

IN THE DISTRICT COURT OF DOUGLAS COUNTY, NEBRASKA

SADDLECREEK 1011, LLC,

Plaintiff,

vs.

TOM RINE,

Defendant.

CASE NO. CI 18 5588

COMPLAINT FOR RESTITUTION
OF PREMISES

ASSIGNED TO Bataillon

COMES NOW the Plaintiff, Saddlecreek 1011, LLC, and for its causes of action against Defendant, Tom Rine, states as follows:

1. That Plaintiff, Saddlecreek 1011, LLC ("Plaintiff"), is a Nebraska Limited Liability Company organized and existing under the laws of the State of Nebraska and is the owner of the property described herein. Said property is located in Omaha, Douglas County, Nebraska.
2. That Defendant, Tom Rine, ("Defendant"), is a resident of Omaha, Douglas County, Nebraska.
3. That on or about June 25, 2015, Plaintiff and Defendant entered into a written building lease (the "Lease") for the possession of commercial space situated at 1011 South Saddle Creek Road, Omaha, Douglas County, Nebraska 68106 (the "Premises"). The term of the Lease began on or about June 25, 2015. A true and correct copy of the Lease is attached hereto as Exhibit "A" and by this reference made a part hereof.
4. That Defendant has willfully violated the terms of the Lease by failing and refusing to pay the agreed monthly rent when due, and that Defendant owes Plaintiff \$16,600.00 for past due rent through June 2018.



#41 FILED
IN DISTRICT COURT
DOUGLAS COUNTY NEBRASKA
JUN 20 2018
JOHN M. FRIEND
CLERK DISTRICT COURT

ORIGINAL

5. On June 12, 2018, Plaintiff served upon Defendant a written three day notice to quit (the "Notice to Quit"); a true and correct copy of the Notice to Quit is attached hereto as Exhibit "B" and by this reference made a part hereof.

6. That more than the statutory time period of three days has elapsed between the serving of said Notice to Quit upon Defendant and the date of filing of this Complaint, and Defendant continues to unlawfully occupy the Premises.

7. That Plaintiff is entitled to immediate possession of the Premises.

WHEREFORE, Plaintiff prays that the Court enter judgment against Defendant, granting Plaintiff restitution of the Premises, and Plaintiff prays for a judgment against Defendant for its costs herein expended, its reasonable attorney fees herein expended, and other just and equitable relief as this Court deems proper.

Dated this 20th day of June, 2018.

SADDLECREEK 1011, LLC, Plaintiff

By: /s/ Michael L. Schleich
Michael L. Schleich, #13690
FRASER STRYKER PC LLO
500 Energy Plaza
409 South 17 Street
Omaha, NE 68102-2663
(402) 341-6000
mschleich@fslf.com
ATTORNEYS FOR PLAINTIFF

1905468.01

Exhibit
A

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BUILDING LEASE

THIS BUILDING LEASE ("Lease") is entered into this 25 day of June, 2015, between Saddlecreek 1011, LLC ("Landlord") and Tom Rinc ("Tenant").

PREMISES

1. Landlord leases to Tenant the entire building located at 1011 South Saddle Creek Road, Omaha, Nebraska, 68106 (the "Premises").

TERM

2. The term of this Lease shall commence upon Landlord's acquisition of fee title to the Premises (at which time Tenant's existing lease of a portion of the Premises shall terminate) and shall continue until either Landlord or Tenant terminate this Lease upon three (3) months advance written notice to the other.

USE OF PREMISES

3. The Premises are to be used by Tenant for storage and sale of items to the public and for no other purpose without Landlord's prior written consent, which consent shall not be unreasonably withheld. Tenant agrees to comply with all applicable governmental laws, ordinances, and regulations in connection with its use of the Premises, to keep the Premises in a clean and sanitary condition, and to use all reasonable precaution to prevent waste, damage, or injury to the Premises.

