RETURN

IN THE 15TH JUDICIAL CIRCUIT, SALINE COUNTY, MISSOURI

Judge or Division: W. PAGE BELLAMY	**Case Number:** **23SA-CV00269**
Plaintiff/Petitioner: CLEEK'S INC	Plaintiff's/Petitioner's Attorney/Address: JAMES NYMARK FENDELMAN 9666 OLIVE BLVD SUITE 690 ST. LOUIS, MO 63132 (314) 725-9790
vs.	
Defendant/Respondent: RACHEL E SIMS	Date, Time and Location of Court Appearance: **26-SEP-2023, 09:30 AM** **Division VI Courtroom** **19 EAST ARROW** **PO BOX 670** **MARSHALL, MO 65340**
Nature of Suit: AC Breach of Contract	

RECEIVED
AUG 11 2023
COOPER COUNTY SHERIFF'S OFFICE

(Date File Stamp)

Associate Division Alias Summons

The State of Missouri to: RACHEL E SIMS
Alias:

200 MAIN ST
BOONVILLE, MO 65233

COURT SEAL OF

CIRCUIT COURT OF MISSOURI

SALINE COUNTY

You are summoned to appear before this court on the date, time, and location above to answer the attached petition. If you fail to do so, judgment by default will be taken against you for the relief demanded in the petition. You may be permitted to file certain responsive pleadings, pursuant to chapter 517, RSMo. Should you have any questions regarding responsive pleadings in this case you should consult an attorney.

If you have a disability requiring special assistance for your court appearance, please contact the court at least 48 hours in advance of scheduled hearing.

8-8-2023
Date

/s/Rebecca Uhlich, Circuit Clerk
by Chandra Bachtel, Deputy
Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Service must not be made less than 10 days nor more than 60 days from the date the defendant/respondent is to appear in court.

I certify that I have served the above Summons by: (check one)

☒ delivering a copy of the summons and petition to the defendant/respondent.

☐ leaving a copy of the summons and petition at the dwelling house or usual place of abode of the defendant/respondent with _____, a person at least 18 years of age residing therein.

☐ (for service on a corporation) delivering a copy of the summons and petition to: _____ (name) _____ (title).

☐ other: _____.

Served at 1216 E Morgan Street (address) in Cooper (County/City of St. Louis), MO, on 08-13-23 (date) at 16:34 (time).

Ryan Litzsinger
Printed Name of Sheriff or Server

Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer.

Subscribed and sworn to before me on _____ (date).

(Seal)

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees, if applicable

Summons	$_____
Non Est	$_____
Sheriff's Deputy Salary	
Supplemental Surcharge	$ 10.00
Mileage	$_____ (_____ miles @ $._____ per mile)
Total	$_____

A copy of the summons and petition must be served on **each** defendant/respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

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Electronically Filed - SALINE - August 04, 2023 - 10:40 AM

IN THE CIRCUIT COURT OF SALINE COUNTY
STATE OF MISSOURI

CLEEK'S INC. a Missouri Corporation,	)	
	)	
Plaintiff,	)	Cause No. 23SA-CV00269
	)	
vs.	)	
	)	
RACHEL E. SIMS,	)	Div:
Serve at POE: Boonville Correction Center	)	
1216 E Morgan St	)	
Boonville, MO 65233	)	
	)	
Defendant.	)	

REQUEST SUMMONS
TO BE SERVED BY THE COOPER COUNTY SHERIFF

COMES NOW Plaintiff, by and through its undersigned counsel and requests a summons be issued for the above matter, to be served by the Cooper County Sheriff at 200 Main St., Boonville, MO 65233.

FENDELMAN & ASSOCIATES, L.L.C.

By: /S/ James N. Fendelman
JAMES N. FENDELMAN, #41736
Attorney for Plaintiff
9666 Olive Boulevard
Suite 690
St. Louis, Missouri 63132
(314) 725-9790
(314) 725-9720 Facsimile

Signature above is also certification that counsel has signed the original pursuant to Rule 55.03(a) of the Missouri Rules of Civil Procedure.

