ARIZONA COURT OF APPEALS

DIVISION ONE

AGRICANN LLC, Plaintiff/Appellant, v. NATURAL REMEDY PATIENT CENTER LLC, Defendant/Appellee.	Court of Appeals Division One No. 1 CA-CV 24-0770 Maricopa County Superior Court No. CV2016-001283

APPELLEE'S ANSWERING BRIEF AND APPENDIX

Sharon A. Urias (016970)
GREENSPOON MARDER LLP
8585 E. Hartford Drive, Ste. 700
Scottsdale, Arizona 85255
(480) 306-5458
sharon.urias@gmlaw.com

Thomas L. Hudson (014485)
Eric M. Fraser (027241)
Michael A. Moorin (039811)
OSBORN MALEDON, P.A.
2929 N. Central Avenue, Ste. 2000
Phoenix, Arizona 85012
(602) 640-9000
thudson@omlaw.com
efraser@omlaw.com
mmoorin@omlaw.com

Attorneys for Defendant/Appellee

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INTRODUCTION

Agricann's core argument is that, on remand, the superior court should have granted summary judgment reinstating the very same damages award that this Court vacated in the first appeal. This Court already held that the vacated award erroneously "placed Agricann in a better position than it would have been in had the contract been fully performed." Yet Agricann ignored that ruling on remand and continued to assert—in the face of overwhelming evidence to the contrary—that it avoided no costs by not having to perform the contract. The superior court correctly rejected that argument on summary judgment, and this Court should too. This Court lacks jurisdiction to review it, the law of the case forecloses it, and the additional evidence on remand debunked it, in any event.

Agricann tries to avoid that evidence by claiming this Court's mandate limited the remand proceedings to the evidence presented at the first trial. Again, however, this Court lacks jurisdiction over that claim, which needed to be brought by special action during the remand (as the superior court invited). Regardless, the mandate—which ordered the judge on remand "to conduct such proceedings as required" to "consider the costs that Agricann

avoided"—permitted the superior court to consider additional evidence aiding the judge in identifying and calculating the costs Agricann avoided.

This Court should therefore dismiss the appeal because it lacks jurisdiction over each of Agricann's arguments. Alternatively, the Court should affirm because the remand evidence complied with the mandate and that evidence, as well as the law of the case, foreclosed summary judgment.

STATEMENT OF FACTS AND CASE*

I. The superior court originally awarded Agricann the full amount remaining under the Breakup Deal.

"In May 2014, the parties" in this case—Agricann, LLC and Natural Remedy Patient Center, LLC—"entered a two-year … contract … under which Agricann would cultivate and Natural Remedy would sell medical marijuana." *Agricann LLC v. Nat. Remedy Patient Ctr. LLC*, No. 1 CA-CV 20-0231, 2022 WL 1498523, ¶ 4 (Ariz. App. May 12, 2022) (*Agricann I*) (APP098). "Agricann … held the lease to … the 'Grow Facility.'" *Id.*, ¶ 2 (APP099). Over the course of the agreement, "[a]n ongoing dispute developed over

* Selected record items cited are included in the Appendix attached to the end of this brief, cited by page numbers (e.g., APP114), which also match the PDF page numbers and function as clickable links. Other record items are cited with "IR-" followed by the record number.

what Natural Remedy owed Agricann and whether either party was complying with … the contract[.]" *Id.*, ¶ 6 (APP100). "Consequently, in October 2015, … the parties met … to find an amicable way to end their business relationship." *Id.* (APP100).

"At that meeting, the parties" formed "the 'Breakup Deal.'" *Agricann I*, ¶¶ 7-8 (APP100–101). "According to … the 'Breakup Deal,'" "Natural Remedy would sublease the Grow Facility for $20,000.00 a month for three years, beginning on November 15, 2015, and ending with a $400,000.00 balloon payment…. [T]he Breakup Deal would [also] include the transfer of title to" marijuana-growing "equipment from Agricann to Natural Remedy." *Id.*, ¶ 8 (APP101).

"Natural Remedy paid $20,000.00 in November 2015, $20,000.00 in December 2015, and $15,000.00 in January 2016" but then "breached the Breakup Deal by failing to make payments after January 2016." *Id.*, ¶ 15 (APP103).

Litigation ensued and, after the first trial in this case, the superior court ultimately awarded Agricann "the remaining … payments of $20,000.00, and the $400,000.00 balloon payment, totaling $1.065 million" in damages due to

Natural Remedy's breach of the Breakup Deal. *Id.* (APP103). Natural Remedy then appealed that award. *Id.*, ¶ 17 (APP103).

II. This Court vacated the prior damages award because it failed to deduct costs avoided and thus put Agricann in a better position than had the Breakup Deal been performed.

This Court's decision in the prior appeal "vacate[d] the damages award" from the first trial because the superior court had improperly given "Agricann the full amount due under the Breakup Deal." *Agricann I*, ¶ 35 (APP108).

The Court explained that the superior court failed to "consider[] the costs that Agricann avoided by not having to perform" the Breakup Deal, "such as, but not limited to, the rent payments and the transfer of equipment" that Agricann would have incurred if the Deal had been carried out. *Id.*, ¶¶ 34-36, 45 (APP107–08, 110). That "error" in failing to deduct avoided costs "placed Agricann in a better position than it would have been in had the contract been fully performed." *Id.*, ¶ 36 (APP108). A correct "calculation of expectation damages" should have "necessarily include[d] a deduction for any cost or other loss … avoided by not having to perform." *Id.*, ¶ 34 (APP107–08) (citation omitted). This is basic contract law. *See, e.g.*,

Restatement (Second) of Contracts § 347(c) (1981) ("any cost or other loss that he has avoided by not having to perform").

This Court accordingly "instruct[ed] … the superior court to consider the costs that Agricann avoided by not having to perform." *Agricann I*, ¶ 36 (APP108). In other words, the superior court needed to determine a dollar value for the costs that Agricann avoided, and that dollar value could not be zero (because the Court had already determined that subtracting no costs "placed Agricann in a better position than it would have been in had the contract been fully performed"). *Id.* (APP108).

The superior court vacated the damages award, remanded, and ordered the superior court to conduct any "further proceedings consistent with th[e] decision." *Id.*, ¶¶ 1, 36, 45 (APP099, 108, 110). The mandate similarly "commanded" the trial court "to conduct such proceedings as required[.]" IR-237 at 1 (APP096).

III. On remand, the superior court considered Agricann's avoided costs and found that Agricann avoided rent, utilities, and equipment costs exceeding the amount remaining under the Breakup Deal.

A. The superior court rejected Agricann's requests to reenter the vacated damages award and limit the remand to existing evidence.

On remand, Agricann argued only that the vacated damages award should be reinstated in full because Agricann avoided no costs—a position directly contrary to this Court's holding that the vacated award "placed Agricann in a better position than it would have been in had the contract been fully performed." *Agricann I*, ¶ 36 (APP108). On remand, Agricann immediately lodged a proposed judgment asking the superior court to reinstate the prior vacated damages award. IR-239 (APP143, APP146).

According to Agricann, this Court's mandate to "consider" avoided costs allowed the court on remand to find that no such costs existed. IR-243 at 3-4. Agricann also argued that "any consideration of new evidence" on remand "would be improper," IR-259 at 6, because "the Court of Appeals did not instruct this Court to conduct a new trial," IR-243 at 3.

The superior court "den[ied]" Agricann's "proposed … judgment" and held discussion "regarding the interpretation of" this Court's "mandate." IR-244 (APP113–14). The court disagreed with Agricann's

interpretation of the mandate, instead ruling that under the "correct[] interpret[ation]" of "the Court of Appeals memorandum decision," "it would be error for me to grant [Agricann's] … proposed form of judgment and not reopen discovery and disclosure" into the remanded issue. 4/6/2023 Tr. at 3:13-18 (APP287); *see also* 7/13/2023 Tr. at 6:2-6 (APP299) (reiterating that if there were "no new fact[s] to be known" on remand, "the Court of Appeals could have just … ruled on it on appeal and made the appropriate [damages] calculations").

The superior court noted that "the parties obviously agree to disagree about how to interpret" the mandate, and told Agricann that "[i]f the Plaintiffs believe that" the court's interpretation "was in error … you could ask the Court of Appeals to consider special action review." 4/6/2023 Tr. at 5:11-16 (APP289). The court then temporarily stayed the case "to allow [Agricann] to seek … special action review" of its interpretation of the mandate. IR-244 at 2 (APP114). Agricann did not do so.

The parties submitted different proposed discovery schedules, IR-245, and the superior court "adopt[ed]" Natural Remedy's "position on scope of discovery," IR-254 (APP116). The court entered a scheduling order

permitting supplemental disclosures, depositions, and "an evidentiary hearing" on Agricann's avoided costs. IR-257 at ¶¶ 1-8 (APP117–18).

B. The superior court denied summary judgment because the law of the case foreclosed Agricann's position and fact issues remained regarding the types and amounts of Agricann's avoided costs.

Agricann then filed a motion for summary judgment, arguing again that "[t]here are no" avoided costs. IR-259 at 1. Despite this Court's holding that the original $1,065,000 award "placed Agricann in a better position than it would have been in had the contract been fully performed," *Agricann I*, ¶ 36 (APP108), Agricann again asked the remand judge to hold as a matter of law that Agricann was entitled to the same damages award this Court had vacated, IR-259 at 17.

Agricann's claim that it avoided no costs hinged on asserting that under the Breakup Deal, Natural Remedy agreed to pay Agricann's rent and utilities on top of the $20,000 per month it was already paying to sublease the facility. IR-259 at 12-13. Agricann also claimed it did not avoid the cost of transferring title to the equipment because Natural Remedy "already obtained the equipment." *Id.* at 14.

Natural Remedy opposed summary judgment. It argued that reinstating the vacated damages award, and holding that Agricann did not avoid any costs, would violate the law of the case. IR-266 at 9-11, 17. The appellate court had already determined that avoiding rent payments and the equipment transfer made Agricann better off, so the court on remand could not find that the costs avoided were zero. Natural Remedy also presented detailed evidence showing that genuine factual disputes existed regarding the costs Agricann avoided—and in particular that the costs avoided were more than the zero dollars Agricann continued to insist on. *Id.* at 4-9.

For instance, to show that Agricann would have remained responsible for paying its rent and utilities during the Breakup Deal, Natural Remedy pointed out that the Deal itself stated that Natural Remedy's "$20k/mo" payments were a "sublease rate," meaning Agricann remained the lessee owing rent to the landlord. IR-268, Ex. 1 (APP149). Indeed, at all times, the lease listed "Agricann" as the "Lessee." *Id.*, Ex. 3 (APP151). Agricann's 30(b)(6) witness (Brigham Burton) testified during deposition that "Agricann LLC … was the only … lessee." IR-269, Ex. 4 at 92:20-23 (APP180). And the landlord (John Masciandaro) testified that, although it was "fine with a sublease," "it's still … the initial … lessee"—Agricann—who was

"legally responsible for making the monthly payments" for rent and utilities. *Id.*, Ex. 5 at 22:16-23:3, 25:1-17 (APP195, 198). That is why the landlord sent Agricann, not Natural Remedy, a default letter when Agricann failed to pay rent. IR-270, Ex. 14 (APP284). The facility's utility bills also showed "Agricann LLC" as the paying account holder. IR-269, Ex. 7 (APP212–255).

Shadi Zaki (who worked for Natural Remedy) similarly declared that "Agricann … was solely responsible for its obligations under th[e] Lease," that Natural Remedy never "assume[d]" those obligations, and that Natural Remedy was not required under the Breakup Deal "to pay … rent and utilities *in addition to* the $20,000.00/monthly payments" for subleasing the facility. IR-270, Ex. 10 at 3 (APP282) (emphasis added). After all, Natural Remedy's $20,000 sublease payments more than covered the roughly $7,000 in monthly rent Agricann owed the landlord. IR-268, Ex. 3 at AG-WL 00003, AG-WL000016 (APP151, 164).

To show Agricann's avoided cost of transferring title to the equipment, Natural Remedy offered evidence showing that "ownership of the equipment was never transferred" to Natural Remedy—including evidence that Agricann later purported to transfer the equipment to another business partner—Dr. Imran Kazem. *See* IR-266 at 8-9 (citing IR-270, Ex. 9 at ¶ 1.B

(APP273); *Agricann I*, ¶ 8 (APP101)). Natural Remedy estimated that the value of the equipment it should have received was between $200,000 and $600,000, depending on facts to be proved at trial. IR-266 at 8-9.

Natural Remedy claimed the above evidence (and much more) at least established genuine issues of material fact precluding summary judgment on the costs Agricann avoided. *Id.* at 13-16.

The superior court agreed, remarking that "[t]he issue is not even close" and that Agricann "chooses to continuously ignore the unambiguous rulings of" the Court of Appeals. IR-278 at 1–2 (APP128–29). The superior court denied summary judgment for two reasons. *Id.* at 1 (APP128). First, Agricann's request that the court find that Agricann avoided no costs, and make those findings without considering new evidence, "ignore[d] the Law of the Case, and the actual wording of the Court of Appeals' Memorandum Decision." *Id.* (APP128). In other words, there had to be a deduction—the only question was how much. Second, the superior court found that the evidence, in any event, established "disputed issues of fact" regarding Agricann's "avoided rent payment," "the Equipment" cost, and the "avoided utility expense." *Id.* at 2 (APP129).

C. After a limited damages trial, the superior court found that Agricann avoided rent, utilities, and equipment costs.

The superior court held a damages trial to determine the costs Agricann avoided. *See* IR-320; IR-321. The evidence presented at trial amply supported the same points Natural Remedy made in opposing summary judgment, and further quantified the avoided costs. *See, e.g.*, IR-327 at 11-14 (collecting trial evidence showing Agricann was responsible for and avoided rent payments), 16-18 (same for avoided utilities payments), 19-20 (same for avoided cost of transferring title to equipment).

For example, as to the rent payments, the evidence showed that Agricann, not Natural Remedy, had leased the facility and that Agricann was the party responsible under the lease for paying rent. 4/10/2024 Tr. 48:7-15, 55:4-10. Burton admitted that Agricann would be in breach of the lease if Agricann did not pay the rent. *Id.* at 55:12-14. And Burton admitted that Agricann "was being paid" by Natural Remedy "to maintain its lease." *Id.* at 151:9-18. The landlord, John Masciandaro, also confirmed that Agricann remained responsible for the rent under the lease, and would remain so, even in the event of a sublease. 4/11/2024 Tr. 79:13-21, 80:10-12, 83:10-12.

As to utilities, for instance, Burton admitted that "under the terms of the lease," Agricann was "responsible for utilities," 4/10/2024 Tr. 56:11-18, which the electricity bills also confirmed, *id.* at 56:19-57:9. And as to the transfer of equipment, Agricann's witnesses testified that Agricann purported to transfer the equipment to Dr. Imran Kazem, not Natural Remedy. *See id.* at 86:9-87:18, 107:8-108:21, 109:5-10. Shadi Zaki additionally testified that "all the equipment was [still] there" when Natural Remedy "moved out upon Agricann's eviction in May 2016." 4/11/2024 Tr. 101:22-102:7. Natural Remedy "didn't take any equipment." *Id.*

By contrast, Agricann did not urge a different damages number, other than reinstating the vacated damages award. It clung to its position that Agricann in fact avoided zero costs, despite the prior decision foreclosing that position. Agricann did not have a damages expert, present any alternative damages number, or even call any of its own witnesses.

Based on that evidence and much more at trial, the superior court found in favor of Natural Remedy. It reiterated its holding that the law of the case foreclosed any argument that Agricann avoided no costs and the argument that rent and equipment were not among the costs avoided:

> The Mandate requires this Court to deduct costs avoided because the prior damages award "placed Agricann in a better position than it would have been in had the contract been fully performed." (Mandate, ¶ 36.) *According to the law of the case* set forth in the Mandate, *this Court must deduct the costs avoided* by Agricann… *including those associated with "rent payments and the transfer of the equipment."* (*Id.* ¶¶ 35-36.) …. The plain language of the Mandate instructs that this Court must "consider the costs that Agricann avoided by not having to perform." (Mandate, ¶ 36.) *It does not state that the Court should consider whether Agricann avoided any costs*.

IR-338 at 6-7 (APP135–36).

The superior court also found that the trial evidence showed Agricann did in fact avoid rent, utilities, and equipment costs, and that those avoided costs exceeded what Natural Remedy owed under the Breakup Deal (after subtracting what Natural Remedy had already paid). The court noted that although "Agricann b[ore] the burden of proving" its damages, "Natural Remedy assumed the burden of producing evidence of deductions" on remand because "Agricann [wa]s unwilling to concede any" deductions and "did not present any evidence of damages." *Id.* at 7 (APP136). The court then found Natural Remedy "met this burden of pro[ving]" Agricann avoided rent, utilities, and equipment costs. *Id.* (APP136).

Regarding rent, the superior court found that "Agricann was ultimately responsible for paying the rent to the Landlord and would remain

so even in the event of a sublease." IR-338 at 8 (APP137). The court explained that Natural Remedy's sublease payments of $20,000 per month covered "those rental payments" that Agricann "would have … made in turn to the Landlord." *Id.* (APP137). Accordingly, "[r]ent is a cost avoided because once Natural Remedy breached the Breakup Deal, Agricann no longer paid [the] rent" it owed the landlord. *Id.* (APP137). The court calculated that "Agricann avoided rental costs in the amount of $207,713.00." *Id.* at 9 (APP138). Agricann, however, wants to be made better off. It wants to get $20,000 monthly sublease payments *without having to pay the landlord anything*. The superior court correctly rejected giving Agricann this windfall.

As to utilities, the court found that "Agricann was contractually obligated to pay utilities" for the facility during the Breakup Deal. *Id.* (APP138). "When Agricann was evicted … it received its final APS invoice and Agricann no longer had the obligation to pay utility expenses at the Facility. … Accordingly, utility expenses constitute a cost avoided by Agricann." *Id.* (APP138). The Court therefore deducted "$285,708.40" in "avoided utility expenses," which was a "conservative estimate." *Id.* (APP138). Here again, Agricann wanted to take all the payments it was

owed, but without having to incur any of the expense. Here, too, the superior court rejected giving Agricann this windfall.

As to Agricann's avoided cost of transferring title to the equipment, the court "reject[ed] Agricann's argument that Natural Remedy already had possession of the equipment and therefore there was nothing left for Agricann to transfer." *Id.* (APP138). "[T]he Breakup Deal would include the transfer of title to equipment," but "in July 2016, Agricann transferred the equipment to Dr. Kazem" not Natural Remedy. *Id.* (APP138). And the court found "that the unrebutted evidence at trial established that the value of the equipment that should be deducted from the award is $600,000.00." *Id.* (APP138). As with the other avoided costs, Agricann wanted to be able to keep the equipment, and even sell it to someone else, all while recovering everything Natural Remedy was supposed to pay.

After deducting those avoided costs, the court calculated that Agricann incurred no expectation damages and entered judgment for Natural Remedy because the combined rent, utility, and equipment costs that Agricann avoided exceeded the $1,065,000 Agricann would have received had the Breakup Deal been performed. *See id.* (APP138).

The superior court entered final judgment (IR-351 (APP139–40)) and Agricann appealed (IR-353).

STATEMENT OF THE ISSUES

1a. Does this Court lack jurisdiction to review the superior court's ruling that the appellate mandate permitted it to hear new evidence on remand?

1b. Did the remand proceedings comport with the mandate?

2a. In this appeal from a final judgment entered after trial, does this Court lack jurisdiction to review the superior court's earlier denial of summary judgment?

2b. Did the law of the case preclude Agricann's summary judgment argument that it avoided no costs?

2c. Was there sufficient evidence at summary judgment and trial for a reasonable factfinder to conclude that Agricann avoided rent, utility, and equipment costs?

ARGUMENT SUMMARY

This Court lacks jurisdiction to review Agricann's claim that considering new evidence on remand violated the mandate. In any event, that claim is meritless. (Argument § I.)

The only method to challenge a court's compliance on remand with the appellate mandate is by special action, which Agricann did not file (despite the superior court's invitation to do so). Accordingly, in this appeal from the final judgment, this Court cannot review the superior court's decision that the mandate allowed consideration of new evidence to aid its determination of the remanded issue about Agricann's avoided costs. (Argument § I.A.)

But that decision adhered to the mandate regardless. The mandate ordering the superior court "to conduct such proceedings as required," IR-237 at 1 (APP096), permitted the superior court to hold a hearing and consider new evidence. And it was particularly appropriate to take that path here because it enabled the new judge on remand to assess witness credibility and fully consider the fact-intensive damages issue that the prior judge failed to consider the first time around. (Argument § I.B.)

Agricann's other claim—that the superior court should have granted summary judgment that Agricann avoided no costs—is similarly unreviewable, foreclosed by the law of the case, and meritless. (Argument § II.)

This Court lacks jurisdiction to review the denial of Agricann's summary-judgment motion because an order denying summary judgment based on factual disputes does not necessarily affect the final judgment and so falls outside the scope of appellate review. This Court therefore lacks jurisdiction over each of Agricann's claims, and so should dismiss the appeal. (Argument § II.A.)

Alternatively, this Court should affirm the denial of summary judgment. The superior court correctly ruled that the law of the case foreclosed Agricann's position on summary judgment that it avoided no costs. This Court's prior decision already held that Agricann avoided costs. It specifically stated that the failure to deduct "the costs that Agricann avoided," including "rent payments and … equipment," was an "error" that "placed Agricann in a better position than it would have been in had the contract been fully performed." *Agricann I*, ¶¶ 35-36 (APP108). The law of the case thus barred Agricann's argument that it avoided no costs. (Argument § II.B.)

Regardless, the evidence on Agricann's avoided costs supported both the superior court's denial of summary judgment and findings at trial. At summary judgment, numerous documents and depositions raised genuine

issues of fact supporting Agricann's avoidance of rent, utilities, and equipment costs. And when fully presented at trial, that evidence again supported the court's findings that Agricann avoided those costs. That evidence (and commonsense) belies Agricann's assertion that the Breakup Deal required Natural Remedy to pay Agricann's rent and utilities on top of the $20,000 per month it was already paying to sublease the facility. (Argument § II.C.)

Finally, the law of the case and blackletter law dispel Agricann's suggestion that deducting avoided costs is inconsistent with awarding expectation damages under the Breakup Deal. This Court already held that awarding Agricann its expectation damages under that Deal required deducting any costs avoided. And that is what the law requires—as Agricann at times acknowledges in its brief. The basic concept of expectation damages is to put the nonbreaching party in the position it would have been in had the contract been performed. That entails deducting costs that would have been incurred during performance. (Argument § II.D.)

ARGUMENT

After the first appeal, the superior court had to determine the amount of costs that Agricann avoided from rent, equipment, etc. Agricann's position, both below and on appeal, is that the superior court simply had to reinstate the prior damages award. This argument has several fatal defects, including two jurisdictional flaws that prevent this Court from even reaching the issue. Fundamentally, however, Agricann's argument that the superior court was required to find that Agricann avoided no costs related to rent and equipment flies in the face of the prior appellate decision finding that failing to deduct those avoided costs made Agricann better off. Agricann invites this Court to require the superior court to repeat the same error that caused the reversal in the prior appeal. The Court should reject the invitation to give Agricann that windfall.

I. Agricann's argument that the remand did not comply with the mandate cannot be reviewed by direct appeal and is meritless.

Agricann's primary argument on appeal is that the superior court did not comply with the appellate mandate. But this Court lacks appellate jurisdiction over this issue because it had to be raised via special action. It is

also wrong because the mandate allowed the superior court to conduct further proceedings on remand.

A. This Court lacks appellate jurisdiction to review the superior court's compliance with the mandate, which is an issue that needed to be raised via special action.

"[T]his court has an independent duty to determine whether it has jurisdiction to consider an appeal." *Sorensen v. Farmers Ins. Co. of Ariz.*, 191 Ariz. 464, 465 (App. 1997).

Agricann's appeal rests on its contention (at 6, 31, 34-36) that the superior court incorrectly interpreted the mandate on remand. But "the appropriate method of … test[ing] whether the trial court is acting contrary to the directives of the appellate court" on remand is "special action." *Scates v. Ariz. Corp. Comm'n*, 124 Ariz. 73, 75-76 (App. 1979) (dismissing appeal); *accord Raimey v. Ditsworth*, 227 Ariz. 552, 554 (App. 2011) ("a trial court's entry of judgment 'based on [an appellate court's] specific mandate and opinion is not appealable'" (citation omitted)); *Tovrea v. Super. Ct. In & For Maricopa Cnty.*, 101 Ariz. 295, 297 (1966) ("mandamus[1] is the proper remedy" if "[t]he trial court … fl[ies] in the face of an appellate mandate").

[1] The writ of mandamus is now called a special action. *See* RPSA 2(c).

