

**SUPREME COURT OF ARIZONA**

HIGH DESERT HEALING, LLC, et al.,

Plaintiffs/ Appellees,

v.

CEC 141202761, LLC,

Defendant/ Appellant.

Arizona Supreme Court  
No. CV-24-0185-PR

Court of Appeals  
Division One  
No. 1 CA-CV 23-0195

Maricopa County  
Superior Court  
No. CV2021-016161  
CV2021-053708

**PLAINTIFFS/APPELLEES' RESPONSE TO  
PETITION FOR REVIEW AND APPENDIX**

Eric M. Fraser (027241)  
John S. Bullock (034950)  
OSBORN MALEDON, P.A.  
2929 N. Central Avenue, Suite 2000  
Phoenix, Arizona 85012  
(602) 640-9000  
efraser@omlaw.com  
jbullock@omlaw.com

Attorneys for Plaintiffs/ Appellees

## TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	4
INTRODUCTION .....	6
BACKGROUND .....	7
I. High Desert rented property from CEC and requested a lease assignment after an acquisition, but CEC refused in an effort to extract higher rent. ....	7
II. The superior court found that CEC unreasonably withheld consent and that any breach by High Desert was immaterial.....	9
III. On appeal, CEC botched the transcripts and raised waived issues.....	10
ISSUES.....	11
REASONS TO DENY REVIEW.....	11
I. The “attempted assignment” issue does not warrant review because it is waived, case-specific, and wrong. ....	11
A. CEC does not challenge the waiver ruling. ....	11
B. The case-specific contract term does not warrant review.....	12
II. The “withholding consent” issue does not warrant review because it lacks a proper record, is factbound, and lacks merit.....	14
A. CEC did not develop the record necessary for this Court’s review.....	14
B. CEC’s argument is factbound and ignores settled law. ....	15

C.    CEC’s argument ignores the unchallenged findings and is wrong.....	17
REQUEST FOR ATTORNEYS’ FEES .....	20
CONCLUSION .....	20
APPENDIX.....	23

## TABLE OF AUTHORITIES

	<u>Page(s)</u>
<b>Cases</b>	
<i>Auman v. Auman</i> , 134 Ariz. 40 (1982) .....	15
<i>Found. Dev. Corp. v. Loehmann’s Inc.</i> , 163 Ariz. 438 (1990) .....	6, 10, 16
<i>Qwest Corp. v. City of Chandler</i> , 222 Ariz. 474 (App. 2009) .....	17
<i>Trantor v. Fredrikson</i> , 179 Ariz. 299 (1994) .....	12
<i>Trisha A. v. Dep’t of Child Safety</i> , 247 Ariz. 84 (2019) .....	18
<i>Tucson Med. Ctr. v. Zoslow</i> , 147 Ariz. 612 (App. 1985) .....	16
<b>Statutes &amp; Rules</b>	
A.R.S. § 12-341.01 .....	20
ARCAP 11.....	10
ARCAP 21.....	20
Ariz. R. Civ. P. 52 .....	17
<b>Other Authorities</b>	
Antonin Scalia & Bryan A. Garner, <i>Reading Law: The Interpretation of Legal Texts</i> (2012).....	18
Bryan A. Garner, <i>Garner’s Dictionary of Legal Usage</i> (3d ed. 2009) .....	19
Mirriam-Webster’s Dictionary .....	18

Oxford English Dictionary.....	18
Restatement (Second) of Contracts § 241.....	10, 16

## INTRODUCTION

CEC's petition has none of the hallmarks of cases warranting review. This Court has already ruled 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). CEC offers no argument to jettison that longstanding settled doctrine. Moreover, the lease in this case explicitly says that the landlord's consent for a lease assignment "shall not be unreasonably withheld." The superior court found that CEC unreasonably withheld consent and CEC did not challenge that finding on appeal.

Even if the petition presented issues worthy of this Court's review, this case presents an exceptionally poor vehicle for review. The court of appeals (1) ruled that CEC's primary issue was waived because it was never raised below, (2) ruled that CEC does not challenge the findings necessary to obtain reversal, and (3) struck the transcripts from the appellate record. CEC does not challenge any of these rulings from the court of appeals, yet they erect threshold obstacles that block further review.

The Court should deny review.

## BACKGROUND

- I. **High Desert rented property from CEC and requested a lease assignment after an acquisition, but CEC refused in an effort to extract higher rent.**

This is a case about a commercial lease. Defendant/Appellant CEC 141202761, LLC was the landlord; Plaintiff/Appellee High Desert Healing, LLC the tenant. [Decision ¶ 2](#). Soon after signing the lease, CEC (the landlord) had second thoughts. CEC's manager twice called High Desert "filthy rich" and suggested the lease rate was too low. [Tr. Ex. 42 at HDHLLC002159 ([APP084](#)).] Thus began the landlord's attempt to try to get out of its own lease so it could extract higher rent.

When the parties signed the lease, High Desert (the tenant) was owned by Harvest Dispensaries, Cultivations & Productions Facilities, LLC. [Decision ¶ 2](#). Trulieve Cannabis Corp. then entered into an agreement to acquire Harvest's parent company (Harvest Health & Recreation). *Id.*

Because the acquisition caused a change in voting control, High Desert sought the landlord's consent to assign the lease. The lease required High Desert to submit a written request for approval "together with" (meaning "in addition to") a \$500 fee. [Tr. Ex. 25, § 10.1(e) ([APP069](#)).] The lease mandated that the landlord's "approval shall not be unreasonably withheld,

delayed or conditioned[.]” [*Id.*, § 10 ([APP069](#)).] CEC’s own lease therefore required it to act reasonably when it came to assignment requests.

High Desert requested approval in August 2021 and sensibly promised to pay the \$500 fee with the next month’s rent. [Tr. Ex. 61 ([APP086](#)).] This made sense in light of the parties’ ongoing relationship, which required regular monthly payments. The \$500 fee was trivial – under 3% of the \$17,000/month rent. It’s the same as paying a landscaper for a \$5 irrigation part with the next month’s \$200 regular payment.

High Desert fulfilled its promise and paid the \$500 on September 1, along with its rent for the month. [Tr. Ex. 124 at cell D9 ([APP094](#)) (reflecting \$20,744.24 payment, which is \$500 higher than the \$20,244.24 monthly rent).]

CEC refused to consent to the requested assignment and tried to terminate the lease. When refusing consent, however, CEC did not mention the timing of the \$500 fee. Instead, CEC identified other reasons for refusing consent that it has long since abandoned. [Tr. Ex. 233 ([APP096](#)).]



**II. The superior court found that CEC unreasonably withheld consent and that any breach by High Desert was immaterial.**

High Desert sued CEC, seeking declaratory judgment and other relief.

[IR-1.] CEC filed a separate forcible-entry-and-detainer complaint against High Desert, which the superior court consolidated. [IR-17.]

The superior court held a four-day bench trial and issued detailed findings of facts and conclusions of law. The court “conclude[d] that CEC unreasonably withheld consent to the assignment,” and found in the alternative that even if High Desert did breach the lease in connection with the \$500 fee, “the breach (if any) was not material[.]” [IR-44 at 13 ([APP053](#)).]

As for withholding consent, the superior court found that CEC’s stated bases for refusing consent were pretextual and unreasonable. It found reasonable High Desert’s conclusions that CEC was trying to “shake down” High Desert for more money and “was seeking to force a renegotiation of rent.” [*Id.* at 8, 13-14 ([APP048](#), [APP053-54](#)).] The superior court made explicit credibility determinations and ultimately concluded that “[b]ased on [CEC’s manager’s] 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.* at 14 ([APP054](#)).]

