill, NC 27516 pursuant to a lease agreement with James Kelley and Ware Investments, Inc. An accurate photocopy of that lease agreement is attached to this Affidavit as Exhibit 1.
3. Pursuant to my lease agreement (Exhibit 1, Paragraph 4), I gave to James Kelley a security deposit in the sum of FIVE HUNDRED AND FIFTY DOLLARS (\$550.00).
4. My lease ended on July 31, 2012 and, despite demands by me and my attorney, Dorothy C. Bernholz, James Kelley and Ware Investments, Inc. have failed to account for/or return the deposit monies. A accurate photocopy of the letter from my attorney, dated November 29, 2012, is attached to this Affidavit at Exhibit 2.
5. On the lease agreement attached to this Affidavit as Exhibit 1, James Kelley identified the following titles beneath is name: "Real Estate Investor & Mortgage Banker", which designations had the capacity to mislead me regarding his status as either a licensed real estate broker and/or mortgage broker.


ANTHONY BEARD

Sworn to and subscribed before me
This the 7th day on February, 2013


NOTARY PUBLIC

My Commission Expires: Jan 16, 2017

CHADLEY S. FRITZ
Notary Public
Durham County
North Carolina
My Commission Expires Jan 16, 2017

PENCAD-Bayonne, N. J.
PLAINTIFF'S
EXHIBIT
1

RESIDENTIAL RENTAL CONTRACT

COPY

RESIDENT: Anthony Beard & Ryland Jones ("Tenant")

OWNER: James Kelley & Ware Investments, Inc ("Landlord")

REAL ESTATE MANAGEMENT FIRM: ("Agent")

PREMISES: City: Chapel Hill, NC County: Orange State of North Carolina

- Street Address: 1513 Esley St Chapel Hill, NC 27516
Apartment Complex:
Other Description (Room, portion of above address, etc.):

INITIAL TERM: Beginning Date of Lease 8/1/11 Ending Date of Lease 7/31/12

RENT: \$ 1100.00 PAYMENT PERIOD: monthly weekly yearly other

LATE PAYMENT FEE: \$ OR 5 % of rental payment, whichever is greater

SECURITY DEPOSIT: \$ 1100.00 to be deposited with: Landlord Agent

LOCATION OF DEPOSIT: (insert name of bank): First Citizens Bank Chapel Hill, NC

BANK ADDRESS: Chapel Hill, NC

RETURNED CHECK FEE: \$ 25.00

SUMMARY EJECTMENT ADMINISTRATIVE FEE: (see paragraph 17): \$

PETS: PETS NOT ALLOWED PETS ALLOWED NONREFUNDABLE PET FEE (if pets allowed): \$ 200.00
TYPE OF PET PERMITTED (if pets allowed):

PERMITTED OCCUPANTS (in addition to Tenant): Anthony Beard & Ryland Jones

IN CONSIDERATION of the promises contained in this Agreement, Landlord, by and through Agent, hereby agrees to lease the Premises to Tenant on the following terms and conditions:

1. Termination and Renewal: Either Landlord or Tenant may terminate the tenancy at the expiration of the Initial Term by giving written notice to the other at least 32 days prior to the expiration date of the Initial Term. In the event such written notice is not given or if the Tenant holds over beyond the Initial Term, the tenancy shall automatically become a Month (period) to Month (period) tenancy upon the same terms and conditions contained herein and may thereafter be terminated by either Landlord or Tenant giving the other 30 days written notice prior to the last day of the then current period of the tenancy.

2. Rent: Tenant shall pay the Rent, without notice, demand or deduction, to Landlord or as Landlord directs. The first Rent payment, which shall be prorated if the Initial Term commences on a day other than the first day of the Payment Period, shall be due on 8/1/11 (date). Thereafter, all rentals shall be paid in advance on or before the FIRST day of each subsequent Payment Period for the duration of the tenancy.

3. Late Payment Fees and Returned Check Fees: Tenant shall pay the Late Payment Fee if any rental payment is not received by midnight on the fifth (5th) day after it is due. This late payment fee shall be due immediately without demand therefor and shall be added to and paid with the late rental payment. Tenant also agrees to pay the Returned Check Fee for each check of Tenant that is returned by the financial institution because of insufficient funds or because the Tenant did not have an account at the financial institution

North Carolina Association of REALTORS®, Inc.
Tenant Initials
James W. Kelley 103D Isley St. Chapel Hill, NC 27516
Phone: 919.605.3444 Fax: 703.995.0470



STANDARD FORM Exhibit 1
8-72004

14977803 2/11

4. **Tenant Security Deposit:** The Security Deposit shall be administered in accordance with the North Carolina Tenant Security Deposit Act (N.C.G.S. § 42-50 et. seq.). IT MAY, IN THE DISCRETION OF EITHER THE LANDLORD OR THE AGENT, BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT WITH THE BANK OR SAVINGS INSTITUTION NAMED ABOVE. ANY INTEREST EARNED UPON THE TENANT SECURITY DEPOSIT SHALL ACCRUE FOR THE BENEFIT OF, AND SHALL BE PAID TO, THE LANDLORD, OR AS THE LANDLORD DIRECTS. SUCH INTEREST, IF ANY, MAY BE WITHDRAWN BY LANDLORD OR AGENT FROM SUCH ACCOUNT AS IT ACCRUES AS OFTEN AS IS PERMITTED BY THE TERMS OF THE ACCOUNT.

Upon any termination of the tenancy herein created, the Landlord may deduct from the Tenant Security Deposit amounts sufficient to pay: (1) any damages sustained by the Landlord as a result of the Tenant's nonpayment of rent or nonfulfillment of the Initial Term or any renewal periods, including the Tenant's failure to enter into possession; (2) any damages to the Premises for which the Tenant is responsible; (3) any unpaid bills which become a lien against the Premises due to the Tenant's occupancy; (4) any costs of re-renting the Premises after a breach of this lease by the Tenant; (5) any court costs incurred by the Landlord in connection with terminating the tenancy; and (6) any other damages of the Landlord which may then be a permitted use of the Tenant Security Deposit under the laws of this State. No fees may be deducted from the Tenant Security Deposit until the termination of the tenancy. After having deducted the above amounts, the Landlord shall, if the Tenant's address is known to him, refund to the Tenant, within thirty (30) days after the termination of the tenancy and delivery of possession, the balance of the Tenant Security Deposit along with an itemized statement of any deductions. If there is more than one person listed above as Tenant, Agent may, in Agent's discretion, pay said balance to any such person, and the other person(s) agree to hold Agent harmless for such action. If the Tenant's address is unknown to the Landlord, the Landlord may deduct the above amounts and shall then hold the balance of the Tenant Security Deposit for the Tenant's collection for a six-month period beginning upon the termination of the tenancy and delivery of possession by the Tenant. If the Tenant fails to make demand for the balance of the Tenant Security Deposit within the six-month period, the Landlord shall not thereafter be liable to the Tenant for a refund of the Tenant Security Deposit or any part thereof.

If the Landlord removes Agent or Agent resigns, the Tenant agrees that Agent may transfer any Tenant Security Deposit held by Agent hereunder to the Landlord or the Landlord's designee and thereafter notify the Tenant by mail of such transfer and of the transferee's name and address. The Tenant agrees that such action by Agent shall relieve Agent of further liability with respect to the Tenant Security Deposit. If Landlord's interest in the Premises terminates (whether by sale, assignment, death, appointment of receiver or otherwise), Agent shall transfer the Tenant Security Deposit in accordance with the provisions of North Carolina General Statutes § 42-54.

5. **Tenant's Obligations:** Unless otherwise agreed upon, the Tenant shall:
- (a) use the Premises for residential purposes only and in a manner so as not to disturb the other tenants;
 - (b) not use the Premises for any unlawful or immoral purposes or occupy them in such a way as to constitute a nuisance;
 - (c) keep the Premises, including but not limited to all plumbing fixtures, facilities and appliances, in a clean and safe condition;
 - (d) cause no unsafe or unsanitary condition in the common areas and remainder of the Premises used by him;
 - (e) comply with any and all obligations imposed upon tenants by applicable building and housing codes;
 - (f) dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner and comply with all applicable ordinances concerning garbage collection, waste and other refuse;
 - (g) use in a proper and reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, if any, furnished as a part of the Premises;
 - (h) not deliberately or negligently destroy, deface, damage or remove any part of the Premises (including all facilities, appliances and fixtures) or permit any person, known or unknown to the Tenant, to do so;
 - (i) pay the costs of all utility services to the Premises which are billed directly to the Tenant and not included as a part of the rentals, including, but not limited to, water, electric, telephone, and gas services;
 - (j) conduct himself and require all other persons on the Premises with his consent to conduct themselves in a reasonable manner and so as not to disturb other tenants' peaceful enjoyment of the Premises; and
 - (k) not abandon or vacate the Premises during the Initial Term or any renewals or extensions thereof. Tenant shall be deemed to have abandoned or vacated the Premises if Tenant removes substantially all of his possessions from the Premises
- (l) _____

-
6. **Landlord's Obligations:** Unless otherwise agreed upon, the Landlord shall:
- (a) comply with the applicable building and housing codes to the extent required by such building and housing codes;
 - (b) make all repairs to the Premises as may be necessary to keep the Premises in a fit and habitable condition; provided, however, in accordance with paragraph 10, the Tenant shall be liable to the Landlord for any repairs necessitated by the Tenant's intentional or negligent misuse of the Premises;

(c) keep all common areas, if any, used in conjunction with the Premises in a clean and safe condition; and
(d) promptly repair all facilities and appliances, if any, as may be furnished by the Landlord as part of the Premises, including electrical, plumbing, sanitary, heating, ventilating, and air conditioning systems, provided that the Landlord, except in emergency situations, actually receives notification from the Tenant in writing of the needed repairs.

7. **Smoke Detectors:** Pursuant to North Carolina General Statutes § 42-42 and 42-43, the Landlord shall provide and install operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval. The Tenant shall notify the Landlord, in writing, of the need for replacement of or repairs to a smoke detector. The Landlord shall replace or repair the smoke detectors within 15 days of receipt of notification if the Landlord is notified of needed replacement or repairs in writing by the Tenant. The Landlord shall ensure that a smoke detector is operable and in good repair at the beginning of the Initial Term of the tenancy. The Landlord shall place new batteries in any battery-operated smoke detectors at the beginning of the Initial Term of the tenancy; **the Tenant shall replace the batteries as needed during the tenancy.**

8. **Rules and Regulations:** The Tenant, his family, servants, guests and agents shall comply with and abide by all the Landlord's existing rules and regulations and such future reasonable rules and regulations as the Landlord may, at Landlord's discretion, from time to time, adopt governing the use and occupancy of the Premises and any common areas used in connection with them (the "Rules and Regulations"). Landlord reserves the right to make changes to the existing Rules and Regulations and to adopt additional reasonable rules and regulations from time to time; provided however, such changes and additions shall not alter the essential terms of this lease or any substantive rights granted hereunder and shall not become effective until thirty (30) days' written notice thereof shall have been furnished to Tenant. Tenant also agrees to abide by any applicable homeowners' association regulations as they now exist or may be amended. A copy of the existing Rules and Regulations, and any applicable homeowners' association regulations, are attached hereto and the Tenant acknowledges that he has read them. The Rules and Regulations shall be deemed to be a part of this lease giving to the Landlord all the rights and remedies herein provided.

9. **Right of Entry:** Landlord hereby reserves the right to enter the Premises during reasonable hours for the purpose of (1) inspecting the Premises and the Tenant's compliance with the terms of this lease; (2) making such repairs, alterations, improvements or additions thereto as the Landlord may deem appropriate; and (3) showing the Premises to prospective purchasers or tenants. Landlord shall also have the right to display "For Sale" or "For Rent" signs in a reasonable manner upon the Premises.

10. **Damages:** Tenant shall be responsible (or and liable to the Landlord for all damage to, defacement of, or removal of property from the Premises whatever the cause, except such damage, defacement or removal caused by ordinary wear and tear, acts of the Landlord, his agent, or of third parties not invitees of the Tenant, and natural forces. Tenant agrees to pay Landlord for the cost of repairing any damage for which Tenant is responsible upon receipt of Landlord's demand therefor, and to pay the Rent during the period the Premises may not be habitable as a result of any such damage.

11. **Pets:** If pets are not allowed, Tenant agrees not to keep or allow anywhere on or about the Property any animals or pets of any kind, including but not limited to, dogs, cats, birds, rodents, reptiles or marine animals. If pets are allowed, Tenant acknowledges that the amount of the Pet Fee is reasonable and agrees that the Landlord shall not be required to refund the Pet Fee in whole or in part. If pets are allowed, Tenant agrees to reimburse Landlord for any primary or secondary damages caused thereby whether the damage is to the Premises or to any common areas used in conjunction with them, and to indemnify Landlord from any liability to third parties which may result from Tenant's keeping of such pet or pets.