RENT

4. (a) Base Rent. Tenant agrees to pay Landlord base rent of \$5,000.00 per month ("Base Rent") in lawful money of the United States, in equal monthly installments in advance, on the 21st day of each month. Base Rent for any partial month shall be prorated. *30th + R*

(b) Payment of Rent. Tenant agrees to pay the Base Rent and all other amounts required to be paid by Tenant under this Lease as and when due. In the event of nonpayment of any amounts due under this Lease, whether or not designated as rent, Landlord shall have all the rights and remedies provided in this Lease or by law for failure to pay rent. *ccc*

(c) Late Charges. If Tenant fails to pay Base Rent or any other amounts required to be paid by Tenant under this Lease on or before the 10th day after such payments are due, Tenant agrees to pay Landlord a late charge of \$50.00 and the delinquent payment shall accrue interest at the rate of ten percent (10%) per annum from and after such date.

(d) Security Deposit. \$2,500.00 (which will be transferred by the former owner to Landlord).

SERVICES

5. Tenant agrees to reimburse Landlord each month for the cost of all utilities provided to the Premises including, without limitation, electric, gas, water, fuel and sewer.

ASSIGNMENT OR SUBLEASE

6. Tenant shall not assign this Lease or sublet the whole or any part of the Premises, transfer this Lease by operation of law or otherwise, or permit any other person except agents, subcontractors, independent contractors and employees of Tenant to occupy the Premises, or any part thereof, without the prior written consent of Landlord which consent shall not be unreasonably withheld. Landlord may consider, among other things, the following in determining whether to withhold consent: (a) financial responsibility of the new tenant, (b) identity and business character of the new tenant, (c) nature and legality of the proposed use of the Premises. Any permitted assignment shall not release Tenant from liability hereunder. Landlord shall have the right to assign its interest under this Lease and the rent reserved hereunder.

TENANT'S IMPROVEMENTS

7. Tenant shall have the right to place partitions and fixtures and make improvements or other alterations in the interior of the Premises at its own expense. Prior to commencing any such work, Tenant shall first obtain the written consent of Landlord for the proposed work. Landlord may, as a condition to its consent, require that the work be done by Landlord's own

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employees and/or under Landlord's supervision, but at the expense of Tenant, and that Tenant give sufficient security that the Premises will be completed free and clear of liens and in a manner satisfactory to Landlord. Upon termination of this Lease, at Landlord's option, Tenant will repair and restore the Premises to its former condition, at Tenant's expense, or any such improvements, additions, or alterations installed or made by Tenant, except Tenant's trade fixtures, shall become part of the Premises and the property of the Landlord. Tenant may remove its trade fixtures at the termination of this Lease provided Tenant repairs any damage caused by such removal.

REPAIRS

8. (a) Landlord Obligations. Landlord agrees to make all necessary repairs and replacements to the roof, exterior walls and foundations.

(b) Tenant Obligations. Tenant agrees that it will make all repairs and replacements to the Premises not required to be made by Landlord and to maintain the Premises in a safe, clean, neat, and sanitary condition. Tenant shall be entitled to no compensation for inconvenience, injury, or loss of business arising from the making of any repairs by Landlord.

CONDITION OF PREMISES

9. Tenant agrees that no promises, representations, statements, or warranties have been made on behalf of Landlord to Tenant respecting the condition of the Premises. By taking possession of the Premises, Tenant acknowledges that the Premises were in good and satisfactory condition when possession was taken. Tenant shall, at the termination of this Lease, by lapse of time or otherwise, remove all of Tenant's property and surrender the Premises to Landlord in as good condition as when Tenant took possession, normal wear excepted.

PERSONAL PROPERTY AT RISK OF TENANT

10. All personal property in the Premises shall be at the risk of Tenant only. Landlord shall not be liable for any damage to any property of Tenant or its agents or employees in the Premises caused by steam, electricity, sewage, gas or odors, or from water, rain, or snow which may leak into, issue or flow into the Premises from any part of the Premises, or from any other place, or for any damage done to Tenant's property in moving same to or from the Premises. Tenant shall give Landlord, or its agents, prompt written notice of any damage to or defects in water pipes, gas or warming or cooling apparatus in the Premises.

