ARIZONA COURT OF APPEALS

DIVISION ONE

HIGH DESERT HEALING, LLC, et al., Plaintiffs/Appellees, v. CEC 141202761, LLC, Defendant/Appellant.	Court of Appeals Division One No. 1 CA-CV 23-0195 Maricopa County Superior Court No. CV2021-016161 CV2021-053708

PLAINTIFFS/APPELLEES' ANSWERING BRIEF AND APPENDIX

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INTRODUCTION

This is a case about a landlord trying to use a $500 fee to get out of a $3 million commercial lease because it thinks it can rent the property for more money. The landlord thought it had an opportunity to break the lease because its tenant needed to assign the lease to accommodate a corporate acquisition. As part of this process, the tenant had to make a written assignment request and pay $500. When the tenant sensibly paid the trivial fee along with the next month's rent, the landlord thought its "gotcha" moment had arrived.

Applying settled Arizona law, however, the trial court rejected the landlord's argument because (1) it violated the lease's express reasonableness requirement, (2) the tenant did not in fact breach, and (3) any breach was immaterial under settled Arizona law.

On appeal, the landlord does not challenge the findings and rulings necessary to reverse. It also has not supplied the transcripts necessary for this Court to review the evidence supporting the trial court's findings. The Court should affirm.

STATEMENT OF FACTS AND CASE[1]

I. In 2018, CEC leased a commercial property to High Desert.

This dispute arises out of a lease agreement between High Desert Healing, LLC and CEC 141202761, LLC. [IR-44 at 1 (APP091).] High Desert was a wholly owned subsidiary of Harvest Dispensaries, Cultivations & Productions Facilities, LLC.[2] [IR-44 at 2 (APP092).]

In March 2018, High Desert leased property from CEC. [Tr. Ex. 25 at § 1 (APP117), CEC00403 (APP130).] The Agreement gave High Desert the right to use the property "for the purpose of operating and managing a medical marijuana dispensary facility" and, if Arizona legalized recreational marijuana (which it did that year), to use the property "for the purpose of operating and managing an adult/recreational marijuana dispensary facility …." [Tr. Ex. 25 at § 6.1 (APP121).] The lease was for 15 years at $17,000/month, increasing 3% annually. [Tr. Ex. 25 at §§ 1.3, 1.5 (APP117).]

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[1] This appeal involves two consolidated cases from the superior court. Unless otherwise noted, citations to the index of record (IR) refer to the lead case, No. CV2021-016161. Citations to the other case are indicated specifically (e.g., "No. CV2021-053708 IR-1").

[2] Because nothing in this appeal depends on the distinction between the entities, "High Desert" generally refers to all Plaintiffs/Appellees, namely High Desert Healing, LLC; Harvest Dispensaries, Cultivations & Production Facilities, LLC; and Harvest Health & Recreation, Inc.

Shortly after signing the lease, CEC had second thoughts. CEC thought that it had given High Desert too good of a deal. CEC's manager, Scott Ayers, wrote to High Desert, calling it (twice) a "filthy rich publicly traded company," and claiming "the rent you are charged at this location is 60% lower than the average retail store rental rate (9.8% of sales) reported by retail stores nationwide. But apparently, when you're a filthy rich publicly traded company, no deal is good enough." [Tr. Ex. 42 at HDHLLC002159 (APP139) (emphases removed).]

II. The lease provided CEC could not unreasonably withhold written consent of High Desert's request to assign the lease.

In May 2021, three years into the lease, High Desert's parent company Harvest agreed to be acquired by Trulieve Cannabis Corp. [Tr. Ex. 61 at HDHLLC002216 (APP142).] High Desert therefore needed to assign the lease to Trulieve.

The lease allows High Desert to assign the lease by "obtaining prior written approval of [CEC], which approval shall not be unreasonably withheld, delayed or conditioned":

> **10. Assignment and Subletting.** Lessee may not assign, transfer, mortgage, pledge, hypothecate, license, grant concession(s) or convey or sublet, in whole or in part, or otherwise permit occupancy of all or any part of the Premises or

> Property by anyone with, through or under Lessee, this Lease, the Premises or the Property, or Tenant's interest in the foregoing (each an "Assignment") without having notified Lessor in writing of the terms of the Assignment (the "Assignment Request") and obtaining prior written approval of Lessor, *which approval shall not be unreasonably withheld, delayed or conditioned*; provided, however, that in the event Lessee shall be in Default of this Lease or if the proposed Assignee's net worth is not at least equal to or greater than Lessee's as of the Lease Date, Lessor may elect not to approve any proposed Assignment, based upon the Default or failure to meet the net worth requirement and each of the foregoing shall be deemed a reasonable cause for Lessor's disapproval thereof. These prohibitions shall be construed to refer to events occurring by operation of law, legal process, receivership, and bankruptcy or otherwise. Any attempt at an Assignment without Lessor's prior written consent shall be null and void, confer no rights upon a third person, and shall, at the option of Lessor, be a Breach pursuant to Section 11.1(b) without the necessity of any notice or cure period, in which case Lessor may terminate this Lease and exercise any and all remedies described in this Lease. A Change of Control shall constitute an Assignment requiring Lessor's consent. For purposes of this Section 10, the term "Change of Control" means the transfer of more than 50% of the voting control of Lessee or Guarantor. The receipt by Lessor of Rent from a party other than Lessee shall not be deemed notice of a Change of Control. Notwithstanding the foregoing, and without conferring any rights upon Lessee, Lessee shall submit any Assignment Request with sufficient time and with sufficient information for Lessor to make an informed decision regarding the proposed Assignment.

[Tr. Ex. 25, § 10 (APP124) (italics added; bold omitted).]

The lease lists two circumstances that would be "deemed a reasonable cause" for withholding consent: if (1) "[High Desert] is in Default of this

Lease," or (2) "the proposed Assignee's net worth is not equal or greater than Lessee's as of the Lease Date." [*Id.* (APP124).]

The lease also provides certain procedures for assignments. As relevant here, the lease required High Desert to submit a written request, "together with" (meaning "in addition to") a $500 fee:

> (e) Each Assignment Request shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed Assignee, including but not limited to the proposed Assignment terms, *together with a fee of $500* as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

[*Id.*, § 10.1(e) (APP124) (italics added).]

In sum, the lease allowed High Desert to request CEC's consent to an assignment, via a request made in writing in addition to paying a $500 fee. CEC had to evaluate the request, but could not unreasonably withhold its consent to the requested assignment.

III. High Desert requested CEC's written consent because its parent company was merging with another company.

High Desert invoked this procedure and requested CEC's consent to assign the lease to Trulieve. On August 6, 2021, it sent CEC the formal written request required by the lease. [Tr. Ex. 61 (APP141).]

High Desert's request proactively addressed the required $500 assignment application fee, telling CEC that High Desert would include the fee "with the next installment of Base Rent." [*Id.* at HDHLLC002217 (APP143).] This approach made sense because the fee was trivial in comparison to the rent—under 3% of the monthly rent amount. High Desert made good on this promise by paying the $500 fee on September 1, along with its September rent payment. [Tr. Ex. 124 at cell D9 (APP198) (CEC's bank ledger, showing $20,744.24 received on 9/1/2021, compared to $20,244.24 in surrounding months).]

CEC did not immediately respond to this request, so High Desert submitted additional requests on August 17, August 23, and August 31. [IR-44 at 7, ¶ 35 (APP097).]

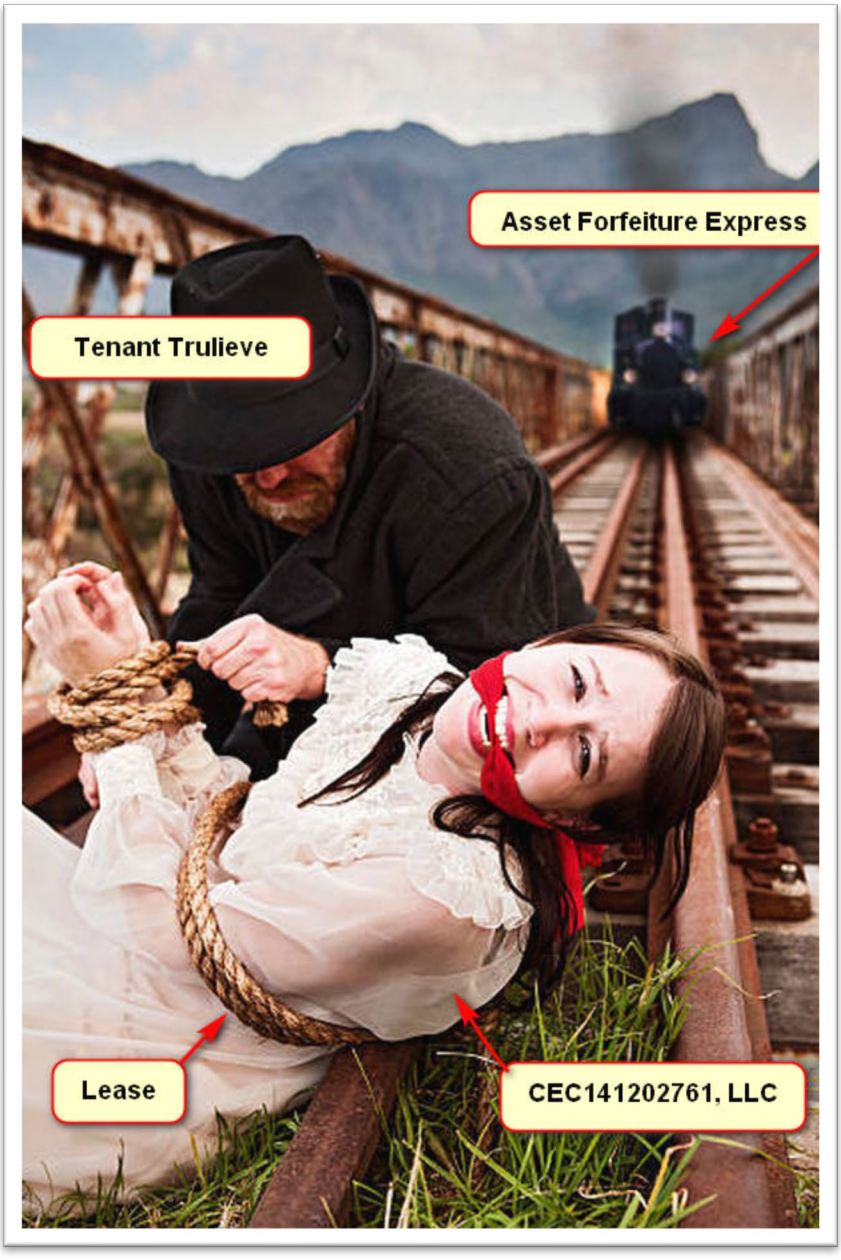
IV. CEC gave several pretextual reasons for denying consent to obtain higher rent from High Desert.

On August 31, CEC's manager, Scott Ayers, responded to the request. [Tr. Ex. 67 (APP156).] He complained that the $500 fee had not been received by then, explaining that "the lease requires payment of a $500 fee to the landlord to consider and process the request." [Tr. Ex. 67 at HDHLLC002620 (APP156) (emphasis removed).] CEC did not claim that CEC had breached the lease by submitting a written request without paying the fee simultaneously.

Instead, Mr. Ayers pretended to be concerned about civil asset forfeiture. The theory was apparently that if the tenant was engaged in marijuana-related transactions, "CEC's property may be seized as part of a 'civil asset forfeiture'." [*Id.* (APP156).] CEC did not explain how the landlord's property would be at risk, and did not explain how Trulieve presented any greater risk to CEC than High Desert did—after all, the property would be used for the same purpose both before and after the proposed assignment.

Instead, Mr. Ayers made a meme, showing a train barreling toward CEC, depicted as a damsel in distress tied up and gagged on the railroad

tracks. The meme labeled the villain as "Tenant Trulieve," and labeled the rope as "Lease." CEC's meme did not depict a landlord trying to force its tenant to comply with the terms of the lease. To the contrary, it showed a landlord trying to break free of the lease:



[Tr. Ex. 67 at HDHLLC002630 (APP164).]

High Desert responded the next day, on September 1, 2021, indicating that the $500 fee was paid earlier that day, as promised, and saying that Mr. Ayers's "communications are becoming unnecessarily contentious." [Tr. Ex. 68 at HDHLLC002709 (APP166).]

The next day, on September 2, 2021, counsel for CEC demanded extremely detailed information, supposedly as part of CEC's consideration of the assignment request. [Tr. Ex. 69 (APP172).] High Desert supplied the requested information the next day (September 3). [Tr. Ex. 71 (APP181).] CEC's counsel then confirmed that it would "undertake to review that information [supplied by High Desert] in furtherance of the landlord's consideration of the assignment request." [Tr. Ex. 70 at HDHLLC002741 (APP177).] In other words, CEC would be considering the assignment request, without claiming that the timing of the $500 fee breached the lease.

CEC immediately started looking for ways to terminate the lease. It hired a private investigator to investigate Trulieve. [IR-44 at 8, ¶ 43 (APP098) ("Mr. Ayers confirmed as much when he testified about having hired a

private investigator to look into Trulieve.").][3] It also brought up an alleged change in control from two years earlier and disputes about rent charges from over a year earlier.[4] [Tr. Ex. 67 (APP156); Tr. Ex. 80.]

About a month later, on September 29, 2021, counsel for CEC told High Desert that "the Landlord hereby refuses to grant and denies the Consent Request …." [Tr. Ex. 233 at 2 (APP201).] The letter listed several supposed bases, focusing on the prior alleged change in control, alleged deficient responses to inquiries, and "state and federal forfeiture laws." [*Id.* at 2-4 (APP201-03).]

Tellingly, there is zero overlap between the bases CEC gave at the time for refusing consent and the sole basis it offers on appeal. CEC's appeal does not seek to defend the specific bases CEC offered in its 2021 letter refusing consent. Instead, CEC's appeal focuses on the timing of the $500 fee and assignment attempt, but the 2021 refusal letter raises neither.

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[3] As explained below, because CEC did not supply transcripts, the Court must assume that the missing transcripts support the superior court's findings. (Argument § I.)

[4] CEC does not raise this change-in-control issue on appeal so High Desert does not address it. The superior court thoroughly addressed the issue. [IR-44 at 6-7, 10-12 (APP096-97, APP100-02).]

Instead of merely denying consent, CEC tried to get out of its own lease: "The Landlord hereby notifies the Tenant of the Landlord's election to terminate the Lease …." [*Id.* at 3 (APP202).] It demanded that High Desert "vacat[e] the leased premises," and threatened to "pursue other means to recover possession of the subject lease premises." [*Id.* at 4-5 (APP203-04).]

High Desert's general counsel then called CEC's counsel and followed up in an effort to "attempt to reset this situation if possible." [Tr. Ex. 88 (APP193).] Not long after, CEC's manager, Mr. Ayers, redirected things back to the real reason he wanted to terminate the lease—the rent rate: "Correct me if I'm wrong but I recall that the national average for retail space rents at 8-10% of gross revenues. That is, shoe stores and grocery stores would consider 8-10% of monthly revenue a reasonable rent rate." [Tr. Ex. 93 (APP196).]

CEC's refusal to consent to the assignment was unprecedented. Harvest sought consent from landlords for 40 leases across the country as part of its merger with Trulieve. "All of the landlords except [CEC] gave approval." [IR-44 at 13 n.6 (APP103).] And in all other instances, "[t]he longest period between the request for approval and the approval was two weeks." [*Id.* (APP103).]

V. After a bench trial, the superior court found that CEC unreasonably withheld consent to seek higher rent from High Desert.

After High Desert received CEC's letter attempting to terminate its lease, High Desert sued CEC, seeking declaratory judgment that High Desert had not breached the lease and other associated relief. [IR-1 at 5-7.] CEC filed a separate complaint for forcible entry and detainer. [No. CV2021-053708 IR-1.] The superior court consolidated the two cases. [IR-17.] The parties agreed to a stipulated injunction that prevented CEC from terminating the lease while the case was pending. [IR-24 (APP088).]

The superior court (Viola, J.) held a four-day bench trial and issued findings of fact and conclusions of law. The superior court concluded that High Desert "did not breach the Lease" and that "CEC has an obligation to approve in writing an assignment of the Lease as requested by [High Desert]." [IR-44 at 15 (APP105).]

Most of the superior court's ruling involves issues CEC has not appealed and has therefore abandoned. As relevant here, the superior court made three key findings: (1) it "conclude[d] that CEC unreasonably withheld consent to the assignment," [*id.* at 13 (APP103)]; (2) it granted High Desert's request for a judicial determination that "[High Desert] did not

breach the Lease," [*id.* at 15 (APP105)]; and (3) it found that even if High Desert did breach the lease in connection with the $500 fee, "the breach (if any) was not material and enforcing a forfeiture under the circumstances would not be just," [*id.* at 13 (APP103)].

The superior court made extensive factual findings on these issues. For example, the trial court, acting as finder of fact, found CEC's concern about asset forfeiture to be pretextual. After all, the entire point of the lease was for High Desert to "operat[e] a dispensary." [*Id.* at 5, ¶ 20 (APP095).] The use therefore would not change pre- to post-assignment, and the assignment would not change the forfeiture risk. CEC never "presented [] any evidence to establish that forfeiture has been used to seize property from landlords leasing to dispensaries." [*Id.* at 5, n.2 (APP095).]

Moreover, shortly before High Desert requested consent to the assignment, CEC took out "a $1.5 million loan secured by the property and the subject Lease." [*Id.* at 5, ¶ 20 (APP095).] "The Deed of Trust issued by the lender contains a provision that prevents CEC from changing the use of the property." [*Id.* at 5, ¶ 16 (APP095); *see also* Tr. Ex. 64 at 7, § 3 (APP152) ("Borrower shall not change, nor allow changes in, the use of the Mortgaged Property from the current use of the Mortgaged Property as of the date of

this Security Instrument.").] In other words, under its contract with the lender, CEC *could not* change of the use of the property, further undermining its asset-forfeiture story. The court therefore found that "CEC's conduct in obtaining the loan is inconsistent with Mr. Ayers' purported concerns about forfeiture." [IR-44 at 5, ¶ 20 (APP095).] It further found that it "did not find [Mr. Ayers'] testimony credible" on this point. [*Id.* at 13 n.7 (APP103).]

The court also rejected CEC's theory that High Desert had breached. "CEC did not report to ASIF [the lender] any alleged uncured breaches of the Lease. … CEC represented to ASIF that [High Desert] was current with all payments under the Lease. The information provided to the lender conflicts with positions later taken by CEC upon request for approval of the Lease assignment and earlier asserted to [High Desert]." [*Id.* at 5, ¶ 17 (APP095).]

Although not challenged on appeal, the court rejected CEC's pretextual claim that High Desert had an unauthorized change of control in 2019, finding, "There was no change in voting control over [High Desert] and/or Harvest DCP from March 1, 2018 through October 1, 2021," and that "Steve White had full control of [High Desert] and Harvest DCP from March 1, 2018 through October 1, 2021." [*Id.* at 6, ¶¶ 28-29 (APP096).] The court

also found that CEC had all relevant facts "but did not raise any issue about a breach of the Lease related to change in voting control until Plaintiffs sought CEC's approval of an assignment of the Lease." [*Id.* at 9, ¶ 47 (APP099).] In sum, "CEC failed to establish that voting control transferred at any time." [*Id.* at 11 (APP101).] But the court did not stop there. It found that even if there was a change of control, "CEC has not established that any change of control is material." [*Id.* (APP101).] The court relied on the immaterial breach doctrine from the Arizona Supreme Court in *Foundation Dev. Corp. v. Loehmann's Inc.*, 163 Ariz. 438 (1990), and the five-part test from Restatement (Second) of Contracts § 241, which the Supreme Court adopted in *Loehmann's*. [IR-44 at 11-13 (APP101-03).]

On the $500 fee, the superior court found that High Desert "did explain that it would pay the $500 fee with September rent," and that it in fact "paid the $500 fee … on September 1, 2021 as it indicated it would do." [*Id.* at 7, ¶¶ 36, 38 (APP097).] "CEC never requested that HDH/Harvest tender the $500 in order to proceed with considering the request." [*Id.* at 7, ¶ 36 (APP097).] Again applying the immaterial breach doctrine from *Loehmann's*, the superior court found that even if the timing of the fee constituted a

breach, "the breach (if any) was not material and enforcing a forfeiture under the circumstances would not be just." [*Id.* at 13 (APP103).]

The superior court ultimately found that CEC's claimed bases for refusing consent were pretextual. It found that "CEC responded [to the consent request] in bad faith …." [*Id.* at 8, ¶ 43 (APP098).] It further found that High Desert "*reasonably concluded* that Mr. Ayers was attempting a 'shake down.'" [*Id.* at 8, ¶ 44 (APP098) (emphasis added).] High Desert "believed CEC was seeking to force a renegotiation of rent. *This conclusion was reasonable* …." [*Id.* at 13 (APP103) (emphasis added).] Emphasizing that "[t]he Court had an opportunity to consider Mr. Ayers' demeanor and tone of voice while testifying," it found that "the Court did not find Mr. Ayer[s'] testimony credible on this issue." [*Id.* at 14 & n.8 (APP104).]

The court emphasized the damsel-in-distress meme, explaining that it was "consistent with CEC's prior correspondence suggesting that the rent charged was '60% lower than the average retail store rental rate.'" [*Id.* at 8, ¶ 45 (APP098) (emphasis omitted).] The court also relied on Mr. Ayers' communications to Trulieve, which "further corroborate the Court's conclusion that Mr. Ayers was interested in higher rent." [*Id.* at 14 (APP104).] It viewed these communications as "a not so veiled attempt to

secure higher rent for the property after he terminated the Lease." [*Id.* (APP104).] Again "[b]ased on Mr. Ayers' testimony, including his demeanor and tone while testifying, and his prior correspondence, the Court concludes that the communications were a veiled attempt to suggest that the space might be available for Trulieve for the right price (i.e., a higher price than CEC was receiving from [High Desert])." [*Id.* (APP104).]

VI. The superior court entered judgment for High Desert.

The Court therefore held that High Desert "did not breach the Lease," and that "CEC has an obligation to approve in writing an assignment of the Lease as requested by Plaintiffs." [*Id.* at 15 (APP105).]

CEC requested additional findings of fact and conclusions of law, none of which referenced the $500 fee or any attempt at an assignment. [IR-46.] The court denied this request. [IR-63 at 2 (APP107).] It awarded High Desert attorneys' fees, which are not disputed on appeal. [*Id.* at 4 (APP109).]

The court entered judgment on February 7, 2023. [IR-78 (APP111).] CEC appealed. [IR-81.] This Court has jurisdiction under A.R.S. § 12-2101(A)(1).

STATEMENT OF THE ISSUES

1. The lease provides that CEC's "approval shall not be unreasonably withheld, or delayed" with exceptions that CEC has not invoked on appeal. Refusing to consent to an assignment request because the landlord is unhappy with the low rent is unreasonable. The superior court here concluded that CEC withheld consent to obtain higher rent from High Desert. Did the superior court clearly err in concluding that CEC unreasonably withheld consent to the assignment of the lease?

2. Under the lease, "[e]ach Assignment Request shall be in writing … together with a fee of $500 …." This lease uses the phrase "together with" invariably to mean "in addition to," which is consistent with its ordinary meaning. Did the superior court clearly err in concluding that Trulieve did not breach the lease when it both made a written request and paid the $500 fee?

3. Under controlling law, a lease may not be forfeited for a trivial or technical breach. Here, the alleged breach involves paying a $500 fee (in a multi-million-dollar lease) with the next month's rent, instead of with a request for an assignment approval. Did the superior court clearly err in concluding that any breach was immaterial?

4. CEC argues for the first time on appeal that High Desert "attempted an assignment" when it submitted a request for consent. Did CEC waive this argument?

STANDARD OF REVIEW

This Court "defer[s] to a superior court's findings of fact unless clearly erroneous, but … review[s] its conclusions of law de novo" in an appeal from a bench trial. *Town of Marana v. Pima Cnty.*, 230 Ariz. 142, 152, ¶ 46 (App. 2012); *accord* Ariz. R. Civ. P. 52(a)(6) ("Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the credibility of witnesses."). "To be clearly erroneous, a finding must be unsupported by any reasonable evidence." *In re Van Dox*, 214 Ariz. 300, 304, ¶ 15 (2007).

The reviewing court must "view the evidence and reasonable inferences from that evidence in the light most favorable to the prevailing party and must affirm if any evidence supports the trial court's judgment." *FL Receivables Tr. 2002-A v. Arizona Mills, LLC*, 230 Ariz. 160, 166, ¶ 24 (App. 2012).

ARGUMENT SUMMARY

CEC's appeal suffers from a fundamental problem. CEC did not file any transcripts, which means that this Court must presume that the missing transcripts supported the trial court's ruling. (Argument § I.)

The lack of transcripts presents an acute problem for CEC because its opening brief bears almost no resemblance to what happened below. The superior court made three key findings: (1) that CEC unreasonably withheld consent to High Desert's request for consent to an assignment, (2) that High Desert did not breach the lease, and (3) that any breach was immaterial. Any one of these findings is sufficient to affirm, and each one is supported by settled Arizona law and reasonable evidence. (Argument § II.)

On CEC's unreasonable refusal, both the lease itself and longstanding Arizona law prohibit a landlord from unreasonably refusing an assignment request. (Argument § II.A.1.) Substantial evidence supported the superior court's finding that CEC acted unreasonably. CEC's claimed bases made no sense, and CEC was instead motivated by an attempt to get higher rent. (Argument § II.A.2.)

The superior court also correctly held that High Desert did not breach the lease. The lease simply requires the tenant to submit a written request

for assignment "together with" a $500 fee, but the fee does not have to be paid simultaneously with the request. The lease uses the phrase "together with" several other times, consistently and invariably to mean "in addition to," not "simultaneous with." This also comports with the ordinary meaning of the term. (Argument § II.B.)

The superior court also found that even if there was a breach, any breach is immaterial and therefore does not justify terminating the lease. Here, too, the superior court relied on settled Arizona law, principally the Supreme Court's decision in *Foundation Development Corp. v. Loehmann's Inc.*, 163 Ariz. 438, 445 (1990). (Argument § II.C.)

CEC's arguments do not justify reversal because CEC never confronts the core findings and legal authority supporting the superior court's rulings. (Argument § III.A.) It criticizes the superior court for supposedly nullifying the lease by adding a "reasonableness requirement," but CEC does not address the fact that the lease says "approval shall not be unreasonably withheld, delayed or conditioned," [Tr. Ex. 25, § 10 (APP124)], or the settled law that would impose a reasonableness requirement even if the lease did not. If CEC wanted to challenge the superior court's reasonableness finding,

it had to confront it directly, including the facts and law that support it. (Argument § III.B.1.)

CEC's brief also presumes that High Desert breached the lease by not paying the $500 fee simultaneously with its request for consent. But it does not confront the superior court's finding that High Desert did not in fact breach, nor does CEC offer any textual analysis to support its repeated claim that the lease requires the fee to be paid simultaneously with the request. CEC cannot simply assume that a breach occurred when the superior court made a contrary finding. (Argument § III.C.)

On the immaterial breach issue, CEC argues that any breach justifies forfeiture. But CEC does not cite or discuss the controlling law on this issue. The superior court expressly invoked the Supreme Court's holding that "forfeiture for a trivial or immaterial breach of a commercial lease should not be enforced." *Loehmann's*, 163 Ariz. at 446. If CEC wanted to challenge the immaterial breach doctrine, it had to confront the controlling cases and the express bases for the superior court's ruling. (Argument § III.B.1.)

Moreover, all contracts incorporate common-law principles such as the reasonableness requirement for consenting to lease assignments and the immaterial breach doctrine. CEC's arguments that the superior court

nullified or rewrote the lease therefore fail, along with its argument about the contracts clause of the Constitution. (Argument § III.B.)

CEC also claims that High Desert breached the lease by attempting an assignment without CEC's written consent. But CEC never raised this argument below and its brief does not sufficiently develop the argument. CEC never identifies what the "attempt" was, so it is impossible for High Desert to respond to the argument or for the Court to analyze it. (Argument § III.D.)

Fundamentally, CEC frames this case as if it is trying to honor the lease while the tenant tries to escape it. But the superior court found the opposite—that CEC was looking for any excuse to get out of the lease, in an effort to jack up the rent. CEC does not meaningfully address the superior court's findings and conclusions, does not challenge the rulings necessary to reverse, and has not even supplied transcripts to enable this Court to review the record. The Court should affirm.

ARGUMENT

I. Because CEC failed to supply any transcripts, the Court must assume that all trial evidence and argument would have supported the trial court's ruling.

As a threshold matter, CEC failed to file any transcripts. As the appellant, CEC had the "burden to ensure that the record on appeal contain[ed] all transcripts or other documents necessary for [this Court] to consider the issues raised." *Blair v. Burgener*, 226 Ariz. 213, 217, ¶ 9 (App. 2010) (citation and quotation marks omitted). In its case management statement, Appellant told this Court "[t]here has been a delay in ordering the transcripts due to a misunderstanding on who was doing the ordering. They will be filed in short order." Case Management Statement at 6 (filed 4/20/2023). CEC never filed any transcripts or otherwise explained its failure to do so.

To challenge the superior court's findings and conclusions, CEC "must include in the record transcripts of all proceedings containing evidence relevant to that judgment, finding or conclusion" that challenges on appeal. ARCAP 11(c)(1)(B). The consequences for failing to provide transcripts are serious: "[w]hen a party fails to include necessary items, we assume they would support the court's findings and conclusions." *Baker v. Baker*, 183 Ariz.

70, 73 (App. 1995); *accord Blair*, 226 Ariz. at 217, ¶ 9 ("[I]n the absence of a transcript, we presume the evidence and arguments presented at the hearing support the trial court's ruling.").

Accordingly, the Court here must assume that all evidence and argument presented at trial would support the superior court's "findings and conclusions." *Baker*, 183 Ariz. at 73.

CEC may tell the Court that its issues on appeal are pure legal issues. But as explained below, it cannot obtain relief on appeal without overturning the superior court's findings and conclusions—and for that, it needed to supply transcripts.

II. The superior court correctly ruled for High Desert on the $500 fee.

CEC's primary argument on appeal (at 13) is that the timing of High Desert's $500 fee payment gave CEC "the absolute right to deny the assignment and declare the lease contract null and void."

The superior court gave three independent bases for ruling for High Desert on the $500 fee. First, the superior court held that "CEC unreasonably withheld consent to the assignment," largely because CEC's reasons for refusing consent were mere pretext for trying to "force a renegotiation of rent." [IR-44 at 13 (APP103).]

Second, the court held that High Desert did not breach. [*Id.* at 15 (APP105) ("granting HDH and Harvest DCP's request for a judicial determination that HDC and Harvest DCP did not breach the Lease").]

Third, the superior court held that even if the timing of the $500 fee was a breach, "the breach (if any) was not material …." [*Id.* at 13 (APP103).]

Any of these three bases is sufficient to affirm. Substantial evidence supports all of them.

A. Substantial evidence supported the superior court's finding that CEC unreasonably withheld its approval to the assignment.

1. As a matter of law, CEC could not unreasonably withhold its consent to an assignment.

CEC did not have unfettered discretion to withhold approval to an assignment, for two reasons.

(a) The lease's plain terms prohibit CEC from unreasonably withholding approval.

First, the text of the lease prohibits CEC from unreasonably withholding approval. It says that High Desert may not assign the lease without "obtaining prior written approval of Lessor, which approval *shall not be unreasonably withheld*, delayed or conditioned …." [Tr. Ex. 25, § 10

(APP124) (emphasis added).] This lease term unambiguously required CEC to act reasonably in considering the assignment request.

(b) Under settled, law, a landlord cannot unreasonably or arbitrarily withhold consent to assignment of a lease.

Second, even without this express provision in the lease, a landlord may not unreasonably withhold consent under settled Arizona law.

"The assignability of a lease depends on the provisions of the lease and the law of the situs of the property, but a term or estate for years generally is transferrable." 52 C.J.S. *Landlord & Tenant* § 30 (2023). Generally, "each tenant has the unrestricted right to assign or sublet as he wills." *Tucson Med. Ctr. v. Zoslow*, 147 Ariz. 612, 614 (App. 1985). But "the parties may restrict, take away, or impose conditions on the exercise of the right to assign or sublet the demised premises." 52 C.J.S. *Landlord & Tenant* § 33 (2023). Landlords often require their consent to assign the lease as a condition of the parties' agreement.

Yet "the landlord's consent … cannot be withheld unreasonably, unless a freely negotiated provision in the lease gives the landlord an absolute right to withhold consent." *Zoslow*, 147 Ariz. at 614 (adopting Restatement (Second) of Property § 15.2(2)); *see also Campbell v. Westdahl*, 148

Ariz. 432, 436 (App. 1985) (same). That is, even if the lease "does not contain any language limiting the withholding of that consent" (such as an express reasonableness requirement), consent cannot be arbitrarily or unreasonably withheld. *Zoslow*, 147 Ariz. at 614 (rejecting argument that landlord "had a right to arbitrarily refuse to approve the sublease").

A landlord's rationale for denying consent therefore must be reasonable.

2. Substantial evidence supported the superior court's factual finding that CEC's refusal was unreasonable.

To be reasonable, "[a] reason for refusing consent … must be objectively sensible and of some significance." *Zoslow*, 147 Ariz. at 615. So, for example, an "incorrect reading of the deed restrictions cannot be considered to be reasonable." *Id.* A tenant can demonstrate that the landlord is acting unreasonably through the circumstances surrounding the proposed assignment. *See id.* If the proposed assignees are "reputable and experienced business persons with a good record of meeting their obligations" that is evidence that denial of the assignment is unreasonable. *Richter v. Dairy Queen of S. Ariz., Inc.*, 131 Ariz. 595, 597 (App. 1982).

On the other hand, reasonable rationales to deny consent include "inability to fulfill the terms of the lease, financial irresponsibility or instability, unsuitability of the premises for the intended use, or intended lawful or undesirable use of the premises." *Zoslow*, 147 Ariz. at 615.

Applying these principles, this Court has held that "[a] landlord's refusal to consent to an assignment because the landlord is unhappy with the low rent provided under the existing lease is unreasonable." *Campbell*, 148 Ariz. at 438. This Court has also explained that it should affirm if the superior court "could have concluded that the reason for refusing which [landlord] gave at trial was a mere pretext … because they wanted to extract more rent from [the tenant.]" *Magna Inv. & Dev. Corp. v. Brooks Fashion Stores, Inc.*, 137 Ariz. 247, 249 (App. 1983) (affirming trial court's findings that reasons for denying consent were unreasonable), *overruled on other grounds by DVM Co. v. Stag Tobacconist, Ltd.*, 137 Ariz. 466 (1983).

Here, the superior court found just that: CEC's *real* motivation was in getting "higher rent." [IR-44 at 13 (APP103).] Its efforts were "a veiled attempt to suggest that the space might be available for Trulieve for the right price (i.e., a higher price than CEC was receiving from [High Desert])." [*Id.* at 14 (APP104).]

Whether a landlord's refusal was reasonable is "a question of fact to be determined by the [factfinder]." *Campbell*, 148 Ariz. at 436. The trial court's finding accordingly may not be set aside "unless clearly erroneous." *Marana*, 230 Ariz. at 152, ¶ 46. To be clearly erroneous, "a decision must [be] more than just maybe or probably wrong; it must … strike [the reviewing body] as wrong with the force of a five-week-old, unrefrigerated dead fish." *Van Dox*, 214 Ariz. at 304 n.3 (alterations in original) (quoting *Parts & Elec. Motors, Inc. v. Sterling Elec., Inc.*, 866 F.2d 228, 233 (7th Cir. 1988)).

The question on appeal, therefore, is not whether the appellate panel thinks that CEC acted reasonably or pretextually, but whether *any evidence* supported the superior court's finding that CEC's true motivation for refusing consent was to extract higher rent.

This is particularly true when, as here, the superior court expressly based its findings on witness credibility and demeanor:

- "The Court did not find [Mr. Ayers'] testimony credible" on this point. [IR-44 at 13 n.7 (APP103).]
- "The Court did not find Mr. Ayer[s'] testimony credible on this issue." [*Id.* at 14 (APP104).]
- "The Court had an opportunity to consider Mr. Ayers' demeanor and tone of voice while testifying." [*Id.* at 14 n.8 (APP104).]

- "Based on Mr. Ayers' testimony, including his demeanor and tone while testifying …." [*Id.* at 14 (APP104).]

This Court "will defer to the trial court's determination of witnesses' credibility and the weight to give conflicting evidence." *Gutierrez v. Gutierrez*, 193 Ariz. 343, 347, ¶ 13 (App. 1998). Because pretext often turns on demeanor and credibility, it is precisely the type of issue that warrants deference to the factfinder.

CEC's failure to supply transcripts means that the court must "assume they would support the court's findings and conclusions." *Baker*, 183 Ariz. at 73; *accord Blair*, 226 Ariz. at 217, ¶ 9 ("[I]n the absence of a transcript, we presume the evidence and arguments presented at the hearing support the trial court's ruling."). (Argument § I, above.) This presumption makes sense here because not only can the appellate court not see the witnesses' "demeanor and tone" [IR-44 at 14 (APP104)], but the appellate court does not even know what the witnesses said.

Even without this presumption, however, the evidence supports the superior court's findings. Although CEC claimed to be motivated by a fear of asset forfeiture, the use of the lease would not change with the assignment. It was used as a dispensary pre-assignment and would be used

as a dispensary post-assignment. [Tr. Ex. 25 at § 6.1 (APP121) (lease giving tenant the right to use the property "for the purpose of operating and managing a medical marijuana dispensary facility").] Moreover, the deed of trust CEC obtained shortly before the assignment request prohibited CEC from changing or allowing changes to the use of the property. [Tr. Ex. 64 at 7, § 3 (APP152) ("Borrower shall not change, nor allow changes in, the use of the Mortgaged Property from the current use of the Mortgaged Property as of the date of this Security Instrument.").] The court also summarized the detailed evidence showing that there was no change in voting control at all (let alone a material change), and that CEC had represented to its lender shortly before the assignment request that High Desert was not in breach. [IR-44 at 6, ¶ 28-29 (APP096); *id.* at 9, ¶ 47 (APP099); *id.* at 11-13 (APP101-03).]

The damsel-in-distress meme further supported the superior court's finding of pretext and unreasonableness. Instead of showing High Desert trying to escape from the lease, the meme showed the opposite. It depicted High Desert as using the lease to tie up CEC. [Tr. Ex. 67 at HDHLLC002630 (APP164).]

This meme did not stand alone. CEC repeatedly brought up the lease rate, not-so-subtly suggesting that CEC thought High Desert was getting too good of a deal. Mr. Ayers wrote, "the rent you are charged at this location is 60% lower than the average retail store rental rate (9.8% of sales) reported by retail stores nationwide. But apparently, when you're a filthy rich publicly traded company, no deal is good enough." [Tr. Ex. 42 at HDHLLC002159 (APP139) (emphases removed).] He later wrote, "Correct me if I'm wrong but I recall that the national average for retail space rents at 8-10% of gross revenues. That is, shoe stores and grocery stores would consider 8-10% of monthly revenue a reasonable rent rate." [Tr. Ex. 93 (APP196).] The evidence thus supported the superior court's finding that High Desert was reasonable in viewing this as CEC "seeking to force a renegotiation of rent," or "a 'shake down.'" [IR-44 at 13 (APP103); *id.* at 8, ¶ 44 (APP098).]

These findings gave the superior court ample discretion to find that "CEC unreasonably withheld consent to the assignment." [*Id.* at 15 (APP105).] "A landlord's refusal to consent to an assignment because the landlord is unhappy with the low rent provided under the existing lease is unreasonable." *Campbell*, 148 Ariz. at 438; *see also Magna*, 137 Ariz. at 249

(court should affirm if the superior court "could have concluded that the reason for refusing which [landlord] gave at trial was a mere pretext … because they wanted to extract more rent from [the tenant.]" There was thus "sufficient evidence from which the [trial court] could have found that [the landlord] withheld consent for an improper reason," so the judgment should be affirmed. *Campbell*, 148 Ariz. at 438.

Because CEC challenges neither the findings about its objective nor the ruling that this objective is unreasonable, the Court should summarily affirm.

B. Substantial evidence supports the superior court's finding that High Desert did not breach the lease.

1. The lease does not require the $500 fee simultaneous with the written request.

In addition to finding that CEC's refusal to approve the assignment was unreasonable, the superior court also found that High Desert did not breach the lease. [IR-44 at 15 (APP105) ("granting HDH and Harvest DCP's request for a judicial determination that HDC and Harvest DCP did not breach the Lease").] This is an independent basis on which the Court may affirm.

Although the superior court does not explain this ruling in detail (and had no obligation to do so), the no-breach finding is correct—High Desert did not breach. On appeal, CEC's theory rests on High Desert having paid the $500 fee on September 1 instead of *simultaneously with* its written assignment request.