The Arizona Appellate Handbook confirms that "[t]he appropriate method of seeking review of a claim that the superior court failed to properly follow the appellate court's mandate is instead through a special action." Arizona Appellate Handbook 2.0 at 11.13 (2020).

Thus, "this Court is without jurisdiction to consider" arguments in a direct appeal that the trial court did not properly follow the appellate mandate. *Scates*, 124 Ariz. at 75. If an appellant raises such a challenge in a direct appeal from the final judgment on remand, the Court must dismiss. *Id.* at 76 (dismissing appeal).

This jurisdictional rule applies not only when an appellant makes an indirect attempt to relitigate the appellate court's decision, but also whenever the appellant argues that "the trial court is acting contrary to the directives of the appellate court" on remand. *Scates*, 124 Ariz. at 75-76. In *Scates*, for instance, the appellate court dismissed the appeal because the appellant did not bring a special action to argue that the trial court misapplied the mandate by denying attorneys' fees that the mandate gave discretion to grant. *Id.* The appellant claimed it did not need to bring a special action because the mandate gave "discretion to deal with points not mentioned" and "contain[ing] language authorizing the lower court to

entertain … the additional issue of attorneys' fees." *Id.* at 76. The court "reject[ed]" that argument and dismissed the appeal, noting that the mandate "authorizing further court proceeding[s]" on attorneys' fees did not render the "mandate" or "opinion … general in terms." *Id.*

Likewise, in *Raimey*, the court accepted special action jurisdiction as the "appropriate method of seeking review of" the parties' "dispute[s] [about] the ramifications and scope of" the appellate "decision" and its mandate "to 'comply with the decision'" on remand. 227 Ariz. at 554, ¶¶ 1-3. The parties disputed whether the mandate affected only a subset of parties, *id.* at 555, ¶ 5, and whether it gave the trial court discretion to award attorneys' fees on remand even though it "did not expressly direct the trial court to grant … fees," *id.* at 561, ¶ 26. Those disputes concerned more than a ministerial act on remand; they concerned whether "the trial court … was free to entertain" further proceedings and make further decisions that the mandate "did not specifically address" and "did not expressly direct the trial court to" undertake. *Id.* at 555-556, 561, ¶¶ 7, 26. Still, *Raimey* stressed that "the appropriate method of seeking review of" whether those actions on remand were "inconsistent with the mandate" was "through special action,"

not an appeal of the "trial court's entry of judgment" after completing the remand. *Id.* at 554, 556, ¶¶ 1, 26.

Here, the appellate mandate was to "vacate the damages award and remand with instruction for the superior court to consider the costs that Agricann avoided by not having to perform." *Agricann I*, ¶ 36 (APP108). On appeal, Agricann argues (at 6, 34-36) that "the trial court err[ed] in the way it chose to enforce the mandate" because "[t]he trial court already took evidence at the first trial," the mandate "never remanded for a new trial," and so "[o]n remand … the new trial judge should have limited the proceedings to considering any … avoided costs or expenses that the evidence had established at the first trial." These are challenges to the superior court's compliance with the appellate mandate. If Agricann thought that the superior court had incorrectly interpreted the mandate, then it had to seek special-action review. It cannot raise the issue in a direct appeal from the final judgment.

Tellingly, the superior court knew that if Agricann disagreed with its interpretation of the mandate, it should have pursued a special action. After ruling on how the case would proceed on remand, the superior court made clear that "[i]f the Plaintiffs believe that" the court's interpretation requiring

additional discovery "was in error," Agricann "could ask the Court of Appeals to consider special action review" of that issue. 4/6/2023 Tr. at 5:11-16 (APP289). The superior court even paused the case to give Agricann time to do so, "staying th[e] matter until April 13, 2023 to allow Plaintiff to seek a special action review by the Court of Appeals." IR-244 at 2 (APP114).

If Agricann wanted to challenge the superior court's interpretation of the mandate, the judge plotted the proper course and even paved the way by granting a stay. Despite the superior court's express invitation, Agricann never filed a special-action petition. After the stay lapsed, Agricann instead chose to proceed to trial and judgment, allowing Agricann to find out the outcome before it decided what to do. This allowed Agricann to "simply take [its] chances at trial and, if not satisfied, thereafter appeal[.]" *Rancho Pescado, Inc. v. Nw. Mut. Life Ins. Co.*, 140 Ariz. 174, 182 (App. 1984). That is not how this works, and condoning it "would allow the party an unfair second bite at the apple." *Id.* Having deliberately chosen to march forward, Agricann cannot now reverse course because it does not like the outcome.

Because Agricann challenges the superior court's interpretation of and compliance with the appellate mandate, this Court lacks jurisdiction and it should dismiss the appeal.[2]

B. The superior court complied with the mandate on remand.

If the Court reaches the merits of the mandate issue, it should affirm because the superior court correctly complied with the mandate on remand.

1. Standard of review.

The Court reviews "de novo" whether the superior court acted "outside the scope of this court's mandate." *Cyprus Bagdad Copper Corp. v. Arizona Dep't of Revenue*, 196 Ariz. 5, 7, ¶ 6 (App. 1999).

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[2] The Court should not convert the direct appeal to a special action. As explained above, Agricann knew or should have known the correct path because the superior court expressly invited a special action and stayed the case to allow Agricann to do so. The fact that Agricann decided to roll the dice at trial and seek appellate review only after "tak[ing] his chances at trial and" losing confirms that the Court should not allow it to pursue a special action now when it should have done so almost two years ago. *Rancho Pescado*, 140 Ariz. at 182. Moreover, that "unreasonabl[e] delay[] … support[s] … declining" special action jurisdiction. RPSA 12(c); *Cicoria v. Cole*, 222 Ariz. 428, 430 & n.1 (App. 2009) ("Without some explanation, a four-month delay in seeking special action relief would typically be unreasonable…. We are also concerned about possible gamesmanship" from such delay).

2. The mandate required the superior court to conduct "further proceedings" on remand.

This Court's prior decision "vacate[d] the damages award" from the first trial because it "placed Agricann in a better position than it would have been in had the contract been fully performed." *Agricann I*, ¶ 36 (APP108). Specifically, the first trial failed to "consider[] the costs that Agricann avoided by not having to perform," including "but not limited to, the rent payments and the transfer of the equipment…." *Id.*, ¶ 35-36 (APP108). A correct "calculation of expectation damages" would have "necessarily include[d] a deduction for any cost" avoided. *Id.*, ¶ 34 (APP107–08) (citation omitted).

This Court accordingly "remand[ed] with instruction for the superior court to consider the costs that Agricann avoided," and permitted the court to conduct any "further proceedings consistent with th[at] decision." *Agricann I*, ¶¶ 1, 35-36, 45 (APP099, 108, 110,). The mandate similarly "commanded" the superior court "to conduct such proceedings as required to comply with the memorandum decision." IR-237 at 1 (APP096).

3. The superior court's proceedings on remand fell within the scope of the "further proceedings" required by the mandate.

On remand, the case was assigned to a different judge (Judge Ryan) because the judge who conducted the first trial (Judge Smith) had retired from the bench. *See* IR-238 (APP111) (remand status conference set by Judge Ryan). Judge Ryan thus had no prior opportunity before remand to hear witness testimony, evaluate credibility, or weigh evidence on any issue in the case. And the first trial, in any event, had not yet considered the issue that would be the focus of the remand—identifying and calculating Agricann's avoided costs. Given the mandate instructing the superior court to conduct further proceedings to determine such costs, Judge Ryan accordingly allowed the parties to submit evidence on that issue and ordered a limited damages trial at which he could hear live testimony, assess credibility, and make factual findings about the specific types and amounts of costs that Agricann avoided. *See* IR-257 (APP117) (scheduling order permitting discovery on remand); IR-275 (APP120) (setting trial).

The superior court's course of action adhered to this Court's decision and mandate. The decision vacated the damages award in its entirety and instructed the superior court to conduct "further proceedings," IR-237 at

¶ 45 (APP110), and "such proceedings as required," *id.* at 1 (APP096), to determine any costs Agricann avoided. That remand permitted the superior court to hear new evidence that it deemed would aid its determination of the remanded issue.

Trial judges have broad discretion in determining how to conduct the proceedings on remand with this type of mandate. For example, *Anderson v. Contes*, 212 Ariz. 122, 126, ¶¶ 15-16 (App. 2006) held that a "trial court [wa]s not *required* to conduct an entirely new hearing when it reexamines the … issues," and affirmed the trial judge's decision to proceed without a new hearing. But this Court indicated that the trial court was "at liberty to hold such proceedings as it deems necessary to comply with the … decision," suggesting that the trial court had discretion to hold a new hearing. *Id.* The Court also explained that appellate courts "remanding for further proceedings that" are "limited in focus" and "do not require complete retrial" often still contemplate "the presentation of additional evidence." *Id.*, ¶ 10.

Johnson v. Provoyeur confirms that trial courts have broad discretion in whether to hold a new hearing on remand. *Johnson*, like *Anderson*, affirmed a decision not to hold a new hearing on remand. But, citing *Anderson*, the

court reiterated that the trial court *could have* held a hearing, indicating that "the mandate authorized the court to hold a hearing if it believed one was necessary to aid its determination." *Johnson v. Provoyeur*, 2017 WL 1506569, at *1-2, ¶¶ 5, 10 (Ariz. App. Apr. 27, 2017); *see also Cyprus Bagdad Copper Corp.*, 196 Ariz. at 7, ¶¶ 5-7 (superior court did not act "outside the scope of the … mandate" when it "considered … additional" evidence on the issue this Court "remanded the case to … determin[e]"). In fact, "it is likely that new evidence" is "required" when the "directive" on remand is to apply a legal rule "that was not applied during the [first] trial and to determine a corollary question left 'open[.]'" *Smith v. Mitchell*, 214 Ariz. 78, 81 n.2 (App. 2006).

Here, it was particularly appropriate for the superior court to exercise its discretion to hear additional evidence when carrying out its required task on remand. First, Judge Ryan was new to the case. Hearing the testimony and evaluating the credibility of witnesses is one of the principal jobs of a finder of fact. *See, e.g.*, *Ohlmaier v. Indus. Comm'n of Arizona*, 161 Ariz. 113, 117 (1989) ("The function of a fact-finding judge … is to receive and weigh evidence and reach a conclusion based upon that evidence."). It was therefore reasonable and necessary to hear new testimony because "personal observation of witnesses is crucial to accurate fact-finding" when the issue

"depends on an assessment of … credibility." *Matter of Pima Cnty., Juv. Action, No. 63212-2*, 129 Ariz. 371, 375 (1981). Witnesses (such as Zaki and Burton) disputed whether Agricann failed to transfer equipment and remained liable for rent and utilities under the parties' understanding of the Breakup Deal. "[T]he court would … risk error to determine the credibility of a witness not seen or heard who is available to be recalled." *Davis v. Davis*, 195 Ariz. 158, 164, ¶ 24 (App. 1999) (citation omitted). This is why Ariz. R. Civ. P. 63 allows a successor trial judge to recall witnesses when a prior judge in the proceeding is unavailable.

Second, resolving the issue required making new findings about additional disputed facts, such as the amount of rent Agricann would have paid over the course of the Breakup Deal, the market value of the equipment Agricann failed to transfer, and whether Agricann was responsible for paying utilities during the Breakup Deal (*see* Facts & Case § III.B; Argument § II.C).

The superior court's proceedings on remand therefore fell well within the scope of the "further proceedings" required by the mandate.

4. Agricann's argument that the mandate prohibited new evidence lacks support and ignores the context of the case.

Agricann claims (at 35) that "the new trial judge" violated the mandate by not "limit[ing] the proceedings to considering … avoided costs … that the evidence had established at the first trial." But Agricann cites no legal authority for that claim. To the contrary, a remand for "further proceedings" "authorize[s] the court to hold a hearing if it believe[s] one w[ould] … aid its determination" of the remanded issue, *Johnson*, 2017 WL 1506569, at *1-2, ¶¶ 5, 10.

Agricann asserts (at 35) that the mandate did not expressly mention "a new trial." But that gets things backwards. After a remand for further proceedings, the trial judge has broad discretion in how the case should proceed. Even when the trial court is "not require[d]" to conduct "a new hearing," the court is still "authorized" to do so when the case is remanded "for further proceedings" to determine a particular issue. *Id.* The mandate did not need to mention a new trial. "While there is no language explicitly directing a retrial, … [t]here is no verbiage in the opinion that would negate" that path on remand. *Tucson Gas*, 9 Ariz. App. at 213. Here, nothing in the appellate decision or mandate precluded the trial court from hearing

evidence or holding a hearing to perform the task it was required to perform on remand.

Agricann complains (at 34-35) that hearing new evidence on remand "gave Natural Remedy" a "second bite at the apple" because the "trial court already took evidence at the first trial" on "contract-related costs," yet "there was no evidence presented regarding expenses and costs … avoided." That is wrong and irrelevant for several reasons.

First, characterizing a vacate-and-remand mandate as "a second bite at the apple" is a disguised attack at the outcome of the prior appeal. If Agricann thought that the damages award should not be vacated, or thought that the case should not be remanded, then it needed to obtain relief before the mandate issued, either on reconsideration or via a petition for review.

Second, this Court already concluded that Agricann avoided—at a minimum—"rent payments and … equipment" costs, such that the damages award erroneously "placed Agricann in a better position than it would have been in had the contract been fully performed." *Agricann I*, ¶¶ 35-36 (APP108). For instance, evidence at the first trial showed the facility lease was never assigned or transferred to Natural Remedy, meaning Natural Remedy was not responsible for Agricann's rent during the Breakup Deal.

See IR-310 at 45:6-8. Agricann's argument (at 34) that "there was no evidence presented regarding expenses and costs … avoided" likewise is simply an impermissible attack on the outcome of the prior appeal.

Third, if this Court intended the issue to be decided on the existing cold record, without new evidence or live testimony, it could have simply done so instead of remanding for further proceedings. As the superior court recognized, if there were "no new fact[s] to be known," "the Court of Appeals could have just … ruled on it on appeal and made the appropriate [damages] calculations." 7/13/2023 Tr. at 6:2-6 (APP299). The fact that this Court ordered further proceedings, and made clear those proceedings were "not limited to" the specific costs mentioned in its decision (*Agricann I*, ¶ 35 (APP108)), demonstrates that this Court intended, or at least permitted, the consideration of additional evidence to identify and calculate any costs Agricann avoided.

Fourth, the parties disputed (both in the first trial and on remand) the types and amounts of costs avoided, and there was conflicting witness testimony. To follow the mandate, the superior court needed to make credibility determinations and resolve these factual disputes. As explained above, the judicial retirement meant that Judge Ryan was new to the case, so

he had not yet had any opportunity to hear witness testimony and make the credibility determinations necessary to carry out his required task on remand. *See, e.g.*, *Matter of Pima Cnty.*, 129 Ariz. at 375 ("personal observation of witnesses is crucial to accurate fact-finding"). He therefore took the reasonable and unsurprising step of hearing evidence at a hearing rather than making findings from a cold record. Indeed, Judge Ryan ultimately relied on witness credibility to make findings on avoided costs. *See* IR-338 at 6 (APP135) (rejecting "Burton's contradictory testimony disavowing his prior testimony"). Agricann's position would make it difficult for trial judges to resolve cases on remand after judges retire or when an appellate court identifies an issue not fully addressed in the first trial.

In sum, if this Court reaches the merits of Agricann's arguments about mandate compliance, the superior court acted well within the scope of the mandate. The Court should affirm.

II. Agricann's challenge to the denial of summary judgment is not reviewable on appeal, foreclosed by the law of the case, and meritless.

The rest of Agricann's appeal rests on its contention that it was entitled to summary judgment because the breach did not allow it to avoid any costs.

The Court lacks jurisdiction over this issue, as well. And it is wrong—the evidence, both at summary judgment and at trial, was more than sufficient to support the finding that Agricann avoided costs. Although Agricann argues that the superior court misapplied expectation damages, it is a basic principle of contract law—and law of the case—that damages must be reduced by "any cost or other loss that he has avoided by not having to perform." Restatement (Second) of Contracts § 347(c). Agricann, however, wants all of the benefit of the contract, without having to bear any of the expense. This Court and the superior court correctly rejected giving Agricann that windfall.

A. This Court lacks jurisdiction to review the denial of summary judgment.

Agricann's appeal has another jurisdictional flaw. This Court cannot review a denial of summary judgment once a final judgment has been entered after full presentation of the evidence at trial.

On remand, the case proceeded to a limited damages trial after the superior court denied Agricann's summary-judgment motion. Yet on appeal, Agricann does not challenge any of the superior court's rulings or findings from trial. Instead, it challenges only the denial of its earlier

summary-judgment motion. Agricann's "Statement of the Issues" (Opening Br. at 6) states a challenge to the "refusal to grant summary judgment" but does not describe any challenge to the sufficiency of the evidence at trial. And although Agricann's "Statement of Facts" recites some trial testimony (at 16-22), the brief contains no legal argument that the trial evidence was insufficient—just that the evidence was insufficient to move past summary judgment. *See* Opening Br. at 31-36 (arguing that the court "abused its discretion by failing to grant Agricann's motion for summary judgment," but not arguing insufficiency of the trial evidence).

But this Court lacks jurisdiction to review Agricann's challenge to the denial of summary judgment because "the denial of a summary judgment motion is not reviewable on appeal from a final judgment entered after a trial[.]" *John C. Lincoln Hosp. & Health Corp. v. Maricopa Cnty.*, 208 Ariz. 532, 539, ¶ 19 (App. 2004) (declining to review summary judgment denial after a bench trial); *see also Campion v. City of Tucson*, 256 Ariz. 256, 262, ¶¶ 8-9 (App. 2023) ("declin[ing] to review" the "court's denial of … summary judgment"); *Desert Palm Surgical Grp., P.L.C. v. Petta*, 236 Ariz. 568, 577 (App. 2015) (same). "[A]n order denying … summary judgment is … one of those intermediate orders which by their nature do not … necessarily affect the

final judgment," and therefore fall outside "the scope of appellate review" under "A.R.S. § 12-2102," which addresses appellate jurisdiction. *Navajo Freight Lines, Inc. v. Liberty Mut. Ins. Co.*, 12 Ariz. App. 424, 428 (1970).[3]

The rule prohibiting appeals from summary-judgment denials has a narrow exception when the denial "is based on a purely legal issue or … the proponent reasserts the issue in a … motion for judgment as a matter of law or other post-trial motion." *Desert Palm*, 236 Ariz. at 577, ¶ 22. Although

[3] Federal courts follow the same rule. "[A]n order denying summary judgment on sufficiency-of-the-evidence grounds is not appealable after a trial." *Dupree v. Younger*, 598 U.S. 729, 731 (2023) (citing *Ortiz v. Jordan*, 562 U.S. 180 (2011)). Such an order falls outside "[t]he jurisdiction of" the appellate court because "[o]nce the case proceeds to trial, the full record developed in court supersedes the record existing at the time of the summary-judgment motion." *Ortiz*, 562 U.S. at 184, 188; *Dupree*, 598 U.S. at 734 ("after trial, a district court's assessment of the facts based on the summary-judgment record becomes 'ancient history and [is] not subject to appeal'" (citation omitted)). That is true whether the case proceeds to a bench or jury trial. *See Matter of York*, 78 F.4th 1074, 1085 (9th Cir. 2023) ("the trial record at that bench trial would still have 'supersede[d]' the earlier summary judgment record" (citation omitted)); *Kreg Therapeutics, Inc. v. VitalGo, Inc.*, 919 F.3d 405, 410, 416 (7th Cir. 2019) ("after the bench trial," "previous denials of summary judgment" based on "outstanding issues of fact" were "unreviewable"). Accordingly, when an appeal challenges a denial of summary judgment in a case that went to trial, the proper disposition is to "dismiss the appeal for lack of appellate jurisdiction." *Gerics v. Trevino*, 974 F.3d 798, 808 (6th Cir. 2020); *Conatser v. N. Las Vegas Police Dep't*, 445 F. App'x 932, 933 (9th Cir. 2011) (same).

Agricann argued that it raises only an issue of law, its core argument that Agricann avoided no costs "is not a purely legal issue" because "it requires this court to review and assess predicate facts." *Id.*, ¶ 23. Here, the superior court denied summary judgment because "[t]here are disputed issues of fact as to whether Plaintiff avoided rent payment[,] … whether the Equipment to NRPC should be deducted, [and] … whether avoided utility expense should be deducted." IR-278 at 2 (APP129). Consequently, "the ruling was not based on a purely legal issue." *Campion*, 256 Ariz. at 261, ¶ 8; *see also John C. Lincoln*, 208 Ariz. at 539, ¶ 19 (summary-judgment ruling not reviewable on appeal when "the trial court denied … summary judgment due to the existence of material factual disputes)." Moreover, even if Agricann's appeal "involved mixed question[s] of law and fact," the rule would still bar an appeal. *Campion*, 256 Ariz. at 262, ¶ 8 (citation omitted).

The rule prohibiting appeals from denials of summary judgment makes sense here. A contrary rule "could lead to the absurd result that one who has sustained his position after a full trial and a more complete presentation of the evidence might nevertheless be reversed on appeal because he had failed to prove his case more fully at … summary judgment.'" *Desert Palm*, 236 Ariz. at 577 (quoting *Navajo Freight Lines v.*

Liberty Mut. Ins. Co., 12 Ariz. App. 424, 428 (1970)). Here, Agricann claims (at 31) that Natural Remedy's summary-judgment response "failed to identify any costs that should or could be assessed against Agricann[.]" That's not true, as explained below (Argument § II.C.2). But even if it were true, the superior court heard detailed evidence at trial about the costs Agricann avoided. It would make no sense to reverse a judgment entered after trial because of a failure of proof before trial. That would require ignoring the evidence presented at trial, which appellate courts do not do.

The proper appeal would be for Agricann to challenge the sufficiency of the evidence presented at trial. But Agricann did not do so. Its appeal brief does not challenge any rulings or findings from trial, but instead focuses solely on the now-moot summary-judgment stage. *See, e.g.*, Opening Br. at 6 (statement of issues), 31-36 ("trial court abused discretion by failing to grant … summary judgment"). It is too late to do so now. *See also* ARCAP 13(a) ("An appellant's opening brief must set forth … Appellant's contentions concerning each issue presented for review, with supporting reasons for each contention, and with citations of legal authorities"); *Arcadia Osborn Neighborhood v. Clear Channel Outdoor, LLC*, 256 Ariz. 88, 95 n.1 (App.

2023) (where appellant does "not raise the issue in its own opening brief, … they have waived the issue on appeal").

B. The law of the case forecloses the central premise of Agricann's challenge to the denial of summary judgment.

If the Court reaches the merits of the issue, it should affirm.

1. Standard of review.

Whether the superior court correctly applied the law of the case is reviewed *de novo* by this court. *See Associated Aviation Underwriters v. Wood*, 209 Ariz. 137, 147, 150, ¶¶ 23, 40 (App. 2004) (reviewing "legal issue[s]" of "collateral estoppel" and "law of the case" *de novo*).

2. Agricann's argument that it avoided no costs violates the law of the case.

The core of Agricann's arguments rests on a single premise: that Agricann avoided no costs, and therefore the superior court was obligated to reinstate the prior damages award.

But this Court already decided that ignoring the costs Agricann avoided "placed Agricann in a better position than it would have been in had the contract been fully performed." *Agricann I*, ¶ 36 (APP108). The appellate mandate further held that the superior court had erred by not

considering the specific avoided costs of "rent payments and the transfer of equipment." *Id.*, ¶ 35 (APP108).

On remand, those holdings from the first appeal were "law of the case." *Paul R. Peterson Constr., Inc. v. Arizona State Carpenters Health & Welfare Tr. Fund*, 179 Ariz. 474, 478 (App. 1994) ("[I]f an appellate court has ruled upon a legal question and remanded for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case").

Bound by the decisions in the first appeal, the superior court therefore correctly interpreted the law of the case as foreclosing Agricann's position that it avoided no costs. At the summary-judgment stage, the court held that "Plaintiff's Motion for Summary Judgment ignores the Law of the Case." IR-278 at 1-2 (APP128–29). At the trial stage, the superior court again recognized that it "is bound by factual and legal determinations made by the Court of Appeals …. According to the law of the case …, this Court must deduct the costs avoided by Agricann." IR-338 at 6, 9 (APP135, 138).

The superior court was correct. "[T]he decision of [this] … court … is the law of th[e] case on the issues decided throughout all subsequent proceedings in both the trial and appellate courts." IR-338 at 6 (APP135)

(quoting *Stauffer v. Premier Serv. Mortg., LLC*, 240 Ariz. 575, 579 (App. 2016)). This Court's prior decisions that Agricann avoided costs, and that those costs included rent and equipment, are therefore "not subject to review … on second appeal." *Rail N Ranch Corp. v. State*, 7 Ariz. App. 558, 560 (1968) (citation omitted).

