

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ARLENA J. KELLY, )  
)  
Plaintiff, )  
v. )  
)  
THOMAS DELLWO and YOUR )  
PROPERTY SOLUTION, LLC, A )  
Nebraska Limited Liability Company, )  
)  
Defendants. )

CASE NO.

**COMPLAINT**

Plaintiff states:

**FIRST CAUSE OF ACTION  
(Negligence)**

1. That Plaintiff, Arlena J. Kelly, hereinafter Kelly, is a resident of Omaha, Douglas County, Nebraska.
2. That Defendant Your Property Solution, LLC, hereinafter Your Property Solution, is a Nebraska limited liability company whose registered agent is Jennifer L. Rattner, 8712 West Dodge Road, Suite 300, Omaha, NE 68114.
3. That Defendant Your Property Solution is the owner and manager of real property known as 5003 North 64<sup>th</sup> Street, Omaha, Nebraska, and legally described as Lot 108, in Park Lane, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska which is the subject of this action, and said subject premises are situated in Omaha, Douglas County, Nebraska.
4. That Defendant Thomas Dellwo, hereinafter Dellwo, is an individual who is the owner and employee of Defendant Your Property Solution and also a resident of the State of Nebraska.
5. That on November 23, 2013 Plaintiff Kelly and Defendant Your Property Solution entered into a lease agreement with option to purchase real estate located at 5003 North 64 Street, Omaha, Nebraska, a copy of said lease agreement is attached hereto, made a part hereof and marked Exhibit A.

6. Shortly thereafter Plaintiff, with Defendants' knowledge, consent, and encouragement, moved into this leasehold prior to certain promised and necessary repairs and renovations being completed.

7. Prior to entering into this lease, the Defendants knew, or should have known, that this residence was infected with toxic mold causing excruciating and severe injuries more specifically described in Paragraph 15.

8. That Plaintiff discovered mold in her son's bedroom in December 2014 and notified Defendants who attempted to correct the condition by painting over the mold.

9. That at an office visit in January 2014 Plaintiff presented to the Methodist Physicians Clinic because she was experiencing coughing and nasal congestion due to being exposed to toxic mold. She was advised that the mold problem in her home needed to be completely eradicated or that she needed to move into a mold free environment. She was again seen at the Clinic on March 31, 2014 complaining of nasal congestion, cough, and chest congestion. She was again advised to have the mold cleaned up completely or move to a mold free environment. She was seen at the Methodist Hospital emergency room on two subsequent occasions for asthmatic exacerbations and prescribed medications.

10. On or about April 3, 2014 the Douglas County Health Department ("DCHD") performed an inspection of the residence at 5003 North 64<sup>th</sup> Street, Omaha, Douglas County, Nebraska, owned by the Defendants. DCHD found and confirmed the existence of mold and water problems at the residence. DCHD recommended finding and fixing the water problem and then cleaning the moldy areas at the residence. DCHD also advised that areas being worked on be fully contained behind plastic sheeting.

11. That a copy of the inspection report performed by DCHD is attached hereto, made a part hereof and marked Exhibit B.

12. On May 7, 2014 5003 North 64<sup>th</sup> Street, Omaha, Nebraska was inspected by the Code Enforcement Division of the City of Omaha Housing Department and was found to be unsafe and unfit for habitation because of the mold condition.

13. That a copy of the inspection report by the City of Omaha Housing Department is attached hereto, made a part hereof and marked Exhibit C.

14. That Defendants were negligent in one or more of the following particulars, to wit:

- a) In failing to meet the Rules and Regulations of the Douglas County Health Department;
- b) In failing to meet the Rules and Regulations of the City of Omaha Housing Department;
- c) In failing to remove the mold;
- d) In failing to take precautions to prevent the mold developing;
- e) In failing to move Plaintiff to a mold free residence;
- f) In failing to abate (replace) hazardous areas;
- g) In failing to maintain fit premises;
- h) In failing to inspect the premises and warn of any dangers;
- i) In having knowledge, or should have had the knowledge, of the mold;
- j) In failing to warn the Plaintiff of the mold existing in this residence;
- k) In failing to remove all mold before leasing this residence to the Plaintiff; and
- l) In failing to use ordinary care under the circumstances.

15. That as a direct and proximate result of the negligence of the Defendants, as heretofore set forth in Paragraph 7, Plaintiff, Arlcna J. Kelly was seriously and permanently injured in that she suffered excruciating and severe injuries including of nasal congestion, cough, and chest congestion and asthmatic exacerbations to her upper and lower respiratory tracks. These injuries are all permanent in nature. That she has suffered, now suffers, and will in the future continue to suffer great and excruciating permanent physical pain and mental anguish. That due to said injuries, the Plaintiff will lose income in the future. That the Plaintiff's earning capacity has been permanently diminished and impaired because of these injuries. That the Plaintiff has incurred medical expenses because of the exposure to toxic mold, and will incur medical expenses in the future. The Plaintiff also incurred moving expenses because of the mold.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with her costs herein expended.

**SECOND CAUSE OF ACTION**  
**(Breach of Implied Warranty of Habitability)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 15 of the previous Cause of Action a part of this Cause of Action as if fully set forth herein.

16. Under *Neb. Rev. Stat. §76-1419*, a landlord renting property in Nebraska must provide and maintain fit premises establishing an implied warranty of habitability.

17. Defendants breached the implied warranty of habitability by renting to the Plaintiff a residential unit, which was infested with toxic mold.

18. That as a direct and proximate result of Defendants' breach, the Plaintiff suffered excruciating and severe injuries as heretofore set forth in Paragraph 15.

19. As a consequential and proximate result of Defendants' breach, the Plaintiff was forced to move to another residence.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with the costs herein expended.

**THIRD CAUSE OF ACTION**  
**(Nuisance)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 19 of the previous Causes of Action a part of this Cause of Action as if fully set forth herein.

20. Defendants allowed this residence to be infested with mold and subjected the Plaintiff to a horrible, unlivable and unbearable living residence.

21. Defendants' actions interfered with the Plaintiff's use and enjoyment of the residence.

22. This interference was a situation that was maintained by Defendants allowing for an abnormally dangerous condition to be created at this rental.

23. That as a direct and proximate result of Defendants' breach, the Plaintiff suffered excruciating and severe injuries as heretofore set forth in Paragraph 15.



24. As a consequential and proximate result of Defendants' interference, the Plaintiff was forced to move to another residence.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with the costs herein expended.

**FOURTH CAUSE OF ACTION  
(Intentional Infliction of Emotional Distress)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 24 of the previous Causes of Action a part of this Cause of Action as if fully set forth herein.

25. Defendants allowed this residence to be infested with toxic mold and subjected the Plaintiff to exposure to toxic mold.

26. This conduct is so outrageous in character and extreme in degree as to go beyond the bounds of decency and is utterly intolerable in a civilized community.

27. That as a direct and proximate result of Defendants' breach, the Plaintiff suffered excruciating and severe injuries as heretofore set forth in Paragraph 15.

28. As a direct result, the Plaintiff suffered emotional distress so severe that no reasonable person should be expected to endure it.

29. As a consequential and proximate result of Defendants' conduct, the Plaintiff was forced to move to another residence.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with the costs herein expended.

**FIFTH CAUSE OF ACTION  
(Negligent Infliction of Emotional Distress)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 29 of the previous Causes of Action a part of this Cause of Action as if fully set forth herein.

30. Defendants allowed the residence to be infested with toxic mold and subjected the Plaintiff to exposure to toxic mold.

31. This conduct is so outrageous in character and extreme in degree as to go beyond the bounds of decency and is utterly intolerable in a civilized community.

32. That as a direct and proximate result of Defendants' breach, the Plaintiff, suffered excruciating and severe injuries, as heretofore set forth in Paragraph 15, and expenses incurred by the Plaintiff heretofore set forth in Paragraph 15.

33. As a consequential and proximate result of Defendants' conduct, the Plaintiff was forced to move to another residence.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with the costs herein expended.

DATED this 22<sup>nd</sup> day of April, 2015.

ARLENA J. KELLY, Plaintiff,

By. 

Thomas J. Anderson, Esq., #22779  
THOMAS J. ANDERSON, P.C., L.L.O.  
12020 Shamrock Plz., #333  
Omaha, NE 68154  
Phone: 402-884-4430  
Fax: 888-701-6190  
[lawyers@cox.net](mailto:lawyers@cox.net)

and,

James E. Connor, #15926  
CONNOR LAW  
13057 West Center Road, Suite 17  
Omaha, Nebraska 68144  
Phone: 402.345.3322  
Fax: 402.334.2317  
[jim@connorlaw.omhcoxmail.com](mailto:jim@connorlaw.omhcoxmail.com)  
ATTORNEYS FOR PLAINTIFF

# RESIDENTIAL LEASE AGREEMENT

for

5003 N 64<sup>th</sup> St. Omaha, NE 68104

(Property Address)

This AGREEMENT is made and entered into this 23 day of November, 2013 between Your Property Solution, LLC, hereinafter referred to as "LANDLORD", "LESSOR", and/or "OPTIONOR" and

TENANT Name: Ardene Kelly TENANT Name: DeAnna Hoskins  
 TENANT Name: Dwayne Hoskins TENANT Name: \_\_\_\_\_

hereinafter collectively referred to as "TENANT", LESSEE", and/or "OPTIONEE", parties hereby agree to as follows:

\*This single document consists of two separate and distinct contracts by and between the parties hereto. Specifically, this document encompasses both a Residential Lease and an Option to Purchase the subject residential real property upon the terms and conditions set forth herein below. Although said separate contracts may relate to each other in some respects and may sometimes refer from one to the other, the Residential Lease and the Option to Purchase remain separate contracts by and between the parties hereto.

**SUMMARY:** The initial rents, charges and deposits are as follows:

	TOTAL MONTHLY AMOUNT	RECEIVED	BALANCE DUE PRIOR TO OCCUPANCY
Monthly Rent: From <u>11/24/13</u> , To <u>11/30/2015</u>	\$ <u>900.00</u>	\$ <u>0.00</u>	\$ <u>900.00</u>
Security Deposit	\$ <u>0.00</u>	\$ _____	\$ _____
Key Deposit	\$ <u>0.00</u>	\$ _____	\$ _____
Admin Fee/Credit App Fee (Non-refundable)	\$ <u>0.00</u>	\$ _____	\$ _____
Pet Deposit	\$ <u>0.00</u>	\$ _____	\$ _____
Cleaning Deposit (Non-refundable)	\$ <u>0.00</u>	\$ _____	\$ _____
Last Month's Rent Security	\$ <u>0.00</u>	\$ _____	\$ _____
CIC Registration	\$ <u>0.00</u>	\$ _____	\$ _____
Utility Proration	\$ <u>0.00</u>	\$ _____	\$ _____
Sewer/Trash Proration	\$ <u>0.00</u>	\$ _____	\$ _____
Other	\$ <u>0.00</u>	\$ _____	\$ _____
Other	\$ <u>0.00</u>	\$ _____	\$ _____
Other	\$ <u>0.00</u>	\$ _____	\$ _____
Other	\$ <u>0.00</u>	\$ _____	\$ _____
<b>TOTAL</b>	\$ <u>900.00</u>	\$ _____	\$ <u>900.00</u>

(Any balance due prior to occupancy to be paid in check)

**ADDITIONAL MONIES DUE:**

\*SEE OPTION TO PURCHASE AGREEMENT

**PREMISES:** LANDLORD hereby leases to TENANT and TENANT hereby leases from LANDLORD, subject to the terms and conditions of the lease, the Premises commonly known as: 5003 N 64<sup>th</sup> St. Omaha, NE 68104 ("the Premises").