But the lease does not require payment simultaneous with the written request. To the contrary, the lease says "together with," not "simultaneous with":

> Each Assignment Request shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed Assignee, including but not limited to the proposed Assignment terms, *together with a fee of $500* as consideration for Lessor's considering and processing said request.

[Tr. Ex. 25, § 10.1(e) (APP124).]

This lease consistently and invariably uses "together with" simply as a conjunction, meaning the same thing as "in addition to" or "and" (i.e., to combine two or more things). These other uses of "together with" demonstrate that as used in this lease, the phrase does not mean "simultaneous with."

"A word or phrase is presumed to bear the same meaning throughout a text …." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012); *accord Trisha A. v. Dep't of Child Safety*, 247 Ariz. 84, 88, ¶ 17 (2019) (quoting Scalia & Garner).

First, § 5 uses "together with" to combine the "Initial Security Deposit" with the "Additional Security Deposit":

> **5. Security Deposit**. Lessee deposited with Lessor prior to the execution hereof $3,350 (the "Initial Security Deposit") as security for Lessee's faithful performance of its obligations under this Lease. Upon the execution of this Lease, Lessee shall deposit $30,650.00 (the "Additional Security Deposit" and *together with* the Initial Security Deposit, the "Security Deposit") with Lessor as additional security.

[Tr. Ex. 25, § 5 (APP121) (italics added; bold omitted).]

Here, "together with" unambiguously means "and." It cannot mean "simultaneous with," because the Initial Security Deposit had *already been paid* ("deposited with Lessor prior to the execution hereof"), but the Additional Security Deposit had not ("Upon the execution of this Lease, Lessee shall deposit").

Second, § 6.1 uses "together with" to combine two sources of law (the Act and DHS Rules) to define the term "AMMA":

> in compliance with Title 9, Chapter 17 of the Department of Arizona Department of Health Services Medical Marijuana Program, as amended from time to time (the "DHS Rules") and Section 36, Chapter 28 of the Arizona Revised Statutes, as amended from time to time (the "Act" and *together with* the DHS Rules, the "AMMA")

[Tr. Ex. 25, § 6.1 (APP121) (italics added; bold omitted).]

Here, too, "together with" unambiguously means "and." It has no temporal component because the Act and the DHS rules are referred to as sources of law with no temporal meaning (it even specifies "as amended from time to time" for both). It would make no sense for it to mean "simultaneous with."

Third, § 8 uses "together with" to combine utility payments with taxes on those payments:

> **8. Utilities and Services.** Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises and the Property, *together with* any taxes thereon.

[Tr. Ex. 25, § 8 (APP124) (italics added).]

Here, "together with" unquestionably means "and." As with the prior instance, the utilities and taxes have no temporal meaning.

Fourth, the exhibits to the lease use "together with" twice to specify the tenant's property subject to a security interest:

> B. All equipment now owned or hereafter acquired, including all furniture, fixtures, furnishings, vehicles (whether titled or non-titled), signage, machinery, materials and supplies, wherever located, *together with* all parts, accessories, attachments, additions or replacements therefor; and
>
> C. All payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to receive the same, from any and all insurance policies covering the Collateral or any portion thereof, *together with* (i) all policies or certificates of insurance covering any of the foregoing property …

[Tr. Ex. 25, Ex. 3 thereto, §§ B-C (APP136) (italics added).]

In these uses, "together with" unambiguously means "and," or "including." It would make no sense to mean "simultaneous with," because these provisions simply list various types of property.

In sum, the lease uniformly uses "together with" to join together two or more things in a list, not to specify that things must happen at the same time.

The lease's usage comports with the ordinary meaning of "together with." The phrase means "in addition to." *Together with*, Mirriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/together%20with; *see also Together with*, Oxford English Dictionary, https://doi.org/10.1093/OED/9668226242 ("Along with; in combination with, in addition

to, or with the addition of"). It simply couples two or more "singular nouns." *Coupled with*, Bryan A. Garner, *Garner's Dictionary of Legal Usage* 231 (3d ed. 2009) ("This phrase, like *together with*, results in a singular and not a plural verb when it couples two singular nouns.").

2. High Desert satisfied the requirement to submit its written request "together with" the $500 fee and therefore did not breach.

Here, the lease provision requiring a written assignment request "together with a fee of $500" simply means that High Desert had to submit both a written request and $500, not that those things had to happen at the same time. The superior court found that High Desert "explain[ed] that it would pay the $500 fee with the September rent," and found that High Desert then "paid the $500 fee required by Section 10(e) of the Lease on September 1, 2021 as it indicated it would do." [IR-44 at 7, ¶¶ 36, 37 (APP097); *see also id.* at 13 (APP103) ("HDH/Harvest explained that it would pay the $500 fee with the September 2021 rent and it did so.").]

These findings are not clearly erroneous; the record confirms the court's findings. The initial written request stated, "Tenant recognizes that the amount of $500 is to be paid to Landlord in accordance with Section 10.1(e) of the Lease and will provide such payment simultaneous with the

next installment of Base Rent." [Tr. Ex. 61 at HDHLLC002217 (APP143).] CEC's bank records show that High Desert made good on the promise. [Tr. Ex. 124 at cell D9 (APP198).]

This interpretation does not mean that the timing is irrelevant. For example, perhaps CEC could choose to wait to process the request until the tenant perfects the request by submitting $500. But the tenant does not breach the lease by submitting the written assignment request and the fee sequentially instead of simultaneously.

Substantial evidence therefore supports the superior court's finding that High Desert did not breach, and the Court should affirm.

C. Substantial evidence supports the superior court's finding that any breach was immaterial.

Although the superior court found that High Desert did not breach, it also found that even if the timing of the $500 was a breach, it was immaterial. This is an independent basis on which the Court may affirm.

1. The immaterial breach doctrine is a longstanding principle of landlord-tenant law.

For decades, Arizona courts have held that "a lease may not be forfeited for a trivial or technical breach even where the parties have specifically agreed that 'any breach' gives rise to the right of termination."

Foundation Dev. Corp. v. Loehmann's Inc., 163 Ariz. 438, 445 (1990). Under that rule, "to justify forfeiture" of the lease, "the breach must be 'material,' 'serious,' or 'substantial.'" *Id.* Even if a lease's *express terms* provide that a technical breach results in forfeiture, "a tenant's right to possession may not be conditioned on perfect performance of a commercial lease …." *Maleki v. Desert Palms Prof. Props.*, 222 Ariz. 327, 332, ¶ 24 (App. 2009). Instead, possession "may be forfeited only upon a material breach." *Id.*

The Arizona Supreme Court's decision in *Loehmann's* provides a helpful illustration of the rules around material breach of lease agreements. In that case, the dispute was over the tenant's failure to timely pay common-area charges (though it had timely paid rent). *See* 163 Ariz. at 440-41. The tenant's "total annual payments to Foundation were approximately $50,000 ($45,000 annual rent plus approximately $5,000 for common area charges)." *Id.* at 440. The landlord first presented the tenant with a bill for the common-area charges for $3,566.44. *Id.* Because the tenant did not pay the common-area charge in the time set by the lease, the landlord sought to terminate the lease. *Id.* at 441.

In that case, the parties agreed that the tenant had violated a provision of the lease by failing to pay the common-area charges on time. *See id.* at 442.

The only issue was whether this breach allowed the landlord to terminate the lease. The Supreme Court concluded it did not, holding that the breach was trivial and did not warrant forfeiture. *Id.* at 447-48. Among other factors, the court highlighted that "the size of the breach relative to the entire amount of money annually due" demonstrated that the breach was immaterial. *Id.* at 447.

2. Substantial evidence supports the superior court's finding that any breach was immaterial.

Arizona courts consider factors from the Restatement when evaluating whether a breach of a lease agreement was immaterial or trivial. *Loehmann's*, 163 Ariz. at 445. These include:

> (a) the extent to which the injured party will be deprived of the benefit which he reasonably expected;
>
> (b) the extent to which the injured party can be adequately compensated [by damages] for the part of that benefit of which he will be deprived;
>
> (c) the extent to which the party failing to perform or to offer to perform will suffer forfeiture;
>
> (d) the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances;
>
> (e) the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Id. at 446-47 (outlining factors and adopting Restatement (Second) of Contracts § 241).

As to the timing of the $500 fee, the superior court found that "the breach (if any) was not material and enforcing a forfeiture under the circumstances would not be just." [IR-44 at 13 (APP103).]

Whether a breach of a lease agreement is trivial or immaterial is a question of fact. *Loehmann's*, 163 Ariz. at 446-47 (explaining what "the factfinder" should consider in resolving this issue); *see also, e.g.*, *Henderson v. Wells Fargo Bank, N.A.*, 974 F.Supp.2d 993, 1005-1006 (N.D. Tex 2013) (denying summary judgment because materiality was question for jury); *Todd v. Heekin*, 95 F.R.D. 184, 186 (S.D. Ohio 1982) (same). Consequently, this Court must affirm unless the superior court's findings that the breach was trivial are clearly erroneous. And again, to be clearly erroneous, the findings must be "wrong with the force of a five-week-old, unrefrigerated dead fish." *Van Dox*, 214 Ariz. at 304, n.3 (citation omitted).

Here again, CEC's failure to supply transcripts means that the court must "assume they would support the court's findings and conclusions." *Baker*, 183 Ariz. at 73; *accord Blair*, 226 Ariz. at 217, ¶ 9. (Argument § I.) Even without the presumption due to a lack of transcripts, the available evidence

supports the superior court's finding "that the breach (if any) was not material …." [IR-44 at 13 (APP103).]

Restatement § 241's factor (a) is easily satisfied. CEC was not "deprived of a benefit which it reasonably expected." Restatement (Second) of Contracts § 241(a). CEC reasonably expected the benefits of rent payments, which it received in full. If the tenant sought to assign the lease, CEC could also reasonably expect "a fee of $500 as consideration for Lessor's considering and processing said request." [Tr. Ex. 25, § 10.1(e) (APP124).] CEC received this benefit; High Desert "paid the $500 fee along with its monthly rent on September 1, 2021." [IR-44 at 9, ¶ 54 (APP099).]

On factor (b) ("the extent to which the injured party can be adequately compensated [by damages] for the part of that benefit of which he will be deprived"), this is the classic type of injury that damages can address. If High Desert failed to pay the $500 fee, then CEC could recover $500 in damages. If the slight delay (three weeks) caused CEC harm, then perhaps it could recover interest (which itself would be trivial on $500).[5]

[5] The lease calls for 10% interest on unpaid rent. [Tr. Ex. 25, § 4.4 (APP121).] Even if this rate applied to the $500 fee, the three weeks' worth of interest amount to under $3.00.

On factor (c) (the extent to which the party failing to perform or to offer to perform will suffer forfeiture"), the superior court found that if CEC takes back the property, then "[High Desert] will suffer a forfeiture in the form of the significant improvements to the property and goodwill associated with the property." [IR-44 at 12 (APP102).]

On factor (d) ("the likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonable assurances"), High Desert already cured any breach and provided reasonable assurances. High Desert said it would pay the $500 with the next month's rent (due September 1), and that's exactly what it did. [Tr. Ex. 61 at HDHLLC002217 (APP143); Tr. Ex. 124 at cell D9 (APP198).]

On factor (e) ("the extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing"), paying a fee with the next month's rent is operating in good faith. The $500 fee was trivial—under 3% of the monthly rent amount. Consider a landscaper who fixes a drip irrigation issue with a $5 part. It would not be bad faith to pay for the $5 part with the next month's $200

monthly service fee. That's how the world works for trivial additions to monthly payments.

In addition, "the size of the breach relative to the entire amount of money annually due, support[s] the trial judge's finding that this breach was trivial." *Loehmann's*, 163 Ariz. at 447. High Desert pays CEC $204,000 annually in base rent. [Tr. Ex. 25 at ¶ 1 (APP117).] A $500 fee is less than 0.3% of annual rent. This Court has held that *ongoing* disputes under similar circumstances did not constitute a material breach of a lease agreement. *Cf. Maleki*, 222 Ariz. at 421, ¶¶ 26-27 (holding that good faith dispute over $14,617 in back payment of rent and taxes was not material breach of lease agreement). Here, by contrast, High Desert paid the fee exactly when it said it would.

More fundamentally, a tenant is not required to pay the $500 to maintain the lease. The $500 fee applies only to a specific circumstance—a requested assignment. In this way, the $500 fee works like a pet fee. Consider a $2,000/month residential lease, with a $150 fee for registering a pet (which covers the landlord's costs in confirming the pet's county registration, immunizations, etc.). If a tenant doesn't pay the $150 fee, the tenant hasn't breached *the lease as a whole*. Perhaps the landlord could refuse

to allow the pet until the tenant paid the fee, but the tenant is not in breach of *the lease*. And even if it is a technical breach, it is not a material breach of the lease.

Here, CEC did not delay processing High Desert's assignment request. [IR-44 at 13 (APP103) ("Just the opposite, the record confirms that CEC performed due diligence regarding Trulieve during the more than three weeks it waited to respond to the request for consent.").] Instead, CEC now seeks to use the timing of the $500 payment to terminate the *entire lease*. This extreme position—under which even a trivial breach can allow the landlord to terminate a multi-million-dollar lease—makes no sense, and would violate Arizona law. It would undermine *Loehmann's* immaterial breach standard and Restatement § 241, which *Loehmann's* adopted.

Given the short delay, the small amount at issue, and CEC's failure to claim breach, the superior court did not clearly err in concluding any breach was immaterial.

III. CEC's arguments on appeal do not warrant reversal.

A. CEC doesn't challenge the actual rulings the trial court made.

On appeal, CEC does not challenge the rulings and findings necessary to reverse. It does not seriously challenge the superior court's finding that

CEC's stated bases for refusing consent were pretextual, based on the fact that CEC "was interested in higher rent" and was making a "veiled attempt to suggest that the space might be available for Trulieve for the right price." [IR-44 at 14 (APP104).] Although CEC's issue statement (at 6) lists as an issue for appeal "Did the trial court err by finding that CEC had unreasonably withheld its consent," CEC never develops any argument to show that the superior court's finding on reasonableness were clearly erroneous. *See* ARCAP 13(a)(7)(A) (Argument section must contain "Appellant's contentions concerning each issue presented for review, with supporting reasons for each contention"). The Court may summarily affirm on this issue.

Similarly, CEC does not acknowledge the superior court's finding that High Desert did not breach the lease. Instead, its brief simply assumes that a breach occurred, and in fact seems to suggest (at 13) that the superior court found that High Desert *did* breach. (*See* Argument § III.C.1, below.)

CEC also does not challenge the superior court's findings that any breach regarding the $500 fee was immaterial. As explained below (Argument § III.B.1), CEC does not discuss the longstanding immaterial breach doctrine on which the superior court based its ruling.

CEC's failure to challenge these findings and rulings warrants affirming. If CEC thought that it had in fact refused consent reasonably (rather than pretextually), and that it was clearly erroneous to find otherwise, it had to develop that argument in its opening brief. If CEC thought that the no-breach finding was erroneous, it needed to directly challenge the finding on appeal and thoroughly develop the argument. If CEC thought that the superior court's findings on immateriality were clearly erroneous, it had to develop that argument. And if CEC thought that that the reasonableness requirement for assignments or the immaterial breach doctrine should be ousted from the law, it had to say so and explain why. *See, e.g.*, *Ariz. Republican Party v. Richer*, __ Ariz. __, 532 P.3d 355, 362, ¶ 31 (App. 2023) (arguments waived when appellant "does not challenge the court's reasoning").

Having failed to do any of this, the Court should affirm. CEC may not cure this in reply and challenge the findings for the first time. *See Austin v. Austin*, 237 Ariz. 201, 204 n.1 (App. 2015) ("We note, however, that Josiah, for the first time in his reply brief, alleges several of the trial court's factual findings are clearly erroneous. But '[w]e will not consider arguments made

for the first time in a reply brief.'" (quoting *Dawson v. Withycombe*, 216 Ariz. 84, 111, ¶ 91 (App. 2007))).

B. The superior court did not "nullify" or "rewrite" the lease's terms.

1. The lease's text and longstanding principles of contract law support the superior court's ruling.

The central theme of CEC's appeal is that the superior court lacked power to "nullify terms," "rewrite the terms," or "refuse to enforce the contract as written." (Opening Br. at 16-18.) CEC urges the Court to respect freedom of contract. In doing so, however, CEC ignores the text of the lease and the longstanding background principles of contract law.

For example, CEC claims (at 18), "The trial court, in other words, had no right to impose any reasonableness conditions into the lease contract when they do not exist within it." But the lease's plain terms require reasonableness on this exact issue: the landlord's "approval shall not be unreasonably withheld, delayed or conditioned ...." [Tr. Ex. 25, § 10 (APP124).] (*See* Argument § II.A.1.a.) Although CEC references this provision once (at 9), CEC does not explain its later assertion (at 18) that the lease contains no "reasonableness conditions," nor does CEC explain why this provision does not apply. *Cf.* ARCAP 13(a)(7)(A) (opening brief must

contain "supporting reasons for each contention," and "appropriate references to the portions of the record on which the appellant relies.").

And even if the lease did not require reasonableness, under settled Arizona law "the landlord's consent … cannot be withheld unreasonably, unless a freely negotiated provision in the lease gives the landlord an absolute right to withhold consent." *Zoslow*, 147 Ariz. at 614; *accord Campbell* 148 Ariz. at 436. (*See* Argument § II.A.1.b.) CEC does not acknowledge this background law or offer any reason to depart from it.

CEC also claims (at 15) that "The trial court's notion that it could not enforce the Lease contract's terms because that might result in a forfeiture was categorically wrong." But the Supreme Court has recognized that "an overwhelming majority of courts has concluded, without reference to a specific statutory provision, that a lease may not be forfeited for a trivial or technical breach even where the parties have specifically agreed that 'any breach' gives rise to the right of termination." *Loehmann's*, 163 Ariz. at 445. The Supreme Court therefore held that "forfeiture for a trivial or immaterial breach of a commercial lease should not be enforced." *Id.* at 446. This Court later confirmed that "immaterial breach may not cause forfeiture of a leasehold." *Maleki*, 222 Ariz. at 332, ¶ 23.

Although the superior court expressly cited and relied on *Loehmann's* in explaining that "the Supreme Court held that a lease may not be forfeited for an immaterial breach" [IR-44 at 11 (APP101)], CEC does not cite *Loehmann's* or offer any reason to depart from it. Instead, CEC cites (at 18) *Freedman v. Continental Serv. Corp.*, 127 Ariz. 540, 545 (App. 1980). But *Freedman* did not address the immaterial breach doctrine, and in any event cannot possibly trump the Supreme Court's holding ten years later in *Loehmann's*.

CEC repeatedly invokes freedom of contract (at 16-19). But "all contracts incorporate applicable statutes and common-law principles." *Qwest Corp. v. City of Chandler*, 222 Ariz. 474, 484, ¶ 34 (App. 2009). Applying the reasonableness requirement for assignments and the immaterial breach doctrine does not violate the freedom of contract or nullify the contract because the contract incorporates these longstanding legal rules.

2. The superior court did not violate the contract clauses of the Arizona and U.S. Constitutions because those clauses do not apply to judicial determinations or preexisting doctrines.

CEC contends (at 18-19) that the superior court's ruling violates the state and federal contract clauses. This argument fails for several reasons.

First, the clauses do not apply to judicial determinations. *See Dobson Bay Club II DD, LLC v. La Sonrisa de Siena, LLC*, 242 Ariz. 108, 116, ¶ 40 (2017) ("judicial invalidation of a contract provision does not implicate the contract clause"); *Cross Lake Shooting & Fishing Club v. Louisiana*, 224 U.S. 632, 638 (1912) ("This clause, as its terms disclose, is not directed against all impairment of contract obligations, but only against such as results from a subsequent exertion of the *legislative power* of the state. It does not reach mere errors committed by a state court when passing upon the validity or effect of a contract under the laws in existence when it was made." (Emphasis added)).

Second, the clauses do "not curtail application of proscriptive principles that existed at the time of contract creation." *Dobson Bay*, 242 Ariz. at 116, ¶ 41. Said another way, "[c]ontracts are made with reference to existing law and can not be impaired by it …." *Washington v. Maricopa Cnty.*, 152 F.2d 556, 559 (9th Cir. 1945). Applying this rule, in *Dobson Bay*, the Arizona Supreme Court held that refusing to enforce a contractual liquidated damages clause did not violate the contract clause because "[o]ur cases proscribed penalty clauses long before origination of the [contract] here …." *Dobson Bay*, 242 Ariz. at 116, ¶ 41.

CEC cites *Dobson Bay* (at 19) for the premise that the contract clause "'limits the state's ability to impair existing contract obligations.'" But CEC's brief omits the beginning and end of the quoted sentence. The full sentence confirms that the clause does not apply here: "The contract clause *only* limits the state's ability to impair existing contract obligations; *it does not curtail application of proscriptive principles that existed at the time of contract creation*." 242 Ariz. at 116, ¶ 41 (emphases added).

Here, the reasonableness requirement for assignments and the immaterial breach doctrine existed long before this 2018 lease. A judicial determination applying those doctrines to a 2018 lease therefore does not violate the state or federal contract clauses.

C. Contrary to CEC's suggestion, the superior court did not find that High Desert breached the lease, or that the $500 was a condition precedent.

1. The superior court determined that High Desert did not breach.

CEC bases its appeal on a false premise—that High Desert breached the lease. But the superior court found the opposite. It expressly "grant[ed] [High Desert]'s request for a judicial determination that [High Desert] did not breach the Lease …." [IR-44 at 15 (APP105).]

CEC quotes (at 13) the superior court's finding that High Desert "did not pay the $500 required by Section 10(e) of the Lease immediately upon making its request for consent of the assignment." [IR-44 at 7, ¶ 36 (APP097).] From this, CEC implies that the superior court agreed that the $500 fee had to be paid immediately upon making the request. Not so. The phrase "the $500 required by Section 10(e) of the Lease" simply refers to the fee itself, which no one disputes is required by that portion of the lease. No one disputes that High Desert did not pay that fee "immediately upon making its request for consent of the assignment," as the superior court found. But that sentence does not support the implication that CEC suggests. It does not reflect a finding that the lease required the fee to be paid simultaneously with the request.

To the extent CEC refers to the superior court's reference to "the breach (if any)," [IR-44 at 13 (APP103)], the "(if any)" parenthetical confirms that the court had not found a breach—instead, it simply found even if there was a breach, it was immaterial and would not justify withholding approval to an assignment. The superior court's order at the end of its ruling confirms that it made "a judicial determination that [High Desert] did not breach the Lease …." [*Id.* at 15 (APP105).]

2. Contrary to CEC's contention, the superior court did not find that the $500 fee was a condition precedent.

CEC (at 10) also asserts that "the trial court acknowledged that payment of the $500 fee was 'a condition precedent to CEC's consideration of the request for assignment.'" That is not true. The superior court never found that the $500 was a condition precedent.

CEC's quotation from the ruling omits the first portion of the sentence, which confirms that the superior court was simply describing CEC's argument:

> *CEC further asserted that* HDH/Harvest did not pay the $500 fee required by Section 10(e) of the Lease, which was a condition precedent to CEC's consideration of the request for assignment.

[IR-44 at 13 (APP103) (emphasis added).]

By describing CEC's assertion, the superior court did not "acknowledge" whether or not the fee was a condition precedent.

Moreover, even if the $500 fee was a condition precedent, High Desert satisfied that condition by paying the $500 fee. [Tr. Ex. 124 at cell D9 (APP198).]

3. CEC does not support its implicit argument that "together with" means "simultaneous with."

CEC bases its breach theory on contending (at 13) that the lease required High Desert to tender the $500 fee "simultaneously with making its request for assignment of the lease …." Its whole brief is based on this premise; its opening brief uses the word "simultaneous" and its variants seven times.

But as explained above (Argument § II.B.1), the lease does not require the payment to happen simultaneously. The lease invariably and uniformly uses "together with" to mean "in addition to," which is also consistent with its ordinary meaning.

Other than stating the conclusion emphatically and repeatedly (e.g., by saying (at 13) that the lease "absolutely and clearly required" simultaneous payment), CEC does not support its argument with any analysis or citations. If CEC thought that "together with" absolutely and clearly means "simultaneous with," then it had to say why. It had to "argue it in [its] brief with appropriate citations to the record and legal authority." *Ritchie v. Krasner*, 221 Ariz. 288, 305, ¶ 61 (App. 2009). It had to confront the other uses of "together with" in the lease, all of which show that the lease used the

phrase to mean "in addition to" or "and." It had to confront the dictionary definitions, which confirm the ordinary meaning of the term. Even though this "simultaneous" point is one of the central premises of the brief, CEC didn't do any of the work necessary to obtain reversal. This issue is so central to CEC's appeal that CEC cannot develop the argument for the first time in its reply brief. *See, e.g.*, *Austin*, 237 Ariz. at 204 n.1 ("[W]e will not consider arguments made for the first time in a reply brief.") (citation omitted). If CEC wanted to meaningfully challenge the no-breach finding, it had to do so in the opening brief.

The Court should therefore affirm the superior court's determination that High Desert did not breach the lease.

D. Contrary to CEC's argument, the August 2021 request for approval is not an "attempt at an Assignment" that needed prior approval.

In addition to the arguments on breach, CEC also argues (at 6) that "High Desert attempted an assignment without obtaining CEC's prior written consent," which gave CEC an "unfettered right" to terminate the lease. But this argument was waived below, CEC does not explain it on appeal, and in any event it makes no sense.

1. The Court should not consider this waived argument.

The record does not indicate that CEC ever raised this attempted-assignment argument in the superior court, despite having several opportunities to do so. It did not raise this argument in its September 2021 letter declining consent. [Tr. Ex. 246 at 2-3 (APP207-08).] It did not raise the argument in its complaint. [No. CV2021-053708 IR-1.] It did not raise this in the parties' joint pretrial statement. [IR-33.] It did not raise the issue in its post-ruling motion for additional findings of fact and conclusions of law. [IR-46]. CEC's failure to supply transcripts bars it from claiming that it was raised orally (which in any event would be insufficient to raise an issue not identified in the joint pretrial statement).

CEC was required to include in its opening brief "references to the record on appeal where the particular issue was raised and ruled on …." ARCAP 13(a)(7)(B). Its opening brief does not identify where it ever raised this issue, or where the superior court ruled on it. *See Richer*, 532 P.3d at 362, ¶ 30 (argument waived when appellant "does not inform us where this argument was raised in the superior court.").

"[L]egal theories must be presented timely to the trial court so that the court may have an opportunity to address all issues on their merits." *BMO*

Harris Bank N.A. v. Espiau, 251 Ariz. 588, 593-94, ¶ 25 (App. 2021) (citation omitted). Accordingly, CEC has waived this argument and the Court should not consider it on appeal. *Harris v. Cochise Health Sys.*, 215 Ariz. 344, 349, ¶ 17 (App. 2007) ("Generally, an appellate court will not consider issues not raised in the trial court.").

2. CEC does not develop the argument.

CEC argues repeatedly that that a supposed attempt at an assignment gave it the right to terminate the lease. But the opening brief simply presumes that an attempt occurred. Its entire opening brief never identifies what the "attempt" was, when it occurred, or any other facts that would allow High Desert to respond to the argument.

For example, CEC asserts (at 11) that "once High Desert made an 'attempt' a[t] an assignment without CEC's prior written consent—which it undeniably did—that attempt was null and void." But despite saying that the attempt was "undeniabl[e]," CEC doesn't actually explain what it means by "attempt."

CEC's failure to raise this issue below compounds the problem. If the superior court had addressed an "attempt at an Assignment," then there would likely be no confusion. Similarly, if CEC had raised the "attempt"

issue in its joint pretrial statement, then things might be different. But neither document even mentions an attempt at an assignment (other than in block quotes of the lease). [*See* IR-33; IR-44.]

Because the superior court never found that High Desert made an "attempt at an Assignment," CEC cannot simply assume that an attempt occurred, or call it "undeniabl[e]," as it does (at 11). To make the argument, CEC must specifically identify what the attempt was, and explain why it qualifies as an "attempt at an Assignment" within the meaning of § 10. *Ritchie*, 221 Ariz. at 305, ¶ 61 ("Thus, for us to address it on appeal, [appellant] was required to argue it in his brief with appropriate citations to the record and legal authority."). In other words, CEC must show its work.

CEC's brief on this point therefore violates ARCAP 13(a)(7)(A), which requires it to provide "supporting reasons for each contention," and "appropriate references to the portions of the record on which the appellant relies." (This is independent of its violation of ARCAP 13(a)(7)(B), which requires identifying where CEC raised the issue below.)

This is not a minor issue. Without identifying what the "attempt at an Assignment" was, or why it fits the meaning of that term in § 10, High Desert cannot meaningfully respond or rebut CEC's argument. The Court should

summarily affirm on this issue because CEC "fail[ed] to develop and support [its] conclusory arguments" on this point. *Boswell v. Fintelmann*, 242 Ariz. 52, 54 n.3 (App. 2017). Moreover, CEC's argument is so undeveloped that the Court should not allow CEC to develop the argument on reply, which would deprive High Desert of an opportunity to respond to the argument. *See, e.g.*, *Austin*, 237 Ariz. at 204 n.1 ("[W]e will not consider arguments made for the first time in a reply brief.") (citation omitted).

3. To the extent CEC refers to the August 2021 request, that request cannot be an "attempt at an Assignment."

On page 14 of the opening brief, CEC seems to link the "attempt at an assignment" with the $500 fee. From this, perhaps CEC believes that High Desert's August 6, 2021 request for CEC's consent to assign the lease to Trulieve is itself an "attempt at an Assignment." Accordingly, High Desert

addresses this argument under the assumption that the "attempt" refers to the August 6, 2021 request.[6]

If the Court considers this argument, it should reject it because the argument is unsupported by the record and the superior court's findings. The record does not show that High Desert made an "attempt at an Assignment" without CEC's consent.

CEC's argument arises from § 10 of the lease:

> Any attempt at an Assignment without Lessor's prior written consent shall be null and void, confer no rights upon a third person, and shall, at the option of Lessor, be a Breach pursuant to Section 11.1(b) without the necessity of any notice or cure period, in which case Lessor may terminate this Lease and exercise any and all remedies described in this Lease.

[Tr. Ex. 25, § 10 (APP124).]

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[6] If CEC means that the attempt was the consummation of the merger between High Desert and Trulieve, the superior court properly rejected that theory: "To the extent that CEC alleges the consummation of the merger constituted a breach of the Lease, the Court finds that CEC breached its obligation to approve the assignment before the merger. Accordingly, the Court concludes HDH was relieved from further performing as to the request for assignment." [IR-44 at 13 (APP103) (citing *Murphy Farrell Dev., LLLP v. Sourant*, 229 Ariz. 124, 133, ¶ 33 (App. 2012)).] CEC does not challenge this ruling on appeal. And in any event, the Court should not reverse based on an ambiguous argument in the opening brief, in which CEC never explained what "attempt" it was referring to.

The lease does not define "attempt at an Assignment," but it unambiguously cannot mean the tenant's request for the landlord's consent to an assignment. Two sentences earlier, also in § 10, the lease defines the term "Assignment Request" as the notification to the landlord "in writing of the terms of the Assignment." [*Id.* (APP124).] In other words, the communication with the landlord seeking approval for the assignment is the "Assignment Request." But the "Assignment Request" cannot itself be an "attempt at an Assignment" because the lease uses different terms. *See, e.g.*, Scalia & Garner at 170 ("[A] material variation in terms suggests a variation in meaning."); *State ex rel. Ariz. Dep't of Revenue v. Tunkey*, 254 Ariz. 432 n.2 (2023) (quoting Scalia & Garner).

Construing "attempt at an Assignment" to include the request for the landlord's consent also would make no sense. The only way to obtain prior written consent is to ask for it. Asking for consent can't be the thing that triggers the landlord's ability to terminate the lease when the lease unquestionably allows for assignment and provides an entire process for termination. If CEC's argument were correct, then the lease effectively never could be assigned because any request for consent would give the landlord the right to terminate. The parties never intended this absurd result.

Moreover, every potential assignment necessarily involves preparatory steps. For example, the tenant must work out with the potential assignee what the terms of the assignment will be. After all, the lease requires that the Assignment Request include "the proposed Assignment's terms." [Tr. Ex. 25, § 10.1(e) (APP124).] These types of preparatory activities necessarily cannot constitute an "attempt at Assignment" within the meaning of § 10.

REQUEST FOR ATTORNEYS' FEES

Pursuant to ARCAP 21, High Desert requests attorneys' fees under § 28 of the lease [Tr. Ex. 25, § 28 (APP127)], and A.R.S. § 12-341.01.

CONCLUSION

The Court should affirm.

RESPECTFULLY SUBMITTED this 15th day of August, 2023.

OSBORN MALEDON, P.A.

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131.	EXHIBIT 252 - 05/02/2022 - DEFENDANT	Mar. 9, 2023
132.	EXHIBIT 254 - 05/02/2022 - DEFENDANT	Mar. 9, 2023
133.	EXHIBIT 259 - 05/02/2022 - DEFENDANT	Mar. 9, 2023
134.	EXHIBIT 263 - 05/02/2022 - DEFENDANT	Mar. 9, 2023
135.	NOTICE OF APPEARANCE OF ATTORNEY DAVID L. ABNEY	Mar. 8, 2023
136.	APPLICATION FOR WRIT OF GARNISHMENT	Mar. 8, 2023
137.	NOTICE OF FILING NOTICE OF APPEAL	Mar. 9, 2023
138.	EXHIBIT WORKSHEET HD 05/02/2022	Mar. 9, 2023
139.	RETURNED MAIL	Mar. 21, 2023
140.	NOTICE OF APPEARANCE OF COUNSEL ON BEHALF OF BANK OF AMERICA, N.A., AS GARNISHEE	Mar. 20, 2023
141.	ANSWER TO WRIT OF GARNISHMENT	Mar. 20, 2023

APPEAL COUNT: 1

RE: CASE: UNKNOWN

DUE DATE: 04/06/2023

CAPTION: HIGH DESERT HEALING LLC ET AL VS CEC 141202761

CAPTION: CONSOLIDATED FROM CV2021-053708

Electronic Index of Record
MAR Case # CV2021-016161

EXHIBIT(S): HD 05/02/2022 - ELECTRONIC - IOR # 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100 101 102 103 104 105 106 107 108 109 110 111 112 113 114 115 116 117 118 119 120 121 122 123 124 125 126 127 128 129 130 131 132 133 134

LOCATION ONLY: NONE

SEALED DOCUMENT: NONE

DEPOSITION(S): NONE

TRANSCRIPT(S): NONE

COMPILED BY: BRI.ROMERO on March 21, 2023; [2.5-17026.63]
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CERTIFICATION: I, JEFF FINE, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

The bracketed [date] following the minute entry title is the date of the minute entry.

CONTACT INFO: Clerk of the Superior Court, Maricopa County, Appeals Unit, 175 W Madison, Phoenix, AZ 85003; 602-372-5375

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

HIGH DESERT HEALING, LLC, an Arizona limited liability company; HARVEST DISPENSARIES, CULTIVATIONS & PRODUCTION FACILITIES, LLC, an Arizona limited liability company; HARVEST HEALTH & RECREATION, INC., a British Columbia corporation; Plaintiffs, vs. CEC 141202761, LLC, an Arizona limited liability company; JOHN and Jane Doe; JOHN AND JANE DOE REVOCABLE LIVING TRUST; ADDITIONAL DEFENDANTS 1-3; Defendants.	Case No. CV2021-016161 (Consolidated with CV2021-053708) **STIPULATED PRELIMINARY INJUNCTION** (Assigned to The Honorable Danielle J. Viola)
CEC 141202761, LLC, an Arizona limited liability company, Plaintiffs, vs. HIGH DESERT HEALING, LLC, an Arizona limited liability company; Harvest DISPENSARIES, CULTIVATIONS & PRODUCTION FACILITIES, LLC, an Arizona limited liability company, Defendants.	

By and through counsel, whose consent is indicated below, the parties in this civil action stipulate to the issuance of a preliminary injunction, pursuant to Rule 65, Ariz. R. Civ. P., as follows, and request that the Court approve and enter same as an Order of the Court:

Defendant CEC 141202761, LLC and any person or entity acting in concert or participation with Defendant is enjoined from contending and/or acting as if the lease for property located at 13433 East Chandler Blvd, Chandler, Arizona 85255 (dated March 1, 2018, as amended December 11, 2018) (the "Lease"), has been terminated, including a prohibition on any lock out of Plaintiff High Desert Healing, LLC ("HDH") from the premises leased to it under the Lease, or otherwise interfering with HDH's use of the premises pursuant to the Lease through any form of self-help, or eviction suit of any type or nature other than the Forcible Entry and Detainer litigation that was previously filed and has been consolidated herewith, until and unless the injunctive relief is modified or dissolved by a further, express order of this Court. No bond shall be required for this injunction.

Dated this 16th day of November 2021

DJViola

The Honorable Danielle J. Viola
Judge, Maricopa County Superior Court

Stipulated as to form and content November 16, 2021.

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Clerk of the Superior Court
*** Electronically Filed ***
07/05/2022 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

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HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT
S. Motzer
Deputy

HIGH DESERT HEALING L L C, et al. PAUL A CONANT

v.

C E C 141202761 L L C DAVID J SANDOVAL

JOSEPH M PARKER
JUDGE VIOLA

UNDER ADVISEMENT RULING

The Court held a Bench Trial on May 2-5, 2022 to consider Plaintiffs' declaratory judgment action and Defendant CEC's consolidated forcible entry and detainer complaint. The Court heard the testimony of Scott Ayers, Steve White, Eric Powers, Joseph Parker, Janet Jackim, and Will Koslow. The Court has had an opportunity to review and consider the evidence and arguments presented and now makes its ruling including findings of fact and conclusions of law.

The dispute arises from the termination of a commercial lease. Tenant, High Desert Healing, LLC (HDH), requested that Landlord, CEC 141202761, LLC (CEC), approve a requested assignment. HDH requested the assignment as part of a larger merger/acquisition involving Harvest Health & Recreation, Inc. (Harvest). Harvest represented a constellation of entities involved in the medical marijuana and recreational marijuana business in Arizona and other states. The lease at issue was for a Harvest branded dispensary in Chandler, Arizona.

CEC leased a building to HDH beginning in March 2018. The lease negotiations led to a lawsuit filed by HDH that resulted in a settlement and execution of the relevant lease. The lease term was a period of 15 years. Harvest began improvements at the property. At various points, CEC expressed objections to Harvest about the nature and extent of the construction and

improvements. In part, CEC claimed HDH completed improvements without CEC's approval. The pre-execution negotiations and litigation, as well as disagreements about the tenant's improvements led to a somewhat acrimonious landlord-tenant relationship between the parties. The current dispute followed.

Stipulated Facts

The parties stipulated to only seven facts set forth in the Rule 16(f) Joint Pretrial Statement:[1]

1. HDH is a wholly owned subsidiary of Harvest Dispensaries, Cultivations & Production Facilities, LLC (Harvest DCP).

2. CEC is an Arizona limited liability company.

3. CEC leased a commercial Property to HDH pursuant to a written Standard Industrial/Commercial Single-Tenant Lease – effective March 1, 2018 (the "Lease") and an amendment thereto dated December 11, 2018 (the "Amendment"). Exhibit 25.

4. Harvest DCP guaranteed the payment and performance of Lessee pursuant to a Guaranty attached to the Lease.

5. On August 6, 2021, *via* email, CEC received a letter from HDH notifying CEC of an impending merger with Trulieve Cannabis Corp. ("Trulieve") and, pursuant to Sections 10 and 10.1 of the Lease, requesting CEC's written approval for the assignment of the Lease. The letter states that Trulieve Cannabis Corp. was acquiring "all of the issued and outstanding subordinate voting shares, multiple voting shares and super voting shares" of Harvest, such that Trulieve would become the ultimate parent and have control of HDH.

6. On September 29, 2021, CEC sent a letter to HDH refusing consent to the requested assignment.

7. The Trulieve/Harvest merger was effectively completed as of October 1, 2021.

Additional Facts

Lease Terms

[1] The limited number of stipulated facts is indicative of the relationship between the parties.

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8. The following provisions of the Lease are directly at issue in this litigation:

10. Assignment and Subletting. Lessee may not assign, transfer, mortgage, pledge, hypothecate, license, grant concession(s) or convey or sublet, in whole or in part, or otherwise permit occupancy of all or any part of the Premises or Property by anyone with, through or under Lessee, this Lease, the Premises or the Property, or Tenant's interest in the foregoing (each an "Assignment") without having notified Lessor in writing of the terms of the Assignment (the "Assignment Request") and obtaining prior written approval of Lessor, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that in the event Lessee shall be in Default of this Lease or if the proposed Assignee's net worth is not at least equal to or greater than Lessee's as of the Lease Date, Lessor may elect not to approve any proposed Assignment, based upon the Default or failure to meet the net worth requirement and each of the foregoing shall be deemed a reasonable cause for Lessor's disapproval thereof. These prohibitions shall be construed to refer to events occurring by operation of law, legal process, receivership, and bankruptcy or otherwise. Any attempt at an Assignment without Lessor's prior written consent shall be null and void, confer no rights upon a third person, and shall, at the option of Lessor, be a Breach pursuant to Section 11.1(b) without the necessity of any notice or cure period, in which case Lessor may terminate this Lease and exercise any and all remedies described in this Lease. A Change of Control shall constitute an Assignment requiring Lessor's consent. For purposes of this Section 10, the term "Change of Control" means the transfer of more than 50% of the voting control of Lessee or Guarantor. The receipt by Lessor of Rent from a party other than Lessee shall not be deemed notice of a Change of Control. Notwithstanding the foregoing, and without conferring any rights upon Lessee, Lessee shall submit any Assignment Request with sufficient time and with sufficient information for Lessor to make an informed decision regarding the proposed Assignment.