LANDLORD'S RESERVED RIGHTS

11. Without notice to Tenant, without liability to Tenant for damages or injury to property, person, or business, and without effecting an eviction of Tenant or disturbance of Tenant's use or possession or giving rise to any claim for setoff or abatement of rent, Landlord shall have the right to:

- (a) Change the name or street address of the Premises with 120 days written notice.
- (b) Install or maintain signs on or in the vicinity of the Premises.
- (c) Possess passkeys to the Premises.
- (d) Show the Premises to prospective tenants, lenders, and purchasers at reasonable times.
- (e) Take any and all reasonable measures, including inspections or the making of repairs, alterations, and additions and improvements to the Premises, which Landlord deems necessary or desirable for the safety, protection, operation, or preservation of the Premises.
- (f) Approve all sources furnishing signs, painting, and/or lettering to the Premises, and approve all signs on the Premises prior to installation thereof.

INSURANCE

12. (a) Landlord's Insurance. Landlord at all times during the term of this Lease shall maintain and keep in force with respect to the Premises, property insurance on a replacement cost basis insuring against fire and extended coverage perils, and such other insurance as Landlord shall deem reasonable to maintain. Tenant shall not use or occupy the Premises or any part thereof in any manner which could invalidate any policies of insurance now or hereafter placed on the Premises or increase the risk covered by insurance on the Premises or necessitate additional insurance premiums or policies of insurance, even if such use may be a furtherance of Tenant's business purposes. In the event any policies of insurance are invalidated by acts or omission of Tenant, Landlord shall have the right to terminate this Lease or, at Landlord's option, to charge Tenant for

extra insurance premiums required on the Premises on account of the increased risk caused by Tenant's use and occupancy of the Premises.

(b) Tenant's Insurance. Tenant, at its expense at all times during the term of this Lease, shall obtain and keep in force with respect to the Premises general public liability insurance in form customarily written for the protection of owners, landlords and tenants of real estate, with Landlord and Landlord's lender as additional insureds, which insurance shall provide coverage of not less than \$2,000,000.00 for each occurrence of bodily injury and property damage. Tenant understands and acknowledges that the insurance which this Lease requires Landlord to obtain and keep in force will not cover any of Tenant's property, Tenant's leasehold improvements or any loss of income/business interruption loss suffered by Tenant. Tenant agrees, at its expense, during the term of this Lease to obtain and keep in force with respect to Tenant's leasehold improvements, inventory, fixtures and equipment, signs and other personal property in the Premises, replacement value fire and extended coverage insurance. Tenant shall furnish to Landlord appropriate certificates evidencing that all insurance required of Tenant hereunder is in force.

(c) Waiver. Each party hereby waives all claims for recovery from the other for any loss or damage to any of its property insured under insurance policies maintained or required to be maintained by it hereunder and all such policies shall contain a waiver of subrogation clause or endorsement.

INDEMNITY

13. Tenant shall indemnify, defend and hold harmless Landlord from and against any and all damage, expense, claim, liability or loss, including reasonable attorneys' fees, arising out of or in any way connected to any condition, occurrence or event occurring on the Premises or arising out of any use of the Premises during the term of this Lease. This duty to indemnify and defend shall include but shall not be limited to damages, costs, liability, loss and expense including professional consultant, engineering or attorneys' fees incurred in responding to federal, state, or local laws, strict liability, or common law.

TAXES

14. Tenant shall timely pay or cause to be paid when due all personal property, sales, use and other taxes or assessments, general or special, now or hereafter imposed by any federal, state, or local government on the Premises or on the ownership, lease, sale, possession or use of the Premises, whether the same are assessed against Landlord or Tenant. If any such tax is assessed against Landlord, Landlord shall provide Tenant with written notice of the assessment. Upon demand, Tenant shall provide Landlord with proof of all required payments.