As for immaterial breach, 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 ([APP047](#)).] It applied the long-settled immaterial breach doctrine from this Court’s decision in *Loehmann’s*, [163 Ariz. 438](#), as well as [Restatement \(Second\) of Contracts § 241](#). [*Id.* at 11-13 ([APP051-53](#)).] The superior court entered judgment for High Desert. [IR-78 ([APP056](#)).] CEC appealed.

### **III. On appeal, CEC botched the transcripts and raised waived issues.**

Despite having an obligation to promptly order and file transcripts ([ARCAP 11\(c\)\(1\)\(B\)](#)), CEC didn’t file any transcripts until after the case was fully briefed and argued. [Decision at 5 n.1](#). Moreover, the transcripts were not even certified or reliable (*see* [§ II.A](#) below). The court of appeals struck the transcripts and correctly “presume[d] the missing transcripts support the court’s findings and conclusions.” [Decision ¶ 11](#).

In an unpublished memorandum decision, the court of appeals rejected CEC’s argument that High Desert’s *request* for consent constituted

an “attempt” to assign the lease, which enabled CEC to terminate the lease. It first found the issue waived, noting that “CEC’s appellate counsel conceded at oral argument that the issue was raised for the first time on appeal,” [Decision ¶ 15](#), and noted that “CEC does not challenge these [trial court] findings on appeal,” *id.* ¶ 13. The court of appeals also rejected CEC’s argument on the merits because CEC’s interpretation is unreasonable and would render portions of the lease meaningless. *Id.* ¶¶ 16-17.

CEC then filed a petition for review.

## ISSUES

1. Was High Desert’s *request* for consent from CEC an “attempt at an assignment” that enabled CEC to unilaterally terminate the lease?
2. Did the superior court clearly err when finding that CEC unreasonably withheld consent for an assignment when the lease stated the “approval shall not be unreasonably withheld”?

## REASONS TO DENY REVIEW

- I. **The “attempted assignment” issue does not warrant review because it is waived, case-specific, and wrong.**
  - A. **CEC does not challenge the waiver ruling.**

CEC’s first issue relates to the “attempt at an Assignment” provision from the lease. [Tr. Ex. 25, § 10 ([APP069](#)).] The court of appeals correctly

held that CEC waived this argument by not raising it below: “CEC, however, does not point to anywhere in the record showing that it raised this ‘attempt at an Assignment’ issue in the superior court, and CEC’s appellate counsel conceded at oral argument that the issue was raised for the first time on appeal. It is therefore waived.” [Decision ¶ 15](#). As this Court has held, “absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal.” *Trantor v. Fredrikson*, [179 Ariz. 299, 300](#) (1994). (See also COA Answering Br. at 68-71.)

CEC’s petition does not acknowledge or challenge this waiver finding, nor does it identify any extraordinary factors that could justify overlooking the waiver. The Court should decline review on this basis alone.

**B. The case-specific contract term does not warrant review.**

The “attempted assignment” issue also does not warrant review because it relies on a case-specific contract provision. It seeks interpretation of § 10 of the specific lease in this case, but CEC does not explain why interpreting this provision would affect anyone beyond the parties to this case. CEC has not contended, let alone demonstrated, that this provision is common in commercial leases, or that any court has had difficulty

interpreting or applying the provision in other cases. The issue therefore is not an important legal issue and lacks statewide importance.

CEC's position is also demonstrably wrong. The lease says, "Any attempt at an Assignment without Lessor's prior written consent shall be null and void[.]" [Tr. Ex. 25, § 10 ([APP069](#)).] CEC argues (at 14) that High Desert's *request for consent* to an assignment was itself an "attempt at an Assignment" under § 10. In other words, CEC's position is that a lessee cannot *request* consent for an assignment without first *obtaining* consent to the assignment, which makes no sense. The court of appeals correctly rejected this argument, explaining that if merely requesting an assignment triggered § 10, then "it would be impossible to request an assignment without breaching the Lease[.]" [Decision ¶ 16](#). The court of appeals also explained that under CEC's interpretation, "it would be impossible to obtain 'prior written consent,' which would also render that language meaningless." [Id. ¶ 17](#). (See also COA Answering Br. at 71-74.) CEC does not confront or identify any errors in this sensible ruling. The issue does not warrant review.

**II. The “withholding consent” issue does not warrant review because it lacks a proper record, is factbound, and lacks merit.**

**A. CEC did not develop the record necessary for this Court’s review.**

CEC’s second issue asks (at 6), “Did the trial court err by finding CEC had unreasonably withheld its consent for the lease assignment[?]”

The superior court “conclude[d] that CEC unreasonably withheld consent to the assignment[.]” [IR-44 at 13 ([APP053](#)).] Analyzing this issue therefore necessarily requires reviewing the testimony on which the superior court based its findings. After all, the superior court made multiple express credibility determinations, “[b]ased on [CEC’s manager’s] testimony[.]” [*Id.* at 14 ([APP054](#)); *see also id.* at 13 n.7 ([APP053](#)) (“The Court did not find [CEC’s manager’s] testimony credible”); *id.* at 14 n.8 ([APP054](#)) (“totality of his testimony”).] But CEC did not satisfy its burden of supplying the necessary transcripts. It filed them late—not only after briefing, but also after oral argument—so the court of appeals struck them. [Decision at 5 n.1](#).<sup>1</sup> CEC does not challenge the order striking the transcripts,

---

<sup>1</sup> On top of filing them far too late, they were facially unreliable. The court reporter refused to certify them, explaining she was “unable to certify the proceedings are contained fully and accurately[.]” (*See* COA Motion for Procedural Order to Strike Transcripts, filed 12/20/2023.)

nor could it. This Court has held that transcripts filed after the answering brief are “not part of the record for purposes of [the] appeal,” *Auman v. Auman*, 134 Ariz. 40, 42 (1982), and CEC does not invite this Court to revisit this settled rule. The Court therefore must presume that the missing transcripts supported the superior court’s findings, rendering the appellate record inadequate for further review.

**B. CEC’s argument is factbound and ignores settled law.**

Record issues aside, this issue does not warrant review. Whether CEC unreasonably withheld consent is a classic factbound question that affects no one beyond the parties to this case. The issue turns on case-specific facts: what does this specific lease say, what did this tenant say and do, what did this landlord say and do, what were this landlord’s true motivations, and were the landlord’s true motivations reasonable?

There is no bigger question of law at issue. Although the petition emphasizes freedom of contract, this case does not implicate any serious freedom-of-contract question. For starters, the lease imposes an express reasonableness requirement. Under the plain term’s of the lease, the landlord’s consent to an assignment “*shall not be unreasonably withheld, delayed or conditioned[.]*” [Tr. Ex. 25, § 10 ([APP069](#)) (emphasis added).] The

lease therefore disproves the central premise of CEC's second issue, that CEC supposedly "had an absolute right to refuse consent[.]" Petition at 6.<sup>2</sup>

In addition, CEC also criticizes the superior court's alternate holding that even if High Desert breached the lease by paying the \$500 fee with the next month's rent (as promised) instead of simultaneously with the request, any such breach was immaterial. [IR-44 at 13 ([APP053](#)).] This Court has recognized the immaterial-breach doctrine for decades: "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). Arizona is no outlier. See, e.g., [Restatement \(Second\) of Contracts § 241](#) (widely accepted five-part test for materiality). This doctrine does not implicate freedom of contract because "all contracts incorporate applicable statutes

---

<sup>2</sup> Even if the lease did not impose a reasonableness requirement, longstanding background legal principles have long prohibited landlords from refusing consent unreasonably. See, e.g., *Tucson Med. Ctr. v. Zoslow*, [147 Ariz. 612, 614](#) (App. 1985). (See also COA Answering Br. at 36-37 (collecting cases and respected secondary sources).) CEC does not ask this Court to revisit this longstanding principle, nor would this case provide a vehicle for doing so in light of the express contractual reasonableness requirement the parties agreed to.



and common-law principles.” *Qwest Corp. v. City of Chandler*, [222 Ariz. 474, 484, ¶ 34](#) (App. 2009). (*See also* COA Answering Br. at 49-51, 59-61.)