10.1 Additional Terms and Conditions Applicable to an Assignment.

(a) No Assignment shall: (i) be effective without the express written assumption by such assignee or sublessee (collectively, "Assignee") of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations under this Lease; (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of other obligations to be performed by Lessee under this Lease; (iv) alter the secondary liability of Guarantor for payment and performance of Lessee under this Lease; or (v) alter the Agreed Use.

(b) Lessor may accept Rent or performance of Lessee's
obligations from an Assignee or any person other than Lessee pending approval or disapproval of an Assignment. Neither a delay in the approval or disapproval of such Assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for a Breach by Lessee of this Lease.

(c) Lessor's consent to any Assignment shall not constitute a consent to any subsequent Assignment.

(d) In the event of any Breach of this Lease by Lessee or an Assignee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any Guarantor (as defined below), or an Assignee, without first exhausting Lessor's remedies against any person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each Assignment Request shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed Assignee, including but not limited to the proposed Assignment terms, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

(f) Any Assignee of this Lease shall, by reason of accepting such Assignment or entering into possession of the Premises or the Property or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation in this Lease to be observed or performed by Lessee during the Term of this Lease.

(g) In no event shall an Assignee be permitted to make, or attempt to make, a subsequent Assignment without first procuring the written consent of Lessor.

9. Under 10.1 of the Lease, CEC's approval to an assignment is only required in the event that there is more than a 50% change in voting control of either the Tenant (HDH) or the Guarantor (Harvest HDCP).

10. Section 10 of the Lease provides that a Change of Control without CEC's prior written consent will, at the option of CEC, be deemed a material breach of the Lease without the necessity of any notice or cure period, in which case CEC may terminate the Lease and exercise all remedies therein.

11. Under the Lease, CEC may elect not to approve a requested assignment if HDH is in default.

12. Sections 3.4.1 and 3.4.2 of the Lease expressly require HDH/Harvest to operate their marijuana dispensary business in strict accordance with all Marijuana Laws and all other laws and applicable requirements.

CEC Loan

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13. On July 14, 2021, approximately two weeks before HDH requested consent to the assignment, owner of the Landlord CEC (Scott Ayers) wrote to Steve White at Harvest regarding news reports that he had reviewed announcing that Harvest's "revenue compared to the previous year" had experienced a "two fold increase", Harvest was "making money like never before", and that Landlord "CEC has applied for [a] $1.5 million loan" of which some "but hopefully not all" will be used for improvements at the leased location. Exhibit 52.

14. CEC provided information to ASIF, the lender, as part of the ASIF underwriting process.

15. CEC executed a Secured Note payable to ASIF for $1.5 million with a maturity date of September 1, 2023.

16. The Deed of Trust issued by the lender contains a provision that prevents CEC from changing the use of the property.

17. CEC did not report to ASIF any alleged uncured breaches of the Lease. CEC prepared and provided to ASIF financial data. CEC represented to ASIF that HDH was current with all payments under the Lease. The information provided to the lender conflicts with positions later taken by CEC upon request for approval of the Lease assignment and earlier asserted to HDH.

18. CEC did not return to ASIF the money CEC borrowed.

19. CEC obtained a loan to make improvements at the leased location. CEC understood that Harvest was making money like never before.

20. Although Scott Ayers claimed to be fraught with concern about forfeiture related to the Harvest merger, Mr. Ayers caused CEC to obtain a $1.5 million loan secured by the property and the subject Lease. The Lease contemplates HDH operating a dispensary. CEC's conduct in obtaining the loan is inconsistent with Mr. Ayers' purported concerns about forfeiture.[2]

21. Mr. Ayers' email to Mr. White reflects that Mr. Ayers/CEC was aware of the success of the Harvest business in totality as opposed to the single Harvest dispensary at the leased location. As of this time, the transaction between Harvest and Trulieve was public knowledge. It is unclear whether CEC and/or Ayers was aware of the specific anticipated transaction. [3]

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[2] The Court was not presented with any evidence to establish that forfeiture has been used to seize property from landlords leasing to dispensaries.

[3] According to Mr. Ayers, as of May 2021, he could have been aware of the pending merger between Trulieve and Harvest.

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22. CEC/Ayers did regularly monitor Harvest's financial success. *See* Exhibits 42, 52. As early as July 2020, CEC/Ayers recognized Harvest as a publicly traded company and Ayers conflated Harvest and HDH ("This year your **publicly traded company** predicts sales of $200 million."). *See* Exhibit 42 (emphasis in original).

23. The Harvest dispensary located on the premises under the Lease is one of the top performing locations for Harvest with approximately 60 employees and serving patients and customers in an underserved area.

24. Mr. Ayers knew he was dealing with Harvest and that Mr. White was the CEO of Harvest. He also knew that Harvest traded on the Canadian exchange. As early as July 13, 2020, Mr. Ayers referred to Harvest as a "filthy rich publicly traded company." Exhibit 42.

Change in Corporate Structure/Voting Control

25. CEC/Ayers was aware of Harvest and its role as HDH and Harvest DCP's parent company.

26. Throughout the duration of the Lease, CEC/Ayers demonstrated knowledge and understanding of corporate structures and publicly traded companies, specifically related to Harvest.

27. The public records change in management or membership of HDH and/or Harvest DCP related to the efforts to take Harvest public on the Canadian Stock Exchange.

28. There was no change in voting control over HDH and/or Harvest DCP from March 1, 2018 through October 1, 2021.

29. As demonstrated by communications with CEC/Ayers, CEC and Ayers had information that Steve White had full control of HDH and Harvest DCP from March 1, 2018 through October 1, 2021. Exhibits 42, 67.

30. As demonstrated by CEC/Ayers' communications , CEC and Ayers knew that Steve White served as CEO of Harvest.

31. According to CEC, the ownership and domicile of the entity guarantying the Lease changed from an Arizona entity owned by private individuals to a Delaware entity and then to a publicly traded Canadian entity which materially and adversely affected the security given by the Guaranty under the Lease. CEC asserts that the guarantor is no longer a local entity and that piercing the corporate veil to collect against individual owners was no longer an option after the change in

ownership. Of course, CEC did not establish that it would have been entitled to pierce the corporate veil under the original ownership structure.

Net Worth Requirement

32. Trulieve's net worth, both with and without its merger with Harvest, was at least equal to or greater than HDH's net worth as of March 1, 2018, as required by the Lease. The net worth requirement was not the factor cited by CEC in denying the assignment.

Assignment

33. HDH/Harvest requested CEC's consent for assignment on August 6, 2021.

34. Upon request, HDH/Harvest notified CEC of the merger with Trulieve.

35. By email dated August 17, 2021, August 23, 2021, and August 31, 2021, HDH/Harvest again contacted CEC requesting its approval of an assignment of the Lease.

36. HDH/Harvest did not pay the $500 fee required by Section 10(e) of the Lease immediately upon making its request for consent to the assignment. HDH/Harvest did explain that it would pay the $500 fee with September rent. CEC never requested that HDH/Harvest tender the $500 in order to proceed with considering the request. CEC ignored HDH/Harvest's follow up inquiries until August 31, 2021.

37. CEC/Ayers finally responded to the August 6th request on August 31, 2021. *See* Exhibit 67.

38. HDH paid the $500 fee required by Section 10(e) of the Lease on September 1, 2021 as it indicated it would do.

39. On September 2, 2021, CEC's counsel requested information related to the assignment request.

40. Harvest provided information to CEC in response to CEC's request within 24 hours. CEC then requested additional information and the parties engaged in various discussions and exchanged correspondence regarding the impending transaction and potential assignment.

41. On September 29, 2021, CEC informed Harvest that it did not consent to the assignment and that it was terminating the Lease under Section 11.1.2(f) due to the failure to obtain CEC's consent to the Change of Control as required by Section 10 of the Lease. Specifically, CEC identified the change in control as more than 50% of the ownership and voting control of the guarantor of the

Lease, Harvest Dispensaries, Cultivations & Production Facilities, LLC (the "Guarantor") transferred in its entirety, apparently sometime in 2019. Specifically, Harvest Enterprises, Inc., a Delaware corporation, became the sole manager and the sole member. *See* Exhibit 239.

42. Plaintiffs timely requested CEC's approval of an assignment two months prior to the completion of the Harvest/Trulieve merger.

43. When CEC first responded to the assignment request, CEC responded in bad faith by immediately claiming a failure to pay rent, referring to court cases in which Harvest or an affiliate was a party, and making derogatory remarks about Plaintiffs. CEC responded by sending a meme/graphic to Plaintiffs suggesting that CEC might be subject to forfeiture and that CEC was being held hostage. Scott Ayers created a meme/graphic depicting Harvest as the villain and the CEC as a damsel in distress restricted by the Lease and the impending doom of asset forfeiture in the form of a train bearing down on the tracks. The graphics are indicative of the contentious relationship between Harvest and CEC. The acrimony started before the Lease was ever effective. The graphics also establish that Mr. Ayers had conducted significant due diligence into Trulieve relevant to the assignment request by the time he responded on August 31, 2021, despite his claim that HDH needed to pay the $500 fee before the consent to assignment could even be considered. Mr. Ayers confirmed as much when he testified about having hired a private investigator to look into Trulieve.[4] Regardless, in the face of requesting the assignment, Harvest appeared to have a reasonable expectation that CEC would approve the assignment because every other landlord had done so.

44. HDC reasonably concluded that Mr. Ayers was attempting a "shake down." HDC provided bare minimum information related to the requested assignment.

45. The meme/graphic is consistent with CEC's prior correspondence suggesting that the rent charged was **"60% lower than the average retail store rental rate."** Exhibit 42 (emphasis in original).

46. Harvest obtained consents to assignment from every other landlord which was required under its respective leases. The Court finds this evidence persuasive as to whether CEC's request for information and refusal to grant consent was reasonable. The Court further finds it persuasive as to whether CEC unreasonably withheld, delayed or conditioned consent to the assignment. Mr. Ayers did not expressly state that he wanted something in exchange for the approval. Instead, Mr. Ayers let the graphics speak for themselves.

[4] Once again, this type of conduct is indicative of the history of the relationship between the parties.

47. CEC had knowledge of Harvest as a public company but did not raise any issue about a breach of the Lease related to change in voting control until Plaintiffs sought CEC's approval of an assignment of the Lease. *See* Exhibit 42.

48. The Lease contemplates CEC will be provided sufficient information "for Lessor to make an informed decision regarding the proposed Assignment" as may "reasonably" be requested by CEC.

49. Plaintiffs provided information for CEC to make an informed decision regarding the proposed assignment in compliance with the Lease. All of the other landlords provided consent. CEC's request was the most expansive and broad request received.

50. The Lease does not provide for endless time for CEC's review and approval nor does the Lease provide for extensive due diligence.

51. The Lease requires that HDH submit its request for assignment with "sufficient time" for CEC "to make an informed decision regarding the proposed Assignment." Here, CEC had sufficient time to make an informed decision. CEC had enough time to request and consider information, hire a private investigator, and hire counsel who obtained information from HDH.

52. Plaintiffs provided two months and thus sufficient time for CEC to make an informed decision regarding the proposed assignment in compliance with the Lease. HDH's other landlords approved assignments with less information and without delay.

53. Trulieve's Chief Legal Officer confirmed that he reprimanded and demoted a Trulieve employee for his conduct during the due diligence process. Of note, however, this individual was not then an employee or representative of Harvest. While the conduct might be relevant to CEC in evaluating the assignment, the Court finds it inappropriate to impute Trulieve's pre-merger conduct onto Harvest.

54. In wrongfully refusing to approve the assignment, CEC alleged that HDH failed to pay the $500 fee called for in Section 10.1 of the Lease; however, HDC paid the $500 fee along with its monthly rent on September 1, 2021.

55. CEC was obligated to approve the assignment under the terms of the Lease. CEC delayed and unreasonably withheld its approval to the assignment. CEC's conduct was wrongful and in violation of the terms of the Lease.

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Termination

56. In refusing to approve the assignment, CEC alleged that HDH changed members and/or managers without its approval in prior breach of the Lease. CEC alleged that Harvest Enterprises, Inc. took the place of owners, managers or members of HDH and/or Harvest DCP without CEC's approval in prior breach of the Lease.

Conclusions of Law[5]
Forcible Entry and Detainer

CEC brought a forcible entry and detainer (FED) action against HDH. The Court consolidated the action with HDH and Harvest DCP's action for declaratory judgment and other claims. FED actions involving commercial properties arise under A.R.S. § 33-361. *Colonial Tri-City Limited Partnership v. Ben Franklin Stores, Inc.*, 179 Ariz. 428, 432 (App. 1993) (holding in order to maintain an action under § 33-361, a landlord-tenant relationship must exist between the parties, the action is a "summary proceeding" which is "designed to determine whether the existing landlord and tenant relationship should be terminated for failure to pay rent or for breach of lease"). Here, the Court determines that CEC failed to establish a failure to pay rent as a basis to support an FED action. The Court then turns to whether the action should proceed based on a breach of the Lease.

Under the Lease, CEC had the discretion not to approve a requested assignment under two conditions: 1) HDH was in default; or 2) the assignee's net worth was not at least equal to or greater than HDH's net worth as of the Lease Date. CEC may elect not to approve a proposed assignment, based upon the default or the failure to meet the net worth requirement. Either reason provides reasonable cause for disapproval. Here, CEC conceded that the net worth requirement was not the basis for denying consent. Accordingly, the Court will focus on alleged defaults.

Transfer Of Voting Power

The Lease further provides that a Change of Control shall constitute an Assignment requiring Lessor's consent. For purposes of Section 10, the term "Change of Control" means the transfer of more than 50% of the voting control of Lessee or Guarantor. CEC focused on one change of control giving rise to a breach of the Lease. CEC asserted HDH was in breach of the Lease because more than 50% of the ownership and voting control of the guarantor, Harvest DCP, was transferred in its entirety in 2019. Harvest Enterprises, Inc., a Delaware corporation, became the sole manager and member of Harvest DCP.

[5] The Court has used the headings Findings of Fact and Conclusions of Law as guideposts. The Court does not intend the headings to suggest that the content of the section is limited to the heading description.

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CEC asserts that the ownership and domicile of the guarantor changed from an Arizona entity owned by private individuals to a Delaware entity followed by a Canadian entity. CEC further asserts that this materially and adversely affected the security given by the Guaranty. CEC fails to explain how the changes it identifies are relevant to the security given by the Guaranty. For example, the Lease does not require that the Guarantor be owned by individuals as opposed to corporations nor does the Lease require the entity to be domiciled in Arizona. The Lease contains no restrictions on how the Guarantor operates or where it operates. The changes CEC complains about are not necessarily the result of a change in voting control. While the Court recognizes that the member and manager of Harvest DCP changed, CEC has not established a related change in voting control.

The Court concludes that in the context of this case, each of the alleged breaches is trivial or inconsequential. Specifically, the alleged transfer of voting control is inconsequential. There was no showing of any transfers in voting control that resulted in anyone other than Steve White maintaining control over HDH or the Guarantor. Mr. White testified regarding the extent of his control over the constellation of Harvest entities. Considering the totality of the evidence, the Court concludes that the corporate documents do not necessarily reflect the voting control relevant to Harvest DCP. This is particularly true in the time period leading up to the efforts to take Harvest public and leading up to the Trulieve transaction. *See e.g. Berg v. Berg*, 1 CA-CV 21-0320 FC, 2022 WL 1498136. *3 (App. May 12, 2022) (recognizing Court's discretion to weigh testimony and timing of events and other evidence to determine ownership of entity, despite documents demonstrating a change of ownership). Moreover, the testimony confirms that Jason Vedadi and Steve White maintained at least 50% of voting control over Harvest DCP from March 1, 2018 through September 29, 2021. The voting control was held individually or via corporate entities controlled by Mr. White and/or Mr. Vedadi. *See* Exhibits 250 (Vedadi 50%), 252 (Vedadi 50%), 254 (Vedadi and White 60%), 259 (Vedadi and White 53%), and 263 (Vedadi and White 100% resulting from super voting shares following RTO transaction). CEC did not establish a transfer of more than 50% of the voting control of Harvest DCP during the relevant time period.

CEC failed to establish that voting control transferred at any time. Even if it did, however, CEC has not established that any change of control is material. In *Foundation Dev. Corp. v. Loehmann's Inc.*, 163 Ariz. 438 (1990), the Arizona Supreme Court considered whether a commercial tenant's delay in paying a common area charge supported a forfeiture. In *Loehmann's*, the Supreme Court held that a lease may not be forfeited for an immaterial breach even if the lease specifically provided that any breach is cause for termination. *Id*. at 443-446. In doing so, the Court adopted the standards set forth in the Restatement (Second of Contracts) §241 to determine whether a breach by a tenant is material. The five-part test in §241 considers the following:

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1. The extent to which the injured party will be deprived of the benefit which he reasonably expected;
2. The extent to which the injured party can be adequately compensated [by damages] for the part of that benefit of which he will be deprived;
3. The extent to which the party failing to perform or to offer to perform will suffer forfeiture;
4. The likelihood that the party failing to perform or to offer to perform will cure his failure, taking account of all the circumstances including any reasonably assurances; and
5. The extent to which the behavior of the party failing to perform or to offer to perform comports with standards of good faith and fair dealing.

Here, CEC reasonably expected that HDH would pay rent and that the guarantor would pay if necessary. In this instance, CEC continues to have the benefit of a guarantor on the Lease. CEC has not identified any damages necessary to compensate it for the fact that a different guarantor is in place. The Court received no evidence to establish that Trulieve is unable or unwilling to pay the necessary rent. On the contrary, Mr. White testified a willingness to pay rent and any damages related to the Lease. Further, CEC did not present any evidence that Trulieve has failed to pay rent following the closing of the transaction.

If the Court allows CEC to retake the property, HDH will suffer a forfeiture in the form of the significant improvements to the property and goodwill associated with the property. In addition, HDH employs approximately 60 employees and has various vendor contracts associated with the dispensary. In this case, HDH complied with the Lease by requesting approval of the assignment. If HDH was in breach because of the change in control, HDH is not in a position to perform or to offer to perform because the merger has already occurred. Here, there is no evidence to support a conclusion that HDH acted in bad faith in the context of the alleged changes of control constituting the alleged breach.

On the contrary, the evidence presented supports a finding that CEC acted in bad faith by alleging a breach based on failure to pay rent in response to the requested assignment. Specifically, Mr. Ayers claimed that Harvest did not pay rent in January and July 2020. Exhibit 67. At the same time, CEC borrowed over $1 million based, in part, on the strength of the Harvest operations at the property, including rent compliance. Based on the evidence presented, Steve White controlled the Harvest entities, including HDH and Harvest DCP at all relevant times. Steve White and Jason Vedadi maintained at least 50% voting control during the revenant time. The Court finds no basis to conclude that HDH or Harvest DCP concealed information about their corporate structure or otherwise made any attempt to mislead CEC regarding any changes in control related to HDH or Harvest DCP. Indeed, HDH complied with the Lease terms when it was preparing to enter into the transaction with Trulieve. HDH requested approval in advance and responded immediately when asked for information related to the new tenant.

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To the extent that CEC alleges the consummation of the merger constituted a breach of the Lease, the Court finds that CEC breached its obligation to approve the assignment before the merger. Accordingly, the Court concludes HDH was relieved from further performing as to the request for assignment. *Murphy Farrell Dev., LLLP v. Sourant*, 229 Ariz. 124, 133, ¶ 33 (App. 2012), *as amended* (June 29, 2012) ("[A]n uncured material breach of contract relieves the non-breaching party from the duty to perform and can discharge that party from the contract.").

Other Possible Breach

CEC further asserted that HDH/Harvest did not pay the $500 fee required by Section 10(e) of the Lease, which was a condition precedent to CEC's consideration of the request for assignment. The Court concludes the failure to pay upon request is inconsequential because HDH/Harvest explained that it would pay the $500 fee with the September 2021 rent and it did so. CEC never communicated to HDH/Harvest that it would not consider the request without first receiving the $500 payment. Just the opposite, the record confirms that CEC performed due diligence regarding Trulieve during the more than three weeks it waited to respond to the request for consent. Upon responding, CEC shared information it learned about Trulieve and CEC's purported view that it was being held hostage by the impending threat of forfeiture. On balance, the Court finds that the breach (if any) was not material and enforcing a forfeiture under the circumstances would not be just.

CEC Unreasonably Refused Consent

Based on the findings above, the Court further concludes that CEC unreasonably withheld consent to the assignment.[6] As explained above, the alleged breaches were not material. HDH sought approval of the assignment to Trulieve consistent with the terms of the Lease. Accordingly, CEC was obligated to act reasonably and in good faith when considering the request for assignment. Instead, CEC alleged that HDH was in default for failing to pay rent in January 2020 and July 2020. CEC further raised purported concerns via Mr. Ayers about forfeiture because the tenant was operating a marijuana dispensary.[7] *See* Exhibit 67. HDH believed CEC was seeking to force a renegotiation of rent. This conclusion was reasonable given CEC's reaction when HDH requested the approval for assignment. *See* Exhibit 67. The

[6] Mr. White testified that Harvest needed to have lease assignments executed for up to 40 leases across the country. All of the landlords except Mr. Ayers gave approval. The longest period between the request for approval and approval was two weeks.

[7] Mr. Ayers claimed he was always concerned about forfeiture. The Court did not find this testimony credible when considering Mr. Ayers obtained a $1.5 million loan secured by the very property that was leased to Harvest.

Court did not find Mr. Ayer's testimony credible on this issue.[8] Shortly before making this claim, CEC provided information to its lender confirming that HDH was fully performing its financial obligations. Indeed, CEC secured a $1.5 million loan based, in part, on the strength of the dispensary operations.

Mr. Ayer's communications with Kerri Larson of Trulieve further corroborate the Court's conclusion that Mr. Ayers was interested in higher rent. Mr. Ayers reached out to Ms. Larson to ask for a referral for a replacement tenant and to discuss her view as to reasonable gross revenues for a marijuana business. According to Mr. Ayers, this was a "shot in the dark" but the Court concludes otherwise. Mr. Ayers singled out Ms. Larson in a not so veiled attempt to secure higher rent for the property after he terminated the Lease. *See* Exhibit 93. Mr. Ayers' communications to Ms. Larson further contradict the notion that CEC/Mr. Ayers were worried about forfeiture. Instead, Mr. Ayers alluded to the fact that Trulieve might not have secured an alternative space for its operations and that Mr. Ayers was looking to sell or lease the space for average retail rents at 8-10% of gross revenues. *See* Exhibit 93 ("I'm confident Trulieve already has an alternate location for its operation, but if you know of a company that might be interested in the space please kindly refer them to this email address.). Based on Mr. Ayers' testimony, including his demeanor and tone while testifying, and his prior correspondence, the Court concludes that the communications were a veiled attempt to suggest that the space might be available for Trulieve for the right price (i.e., a higher price than CEC was receiving from HDH).

There is no doubt that the parties engaged in a somewhat acrimonious diligence process related to the requested consent for assignment. The Lease does not allow for due diligence beyond that required to make an informed decision regarding the proposed assignment. *See* Exhibits 25, 29. Notwithstanding the acrimonious relationship, HDH provided information that would have allowed CEC to make an informed decision regarding the proposed assignment. Here, CEC hired a private investigator and lawyer to evaluate the potential assignment. Without a doubt, HDH could have provided more information and could have done so in a more cooperative fashion. The fact that it did not provide all of the specific information requested does not mean that CEC lacked sufficient information to make an informed reasonable decision.

CONCLUSION

Based on the above findings and conclusions,

[8] The Court had an opportunity to consider Mr. Ayers' demeanor and tone of voice while testifying. The Court further considered the totality of his testimony in light of the documents and events in the case.

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IT IS ORDERED denying CEC's request to receive possession of the leased property and CEC's request to recovery immediate possession of the property and all fixtures, trade fixtures, and related tenant improvements.

IT IS FURTHER ORDERED granting HDH and Harvest DCP's request for a judicial determination that HDC and Harvest DCP did not breach the Lease, and CEC has an obligation to approve in writing an assignment of the Lease as requested by Plaintiffs.

IT IS FURTHER ORDERED either party may request additional findings of fact or conclusions of law no later than **July 15, 2022**.

Clerk of the Superior Court
*** Electronically Filed ***
11/17/2022 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2021-016161 11/03/2022

HONORABLE DANIELLE J. VIOLA

CLERK OF THE COURT
S. Ortega
Deputy

HIGH DESERT HEALING L L C, et al. PAUL A CONANT

v.

C E C 141202761 L L C DAVID J SANDOVAL

JOSEPH M PARKER
JUDGE VIOLA

Defendant CEC 141202761, LLC's Request for Additional Findings of Fact and Conclusions of Law – Denied

Plaintiffs' Application for Award of Attorneys' Fees and Costs – Granted in Part

Order to Show Cause – Hearing Set

The Court has reviewed and considered the following:

1. Defendant CEC 141202761, LLC's Request for Additional Findings of Fact and Conclusions of Law filed July 15, 2022, the Response, and Reply;
2. Plaintiffs' Application for Award of Attorneys' Fees and Costs filed July 11, 2022, the Response, and Reply; and
3. Stipulated Form of Judgment filed August 22, 2022.

Additional Findings of Fact and Conclusions of Law

The Court has reviewed the additional findings of fact and conclusions of law proposed by CEC. The Court concludes that the existing findings of fact and conclusions of law are

appropriate and sufficient to address the issue presented to the Court. *See Gilliland v. Rodriquez*, 77 Ariz. 163, 167 (1954) (internal citations omitted) ("A court is called upon to make findings of only ultimate facts and is not required to bolster them by subsidiary findings on evidentiary matters upon which such ultimate facts are based").

IT IS ORDERED denying Defendant CEC 141202761, LLC's Request for Additional Findings of Fact and Conclusions of Law.

Attorneys' Fees

Plaintiffs (HDH and Harvest DCP, collectively HDH) request an award of fees of $149,097.50 and costs of $2,439.25 pursuant to A.R.S. § 12-341.01 and § 12-341 and Section 28 of the applicable Lease. Plaintiffs further request a final judgment with Harvest Health & Recreation, Inc. (HARV) waiving its Fourth Claim for Relief (tortious interference with business expectancy). CEC does not dispute that fees and costs may be recoverable under the Lease or §§ 12-341.01 and 12-341. The Court concludes that HDH may recover attorneys' fees and costs. The Court further concludes that HARV was not a party to the Lease that contains the prevailing party fee provision.

CEC generally opposes the award and argues that any fees should be reduced to reflect the time spend litigating the contract claims only. As noted above, HARV, not HDH or Harvest DCP, asserted a claim for tortious interference with business expectancy. HARV has not presented any basis for an award of fees as it agrees to waive the only claim it plead in the Complaint.

In the context of CEC's arguments, the Court has further considered the following factors: 1) the merits of the claim or defense presented by the unsuccessful party; 2) whether the litigation could have been avoided or settled and whether the successful party's efforts were completely superfluous in achieving the result; 3) whether assessing fees against the unsuccessful party would cause an extreme hardship; 4) whether the successful party prevailed with respect to all of the relief sought; 5) the novelty of the legal question presented; 6) whether such claim had previously been adjudicated in this jurisdiction; and 7) whether the award would discourage other parties with tenable claims or defenses from litigating or defending legitimate contract issues. *Associated Indem. Corp. v. Warner*, 143 Ariz. 567, 570 (1985).

The Court concludes that the merits of the claims and defenses do not weigh in favor of or against a fee award. HDH prevailed at the bench trial and HARV waived its claim for tortious interference with business expectancy. HDH presented the Court with a written settlement offer to CEC. CEC did not accept the offer. The Court's ruling following the bench trial places HDH

in essentially the same position they would have been had CEC accepted the offer. No party presented the Court with any information to support a conclusion that assessing fees against CEC would cause an extreme hardship. HDH prevailed as to the request for declaratory relief. There is no information to suggest the claims at issue were previously adjudicated in this jurisdiction. The issues raised were not necessarily novel, but they were nuanced. Finally, the Court finds an award of fees in general is not likely to discourage parties with tenable claims or defenses from litigating or defending legitimate contract issues.

In determining the reasonableness of a request for fees, the following factors are relevant:

1. The qualities of the advocate: his/her ability, training, education, experience, professional standing and skill;
2. The character of the work to be performed: its intricacy, importance, etc.;
3. The work actually performed: the skill, time and attention given to the work;
4. The result;
5. The billing rate: the court need not determine the reasonable hourly rate prevailing in the community for similar work; rather, the rate charged is the best indication of reasonableness in the particular case; however, if the opposing side sets forth reasons for objecting to the hourly rate, the court has the discretion to utilize a lower rate; and
6. The number of hours expended: generally, the successful party is entitled to a reasonable fee for items of service which, at the time rendered, would have been undertaken by a reasonable and prudent lawyer to advance his/her client's interests.

Schweiger v. China Doll Restaurant, 138 Ariz. 183, 187-88, 673 P.2d 927, 932 (App. 1983); *Schwartz v. Schwerin*, 85 Ariz. 242, 336 P.2d 144 (1959)).

Here, the Court concludes the fee request in general is supported by the quality of counsel, the nature and extent of the work performed, the result, and the hours worked. *See* Declaration of P. Conant. The work was not particularly complicated. HDH's counsel performed work that resulted in judgment for HDH. The litigation was expedited and resolved by a four-day bench trial. The Court recognizes that both parties completed a significant amount of preparation related to court appearances and the bench trial.

CEC objects to the fee request as unreasonable because HDH is requesting fees for filing an excessively lengthy complaint, including an improper and irrelevant preamble. The Court directed CEC to disregard the first three pages of the Complaint when filing its answer. *See* Minute Entry dated 10/22/2021 at 2. In addition, HARV asserted a claim for tortious interference with business expectancy that it has now abandoned. CEC challenges 8.0 hours spent in drafting the Complaint ($3,600). CEC asks the Court to reduce 25% of the time spent drafting the Complaint due to the excessive nature of the Complaint. CEC further argues the

Court should strike 25% of Plaintiffs' remaining fees as they involved work unrelated to the breach of contract claim. CEC does not otherwise challenge the hourly rates or number of hours worked to complete particular tasks. The Court agrees that a portion of the fees related to the HARV claim should be reduced. CEC asserts that the parties included information in the Joint Pre-Trial Statement related to the tortious interference claim that HDH argued was an oversight. HARV later waived that claim. Plaintiffs incurred $3,077.50 between March 30 and April 13, 2022 related to the pre-trial statement. CEC asserts the time should be reduced by at least 25% to reflect the unnecessary work related to the tortious interference claim that was later waived. The Court agrees. CEC did not, however, present sufficient information to establish the extent to which HARV's claim was otherwise addressed by the parties. Accordingly, the Court will reduce only those fees related to the preparation of the complaint and the joint pre-trial statement.

CEC further argues that HDH's fees should be reduced because HDH sought injunctive relief before asking CEC to stipulate to retain the status quo. CEC agreed to a stipulation shortly after HDH filed its claims. CEC objects to 5.9 hours of attorney and paralegal time totaling $2,557.50 that could have been avoided had HDH communicated with CEC regarding a stipulation. CEC makes a similar argument about HDH's failure to request that counsel for CEC accept service. Instead, HDH incurred 4.8 hours of time totaling $1,802.50 working on service. CEC's counsel later offered to accept service which resulted in additional fees of $197.50 for HDH to prepare an acceptance of service. While the Court recognizes that CEC ultimately stipulated to an injunction pending resolution of the dispute, the record does not support a conclusion that it was unreasonable for HDH to proceed with filing a request for an injunction and arranging for service.

Verified Costs

HDH asks the Court to award taxable costs of $2,394.25. HDH originally requested additional costs of $45.00 but withdrew its request in the Reply. CEC does not object to the taxable costs.

IT IS ORDERED granting in part Plaintiffs' Application for Award of Attorneys' Fees and Costs by awarding HDH and Harvest DCP attorneys' fees in the reduced amount of $147,425.50 and taxable costs of $2,394.25.

Form of Judgment

The parties lodged a stipulated judgment on August 22, 2022. The Court will issue a separate judgment consistent with the stipulated judgment and this ruling after the outstanding matter identified below is resolved.

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Other Outstanding Matter

The Court notes that Plaintiffs filed an Application for Order to Show Cause Re: False Default Notices Issued by CEC 141202761, LLC on November 3, 2022.

IT IS ORDERED setting an Order to Show Cause Hearing on **November 22, 2022 at 10:00 a.m. (time allotted: 30 minutes)** via Court Connect in this division. Defendant CEC is ordered to appear and show cause, if any it has, why the "Notice of Breach of Lease January 2020" and the "Notice of Breach of Lease July 2020" (both issued on October 14, 2022) should not be declared invalid by the Court.

A link to join the hearing will be emailed to Counsel of Record in advance of the hearing. Parties may appear telephonically or by video using the following information:

Please join the courtroom from your computer, tablet or smartphone.

www.tinyurl.com/jbazmc-cvj17

You can also dial in using your phone (audio only)
+1 (917) 781-4590
Phone Conference ID: 701 728 12#

More information regarding Court Connect can be found at:
https://superiorcourt.maricopa.gov/court-connect/

NOTE: All court proceedings are recorded by audio and video method and not by a court reporter. Pursuant to Local Rule 2.22, if a party desires a court reporter for any proceeding in which a court reporter is not mandated by Arizona Supreme Court Rule 30, the party must submit a written request to the assigned judicial officer at least ten (10) judicial days in advance of the hearing, and must pay the authorized fee to the Clerk of the Court at least two (2) judicial days before the proceeding. The fee is $140 for a half-day and $280 for a full day.

Granted with Modifications
See eSignature page

Clerk of the Superior Court
*** Electronically Filed ***
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2/7/2023 8:00:00 AM
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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR MARICOPA COUNTY

HIGH DESERT HEALING, LLC, an Arizona limited liability company; HARVEST DISPENSARIES, CULTIVATIONS & PRODUCTION FACILITIES, LLC, an Arizona limited liability company; HARVEST HEALTH & RECREATION, INC., a British Columbia corporation; Plaintiffs, vs. CEC 141202761, LLC, an Arizona limited liability company; JOHN and Jane Doe; JOHN AND JANE DOE REVOCABLE LIVING TRUST; ADDITIONAL DEFENDANTS 1-3; Defendants.	CV2021-016161 Case No. CV2021-016160 (Consolidated with CV2022-053708) **JUDGMENT** (Assigned to The Honorable Danielle J. Viola)
CEC 141202761, LLC, an Arizona limited liability company, Plaintiffs, vs. HIGH DESERT HEALING, LLC, an Arizona limited liability company; HARVEST DISPENSARIES, CULTIVATIONS & PRODUCTION FACILITIES, LLC, an Arizona limited liability company, Defendants.	

Pursuant to Rule 54(c), Ariz. R. Civ. P., and based upon the record in this matter, it is hereby Ordered, Adjudged and Decreed:

1. Plaintiffs High Desert Healing, LLC ("HDH") and Harvest Dispensaries, Cultivations & Production Facilities, LLC ("Harvest DCP") are determined to be the successful and prevailing parties on their declaratory judgment claims against Defendant CEC 141202761, LLC ("CEC"), and the Court specifically declares:
    a. HDH did not breach the Lease (as amended) as between it and CEC;
    b. Harvest DCP did not breach the Lease (as amended), or guarantee, as between it and CEC; and,
    c. CEC has an obligation to approve in writing an assignment of the Lease, as requested by Plaintiffs, and CEC is hereby directed to do so.
2. CEC's forcible entry and detainer claim is dismissed, and CEC's request to receive possession of the leased property, including immediate possession of said property and all fixtures, trade fixtures and related tenant improvements, is denied.
3. HDH's request for permanent injunctive relief is granted to the following extent: CEC is permanently enjoined from contending and/or acting as if the Lease (as amended) had been terminated as a result of any issues decided in this action. The injunction does not foreclose CEC's rights under the lease as they pertain to any other matters.
4. Upon execution of this Judgment, the tortious interference claim made by Plaintiff Harvest Health & Recreation, Inc., and the damages remedies sought by Plaintiffs HDH and Harvest DCP, are deemed waived.
5. Upon execution of this Judgment, the October 14, 2022 "Notice of Breach of Lease January 2020" and "Notice of Breach of Lease July 2000", the November 13, 2022 "Notice of Breach of Lease", and the December 9, 2022 "Notice of Default of Lease",

all of which were issued by CEC to HDH and/or its representatives, are declared to be invalid, for the reasons set forth in Plaintiffs' November 3, 2022 and December 9, 2022 applications for orders to show cause.

6. Plaintiffs HDH and Harvest DCP are awarded, jointly and severally, the following sums as and for their attorneys' fees and costs under the Lease, and ARS §12-341.01, and their taxable costs under ARS §12-341:
    a. Attorneys' fees and costs under the Lease (and ARS §12-341.01): $147,425.50; and,
    b. Taxable costs under ARS §12-341: $2,394.25.
7. The statutory rate of 8.75% interest shall run on any unpaid amounts stated above, until paid in full.
8. The Court directs that final judgment is and shall be entered pursuant to Rule 54(c), Ariz. R. Civ. P, as this is a judgment which resolves all claims as to all parties, and no further matters remain pending.
9. This judgment is entered under Rule 54(c), Ariz. R. Civ. P.
10. The Court finds no reason for delay and expressly directs entry of this judgment as a final judgment in this matter.

Signed this 6th day of February, 2022

The Honorable Danielle J. Viola, Judge
Maricopa County Superior Court

eSignature Page 1 of 1

Filing ID: 15502868 Case Number: CV2021-016161
Original Filing ID: 15259250

Granted with Modifications

/S/ Danielle Viola Date: 2/6/2023

Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2021-016161 SIGNATURE DATE: 2/6/2023

E-FILING ID #: 15502868 FILED DATE: 2/7/2023 8:00:00 AM

MARK D GOLDMAN

PAUL A CONANT

COURT ADMIN-CIVIL-ARB DESK

Exhibit No. 25

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/2/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE - NET
AIR COMMERCIAL REAL ESTATE ASSOCIATION

1. Basic Provisions ("Basic Provisions").

1.1 **Parties:** This Lease ("**Lease**"), effective as of March 1, 2018 (**"Lease Date"**), is made by and between CEC 141202761, LLC, an Arizona limited liability company(**"Lessor"**), and High Desert Healing, L.L.C., an Arizona limited liability company (**"Lessee"**), (collectively the **"Parties,"** or individually a **"Party"**). Each of the Parties acknowledges and agrees to the provisions described in **Exhibit 1** hereto. Lessee is a wholly-owned subsidiary of Harvest Dispensaries, Cultivations & Production Facilities LLC, an Arizona limited liability company, which shall guarantee the payment and performance of Lessee of this Lease ("**Guarantor**") pursuant to that certain Guaranty of Lease attached hereto as **Exhibit 2**.

1.2 **Premises and the Property:** As of the Lease Date and continuing through the Expansion Date (as defined herein) the Premises shall be that certain portion of the Property (as defined herein), consisting of 2,000 square feet, including all improvements therein, commonly known as the street address 13433 E. Chandler Blvd, Suite A, located in the City of Chandler, County of Maricopa, State of Arizona 85225 (**"Premises"**). Provided that Lessee shall not be in Default (as defined herein) of this Lease on the Expansion Date, effective upon the Expansion Date and continuing through the expiration of the Term of this Lease, the definition of "**Premises**" shall be modified as follows, all references to the term "**Premises**" contained in this Lease shall mean the following, and the terms "**Premises**" and "**Property**" are used interchangeably unless otherwise required by the context of use:

> All of that certain real property, consisting of 6,000 square feet, including all improvements thereon, commonly known as the street address 13433 E. Chandler Blvd, Suites A and B, located in the City of Chandler, County of Maricopa, State of Arizona 85255 (**"Premises"** or **"Property"**).

Subject to the terms and provisions of Section 3.3, the term "**Expansion Date**" shall mean the date on which Lessor surrenders Suite B and delivers possession of the remaining Property to Lessee; provided, that Lessor shall use commercially reasonable efforts to surrender Suite B and deliver possession of the remaining Property to Lessee no later than June 1, 2018. On the Expansion Date and provided that Lessee shall not be in Default of this Lease, Lessor shall surrender Suite B and deliver possession of the remaining Property in the condition described in Section 2.2, and Lessor shall have the right to select the items of its trade fixtures and other personal property, alterations and utility installations in Suites A and B (collectively, "**Lessor's Personal Property**") that it desires to remove. Any Lessor's Personal Property in Suites A or B of Lessor not removed on or before the Expansion Date shall be deemed to have been abandoned by Lessor and shall be disposed of or retained by Lessee.