Despite all of this, Agricann continues to repeatedly assert on appeal that it avoided no costs. *See* Opening Br. at 19 ("Agricann saved no costs"), 26 ("Agricann would have had not any costs"), *id.* ("no costs"), 29 ("did not need to incur any costs"), 30 ("identified no costs"), 31 ("identified no costs"), *id.* ("failed to identify any costs"), 33 ("no costs or expenses"), *id.* ("never proved that Agricann would have incurred any costs"), 34 ("no avoided costs"). But this foundational premise is inconsistent with the law of the case that the prior damages award (which did not subtract costs) "placed Agricann in a better position than it would have been in had the contract been fully performed." *Agricann I*, ¶ 36, (APP108). It would have been error if the superior court had, as Agricann urged, simply reinstated the damages award that the appellate court already held made Agricann better off.

Notably, Agricann does not challenge the avoided cost *amounts* the superior court calculated. Agricann only argues it did not avoid those costs. Because this Court definitively rejected that argument in the first appeal, this Court should reject it here and affirm.

C. The evidence on remand was more than sufficient to support the finding that Agricann avoided rent, utility, and equipment costs.

Even if the law of the case did not prohibit the remand judge from reinstating the prior damages award, the evidence was more than sufficient for the judge to find that Agricann did in fact avoid costs. Again, Agricann does not dispute the *amount* of avoided costs. Its entire appeal is an all-or-nothing argument that Agricann avoided *no* costs. Consequently, if the evidence was sufficient to find that Agricann avoided any costs, then this Court must affirm.

1. Standard of review.

The superior court's denial of summary judgment must be affirmed so long as this Court determines "de novo" that there was any evidence raising a "genuine issue[] of material fact" when viewed "in the light most favorable to the" nonmovant—Natural Remedy. *Acosta v. Phoenix Indem. Ins. Co.*, 214 Ariz. 380, 381, ¶ 2 (App. 2007).

In addition, although Agricann challenges only the summary-judgment ruling, and does not challenge the findings from trial, the trial record also justifies affirmance. Out of an abundance of caution, Natural Remedy summarizes both the summary-judgment and trial evidence below. The trial findings must be affirmed so long as the evidence would "allow[] a reasonable person to reach the trial court's result," "giving due regard to the opportunity of the court to judge … credibility." *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 51-52, ¶ 11 (App. 2009) (citations omitted). This Court "uphold[s] … findings of fact unless clearly erroneous." *Barry Goldwater Inst. for Pub. Pol'y Rsch. Ctr. v. City of Phx.*, ___ Ariz. ___, 563 P.3d 656, 661, ¶ 16 (App. 2025). "To be clearly erroneous, a finding must be unsupported by any reasonable evidence…. [I]t must ... strike [this Court] as wrong with the force of a five-week-old, unrefrigerated dead fish." *In re Non-Member of State Bar of Arizona, Van Dox*, 214 Ariz. 300, 304, ¶ 15 n.3 (2007) (citation omitted). As this Court stressed in its prior decision in this case, "where there is a dispute in the evidence from which reasonable [persons] could arrive at different conclusions as to the ultimate facts, we will not disturb the findings of a trial court." *Agricann I*, ¶ 27 (APP106) (quoting *In re U.S. Currency in Amount of $26,980.00*, 199 Ariz. 291, 296, ¶ 16 (App. 2000)).

2. The summary judgment and trial evidence showed that Agricann avoided costs.

Agricann's avoided costs fall into three categories: rent, utilities, and equipment. Because of Agricann's all-or-nothing strategy on appeal, finding that the evidence supports any costs avoided from any one of these categories is sufficient to affirm.

Rent. The summary judgment (and trial) evidence supported finding that Agricann remained responsible for paying rent during the Breakup Deal to keep the facility available for its subtenant Natural Remedy, and that Agricann therefore avoided the need to pay rent once Natural Remedy stopped paying for the sublease.

At all times, Agricann held the lease to the facility. The lease listed "Agricann" as the "Lessee." IR-268, Ex. 3 at AG-WL 00003 (APP151). And Agricann's 30(b)(6) witness (Brigham Burton) agreed during deposition that "Agricann LLC … was the only … lessee." IR-269, Ex. 4 at 92:20-23 (APP180).

During the Breakup Deal, Agricann subleased the facility to Natural Remedy, but nothing excused Agricann from making its rent payments under the lease. The Deal itself clarified that Natural Remedy's "$20k/mo" payments were a "sublease rate," meaning Agricann remained the lessee.

IR-268, Ex. 1 (APP149). The landlord testified during deposition that, after "a sublease," "the initial … lessee" (Agricann) remains "legally responsible for making the monthly payments" for rent. IR-269, Ex. 5 at 22:16–23:3, 25:1-17 (APP195–96, 198). Shadi Zaki (who worked for Natural Remedy) had a similar understanding. He testified that, under the Breakup Deal, "Agricann … was solely responsible for its obligations under th[e] Lease," Natural Remedy never "assume[d]" those obligations, and Natural Remedy did not agree "to pay [Agricann's] … rent and utilities *in addition to* the $20,000.00/month[]" it was already paying Agricann to sublease the facility. IR-270, Ex. 10 at 3 (APP282) (emphasis added). Indeed, the $20,000 sublease payments more than covered Agricann's roughly $7,000 in monthly rent. IR-268, Ex. 3 at AG-WL 00003, AG-WL 00016 (APP151, APP164).

Accordingly, when Natural Remedy stopped paying sublease payments, that breach of the Breakup Deal permitted Agricann to stop paying rent because it no longer needed to keep the facility available to Natural Remedy. And that is exactly what Agricann did—it stopped paying rent. IR-270, Ex. 14 (APP284). The landlord then sent Agricann, not Natural Remedy, a default letter, *id.* (APP284), and evicted Agricann from the facility, IR-269, Ex. 4 at 42:20-25 (APP179). As a result, Agricann ended up

avoiding the rent costs it would have incurred over the remaining term of the Breakup Deal had Natural Remedy continued to make its sublease payments.

On summary judgment, the above evidence at least raised a "disputed issue[] of fact" supporting that Agricann was responsible for, and avoided, rent by not having to perform the Breakup Deal. IR-278 at 2 (APP129). Allowing Agricann to collect all of the sublease payments from Natural Remedy without having to pay the landlord anything would have made Agricann better off.

Likewise, after full presentation of that evidence at trial (including live testimony from which the court could assess credibility), a "reasonable person" could have "reach[ed] the trial court's" conclusion that Agricann was responsible for, and did in fact avoid, rent. *Castro*, 222 Ariz. at 51-52, ¶ 11. The terms of the Breakup Deal, Agricann's lease, and the landlord's default letter to Agricann all showed Agricann remained responsible for

paying rent. IR-327 at 11-14 (citing relevant trial transcripts and exhibits).[4] As did trial testimony from Burton, Zaki, and the landlord John Masciandaro. *Id.* (same). Burton in fact testified at trial that "under the lease" it "is true" that "Agricann was ultimately responsible for paying rent to the landlord, that "if Agricann didn't pay the rent it would be in breach of the lease," and that "Agricann directly made rent payments to the landlord." 4/10/2024 Tr. at 55:4-17. There was thus more than sufficient evidence to find that, once Natural Remedy stopped paying for its sublease, Agricann lost $20,000 per month *but also avoided* paying rent to keep the facility available. IR-338 at 8 (APP137).

Agricann does not confront any of that evidence. Opening Br. at 31-36. Yet it continues to assert that Natural Remedy was supposed to make its $20,000 sublease payments *and then also pay Agricann's rent on top of that*. *See* Opening Br. 14 ("Agricann owed nothing whatsoever to maintain" the

[4] For example, the trial evidence showed that Agricann was the party responsible under the lease for paying rent. 4/10/2024 Tr. 48:7-15, 55:4-10. Burton admitted that. *Id.* at 55:12-14. And he admitted that Agricann "was being paid" by Natural Remedy "to maintain its lease." *Id.* at 151:9-18. The landlord, John Masciandaro, also confirmed that Agricann remained responsible for the rent in the event of a sublease. 4/11/2024 Trial Tr. 79:13-21, 80:10-12, 83:10-12.

facility, "to pay for its utilities, or to make any payments to anyone"); *id.* at 17 ("Natural Remedy … had to 'continue to make rent payments, … pay the utility bills, and then of course' pay Agricann the monthly payments").

Agricann cites (at 16-21) portions of Burton and Kazem's testimony in support. But Burton merely asserted, without any supporting facts, that Agricann was "no longer responsible for making th[e] [rent] payments" once "the Breakup Deal was entered into" (4/10/2024 Tr. 58:5-8); that Agricann "sold the lease rights" to "Natural Remedy" even though at all times "Agricann still had the lease with" the landlord (*id.* at 89:25-90:5, 155:7-12); and that Natural Remedy "had to … make rent payments … and then of course pay us … the $20,000 per month (*id.* at 157:7-15; *see also id.* at 159:6, 164:4-9, 171:9-11 (similar)). Kazem asserted that Natural Remedy "was supposed to take over lease payments," but that he "was still footing the bill personally" (*id.* at 122:9-18) and "that Agricann [wa]s still … holding the lease in th[e] facility" the entire time (*id.* at 141:5-11).

There was overwhelming summary-judgment and trial evidence discrediting those self-serving and contradictory assertions. But "even if" Burton and Kazem's testimony amounted to "substantial … evidence" in favor of Agricann's argument, the superior court's findings based on other

"conflicting" evidence were "not clearly erroneous" and must be affirmed. *Castro*, 222 Ariz. at 51-52, ¶ 11.

Agricann's argument that Natural Remedy owed both sublease payments *and rent* also defies the commonsense understanding of a sublease—under which the subtenant's payment covers the rent the tenant owes the landlord. *See, e.g.*, *Walgreen Ariz. Drug Co. v. Plaza Ctr. Corp.*, 132 Ariz. 512, 517 (App. 1982) (after a "sublease," "the original lessee remained liable on the lease" to the landlord); *Riggs v. Murdock*, 10 Ariz. App. 248, 252 (1969) ("Defendant obtained a subtenant and … appl[ied] the rental [payments] obtained from" the subtenant "toward the amount due under the lease"); *Mac Enters., Inc. v. Del E. Webb Dev. Co.*, 132 Ariz. 331, 334 (App. 1982) ("the subtenant … holds his estate from the sublessor alone," not the landlord). Recall that Agricann's rent to the landlord was less than $7,000 per month, meaning Natural Remedy's $20,000 payments more than covered Agricann's rent obligations. IR-268, Ex. 3 at AG-WL 00003, AG-WL 00016 (APP151, 164). And, after all, the Breakup Deal itself states "$20k/mo" was the "sublease rate," i.e., the total Natural Remedy agreed to pay each month. IR-268, Ex. 1 (APP149).

A simple hypothetical underscores the point. Imagine agreeing to sublease an apartment for $3,000 per month. At the end of the month, the person you subleased from takes your $3,000 but then says, "now where is the $2,500 I need to pay the landlord." The sublease payment already covers that; you obviously didn't agree to pay $5,500 per month. Agricann's position not only conflicts with the law of the case, but it violates common sense and would result in an enormous windfall to Agricann.

Utilities. The summary-judgment and trial evidence similarly supported finding that Agricann was responsible for continuing to pay the facility's utilities during the Breakup Deal, and thus avoided utility costs once it was evicted from the facility and stopped paying.

The landlord testified during deposition that "from the time we signed the lease with Agricann," "it was Agricann" who was "responsible" for "making … utility payments for this property." IR-269, Ex. 5 at 60:19–61:6 (APP209–10). The facility's utility bills confirmed that, showing "Agricann LLC" as the paying account holder. *Id.*, Ex. 7 (APP212). Zaki confirmed that Natural Remedy did not agree "to pay … utilities in addition to the $20,000.00/monthly payments" for use of the facility. IR-270, Ex. 10 at 3 (APP282).

The evidence at trial again supported that conclusion. Agricann's lease (in which Agricann was the lessee) expressly required that the "Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises." IR-327 at 22. The landlord in fact "insisted under the lease that all those things be in" Agricann's name. 4/11/2024 Tr. at 74:5-18. Even Burton agreed at trial that Agricann "was also responsible for utilities … [u]nder the terms of the lease," that "Agricann was still on the record … as being the party that owed the money for the utility bill," and that "at no point in time was the [utility] account transferred from Agricann to" Natural Remedy. 4/10/2024 Tr. at 56:11-18, 58:11-23. Zaki likewise confirmed that Natural Remedy never had any utility accounts at the facility, as the utility bills demonstrated. 4/11/2024 Tr. at 49:6-17.

Agricann acknowledges none of this evidence in its challenge to the denial of summary judgment. Opening Br. 31-36. Agricann flags in its "Statement of Facts" only a couple of conclusory assertions from Burton that Natural Remedy had to "pay the utility bills … and then of course pay us … $20,000 per month" (4/10/2024 Tr. at 157:9-12), and that "Natural Remedy"

was "obligated to pay for … electricity" that it was "benefitting from" at the facility (*id.* at 159:21-160:5).

Not only does that testimony conflict with Burton's own admissions that Agricann owed utilities under the lease and never transferred its utility account to Natural Remedy, but it also conflicts with numerous other witnesses' testimony and the text of the Breakup Deal stating that $20,000 was Natural Remedy's total rate for subleasing the facility. As the subtenant, Natural Remedy was of course using the space and benefitting from the facility's electricity. But it had already agreed to pay $20,000 per month to do so. Regardless, the evidence was at least sufficient, at both summary judgment and trial, to allow a reasonable factfinder to conclude that Natural Remedy did not owe utilities on top of its sublease payment, such that Agricann was the entity that avoided the need to pay utilities once the Breakup Deal fell apart.

Equipment. The evidence was also sufficient to find that Agricann avoided transferring title to the marijuana-growing equipment that it had to transfer to Natural Remedy under the Breakup Deal.

The summary-judgment evidence demonstrated that Agricann never transferred title to the equipment to Natural Remedy. Instead, Agricann

later transferred title to Imran Kazem through a separate agreement: "Agricann hereby makes an in-kind distribution to Kazem of any and all right, title, and interest Agricann has or may claim to have in the 26th Avenue Facility, including … any improvements, furniture, fixtures, equipment, and other personal property." IR-270, Ex. 9 at NRPC_000382 (APP273) (emphasis added); *see also id.* at Ex. 8 at 52:17-23 (APP263) (Kazem responding "Correct" when asked if "Agricann came to you and said you can have all the equipment in the building…?). Kazem further testified that Burton "represented to [him] that" the "equipment was there" in the facility when Kazem entered this agreement, *id.*, Ex. 8 at 52:14–23; 58:25–59:10 (APP263–65), Ex. 9 at NRPC_000386 (APP277)—which was *after* Agricann and Natural Remedy had been locked from the facility, IR-269, Ex. 5 at 55:15–56:13 (APP207–08).

At trial, Burton and Kazem again testified that Agricann purported to transfer the equipment to Kazem. *See* 4/10/2024 Tr. 86:9-87:18, 107:8-108:21, 109:5-10. Zaki additionally testified that "all the equipment was [still] there" when Natural Remedy "moved out upon Agricann's eviction in May 2016." 4/11/2024 Tr. 101:22-102:7. Natural Remedy "didn't take any equipment." *Id.*

Agricann's brief ignores this evidence showing that Natural Remedy never took title to the equipment. Opening Br. 31-36. This evidence discredits Burton's conclusory trial testimony mentioned in Agricann's brief. *See id.* at 17, 19 (quoting Burton's testimony that Natural Remedy "assumed control of the … equipment," Agricann "conveyed … the equipment to Natural Remedy," and "Natural Remedy … had possession of that equipment"). It is of course true that Natural Remedy had physical possession and use of the equipment while it was subleasing the facility. But *use* does not confer ownership. Natural Remedy never took title to the equipment, which remained in the facility when Agricann was evicted, and was then transferred to Kazem. (This is consistent with what the Court of Appeals already determined in the first appeal. *See* Argument § II.B.2, above.)

At the very least, there was more than enough conflicting evidence to raise a "genuine issue[] of material fact" on the issue, when viewed "in the light most favorable to the" Natural Remedy on summary judgment—which, again, is the only ruling Agricann challenges. *Acosta*, 214 Ariz. at 381, ¶ 2.

Moreover, the law of the case forecloses Agricann's argument that it transferred title to the equipment. This Court's prior decision specifically identified "the transfer of the equipment" as a "cost[] that Agricann avoided by not having to perform." *Agricann I*, ¶ 35 (APP108). There was no contrary finding at the first trial. Judge Smith merely noted there was no "evidence that the lack of an assignment" of the lease "affected [Natural Remedy] using that property at all. There is no dispute that NRPC obtained the equipment in the facility" when "NRPC occupied the facility after the [Breakup Deal]… agreement." IR-141 at 6. That simply meant Natural Remedy had use of the equipment while it was subleasing the facility, not that it was transferred ownership.

In sum, the evidence was more than sufficient to deny summary judgment. There was at a minimum a genuine dispute of material fact as to whether Agricann avoided costs in three categories, any one of which was sufficient to defeat Agricann's all-or-nothing theory. And at trial, it was not clearly erroneous for the superior court to find that Agricann avoided at least some costs. Consequently, the superior court did not err by refusing to reinstate the same damages award that this Court vacated in the prior appeal. The Court should affirm on this issue.

D. Awarding Agricann its expectation damages under the Breakup Deal required deducting avoided costs.

This Court held in the first appeal that "the Breakup Deal was a complete novation" that "replaced" and "extinguished" any previous contract between the parties. *Agricann I*, ¶ 40 (APP109). But this Court also confirmed that, as with any other contract, calculating Agricann's expectation damages under that novation "necessarily includes a deduction for 'any cost or other loss that [the injured party] has avoided by not having to perform.'" *Id.*, ¶ 35 (APP108) (citation omitted).

Natural Remedy thus does not dispute Agricann's point (Opening Br. 22-26) that the Breakup Deal was a novation. Agricann's brief, however, sometimes suggests that deducting avoided costs is inconsistent with awarding full expectation damages under a novation. *See* Opening Br. 25-26 ("the 'breakup deal' had created a … novated contract…. Still, this Court" required "deduct[ing] relevant costs"), *id.* at 29 ("The novated contract was clear and simple. Agricann expected to receive … $1.065 million. It did not need to incur any costs to do that.").

Agricann cites no authority supporting that a novation should be treated differently with respect to deducting avoided costs. To the contrary,

Agricann acknowledges in multiple other places in its brief that "damages based on expectation interest" must account for "any cost or other loss … avoided." *Id.* at 30 (quoting *AROK Constr. Co. v. Indian Const. Servs.*, 174 Ariz. 291, 298 n.11 (App. 1993)); *id.* at 29 ("expectation damages … put the injured party … in as good a position as … had the contract been performed" (citation omitted)); *id.* at 32, 33-34 (damages exclude "expenses saved in consequence of … breach"; "basic principles for expectation damages … consider" whether "plaintiff … avoided any cost"). That is correct. And, in any event, Agricann could not escape this Court's ruling that calculating Agricann's expectation damages requires deducting any costs avoided by not having to perform the Breakup Deal. That is now law of the case.

In the end, Agricann's position is that summary judgment should have been granted because there was no evidence of avoided costs—not that avoided costs should have been ignored if they existed. But, as explained above, that challenge to the denial of summary judgment (1) cannot be reviewed on appeal from a final judgment entered after trial, (2) is foreclosed by this Court's prior decision holding there *were* avoided costs, and (3) ignores the wealth of summary-judgment evidence creating a material dispute of fact as to whether Agricann avoided costs.

REQUEST FOR ATTORNEYS' FEES

Natural Remedy requests its attorneys' fees under ARCAP 21 and A.R.S. § 12-341.01.

CONCLUSION

This Court should dismiss this appeal or, alternatively, affirm.

RESPECTFULLY SUBMITTED this 2nd day of April, 2025.

OSBORN MALEDON, P.A.

By /s/ Eric M. Fraser
Thomas L. Hudson
Eric M. Fraser
Michael A. Moorin
2929 N. Central Avenue, Suite 2000
Phoenix, Arizona 85012

GREENSPOON MARDER LLP
Sharon A. Urias
8585 E. Hartford Drive, Suite 700
Scottsdale, Arizona 85255

Attorneys for Defendant/Appellee

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APPENDIX
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152.	**ME: ORDER ENTERED BY COURT [01/16/2020]**	**Jan. 21, 2020**
153.	DEFENDANT NATURAL REMEDY PATIENT CENTER'S SUPPLEMENT IN SUPPORT OF MOTION FOR RECONSIDERATION	Jan. 24, 2020
154.	(PART 1 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
155.	(PART 2 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
156.	(PART 3 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
157.	(PART 4 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
158.	(PART 5 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
159.	(PART 6 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
160.	(PART 7 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
161.	(PART 8 OF 8) PLAINTIFF'S MOTION FOR RECONSIDERATION	Feb. 6, 2020
162.	**ME: RULING [02/11/2020]**	**Feb. 12, 2020**
163.	(PART 1 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
164.	(PART 2 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
165.	(PART 3 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
166.	(PART 4 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020

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167.	(PART 5 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
168.	(PART 6 OF 6) AGRICANN'S RESPONSE TO NRPC'S MOTION FOR RECONSIDERATION AND SUPPLEMENT IN SUPPORT	Feb. 12, 2020
169.	PLAINTIFF'S (MODIFIED) MOTION TO RECONSIDER	Feb. 14, 2020
170.	**ME: RULING [02/19/2020]**	**Feb. 20, 2020**
171.	**ME: RULING [03/12/2020]**	**Mar. 13, 2020**
172.	JUDGMENT	Mar. 16, 2020
173.	NOTICE OF LODGING FORM OF ORDER	Mar. 27, 2020
174.	(PART 1 OF 2) MOTION TO FILE EXHIBITS TO DEFENDANT NATURAL REMEDY PATIENT CENTER LLC'S MOTION TO STAY EXECUTION AND SET SUPERSEDEAS BOND UNDER SEAL	Mar. 27, 2020
175.	(PART 2 OF 2) MOTION TO FILE EXHIBITS TO DEFENDANT NATURAL REMEDY PATIENT CENTER LLC'S MOTION TO STAY EXECUTION AND SET SUPERSEDEAS BOND UNDER SEAL	Mar. 27, 2020
176.	(PART 1 OF 3) DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Mar. 27, 2020
177.	(PART 2 OF 3) DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Mar. 27, 2020
178.	(PART 3 OF 3) DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Mar. 27, 2020
179.	NOTICE OF APPEAL	Mar. 27, 2020
180.	**ME: ORDER ENTERED BY COURT [03/30/2020]**	**Apr. 1, 2020**
181.	NOTICE OF APPEAL AND CROSS-APPEAL	Apr. 10, 2020
182.	NOTICE OF TRANSCRIPT ORDER	Apr. 13, 2020
183.	NOTICE OF STIPULATED EXTENSION TO RESPOND TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Apr. 14, 2020

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No.	Document Name	Filed Date
184.	DECLARATION OF LONI WOODLEY IN SUPPORT OF DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Apr. 2, 2020
185.	COURT OF APPEALS APPELLATE CLERK NOTICE	Apr. 29, 2020
186.	COURT OF APPEALS RECEIPT	Apr. 30, 2020
187.	ELECTRONIC INDEX OF RECORD	Apr. 30, 2020
188.	NOTICE OF (SECOND) STIPULATED EXTENSION TO RESPOND TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	May. 8, 2020
189.	AMENDED NOTICE OF TRANSCRIPT ORDER	May. 8, 2020
190.	COURT OF APPEALS RECEIPT	May. 8, 2020
191.	NOTICE OF (THIRD) STIPULATED EXTENSION TO RESPOND TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	May. 22, 2020
192.	NOTICE OF (FOURTH) STIPULATED EXTENSION TO RESPOND TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Jun. 1, 2020
193.	NOTICE OF (SIXTH) STIPULATED EXTENSION TO RESPOND TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Jun. 29, 2020
194.	NOTICE OF (SEVENTH) STIPULATED EXTENSION TO RESPOND TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Jul. 15, 2020
195.	(PART 1 OF 2) RESPONSE TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL AND REQUEST FOR HEARING	Jul. 15, 2020
196.	(PART 2 OF 2) RESPONSE TO DEFENDANT NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL AND REQUEST FOR HEARING	Jul. 15, 2020