Despite criticizing the superior court’s immaterial-breach finding, the petition does not acknowledge this longstanding principle, nor does it offer any reason for the Court to depart from its long-settled precedent.

**C. CEC’s argument ignores the unchallenged findings and is wrong.**

CEC’s argument is also wrong. As a threshold matter, the superior court’s factual findings “must not be set aside unless clearly erroneous[.]” [Ariz. R. Civ. P. 52\(a\)\(6\)](#). But the court of appeals found that “CEC [did] not challenge [the superior court’s factual] findings on appeal[.]” [Decision ¶ 13](#). (*See also* COA Answering Br. at 56-59.) CEC’s failure to challenge the findings renders this case a poor vehicle for review.

CEC’s argument also rests on a false premise – that CEC breached the lease at all. The lease requires a request for consent for an assignment “together with” a \$500 fee. [Tr. Ex. 25, § 10.1(e) ([APP069](#)).] High Desert unquestionably paid the \$500 fee. High Desert explained that it would pay the fee with the next month’s rent. [IR-44 at 7, 13 ([APP047](#), [APP053](#)); Tr. Ex. 61 at HDHLLC002217 ([APP088](#)).] No one disputes that High Desert

fulfilled that promise, paying the fee on September 1, 2021. [IR-44 at 7, 13 ([APP047](#), [APP053](#)); Tr. Ex. 124 at cell D9 ([APP094](#)).]

CEC insists that “together with” means “at the same time as.” Petition at 14. In light of the other findings and rulings, neither the superior court nor the court of appeals needed to dwell on this issue, nor does this Court. But in any event, the lease does not require the \$500 fee to be paid simultaneously with the assignment request.

First, “[a] word or phrase is presumed to bear the same meaning throughout a text[.]” *Trisha A. v. Dep’t of Child Safety*, [247 Ariz. 84, 88, ¶ 17](#) (2019) (Quoting Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 170 (2012)). “together with” in this lease does not mean “simultaneously with.” This lease uses “together with” six times, invariably to mean “in addition to,” not “simultaneously with.” (See COA Answering Br. at 44-47.)

Second, the two-word phrase “together with” means “in addition to.” *Together with*, Merriam-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”). The

phrase couples together 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.”). CEC cites dictionary definitions of “with,” claiming (at 13) “[t]he key to the case is thus one word – “with.”” But the key is not one word. “Together with” is a two-word compound phrase with a well-understood ordinary meaning, both generally and in this lease in particular.

In other words, 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 moment. The superior court correctly found that High Desert satisfied this requirement, and no one contends otherwise.<sup>3</sup> (*See also* COA Answering Br. at 43-49.)

---

<sup>3</sup> CEC repeatedly suggests (at 7, 15) that the superior court found otherwise, quoting 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 ([APP047](#)).] That finding merely reflects the undisputed facts that (1) section 10(e) requires a \$500 fee, and (2) High Desert did not pay the fee immediately upon requesting consent. The superior court did not find that the lease required the fee to be paid simultaneously with the request.

More fundamentally, CEC's entire second issue does not warrant review because it will not affect any future cases. Because of CEC's failure to supply transcripts, failure to preserve issues below, and failure to challenge the superior court's factual findings, the court of appeals did not even need to analyze the issue in detail. In other words, the issues in CEC's petition do not match the face of the memorandum decision. Any supposed failures by the court of appeals in this unpublished decision therefore will not work any change in the law or be cited by future litigants on this issue.

### **REQUEST FOR ATTORNEYS' FEES**

Pursuant to [ARCAP 21](#), High Desert requests attorneys' fees. As the court of appeals recognized ([Decision ¶ 18](#)), the lease contains a mandatory fee-shifting provision. [Tr. Ex. 25, § 28 ([APP072](#)).] In the alternative, High Desert requests fees under [A.R.S. § 12-341.01](#).

### **CONCLUSION**

The Court should deny review and award High Desert its attorneys' fees.

RESPECTFULLY SUBMITTED this 3rd day of October, 2024.

OSBORN MALEDON, P.A.

By /s/ Eric M. Fraser

Eric M. Fraser

John S. Bullock

2929 N. Central Avenue, Suite 2000

Phoenix, Arizona 85012

Attorneys for Plaintiffs/ Appellees

[This page intentionally left blank]

**APPENDIX  
TABLE OF CONTENTS\***

<b>Index of Record #</b>	<b>Description</b>	<b>Appendix Page Nos.</b>
<b>COURT-ISSUED DOCUMENTS (No. 1 CA-CV 23-0195)</b>		
	Decision (filed Feb. 29, 2024)	APP025 – APP031
<b>COURT-ISSUED DOCUMENTS (No. CV2021-016161)</b>		
	Superior Court Index of Record	APP032 – APP040
44	Findings of Fact/Conclusions of Law (filed July 5, 2022)	APP041 – APP055
78	Judgment (filed Feb. 7, 2023)	APP056 – APP060
<b>TRIAL EXHIBITS</b>		
86	Tr. Ex. 25 – Lease (dated Mar. 1, 2018)	APP061 – APP081
88	Tr. Ex. 42 – Email re CEC141202761 (dated July 13, 2020) [excerpts]	APP082 – APP084
96	Tr. Ex. 61 – Email re Request for Consent Assignment (dated Aug. 6, 2021)	APP085 – APP092
114	Tr. Ex. 124 – Spreadsheet re Rent	APP093 – APP094

---

\* The appendix page number matches the electronic PDF page number. Counsel has added emphasis to selected pages in this Appendix using yellow highlighting to assist the Court with its review of the record. Some record items included in the Appendix contain only a limited excerpt. This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

Index of Record #	Description	Appendix Page Nos.
123	Tr. Ex. 233 - Letter to terminate lease (dated Sept. 29, 2021)	APP095 - APP100



NOTICE: NOT FOR OFFICIAL PUBLICATION.  
UNDER ARIZONA RULE OF THE SUPREME COURT 111(c), THIS DECISION IS NOT PRECEDENTIAL  
AND MAY BE CITED ONLY AS AUTHORIZED BY RULE.

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION ONE

---

HIGH DESERT HEALING, LLC, et al.,  
*Plaintiffs/Appellees,*

*v.*

CEC 141202761, LLC,  
*Defendant/Appellant.*

No. 1 CA-CV 23-0195  
FILED 2-29-2024

---

Appeal from the Superior Court in Maricopa County  
No. CV2021-016161, CV2021-053708  
The Honorable Danielle J. Viola, Judge

**AFFIRMED**

---

COUNSEL

Conant Law Firm, PLC, Phoenix  
By Paul A. Conant, Melissa A. Emmel  
*Counsel for Plaintiffs/Appellees*

Osborn Maledon, P.A., Phoenix  
By Eric M. Fraser, John S. Bullock  
*Counsel for Plaintiffs/Appellees*

Ahwatukee Legal Office, P.C., Phoenix  
By David L. Abney  
*Counsel for Defendant/Appellant*

HIGH DESERT, et al. v. CEC 141202761  
Decision of the Court

---

**MEMORANDUM DECISION**

Presiding Judge Michael J. Brown delivered the decision of the Court, in which Judge Andrew M. Jacobs and Judge Angela K. Paton joined.

---

**B R O W N**, Judge:

¶1 CEC 141202761, LLC (“CEC”) appeals the superior court’s ruling that CEC breached a lease (“Lease”) by unreasonably withholding its consent of High Desert Healing, LLC’s (“High Desert”) assignment request. Because CEC has shown no error, we affirm.