The Tenant shall remove any pet previously permitted within 48 hours of written notification from the Landlord that the pet, in the Landlord's sole judgment, creates a nuisance or disturbance or is, in the Landlord's opinion, undesirable. If the pet is caused to be removed pursuant to this paragraph, the Landlord shall not be required to refund the Pet Fee; however, the Tenant shall be entitled to acquire and keep another pet of the type previously authorized.

12. **Alterations:** The Tenant shall not paint, mark, drive nails or screws into, or otherwise deface or alter walls, ceilings, floors, windows, cabinets, woodwork, stone, ironwork or any other part of the Premises or decorate the Premises or make any alterations, additions, or improvements in or to the Premises without the Landlord's prior written consent and then only in a workmanlike manner using materials and contractors approved by the Landlord. All such work shall be done at the Tenant's expense and at such times and in such manner as the Landlord may approve. All alterations, additions, and improvements upon the Premises, made by either the Landlord or Tenant, shall become the property of the Landlord and shall remain upon and become a part of the Premises at the end of the tenancy hereby created.

13. **Occupants:** The Tenant shall not allow or permit the Premises to be occupied or used as a residence by any person other than Tenant and the Permitted Occupants.

14. **Rental Application:** In the event the Tenant has submitted a Rental Application in connection with this lease, Tenant acknowledges that the Landlord has relied upon the Application as an inducement for entering into this Lease and Tenant warrants to Landlord that the facts stated in the Application are true to the best of Tenant's knowledge. If any facts stated in the Rental Application prove to be untrue, the Landlord shall have the right to terminate the tenancy and to collect from Tenant any damages resulting therefrom.

15. **Termination for Military Transfer:** If Tenant is a member of the United States Armed Forces who (i) has received permanent change of station orders to move fifty (50) miles or more from the Premises or (ii) is prematurely or involuntarily discharged or relieved from active duty with the United States Armed Forces, Tenant may terminate this lease by written notice of

termination to Landlord stating the effective date of such termination, which date shall not be less than thirty (30) days after receipt of notice by Landlord, provided such notice is accompanied by a copy of the official orders of such transfer, discharge or release from active duty or a written verification signed by the Tenant's Commanding Officer. The final rent due by Tenant shall be prorated to such date of termination and shall be payable, together with liquidated damages in the amount of: (a) one (1) month's rent for the premises, if less than six (6) months of the term of the lease have elapsed as of the effective date of termination, or (b) the amount of one-half (1/2) of one (1) month's rent, if more than six (6) months but less than nine (9) months of the term of the lease have elapsed as of the effective date of such termination; provided, however, no liquidated damages shall be due unless Tenant has completed less than nine (9) months of the tenancy and Landlord has suffered actual damage due to the loss of the tenancy. Upon Tenant's compliance with all the requirements of this paragraph, Landlord shall release Tenant from all obligations hereunder and this lease shall terminate. The Tenant Security Deposit shall be returned, subject to the provisions of paragraph 4 above.

16. **Tenant's Duties Upon Termination:** Upon any termination of the Tenancy created hereby, whether by the Landlord or the Tenant and whether for breach or otherwise, the Tenant shall: (1) pay all utility bills due for services to the Premises for which he is responsible and have all such utility services discontinued; (2) vacate the Premises removing therefrom all Tenant's personal property of whatever nature; (3) properly sweep and clean the Premises, including plumbing fixtures, refrigerators, stoves and sinks, removing therefrom all rubbish, trash, garbage and refuse; (4) make such repairs and perform such other acts as are necessary to return the Premises, and any appliances or fixtures furnished in connection therewith, in the same condition as when Tenant took possession of the Premises; provided, however, Tenant shall not be responsible for ordinary wear and tear or for repairs required by law or by paragraph 6 above to be performed by Landlord; (5) fasten and lock all doors and windows; (6) return to the Landlord all keys to the Premises; and (7) notify the Landlord of the address to which the balance of the Security Deposit may be returned. If the Tenant fails to sweep out and clean the Premises, appliances and fixtures as herein provided, Tenant shall become liable, without notice or demand, to the Landlord for the actual costs of cleaning (over and above ordinary wear and tear), which may be deducted from the Security Deposit as provided in paragraph 4 above.

17. **Tenant's Default:** In the event the Tenant shall fail to:

- (a) pay the rentals herein reserved as and when they shall become due hereunder; or
- (b) perform any other promise, duty or obligation herein agreed to by him or imposed upon him by law and such failure shall continue for a period of five (5) days from the date the Landlord provides Tenant with written notice of such failure,

then in either of such events and as often as either of them may occur, the Landlord, in addition to all other rights and remedies provided by law, may, at its option and with or without notice to Tenant, either (i) terminate this lease or (ii) terminate the Tenant's right to possession of the Premises without terminating this lease. Regardless of whether Landlord terminates this lease or only terminates the Tenant's right of possession without terminating this lease, Landlord shall be immediately entitled to possession of the Premises and the Tenant shall peacefully surrender possession of the Premises to Landlord immediately upon Landlord's demand. In the event Tenant shall fail or refuse to surrender possession of the Premises, Landlord shall, in compliance with Article 2A of Chapter 42 of the General Statutes of North Carolina, reenter and retake possession of the Premises only through a summary ejectment proceeding. If a summary ejectment proceeding is instituted against Tenant, in addition to any court costs and past-due rent that may be awarded, Tenant shall be responsible for paying Landlord the Summary Ejectment Administrative Fee, the amount of which shall be reasonably related to the additional expense in filing the proceeding. In the event Landlord terminates this lease, all further rights and duties hereunder shall terminate and Landlord shall be entitled to collect from Tenant all accrued but unpaid rents and any damages resulting from the Tenant's breach. In the event Landlord terminates the Tenant's right of possession without terminating this lease, Tenant shall remain liable for the full performance of all the covenants hereof, and Landlord shall use reasonable efforts to re-let the Premises on Tenant's behalf. Any such rentals reserved from such re-letting shall be applied first to the costs of re-letting the Premises and then to the rentals due hereunder. In the event the rentals from such re-letting are insufficient to pay the rentals due hereunder in full, Tenant shall be liable to the Landlord for any deficiency. In the event Landlord institutes a legal action against the Tenant to enforce the lease or to recover any sums due hereunder, Tenant agrees to pay Landlord reasonable attorney's fees in addition to all other damages. No fees may be deducted from the Tenant Security Deposit until the termination of the tenancy.

18. **Landlord's Default; Limitation of Remedies and Damages:** Until the Tenant notifies the Landlord in writing of an alleged default and affords the Landlord a reasonable time within which to cure, no default by the Landlord in the performance of any of the promises or obligations herein agreed to by him or imposed upon him by law shall constitute a material breach of this lease and the Tenant shall have no right to terminate this lease for any such default or suspend his performance hereunder. In no event and regardless of their duration shall any defective condition of or failure to repair, maintain, or provide any area, fixture or facility used in connection with recreation or recreational activities, including but not limited to swimming pools, club houses, and tennis courts, constitute a material breach of this lease and the Tenant shall have no right to terminate this lease or to suspend his performance hereunder. In any legal action instituted by the Tenant against the Landlord, the Tenant's damages shall be limited to the difference, if any, between the rent reserved in this lease and the reasonable rental value of the Premises, taking into account the Landlord's breach or breaches, and in no event, except in the case of the Landlord's willful or wanton negligence, shall the Tenant collect any consequential or secondary damages resulting from the breach or breaches, including but not limited to the following items, damage or destruction of furniture or other personal property of any kind located in or about the Premises, moving expenses, storage expenses, alternative interim housing expenses, and expenses of locating and procuring alternative housing.

19. Removal, Storage and Disposition of Tenant's Personal Property:

(a) Ten days after being placed in lawful possession by execution of a writ of possession, the Landlord may throw away, dispose of, or sell all items of personal property remaining on the Premises. During the 10-day period after being placed in lawful possession by execution of a writ of possession, the Landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the Premises unless otherwise provided for in Chapter 42 of the North Carolina General Statutes. Upon the Tenant's request prior to the expiration of the 10-day period, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon. If the Landlord elects to sell the property at public or private sale, the Landlord shall give written notice to the Tenant by first-class mail to the Tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the Tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the Tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the Tenant's request prior to the day of sale, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon. The Landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the Tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located.

(b) If the total value of all property remaining on the Premises at the time of execution of a writ of possession in an action for summary ejectment is less than one hundred dollars (\$100.00), then the property shall be deemed abandoned five days after the time of execution, and the Landlord may throw away or dispose of the property. Upon the Tenant's request prior to the expiration of the five-day period, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon.

20. **Bankruptcy:** If any bankruptcy or insolvency proceedings are filed by or against the Tenant or if the Tenant makes any assignment for the benefit of creditors, the Landlord may, at his option, immediately terminate this Tenancy, and reenter and repossess the Premises, subject to the provisions of the Bankruptcy Code (11 USC Section 101, et. seq.) and the order of any court having jurisdiction thereunder.

21. **Tenant's Insurance; Release and Indemnity Provisions:** The Tenant shall be solely responsible for insuring any of his personal property located or stored upon the Premises upon the risks of damage, destruction, or loss resulting from theft, fire, storm and all other hazards and casualties. Regardless of whether the Tenant secures such insurance, the Landlord and his agents shall not be liable for any damage to, or destruction or loss of, any of the Tenant's personal property located or stored upon the Premises regardless of the cause or causes of such damage, destruction, or loss, unless such loss or destruction is attributable to the intentional acts or willful or wanton negligence of the Landlord. The Tenant agrees to release and indemnify the Landlord and his agents from and against liability for injury to the person of the Tenant or to any members of his household resulting from any cause whatsoever except only such personal injury caused by the negligent, or intentional acts of the Landlord or his agents.

22. **Agent:** The Landlord and the Tenant acknowledge that the Landlord may, from time to time in his discretion, engage a third party ("the Agent") to manage, supervise and operate the Premises or the complex, if any, of which they are a part. If such an Agent is managing, supervising and operating the Premises at the time this lease is executed, his name will be shown as "Agent" on the first page hereof. With respect to any Agent engaged pursuant to this paragraph, the Landlord and the Tenant hereby agree that: (1) Agent acts for and represents Landlord in this transaction; (2) Agent shall have only such authority as provided in the management contract existing between the Landlord and Agent; (3) Agent may perform without objection from the Tenant, any obligation or exercise any right of the Landlord imposed or given herein or by law and such performance shall be valid and binding, if authorized by the Landlord, as if performed by the Landlord; (4) the Tenant shall pay all rentals to the Agent if directed to do so by the Landlord; (5) except as otherwise provided by law, the Agent shall not be liable to the Tenant for the nonperformance of the obligations or promises of the Landlord contained herein; (6) nothing contained herein shall modify the management contract existing between the Landlord and the Agent; however, the Landlord and the Agent may from time to time modify the management agreement in any manner which they deem appropriate; (7) the Landlord, may, in his discretion and in accordance with any management agreement, remove without replacing or remove and replace any agent engaged to manage, supervise and operate the Premises.

23. **Form:** The Landlord and Tenant hereby acknowledge that their agreement is evidenced by this form contract which may contain some minor inaccuracies when applied to the particular factual setting of the parties. The Landlord and Tenant agree that the courts shall liberally and broadly interpret this lease, ignoring minor inconsistencies and inaccuracies, and that the courts shall apply the lease to determine all disputes between the parties in the manner which most effectuates their intent as expressed herein. The following rules of construction shall apply: (1) handwritten and typed additions or alterations shall control over the preprinted language when there is an inconsistency between them; (2) the lease shall not be strictly construed against either the Landlord or the Tenant; (3) paragraph headings are used only for convenience of reference and shall not be considered as a substantive part of this lease; (4) words in the singular shall include the plural and the masculine shall include the feminine and neuter genders, as appropriate; and (5) the invalidity of one or more provisions of this lease shall not affect the validity of any other provisions hereof and this lease shall be construed and enforced as if such invalid provision(s) were not included.

Tenant Initials _____

24. **Amendment of Laws:** In the event that subsequent to the execution of this lease any state statute regulating or affecting any duty or obligation imposed upon the Landlord pursuant to this lease is enacted, amended, or repealed, the Landlord may, at his option, elect to perform in accordance with such statute, amendment, or act of repeal in lieu of complying with the analogous provision of this lease.

25. **Eminent Domain and Casualties:** The Landlord shall have the option to terminate this lease if the Premises, or any part thereof, are condemned or sold in lieu of condemnation or damaged by fire or other casualty.