**TERM:** The term hereof shall commence on November 24, 2013 and shall continue for 12-24 months from the commencement date, then on a month-to-month basis thereafter, until either party shall terminate the same by giving the other party thirty (30) days written notice delivered by certified mail (all calculation based on 30 day month).

RENT: TENANT shall pay the prorated rent of \$215.00, in advance for the time period of November 24 through November 30, 2013. TENANT shall then pay rent at the monthly rate of \$ 900.00 , in advance, on the 1<sup>st</sup> day of every month beginning the 1<sup>st</sup> day of December , 2013 . There is a 5 day grace period.

**ADDITIONAL FEES:**

- A. **LATE FEES:** In the event TENANT fails to pay rent when due, TENANT shall pay a late fee of \$100.
- B. **DISHONORED CHECKS:** A charge of \$35 shall be imposed for each dishonored check made by TENANT to LANDLORD. TENANT agrees to pay all rents, all late fees, all notice fees and all costs to honor a returned check with certified funds. After TENANT has tendered a check which is dishonored, TENANT hereby agrees to pay all remaining payments including rent due under this Agreement by certified funds. Any payments tendered to LANDLORD thereafter, which are not in the form of certified funds, shall be treated as if TENANT failed to make said payment until certified funds are received. LANDLORD presumes that TENANT is aware of the criminal sanctions and penalties for issuance of a check which TENANT knows is drawn upon insufficient funds and which is tendered for the purpose of committing a fraud upon a creditor.
- C. **ADDITIONAL RENT:** All late fees and dishonored check charges shall be due when incurred and shall become additional rent for that month. Payments will be applied to charges which become rent in the order accumulated. All unpaid charges or any fees owed by TENANT, including but not limited to notice fees, attorney's fees, repair bills, utility bills, landscape/pool repair and maintenance bills will become additional rent at the beginning of the month after TENANT is billed. TENANT'S failure to pay the full amount for a period may result in the initiation of eviction proceedings. LANDLORD'S acceptance of any late fee or dishonored check fee shall not act as a waiver of any default of TENANT, or as an extension of the date on which rent is due. LANDLORD reserves the right to exercise any other rights and remedies under this Agreement or as provided by law.
- D. In the event of lost or misplaced keys and LANDLORD has to come out to unlock the dwelling there will be a fee of \$75 for each occurrence.

**PLACE OF PAYMENTS:** All payments shall be made payable to:

Your Property Solution, LLC  
Attn: Tom Dellwo  
PO Box 1578  
Bellevue, NE 68005

**SECURITY DEPOSIT:** To deposit the sum of \$ 0.00 which shall be paid upon the signing of this agreement in the form of cashier's check or money order and made payable to Your Property Solution, LLC. Said security deposit shall serve as security for any damage caused to the Premises during the term hereof and for cleaning of the premises should TENANT not deliver the premises in a clean condition at the termination of the lease.

**NO ASSIGNMENT OR SUBLETTING:** TENANT agrees not to assign or sublet the premises, or any part thereof, without such previous consent in writing of LANDLORD. Any consent by LANDLORD to one such assignment, sub-letting or license shall not be deemed to be consent to any subsequent assignment, sub-letting or license. An assignment, sub-letting or license without the prior written consent of LANDLORD or an assignment or sub-letting by operation of law shall be absolutely null and void and shall, at LANDLORD'S option, terminate this Agreement.

**OCCUPANCY:** To use and permit to occupy the Premises only by those designated as TENANT(s) above, exclusively, as a private single family dwelling, and no part of the Premises shall be used at any time during the term of this Agreement by TENANT for the purpose of carrying on any business, profession, or trade of any kind, or any purpose other than as a private single family dwelling, unless agreed to in writing by LANDLORD.

If LANDLORD, with written consent, will allow 1 additional person to occupy the premises without additional fees or charges. If LANDLORD, with written consent, allows for any additional persons to occupy the premises, the rent shall not be increased.

**UTILITIES:** TENANT shall immediately connect all utilities and services of premises upon commencement of lease. TENANT is to pay when due all utilities and other charges in connection with TENANT'S individual rented premises. Responsibility is described as (T) for TENANT and (O) for OWNER:

Electricity: T    Trash: T    Phone: NA    Gas: T    Sewer: T  
Cable: NA    Water: T    Septic: NA    Association Fees: NA    Other: \_\_\_\_\_

a. TENANT is responsible to connect the following utilities in TENANT'S name:  
All utilities noted above except those marked NA which are optional

b. LANDLORD will maintain the connection of the following utilities in LANDLORD'S name and bill TENANT for connection fees and use accordingly, and the TENANT will be billed for each such account no later than the 15<sup>th</sup> of each month and will be due upon the 1st of each following month:  
NONE

c. No additional phone or cable lines or outlets shall be obtained for the Premises without the LANDLORD'S written consent. In the event of LANDLORD'S consent, TENANT shall be responsible for all costs associated with the additional lines or outlets.

d. If an alarm system exists on the Premises, TENANT shall, if desired, obtain the services of an alarm services company and shall pay all costs associated therewith.

e. Other: NONE

**PETS:** No pet shall be on or about the Premises at any time without written permission of LANDLORD. In the event TENANT wishes to have a pet, TENANT will complete an Application for Pet Approval. Should written permission be granted for occupancy of the designated pet, an additional security deposit in the amount of \$200 will be required and paid by TENANT in advance subject to deposit terms and conditions aforementioned. In the event written permission shall be granted, TENANT shall be required to procure and provide to LANDLORD written evidence that TENANT has obtained such insurance as may be available against property damage to the Premises and liability to third party injury. Each such policy shall name LANDLORD and LANDLORD'S AGENT as additional insured's. A copy of each such policy shall be provided to LANDLORD or LANDLORD'S BROKER prior to any pets being allowed within the Premises. If TENANT obtains a pet without written permission of LANDLORD, TENANT agrees to pay an immediate fine of \$200 (two hundred dollars), and the pet(s) shall be immediately removed from the premises. TENANT agrees to indemnify LANDLORD for any and all liability, loss and damages which LANDLORD may suffer as a result of any animal in the Premises, whether or not written permission was granted.

**RESTRICTIONS:** TENANT shall not keep or permit to be kept in, on, or about the Premises: waterbeds, boats, campers, trailers, mobile homes, any non-operative vehicles, or more than 1 small commercial tow truck vehicle and 1 small lawn trailer.

**TENANT shall not conduct nor permit any commercial work on vehicles on the premises.**

**NO MAJOR ALETERATIONS OR IMPROVEMENTS:** To make no major alterations or additions to the buildings or improvements on the Premises or construct any building or make any other improvements on the Premises having a typical professional cost of more than \$200 without the prior written consent of LANDLORD. Any alterations, changes, and/or improvements built, constructed or placed on the Premises by TENANT shall, unless otherwise provided by written agreement between LANDLORD and TENANT, be and become the property of LANDLORD and remain on the Premises at the expiration or earlier termination of this Agreement.



**DEFAULT:** Failure by TENANT to pay rent, perform any obligation under this Agreement, or comply with any Association Governing Documents (if any), or TENANT'S engagement in activity prohibited by this Agreement, or TENANT'S failure to comply with any and all applicable laws, shall be considered a default hereunder. Upon default, LANDLORD may, at its option, terminate this tenancy upon giving proper notice. Upon default, LANDLORD shall issue a proper itemized statement to TENANT noting the amount owed by TENANT. LANDLORD may pursue any and all legal and equitable remedies available.

**ENFORCEMENT:** Any failure by LANDLORD to enforce the terms of this Agreement shall not constitute a waiver of said terms by LANDLORD. Acceptance of rent due by LANDLORD after any default shall not be construed to waive any right of LANDLORD or affect any notice of termination or eviction.

**LANDLORD'S RIGHT OF ACCESS:** To permit LANDLORD or LANDLORD'S agents at all reasonable times during the term of this Agreement and any renewal thereof to enter the Premises for the purpose of inspecting the Premises and all buildings and improvements thereon for the purposes of making any repairs, additions or alterations as may be deemed appropriate by LANDLORD for the preservation of the Premises or the building. LANDLORD and their agents shall further have the right to exhibit the Premises and to display the usual "for sale", "for lease payment" or "vacancy" signs on the Premises at any time within twenty (20) days before the expiration of this Lease, provided that TENANT has not notified LANDLORD in writing of TENANT'S intent to exercise TENANT'S Option to Purchase pursuant to the terms of the Option to Purchase. The right of entry shall likewise exist for the purpose of removing placards, signs, fixtures, alterations or additions that do not conform to this Agreement or to any restrictions, rules or regulations affecting the Premises.

**TERMINATION:** Upon termination of the tenancy, TENANT shall surrender and vacate the Premises and shall remove any and all of TENANT'S property. TENANT shall return keys, personal property and Premises to the LANDLORD in good, clean and sanitary condition, normal wear excepted. TENANT will allow LANDLORD to inspect the Premises in the TENANT'S presence to verify the condition of the Premises.

**MAINTENANCE:** To, at TENANT'S sole expense, keep and maintain the Premises, externally and internally, and all appurtenances in good and sanitary condition and repair during the term of this Agreement and any renewal thereof; reasonable wear and tear expected. Without limiting the generality of the foregoing, TENANT shall:

- (a) Not obstruct the driveways, sidewalks, courts, entryways, stairs and/or halls, which shall be used for the purposes of ingress and egress only;
- (b) Keep all windows, glass, window coverings, doors, locks and hardware in good, clean order and repair;
- (c) Not obstruct or cover the windows or doors;
- (d) Not leave windows or doors in an open position during any inclement weather;
- (e) Not cause or permit any locks or hooks to be placed upon any door or window without the prior written consent of LANDLORD;
- (f) Keep all air conditioning and furnace filters clean and free from dirt;
- (g) Keep all lavatories, sinks, toilets, and all other water and plumbing apparatus in good order and repair and shall use same only for the purposes for which they were constructed. TENANT shall not allow any sweepings, rubbish, sand, rags, ashes or other substances to be thrown or deposited therein. Any damage to any such apparatus and the cost of clearing stopped plumbing resulting from misuse shall be borne by TENANT;
- (h) TENANT and TENANT'S family and guests shall at all times maintain order in the Premises and at all places on the Premises, and shall not make or permit any loud or improper noises, or otherwise disturb neighbors or other residents;
- (i) Keep all radios, television sets, stereos, phonographs, etc., turned down to a level of sound that does not annoy or interfere with other neighbors or residents;
- (k) Deposit all trash, garbage, rubbish or refuse in the trash cans and shall not allow any trash, garbage, rubbish or refuse to be deposited or permitted to stand on the exterior of any building;

**YARD MAINTENANCE:** TENANT shall, at its sole expense, maintain the yard, keeping it mowed, clear of rubbish and weeds, and well maintained at all times during the Term of this Lease.