DAMAGE BY FIRE OR OTHER CASUALTY

15. If, during the term of this Lease, the Premises shall be so damaged by fire or any other cause, so as to render the Premises untenable, the rent shall be abated while the Premises remain untenable; and in the event of such damage, Landlord shall elect whether to repair the Premises or to cancel this Lease, and shall notify Tenant in writing of its election within sixty (60) days after such damage. In the event Landlord elects to repair the Premises, the work or repair shall begin promptly and shall be carried on without unnecessary delay. In the event Landlord elects not to repair the Premises, the Lease shall be deemed canceled as of the date of the damage. Such damage shall not extend the Lease term.

CONDEMNATION

16. If the whole or any part of the Premises shall be taken by public authority under the power of eminent domain, then the term of this Lease shall cease on that portion of the Premises so taken, from the date of possession, and the Base Rent shall be paid to that date, with a proportionate refund by Landlord to Tenant of such rent as may have been paid by Tenant in advance. If the portion of the Premises taken is such that it prevents the practical use of the Premises for Tenant's purposes, then Tenant shall have the right either (a) to terminate this Lease by giving written notice of such termination to Landlord not later than thirty (30) days after the taking; or (b) to continue in possession of the remainder of the Premises, except that the Base Rent shall be reduced in proportion to the area of the Premises taken. In the event of any condemnation or taking of the Premises, in whole or in part, the entire resulting award of damages shall be the exclusive property of the Landlord including all damages award as compensation for diminution in value to the leasehold, without any deduction for the value of any unexpired term of this Lease, or for any other estate or interest in the Premises now or hereafter vested in Tenant except that Tenant shall, if allowed by law, be entitled to appear, claim, prove and receive in the condemnation proceeding (a) the value of the Tenant's personal property that is damaged, destroyed or taken in such proceeding; and (b) the cost of relocation.

DEFAULT OR BREACH

17. Each of the following events shall constitute a default or a breach of this Lease by Tenant:

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- (a) If Tenant fails to pay Landlord any Base Rent or other payments when due hereunder;
- (b) If Tenant vacates or abandons the Premises without adequately securing the Premises;
- (c) If Tenant files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act, or voluntarily takes advantage of any such act by answer or otherwise, or makes an assignment for the benefit of creditors;
- (d) If involuntary proceedings under any bankruptcy or insolvency act shall be instituted against Tenant, or if a receiver or trustee shall be appointed of all or substantially all of the property of Tenant, and such proceedings shall not be dismissed or the receivership or trusteeship vacated within thirty (30) days after the institution or appointment; or
- (e) If Tenant fails to perform or comply with any other term or condition of this Lease and if such nonperformance shall continue for a period of ten (10) days after notice thereof by Landlord to Tenant, time being of the essence.

EFFECT OF DEFAULT

18. In the event of any default or breach hereunder, in addition to any other right or remedy available to Landlord, either at law or in equity, Landlord may exert any one or more of the following rights:

- (a) Landlord may with process re-enter the Premises immediately and remove the property and personnel of Tenant, and shall have the right, but not the obligation, to store such property in a public warehouse or at a place selected by Landlord, at the risk and expense of Tenant.
- (b) Landlord may with process retake the Premises and may terminate this Lease by giving written notice of termination to Tenant. Without such notice, Landlord retaking will not terminate the Lease. On termination, Landlord may recover from Tenant all damages proximately resulting from the breach, including, but not limited to, the cost of recovering the Premises and the difference between the rent due for the balance of the Lease term, as though the Lease had not been terminated, and the reasonable rental value of the Premises, which sum shall be immediately due Landlord from Tenant.
- (c) Landlord may relet the Premises or any part thereof for any term without terminating this Lease, at such rent and on such terms as it may choose. Landlord may make alterations and repairs to the Premises. In addition to Tenant's liability to Landlord for breach of this Lease, Tenant shall be liable for all expenses of the reletting, for any alterations and repairs made, and for the rent due for the balance of the Lease term, which sum shall be immediately due Landlord from Tenant. The amount due Landlord will be reduced by the net rent received by Landlord during the remaining term of this Lease from reletting the Premises or any part thereof.