26. **Assignment:** The Tenant shall not assign this lease or sublet the Premises in whole or part.

27. **Waiver:** No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise.

28. **Other Terms and Conditions:**

(a) (Check if applicable) The Premises were built prior to 1978. (Attach Standard Form # 430 - T, "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards.")

(b) If there is an Agent involved in this transaction, Agent hereby discloses to Tenant that Agent is acting for and represents Landlord.

(c) The following additional terms and conditions shall also be a part of this lease:

(d) Itemize all addenda to this Contract and attach hereto: _____

29. **Inspection of Premises:** Within 3 days of occupying the Premises, Tenant has the right to inspect the Premises and complete a Move-in Inspection Form.

30. **Notice:** Any notices required or authorized to be given hereunder or pursuant to applicable law shall be mailed or hand delivered to the following addresses:

Tenant: the address of the Premises
Landlord: the address of which rental payments are sent.

31. **Execution; Counterparts:** When Tenant signs this lease, he acknowledges he has read and agrees to the provisions of this lease. This lease is executed in 1 (number) counterparts with an executed counterpart being retained by each party.

32. **Entire Agreement:** This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®. INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

TENANT: _____ (SEAL) LANDLORD: _____ (SEAL)

_____ (SEAL) _____ (SEAL)

Date: _____ By: _____, AGENT

_____ (SEAL)

James W Kelley

Date: _____

Real Estate Investor & Mortgage Banker



103 Isley St
Suite D
Chapel Hill, NC 27516
919.605.3444
903.995.0470 fax

Carolina Student Legal Services, Inc.
Carolina Union Building, CB #5210
University of North Carolina
Chapel Hill, North Carolina 27514
Suite 3512

DOROTHY C. BERNHOLZ
CAROL BADGETT
DAVID E. CRESCENZO

ATTORNEYS AT LAW

MAILING ADDRESS
POST OFFICE BOX 1312
CHAPEL HILL, NC 27514

(919) 962-1303
(919) 962-5875 FAX

November 29, 2012

James W. Kelley
103D Isley Street
Chapel Hill, NC 27514

VIA US MAIL AND EMAIL

Re: Anthony Beard and Ryland Jones, former tenants 101 B Isley Street

Dear Mr. Kelley:

I represent Mr. Beard and Mr. Jones, referenced above, for the purpose of recovering the full amount of their \$1,100.00 security deposit. My clients have informed me that their lease terminated on July 31, 2012, and that you have failed to account for and/or return their monies in violation of the North Carolina Tenant Security Deposit Act.

In addition, I note that you have indicated on your lease the following nomenclature: "Real Estate Investment and Mortgage Banker." I have been unable to determine whether any regulatory body in North Carolina licenses you. I respectfully request that you offer an explanation for why you indicate those designations on your lease with my clients. In addition, I note that you identify "Ware Investments, LLC" as the owner/landlord. The records registered with the NC Secretary of State indicate that this corporation has been administratively dissolved. Please explain why you continue to represent that this business entity is a party to the lease.

Please contact me immediately regarding your position on this matter. If I have not heard from you on or before December 3, 2012, I will advise my clients to pursue their legal remedies pursuant to North Carolina and federal law.

Sincerely,

Dorothy C. Bernholz


Exhibit 2

NORTH CAROLINA

ORANGE COUNTY

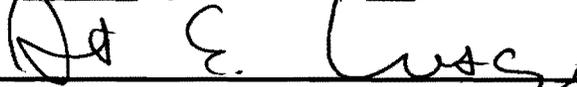
AFFIDAVIT OF RYLAND JONES

Ryland Jones, being first duly sworn, deposes and says the following:

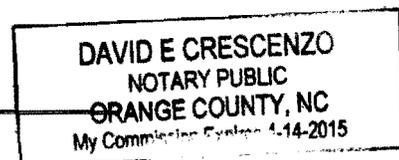
1. My name is Ryland Jones. I reside in Orange County, North Carolina at Apartment 12 D, 425 Hillsborough Street, Chapel Hill, NC 27514.
2. For the term of August 1, 2011, through July 31, 2012, I resided at 101 B Isley Street, Chapel Hill, NC 27516 pursuant to a lease agreement with James Kelley and Ware Investments, Inc. An accurate photocopy of that lease agreement is attached to this Affidavit as Exhibit 1.
3. Pursuant to my lease agreement (Exhibit 1, Paragraph 4), my father Randall O. Jones, for my benefit, tendered his personal check #1162 drawn on his USAA Federal Savings Bank made payable to "James Kelley Investments" in the sum of FIVE HUNDRED AND FIFTY DOLLARS (\$550.00) identified as "Deposit 101 B Isley St., CH, NC". An accurate photocopy of that check is attached to this Affidavit as Exhibit 2.
4. My lease ended on July 31, 2012 and, despite demands by me and my attorney, Dorothy C. Bernholz, James Kellely and Ware Investments, Inc. have failed to account for/or return the deposit monies. A accurate photocopy of the letter from my attorney, dated November 29, 2012, is attached to this Affidavit at Exhibit 3.
5. On the lease agreement attached to this Affidavit as Exhibit 1, James Kelley identified the following titles beneath is name: "Real Estate Investor & Mortgage Banker", which designations had the capacity to mislead me regarding his status as either a licensed real estate broker and/or mortgage broker.


RYLAND JONES

Sworn to and subscribed before me
This the 13th day on December , 2012.


NOTARY PUBLIC

My Commission Expires: 4/14/2015



RESIDENTIAL RENTAL CONTRACT

COPIES

RESIDENT: Anthony Beard & Ryland Jones ("Tenant")

OWNER: James Kelley & Ware Investments, LLC ("Landlord")

REAL ESTATE MANAGEMENT FIRM: ("Agent")

PREMISES: City: Chapel Hill, NC County: Orange State of North Carolina

- Street Address: 1613 Isley St Chapel Hill, NC 27516
Apartment Complex:
Other Description (Room, portion of above address, etc.):

INITIAL TERM: Beginning Date of Lease: 8/1/11 Ending Date of Lease: 7/31/12

RENT: \$ 1100.00 PAYMENT PERIOD: monthly weekly yearly other:

LATE PAYMENT FEE: \$ OR 5 % of rental payment, whichever is greater

SECURITY DEPOSIT: \$ 1100.00 to be deposited with: (check one) Landlord Agent

LOCATION OF DEPOSIT: (insert name of bank): First Citizens Bank Chapel Hill, NC
BANK ADDRESS: Chapel Hill, NC

RETURNED CHECK FEE: \$ 25.00

SUMMARY EJECTMENT ADMINISTRATIVE FEE (see paragraph 17): \$

PETS: PETS NOT ALLOWED PETS ALLOWED NONREFUNDABLE PET FEE (if pets allowed): \$ 200.00

TYPE OF PET PERMITTED (if pets allowed):

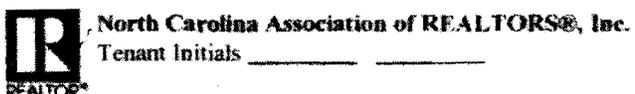
PERMITTED OCCUPANTS (in addition to Tenant): Anthony Beard & Ryland Jones

IN CONSIDERATION of the promises contained in this Agreement, Landlord, by and through Agent, hereby agrees to lease the Premises to Tenant on the following terms and conditions:

1. Termination and Renewal: Either Landlord or Tenant may terminate the tenancy at the expiration of the Initial Term by giving written notice to the other at least 30 days prior to the expiration date of the Initial Term. In the event such written notice is not given or if the Tenant holds over beyond the Initial Term, the tenancy shall automatically become a Month (period) to Month (period) tenancy upon the same terms and conditions contained herein and may thereafter be terminated by either Landlord or Tenant giving the other 30 days written notice prior to the last day of the then current period of the tenancy.

2. Rent: Tenant shall pay the Rent, without notice, demand or deduction, to Landlord or as Landlord directs. The first Rent payment, which shall be prorated if the Initial Term commences on a day other than the first day of the Payment Period, shall be due on 8/1/11 (date). Thereafter, all rentals shall be paid in advance on or before the FIRST day of each subsequent Payment Period for the duration of the tenancy.

3. Late Payment Fees and Returned Check Fees: Tenant shall pay the Late Payment Fee if any rental payment is not received by midnight on the fifth (5th) day after it is due. This late payment fee shall be due immediately without demand therefor and shall be added to and paid with the late rental payment. Tenant also agrees to pay the Returned Check Fee for each check of Tenant that is returned by the financial institution because of insufficient funds or because the Tenant did not have an account at the financial institution.



STANDARD FORM #1 Exhibit 1
© 7/2004

James W. Kelley 1613D Isley St. Chapel Hill, NC 27516
Phone: 919.605.3444 Fax: 703.995.0470

T4977803 ZFX

4. **Tenant Security Deposit:** The Security Deposit shall be administered in accordance with the North Carolina Tenant Security Deposit Act (N.C.G.S. § 42-50 et. seq.). IT MAY, IN THE DISCRETION OF EITHER THE LANDLORD OR THE AGENT, BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT WITH THE BANK OR SAVINGS INSTITUTION NAMED ABOVE. ANY INTEREST EARNED UPON THE TENANT SECURITY DEPOSIT SHALL ACCRUE FOR THE BENEFIT OF, AND SHALL BE PAID TO, THE LANDLORD, OR AS THE LANDLORD DIRECTS. SUCH INTEREST, IF ANY, MAY BE WITHDRAWN BY LANDLORD OR AGENT FROM SUCH ACCOUNT AS IT ACCRUES AS OFTEN AS IS PERMITTED BY THE TERMS OF THE ACCOUNT.

Upon any termination of the tenancy herein created, the Landlord may deduct from the Tenant Security Deposit amounts sufficient to pay: (1) any damages sustained by the Landlord as a result of the Tenant's nonpayment of rent or nonfulfillment of the Initial Term or any renewal periods, including the Tenant's failure to enter into possession; (2) any damages to the Premises for which the Tenant is responsible; (3) any unpaid bills which become a lien against the Premises due to the Tenant's occupancy; (4) any costs of re-creating the Premises after a breach of this lease by the Tenant; (5) any court costs incurred by the Landlord in connection with terminating the tenancy; and (6) any other damages of the Landlord which may then be a permitted use of the Tenant Security Deposit under the laws of this State. No fees may be deducted from the Tenant Security Deposit until the termination of the tenancy. After having deducted the above amounts, the Landlord shall, if the Tenant's address is known to him, refund to the Tenant, within thirty (30) days after the termination of the tenancy and delivery of possession, the balance of the Tenant Security Deposit along with an itemized statement of any deductions. If there is more than one person listed above as Tenant, Agent may, in Agent's discretion, pay said balance to any such person, and the other person(s) agree to hold Agent harmless for such action. If the Tenant's address is unknown to the Landlord, the Landlord may deduct the above amounts and shall then hold the balance of the Tenant Security Deposit for the Tenant's collection for a six-month period beginning upon the termination of the tenancy and delivery of possession by the Tenant. If the Tenant fails to make demand for the balance of the Tenant Security Deposit within the six-month period, the Landlord shall not thereafter be liable to the Tenant for a refund of the Tenant Security Deposit or any part thereof.

If the Landlord removes Agent or Agent resigns, the Tenant agrees that Agent may transfer any Tenant Security Deposit held by Agent hereunder to the Landlord or the Landlord's designee and thereafter notify the Tenant by mail of such transfer and of the transferee's name and address. The Tenant agrees that such action by Agent shall relieve Agent of further liability with respect to the Tenant Security Deposit. If Landlord's interest in the Premises terminates (whether by sale, assignment, death, appointment of receiver or otherwise), Agent shall transfer the Tenant Security Deposit in accordance with the provisions of North Carolina General Statutes § 42-54.