**SNOW REMOVAL:** Snow removal shall be the sole responsibility of the TENANT. TENANT shall comply with the City of Omaha's requirement that all sidewalks be cleared of ice and snow within twenty-four (24) hours of any freeze or snowfall.

**INVENTORY:** It is agreed that the following inventory is now on said premises. (Check if present; cross out if absent.) None of the inventory items are warranted by the LANDLORD.

- |   |   |   |
|---|---|---|
| <del>Interroom System</del>                         | <del>Alarm System</del>                                 | <del>Trash Compactor</del>                          |
| <del>Ceiling Fans</del>                             | <input checked="" type="checkbox"/> Refrigerator        | <input checked="" type="checkbox"/> Stove           |
| <del>Microwave</del>                                | <del>Disposal</del>                                     | <input checked="" type="checkbox"/> Dishwasher      |
| <del>Washer</del>                                   | <del>Dryer</del>  | <del>Water Conditioner Equip.</del>                 |
| <input checked="" type="checkbox"/> Floor Coverings | <del>Window Coverings</del>                             | <del>Spa Equipment</del>                            |
| <del>Auto Sprinklers</del>                          | <input checked="" type="checkbox"/> Auto Garage Openers | <del>BEO</del>                                      |
| <del>Solar Screens</del>                            | <del>Pool Equipment</del>                               | <input checked="" type="checkbox"/> Other: Fan/Hood |

TENANT assumes responsibility for the typical care and maintenance thereof.

**INSURANCE:** TENANT X is -OR- \_\_\_\_\_ is not required to purchase renter's insurance. LANDLORD and BROKER shall be named as additional interests on any such policy. LANDLORD shall not be liable for any damage or injury to TENANT, or any other person, to any property occurring on the Premises or any part thereof, or in common areas thereof. TENANT agrees to indemnify, defend and hold LANDLORD harmless from any claims for damages. TENANT understands that LANDLORD'S insurance does not cover TENANT'S personal property. Even if it is not a requirement of this Agreement, TENANT understands that LANDLORD highly recommends that TENANT purchase renter's insurance. LANDLORD has the right to request certificates of insurance or any other insurance documentation the LANDLORD deems necessary upon 3 days written notice.

**Notice to TENANT of Swimming Pool Barrier Regulations (Initials Required):** A swimming pool is defined as an above or below ground swimming pool or contained body of water intended for swimming, exclusive of public or semi-public swimming pools ("Swimming Pool"). The parties further acknowledge that the county or municipality in which the Property is located may have different swimming pool barrier regulations than the state. TENANT agrees to investigate all applicable state, county, and municipal swimming pool barrier regulations and agrees to comply with and pay all costs of compliance with said regulations prior to possession of the Property. TENANT'S INITIALS ACKNOWLEDGE 1) EXISTENCE OF SWIMMING POOL BARRIER REGULATIONS, and 2) IF THESE PREMISES CONTAIN A SWIMMING POOL, RECEIPT OF THE REQUIRED POOL SAFETY NOTICES.

(TENANT'S INITIALS ARE REQUIRED):

AK  
TENANT

AK  
TENANT

**Lead-Based Paint Disclosure (Initials Required):** The U.S. Department of Housing and Urban Development requires any LANDLORD of residential real property built prior to 1978 to (1) notify TENANT of any known lead-based paint or lead-based paint hazards in the Property to be sold, (2) provide TENANT with any lead-based paint risk assessments or inspections in LANDLORD'S possession, and (3) provide TENANT a 10-day opportunity, or other mutually agreed upon period, to conduct or obtain a risk assessment or inspection for the presence of lead-based paint or lead-based paint hazards. LANDLORD is advised to conduct or obtain such assessments or inspections during the Inspection Period. The lead-based paint disclosures are attached hereto as Exhibit A. By initialing below, TENANT acknowledges:

- ◆ That the residence(s) and building(s) included in the sales were constructed prior to 1978 and that buyer has the Disclosure of Information on Lead-Based Paint and Lead-Based Paint Hazards, and any report, records, pamphlets and/or other materials referenced therein, including the pamphlet "Protect Your Family from Lead in Your Home"; or
- ◆ That the residence(s) and building(s) included in this sale were constructed in 1978 or later.

(TENANT'S INITIALS ARE REQUIRED):

AK  
TENANT

AK  
TENANT

**COMPLIANCE WITH LAWS, ETC.:** To comply with any and all laws, ordinances, rules and orders of any and all governmental or quasi-governmental authorities affecting the cleanliness, use, occupancy and preservation of the Premises. TENANT shall also comply with any and all provisions of the Covenants, Conditions & Restrictions (C C & Rs) of the HOA, or any other rules or regulations now in existence or which may in the future be promulgated by the HOA, if applicable.

**SMOKE DETECTORS:** TENANT agrees to maintain, at TENANT'S expense, smoke detectors as required by law.

**CONDITION.:** TENANT AGREES THE PROPERTY IS TO BE SOLD IN 'AS IS CONDITION.' TENANT FURTHER UNDERSTANDS AND AGREES THAT THE LANDLORD DOES NOT WARRANT OR GUARANTEE THIS PROPERTY AGAINST HABITABILITY OR FITNESS OR DEFECTS OF ANY KIND, WHETHER OPEN OR HIDDEN, NOW EXISTING OR LATER OCCURRING. TENANT FULLY UNDERSTANDS THE LANDLORD HAS NO DUTY TO REFUND ANY OF THE LEASE PAYMENTS, OPTION MONEYS, OR PURCHASE PRICE ON ACCOUNT OF SUCH DEFECTS NOR PAY FOR THEIR REPAIRS. THE SELLER SHALL NOT BE BOUND BY ANY TERMS, CONDITIONS, STATEMENTS, OR REPRESENTATION ORAL OR WRITTEN, NOT CONTAINED IN THIS AGREEMENT, WHICH IS THE FINAL AND ENTIRE AGREEMENT. TENANT ACKNOWLEDGES THAT HE/SHE HAS BEEN GIVEN FULL OPPORTUNITY TO INSPECT THE PROPERTY INCLUDING ALL HEATING, AIR CONDITIONING, ELECTRICAL, MECHANICAL, PLUMBING AND ROOF SYSTEMS, AND BY INITIALING BELOW, HAS AGREED TO HOLD SELLER HARMLESS FOR THE CONDITION OF ANY AND ALL OF SUCH SYSTEMS. TENANT ACKNOWLEDGES THE RECEIPT OF THE SELLER PROPERTY CONDITION DISCLOSURE STATEMENT ATTACHED HERETO AS EXHIBIT B

*(TENANT'S INITIALS ARE REQUIRED):*

*AK*  
TENANT

*AK*  
TENANT

**CHANGES MUST BE IN WRITING:** No changes, modifications or amendment of this Agreement shall be valid or binding unless such changes, modifications or amendment are in writing and signed by each party. Such changes shall take effect after thirty days notice to TENANT.

**CONFLICTS BETWEEN LEASE AND ADDENDUM:** In case of conflict between the provisions of an addendum and any other provisions of this Agreement, the provisions of the addendum shall govern.

**ATTORNEY'S FEES:** In the event of any court action, the prevailing party shall be entitled to be awarded against the losing party all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs.

**WAIVER:** Nothing contained in this Agreement shall be construed as waiving any of the LANDLORD'S or TENANT'S rights under the laws of the State of Nebraska.

**ABANDONMENT:** If at any time during the term of this Agreement TENANT abandons the Premises or any part thereof, LANDLORD may, at LANDLORD'S option, obtain possession of the Premises in the manner provided by law, and without becoming liable to TENANT for damages or for any payment of any kind whatever. LANDLORD may, at LANDLORD'S discretion, as agent for TENANT, relet the Premises, or any part thereof, for the whole or any part thereof, for the whole or any part of the then unexpired term, and may receive and collect all lease payment payable by virtue of such reletting, and, at LANDLORD'S option, hold TENANT liable for any difference between the lease payment that would have been payable under this Agreement during the balance of the unexpired term, if this Agreement had continued in force, and the net lease payment for such period realized by LANDLORD by means of such reletting. If LANDLORD'S right of reentry is exercised following abandonment of the Premises by TENANT, then LANDLORD shall consider any personal property belonging to TENANT and left on the Premises to also have been abandoned, in which case LANDLORD may dispose of all such personal property in any manner LANDLORD shall deem proper and LANDLORD is hereby relieved of all liability for doing so.

**DEATH OF TENANT:** In the event of TENANT'S death, this lease shall terminate and all rights of possession shall be restored to LANDLORD.

**DEATH OF LANDLORD:** This lease and option shall include and insure to and bind the heirs, executors, administrators, successors, and assigns of TENANT upon the death of LANDLORD.

---

IN WITNESS WHEREOF, LANDLORD and TENANT have executed this agreement on November 23, 2013.

**TENANTS:**

Alena Kelly

**LANDLORD:**

[Signature]

DATE: 11-23-13

DATE: 11/23/2013



**EXHIBIT A**

**LEAD-BASED PAINT DISCLOSURES**



**OMAHA AREA BOARD OF REALTORS®  
LEAD-BASED PAINT & LEAD-BASED PAINT HAZARDS  
ADDENDUM TO PURCHASE AGREEMENT**



ON PROPERTY LOCATED AT 5003 N 64<sup>th</sup> St. Omaha, NE 68104  
Environmental Protection Agency (EPA) and U.S. Department of Housing and Urban Development  
(HUD)

**LEAD-BASED PAINT & LEAD-BASED PAINT HAZARDS  
TARGET HOUSING AND EXEMPTIONS**

Target Housing is defined as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling in which the living area is not separated from the sleeping area, including efficiencies, studio apartments, dormitory housing, military barracks, and rentals of individual rooms in residential dwellings.