23-244

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IN THE CIRCUIT COURT OF SALINE COUNTY
STATE OF MISSOURI

CLEEK'S INC, a Missouri Corporation,	)	
	)	
Plaintiff,	)	Cause No.
	)	
vs.	)	
	)	
RACHEL SIMS,	)	Div:
Serve at: 151 W. Arrow, Apt. 1,	)	
Marshall, MO 65340	)	
	)	
Defendant.	)	

PETITION

BREACH OF CONTRACT AND CONVERSION

COUNT I – CONVERSION

COMES NOW Plaintiff, by and through its undersigned counsel, and for Count I its Petition states as follows:

1. Plaintiff is a Missouri corporation in good standing, registered with the Secretary of State and duly authorized to transact business in the State of Missouri.

2. Defendant is an individual residing in the County of Saline, Missouri.

3. Venue is appropriate in Saline County specifically in that the agreement sued upon was executed in Saline County, Missouri.

NOTE: THE CONTRACT SUBJECT OF THIS LAWSUIT CONTAINS AN ARBRTRATION PROVISION: TO ENFORCE THE ARBRITRATION PROVISION SIMPLY NOTIFY PLAINTIFF'S ATTORNEY THAT YOU WOULD LIKE TO DO SO AND THE PARTIES BY CONSENT WILL ARBITRATE.

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4. On or about the dates of the Rental Agreement attached hereto, incorporated herein by reference and marked as "**Exhibit 1**" Plaintiff and Defendant entered into a contract by which certain rental merchandise as more fully described in "Exhibit 1" would be delivered to Defendant in accordance with the terms and conditions more fully set forth in the terms and conditions of the rental agreement.

5. The merchandise was delivered into Defendant's possession and Defendant has defaulted in the terms and conditions of the rental agreement and despite Plaintiff's repeated requests, Defendant has failed and refused to cure said default.

6. Defendant has converted the property specifically in that; (a) at all times relevant hereto, Plaintiff was the owner of property; (b) Defendant took possession of the property with the intent to exercise some control over it; and (c) Defendant wrongfully deprived plaintiff of the right to possession of property.

7. The fair market value of the merchandise is $1,669.98.

8. As a direct and proximate result of Defendant's tortious actions as set forth above, Plaintiff has been damaged in the amount of $1,669.98 for the fair market value of the rental merchandise.

9. The terms and conditions of the rental agreement allow either party the option of enforcing an Arbitration Agreement. Plaintiff in filing its Petition herein specifically reserves the right to enforce the Arbitration Agreement and further notifies Defendant that Defendant likewise has the option of invoking the Arbitration Agreement.

10. In the event that arbitration is elected by either of the parties Plaintiff requests that

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this Honorable Court enter a judgment consistent with the award of the arbitration panel.

WHEREFORE, Plaintiff requests judgment against Defendant, for the fair market value of the merchandise and for such other relief as the court deems just and proper.

COUNT II - BREACH OF CONTRACT

COMES NOW Plaintiff, by and through its undersigned counsel, in addition to Count I above, and for Count II of its cause of action against Defendant, respectfully states to the Court as follows:

11. Plaintiff restates and incorporates by reference herein each and every allegation set forth in Count I, above.

12. On or about the dates of the Rental Agreement attached hereto, incorporated herein by reference and marked as "**Exhibit 1**" Plaintiff and Defendant entered into a contract by which certain rental merchandise as more fully described in "Exhibit 1" would be delivered to Defendant in accordance with the terms and conditions more fully set forth in the terms and conditions of the rental agreement.

13. The said Rental Agreement was based upon valid consideration and mutual covenants between the parties.

14. The merchandise was delivered into Defendant's possession and Defendant has defaulted in the terms and conditions of the agreement and despite Plaintiff's repeated requests, Defendant has failed to pay the rental amounts as more fully set forth in "Exhibit 1."

15. Plaintiff has performed all conditions precedent to the contractual duties of the

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above-referenced relationship.

16. Pursuant to the terms of the Rental Agreement, Defendant owes to Plaintiff back due rent in the amount of $486.52.

17. Pursuant to the terms of the Rental Agreement Defendant also owes Plaintiff reasonable attorneys' fees.

18. That although demand for payment has often been made, Defendant has failed and refused and continues to fail and refuse to pay said amount or any part thereof.