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No.	Document Name	Filed Date
197.	NOTICE OF FIRST STIPULATED EXTENSION FOR DEFENDANT NATURAL REMEDY PATIENT CENTER, LLC TO FILE REPLY MEMORANDUM IN SUPPORT OF MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Jul. 20, 2020
198.	NOTICE OF SECOND STIPULATED EXTENSION FOR DEFENDANT NATURAL REMEDY PATIENT CENTER, LLC TO FILE REPLY MEMORANDUM IN SUPPORT OF MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Aug. 6, 2020
199.	(PART 1 OF 2) DEFENDANT NATURAL REMEDY PATIENT CENTER'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Aug. 11, 2020
200.	(PART 2 OF 2) DEFENDANT NATURAL REMEDY PATIENT CENTER'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO SET SUPERSEDEAS BOND AND STAY EXECUTION OF JUDGMENT PENDING APPEAL	Aug. 11, 2020
201.	**ME: ORAL ARGUMENT SET [08/19/2020]**	**Aug. 20, 2020**
202.	MOTION FOR LEAVE TO APPEAR TELEPHONICALLY OR BY OTHER REMOTE MEDIA	Aug. 26, 2020
203.	**ME: CASE STATUS MINUTE ENTRY [09/01/2020]**	**Sep. 2, 2020**
204.	**ME: HEARING SET [09/03/2020]**	**Sep. 4, 2020**
205.	**ME: HEARING [09/03/2020]**	**Sep. 4, 2020**
206.	DEFENDANT NATURAL REMEDY PATIENT CENTER'S DISCLOSURE OF WITNESS TESTIMONY FOR SUPERSEDEAS BOND HEARING	Sep. 11, 2020
207.	JOINT EXHIBIT LIST OF THE PARTIES FOR HEARING ON MOTION TO SET SUPERSEDEAS BOND	Sep. 14, 2020
208.	JOINT PRETRIAL STATEMENT	Sep. 15, 2020
209.	**ME: MATTER UNDER ADVISEMENT [09/22/2020]**	**Sep. 23, 2020**
210.	STIPULATION TO EXTEND DATE FOR RULING ON DEFENDANT'S MOTION TO SET SUPERSEDEAS BOND	Oct. 6, 2020
211.	ORDER GRANTING EXTENSION OF DATE FOR RULING ON DEFENDANT'S MOTION TO SET SUPERSEDEAS BOND	Oct. 8, 2020
212.	**ME: UNDER ADVISEMENT RULING [10/13/2020]**	**Oct. 14, 2020**

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No.	Document Name	Filed Date
213.	***SEALED*** EXHIBIT 3 - 09/22/2020 - PLAINTIFF	Oct. 20, 2020
214.	***SEALED*** EXHIBIT 4 - 09/22/2020 - PLAINTIFF	Oct. 20, 2020
215.	EXHIBIT WORKSHEET HD 09/22/2020	Oct. 30, 2020
216.	MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DAVID SANCHEZ WITH CONSENT	Jan. 19, 2021
217.	ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR DAVID SANCHEZ WITH CONSENT	Feb. 17, 2021
218.	STIPULATION FOR SUBSTITUTION OF COUNSEL	Feb. 24, 2021
219.	**ME: SUBSTITUTION OF COUNSEL [03/05/2021]**	**Mar. 8, 2021**
220.	RETURNED MAIL	Mar. 19, 2021
221.	COURT OF APPEALS MEMORANDUM DATED 04/13/2021	Apr. 13, 2021
222.	COURT OF APPEALS RECEIPT	Apr. 26, 2021
223.	AMENDED ELECTRONIC INDEX OF RECORD	Apr. 26, 2021
224.	(PART 1 OF 2) NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND OR ALTERNATIVELY TO COMPEL PLAINTIFF TO COMPLY WITH THE PARTIES' AGREEMENT SETTING SECURITY IN LIEU OF A SUPERSEDEAS BOND	Jan. 24, 2022
225.	(PART 2 OF 2) NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND OR ALTERNATIVELY TO COMPEL PLAINTIFF TO COMPLY WITH THE PARTIES' AGREEMENT SETTING SECURITY IN LIEU OF A SUPERSEDEAS BOND	Jan. 24, 2022
226.	**ME: ORDER ENTERED BY COURT [01/24/2022]**	**Jan. 25, 2022**
227.	NOTICE OF LIMITED APPEARANCE	Jan. 27, 2022
228.	RESPONSE TO NATURAL REMEDY PATIENT CENTER'S MOTION TO SET SUPERSEDEAS BOND OR ALTERNATIVELY TO COMPEL PLAINTIFF TO COMPLY WITH THE PARTIES' AGREEMENT SETTING SECURITY IN LIEU OF SUPERSEDEAS BOND AND NOTICE OF LODGING PROPOSED ORDER	Jan. 27, 2022
229.	**ME: HEARING SET [02/02/2022]**	**Feb. 3, 2022**
230.	**ME: ORDER ENTERED BY COURT [02/03/2022]**	**Feb. 4, 2022**

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No.	Document Name	Filed Date
231.	NATURAL REMEDY PATIENT CENTER'S REPLY MEMORANDUM IN SUPPORT OF MOTION TO SET SUPERSEDEAS BOND OR ALTERNATIVELY TO COMPEL PLAINTIFF TO COMPLY WITH THE PARTIES' AGREEMENT SETTING SECURITY IN LIEU OF A SUPERSEDEAS BOND	Feb. 8, 2022
232.	NATURAL REMEDY PATIENT CENTER, LLC'S LIST OF WITNESSES AND EXHIBITS FOR HEARING ON MOTION TO SET SUPERSEDEAS BOND	Feb. 22, 2022
233.	STIPULATION RE: STAY OF EXECUTION AND ESCROW FUNDS IN LIEU OF BOND	Mar. 2, 2022
234.	**ME: ORDER ENTERED BY COURT [03/07/2022]**	**Mar. 8, 2022**
235.	ORDER RE: STAY OF EXECUTION AND ESCROW FUNDS IN LIEU OF BOND	Mar. 8, 2022
236.	COURT OF APPEALS LETTER OF TRANSMITTAL DATED 02/23/2023	Feb. 23, 2023
237.	COURT OF APPEALS MANDATE	Feb. 23, 2023
238.	**ME: STATUS CONFERENCE SET [03/03/2023]**	**Mar. 6, 2023**
239.	NOTICE OF LODGING PROPOSED FORM OF JUDGMENT	Mar. 15, 2023
240.	**ME: MATTER UNDER ADVISEMENT [03/20/2023]**	**Mar. 22, 2023**
241.	(PART 1 OF 2) NATURAL REMEDY PATIENT CENTER'S OBJECTIONS TO AGRICANN, LLC'S PROPOSED FORM OF JUDGMENT	Mar. 23, 2023
242.	(PART 2 OF 2) NATURAL REMEDY PATIENT CENTER'S OBJECTIONS TO AGRICANN, LLC'S PROPOSED FORM OF JUDGMENT	Mar. 23, 2023
243.	REPLY TO NATURAL REMEDY PATIENT CENTER'S OBJECTIONS TO AGRICANN, LLC'S PROPOSED FORM OF JUDGMENT	Apr. 3, 2023
244.	**ME: UNDER ADVISEMENT RULING [04/06/2023]**	**Apr. 10, 2023**
245.	(PART 1 OF 2) JOINT NOTICE OF LODGING SEPARATE SCHEDULING ORDERS	May. 18, 2023
246.	(PART 2 OF 2) JOINT NOTICE OF LODGING SEPARATE SCHEDULING ORDERS	May. 18, 2023
247.	STIPULATED MOTION TO RESET STATUS CONFERENCE TO 9:00 AM ON JULY 12, 2023	Jun. 6, 2023

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No.	Document Name	Filed Date
248.	**ME: CONFERENCE RESET/CONTINUED [06/07/2023]**	**Jun. 9, 2023**
249.	ORDER GRANTING RESET OF STATUS CONFERENCE	Jun. 16, 2023
250.	**ME: CONFERENCE RESET/CONTINUED [06/20/2023]**	**Jun. 21, 2023**
251.	MOTION TO WITHDRAW AS COUNSEL WITHOUT CLIENT CONSENT	Jul. 19, 2023
252.	**ME: MATTER UNDER ADVISEMENT [07/13/2023]**	**Jul. 20, 2023**
253.	ORDER GRANTING MOTION TO WITHDRAW AS COUNSEL WITHOUT CLIENT CONSENT	Jul. 20, 2023
254.	**ME: UNDER ADVISEMENT RULING [07/20/2023]**	**Jul. 25, 2023**
255.	**ME: WITHDRAWAL OF COUNSEL [07/20/2023]**	**Jul. 25, 2023**
256.	NOTICE OF LODGING PROPOSED SCHEDULING ORDER	Jul. 27, 2023
257.	SCHEDULING ORDER	Aug. 1, 2023
258.	**ME: SCHEDULING CONFERENCE SET [08/01/2023]**	**Aug. 4, 2023**
259.	MOTION FOR SUMMARY JUDGMENT	Sep. 20, 2023
260.	STATEMENT OF MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Sep. 20, 2023
261.	NOTICE OF FIRST EXTENSION OF TIME FOR NATURAL REMEDY PATIENT CENTER TO RESPOND TO PLAINTIFF AGRICANN'S MOTION FOR SUMMARY JUDGMENT	Oct. 20, 2023
262.	(PART 1 OF 2) NATURAL REMEDY PATIENT CENTER, LLC'S MOTION TO EXTEND DEADLINE TO FILE RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY TWO DAYS	Oct. 31, 2023
263.	(PART 2 OF 2) NATURAL REMEDY PATIENT CENTER, LLC'S MOTION TO EXTEND DEADLINE TO FILE RESPONSE IN OPPOSITION TO MOTION FOR SUMMARY JUDGMENT BY TWO DAYS	Oct. 31, 2023
264.	[PROPOSED] ORDER GRANTING NATURAL REMEDY PATIENT CENTER, LLC'S MOTION TO EXTEND DEADLINE TO FILE RESPONSE IN OPPOSITION TO MOTIONF(SIC) OR SUMMARY JUDGMENT BY TWO DAYS	Nov. 2, 2023
265.	**ME: ORDER SIGNED [11/02/2023]**	**Nov. 3, 2023**

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266.	NATURAL REMEDY PATIENT CENTER'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT	Nov. 3, 2023
267.	(PART 1 OF 5) NATURAL REMEDY PATIENT CENTER, LLC'S SEPARATE STATEMENT OF CONTROVERTING FACTS IN OPPOSITION TO AGRICANN, LLC'S MOTION FOR SUMMARY JUDGMENT	Nov. 3, 2023
268.	(PART 2 OF 5) NATURAL REMEDY PATIENT CENTER, LLC'S SEPARATE STATEMENT OF CONTROVERTING FACTS IN OPPOSITION TO AGRICANN, LLC'S MOTION FOR SUMMARY JUDGMENT	Nov. 3, 2023
269.	(PART 3 OF 5) NATURAL REMEDY PATIENT CENTER, LLC'S SEPARATE STATEMENT OF CONTROVERTING FACTS IN OPPOSITION TO AGRICANN, LLC'S MOTION FOR SUMMARY JUDGMENT	Nov. 3, 2023
270.	(PART 4 OF 5) NATURAL REMEDY PATIENT CENTER, LLC'S SEPARATE STATEMENT OF CONTROVERTING FACTS IN OPPOSITION TO AGRICANN, LLC'S MOTION FOR SUMMARY JUDGMENT	Nov. 3, 2023
271.	(PART 5 OF 5) NATURAL REMEDY PATIENT CENTER, LLC'S SEPARATE STATEMENT OF CONTROVERTING FACTS IN OPPOSITION TO AGRICANN, LLC'S MOTION FOR SUMMARY JUDGMENT	Nov. 3, 2023
272.	**ME: CONFERENCE RESET/CONTINUED [11/06/2023]**	**Nov. 15, 2023**
273.	REPLY TO MOTION FOR SUMMARY JUDGMENT	Nov. 27, 2023
274.	**ME: ORAL ARGUMENT SET [11/27/2023]**	**Dec. 5, 2023**
275.	**ME: TRIAL SETTING [01/19/2024]**	**Jan. 22, 2024**
276.	MOTION TO EXCLUDE EXPERT TESTIMONY	Mar. 4, 2024
277.	NATURAL REMEDY PATIENT CENTER, LLC'S MOTION TO STRIKE AGRICANN, LLC'S MOTION TO EXCLUDE EXPERT TESTIMONY	Mar. 6, 2024
278.	**ME: UNDER ADVISEMENT RULING [03/11/2024]**	**Mar. 12, 2024**
279.	(PART 1 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
280.	(PART 2 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024

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281.	(PART 3 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
282.	(PART 4 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
283.	(PART 5 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
284.	(PART 6 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
285.	(PART 7 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
286.	(PART 8 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
287.	(PART 9 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
288.	(PART 10 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
289.	(PART 11 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
290.	(PART 12 OF 12) NATURAL REMEDY PATIENT CENTER, LLC'S TRIAL MEMORANDUM	Mar. 15, 2024
291.	(PART 1 OF 3) JOINT PRETRIAL STATEMENT	Mar. 15, 2024
292.	(PART 2 OF 3) JOINT PRETRIAL STATEMENT	Mar. 15, 2024
293.	(PART 3 OF 3) JOINT PRETRIAL STATEMENT	Mar. 15, 2024
294.	RESPONSE TO NATURAL REMEDY PATIENT CENTER, LLC'S MOTION TO STRIKE AGRICANN, LLC'S MOTION TO EXCLUDE EXPERT TESTIMONY	Mar. 18, 2024
295.	NATURAL REMEDY PATIENT CENTER, LLC'S REQUEST FOR COURT REPORTER FOR APRIL 10-11, 2024 TRIAL	Mar. 25, 2024
296.	(PART 1 OF 2) NATURAL REMEDY PATIENT CENTER, LLC'S OPPOSITION TO AGRICANN, LLC'S MOTION TO EXCLUDE EXPERT TESTIMONY	Mar. 25, 2024

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297.	(PART 2 OF 2) NATURAL REMEDY PATIENT CENTER, LLC'S OPPOSITION TO AGRICANN, LLC'S MOTION TO EXCLUDE EXPERT TESTIMONY	Mar. 25, 2024
298.	**ME: PRETRIAL CONFERENCE [03/25/2024]**	**Mar. 28, 2024**
299.	NOTICE OF APPEARANCE	Apr. 3, 2024
300.	(PART 1 OF 2) STIPULATED MOTION TO AMEND TRIAL EXHIBIT LIST	Apr. 4, 2024
301.	(PART 2 OF 2) STIPULATED MOTION TO AMEND TRIAL EXHIBIT LIST	Apr. 4, 2024
302.	NOTICE OF APPEARANCE	Apr. 4, 2024
303.	**ME: ORDER ENTERED BY COURT [04/04/2024]**	**Apr. 5, 2024**
304.	REQUEST FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW	Apr. 5, 2024
305.	NATURAL REMEDY PATIENT CENTER'S OBJECTION TO AGRICANN, LLC'S REQUEST FOR FINDINGS OF FACTS AND CONCLUSIONS OF LAW	Apr. 5, 2024
306.	NOTICE OF APPEARANCE	Apr. 5, 2024
307.	MOTION TO EXCLUDE EVIDENCE OF FELONY CONVICTION	Apr. 9, 2024
308.	ORIGINAL TRANSCRIPT OF PROCEEDING HD 11/21/2019	Apr. 10, 2024
309.	ORIGINAL TRANSCRIPT OF PROCEEDING HD 11/20/2019	Apr. 10, 2024
310.	ORIGINAL TRANSCRIPT OF PROCEEDING HD 11/22/2019	Apr. 10, 2024
311.	ORIGINAL DEPOSITION OF CARLY BURTON TAKEN 09/16/2019	Apr. 10, 2024
312.	ORIGINAL DEPOSITION OF BRIGHAM ATTAYA BURTON TAKEN 03/21/2019	Apr. 10, 2024
313.	ORIGINAL DEPOSITION OF JOHN MASCIANDARO TAKEN 07/25/2023	Apr. 10, 2024
314.	ORIGINAL DEPOSITION OF DR. IMRAN KAZEM TAKEN 09/07/2023	Apr. 10, 2024
315.	ORIGINAL DEPOSITION OF BRIGHAM BURTON TAKEN 07/13/2023	Apr. 10, 2024

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316.	(PART 1 OF 2) ORIGINAL DEPOSITION OF DR. IMRAN KAZEM TAKEN 10/28/2019	Apr. 10, 2024
317.	(PART 2 OF 2) ORIGINAL DEPOSITION OF DR. IMRAN KAZEM TAKEN 10/28/2019	Apr. 10, 2024
318.	***SEALED*** ORIGINAL SEALED DOCUMENT (ENVELOPE WITH PURPORTED FLASH DRIVE)	Apr. 16, 2024
319.	**ME: ORDER ENTERED BY COURT [04/16/2024]**	**Apr. 17, 2024**
320.	**ME: TRIAL [04/10/2024]**	**Apr. 24, 2024**
321.	**ME: MATTER UNDER ADVISEMENT [04/11/2024]**	**Apr. 24, 2024**
322.	STIPULATED MOTION TO EXTEND THE DEADLINE TO FILE CLOSING TRIAL BRIEFS	Apr. 30, 2024
323.	ORDER GRANTING STIPULATED MOTION TO EXTEND THE DEADLINE TO FILE CLOSING TRIAL BRIEFS	May. 2, 2024
324.	**ME: ORDER SIGNED [05/02/2024]**	**May. 6, 2024**
325.	(PART 1 OF 2) CLOSING ARGUMENT	May. 8, 2024
326.	(PART 2 OF 2) CLOSING ARGUMENT	May. 8, 2024
327.	(PART 1 OF 4) NATURAL REMEDY PATIENT CENTER, LLC'S POST-TRIAL CLOSING MEMORANDUM	May. 8, 2024
328.	(PART 2 OF 4) NATURAL REMEDY PATIENT CENTER, LLC'S POST-TRIAL CLOSING MEMORANDUM	May. 8, 2024
329.	(PART 3 OF 4) NATURAL REMEDY PATIENT CENTER, LLC'S POST-TRIAL CLOSING MEMORANDUM	May. 8, 2024
330.	(PART 4 OF 4) NATURAL REMEDY PATIENT CENTER, LLC'S POST-TRIAL CLOSING MEMORANDUM	May. 8, 2024
331.	**ME: UNDER ADVISEMENT RULING [06/03/2024]**	**Jun. 6, 2024**
332.	**ME: ORDER ENTERED BY COURT [06/14/2024]**	**Jun. 17, 2024**
333.	STIPULATED MOTION TO EXTEND THE DEADLINE TO FILE PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	Jun. 17, 2024

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No.	Document Name	Filed Date
334.	NATURAL REMEDY PATIENT CENTER, LLC'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	Jun. 27, 2024
335.	AGRICANN'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	Jun. 27, 2024
336.	**ME: RULING [06/26/2024]**	**Jun. 28, 2024**
337.	NATURAL REMEDY PATIENT CENTER, LLC'S AMENDED PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW	Jul. 1, 2024
338.	**ME: UNDER ADVISEMENT RULING [08/22/2024]**	**Aug. 23, 2024**
339.	NOTICE OF LODGING OF FINAL JUDGMENT	Aug. 23, 2024
340.	MOTION FOR RECONSIDERATION	Aug. 27, 2024
341.	**ME: RESPONSE/REPLY TIMES SET [08/28/2024]**	**Aug. 29, 2024**
342.	DIGITAL EXHIBIT LIST COVERSHEET HD 04/10/2024	Aug. 30, 2024
343.	OBJECTION TO FORM OF JUDGMENT	Sep. 3, 2024
344.	MOTION FOR ENTRY OF SIGNED RULE 54(C) FINAL AND APPEALABLE JUDGMENT	Sep. 4, 2024
345.	NOTICE OF APPEARANCE OF ATTORNEY DAVID L. ABNEY	Sep. 4, 2024
346.	NATURAL REMEDY PATIENT CENTER, LLC'S NOTICE OF JOINDER OF AGRICANN, LLC'S MOTION FOR ENTRY OF SIGNED RULE 54(C) FINAL AND APPEALABLE JUDGMENT	Sep. 5, 2024
347.	NATURAL REMEDY PATIENT CENTER'S OPPOSITION TO MOTION FOR RECONSIDERATION	Sep. 16, 2024
348.	NATURAL REMEDY PATIENT CENTER'S RESPONSE TO OBJECTION TO FORM OF JUDGMENT	Sep. 16, 2024
349.	NOTICE OF APPEAL	Sep. 23, 2024
350.	**ME: RULING [09/24/2024]**	**Sep. 25, 2024**
351.	FINAL JUDGMENT	Sep. 25, 2024
352.	NOTICE OF FILING NOTICE OF APPEAL	Sep. 25, 2024
353.	NOTICE OF FILING FIRST AMENDED NOTICE OF APPEAL	Sep. 27, 2024

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APPEAL COUNT: 2

RE: CASE: UNKNOWN

DUE DATE: 10/22/2024

CAPTION: AGRICANN VS NATURAL REMEDY

EXHIBIT(S): HD 03/14/2016 - LIST # 1 2 4 5 6 8 IN A MANILA ENVELOPE

HD 11/20/2019 - LIST # 1 2 3 4 5 6 7 16 17 22 29 31 32 44 46 47 60 61 63 76 77 78 79 80 81 82 83 90 93 97 100 102 103 104 107 120 125 126 127 130 134 135 138 142 143 156 157 161 162 163 167 IN A BOX

HD 09/22/2020 - ELECTRONIC - IOR # 213 214

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TRANSCRIPT(S): ORIGINAL TRANSCRIPTS INCLUDED IN INDEX OF RECORD

COMPILED BY: MORRISE002 on October 22, 2024; [2.5-17026.63]
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CERTIFICATION: I, JEFF FINE, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

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

AGRICANN VS NATURAL REMEDY

Electronic Index of Record
MAR Case # CV2016-001283

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

IN THE

COURT OF APPEALS

STATE OF ARIZONA

DIVISION ONE

AGRICANN LLC, Plaintiff/Appellee/ Cross-Appellant, v. NATURAL REMEDY PATIENT CENTER LLC, Defendant/Appellant/ Cross-Appellee, and DAVID SANCHEZ, Defendant/Appellee.	)	Court of Appeals Division One No. 1 CA-CV 20-0231 Maricopa County Superior Court No. CV 2016-001283

MANDATE

TO: The Maricopa County Superior Court and the Honorable James D Smith, Judge, in relation to Cause No. CV2016-001283.

This cause was brought before Division One of the Arizona Court of Appeals in the manner prescribed by law. This Court rendered its MEMORANDUM DECISION and it was filed on May 12, 2022.

The time for the filing of a motion for reconsideration has expired and no motion was filed. A petition for review was filed. By order, dated December 6, 2022, the Arizona Supreme Court denied the petition for review. Arizona Supreme Court No. CV-22-0148-PR.

NOW, THEREFORE, YOU ARE COMMANDED to conduct such proceedings as required to comply with the MEMORANDUM DECISION of this court; a copy of which is attached hereto.

COSTS: **$154.81**
ATTORNEY'S FEES: **$5,000.00**
(Defendant/Appellee-Cross Appellant Agricann)

I, Amy M. Wood, Clerk of the Court of Appeals, Division One, hereby certify the attachment to be a full and accurate copy of the MEMORANDUM DECISION filed in this cause on May 12, 2022.

IN WITNESS WHEREOF, I hereunto set my hand and affix the official seal of the Arizona Court of Appeals, Division One, on February 23, 2023.

AMY M. WOOD, CLERK
By_____jt_____
Deputy Clerk

IN THE

ARIZONA COURT OF APPEALS

DIVISION ONE

AGRICANN LLC,
Plaintiff/Appellee/Cross-Appellant,

v.

NATURAL REMEDY PATIENT CENTER LLC,
Defendant/Appellant/Cross-Appellee,

and

DAVID SANCHEZ,
Defendant/Appellee.

No. 1 CA-CV 20-0231
FILED 5-12-2022

Appeal from the Superior Court in Maricopa County
No. CV2016-001283
The Honorable James D. Smith, Judge

AFFIRMED IN PART; VACATED AND REMANDED IN PART

COUNSEL

Mills and Woods Law PLLC, Phoenix
By Sean A. Woods
Co-Counsel for Plaintiff/Appellee/Cross-Appellant

Ahwatukee Law Office, P.C., Phoenix
By David L. Abney
Co-Counsel for Plaintiff/Appellee/Cross-Appellant

Osborn Maledon, P.A., Phoenix
By Eric M. Fraser, Thomas L. Hudson, Hayleigh S. Crawford
Co-Counsel for Defendant/Appellant/Cross-Appellee

Greenspoon Marder LLP, Scottsdale
By Sharon A. Urias, Stuart Knight *Pro Hac Vice*
Co-Counsel for Defendant/Appellant/Cross-Appellee

MEMORANDUM DECISION

Presiding Judge D. Steven Williams delivered the decision of the Court, in which Judge Jennifer B. Campbell and Judge James B. Morse Jr. joined.