**BACKGROUND**

¶2 In March 2018, High Desert leased a commercial property from CEC. At the time, High Desert was a wholly owned subsidiary of Harvest Dispensaries, Cultivations & Productions Facilities, LLC (“Harvest DCP”). The Lease term was 15 years and permitted High Desert to operate a medical marijuana dispensary on the property.

¶3 In May 2021, Harvest DCP’s parent company, Harvest Health & Recreation, Inc. (“the Parent Company”) entered an agreement to be acquired by Trulieve Cannabis Corp. Because the acquisition would transfer more than 50% of the voting control in Harvest DCP, it would trigger the assignment clause under the Lease and thus require CEC’s consent. Sections 10 and 10.1 explain the procedure for requesting an assignment and the ramifications for failing to do so:

**10. Assignment and Subletting.** Lessee may not assign . . . this Lease . . . 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 . . . 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 . . . . A Change of Control shall constitute an Assignment requiring Lessor’s consent . . . the term “**Change of Control**”

HIGH DESERT, et al. v. CEC 141202761  
Decision of the Court

means the transfer of more than 50% of the voting control of Lessee or Guarantor.

...

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

...

(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.

¶4 On August 6, 2021, High Desert emailed CEC a letter notifying CEC of the pending acquisition and requesting CEC's consent to the assignment. High Desert provided links to Trulieve's publicly available business history and financial information and indicated the transaction would likely occur before the end of 2021. Noting the \$500 fee required under Section 10.1(e), High Desert stated it would add \$500 to its next rent payment. Awaiting a response, High Desert sent CEC three emails over the next three weeks making similar requests. CEC responded by email on August 31, explaining the \$500 fee, which had not been paid, was a prerequisite for consideration of the assignment request. CEC also (1) noted concerns about past due rent, (2) referred to legal issues involving the Parent Company, and (3) questioned whether the leased property could "be seized as part of a 'civil asset forfeiture.'"

¶5 Consistent with its initial letter requesting approval of the assignment, on September 1, High Desert paid the \$500 fee to CEC with its monthly rent payment and notified CEC it had done so. A day later, CEC requested detailed financial information about High Desert and Trulieve, which High Desert provided the following day. CEC indicated it would review that information in considering the assignment request.

¶6 On September 29, CEC sent High Desert a letter refusing consent to the August 6, 2021 assignment request. CEC explained in part that the proposed acquisition of the Parent Company would detrimentally

HIGH DESERT, et al. v. CEC 141202761  
Decision of the Court

affect the landlord-tenant relationship, noting its “concerns that the additional locations and jurisdictions in which Trulieve operates would” increase CEC’s “exposure to state and federal forfeiture laws.” The letter did not mention the timing of the \$500 fee as a reason for refusing consent to the assignment. In addition, CEC stated it was terminating the Lease, “effective immediately,” because Harvest DCP had changed control in 2019, and CEC had not given prior written consent for that assignment.

¶7 High Desert sued CEC, seeking in part a declaratory judgment that it had not breached the Lease. In a separate action, CEC moved to evict High Desert. The superior court consolidated the cases and held a four-day bench trial during which six witnesses testified.

¶8 The court ruled that High Desert did not breach the Lease, CEC did breach the Lease, and CEC was obligated to approve the assignment and could not evict High Desert. In its detailed ruling, the court found that “[High Desert] 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.” The court further found that CEC failed to establish that voting control of Harvest DCP transferred before September 29, 2021. It also noted that CEC’s purported asset forfeiture concerns were not credible, and that CEC acted in bad faith by claiming High Desert failed to pay rent. The court thus concluded that “CEC unreasonably withheld consent to the assignment.”

¶9 The court later issued a final judgment that awarded, under the Lease, approximately \$150,000 to High Desert for its attorneys’ fees and taxable costs. CEC timely appealed, and we have jurisdiction under A.R.S. § 12-2101(A)(1).

## DISCUSSION

¶10 On appeal from a bench trial, we defer to the superior court’s factual findings unless clearly erroneous, but we review its legal conclusions de novo. *Town of Marana v. Pima Cnty.*, 230 Ariz. 142, 152, ¶ 46 (App. 2012). We review issues of contract interpretation de novo. *Am. Power Prods., Inc. v. CSK Auto, Inc.*, 242 Ariz. 364, 367, ¶ 12 (2017). When interpreting a contract, we aim to determine and effectuate the parties’ intent. *Terrell v. Torres*, 248 Ariz. 47, 49, ¶ 14 (2020). In doing so, we construe provisions by their “plain and ordinary meaning,” and we consider that meaning “in the context of the entire contract.” *Id.* at 50, ¶ 14.

HIGH DESERT, et al. v. CEC 141202761  
Decision of the Court

¶11 We first note that CEC failed to timely submit the transcripts from the superior court's bench trial.<sup>1</sup> See ARCAP 11(c) (stating that an appellant is responsible for ordering transcripts necessary to consider the issues on appeal). Thus, to the extent any issue CEC has raised on appeal flows from the court's resolution of factual disputes, we presume the missing transcripts support the court's findings and conclusions. See *State ex rel. Dep't of Econ. Sec. v. Burton*, 205 Ariz. 27, 30, ¶ 16 (App. 2003).

¶12 The only argument CEC makes on appeal is that by failing to pay the \$500 fee simultaneous with its August 6, 2021 written request, High Desert breached the Lease by "attempting an assignment" without CEC's consent, which gave CEC the absolute right to refuse the assignment and terminate the Lease. CEC asserts that the clause in Section 10.1 requiring that "[e]ach Assignment Request shall be in writing . . . together with a fee of \$500 as consideration for Lessor's considering and processing said request" means the \$500 fee must be paid simultaneously with the assignment request. It contends that "together with" means "simultaneously with" and "there is nothing ambiguous or unclear" about it. On the other hand, High Desert argues that "together with a fee of \$500" means that it had to submit both the written request and \$500, but those things did not have to happen simultaneously.

¶13 The superior court did not determine whether failure to pay the \$500 with the assignment request simultaneously was a breach, but we need not reach that issue because the court found that it was "not material" given that (1) High Desert explained in the August 6, 2021 request that it would pay the \$500 fee with September rent, (2) it paid the \$500 fee as promised, (3) the delayed payment did not prevent CEC from considering the request, and (4) CEC never indicated it would not consider the request without receiving the \$500 fee. For CEC to prevail on appeal, it must show these findings were clearly erroneous. Yet, CEC does not challenge these findings on appeal, nor could it without providing the trial transcripts.

¶14 Instead, CEC argues the superior court should not have analyzed whether the breach was material. Under CEC's theory, High Desert's August 6, 2021 request was not merely an improper assignment request, but an "attempt" to assign. And under 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,

---

<sup>1</sup> We granted High Desert's motion to strike the trial transcripts from the appellate record because CEC did not file them until after briefing and oral argument.

HIGH DESERT, et al. v. CEC 141202761  
Decision of the Court

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 . . . .” Therefore, according to CEC, this provision “trumps any language stating that consent to assignment ‘shall not [be] unreasonably withheld’” and what the “trial court regards as material or immaterial is not relevant.”

¶15 CEC, however, does not point to anywhere in the record showing that it raised this “attempt at an Assignment” issue in the superior court, and CEC’s appellate counsel conceded at oral argument that the issue was raised for the first time on appeal. It is therefore waived. *See Trantor v. Fredrikson*, 179 Ariz. 299, 300 (1994) (“Because a trial court and opposing counsel should be afforded the opportunity to correct any asserted defects before error may be raised on appeal, absent extraordinary circumstances, errors not raised in the trial court cannot be raised on appeal.”).