19. The terms and conditions of the rental agreement allow either party the option of enforcing an Arbitration Agreement. Plaintiff in filing its Petition herein specifically reserves the right to enforce the Arbitration Agreement and further notifies Defendant that Defendant likewise has the option of invoking the Arbitration Agreement.

20. In the event that arbitration is elected by either of the parties Plaintiff requests that this Honorable Court enter a judgment consistent with the award of the arbitration panel.

WHEREFORE, in addition to Count I above, Plaintiff prays for judgment against Defendant for back due rent in the amount of $486.52 plus reasonable attorneys' fees, plus court costs, and for such other relief as the Court deems under the circumstances to be just and proper.

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FENDLEMAN & ASSOCIATES, LLC

By: _____
JAMES N. FENDELMAN, #41736
Attorney for Plaintiff
9666 Olive Blvd., Ste. 690
St. Louis, Missouri 63132
(314) 725-9790
Facsimile (314) 725-9720
jfendelman@fptlaw.com

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Cleek's
HOME FURNISHINGS | RENTALS & SALES

CONSUMER RENTAL-PURCHASE AGREEMENT--MISSOURI

Agreement Number: 137018 **Date:** OCTOBER 19, 2021

Lessor:
Cleek's, Inc.
941 South Cherokee Suite 5
Marshall, MO
Email:
Phone: (660) 831-5344

Lessee/Rental Customer: RACHEL SIMS
Address: 151 W ARROW #1
MARSHALL MO 65340
Phone: (660)886-0708 Email: RACHELOFMANY@YAHOO.COM

In this Agreement, "we," "us," and "our" refer to Cleek's, Inc., as Lessor. "You" and "your" refer to the person(s) signing this Agreement as the Lessee/Rental Customer. "Agreement" refers to this Rental-Purchase Agreement. "Property" refers to the rental property described below.

1. Description of the Property:

Description	Model	Manufacturer	Serial #	Condition	Cash Price
SECT-2PC-LAF SOFA-RA	FLASH2500366/17	ASHLEY FURNITURE IND	117054	NEW	$1,300.00
OTTOMAN	FLASH2500308	ASHLEY FURNITURE IND	117053	NEW	$369.98

2. **Initial Rental Payment.** Your initial Rental payment due when you sign this Agreement includes the following charges:

Initial Rental Payment	$0.00
Delivery Fee	$0.00
Liability Damage Waiver (Optional) (Item 7 below)	$0.00
Tax	$0.00
Total	$0.00

This Initial Payment covers 1 month and is due when you sign this Agreement. Your Initial Payment may be for a longer or shorter period than a regular periodic payment term for so we can match your renewal periods with your paydays or on another schedule that you prefer. After the initial term, you have three options: (1) you can continue using the Property by making a rental renewal payment in advance, (2) you can purchase the Property (see item 5 below); or (3) you can return the Property to us with no further obligation, except for any past due payments due.

3. **Rental Period Dates.** Your Initial Term begins on the date of this Agreement and expires on OCTOBER 19, 2021 .

4. **Rental Periods and Renewal Payments. Renewal payments shown below are due in advance for each period that you choose to renew this Agreement.**

		LDW(Optional)	Tax*	Total Payment
Monthly rental rate	$139.99	$4.00	$11.51	$155.50
Weekly rental rate	$34.99	$1.00	$2.88	$38.87
Semi-monthly rental rate	$70.00	$2.00	$5.76	$77.76
Bi-Weekly rental rate	$69.98	$2.00	$5.76	$77.74

*Taxes are subject to changes in the applicable tax rate.