W I L L I A M S, Judge:

¶1 Natural Remedy Patient Center, LLC ("Natural Remedy") appeals portions of the superior court's judgment in favor of Agricann, LLC ("Agricann"). Agricann cross-appeals portions of the same judgment granted in favor of Natural Remedy. For reasons that follow, we affirm the judgment, but vacate the damages award for Agricann and remand for further proceedings consistent with this decision.

FACTUAL AND PROCEDURAL HISTORY

¶2 Natural Remedy, a not-for profit entity, which holds a medical marijuana dispensary certificate issued by the Arizona Department of Health Services, formed a joint venture to grow and sell medical marijuana with Agricann, a for-profit entity, which held the lease to a facility suitable for medical marijuana production (the "Grow Facility").

¶3 At the time of the joint venture, David Sanchez and his wife Kathy Sanchez were the principals of Natural Remedy. Shadi Zaki, though not a principal or agent of Natural Remedy, consulted on their behalf. Agricann's principals were Brig Burton and Imran Kazem.

¶4 In May 2014, the parties entered a two-year dispensary agent contract (the "Management Contract") under which Agricann would cultivate and Natural Remedy would sell medical marijuana. The parties

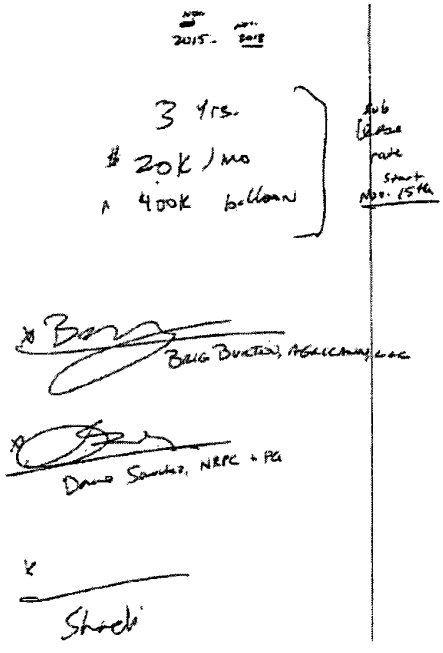
formed Natural Agriculture, LLC[1] ("Natural Agriculture") to pay the joint venture's expenses, including rent, and to hold the lease rights to the Grow Facility.

¶5 Under the Management Contract, profits were to be shared as follows: "[a]ll distributions of [s]ales [i]ncome shall be paid on a pro-rata basis (i.e.[,] 80% of all gross sales from both the retail and wholesale operations shall be paid to [Agricann], and 20% shall be retained by [Natural Remedy]." Natural Remedy agreed to pay Agricann its share of the profits within five days of receipt of sales income and was subject to an interest penalty of 1% per day for late payments. It appears, however, that profits were not shared in this manner and that the parties later agreed to share profits equally.

¶6 An ongoing dispute developed over what Natural Remedy owed Agricann and whether either party was complying with its obligations under the contract's terms. Agricann then locked Natural Remedy out of the Grow Facility and contemplated suing Natural Remedy for amounts owed under the Management Contract. Consequently, in October 2015, approximately six months before the expiration of the Management Contract, the parties met to avoid a lawsuit and to find an amicable way to end their business relationship.

¶7 At the meeting, the parties contemplated an agreement that would alter their rights and obligations under the Management Contract and under which Natural Remedy would "buy out" Agricann's lease rights to the Grow Facility and obtain title to the equipment therein. During the meeting, a representative from Agricann, either Burton or Kazem, wrote the following terms on a sheet of a paper:

[1] The Management Contract refers to this entity as "Nature's Agriculture, LLC." However, the parties formed "Natural Agriculture, LLC."



¶8 According to this document, (hereinafter, the "Breakup Deal") Natural Remedy would sublease the Grow Facility for $20,000.00 a month for three years, beginning on November 15, 2015, and ending with a $400,000.00 balloon payment. Although not self-evident from the document's four corners, the parties agree the Breakup Deal would include the transfer of title to equipment from Agricann to Natural Remedy and the transfer of Agricann's lease rights in the Grow Facility to Natural Remedy.

¶9 The Breakup Deal was signed by Burton, as Agricann's representative, and by Sanchez, as Natural Remedy's representative.[2] Nevertheless, the parties dispute whether the Breakup Deal was a binding agreement.

¶10 Following the meeting, the parties continued negotiations regarding additional terms related to the Breakup Deal, and Burton prepared several additional contract documents, including a personal guarantee, a promissory note, a security agreement, and a purchase and settlement agreement and release (the "Release Agreement") under which Agricann agreed to "settle[] and release[] [Natural Remedy] from its obligations, delinquent or otherwise, arising under the [Management Contract]." Burton then sent several emails to Natural Remedy in which he

[2] Although the Breakup Deal provided a space for Zaki to sign, he did not sign as he was not a principal or agent of Natural Remedy.

acknowledged that the Breakup Deal was created, in part, "to resolve the [debt] that [Natural Remedy] owes Agricann," and cautioned that, if the documents were not signed, Agricann would likely move to enforce the debts owed under the Management Contract. Unlike the Breakup Deal, these documents were never signed.

¶11 The parties dispute whether Natural Remedy made payments under the Breakup Deal but agree that Agricann was last paid in January 2016. In February 2016, Agricann sued Natural Remedy alleging, as relevant to this appeal, that Natural Remedy breached the Management Contract by failing to pay Agricann 80% of the gross sales, and that Natural Remedy breached the Breakup Deal by failing to make the required payments. In May or June 2016, Natural Remedy moved out of the Grow Facility. Before their departure, Natural Remedy allegedly found a new tenant to occupy the Grow Facility. At some point, Agricann lost its lease rights, which Agricann attributes to Natural Remedy's nonpayment.

¶12 The matter proceeded to a three-day bench trial. At trial, Burton, the signatory for Agricann, testified that it was his intent that the Breakup Deal would be binding. Kazem testified in support, acknowledging that while the parties anticipated signing a formal document, the parties agreed to the terms set forth in the Breakup Deal. Sanchez, the signatory for Natural Remedy, did not testify. Instead, only Zaki, Natural Remedy's independent contractor, who is neither a party to nor a signatory of the Breakup Deal, testified to the parties' intent. Zaki testified that the Breakup Deal reflected only "discussions towards a potential agreement." Burton also testified that under the Breakup Deal, Agricann gave up its rights under the Management Contract "going forward." He did not, however, testify as to whether the Breakup Deal included the settlement of debts owed by Natural Remedy under the Management Contract.

¶13 Agricann claimed damages of approximately $30 million, including interest, for Natural Remedy's breach of the Management Contract. Agricann also claimed damages of $1.065 million in principal, totaling approximately $15.5 million including interest, for Natural Remedy's breach of the Breakup Deal. A damages expert was not used; rather Burton calculated and testified to Agricann's damages. In its closing brief, Natural Remedy argued Agricann did not prove breach of the Management Contract or related damages and contended that the Breakup Deal was unenforceable.

¶14 The superior court ruled against Agricann on the Management Contract and made the following relevant findings: (1) the parties' course of performance and contemporaneous communications modified the Management Contract such that income was split equally, rather than 80/20; (2) Agricann's claim for a daily interest penalty of 1% for late payments of goods sold was unenforceable because it was a "form of liquidated damages" and functioned as an "impermissible penalty rather than enforceable liquidated damages;" (3) Agricann failed to show that Natural Remedy breached the modified, as opposed to original, Management Contract; and (4) Agricann failed to establish its damages persuasively.

¶15 By contrast, the superior court ruled in favor of Agricann on the Breakup Deal, making the following relevant findings: (1) the Breakup Deal was enforceable; (2) the Breakup Deal was a novation of the Management Contract; (3) Natural Remedy paid $20,000.00 in November 2015, $20,000.00 in December 2015, and $15,000.00 in January 2016; and (4) Natural Remedy breached the Breakup Deal by failing to make payments after January 2016. The court determined that Natural Remedy owed $5,000.00 for January 2016, the remaining thirty-three contract payments of $20,000.00, and the $400,000.00 balloon payment, totaling $1.065 million. The court noted that these were "liquidated amounts," and awarded ten percent statutory pre-judgment interest.

¶16 Lastly, the court denied both parties' requests for fees holding that neither side was the successful party.

¶17 Both parties moved for reconsideration and the court denied the motions. The superior court entered judgment. Natural Remedy timely appealed and Agricann timely cross-appealed. We have jurisdiction under Article 6, Section 9, of the Arizona Constitution and A.R.S. § 12-2101(A)(1).

DISCUSSION

I. Natural Remedy Appeals the Superior Court's Ruling on the Breakup Deal

¶18 Natural Remedy argues the Breakup Deal was not an enforceable contract and also argues, in the alternative, that if the Breakup Deal was enforceable, the damages award has "no basis in the law." On these bases, Natural Remedy requests that we reverse the superior court's ruling.

¶19 On appeal from a bench trial, we view the "evidence and all reasonable inferences in the light most favorable to sustaining the superior

court's ruling," *Town of Marana v. Pima Cnty.*, 230 Ariz. 142, 152, ¶ 46 (App. 2012), and we will affirm the court's judgment if it is correct for any reason, *FL Receivables Tr. 2002-A v. Ariz. Mills, L.L.C.*, 230 Ariz. 160, 166, ¶ 24 (App. 2012). "We defer to a superior court's findings of fact unless clearly erroneous, but we review its conclusions of law de novo." *Town of Marana*, 230 Ariz. at 152, ¶ 46. "A finding of fact is not clearly erroneous if substantial evidence supports it, even if substantial conflicting evidence exists." *Kocher v. Dep't of Revenue of Ariz.*, 206 Ariz. 480, 482, ¶ 9 (App. 2003). The validity and enforceability of a contract and whether the court applied the correct measure of damages are mixed questions of fact and law that we review de novo. *Armiros v. Rohr*, 243 Ariz. 600, 605-06, ¶¶ 16, 21 (App. 2018).

A. Enforceability of the Breakup Deal

¶20 Natural Remedy asserts that the Breakup Deal is not an enforceable contract but rather represents only the parties' "preliminary negotiations," as demonstrated by the lack of certain "material terms" and by the parties' contemporaneous behavior and conduct. Agricann asserts that the Breakup Deal was a binding document, not a mere preliminary negotiation.

¶21 A contract may be formed if it is clear the parties intended to be bound by its terms. *Johnson Int'l, Inc. v. City of Phx.*, 192 Ariz. 466, 470, ¶ 26 (App. 1998). The parties' anticipation of the creation of a more complete, thorough contract will not prevent enforcement of an otherwise binding contract unless a party has expressed the intention not to be bound until the future writing is executed. *See id.* at 471, ¶ 31 (concluding initial agreement was not binding where one party expressed the intention not to be bound until execution of the final agreement); 1 Samuel Williston & Richard A. Lord, Williston on Contracts § 4.11 (4th ed. 1999) ("[T]o avoid the conclusion that a contract has been formed it must be found as a fact that at least one of the parties has expressed the intention not to be bound until the [future] writing [is] executed."); *AROK Constr. Co. v. Indian Constr. Servs.*, 174 Ariz. 291, 295, 299 (App. 1993) (concluding that, even if the parties anticipated making a written agreement, that fact would not preclude the finding that an oral contract was made if the parties intended to be bound). In determining whether the parties intended to be bound, a court may look to the writing, the parties' conduct, and the surrounding circumstances. *Muchesko v. Muchesko*, 191 Ariz. 265, 268 (App. 1997). The focus is on objective evidence, not on the "hidden intent of the parties." *Id.* (quoting *Modular Sys., Inc. v. Naisbitt*, 114 Ariz. 582, 585 (App. 1977)).

¶22 Because the law "favors enforcement when it is clear that the parties intended themselves to be bound," "absent or uncertain terms are not fatal to the enforceability of an otherwise binding contract." *AROK*, 174 Ariz. at 297; *see also Schade v. Diethrich*, 158 Ariz. 1, 10-11 (1988) (holding promise to enter into an equitable and fair settlement with the specific terms to be resolved later, sufficiently manifested mutual assent to be bound despite the absence of agreement on the most basic terms). Whether an agreement resolves every matter is not the touchstone for enforceability. *AROK*, 174 Ariz. at 297. Rather, an agreement's terms are sufficiently certain if they "provide a basis for determining the existence of a breach and for giving an appropriate remedy." *Id.* (quoting Restatement (Second) of Contracts § 33(2) (1981)). Thus, omitted terms, even those "essential" to the contract, "are not invariably fatal to the rights of the parties to obtain enforcement of their bargain." *Id.* at 298.

¶23 Accordingly, the questions before us are whether the parties intended to be bound by the Breakup Deal, despite anticipating a future, more formal agreement and, if so, whether the terms of the Breakup Deal are sufficiently certain to be enforceable.

1. The Parties Intended to Be Bound by the Breakup Deal

¶24 Natural Remedy contends the parties' contemporaneous communications and behavior, particularly their contemplation of a more formal agreement, demonstrates that the parties did not intend to be bound by the Breakup Deal. We disagree. Viewed in the light most favorable to upholding the court's ruling, *Town of Marana*, 230 Ariz. at 152, ¶ 46, the writing, the parties' conduct, and the surrounding circumstances demonstrate that the parties' intended to be bound by the terms included in the writing, *see Muchesko*, 191 Ariz. at 268.

¶25 We first consider whether the writing establishes the parties' intent to be bound. At the October 2015 meeting, the parties not only reduced their agreement to writing, but also signed the agreement. Notably, the Breakup Deal did not contain a "non-binding" clause, or any language indicating that the parties did not intend to be bound by its terms. *See Johnson*, 192 Ariz. at 473, ¶¶ 42-44 (holding that where a preliminary agreement contained non-binding language, the agreement could not bind the parties). Accordingly, we may look beyond the writing to determine the parties' intent. *See id.* at ¶ 43.

¶26 After signing the Breakup Deal, the parties acted consistently with a binding agreement. As the superior court found, Natural Remedy

was given possession of the Grow Facility and Natural Remedy does not dispute this fact. The superior court also found that Natural Remedy paid "$20,000.00 in November and [$20,000.00 in] December 2015 and [$]15,000.00 in January 2016." Natural Remedy argues this finding was in error, citing only an internal, undated spreadsheet created by Zaki. At trial, Burton and Zaki gave conflicting testimony regarding the payments and the only piece of non-testimonial evidence on the matter was Zaki's internal, undated spreadsheet.

¶27 Burton testified that Natural Remedy made three payments under the Breakup Deal—$20,000.00 in November, $20,000.00 in December, and $15,000.00 in January. By contrast, Zaki testified that Natural Remedy did not make any payments under the Breakup Deal. On cross-examination, Zaki's prior deposition testimony was used to show he had previously acknowledged that two payments totaling $20,000.00 were made in December 2015 and a payment of $15,000.00 was made in January 2016. Zaki's spreadsheet confirms this account but fails to provide dates or reasons for the payments. We acknowledge that conflicting testimony exists. However, "where there is a dispute in the evidence from which reasonable [persons] could arrive at different conclusions as to the ultimate facts, we will not disturb the findings of a trial court." *In re U.S. Currency in Amount of $26,980.00*, 199 Ariz. 291, 296, ¶ 16 (App. 2000) (citations omitted); *see also In re Estate of Zaritsky*, 198 Ariz. 599, 601, ¶ 5 (App. 2000) (noting that the appellate court gives "due regard to the opportunity of the [superior] court to judge the credibility of witnesses").

¶28 Lastly, the circumstances surrounding the creation of the Breakup Deal support the finding that the parties intended to be bound by its terms. Prior to their meeting, Agricann locked Natural Remedy out of the Grow Facility and contemplated suing Natural Remedy. The parties met in October to resolve their problems under the Management Contract and to avoid a lawsuit. On this record, substantial evidence supports the court's finding that the parties' intended to be bound by the terms of the Breakup Deal. *See Kocher*, 206 Ariz. at 482, ¶ 9.

2. The Terms of the Breakup Deal are Sufficiently Certain to be Enforceable

¶29 Natural Remedy argues the Breakup Deal is unenforceable because the document did not include certain additional terms discussed by the parties, such as how the agreement would alter the parties' rights and obligations under the Management Contract, how title to the equipment would transfer, whether the agreement would contain a

personal guarantee by the Sanchezes, and whether the agreement would include an interest penalty for late payments.

¶30 Because the parties intended to be bound by the Breakup Deal, the law favors its enforcement. *See AROK*, 174 Ariz. at 297. Omitted terms, even those essential to the contract, are not fatal to its enforceability, so long as the agreement's terms "provide a basis for determining the existence of a breach and for giving an appropriate remedy." *Id.* (quoting Restatement (Second) of Contracts § 33(2)).

¶31 Here, the terms of the Breakup Deal are sufficiently certain to render the Breakup Deal enforceable. Natural Remedy breached the contract at a point when the only terms necessary to determine the existence of the breach (payments under the agreement) and for giving an appropriate remedy (agreed-upon payments) were present. Because Natural Remedy breached the contract—by failing to make the required payments—the absence of additional contract terms contemplated by the parties is not fatal to Agricann's claim. "Only '[i]f the essential terms are so uncertain that there is no basis for deciding whether the agreement has been kept or broken' does a contract not exist." *Id.* at 298 (quoting Restatement (Second) of Contracts § 33 cmt. a).

¶32 Accordingly, the superior court did not err in finding the contract enforceable.

B. The Damages Award

¶33 Natural Remedy requests this court reverse the damages award arguing it has "no basis in the law." Whether the court applied the correct measure of damages is a mixed question of fact and law we review de novo. *Armiros*, 243 Ariz. at 605-06, ¶¶ 16, 21.

¶34 Contract remedies are designed to redress the plaintiff's "loss of the benefit of the bargain." *Arrow Leasing Corp. v. Cummins Ariz. Diesel, Inc.*, 136 Ariz. 444, 447 (App. 1983). Accordingly, one of the principal goals of remedying a breach of contract is to "[e]nforc[e] the expectation interests of the parties." *John Munic Enterprises, Inc. v. Laos*, 235 Ariz. 12, 18, ¶ 18 (App. 2014). Expectation damages, therefore, are "intended to put the injured party 'to the extent possible . . . in as good a position as he would have been in had the contract been performed.'" *Ramsey v. Ariz. Registrar of Contractors*, 241 Ariz. 102, 107, ¶ 12 (App. 2016) (quoting Restatement (Second) of Contracts § 347 cmt. a). However, in doing so, the court must adhere to the maxim that "a party should not profit more from breach of a contract than its full performance." *John Munic, 235 Ariz.* at 18, ¶ 19; *see also*

Int'l Prod. Specialists, Inc. v. Schwing Am., Inc., 580 F.3d 587, 601 (7th Cir. 2009) (remanding where damages award placed non-breaching party "in a better position than it would have been in had [breaching party] performed"); *see also* 11 Joseph M. Perillo, Corbin on Contracts § 55.3 (rev. ed. 2005) ("[I]t is a basic tenet of contract law that the aggrieved party will not be placed in a better position than it would have occupied had the contract been fully performed."). Therefore, the calculation of expectation damages "necessarily includes a deduction for 'any cost or other loss that [the injured party] has avoided by not having to perform.'" *Ramsey*, 241 Ariz. at 107, ¶ 12 (quoting Restatement (Second) of Contracts § 347(c)).

¶35 Here, the court, by awarding Agricann the full amount due under the Breakup Deal, less the amounts paid by Natural Remedy, awarded Agricann its expectation under the contract. However, because nothing in the court's ruling suggests that it considered the costs that Agricann avoided by not having to perform, such as, but not limited to, the rent payments and the transfer of the equipment, the court's award was in error. *See, e.g., id.*

¶36 Because the court's error placed Agricann in a better position than it would have been in had the contract been fully performed, we vacate the damages award and remand with instruction for the superior court to consider the costs that Agricann avoided by not having to perform.

II. Agricann Cross-Appeals the Superior Court's Ruling on the Management Contract

¶37 Agricann cross-appeals the superior court's entry of judgment in favor of Natural Remedy on the Management Contract. Agricann argues the court erred by finding: (1) that the parties validly modified the Management Contract; (2) that Agricann did not establish damages under the modified Management Contract; and (3) that the interest rate was an impermissible penalty.

¶38 Because we will affirm the court's judgment if it is correct for any reason, *Ariz. Mills, L.L.C.*, 230 Ariz. at 166, ¶ 24, we must determine whether the judgment rather than the reasoning of the superior court was correct, *Picaso v. Tucson Unified Sch. Dist.*, 217 Ariz. 178, 181, ¶ 9 (2007).

¶39 The superior court, finding that the parties modified the Management Contract, held that Agricann did not establish breach or resulting damages under the Management Contract. While Agricann challenges this finding on appeal, we need not address the court's reasoning because we conclude the judgment was correct. *See id.*

¶40 As noted, *supra* ¶ 15, the superior court found the Breakup Deal was a novation of the Management Contract which "replac[ed] the Management Contract." While the court explained that a novation extinguishes obligations arising under a previous agreement, the court did not specify whether the Breakup Deal extinguished the debts and claims arising under the Management Contract.[3] Because we conclude the Breakup Deal was a complete novation of the Management Contract, that is, it extinguished the debts and claims arising under the Management Contract as well as the future obligations due under the Management Contract, we affirm the court's judgment.

¶41 A novation is the "substitution by mutual agreement of . . . a new debt or obligation for an existing one which is thereby extinguished." *Maxwell v. Fid. Fin. Servs., Inc.*, 184 Ariz. 82, 91 (1995) (quoting *Western Coach Corp. v. Roscoe*, 133 Ariz. 147, 152 (1982)). Thus, "[t]he effect of a novation is to discharge the original debt." *Id.* A novation may be express, or it may be "implied from the facts and circumstances surrounding the transaction and the conduct of the parties thereafter." *United Sec. Corp. v. Anderson Aviation Sales Co., Inc.*, 23 Ariz. App. 273, 275 (1975).

¶42 The facts and circumstances surrounding the creation of the Breakup Deal, as well as the parties' conduct following its execution, demonstrate that the Breakup Deal novated the Management Contract and extinguished the debts arising therefrom. Just before the parties entered the Breakup Deal, Agricann locked Natural Remedy out of the Grow Facility and contemplated suing Natural Remedy for amounts owed under the Management Contract. To be sure, the parties entered the Breakup Deal to avoid a lawsuit over the Management Contract. Moreover, following its execution, Burton prepared the Release Agreement under which Agricann agreed to release Natural Remedy from its "obligations, delinquent or otherwise, arising under the [Management Contract]" and sent several emails to Natural Remedy in which he acknowledged that the Breakup Deal was created to resolve the debt that Natural Remedy owed Agricann.

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[3] Agricann asserts the finding of novation is supported by the evidence but contends that the superior court "concluded that the effect of the Breakup Deal was a 'novation' of the Management Contract for the remainder of its term." In other words, Agricann asserts that the superior court found the Breakup Deal "novate[d] the Management Contract going forward" but did not extinguish Natural Remedy's obligation to pay past amounts due under the Management Contract. The superior court made no such express finding.

¶43 Because the Breakup Deal was a novation of the Management Contract, Natural Remedy was released from liability under the Management Contract. *See Western Coach Corp.*, 133 Ariz. at 152 (noting that, if a novation had occurred, the defendants would have been released from liability under the original contract). Accordingly, Agricann could not establish that Natural Remedy breached the Management Contract. On this basis, we affirm the judgment of the superior court.

CONCLUSION

¶44 Both parties have requested attorneys' fees and costs on appeal pursuant to A.R.S. § 12-341.01. Because neither party is fully successful on appeal, we decline to award fees or costs to either party. Similarly, both parties have requested that on remand we instruct the superior court to reconsider the prevailing party for purpose of an award of attorneys' fees and costs at the superior court level. We decline to do so.

¶45 For these reasons, we affirm the judgment but vacate the damages award and remand for further proceedings consistent with this decision.

COURT OF APPEALS
STATE OF ARIZONA

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

Clerk of the Superior Court
*** Electronically Filed ***
03/06/2023 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 03/03/2023

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
K. Chocoj/S. Dickinson
Deputy

AGRICANN L L C, et al.

BRIAN A WEINBERGER

v.

NATURAL REMEDY PATIENT CENTER L L C, et al.

SHARON A URIAS

MARK DEATHERAGE
DAVID SANCHEZ
172 S COBBLESTONE
GILBERT AZ 85296
JUDGE RYAN

MINUTE ENTRY

The Court has received the Order of Mandate filed February 23, 2023.

IT IS ORDERED setting a **Status Conference** on **March 20, 2023, at 9:15 a.m. (time allotted: 15 minutes)** in this division.

The hearing(s) will be held by phone/video conference via the Court Connect platform. Please join my meeting from your computer, tablet or smartphone.