In addition to Lessee's right to use and occupy the Premises as herein specified, on the Lease Date and continuing until the Expansion Date, Lessee shall have non-exclusive rights to any utility raceways of the building containing the Premises (**"Building"**) and to the Common Areas (as defined in Section 2.7 below) in common with other tenants and their employees and invitees, but shall not have any tenant's rights to the roof or exterior walls of the Building or to any other buildings on the Property until the Expansion Date. On the Expansion Date, Lessee shall have exclusive use of the entire Property, including the entire parking lot, utility raceways and Common Areas. Lessee hereby accepts the square footage of Suites A and B as described in this Section 1.2.

1.3 **Term:** 15 years and no months **("Term")** commencing on the Lease Date and ending on March 1, 2033 (**"Expiration Date"**).

1.4 **Parking**. On the Lease Date and continuing until the Expansion Date, Lessee shall have the non-exclusive right to use no more than eight (8) parking spaces for Lessee's or Lessee's Invitees' vehicle parking (as "**Invitees**" is defined below) on those portions of the Common Areas designated from time to time by Lessor for Lessee's and Lessee's Invitees' parking, including Lessor's designation of certain parking spaces in the Common Areas as reserved for use by Lessee and Lessee's Invitees, Lessor, and/or other tenants of the Property. As of the Expansion Date, Lessee shall have exclusive use of the entire parking lot and there shall be no limitation on the number of parking spaces available on the Property for Lessee's use, other than those limitations arising under any applicable laws, ordinances, rules and regulations of any public authority (including the Marijuana Laws defined below) (collectively, the "**Laws**"). In addition, at all times during the Term:

(a) Lessor may regulate the loading and unloading of vehicles by adopting Rules and Regulations as provided in Section 2.9.

(b) No vehicles other than Permitted Size Vehicles (as defined herein) may be parked in the Common Areas by Lessee or Lessee's Invitees (as defined herein) without the prior written permission of Lessor.

(c) Parking spaces shall be used for parking by vehicles no larger than full-size passenger automobiles or pick-up trucks, herein called "**Permitted Size Vehicles**."

(d) Lessee shall not permit or allow any vehicles that belong to or are controlled by Lessee or Lessee's employees, suppliers, shippers, customers, contractors or Invitees to be loaded, unloaded, or parked in areas other than those designated by Lessor for such activities.

(e) Lessee shall not service or store any vehicles in the Common Areas.

(f) In the event of more than three (3) violations of the activities set forth in clauses (a) through (e) of this Section 1.4, Lessee shall assign an employee to direct parking for Lessee's Invitees, and install appropriate signage indicating which spaces are designated for Lessee's Invitees. Lessee shall use commercially reasonable efforts to maintain the gate to the Property and the parking area free flowing and accessible at all times.

1.5 **Base Rent; Additional Rent; Banking:** Subject to the terms and conditions of this Lease, Lessee shall pay to Lessor $17,000.00 U.S. Dollars inclusive of rent, sales, franchise and use taxes per month as rent **("Base Rent")**, payable by wire transfer, check, or as Lessor may otherwise designate by written notice to Lessee on the fifth day of each month commencing on the Lease Date. Base Rent will increase by three (3%) each consecutive 12-month period during the Term. No payment of Base Rent or any other amount due under this Lease shall be paid in cash. Subject to the terms and conditions of this Lease, Lessee shall pay Lessor monthly as additional rent ("**Additional Rent**") commencing with the Lease Date and monthly on the fifth (5th) day of each month of the Term: (a) all utilities serving the Premises and the Property; (b) all Real Property Taxes applicable to the Premises and the Property; (c) Lessee's Share of the Common Area Operating Expenses from the Lease Date and continuing until the Expansion Date; and (d) all of the Common Area Operating Expenses as of the Expansion Date through the expiration of the Term. The term "Rent" shall mean and include the Base Rent, Additional Rent and all other amounts due under this Lease by Lessee to Lessor.

1.6 **Lessee's Share of Common Area Operating Expenses**: From the Lease Date and continuing until the Expansion Date, $250.00 per month ("**Lessee's Share**"); provided, that Lessee's Share of the Common Area Operating Expenses shall increase to include all of the Common Area Operating Expenses under this Lease from the Expansion Date through the expiration of the Term.

1.7 **Electronic Monument Sign**: Provided that Lessee shall comply with all Laws relative to signage and otherwise, and provided further that Lessee shall not be in Default of this Lease, as of the Expansion Date and continuing throughout the Term of this Lease, Lessee shall be permitted to use 100% of the electronic monument sign on the Premises and the Property for advertising purposes.

1.8 **Base Rent and Other Monies Paid Upon Lease Execution:**

(a) **Base Rent:** $11,750.00 for March, 2018, plus the rent credit described in the last sentence of Section 1.9.

(b) **Common Area Operating Expenses:** $250.00

(c) **Additional Security Deposit**: $30,650.00 (see Section 5).

(d) **Total Due Upon Execution of this Lease:** $42,450.00.

1.9 **Termination of Prior Lease**: Lessor acknowledges and represents that prior to the execution of this Lease, it was party to that certain lease relating to the Premises, dated August 15, 2016, between Desert Car Health, LLC, as lessee, and Lessor (the "**Prior Lease**"). On or about October 12, 2017, Desert Car Health, LLC ("**Original Tenant**"), as assignor, entered into that certain Lease Assignment with AZ ND, LLC, an Arizona limited liability company ("**Successor Tenant**"), as Assignee, as defined herein, which is an affiliate of Lessee, assigning all of Original Tenant's right, title and interest in and to the Prior Lease to Successor Tenant, and Successor Tenant assuming all of Original Tenant's obligations under the Prior Lease (the "**Prior Lease Assignment**"). Pursuant to provisions in the Prior Lease Assignment granting certain due diligence rights to Successor Tenant and permitting Successor Tenant to terminate the Prior Lease Assignment within a designated period of time in the event Successor Tenant was unsatisfied with the results of its due diligence, Successor Tenant did not terminate the Prior Lease Assignment. Pursuant to the Prior Lease Assignment, Successor Tenant is the assignee-lessee of the Prior Lease. As a condition precedent to the effectiveness of this Lease, Successor Tenant, Lessor and Lessee shall have executed that certain termination agreement terminating the Prior Lease concurrently with the execution of this Lease by Successor Tenant, Lessor and Lessee pursuant to the terms and provisions of the termination agreement (the "**Termination Agreement**"). Notwithstanding anything to the contrary contained in this Lease, Successor Tenant's rent payments to Lessor under the Prior Lease for the months of January and February, 2018 in the amount of $5,250.00 each shall be accepted by Lessor as partial consideration for the Termination Agreement. Effective as of the Lease Date, Lessor and Lessee agree that Successor Tenant's rent payment to Lessor under the Prior Lease for the month of March, 2018 in the amount of $5,250.00 shall be accepted by Lessor as a credit against the Base Rent due for March, 2018 and on Lessee's execution of this Lease Lessee shall pay Lessor the balance of Base Rent due for March, 2018 of $11,750.00.

2. Premises and the Property.

2.1 **Letting.** On the Lease Date and continuing until the Expansion Date, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, and provided that Lessee shall not be in Default of this Lease, on the Expansion Date Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Property, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. While the approximate square footage of the Premises or Property may have been used in the marketing of the Premises or Property for purposes of comparison, the Parties agree that all references to square footage in this Lease have been agreed upon by each of them and no square footage, and no calculation based upon square footage, is subject to adjustment should the actual size be determined to be different. **Note: Lessee is advised to verify the actual sizes prior to executing this Lease.**

2.2 **Condition. LESSEE ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, LESSOR HAS NOT MADE, DOES NOT MAKE AND SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO: (I) THE VALUE OF THIS LEASE, THE PREMISES OR THE PROPERTY; (II) THE INCOME TO BE DERIVED FROM THE PREMISES OR THE PROPERTY; (III) THE SUITABILITY OF THE PREMISES OR THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USES WHICH LESSEE MAY CONDUCT THEREON, INCLUDING, WITHOUT LIMITATION, THE POSSIBILITIES FOR FUTURE DEVELOPMENT OR USE OF THE PREMISES OR THE PROPERTY, NOTWITHSTANDING LESSOR'S KNOWLEDGE OF LESSEE'S INTENDED USES OF SUITES A AND B; (IV) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY AND FITNESS FOR A PARTICULAR PURPOSE OF THE PREMISES OR THE PROPERTY; (V) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE PREMISES OR THE PROPERTY INCLUDING ANY IMPROVEMENTS THEREON; (VI) THE NATURE, QUALITY OR CONDITION OF THE PREMISES OR THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY; (VII) THE COMPLIANCE OF OR BY THE PREMISES OR THE PROPERTY OR ITS OPERATION WITH ANY LAW, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, INCLUDING BUT NOT LIMITED TO THE MARIJUANA LAWS; (VIII) THE MANNER OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE PREMISES OR THE PROPERTY; (IX) COMPLIANCE OF THE PREMISES OR THE PROPERTY WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING, WITHOUT LIMITATION, THE MARIJUANA LAWS, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, THE VISUAL ARTISTS RIGHTS ACT, THE FEDERAL WATER POLLUTION CONTROL ACT, THE FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCE CONSERVATION AND RECOVERY ACT OF 1976, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT, THE TOXIC SUBSTANCE CONTROL ACT, AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING; (X) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS, DEFINED BELOW, AT, ON, UNDER, OR ADJACENT TO THE PREMISES OR THE PROPERTY; (XI) THE CONTENT, COMPLETENESS OR ACCURACY OF THE DUE DILIGENCE MATERIALS, INCLUDING BUT NOT LIMITED TO A PRELIMINARY REPORT REGARDING THE CONDITION OF TITLE, IF ANY; (XII) THE CONFORMITY OF ANY IMPROVEMENTS TO ANY PLANS OR SPECIFICATIONS FOR THE PREMISES OR THE PROPERTY, INCLUDING ANY PLANS AND SPECIFICATIONS THAT MAY HAVE BEEN OR MAY BE PROVIDED TO LESSEE; (XIII) THE CONFORMITY OF THE PREMISES OR THE PROPERTY OR ITS RESPECTIVE USE TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING REQUIREMENTS; (XIV) THE DEFICIENCY OF ANY UNDERSHORING; (XV) THE DEFICIENCY OF ANY DRAINAGE; (XVI) THE FACT THAT ALL OR A PORTION OF THE PREMISES OR THE PROPERTY MAY BE LOCATED ON OR NEAR AN EARTHQUAKE ZONE; (XVII) THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS, OR LACK THEREOF, AFFECTING THE PREMISES OR THE PROPERTY; OR (XVIII) WITH RESPECT TO ANY OTHER MATTER. LESSEE, FOR ITSELF AND ITS AFFILIATES, ACKNOWLEDGES AND AGREES THAT ALL OF THE COSTS, FEES AND EXPENSES INCURRED OR PAID WITH RESPECT TO OBTAINING A VARIANCE AND MEETING OTHER ZONING, PLANNING AND DEVELOPMENT REQUIREMENTS AND LAWS OF OR BY MARICOPA COUNTY FOR THE LOCATING OF A DISPENSARY IN THE PREMISES OR ON THE PROPERTY ARE SOLELY THE RESPONSIBILITY OF LESSEE, AND LESSEE AGREES TO INDEMNIFY AND HOLD LESSOR HARMLESS THEREFROM.** The provisions of this Section 2.2 which by their nature survive the expiration or other termination of this Lease, including Lessee's obligation to indemnify Lessor for damages caused by Lessee's breach of this Section 2.2, shall so survive. Subject to Section 1.2, Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Lease Date and Lessor shall deliver the Property to Lessee broom clean and free of debris on the Expansion Date. Lessee acknowledges and agrees that Lessee has been given the opportunity to inspect the Premises and the Property and review information and documentation affecting the Premises and the Property, if any, and Lessee is relying solely on its own investigation of the Premises and the Property and review of such information and documentation, and not on any information provided or to be provided

by Lessor. Lessee further acknowledges and agrees that any information made available to Lessee or provided or to be provided by or on behalf of Lessor with respect to the Premises and the Property was obtained from a variety of sources and that Lessor has not made any independent investigation or verification of such information and makes no representations or warranties as to the accuracy or completeness of such information. Lessee agrees to fully and irrevocably release Lessor from any and all claims that Lessee may now have or hereafter acquire against Lessor for any costs, loss, liability, damage, expense, demand, action or cause of action arising from such information or documentation. Lessor is not liable for or bound in any manner by any oral or written statements, representations or information pertaining to the Premises or the Property, or the operation thereof, furnished by any real estate broker, agent, employee, servant or other person. LESSEE FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE LEASE OF THE PREMISES AND THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" "WHERE IS" CONDITION AND BASIS, WITH ALL FAULTS, AND THAT LESSOR HAS NO OBLIGATIONS TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS. LESSEE REPRESENTS, WARRANTS, AND COVENANTS TO LESSOR THAT, EXCEPT FOR LESSOR'S EXPRESS REPRESENTATIONS AND WARRANTIES SPECIFIED IN THIS LEASE, LESSEE IS RELYING SOLELY UPON LESSEE'S OWN INVESTIGATION OF THE PREMISES AND THE PROPERTY.

2.3 **Compliance.** Lessee is responsible for determining whether or not any Laws, including the building and zoning codes, applicable laws, covenants or restrictions of record, regulations, and ordinances (collectively, the "**Applicable Requirements**"), and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises or the Property may no longer be allowed. If the Premises or the Property do not comply with the Applicable Requirements or Laws, Lessee shall promptly rectify the same at Lessee's sole cost and expense. If the Applicable Requirements or Laws are hereafter changed so as to require during the Term of this Lease the construction of an addition to or an alteration of the Premises or the Property, the remediation of any Hazardous Substance (as defined below), or the reinforcement or other physical modification of the Premises or the Property, all compliance shall be the obligation of Lessee at Lessee's sole cost and expense. Lessee's obligation to indemnify Lessor for damages caused by Lessee's breach of this Section 2.3 during the Term shall survive the expiration or earlier termination of this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been given an opportunity to inspect and measure the Premises and the Property, (b) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the size and condition of the Premises and the Property (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Laws), and their suitability for Lessee's intended use, (c) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to the Premises and the Property, and (d) neither Lessor, Lessor's agents, nor Brokers have made any oral or written representations or warranties with respect to said matters other than as set forth in this Lease.

2.5 **Intentionally Omitted.**

2.6 **Intentionally Omitted.**

2.7 **Common Areas - Definition**. Prior to the Expansion Date, the term "**Common Areas**" is defined as all areas and facilities outside the exterior boundaries of Suite A that are provided and designated by the Lessor from time to time for the general non-exclusive use of Lessor, Lessee and other tenants of the Property and their respective employees, suppliers, shippers, customers, contractors and Invitees, including parking areas, loading and unloading areas, trash areas, roadways, walkways, driveways and landscaped areas. On and after the Expansion Date the term "Common Areas" is defined as the Property.

2.8 **Common Areas - Lessee's Rights**. On the Lease Date and continuing until the Expansion Date Lessor grants to Lessee, for the benefit of Lessee and its employees, suppliers, shippers, contractors, customers and Invitees (collectively, "**Invitees**") the non-exclusive right to use, in common with others entitled to such use, and on the Expansion Date the exclusive use of the Common Areas as they exist from time to time, subject to any rights, powers, and privileges reserved by Lessor under the terms hereof or under the terms of any Rules and Regulations or restrictions governing the use of the Property. Under no circumstances shall the right herein granted to use the Common Areas be deemed to include the right to store any property, temporarily or permanently, in the Common Areas. Any such storage shall be permitted only by the prior written consent of Lessor, which consent may be revoked at any time. In the event that any unauthorized storage shall occur then Lessor shall have the right, without notice, in addition to such other rights and remedies that it may have, to remove the property and charge the cost to Lessee as Additional Rent, which cost shall be immediately payable by Lessee upon demand by Lessor.

2.9 **Common Areas - Rules and Regulations**. Lessor or such other person(s) as Lessor may appoint shall have the exclusive control and management of the Common Areas and shall have the right, from time to time, to establish, modify, amend and enforce reasonable Rules and Regulations ("**Rules and Regulations**") for the management, safety, care, and cleanliness of the grounds, the parking and unloading of vehicles and the preservation of good order, as well as for the convenience of other occupants or tenants of the Building and the Property and their Invitees. Lessee agrees to abide by and conform to all such Rules and Regulations, and shall use its best efforts to cause its Invitees to so abide and conform. Lessor shall not be responsible to Lessee for the non-compliance with said Rules and Regulations by other tenants or tenants' Invitees of the Property.

2.10 **Common Areas - Changes**. Lessor shall have the right, in Lessor's sole discretion, from time to time:

(a) To make changes to the Common Areas, including, without limitation, changes in the location, size, shape and number of driveways, entrances, parking spaces, parking areas, loading and unloading areas, ingress, egress, direction of traffic, landscaped areas, walkways and utility raceways;

(b) To close temporarily any of the Common Areas for maintenance purposes so long as reasonable access to the Premises and the Property is provided;

(c) To designate other land outside the boundaries of the Property to be a part of the Common Areas;

(d) To add additional buildings and improvements to the Common Areas;

(e) To use the Common Areas while engaged in making additional improvements, repairs or Alterations (as defined herein) to the Property; or

(f) To do and perform such other acts and make such other changes in, to or with respect to the Common Areas and Property as Lessor may, in the exercise of sound business judgment, deem to be appropriate.

2.11 **Intentionally Omitted**.

3. Term.

3.1 **Term.** The Lease Date, Expiration Date and Term of this Lease are as specified in Section 1.3.

3.2 **Intentionally Omitted.**

3.3 **Delay In Possession.** Lessor and Lessee acknowledge and agree that Lessor has already delivered possession of the Premises to Lessee pursuant to the Prior Lease Assignment. If Lessor fails to deliver possession of the remaining Property to Lessee by June 1, 2018, such failure shall not affect the validity of this Lease or change the Expiration Date. Notwithstanding the foregoing and providing Lessee shall not be in Default of this Lease, if Lessor fails to deliver possession of the remaining Property to Lessee by June 1, 2018, then effective as of such date and continuing until Lessor's delivery of possession of the remaining Property: (a) the Base Rent shall be automatically adjusted to $5,250.00 per month; (b) the Additional Rent shall be automatically adjusted to include only those utilities and Real Property Taxes serving and applicable to the Premises; (c) Lessor shall accept as a credit against the Base Rent and Additional Rent due by Lessee as of June 1, 2018, the difference between, on the one hand, the sum of the amounts of Base Rent and Additional Rent actually paid by Lessee from the Lease Date through June 1, 2018, and on the other hand, the sum of the amounts of Base Rent and Additional Rent that would have paid by Lessee for such period if such Base Rent and Additional Rent had been adjusted pursuant to the preceding clauses (a) and (b); and (d) Lessee shall have the option to terminate this Lease by providing 30 days' written notice to Lessor, in which event the Parties shall be discharged from all obligations hereunder; provided, however, for the avoidance of doubt, if Lessee is in Default of this Lease on June 1, 2018, then clauses

(a) through (d) shall not apply, and the Base Rent and Additional Rent shall continue in the amounts provided for in this Lease as of May 31, 2018 until Lessee has cured such Default in accordance with the terms hereof, at which time such clauses (a) through (d) shall apply and shall continue to apply until Lessor delivers possession of the remaining Property to Lessee. Upon Lessor's delivery of possession of the remaining Property to Lessee at any time after June 1, 2018: (i) the Base Rent and Additional Rent shall be automatically adjusted to their respective amounts as of May 31, 2018; and (ii) Lessor shall continue to accept any amounts left uncredited under clause (c) in the preceding sentence as a credit against the Base Rent and Additional Rent due by Lessee after delivery of the remaining Property.

3.4 **Lessee Compliance.** Lessee will, at its sole cost and expense, operate, administer, manage and maintain the medical marijuana dispensary and all related operations in the Premises and the Property (collectively, the "**Dispensary**") pursuant to and in compliance with this Lease, and all applicable Laws, and Applicable Requirements pursuant thereto. Lessee shall, at its sole cost and expense, implement all actions necessary to ensure the quality, safety, and security of the Dispensary at the Premises and on the Property, pursuant to and in compliance with the AMMA and all other laws and Applicable Requirements pursuant thereto. Lessee shall immediately notify Lessor in writing upon the event of any state or federal audit, enforcement action or allegation affecting the Dispensary, the Premises, the Property, or against Lessee and shall deliver details concerning the foregoing event and how Lessee intends to respond to the event. This Lease is subject to Lessee's compliance in all material respects with the Marijuana Laws (as defined herein) regarding the Premises and the Property, all of which are hereby incorporated herein. Lessee acknowledges that:

3.4.1 Implications of Failure to Comply. THE ACQUISITION, POSSESSION, CULTIVATION, MANUFACTURING, DELIVERY, TRANSFER, TRANSPORTATION, SUPPLYING, SELLING, DISTRIBUTING, OR DISPENSING OF "MEDICAL" MARIJUANA UNDER STATE LAW IS LAWFUL IN ARIZONA ONLY IF DONE IN STRICT COMPLIANCE WITH THE REQUIREMENTS OF THE AMMA. ANY FAILURE TO COMPLY WITH THE AMMA MAY RESULT IN REVOCATION OF THE REGISTRY IDENTIFICATION CARD(S) OF LESSEE, THE LESSEE'S PRINCIPALS, BOARD AND/OR EMPLOYEES OF LESSEE, THE REGISTRATION CERTIFICATE, THE ATO (AS DEFINED HEREIN), AND/OR THE SUP (AS DEFINED HEREIN) AND THE POSSIBLE ARREST, PROSECUTION, IMPRISONMENT AND FINES FOR VIOLATION OF STATE AND/OR FEDERAL DRUG LAWS. LESSEE ACKNOWLEDGES AND UNDERSTANDS THAT ANY SUCH NON-COMPLIANCE MAY RESULT IN SUBSTANTIAL MONETARY DAMAGES TO LESSEE AND/OR LESSOR, AND THE PRINCIPALS, BOARD AND/OR EMPLOYEES OF THE FOREGOING, AS WELL AS PENAL PUNISHMENT.

3.4.2 **Agreed Use Subject to Strict Compliance.** Lessor and Lessee are aware that the cultivation and sale of marijuana and marijuana products remains illegal under the laws of the United States of America. Lessee covenants, represents and warrants to Lessor that prior to the Lease Date and during the Term, Lessee has conducted and shall continue to conduct the Agreed Use (as defined herein) in the Premises and on the Property in a manner that complies with the Marijuana Laws and all other Laws and Applicable Requirements.

4. Rent.

4.1. **Rent Defined.** All monetary obligations of Lessee to Lessor under the terms of this Lease (except for the Security Deposit) are deemed to be rent (collectively, **"Rent"**).

4.2 **Common Area Operating Expenses**. Lessee shall pay to Lessor during the Term hereof, in addition to the Base Rent, Lessee's Share (as specified in Section 1.6) of all Common Area Operating Expenses, as hereinafter defined from the Lease Date until the Expansion Date, and on the Expansion Date through the expiration of the Term, all of the Common Area Operating Expenses, during each calendar year of the Term of this Lease, in accordance with the following provisions:

(a) "**Common Area Operating Expenses**" are defined, for purposes of this Lease, as all costs incurred or accrued by Lessor relating to the ownership and operation of the Property, including, but not limited to, the following:

(i) The operation, repair and maintenance, in neat, clean, good order and condition, and if necessary the replacement, of the following:

(aa) The Common Areas and Common Area improvements, including parking areas, loading and unloading areas, trash areas, roadways, parkways, walkways, driveways, landscaped areas, bumpers, irrigation systems, Common Area lighting facilities, fences and gates, elevators, roofs, exterior walls of the buildings, building systems and roof drainage systems.

(bb) Exterior signs and any tenant directories.

(cc) Any fire sprinkler systems.

(dd) All other areas and improvements that are within the exterior boundaries of the Property but outside of the Premises and/or any other space occupied by a tenant.

(ii) The cost of water, gas, electricity and telephone to service the Common Areas and any utilities not separately metered.

(iii) The cost of trash disposal, pest control services, property management, security services, owners' association dues and fees, the cost to repaint the exterior of any structures and the cost of any environmental inspections.

(iv) Reserves set aside for maintenance, repair and/or replacement of Common Area improvements and equipment.

(v) Any form of assessment; real estate, general, special, ordinary or extraordinary, or rental levy or tax (other than inheritance, personal income or estate taxes); improvement bond; and/or license fee imposed upon or levied against any legal or equitable interest of Lessor in the Premises or the Property, Lessor's right to other income therefrom, and/or Lessor's business of leasing, by any authority having the direct or indirect power to tax and where the funds are generated with reference to the Building address and where the proceeds so generated are to be applied by the city, county or other local taxing authority of a jurisdiction within which the Premises and the Property are located (collectively, "**Real Property Taxes**").

(vi) The cost of the premiums for the insurance maintained by Lessor with respect to the Premises or the Property.

(vii) Any deductible portion of an insured loss concerning the Building or the Common Areas.

(viii) Auditors', accountants' and attorneys' fees and costs related to the operation, maintenance, repair and replacement of the Property.

(ix) The cost of any capital improvement to the Building or the Property not covered under the provisions of Section 2.3, provided, however, that Lessor shall allocate the cost of any such capital improvement over a 12-year period and Lessee shall not be required to pay more than Lessee's Share of 1/144th of the cost of such capital improvement in any given month.

(x) The cost of any other services to be provided by Lessor that are stated elsewhere in this Lease to be a Common Area Operating Expense.

(xi) The accounting and legal fees and a management fee payable to Lessor of five percent (5%) of each of the Common Area Operating Expenses.

(b) **Intentionally Omitted.**

(c) The inclusion of the improvements, facilities and services set forth in Subsection 4.2(a) shall not be deemed to impose an obligation upon Lessor to either have said improvements or facilities or to provide those services unless at the Lease Date the Property has the same or Lessor has agreed elsewhere in this Lease to provide the same.

(d) Lessee shall pay the Common Area Operating Expenses monthly on the same day as the Base Rent is due hereunder. The amount of such payments shall be based on Lessor's estimate of the annual Common Area Operating Expenses. Payments of Common Area Operating Expenses shall be made in monthly installments commencing with the Lease Date, in the amount initially estimated by Lessor and described in Section 1.6, one (1) such installment being due on the fifth day of each full or partial month during the Lease Term. Upon notice from Lessor, such monthly installments shall increase or decrease from time to time to reflect the then current estimate of the amount of any such Common Area Operating Expenses. When the actual amount of any such Operating Expenses is determined by Lessor, Lessor will notify Lessee of such actual amount (in a format to be reasonably determined by Lessor) and of any excess or deficiency in the amount theretofore paid by Lessee. Any such excess will be credited to Lessee's account. Lessee will pay the amount of any deficiency to Lessor within thirty (30) days following Lessor's notice thereof. Lessee acknowledges and stipulates that Lessor has made no representations or agreements of any kind as to the total dollar amount of such Common Area Operating Expenses, actual or estimated, or Lessee's dollar share thereof.

(e) Common Area Operating Expenses shall not include any expenses paid by any tenant directly to third parties, or as to which Lessor is otherwise reimbursed by any third party, another tenant, or insurance proceeds.

4.3 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States but not in cash, without offset or deduction (except as specifically permitted in this Lease), on or before the day on which it is due. All monetary amounts shall be rounded to the nearest whole dollar. In the event that any invoice prepared by Lessor is inaccurate such inaccuracy shall not constitute a waiver and Lessee shall be obligated to pay the amount set forth in this Lease. Rent for any period during the Term hereof which is for less than one full calendar month shall be prorated based upon the actual number of days of said month. Payment of Rent shall be made to Lessor at its address stated herein or to such other persons or place as Lessor may from time to time designate in writing. Acceptance of a payment which is less than the amount then due shall not be a waiver of Lessor's rights to the balance of such Rent, regardless of Lessor's endorsement of any check so stating. In the event that any check, draft, or other instrument of payment given by Lessee to Lessor is dishonored for any reason, Lessee agrees to pay to Lessor the sum of $100.00 in addition to any late charge provided in this Lease and Lessor, at its option, may require all future payments to be made by Lessee to be by cashier's check. Payments will be applied first to accrued late charges and attorney's fees, second to accrued interest, then to Base Rent, Common Area Operating Expenses, and any remaining amount to any other outstanding charges or costs or Additional Rent.

4.4 **Interest**. If Lessee fails to pay when due and payable any Rent due from Lessee under this Lease, the unpaid amounts shall bear interest at ten (10%) percent per annum from the date due to the date of payment.

5. Security Deposit. Lessee deposited with Lessor prior to the execution hereof $3,350 (the "**Initial Security Deposit**") as security for Lessee's faithful performance of its obligations under this Lease. Upon the execution of this Lease, Lessee shall deposit $30,650.00 (the "**Additional Security Deposit**" and together with the Initial Security Deposit, the "**Security Deposit**") with Lessor as additional security. If Lessee fails to pay Rent, or otherwise is in Default under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount already due Lessor, for Rents which will be due in the future, and/ or to reimburse or compensate Lessor for any liability, expense, loss or damage which Lessor may suffer or incur by reason thereof. If Lessor uses or applies all or any portion of the Security Deposit, Lessee shall within 10 days after written request therefor deposit monies with Lessor sufficient to restore said Security Deposit to the full amount required by this Lease. If the Base Rent: (a) increases during the Term of this Lease, Lessee shall, upon written request from Lessor, deposit additional monies with Lessor so that the total amount of the Security Deposit shall at all times bear the same proportion to the increased Base Rent as the Security Deposit bears to the Base Rent as of the Lease Date (*i.e.*, $34,000/$17,000); (b) decreases during the Term of this Lease pursuant to Section 3.3, Lessor shall, upon written request from Lessee, return that portion of the Security Deposit to Lessee so that the total amount of the Security Deposit shall at all times bear the same proportion to the decreased Base Rent as the Security Deposit bears to the Base Rent as of the Lease Date. Should the Agreed Use be amended to accommodate a material change in the business of Lessee or to accommodate a sublessee or assignee, Lessor shall have the right to increase the Security Deposit to the extent necessary, in Lessor's reasonable judgment, to account for any increased wear and tear that the Premises or Property may suffer as a result thereof. If a change in control of Lessee occurs during this Lease and following such change the financial condition of Lessee is, in Lessor's reasonable judgment, significantly reduced, Lessee shall deposit such additional monies with Lessor as shall be sufficient to cause the Security Deposit to be at a commercially reasonable level based on such change in financial condition. Lessor shall not be required to keep the Security Deposit separate from its general accounts. Within 90 days after the expiration or termination of this Lease, Lessor shall return that portion of the Security Deposit not used or applied by Lessor. No part of the Security Deposit shall be considered to be held in trust, to bear interest or to be prepayment for any monies to be paid by Lessee under this Lease.

6. Use.

6.1 **Agreed Use**. Pursuant to the terms, covenants, and obligations of this Lease, Lessor gives Lessee the non-exclusive right to lease, occupy, and use the Property and, as of the Expansion Date, the exclusive right to lease, occupy, and use the Property, for the following purposes (collectively, the "**Agreed Use**"): (a) for the purpose of operating and managing a medical marijuana dispensary facility and, as of the Expansion Date, a cultivation facility on the Property (collectively, the "**Dispensary**") in compliance with Title 9, Chapter 17 of the Department of Arizona Department of Health Services Medical Marijuana Program, as amended from time to time (the "**DHS Rules**") and Section 36, Chapter 28 of the Arizona Revised Statutes, as amended from time to time (the "**Act**" and together with the DHS Rules, the "**AMMA**") and all applicable Laws and Applicable Requirements pursuant thereto, and (b) in the event the State of Arizona adopts legislation legalizing the adult/recreational use of marijuana (such legislation shall be hereinafter referred to as "**Future Legislation**"), for the purpose of operating and managing an adult/recreational marijuana dispensary facility and cultivation facility in compliance with such Future Legislation and all applicable Laws, and Applicable Requirements pursuant thereto. For the avoidance of doubt, Lessor acknowledges and agrees that, upon adoption by the State of Arizona of any Future Legislation: (i) no provision in this Lease shall prevent Lessee from continuing to operate and manage the Dispensary for the purpose of the sale of recreational marijuana (*i.e.*, non-medical), and (ii) Lessee's commencement of the sale of recreational marijuana shall not require any amendment to this Lease, provided, however, that references to the AMMA shall also include the Future Legislation and all applicable Laws, and Applicable Requirements pursuant thereto. For purposes of clarification, all references hereinafter to the "Dispensary" shall be deemed to include an adult/recreational marijuana dispensary upon the adoption of any Future Legislation.

6.2 **Use.** Lessee shall use and occupy the Premises and the Property only for the Agreed Use, and for no other purpose. Lessee shall not use or permit the use of the Premises or the Property in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs other tenants or occupants of or causes damage to the Premises and the Property, or neighboring premises or properties. Other than guide, signal and seeing-eye dogs, Lessee shall not keep or allow in the Premises and the Property any pets, animals, birds, fish, or reptiles. From the Lease Date until the Expansion Date, Lessee shall not use the Premises for a marijuana cultivation, kitchen, laboratory, and testing or extraction facility. As of the Expansion Date, Lessee shall be permitted to use the Premises and the Property for a marijuana cultivation, kitchen, laboratory, testing or extraction facility, provided, however that such use complies with all applicable Laws and Applicable Requirements.

6.3 **Environmental Requirements**. Lessee acknowledges and agrees to take all actions necessary to ensure compliance with all applicable present and future statutes, regulations, ordinances, rules, codes, judgments, permits, authorizations, orders, policies or other similar requirements of any governmental authority, agency or court regulating or relating to health, safety, or environmental conditions on, under, or about the Premises, the Property or the environment, including without limitation, the following: Future Legislation; the AMMA; the Marijuana Laws; the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; the Clean Air Act; the Clean Water Act; the Toxic Substances Control Act and all state and local counterparts thereto, and any common or civil law obligations including, without limitation, nuisance or trespass (the aforementioned collectively the "**Environmental Requirements**"). Lessee also agrees to ensure the Premises and the Property are free at all times, from all hazardous materials, which means and includes any substance, material, waste, pollutant, or contaminant that is or could be regulated under the

Environmental Requirements or that may adversely affect human health or the environment, including, without limitation, any solid or hazardous waste, hazardous substance, asbestos, petroleum (including crude oil or any fraction thereof, natural gas, synthetic gas, polychlorinated biphenyls (PCBs), and radioactive material. Lessee's obligation to indemnify Lessor for damages caused by Lessee's breach of this Section 6.3 during the Term shall survive the expiration or earlier termination of this Lease.

6.4 **Operation of Business**. Except when and to the extent that the Premises or the Property shall be untenantable by reason of damage by fire, flood or other casualty, Lessee shall: (a) fully stock and adequately staff the Premises and the Property with trained personnel and shall continuously and uninterruptedly use, occupy, operate and conduct Lessee's business in the entire Premises and the Property; (b) keep the Premises and the Property open for business during all business hours, and on all business days, in compliance with the AMMA (the "**Regular Business Hours**"); (c) use for office, clerical, storage or other non-selling purposes only such space as is reasonably required for the proper operation of Lessee's business in the Premises and the Property; (d) use Lessee's trade name on Dispensary signs and promotional material (and, upon Lessee's written consent, Lessor shall have the right to use Lessee's trade name and the brand names of Lessee in such brochures, newspapers, advertisements and other promotional material and online that have been submitted to Lessee for Lessee's approval); (e) apply for, secure, maintain and comply with all licenses or permits which may be required for the conduct of the Agreed Use and pay, if, as and when due all license and permit fees and charges of a similar nature in connection therewith; (f) keep the Premises (including, without limitation, exterior and interior portions of all windows, doors and all other glass) and the Property in a neat, clean and safe condition; (g) maintain the Premises and the Property and Lessee's personal property therein as an attractive shopping area; (h) use commercially reasonable efforts to cooperate with Lessor in promoting the reasonable use of such trade names and slogans as Lessor may adopt for the Property; (i) pay before delinquency any and all taxes, assessments and public charges, levied, assessed or imposed upon Lessee's business or the Rent payable by Lessee hereunder or upon Lessee's interest in this Lease or use or occupancy of the Premises, the Property or Lessee's improvements and Lessee's personal property in the Premises and the Property; (j) handle and dispose of all rubbish, garbage and waste from Lessee's operations in accordance with all applicable laws and not permit the accumulation or burning of any garbage in, on or about any part of the Premises or the Property and not permit any garbage or rubbish to be collected or disposed of from the Premises or the Property except by a person approved in advance by Lessor; (k) take no action which would create any work stoppage, picketing, labor disruption or dispute, or any interference with the business of Lessor or with the rights and privileges of any customer or other person lawfully in or upon the Premises and the Property, nor cause any impairment or reduction of the goodwill of the Premises or the Property; and (l) keep all utilities operational at such times as shall be necessary so as to prevent damage to the Premises or the Property by the elements.

6.5 **Additional Covenants.** Lessee shall not: (a) operate its business under this Lease so as to violate any restrictive covenant or restrictive agreement contained in any other lease of which Lessee has knowledge; (b) conduct any real or fictitious 'going-out-of-business', auction, liquidation, distress, fire or bankruptcy or similar sale from the Premises or the Property, and Lessee shall not be permitted to use any signage to that effect; (c) sell, display or distribute any alcoholic liquors or alcoholic beverages for consumption on or off the Premises or the Property; (d) use portions outside of the buildings on the Premises or the Property for the sale or display of any merchandise, for solicitations or demonstrations or for any other business, occupation, undertaking or activity; (e) except with respect to the Agreed Use, use or permit or suffer the use of any portion of the Premises or the Property for improper, illegal or immoral purposes; (f) use the plumbing facilities for any purposes other than that for which they were constructed, or dispose of any garbage or other foreign substance therein, whether through the utilization of so-called disposal or similar units, or otherwise; (g) park trucks or other delivery vehicles so as to unreasonably interfere with Lessor's and other tenants' use of the driveways, walks, roadways, highways, streets, malls, or parking areas; (h) suffer, permit or commit any waste or any nuisance or other act or thing in the Premises or the Property; (i) use or permit or suffer the use of any machines or equipment in the Premises or the Property which cause vibration or noise that may be transmitted to or heard outside the buildings on the Premises or the Property; (j) use or permit or suffer any odor, fumes or vapors to emanate from the Premises or the Property; (k) install, operate, or maintain in the Premises or the Property any electrical equipment which will overload the electrical system therein, or any part thereof, beyond its reasonable capacity for proper and safe operation as determined by Lessor in light of the over-all system and requirements therefor in the Premises or the Property or which does not bear underwriter approval; or (l) place a load on any floor in the Premises or the Property exceeding the floor load per square foot which such floor was designed to carry, or install, operate or maintain therein any heavy item of equipment except in such manner as to achieve a proper distribution of the weight. Lessee's obligation to indemnify Lessor for damages caused by Lessee's breach of this Section 6.5 during the Term shall survive the expiration or earlier termination of this Lease.

7. Maintenance; Repairs; Utility Installations; Trade Fixtures and Alterations.

7.1 **Lessee's Obligations.**

(a) **In General.** Lessee shall, at Lessee's sole cost and expense, keep, repair and replace the Premises, and all parts thereof, from the Lease Date until the Expansion Date, and the Property, and all parts thereof, as of the Expansion Date through the expiration of the Term, Utility Installations (intended for Lessee's exclusive use, no matter where located), and Alterations in good order, condition and repair (whether or not the portion of the Premises or the Property requiring repairs, or the means of repairing the same, are reasonably or readily accessible to Lessee, and whether or not the need for such repairs occurs as a result of Lessee's use, any prior use, the elements or that age of such portion of the Premises or the Property) including, but not limited to, all equipment or facilities, such as plumbing, HVAC equipment electrical, lighting facilities, boilers, pressure vessels, fire protection system, fixtures, walls (interior and exterior), ceilings, floors, windows, doors, plate glass, skylights, landscaping, driveways, parking lots, fences, retaining walls, signs, sidewalks and parkways located in, on, or adjacent to the Premises and the Property. Lessee is also responsible for keeping the roof and roof drainage clean and free of debris. On the Lease Date until the Expansion Date, Lessor, subject to Lessee's payment of Common Area Operating Expenses, and on the Expansion Date through the expiration of the Term, Lessee, at its sole cost and expense, shall keep, repair and replace the surface and structural elements of the roof, foundations, and bearing walls in good repair (see Section 7.2). Lessee, in keeping the Premises and the Property in good order, condition and repair, shall exercise and perform good maintenance practices, specifically including the procurement and maintenance of the service contracts required by Section 7.1(b) below. Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises and the Property and all improvements thereon or a part thereof in good order, condition and state of repair. Lessee shall, during the term of this Lease, keep the exterior appearance of the Premises, Building and the Property in a first-class condition (including, e.g. graffiti removal) consistent with the exterior appearance of other similar facilities of comparable age and size in the vicinity, including, when necessary, the exterior repainting of the Building.