5. **Tenant's Obligations:** Unless otherwise agreed upon, the Tenant shall:

- (a) use the Premises for residential purposes only and in a manner so as not to disturb the other tenants;
- (b) not use the Premises for any unlawful or immoral purposes or occupy them in such a way as to constitute a nuisance;
- (c) keep the Premises, including but not limited to all plumbing fixtures, facilities and appliances, in a clean and safe condition;
- (d) cause no unsafe or unsanitary condition in the common areas and remainder of the Premises used by him;
- (e) comply with any and all obligations imposed upon tenants by applicable building and housing codes;
- (f) dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner and comply with all applicable ordinances concerning garbage collection, waste and other refuse;
- (g) use in a proper and reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, if any, furnished as a part of the Premises;
- (h) not deliberately or negligently destroy, deface, damage or remove any part of the Premises (including all facilities, appliances and fixtures) or permit any person, known or unknown to the Tenant, to do so;
- (i) pay the costs of all utility services to the Premises which are billed directly to the Tenant and not included as a part of the rentals, including, but not limited to, water, electric, telephone, and gas services;
- (j) conduct himself and require all other persons on the Premises with his consent to conduct themselves in a reasonable manner and so as not to disturb other tenants' peaceful enjoyment of the Premises; and
- (k) not abandon or vacate the Premises during the Initial Term or any renewals or extensions thereof. Tenant shall be deemed to have abandoned or vacated the Premises if Tenant removes substantially all of his possessions from the Premises.
- (l) _____

6. **Landlord's Obligations:** Unless otherwise agreed upon, the Landlord shall:

- (a) comply with the applicable building and housing codes to the extent required by such building and housing codes;
- (b) make all repairs to the Premises as may be necessary to keep the Premises in a fit and habitable condition; provided, however, in accordance with paragraph 10, the Tenant shall be liable to the Landlord for any repairs necessitated by the Tenant's intentional or negligent misuse of the Premises;

(c) keep all common areas, if any, used in conjunction with the Premises in a clean and safe condition; and
(d) promptly repair all facilities and appliances, if any, as may be furnished by the Landlord as part of the Premises, including electrical, plumbing, sanitary, heating, ventilating, and air conditioning systems, provided that the Landlord, except in emergency situations, actually receives notification from the Tenant in writing of the needed repairs.

7. **Smoke Detectors:** Pursuant to North Carolina General Statutes § 42-42 and 42-43, the Landlord shall provide and install operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval. The Tenant shall notify the Landlord, in writing, of the need for replacement of or repairs to a smoke detector. The Landlord shall replace or repair the smoke detectors within 15 days of receipt of notification if the Landlord is notified of needed replacement or repairs in writing by the Tenant. The Landlord shall ensure that a smoke detector is operable and in good repair at the beginning of the Initial Term of the tenancy. The Landlord shall place new batteries in any battery-operated smoke detectors at the beginning of the Initial Term of the tenancy; **the Tenant shall replace the batteries as needed during the tenancy.**

8. **Rules and Regulations:** The Tenant, his family, servants, guests and agents shall comply with and abide by all the Landlord's existing rules and regulations and such future reasonable rules and regulations as the Landlord may, at Landlord's discretion, from time to time, adopt governing the use and occupancy of the Premises and any common areas used in connection with them (the "Rules and Regulations"). Landlord reserves the right to make changes to the existing Rules and Regulations and to adopt additional reasonable rules and regulations from time to time; provided however, such changes and additions shall not alter the essential terms of this lease or any substantive rights granted hereunder and shall not become effective until thirty (30) days' written notice thereof shall have been furnished to Tenant. Tenant also agrees to abide by any applicable homeowners' association regulations as they now exist or may be amended. A copy of the existing Rules and Regulations, and any applicable homeowners' association regulations, are attached hereto and the Tenant acknowledges that he has read them. The Rules and Regulations shall be deemed to be a part of this lease giving to the Landlord all the rights and remedies herein provided.

9. **Right of Entry:** Landlord hereby reserves the right to enter the Premises during reasonable hours for the purpose of (1) inspecting the Premises and the Tenant's compliance with the terms of this lease; (2) making such repairs, alterations, improvements or additions thereto as the Landlord may deem appropriate; and (3) showing the Premises to prospective purchasers or tenants. Landlord shall also have the right to display "For Sale" or "For Rent" signs in a reasonable manner upon the Premises.

10. **Damages:** Tenant shall be responsible for and liable to the Landlord for all damage to, defacement of, or removal of property from the Premises whatever the cause, except such damage, defacement or removal caused by ordinary wear and tear, acts of the Landlord, his agent, or of third parties not invitees of the Tenant, and natural forces. Tenant agrees to pay Landlord for the cost of repairing any damage for which Tenant is responsible upon receipt of Landlord's demand therefor, and to pay the Rent during the period the Premises may not be habitable as a result of any such damage.

11. **Pets:** If pets are not allowed, Tenant agrees not to keep or allow anywhere on or about the Property any animals or pets of any kind, including but not limited to, dogs, cats, birds, rodents, reptiles or marine animals. If pets are allowed, Tenant acknowledges that the amount of the Pet Fee is reasonable and agrees that the Landlord shall not be required to refund the Pet Fee in whole or in part. If pets are allowed, Tenant agrees to reimburse Landlord for any primary or secondary damages caused thereby whether the damage is to the Premises or to any common areas used in conjunction with them, and to indemnify Landlord from any liability to third parties which may result from Tenant's keeping of such pet or pets.

The Tenant shall remove any pet previously permitted within 48 hours of written notification from the Landlord that the pet, in the Landlord's sole judgment, creates a nuisance or disturbance or is, in the Landlord's opinion, undesirable. If the pet is caused to be removed pursuant to this paragraph, the Landlord shall not be required to refund the Pet Fee; however, the Tenant shall be entitled to acquire and keep another pet of the type previously authorized.

12. **Alterations:** The Tenant shall not paint, mark, drive nails or screws into, or otherwise deface or alter walls, ceilings, floors, windows, cabinets, woodwork, stone, ironwork or any other part of the Premises or decorate the Premises or make any alterations, additions, or improvements in or to the Premises without the Landlord's prior written consent and then only in a workmanlike manner using materials and contractors approved by the Landlord. All such work shall be done at the Tenant's expense and at such times and in such manner as the Landlord may approve. All alterations, additions, and improvements upon the Premises, made by either the Landlord or Tenant, shall become the property of the Landlord and shall remain upon and become a part of the Premises at the end of the tenancy hereby created.

13. **Occupants:** The Tenant shall not allow or permit the Premises to be occupied or used as a residence by any person other than Tenant and the Permitted Occupants.

14. **Rental Application:** In the event the Tenant has submitted a Rental Application in connection with this lease, Tenant acknowledges that the Landlord has relied upon the Application as an inducement for entering into this Lease and Tenant warrants to Landlord that the facts stated in the Application are true to the best of Tenant's knowledge. If any facts stated in the Rental Application prove to be untrue, the Landlord shall have the right to terminate the tenancy and to collect from Tenant any damages resulting therefrom.

15. **Termination for Military Transfer:** If Tenant is a member of the United States Armed Forces who (i) has received permanent change of station orders to move fifty (50) miles or more from the Premises or (ii) is prematurely or involuntarily discharged or relieved from active duty with the United States Armed Forces, Tenant may terminate this lease by written notice of

termination to Landlord stating the effective date of such termination, which date shall not be less than thirty (30) days after receipt of notice by Landlord, provided such notice is accompanied by a copy of the official orders of such transfer, discharge or release from active duty or a written verification signed by the Tenant's Commanding Officer. The final rent due by Tenant shall be prorated to such date of termination and shall be payable, together with liquidated damages in the amount of: (a) one (1) month's rent for the premises, if less than six (6) months of the term of the lease have elapsed as of the effective date of termination, or (b) the amount of one-half (1/2) of one (1) month's rent, if more than six (6) months but less than nine (9) months of the term of the lease have elapsed as of the effective date of such termination; provided, however, no liquidated damages shall be due unless Tenant has completed less than nine (9) months of the tenancy and Landlord has suffered actual damage due to the loss of the tenancy. Upon Tenant's compliance with all the requirements of this paragraph, Landlord shall release Tenant from all obligations hereunder and this lease shall terminate. The Tenant Security Deposit shall be returned, subject to the provisions of paragraph 4 above.

16. Tenant's Duties Upon Term Ination: Upon any termination of the Tenancy created hereby, whether by the Landlord or the Tenant and whether for breach or otherwise, the Tenant shall: (1) pay all utility bills due for services to the Premises for which he is responsible and have all such utility services discontinued; (2) vacate the Premises removing therefrom all Tenant's personal property of whatever nature; (3) properly sweep and clean the Premises, including plumbing fixtures, refrigerators, stoves and sinks, removing therefrom all rubbish, trash, garbage and refuse; (4) make such repairs and perform such other acts as are necessary to return the Premises, and any appliances or fixtures furnished in connection therewith, in the same condition as when Tenant took possession of the Premises; provided, however, Tenant shall not be responsible for ordinary wear and tear or for repairs required by law or by paragraph 6 above to be performed by Landlord; (5) fasten and lock all doors and windows; (6) return to the Landlord all keys to the Premises; and (7) notify the Landlord of the address to which the balance of the Security Deposit may be returned. If the Tenant fails to sweep out and clean the Premises, appliances and fixtures as herein provided, Tenant shall become liable, without notice or demand, to the Landlord for the actual costs of cleaning (over and above ordinary wear and tear), which may be deducted from the Security Deposit as provided in paragraph 4 above.

17. Tenant's Default: In the event the Tenant shall fail to:

- (a) pay the rentals herein reserved as and when they shall become due hereunder; or
- (b) perform any other promise, duty or obligation herein agreed to by him or imposed upon him by law and such failure shall continue for a period of five (5) days from the date the Landlord provides Tenant with written notice of such failure,

then in either of such events and as often as either of them may occur, the Landlord, in addition to all other rights and remedies provided by law, may, at its option and with or without notice to Tenant, either (i) terminate this lease or (ii) terminate the Tenant's right to possession of the Premises without terminating this lease. Regardless of whether Landlord terminates this lease or only terminates the Tenant's right of possession without terminating this lease, Landlord shall be immediately entitled to possession of the Premises and the Tenant shall peacefully surrender possession of the Premises to Landlord immediately upon Landlord's demand. In the event Tenant shall fail or refuse to surrender possession of the Premises, Landlord shall, in compliance with Article 2A of Chapter 42 of the General Statutes of North Carolina, reenter and retake possession of the Premises only through a summary ejectment proceeding. If a summary ejectment proceeding is instituted against Tenant, in addition to any court costs and past-due rent that may be awarded, Tenant shall be responsible for paying Landlord the Summary Ejectment Administrative Fee, the amount of which shall be reasonably related to the additional expense in filing the proceeding. In the event Landlord terminates this lease, all further rights and duties hereunder shall terminate and Landlord shall be entitled to collect from Tenant all accrued but unpaid rents and any damages resulting from the Tenant's breach. In the event Landlord terminates the Tenant's right of possession without terminating this lease, Tenant shall remain liable for the full performance of all the covenants hereof, and Landlord shall use reasonable efforts to re-let the Premises on Tenant's behalf. Any such rentals reserved from such re-letting shall be applied first to the costs of re-letting the Premises and then to the rentals due hereunder. In the event the rentals from such re-letting are insufficient to pay the rentals due hereunder in full, Tenant shall be liable to the Landlord for any deficiency. In the event Landlord institutes a legal action against the Tenant to enforce the lease or to recover any sums due hereunder, Tenant agrees to pay Landlord reasonable attorney's fees in addition to all other damages. No fees may be deducted from the Tenant Security Deposit until the termination of the tenancy.

18. Landlord's Default; Limitation of Remedies and Damages: Until the Tenant notifies the Landlord in writing of an alleged default and affords the Landlord a reasonable time within which to cure, no default by the Landlord in the performance of any of the promises or obligations herein agreed to by him or imposed upon him by law shall constitute a material breach of this lease and the Tenant shall have no right to terminate this lease for any such default or suspend his performance hereunder. In no event and regardless of their duration shall any defective condition of or failure to repair, maintain, or provide any area, fixture or facility used in connection with recreation or recreational activities, including but not limited to swimming pools, club houses, and tennis courts, constitute a material breach of this lease and the Tenant shall have no right to terminate this lease or to suspend his performance hereunder. In any legal action instituted by the Tenant against the Landlord, the Tenant's damages shall be limited to the difference, if any, between the rent reserved in this lease and the reasonable rental value of the Premises, taking into account the Landlord's breach or breaches, and in no event, except in the case of the Landlord's willful or wanton negligence, shall the Tenant collect any consequential or secondary damages resulting from the breach or breaches, including but not limited to the following items: damage or destruction of furniture or other personal property of any kind located in or about the Premises, moving expenses, storage expenses, alternative interim housing expenses, and expenses of locating and procuring alternative housing.

Tenant Initials _____

19. Removal, Storage and Disposition of Tenant's Personal Property:

(a) Ten days after being placed in lawful possession by execution of a writ of possession, the Landlord may throw away, dispose of, or sell all items of personal property remaining on the Premises. During the 10-day period after being placed in lawful possession by execution of a writ of possession, the Landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the Premises unless otherwise provided for in Chapter 42 of the North Carolina General Statutes. Upon the Tenant's request prior to the expiration of the 10-day period, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon. If the Landlord elects to sell the property at public or private sale, the Landlord shall give written notice to the Tenant by first-class mail to the Tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the Tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the Tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the Tenant's request prior to the day of sale, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon. The Landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the Tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located.