Click here to join the meeting

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SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 03/03/2023

Phone Conference ID: 803 526 856#

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

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

The Arizona Constitution requires the Arizona Commission on Judicial Performance Review to conduct performance evaluations of superior court judges. The Commission is asking for your help to evaluate Maricopa County Superior Court judges currently undergoing performance review. After your hearing, if the judge you are in front of is undergoing review, a survey will either be given to you by court staff or will be emailed to you and you can take the survey online. The survey is conducted by the Docking Institute of Public Affairs at Fort Hays State University and is anonymous and confidential. Your participation in the review process is important! More information on Judicial Performance Review can be found at www.azjudges.info.

La Constitución de Arizona exige que la Comisión de la Evaluación del Desempeño Judicial realice evaluaciones de desempeño de los jueces de los tribunales superiores. La comisión pide su ayuda para evaluar a los jueces del Tribunal Superior del Condado de Maricopa a quienes actualmente se les está evaluando su desempeño. Después de su audiencia, si el juez frente a usted está siendo revisado, el personal de la corte le entregará una encuesta o se le enviará por correo electrónico y usted puede realizar la encuesta en línea. La encuesta es realizada por el Docking Institute of Public Affairs de la Fort Hays State University y se mantiene anónima y confidencial. ¡Su participación en el proceso de la evaluación es importante! Para obtener más información sobre la evaluación del desempeño judicial, diríjase a www.azjudges.info.

Clerk of the Superior Court
*** Electronically Filed ***
04/10/2023 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 04/06/2023

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
S. Ortega
Deputy

AGRICANN LLC, et al.

v.

NATURAL REMEDY PATIENT CENTER LLC, et al.

BRIAN A WEINBERGER

SHARON A URIAS

MARK DEATHERAGE
DAVID SANCHEZ
172 S COBBLESTONE
GILBERT AZ 85296
MARC STEVEN WINDTBERG
JUDGE RYAN

MINUTE ENTRY

East Court Building – Courtroom 814

9:16 a.m. This is the time set for a virtual Status Conference regarding the Court of Appeals Mandate and Memorandum Decision, filed February 23, 2023. Plaintiff is represented by counsel, Marc Steven Windtberg for counsel of record, Brian A. Weinberger. Defendant is represented by counsel, Sharon A. Urias. All parties appear virtually and/or telephonically via Court Connect/Microsoft Teams.

A record of the proceedings is made digitally in lieu of a court reporter.

Discussion is held regarding the interpretation of the Court of Appeals Mandate and Memorandum Decision. For the reasons set forth on the record,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 04/06/2023

IT IS ORDERED denying without prejudice Plaintiff's motion to rule on the proposed form of Judgment.

IT IS FURTHER ORDERED staying this matter until **April 13, 2023** to allow Plaintiff to seek a special action review by the Court of Appeals.

IT IS FURTHER ORDERED setting a **Status Conference** on **June 14, 2023 at 8:30 a.m. (time allotted: 15 minutes)** in this division to discuss how to proceed in moving the case forward.

The hearing(s) will be held by phone/video conference via the Court Connect platform. Please join my meeting from your computer, tablet or smartphone.

Click here to join the meeting
www.tinyurl.com/jbazmc-cvj10

You can also dial in using your phone (audio only)
+1 (917) 781-4590
Phone Conference ID: 803 526 856#

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

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

IT IS FURTHER ORDERED counsel shall submit to the Court a proposed scheduling order.

Based on Plaintiff's position regarding further discovery in this matter, the Court would not be opposed to Plaintiff's counsel filing a motion in limine precluding additional discovery disclosure.

9:23 a.m. Hearing concludes.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 04/06/2023

The Arizona Constitution requires the Arizona Commission on Judicial Performance Review to conduct performance evaluations of superior court judges. The Commission is asking for your help to evaluate Maricopa County Superior Court judges currently undergoing performance review. After your hearing, if the judge you are in front of is undergoing review, a survey will either be given to you by court staff or will be emailed to you and you can take the survey online. The survey is conducted by the Docking Institute of Public Affairs at Fort Hays State University and is anonymous and confidential. Your participation in the review process is important! More information on Judicial Performance Review can be found at www.azjudges.info.

La Constitución de Arizona exige que la Comisión de la Evaluación del Desempeño Judicial realice evaluaciones de desempeño de los jueces de los tribunales superiores. La comisión pide su ayuda para evaluar a los jueces del Tribunal Superior del Condado de Maricopa a quienes actualmente se les está evaluando su desempeño. Después de su audiencia, si el juez frente a usted está siendo revisado, el personal de la corte le entregará una encuesta o se le enviará por correo electrónico y usted puede realizar la encuesta en línea. La encuesta es realizada por el Docking Institute of Public Affairs de la Fort Hays State University y se mantiene anónima y confidencial. ¡Su participación en el proceso de la evaluación es importante! Para obtener más información sobre la evaluación del desempeño judicial, diríjase a www.azjudges.info.

Clerk of the Superior Court
*** Electronically Filed ***
07/25/2023 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 07/20/2023

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
K. Chocoj
Deputy

AGRICANN L L C, et al.

BRIAN A WEINBERGER

v.

NATURAL REMEDY PATIENT CENTER L L C, et al.

SHARON A URIAS

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JUDGE RYAN

UNDER ADVISEMENT RULING

The Court has considered the parties' positions on a new scheduling order and revisited the memorandum opinion issued by the Arizona Court of Appeals.

IT IS ORDERED adopting Defendant's position on scope of discovery and revised deadlines. Defense counsel shall submit a scheduling order consistent with the position stated in court on July 13, 2023.

SHARON A. URIAS (SBN 016970)
DANIEL F. NAGEOTTE (SBN 035562)
GREENSPOON MARDER LLP
8585 E. Hartford Drive, Ste. 700
Scottsdale, AZ 85255
Tel. 480.306.5458
Email: sharon.urias@gmlaw.com
Email: daniel.nageotte@gmlaw.com

Attorneys for Defendants/Counterclaimants Natural Remedy Patient Center, LLC

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

AGRICANN, LLC *et al.*, Plaintiffs, v. NATURAL REMEDY PATIENT CENTER, LLC *et al.*, Defendants.	Case No.: CV2016-001283 **SCHEDULING ORDER**
NATURAL REMEDY PATIENT CENTER, LLC, Counterclaimant, v. AGRICANN, LLC, Counterdefendant.	**(Assigned to the Honorable Timothy Ryan)**

Upon consideration of the parties' Stipulated Request for Entry of Modified Scheduling Order and pursuant to the Court's July 20, 2023 Order, the Court hereby orders as follows:

1. ***Initial Disclosure Statements:*** The parties have already exchanged initial Rule 26.1 Disclosure Statements.

2. ***Expert witness disclosure:*** The parties will exchange the identity and opinions of experts by **September 22, 2023**. The parties will exchange the identity and opinions of their rebuttal experts by **October 13, 2023**.

3. ***Lay (non-expert) witness disclosure:*** The parties will disclose all lay witnesses by **August 18, 2023**.

4. ***Final supplemental disclosure:*** Each party shall provide final supplemental disclosures by **October 20, 2023**. This Order does not replace the parties' obligation to seasonably disclose Rule 26.1 information on an on-going basis and as it becomes available. **No party shall use any lay witness, expert witness, expert opinion, or exhibit at trial not disclosed in a timely manner, except upon order of the Court for good cause shown or upon a written or an on-the-record agreement of the parties.**

5. ***Discovery deadlines:*** The parties will propound all discovery undertaken pursuant to Rules 33 through 36 by **August 23, 2023**. The parties will complete the depositions of parties and lay witnesses by **September 8, 2023**, and will complete the depositions of expert witnesses by **October 18, 2023**. The parties will complete all other discovery by **October 19, 2023**. ("Complete discovery" includes conclusion of all depositions and submission of full and final responses to written discovery.)

6. ***Mediation or Settlement Conference:*** The parties shall participate in mediation or a settlement conference which shall be completed by **October 31, 2023**. All attorneys and their clients, all self-represented parties, and any non-attorney representatives who have full and complete authority to settle this case shall personally appear and participate in good faith, even if no settlement is expected. However, if a non-attorney representative requests a telephonic appearance and the request is granted prior to the scheduled date, a non-attorney representative may appear telephonically.

8. ***Trial setting conference:*** On **November 6, 2023 at 9:00 a.m.**, the Court will conduct a telephonic trial setting conference at which time the Court will address setting an evidentiary hearing. Attorneys and self-represented parties shall have their calendars available for the conference. Plaintiff will initiate the conference call by arranging for the presence of all other counsel and self-represented parties, and by calling this division at **(602) 372-3081** at the scheduled time.

9. ***Firm dates:*** No stipulation of the parties that alters a filing deadline or a hearing date contained in this Scheduling Order will be effective without an Order of this Court approving the stipulation. Dates set forth in this Order that govern Court filings or hearings are firm dates, and may be modified only with this Court's consent and for good cause. This Court ordinarily will not consider a lack of preparation as good cause.

7/31/23
Date

The Honorable Timothy Ryan
Judge of the Superior Court

Clerk of the Superior Court
*** Electronically Filed ***
01/22/2024 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 01/19/2024

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
N. Johnson
Deputy

AGRICANN L L C, et al.

AGRICANN L L C
ATTN BRIG BURTON AND BOB PHILLIPS
1023 E BARTLETT WAY
CHANDLER AZ 85249

v.

NATURAL REMEDY PATIENT CENTER L L C, et al.

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JUDGE RYAN

MINUTE ENTRY

East Court Building - Courtroom 814

9:58 a.m. This is the time set for a combined virtual Oral Argument regarding Plaintiff/Counter-Defendant, Agricann, LLC's Motion for Summary Judgment, filed September 20, 2023 and Setting Conference. Plaintiff/Counter-Defendant, Agricann, LLC, is represented by counsel, Marc Steven Windtberg. Defendant/Counter-Claimant, Natural Remedy Patient Center, LLC, is represented by counsel, Sharon A. Urias and Daniel F. Nageotte. The parties appear virtually.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 01/19/2024

A record of the proceedings is made digitally in lieu of a court reporter.

Oral argument is presented.

For the reasons stated on the record,

IT IS ORDERED taking this matter under advisement.

Discussion is held regarding the status of the case and the setting of a trial date.

The Court informs counsel that witnesses may appear virtually for trial.

Discussion is held regarding closing arguments and post-trial filings.

IT IS ORDERED setting this matter for a 2-day **Trial to the Court** on **April 10 and 11, 2024 at 9:30 a.m.** before:

HONORABLE TIMOTHY RYAN
MARICOPA SUPERIOR COURT
EAST COURT BUILDING
101 W. JEFFERSON STREET
8th FLOOR-COURTROOM 814
PHOENIX, AZ 85003
(602) 372-3801

Scheduled trial dates are: **April 10 and 11, 2024**

Trial days are normally 9:30 a.m. to 12:00 p.m. and 1:30 p.m. to 4:30 p.m., Monday through Thursday.

Counsel and any self-represented party shall appear at **9:00 a.m.** in this division for the first day of trial.

NOTE: This is a firm trial setting. Motions to continue based on lack of preparation will ordinarily not be granted.

IT IS FURTHER ORDERED setting a **virtual Final Trial Management Conference** on **March 25, 2024 at 8:30 a.m. (1 hour reserved)**. This minute entry order sets forth tasks that must be completed. All tasks that this minute entry imposes on "counsel" apply to self-represented litigants.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 01/19/2024

The hearing(s) will be held by phone/video conference via the Court Connect platform. Please join my meeting from your computer, tablet or smartphone.

Click here to join the meeting

www.tinyurl.com/jbazmc-cvj10

You can also dial in using your phone (audio only)
+1 (917) 781-4590
Phone Conference ID: 803 526 856#

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10:38 a.m. Matter concludes.

Based upon the foregoing trial setting,

DUTIES PROR TO FINAL TRIAL MANAGEMENT CONFERENCE

A Joint Pretrial Statement (JPTS) and Trial Memoranda must be filed no later than **March 15, 2024**. **Plaintiff must deliver its portions of the JPTS to all other parties at least 20 days before the due date; all other parties must deliver their portions no later than 15 days before the due date. Ariz. R. Civ. P. 16(f)(1).** In addition to the materials required by Arizona Rule of Civil Procedure 16(f)(2), counsel shall meet before the Final Trial Management Conference in order to discuss and prepare the following, which shall be filed with or included in the JPTS:

A. A completed Witness Information Form (attached), setting forth a list of all witnesses each party intends to call at trial in the order in which the party intends to call the witness, together with the estimated time needed for direct, cross, and redirect examinations.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 01/19/2024

B. A list, by page and line numbers, of all deposition or other transcribed testimony that may be offered at trial, other than for impeachment, including designations of testimony that a party believes ought in fairness to be introduced under Arizona Rule of Civil Procedure 32(a), together with any testimony to be offered by an opposing/other party. **Any objection not included is waived**. Jurors generally prefer narrative summaries or brief excerpts of questions and answers, so the parties should confer and prepare agreed-upon summaries. The order after the trial management conference will include a protocol for providing these deposition transcripts to the Court.

C. A list of all marked exhibits containing a brief description of each exhibit and any objections to such exhibits. **Any objection not included is waived**.

D. As an attachment to the Joint Pretrial Statement, any party asserting a claim or affirmative defense must file a Memorandum with the following regarding each claim or affirmative defense: (1) the elements, (2) whether some burden of proof other than preponderance applies, and (3) the legal authority supporting the foregoing. The opposing party must file an opposing memorandum within two Court days that sets out (1) any disagreement with the Memorandum (2) the legal authority supporting the disagreements and the (3) legal authority to support any defenses. The parties may satisfy their burden regarding relevant legal authority by citing relevant RAJI.

E. Any party requesting findings of fact and conclusions of law under Arizona Rule of Civil Procedure 52 must do so at least 30 days before trial. If a party timely requests findings/conclusions, then all parties must file and serve their proposed findings and conclusions **at least five Court days before trial**. All parties also must deliver to this division a flash drive or similar storage device with their proposed findings/conclusions in Word format at least three Court days before trial. The Court will deem any request for findings and conclusions waived if a party does not comply with this paragraph.

At the Final Trial Management Conference, counsel who will try the case shall appear and be prepared to discuss and resolve:

A. Allocation of trial time among the parties.

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MARICOPA COUNTY

CV 2016-001283 01/19/2024

B. Stipulations regarding witnesses' testimony and the admission of exhibits.

C. Deposition summaries and excerpts from depositions including objections thereto.

D. Scheduling, equipment, or interpreter issues.

E. Status of settlement negotiations.

F. Motions *in limine*; and

G. Other matters addressed in the JPTS.

Counsel shall present **original** depositions for filing at the same time they present exhibits. Original depositions are provided to the clerk for the record and **are not** marked as exhibits.

PLEASE READ CAREFULLY THE FOLLOWING DUTIES PRIOR TO TRIAL

Discovery Disputes:

If a discovery dispute needs judicial intervention, the parties must first meet and confer (telephonically, if not in person). Absent resolution, counsel must jointly call my JA (602-372-3081) and obtain a date and time for a telephonic conference. My JA will try to set a time within the next five judicial days. You must file a statement of the issue and your position, not to exceed three pages (1.5 pages per side). If a written discovery request is involved, such as an interrogatory or request for production, provide the discovery request and response. [This differs from Rule 26(d)(2).] Email this submission to the Judicial Assistant, Brittany Sarracino at least two judicial days before the conference at: Brittany.Sarracino@JBAZMC.Maricopa.Gov

Trial Exhibits:

This division is piloting Case Center, a state-wide electronic exhibit portal. All exhibits should be electronically submitted through Case Center. When the case has been initiated by the Clerk of Court, the attorney of record and any self-represented party will receive an email invitation to the case created in Case Center. The attorney of record is responsible for inviting through Case Center any co-counsel or staff who need access to the case.

Counsel and any self-represented party shall upload all trial exhibits to Case Center no later than April 3, 2024.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 01/19/2024

For uploading exhibits to Case Center, please adhere to the following guidelines:

1. Exhibits must be appropriately titled. Any exhibit title containing derogatory or prejudicial information will be renamed by the Clerk.

2. Do not put exhibit numbers in your exhibit titles. Case Center will assign an exhibit number to each exhibit upon upload, and will number Plaintiff's exhibits and Defendant's exhibits separately (e.g., Plaintiff's exhibit 1; Defendant's exhibit 1, etc.).

3. Do not submit duplicate exhibits. **It is essential that the parties confer to avoid submitting duplicate exhibits**.

4. Original Depositions will not be marked as an exhibit. **Original** depositions to be used for impeachment purposes shall be provided in paper form to the Clerk on the first day of the hearing/trial to be hand-filed.

5. If large charts or blow-ups are anticipated to be used, please include a small version (or photo) which can be marked as the exhibit. The charts and blow-ups are used for demonstrative purpose only, are not marked as the exhibits, and are returned.

The Court, Clerk, and all counsel and self-represented parties will have access to the exhibits through Case Center. The Court will not have paper copies of exhibits available for witnesses. Counsel may use the Case Center presentation software or may use their own trial presentation software to present exhibits to witnesses and the jury, as long as counsel can avow that the exhibits they present are true and accurate copies of the Court's exhibits. These matters will be discussed further at the Final Trial Management Conference.

Further information about Case Center and training materials can be found at:
https://www.azcourts.gov/digitalevidence/Digital-Evidence-Information

For additional assistance in preparation of exhibits contact the Courtroom Clerk at: (602) 372-1153.

Miscellaneous Issues:

Any requests for interpreters, court reporters or video conference must be made at least two weeks prior to your hearing date.

If you ever email this division, you must copy all parties involved in the case.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 01/19/2024

If you are not familiar with this division's electronic equipment, please make an appointment with this division's Court Assistant at least one week before your hearing.

ATTACHED: Witness Information Form

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 01/19/2024

WITNESS INFORMATION FORM

WITNESSES FOR PLAINTIFF:

	WITNESS NAME	DIRECT	CROSS	REDIRECT
1				
2				
3				
4				
5				

PLAINTIFF'S TOTAL WITNESS TIME ESTIMATE: _____

WITNESSES FOR DEFENDANT:

	WITNESS NAME	DIRECT	CROSS	REDIRECT
1				
2				
3				
4				
5				

DEFENDANT'S TOTAL WITNESS TIME ESTIMATE: _____

TIME ESTIMATE FOR:	PLAINTIFF(S)		DEFENDANT(S)
VOIR DIRE			
OPENING STATEMENT			
CLOSING ARGUMENT	1st:	2nd:	

PLAINTIFF'S TOTAL TIME ESTIMATE: _____

DEFENDANT'S TOTAL TIME ESTIMATE: _____

NOTE: if there are multiple parties on the same side who are represented by different attorneys, then each party being represented by different attorneys shall fill out his/her own time estimates.

Clerk of the Superior Court
*** Electronically Filed ***
03/12/2024 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 03/11/2024

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
T. DeRaddo
Deputy

AGRICANN L L C, et al.

AGRICANN L L C
ATTN BRIG BURTON AND BOB PHILLIPS
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JUDGE RYAN

MINUTE ENTRY

The Court has considered the pleadings and argument of counsel.

The issue is not even close. The Court of Appeals clearly considered a trial/hearing on the merits as the path forward as a trial on the merits. Plaintiff's Motion for Summary Judgment ignores the Law of the Case, and the actual wording of the Court of Appeals' Memorandum Decision.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 03/11/2024

There are disputed issues of fact as to whether Plaintiff avoided rent payment from May 2016-November 2018. There is also an issue of fact as to whether the Equipment to NRPC should be deducted, based on Agricann's troubling misbehavior evidenced in the record. The Court also finds that there are disputed issues of fact as to whether avoided utility expense should be deducted in the net equation.

If Plaintiff chooses to continuously ignore the unambiguous rulings of the Court of Appeals and expand the proceedings with borderline frivolous filings, then they do so at their own peril, including sanctions under A.R.S. §§12-349 and 12-350.

IT IS ORDERED denying Plaintiff's Motion for Summary Judgment.

Clerk of the Superior Court
*** Electronically Filed ***
08/23/2024 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 08/22/2024

HONORABLE TIMOTHY J. RYAN

CLERK OF THE COURT
A. Hayes
Deputy

AGRICANN L L C, et al.

MARC STEVEN WINDTBERG

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DANIEL F NAGEOTTE
JUDGE RYAN

MINUTE ENTRY

I. FINDINGS OF FACT

In August 2013, Agricann, LLC entered an agreement with J&J AJAX, I, LLC to lease a building to be used as a medical marijuana grow facility located at 1434 N. 26th Avenue, Phoenix, Arizona 85009, beginning on September 15, 2013.

Agricann and Natural Remedy Patient Center, LLC formed the breakup deal in October 2015.

Under the Breakup Deal, National Remedies was to sublease the Grow Facility from Agricann for $20,000.00 a month for three years, beginning on November 15, 2015.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 08/22/2024

In May 2016, Agricann was evicted from and prohibited from going into the Grow Facility by the Landlord.

At the 2019 trial, Agricann was awarded $1.065 million against National Remedies in damages related to the Breakup Deal.

According to the breakup deal, Natural Remedy would sublease the Grow Facility for $20,000.00 a month for three years, beginning on November 15, 2015, and ending with a $400,000.00 balloon payment.

The Breakup Deal would include the transfer of title to equipment from Agricann to Natural Remedy and the transfer of Agricann's lease rights in the Grow Facility to Natural Remedy.

Agricann was contractually obligated under the Breakup Deal to sublease the Grow Facility (also referred to herein as the "Facility") to Natural Remedy and it could only do so with a lease from the Landlord in order to ensure that it had the Facility available for Natural Remedy.

Natural Agriculture, LLC is an entity jointly owned by the members of Agricann and Natural Remedy, including Brig Burton, Imran Kazem, Carly Burton, and Kathy Sanchez.

The parties formed Natural Agriculture, LLC to pay the joint venture's expenses, including rent, and to hold the lease rights to the Grow Facility.

Throughout the parties' entire business relationship, Natural Agriculture, LLC paid the rent and other operational expenses.

Natural Agriculture was funded 50/50 by Agricann and Natural Remedy.

The parties' course of conduct after the Breakup Deal did not change and the parties continued their business operations as they always had under the Management Agreement.

Natural Remedy continued sending weekly operational updates to David Sanchez, Kathy Sanchez, Zaki and Burton after the Breakup Deal, and these weekly emails continued all the way towards to the end.

Throughout the term of the Lease, Agricann was responsible for making rental payments to the Landlord for the Facility.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 08/22/2024

After the Breakup Deal, Agricann continued to occupy the Facility, and Agricann employees—including Burton—continued to go to the Facility until Agricann's eviction in May 2016.

Natural Remedy never paid the rent after the October 2015 Breakup Deal or at any other time.

In May 2016, Natural Agriculture ceased paying rent and the Landlord held Agricann in default.

As a result, "Agricann lost its lease rights.

On May 12, 2016, the Landlord locked Agricann out of the facility.

In July 2016, Agricann relinquished any remaining rights in the Lease when it transferred (or purported to transfer) its Lease rights to Dr. Kazem as part of a settlement between Agricann, Burton and Dr. Kazem in their July 11, 2016, Settlement and Business Dissolution Agreement.

In the Settlement Agreement, Agricann represented in the Recitals that Agricann was the tenant of and held the leasehold interest in the property and medical marijuana grow facility located at 1434 North 26th Avenue in Phoenix, Arizona, and claims and contends that it is still the tenant and holder of the leasehold interest.

As of July 11, 2016, Agricann no longer retained any interest in the Facility, including the Lease, and, therefore, Agricann no longer had any liability for, or rights to, the Facility.

At least as early as July 11, 2016, Dr. Kazem assumed all responsibility for Lease payments to the Landlord for the Facility and Agricann avoided having to incur the cost of rent going forward.

According to Agricann, Dr. Kazem already had entered into a new lease with the Landlord in May 2016.

Agricann avoided rent expenses at the Facility from May 2016 through November 2018 in the amount of $207,713.00.

The amount of the rent deduction is calculated by totaling the amounts set forth in the Lease's rental schedule and applying City of Phoenix rental rates of 2.6% to 2.9%.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 08/22/2024

Agricann offered no evidence to controvert the amount of the rent deduction, namely, $207,713.00.

Utility expenses should be deducted. Agricann avoided these expenses by not having to perform under the Breakup Deal. Agricann had a contractual obligation to pay the utilities under Paragraph 11 of the Lease, which expressly required that "Lessee shall pay for all water, gas, heat, light, power, telephone, trash disposal and other utilities and services supplied to the Premises, together with any taxes thereon."

Agricann ignored its obligation to pay the utilities when the Lease was terminated in May 2016 upon its default and eviction from the Grow Facility. 27. For the duration of the parties' relationship, Natural Agriculture (not Natural Remedy) paid the utility expenses.