(b) **Service Contracts.** Lessee shall, at Lessee's sole expense, procure and maintain contracts, with copies to Lessor, in customary form and substance for, and with contractors specializing and experienced in the maintenance of the following equipment and improvements, if any, if and when installed on the Premises and the Property: (i) HVAC equipment, (ii) boiler, and pressure vessels, (iii) fire extinguishing systems, including fire alarm and/or smoke detection, (iv) landscaping and irrigation systems, and (v) clarifiers. However, Lessor reserves the right, upon notice to Lessee, to procure and maintain any or all of such service contracts, and Lessee shall reimburse Lessor, upon demand, for the cost thereof relative to the Premises and the Property plus an administrative charge of fifteen percent (15%) of the cost to compensate Lessor for its costs and expenses in managing the performance of Lessee's obligations.

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Section 7.1, Lessor may enter upon the Premises and the Property after 10 days' prior written notice to Lessee (except in the case of an emergency, in which case no notice shall be required), perform such obligations on Lessee's behalf, and put the Premises and the Property in good order, condition and repair, and Lessee shall promptly reimburse Lessor for the cost thereof plus an administrative charge of fifteen percent (15%) of the cost to compensate Lessor for its costs and expenses in managing the performance of Lessee's obligations. Lessee's obligation to indemnify Lessor for damages caused by Lessee's breach of this Section 7.1 during the Term shall survive the expiration or earlier termination of this Lease.

(d) **Intentionally Omitted.**

7.2 **Lessor's Obligations.** On the Lease Date through the Expansion Date Lessor, subject to Lessee's payment of Common Area Operating Expenses, and on the Expansion Date through the expiration of the Term Lessee, at its sole cost and expense, shall keep in good order, condition and repair, if on the Property on the Lease Date, the foundations, exterior walls, structural condition of interior bearing walls, exterior roof, fire sprinkler system, Common Area fire alarm and/or smoke detection systems, fire hydrants, parking lots, walkways, parkways, driveways, landscaping, fences, signs and utility systems serving the Common Areas and all parts thereof, as well as providing the services for which there is a Common Area Operating Expense pursuant to Section 4.2. Lessor shall not be obligated to paint the exterior or interior surfaces of exterior walls nor shall Lessor be obligated to maintain, repair or replace windows, doors or plate glass of the Premises or the Property, all of the foregoing of which shall be the sole obligation of Lessee, at its sole cost and expense, throughout the Term of this Lease.

7.3 **Utility Installations; Trade Fixtures; Alterations.**

(a) **Definitions.** The term **"Utility Installations"** refers to all air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, and plumbing in or on the Premises and the Property. The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises or the Property. The term **"Alterations"** shall mean any modification of the improvements in existence in the Premises on execution of this Lease and the Property on the Expansion Date, other than Utility Installations or Trade Fixtures, whether by addition or deletion.

(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises or the Property without Lessor's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed. Lessee may, however, make non-structural Alterations or Utility Installations to the interior of the Premises and the Property (excluding the roof) without such consent but upon notice to Lessor, as long as they are not visible from the outside, do not involve puncturing, relocating or removing the roof or any existing walls, will not affect the electrical, plumbing, HVAC, and/or life safety systems, and the cumulative cost thereof during the Term of this Lease does not exceed a sum equal to three (3) month's Base Rent in the aggregate or a sum equal to one (1) month's Base Rent in any one year. Notwithstanding the foregoing, Lessee shall not make or permit any roof penetrations and/or install anything on the roof without the prior written approval of Lessor. Lessor may, as a precondition to granting such approval, require Lessee to utilize a contractor chosen and/or approved by Lessor. Any Alterations or Utility Installations that Lessee shall desire to make and which require the consent of the Lessor shall be presented to Lessor in written form with detailed plans. Consent shall be deemed conditioned upon Lessee's: (i) acquiring all applicable governmental permits, (ii) furnishing Lessor with copies of both the permits and the plans and specifications prior to commencement of the work, and (iii) compliance with all conditions of said permits and other Applicable Requirements in a prompt and expeditious manner, including but not limited to Lessee's engagement of only Arizona licensed contractors and subcontractors. Any Alterations or Utility Installations shall be performed in a workmanlike manner with good and sufficient materials. Lessee shall promptly upon completion furnish Lessor with as-built plans and specifications. Subject to Lessee's right to make non-structural Alterations without approval, as set forth above, Lessor shall have a period of five (5) days from receipt of the plans within which to approve or disapprove the proposed Alteration(s), after which time they shall be deemed approved by Lessor. Any Alteration made by Lessee after consent has been given, and any fixture (except Trade Fixtures) shall throughout the Term of the Lease be the property of Lessor. Lessor will advise Lessee at the time of consent whether the proposed Alteration may remain or will need to be removed by Lessee at the end of the Lease Term.

(c) **Liens; Bonds.** Lessee shall pay, when due, all claims for labor or materials furnished or alleged to have been furnished to or for Lessee at or for use on the Premises and the Property, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or the Property or any interest therein. Lessee shall give Lessor not less than ten (10) days' notice prior to the commencement of any work in, on or about the Premises and the Property, and Lessor shall have the right to post notices of non-responsibility. If Lessee shall contest the validity of any such lien, claim or demand, then Lessee shall, at its sole expense defend and protect itself, Lessor, the Premises and the Property against the same and shall pay and satisfy any such adverse judgment that may be rendered thereon before the enforcement thereof. If Lessor shall require, Lessee shall furnish a surety bond in an amount equal to 150% of the amount of such contested lien, claim or demand, indemnifying Lessor against liability for the same. If Lessor elects to participate in any such action, Lessee shall pay Lessor's attorneys' fees and costs. The provisions of this Section 7.3 which by their nature survive the expiration or earlier termination of this Lease, including Lessee's obligation to indemnify Lessor for damages caused by Lessee's breach of this Section 7.3, shall so survive.

7.4 **Ownership; Removal; Surrender; and Restoration.**

(a) **Ownership.** All Alterations and Utility Installations made by Lessee shall become the property of Lessor at installation in the Premises and on the Property.

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the expiration of the Term, Lessor may require that any or all Alterations or Utility Installations be removed by the expiration or termination of this Lease. Lessor may require the removal at any time of all or any part of any Alterations or Utility Installations made without the required consent.

(c) **Surrender; Restoration.** Lessee shall surrender the Premises and the Property by the Expiration Date or any earlier termination date, with all of the improvements, parts and surfaces thereof broom clean and free of debris, and in good operating order, condition and state of repair, ordinary wear and tear excepted. "Ordinary wear and tear" shall not include any damage or deterioration that would have been prevented by good maintenance practices. Lessee shall repair any damage occasioned by the installation, maintenance or removal of Trade Fixtures, Alterations and Utility Installations, furnishings, and equipment as well as the removal of any storage tank installed by or for Lessee. Lessee shall remove from the Premises and the Property any and all hazardous substances brought onto the Premises or the Property by or for Lessee, or any third party (except hazardous substances which were deposited via underground migration from areas outside of the Premises or the Property) to the level specified in Applicable Requirements. Trade Fixtures shall remain the property of Lessee and shall be removed by Lessee. Any personal property of Lessee not removed on or before the Expiration Date or any earlier termination date shall be deemed to have been abandoned by Lessee and may be disposed of or retained by Lessor as Lessor may desire without notice to Lessee. The failure by Lessee to timely vacate the Premises and the Property pursuant to this Section 7.4(c) without the express written consent of Lessor shall constitute a holdover under the provisions of Section 24 below. The provisions of this Section 7.4 which by their nature survive the expiration or earlier termination of this Lease, including Lessee's obligation to indemnify Lessor for damages caused by Lessee's breach of this Section 7.4 during the Term, shall so survive.

7.5 **Lessor's Right of Entry; Inspections.** Lessor may reasonably enter the Premises and the Property at all times in the case of an emergency, and otherwise at reasonable times after two (2) business days' prior notice by email to an executive or manager of Lessee, to inspect the Premises and the Property, make repairs to the Premises and the Property authorized hereunder or perform any work therein: (a) needed to comply with any applicable Laws (including the Marijuana Laws), and Applicable Regulations of any public authority or the insurers or any similar body; (b) that Lessor deems necessary to prevent waste or deterioration in or to the Premises and the Property if Lessee fails to make repairs or perform required work promptly after receipt of written demand from Lessor; or (c) that Lessor deems reasonably necessary in connection with the expansion, reduction, remodeling, or renovation of the Premises and the Property; provided, however, that Lessor's exercise of this right shall not materially disturb Lessee's enjoyment of the Premises and the Property, shall be undertaken to minimally disrupt the business of Lessee in the Premises and the Property and Lessor shall be accompanied by an agent or representative of Lessee except in cases of an emergency endangering property or person or pursuant to the order or direction of DHS. The cost of any such inspections shall be paid by Lessee.

7.6 **Access of Dispensary Agents**. Lessee hereby acknowledges, agrees and covenants that Lessee will not distribute or provide a copy of all security cameras and other security equipment relating to the Premises and the Property, including inside the buildings on the Premises and the Property (collectively, the "**Security Systems**"), or any part thereof, to any person other than Lessee's President or other senior most executive, or those certain persons with verifiable, current dispensary agent registry identification cards issued by DHS for the Premises and the Property ("**Agent Cards**") and

approved in writing by Lessee to enter the Premises and the Property for the sole purpose of conducting Lessee's business in the Premises and the Property. Lessee agrees to obtain all registrations, licenses, and permits, including the Agent Cards issued by DHS, in compliance with the Marijuana Laws, for all employees, contractors, subcontractors, agents and representatives of Lessee in the Premises and the Property.

7.7 **Other Liens; Security Agreement**. Lessee shall keep the Premises and the Property free from any and all liens arising out of all taxes, work or services claimed to have been performed or furnished, or obligations claimed incurred by or on behalf of Lessee. Lessee shall not create or suffer to be created a security interest or other lien against the Alterations, Utility Installations or the Trade Fixtures and personal property of Lessee, and should any lien or security interest be in existence on the Lease Date or created during the Term, Lessee shall be in Default of this Lease. This Lease constitutes a security agreement pursuant to A.R.S. § 47-9203 and is a contractual lien. To further secure Lessee's obligations under this Lease, Lessee agrees to execute that certain Uniform Commercial Code Financing Statement attached hereto as Exhibit 3 on the Lease Date and hereby grants to Lessor a first priority security interest in and to Lessee's interest in this Lease, improvements to the Premises and the Property and Lessee's personal property described on Exhibit 3. The provisions of this Section 7.7 which by their nature survive the expiration or earlier termination of this Lease, including Lessee's obligation to indemnify Lessor for damages caused by Lessee's breach of this Section 7.7, shall so survive.

8. Utilities and Services. Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises and the Property, together with any taxes thereon. If any such services are not separately metered or billed to Lessee, Lessee shall pay a reasonable proportion, to be determined by Lessor, of all charges jointly metered or billed. There shall be no abatement of rent and Lessor shall not be liable in any respect whatsoever for the inadequacy, stoppage, interruption or discontinuance of any utility or service due to riot, strike, labor dispute, breakdown, accident, repair or other cause beyond Lessor's reasonable control or in cooperation with governmental request or directions.

9. Approval to Operate the Dispensary. Provided that Lessee shall not be in Default of this Lease, Lessor will reasonably cooperate with, and provide information reasonably requested by Lessee, at no cost to Lessor, to enable Lessee and/or its affiliate to obtain, maintain, and renew from DHS an approval to operate the Dispensary at the Premises and the Property in compliance with the AMMA, any Future Legislation and all applicable rules, requirements, and restrictions pursuant thereto; provided, however, that Lessor makes no representation or warranty that an ATO (an approval to operate) will be obtained from DHS; and provided, further, THAT LESSOR HAS NO OBLIGATION TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS TO THE PREMISES OR THE PROPERTY. LESSEE REPRESENTS, WARRANTS, AND COVENANTS TO LESSOR THAT, EXCEPT FOR LESSOR'S EXPRESS REPRESENTATIONS AND WARRANTIES SPECIFIED IN THIS LEASE, LESSEE IS RELYING SOLELY UPON LESSEE'S OWN INVESTIGATION OF THE PREMISES AND THE PROPERTY.

10. Assignment and Subletting. Lessee may not assign, transfer, mortgage, pledge, hypothecate, license, grant concession(s) or convey or sublet, in whole or in part, or otherwise permit occupancy of all or any part of the Premises or Property by anyone with, through or under Lessee, this Lease, the Premises or the Property, or Tenant's interest in the foregoing (each an "**Assignment**") without having notified Lessor in writing of the terms of the Assignment (the "**Assignment Request**") and obtaining prior written approval of Lessor, which approval shall not be unreasonably withheld, delayed or conditioned; provided, however, that in the event Lessee shall be in Default of this Lease or if the proposed Assignee's net worth is not at least equal to or greater than Lessee's as of the Lease Date, Lessor may elect not to approve any proposed Assignment, based upon the Default or failure to meet the net worth requirement and each of the foregoing shall be deemed a reasonable cause for Lessor's disapproval thereof. These prohibitions shall be construed to refer to events occurring by operation of law, legal process, receivership, and bankruptcy or otherwise. Any attempt at an Assignment without Lessor's prior written consent shall be null and void, confer no rights upon a third person, and shall, at the option of Lessor, be a Breach pursuant to Section 11.1(b) without the necessity of any notice or cure period, in which case Lessor may terminate this Lease and exercise any and all remedies described in this Lease. A Change of Control shall constitute an Assignment requiring Lessor's consent. For purposes of this Section 10, the term "**Change of Control**" means the transfer of more than 50% of the voting control of Lessee or Guarantor. The receipt by Lessor of Rent from a party other than Lessee shall not be deemed notice of a Change of Control. Notwithstanding the foregoing, and without conferring any rights upon Lessee, Lessee shall submit any Assignment Request with sufficient time and with sufficient information for Lessor to make an informed decision regarding the proposed Assignment.

10.1 **Additional Terms and Conditions Applicable to an Assignment.**

(a) No Assignment shall: (i) be effective without the express written assumption by such assignee or sublessee (collectively, "**Assignee**") of the obligations of Lessee under this Lease; (ii) release Lessee of any obligations under this Lease; (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of other obligations to be performed by Lessee under this Lease; (iv) alter the secondary liability of Guarantor for payment and performance of Lessee under this Lease; or (v) alter the Agreed Use.

(b) Lessor may accept Rent or performance of Lessee's obligations from an Assignee or any person other than Lessee pending approval or disapproval of an Assignment. Neither a delay in the approval or disapproval of such Assignment nor the acceptance of Rent or performance shall constitute a waiver or estoppel of Lessor's right to exercise its remedies for a Breach by Lessee of this Lease.

(c) Lessor's consent to any Assignment shall not constitute a consent to any subsequent Assignment.

(d) In the event of any Breach of this Lease by Lessee or an Assignee, Lessor may proceed directly against Lessee or anyone else responsible for the performance of Lessee's obligations under this Lease, including any Guarantor (as defined below), or an Assignee, without first exhausting Lessor's remedies against any person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each Assignment Request shall be in writing, accompanied by information relevant to Lessor's determination as to the financial and operational responsibility and appropriateness of the proposed Assignee, including but not limited to the proposed Assignment terms, together with a fee of $500 as consideration for Lessor's considering and processing said request. Lessee agrees to provide Lessor with such other or additional information and/or documentation as may be reasonably requested.

(f) Any Assignee of this Lease shall, by reason of accepting such Assignment or entering into possession of the Premises or the Property or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation in this Lease to be observed or performed by Lessee during the Term of this Lease.

(g) In no event shall an Assignee be permitted to make, or attempt to make, a subsequent Assignment without first procuring the written consent of Lessor.

11. Default; Breach; Remedies.

11.1 **Default; Breach**. Time is of the essence. A "**Default**" is defined as a failure by the Lessee or the Guarantor to comply with or perform any of the promises, covenants, obligations, or agreements stated in this Lease or the Guaranty, as the case may be. A "**Breach**" is defined as the occurrence of one or more of the following Defaults and the failure of Lessee to cure such Default within any applicable cure period:

(a) the filing by or against Lessee or Guarantor in any court, pursuant to any statute either of the United States or of any state, of a petition in bankruptcy or insolvency or a petition for reorganization or for the appointment of a receiver or trustee of all or a portion of the property of the Lessee or the Guarantor, or the making by the Lessee or Guarantor of an assignment for the benefit of creditors, or the petitioning for or entering into an arrangement pursuant to any statute either of the United States or of any state by the Lessee or the Guarantor, or the taking of this Lease under any writ of execution or attachment, or the issuance of any execution or attachment against the Lessee or the Guarantor or any of their property, or the dissolution or liquidation or the commencement of any action or proceeding for the dissolution or liquidation of the Lessee or the Guarantor;

(b) the passing of this Lease to or the devolution of this Lease upon any person(s) other than Lessee, whether by operation of law or otherwise;

(c) the Premises or the Property being vacant, deserted or abandoned for five (5) consecutive business days or more after Lessor shall have given to Lessee a notice specifying that nature of such Default;

(d) any actual federal enforcement action, or other action that prohibits the legal operation of the Dispensary on the Premises and/or the Property, unless the right to operate the Premises and Property is restored within 120 business days.

(e) the Default in the payment of any Rent or any part thereof for (i) a period of three (3) business days following written notice to Lessee from Lessor, or (ii) a period of seven (7) business days without any notice from Lessor;

(f) the Default in the performance of any other obligation of Lessee under this Lease, and the continuance of such Default for 10 days after Lessor shall have given to Lessee written notice specifying the nature of such Default, but if said Default shall be of such a nature that it cannot reasonably be cured or remedied within said 10-day period, same shall not be deemed a Breach if Lessee shall have commenced in good faith the curing or remedying of such Default within such 10-day period and shall thereafter continuously and diligently proceed therewith to completion. For the purposes of this Section 11.1, the term 'affiliate' shall mean any person controlled by, controlling or under common control with the first person.

11.1.1 **Intentionally omitted**.

11.1.2 **Lessor's Remedies on Breach.** In the event of any Breach, Lessor may at any time thereafter, in its sole discretion, with or without additional notice or demand and without limiting Lessor in the exercise of a right or remedy which Lessor may have by reason of such Breach exercise one (1) or more remedies as follow:

(a) **Lessee's Vacating of the Premises or the Property**. Lessor shall have the right to deliver written notice to Lessee to vacate the Premises and the Property and Lessee shall vacate not later than five (5) days after delivery of the notice and shall vacate as if the Lease Term had expired pursuant to this Lease.

(b) **Right to Possession**. Lessor shall have the right to deliver written notice to Lessee to terminate Lessee's right to possession of the Premises and the Property by any lawful means, in which case this Lease shall terminate. In such event Lessor shall be entitled to recover from Lessee: (a) the unpaid Rent which had been earned at the time of termination; (b) the worth at the time of award of the amount by which the unpaid Rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that the Lessee proves could have been reasonably avoided; (c) the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of such rental loss that the Lessee proves could be reasonably avoided; (d) tenant improvement allowance(s), if any; (e) brokers' commissions and fees; and (f) any other amounts necessary to compensate Lessor for all the detriments proximately caused by the Lessee's failure to perform its obligations under this Lease or which in the ordinary course of things would be likely to result therefrom, including, but not limited to, the cost of recovering possession of the Premises and the Property, expenses of reletting, including reasonably necessary demolitions, renovations and alterations of the Premises and the Property, and reasonable attorneys' fees. The worth at the time of award of the amount referred to in provision (c) of the immediately preceding sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of the District within which the Premises and the Property are located at the time of award plus one percent (1%). Efforts by Lessor to mitigate damages caused by any Breach shall not waive Lessor's right to recover damages under this Section 11.1.2. Wherever in this Lease Lessor has reserved or is granted the right of "reentry" into the Premises and the Property, the use of such word is not intended, nor shall it be construed, to be limited to its technical legal meaning.

(c) **Maintain Lessee's Right to Possess**. Lessor shall have the right to maintain Lessee's right to possession, in which case this Lease and the Guaranty shall continue in effect whether or not Lessee shall have abandoned the Premises and the Property. Lessee agrees that in such event Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease and the Guaranty, including the right to recover Rent and other charges as they become due, in which event Lessee may sublet or assign this Lease, subject only to reasonable limitations.

(d) **Other Remedies; Cumulative Remedies**. Lessor shall have the right to pursue any other remedy (including recovery of all damages or equitable relief allowed at law or in equity) now or hereafter available to Lessor under the laws or judicial decisions of the State in which the Premises and the Property is located. The rights and remedies of Lessor in this Lease and the Guaranty are distinct, separate and cumulative rights and remedies, and no one of them, whether or not exercised by Lessor, shall be deemed to be in exclusion of any of the others.

(e) **Immediate Possession**. Upon the final and definitive revocation of all state and local licenses, permits, certificates, the Certificate, the ATO and the SUP (special use permit), Lessee shall cease all cannabis activity immediately, this Lease shall automatically terminate, Lessee shall vacate the Premises and the Property, and Lessee shall leave in place for the benefit of Lessor all of the Alterations and Utility Systems for further disposition or use by Lessor, in its sole discretion, and Lessee shall immediately remove and legally dispose of all cannabis from the Premises and the Property.

(f) **Termination**. Lessor, in addition to all other rights or remedies it may have, shall have the right upon any Breach or at any time thereafter to terminate this Lease by giving written notice to Lessee stating the date upon which such termination shall be effective, and shall have the right, either before or after any such termination, to re-enter and take possession of the Premises and the Property, remove all persons and property from the Premises and the Property, store such property at Lessee's expense, and sell such property if necessary to satisfy any deficiency in payments by Lessee as required hereunder, all without notice or resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage occasioned thereby.

(g) **Repeated Defaults**. Notwithstanding anything to the contrary herein contained, if Lessee commits more than three (3) Defaults hereunder for or precedent to which or with respect to which notice is herein required within any consecutive twelve (12) month period, any such subsequent Default shall be considered a Breach, and no notice shall thereafter be required to be given by Lessor as to or precedent to any such subsequent Default (as Lessee hereby waives the same) before exercising any or all remedies available to Lessor.

(h) **Right to Relet**. If Lessor re-enters the Premises or the Property or if Lessor takes possession pursuant to legal proceedings or otherwise, it may either terminate this Lease, but Lessee shall remain liable for all obligations arising during the balance of the Term as hereafter provided as if this Lease had remained in full force and effect, or it may, from time to time, without terminating this Lease, make such alterations and repairs as it deems advisable to relet the Premises and the Property, and relet the Premises and the Property or any part thereof for such term or terms (which may extend beyond the Term) and at such rentals and upon such other terms and conditions as Lessor in its sole discretion deems advisable, subject to Lessor's duty to mitigate under applicable Law; upon each such reletting all rentals received by Lessor therefrom shall be applied, first, to any indebtedness other than Rent due hereunder from Lessee to Lessor; second, to pay any costs and expenses of reletting, including brokers and attorneys' fees and costs of alterations and repairs; third, to Rent due hereunder, and the residue, if any, shall be held by Lessor and applied in payment of future Rent as it becomes due hereunder. If rentals received from such reletting during any month are less than that to be paid during that month by Lessee hereunder, Lessee shall immediately pay any such deficiency to Lessor. No re-entry or taking possession of the Premises and the Property by Lessor shall be construed as an election to terminate this Lease unless a written notice of such termination is given by Lessor. Notwithstanding any such reletting without termination, Lessor may at any time thereafter terminate this Lease for any prior Breach. If Lessor terminates this Lease for any Breach, or otherwise takes any action on account of Lessee's Breach hereunder, in addition to any other remedies it may have, it may recover from Lessee all damages incurred by reason of such Breach or Default, including the cost of recovering the Premises and the Property, brokerage fees and expenses of placing the Premises and the Property in rentable condition, attorneys' fees, and an amount equal to the difference between the Rent reserved hereunder for the period which otherwise would have constituted the balance of the Term and the then present rental value of the Premises and the Property for such period, both discounted in accordance with accepted financial practice to the then present worth, at the average rate established and announced for United States Treasury Bills, with a maturity of thirteen (13) weeks at the four (4) weekly auctions held immediately prior to the date of such termination [the four (4) week average bill rate], all of which shall immediately be due and payable by Lessee to Lessor. In determining the rental value of the Premises and the Property, the rental realized by any reletting, if such reletting be accomplished by Lessor with reasonable effort and within a reasonable time after the termination of this Lease, shall be deemed prima facie to be the rental value, but if Lessor having reasonably undertaken to relet, has not accomplished reletting, then it will be conclusively presumed that the Rent reserved under this Lease represents the rental value of the Premises and the Property for the purposes herein (in which event Lessor may recover from Lessee, the

full total of all Rent due hereunder, discounted to present value as hereinbefore provided). Lessor shall, however, account to Lessee for the Rent received from persons using or occupying the Premises and the Property during the period representing that which would have constituted the balance of the Term, but only if Lessee shall have paid to Lessor its damages as provided herein, and only to the extent of sums recovered from Lessee as Lessor's damages, Lessee waiving any claim to any surplus. Nothing herein contained, however, shall limit or prejudice the right of Lessor to prove and obtain as damages by reason of such termination, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved.

(i) **Attorneys' Fees.** Lessee's obligation to reimburse Lessor for attorneys' fees as referred to in this Lease shall include all legal costs, fees and expenses arising out of Lessee's Default in the performance or observance of any of the terms, covenants, conditions or obligations contained in this Lease and Lessor places the enforcement of all or any part of this Lease, the collection of any Rent due or to become due or the recovery of possession of the Premises and the Property in the hands of an attorney.

(j) **Counterclaim**. If Lessor commences any proceedings for non-payment of Rent, or for any other Default, Lessee will interpose any compulsory or mandatory counterclaim required by the applicable procedural rules of the court. The covenants to pay Rent and other amounts hereunder are independent covenants and Lessee shall have no right to hold back, offset or fail to pay any such amounts for default by Lessor of this Lease.

(k) **Enforcement and Termination**. Lessor shall not be liable to Lessee in damages or otherwise if any utilities or services, whether or not furnished by Lessor hereunder, are interrupted or terminated because of repairs, installation or improvements, or any cause beyond Lessor's reasonable control, nor shall any such termination relieve Lessee of any of its obligations under this Lease. Lessee shall use commercially reasonable efforts to operate the Premises and the Property in such a way as shall not waste fuel, energy or natural resources. Lessee shall use commercially reasonable efforts to cooperate with Lessor's reasonable directives to reduce energy consumption, including installation of new energy efficient equipment or the modification or replacement of existing equipment, as the case may be. Lessor may cease to furnish any one or more of said utilities or services to Lessee without liability for the same on thirty (30) days' prior written notice and no such discontinuance of any utilities or services shall constitute a constructive eviction; provided that alternative services or utilities are otherwise made reasonably available to Lessee.

(l) In the event of any Breach or threatened Breach by Lessee of any of the covenants or provisions of this Lease, Lessor shall have the right of injunction and the right to invoke any remedy allowed at law or in equity. The mention in this Lease of any particular remedy shall not preclude Lessor from any other remedy at law or in equity. Lessee hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of this Lease being terminated and/or Lessor obtaining possession of the Premises or the Property pursuant to this Lease.

11.2. **Lessor Default**. Provided that Lessee shall not be in Default of this Lease, if Lessor fails to perform any of the covenants, provisions, or conditions stated in this Lease within 30 days after written notice of default (or if more than thirty (30) days shall be required because of the nature of the default, if Lessor shall fail to diligently proceed to commence to cure the default after written notice), then Lessee shall be entitled to elect to terminate the Lease by written notice to Lessor, and pursue all remedies available at law and equity (including, without limitation, action for damages and specific performance) in the Superior Court of Maricopa County, State of Arizona. In the event Lessee elects to terminate this Lease and pursue any of the remedies provided herein, the Parties agree that Lessee shall have the right to occupy the Premises and/or the Property and continue to operate the Dispensary until the occurrence of the first of the following: (a) Lessee or any of its affiliates acquires and receives approval from DHS to relocate the Dispensary, pursuant to the AMMA or any Future Legislation; or (b) the date that is six months following Lessee's notice to Lessor of its desire to terminate the Lease. Lessee shall be obligated to remit payment of the Rent to Lessor until such time as the Lease ceases and terminates as provided herein and Lessee vacates the Premises and the Property.

12. Termination. Each Party shall have the right to terminate this Lease prior to the end of the Term by providing written notice to the other Party, stipulating the intended date of termination which shall not be later than thirty (30) days after the other Party's receipt of such notice, upon the occurrence of any one of the following events: (a) any Breach or Default of this Lease which remains uncured in accordance with Section 11 hereof; (b) any grossly negligent or intentional or willful misconduct by any Party which remains uncured in accordance with Section 11 hereof; (c) in the event any federal enforcement action described in Section 23.3 shall have been filed in the appropriate court against any Party; (d) any adoption, change or revocation of state or local law that has the effect of prohibiting the legal operation of the Dispensary on the Premises and/or the Property; (e) refusal by DHS to approve any application by Lessee or any of its affiliates with respect to the renewal of the registration certificate associated with Lessee's operation and management of the Dispensary; or (f) any failure by Lessee or any of its affiliates to maintain in good standing the registration certificate associated with Lessee's operation and management of the Dispensary, resulting in revocation of such certificate.

13. Indemnification. To the fullest extent permitted by law, Lessee covenants with Lessor that Lessor shall not be liable for any damage or liability of any kind or for any injury to or death of persons or damage to property of Lessee or any other person occurring from and after the Lease Date from any cause whatsoever related to the use, occupancy, or enjoyment of the Premises and the Property by Lessee. Lessee shall pay for, defend (with a mutually agreed upon attorney), indemnify, and save Lessor harmless against and from any real or alleged damage or injury and from all claims, judgments, liabilities, costs and expenses, including attorney's fees and costs, arising out of Lessee's use of the Premises and the Property or any repairs, alterations or improvements, which Lessee may make or cause to be made upon the Premises and the Property. Lessor covenants with Lessee that Lessee shall not be liable for such damage or injury to the extent that the same is ultimately determined to be attributable to the gross negligence or intentional misconduct of Lessor. All indemnity obligations under this Section 13 shall survive the expiration or termination of this Lease.

14. Condemnation. If the Premises or the Property or any portion thereof are taken under the power of eminent domain or sold under the threat of the exercise of said power (collectively "**Condemnation**"), this Lease shall terminate as to the part taken as of the date the condemning authority takes title or possession, whichever first occurs. If more than 10% of the Building, or more than 25% of that portion of the Premises and the Property not occupied by any building is taken by Condemnation, Lessee may, at Lessee's option, to be exercised in writing within 10 days after Lessor shall have given Lessee written notice of such taking (or in the absence of such notice, within 10 days after the condemning authority shall have taken possession) terminate this Lease as of the date the condemning authority takes such possession. If Lessee does not terminate this Lease in accordance with the foregoing, this Lease shall remain in full force and effect as to the portion of the Premises and the Property remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises and the Property caused by such Condemnation. Condemnation awards and/or payments shall be the property of Lessor, whether such award shall be made as compensation for diminution in value of the leasehold, the value of the part taken, or for severance damages; provided, however, that Lessee shall be entitled to any compensation paid by the condemnor for Lessee's relocation expenses, loss of business goodwill and/or Trade Fixtures, without regard to whether or not this Lease is terminated pursuant to the provisions of this Section. For the avoidance of doubt, upon any Condemnation, all Alterations and Utility Installations made to the Premises and the Property by Lessee shall be considered the property of the Lessee and Lessee shall be entitled to any and all compensation which is payable therefor. In the event that this Lease is not terminated by reason of the Condemnation, Lessor shall repair any damage to the Premises and the Property caused by such Condemnation.

15. Intentionally omitted.

16. Definition of Lessor. The term "**Lessor**" as used herein shall mean the owner or owners at the time in question of the fee title to the Premises and the Property, or, if this is a sublease, of the Lessee's interest in the prior lease. In the event of a transfer of Lessor's title or interest in the Premises and the Property or this Lease, Lessor shall deliver to the transferee or assignee (in cash or by credit) any unused Security Deposit held by Lessor. Upon such transfer or assignment and delivery of the Security Deposit, as aforesaid, the prior Lessor shall be relieved of all liability with respect to the obligations and/or covenants under this Lease thereafter to be performed by the Lessor. Subject to the foregoing, the obligations and/or covenants in this Lease to be performed by the Lessor shall be binding only upon the Lessor as hereinabove defined.

17. Severability. The invalidity of any provision of this Lease, as determined by a court of competent jurisdiction, shall in no way affect the validity of

any other provision hereof.

18. Days. Unless otherwise specifically indicated to the contrary, the word "days" as used in this Lease shall mean and refer to calendar days.

19. Limitation on Liability. The obligations of Lessor under this Lease shall not constitute personal obligations of Lessor or its partners, members, directors, officers or shareholders, and Lessee shall look to the Premises and the Property, and to no other assets of Lessor, for the satisfaction of any liability of Lessor with respect to this Lease, and shall not seek recourse against Lessor's partners, members, directors, officers or shareholders, or any of their personal assets for such satisfaction.

20. Time of Essence. Time is of the essence with respect to the performance of all obligations to be performed or observed by the Parties under this Lease.

21. No Prior or Other Agreements; Broker Disclaimer. This Lease contains all agreements between the Parties with respect to any matter mentioned herein, and no other prior or contemporaneous agreement or understanding shall be effective. Each Party represents and warrants to the other Party that it has made, and is relying solely upon, its own investigation as to the nature, quality, character and financial responsibility of the other Party to this Lease and as to the use, nature, quality and character of the Premises and the Property.

22. Notices.

22.1 **Notice Requirements.** All notices required or permitted by this Lease or applicable law shall be in writing and may be delivered in person (by hand or by courier) or may be sent by regular, certified or registered mail or U.S. Postal Service Express Mail, with postage prepaid, or by facsimile transmission, or by email, and shall be deemed sufficiently given if served in a manner specified in this Section 22. The addresses noted adjacent to a Party's signature on this Lease shall be that Party's address for delivery or mailing of notices. Either Party may by written notice to the other specify a different address for notice, except that upon Lessee's taking possession of the Premises and the Property, the Premises and the Property shall constitute Lessee's address for notice. A copy of all notices to Lessor shall be concurrently transmitted to such party or parties at such addresses as Lessor may from time to time hereafter designate in writing.

22.2 **Date of Notice.** Any notice sent by registered or certified mail, return receipt requested, shall be deemed given on the date of delivery shown on the receipt card, or if no delivery date is shown, the postmark thereon. If sent by regular mail the notice shall be deemed given 72 hours after the same is addressed as required herein and mailed with postage prepaid. Notices delivered by United States Express Mail or overnight courier that guarantees next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier. Notices delivered by hand, or transmitted by facsimile transmission or by email shall be deemed delivered upon actual receipt. If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day.

23. Waivers.

23.1 No waiver by Lessor of any Default or Breach of any term, covenant or condition hereof by Lessee, shall be deemed a waiver of any other term, covenant or condition hereof, or of any subsequent Default or Breach by Lessee of the same or of any other term, covenant or condition hereof. Lessor's consent to, or approval of, any act shall not be deemed to render unnecessary the obtaining of Lessor's consent to, or approval of, any subsequent or similar act by Lessee, or be construed as the basis of an estoppel to enforce the provision or provisions of this Lease requiring such consent.

23.2 The acceptance of Rent by Lessor shall not be a waiver of any Default or Breach by Lessee. Any payment by Lessee may be accepted by Lessor on account of moneys or damages due Lessor, notwithstanding any qualifying statements or conditions made by Lessee in connection therewith, which such statements and/or conditions shall be of no force or effect whatsoever unless specifically agreed to in writing by Lessor at or before the time of deposit of such payment.

23.3 Notwithstanding anything in this Lease to the contrary, the Parties agree to waive illegality as a defense to any contract enforcement action related to this Lease, to the extent such illegality defense is based on activities involving marijuana that are legal under Arizona law. The Parties acknowledge that they are aware of and fully understand that despite the State of Arizona's medical marijuana laws, Arizona medical marijuana cultivators, transporters, distributors, or possessors may still be arrested by federal officers and prosecuted under federal law.

23.4 Lessee expressly waives the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease.

24. No Right To Holdover. Lessee has no right to retain possession of the Premises and the Property or any part thereof beyond the expiration or termination of this Lease. In the event that Lessee holds over, then the Base Rent shall be increased to 150% of the Base Rent applicable immediately preceding the expiration or termination. Holdover Base Rent shall be calculated on monthly basis. Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee.

25. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

26. Covenants and Conditions; Construction of Agreement. All provisions of this Lease to be observed or performed by Lessee are both covenants and conditions. In construing this Lease, all headings and titles are for the convenience of the Parties only and shall not be considered a part of this Lease. Whenever required by the context, the singular shall include the plural and vice versa. This Lease shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if both Parties had prepared it.

27. Binding Effect; Choice of Law. This Lease shall be binding upon the Parties, their personal representatives, successors and assigns and be governed by the laws of Arizona. Any litigation between the Parties hereto concerning this Lease shall be initiated in the Superior Court of Maricopa County.

28. Attorneys' Fees. If any Party brings an action or proceeding involving the Premises or the Property whether founded in tort, contract or equity, or to declare rights hereunder, the Prevailing Party (as hereafter defined) in any such proceeding, action, or appeal thereon, shall be entitled to reasonable attorneys' fees. Such fees may be awarded in the same suit or recovered in a separate suit, whether or not such action or proceeding is pursued to decision or judgment. The term, "Prevailing Party" shall include, without limitation, a Party who substantially obtains or defeats the relief sought, as the case may be, whether by compromise, settlement, judgment, or the abandonment by the other Party of its claim or defense. The attorneys' fees award shall not be computed in accordance with any court fee schedule, but shall be such as to fully reimburse all attorneys' fees reasonably incurred. In addition, Lessor shall be entitled to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default and consultations in connection therewith, whether or not a legal action is subsequently commenced in connection with such Default or Breach ($500.00 is a reasonable minimum per occurrence for such services and consultation).

29. Lessor's Access; Showing Premises and the Property; Repairs. Lessor and Lessor's agents shall have the right to enter the Premises and the Property, in the case of an emergency, and otherwise upon providing Lessee with at least two (2) business days' prior notice for the purpose of showing the same to prospective purchasers, lenders, or tenants, and making such alterations, repairs, improvements or additions to the Premises and the Property as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and the Property and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises and the Property. All such activities shall be without abatement of rent or liability to Lessee. Lessor acknowledges and agrees that Lessor and its agents must be accompanied at all times by an authorized representative of Lessee in compliance with the AMMA.

30. Auctions. Lessee shall not conduct, nor permit to be conducted, any auction upon the Premises and the Property without Lessor's prior written consent. Lessor shall not be obligated to exercise any standard of reasonableness in determining whether to permit an auction.

31. Signs. Lessor may place on the Premises and the Property ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the Term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises and the Property without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

32. Termination; Merger. Unless specifically stated otherwise in writing by Lessor, the voluntary or other surrender of this Lease by Lessee, the mutual

termination or cancellation hereof, or a termination hereof by Lessor for Breach by Lessee, shall automatically terminate any sublease or lesser estate in the Premises and the Property; provided, however, that Lessor may elect to continue any one or all existing subtenancies. Lessor's failure within 10 days following any such event to elect to the contrary by written notice to the holder of any such lesser interest, shall constitute Lessor's election to have such event constitute the termination of such interest.

33. Consents. Except as otherwise provided herein, wherever in this Lease the consent of a Party is required to an act by or for the other Party, such consent shall not be unreasonably withheld, conditioned or delayed. Lessor's actual reasonable costs and expenses (including but not limited to architects', attorneys', engineers' and other consultants' fees) incurred in the consideration of, or response to, a request by Lessee for any Lessor consent, including but not limited to consents to an assignment, a subletting or the presence or use of a hazardous substance, shall be paid by Lessee upon receipt of an invoice and supporting documentation therefor. Lessor's consent to any act, assignment or subletting shall not constitute an acknowledgment that no Default or Breach by Lessee of this Lease exists, nor shall such consent be deemed a waiver of any then existing Default or Breach, except as may be otherwise specifically stated in writing by Lessor at the time of such consent. In the event that either Party disagrees with any determination made by the other hereunder and reasonably requests the reasons for such determination, the determining party shall furnish its reasons in writing and in reasonable detail within 10 business days following such request. Except as otherwise provided in this Lease, any unreasonable withholding, conditioning or delay of consent by a party shall be a breach of this Lease.

34. Quiet Possession. Subject to payment by Lessee of the Rent and performance of all of the covenants, conditions and provisions on Lessee's part to be observed and performed under this Lease, Lessee shall have quiet possession and quiet enjoyment of the Premises and the Property during the Term hereof, free from any interference by Lessor.

35. Security Measures. Lessee hereby acknowledges that the Rent payable to Lessor hereunder does not include the cost of guard service or other security measures, and that Lessor shall have no obligation whatsoever to provide same. Lessee assumes all responsibility for the protection of the Premises and the Property, Lessee, its agents and Invitees and their property from the acts of third parties.