(b) If the total value of all property remaining on the Premises at the time of execution of a writ of possession in an action for summary ejectment is less than one hundred dollars (\$100.00), then the property shall be deemed abandoned five days after the time of execution, and the Landlord may throw away or dispose of the property. Upon the Tenant's request prior to the expiration of the five-day period, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon.

20. Bankruptcy: If any bankruptcy or insolvency proceedings are filed by or against the Tenant or if the Tenant makes any assignment for the benefit of creditors, the Landlord may, at his option, immediately terminate this Tenancy, and reenter and repossess the Premises, subject to the provisions of the Bankruptcy Code (11 USC Section 101, et. seq.) and the order of any court having jurisdiction thereunder.

21. Tenant's Insurance; Release and Indemnity Provisions: The Tenant shall be solely responsible for insuring any of his personal property located or stored upon the Premises upon the risks of damage, destruction, or loss resulting from theft, fire, storm and all other hazards and casualties. Regardless of whether the Tenant secures such insurance, the Landlord and his agents shall not be liable for any damage to, or destruction or loss of, any of the Tenant's personal property located or stored upon the Premises regardless of the cause or causes of such damage, destruction, or loss, unless such loss or destruction is attributable to the intentional acts or willful or wanton negligence of the Landlord. The Tenant agrees to release and indemnify the Landlord and his agents from and against liability for injury to the person of the Tenant or to any members of his household resulting from any cause whatsoever except only such personal injury caused by the negligent, or intentional acts of the Landlord or his agents.

22. Agent: The Landlord and the Tenant acknowledge that the Landlord may, from time to time in his discretion, engage a third party ("the Agent") to manage, supervise and operate the Premises or the complex, if any, of which they are a part. If such an Agent is managing, supervising and operating the Premises at the time this lease is executed, his name will be shown as "Agent" on the first page hereof. With respect to any Agent engaged pursuant to this paragraph, the Landlord and the Tenant hereby agree that: (1) Agent acts for and represents Landlord in this transaction; (2) Agent shall have only such authority as provided in the management contract existing between the Landlord and Agent; (3) Agent may perform without objection from the Tenant, any obligation or exercise any right of the Landlord imposed or given herein or by law and such performance shall be valid and binding, if authorized by the Landlord, as if performed by the Landlord; (4) the Tenant shall pay all rentals to the Agent if directed to do so by the Landlord; (5) except as otherwise provided by law, the Agent shall not be liable to the Tenant for the nonperformance of the obligations or promises of the Landlord contained herein; (6) nothing contained herein shall modify the management contract existing between the Landlord and the Agent; however, the Landlord and the Agent may from time to time modify the management agreement in any manner which they deem appropriate; (7) the Landlord, may, in his discretion and in accordance with any management agreement, remove without replacing or remove and replace any agent engaged to manage, supervise and operate the Premises.

23. Form: The Landlord and Tenant hereby acknowledge that their agreement is evidenced by this form contract which may contain some minor inaccuracies when applied to the particular factual setting of the parties. The Landlord and Tenant agree that the courts shall liberally and broadly interpret this lease, ignoring minor inconsistencies and inaccuracies, and that the courts shall apply the lease to determine all disputes between the parties in the manner which most effectuates their intent as expressed herein. The following rules of construction shall apply: (1) handwritten and typed additions or alterations shall control over the preprinted language when there is an inconsistency between them; (2) the lease shall not be strictly construed against either the Landlord or the Tenant; (3) paragraph headings are used only for convenience of reference and shall not be considered as a substantive part of this lease; (4) words in the singular shall include the plural and the masculine shall include the feminine and neuter genders, as appropriate; and (5) the invalidity of one or more provisions of this lease shall not affect the validity of any other provisions hereof and this lease shall be construed and enforced as if such invalid provision(s) were not included.

24. **Amendment of Laws:** In the event that subsequent to the execution of this lease any state statute regulating or affecting any duty or obligation imposed upon the Landlord pursuant to this lease is enacted, amended, or repealed, the Landlord may, at his option, elect to perform in accordance with such statute, amendment, or act of repeal in lieu of complying with the analogous provision of this lease.

25. **Eminent Domain and Casualties:** The Landlord shall have the option to terminate this lease if the Premises, or any part thereof, are condemned or sold in lieu of condemnation or damaged by fire or other casualty.

26. **Assignment:** The Tenant shall not assign this lease or sublet the Premises in whole or part.

27. **Waiver:** No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise.

28. **Other Terms and Conditions:**

(a) (Check if applicable) The Premises were built prior to 1978. (Attach Standard Form # 430 - T, "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards.")

(b) If there is an Agent involved in this transaction, Agent hereby discloses to Tenant that Agent is acting for and represents Landlord.

(c) The following additional terms and conditions shall also be a part of this lease:

(d) Itemize all addenda to this Contract and attach hereto: _____

29. **Inspection of Premises:** Within 3 days of occupying the Premises, Tenant has the right to inspect the Premises and complete a Move-in Inspection Form.

30. **Notice:** Any notices required or authorized to be given hereunder or pursuant to applicable law shall be mailed or hand delivered to the following addresses:

Tenant: the address of the Premises

Landlord: the address of which rental payments are sent.

31. **Execution; Counterparts:** When Tenant signs this lease, he acknowledges he has read and agrees to the provisions of this lease. This lease is executed in 1 (number) counterparts with an executed counterpart being retained by each party.

32. **Entire Agreement:** This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

TENANT:

LANDLORD:

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

_____ (SEAL)

Date: _____

By: _____, AGENT

_____ (SEAL)

James W Kelley

Date: _____

Real Estate Investor & Mortgage Banker



103 Isley St.
Suite D
Chapel Hill, NC 27516
319.605.3444
703.995.0470 fax

1stCap@msn.com

RANDAL O JONES *Ryland Jones -* **1162**
 SPECIAL
 4903 OAK HILL RD
 CHAPEL HILL, NC 27514-9055
 Date *18 March 2011* 30-7026/3140

Pay to the Order of **JAMES KELLEY INVESTMENTS** \$ **550.00**
five hundred fifty Dollars

USAA FEDERAL SAVINGS BANK
 18/50 McDERMOTT FWY
 SAN ANTONIO, TEXAS 78260-0544
 (210) 458-8800 1-800-832-3724

Deposit 101 B Isley St. Ft. Worth, TX

1162

AccountNum: [REDACTED]
 Amount: 550.00
 CheckNum: 1162
 Tracer: [REDACTED]
 Routing: [REDACTED]
 DatePosted: 20110323

21 009 118 018245488 20110323 101

For Deposit Only
Ware Investments, LLC

AccountNum: [REDACTED]
 Amount: 550.00
 CheckNum: 1162
 Tracer: [REDACTED]
 Routing: [REDACTED]
 DatePosted: 20110323

Carolina Student Legal Services, Inc.
Carolina Union Building, CB #5210
University of North Carolina
Chapel Hill, North Carolina 27514
Suite 3512

DOROTHY C. BERNHOLZ
CAROL BADGETT
DAVID E. CRESCENZO

ATTORNEYS AT LAW

MAILING ADDRESS
POST OFFICE BOX 1312
CHAPEL HILL, NC 27514

(919) 962-1303
(919) 962-5875 FAX

November 29, 2012

James W. Kelley
103D Isley Street
Chapel Hill, NC 27514

VIA US MAIL AND EMAIL

Re: Anthony Beard and Ryland Jones, former tenants 101 B Isley Street

Dear Mr. Kelley:

I represent Mr. Beard and Mr. Jones, referenced above, for the purpose of recovering the full amount of their \$1,100.00 security deposit. My clients have informed me that their lease terminated on July 31, 2012, and that you have failed to account for and/or return their monies in violation of the North Carolina Tenant Security Deposit Act.

In addition, I note that you have indicated on your lease the following nomenclature: "Real Estate Investment and Mortgage Banker." I have been unable to determine whether any regulatory body in North Carolina licenses you. I respectfully request that you offer an explanation for why you indicate those designations on your lease with my clients. In addition, I note that you identify "Ware Investments, LLC" as the owner/landlord. The records registered with the NC Secretary of State indicate that this corporation has been administratively dissolved. Please explain why you continue to represent that this business entity is a party to the lease.

Please contact me immediately regarding your position on this matter. If I have not heard from you on or before December 3, 2012, I will advise my clients to pursue their legal remedies pursuant to North Carolina and federal law.

Sincerely,

Dorothy C. Bernholz


Exhibit 3

NORTH CAROLINA

ORANGE COUNTY

AFFIDAVIT OF ERIN HAWLEY

Erin Hawley, being first duly sworn, deposes and says the following:

1. My name is Erin Hawley. I reside in Orange County, North Carolina at 105 B Isley Street, Chapel Hill, NC 27516.
2. On November 11, 2011, I entered into a lease for the premises described above for the term of August 1, 2012 through July 31, 2013. James Kelley and Ware Investments, LLC are identified in that lease as "owner" "landlord." An accurate photocopy of that lease agreement is attached to this Affidavit as Exhibit 1.
3. On November 15, 2011, I wrote a personal check in the total sum of ONE THOUSAND FOUR HUNDRED AND TEN DOLLARS (\$1,410.00) on my Bank of America account #237015121750 maintained by my mother and myself. My check #1012 was deposit into an account #005002155711 under the endorsement "Ware Investments, LLC." An accurate copy of the back and front of that check was provided to me by the Bank of America and is attached to this Affidavit as Exhibit 2.
4. I am informed by former tenants of James Kelley that he has a reputation for withholding tenants' security deposits. I am concerned about the security of my funds due to be held in trust until the termination of my lease agreement with James Kelley due to occur on July 31, 2013.

Erin Hawley

 ERIN HAWLEY

Sworn to and subscribed before me
 This the 13th day on December , 2012.

[Signature]

 NOTARY PUBLIC

My Commission Expires: 4/14/2015

DAVID E. RESCENZO
 NOTARY PUBLIC
 ORANGE COUNTY, NC
 My Commission Expires 4-14-2015

PLAINTIFF'S
 EXHIBIT
3

RESIDENTIAL RENTAL CONTRACT

RESIDENT: Eric Hausberg, Patrick Eckman, Daniela Bolinski ("Tenant")
OWNER: James Kelley, Wade Investments, LLC ("Landlord")

REAL ESTATE MANAGEMENT FIRM: _____ ("Agent")

PREMISES City: Chapel Hill, NC County: Orange State of North Carolina
Street Address: 1606 Finken St, Chapel Hill, NC 27516 Apartment No. _____
 Apartment Complex: _____
 Other Description (Room, portion of above address, etc.): _____

INITIAL TERM: Beginning Date of Lease: 8/1/12 Ending Date of Lease: 7/31/13

RENT: \$ 1410.00 PAYMENT PERIOD: monthly weekly yearly other: _____

LATE PAYMENT FEE: \$ _____ OR 5 % of rental payment, whichever is greater

SECURITY DEPOSIT: \$ 1410.00 to be deposited with: (check one) Landlord Agent
LOCATION OF DEPOSIT: (insert name of bank): First Citizens Bank, Chapel Hill, NC
BANK ADDRESS: Chapel Hill, NC

RETURNED CHECK FEE: \$ 25.00
SUMMARY EJECTMENT ADMINISTRATIVE FEE (see paragraph 17): \$ 125.00

PETS: PETS NOT ALLOWED PETS ALLOWED NONREFUNDABLE PET FEE (if pets allowed): \$ 200.00
TYPE OF PET PERMITTED (if pets allowed): _____

PERMITTED OCCUPANTS (in addition to Tenant): _____

IN CONSIDERATION of the promises contained in this Agreement, Landlord, by and through Agent, hereby agrees to lease the Premises to Tenant on the following terms and conditions:

1. Termination and Renewal: Either Landlord or Tenant may terminate the tenancy at the expiration of the Initial Term by giving written notice to the other at least 30 days prior to the expiration date of the Initial Term. In the event such written notice is not given or if the Tenant holds over beyond the Initial Term, the tenancy shall automatically become a Month (period) to Month (period) tenancy upon the same terms and conditions contained herein and may thereafter be terminated by either Landlord or Tenant giving the other 30 days written notice prior to the last day of the then current period of the tenancy.
 2. Rent: Tenant shall pay the Rent, without notice, demand or deduction, to Landlord or as Landlord directs. The first Rent payment, which shall be provided if the Initial Term commences on a day other than the first day of the Payment Period, shall be due on 8/1/12 (date). Thereafter, all rentals shall be paid in advance on or before the FIRST day of each subsequent Payment Period for the duration of the tenancy.
 3. Late Payment Fees and Returned Check Fee: Tenant shall pay the Late Payment Fee if any rental payment is not received by midnight on the fifth (5th) day after it is due. This late payment fee shall be due immediately without demand therefor and shall be added to and paid with the late rental payment. Tenant also agrees to pay the Returned Check Fee for each check that is returned by the financial institution because of insufficient funds or because the Tenant did not have an account at the institution.