5. **Rental-Purchase Ownership. You do not own the property. You are not obligated to renew this agreement in any way beyond the initial term. You do not obtain any ownership rights until you have paid for the Property in full by making 78 weekly payments of $34.99, for a Total Cost of $2,953.70; or 39 bi-weekly payments of $69.98, for a Total Cost of $2,953.70 ;or 36 semi-monthly payments of $70.00, for a Total Cost of $2,727.08 ; or 18 monthly payments of $139.99, for a Total Cost of $2,727.08, plus any other charges you owe us. The Total Cost includes tax but does not include certain other charges which are explained below.**

Or, if you are current you may purchase the Property at any time by exercising your Early Purchase Option (EPO). During the first 180 days, your EPO Price will be the Cash Price less 100% of rental payments made (not including any taxes or fees), plus tax and any unpaid amounts you owe us. After that your EPO Price will be the Cash Price less 50% of all rental payments made (not including any taxes or fees) plus tax and any unpaid amount you owe us. Your " 180 -Days-Same-As-Cash" option expires on 4/17/22 .

6. **Loss of or Damage to the Property. You are responsible for loss or damage in excess of normal wear and tear from all causes. Your liability will be the lesser of the cost of repair or the fair market value of the Property on the date of the loss. You can cover some of your liability by choosing our optional Liability Damage Waiver, below.**

7. **Other Charges. These fees are all reasonably related to the services performed.**

a) **Bank- or Card-Declined Charge: If your payment is denied for any reason, you must pay us a $15.0 our costs in processing your payment in addition to your rental payment.**

EXHIBIT
1

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b) **Late Fee: If you do not make your rental payment when due, you must pay us $5.00 plus your rental payment to continue using the Property.**

c) **In-Home Collection: $10.00 . If we have to send someone to your home to pick up a payment, you must pay this fee.**

d) **Liability Damage Waiver (Optional): If you choose this option, you will not be liable for loss of or damage to the Property from wind, rain, flood, fire, or other Act of God. You will not be liable for theft if you show us a police report within 48 hours of the theft showing forced entry. You must be current to claim LDW coverage.**

Accept LDW _____ **Decline LDW** VV

8. Reinstatement. If you fail to make a timely rental renewal payment, this Agreement expires. You can reinstate it without losing any rights or options previously acquired by making all payments due or returning the Property to us as soon as we ask you to. If you return the Property to us promptly, then you will have 3 rental terms (3 months, 3 weeks, or 3 bi-weekly or semi-monthly periods) from the date of return to reinstate by making all payments due. If you reinstate, we will furnish you with the same Property or property of comparable quality and condition.

9. Maintenance, Repairs, and Warranty: We will maintain the Property in good working condition during the rental term. We will not be responsible for the costs or the results of any repairs or damage caused by improper use. You must notify us immediately if the Property breaks. **If any part of a manufacturer's warranty, or third-party warranty, covers the Property at the time you acquire ownership, the warranty will be transferred to you, if allowed by the terms of the warranty.**

10. Termination and Default.

a) You may terminate this Agreement at any time by returning the Property to us in good condition, fair wear and tear excepted, or by making arrangements with us for its return and paying any past due amounts you owe. We may terminate this Agreement if you fail to keep any of your agreements. We may notify you of termination in writing, or by e-mail, or by telling you. You agree to pay us the fair market value of the Property if you fail to return it to us when this agreement terminates or make prompt arrangement with us for its return. You remain liable for rental payments until the Property is returned to us.

b) **Return of Property upon Termination.** If this Agreement is terminated for any reason, you agree to provide for the immediate return of this Property to us in good condition, fair wear and tear excepted. You can make arrangements for return of the Property by calling us at the number listed above or by taking the Property back to the store where you signed this Agreement.

11. Reimbursement of Costs. If you do not keep this Agreement, in addition to other charges you may owe us, you understand that you will have to pay us for all reasonable costs we incur in getting our Property back. These costs may include attorney's fees and court costs if they are incurred and permitted by state law.

12. Equity. You understand that we own the Property until you buy it or obtain ownership as stated in this Agreement. During the rental term, you do not have any ownership interest in this Property at all until you make all payments necessary for ownership or exercise your early purchase option, and you do not have the right to a refund of any rental payments when this Agreement is terminated.

13. Location of Property and Inspection. You agree to keep this Property on your person or at the address shown above. If you remove this Property without our written permission, we have the right to terminate this Agreement immediately. You agree that we have the right to inspect the Property at all reasonable times.

14. Assignment. You have no right to sell, transfer, assign, pawn, pledge, sub-lease or encumber the Property or this Agreement in any way. We may sell, transfer, or assign our rights in this Agreement.