The Regulations regarding lead-based paint in residential structures apply to all transactions to sell or lease target housing, including subleases, with the exception of the following:

- (a) Sales of target housing at foreclosure.
- (b) Leases of target housing that have been found to be lead-based paint free by an inspector certified under the Federal certification program or under a federally accredited State or tribal certification program. Until a Federal certification program or federally accredited State certification program is in place within the State, inspectors shall be considered qualified to conduct an inspection for this purpose if they have received certification under any existing State or tribal inspector certification program. The LANDLORD has the option of using the results of additional test(s) by a certified inspector to confirm or refute a prior finding.
- (c) Short-term leases of 100 days or less, where no lease renewal or extension can occur.
- (d) Renewals of existing leases in target housing in which the LANDLORD has previously disclosed all information required and where no new information has come into the possession of the LANDLORD. For the purposes of this paragraph, renewal shall include both renegotiation of existing lease terms and/or ratification of a new lease. Disclosure is required when the lease is originally signed. Disclosure MUST, therefore, be made when renewing leases which were in place prior to December 6, 1996, for owners of one to four residential dwellings and September 6, 1996, for owners of more than four residential dwellings.

**Lead-Based Paint Testing Contingency:** This contract is contingent upon a risk assessment or inspection of the property for the presence of lead-based paint and/or lead-based paint hazards at the Purchaser's expense until 9:00 p.m.  on the tenth calendar day after acceptance  or the following mutually agreed upon date November 23, 2013. This contingency will terminate at the above predetermined deadline unless the Purchaser (or the Purchaser's agent) delivers to the Seller (or the Seller's agent) a written contract addendum listing the specific existing deficiencies and corrections needed, together with a copy of the inspection and/or risk assessment report. The Seller may, at the Seller's option, within 10 days after delivery of the addendum, elect in writing whether the correct the conditions(s) prior to settlement. If the Seller will correct the condition, the Seller shall furnish the Purchaser with certification from a risk assessor or inspector demonstrating that the condition has been remedied before the date of the settlement. If the seller does not elect to make the repairs or if the Seller makes a counter-offer, the Purchaser shall have 10 days to respond to the counter-offer or remove this contingency and take the property in "as is" condition or this contract shall become void. The Purchaser may remove this contingency at any time without cause.



**TARGET HOUSING SALES**

**DISCLOSURE OF INFORMATION ON LEAD-BASED PAINT AND LEAD-BASED PAINT HAZARDS**

**Lead Warning Statement**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessment or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**Seller's Disclosure (initial)**

AD (a) Presence of lead-based paint and/or lead-based paint hazards (check one below):  
 Known lead-based paint and/or lead-based paint hazards are present in the housing (explain) \_\_\_\_\_

Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

AS (b) Records and reports available to the seller (check one below):  
 Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below) \_\_\_\_\_  
 Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

\_\_\_\_\_ (c) The housing is located in an area of Omaha Nebraska (generally east of 45<sup>th</sup> Street, south of Ames Avenue, and north of L Street) which EPA tests have shown may contain concentrations of lead in the soil that may pose an unacceptable risk to human health and the environment (the "Omaha Nebraska Lead Site"). The Omaha Lead Site has been included on EPA's Superfund National Priorities List. However, the housing will only become part of the Omaha Lead Site if soils in its yard are tested and contain lead concentrations in excess of applicable EPA action levels.

**Purchaser's Acknowledgment (initial)**

AK (d) Purchaser has received copies of all information listed above.  
AK (e) Purchaser has received the pamphlet *Protect Your Family from Lead in Your Home*.  
AK (f) Purchaser has (check one below):  
 Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or  
 Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate

[Signature] \_\_\_\_\_  
Seller Date 11/23/2013

[Signature] \_\_\_\_\_  
Purchaser Date 11-23-13

\_\_\_\_\_  
Seller Date

\_\_\_\_\_  
Purchaser Date

**Lead Warning Statement**

Housing built before 1978 may contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 housing, lessors must disclose the presence of known lead-based paint and lead-based paint hazards in the dwelling. Lessees must also receive a federally approved pamphlet on lead poisoning prevention.

**Lessor's Disclosure (initial)**

AK

(a) Presence of lead-based paint or lead-based paint hazards (check one below):

Known lead-based paint and/or lead-based paint hazards are present in the housing (explain): \_\_\_\_\_

Lessor has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

AK

(b) Records and reports available to the lessor (check one below):

Lessor has provided the lessee with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list all documents below): \_\_\_\_\_

Lessor has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

(c) The housing is located in an area of Omaha Nebraska (generally east of 45<sup>th</sup> Street, south of Ames Avenue, and north of L Street) which EPA tests have shown may contain concentrations of lead in the soil that may pose an unacceptable risk to human health and the environment (the "Omaha Nebraska Lead Site"). The Omaha Lead Site has been included on EPA's Superfund National Priorities List. However, the housing will only become part of the Omaha Lead Site if soils in its yard are tested and contain lead concentrations in excess of applicable EPA action levels.

**Lessee's Acknowledgment (initial)**

AK  
AK

(d) Lessee has received copies of all information listed above.

(e) Lessee has received the pamphlet *Protect Your Family from Lead in Your Home*

**Certification of Accuracy**

The following parties have reviewed the information above and certify, to the best of their knowledge, that the information they have provided is true and accurate.

[Signature] \_\_\_\_\_ 7/23/2013  
Lessor Date

[Signature] \_\_\_\_\_ 11-23-13  
Lessee Date

\_\_\_\_\_  
Lessor Date

\_\_\_\_\_  
Lessee Date

***EXHIBIT B***

***SELLER PROPERTY CONDITION DISCLOSURE STATEMENT***

**\*SEE Seller Property Condition Disclosure Statement below.**

# OPTION TO PURCHASE AGREEMENT

for

5003 N 64<sup>th</sup> St, Omaha, NE 68104

(Property Address)

1. Option to Purchase. Effective immediately upon the execution of this Agreement, and shall have the Option to purchase the aforescribed real property (hereinafter referred to as "the Property").
2. Purchase Price. The purchase price of the Property shall be as follows:

A. The purchase price of the Property shall be \$107,000 (one hundred and seven thousand dollars). If the appraisal for financing upon the OPTIONEE'S Option to Purchase produces a market value higher than \$107,000, the purchase price is to remain at \$107,000.

B. Option Consideration. The Option consideration shall be the sum of \$2,000 (two thousand dollars), in addition to the other consideration stated herein. The option consideration as provided for in this paragraph shall be paid as follows: \$1,200.00 (one thousand two hundred) on the day of the signing of this Agreement, and then \$133.00 (one hundred thirty three) on the 1<sup>st</sup> day of each following month for six months for a total of \$800.00 (eight hundred) or else the Residential Lease Agreement and the Option to Purchase Agreement shall become null and void. The total credit available, as provided for in this Paragraph shall not exceed \$2,000 (two thousand dollars). Said credit shall be deducted from the purchase price as shall be established under the provisions of paragraph 2a of this Option to Purchase Agreement; under no circumstances shall the option consideration be refunded to the OPTIONEE; only credited to the purchase price if Option to Purchase is exercised as stipulated in paragraph 3 below.

The monthly lease payment, for purposes of this provision, shall be considered to be timely if the payment is received by the LANDLORD on or before the due date specified in the Lease Agreement.

3. Time for Exercise of Option: This Option may not be exercised prior to 8 months of the effective date of this agreement. This Option shall terminate if not exercised on or before 5:00 p.m. Central Standard Time twenty four (24) months from the effective date of this agreement. Upon the expiration of the Option, all legal and equitable rights of OPTIONEE under this Option agreement shall immediately terminate and OPTIONOR shall have no further obligation to OPTIONEE. In the event of:

A. A termination of the Option due to OPTIONEE'S failure to exercise the Option to Purchase within the time and in the manner specified herein,

B. The OPTIONEE'S decision not to exercise the option for any reason within the time and in the manner specified herein,

no portion of the Option Consideration or lease payments shall be refunded to the OPTIONEE/TENANT.

4. Closing: In the event that closing/refinancing occurs subsequent to the end date of the lease specified in the Lease Agreement, any lease payment due shall be prorated to the date of closing. In the event that OPTIONEE is unable or unwilling to close on or before the twenty four (24) months from the effective date of this agreement, this Option shall automatically terminate and no portion of the Option Price or of the lease payments shall be refunded to OPTIONEE.

5. Default/Termination: If OPTIONEE defaults or fails to perform any term or condition of the attached Residential Lease, the Option to Purchase shall terminate without the necessity of any notice of such termination to the OPTIONEE. Such a default shall include, but shall not be limited to, a failure by the TENANT/OPTIONEE to make a lease payment by the due dates specified in the lease agreement,

failure to maintain the property or to make repairs, or failure to pay any late charge or interest payment when due.

6. LANDLORD May Continue Lease Even if Option Terminates. If TENANT/OPTIONEE breaches a term of the lease, the LANDLORD/OPTIONOR may choose not to terminate the lease but only the Option to purchase, irregardless of the continuation or termination of the lease, shall terminate automatically upon the TENANT'S/OPTIONEE'S breach.
7. No Assignment or Transfer. The OPTIONEE may not transfer or assign any rights under this Option, without OPTIONOR'S prior written consent to said assignment or transfer.
8. Time is of the Essence. Time is of the essence for all obligations of performance under this agreement.
9. Costs, Prorations, Fees and Taxes. All closing cost shall be will be split in a normal and customary manner. The following costs, prorations, fees, and taxes shall be allocated at closing as follows:
  - a. Title Insurance: The Seller's/Buyer' s policy of title insurance shall be paid by OPTIONOR. The Lender's policy of title insurance shall be paid by OPTIONEE.
  - b. Escrow Fees: All escrow fees shall be paid by OPTIONEE.
  - c. Transfer Tax: The county transfer tax shall be paid by OPTIONOR.
  - d. County/City: Required Inspection Fees (if any): Any required County or City inspection fees shall be paid by OPTIONEE.
  - e. Buyer's Closing Costs: OPTIONOR shall not contribute any portion of BUYER/OPTIONEE'S closing costs.
  - f. HOA Transfer Fees and Appraisal: If there are any Home Owner's Association transfer fees, OPTIONEE shall pay the same. All costs of appraisal shall be paid by OPTIONEE.
  - g. Real Estate Taxes: Real estate taxes shall be prorated between the OPTIONOR and OPTIONEE and will be prorated as of the close of escrow.
10. Title: At the close of escrow, upon OPTIONEE'S delivery of the full purchase price, OPTIONOR shall deliver to OPTIONEE marketable title free and clear of all encumbrances other than (1) curlease payment pro-rata property taxes, (2) covenants, conditions and restrictions (C C & R's) and related restrictions including HomeOwner easements, rights of way or reservations of record, (4) obligations and encumbrances assumed by OPTIONEE hereunder. OPTIONEE'S due diligence must be completed within 5 days prior to the closing of escrow.
11. Property Inspection: OPTIONEE acknowledges and agrees that the Property is being sold without any warranties, expressed or implied, unless imposed by law. OPTIONEE has the right to have non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey/square footage, and any other property systems, inspected through licensed contractors or other qualified professionals during the term of the lease or prior to the closing. If OPTIONEE is dissatisfied with the condition of any aspect of the premises, OPTIONEE shall have the option to accept the Property in the as-is condition or to cancel the agreement to purchase within 5 days prior to the time of closing without refund or reimbursement of any portion of the lease or option payments



to OPTIONEE and without the requirement of any reimbursement of costs or otherwise to OPTIONEE.