Exhibit 1



North Carolina Association of REALTORS®, Inc.
Tenant Initials _____



STANDARD FORM 490-T
07/2004

James W. Kelley 1030 Liberty St. Chapel Hill, NC 27516
Phone: 919.602.3444 Fax: 703.925.0470

Proceed with Performance! In the Event of a Dispute, Call the Office of the State Bar of North Carolina at 1-800-333-3333

T9077003 ZTX

4. **Tenant Security Deposit:** The Security Deposit shall be administered in accordance with the North Carolina Tenant Security Deposit Act (N.C.G.S. § 42-50 et. seq.). IT MAY, IN THE DISCRETION OF EITHER THE LANDLORD OR THE AGENT, BE DEPOSITED IN AN INTEREST-BEARING ACCOUNT WITH THE BANK OR SAVINGS INSTITUTION NAMED ABOVE. ANY INTEREST EARNED UPON THE TENANT SECURITY DEPOSIT SHALL ACCRUE FOR THE BENEFIT OF, AND SHALL BE PAID TO, THE LANDLORD, OR AS THE LANDLORD DIRECTS. SUCH INTEREST, IF ANY, MAY BE WITHDRAWN BY LANDLORD OR AGENT FROM SUCH ACCOUNT AS IT ACCRUES AS OFTEN AS IS PERMITTED BY THE TERMS OF THE ACCOUNT.

Upon any termination of the tenancy herein created, the Landlord may deduct from the Tenant Security Deposit amounts sufficient to pay: (1) any damages sustained by the Landlord as a result of the Tenant's nonpayment of rent or nonfulfillment of the Initial Term or any renewal periods, including the Tenant's failure to enter into possession; (2) any damages to the Premises for which the Tenant is responsible; (3) any unpaid bills which become a lien against the Premises due to the Tenant's occupancy; (4) any costs of re-renting the Premises after a breach of this lease by the Tenant; (5) any court costs incurred by the Landlord in connection with terminating the tenancy; and (6) any other damages of the Landlord which may then be a permitted use of the Tenant Security Deposit under the laws of this State. No fees may be deducted from the Tenant Security Deposit until the termination of the tenancy. After having deducted the above amounts, the Landlord shall, if the Tenant's address is known to him, refund to the Tenant, within thirty (30) days after the termination of the tenancy and delivery of possession, the balance of the Tenant Security Deposit along with an itemized statement of any deductions. If there is more than one person listed above as Tenant, Agent may, in Agent's discretion, pay said balance to any such person, and the other person(s) agree to hold Agent harmless for such action. If the Tenant's address is unknown to the Landlord, the Landlord may deduct the above amounts and shall then hold the balance of the Tenant Security Deposit for the Tenant's collection for a six-month period beginning upon the termination of the tenancy and delivery of possession by the Tenant. If the Tenant fails to make demand for the balance of the Tenant Security Deposit within the six-month period, the Landlord shall not thereafter be liable to the Tenant for a refund of the Tenant Security Deposit or any part thereof.

If the Landlord removes Agent or Agent resigns, the Tenant agrees that Agent may transfer any Tenant Security Deposit held by Agent hereunder to the Landlord or the Landlord's designee and thereafter notify the Tenant by mail of such transfer and of the transferee's name and address. The Tenant agrees that such action by Agent shall relieve Agent of further liability with respect to the Tenant Security Deposit. If Landlord's interest in the Premises terminates (whether by sale, assignment, death, appointment of receiver or otherwise), Agent shall transfer the Tenant Security Deposit in accordance with the provisions of North Carolina General Statutes § 42-54.

5. **Tenant's Obligations:** Unless otherwise agreed upon, the Tenant shall:

- (a) use the Premises for residential purposes only and in a manner so as not to disturb the other tenants;
- (b) not use the Premises for any unlawful or immoral purposes or occupy them in such a way as to constitute a nuisance;
- (c) keep the Premises, including but not limited to all plumbing fixtures, facilities and appliances, in a clean and safe condition;
- (d) cause no unsafe or unsanitary condition in the common areas and remainder of the Premises used by him;
- (e) comply with any and all obligations imposed upon tenants by applicable building and housing codes;
- (f) dispose of all ashes, rubbish, garbage, and other waste in a clean and safe manner and comply with all applicable ordinances concerning garbage collection, waste and other refuse;
- (g) use in a proper and reasonable manner all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances, if any, furnished as a part of the Premises;
- (h) not deliberately or negligently destroy, deface, damage or remove any part of the Premises (including all facilities, appliances and fixtures) or permit any person, known or unknown to the Tenant, to do so;
- (i) pay the costs of all utility services to the Premises which are billed directly to the Tenant and not included as a part of the rentals, including, but not limited to, water, electric, telephone, and gas services;
- (j) conduct himself and require all other persons on the Premises with his consent to conduct themselves in a reasonable manner and so as not to disturb other tenants' peaceful enjoyment of the Premises; and
- (k) not abandon or vacate the Premises during the Initial Term or any renewals or extensions thereof. Tenant shall be deemed to have abandoned or vacated the Premises if Tenant removes substantially all of his possessions from the Premises.
- (l) _____

6. **Landlord's Obligations:** Unless otherwise agreed upon, the Landlord shall:

- (a) comply with the applicable building and housing codes to the extent required by such building and housing codes;
- (b) make all repairs to the Premises as may be necessary to keep the Premises in a fit and habitable condition; provide however, in accordance with paragraph 10, the Tenant shall be liable to the Landlord for any repairs necessitated by the Tenant's intentional or negligent misuse of the Premises;

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(c) keep all common areas, if any, used in conjunction with the Premises in a clean and safe condition; and
(d) promptly repair all facilities and appliances, if any, as may be furnished by the Landlord as part of the Premises, including electrical, plumbing, sanitary, heating, ventilating, and air conditioning systems, provided that the Landlord, except in emergency situations, actually receives notification from the Tenant in writing of the needed repairs.

7. **Smoke Detectors:** Pursuant to North Carolina General Statutes § 42-42 and 42-43, the Landlord shall provide and install operable smoke detectors, either battery-operated or electrical, having an Underwriters' Laboratories, Inc., listing or other equivalent national testing laboratory approval. The Tenant shall notify the Landlord, in writing, of the need for replacement of or repairs to a smoke detector. The Landlord shall replace or repair the smoke detectors within 15 days of receipt of notification if the Landlord is notified of needed replacement or repairs in writing by the Tenant. The Landlord shall ensure that a smoke detector is operable and in good repair at the beginning of the Initial Term of the tenancy. The Landlord shall place new batteries in any battery-operated smoke detectors at the beginning of the Initial Term of the tenancy; the Tenant shall replace the batteries as needed during the tenancy.

8. **Rules and Regulations:** The Tenant, his family, servants, guests and agents shall comply with and abide by all the Landlord's existing rules and regulations and such future reasonable rules and regulations as the Landlord may, at Landlord's discretion, from time to time, adopt governing the use and occupancy of the Premises and any common areas used in connection with them (the "Rules and Regulations"). Landlord reserves the right to make changes to the existing Rules and Regulations and to adopt additional reasonable rules and regulations from time to time; provided however, such changes and additions shall not alter the essential terms of this lease or any substantive rights granted hereunder and shall not become effective until thirty (30) days' written notice thereof shall have been furnished to Tenant. Tenant also agrees to abide by any applicable homeowner's association regulations as they now exist or may be amended. A copy of the existing Rules and Regulations, and any applicable homeowner's association regulations, are attached hereto and the Tenant acknowledges that he has read them. The Rules and Regulations shall be deemed to be a part of this lease giving to the Landlord all the rights and remedies herein provided.

9. **Right of Entry:** Landlord hereby reserves the right to enter the Premises during reasonable hours for the purpose of (1) inspecting the Premises and the Tenant's compliance with the terms of this lease; (2) making such repairs, alterations, improvements or additions thereto as the Landlord may deem appropriate; and (3) showing the Premises to prospective purchasers or tenants. Landlord shall also have the right to display "For Sale" or "For Rent" signs in a reasonable manner upon the Premises.

10. **Damages:** Tenant shall be responsible for and liable to the Landlord for all damage to, defacement of, or removal of property from the Premises whatever the cause, except such damage, defacement or removal caused by ordinary wear and tear, acts of the Landlord, his agent, or of third parties not invitees of the Tenant, and natural forces. Tenant agrees to pay Landlord for the cost of repairing any damage for which Tenant is responsible upon receipt of Landlord's demand therefor, and to pay the Rent during the period the Premises may not be habitable as a result of any such damage.

11. **Pets:** If pets are not allowed, Tenant agrees not to keep or allow anywhere on or about the Property any animals or pets of any kind, including but not limited to, dogs, cats, birds, rodents, reptiles or marine animals. If pets are allowed, Tenant acknowledges that the amount of the Pet Fee is reasonable and agrees that the Landlord shall not be required to refund the Pet Fee in whole or in part. If pets are allowed, Tenant agrees to reimburse Landlord for any primary or secondary damages caused thereby whether the damage is to the Premises or to any common areas used in conjunction with them, and to indemnify Landlord from any liability to third parties which may result from Tenant's keeping of such pet ^{of} 2 hours of written notification from the Landlord that the pet, in the Landlord's sole judgment, creates a nuisance or disturbance or is, in the Landlord's opinion, undesirable. If the pet is caused to be removed pursuant to this paragraph, the Landlord shall not be required to refund the Pet Fee; however, the Tenant shall be entitled to acquire and keep another pet of the type previously authorized.

12. **Alterations:** The Tenant shall not paint, mark, drive nails or screws into, or otherwise deface or alter walls, ceilings, floors, windows, cabinets, woodwork, stone, ironwork or any other part of the Premises or decorate the Premises or make any alterations, additions, or improvements in or to the Premises without the Landlord's prior written consent and then only in a workmanlike manner using materials and contractors approved by the Landlord. All such work shall be done at the Tenant's expense and at such times and in such manner as the Landlord may approve. All alterations, additions, and improvements upon the Premises, made by either the Landlord or Tenant, shall become the property of the Landlord and shall remain upon and become a part of the Premises at the end of the tenancy hereby created.

13. **Occupancy:** The Tenant shall not allow or permit the Premises to be occupied or used as a residence by any person other than Tenant and the Permitted Occupants.

14. **Rental Application:** In the event the Tenant has submitted a Rental Application in connection with this lease, Tenant acknowledges that the Landlord has relied upon the Application as an inducement for entering into this Lease and Tenant warrants to Landlord that the facts stated in the Application are true to the best of Tenant's knowledge. If any facts stated in the Rental Application prove to be untrue, the Landlord shall have the right to terminate the tenancy and to collect from Tenant any damages resulting therefrom.

15. **Termination for Military Transfer:** If Tenant is a member of the United States Armed Forces who (i) has received permanent change of station orders to move fifty (50) miles or more from the Premises or (ii) is prematurely or involuntarily discharged or relieved from active duty with the United States Armed Forces, Tenant may terminate this lease by written notice of

Tenant Initials DA RE

termination to Landlord stating the effective date of such termination, which date shall not be less than thirty (30) days after receipt of notice by Landlord, provided such notice is accompanied by a copy of the official orders of such transfer, discharge or release from active duty or a written verification signed by the Tenant's Commanding Officer. The final rent due by Tenant shall be prorated to such date of termination and shall be payable, together with liquidated damages in the amount of: (a) one (1) month's rent for the premises, if less than six (6) months of the term of the lease have elapsed as of the effective date of termination, or (b) the amount of one-half (1/2) of one (1) month's rent, if more than six (6) months but less than nine (9) months of the term of the lease have elapsed as of the effective date of such termination; provided, however, no liquidated damages shall be due unless Tenant has completed less than nine (9) months of the tenancy and Landlord has suffered actual damage due to the loss of the tenancy. Upon Tenant's compliance with all the requirements of this paragraph, Landlord shall release Tenant from all obligations hereunder and this lease shall terminate. The Tenant Security Deposit shall be returned, subject to the provisions of paragraph 4 above.