Agricann was the sole party named on and responsible for the APS account for the Grow Facility, including during the term of the Breakup Deal, and the address for Agricann listed on the APS invoices was Burton's personal residence. In May 2016, Agricann no longer leased or occupied the Facility. In addition, Agricann received its final APS invoice. Therefore, after May 2016, Agricann no longer had the obligation to pay utility expenses at the Facility.

Thus, Agricann avoided utility expenses at the Facility from May 2016 (eviction) through November 2018 (expiration of the Breakup Deal) in the amount of $285,708.31. This amount represents a reasonable and conservative estimate based on average daily electricity usage at the Facility from July 2015 through May 2016, as recorded by APS over the eleven-month period of APS invoices available during the parties' joint venture.

Agricann failed to introduce any evidence to controvert the amount of the utility's deduction.

Accordingly, the appropriate deduction for utility expenses avoided is $285,708.40.

As part of the Breakup Deal, Agricann was required to transfer title for the equipment to Natural Remedy. Although not self-evident from the document's four corners, the parties agree the Breakup Deal would include the transfer of title to equipment from Agricann to Natural Remedy.

Because Agricann did not transfer title of the equipment to Natural Remedy, the equipment costs should be deducted as a cost avoided.

Agricann never transferred title of the equipment to Natural Remedy, and as of May 2016 when Agricann was locked out of the Facility, it no longer had access to the equipment.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2016-001283 08/22/2024

Agricann transferred title of the equipment to Dr. Kazem in July 2016 as part of the Settlement Agreement, which included the transfer of all "improvements, furniture, fixtures, equipment, and other personal property" in the Facility.

Natural Remedy never received ownership of the equipment, even though Agricann was required to transfer title to Natural Remedy under the Breakup Deal. Accordingly, as instructed by the Court of Appeals, the value of the equipment is a cost avoided that should be deducted by this Court.

The only evidence presented established that Agricann valued the equipment at $600,000.00.

Burton asked David Sanchez to execute a personal guarantee for performance of the Breakup Deal equal to the value of equipment and tenant improvements, in the amount of $600,000.

On January 18, 2016, Burton circulated a draft document titled "Purchase & Extension Agreement" to the parties, prepared by his attorney, that included a provision stating that the principals and officers of Natural Remedy would personally guarantee an amount "equal to the total amount invested in the Facility, including any and all tenant improvements, equipment and inventory, estimated to equal no less than $600,000.00

In a May 19, 2016, email to the landlord, Burton represented, "[w]e've put in over $300,000 in TI's and equipment into the building and we have rights that have been infringed upon." Burton confirmed in his testimony that in the email, he meant that Agricann put in the $300,000.00 in TI's and equipment.

The equipment was purchased by Natural Agriculture, which comports with Burton's statement to the landlord—Natural Agriculture was funded 50/50 by Agricann and Natural Remedy. Therefore, the $300,00.00 amount represented by Burton as Agricann's portion (or 50% of $600,000.00) supports Burton's other, earlier representations, as well as the amount his attorney included in the draft agreement, that the equipment was worth $600,000.00.

In the Settlement Agreement, Dr. Kazem gave up his $400,000.00 claim against Agricann and Burton from his investment and loan to Agricann. In exchange, for the value of $400,000.00, Dr. Kazem received the nonexistent already-terminated leasehold rights to the Facility and the equipment at the Facility.

The parties incurred costs of at least $167,383.74 for the purchase of lights for the Facility.

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Other than Burton's contradictory testimony disavowing his prior testimony and representations that the equipment was worth $600,000.00, Agricann did not challenge, rebut or otherwise contest Natural Remedy's evidence of the equipment's value. Accordingly, Natural Remedy is entitled to a deduction of the equipment costs avoided.

II. CONCLUSIONS OF LAW

The governing legal doctrine for this proceeding is "law of the case," which applies to later proceedings in the same lawsuit. Law of the case is a "legal doctrine providing that the decision of a court in a case is the law of that case on the issues decided throughout all subsequent proceedings in both the trial and appellate courts, provided the facts, issues and evidence are substantially the same as those upon which the first decision rested." *Stauffer v. Premier Serv. Mortg., LLC*, 240 Ariz. 575, 579 (Ct. App. 2016). The doctrine embodies "the judicial policy of refusing to reopen questions previously decided in the same case by the same court or a higher appellate court." *Powell-Cerkoney v. TCR-Montana Ranch Joint Venture, II*, 176 Ariz. 275, 278 (Ct. App. 1993) (citation omitted)

Under the "law of the case" doctrine, this Court is bound by factual and legal determinations made by the Court of Appeals in its Mandate.

This Court will not consider as part of this decision any legal theories, facts or evidence that were not presented at the April 10-11, 2024, trial and not part of the items to be reviewed by the trial court as laid out in the Mandate. The Mandate requires this Court to deduct costs avoided because the prior damages award "placed Agricann in a better position than it would have been in had the contract been fully performed." (Mandate, ¶ 36.) According to the law of the case set forth in the Mandate, this Court must deduct the costs avoided by Agricann.

The Court of Appeals vacated the prior trial court's award of $1,065,000.00 in damages because the award made Agricann better off than if both sides had simply performed on the agreement.

The Court of Appeals issued the remand so this Court would recalculate damages to ensure that Agricann is not placed in a better position than it would have been in had Natural Remedy performed. (Mandate, ¶ 34) (citing Jon Munic, 235 Ariz. at 18; *Int'l Prod. Specialists, Inc. v. Schwing Am., Inc.*, 580 F.3d 587, 601 (7th Cir. 2009).)

The calculation of damages must deduct the costs Agricann avoided by not having to perform, including those associated with "rent payments and the transfer of the equipment." (Id. ¶¶ 35-36.)

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It is also appropriate and necessary to deduct utility costs because Agricann avoided having to incur utility costs, which it was contractually obligated to pay under the Lease, when it was evicted from the Facility.

The plain language of the Mandate instructs that this Court must "consider the costs that Agricann avoided by not having to perform." (Mandate, ¶ 36.) It does not state that the Court should consider whether Agricann avoided any costs.

The Court of Appeals held that "the calculation of expectation damages necessarily includes a deduction for any cost or other loss that [the injured party] has avoided by not having to perform." (Mandate, ¶ 34) (citing *Ramsey v. Ariz. Registrar of Contractors*, 214 Ariz. 102, 107 (Ct. App. 2016)) (emphasis added). That is why it is necessary for this Court to deduct, at a minimum, the rent and equipment costs. Because Agricann also avoided making utility payments, which it was required to do to maintain its Lease for the Facility, utility costs also should be deducted as costs Agricann avoided by not having to perform.

The Mandate held that the wrong calculation of damages was applied by the earlier trial court because it did not include deductions. (Mandate, ¶ 34.) The Mandate does not say that the case should be remanded so that Natural Remedy can prove the affirmative defense of "offset" or "setoff." Rather, the Mandate is clear that the initial calculation must deduct costs avoided and does not include any mention of "offsets" or "setoffs."

Because it is the plaintiff's burden to prove its expectation damages, Agricann bears the burden of proving the correct calculation of such damages, including a deduction for the costs it avoided by not having to perform. Agricann has not met that burden because it claims its damages are the erroneous and vacated amount of $1,065,000.00 and at trial, Agricann did not present any evidence of damages.

As a practical matter, however, because the Court of Appeal's instruction was to consider deductions from the $1,065,000.00 gross amount, and because Agricann is unwilling to concede any deductions, Natural Remedy assumed the burden of producing evidence of deductions. Natural Remedy met this burden of proof, as discussed below.

Because Agricann could not perform its end of the bargain, as a matter of law Agricann cannot require Natural Remedy to fully perform its end of the bargain. Cf. *Sabin v. Rauch*, 76 Ariz. 71, 73 (1953) ("It is plaintiffs' obligation to prove that when the entire purchase price is paid as required by the decree of the court, clear title will result from the confused situation here presented.").

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Agricann was unable to ensure that Natural Remedy could continue to occupy the Facility by keeping the Lease current, including Agricann's obligations to pay rent and utilities under the Lease. The fact that Agricann retained ownership of the equipment means that Agricann was able to use it in a later transaction, which Agricann did in its settlement with Dr. Kazem.

Accordingly, the Court will deduct three categories of expenses from the $1,065,000.00 vacated award: rent, utilities and equipment. For Agricann to claim damages arising from breach of the Breakup Deal, Agricann had to ensure that Natural Remedy could continue to occupy the Facility.

This means that Agricann had to keep the Lease current by meeting its obligation under the Lease to pay rent to the Landlord.

By deducting the rental payments avoided, Agricann is placed in exactly the same position it would be in had Natural Remedy performed under the Breakup Deal. Had both parties performed, Agricann would not have received rental payments from Natural Remedy as a profit because those rental payments would have been made in turn to the Landlord. Accordingly, it is proper to deduct the rental payments from the award.

This ruling is consistent with Arizona's "general policy of the law to bar a party from benefitting from his own wrong or gaining a windfall." *Premier Consulting & Mgmt. Sols., LLC v. Peace Releaf Ctr*. I, 544 P.3d 658, 667 (Ct. App. 2024) (commercial landlord has obligation to make reasonable effort to mitigate damages, otherwise damages will be limited to prevent windfall to landlord) (citing *Phx. Newspapers, Inc. v. Schmuhl,* 114 Ariz. 113, 117 (Ct. App. 1976). It also follows the Mandate's instruction to include a rent deduction from the award to Agricann.

During the term of the Lease, Agricann was ultimately responsible for paying the rent to the Landlord and would remain so even in the event of a sublease.

The sublease between the parties pursuant to the Breakup Deal terminated when the Landlord terminated the Lease. This is because for a sublease to exist, there must be a lease. See *Kuykendall v. Tim's Buick, Pontiac, GMC & Toyota, Inc*., 149 Ariz. 465, 469 (Ct. App. 1985) ("A sublease estate is subject to the limitations imposed on the primary leasehold estate.") Accordingly, when the Lease was terminated upon Agricann's eviction in May 2016, the sublease contained in the Breakup Deal also terminated in May 2016. Thus, Natural Remedy's obligation to pay rent under the sublease terminated in May 2016 when Agricann's obligation to pay rent to the Landlord terminated.

Rent is a cost avoided because once Natural Remedy breached the Breakup Deal, Agricann no longer paid rent to the Landlord. The Lease went into default and Agricann was evicted in May

2016. Therefore, after May 2016, Agricann avoided rental costs in the amount of $207,713.00. B. Avoided Utility Expenses of $285,708.40 Will Be Deducted

Because disposal and other utilities and services supplied to the Premises, together with any taxes thereon," Agricann was contractually obligated to pay utilities at the Facility for the term of the Lease. 26. When Agricann was evicted from the Facility in May 2016 and the Landlord terminated the Lease, Agricann's contractual requirement under the Lease to pay utilities also terminated.

Therefore, in May 2016, when Agricann no longer leased or occupied the Facility, it received its final APS invoice and Agricann no longer had the obligation to pay utility expenses at the Facility. Accordingly, utility expenses constitute a cost avoided by Agricann. Natural Remedy's expert opined that the total avoided utility expenses from May 2016 through November 2018 is $285,708.40. The Court finds that this amount represents a reasonable and conservative estimate based on average daily electricity usage at the Facility from July 2015 through May 2016, as recorded by APS. C. Avoided Equipment Expenses Will Be Deducted

The Mandate requires this Court to deduct equipment as a cost avoided by Agricann. "Although not self-evident from the document's four corners, the parties agree the Breakup Deal would include the transfer of title to equipment from Agricann to Natural Remedy . . .." (Mandate, ¶ 8.)

The Court rejects Agricann's argument that Natural Remedy already had possession of the equipment and therefore there was nothing left for Agricann to transfer. This argument is contrary to the law of the case established by the Court of Appeals, which rejected that argument and ordered that the equipment be deducted as a cost avoided. Moreover, in July 2016, Agricann transferred the equipment to Dr. Kazem in the Settlement Agreement.

The Court finds that the unrebutted evidence at trial established that the value of the equipment that should be deducted from the award is $600,000.00 based on Burton's admission of the equipment's value in 2016.

As ordered in the Mandate, neither party is entitled to an award of attorneys' fees or costs on remand in the superior court and this Court will not reconsider the prevailing party for purpose of such an award.

IT IS ORDERED entering judgment in favor of defendants in accordance with Rule 54(c) of the Arizona Rules of Civil Procedure.

Granted with Modifications
See eSignature page

Clerk of the Superior Court
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A. Hayes, Deputy
9/25/2024 8:00:00 AM
Filing ID 18564985

SHARON A. URIAS (SBN 016970)
DANIEL F. NAGEOTTE (SBN 035562)
GREENSPOON MARDER LLP
8585 E. Hartford Drive, Ste. 700
Scottsdale, AZ 85255
Tel. 480.306.5458
Email: sharon.urias@gmlaw.com
Email: daniel.nageotte@gmlaw.com

TIMOTHY I. MCCULLOCH (SBN 023732)
MCCULLOCH AVIATION LAW FIRM PLLC
21001 N. Tatum Blvd, Suite 1630-936
Phoenix, AZ 85050
tim@mccullochaviation.com
602.568.5291

Attorneys for Defendants/Counterclaimants Natural Remedy Patient Center, LLC

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

AGRICANN, LLC *et al.*, Plaintiffs, v. NATURAL REMEDY PATIENT CENTER, LLC *et al.*, Defendants.	Case No.: CV2016-001283 **FINAL JUDGMENT**
NATURAL REMEDY PATIENT CENTER, LLC, Counterclaimant, v. AGRICANN, LLC, Counterdefendant.	**(Assigned to the Honorable Timothy Ryan)**

Pursuant to the February 23, 2023 Mandate issued by the Arizona Court of Appeals, Division One, in this matter, this Court, having conducted a bench trial on April 10 and April 11,

2024 and having considered the parties' post-trial briefing, hereby enters final judgment as follows:

IT IS ORDERED that judgment is entered in favor of Natural Remedy Patient Center, LLC and against Agricann, LLC as follows:

1. The March 16, 2020 judgment is vacated;

2. The Court adopts in full the Findings of Fact and Conclusions of Law set forth in its August 22, 2024 Minute Entry;

3. The Court hereby deducts the following three categories of expenses from the $1,065,000.00 damages award vacated by the Court of Appeal:

   a. $207,713.00 in avoided rent expenses;

   b. $285,708.40 in avoided utility expenses; and

   c. $600,000.00 in avoided equipment costs.

4. As a result, thereof, Agricann, LLC is not entitled to any damages award.

IT IS FURTHER ORDERED that all parties shall bear their own attorneys' fees and costs.

IT IS FURTHER ORDERED that no further matters remain pending, and this Judgment is entered as final under Rule 54(c).

DATED this _____ day of September, 2024.

_____

Hon. Timothy Ryan

CV2016-001283
FINAL JUDGMENT

eSignature Page 1 of 1

Filing ID: 18564985 Case Number: CV2016-001283
Original Filing ID: 18394774

Granted with Modifications

/S/ Timothy Ryan Date: 9/24/2024
Judicial Officer of Superior Court

ENDORSEMENT PAGE

CASE NUMBER: CV2016-001283 SIGNATURE DATE: 9/24/2024

E-FILING ID #: 18564985 FILED DATE: 9/25/2024 8:00:00 AM

MARC STEVEN WINDTBERG

MARK DEATHERAGE

SHARON A URIAS

TIMOTHY I MCCULLOCH

DAVID SANCHEZ
172 S COBBLESTONE GILBERT AZ 85296

Clerk of the Superior Court
*** Electronically Filed ***
K. Higuchi-Mason, Deputy
3/15/2023 12:56:20 PM
Filing ID 15680565

WINDTBERG LAW, PLC
7600 N. 15th Street, Suite 150
Phoenix, Arizona 85020
Phone: (602) 753-0706
office@wlawaz.com
Marc Windtberg - 24802
Attorney for Agricann, LLC

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AGRICANN LLC, *et al.*, Plaintiffs, v. NATURAL REMEDY PATIENT CENTER LLC, *et al.*, Defendants.	No. CV2016-001283 **NOTICE OF LODGING PROPOSED FORM OF JUDGMENT** (Assigned to the Hon. Timothy Ryan)

NOTICE IS HEREBY GIVEN that Agricann, LLC is lodging its proposed form of judgment. A copy of the proposed order is attached hereto as Exhibit 1.

Dated this 15th day of March, 2023.

WINDTBERG LAW, PLC

By /s/ Marc Windtberg
Marc Windtberg
7600 N. 15th Street, Suite 150
Phoenix, Arizona 85020
Attorneys for Plaintiff

ORIGINAL of the foregoing filed and
COPY of the foregoing mailed
this 15th day of March, 2023, to:

Sharon A. Urias
Greenspoon Marder, LLCP
8585 E. Hartford Dr., Suite 700
Scottsdale, AZ 85255
Attorneys for Natural Remedy Pain Center, LLC

David Sanchez
172 S. Cobblestone
Gilbert, AZ 85296

By /s/ Karra Gingry

EXHIBIT 1:
Proposed Form of Judgment

WINDTBERG LAW, PLC
7600 N. 15th Street, Suite 150
Phoenix, Arizona 85020
Phone: (602) 753-0706
office@wlawaz.com
Marc Windtberg - 24802
Attorney for Agricann, LLC

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AGRICANN LLC, *et al.*, Plaintiffs, v. NATURAL REMEDY PATIENT CENTER LLC, *et al.*, Defendants.	No. CV2016-001283 **JUDGMENT** (Assigned to the Hon. Timothy Ryan)

This matter comes before the Court on remand from Division One of the Arizona Court of Appeals. This Court, having complied with the Mandate and the Memorandum Decision issued by the Court of Appeals, and for good cause appearing, enters judgment as follows:

IT IS ORDERED:

1. Agricann LLC has judgment against Natural Remedy Patient Center, LLC for:
    a. the principal amount of $1,065,000.00;
    b. simple, prejudgment interest at 10% per year, in the amount of $218,790.29 through January 13, 2020, and continuing to accrue at the rate of $291.78 per day from January 14, 2020, until entry of this judgment;

c. costs incurred on appeal and awarded by the Court of Appeals, in the amount of $154.81; and

d. attorney's fees incurred on appeal and awarded by the Court of Appeals, in the amount of $5,000.00; and

e. post-judgment interest on the principal amount, costs, and attorney's fees at the statutory rate for judgments of 8.75%.

No matters remain pending. The Court enters this judgment under Arizona Rule of Civil Procedure 54(c).

DATED: _____

_____
Honorable Timothy Ryan
Maricopa County Superior Court

EXHIBIT 1

NOV. ~~DEC~~ 2018 - NOV. 2018

3 YRS.

$ 20K / MO

A 400K BALLOON

Sub Lease rate

Start Nov. 15th

X _____

BRIG BURTON, AGRICANN, LLC

X _____

Dave Sanchez, NRPC + PG

X _____

Sheedi

EXHIBIT 3

ARIZONA

AIR COMMERCIAL REAL ESTATE ASSOCIATION
STANDARD INDUSTRIAL/COMMERCIAL SINGLE-TENANT LEASE -- GROSS
(DO NOT USE THIS FORM FOR MULTI-TENANT BUILDINGS)

1. **Basic Provisions ("Basic Provisions").**

1.1 **Parties:** This Lease ("Lease"), dated for reference purposes only AUGUST 19, 2013 is made by and between J & J AJAX I, LLC, AN ARIZONA LIMITED LIABILITY COMPANY ("Lessor") and AGRICANN, LLC, AN ARIZONA LIMITED LIABILITY COMPANY ("Lessee"), (collectively the "Parties," or individually a "Party").

1.2 **Premises:** That certain real property, including all improvements therein or to be provided by Lessor under the terms of this Lease, and commonly known as 1434 N. 26TH AVENUE, PHOENIX, 85009, located in the County of MARICOPA, State of ARIZONA, and generally described as (describe briefly the nature of the property and, if applicable, the "Project", if the property is located within a Project) AN APPROXIMATELY 7,734 SINGLE TENANT INDUSTRIAL BUILDING ("Premises"). (See also Paragraph 2)

1.3 **Term:** FOUR (4) years and SIXTEEN (16) DAYS months ("Original Term") commencing SEPTEMBER 15, 2013 ("Commencement Date") and ending SEPTEMBER 30, 2017 ("Expiration Date"). (See also Paragraph 3)

1.4 **Early Possession:** UPON LEASE EXECUTION, RECEIPT OF FUNDS DUE, AND RECEIPT OF CERTIFICATE OF LIABILITY INSURANCE ("Early Possession Date"). (See also Paragraphs 3.2 and 3.3)

1.5 **Base Rent:** $5,027.10 per month ("Base Rent"), payable on the FIRST day of each month commencing NOVEMBER 1, 2013. (See also Paragraph 4)

☑ If this box is checked, there are provisions in this Lease for the Base Rent to be adjusted. See Paragraph 51

1.6 **Base Rent and Other Monies Paid Upon Execution:**

(a) **Base Rent:** $5,027.00 for the period NOVEMBER 1-30, 2013.

(b) **Security Deposit:** $6,600.00 ("Security Deposit"). (See also Paragraph 5)

(c) **Association Fees:** $N/A for the period N/A

(d) **Other:** $130.70 for CITY OF PHOENIX RENTAL TAX (2.6%).

(e) **Total Due Upon Execution of this Lease:** $11,757.70

1.7 **Agreed Use:** MEDICAL MARIJUANA CULTIVATION (See also Paragraph 6)

1.8 **Insuring Party:** Lessor is the "Insuring Party". The annual "Base Premium" is $TO BE DETERMINED (See also Paragraph 8)

1.9 **Real Estate Brokers:** (See also Paragraph 15)

(a) **Representation:** The following real estate brokers (the "Brokers") and brokerage relationships exist in this transaction (check applicable boxes).

☑ J & J COMMERCIAL PROPERTIES, INC. (J. STOCKWELL/J. MASCIANDARO/C. NEPPL/J. HAYS) represents Lessor exclusively ("Lessor's Broker").

☑ RUCCI GROUP LLC (B. BURTON) represents Lessee exclusively ("Lessee's Broker"); or

☐ _____ represents both Lessor and Lessee ("Dual Agency").

(b) **Payment to Brokers:** Upon execution and delivery of this Lease by both Parties, Lessor shall pay to the Broker the fee agreed to in their separate written agreement (or if there is no such agreement, the sum of —or 6% of the total Base Rent) for the brokerage services rendered by the Brokers. The commission shall not be paid until after the Lessee has received final approval from the City of Phoenix and the State of Arizona/Arizona Department of Health Services ("ADHS").

1.10 **Guarantor.** The obligations of the Lessee under this Lease are to be guaranteed by N/A ("Guarantor"). (See also Paragraph 37)

1.11 **Attachments.** Attached hereto are the following, all of which constitute a part of this Lease:

☑ an Addendum consisting of Paragraphs 51 through 57;

☐ a plot plan depicting the Premises;

☐ a current set of the Rules and Regulations;

☐ a Work Letter;

☑ other (specify): INDEMNIFICATION AND HOLD HARMLESS AGREEMENT BETWEEN LESSOR/OWNER AND BROKER/AGENT, HOLD HARMLESS AND INDEMNIFICATION AGREEMENT BETWEEN INDEMNITOR AND INDEMNITEES, OPTION TO EXTEND ADDENDUM, AND OPTION TO PURCHASE ADDENDUM.

2 **Premises.**

2.1 **Letting.** Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Premises, for the term, at the rental, and upon all of the terms, covenants and conditions set forth in this Lease. Unless otherwise provided herein, any statement of size set forth in this Lease, or that may have been used in calculating Rent, is an approximation which the Parties agree is reasonable and any payments based thereon are not subject to revision whether or not the actual size is more or less. **Note: Lessee is advised to verify the actual size prior to executing this Lease.**

2.2 **Condition.** Lessor shall deliver the Premises to Lessee broom clean and free of debris on the Commencement Date or the Early Possession Date, whichever first occurs ("Start Date"), and, so long as the required service contracts described in Paragraph 7.1(b) below are obtained

Lessee and in effect within thirty days following the Start Date, warrants that the existing electrical, plumbing, fire sprinkler, lighting, heating, ventilating and air conditioning systems ("HVAC"), loading doors, sump pumps, if any, and all other such elements in the Premises, other than those constructed by Lessee, shall be in good operating condition on said date that the surface and structural elements of the roof, bearing walls and foundation of any buildings on the Premises (the "Building") shall be free of material defects, and that the Premises do not contain hazardous levels of any mold or fungi defined as toxic under applicable state or federal law. If a non-compliance with said warranty exists as of the Start Date, or if one of such systems or elements should malfunction or fail within the appropriate warranty period, Lessor shall, as Lessor's sole obligation with respect to such matter, except as otherwise provided in this Lease, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, malfunction or failure, rectify same at Lessor's expense. The warranty periods shall be as follows: (i) 6 months as to the HVAC systems, and (ii) 30 days as to the remaining systems and other elements of the Building. If Lessee does not give Lessor the required notice within the appropriate warranty period, correction of any such non-compliance, malfunction or failure shall be the obligation of Lessee at Lessee's sole cost and expense, except for the roof, foundations and bearing walls which are handled as provided in paragraph 7.