12. Repairs: OPTIONOR shall have no obligation to pay for any repairs to the Property.
13. Death of OPTIONEE. In the event OPTIONEE'S death, this Option shall terminate.
14. Recording. OPTIONEE shall not record this Option Agreement, or any portion thereof, in the Public Records of any public office. In the event that OPTIONEE shall record this Option Agreement, this Option shall terminate immediately.
15. Severability. If any provision of this Agreement or the application thereof shall, for any reason and to any extent, be invalid or unenforceable, neither the remainder of this Agreement nor the application of the provision to other persons, entities or circumstances shall be affected thereby, but instead shall be enforced to the maximum extent permitted by law.
16. Headings. The descriptive headings used herein are for convenience of reference only and they are not intended to have any effect whatsoever in determining the rights or obligations of the OPTIONOR or OPTIONEE.
17. No Waiver. No indulgence, waiver, election or non-election by OPTIONOR under this Agreement shall affect OPTIONEE'S duties and liabilities hereunder.
18. The Entire Agreement: This shall constitute the entire Option Agreement of the parties and shall supersede any and all prior or contemporaneous negotiations, agreements, representations or otherwise. Any modification to this Option agreement shall only be binding upon the parties if made in writing and signed by the parties hereto.
19. Attorneys Fees and Costs. Should it become necessary for OPTIONOR or OPTIONEE to employ an attorney to interpret or to enforce any of the provisions of this Option Agreement, the parties hereto agree to pay all expenses so incurred, including a reasonable attorneys' fee to the prevailing party.
20. Grammatical Interpretation. All words used herein in the singular number shall include the plural, and the present tense shall include the future and the masculine gender shall include the feminine and neuter.

IN WITNESS WHEREOF, LANDLORD and TENANT have executed this agreement on November 23, 2013.

TENANTS: *Ashley Kelly*

LANDLORD: *T. Walker*

(Tenants)

(Investor)

Date: 11-23-13

Date: 11/23/2013



Promoting and Protecting Public Health

Health Department Lab, 4102 Woolworth Ave, Omaha, NE 68105

April 3, 2014

Arlena Kelly  
5003 N 64<sup>th</sup> Street  
Omaha, NE 68104

Re: Indoor Air Quality Inspection

Dear Ms Kelly,

On 4/3/2014 the Douglas County Health Department investigated a mold/moisture concern from Ms. Kelly's rental home at 5003 N 64<sup>th</sup> Street. The mold investigation was limited to visible surface mold. Mold will grow when their spores land on surfaces wet or moist. To control mold is to stop the moisture at its source. Any areas wet longer than 48 hours have the potential for mold growth. The EPA states that absorbent or porous materials, such as ceiling tiles, wood, fiberboard and carpet may have to be replaced if they have become moldy. Mold can grow on or fill in the empty spaces and crevices of porous materials, so the mold may be difficult or impossible to remove completely. If mold is on non-porous surfaces it can be cleaned with detergent and water. It is important to use appropriate personal protective equipment when remediating mold. Currently there are no standards on mold, but research indicates health concerns correlated with moldy environments. A physician should be consulted for health concerns believed to be related to mold in an environment.

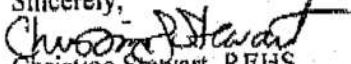
The affected areas we saw, the problems and our recommendations are as follows:

- Since the wall had been replaced already, Ms. Kelly showed me some pieces of drywall which were taken from the bathroom closet area, along with some photographs of how the inside of the wall looked before it had been replaced. Mold was visible on the drywall pieces and the photographs appeared to have visible mold in them. Ms. Kelly informed me the mold was not cleaned up and the wall was replaced with the damaged drywall. This department recommends finding and fixing moisture problem, then removing and replacing all moldy drywall with new drywall. This would include the adjoining bedroom wall which is on the other side of this closet.
- Ms. Kelly showed me some pictures of areas in the basement which appeared to have some visible mold on them. I was informed the landlord painted over the mold and then covered these areas with a board. The areas of concern were on the wood underneath the stairs and on the rafters underneath where the toilet sits. This department recommends finding and fixing the water problem then cleaning the moldy wood.
- Ms. Kelly informed me of her concerns about being in the home when mold is being cleaned. This department recommends the area being worked on is fully contained behind plastic sheeting.

The Douglas County Health Department performs these assessments as a courtesy. The assessments associated with the indoor air environment are related to the time period investigated only and may vary with time, maintenance, seasonal variations as well as other factors. The Douglas County Health Department makes no warranty associated with this assessment. If you have further concerns, you should contact an independent environmental assessment company.

If you should have any questions or comments, please contact me at (402) 444-7496.

Sincerely,

  
Christine Stewart, REHS  
Air Pollution Technician



City of Omaha  
Jean Stothert, Mayor

**NOTICE OF VIOLATION**  
May 7, 2014

**Planning Department**

Omaha/Douglas Civic Center  
1819 Farnam Street, Suite 1003  
Omaha, Nebraska 68183  
(402) 444-5150  
Telefax (402) 546-0714

James R. Thele  
Director

Your Property Solution LLC  
PO Box 1578  
Bellevue, NE 68005

Parcel No.: 3782091119  
Legal Description: Lot 106, Park Lane

This notice concerns the Property at: **5003 N 084 ST Dwelling Entire Structure**

The Property is in violation of the Omaha Municipal Code. The violations currently known to exist on this Property are listed in the attached Violations List.

You are ordered to repair or cure the said violations by July 6, 2014. A follow-up inspection, to determine whether the violations have been repaired or cured and whether the Property can thereby be released, will be scheduled on or shortly after that date, or sooner if you so request.

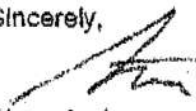
This occupied Property is declared to be unsafe, unfit for human occupancy, or unlawful, because of the violations so designated in the attached Violations List. If any of those designated violations are not cured within the time period stated above, the Property will be placarded, and occupancy will be prohibited until the violations are cured and released.

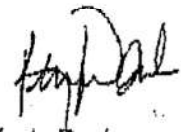
While the necessity of City permits to conduct the necessary work will depend on the method of repair chosen by the Property owner, it presently appears that the following types of permits will have to be obtained from the City to perform the necessary work: **Building, Electrical**

Any person directly affected by this notice may appeal to the Omaha Building Board of Review by filing a written appeal application form and \$108.00 filing fee with the office of the City Permits and Inspections Division, Omaha/Douglas Civic Center, 1819 Farnam Street, Suite 1100, Omaha, Nebraska, within 20 days of the date of this notice (add an additional three business days if this notice was sent by regular mail). The appeal application shall state all grounds for objection to this notice.

If you desire clarification of this notice or of any of the violations listed, please call the undersigned between the hours of 8:00 a.m. and 9:30 a.m. and arrangements will be made to assist you.

Sincerely,

  
Steve Andersen  
Housing Inspector, 402-444-5150 x 2102

  
Kevin Denker  
Chief Housing Inspector

- C: Nathaniel J. Warnock, 8712 W. Dodge Rd., Suite #300, Omaha, NE 68114
- Charter West National Bank, PO Box 288, 201 S. Main St., West Point, NE 68788
- Construction Lien, Reliable Floor Care, 4319 Oak St., Omaha, NE 68105
- Occupant(s) of 5003 N 84 St Omaha, NE 68104

The City of Omaha Planning Department  
Housing Division  
Permits and Code Requirements  
for property address: 5003 N 064 ST  
Structure Type: Dwelling-Entire Structure  
May 7, 2014

A Building permit is required for the amount of \$1,000.00. Note: The fee charged for a Building permit is based on the total amount of estimated labor and material costs.

[REDACTED]

- |   |   |   |
|---|---|---|
| <input type="checkbox"/> Fire                   | <input type="checkbox"/> Window Replacement     | <input type="checkbox"/> Interior Inspection. |
| <input type="checkbox"/> Reroof                 | <input type="checkbox"/> Soffits, Gutters, etc. | Requested for the following reason(s):        |
| <input type="checkbox"/> Remove Existing Roof   | <input type="checkbox"/> Kitchen Remodel        |   |
| <input type="checkbox"/> Reside                 | <input type="checkbox"/> Bath Remodel           |   |
| <input type="checkbox"/> Remove existing siding | <input type="checkbox"/> Plans required         |   |
| <input type="checkbox"/> Basement Finish        | <input type="checkbox"/> Fence                  |   |
| <input type="checkbox"/> Retaining Wall         | <input type="checkbox"/> Decks/Porches          |   |
|   | <input type="checkbox"/> Fire Escape            |   |

Separate Permits required for the following:

- Electrical     Plumbing     Mechanical     Wreck

**Special Code Requirements:**

**Electrical Requirements -**  
Under 121-142 Chapter 44. Bring electrical service up to code. A licensed, bonded, electrical contractor is required to make repairs. A City of Omaha electrical permit and an inspection by the City Electrical Inspector is required for conformance.

## Violations List

May 7, 2014

Your Property Solution LLC  
 PO Box 1578  
 Bellevue, NE 68005

Re: 5003 N 064 ST  
 Inspected by: Steve Andersen  
 Structure Type: Dwelling

### Owner Violation List Items and Corrective Actions

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<p><b>040-106. Permit required.</b> The installation, alteration, repair or replacement of any air conditioning/air distribution system or exhaust system shall not be undertaken within the jurisdiction of the city without a permit issued by the permits and inspections division prior to said installation.</p>	<p>Entire Dwelling. All mechanical repairs and alterations must be made by a mechanical contractor, licensed and bonded by the City of Omaha. Appropriate mechanical permits and inspections are required.</p>	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<p><b>043-101. Generally.</b> All construction or work for which a permit is required shall be subject to inspection by the building official and all such construction or work shall remain accessible and exposed for inspection purposes until approved by the building official. In addition, certain types of construction shall have special inspection as specified in the building code as adopted by this jurisdiction.</p>	<p>Entire Dwelling. Construction work shall remain accessible &amp; exposed for inspections until approved.</p>	

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of the building code, this Code or other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of the building code, this Code or other ordinances of the jurisdiction shall not be valid.

It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

A survey of the lot may be required by the building official to verify that the structure is located in accordance with the approved plans.

(Ord. No 33582, SS 1(43-101), 6-27-95)



Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>043-71. Required.</b> Except as specified in section 43-72 of this Code, no building or structure regulated by this Code shall be erected, constructed, enlarged, altered, repaired, moved, improved, removed, converted or demolished unless a separate permit for each building or structure has first been obtained from the building official. (Ord. No. 33582 SS 1(43-71), 6-27-95)	Entire Dwelling. General repair permit is required before repairs are started.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>043-91. Permit Fees.</b> Fees shall be assessed in accordance with the provisions of this section. The fee for each building permit shall be as set forth in Table 43-91.	Entire Dwelling. Fee shall be assessed in accordance with the provisions of this sections.	