¶16 Waiver aside, we decline to adopt CEC’s construction of the “attempt at an Assignment” provision. The Lease does not define “attempt at an Assignment;” however, to request an assignment under the Lease, “Lessee” must notify “Lessor in writing of the terms of the Assignment,” which High Desert did on August 6, 2021. If that request itself is considered “an attempt at an Assignment,” it would be impossible to request an assignment without breaching the Lease and allowing CEC to terminate it. Thus, CEC’s interpretation renders the portion of the Lease dedicated to requesting an assignment meaningless. *See Aztar Corp. v. U.S. Fire Ins. Co.*, 223 Ariz. 463, 476, ¶ 45 (App. 2010) (“Our reading of one provision of a contract must not render a related provision meaningless.”).

¶17 Moreover, if we were to focus only on the “attempt at an Assignment” provision, CEC’s interpretation still cannot be reconciled. The provision reads: “Any attempt at an Assignment without Lessor’s *prior written consent* shall be null and void . . . .” (emphasis added). If High Desert’s August 6, 2021 request for CEC’s prior written consent to the assignment is by itself an “attempt at an Assignment without [CEC’s] prior written consent,” then it would be impossible to obtain “prior written consent,” which would also render that language meaningless. *See id.*; *see also Roe v. Austin*, 246 Ariz. 21, 27, ¶ 17 (App. 2018) (“[C]ourts must avoid an interpretation of a contract that leads to an absurd result.”). We conclude that High Desert did not attempt an Assignment.

¶18 High Desert requests an award of attorneys’ fees incurred on appeal under Section 28 of the Lease, which states that the prevailing party on appeal “shall be entitled to reasonable attorneys’ fees.” A contractual provision for attorneys’ fees will be enforced according to its terms. *Rand*

HIGH DESERT, et al. v. CEC 141202761  
Decision of the Court

*v. Porsche Fin. Servs.*, 216 Ariz. 424, 435, ¶ 42 (App. 2007). We therefore award reasonable attorneys' fees to High Desert subject to compliance with ARCAP 21.

**CONCLUSION**

¶19 We affirm the superior court's judgment.



AMY M. WOOD • Clerk of the Court  
FILED: AA



1 CA-CV 23-0195  
HIGH DESERT HEALING LLC ET AL VS CEC 141202761  
CONSOLIDATED FROM CV2021-053708

**AMENDED**

**Electronic Index of Record  
MAR Case # CV2021-016161**

No.	Document Name	Filed Date
1.	COMPLAINT	Oct. 15, 2021
2.	CIVIL COVERSHEET	Oct. 15, 2021
3.	CERTIFICATE OF COMPULSORY ARBITRATION	Oct. 15, 2021
4.	SUMMONS	Oct. 15, 2021
5.	SUMMONS	Oct. 15, 2021
6.	SUMMONS	Oct. 15, 2021
7.	PLAINTIFFS': (1) APPLICATION FOR PRELIMINARY INJUNCTION; (2) PETITION FOR ORDER TO SHOW CAUSE; AND, (3) REQUEST FOR RETURN HEARING ORDER.	Oct. 18, 2021
8.	PLAINTIFFS': (1) APPLICATION FOR PRELIMINARY INJUNCTION; (2) PETITION FOR ORDER TO SHOW CAUSE; AND, (3) REQUEST FOR RETURN HEARING ORDER.	Oct. 18, 2021
9.	RETURN HEARING ORDER	Oct. 19, 2021
10.	DECLARATION OF SERVICE	Oct. 20, 2021
11.	PLAINTIFFS' NOTICE OF FILING AFFIDAVIT OF SERVICE	Oct. 20, 2021
12.	NOTICE OF APPEARANCE	Oct. 21, 2021
13.	NOTICE OF FILING ACCEPTANCE OF SERVICE	Oct. 21, 2021
14.	CREDIT MEMO	Oct. 25, 2021
15.	STIPULATED SCHEDULING ORDER RE: PRELIMINARY INJUNCTION HEARING SET FOR DECEMBER 2-3, 2021	Oct. 25, 2021
16.	<b>ME: HEARING SET [10/22/2021]</b>	<b>Oct. 26, 2021</b>
17.	<b>ME: CASE CONSOLIDATION [10/25/2021]</b>	<b>Oct. 26, 2021</b>
18.	RULE 26(D) STATEMENT	Nov. 3, 2021
19.	<b>ME: STATUS CONFERENCE SET [11/03/2021]</b>	<b>Nov. 4, 2021</b>
20.	PLAINTIFFS' REQUEST FOR FINDINGS OF FACT AND CONCLUSIONS OF LAW	Nov. 5, 2021
21.	<b>ME: ORDER ENTERED BY COURT [11/05/2021]</b>	<b>Nov. 8, 2021</b>





1 CA-CV 23-0195  
HIGH DESERT HEALING LLC ET AL VS CEC 141202761  
CONSOLIDATED FROM CV2021-053708

**AMENDED**

**Electronic Index of Record  
MAR Case # CV2021-016161**

No.	Document Name	Filed Date
22.	(PART 1 OF 2) STIPULATED MOTION FOR ENTRY OF PROTECTIVE ORDER	Nov. 15, 2021
23.	(PART 2 OF 2) STIPULATED MOTION FOR ENTRY OF PROTECTIVE ORDER	Nov. 15, 2021
24.	STIPULATED PRELIMINARY INJUNCTION	Nov. 16, 2021
25.	STIPULATED PROTECTIVE ORDER	Nov. 16, 2021
26.	<b>ME: TRIAL SETTING [11/23/2021]</b>	<b>Nov. 24, 2021</b>
27.	<b>ME: RULING [12/01/2021]</b>	<b>Dec. 3, 2021</b>
28.	JOINT REPORT	Feb. 14, 2022
29.	ANSWER	Feb. 22, 2022
30.	STIPULATED SCHEDULING ORDER	Feb. 23, 2022
31.	ANSWER TO FORCIBLE ENTRY AND DETAINER COMPLAINT (CASE #CV2021-053708	Mar. 18, 2022
32.	NOTICE OF FIRST EXTENSION OF TIME TO FILE JOINT PRETRIAL STATEMENT	Apr. 6, 2022
33.	RULE 16(F) JOINT PRETRIAL STATEMENT	Apr. 14, 2022
34.	<b>ME: PRETRIAL CONFERENCE [04/15/2022]</b>	<b>Apr. 18, 2022</b>
35.	NOTICE OF IN-PERSON TESTIMONY OF KERRIE LARSON AND ERIC POWERS	Apr. 19, 2022
36.	NOTICE OF FILING EXHIBIT B (JOINT EXHIBIT LIST) TO THE PARTIES' JOINT PRETRIAL STATEMENT	Apr. 25, 2022
37.	NOTICE OF VIRTUAL TESTIMONY OF JANET E. JACKIM	Apr. 28, 2022
38.	<b>ME: TRIAL [05/02/2022]</b>	<b>May. 3, 2022</b>
39.	ACCEPTANCE OF SERVICE	May. 3, 2022
40.	WAIVER AND ACCEPTANCE OF SERVICE OF TRIAL SUBPOENA TO WILLIAM KOSLOW	May. 3, 2022
41.	<b>ME: TRIAL [05/03/2022]</b>	<b>May. 6, 2022</b>