15. Damage to Other Property. You understand that we will not be responsible for any loss or damage to any property arising out of your use of the Property.

16. Consent to Contact You. You agree that we or our agents can contact you regarding your account with us via telephone, including cell phones, or text message at any number you have given us or that you give us in the future, even if you are charged for the call. You also agree that we can contact you using automatic dialing or with prerecorded messaging. You acknowledge that the number(s) you have given us are for phone(s) that belong to you. You can cancel this consent to get automatic dialing or prerecorded messaging calls by notifying us of your desire to do so.

17. Miscellaneous Provisions. You understand that time is of the essence in this Agreement. You understand that no changes may be made to this Agreement except by us in writing. You understand that the Property may be new, refurbished, or previously rental, as indicated in item 1 above. You agree that we have not made any promises or representations about this Agreement or the Property other than those contained in this Agreement. You agree that you have received the Property in satisfactory condition.

18. ARBITRATION. ARBITRATION AND WAIVER OF JURY TRIAL. PLEASE READ THIS PROVISION OF THE AGREEMENT CAREFULLY. UNLESS YOU EXERCISE YOUR RIGHT TO OPT-OUT OF ARBITRATION IN THE MANNER DESCRIBED BELOW, YOU AGREE THAT ANY DISPUTE WILL BE RESOLVED BY BINDING ARBITRATION. ARBITRATION REPLACES THE RIGHT TO GO TO COURT, INCLUDING THE RIGHT TO HAVE A JURY TRIAL, TO ENGAGE IN DISCOVERY (EXCEPT AS MAY BE PROVIDED FOR IN THE ARBITRATION RULES), AND TO PARTICIPATE AS A REPRESENTATIVE OR MEMBER OF ANY CLASS OF CLAIMANTS OR IN ANY CONSOLIDATED ARBITRATION PROCEEDING OR AS A PRIVATE ATTORNEY GENERAL. OTHER RIGHTS THAT YOU WOULD HAVE IF YOU WENT TO COURT MAY ALSO BE UNAVAILABLE IN ARBITRATION.

Agreement to Arbitrate. You and we (defined below) agree that any Dispute (defined below) will be resolved by Arbitration. This agreement to arbitrate is governed by the Federal Arbitration Act, 9 U.S.C. § 1 et seq., and the substantive law of the State where you live without applying its choice-of-law rules). Nothing in this arbitration agreement is intended to prevent either of us from filing a lawsuit in an appropriate small claims court for an amount that does not exceed the court's jurisdictional limits. If counterclaims or other motions would cause the lawsuit to be removed from small claims court to another court, the dispute must be resolved by arbitration.

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What Arbitration Is. Arbitration is a means of having an independent third party resolve a Dispute. A Dispute is any claim or controversy of any kind between you and us. The term Dispute is to be given its broadest possible meaning and includes, without limitation, all claims or demands (whether past, present, or future, including events that occurred prior to origination of your Rental-Purchase Agreement (Agreement) and whether or not an Agreement is provided to you, based on any legal or equitable theory (contract, tort, or otherwise) and regardless of the type of relief sought (i.e., money, injunctive relief, or declaratory relief). A Dispute includes, by way of example and without limitation, any claim based upon a federal or state constitution, statute, ordinance, regulation, or common law, and any issue concerning the validity, enforceability, or scope of this arbitration agreement.
For purposes of this arbitration agreement, the terms you and your include any co-signer, co-obligor, or guarantor and also your heirs, guardian, personal representative, or trustee in bankruptcy. The terms we, our, and us mean Lessor and include Lessors employees, officers, directors, members, managers, attorneys, affiliated companies, predecessors, and assigns, as well as Lessors marketing, servicing, and collection representatives and agents.
How Arbitration Works. If a Dispute arises, the party asserting the claim or demand must initiate arbitration, provided you or we may first try to resolve the matter informally or through customary business methods, including collection activity. The party filing an arbitration must choose either of the following arbitration firms for initiating and pursuing an arbitration: the American Arbitration Association (AAA) or JAMS, The Resolution Experts (JAMS). If the parties mutually agree, a private party, such as a retired judge, may serve as the arbitrator. If you claim you have a Dispute with us, but do not initiate an arbitration or select an arbitrator, we may do so. You may obtain copies of the current rules of each of the arbitration firms and forms and instructions for initiating an arbitration by contacting them as follows:

American Arbitration Association
120 Broadway, 21st Floor
New York, NY 10271
Web site: www.adr.org
Telephone: (800) 778-7879

JAMS, The Resolution Experts
18881 Von Karman Ave., Suite 350
Irvine, CA 92612
Web site: www.jamsadr.com
Telephone: (949) 224-1810 or (800) 352-5267

The policies and procedures of the selected arbitration firm will apply provided such policies and procedures are consistent with this arbitration agreement. To the extent the arbitration firms rules or procedures are different than the terms of this arbitration agreement, the terms of this arbitration agreement will apply. **What Arbitration Costs.** No matter which party initiates the arbitration, we will advance or reimburse filing fees and other costs or fees of arbitration, provided each party will be initially responsible for its own attorneys fees and related costs. Unless prohibited by law, the arbitrator may award fees, costs, and reasonable attorneys fees to the party who substantially prevails in the arbitration. **Location of Arbitration.** Unless you and we agree to a different location, the arbitration will be conducted within 30 miles of your then current mailing address. **Waiver of Rights.** You are waiving your right to a jury trial, to have a court decide your Dispute, to participate in a class action lawsuit, and to certain discovery and other procedures that are available in a lawsuit. You and we agree that the arbitrator has no authority to conduct class-wide arbitration proceedings and is only authorized to resolve the individual Disputes between you and us. The validity, effect, and enforceability of this waiver of class action lawsuit and class-wide arbitration, if challenged, are to be determined solely by a court of competent jurisdiction and not by the AAA, JAMS, or an arbitrator. If such court refuses to enforce the waiver of class-wide arbitration, the Dispute will proceed in court and be decided by a judge, sitting without a jury, according to applicable court rules and procedures, and not as a class action lawsuit. The arbitrator has the ability to award all remedies available by statute, at law, or in equity to the prevailing party. **Applicable Law and Review of Arbitrators Award.** The arbitrator shall apply applicable federal and the substantive law of the state where you live and the terms of this Agreement. The arbitrator must apply the terms of this arbitration agreement, including without limitation the waiver of class-wide arbitration. The arbitrator shall make written findings and the arbitrators award may be filed with any court having jurisdiction. The arbitration award shall be supported by substantial evidence and must be consistent with this Agreement and with applicable law, and if it is not, it may be set aside by a court. The parties shall have, in addition to the grounds referred to in the Federal Arbitration Act for vacating, modifying, or correcting an award, the right to judicial review of (a) whether the findings of face rendered by the arbitrator are supported by substantial evidence and (b) whether the conclusions of law are erroneous under the substantive law of The state where you live and applicable federal law. Judgment confirming an award in such a proceeding may be entered only if a court determines that the award is supported by substantial evidence and is not based on legal error under the substantive law of the state where you live and applicable federal law. **Survival.** This arbitration provision shall survive: (1) cancellation, payment, charge-off, or assignment of this Agreement; (2) the bankruptcy of any party; and (3) any transfer, sale, or assignment of this Agreement, or any amounts owed under this Agreement, to any other person or entity. **Right to Opt-Out.** If you do not wish to agree to arbitrate all Disputes in accordance with the terms and conditions of this section, you must advise us in writing at the following address by either hand delivery or a letter postmarked no later than thirty (30) days following the date you enter into this Agreement. You may opt-out without affecting your application or status as a lessee at our address above.

NOTICE TO THE LESSEE: (a) Do not sign this Lease-Purchase agreement before you read it or if it contains any blank spaces. (b) You are entitled to an exact copy of the rental-purchase agreement you sign. Keep it to protect your legal rights.

Collaterally assigned to CNB Bank & Trust.

Lessor: Cleeks, Inc.

Signature

Printed Name

10-19-21

Date

Lessee/Rental Customer:

Signature

Rachel Sims

Printed Name

10-19-21

Date

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