16. **Tenant's Duties Upon Term Expiration:** Upon any termination of the Tenancy created hereby, whether by the Landlord or the Tenant and whether for breach or otherwise, the Tenant shall: (1) pay all utility bills due for services to the Premises for which he is responsible and have all such utility services discontinued; (2) vacate the Premises removing therefrom all Tenant's personal property of whatever nature; (3) properly sweep and clean the Premises, including plumbing fixtures, refrigerators, stoves and sinks, removing therefrom all rubbish, trash, garbage and refuse; (4) make such repairs and perform such other acts as are necessary to return the Premises, and any appliances or fixtures furnished in connection therewith, in the same condition as when Tenant took possession of the Premises; provided, however, Tenant shall not be responsible for ordinary wear and tear or for repairs required by law or by paragraph 6 above to be performed by Landlord; (5) fasten and lock all doors and windows; (6) return to the Landlord all keys to the Premises; and (7) notify the Landlord of the address to which the balance of the Security Deposit may be returned. If the Tenant fails to sweep out and clean the Premises, appliances and fixtures as herein provided, Tenant shall become liable, without notice or demand, to the Landlord for the actual costs of cleaning (over and above ordinary wear and tear), which may be deducted from the Security Deposit as provided in paragraph 4 above.

17. **Tenant's Default:** In the event the Tenant shall fail to:

- (a) pay the rentals herein reserved as and when they shall become due hereunder; or
- (b) perform any other promise, duty or obligation herein agreed to by him or imposed upon him by law and such failure shall continue for a period of five (5) days from the date the Landlord provides Tenant with written notice of such failure, then in either of such events and as often as either of them may occur, the Landlord, in addition to all other rights and remedies provided by law, may, at its option and with or without notice to Tenant, either (i) terminate this lease or (ii) terminate the Tenant's right to possession of the Premises without terminating this lease. Regardless of whether Landlord terminates this lease or only terminates the Tenant's right of possession without terminating this lease, Landlord shall be immediately entitled to possession of the Premises and the Tenant shall peacefully surrender possession of the Premises to Landlord immediately upon Landlord's demand. In the event Tenant shall fail or refuse to surrender possession of the Premises, Landlord shall, in compliance with Article 2A of Chapter 42 of the General Statutes of North Carolina, re-enter and retake possession of the Premises only through a summary ejectment proceeding. If a summary ejectment proceeding is instituted against Tenant, in addition to any court costs and past-due rent that may be awarded, Tenant shall be responsible for paying Landlord the Summary Ejectment Administrative Fee, the amount of which shall be reasonably related to the additional expense in filing the proceeding. In the event Landlord terminates this lease, all further rights and duties hereunder shall terminate and Landlord shall be entitled to collect from Tenant all accrued but unpaid rents and any damages resulting from the Tenant's breach. In the event Landlord terminates the Tenant's right of possession without terminating this lease, Tenant shall remain liable for the full performance of all the covenants hereof, and Landlord shall use reasonable efforts to re-let the Premises on Tenant's behalf. Any such rentals reserved from such re-letting shall be applied first to the costs of re-letting the Premises and then to the rentals due hereunder. In the event the rentals from such re-letting are insufficient to pay the rentals due hereunder in full, Tenant shall be liable to the Landlord for any deficiency. In the event Landlord institutes a legal action against the Tenant to enforce the lease or to recover any sums due hereunder, Tenant agrees to pay Landlord reasonable attorney's fees in addition to all other damages. No fees may be deducted from the Tenant Security Deposit until the termination of the tenancy.

18. **Landlord's Default; Limitation of Remedies and Damages:** Until the Tenant notifies the Landlord in writing of an alleged default and affords the Landlord a reasonable time within which to cure, no default by the Landlord in the performance of any of the promises or obligations herein agreed to by him or imposed upon him by law shall constitute a material breach of this lease and the Tenant shall have no right to terminate this lease for any such default or suspend his performance hereunder. In no event and regardless of their duration shall any defective condition of or failure to repair, maintain, or provide any area, fixture or facility used in connection with recreation or recreational activities, including but not limited to swimming pools, club houses, and tennis courts, constitute a material breach of this lease and the Tenant shall have no right to terminate this lease or to suspend his performance hereunder. In any legal action instituted by the Tenant against the Landlord, the Tenant's damages shall be limited to the difference, if any, between the rent reserved in this lease and the reasonable rental value of the Premises, taking into account the Landlord's breach or breaches, and in no event, except in the case of the Landlord's willful or wanton negligence, shall the Tenant collect any consequential or secondary damages resulting from the breach or breaches, including but not limited to the following items: damage or destruction of furniture or other personal property of any kind located in or about the Premises, moving expenses, storage expenses, alternative interim housing expenses, and expenses of locating and procuring alternative housing.

Tenant Initials:

19. Removal, Storage and Disposition of Tenant's Personal Property:

(a) Ten days after being placed in lawful possession by execution of a writ of possession, the Landlord may throw away, dispose of, or sell all items of personal property remaining on the Premises. During the 10-day period after being placed in lawful possession by execution of a writ of possession, the Landlord may move for storage purposes, but shall not throw away, dispose of, or sell any items of personal property remaining on the Premises unless otherwise provided for in Chapter 42 of the North Carolina General Statutes. Upon the Tenant's request prior to the expiration of the 10-day period, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon. If the Landlord elects to sell the property at public or private sale, the Landlord shall give written notice to the Tenant by first-class mail to the Tenant's last known address at least seven days prior to the day of the sale. The seven-day notice of sale may run concurrently with the 10-day period which allows the Tenant to request possession of the property. The written notice shall state the date, time, and place of the sale, and that any surplus of proceeds from the sale, after payment of unpaid rents, damages, storage fees, and sale costs, shall be disbursed to the Tenant, upon request, within 10 days after the sale, and will thereafter be delivered to the government of the county in which the rental property is located. Upon the Tenant's request prior to the day of sale, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon. The Landlord may apply the proceeds of the sale to the unpaid rents, damages, storage fees, and sale costs. Any surplus from the sale shall be disbursed to the Tenant, upon request, within 10 days of the sale and shall thereafter be delivered to the government of the county in which the rental property is located.

(b) If the total value of all property remaining on the Premises at the time of execution of a writ of possession in an action for summary ejectment is less than one hundred dollars (\$100.00), then the property shall be deemed abandoned five days after the time of execution, and the Landlord may throw away or dispose of the property. Upon the Tenant's request prior to the expiration of the five-day period, the Landlord shall release possession of the property to the Tenant during regular business hours or at a time agreed upon.

20. Bankruptcy: If any bankruptcy or insolvency proceedings are filed by or against the Tenant or if the Tenant makes any assignment for the benefit of creditors, the Landlord may, at his option, immediately terminate this Tenancy, and reenter and repossess the Premises, subject to the provisions of the Bankruptcy Code (11 USC Section 101, et. seq.) and the order of any court having jurisdiction thereunder.

21. Tenant's Insurance; Release and Indemnity Provisions: The Tenant shall be solely responsible for insuring any of his personal property located or stored upon the Premises upon the risks of damage, destruction, or loss resulting from theft, fire, storm and all other hazards and casualties. Regardless of whether the Tenant secures such insurance, the Landlord and his agents shall not be liable for any damage to, or destruction or loss of, any of the Tenant's personal property located or stored upon the Premises regardless of the cause or causes of such damage, destruction, or loss, unless such loss or destruction is attributable to the intentional acts or willful or wanton negligence of the Landlord. The Tenant agrees to release and indemnify the Landlord and his agents from and against liability for injury to the person of the Tenant or to any members of his household resulting from any cause whatsoever except only such personal injury caused by the negligent, or intentional acts of the Landlord or his agents.

22. Agent: The Landlord and the Tenant acknowledge that the Landlord may, from time to time in his discretion, engage a third party ("the Agent") to manage, supervise and operate the Premises or the complex, if any, of which they are a part. If such an Agent is managing, supervising and operating the Premises at the time this lease is executed, his name will be shown as "Agent" on the first page hereof. With respect to any Agent engaged pursuant to this paragraph, the Landlord and the Tenant hereby agree that: (1) Agent acts for and represents Landlord in this transaction; (2) Agent shall have only such authority as provided in the management contract existing between the Landlord and Agent; (3) Agent may perform without objection from the Tenant, any obligation or exercise any right of the Landlord imposed or given herein or by law and such performance shall be valid and binding, if authorized by the Landlord, as if performed by the Landlord; (4) the Tenant shall pay all rentals to the Agent if directed to do so by the Landlord; (5) except as otherwise provided by law, the Agent shall not be liable to the Tenant for the nonperformance of the obligations or promises of the Landlord contained herein; (6) nothing contained herein shall modify the management contract existing between the Landlord and the Agent; however, the Landlord and the Agent may from time to time modify the management agreement in any manner which they deem appropriate; (7) the Landlord, may, in his discretion and in accordance with any management agreement, remove without replacing or remove and replace any agent engaged to manage, supervise and operate the Premises.

23. Forms: The Landlord and Tenant hereby acknowledge that their agreement is evidenced by this form contract which may contain some minor inaccuracies when applied to the particular factual setting of the parties. The Landlord and Tenant agree that the courts shall liberally and broadly interpret this lease, ignoring minor inconsistencies and inaccuracies, and that the courts shall apply the lease to determine all disputes between the parties in the manner which most effectuates their intent as expressed herein. The following rules of construction shall apply: (1) handwritten and typed additions or alterations shall control over the preprinted language when there is an inconsistency between them; (2) the lease shall not be strictly construed against either the Landlord or the Tenant; (3) paragraph headings are used only for convenience of reference and shall not be considered as a substantive part of this lease; (4) words in the singular shall include the plural and the masculine shall include the feminine and neuter genders, as appropriate; and (5) the invalidity of one or more provisions of this lease shall not affect the validity of any other provisions hereof and this lease shall be construed and enforced as if such invalid provision(s) were not included.

Tenant Initials

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24. **Amendment of Laws:** In the event that subsequent to the execution of this lease any state statute regulating or affecting any duty or obligation imposed upon the Landlord pursuant to this lease is enacted, amended, or repealed, the Landlord may, at his option, elect to perform in accordance with such statute, amendment, or act of repeal in lieu of complying with the analogous provision of this lease.

25. **Eminent Domain and Casualties:** The Landlord shall have the option to terminate this lease if the Premises, or any part thereof, are condemned or sold in lieu of condemnation or damaged by fire or other casualty.

26. **Assignment:** The Tenant shall not assign this lease or sublet the Premises in whole or part.

27. **Waiver:** No waiver of any breach of any obligation or promise contained herein shall be regarded as a waiver of any future breach of the same or any other obligation or promise.

28. **Other Terms and Conditions:**

(a) (Check if applicable) The Premises were built prior to 1978. (Attach Standard Form # 430 - T, "Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards.")

(b) If there is an Agent involved in this transaction, Agent hereby discloses to Tenant that Agent is acting for and represents Landlord.

(c) The following additional terms and conditions shall also be a part of this lease:

Carbon Monoxide detectors must be installed.

(d) Itemize all addenda to this Contract and attach hereto: _____

29. **Inspection of Premises:** Within 5 days of occupying the Premises, Tenant has the right to inspect the Premises and complete a Move-in Inspection Form.

30. **Notice:** Any notices required or authorized to be given hereunder or pursuant to applicable law shall be mailed or hand delivered to the following addresses:

Tenant: the address of the Premises

Landlord: the address of which rental payments are sent.

31. **Execution; Counterparts:** When Tenant signs this lease, he acknowledges he has read and agrees to the provisions of this lease. This lease is executed in 1 (number) counterparts with an executed counterpart being retained by each party.

32. **Entire Agreement:** This Agreement contains the entire agreement of the parties and there are no representations, inducements or other provisions other than those expressed in writing. All changes, additions or deletions hereto must be in writing and signed by all parties.

THE NORTH CAROLINA ASSOCIATION OF REALTORS®, INC. MAKES NO REPRESENTATION AS TO THE LEGAL VALIDITY OR ADEQUACY OF ANY PROVISION OF THIS FORM IN ANY SPECIFIC TRANSACTION.

TENANT: Erin Hawley
Patrick Edwards (SEAL)

(SEAL)

LANDLORD:

(SEAL)

(SEAL)

Date: _____

By: _____, AGENT

(SEAL)

James W Kolley

Date: _____

Real Estate Investor & Mortgage Banker



103 Isley St.
Suite D
Chapel Hill, NC 27516
919.805.3444
703.895.0470 fax

1stCap@men.com

Amount: \$32,000,014.10
Account: [REDACTED]
Bank Number: 053000

Sequence Number: [REDACTED]
Capture Date: 11/11/0120
Check Number: 1012

ERIN M. HAWLEY
CHERYL D. HAWLEY
8916 CREEKSTONE RD.
WAXHAW, NC 28173-7506

1012

11/15/2011 Date

66-18/530 NC
95000

For James Kelley, Ware Investments \$ 1416.00
One thousand four hundred and ten and 00/100 Dollars

Bank of America

NCH R/L 053000185

For Deposit to SB Isley Erin Hawley

⑆053000196⑆ [REDACTED] 1012

For Deposit Only
Ware Investments, LLC
005002155711

00

STATE OF NORTH CAROLINA

COUNTY OF ^{Wake} ~~ORANGE~~

AFFIDAVIT OF KENNAN EILER

I, Kennan Eiler, being first duly sworn, do hereby depose and say:

1. I leased premises located at 105-B Isley Street for a term running from August 1, 2006 through July 31, 2007 from James W. Kelley. Together with my roommates Angie Neri and Katie Lalonde, we submitted a security deposit to Mr. Kelley in the amount of One Thousand Fifty Dollars (\$1050.00). We were never given a copy of the lease for the premises nor informed where our security deposit was deposited into a trust account.