1 CA-CV 23-0195  
HIGH DESERT HEALING LLC ET AL VS CEC 141202761  
CONSOLIDATED FROM CV2021-053708

**AMENDED**

**Electronic Index of Record  
MAR Case # CV2021-016161**

No.	Document Name	Filed Date
42.	<a href="#">ME: TRIAL [05/04/2022]</a>	May. 6, 2022
43.	<a href="#">ME: MATTER UNDER ADVISEMENT [05/05/2022]</a>	May. 9, 2022
44.	<a href="#">ME: UNDER ADVISEMENT RULING [06/30/2022]</a>	Jul. 5, 2022
45.	<a href="#">PLAINTIFFS' APPLICATION FOR AWARD OF ATTORNEYS' FEES AND COSTS</a>	Jul. 11, 2022
46.	<a href="#">DEFENDANT CEC 141202761, LLC'S REQUEST FOR ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW</a>	Jul. 15, 2022
47.	<a href="#">PLAINTIFFS' REQUEST FOR FINAL JUDGMENT PURSUANT TO RULE 54(C), ARIZ. R. CIV. P.</a>	Jul. 15, 2022
48.	<a href="#">RULE 7.1 NOTICE OF FIRST EXTENSION OF TIME TO FILE RESPONSES</a>	Jul. 20, 2022
49.	<a href="#">PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT CEC 14120261, LLC'S REQUEST FOR ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW</a>	Aug. 3, 2022
50.	<a href="#">DEFENDANT CEC 141202761, LLC'S MOTION FOR LEAVE TO FILE REPLY IN SUPPORT OF PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW</a>	Aug. 15, 2022
51.	<a href="#">DEFENDANT CEC 141202761, LLC'S RESPONSE TO PLAINTIFF'S APPLICATION FOR AWARD OF ATTORNEYS' FEES AND COSTS</a>	Aug. 15, 2022
52.	<a href="#">(PART 1 OF 2) NOTICE OF LODGING STIPULATED PROPOSED FORM OF JUDGMENT</a>	Aug. 22, 2022
53.	<a href="#">(PART 2 OF 2) NOTICE OF LODGING STIPULATED PROPOSED FORM OF JUDGMENT</a>	Aug. 22, 2022
54.	<a href="#">PLAINTIFFS' REPLY IN SUPPORT OF THEIR APPLICATION FOR AWARD OF ATTORNEYS' FEES AND COSTS</a>	Aug. 29, 2022
55.	<a href="#">EMAIL DATED 09/07/2022</a>	Sep. 7, 2022
56.	<a href="#">ME: RULING [09/07/2022]</a>	Sep. 8, 2022
57.	<a href="#">DEFENDANT CEC 141202761, LLC'S REPLY IN SUPPORT OF ITS REQUEST FOR ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW</a>	Sep. 19, 2022
58.	<a href="#">EMAIL DATED 09/07/2022</a>	Sep. 27, 2022



1 CA-CV 23-0195  
HIGH DESERT HEALING LLC ET AL VS CEC 141202761  
CONSOLIDATED FROM CV2021-053708

**AMENDED**

**Electronic Index of Record  
MAR Case # CV2021-016161**

No.	Document Name	Filed Date
59.	<b>ME: ORDER ENTERED BY COURT [11/02/2022]</b>	<b>Nov. 3, 2022</b>
60.	APPLICATION FOR ORDER TO SHOW CAUSE RE: FALSE DEFAULT NOTICES ISSUED BY CEC 141202761, LLC	Nov. 3, 2022
61.	DEFENDANT CEC 141202761, LLC'S REQUEST FOR STAY AND EXTENSION TO FILE RESPONSE TO PLAINTIFFS' APPLICATION FOR ORDER TO SHOW CAUSE RE NOTICES OF DEFAULT	Nov. 10, 2022
62.	RESPONSE IN OPPOSITION TO REQUEST FOR STAY	Nov. 11, 2022
63.	<b>ME: HEARING SET [11/03/2022]</b>	<b>Nov. 17, 2022</b>
64.	<b>ME: HEARING RESET [11/22/2022]</b>	<b>Nov. 23, 2022</b>
65.	MOTION TO WITHDRAW AS COUNSEL OF RECORD	Nov. 29, 2022
66.	NOTICE OF NO OPPOSITION TO MOTION TO WITHDRAW AS COUNSEL OF RECORD	Nov. 30, 2022
67.	ORDER GRANTING MOTION TO WITHDRAW	Dec. 2, 2022
68.	<b>ME: ORDER ENTERED BY COURT [12/07/2022]</b>	<b>Dec. 8, 2022</b>
69.	SECOND (NEW) APPLICATION FOR ORDER TO SHOW CAUSE RE: FALSE DEFAULT NOTICES ISSUED BY CEC 141202761, LLC	Dec. 9, 2022
70.	NOTICE OF LODGING REVISED PROPOSED FORM OF JUDGMENT	Dec. 13, 2022
71.	NOTICE OF APPEARANCE OF COUNSEL FOR CEC 141202761	Dec. 13, 2022
72.	<b>ME: HEARING SET [12/16/2022]</b>	<b>Dec. 19, 2022</b>
73.	<b>ME: ORDER ENTERED BY COURT [12/19/2022]</b>	<b>Dec. 20, 2022</b>
74.	CEC 141202761'S MOTION TO CONTINUE HEARING AND OTHER DUE DATES AND REQUEST FOR STATUS CONFERENCE	Jan. 3, 2023
75.	<b>ME: STATUS CONFERENCE SET [01/04/2023]</b>	<b>Jan. 5, 2023</b>
76.	EMAIL DATED 01/04/2023	Jan. 5, 2023
77.	<b>ME: STATUS CONFERENCE [01/30/2023]</b>	<b>Jan. 31, 2023</b>
78.	JUDGMENT	Feb. 7, 2023
79.	EMAIL DATED 02/03/2023	Feb. 7, 2023



**Electronic Index of Record  
MAR Case # CV2021-016161**

<b>No.</b>	<b>Document Name</b>	<b>Filed Date</b>
80.	<a href="#">NOTICE OF ENTRY OF (CORRECTED) JUDGMENT</a>	Feb. 8, 2023
81.	<a href="#">NOTICE OF APPEAL</a>	Mar. 8, 2023
82.	<a href="#">EXHIBIT 3 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
83.	<a href="#">EXHIBIT 10 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
84.	<a href="#">EXHIBIT 16 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
85.	<a href="#">EXHIBIT 20 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
86.	<a href="#">EXHIBIT 25 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
87.	<a href="#">EXHIBIT 29 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
88.	<a href="#">EXHIBIT 42 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
89.	<a href="#">EXHIBIT 52 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
90.	<a href="#">EXHIBIT 53 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
91.	<a href="#">EXHIBIT 55 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
92.	<a href="#">EXHIBIT 56 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
93.	<a href="#">EXHIBIT 57 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
94.	<a href="#">EXHIBIT 58 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
95.	<a href="#">EXHIBIT 59 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
96.	<a href="#">EXHIBIT 61 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
97.	<a href="#">EXHIBIT 64 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
98.	<a href="#">EXHIBIT 66 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
99.	<a href="#">EXHIBIT 67 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
100.	<a href="#">EXHIBIT 68 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
101.	<a href="#">EXHIBIT 69 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
102.	<a href="#">EXHIBIT 70 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
103.	<a href="#">EXHIBIT 71 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023



**Electronic Index of Record  
MAR Case # CV2021-016161**

No.	Document Name	Filed Date
104.	<a href="#">EXHIBIT 80 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
105.	<a href="#">EXHIBIT 82 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
106.	<a href="#">EXHIBIT 88 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
107.	<a href="#">EXHIBIT 90 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
108.	<a href="#">EXHIBIT 91 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
109.	<a href="#">EXHIBIT 93 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
110.	<a href="#">EXHIBIT 101 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
111.	<a href="#">EXHIBIT 102 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
112.	<a href="#">EXHIBIT 122 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
113.	<a href="#">EXHIBIT 123 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
114.	<a href="#">EXHIBIT 124 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
115.	<a href="#">EXHIBIT 153 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
116.	<a href="#">EXHIBIT 154 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
117.	<a href="#">EXHIBIT 193 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
118.	<a href="#">EXHIBIT 199 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
119.	<a href="#">EXHIBIT 200 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
120.	<a href="#">EXHIBIT 202 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
121.	<a href="#">EXHIBIT 208 - 05/02/2022 - PLAINTIFF</a>	Mar. 9, 2023
122.	<a href="#">EXHIBIT 219 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
123.	<a href="#">EXHIBIT 233 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
124.	<a href="#">EXHIBIT 236 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
125.	<a href="#">EXHIBIT 239 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
126.	<a href="#">EXHIBIT 240 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
127.	<a href="#">EXHIBIT 246 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023