The determination of value or valuation for the purpose of assessing the permit fee shall be made by the building official. The value to be used in computing the building permit and plan review fees shall be the total value of all construction work for which the permit is issued.

Penalty fees: When construction begins before the permit has been issued, the applicant shall pay a penalty fee. Said fee shall be quadruple the amount of the regular fee.

No quadruple fee penalty set forth in this chapter shall be imposed if the work is of an emergency nature where a delay in performing the work may cause a risk to life or health or will significantly increase the risk of property damage, provided a permit is applied for within 48 hours of the start of the work, in which case no penalty shall be imposed.

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>043-94. Commencing work without permit.</b> Whenever any work for which a permit is required has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued. A penalty fee shall be assessed in accordance with table 43-91. Payment of the penalty fee shall not exempt the applicant from making any changes that may be required to bring the work into compliance with the city's building, zoning and other codes. (Ord. No 33582, SS 1(43-94), 6-27-95)	Entire Dwelling. Whenever any work for which a permit is required has been commenced without first obtaining said permit a penalty fee shall be assessed.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>044-121. Permit required..</b> Before proceeding to install, alter, repair, relocate, affix or suspend any electrical wiring, or to install or connect any equipment or apparatus which requires electrical wiring to be installed, affixed or suspended to make the same operable, for either interior or exterior wiring, a permit shall be obtained by an electrical contractor or a master electrician from the electrical official at the permits and inspections division.	Entire Dwelling. An electrical contractor, that is licensed and bonded by the City of Omaha, must make all electrical repairs. Appropriate electrical permits and inspections are required.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-12a. <b>Maintenance.</b> Equipment, systems, devices and safeguards required by this code or a previous regulation or code under which the structure or premises was constructed, altered or repaired shall be maintained in good working order. The requirements of this code are not intended to provide the basis for removal or abrogation of fire protection and safety systems and devices in existing structures. Except as otherwise specified herein, the owner or the owner's designated agent shall be responsible for the maintenance of buildings, structures and premises.	Entire Dwelling. Owner and or person or persons responsible.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-13. <b>Application of other codes.</b> Repairs, additions or alterations to a structure, or changes of occupancy, shall be done in accordance with the procedures and provisions of the City's Building Code, Plumbing Code, Mechanical Code, Fuel Gas Code, Fire Code and Electrical Code, all as defined in this code. Nothing in this code shall be construed to cancel, modify or set aside any provisions of Chapter 55 of the Omaha Municipal Code.	Entire Dwelling. All City codes apply. Building code, plumbing code, electrical code, mechanical code, fire code.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-15. <b>Workmanship.</b> Repairs, maintenance work, alterations or installations which are caused directly or indirectly by the enforcement of this code shall be executed and installed in a workmanlike manner and installed in accordance with the manufacturer's installation instructions.	Entire Dwelling. All repairs, alterations, maintenance work & installations shall be made in a workmanlike manner, and in accordance with manufacturer's installation instructions.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-25. <b>Fees.</b> The fees for activities and services performed by the city in carrying out its responsibilities under this code shall be as indicated in the following schedule:	Entire Dwelling. Owner. Fee shall apply.	

Reinspection Fees, charged once for each Notice of Violation.

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-31. <b>General.</b> The code official shall enforce the provisions of this code.	Entire Dwelling. This code will be enforced.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-34. <b>Right of entry.</b> The code official is authorized to enter the structure or premises at reasonable times to inspect subject to constitutional restrictions on unreasonable searches and seizures. If entry is refused or not obtained, the code official is authorized to pursue recourse as provided by law.	Entire Dwelling. The code official is authorized to enter the structure or premises at reasonable times.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-51. <b>Unlawful acts.</b> It shall be unlawful for a person, firm or corporation to be in conflict with or in violations of any of the provisions of this code.	Entire Dwelling. It is unlawful to be in violation of this code.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-53. <b>Prosecution of violation.</b> Any person failing to comply with a notice of violation or order served in accordance with this code shall be deemed guilty of a misdemeanor, as provided in Section 1-10 of the Omaha Municipal Code. If the notice of violation is not complied with, the code official may institute the appropriate proceeding at law or in equity to restrain, correct or abate such violation, or to require the removal or termination of the unlawful occupancy of the structure in violation of the provisions of this code or of the order or direction made pursuant thereto.	Entire Dwelling. Any person failing to comply with a notice shall be prosecuted.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-54. <b>Violation penalties.</b> Any person who shall violate a provision of this code, or fail to comply therewith, or with any of the requirements thereof, shall be prosecuted within the limits provided by state or local laws. Each day that a violation continues after due notice has been served shall be deemed a separate offense.	Entire Dwelling. Any person who violates a provision of this code shall be prosecuted within the limits provided by state or local laws.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-61. <b>Notice to owner or to person or persons responsible.</b> Whenever the code official determines that there has been a violation of this code or has grounds to believe that a violation has occurred, notice shall be given to the owner or the person or persons responsible therefore in the manner prescribed in sections 48-62 and 48-63. Not more than one notice of violations shall be issued for the same violation. Notices for procedures declaring property unsafe or unfit for human occupancy shall also comply with Division 8.	Entire Dwelling. Owner and or person or persons responsible.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-65. <b>Transfer of ownership.</b> If the ownership of a property subject to a pending notice or order under this code is to be transferred, the transferring owner shall report to the city housing division the impending transfer of the property and the name and address of the transferee, at least seven (7) days prior to the transfer.	Entire Dwelling. Inspector must be notified of pending transfer of ownership seven (7) days prior to transfer.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<p><b>048-71a. General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.</p> <p>a. <b>Unsafe Structure.</b> An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.</p>	<p>Entire Dwelling. Suspected mold/mildew in wall cavity in closet next to main floor bathroom, in cabinet under kitchen sink, and on underside of subfloor under kitchen sink &amp; bathroom.</p>	<p>Yes</p>

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<p><b>048-71a. General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.</p> <p>a. <b>Unsafe Structure.</b> An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.</p>	<p>Entire Dwelling. Missing smoke detectors in bedrooms.</p>	<p>Yes</p>

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<p><b>048-71a. General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.</p> <p>a. <b>Unsafe Structure.</b> An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.</p>	<p>Entire Dwelling. Open holes and penetrations at plumbing pipes under kitchen and bathroom sinks.</p>	<p>Yes</p>

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<p><b>048-71a. General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.</p>	Entire Dwelling. Dishwasher vent loop not properly secured.	Yes

a. **Unsafe Structure.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<p><b>048-71a. General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.</p>	Entire Dwelling. Upstairs bathroom GFI outlet not properly wired.	Yes

a. **Unsafe Structure.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<p><b>048-71a. General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.</p>	Entire Dwelling. Electric conduit not properly connected to junction box in kitchen sink cabinet.	Yes

a. **Unsafe Structure.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.



Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-71a. <b>General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.	Entire Dwelling. Improperly vented dryer in basement.	Yes

a. **Unsafe Structure.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-71a. <b>General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.	Entire Dwelling. Rotted wood causing a hole to basement under front door threshold.	Yes

a. **Unsafe Structure.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
048-71a. <b>General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.	Entire Dwelling. Roofing and siding debris and nails around exterior of property.	Yes

a. **Unsafe Structure.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>048-71a. General.</b> When a structure or equipment is found by the code official to be unsafe, or when a structure is found unfit for human occupancy, or is found unlawful, such structure shall be declared as such by notice pursuant to the provisions of this code.	Entire Dwelling. No permits taken for new siding and roof.	Yes

a. **Unsafe Structure.** An unsafe structure is one that is found to be dangerous to the life, health, property or safety of the public or the occupants of the structure by not providing minimum safeguards to protect or warn occupants in the event of fire, or because such structure contains unsafe equipment or is so damaged, decayed, dilapidated, structurally unsafe, or of such faulty construction or unstable foundation that partial or complete collapse is possible.

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>048-73. Notice.</b> Whenever the code official has declared a structure or equipment unsafe or unfit under the provisions of this Division, notice shall be posted in a conspicuous place in or about the structure affected by such notice and served on the owner or the person or persons responsible for the structure or equipment in accordance with Section 48-63. If the notice pertains to equipment, it shall also be placed on the equipment. The notice shall be in the form prescribed in Section 48-62.	Entire Dwelling. Notice(s) have been served.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>048-74. Placarding.</b> Upon failure of the owner or person responsible to comply with the notice provisions within the time given, the code official shall post on the premises or on defective equipment a placard reading "Danger - Closed" or similar language, and a statement of the penalties provided for occupying the premises, operating the equipment, removing the placard, or failing to close the premises or keep the premises closed.	Entire Dwelling. Upon failure to comply within the time given, structure shall be placarded, marked "Danger Closed".	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>048-75. Prohibited occupancy.</b> It shall be unlawful for any person to occupy a placarded premises or to operate placarded equipment, and for any owner or any person responsible for the premises to let anyone occupy a placarded premises or operate placarded equipment. Such persons shall be subject to the penalties set out in section 1-10 of this Code.	Entire Dwelling. Upon failure to comply with repairs as ordered within the time directed in this Notice of Violation, structure shall be vacated. Occupancy is prohibited until all repairs are complete and final inspections made.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
<b>049-300. Required.</b> It shall be unlawful for any person to begin any job of plumbing until a license holder has secured from the permits and inspections division a permit to do such work; provided that no permit will be required for minor repair work as defined in sections 49-400 and 49-303.	Entire Dwelling. All plumbing repairs must be made by a plumbing contractor, licensed and bonded by the City of Omaha. Appropriate plumbing permits and inspections are required.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
301.2. <b>Responsibility.</b> The owner of the premises shall maintain the structures and exterior property in compliance with these requirements, except as otherwise provided for in this code. A person shall not occupy as owner-occupant or permit another person to occupy premises which are not in a sanitary and safe condition and which do not comply with the requirements of this chapter. Occupants of a dwelling unit are responsible for keeping in a clean, sanitary and safe condition that part of the dwelling unit or premises which they occupy and control.	Entire Dwelling. Owner. Entire structure.	
301.3. <b>Vacant structures and land.</b> All vacant structures and premises thereof or vacant land shall be maintained in a clean, safe, secure and sanitary condition as provided herein so as not to cause a blighting problem or adversely affect the public health or safety.	Entire Dwelling. Owner and / or person(s) responsible.	
302.1. <b>Sanitation.</b> All exterior property and premises shall be maintained in a clean, safe and sanitary condition. The occupant shall keep that part of the exterior property which such occupant occupies or controls in a clean and sanitary condition.	Entire Dwelling. Roofing and siding debris and nails around exterior of property.	Yes
304.13. <b>Window, skylight and door frames.</b> Every window, skylight, door and frame shall be kept in sound condition, good repair and weather tight.	Entire Dwelling. Rooted wood/ hole to basement under front door threshold.	Yes
304.2. <b>Protective treatment.</b> All exterior surfaces, including but not limited to, doors, door and window frames, cornices, porches, trim, balconies, decks and fences shall be maintained in good condition. Exterior wood surfaces, other than decay-resistant woods, shall be protected from the elements and decay by painting or other protective covering or treatment. Peeling, flaking and chipped paint shall be eliminated and surfaces repainted. All siding and masonry joints, as well as those between the building envelope and the perimeter of windows, doors and skylights shall be maintained, weather resistant and water-tight. All metal surfaces subject to rust or corrosion shall be coated to inhibit such rust and corrosion and all surfaces with rust or corrosion shall be stabilized and coated to inhibit future rust and corrosion. Oxidation stains shall be removed from exterior surfaces. Surfaces designed for stabilization by oxidation are exempt from this requirement.	Entire Dwelling. Missing paint on side exterior door threshold and trim below. AC freon and electrical lines are not sealed	
304.5. <b>Foundation walls.</b> All foundation walls shall be maintained plumb and free from open cracks and breaks and shall be kept in such condition so as to prevent the entry of rodents and other pests.	Entire Dwelling. Displaced foundation block on north side allowing a path for pest infiltration.	Yes





Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
604.3. <b>Electrical system hazards.</b> Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacles and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.	Entire Dwelling. Electric conduit not properly connected to junction box in kitchen sink cabinet.	Yes

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
604.3. <b>Electrical system hazards.</b> Where it is found that the electrical system in a structure constitutes a hazard to the occupants or the structure by reason of inadequate service, improper fusing, insufficient receptacles and lighting outlets, improper wiring or installation, deterioration or damage, or for similar reasons, the code official shall require the defects to be corrected to eliminate the hazard.	Entire Dwelling. Air conditioner's disconnect not properly secured.	Yes

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
701.2. <b>Responsibility.</b> The owner of the premises shall provide and maintain such fire safety facilities and equipment in compliance with these requirements. A person shall not occupy as owner-occupant or permit another person to occupy any premises that do not comply with the requirements of this chapter.	Entire Dwelling. A person shall not occupy as owner occupant or permit another person to occupy premises which do not comply.	

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
703.1. <b>Fire-resistance-rated .</b> The required fire-resistance rating of fire-resistance-rated walls, fire stops, shaft enclosures, partitions and floors shall be maintained.	Entire Dwelling. Open holes and penetrations at plumbing pipes under kitchen and bathroom sinks.	Yes

Code Section Violated	Location and Nature of Violation	Unsafe/Unfit Designation
704.1. <b>Smoke detectors.</b> Existing Group R occupancies not already provided with single-station smoke alarms shall be provided with approved single-station smoke alarms.	Entire Dwelling. Missing smoke detectors in bedrooms.	Yes



IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ARLENA J. KELLY,	)	
	)	CASE NO. 15-3855
Plaintiff,	)	
v.	)	
	)	
THOMAS DELLWO and YOUR	)	<b>FIRST AMENDED COMPLAINT</b>
PROPERTY SOLUTION, LLC, A	)	
Nebraska Limited Liability Company,	)	
	)	
Defendants.	)	

Plaintiff states:

**FIRST CAUSE OF ACTION  
(Negligence)**

1. That Plaintiff, Arlena J. Kelly, hereinafter Kelly, is a resident of Omaha, Douglas County, Nebraska.
2. That Defendant Your Property Solution, LLC, hereinafter Your Property Solution, is a Nebraska limited liability company whose registered agent is Jennifer L. Rattner, 8712 West Dodge Road, Suite 300, Omaha, NE 68114.
3. That Defendant Your Property Solution is the owner and manager of real property known as 5003 North 64<sup>th</sup> Street, Omaha, Nebraska, and legally described as Lot 108, in Park Lane, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska which is the subject of this action, and said subject premises are situated in Omaha, Douglas County, Nebraska.
4. That Defendant Thomas Dellwo, hereinafter Dellwo, is an individual who is the owner and employee of Defendant Your Property Solution and also a resident of the State of Nebraska.
5. That on November 23, 2013 Plaintiff Kelly and Defendant Your Property Solution entered into a lease agreement with option to purchase real estate located at 5003 North 64 Street, Omaha, Nebraska, a copy of said lease agreement is attached hereto, made a part hereof and marked Exhibit A.

6. Shortly thereafter Plaintiff, with Defendants' knowledge, consent, and encouragement, moved into this leasehold prior to certain promised and necessary repairs and renovations being completed.

7. Prior to entering into this lease, the Defendants knew, or should have known, that this residence was infected with toxic mold causing excruciating and severe injuries more specifically described in Paragraph 15.

8. That Plaintiff discovered mold in her son's bedroom in December 2014 and notified Defendants who attempted to correct the condition by painting over the mold.

9. That at an office visit in January 2014 Plaintiff presented to the Methodist Physicians Clinic because she was experiencing coughing and nasal congestion due to being exposed to toxic mold. She was advised that the mold problem in her home needed to be completely eradicated or that she needed to move into a mold free environment. She was again seen at the Clinic on March 31, 2014 complaining of nasal congestion, cough, and chest congestion. She was again advised to have the mold cleaned up completely or move to a mold free environment. She was seen at the Methodist Hospital emergency room on two subsequent occasions for asthmatic exacerbations and prescribed medications.

10. On or about April 3, 2014 the Douglas County Health Department ("DCHD") performed an inspection of the residence at 5003 North 64<sup>th</sup> Street, Omaha, Douglas County, Nebraska, owned by the Defendants. DCHD found and confirmed the existence of mold and water problems at the residence. DCHD recommended finding and fixing the water problem and then cleaning the moldy areas at the residence. DCHD also advised that areas being worked on be fully contained behind plastic sheeting.

11. That a copy of the inspection report performed by DCHD is attached hereto, made a part hereof and marked Exhibit B.

12. On May 7, 2014 5003 North 64<sup>th</sup> Street, Omaha, Nebraska was inspected by the Code Enforcement Division of the City of Omaha Housing Department and was found to be unsafe and unfit for habitation because of the mold condition.

13. That a copy of the inspection report by the City of Omaha Housing Department is attached hereto, made a part hereof and marked Exhibit C.

14. That Defendants were negligent in one or more of the following particulars, to wit:



- a) In failing to meet the Rules and Regulations of the Douglas County Health Department;
- b) In failing to meet the Rules and Regulations of the City of Omaha Housing Department;
- c) In failing to remove the mold;
- d) In failing to take precautions to prevent the mold developing;
- e) In failing to move Plaintiff to a mold free residence;
- f) In failing to abate (replace) hazardous areas;
- g) In failing to maintain fit premises;
- h) In failing to inspect the premises and warn of any dangers;
- i) In having knowledge, or should have had the knowledge, of the mold;
- j) In failing to warn the Plaintiff of the mold existing in this residence;
- k) In failing to remove all mold before leasing this residence to the Plaintiff; and
- l) In failing to use ordinary care under the circumstances.

15. That as a direct and proximate result of the negligence of the Defendants, as heretofore set forth in Paragraph 7, Plaintiff, Arlena J. Kelly was seriously and permanently injured in that she suffered excruciating and severe injuries including of nasal congestion, cough, and chest congestion and asthmatic exacerbations to her upper and lower respiratory tracks. These injuries are all permanent in nature. That she has suffered, now suffers, and will in the future continue to suffer great and excruciating permanent physical pain and mental anguish. That due to said injuries, the Plaintiff will lose income in the future. That the Plaintiff's earning capacity has been permanently diminished and impaired because of these injuries. That the Plaintiff has incurred medical expenses because of the exposure to toxic mold, and will incur medical expenses in the future. The Plaintiff also incurred moving expenses because of the mold.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with her costs herein expended.

**SECOND CAUSE OF ACTION  
(Breach of Implied Warranty of Habitability)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 15 of the previous Cause of Action a part of this Cause of Action as if fully set forth herein.

16. Under *Neb. Rev. Stat.* §76-1419, a landlord renting property in Nebraska must provide and maintain fit premises establishing an implied warranty of habitability.

17. Defendants breached the implied warranty of habitability by renting to the Plaintiff a residential unit, which was infested with toxic mold.

18. That as a direct and proximate result of Defendants' breach, the Plaintiff suffered excruciating and severe injuries as heretofore set forth in Paragraph 15.

19. As a consequential and proximate result of Defendants' breach, the Plaintiff was forced to move to another residence.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with the costs herein expended.

**THIRD CAUSE OF ACTION  
(Nuisance)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 19 of the previous Causes of Action a part of this Cause of Action as if fully set forth herein.

20. Defendants allowed this residence to be infested with mold and subjected the Plaintiff to a horrible, unlivable and unbearable living residence.

21. Defendants' actions interfered with the Plaintiff's use and enjoyment of the residence.

22. This interference was a situation that was maintained by Defendants allowing for an abnormally dangerous condition to be created at this rental.

23. That as a direct and proximate result of Defendants' breach, the Plaintiff suffered excruciating and severe injuries as heretofore set forth in Paragraph 15.

24. As a consequential and proximate result of Defendants' interference, the Plaintiff was forced to move to another residence.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with the costs herein expended.

**FOURTH CAUSE OF ACTION  
(Intentional Infliction of Emotional Distress)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 24 of the previous Causes of Action a part of this Cause of Action as if fully set forth herein.

25. Defendants allowed this residence to be infested with toxic mold and subjected the Plaintiff to exposure to toxic mold.

26. This conduct is so outrageous in character and extreme in degree as to go beyond the bounds of decency and is utterly intolerable in a civilized community.

27. That as a direct and proximate result of Defendants' breach, the Plaintiff suffered excruciating and severe injuries as heretofore set forth in Paragraph 15.

28. As a direct result, the Plaintiff suffered emotional distress so severe that no reasonable person should be expected to endure it.

29. As a consequential and proximate result of Defendants' conduct, the Plaintiff was forced to move to another residence.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with the costs herein expended.

**FIFTH CAUSE OF ACTION  
(Negligent Infliction of Emotional Distress)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 29 of the previous Causes of Action a part of this Cause of Action as if fully set forth herein.



30. Defendants allowed the residence to be infested with toxic mold and subjected the Plaintiff to exposure to toxic mold.

31. This conduct is so outrageous in character and extreme in degree as to go beyond the bounds of decency and is utterly intolerable in a civilized community.

32. That as a direct and proximate result of Defendants' breach, the Plaintiff, suffered excruciating and severe injuries, as heretofore set forth in Paragraph 15, and expenses incurred by the Plaintiff heretofore set forth in Paragraph 15.

33. As a consequential and proximate result of Defendants' conduct, the Plaintiff was forced to move to another residence.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for special damages and general damages together with the costs herein expended.