SURRENDER-HOLDING OVER

19. Tenant shall, upon termination of this Lease, whether by lapse of time or otherwise, peaceably and promptly surrender the Premises to Landlord. If Tenant remains in possession after the termination of this Lease, without a written lease duly executed by the parties, Tenant shall be deemed a trespasser. If Tenant pays, and Landlord accepts, rent for a period after termination of this Lease, Tenant shall continue to occupy the Premises only as a tenant from month to month, subject to all terms, conditions, and agreements of this Lease, except that the Base Rent shall be 150% times the monthly Base Rent specified in this Lease immediately before termination.

SUBORDINATION AND ATTORNMENT

20. Landlord reserves the right to place liens and encumbrances on the Premises superior in lien and effect to this Lease. This Lease, and all rights of Tenant hereunder, shall be subject and subordinate to any liens and encumbrances now or hereafter imposed by Landlord upon the Premises or the Building or any part thereof, and Tenant agrees to execute, acknowledge, and deliver to Landlord, upon request, any and all instruments that may be necessary or proper to subordinate this Lease and all rights herein to any such lien or encumbrance as may be required by Landlord. In the event any proceedings are brought for the foreclosure of any mortgage on the Premises, Tenant will, at the option of the purchaser at the foreclosure sale, attorn to and recognize such purchaser as the Landlord under this Lease. Such recognition, however, shall not be deemed an acknowledgment by the purchaser of the validity of any of the existing claims of Tenant against the prior Landlord, and the purchaser will have no liability for any claims arising prior to the date on which the purchaser acquired fee title to the Premises. Tenant agrees to execute and deliver such further assurance and other documents, including a new lease upon the same terms and conditions contained herein, confirming the foregoing, as such purchaser may reasonably request. Tenant waives any right of election to terminate this Lease because of any such foreclosure proceedings.

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QUIET ENJOYMENT

21. During the term of this Lease and at all times when Tenant is not in default hereunder, Tenant's quiet and peaceful enjoyment of the Premises shall not be disturbed by anyone holding or claiming title under Landlord and Landlord will warrant and defend Tenant in quiet enjoyment and peaceful possession of the Premises.

NOTICES

22. Any notice to be given hereunder shall be given in writing and sent by personal delivery or certified mail to Landlord at 720 North 13th Street, Omaha, NE 68102, and to Tenant at 10702 Frances Street, Omaha, Nebraska 68124, or at such other address as either party may from time to time designate in writing. Each such notice shall be deemed to have been given at the time it shall be personally delivered to such address or deposited in the United States mail in the manner prescribed herein.

MISCELLANEOUS

23. (a) Binding on Assigns. All terms, conditions, and agreements of this Lease shall be binding upon, apply, and inure to the benefit of the parties hereto and their respective heirs, representatives and permitted successors and assigns.

(b) Amendment in Writing. This Lease contains the entire agreement between the parties and may be amended only by subsequent written agreement.

(c) Waiver-None. The failure of Landlord to insist upon strict performance of any of the terms, conditions and agreements of this Lease shall not be deemed a waiver of any of its rights or remedies hereunder and shall not be deemed a waiver of any subsequent breach or default of any of such terms, conditions, and agreements. The doing of anything by Landlord which Landlord is not obligated to do hereunder shall not impose any future obligation on Landlord nor otherwise amend any provisions of this Lease.

(d) No Surrender. No surrender of the Premises by Tenant shall be effected by Landlord's acceptance of the keys to the Premises or of the rent due hereunder, or by any other means whatsoever, without Landlord's written acknowledgment that such acceptance constitutes a surrender.