**Electronic Index of Record  
MAR Case # CV2021-016161**

No.	Document Name	Filed Date
128.	<a href="#">EXHIBIT 249 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
129.	<a href="#">EXHIBIT 250 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
130.	<a href="#">EXHIBIT 251 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
131.	<a href="#">EXHIBIT 252 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
132.	<a href="#">EXHIBIT 254 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
133.	<a href="#">EXHIBIT 259 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
134.	<a href="#">EXHIBIT 263 - 05/02/2022 - DEFENDANT</a>	Mar. 9, 2023
135.	<a href="#">NOTICE OF APPEARANCE OF ATTORNEY DAVID L. ABNEY</a>	Mar. 8, 2023
136.	<a href="#">APPLICATION FOR WRIT OF GARNISHMENT</a>	Mar. 8, 2023
137.	<a href="#">NOTICE OF FILING NOTICE OF APPEAL</a>	Mar. 9, 2023
138.	<a href="#">EXHIBIT WORKSHEET HD 05/02/2022</a>	Mar. 9, 2023
139.	<a href="#">RETURNED MAIL</a>	Mar. 21, 2023
140.	<a href="#">NOTICE OF APPEARANCE OF COUNSEL ON BEHALF OF BANK OF AMERICA, N.A., AS GARNISHEE</a>	Mar. 20, 2023
141.	<a href="#">ANSWER TO WRIT OF GARNISHMENT</a>	Mar. 20, 2023
<b>Record amended on Friday, September 29, 2023 @ 8:20 AM</b>		
142.	<a href="#">COURT OF APPEALS RECEIPT</a>	Apr. 6, 2023
143.	<a href="#">ELECTRONIC INDEX OF RECORD</a>	Apr. 6, 2023
<b>Record amended on Friday, September 29, 2023 @ 8:42 AM</b>		
144.	<a href="#">COURT OF APPEALS APPELLATE CLERK NOTICE</a>	Apr. 6, 2023
145.	<a href="#">(PART 1 OF 2) APPLICATION FOR GARNISHMENT JUDGMENT</a>	May. 8, 2023
146.	<a href="#">(PART 2 OF 2) APPLICATION FOR GARNISHMENT JUDGMENT</a>	May. 8, 2023
147.	<a href="#">GARNISHMENT JUDGMENT</a>	May. 10, 2023
148.	<a href="#">MOTION TO DISCHARGE GARNISHEE BANK OF AMERICA, N.A.</a>	Jun. 20, 2023
149.	<a href="#">ORDER DISCHARGING GARNISHEE BANK OF AMERICA, N.A.</a>	Jun. 27, 2023



1 CA-CV 23-0195  
HIGH DESERT HEALING LLC ET AL VS CEC 141202761  
CONSOLIDATED FROM CV2021-053708

**AMENDED**

**Electronic Index of Record  
MAR Case # CV2021-016161**

No.	Document Name	Filed Date
Record amended on Friday, October 6, 2023 @ 7:40 AM		
150.	<a href="#">COURT OF APPEALS MEMORANDUM DATED 09/27/2023</a>	Sep. 27, 2023

---

APPEAL COUNT: 1

RE: CASE: 1 CA-CV 23-0195

DUE DATE: 04/06/2023

CAPTION: HIGH DESERT HEALING LLC ET AL VS CEC 141202761

CAPTION: CONSOLIDATED FROM CV2021-053708

---

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 April 6, 2023; [2.5-17026.63]  
\\NTFSNASnew\C2C\C2C-4\CV2021-016161\Group\_01

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.



1 CA-CV 23-0195  
HIGH DESERT HEALING LLC ET AL VS CEC 141202761  
CONSOLIDATED FROM CV2021-053708

**AMENDED**

**Electronic Index of Record  
MAR Case # CV2021-016161**

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



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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:<sup>1</sup>

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

---

<sup>1</sup> The limited number of stipulated facts is indicative of the relationship between the parties.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

(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**

Docket Code 926

Form V000A

Page 4

**APP044**

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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.<sup>2</sup>
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.<sup>3</sup>

---

<sup>2</sup> The Court was not presented with any evidence to establish that forfeiture has been used to seize property from landlords leasing to dispensaries.

<sup>3</sup> According to Mr. Ayers, as of May 2021, he could have been aware of the pending merger between Trulieve and Harvest.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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 6<sup>th</sup> 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

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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.<sup>4</sup> 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.

---

<sup>4</sup> Once again, this type of conduct is indicative of the history of the relationship between the parties.



SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

**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<sup>5</sup>  
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.

---

<sup>5</sup> 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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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:

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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 reasonable 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 relevant 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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

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.<sup>6</sup> 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.<sup>7</sup> 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

---

<sup>6</sup> 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.

<sup>7</sup> 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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

Court did not find Mr. Ayer's testimony credible on this issue.<sup>8</sup> 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,

---

<sup>8</sup> 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.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2021-016161

06/30/2022

**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**.

**Granted with Modifications**

\*\*\*See eSignature page\*\*\*

Clerk of the Superior Court  
\*\*\* Electronically Filed \*\*\*  
K. Cabral, Deputy  
2/7/2023 8:00:00 AM  
Filing ID 15502868

1 Paul A. Conant, 012667  
2 Melissa A. Emmel, 023195  
3 **CONANT LAW FIRM, PLC**  
4 2398 East Camelback Road #925  
5 Phoenix, Arizona 85016-9002  
6 Telephone: 602.508.9010  
7 Facsimile: 602.508.9015  
8 Email: docket@conantlawfirm.com  
9 *Attorneys for Plaintiffs*

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
11 **IN AND FOR MARICOPA COUNTY**

12 HIGH DESERT HEALING, LLC, an Arizona  
13 limited liability company; HARVEST  
14 DISPENSARIES, CULTIVATIONS &  
15 PRODUCTION FACILITIES, LLC, an  
16 Arizona limited liability company; HARVEST  
17 HEALTH & RECREATION, INC., a British  
18 Columbia corporation;  
19 Plaintiffs,

20 vs.

21 CEC 141202761, LLC, an Arizona limited  
22 liability company; JOHN and Jane Doe;  
23 JOHN AND JANE DOE REVOCABLE  
24 LIVING TRUST; ADDITIONAL  
25 DEFENDANTS 1-3;  
26 Defendants.

27 CEC 141202761, LLC, an Arizona limited  
28 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.

CV2021-016161

Case No. CV2021-016160  
(Consolidated with CV2022-053708)

**JUDGMENT**

(Assigned to The Honorable  
Danielle J. Viola)



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

3 1. Plaintiffs High Desert Healing, LLC (“HDH”) and Harvest Dispensaries, Cultivations  
4 & Production Facilities, LLC (“Harvest DCP”) are determined to be the successful and  
5 prevailing parties on their declaratory judgment claims against Defendant CEC  
6 141202761, LLC (“CEC”), and the Court specifically declares:

- 7 a. HDH did not breach the Lease (as amended) as between it and CEC;  
8 b. Harvest DCP did not breach the Lease (as amended), or guarantee, as between  
9 it and CEC; and,  
10 c. CEC has an obligation to approve in writing an assignment of the Lease, as  
11 requested by Plaintiffs, and CEC is hereby directed to do so.  
12

13 2. CEC’s forcible entry and detainer claim is dismissed, and CEC’s request to receive  
14 possession of the leased property, including immediate possession of said property and  
15 all fixtures, trade fixtures and related tenant improvements, is denied.

16 3. HDH’s request for permanent injunctive relief is granted to the following extent: CEC  
17 is permanently enjoined from contending and/or acting as if the Lease (as amended)  
18 had been terminated as a result of any issues decided in this action. The injunction  
19 does not foreclose CEC’s rights under the lease as they pertain to any other matters.