36. Reservations. Lessor reserves to itself the right, from time to time, to grant, without the consent or joinder of Lessee, such easements, rights and dedications that Lessor deems necessary, and to cause the recordation of parcel maps and restrictions, so long as such easements, rights, dedications, maps and restrictions do not unreasonably interfere with the use of the Premises and the Property by Lessee. Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions.

37. Performance Under Protest. If at any time a dispute shall arise as to any amount or sum of money to be paid by one Party to the other under the provisions hereof, the Party against whom the obligation to pay the money is asserted shall have the right to make payment "under protest" and such payment shall not be regarded as a voluntary payment and there shall survive the right on the part of said Party to institute suit for recovery of each sum. If it shall adjudged that there was no legal obligation on the part of said Party to pay such sum or any part thereof, said Party shall be entitled to recover such sum or so much thereof as it was not legally required to pay. A Party who does not initiate suit for the recovery of sums paid "under protest" within 6 months shall be deemed to have waived its right to protest such payment.

38. Authority; Multiple Parties; Execution.

(a) If either Party hereto is a corporation, trust, limited liability company, partnership, or similar entity, each individual executing this Lease on behalf of such entity represents and warrants that he or she is duly authorized to execute and deliver this Lease on its behalf. Each Party shall, within 30 days after request, deliver to the other Party satisfactory evidence of such authority.

(b) If this Lease is executed by more than one person or entity as "Lessee", each such person or entity shall be jointly and severally liable hereunder. It is agreed that any one of the named Lessees shall be empowered to execute any amendment to this Lease, or other document ancillary thereto and bind all of the named Lessees, and Lessor may rely on the same as if all of the named Lessees had executed such document.

(c) This Lease may be executed by the Parties in counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

39. Intentionally Omitted.

40. Offer. Preparation of this Lease by either Party or their agent and submission of same to the other Party shall not be deemed an offer to lease to the other Party. This Lease is not intended to be binding until executed and delivered by both Parties hereto.

41. Amendments. This Lease may be modified only in writing, signed by the Parties in interest at the time of the modification. As long as they do not materially change Lessee's monetary obligations hereunder or Lessee's Agreed Use of the Premises and the Property, Lessee agrees to make such reasonable non-monetary modifications to this Lease as may be reasonably required by a Lender in connection with the obtaining of normal financing or refinancing of the Premises and the Property.

42. Waiver of Jury Trial. THE PARTIES HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING INVOLVING THE PROPERTY OR ARISING OUT OF THIS LEASE.

43. Accessibility; Americans with Disabilities Act. Lessor makes no warranty or representation as to whether or not the Premises and the Property comply with the American with Disabilities Act or any similar local, state or federal legislation (collectively, "**ADA**"). In the event that Lessee's use of the Premises and the Property requires modifications or additions to the Premises and the Property in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's sole cost and expense and in compliance with all of the terms and provisions of this Lease.

44. Confidentiality

A. Confidential Information. Each of Lessor and Lessee acknowledge that it will be privy to confidential and sensitive information of the other party during the course of its duties and obligations pursuant to this Lease. Each party hereby promises and agrees to receive and hold the "Confidential Information" (as hereinafter defined) of the other party in confidence. For purposes of this Lease, "Confidential Information" means Proprietary Information and Patient Information. Without limiting the generality of the foregoing, the parties further promise, agree and covenant to the other the following:

1."Proprietary Information" means: any information, whether in tangible or intangible (e.g., electronic) form, concerning or related to a party's business; business plans; and financial condition; members; managers; agents; investors; operations; policies; processes; procedures; partners; contractors; and systems that the party (i) considers confidential and/or proprietary, and (ii) communicates, provides or makes available to the other party, including but not limited to all strategic and development plans; all financial conditions; all financial forecasts; all financial modeling; all software; all pricing; vendors; customers; patients; prospective vendors; prospective customers; prospective patients; data; business records; forms; documents; customer lists; patient lists; vendors lists; project records; market reports; and business manuals, policies, and procedures; information relating to processes, technologies, or theory; and all other information made available by one (1) party to the other.

2."Patient Information" means any information, whether in tangible or intangible form, that Lessee communicates, provides or makes available to Lessor, if ever, that (i) relates to any "Covered Person" (as hereinafter defined), (ii) related to any transaction or proposed transaction between Lessee and any Covered Person, or (iii) is a list, description of other grouping of Covered Persons, and includes without limitation (a) all "NPI" (as hereinafter defined) with respect to Covered Persons, (b) the fact that any Covered Peron is or was a customer, patient, vendor, employee or contractor of Lessee, (c) information about any Lessee product or service obtained or used by any Covered Person, and (d) any other information that may be determined to be subject to the provisions of the Gramm-Leach Bliley Act, HIPAA, or any other applicable state or federal law or regulation regarding confidentiality and privacy of Covered Persons' information.

3."Covered Persons" means (i) any individual or entity who seeks to provide/obtain, provides/obtains, or has provided/obtained any Confidential Information, product or service to a party; (ii) any claimant or beneficiary under any Confidential Information, product or service, (iii) any individual that provides NPI about himself or herself with respect to or in connection with any such Confidential Information, Proprietary Information or Patient Information

sought or obtained by another, and (iv) any agent, employee or independent contractor of a party.

4."NPI" means non-public information that relates to any individual or entity, including without limitation name, address, taxpayer identification number or other identifying number, account number, telephone number, consumer report or other credit report information, or medical information.

B. Confidentiality. Each party shall each maintain the confidentiality and security of the Confidential Information of the other party, and shall use the Confidential Information solely for the purpose of evaluating the Lease, Guaranty or other arrangements between them. Without limiting the generality of the foregoing, each party agrees as follows:

1.No party shall disclose, directly or indirectly, Confidential Information of the other party to others. Notwithstanding the foregoing, a party may disclose the Confidential Information: (i) to the party's respective accountants and legal counsel solely as required to obtain advice in connection with the Lease, Guaranty and other arrangements between the parties, provided the disclosing party takes all necessary steps to ensure that the Confidential Information is treated confidentially and not re-disclosed by any such party; or (ii) pursuant to any binding judicial or administrative order or process, provided the party promptly notifies the other of any such order or process and reasonably cooperates with the other party, at the party's expense, in obtaining a protective order or other relief with respect to the disclosure of such Confidential Information.

2.Each party shall implement and maintain physical and technical safeguards reasonably designed to: (i) ensure the security and confidentiality of the Confidential Information of the other party in its possession or control, (ii) protect against any anticipated threats or hazards to the security and confidentially of the Confidential Information of the other party in its possession or control, and (iii) protect against any unauthorized access to or use of the Confidential Information of the other party in its possession or control.

3.No party shall duplicate or incorporate Confidential Information into or in connection with the party's own business, investments, records or databases, except in connection with this Lease, the Guaranty, other arrangements between the parties, or the exceptions described in Subsection 44. B. 1.

4.At any time a party is disposing of documents, records, electronic or other media containing Confidential Information, the disposing party shall destroy them in a manner (such as shredding) designed to guarantee that the Confidential Information of the other party cannot be determined or re-constituted by any person such after such destruction.

5.Each party shall notify the other party immediately of any improper disclosure of, access to, or use of Confidential Information of the other party in the party's possession or control, and cooperate with the other party in investigating and correcting any such disclosure, access or use.

C. Exclusions. The confidentiality obligations hereunder shall not apply to Confidential Information which is, or later becomes, public knowledge other than by a breach of the provisions of this Agreement or is independently received by a party from a third party with no restrictions on disclosure.

D. Disclosures to Employees, Agents or Representatives of Lessor. In no event shall Lessee, directly or indirectly through another person, communicate in writing or by phone, text, fax or email with Lessor's employees, agents, vendors, customers, or representatives concerning the entering into or execution of this Lease. In the event that Lessee or its employees, agents or representatives require reasonable access to other than the Premises prior to Lessor's delivery of possession of Suite B of the Property to Lessee, Lessee shall contact Scott Ayers, Manager of Lessor, for access from time to time after Lessor's normal business hours of Suite B.

EACH OF LESSOR AND LESSEE HAS CAREFULLY READ AND REVIEWED THIS LEASE AND EACH TERM AND PROVISION CONTAINED HEREIN, AND BY THE EXECUTION OF THIS LEASE SHOWS ITS INFORMED AND VOLUNTARY CONSENT HERETO. THE PARTIES HEREBY AGREE THAT, AT THE TIME THIS LEASE IS EXECUTED, THE TERMS OF THIS LEASE ARE COMMERCIALLY REASONABLE AND EFFECTUATE THE INTENT AND PURPOSE OF LESSOR AND LESSEE WITH RESPECT TO THE PREMISES AND THE PROPERTY.

[SIGNATURE PAGE FOLLOWS]

The Parties have executed this Lease as of the Lease Date.

LESSOR

CEC 14120276I, L.L.C., an Arizona limited liability company

By: _____

Name: S. Ayers
Its: Manager

Address: PO Box 3211
Chandler, AZ 85244

LESSEE

HIGH DESERT HEALING, L.L.C., an Arizona limited liability company

By: _____

Name: Jason Vedadi
Its: Manager

Address: 627 S 48th St., Suite 100
Tempe, AZ 85281

EXHIBIT 1

MARIJUANA PROVISIONS

Lessee is in the business of cultivating, dispensing and distributing medical marijuana pursuant to the Marijuana Laws, defined below, which impose substantial quality control, recordkeeping, accounting, auditing, licensing, security, sanitation and other requirements, policies and procedures on Lessee and Lessee's business in the Premises and the Property. Lessee and Lessor are aware that the cultivation and sale of marijuana and marijuana products remains illegal under the laws of the United States of America, despite enactment by the State of Arizona ("**State**") of the AMMA, defined below, and that marijuana remains an illegal controlled substance under federal law. The federal government regulates marijuana possession and use through the Controlled Substances Act, 21 U.S.C. § 812(b) (the "**CSA**"). The CSA makes it a crime, among other things, to possess or use marijuana even for medical reasons and despite valid state laws authorizing the medical use of marijuana. 21 U.S.C. §§ 841 to 864. Clear and unambiguous compliance with state Law does not create a legal defense to a violation of the CSA. In consideration of the foregoing risks to Lessor from Lessee's business in the Premises and the Property, Lessee and Lessor agree that the Rent and other obligations of Lessee under this Lease to Lessor are reasonable, fair and appropriate. Lessee shall use the Premises and the Property for any and all medical marijuana related activities allowed pursuant to that certain Medical Marijuana Dispensary Certificate No.00000005DCMV00766195 ("**Certificate**") and the Approval to Operate ("**ATO**"), each issued by the Arizona Department of Health Services ("**DHS**") to Lessee on _____, expiring one (1) year hence, pursuant to the Arizona Medical Marijuana Act (Ariz.Rev.Stat. §§ 36-2801 et seq.) and DHS regulations issued thereunder (Ariz. Admin. Code, R9-17-101 et seq.) and revisions thereto (collectively, "**AMMA**"), and the special use permit (the "**SUP**") issued by Maricopa County, Arizona (the "County") and all other applicable State and local laws, rules, regulations and requirements, including zoning Laws (collectively, the Certificate, ATO, AMMA and the SUP are referred to herein as the "**Marijuana Laws**"). If the Marijuana Laws are modified to allow the sale to the public of marijuana for recreational use, and provided that Lessee is not then in Default, as defined in this Lease, then effective with the effective date of the modified Marijuana Laws Lessee shall be entitled to apply to the **DHS**, or other Arizona governmental agency regulating the sale of marijuana for recreational use, to use the Premises and the Property for the sale to the public of marijuana for recreational use. Use of the Premises and the Property shall include, but not be limited to, a retail store on the Premises and the Property (collectively, the "**Use**" or "**Agreed Use**").

EXHIBIT 2

GUARANTY OF LEASE BY HARVEST DISPENSARIES,
CULTIVATIONS AND PRODUCTION FACILITIES LLC

G U A R A N T Y

Date of Lease: March 1, 2018

Lessor: CEC 141202761, LLC, an Arizona limited liability company, located at: _____.

Lessee: High Desert Healing LLC, an Arizona limited liability company, , located at: _____.

Guarantor: Harvest Dispensaries, Cultivations & Production Facilities LLC, an Arizona limited liability company, located at: _____.

Premises: Suite A, 13433 E. Chandler Blvd., Chandler, AZ 85225

Property: Suites A and B, Suite A, 13433 E. Chandler Blvd., Chandler, AZ 85225

1. Capitalized terms used herein shall have their respective meanings as defined in the Lease, defined below.

2. In consideration of, and as inducement for the granting, execution and delivery of the foregoing lease (the "Lease") between Lessor and Lessee, the undersigned (collectively, "Guarantor"), hereby guarantees to Lessor, its successors and assigns, for the full Term of the Lease (including any renewals or extensions of the Term thereof), the full and prompt payment of Rent payable by Lessee, its successors and assigns, under the Lease, and hereby further guarantees the full and timely performance and observance of all the covenants, terms, conditions and agreements therein provided to be performed and observed by Lessee, its successors and assigns; and Guarantor hereby covenants and agrees to and with Lessor, its successors and assigns, that if Lessee shall default beyond any applicable cure period at any time in the performance and observance of any of the terms, covenants, provisions or conditions contained in the Lease, Guarantor shall and will forthwith pay Rent, to Lessor, its successors and assigns, and any arrears thereof, and shall and will forthwith faithfully perform and fulfill all of such terms, covenants, conditions and provisions, and will forthwith pay to Lessor all damages that may arise in consequence of any Default by Lessee, its successors or assigns, under the Lease, including without limitation, all reasonable attorneys' fees and disbursements incurred by Lessor or caused by any such Default beyond any applicable cure period and/or by the enforcement of this Guaranty.

3. Subject to the limitation set forth in Section 4 hereof, this Guaranty is an absolute and unconditional guaranty of payment and of performance and Guarantor hereby waives any defense, offset or counterclaims to any liability hereunder. It shall be enforceable against Guarantor (or, in the event more than one person or entity signs this Guaranty, either or both Guarantors, whose liability hereunder shall be joint and several), its successors and assigns, without the necessity of any suit or proceedings on Lessor's part of any kind or nature whatsoever against Lessee, its successors and assigns and without the necessity of any notice of non-payment, non-performance or non-observance or of any notice of acceptance of this Guaranty or of any other notice or demand to which Guarantor might otherwise be entitled, all of which Guarantor hereby expressly waives; and Guarantor hereby expressly agrees that the Guaranty and the obligations of Guarantor hereunder shall in nowise be terminated, affected, diminished or impaired by reason of the assertion or the failure to assert by Lessor against Lessee or against Lessee's successors or assigns, of any of the rights of remedies reserved to Lessor pursuant to the provisions of the Lease.

4. This Guaranty shall be a continuing Guaranty, and the liability of Guarantor hereunder shall in no way be affected, modified or diminished by reason of any assignment, renewal, modification or waiver of, or change in any of the terms, covenants, conditions or provisions of the Lease by Lessor and Lessee, or by reason of any extension of time that may be granted by Lessor to Lessee, its successors or assigns, or by reason of any dealings or transactions or matter or thing occurring between Lessor and Lessee, its successors or assigns, or by reason of any bankruptcy, insolvency, reorganization, arrangement, assignment for the benefit of creditors, receivership or trusteeship affecting Lessee or Guarantor, whether or not notice thereof is given to Guarantor.

5. All of Lessor's rights and remedies under the Lease or under this Guaranty are intended to be distinct, separate and cumulative and no such right or remedy therein or herein mentioned is intended to be in exclusion of or a waiver of any of the others.

6. Whenever used in this Guaranty, the terms Guarantor, Lessor and Lessee shall include the respective successors, heirs and assigns of the party named as such.

7. As a further inducement to Lessor to make and enter into the Lease and in consideration thereof, Lessor and Guarantor covenant and agree that in any action or proceeding brought on, under or by virtue of this Guaranty, Lessor and Guarantor shall and do hereby waive trial by jury and the undersigned authorizes the service of process on the undersigned by registered mail or recognized overnight carrier sent to the undersigned at the address of the undersigned hereinbefore set above.

Harvest Dispensaries, Cultivations & Production Facilities LLC, an Arizona limited liability company

By:

Its: Manager

Harvest Dispensaries, Cultivations & Production Facilities LLC, an Arizona limited liability company

By:

Its: Manager

Harvest Dispensaries, Cultivations & Production Facilities LLC, an Arizona limited liability company

By:

Its: Manager

EXHIBIT 3

UNIFORM COMMERCIAL CODE FINANCING STATEMENT [TO COME]

EXHIBIT TO UCC FINANCING STATEMENT

All of Lessee's ("Debtor's") right, title and interest in and to the following described personal property (collectively, the "Collateral"):

A. All accounts, instruments, documents and chattel paper (including all accounts receivable, notes, letters of credit and letters of credit rights, deposit accounts, drafts, prepayments made to vendors for products or services to be installed or delivered to Lessee ("Debtor"), prepaid accounts and deposits from customers, rental service agreements, lease and sublease agreements and security agreements) now existing or hereafter acquired or created from time to time in the course of Debtor's business;

B. All equipment now owned or hereafter acquired, including all furniture, fixtures, furnishings, vehicles (whether titled or non-titled), signage, machinery, materials and supplies, wherever located, together with all parts, accessories, attachments, additions or replacements therefor; and

C. All payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to receive the same, from any and all insurance policies covering the Collateral or any portion thereof, together with (i) all policies or certificates of insurance covering any of the foregoing property, and all awards, loss payments, proceeds and premium refunds that may become payable with respect to such policies; (ii) all property of Debtor that is now or may hereafter be in the possession or control of Secured Party in any capacity, including without limitation all moneys owed or that become owed by Secured Party to Debtor; (iii) all proceeds due or to become due from any sale, exchange or other disposition of any of the foregoing property, whether cash or non-cash in nature, whether represented by checks, drafts, notes or other instruments for the payment of money, and the goods represented thereby; and (iv) all additions, replacements of and substitutions for all or any part of the foregoing property.

Exhibit No. 42

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/2/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

From: S. Aye
To: Will Koslow
Subject: Re: CEC141202761, LLC
Date: Monday, July 13, 2020 4:32:07 PM
Attachments: image001.png
IMG_3639e.JPG

Dear Mr. Koslow,

Good News! It appears that your check 17268 has cleared the bank.

Statements from your email dated July 10, 2020 at 4:09pm (my comments are in red):

"I appreciate your position and I am trying to work with you on this." - The tenant is currently in DEFAULT for nonpayment of rent for July 2020. As I explained previously, per paragraph 4.3 of the lease the minimum attorney's fee of $500 was paid from the check 17268 and then the remaining proceeds were applied to the outstanding July 2020 rent on July 10, 2020, leaving a rent shortage for July 2020 of $500. The rent has NOT been paid in full for July 2020.

*"You must understand that we are a **publicly traded company** and require documentation to support payments. It is not 'commercially reasonable' for me to arrange for payment simply off the basis of an email request. Please provide me with the legal invoice from Davis Miles for review and records."* - Paragraph 28 does not require the submission of an invoice. In fact, paragraph 28 is specifically drafted to avoid the administrative and accounting burden associated with preparing and submitting invoices, this is done by establishing a minimum $500 attorney's fee.

Davis Miles, the law firm I consulted on 7/8/2020 about the UNPAID RENT, handles multiple issues on my behalf and invoices are not itemized by file number. I've provided you the file number and you're welcome to contact Davis Miles (Mesa, AZ). As far as an invoice, it doesn't matter if the cost was $.01 or $499, paragraph 28 provides for a $500 minimum payment. You already paid the $500 minimum attorney's fee with proceeds from check 17268. Now you need to pay the rent in full.

I have tried to handle the tenant's nonpayment of the July 2020 rent in a manner that would minimize everyone's costs.

I am baffled by a **publicly traded company** that FAILS to pay its rent timely. Your **publicly traded company** accounting rigor has not been applied to making timely payment of the RENT. It would seem your **publicly traded company** accounting rules and notions of 'commercially reasonable' only come into play when they serve to delay or avoid payments required by the lease.

As a **publicly traded company** you recently reported Q1 2020 earnings of $45 million and predicted full year revenue of $200 million for 2020. Each of your retail locations has about $5 million in sales per year. But you refuse to pay your rent timely and in full? In fact, the rent you are charged at this location is **60% lower than the average retail store rental rate** (9.8% of sales) reported by retail stores nationwide. But apparently, when you're a filthy rich **publicly traded company**, no deal is good enough. You already obtained a great rental rate, but now you are pleased to pay late and determined to pay less than the full rent amount.

As a filthy rich **publicly traded company**, I don't think you treat people very well. When the rent wasn't paid and when my email inquiries regarding the rent received no reply, on July 3, 2020, I traveled to the building you rent. I thought perhaps you had abandoned the property. Instead of an abandoned building, I discovered a parking lot packed with cars and customers waiting in line outside in 112F heat (photo attached - img_3639e.jpg)! This year your **publicly traded company** predicts sales of $200 million and you can't provide a fan, some water misters, and water bottles for these people in line outside the building? According to your **publicly traded company** literature these people aren't just customers but rather 'sick patients', often 'desperately sick patients' benefiting from the wonders of your product. What if a patient has a heat stroke and collapses? Will they sue the property owner?

CEC141202761, LLC has retained counsel to collect the unpaid rent and interact with your **publicly traded company**, they'll contact you.

Sincerely,

Scott Ayers, Mngr

CEC141202761, LLC

On Fri, Jul 10, 2020 at 4:09 PM Will Koslow <wkoslow@harvestinc.com> wrote:

> Mr. Ayers-
>
> I appreciate your position and I am trying to work with you on this. You must understand that we are a publicly traded company and require documentation to support payments. It is not commercially reasonable for me to arrange for payment simply off the basis of an email request. Please provide me with the legal invoice from Davis Miles for review and records.
>
> Thank you,

Exhibit No. 61

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/2/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

From: Will Koslow <wkoslow@harvestinc.com>
Sent: Friday, August 6, 2021 3:03 PM
To: S. Aye <cec141202761llc@gmail.com>
Cc: Jesse Francoeur <jfrancoeur@harvestinc.com>
Subject: 13433 E. Chandler Blvd, Suites A and B - Request for Consent to Assignment

Mr. Ayers-
The attached correspondence is being sent to you pursuant to 10 and 10.1 of the Lease and is a request for Landlord to provide consent to an Assignment (as defined in Section 10 of the Lease). This email and the attached correspondence will serve as Notice under Section 22 of the Lease.

To be clear, once executed, the Consent applies at the time the transaction constituting an Assignment is completed. More information is included in the correspondence.

Please contact me with any questions. We look forward to receipt of your signed consent shortly.

Thank you,
Will

HARVEST

Will Koslow | Assistant General Counsel | M: 646.831.1997 | wkoslow@harvestinc.com

HARVEST

August 6, 2021

VIA EMAIL to cec141202761llc@gmail.com
CEC 141202761, LLC
1909 E. Ray Rd, Suite 9-156
Chandler, AZ 85225
Attn: Scott Ayers

Re: Standard Industrial/Commercial Single-Tenant Lease-Net AIR Commercial Real Estate Association (the "Lease") effective March 1, 2018, as further amended and supplemented, pursuant to the terms of which High Desert Healing, L.L.C., an Arizona limited liability company ("Tenant") leases from CEC 141202761, LLC, an Arizona limited liability company ("Landlord") all of that certain real property, consisting of 6,000 square feet, including all improvements thereon, commonly known as the street address 13433 E. Chandler Blvd, Suites A and B, located in the City of Chandler, County of Maricopa, State of Arizona 85255 (the "Premises")
Request for Consent to Assignment

Mr. Ayers:

The Tenant under the Lease is hereby notifying the Landlord of an Assignment as required under Section 10 and 10.1 of the Lease, and hereby requests the Landlord's consent to such Assignment. Pursuant to Section 10.1(e), Tenant is providing Landlord with the following information regarding Trulieve Cannabis Corp., a British Columbia corporation ("Trulieve"), the company that will be the ultimate parent and have control of Tenant:

Name: Trulieve is listed and traded on the Canadian Stock Exchange (TRUL) and is also required to file with the Securities and Exchange Commission (TCNNF). Current SEC filings are available at https://investors.trulieve.com/financial-information/sec-filings.

Address: 6749 Ben Bostic Road, Quincy, Florida 32351.

Details of Purchase: On May 10, 2021, Trulieve and Harvest Health & Recreation Inc., ("Harvest"), the ultimate parent of Tenant, entered into a definitive arrangement agreement (the "Arrangement Agreement") pursuant to which Trulieve will acquire all of the issued and outstanding subordinate voting shares, multiple voting shares and super voting shares of Harvest (the "Transaction"). Under the terms of the Arrangement Agreement, shareholders of Harvest will receive 0.1170 of a subordinate voting share of Trulieve (each whole share, a "Trulieve Share") for each Harvest subordinate voting share (or equivalent) held, representing total consideration of approximately $2.1 billion based on the closing price of the Trulieve Shares on May 7, 2021. The actual closing of the Transaction is anticipated to occur before the end of 2021.

Information about Trulieve's business and business history: Please see the information publicly available at https://investors.trulieve.com/.

Proposed use of Premises: There will be no change in the proposed use of Premises.

Banking, financial information: Please see the public disclosures available at https://investors.trulieve.com/financial-information/sec-filings regarding Trulieve.

Because the legal entity comprising the Tenant will remain unchanged, it is Tenant's position that no changes to documentation will be required following Tenant's receipt of Landlord's consent.

Please contact me with any questions at 646-831-1997 or wkoslow@harvestinc.com. Your prompt response to this request for consent is appreciated. Tenant recognizes that the amount of $500 is to be paid to Landlord in accordance with Section 10.1(e) of the Lease and will provide such payment simultaneous with the next installment of Base Rent.

For your convenience, enclosed you will find a proposed form of Consent to Assignment for execution which you can return to me at the email address above. Once received, I can provide a fully executed copy for your records. Thank you.

Sincerely,

High Desert Healing, L.L.C.,
an Arizona limited liability company

By: _____
Name: William M. Koslow
Title: Assistant General Counsel

Encl.

CONSENT TO ASSIGNMENT

This CONSENT TO ASSIGNMENT (this "Consent") is entered into as of this ___ day of August, 2021 (the "Effective Date"), by and between CEC 141202761, LLC, an Arizona limited liability company ("Landlord"), and High Desert Healing, L.L.C., an Arizona limited liability company ("Tenant").

RECITALS

A. WHEREAS, Landlord and Tenant are parties to that certain Standard Industrial/Commercial Single-Tenant Lease-Net AIR Commercial Real Estate Association (the "Lease") effective March 1, 2018, as further amended and supplemented, pursuant to the terms of which Tenant leases from Landlord all of that certain real property, consisting of 6,000 square feet, including all improvements thereon, commonly known as the street address 13433 E. Chandler Blvd, Suites A and B, located in the City of Chandler, County of Maricopa, State of Arizona 85255 (the "Premises"); and

B. WHEREAS, Tenant's ultimate parent is Harvest Health & Recreation Inc., a British Columbia corporation ("Harvest").

C. WHEREAS, Harvest has entered into a definitive arrangement agreement (the "Arrangement Agreement") pursuant to which Trulieve Cannabis Corp., a British Columbia corporation will acquire all of the issued and outstanding subordinate voting shares, multiple voting shares and super voting shares of Harvest (the "Transaction").

D. WHEREAS, the Transaction constitutes an Assignment pursuant to Section 10 of the Lease.

E. WHEREAS, Landlord is willing to consent to the Assignment pursuant to the terms of this Consent.

AGREEMENT

NOW, THEREFORE, the parties in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, agree as follows:

1. Recitals. The foregoing recitals are hereby made a part of this Consent.

2. Definitions. For purposes of this Consent, capitalized terms used herein without definition shall have the meaning given to such terms in the Lease.

3. Transfer Date. The date upon which Closing (as defined in the Arrangement Agreement) occurs and the Transaction is consummated pursuant to the Arrangement Agreement is hereinafter referred to as the "Transfer Date" for purposes of this Consent.

4. Landlord Consent. Landlord hereby consents to the Assignment occurring as a result of the Transaction. Landlord hereby agrees that any purchase options, rights of first refusal, extensions, rights to assign, sublease or otherwise transfer the Lease will remain in place and continue to be exercisable by the Tenant under the Lease on and after the Transfer Date.

5. Notices to Tenant. From and after the Transfer Date, all notices to be delivered to the tenant under the Lease shall be delivered to the following address:

High Desert Healing, L.L.C.
c/o Trulieve Cannabis Corp.
6749 Ben Bostic Road

Quincy, Florida 32351
Attn: General Counsel

6. Disclaimers. Nothing contained in this Consent shall either:

(a) operate as a consent to or approval by Landlord of any of the provisions of the Arrangement Agreement or as a representation or warranty by Landlord, and Landlord shall not be bound or estopped in any way by the provisions of the Arrangement Agreement; or

(b) be construed to modify, waive or affect any of the provisions, covenants or conditions of, or any rights or remedies of Landlord under, the Lease.

7. Covenants. Notwithstanding anything set forth in the Arrangement Agreement to the contrary, Tenant covenants to Landlord that, from and after the Transfer Date, it shall perform, observe and discharge all of the undertakings, obligations, liabilities and covenants of tenant under the Lease. Tenant shall make no further assignment, transfer or sublease under the Lease, nor shall Tenant mortgage, pledge or hypothecate the Lease, except as expressly permitted by the Leases.

8. No Further Consent. This Consent shall not constitute consent to any subsequent assignment of the Lease or subletting of the Premises. Tenant shall voluntarily or by operation of law, directly or indirectly (whether by merger or otherwise), assign, pledge, hypothecate, or otherwise transfer this Consent or any of such party's rights, interests or obligations under this Consent, in whole or in part, except as expressly permitted by the Lease, and any other such purported assignment, pledge, hypothecation, or transfer shall be null and void.

9. Entire Agreement. The terms of this Consent, including the Exhibits referred to herein, are intended by the parties as a final, complete and exclusive expression of their agreement with respect to the terms that are included in this Consent and may not be contradicted or supplemented by evidence of any other prior or contemporaneous agreement.

10. Amendment. No provision of this Consent may be modified, amended or supplemented except by an agreement in writing signed by the parties hereto.

11. Severability. Any provision of this Consent that shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof, and all other provisions of this Consent shall remain in full force and effect and shall be interpreted as if the invalid, void or illegal provision did not exist.

12. Successors and Assigns. Each of the covenants, conditions and agreements contained in this Consent shall inure to the benefit of and shall apply to and be binding upon the parties hereto and their respective heirs, legatees, devisees, executors, administrators and permitted successors and assigns. Nothing in this section shall in any way alter the provisions of this Consent restricting assignment.

13. Governing Law. This Consent shall be governed by and construed and enforced in accordance with the laws of the state where the Premises is located, without regard to such state's conflict of law principles.

14. Electronic Delivery; Counterparts. A facsimile or portable document format (PDF) signature on this Consent shall be equivalent to, and have the same force and effect as, an original signature. This Consent may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same document.

15. Waiver. No failure to exercise or delay in exercising any right, remedy, power or privilege shall operate as a waiver thereof, and no single or partial exercise of any right, remedy, power or privilege shall preclude the exercise of any other right, remedy, power or privilege. No waiver of any term, covenant or condition of this Consent shall be binding unless executed in writing by the party entitled to the benefit of such term, covenant or condition. The waiver of any breach or default of any term, covenant or condition contained in this Consent

shall not be deemed to be a waiver of any preceding or subsequent breach or default of such term, covenant or condition or any other term, covenant or condition of this Consent.

16. Lease Amendment. This Consent shall constitute a duly executed and authorized amendment to the Lease solely to the extent (a) necessary to confirm that the Tenant remains the tenant under the Leases effective from and after the Transfer Date, and (b) otherwise necessary to give effect to the terms and conditions of this Consent. Except for such limited amendments, the Lease shall and all of the covenants, agreements, terms, provisions and conditions thereof shall remain in full force and effect and are hereby ratified and affirmed. In the event of any conflict between the terms contained in this Consent and the terms contained in the Lease, the terms contained herein shall supersede the terms contained in the Leases and shall control the obligations and liabilities of the parties.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Consent to Assignment as of the Effective Date.

LANDLORD:

CEC 141202761, LLC, an Arizona limited liability company

By:_____
Name: Scott Ayers
Title: Manager

TENANT:

High Desert Healing, L.L.C., an Arizona limited liability company

By:_____
Name: Steve White
Title: CEO

Exhibit No. 64

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/2/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

WHEN RECORDED, RETURN TO:

Arixa Secured Income Fund, LLC, a California Limited Liability Company
10960 Wilshire Boulevard, Suite 1050
Los Angeles, California 90024

Loan No. 118500002
Property ID No.: 303-01-001B

57
am

Recording Requested by:
Fidelity National Title Agency

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, FIXTURE FILING, AND SECURITY AGREEMENT

Note Amount: **$1,500,000.00**
Property Address: **13433 E Chandler Blvd, Suites A & B, Scottsdale, Arizona 85255**

THIS DOCUMENT CONSTITUTES A FIXTURE FILING IN ACCORDANCE WITH THE ARIZONA UNIFORM COMMERCIAL CODE.

This Deed of Trust, Assignment of Leases and Rents, Fixture Filing, and Security Agreement (the "Security Instrument" or "Deed of Trust") is made as of August 4, 2021, among CEC141202761, LLC, an Arizona limited liability company ("Borrower"), whose address is 1909 East Ray Road, Unit 9-156, Chandler, Arizona 85225; Fidelity National Title, as trustee ("Trustee"); and Arixa Secured Income Fund, LLC, a California Limited Liability Company (CFL License No. 60DBO-73745), as beneficiary ("Lender"), whose address is 10960 Wilshire Boulevard, Suite 1050, Los Angeles, California 90024.

TRANSFER OF RIGHTS IN THE PROPERTY

To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower GRANTS, BARGAINS, SELLS, AND CONVEYS to Trustee the Mortgaged Property, with power of sale and right of entry, subject only to the Permitted Encumbrances, to have and to hold the Mortgaged Property to Trustee, its successors in trust, and the Trustee's assigns forever, and Borrower does hereby bind itself, its successors, and its assigns to warrant and forever defend the title to the Mortgaged Property to Trustee against anyone lawfully claiming it or any part of it; provided, however, that if the Indebtedness is paid in full as and when it becomes due and payable and the Obligations are performed on or before the date they are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate; otherwise, they shall remain in full force and effect. As additional security for the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Borrower grants to Lender a security interest in the Personalty, Fixtures, Leases, and Rents under Article Nine of the Uniform Commercial Code in effect in the state where the Mortgaged Property is located. Borrower further grants, bargains, conveys, assigns, transfers, and sets over to Trustee, acting as both a trustee and an agent for Lender under this Security Instrument, a security interest in and to all of Borrower's right, title, and interest in, to, and under the Personalty, Fixtures, Leases, Rents, and Mortgaged Property (to the extent characterized as personal property) to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations.

Borrower agrees to execute and deliver, from time to time, such further instruments, including, but not limited to, security agreements, assignments, and UCC financing statements, as may be requested by

Lender to confirm the lien of this Security Instrument on any of the Mortgaged Property. Borrower further irrevocably grants, transfers, and assigns to Lender the Rents. This assignment of Rents is to be effective to create a present security interest in existing and future Rents of the Mortgaged Property.

TO MAINTAIN AND PROTECT THE SECURITY OF THIS SECURITY INSTRUMENT, TO SECURE THE FULL AND TIMELY PERFORMANCE BY BORROWER OF EACH AND EVERY OBLIGATION, COVENANT, AND AGREEMENT OF BORROWER UNDER THE LOAN DOCUMENTS, AND AS ADDITIONAL CONSIDERATION FOR THE INDEBTEDNESS AND OBLIGATIONS EVIDENCED BY THE LOAN DOCUMENTS, BORROWER HEREBY COVENANTS, REPRESENTS, AND AGREES AS FOLLOWS:

DEFINITIONS.

1. Definitions. For purposes of this Security Instrument, each of the following terms shall have the following respective meanings:

1.1 "**Attorneys' Fees.**" Any and all attorney fees (including the allocated cost of in-house counsel), paralegal, and law clerk fees, including, without limitation, fees for advice, negotiation, consultation, arbitration, and litigation at the pretrial, trial, and appellate levels, and in any bankruptcy proceedings, and attorney costs and expenses incurred or paid by Lender in protecting its interests in the Mortgaged Property, including, but not limited to, any action for waste, and enforcing its rights under this Security Instrument.

1.2 "**Borrower.**"

1.2.1. The named Borrower in this Security Instrument;

1.2.2. The obligor under the Note, whether or not named as Borrower in this Security Instrument; and

1.2.3. Subject to any limitations of assignment as provided for in the Loan Documents, the heirs, legatees, devisees, administrators, executors, successors in interest to the Mortgaged Property, and the assigns of any such person.

All references to Borrower in the remainder of the Loan Documents shall mean the obligor under the Note.

1.3 **"Event of Default."** An Event of Default as defined in the Loan Agreement.

1.4 **"Fixtures."** All right, title, and interest of Borrower in and to all materials, supplies, equipment, apparatus, and other items now or later attached to, installed on or in the Land or the Improvements, or that in some fashion are deemed to be fixtures to the Land or Improvements under the laws of the state where the Mortgaged Property is located, including the Uniform Commercial Code. "Fixtures" includes, without limitation, all items of Personalty to the extent that they may be deemed Fixtures under Governmental Requirements.

1.5 **"Governmental Authority."** Any and all courts, boards, agencies, commissions, offices, or authorities of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city, or otherwise) whether now or later in existence.

1.6 **"Governmental Requirements."** Any and all laws, statutes, codes, ordinances, regulations, enactments, decrees, judgments, and orders of any Governmental Authority.

1.7 **"Impositions."** All real estate and personal property taxes, water, gas, sewer, electricity, and other utility rates and charges; charges imposed under any subdivision, planned unit development, or condominium declaration or restrictions; charges for any easement, license, or agreement maintained for the benefit of the Mortgaged Property, and all other taxes, charges, and assessments and any interest, costs, or penalties of any kind and nature that at any time before or after the execution of this Security Instrument may be assessed, levied, or imposed on the Mortgaged Property or on its ownership, use, occupancy, or enjoyment.

1.8 **"Improvements."** Any and all buildings, structures, improvements, fixtures, and appurtenances now and later placed on the Mortgaged Property, including, without limitation, all apparatus

payment within 90 days after such written request is made; if the Mortgaged Property consists of or includes a leasehold estate, each obligation, covenant, and agreement of Borrower arising under, or contained in, the instrument(s) creating any such leasehold; all agreements of Borrower to pay fees and charges to Lender whether or not set forth in this Security Instrument; and charges, as allowed by law, when they are made for any statement regarding the obligations secured by this Security Instrument.

The Obligations specifically exclude the Environmental Indemnity Agreement dated the date of this Security Instrument, executed by Borrower and any guarantor of the Loan, which is not secured by this Security Instrument.

1.19 "Permitted Encumbrances." At any particular time, (a) liens for taxes, assessments, or governmental charges not then due and payable or not then delinquent; (b) liens, easements, encumbrances, and restrictions on the Mortgaged Property that are allowed by Lender to appear in Schedule B, with Parts I and II of an ALTA title policy to be issued to Lender following recordation of the Security Instrument; and (c) liens in favor of or consented to in writing by Lender.

1.20 "Person." Natural persons, corporations, partnerships, unincorporated associations, joint ventures, and any other form of legal entity.

1.21 "Personalty." All of the right, title, and interest of Borrower in and to all tangible and intangible personal property, whether now owned or later acquired by Borrower, including, but not limited to, water rights (to the extent they may constitute personal property), all equipment, inventory, goods, consumer goods, accounts, chattel paper, instruments, money, general intangibles, letter-of-credit rights, deposit accounts, investment property, documents, minerals, crops, and timber (as those terms are defined in the Uniform Commercial Code) and that are now or at any later time located on, attached to, installed, placed, used on, in connection with, or are required for such attachment, installation, placement, or use on the Land, the Improvements, Fixtures, or on other goods located on the Land or Improvements, together with all additions, accessions, accessories, amendments, modifications to the Land or Improvements, extensions, renewals, and enlargements and proceeds of the Land or Improvements, substitutions for, and income and profits from, the Land or Improvee Personalty includes, but is not limited to, all goods, machinery, tools, equipment (including fire sprinklers and alarm systems); building materials, air conditioning, heating, refrigerating, electronic monitoring, entertainment, recreational, maintenance, extermination of vermin or insects, dust removal, refuse and garbage equipment; vehicle maintenance and repair equipment; office furniture (including tables, chairs, planters, desks, sofas, shelves, lockers, and cabinets); safes, furnishings, appliances (including ice-making machines, refrigerators, fans, water heaters, and incinerators); rugs, carpets, other floor coverings, draperies, drapery rods and brackets, awnings, window shades, venetian blinds, curtains, other window coverings; lamps, chandeliers, other lighting fixtures; office maintenance and other supplies; loan commitments, financing arrangements, bonds, construction contracts, leases, tenants' security deposits, licenses, permits, sales contracts, option contracts, lease contracts, insurance policies, proceeds from policies, plans, specifications, surveys, books, records, funds, bank deposits; and all other intangible personal property. Personalty also includes any other portion or items of the Mortgaged Property that constitute personal property under the Uniform Commercial Code.