(e) Limitation on Recourse. Tenant agrees that Tenant will look solely to the equity, estate, and property of Landlord in the Premises and the real estate on which the Premises are situated (subject to prior rights of the holder of any mortgage or deed of trust thereon) for the collection of any judgment requiring the payment of money by Landlord in the event of any default on the part of Landlord in the observance or performance of any of the terms, covenants, and conditions of this Lease to be observed or performed by Landlord; and Tenant understands and agrees that no other assets of Landlord (or shareholders, partners, officers, directors, or employees of Landlord) shall be subject to levy, execution or other process for the satisfaction of any such judgment or for the enforcement of any rights or remedies of Tenant.

(f) Captions. The captions of the various paragraphs in this Lease are for convenience only and do not define, limit, describe, or construe the contents of such paragraphs.

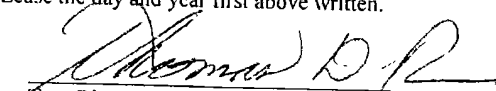
(g) Brokers. Tenant represents and warrants that it has not engaged any real estate broker or agent in connection with this Lease.

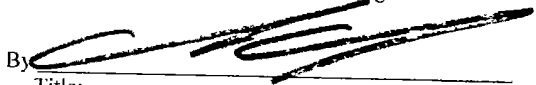
(h) Applicable Law. This Lease shall be governed by and construed in accordance with the laws of the State of Nebraska.

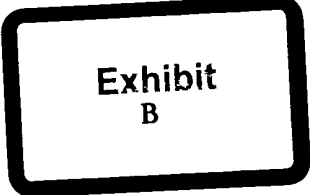
Until this Lease is executed on behalf of all parties hereto, it shall be construed as an offer to lease of Tenant to Landlord.

IN WITNESS WHEREOF, the parties hereto have executed this Lease the day and year first above written.

SADDLECREEK 1011, LLC
By Bluestone Development, L.L.C, Manager


Tom Rinc

By 
Title:



SADDLECREEK 1011, LLC,)
)
 Landlord,)
)
 vs.)
)
 TOM RINE,)
)
 Tenant.)

THREE DAY NOTICE TO QUIT
(Pursuant to Neb. Rev. Stat. § 25-21,221)

TO: TOM RINE, and ALL OTHER OCCUPANTS at 1011 South Saddle Creek Road, Omaha, Douglas County, Nebraska ("You").

RE: Building Lease dated June 25, 2015, inclusive of all addenda and amendments ("Lease Agreement"), for real property located at 1011 South Saddle Creek Road, Omaha, Douglas County, Nebraska 68106 ("Premises").

Pursuant to Neb. Rev. Stat. § 25-21,221, you are hereby notified that you continue to be in breach of the Lease Agreement and must vacate within three (3) days of your receipt of this Notice.

You are hereby further notified that if you fail to vacate the premises within three (3) days of your receipt of this Notice, your possession of the above-referenced premises will terminate and an action for forcible entry and detainer, and to recover all amounts due under the above Lease, will be commenced. Any partial payment of rent shall not waive the default herein or the Landlord's right to proceed with eviction pursuant to this Notice, unless expressly waived in writing and signed by the Landlord.

Dated this 12 day of June, 2018.

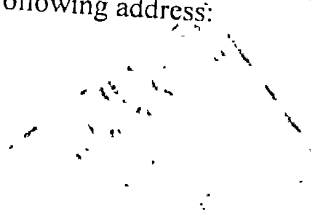
SADDLECREEK 1011, LLC

By: Michael L. Schleich
 Michael L. Schleich #13690
 Fraser Stryker PC LLO
 409 S. 17th Street
 500 Energy Plaza
 Omaha, Nebraska 68102
 (402) 341-6000
 ATTORNEYS FOR LANDLORD

CERTIFICATE OF SERVICE

On the 12 day of June, 2018, I caused this document to be personally served or posted on and sent by certified mail, postage prepaid, to the following address:

Tom Rine
1011 South Saddle Creek Road
Omaha, Nebraska 68106


Michael L. Schleich

Michael L. Schleich