20 4. Upon execution of this Judgment, the tortious interference claim made by Plaintiff  
21 Harvest Health & Recreation, Inc., and the damages remedies sought by Plaintiffs  
22 HDH and Harvest DCP, are deemed waived.

23 5. Upon execution of this Judgment, the October 14, 2022 “Notice of Breach of Lease  
24 January 2020” and “Notice of Breach of Lease 2000”, the November 13, 2022  
25 “Notice of Breach of Lease”, and the December 9, 2022 “Notice of Default of Lease”,  
26

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

4 6. Plaintiffs HDH and Harvest DCP are awarded, jointly and severally, the following  
5 sums as and for their attorneys' fees and costs under the Lease, and ARS §12-341.01,  
6 and their taxable costs under ARS §12-341:

7 a. Attorneys' fees and costs under the Lease (and ARS §12-341.01): \$147,425.50;  
8 and,  
9

10 b. Taxable costs under ARS §12-341: \$2,394.25.

11 7. The statutory rate of 8.75% interest shall run on any unpaid amounts stated above, until  
12 paid in full.

13 8. The Court directs that final judgment is and shall be entered pursuant to Rule 54(c),  
14 Ariz. R. Civ. P, as this is a judgment which resolves all claims as to all parties, and no  
15 further matters remain pending.

16 9. This judgment is entered under Rule 54(c), Ariz. R. Civ. P.

17 10. The Court finds no reason for delay and expressly directs entry of this judgment as a  
18 final judgment in this matter.  
19

20 Signed this 6th day of February, 2022  
21

22  
23  
24 \_\_\_\_\_  
25 The Honorable Danielle J. Viola, Judge  
26 Maricopa County Superior Court  
27

# 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

**APP059**

**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 AZND, 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 UNDERSHORE; (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 been 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 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 be 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 Person 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 confidentiality 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 COMMERCIALY 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 141202761, LLC, an Arizona limited liability company

By: 

Name: S. Ayers  
Its: Manager

Address: PO Box 3211  
Chandler, AZ 85244

**LESSEE**

HIGH DESERT HEALING, LLC, an Arizona limited liability company

By: 

Name: Jason Vedadi  
Its: Manager

Address: 627 S 48<sup>th</sup> St., Suite 100  
Tempe, AZ 85281

Error! Unknown document property name.

CEC00403

Ex. 25-14

**APP075**

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 [REDACTED], 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](mailto: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](mailto:wkoslow@harvestinc.com)>  
**Sent:** Friday, August 6, 2021 3:03 PM  
**To:** S. Aye <[cec141202761llc@gmail.com](mailto:cec141202761llc@gmail.com)>  
**Cc:** Jesse Francoeur <[jfrancoeur@harvestinc.com](mailto: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](mailto: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.

# 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.

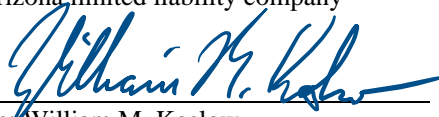
Because the legal entity comprising the Tenant will remain unchanged, it is Tenant's position that no changes to documentation will be required following Tenant's receipt of Landlord's consent.

Please contact me with any questions at 646-831-1997 or [wkoslow@harvestinc.com](mailto: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. 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)


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:19ACHPFBE ID:	20244.24	credit	Income	Business Adv Relationship - 1382
7	10/28/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBE ID:	20244.24	credit	Income	Business Adv Relationship - 1382
8	9/29/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBE ID:	20244.24	credit	Income	Business Adv Relationship - 1382
9	09/01/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBE ID:	20744.24	credit	Income	Business Adv Relationship - 1382
10	7/29/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBE ID:	20244.24	credit	Income	Business Adv Relationship - 1382
11	6/30/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBE ID:	20244.24	credit	Income	Business Adv Relationship - 1382
12	5/28/2021	Harvest Enterpri Des	HARVEST ENTERPRI DES:19ACHPFBE 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	20244.24	credit	Income	Business Adv Relationship - 1382
15	03/01/2021	Harvest Enterpri Des	Harvest Enterpri DES:ACH 2.26a ID:V00364	20244.24	credit	Income	Business Adv Relationship - 1382
16	02/03/2021	Harvest Enterpri Des	Harvest Enterpri DES:ACH 2.2 ID:V00364	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	19263.18	credit	Income	Business Adv Relationship - 1382
19	11/02/2020	Harvest Enterpri Des	Harvest Enterpri DES:Nov Rent ID:V00364	19263.18	credit	Income	Business Adv Relationship - 1382
20	10/01/2020	Harvest Enterpri Des	Harvest Enterpri DES:ACH 9.30 ID:V00364	19263.18	credit	Income	Business Adv Relationship - 1382
21	8/31/2020	Harvest Enterpri Des	Harvest Enterpri DES:CEC1412027 ID:	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:CEC1412027	18199.4	credit	Income	Business Adv Relationship - 1382
42	02/01/2019	Harvest Maryl Des	Harvest of Maryl DES:CEC1412027 ID: INDN:CEC1412027	18199.4	credit	Income	Business Adv Relationship - 1382
43	12/31/2018	Randy Taylor Con	RANDY TAYLOR CON DES:DEC2018 ID: INDN:CEC1412027	18199.4	credit	Rental Income	Business Adv Relationship - 1382
44	11/30/2018	Randy Taylor Con	RANDY TAYLOR CON DES:DEC2018 ID: INDN:CEC1412027	18199.4	credit	Rental Income	Business Adv Relationship - 1382
45	10/31/2018	Randy Taylor Con	RANDY TAYLOR CON DES:Aug2018 ID: INDN:CEC1412027	18199.4	credit	Rental Income	Business Adv Relationship - 1382
46	10/01/2018	Randy Taylor Con	RANDY TAYLOR CON DES:Aug2018 ID: INDN:CEC1412027	18199.4	credit	Rental Income	Business Adv Relationship - 1382
47	8/31/2018	Randy Taylor Con	RANDY TAYLOR CON DES:Aug2018 ID: INDN:CEC1412027	18199.4	credit	Rental Income	Business Adv Relationship - 1382
48	08/01/2018	Randy Taylor Con	RANDY TAYLOR CON DES:Aug2018 ID: INDN:CEC1412027	18199.4	credit	Rental Income	Business Adv Relationship - 1382
49	6/29/2018	Randy Taylor Con	RANDY TAYLOR CON DES:June Rent ID: INDN:CEC1412027	18199.4	credit	Rental Income	Business Adv Relationship - 1382
50	06/01/2018	Randy Taylor Con	RANDY TAYLOR CON DES:June Rent ID: INDN:CEC1412027	18199.4	credit	Rental Income	Business Adv Relationship - 1382
51							
52							

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

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

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

P.O. Box 72708  
Phoenix, Arizona 85050

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

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

September 29, 2021

## **VIA OVERNIGHT COURIER**

High Desert Healing, LLC  
627 S. 48<sup>th</sup> 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.

CEC00514

**APP096**



# PARKER LAW TEAM, PLLC

Re: CEC 141202761, LLC/ High Desert Healing, LLC  
September 29, 2021  
Page 2

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

CEC00515

**APP097**

# PARKER LAW TEAM, PLLC

Re: CEC 141202761, LLC/ High Desert Healing, LLC  
September 29, 2021  
Page 3

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.

# PARKER LAW TEAM, PLLC

Re: CEC 141202761, LLC/ High Desert Healing, LLC

September 29, 2021

Page 4

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

CEC00517

**APP099**

# PARKER LAW TEAM, PLLC

Re: CEC 141202761, LLC/ High Desert Healing, LLC  
September 29, 2021  
Page 5

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

CEC00518

**APP100**