1.22 "Rents." All rents, issues, revenues, income, proceeds, royalties, profits, license fees, prepaid municipal and utility fees, bonds, and other benefits to which Borrower or the record title owner of the Mortgaged Property may now or later be entitled from or which are derived from the Mortgaged Property, including, without limitation, sale proceeds of the Mortgaged Property; any room or space sales or rentals from the Mortgaged Property; and other benefits paid or payable for using, leasing, licensing, possessing, operating from or in, residing in, selling, mining, extracting, or otherwise enjoying or using the Mortgaged Property.

1.23 "Uniform Commercial Code." The uniform commercial code as found in the statutes of the state in which the Mortgaged Property is located.

1.24 "Water Rights." All water rights of whatever kind or character, surface or underground, appropriative, decreed, or vested, that are appurtenant to the Mortgaged Property or otherwise used or useful in connection with the intended development of the Mortgaged Property.

Any terms not otherwise defined in this Security Instrument shall have the meaning given them in the Loan Agreement and Note, dated of even date herewith between Borrower and Lender.

UNIFORM COVENANTS

2. Repair and Maintenance of Mortgaged Property. Borrower shall (a) keep the Mortgaged Property in good condition and repair; (b) not substantially alter, remove, or demolish the Mortgaged Property or any of the Improvements except when incident to the replacement of Fixtures, equipment, machinery, or appliances with items of like kind; (c) restore and repair to the equivalent of its original condition all or any part of the Mortgaged Property that may be damaged or destroyed, including, but not limited to, damage from termites and dry rot, soil subsidence, and construction defects, whether or not insurance proceeds are available to cover any part of the cost of such restoration and repair, and regardless of whether Lender permits the use of any insurance proceeds to be used for restoration under this Security Instrument; (d) pay when due all claims for labor performed and materials furnished in connection with the Mortgaged Property and not permit any mechanics' or materialman's lien to arise against the Mortgaged Property or furnish a loss or liability bond against such mechanics' or materialman's lien claims; (e) comply with all laws affecting the Mortgaged Property or requiring that any alterations, repairs, replacements, or improvements be made on it; (f) not commit or permit waste on or to the Mortgaged Property, or commit, suffer, or permit any act or violation of law to occur on it; (g) not abandon the Mortgaged Property; (h) cultivate, irrigate, fertilize, fumigate, and prune in accordance with prudent agricultural practices; (i) if required by Lender, provide for management satisfactory to Lender under a management contract approved by Lender; (j) notify Lender in writing of any condition at or on the Mortgaged Property that may have a significant and measurable effect on its market value; (k) if the Mortgaged Property is rental property, generally operate and maintain it in such manner as to realize its maximum rental potential; and (l) do all other things that the character or use of the Mortgaged Property may reasonably render necessary to maintain it in the same condition (reasonable wear and tear expected) as existed at the date of this Security Instrument.

3. Use of Mortgaged Property. Unless otherwise required by Governmental Requirements or unless Lender otherwise provides prior written consent, Borrower shall not change, nor allow changes in, the use of the Mortgaged Property from the current use of the Mortgaged Property as of the date of this Security Instrument. Borrower shall not initiate or acquiesce in a change in the zoning classification of the Mortgaged Property without Lender's prior written consent.

4. Condemnation and Insurance Proceeds.

4.1 Assignment to Lender. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of or damage or injury to the Mortgaged Property, or any part of it, or for conveyance in lieu of condemnation, are assigned to and shall be paid to Lender, regardless of whether Lender's security is impaired. All causes of action, whether accrued before or after the date of this Security Instrument, of all types for damages or injury to the Mortgaged Property or any part of it, or in connection with any transaction financed by funds lent to Borrower by Lender and secured by this Security Instrument, or in connection with or affecting the Mortgaged Property or any part of it, including, without limitation, causes of action arising in tort or contract or in equity, are assigned to Lender as additional security, and the proceeds shall be paid to Lender. Lender, at its option, may appear in and prosecute in its own name any action or proceeding to enforce any such cause of action and may make any compromise or settlement of such action. Borrower shall notify Lender in writing immediately on obtaining knowledge of any casualty damage to the Mortgaged Property or damage in any other manner in excess of $2,000.00 or knowledge of the institution of any proceeding relating to condemnation or other taking of or damage or injury to all or any portion of the Mortgaged Property. Lender, in its sole and absolute discretion, may participate in any such proceedings and may join Borrower in adjusting any loss covered by insurance. Borrower covenants and agrees with Lender, at Lender's request, to make, execute, and deliver, at Borrower's expense, any and all assignments and other

IN WITNESS WHEREOF, Borrower has executed and delivered this Security Instrument as of the date first written above.

BORROWER:

CEC141202761, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

By: Scott Ayers
Name: Scott Ayers
Title: Managing Member

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of Idaho)

County of Ada)

On August 9, 2021 before me, Lenise Redding, Notary Public
Date *Here Insert Name of the Officer*

Personally Appeared Scott Ayers
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

LENISE REDDING
Notary Public - State of Idaho
Commission Number 6066
My Commission Expires Nov 9, 2022

I certify under PENALTY OF PERJURY under the laws of the State of Idaho that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

This notarial act involved the use of two-way audio/video communication technology.

Exhibit No. 67

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/2/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

CONFIDENTIAL

Subject: Re: 13433 E. Chandler Blvd, Suites A and B - Request for Consent to Assignment
Attachments: Lease Default 2nd letter 8-10-2019.PDF; Trulieve4t.jpg; Corruption trial1.png; tied to tracksbt.jpg; Nielsen-Complaint.pdf; Screenshot_2021-07-18_170845.png; Falcon Complaint $50 Million.pdf

From: S. Aye <cec141202761llc@gmail.com>
Sent: Tuesday, August 31, 2021 4:39 PM
To: Will Koslow <wkoslow@harvestinc.com>
Subject: Re: 13433 E. Chandler Blvd, Suites A and B - Request for Consent to Assignment

Dear Mr. Koslow,

It would appear that section 10.1e of the lease requires payment of a $500 fee to the landlord to **consider** and process the request. The $500 fee has not been paid as of August 31, 2021.

Ms. Jackim had previously sent Harvest a Notice of Default (attached). It's my recollection that Harvest has not resolved any of the issues.

Ms. Jackim, our former counsel, has left her law firm. So, we are in the position of having to retain new counsel to replace her.

Also, Harvest failed to pay the $19,263 rent owing for January 2020. Please pay your rent.

Harvest has failed to pay the July 2020 rent in full (you were advised in writing, Ayers email dated 7/9/20, that your payment was $500 short)

A marijuana dispensary location landlord claims Mr. Steve White, CEO of Harvest and Mr. Will Koslow used a merger arrangement to defraud the landlord of $175,000 per month rent (CV2021-010116), resulting in millions of dollars of loss. What steps have you taken to make sure that other landlords are not similarly impacted in future mergers?

Mr. White is accused of illegally trafficking marijuana in a pending lawsuit (Case 1:21-cv-00692 Document 1 Filed 03/08/21 USDC Colorado). Can you provide any additional information on the matter? I worry that, if Mr. White is involved in a criminal matter, CEC's property may be seized as part of a 'civil asset forfeiture'.

Recently, Harvest paid $50 million in cash to 'executives' to acquire Falcon. The deal was not consummated following the cash exchange. In an unsuccessful attempt to get back the cash, Harvest filed a lawsuit. According to Harvest, the Falcon 'executives' displayed front and rear pockets stuffed with cash, they carried bags of cash, and wore tens of thousands of dollars in gold jewelry to conventions and meetings with Harvest (excerpts from Case 2:20-cv-00035-DLR filed 1/6/20). However, Harvest has steadfastly refused to pay the $500 minimum legal fee provided in the lease, Harvest has not included the $500 fee required by section 10 in connection with the Assignment request, for more than a year, Harvest has done nothing to provide shade and water for customers forced to line up in 100F+ heat outside of its store location. $50 million in cash on a handshake to Falcom 'executives', but you won't turn loose of a dime for any expense in the lease without a fight.

Sincerely,

Scott Ayers, Mngr
CEC141202761, LLC

CONFIDENTIAL

On Tue, Aug 31, 2021 at 11:16 AM Will Koslow <wkoslow@harvestinc.com> wrote:

> Mr. Ayers-
>
> The below and attached was originally sent to you on August 6. Subsequent emails to follow up with you were sent on August 17 and August 23. No response has been received.
>
> I am following up with you again today, August 31.
>
> Your consent to the proposed assignment is requested. Your approval shall not be unreasonably withheld, delayed or conditioned – your prompt attention to this matter is expected. Please let me know if you have any questions.
>
> Thank you,
>
> Will

Will Koslow | Assistant General Counsel | M: 646.831.1997 | wkoslow@harvestinc.com

> **From:** Will Koslow <wkoslow@harvestinc.com>
> **Sent:** Friday, August 6, 2021 3:03 PM
> **To:** S. Aye <cec141202761llc@gmail.com>
> **Cc:** Jesse Francoeur <jfrancoeur@harvestinc.com>
> **Subject:** 13433 E. Chandler Blvd, Suites A and B - Request for Consent to Assignment

CONFIDENTIAL

Mr. Ayers-

The attached correspondence is being sent to you pursuant to 10 and 10.1 of the Lease and is a request for Landlord to provide consent to an Assignment (as defined in Section 10 of the Lease). This email and the attached correspondence will serve as Notice under Section 22 of the Lease.

To be clear, once executed, the Consent applies at the time the transaction constituting an Assignment is completed. More information is included in the correspondence.

Please contact me with any questions. We look forward to receipt of your signed consent shortly.

Thank you,

Will

HARVEST

Will Koslow | Assistant General Counsel | M: 646.831.1997 | wkoslow@harvestinc.com

--

S. Ayers, Mngr
CEC141202761, LLC

CONFIDENTIAL

SacksTierney P.A.
ATTORNEYS

James W. Armstrong
Shar Bahmani
Steven R. Beeghley
Stephen Aron Benson
Brian E. Ditsch
Paul F. Dowdell
Judith M. Dworkin
Patty A. Ferguson
Brian M. Flaherty
Michael Galen
Roxann S. Gallagher
Gregory P. Gillis
Steven M. Goldstein
Bryan J. Gottfredson
Gaye L. Gould
Michael J. Harris
Evan F. Hiller
Janet E. Jackim
Joe Keene
Robert G. Kimball
Nancy M. Lashnits
Jeffrey S. Leonard
Phoebe Moffatt
Randy Nussbaum
Wesley D. Ray
Lauren M. Reynolds
Michael R. Rooney
Clifford J. Roth
Philip R. Rudd
James S. Samuelson
Sharon B. Shively
Allyson J. Teply
David C. Tierney
Matthew F. Winter

Seymour Sacks (1932 – 2011)
Marvin S. Cohen (1931 – 2009)
Gary E. Pace, CLM, Executive Director

MERITAS
LAW FIRMS WORLDWIDE

August 9, 2019

Jason Vedadi
Manager
High Desert Healing, L.L.C.
627 S. 48th St., Suite 100
Tempe, Arizona 85281
VIA FIRST CLASS MAIL, CERTIFIED,
RETURN RECEIPT REQUESTED AND
EMAIL TO COUNSEL,
wkoslow@harvestinc.com

Writer's Direct Line: 480.425.2616
Writer's Direct Facsimile: 480.425.4916
Writer's E-mail: Jackim@SacksTierney.com

Re: That certain Standard Industrial/Commercial Single-Tenant Lease – Net, 13433 E. Chandler Blvd., Ste. A, Chandler, Arizona

Dear Mr. Vedadi (and Mr. Koslow):

NOTICE OF CONTINUING UNCURED DEFAULTS OF LEASE AND

LANDLORD'S EXERCISE OF REMEDIES

This firm represents CEC 141202761, LLC, an Arizona limited liability company ("Lessor"), the owner of the real estate described above (the "Premises"), which is leased by High Desert Healing, L.L.C., an Arizona limited liability company ("Lessee") pursuant to the lease described above, dated March 1, 2018 and as amended on December 11, 2018 by the First Amendment ("First Amendment") (collectively, the "Lease"). Capitalized terms used but not defined herein are defined in the Lease.

As you know, Lessor delivered a Notice of Lease Defaults to you on July 2, 2019 requiring Lessee's cure of various breaches of the Lease within ten (10) days. Mr. Koslow responded to the Notice on July 22, 2019, i.e., *ten (10) days late*. While Lessor appreciates Mr. Koslow's detailed response, various matters still remain for resolution and Lessor does not agree with much of the response. Accordingly, Lessor hereby reserves all rights and remedies with respect to the defaults described in the Notice and Lessee's response thereto and no waiver should be assumed or implied from Lessor's decision at this time not to pursue its remedies for Lessee's defaults.

Please direct your immediate attention to the following:

A. Breach of the Lease for Liens Continues.

1. **The Lease Requires**: Section 7.7 of the Lease requires Lessee to keep the Premises and all of Lessee's personal property free of liens. It further provides that the Lease "constitutes a security agreement pursuant to A.R.S. § 47-9203 and is a contractual lien". Accordingly, at the commencement of the Lease Lessor had: (a) contractual (Lease) lien rights in *all of Lessee's personal property, wherever located, for any default*, monetary or otherwise, and (b) landlord's statutory lien rights pursuant to A.R.S. §§ 33-361, 33-362 in *all of Lessee's personal property in the premises for the payment of rent*. These are two (2) different lien rights and remedies.

2. **Change of Collateral Description Ineffective**: As revealed in my July 2 Notice of Lease Defaults, Lessee's lender filed a UCC financing statement three (3) months after the Lease date (October, 2018) against "all present and future property and assets of the Debtor", which filing was a violation of Lessee's obligations under Section 7.7 of the Lease. Following Lessor's July 2 protest of this filing, someone filed a change of collateral description (via a UCC financing statement amendment) on July 22, 2019, attempting to exclude the debtor's personal property located at the premises from the collateral described in the October, 2018 financing statement.[1] As admitted in Mr. Koslow's July 22 letter, the October, 2018 financing statement was in error.

3. **New Financing Statement Deepens Lessees's Self-Dug Hole**: On July 26, 2019 lender filed *another* UCC financing statement (Instrument #2019-003-1266-1) against *all personal property of the Lessee (and affiliates) without regard to location*, effectively eviscerating the financing statement amendment and subjecting the Lessee's personal property in the premises to lender's lien. It appears, therefore, that efforts were intentionally made to reverse the financing statement amendment.

We have Lessee's breach of the Lease with the October, 2018 financing statement filing, in direct contravention of the Lease prohibiting such liens, and the attempt to correct the breach by an ineffective financing statement amendment. Now we see another financing statement filed (on July 26) repeating Lessee's errors of the past and adding to the continuing breach.

Let me make this clear: the Lease granted two (2) different lien rights that predated the lender's liens: a landlord's lien on personal property in the premises for tenant's non-payment of rent; and a contractual lien on *all* of the Lessee's property, wherever located, for tenant's non-payment of rent and nonperformance of lease obligations. Each of the lender's UCC financing statements breaches the Lease and each must be terminated as to Lessee now. ***Lessee must have the two (2) financing statements terminated not later than August 31, 2019.***

[1] This action merely removed a paper lien that was subordinate to the landlord's lien anyway and as such was pointless, since the landlord's lien on all of the tenant's personal property in the leased premises commences on the date the property is located in the premises and is perfected without any action on landlord's part.

B. Unapproved Alterations and Plan Modifications are Evident and Admitted by Counsel. Clearly, Mr. Koslow's letter details Lessee's failure to obtain Lessor's prior approval to various alterations to the Suites including covering up the door and painting the exterior. And note Ms. Johnson's March 29, 2019 email (attached) reporting on actions *already taken by Lessee* (including those described below). Both the failure to notify Lessor and obtain Lessor's prior approval of Lessee's alteration intentions and the acts of alteration are serious, material breaches of the Lease. In response to Mr. Koslow's July 22 letter admitting and attempting to explain away numerous breaches of the Lease, we submit the following select (but not comprehensive) corrections to the record:

1. **Heat Pump Misinformation**. Mr. Koslow's July 22 letter contains a number of incorrect assertions concerning the heat pump in the Premises. This equipment provided heating and cooling to Suite B for years, and had been connected both electrically (50 amp electrical circuit) and mechanically at the commencement of the Lease. As the photograph Lessee supplied proves, Lessee has disconnected it electrically and mechanically (metal to metal sealing tape and adhesive removed) and moved it to a new location. All of these actions were taken without notice to or the approval of Lessor and now the heat pump is inoperable and Suite B without cooling or heating.

2. **Glass Door Addition**. Plans submitted by Lessee dated January 23, 2019 indicate Harvest installed a 3 x 8 glass entrance door without Lessor's approval.

3. **Suite B Modifications without Plan Submission**. Mr. Koslow's July 22 letter further documents Lessee's admission to modifications to Suite B without the submission of plans to Lessor. Where are the Suite B plans?

4. **Metal Siding Added to the Building**. One of the most egregious of Lessee's unapproved and undisclosed modifications to the Premises, admitted by Lessee in Mr. Koslow's July 22 letter, was Lessee's application of hundreds of square feet of unknown metal siding to the building in an unspecified manner.

5. **The Entombment of Rollup Glass Doors**. Recall that Lessee agreed in writing to remove the expensive rollup glass doors under the direction of Lessor. When Mr. Ayers visited the Premises on March 29, 2019, he first learned that Lessee had 'entombed' the doors behind an unauthorized drywall structure (note Ms. Johnson's attached email that the doors "are just covered up". During that visit Ms. Johnson made repeated *verbal* requests for approval *of work that had already been completed*, to which Mr. Ayers responded that modifications must be requested in writing and submitted to Lessor for approval. Verbal requests made *after the fact of modification* do not comply with the Lease.

6. **Removal of Signage**. All signage on the building of the Premises was removed without prior notice or permission. See Ms. Johnson's attached email admitting having "removed all of your signage".

C. Next Steps.

1. **Lessee's Ineffective Notice of Lessor's Default**. Today I learned that Harvest has noticed Lessor of Lessor's default of the Lease, which I will respond to in the near future. However, I note that pursuant to Section 11.2 of the Lease, Lessee has no right to notice Lessor of Lessor's default in the event that Lessee is in default, which default (as we know) is continuing and uncured, and that Lessor is entitled to a thirty (30) day cure period (a considerably longer period than the Lessee's notice of default requires (i.e., five (5) days)). *I am out of the country and not returning to the office until August 15, 2019, but expect to send a response to the default notice shortly thereafter.*

2. **Inspection to Come**. Pursuant to rights granted Lessor in Section 7.5 of the Lease, Lessor will be conducting an inspection of the Premises at a date to be determined on written notice to Lessee. Lessor will be accompanied by a construction expert of Lessor's selection (but at Lessee's cost per the Lease); Lessee may designate a representative to accompany them provided the designation is in writing to the undersigned. Lessee's cooperation in granting full access to the Premises is expected but in the event that cooperation is not full and complete Lessor will seek law enforcement and/or court authority to fully exercise Lessor's access and inspection rights.

3. **Lessor's Contact Person**. Given Lessee's egregious list of defaults, many of which remain uncured today, please edit your records to require that all required or desired contacts with Lessor for any reason shall now be directed to the undersigned, provided that Lessee may continue to pay Lessor for all Rent. I will endeavor to promptly respond to your contacts.

4. **Attorneys' Fees**. Pursuant to Article 11 and Section 33 of the Lease, demand is hereby made for payment of Lessor's attorneys' fees and costs related to Lessee's defaults. A statement from the undersigned will be sent shortly; payment is expected upon receipt of the invoice. Lessee's failure to make the payment shall be considered another default of the Lease.

5. **Lessee's Cure of Defaults**. Although I expect the Lessor's construction expert to provide a more definitive list of Lessee's construction errors, non-compliance with building codes and other safety violations, feel free to fix the defaults already raised by Lessor, and if you do, please notify me in writing of Lessee's curative efforts. You are hereby notified that any one or more of the following remedies for Lessee's default may be elected and actions taken by Lessor without additional notice or an opportunity to cure the defaults:

a. The self-help remedy of lockout, dispossession of Lessee from part or all of the Premises, without Lease termination;

b. Litigation for breaches of the Lease for damages, including Lessor's attorneys' fees;

c. Eviction for breaches of the Lease, and other remedies.

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Time is of the essence. If you would like to discuss these matters, please call or email me.

Very truly yours,

SACKS TIERNEY P.A.

/s/

Janet E. Jackim

JEJ:

Encl.

CC: Guarantor

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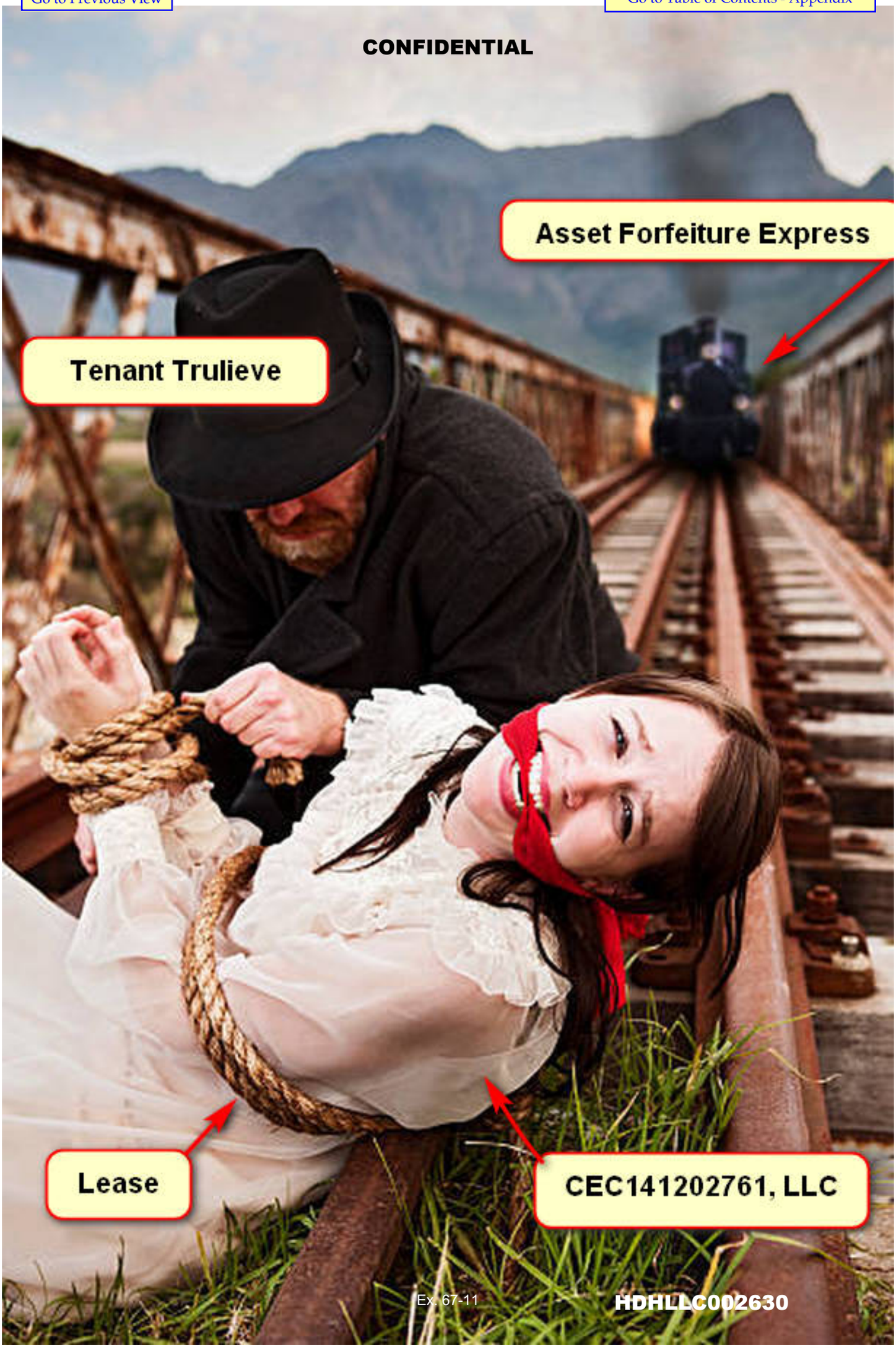

Exhibit No. 68

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/2/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

CONFIDENTIAL

From:	Will Koslow
To:	S. Aye
Subject:	RE: 13433 E. Chandler Blvd, Suites A and B - Request for Consent to Assignment
Date:	Wednesday, September 1, 2021 10:45:22 AM
Attachments:	image001.png image002.png FW Chandler Lease.msg Order Dismissing Complaint against Steve White.pdf

Mr. Ayers-

It seems communications are becoming unnecessarily contentious. I indicated in my initial correspondence requesting the Consent to Assignment that the $500 fee required by Section 10.1(e) of the Lease would be paid simultaneous with the next installment of Base Rent. See copy of such provision highlighted below. At the time of this email, you should now be in receipt of this payment.

If there are issues that you believe are unsettled pertaining to any alleged default under the Lease, please let me know what they are – as there were multiple discussions and correspondences exchanged between Ms. Jackim and Mr. Conant following the date of the Notice of Default that you circulated in your prior email. Not having heard anything further from your attorney it was my belief that these matters had been resolved.

You allege that the January 2020 rent was not paid; however, on July 29, 2019 we paid $18,737.88 and on July 30, 2019 we again paid another $18,737.88 to you. On January 15, 2020, the attached email was sent to Janet Jackim, which indicated that the accumulated rent credit was to be applied for January 2020. No response or other communication was ever made following this correspondence to your counsel regarding January 2020 rent.

The $500 payment that you indicate was to be provided in July 2020 was disputed by the Tenant. In communication to address your concern we requested an invoice evidencing the charge you suggest is to be paid, no invoice was ever produced. Further, Landlord's ability to obtain attorneys' fees under Section 28 of the Lease is limited to attorneys' fees, costs and expenses incurred in the preparation and service of notices of Default. No notice of Default from an attorney was ever served/provided to the Tenant in connection with this matter.

In connection with the references to various litigation matters included in your email below, we are not able to comment on pending litigation outside of the following:

1. CV2021-010116 – See the Order from the Court which quashed service of the summons and dismissed the complaint against Steve White.
2. Case 1:21-cv-00692 – This case has nothing to do with the entity that is the Tenant under the Lease.

I address your remaining points which I've repeated here:

a. Harvest has steadfastly refused to pay the $500 minimum legal fee provided in the lease – this

point was already addressed above.

b. Harvest has not included the $500 fee required by section 10 in connection with the Assignment request – this point was already addressed above.

c. For more than a year, Harvest has done nothing to provide shade and water for customers forced to line up in 100F+ heat outside of its store location – You previously raised concerns about providing shade to the Tenant's customers and we have communicated with you separately to address these concerns. Information was provided to you on August 9, 2021 requesting you to provide approval/feedback on shade structures to address this matter. Email correspondence requesting a response from you in relation to the shade structure was sent as a follow up on each of August 17, 2021 and August 23, 2021, we have yet to receive a response from you. The Tenant is happy to move forward with the shade structure project with your cooperation.

Again, I would request that we have a meeting at the Premises to discuss the above issues as well as any others that you may believe exist. Please propose a few dates/times that would work for you.

Thank you,
Will

Will Koslow | Assistant General Counsel | M: 646.831.1997 | wkoslow@harvestinc.com

---

From: S. Aye <cec141202761llc@gmail.com>
Sent: Tuesday, August 31, 2021 4:39 PM
To: Will Koslow <wkoslow@harvestinc.com>
Subject: Re: 13433 E. Chandler Blvd, Suites A and B - Request for Consent to Assignment

Dear Mr. Koslow,

It would appear that section 10.1e of the lease requires payment of a $500 fee to the landlord to **consider** and process the request. The $500 fee has not been paid as of August 31, 2021.

Ms. Jackim had previously sent Harvest a Notice of Default (attached). It's my recollection that Harvest has not resolved any of the issues.

Ms. Jackim, our former counsel, has left her law firm. So, we are in the position of having to retain new counsel to replace her.

Also, Harvest failed to pay the $19,263 rent owing for January 2020. Please pay your rent.

Harvest has failed to pay the July 2020 rent in full (you were advised in writing, Ayers email dated 7/9/20, that your payment was $500 short)

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A marijuana dispensary location landlord claims Mr. Steve White, CEO of Harvest and Mr. Will Koslow used a merger arrangement to defraud the landlord of $175,000 per month rent (CV2021-010116), resulting in millions of dollars of loss. What steps have you taken to make sure that other landlords are not similarly impacted in future mergers?

Mr. White is accused of illegally trafficking marijuana in a pending lawsuit (Case 1:21-cv-00692 Document 1 Filed 03/08/21 USDC Colorado). Can you provide any additional information on the matter? I worry that, if Mr. White is involved in a criminal matter, CEC's property may be seized as part of a 'civil asset forfeiture'.

Recently, Harvest paid $50 million in cash to 'executives' to acquire Falcon. The deal was not consummated following the cash exchange. In an unsuccessful attempt to get back the cash, Harvest filed a lawsuit. According to Harvest, the Falcon 'executives' displayed front and rear pockets stuffed with cash, they carried bags of cash, and wore tens of thousands of dollars in gold jewelry to conventions and meetings with Harvest (excerpts from Case 2:20-cv-00035-DLR filed 1/6/20). However, Harvest has steadfastly refused to pay the $500 minimum legal fee provided in the lease, Harvest has not included the $500 fee required by section 10 in connection with the Assignment request, for more than a year, Harvest has done nothing to provide shade and water for customers forced to line up in 100F+ heat outside of its store location. $50 million in cash on a handshake to Falcom 'executives', but you won't turn loose of a dime for any expense in the lease without a fight.

Sincerely,

Scott Ayers, Mngr
CEC141202761, LLC

On Tue, Aug 31, 2021 at 11:16 AM Will Koslow <wkoslow@harvestinc.com> wrote:

> Mr. Ayers-
> The below and attached was originally sent to you on August 6. Subsequent emails to follow up with you were sent on August 17 and August 23. No response has been received.
>
> I am following up with you again today, August 31.
>
> Your consent to the proposed assignment is requested. Your approval shall not be unreasonably withheld, delayed or conditioned – your prompt attention to this matter is expected. Please let me know if you have any questions.
>
> Thank you,
> Will

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Will Koslow | Assistant General Counsel | M: 646.831.1997 | wkoslow@harvestinc.com

---

From: Will Koslow <wkoslow@harvestinc.com>
Sent: Friday, August 6, 2021 3:03 PM
To: S. Aye <cec141202761llc@gmail.com>
Cc: Jesse Francoeur <jfrancoeur@harvestinc.com>
Subject: 13433 E. Chandler Blvd, Suites A and B - Request for Consent to Assignment

Mr. Ayers-
The attached correspondence is being sent to you pursuant to 10 and 10.1 of the Lease and is a request for Landlord to provide consent to an Assignment (as defined in Section 10 of the Lease). This email and the attached correspondence will serve as Notice under Section 22 of the Lease.

To be clear, once executed, the Consent applies at the time the transaction constituting an Assignment is completed. More information is included in the correspondence.

Please contact me with any questions. We look forward to receipt of your signed consent shortly.

Thank you,
Will

Will Koslow | Assistant General Counsel | M: 646.831.1997 | wkoslow@harvestinc.com
Confidential communication notice: This e-mail and any files transmitted with it are the property of Harvest Health & Recreation, Inc. and/or its affiliates, are confidential, and are intended solely for the use of the individual or entity to whom this e-mail is addressed. This message may contain privileged, proprietary, or otherwise private information. If you are not one of the named recipients or otherwise have reason to believe that you have received this e-mail in error, please notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing or copying of this e-mail is strictly prohibited.

--

S. Ayers, Mngr
CEC141202761, LLC

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From:	Paul Conant
To:	Will Koslow
Subject:	FW: Chandler Lease
Date:	Wednesday, January 15, 2020 7:15:51 PM

From: Paul Conant
Sent: Wednesday, January 15, 2020 7:15 PM
To: 'Jackim, Janet E.' <Janet.Jackim@sackstierney.com>
Subject: Chandler Lease

Janet,

I am writing to you about the Harvest lease at your client's Chandler location.

In December, I was asked to email you to let you know that my client's accounting showed that there was an overpayment of rent earlier in 2019, and so my client would, in adjustment of that, not make a January 2020 payment.

I recall typing the email but the property manager contacted Harvest about non-payment, and through some discussions, it came back that the property manager did not get that word. Nor did you.

I checked my email and (I think because I was travelling and connectivity was spotty) it never went out you. So, the problem is on my end, and I apologize.

The issue remains, though, that Harvest's accounting shows and overpayment and that rent was overpaid in 2019.

I'd like to make sure that the folks who track this can compare notes to address this accounting issue.

Call to discuss at any time.

Regards,

Paul

Exhibit No. 69

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

DEF 5/4/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

CONFIDENTIAL

From:	Barbara Brackett
To:	Will Koslow
Cc:	Joseph Parker; Katie Cheney
Subject:	13433 E. Chandler Boulevard
Date:	Thursday, September 2, 2021 1:57:19 PM
Attachments:	L. Tenant requesting assignment information (final).pdf

Mr. Koslow: The enclosed letter is also being sent as referenced.

Thank you,

Barbara Brackett
Office Manager

Parker Law Team, PLLC
PO Box 72708
Phoenix, Arizona 85050

Tel: 602.889.5119
Email: admin@parkerlawteam.com

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PARKER LAW TEAM, PLLC

Joseph M. Parker, Esq.
(480) 628-0502
joseph.parker@parkerlawteam.com

P.O. Box 72708
Phoenix, Arizona 85050

Anica P. Parker, Esq.
(480) 326-3762
anica.parker@parkerlawteam.com

Katherine O. Cheney, Esq.
(480) 203-4606
katie.cheney@parkerlawteam.com

Barbara, Brackett, Office Manager
(602) 889-5119
admin@parkerlawteam.com

September 2, 2021

VIA OVERNIGHT COURIER

High Desert Healing, LLC
627 S. 48th St., Suite 100
Tempe, AZ 85281
Attention: Jason Vedadi

VIA OVERNIGHT COURIER

High Desert Healing, LLC
13433 E. Chandler Blvd., Suites A and B
Chandler, AZ 85255

VIA EMAIL
WKOSLOW@HARVESTINC.COM
AND VIA OVERNIGHT COURIER

Harvest Health & Recreation, Inc.
Attn: William M. Koslow
1155 W. Rio Salado Pkwy, Suite 201
Tempe, AZ 85281

Re: Standard Industrial/Commercial Single-Tenant Lease-Net Air Commercial Real Estate Association dated March 1, 2018 (the "Lease") regarding the property located at 13433 E. Chandler Blvd., Suites A and B, in Chandler, Arizona 85255 ("Premises")

Dear Tenant:

This law firm represents CEC 141202761, LLC, the "Landlord" under the Lease, relative to the written request from you, as the "Tenant" under the Lease, dated August 6, 2021 that the Landlord approve the assignment of the Lease to Trulieve Cannabis Corp., a British Columbia corporation ("Trulieve"). In furtherance of the Landlord's consideration of the Tenant's request, the Landlord needs, and we hereby request on behalf of the Landlord pursuant to section 10(e) of the Lease, the following information:

1) A reasonably detailed written explanation of the legal structure and ownership of Trulieve, including, without limitation, the name of each equity owner of Trulieve owning or controlling 20% or more of any class of ownership and/or owning or controlling 20% or more of the combined classes of ownership, as applicable, verifying the same.
2) A reasonably detailed written explanation of the nature and legal documentation governing the transaction(s) involving Tenant and Trulieve out of which the request is generated, including, without limitation, copies of the material agreements and other documents governing the transaction(s).
3) Copies of the most recent audited financial statements of the Tenant and of Trulieve.
4) Copies of the financial statements of the Tenant and of Trulieve through the end of the most recent calendar quarter.
5) A reasonably detailed description of the debt, debt-like, equity and quasi-equity financing of each of the Tenant and Trulieve.
6) A reasonably detailed description of the nature, location and extent of Trulieve's business operations.
7) A reasonably detailed description of the management structure and personnel of Trulieve.
8) A reasonably detailed description of the role of the personnel of the Tenant in Trulieve.
9) A reasonably detailed description of the regulatory compliance programs of each of the Tenant and Trulieve for each particular jurisdiction in which it conducts operations or has assets.
10) A reasonably detailed written description of all legal proceedings, government enforcement actions, government investigations and/or similar proceedings, including, without limitation, lawsuits, mediations and arbitrations, involving the Tenant and/or Trulieve and/or their respective affiliates initiated or threatened to be initiated in the past twelve (12) months.
11) Copies of all written permissions, authorizations, licenses, certificates and other entitlements of each of the Tenant and Trulieve required to operate their respective businesses in each applicable jurisdiction.

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12) Any other information the Tenant believes is or may be relevant to the Landlord's decision to grant or deny the requested assignment.

On a related note, the $500.00 review fee which is required under section 10(e) of the Lease and is a condition precedent to the Landlord's consideration of the request, was only received by Landlord yesterday after Landlord's demand therefor.

The Landlord reserves all of its rights under and relative to the Lease, including, without limitation, the right to request additional information relative to the request pursuant to section 10(e) of the Lease.

Should you have any questions regarding the foregoing or wish to discuss the matter further, please let me know. Any further questions regarding this matter should be directed to my attention.

Sincerely,

/s/ Joseph Parker

Joseph Parker
For the Firm

Exhibit No. 70

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

DEF 5/4/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

CONFIDENTIAL

From: Joseph Parker
To: Will Koslow
Cc: Katie Cheney; Barbara Brackett
Subject: Re: 13433 E. Chandler Boulevard
Date: Friday, September 3, 2021 1:09:50 PM
Attachments: image001.png

Mr. Koslow,

I appreciate the opportunity to talk this afternoon. As I mentioned, if you have additional information you think the landlord should consider, including, without limitation, information relative to any litigation or threats of litigation, please let us know so that we can add it to the information you provided in response to my letter. That said, I understand that the information you provided today constitutes the universe of information the tenant is providing in response to my letter, and, as such, we will undertake to review that information in furtherance of the landlord's consideration of the assignment request.

Thanks!!!

Joe

Joseph M. Parker
Attorney

Parker Law Team
PO Box 72708
Phoenix, Arizona 85050

Email: joseph.parker@parkerlawteam.com
Telephone: 480.628.0502

From: Will Koslow <wkoslow@harvestinc.com>
Sent: Friday, September 3, 2021 9:40 AM
To: Joseph Parker <joseph.parker@parkerlawteam.com>
Cc: Katie Cheney <katie.cheney@parkerlawteam.com>; Barbara Brackett <admin@PARKERLAWTEAM.COM>
Subject: RE: 13433 E. Chandler Boulevard

Mr. Parker-
Attached you will find answers and documents responsive to the information requested by your office on behalf of CEC 141202761, LLC ("Landlord"), following the request for Landlord

to approve the assignment of the Standard Industrial/Commercial Single-Tenant Lease-Net Air Commercial Real Estate Association dated March 1, 2018, regarding the property located at 13433 E. Chandler Blvd., Suites A and B, in Chandler, AZ 85255.

To the extent that you have any questions, please contact me. I ask that you kindly provide an update on status of your review by Wednesday, September 8, so that I have an expectation on timing of approval or otherwise by that time.

Thank you,
Will

Will Koslow | Assistant General Counsel | M: 646.831.1997 | wkoslow@harvestinc.com

---

From: Barbara Brackett <admin@PARKERLAWTEAM.COM>
Sent: Thursday, September 2, 2021 1:57 PM
To: Will Koslow <wkoslow@harvestinc.com>
Cc: Joseph Parker <joseph.parker@parkerlawteam.com>; Katie Cheney <katie.cheney@parkerlawteam.com>
Subject: 13433 E. Chandler Boulevard

Mr. Koslow: The enclosed letter is also being sent as referenced.

Thank you,

Barbara Brackett
Office Manager

Parker Law Team, PLLC
PO Box 72708
Phoenix, Arizona 85050

Tel: 602.889.5119
Email: admin@parkerlawteam.com

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Exhibit No. 71

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

DEF 5/4/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

CONFIDENTIAL

From:	Will Koslow
To:	Joseph Parker
Cc:	Katie Cheney; Barbara Brackett
Subject:	RE: 13433 E. Chandler Boulevard
Date:	Friday, September 3, 2021 9:40:46 AM
Attachments:	image001.png Chandler AZ-Response to Request for Information-v2-HARV.pdf High Desert Healing, LLC-Recreational TPT License (Chandler)-Expires 12.31.2021.pdf High Desert Healing, LLC-Retail (Chandler) State License (Medical)-Expires 08.07.2022.pdf High Desert Healing, LLC-Retail (Chandler) State License (Recreational)-Expires 01.21.2023.pdf High Desert Healing, LLC-Weights & Measures (Chandler)-Expires 10.01.2021.pdf High Desert Healing, LLC-Certicate of Occupancy (Chandler).pdf High Desert Healing, LLC-Edible Authorization-Medical (Chandler).pdf

Mr. Parker-

Attached you will find answers and documents responsive to the information requested by your office on behalf of CEC 141202761, LLC ("Landlord"), following the request for Landlord to approve the assignment of the Standard Industrial/Commercial Single-Tenant Lease-Net Air Commercial Real Estate Association dated March 1, 2018, regarding the property located at 13433 E. Chandler Blvd., Suites A and B, in Chandler, AZ 85255.