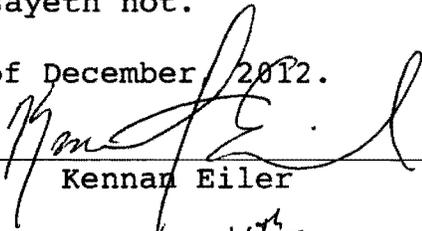
2. Mr. Kelley purported to account for our security deposit more than thirty (30) days after the termination of our lease. In that "accounting," (a copy of which is attached hereto and incorporated by reference herein) he combined the security deposit that we deposited with a security deposit from another of his properties (103-B Isley Street) and sought to charge us for "unpaid water" in the amount of \$955.35.

3. We disputed Mr. Kelley's withholding of any funds from our deposit through our attorney and filed suit in Orange County District Court on February 12, 2008 (Kennan Eiler, Angie Neri and Katie Lalonde vs. James Kelley, 08 Cvd 198).

4. We obtained a Default Judgment against Mr. Kelley in that suit.

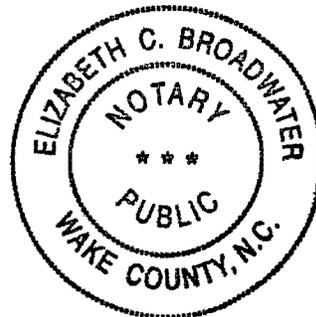
Further your affiant sayeth not.

This the 11 day of December, 2012.


Kennan Eiler

Sworn to & subscribed before me this 11th day of December, 2012.


Notary Public



To: Sarah Caudle
Jessica Ferguson
Kermain Eiler

Katie Lalonde
Angie Nerva

103B Isley St
7 late Fees $\times 37^{50} = \$262^{50}$
NSF Check $\$40^{00}$

Wanted
 $\$40^{00}$

103B Isley St
Unpaid Water $\$955^{35}$

~~\$\$\$~~
 $\frac{\$955^{35}}{\$995^{00}}$

$\$350 \times 5$ Total Deposits $\$1,750^{00}$

Bal owed

$\$755^{00}$

* Mixed Leases?

$$\begin{aligned} \text{Water Service Charge } 382 \times 5.51 &= 2,104.82 \\ \text{Sewer Service Charge } 382 \times 3.66 &= 1,398.12 \\ \hline &= 3,502.94 \end{aligned}$$

Aug⁰⁶ thru Jul 07 Total 382

$$\begin{aligned} &= \frac{3,502.94}{10 \text{ people}} \\ &= \frac{3,502.94}{11} \end{aligned}$$

$$= \$318 \frac{45}{100} \text{ per person}$$

$$\underline{\underline{\$955 \frac{35}{100}}}$$

105A

105B \$79⁴¹ mo or 26⁵⁴ person

NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
08 Cvd 198

2008 APR -1 P 1:34

Kennan Eiler, Angie Neri, and)
Katie Lalonde,)
Plaintiffs *me*)
v.)
James Kelley,)
Defendant)

JUDGMENT
BY DEFAULT
(Rule 55)

This cause was heard by the undersigned clerk on motion of Plaintiffs. It appears to the court upon affidavit that this is an action on a claim for a sum certain or a sum which by computation can be made certain; that personal service was had on the Defendant; that the court has jurisdiction over the subject matter of the action; that Defendant is not under disability and has failed to plead or appear in the time allowed by law; that default has been entered and that Defendant is indebted to Plaintiffs in the sum of One Thousand Three Hundred Dollars (\$1300.00), without setoff or counterclaim.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Plaintiffs have and recover of the Defendant the sum of One Thousand Three Hundred Dollars (\$1300.00) and the costs of this action.

This the 1st day of April, 2008.

Melba C Dees Asst
Clerk of Superior Court



STATE OF NORTH CAROLINA

COUNTY OF ORANGE

AFFIDAVIT OF DANIEL KELLER

I, Daniel Keller, being first duly sworn, do hereby depose and say:

1. I leased premises located at 101-B Isley Street for a term running from June 1, 2007 through May 31, 2008 from James W. Kelley. Together with my roommate Rebecca Martin we submitted a security deposit to Mr. Kelley in the amount of Eight Hundred Dollars (\$800.00).

2. Mr. Kelley purported to account for our security deposit in a letter dated June 30, 2008. In that "accounting" he assessed charges against us for "Labor & Materials" of \$221, a Cleaning Fee of \$75, plus some \$85 for alleged repairs to a stove.

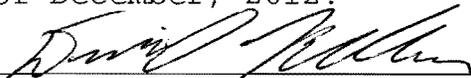
3. We disputed Mr. Kelley's withholding of any funds from our deposit through our attorney and filed suit in Orange County District Court on September 24, 2008 (Daniel Keller and Rebecca Martin vs. James Kelley, 08 CvD 1458.)

4. We submitted an Interrogatory to Mr. Kelley requesting the name and address of the bank where our security deposit had been deposited and the date of the deposit. Mr. Kelley refused to provide that information and responded as follows: "Object: Irrelevant to Damages." He refused to answer most of the other Interrogatories also. (A copy of Mr. Kelley's Responses to Plaintiff's First Set of Interrogatories is attached hereto and incorporated herein by reference.)

5. The matter was resolved in our favor in a negotiated settlement.

Further your affiant sayeth not.

This the 17th day of December, 2012.

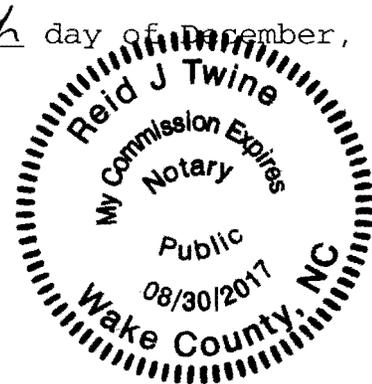


Daniel Keller

Sworn to & subscribed before me this 17th day of December, 2012.



Notary Public



NORTH CAROLINA
ORANGE COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
08 Cvd 1458

Daniel Keller and Rebecca Martin,)
Plaintiffs) Plaintiffs' First Set
v.) of Interrogatories
James Kelley,) and
Defendant) Request for Production
of Documents
(Rules 33 and 34)

TO: JAMES W. KELLEY
103-D ISLEY STREET
CHAPEL HILL, NC 27514

Plaintiffs herewith serve upon you the following written Interrogatories and Request for Production of Documents, under the provisions of Rules 33 and 34 of the Rules of Civil Procedure. You are required to answer these Interrogatories separately and fully in writing under oath and to serve a copy of your answers on the undersigned within thirty (30) days.

These Interrogatories are continuing in nature until the date of trial and you are required to serve supplemental answers as additional information may become available to you, as required by Rule 26 of the Rules of Civil Procedure.

INSTRUCTIONS

For the purposes of these Interrogatories and Requests for Production of Documents:

1. In answering interrogatories, please furnish all information available to you, however obtained, including hearsay. Please include information known by or in possession of yourself, your employees, your agents, or appearing in your records.
2. When identifying an individual, give the name, current address, telephone number, and relation to the Defendant.

3. When identifying any communication in response to these interrogatories, please state:

a. Who made the communication;
b. To whom it was made;
c. By what method of communication it was made (e.g., writing, telephone, electronic mail, in person, etc.)

d. Who else was present or aware of the communication;

e. The date and time of the communication;
f. The location of the communicator(s) when it was made;

g. The closest possible exact wording of the communication.

4. When identifying documents, please state:

a. The date the document was produced;
b. By whom the document was produced; and
c. The name and address of the person who has custody of the document.

FIRST SET OF INTERROGATORIES

1. State your name, address, and telephone number.

ANSWER:

James Kelley
103D Isley St
Chapel Hill, NC
27516
919-605-3444

2. State your occupation, how long you have been in that occupation, and your business address and telephone number.

ANSWER:

Object: Irrelevant to Complaint

3. List completely all properties which Defendant leased or for which Defendant acted as a rental agent or manager in any capacity in the last three years, including:

(a) addresses of all such properties;

ANSWER: *Object: Irrelevant to complaint*

(b) name, address and telephone number of all owners of all such properties; and

ANSWER: *Object: Irrelevant to Complaint*

c) all instances where civil actions have been instituted against you for the recovery of damages arising from breach of a lease.

ANSWER: *Fraud Case by Plaintiffs Atty 105B Isley St.*

4. Regarding 101-B Isley Street, Chapel Hill, North Carolina, state the name, address, and telephone number of any and all persons who have acted on Defendant's behalf or as Defendant's agent for any property management purpose, including, but not limited to, collecting rent,

communicating with tenants, and taking messages and/or complaints from tenants.

ANSWER: ~~Primary~~ & Irrelevant to Complaint
Damages were outlined 6/30/08 letter

5. Regarding 101-B Isley Street, Chapel Hill, North Carolina, state:

(a) the names, addresses, and telephone numbers of the tenants who lived there immediately prior to Plaintiffs.

ANSWER: Objection: Primary & Irrelevant to Complaint

(b) the amount of the security deposit withheld from the tenants who resided there prior to Plaintiffs, including a specific accounting for all monies withheld; and

ANSWER: Objection: Irrelevant to Complaint

(c) the dates of the tenancy immediately prior to Plaintiffs' tenancy.

ANSWER: *Object: Inherent to Damages*

6. State whether the rental property was inspected **immediately prior** to or **at the outset** of Plaintiff's occupancy, and if so, the name, address, and telephone number of the person who conducted each inspection.

ANSWER: *Yes*

7. State whether the rental property was inspected **immediately following** Defendant's occupancy, and if so, the name, address, and telephone number of the person who conducted the inspection.

ANSWER: *Yes*

8. If an inspection was conducted as described in either of the preceding two interrogatories, if any document was created regarding **either inspection**, state the name, address, and telephone number of the person who has custody of each and every such document.

ANSWER: *See 6/30/08 Statement and 10/22/08 Statem*

9. Regarding Plaintiffs' security deposit, state:
a. The name and address of the bank or institution where the trust account into which the security deposit was deposited is currently located;

ANSWER: *Objert: Irrelevant to Damages*

b. The date on which the security deposit was deposited into a trust account;

ANSWER: *Objert: Irrelevant to Case*

c. The date on which Defendant accounted to Plaintiff in writing regarding the proceeds of the deposit;

6/30/08 Statement

ANSWER:

d. If the security deposit was not deposited in a trust account in a bank or institution located in the State of North Carolina, the date on which Defendant informed Plaintiff of this fact and the name of the insurance company furnishing a bond for that deposit.

ANSWER: *NA*

REQUEST FOR PRODUCTION OF DOCUMENTS

Plaintiffs request that Defendant produce the following documents and things pursuant to Rule 34 of the Rules of Civil Procedure. All documents should include the name of the person who created the document and the date of the document's creation. If the documents requested are not in your control or custody, describe in detail all efforts to locate the document, and identify the location of the document and the name, address, and telephone number of the each person who has custody or control of the document.

Defendant may comply with this request by providing **copies** of all requested documents within thirty (30) days to Counsel for Defendants. Otherwise, Plaintiff should produce for inspection and copying all requested documents described herein at the offices of David Crescenzo, Carolina Student Legal Services, Inc., Frank Porter Graham Student Union Building, Suite 3410, University of North Carolina at Chapel Hill, Chapel Hill, North Carolina 27599-5210. Please contact Counsel to arrange a time and date for such inspection and copying so that it may take place no later than thirty (30) days from the date these requests were received by you.

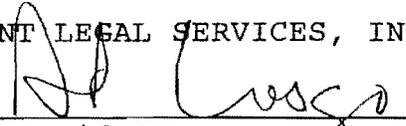
1. All documents identified in Interrogatory # 8 above.

2. All work records, including bills, receipts, and invoices, for work performed at 101-B Isley Street for the period June 1, 2007 through May 31, 2008.

3. A copy of the lease between Plaintiffs and Defendant for 101-B Isley Street, Chapel Hill, North Carolina.

This the 5th day of November, 2008.

CAROLINA STUDENT LEGAL SERVICES, INC.

By: 

David Crescenzo
Attorney for Plaintiffs
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(919) 843-3012