**SIXTH CAUSE OF ACTION**  
**(Fraud)**

The Plaintiff, for this Cause of Action, and to avoid repetition by reference, makes Paragraphs 1 through 33 of the previous Causes of Action a part of this Cause of Action as if fully set forth herein.

34. Defendant Thomas Dellwo knew of the mold conditions at the residence.

35. That Defendant Thomas Dellwo specifically ordered repair and maintenance men to cover over the mold and not properly remediate same, both of whom will testify to that effect.

36. That Defendant Thomas Dellwo specifically deceived and defrauded Plaintiff into believing that the problems were taken care of and that there was no need for her to leave the residence for her health and safety.

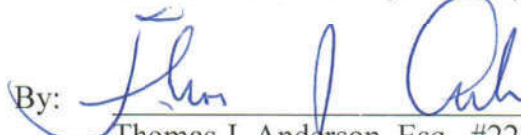
37. That Defendant Thomas Dellwo is an appraiser, owner of many parcels of rental real estate and a sophisticated landlord in connection with issues of health, safety, and issues of conditions and repair of real property.

38. That the deception and fraud of Defendant Thomas Dellwo was the proximate cause of Plaintiff's injuries and damages as alleged herein.

WHEREFORE, the Plaintiff prays for a judgment against Defendant Thomas Dellwo for special damages and general damages together with the costs herein expended.

DATED this 28<sup>th</sup> day of August, 2015.

ARLENA J. KELLY, Plaintiff,

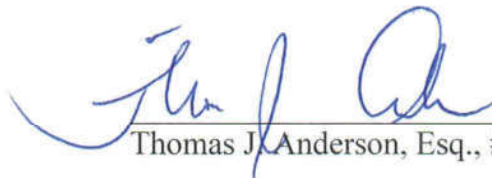
By:   
Thomas J. Anderson, Esq., #22779  
THOMAS J. ANDERSON, P.C., L.L.O.  
12020 Shamrock Plz., #333  
Omaha, NE 68154  
Phone: 402-884-4430  
Fax: 888-701-6190  
[lawyers@cox.net](mailto:lawyers@cox.net)

and,

James E. Connor, #15926  
CONNOR LAW  
13057 West Center Road, Suite 17  
Omaha, Nebraska 68144  
Phone: 402.345.3322  
Fax: 402.334.2317  
[jim@connorlaw.omhcoxmail.com](mailto:jim@connorlaw.omhcoxmail.com)  
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the above and foregoing First Amended Complaint was served upon Michael T. Gibbons, [mgibbons@woglaw.com](mailto:mgibbons@woglaw.com), by emailing a true and correct copy thereof on this 28<sup>th</sup> day of August, 2015.

  
Thomas J. Anderson, Esq., #22779

## Certificate of Service

I hereby certify that on Friday, August 28, 2015 I provided a true and correct copy of the Amended Complaint to the following:

Dellwo,Thomas, represented by Gibbons,Michael,T (Bar Number: 21263) service method:  
Electronic Service to mgibbons@woglaw.com

Your Property Solution LLC represented by Gibbons,Michael,T (Bar Number: 21263)  
service method: Electronic Service to mgibbons@woglaw.com

Dellwo,Thomas, represented by Ryan Kunhart (Bar Number: 24692) service method:  
Electronic Service to rkunhart@akclaw.com

Signature: /s/ Anderson,Thomas Joseph (Bar Number: 22779)

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

ARLENA J. KELLY,	)	Case No. CI 15-3855
	)	
Plaintiff,	)	
	)	
v.	)	<b>MOTION</b>
	)	<b>TO CONTINUE TRIAL</b>
THOMAS DELLWO and YOUR	)	
PROPERTY SOLUTION, LLC,	)	
A Nebraska Limited Liability Company,	)	
	)	
Defendants.	)	

COME NOW the Defendants, by and through their counsel, and hereby respectfully request this Court to continue the trial date of the above-captioned matter, currently set as a “back-up” trial beginning August 8, 2018.

In support of this Motion, moving Defendants state:

1. The above-captioned matter is a lawsuit alleging personal injuries allegedly arising from a mold infestation in a property owned by the Defendants and leased to the Plaintiff.
2. This lawsuit was filed on April 28<sup>th</sup>, 2015. When filed, attorneys Thomas J. Anderson and James E. Connor were listed as counsel for the Plaintiff. Pre-answer motions were filed, resulting in an Amended Complaint being filed on August 31, 2015. Defendants answered that Amended Complaint on September 25, 2015.
3. Written discovery was undertaken and Defendants gathered information and medical records from the Plaintiff through the summer of 2016.
4. On or about September 9, 2016, Defendants learned for the first time of a mold sample in Plaintiff’s counsels’ possession which allegedly was taken in April, 2014 from Defendants’ premises leased to the Plaintiff. This sample had not been disclosed through initial disclosures nor through Plaintiff’s responses to Defendants’ written discovery.



5. On October 27, 2016, Defendants' counsel wrote a letter to Plaintiff's counsel asking for further information about the mold samples, advised Plaintiff's counsel depositions of the mold testing experts would be needed, and requested those depositions be set. Defendants' counsel did not receive a response to this letter.

6. On November 2, 2016, this Court signed a scheduling order. In that Order, Plaintiff was to disclose all expert witnesses by March 1, 2017, with depositions of those experts to be completed by Defendants by June 1, 2017. Defendants were to disclose experts by May 1, 2017, with all depositions of those experts completed by August 1, 2017. The parties were to be ready for trial by December 1, 2017.

7. On April 3, 2017, Plaintiff formally filed a designation of expert witnesses, listing Plaintiff's treating physicians and individuals from two testing laboratories, one in South Carolina and one in Michigan.

8. Between April, 2017 and August 1, 2017, counsel for the Defendants tried contacting Plaintiff's counsel James Connor to arrange for the depositions of Plaintiff's mold testing experts. Phone calls were not returned. On August 1, 2017, Plaintiff's counsel Thomas Anderson filed a Motion with this Court for continuance of deadlines and of the trial readiness date in light of the fact Mr. Connor suffered from a grave illness, which apparently plagued Mr. Connor through the spring and summer of 2017 and explained why no return calls were received from him.

9. On September 15, 2017, attorney Tim Kielty appeared as co-counsel for the Plaintiff.

10. On September 18, 2017, defense counsel had a telephone conversation with Mr. Kielty and requested from him deposition dates for the mold experts. On December 7, 2017, Defense counsel sent an email and telephoned Mr. Kielty and again discussed the need for expert deposition dates. On February 2, 2018, defense counsel again telephoned Mr. Kielty and requested expert deposition dates.



11. Plaintiff counsel did not provide Defendants' counsel with dates for mold expert depositions.

12. On April 23, 2018, Mr. Kielty filed a motion to withdraw as counsel for the Plaintiff, which this Court granted.

13. On May 10, 2018, Mr. Todd Frazier filed an appearance as counsel for the Plaintiff. The next day, May 11, 2018, Mr. Paul Muia filed an appearance as counsel for the Plaintiff.

14. Since the appearance of the two latest counsel for the Plaintiff, counsel for the Defendants has been in contact with both of Plaintiff's new counsel, and efforts are underway to secure deposition dates of Plaintiff's mold experts.

15. With the above as backdrop, Defendants' counsel states this case is not ready for trial as the Plaintiff's experts still need to be deposed, and, based on that deposition testimony, Defendants will have to determine if experts are needed to rebut any testimony from Plaintiff's experts.

16. Defendants' counsel states that good faith efforts have been made to keep this matter moving forward, including the completion of written discovery and the taking of the deposition of the Plaintiff, and to complete the necessary, remaining discovery. However, due to the unfortunate illness and death of one of Plaintiff's attorneys, the appearance and then six months later the withdrawal of a second Plaintiff attorney, and now the appearance of a third and fourth counsel for Plaintiff less than three months before the Court's proposed back-up trial date, the necessary discovery has not yet been completed.

17. Counsel for the Defendants believes the necessary discovery can be completed and this case postured for trial in 180 days' time, and requests this Court continue this trial for that amount of time.

WHEREFORE, Defendants respectfully request this Court continue the August 8, 2018 trial date of this matter, establish a new scheduling order setting forth new deadlines for completion of all discovery and pre-trial motions, and set a final, pre-trial hearing date.

YOUR PROPERTY SOLUTION, LLC, A Nebraska  
Limited Liability Company, and THOMAS DELLWO  
Defendants

By: /s/ Earl G. Greene, III  
Michael T. Gibbons, #21263  
Earl G. Greene, III, #17054  
Woodke & Gibbons, PC, LLO  
619 N. 90<sup>th</sup> Street  
Omaha NE 68114  
(402) 391-6000; (402) 391-6200  
[mgibbons@woglaw.com](mailto:mgibbons@woglaw.com)  
[egreene@woglaw.com](mailto:egreene@woglaw.com)  
Attorneys for Defendants

#### NOTICE OF HEARING

You are hereby notified that Defendant will call up its foregoing Motion to Continue Trial before the Honorable Leigh Ann Retelsdorf, Courtroom 408, Douglas County District Court, 1701 Farnam Street, Omaha, Nebraska, 68183, on the 6<sup>th</sup> day of August, 2018, at 9:00 a.m., or as soon thereafter as counsel may be heard.

#### CERTIFICATE OF SERVICE

It is hereby certified that a copy of the above and foregoing document was emailed and mailed by regular U.S. Mail, postage pre-paid, to the below-listed attorneys of record on the 20<sup>th</sup> day of July, 2018:

Todd E. Frazier  
1600 Farnam St., Ste. 212  
Omaha, NE 68102  
[todd.frazier@gmail.com](mailto:todd.frazier@gmail.com)

Paul M. Muia  
Todd Frazier  
1904 Farnam St., Ste. 605  
Omaha, NE 68102  
[muia@muialaw.com](mailto:muia@muialaw.com)

/s/ Earl G. Greene, III

## Certificate of Service

I hereby certify that on Friday, July 20, 2018 I provided a true and correct copy of the Motion-Continuance to the following:

Kelly,Arlena,J represented by Muia,Paul,M (Bar Number: 19346) service method: Electronic Service to muia@muialaw.com

Dellwo,Thomas, represented by Gibbons,Michael,T (Bar Number: 21263) service method: Electronic Service to mgibbons@woglaw.com

Kelly,Arlena,J represented by James E. Connor (Bar Number: 15926) service method: Electronic Service to jim@connorlaw.omhcoxmail.com

Kelly,Arlena,J represented by Todd Frazier (Bar Number: 16243) service method: First Class Mail

Your Property Solution LLC represented by Gibbons,Michael,T (Bar Number: 21263) service method: Electronic Service to mgibbons@woglaw.com

Kelly,Arlena,J represented by Anderson,Thomas Joseph (Bar Number: 22779) service method: Electronic Service to lawyers@cox.net

Signature: /s/ Greene,Earl,G,III (Bar Number: 17054)