To the extent that you have any questions, please contact me. I ask that you kindly provide an update on status of your review by Wednesday, September 8, so that I have an expectation on timing of approval or otherwise by that time.

Thank you,
Will

Will Koslow | Assistant General Counsel | M: 646.831.1997 | wkoslow@harvestinc.com

From: Barbara Brackett <admin@PARKERLAWTEAM.COM>
Sent: Thursday, September 2, 2021 1:57 PM
To: Will Koslow <wkoslow@harvestinc.com>
Cc: Joseph Parker <joseph.parker@parkerlawteam.com>; Katie Cheney <katie.cheney@parkerlawteam.com>
Subject: 13433 E. Chandler Boulevard

Mr. Koslow: The enclosed letter is also being sent as referenced.

Thank you,

CONFIDENTIAL

Barbara Brackett

Office Manager

Parker Law Team, PLLC

PO Box 72708

Phoenix, Arizona 85050

Tel: 602.889.5119

Email: admin@parkerlawteam.com

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1) A reasonably detailed written explanation of the legal structure and ownership of Trulieve, including, without limitation, the name of each equity owner of Trulieve owning or controlling 20% or more of any class of ownership and/or owning or controlling 20% or more of the combined classes of ownership, as applicable, verifying the same.

ANSWER: Please see the section entitled "Security Ownership of Certain Beneficial Owners and Management" on page 31 of the Notice of Annual General and Special Meeting of Shareholders of Trulieve Cannabis Corp. and Proxy Statement for Annual General and Special Meeting of Shareholders to be held on June 10, 2021 available at the following link: https://investors.trulieve.com/static-files/376cad34-62c6-46f7-906a-371a7efd6ee9

2) A reasonably detailed written explanation of the nature and legal documentation governing the transaction(s) involving Tenant and Trulieve out of which the request is generated, including, without limitation, copies of the material agreements and other documents governing the transaction(s).

ANSWER: On May 10, 2021, Trulieve and Harvest Health & Recreation Inc., ("Harvest"), the ultimate parent of Tenant, entered into a definitive arrangement agreement (the "Arrangement Agreement") pursuant to which Trulieve will acquire all of the issued and outstanding subordinate voting shares, multiple voting shares and super voting shares of Harvest (the "Transaction"). Under the terms of the Arrangement Agreement, shareholders of Harvest will receive 0.1170 of a subordinate voting share of Trulieve (each whole share, a "Trulieve Share") for each Harvest subordinate voting share (or equivalent) held, representing total consideration of approximately $2.1 billion based on the closing price of the Trulieve Shares on May 7, 2021. The actual closing of the Transaction is anticipated to occur before the end of 2021. The Arrangement Agreement governing the transaction involving Tenant and Trulieve is available at the following link:
https://www.sec.gov/Archives/edgar/data/0001760439/000119312521159023/d115500dex21.htm

3) Copies of the most recent audited financial statements of the Tenant and of Trulieve.

ANSWER: There are no financials available for the Tenant, as such financials are not separately prepared, financials for Harvest are consolidated and publicly available at the following link: https://www.sec.gov/ix?doc=/Archives/edgar/data/1760439/000095017021001436/hrvsf-20210630.htm. The most recent audited financial statements of Trulieve are available for review at: https://investors.trulieve.com/static-files/8e1dd3f1-627a-4748-b626-49374ac7c578

4) Copies of the financial statements of the Tenant and of Trulieve through the end of the most recent calendar quarter.

ANSWER: There are no financials available for the Tenant, as such financials are not separately prepared, financials for Harvest are consolidated and publicly available at the following link: https://www.sec.gov/ix?doc=/Archives/edgar/data/1760439/000095017021001436/hrvsf-20210630.htm. The most recent financial statements of Trulieve through the end of June 30, 2021, are available for review at: https://investors.trulieve.com/static-files/8e1dd3f1-627a-4748-b626-49374ac7c578

5) A reasonably detailed description of the debt, debt-like, equity and quasi-equity financing of each of the Tenant and Trulieve.

ANSWER: Tenant has no debt, debt-like, equity and quasi-equity financing in place. A description of the debt, debt-like, equity and quasi-equity financing of Trulieve can be found in the Consolidated Financial Statements included Trulieve's Form 10-K filing available at the following link:

https://investors.trulieve.com/static-files/8e1dd3f1-627a-4748-b626-49374ac7c578. In particular, this information is included in, but not limited to, Section 7 – Notes Payable (page F-21), Section 8 – Notes Payable Related Party (page F-21), Section 9 – Debt (page F-22), Section 11 – Construction Finance Liability (page F-25), Section 12 – Share Capital (page F-26), and Section 15 – Prospectus Offering (page F-30).

6) A reasonably detailed description of the nature, location and extent of Trulieve's business operations.

ANSWER: Please see Part I Item 1. Business in Trulieve's Form 10-K filing available at the following link: https://investors.trulieve.com/static-files/8e1dd3f1-627a-4748-b626-49374ac7c578

7) A reasonably detailed description of the management structure and personnel of Trulieve.

ANSWER: Please see Part III Item 10. Directors, Executive Officers and Corporate Governance in Trulieve's Form 10-K filing available at the following link: https://investors.trulieve.com/static-files/8e1dd3f1-627a-4748-b626-49374ac7c578

8) A reasonably detailed description of the role of the personnel of the Tenant in Trulieve.

ANSWER: There is no expectation that the role of the personnel of the Tenant will change upon consummation of the transaction with Trulieve.

9) A reasonably detailed description of the regulatory compliance programs of each of the Tenant and Trulieve for each particular jurisdiction in which it conducts operations or has assets.

ANSWER: Maintaining compliance is of the utmost importance to Tenant and Trulieve. Both companies rely on all employees to maintain and support compliance efforts. Each company has written operating procedures, policies and training related to compliance. The companies rely on and strongly encourage employees to report suspected compliance violations. There is an effort to create and foster a culture of compliance across the companies. The foregoing is in addition to the requirements imposed on the companies by each of the applicable regulators and the applicable laws with which operations must comply.

10)A reasonably detailed written description of all legal proceedings, government enforcement actions, government investigations and/or similar proceedings, including, without limitation, lawsuits, mediations and arbitrations, involving the Tenant and/or Trulieve and/or their respective affiliates initiated or threatened to be initiated in the past twelve (12) months.

ANSWER: Outside of what is disclosed in public filings the companies do not comment on pending legal proceedings, government enforcement actions, government investigations and/or similar proceedings. The most recent information on legal proceedings for Harvest can be found in Part II, Item 1 – Legal Proceedings of the most recent Form 10-Q available at: https://www.sec.gov/ix?doc=/Archives/edgar/data/1760439/000095017021001436/hrvsf-20210630.htm#item_1_legal_proceedings
and for Trulieve in Part II, Item 1 – Legal Proceedings of the most recent Form 10-Q available at: https://investors.trulieve.com/node/10901/html#II_Item1

11)Copies of all written permissions, authorizations, licenses, certificates and other entitlements of each of the Tenant and Trulieve required to operate their respective businesses in each applicable jurisdiction.

ANSWER: The Tenant's authorizations, licenses, certificates and other entitlements to operate the location at 13433 E. Chandler Boulevard, Chandler, AZ 85255, the applicable jurisdiction, will remain in place and not change as a result of the consummation of the transaction with Trulieve. A copy of each of the following documents is attached for your reference:

- Certificate of Occupancy for 13433 E Chandler Blvd with a Final Date of July 19, 2019
- Approval to Sell or Dispense Marijuana-Infused Edible Food Products from the Arizona Department of Health Services dated October 22, 2013, Registration Certificate ID#: 00000005DCMV00766195
- Transaction Privilege Tax License number 21018011 Issued February 10, 2021
- Medical Marijuana Dispensary Registration Certificate Number 00000005DCMV00766195, effective August 8, 2020, expiring August 7, 2022
- Marijuana Establishment License number 00000007ESWD35270682, effective January 22, 2021, expiring January 21, 2023
- Device License BMF# 47219 from the Arizona Department of Agriculture Weights and Measures Services Division with an expiration of October 1, 2021

12)Any other information the Tenant believes is or may be relevant to the Landlord's decision to grant or deny the requested assignment.

ANSWER: None.

ARIZONA DEPARTMENT OF REVENUE
ATTN: Customer Care and Outreach
PO BOX 29032
Phoenix, AZ 85038-9032

CONFIDENTIAL

ARIZONA DEPARTMENT OF REVENUE

TRANSACTION PRIVILEGE TAX LICENSE

NOT TRANSFERABLE

The licensee listed below is licensed to conduct business upon the condition that taxes are paid to Arizona Department of Revenue as required under provisions of A.R.S. Title 42, Chapter 5, Article 1.

2021

ISSUED TO: HIGH DESERT HEALING LLC
1155 W RIO SALADO PKWY #201
TEMPE AZ 85281

ALL communications and reports MUST REFER to this LICENSE NO.

LICENSE: 21018011
START DATE: 10/01/2013
ISSUED: 02/10/2021
EXPIRES: 12/31/2021

LOCATION: CODE 004
HARVEST OF CHANDLER
13433 E CHANDLER BLVD STE A&B
CHANDLER, AZ 85225
2100060591609
2 1 0 0 0 6 0 5 9 1 6 0 9

BUSINESS CODE	REGION	JURISDICTION
011 - RESTAURANTS AND BARS	MAR - MARICOPA	COUNTY
017 - RETAIL	MAR - MARICOPA	COUNTY
029 - USE TAX	MAR - MARICOPA	COUNTY
030 - USE TAX FROM INVENTORY	MAR - MARICOPA	COUNTY
203 - MEDICAL MARIJUANA RETAIL SALES	MAR - MARICOPA	COUNTY
420 - ADULT USE MARIJUANA RETAIL SALES	MAR - MARICOPA	COUNTY
011 - RESTAURANTS AND BARS	CH - CHANDLER	CITY
017 - RETAIL	CH - CHANDLER	CITY
029 - USE TAX	CH - CHANDLER	CITY
030 - USE TAX FROM INVENTORY	CH - CHANDLER	CITY
203 - MEDICAL MARIJUANA RETAIL SALES	CH - CHANDLER	CITY
420 - ADULT USE MARIJUANA RETAIL SALES	CH - CHANDLER	CITY

Ex. 71-6

This License is issued to the business named above for the address shown. Licenses, by law, cannot be transferred from one person to another, nor can they be transferred from one location to another. Arizona law requires licensees to notify the Department of Revenue if there is a change in business name, trade name, location, mailing address, or ownership. In addition, when the business ceases to operate or the business location changes and a new license is issued, this license must be returned to the Arizona Department of Revenue. According to R15-5-2201, license must be displayed in a conspicuous place.

HDHLLC002749

CONFIDENTIAL

ARIZONA DEPARTMENT OF HEALTH SERVICES

High Desert Healing Llc

13433 E. Chandler Blvd. , Chandler, AZ 85225

The dispensary listed above has been issued a Medical Marijuana Dispensary Registration Certificate. This certificate has been issued under the authority of Title 36, Chapter 28.1, Arizona Revised Statutes and pursuant to the Arizona Administrative Code Title 9, Chapter 17 Department of Health Services' rules and regulations.

THIS CERTIFICATE IS NOT TRANSFERABLE

Registration Certificate Identification Number: 00000005DCMV00766195

Effective Date: August 8, 2020

Expiration Date: August 7, 2022

APPROVED TO:

Dispense

Sell Edibles

Dispense Edibles

A Dispensary Registration Certificate issued by the Arizona Department of Health Services pursuant to A.R.S. Title 36, Chapter 28.1 and A.C.C. Title 9, Chapter 17 does not protect the holder from legal action by local, city, state, or federal authorities, including possible criminal prosecution for violations of federal law for the sale, manufacture, distribution, use, dispensing, possession, etc. of marijuana. The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing medical marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical Marijuana Act ("Act"), A.R.S Title 36, Chapter 28.1 and A.A.C. Title 9, Chapter 17. Any failure to comply with the Act may result in revocation of the Registration Certificate issued by the Arizona Department of Health Services, and possible arrest, prosecution, imprisonment, and fines for violation of state drug laws. The State of Arizona, including but not limited to the employees of the Arizona Department of Health Services, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing medical marijuana.

Megan Whitby

Recommended By: Megan Whitby
Bureau Chief

Issued By: Colby Bower on January 22, 2021
Assistant Director

Ex. 71-7

CONFIDENTIAL

ARIZONA DEPARTMENT
OF HEALTH SERVICES

High Desert Healing Llc

13433 E. Chandler Blvd. , Chandler, AZ 85225

The establishment listed above has been issued a Marijuana Establishment License. This certificate has been issued under the authority of Title 36, Chapter 28.2, Arizona Revised Statutes and pursuant to the Arizona Administrative Code Title 9, Chapter 18 Department of Health Services' rules and regulations.

THIS CERTIFICATE IS NOT TRANSFERABLE

Establishment License Number: 00000007ESWD35270682

Effective Date: January 22, 2021

Expiration Date: January 21, 2023

APPROVED TO:

Cultivation - Cultivate

Retail - Sell

An Establishment License issued by the Arizona Department of Health Services pursuant to A.R.S. Title 36, Chapter 28.2 and A.C.C. Title 9, Chapter 18 does not protect the holder from legal action by local, city, state, or federal authorities, including possible criminal prosecution for violations of federal law for the sale, manufacture, distribution, use, dispensing, possession, etc. of marijuana. The acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing medical marijuana under state law is lawful only if done in strict compliance with the requirements of the State Medical Marijuana Act ("Act"), A.R.S Title 36, Chapter 28.2 and A.A.C. Title 9, Chapter 18. Any failure to comply with the Act may result in revocation of the Registration Certificate issued by the Arizona Department of Health Services, and possible arrest, prosecution, imprisonment, and fines for violation of state drug laws. The State of Arizona, including but not limited to the employees of the Arizona Department of Health Services, is not facilitating or participating in any way with my acquisition, possession, cultivation, manufacturing, delivery, transfer, transportation, supplying, selling, distributing, or dispensing medical marijuana.

Megan Whitby

Recommended By: Megan Whitby
Bureau Chief

Issued By: Colby Bower on January 22, 2021
Assistant Director

Ex. 71-8

HDHLLC002751

CONFIDENTIAL

Statutes and rules regarding licensure and certification can be viewed at https://agriculture.az.gov

ARIZONA DEPARTMENT OF AGRICULTURE
WEIGHTS AND MEASURES SERVICES DIVISION
Phone: (602)542-3578

BMF#: 47219
Expires On: 10/01/2021

RSA License	Number Of Devices	Fee Code
	4	001

DEVICE LICENSE

HARVEST OF CHANDLER #
13433 EAST CHANDLER BLVD SUITE A B
CHANDLER, AZ 85225

HARVEST OF CHANDLER
1155 WEST RIO SALAO PARKWAY 201
TEMPE, AZ 85281

THIS LICENSE MUST BE POSTED ON PREMISES IN A MANNER
THAT PROVIDES THE DEPARTMENT ACCESS TO THE LICENSE DURING NORMAL BUSINESS HOURS

Ex. 71-9

HDHLLC002752

CONFIDENTIAL

CERTIFICATE OF OCCUPANCY

MARICOPA COUNTY
DEPARTMENT OF PLANNING AND DEVELOPMENT

Permit Number: B201802868 Occupancy Type: B Final Date: 7/19/2019

Work Description: Tenant Improvement of approx. 2000 SF of an existing auto shop to a medical marijuana dispensary - HARVEST MEDICAL

Construction Type: IIB Work Class: Business: Prof Service Zoning District: C-3

Site Address: 13433 E CHANDLER Blvd

City, State, Zip CHANDLER AZ 85225

Owner of Building: CEC141202761 LLC

Mailing Address: PO BOX 3211

CHANDLER AZ 85244

Approved By: _____ Date: 7-22-19

CONFIDENTIAL

ARIZONA DEPARTMENT OF HEALTH SERVICES

LICENSING

High Desert Healing LLC
13433 E. Chandler Blvd., Ste. A
Chandler, AZ 85225

RE: APPROVAL TO SELL OR DISPENSE MARIJUANA-INFUSED EDIBLE FOOD PRODUCTS

Date: October 22, 2013
Dispensary Name: High Desert Healing LLC
Registration Certificate ID#: 00000005DCMV00766195
Food Establishment License ID#: N/A
Food Establishment Address: N/A

Your request to sell or dispense marijuana-infused edible food products has been approved with the following stipulations:

(1) Food products obtained for distribution by the dispensary are prepared at a facility holding a valid food establishment license with the Department's Medical Marijuana Program.
(2) Food products distributed by the dispensary are limited to prepackaged foods that are not potentially hazardous (as defined in 9 A.A.C. 8, Article 1), unless prior written authorization is obtained from the Department.
(3) Food products are transported, stored, sold, and dispensed according to 9 A.A.C. 8, Article 1.

In addition, please be advised that as per A.A.C. R9-17-319(B), the dispensary is responsible for content and quality of edible food products sold or dispensed by the dispensary.

If the dispensary sells or dispenses marijuana-infused edible food products prepared by another dispensary, the dispensary must obtain and maintain a copy of the written authorization issued by the Department to the dispensary that prepared the marijuana-infused edible food products.

The Department strongly encourages all dispensary agents that prepare marijuana-infused edible food products to obtain food handlers cards from their local county health department and to have at least one certified food manager, if applicable to county regulations. Links to each Arizona county health department and other online food safety resources can be found at the following links:

- http://www.azdhs.gov/phs/oeh/fses/resources.htm
- http://www.azdhs.gov/phs/oeh/fses/goods/handlers/index.htm

If you have any questions, please contact the Arizona Medical Marijuana Program at 602-364-0857 or email m2dispensaries@azdhs.gov.

Thank you,

Arizona Medical Marijuana Program
Arizona Department of Health Services

Exhibit No. 88

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/3/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

RE: Meet & Greet with Trulieve

Nicole Stanton <nstanton@harvestinc.com>
Tue 10/5/2021 3:54 PM
To: Katie Cheney <katie.cheney@parkerlawteam.com>
Cc: Joseph Parker <joseph.parker@parkerlawteam.com>

Katie and Joe,

Would you and your client be amenable to a zoom meeting or in-person visit with Eric Powers, the Chief Legal Officer for Trulieve? He would like to attempt to reset this situation if possible.

If you are amenable to a zoom meeting we could do that this week. If you prefer an in-person visit we would have to plan that out a little bit.

Let me know what you think. I look forward to hearing from you.

Best regards,

Nicole

Nicole Stanton | VP & General Counsel | office: 480-561-5360 | cell: 602-377-2677 | nstanton@harvestinc.com
HARVEST

From: Katie Cheney <katie.cheney@parkerlawteam.com>
Sent: Thursday, September 30, 2021 10:42 AM
To: Nicole Stanton <nstanton@harvestinc.com>
Cc: Joseph Parker <joseph.parker@parkerlawteam.com>
Subject: Fw: Meet & Greet with Trulieve

It was a pleasure speaking with you this morning, Nicole. The legal office for Trulieve sent the following email to our client directly. As you are aware, our office is representing the Landlord in connection with the proposed assignment. Accordingly, we wanted to be sure and bring this to your attention. Thanks again for your time this morning.

Katie Cheney

Attorney

Parker Law Team, PLLC

PO Box 72708

Phoenix, Arizona 85050

Tel: (480) 203-4606

Email: katie.cheney@parkerlawteam.com

Website: www.parkerlawteam.com

---------- Forwarded message ---------
From: **Karrie Larson** <Karrie.Larson@trulieve.com>
Date: Wed, Sep 29, 2021 at 2:09 PM
Subject: Meet & Greet with Trulieve
To: S. Aye <cec141202761llc@gmail.com>

Hi Scott,

I am reaching out to see if you have a few minutes to talk since we will be working together soon. I did try to connect with you via Joseph Parker first, and I relayed to him that I would pay his prevailing rate for his time so my request would not impact you; however, I have not received a response. Please let me know if you have any availability today or tomorrow, and I will send an invite. I will be your contact at Trulieve for anything needed regarding your property after the acquisition closes.

Thanks,

Karrie Larson
National Director of Real Estate
Certified Paralegal
850.391.4620
www.trulieve.com

Exhibit No. 93

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/2/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

From: S. Aye <cec141202761llc@gmail.com>
Sent: Tuesday, October 19, 2021 1:55 PM
To: Karrie Larson <Karrie.Larson@trulieve.com>
Subject: [External] Re: Meet & Greet with Trulieve

Hi Karrie,

I'm advised that the lease at 13433 E. Chandler Blvd has been terminated.

Correct me if I'm wrong but I recall that the national average for retail space rents at 8-10% of gross revenues. That is, shoe stores and grocery stores would consider 8-10% of monthly revenue a reasonable rent rate.

I'm also advised that I have to make reasonable efforts to mitigate losses and get the space leased again. I am considering listing the property for sale.

I'm confident Trulieve already has an alternate location for its operation, but if you know of a company that might be interested in the space please kindly refer them to this email address.

Sincerely,

Scott Ayers
S. Ayers, Mngr
CEC141202761, LLC

On Wed, Sep 29, 2021 at 2:09 PM Karrie Larson <Karrie.Larson@trulieve.com> wrote:

Hi Scott,

I am reaching out to see if you have a few minutes to talk since we will be working together soon. I did try to connect with you via Joseph Parker first, and I relayed to him that I would pay his prevailing rate for his time so my request would not impact you; however, I have not received a response. Please let me know if you have any availability today or tomorrow, and I will send an invite. I will be your contact at Trulieve for anything needed regarding your property after the acquisition closes.

Thanks,

Karrie Larson
National Director of Real Estate
Certified Paralegal
850.391.4620
www.trulieve.com

Exhibit No. 124

Case No. CV2021-016161

For Identification:

PLF 04/26/2022

In Evidence:

PLF 5/4/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

S. Aye shared this file using Google Sheets

Rent from Harvest 2018-2022

Sign in as Steven Long

C14 | Harvest Enterpri DES:ACH Rent ID:V00364 INDN:CEC141202761 LLC. CO ID:XXXXX04439 CCD

	A	B	C	D	E	F	G
1	Date	Description	Original Description	Amount	Transaction Type	Category	Account Name
2	04/01/2022	Harvest Enterpri Des	Harvest Enterpri DES:ACH040122a ID:V00364	20801.53	credit	Income	Business Adv Relationship - 1382
3	03/01/2022	Harvest Enterpri Des	Harvest Enterpri DES:ACH022822a ID:V00364	20801.53	credit	Income	Business Adv Relationship - 1382
4	1/31/2022	Harvest Enterpri Des	Harvest Enterpri DES:ACH012822a ID:V00364	20244.24	credit	Income	Business Adv Relationship - 1382
5	12/28/2021	Harvest Enterpri Des	Harvest Enterpri DES:ACH122821a ID:V00364	20244.24	credit	Income	Business Adv Relationship - 1382
6	11/30/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBEB ID:	20244.24	credit	Income	Business Adv Relationship - 1382
7	10/28/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBEB ID:	20244.24	credit	Income	Business Adv Relationship - 1382
8	9/29/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBEB ID:	20244.24	credit	Income	Business Adv Relationship - 1382
9	09/01/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBEB ID:	20744.24	credit	Income	Business Adv Relationship - 1382
10	7/29/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBEB ID:	20244.24	credit	Income	Business Adv Relationship - 1382
11	6/30/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBEB ID:	20244.24	credit	Income	Business Adv Relationship - 1382
12	5/28/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBEB ID:	20244.24	credit	Income	Business Adv Relationship - 1382
13	05/06/2021	Counter Credit	Counter Credit	20244.24	credit	Income	Business Adv Relationship - 1382
14	04/01/2021	Harvest Enterpri Des	Harvest Enterpri DES:ACH Rent ID:V00364 I	20244.24	credit	Income	Business Adv Relationship - 1382
15	03/01/2021	Harvest Enterpri Des	Harvest Enterpri DES:ACH 2.26a ID:V00364 I	20244.24	credit	Income	Business Adv Relationship - 1382
16	02/03/2021	Harvest Enterpri Des	Harvest Enterpri DES:ACH 2.2 ID:V00364 IN	19263.18	credit	Income	Business Adv Relationship - 1382
17	01/04/2021	Harvest Enterpri Des	Harvest Enterpri DES:ACH 12.30D ID:V00364	19263.18	credit	Income	Business Adv Relationship - 1382
18	12/01/2020	Harvest Enterpri Des	Harvest Enterpri DES:ACH 11.30 ID:V00364 I	19263.18	credit	Income	Business Adv Relationship - 1382
19	11/02/2020	Harvest Enterpri Des	Harvest Enterpri DES:Nov Rent ID:V00364 IN	19263.18	credit	Income	Business Adv Relationship - 1382
20	10/01/2020	Harvest Enterpri Des	Harvest Enterpri DES:ACH 9.30 ID:V00364 IN	19263.18	credit	Income	Business Adv Relationship - 1382
21	8/31/2020	Harvest Enterpri Des	Harvest Enterpri DES:CEC1412027 ID: IND	19263.18	credit	Income	Business Adv Relationship - 1382
22	08/03/2020	BKOFAMERICA MOBILE 08/03 3724951698 DEPOSIT *MOBILE AZ	BKOFAMERICA MOBILE 08/03 3724951698 DEPOSIT	19263.18	credit	Income	Business Adv Relationship - 1382
23	7/10/2020	BKOFAMERICA MOBILE 07/10 3640085290 DEPOSIT *MOBILE AZ	BKOFAMERICA MOBILE 07/10 3640085290 DEPOSIT	19263.18	credit	Income	Business Adv Relationship - 1382
24	06/05/2020	BKOFAMERICA MOBILE 06/05 3698253695 DEPOSIT *MOBILE AZ	BKOFAMERICA MOBILE 06/05 3698253695 DEPOSIT	19263.18	credit	Income	Business Adv Relationship - 1382
25	05/01/2020	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382	19263.18	credit	Income	Business Adv Relationship - 1382
26	3/30/2020	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382	19263.18	credit	Income	Business Adv Relationship - 1382
27	03/03/2020	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382	19263.18	credit	Income	Business Adv Relationship - 1382
28	1/29/2020	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382	18737.88	credit	Income	Business Adv Relationship - 1382
29							
30	11/25/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
31	10/31/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
32	9/27/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
33	8/29/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
34	08/01/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
35	7/31/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
36	6/26/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
37	5/30/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
38	05/01/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18737.88	credit	Income	Business Adv Relationship - 1382
39	4/22/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	1700	credit	Income	Business Adv Relationship - 1382
40	04/01/2019	Smpb Retail Llc	SMPB Retail LLC DES:BILL PMT ID:004378841382 INDN:	18199.4	credit	Income	Business Adv Relationship - 1382
41	03/01/2019	Harvest Maryl Des	Harvest of Maryl DES:CEC1412027 ID: INDN:CEC141202	18199.4	credit	Income	Business Adv Relationship - 1382
42	02/01/2019	Harvest Maryl Des	Harvest of Maryl DES:CEC1412027 ID: INDN:CEC141202	18199.4	credit	Income	Business Adv Relationship - 1382
43	12/31/2018	Randy Taylor Con	RANDY TAYLOR CON DES:DEC2018 ID: INDN:CEC1412	18199.4	credit	Rental Income	Business Adv Relationship - 1382
44	11/30/2018	Randy Taylor Con	RANDY TAYLOR CON DES:DEC2018 ID: INDN:CEC1412	18199.4	credit	Rental Income	Business Adv Relationship - 1382
45	10/31/2018	Randy Taylor Con	RANDY TAYLOR CON DES:Aug2018 ID: INDN:CEC14120	18199.4	credit	Rental Income	Business Adv Relationship - 1382
46	10/01/2018	Randy Taylor Con	RANDY TAYLOR CON DES:Aug2018 ID: INDN:CEC14120	18199.4	credit	Rental Income	Business Adv Relationship - 1382
47	8/31/2018	Randy Taylor Con	RANDY TAYLOR CON DES:Aug2018 ID: INDN:CEC14120	18199.4	credit	Rental Income	Business Adv Relationship - 1382
48	08/01/2018	Randy Taylor Con	RANDY TAYLOR CON DES:Aug2018 ID: INDN:CEC14120	18199.4	credit	Rental Income	Business Adv Relationship - 1382
49	6/29/2018	Randy Taylor Con	RANDY TAYLOR CON DES:June Rent ID: INDN:CEC1412	18199.4	credit	Rental Income	Business Adv Relationship - 1382
50	06/01/2018	Randy Taylor Con	RANDY TAYLOR CON DES:June Rent ID: INDN:CEC1412	18199.4	credit	Rental Income	Business Adv Relationship - 1382
51							

Sheet1

Exhibit No. 233

Case No. CV2021-016161

For Identification:

DEF 04/26/2022

In Evidence:

DEF 5/4/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

PARKER LAW TEAM, PLLC

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joseph.parker@parkerlawteam.com

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Barbara, Brackett, Office Manager
(602) 889-5119
admin@parkerlawteam.com

September 29, 2021

VIA OVERNIGHT COURIER

High Desert Healing, LLC
627 S. 48th St., Suite 100
Tempe, AZ 85281
Attention: Jason Vedadi

VIA OVERNIGHT COURIER

High Desert Healing, LLC
13433 E. Chandler Blvd., Suites A and B
Chandler, AZ 85255

Re: Standard Industrial/Commercial Single-Tenant Lease-Net Air Commercial Real Estate Association dated March 1, 2018, as amended (the "Lease") regarding the property located at 13433 E. Chandler Blvd., Suites A and B, in Chandler, Arizona 85255 ("Premises"), between CEC 141202761, LLC, as "Landlord" and High Desert Healing, LLC, as "Tenant"

Dear Tenant:

This law firm represents the Landlord relative to the Lease. The purpose of this letter is to communicate the Landlord's response to the Tenant's request for consent to the "Change of Control" involving Harvest Health and Recreation, Inc. ("Harvest") and Trulieve Cannabis Corp. ("Trulieve"), set forth in the letter from Tenant to Landlord dated August 6, 2021, which request was made pursuant to section 10 of the Lease (the "Consent Request").

In furtherance of responding to the Consent Request, the Landlord conducted significant diligence that included, among other things, delivery to the Tenant of a written request for information about the parties and transactions at issue and we, as counsel to the Landlord, participated in multiple telephone conversations with representatives of the Tenant in an effort to obtain information about the circumstances constituting the Change of Control at issue that we, as counsel to the Landlord, considered relevant to the Landlord's consideration of the Consent Request.

As explained in more detail below, the Landlord hereby refuses to grant and denies the Consent Request based on (i) the Landlord's good faith, reasonable and informed conclusion that circumstances constituting the Change of Control at issue present a material change to the nature of the relationship between the Landlord and the Tenant that is materially disadvantageous and detrimental to the Landlord as compared to the status quo, and (ii) the fact the Tenant is in breach of the Lease for having failed to obtain the Landlord's consent to a previous Change of Control that was not disclosed to the Landlord or discovered by Landlord until recently.

Relevant to the previous, undisclosed Change of Control is section 10 of the Lease, which specifically provides, in pertinent part, that a "Change of Control" means the transfer of more than 50% of the voting control of Lessee or Guarantor. Section 10 further provides that a "Change of Control" constitutes an assignment requiring the Landlord's consent, and any assignment without the Landlord's prior written consent will, at the option of Landlord, be a breach without the necessity of any notice or cure period, in which case Landlord may terminate the Lease and exercise all remedies therein. Furthermore, section 10 of the Lease provides that in the circumstance in which the Tenant is in default of this Lease, the Landlord may elect not to approve any proposed assignment, which would include the Consent Request.

In the course of the Landlord's due diligence relative to the Consent Request, the Landlord discovered that more than 50% of the ownership and voting control of the guarantor of the Lease, Harvest Dispensaries, Cultivations & Production Facilities, LLC (the "Guarantor") was transferred in its entirety, apparently sometime in 2019. Specifically, all prior members and managers of the Guarantor were removed, and Harvest Enterprises, Inc., a Delaware corporation, became the sole manager and the sole member. This transfer is evidenced in the Guarantor's Restated Articles of Organization filed with the Arizona Corporation Commission on May 29, 2019. Neither the Tenant nor the Guarantor provided notice to the Landlord of this Change of Control, nor did the Landlord ever consent to such Change of Control. In an attempt to understand the nature and relevance to the Landlord's consideration of the Consent Request and the Landlord's rights under the Lease relative to that Change of Control, our office contacted Mr. Koslow on September 24, 2021, requesting further

information from the Tenant regarding this previous, undisclosed Change of Control. Mr. Koslow responded to our inquiry on September 28, 2021, provided no documentation, set forth the bald, unsubstantiated conclusion that the transfer of the entirety of the management and ownership of the Guarantor was not a Change of Control requiring the Landlord's consent under Section 10 and demanded a response to the Consent Request by the following day, namely, by September 29, 2021.

The Landlord hereby notifies the Tenant of the Landlord's election to terminate the Lease pursuant to section 11.1.2(f) of the Lease effective immediately on account of the failure of the Tenant to obtain the Landlord's consent to the previous, undisclosed Change of Control as required pursuant to section 10 of the Lease.

Independent of the matter involving the Tenant's failure to obtain the Landlord's consent for the previous, undisclosed Change of Control, the Landlord is refusing the Consent Request on account of Landlord's determination that the circumstances involving the Change of Control at issue will change the nature of the relationship between the Landlord and the Tenant in a way that is materially disadvantageous and detrimental to the Landlord as compared to the status quo. The Landlord's determination in that regard is based upon, but not limited to, the following:

1. The Tenant refused to provide certain materially relevant information requested by the Landlord.

2. The Tenant provided certain materially incomplete and inaccurate information in response to information requested by the Landlord.

3. The Tenant confirmed that Steve White, the current director of Harvest, and other executive managers of Harvest would not exercise the managerial control at Trulieve, that they exercise at Harvest.

4. The Tenant refused to provide any information regarding the role, if any, Steve White and other executive managers of Harvest would have at Trulieve.

5. The Tenant refused to provide any meaningful information regarding the measures taken by Trulieve to comply with applicable laws, regulations and rules applicable to the conduct of activities that are in violation of federal law governing controlled substances and mandate compliance with specific state laws, regulations and rules to avoid being in violation of state laws governing controlled substances.

6. Despite our repeated attempts to explain the relevance of the requested information and the related concerns, the Tenant failed to recognize and appreciate the Landlord's exposure to state and federal forfeiture laws, racketeering laws and controlled substances laws the consequences of which could include, among other detrimental consequences, the forfeiture of the subject leased premises and civil and criminal penalties, including, without limitation, the Landlord's concerns that the additional locations and jurisdictions in which Trulieve operates would materially increase the Landlord's exposure as compared to the status quo.

7. The Tenant failed to provide certain requested information regarding litigation involving the Tenant and/or Trulieve.

8. The Tenant unilaterally exercised the Tenant's judgment as to what is material and/or relevant to the Landlord's diligence activities and information requests, thereby refusing to provide information and/or investigate the existence of information requested by the Landlord based on the Tenant's judgment and without disclosure of the same to the Landlord until the Landlord discovered the Tenant's responses were incomplete and/or wholly deficient.

9. The Tenant failed to act in good faith, was uncooperative and was combative during the course of telephone conversations with counsel to the Landlord, which conversations were initiated by the Landlord's counsel in a good faith attempt to obtain requested information with respect to which the Tenant had not previously provided complete or meaningful responses.

In light of the foregoing, we hereby request a conference call with the Tenant's counsel to discuss the willingness of the Tenant to cooperate with the Landlord in furtherance of vacating the leased premises in accordance with the applicable provisions of the Lease. We are hopeful that the Tenant will agree to such a call and

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that the call can take place this week, so as to avoid the need to pursue other means to recover possession of the subject leased premises. That said, please let us know if and when the Tenant's counsel can participate in such a call.

Sincerely,

/s/ Joseph Parker

Joseph Parker
For the Firm

cc: ***VIA EMAIL WKOSLOW@HARVESTINC.COM***
VIA EMAIL NSTANTON@HARVESTINC.COM
AND VIA OVERNIGHT COURIER

Harvest Health & Recreation, Inc.
Attn: William M. Koslow
1155 W. Rio Salado Pkwy, Suite 201
Tempe, AZ 85281

VIA OVERNIGHT COURIER

Harvest Dispensaries, Cultivations
& Production Facilities, LLC
1155 W. Rio Salado Parkway, Suite 201
Tempe, AZ. 85281

VIA OVERNIGHT COURIER

Harvest Dispensaries, Cultivations &
Production Facilities, LLC
c/o Registered Agent Solutions, Inc.
300 W. Clarendon Ave., Suite 240
Phoenix, AZ 85013

Exhibit No. 246

Case No. CV2021-016161

For Identification:

DEF 04/26/2022

In Evidence:

DEF 5/4/2022

Clerk of Superior Court

By: K. CABRAL

(Deputy Clerk)

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September 2, 2021

VIA OVERNIGHT COURIER

High Desert Healing, LLC
627 S. 48th St., Suite 100
Tempe, AZ 85281
Attention: Jason Vedadi

VIA OVERNIGHT COURIER

High Desert Healing, LLC
13433 E. Chandler Blvd., Suites A and B
Chandler, AZ 85255

VIA EMAIL
WKOSLOW@HARVESTINC.COM
AND VIA OVERNIGHT COURIER

Harvest Health & Recreation, Inc.
Attn: William M. Koslow
1155 W. Rio Salado Pkwy, Suite 201
Tempe, AZ 85281

Re: Standard Industrial/Commercial Single-Tenant Lease-Net Air Commercial Real Estate Association dated March 1, 2018 (the "Lease") regarding the property located at 13433 E. Chandler Blvd., Suites A and B, in Chandler, Arizona 85255 ("Premises")

Dear Tenant:

This law firm represents CEC 141202761, LLC, the "Landlord" under the Lease, relative to the written request from you, as the "Tenant" under the Lease, dated August 6, 2021 that the Landlord approve the assignment of the Lease to Trulieve Cannabis Corp., a British Columbia corporation ("Trulieve"). In furtherance of the Landlord's consideration of the Tenant's request, the Landlord needs, and we hereby request on behalf of the Landlord pursuant to section 10(e) of the Lease, the following information:

1) A reasonably detailed written explanation of the legal structure and ownership of Trulieve, including, without limitation, the name of each equity owner of Trulieve owning or controlling 20% or more of any class of ownership and/or owning or controlling 20% or more of the combined classes of ownership, as applicable, verifying the same.
2) A reasonably detailed written explanation of the nature and legal documentation governing the transaction(s) involving Tenant and Trulieve out of which the request is generated, including, without limitation, copies of the material agreements and other documents governing the transaction(s).
3) Copies of the most recent audited financial statements of the Tenant and of Trulieve.
4) Copies of the financial statements of the Tenant and of Trulieve through the end of the most recent calendar quarter.
5) A reasonably detailed description of the debt, debt-like, equity and quasi-equity financing of each of the Tenant and Trulieve.
6) A reasonably detailed description of the nature, location and extent of Trulieve's business operations.
7) A reasonably detailed description of the management structure and personnel of Trulieve.
8) A reasonably detailed description of the role of the personnel of the Tenant in Trulieve.
9) A reasonably detailed description of the regulatory compliance programs of each of the Tenant and Trulieve for each particular jurisdiction in which it conducts operations or has assets.
10) A reasonably detailed written description of all legal proceedings, government enforcement actions, government investigations and/or similar proceedings, including, without limitation, lawsuits, mediations and arbitrations, involving the Tenant and/or Trulieve and/or their respective affiliates initiated or threatened to be initiated in the past twelve (12) months.
11) Copies of all written permissions, authorizations, licenses, certificates and other entitlements of each of the Tenant and Trulieve required to operate their respective businesses in each applicable jurisdiction.

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12) Any other information the Tenant believes is or may be relevant to the Landlord's decision to grant or deny the requested assignment.

On a related note, the $500.00 review fee which is required under section 10(e) of the Lease and is a condition precedent to the Landlord's consideration of the request, was only received by Landlord yesterday after Landlord's demand therefor.

The Landlord reserves all of its rights under and relative to the Lease, including, without limitation, the right to request additional information relative to the request pursuant to section 10(e) of the Lease.

Should you have any questions regarding the foregoing or wish to discuss the matter further, please let me know. Any further questions regarding this matter should be directed to my attention.

Sincerely,

/s/ Joseph Parker

Joseph Parker
For the Firm