2.3 **Compliance.** Lessor warrants that to the best of its knowledge the improvements on the Premises comply with the building codes, applicable laws, covenants or restrictions of record, regulations, and ordinances ("**Applicable Requirements**") that were in effect at the time that each improvement, or portion thereof, was constructed. Said warranty does not apply to the use to which Lessee will put the Premises, modifications which may be required by the Americans with Disabilities Act or any similar laws as a result of Lessee's use (see Paragraph 50), or to any Alterations or Utility Installations (as defined in Paragraph 7.3(a)) made or to be made by Lessee. **NOTE: Lessee is responsible for determining whether or not the Applicable Requirements, and especially the zoning, are appropriate for Lessee's intended use, and acknowledges that past uses of the Premises may no longer be allowed.** If the Premises do not comply with said warranty, Lessor shall, except as otherwise provided, promptly after receipt of written notice from Lessee setting forth with specificity the nature and extent of such non-compliance, rectify the same at Lessor's expense. If Lessee does not give Lessor written notice of a non-compliance with this warranty within 6 months following the Start Date, correction of that non-compliance shall be the obligation of Lessee at Lessee's sole cost and expense. If the Applicable Requirements 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 and/or Building, the remediation of any Hazardous Substance, or the reinforcement or other physical modification of the Unit, Premises and/or Building ("**Capital Expenditure**"), Lessor and Lessee shall allocate the cost of such work as follows:

(a) Subject to Paragraph 2.3(c) below, if such Capital Expenditures are required as a result of the specific and unique use of the Premises by Lessee as compared with uses by tenants in general, Lessee shall be fully responsible for the cost thereof, provided, however that if such Capital Expenditure is required during the last 2 years of this Lease and the cost thereof exceeds 6 months' Base Rent, Lessee may instead terminate this Lease unless Lessor notifies Lessee, in writing, within 10 days after receipt of Lessee's termination notice that Lessor has elected to pay the difference between the actual cost thereof and an amount equal to 6 months' Base Rent. If Lessee elects termination, Lessee shall immediately cease the use of the Premises which requires such Capital Expenditure and deliver to Lessor written notice specifying a termination date at least 90 days thereafter. Such termination date shall, however, in no event be earlier than the last day that Lessee could legally utilize the Premises without commencing such Capital Expenditure.

(b) If such Capital Expenditure is not the result of the specific and unique use of the Premises by Lessee (such as, governmentally mandated seismic modifications), then Lessor shall pay for such Capital Expenditure and Lessee shall only be obligated to pay, each month during the remainder of the term of this Lease, on the date that on which the Base Rent is due, an amount equal to 144th of the portion of such costs reasonably attributable to the Premises. Lessee shall pay interest on the balance but may prepay its obligation at any time. If, however, such Capital Expenditure is required during the last 2 years of this Lease or if Lessor reasonably determines that it is not economically feasible to pay its share thereof, Lessor shall have the option to terminate this Lease upon 90 days prior written notice to Lessee unless Lessee notifies Lessor, in writing, within 10 days after receipt of Lessor's termination notice that Lessee will pay for such Capital Expenditure. If Lessor does not elect to terminate, and fails to tender its share of any such Capital Expenditure, Lessee may advance such funds and deduct same, with interest, from Rent until Lessor's share of such costs have been fully paid. If Lessee is unable to finance Lessor's share, or if the balance of the Rent due and payable for the remainder of this Lease is not sufficient to fully reimburse Lessee on an offset basis, Lessee shall have the right to terminate this Lease upon 30 days written notice to Lessor.

(c) Notwithstanding the above, the provisions concerning Capital Expenditures are intended to apply only to non-voluntary, unexpected, and new Applicable Requirements. If the Capital Expenditures are instead triggered by Lessee as a result of an actual or proposed change in use, change in intensity of use, or modification to the Premises then, and in that event, Lessee shall either: (i) immediately cease such changed use or intensity of use and/or take such other steps as may be necessary to eliminate the requirement for such Capital Expenditure, or (ii) complete such Capital Expenditure at its own expense. Lessee shall not, however, have any right to terminate this Lease.

2.4 **Acknowledgements.** Lessee acknowledges that: (a) it has been advised by Lessor and/or Brokers to satisfy itself with respect to the condition of the Premises (including but not limited to the electrical, HVAC and fire sprinkler systems, security, environmental aspects, and compliance with Applicable Requirements and the Americans with Disabilities Act), and their suitability for Lessee's intended use, (b) Lessee has made such investigation as it deems necessary with reference to such matters and assumes all responsibility therefor as the same relate to its occupancy of the Premises, and (c) 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. In addition, Lessor acknowledges that: (i) Brokers have made no representations, promises or warranties concerning Lessee's ability to honor the Lease or suitability to occupy the Premises, and (ii) it is Lessor's sole responsibility to investigate the financial capability and/or suitability of all proposed tenants.

2.5 **Lessee as Prior Owner/Occupant.** The warranties made by Lessor in Paragraph 2 shall be of no force or effect if immediately prior to the Start Date Lessee was the owner or occupant of the Premises. In such event, Lessee shall be responsible for any necessary corrective work.

3 **Term.**

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

3.2 **Early Possession.** If Lessee totally or partially occupies the Premises prior to the Commencement Date, the obligation to pay Base Rent shall be abated for the period of such early possession. All other terms of this Lease (including but not limited to the obligations to pay Real Property Taxes and insurance premiums and to maintain the Premises) shall be in effect during such period. Any such early possession shall not affect the Expiration Date.

3.3 **Delay in Possession.** Lessor agrees to use its best commercially reasonable efforts to deliver possession of the Premises to Lessee by the Commencement Date. If, despite said efforts, Lessor is unable to deliver possession by such date, Lessor shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease. Lessee shall not, however, be obligated to pay Rent or perform its other obligations until Lessor delivers possession of the Premises and any period of rent abatement that Lessee would otherwise have enjoyed shall run from the date of delivery of possession and continue for a period equal to what Lessee would otherwise have enjoyed under the terms hereof, but minus any days of delay caused by the acts or omissions of Lessee. If possession is not delivered within 60 days after the Commencement Date, Lessee may, at its option, by notice in writing within 10 days after the end of such 60 day period, cancel this Lease, in which event the Parties shall be discharged from all obligations hereunder. If such written notice is not received by Lessor within said 10 day period, Lessee's right to cancel shall terminate. If possession of the Premises is not delivered within 120 days after the Commencement Date, this Lease shall terminate unless other agreements are reached between Lessor and Lessee, in writing.

3.4 **Lessee Compliance.** Lessor shall not be required to deliver possession of the Premises to Lessee until Lessee complies with its obligation to provide evidence of insurance (Paragraph 8.5). Pending delivery of such evidence, Lessee shall be required to perform all of its obligations under this Lease from and after the Start Date, including the payment of Rent, notwithstanding Lessor's election to withhold possession pending receipt of such evidence of insurance. Further, if Lessee is required to perform any other conditions prior to or concurrent with the Start Date, the Start Date shall occur but Lessor may elect to withhold possession until such conditions are satisfied.

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 ("**Rent**").

4.2 **Payment.** Lessee shall cause payment of Rent to be received by Lessor in lawful money of the United States 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 $25 in addition to any Late Charge and Lessor, at its option, may require all future Rent be paid 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, Insurance and Real Property Taxes, and any remaining amount to any other outstanding

ges or costs

4.3 **Association Fees.** In addition to the Base Rent, Lessee shall pay to Lessor each month an amount equal to any owner's association or condominium fees levied or assessed against the Premises. Said monies shall be paid at the same time and in the same manner as the Base Rent.

4.4 **Rental Taxes.** In addition to Base Rent and Common Area Operating Expenses, Lessee shall pay to Lessor each month an amount equal to any rental taxes, gross receipts taxes, transaction privilege taxes, sales taxes, or similar taxes ("Rental Taxes") levied on the Base Rent then due or otherwise assessed in connection with the rental activity. Said monies shall be paid at the same time and in the same manner as the Base Rent.

5. **Security Deposit.** Lessee shall deposit with Lessor upon execution hereof the Security Deposit as security for Lessee's faithful performance of its obligations under this Lease. If Lessee fails to pay Rent, or otherwise Defaults under this Lease, Lessor may use, apply or retain all or any portion of said Security Deposit for the payment of any amount due 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 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 initial Security Deposit bore to the initial Base Rent. 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 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 **Use.** Lessee shall use and occupy the Premises only for the Agreed Use, or any other legal use which is reasonably comparable thereto, and for no other purpose. Lessee shall not use or permit the use of the Premises in a manner that is unlawful, creates damage, waste or a nuisance, or that disturbs occupants of or causes damage to neighboring premises or properties. Other than guide, signal and seeing eye dogs, Lessee shall not keep or allow in the Premises any pets, animals, birds, fish, or reptiles. Lessor shall not unreasonably withhold or delay its consent to any written request for a modification of the Agreed Use, so long as the same will not impair the structural integrity of the improvements on the Premises or the mechanical or electrical systems therein, and/or is not significantly more burdensome to the Premises. If Lessor elects to withhold consent, Lessor shall within 7 days after such request give written notification of same, which notice shall include an explanation of Lessor's objections to the change in the Agreed Use.

6.2 **Hazardous Substances.**

(a) **Reportable Uses Require Consent.** The term "**Hazardous Substance**" as used in this Lease shall mean any product, substance, or waste whose presence, use, manufacture, disposal, transportation, or release, either by itself or in combination with other materials expected to be on the Premises, is either (i) potentially injurious to the public health, safety or welfare, the environment or the Premises, (ii) regulated or monitored by any governmental authority, or (iii) a basis for potential liability of Lessor to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substances shall include, but not be limited to, hydrocarbons, petroleum, gasoline, and/or crude oil or any products, by-products or fractions thereof. Lessee shall not engage in any activity in or on the Premises which constitutes a Reportable Use of Hazardous Substances without the express prior written consent of Lessor and timely compliance (at Lessee's expense) with all Applicable Requirements. "**Reportable Use**" shall mean (i) the installation or use of any above or below ground storage tank, (ii) the generation, possession, storage, use, transportation, or disposal of a Hazardous Substance that requires a permit from, or with respect to which a report, notice, registration or business plan is required to be filed with, any governmental authority, and/or (iii) the presence at the Premises of a Hazardous Substance with respect to which any Applicable Requirements requires that a notice be given to persons entering or occupying the Premises or neighboring properties. Notwithstanding the foregoing, Lessee may use any ordinary and customary materials reasonably required to be used in the normal course of the Agreed Use, ordinary office supplies (copier toner, liquid paper, glue, etc.) and common household cleaning materials, so long as such use is in compliance with all Applicable Requirements, is not a Reportable Use, and does not expose the Premises or neighboring property to any meaningful risk of contamination or damage or expose Lessor to any liability therefor. In addition, Lessor may condition its consent to any Reportable Use upon receiving such additional assurances as Lessor reasonably deems necessary to protect itself, the public, the Premises and/or the environment against damage, contamination, injury and/or liability, including, but not limited to, the installation (and removal on or before Lease expiration or termination) of protective modifications (such as concrete encasements) and/or increasing the Security Deposit.

(b) **Duty to Inform Lessor.** If Lessee knows, or has reasonable cause to believe, that a Hazardous Substance has come to be located in, on, under or about the Premises, other than as previously consented to by Lessor, Lessee shall immediately give written notice of such fact to Lessor, and provide Lessor with a copy of any report, notice, claim or other documentation which it has concerning the presence of such Hazardous Substance.

(c) **Lessee Remediation.** Lessee shall not cause or permit any Hazardous Substance to be spilled or released in, on, under or about the Premises (including through the plumbing or sanitary sewer system) and shall promptly, at Lessee's expense, comply with all Applicable Requirements and take all investigatory and/or remedial action reasonably recommended, whether or not formally ordered or required, for the cleanup of any contamination of, and for the maintenance, security and/or monitoring of the Premises or neighboring properties, that was caused or materially contributed to by Lessee, or pertaining to or involving any Hazardous Substance brought onto the Premises during the term of this Lease, by or for Lessee, or any third party.

(d) **Lessee Indemnification.** Lessee shall indemnify, defend and hold Lessor, its agents, employees, lenders and ground lessor, if any, harmless from and against any and all loss of rents and/or damages, liabilities, judgments, claims, expenses, penalties, and attorneys' and consultants' fees arising out of or involving any Hazardous Substance brought onto the Premises by or for Lessee, or any third party (provided, however, that Lessee shall have no liability under this Lease with respect to underground migration of any Hazardous Substance under the Premises from adjacent properties not caused or contributed to by Lessee). Lessee's obligations shall include, but not be limited to, the effects of any contamination or injury to person, property or the environment created or suffered by Lessee, and the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease. **No termination, cancellation or release agreement entered into by Lessor and Lessee shall release Lessee from its obligations under this Lease with respect to Hazardous Substances, unless specifically so agreed by Lessor in writing at the time of such agreement.**

(e) **Lessor Indemnification.** Lessor and its successors and assigns shall indemnify, defend, reimburse and hold Lessee, its employees and lenders, harmless from and against any and all environmental damages, including the cost of remediation, which result from Hazardous Substances which existed on the Premises prior to Lessee's occupancy or which are caused by the gross negligence or willful misconduct of Lessor, its agents or employees. Lessor's obligations, as and when required by the Applicable Requirements, shall include, but not be limited to, the cost of investigation, removal, remediation, restoration and/or abatement, and shall survive the expiration or termination of this Lease.

(f) **Investigations and Remediations.** Lessor shall retain the responsibility and pay for any investigations or remediation measures required by governmental entities having jurisdiction with respect to the existence of Hazardous Substances on the Premises prior to Lessee's occupancy, unless such remediation measure is required as a result of Lessee's use (including "Alterations" as defined in paragraph 7.3(a) below) of the Premises, in which event Lessee shall be responsible for such payment. Lessee shall cooperate fully in any such activities at the request of Lessor, including allowing Lessor and Lessor's agents to have reasonable access to the Premises at reasonable times in order to carry out Lessor's investigative and remedial responsibilities.

(g) **Lessor Termination Option.** If a Hazardous Substance Condition (see Paragraph 9.1(e)) occurs during the term of this Lease, unless Lessee is legally responsible therefor (in which case Lessee shall make the investigation and remediation thereof required by the Applicable Requirements and this Lease shall continue in full force and effect, but subject to Lessor's rights under Paragraph 6.2(d) and Paragraph 13), Lessor may, at Lessor's option, either (i) investigate and remediate such Hazardous Substance Condition, if required, as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) if the estimated cost to remediate such condition exceeds 12 times the then monthly Base Rent or $100,000, whichever is greater, give written notice to Lessee, within 30 days after receipt by Lessor of knowledge of the occurrence of such Hazardous Substance Condition, of Lessor's desire to terminate this Lease as of the date 60 days following the date of such notice. In the event Lessor elects to give a termination notice, Lessee may, within 10 days thereafter, give written notice to Lessor of Lessee's commitment to pay the amount by which the cost of the remediation of such Hazardous Substance Condition exceeds an amount equal to 12 times the then monthly Base Rent or $100,000, whichever is greater. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days following such commitment. In such event, this Lease shall continue in full force and effect, and Lessor shall proceed to make such remediation as soon as reasonably possible after the required funds are available. If Lessee does not give such notice and provide the required funds or assurance thereof within the time provided, this Lease shall terminate as of the date specified in Lessor's notice of termination.

6.3 **Lessee's Compliance with Applicable Requirements.** Except as otherwise provided in this Lease, Lessee shall, at Lessee's sole expense fully, diligently and in a timely manner, materially comply with all Applicable Requirements the requirements of any applicable fire insurance underwriter or rating bureau, and the recommendations of Lessor's engineers and/or consultants which relate in any manner to the such Requirements without regard to whether such Requirements are now in effect or become effective after the Start Date Lessee shall, within 10 days after receipt of Lessor's written request provide Lessor with copies of all permits and other documents and other information evidencing Lessee's compliance with any Applicable Requirements specified by Lessor, and shall immediately upon receipt, notify Lessor in writing (with copies of any documents involved) of any threatened or actual claim, notice, citation, warning, complaint or report pertaining to or involving the failure of Lessee or the Premises to comply with any Applicable Requirements Likewise, Lessee shall immediately give written notice to Lessor of (i) any water damage to the Premises and any suspected seepage, pooling, dampness or other condition conducive to the production of mold, or (ii) any mustiness or other odors that might indicate the presence of mold in the Premises

6.4 **Inspection; Compliance.** Lessor and Lessor's **"Lender"** (as defined in Paragraph 30) and consultants shall have the right to enter into Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable notice, for the purpose of inspecting the condition of the Premises and for verifying compliance by Lessee with this Lease The cost of any such inspections shall be paid by Lessor unless a violation of Applicable Requirements, or a Hazardous Substance Condition (see paragraph 9.1e) is found to exist or be imminent, or the inspection is requested or ordered by a governmental authority In such case, Lessee shall upon request reimburse Lessor for the cost of such inspection, so long as such inspection is reasonably related to the violation or contamination In addition, Lessee shall provide copies of all relevant material safety data sheets (**MSDS**) to Lessor within 10 days of the receipt of a written request therefor

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

7.1 **Lessee's Obligations.**

(a) **In General.** Subject to the provisions of Paragraph 2.2 (Condition), 2.3 (Compliance), 6.3 (Lessee's Compliance with Applicable Requirements), 7.2 (Lessor's Obligations), 9 (Damage or Destruction), and 14 (Condemnation), Lessee shall, at Lessee's sole expense, keep the Premises, 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 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 the age of such portion of the Premises), 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 Lessee is also responsible for keeping the roof and roof drainage clean and free of debris Lessor shall keep the surface and structural elements of the roof, foundations and bearing walls in good repair (see paragraph 7.2) Lessee, in keeping the Premises 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 Paragraph 7.1(b) below Lessee's obligations shall include restorations, replacements or renewals when necessary to keep the Premises 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 Building 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 (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

(c) **Failure to Perform.** If Lessee fails to perform Lessee's obligations under this Paragraph 7.1, Lessor may enter upon the Premises 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 in good order, condition and repair, and Lessee shall promptly pay to Lessor a sum equal to 115% of the cost thereof

(d) **Replacement.** Subject to Lessee's indemnification of Lessor as set forth in Paragraph 8.7 below, and without relieving Lessee of liability resulting from Lessee's failure to exercise and perform good maintenance practices, if an item described in Paragraph 7.1(b) cannot be repaired other than at a cost which is in excess of 50% of the cost of replacing such item, then such item shall be replaced by Lessor, and the cost thereof shall be prorated between the Parties and Lessee shall only be obligated to pay each month during the remainder of the term of this Lease, on the date on which Base Rent is due, an amount equal to the product of multiplying the cost of such replacement by a fraction, the numerator of which is one, and the denominator of which is 144 (ie 1/144th of the cost per month) Lessee shall pay Interest on the unamortized balance but may prepay its obligation at any time

7.2 **Lessor's Obligations.** Subject to the provisions of Paragraphs 2.2 (Condition), 2.3 (Compliance), 9 (Damage or Destruction) and 14 (Condemnation) it is intended by the Parties hereto that Lessor have no obligation, in any manner whatsoever, to repair and maintain the Premises, or the equipment therein, all of which obligations are intended to be that of the Lessee, except for the surface and structural elements of the roof foundations and bearing walls, the repair of which shall be the responsibility of Lessor upon receipt of written notice that such a repair is necessary It is the intention of the Parties that the terms of this Lease govern the respective obligations of the Parties as to maintenance and repair of the Premises, and they expressly waive the benefit of any statute now or hereafter in effect to the extent it is inconsistent with the terms of this Lease

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

(a) **Definitions.** The term **"Utility Installations"** refers to all floor and window coverings, air and/or vacuum lines, power panels, electrical distribution, security and fire protection systems, communication cabling, lighting fixtures, HVAC equipment, plumbing, and fencing in or on the Premises The term **"Trade Fixtures"** shall mean Lessee's machinery and equipment that can be removed without doing material damage to the Premises The term **"Alterations"** shall mean any modification of the improvements, other than Utility Installations or Trade Fixtures whether by addition or deletion **"Lessee Owned Alterations and/or Utility Installations"** are defined as Alterations and/or Utility Installations made by Lessee that are not yet owned by Lessor pursuant to Paragraph 7.4(a)

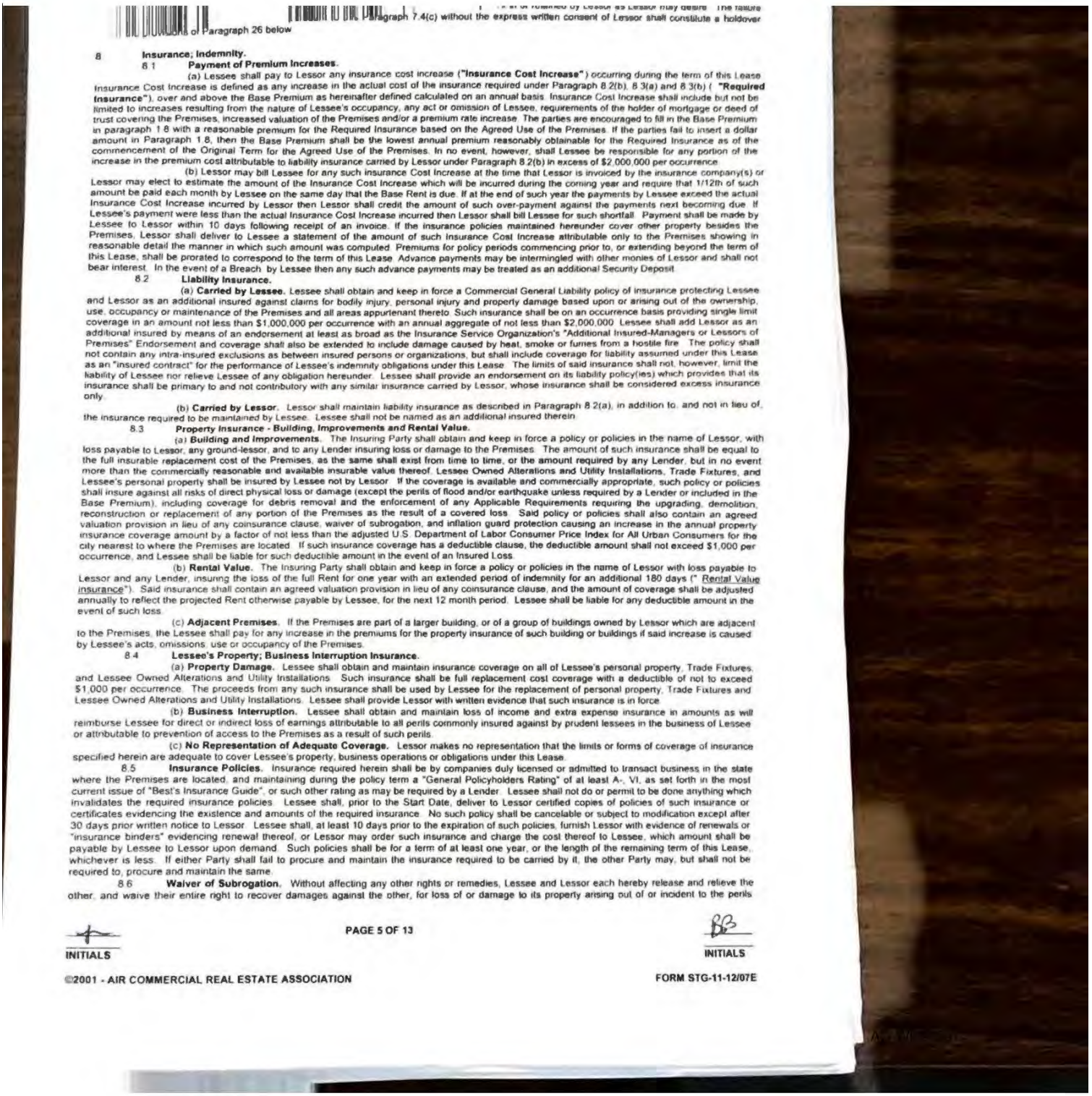
(b) **Consent.** Lessee shall not make any Alterations or Utility Installations to the Premises without Lessor's prior written consent Lessee may, however, make non-structural Utility Installations to the interior of the Premises (excluding the roof) without such consent but upon notice to Lessor, as 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 this Lease as extended does not exceed a sum equal to 3 month's Base Rent in the aggregate or a sum equal to one 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 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 For work which costs an amount in excess of one month's Base Rent, Lessor may condition its consent upon Lessee providing a lien and completion bond in an amount equal to 150% of the estimated cost of such Alteration or Utility Installation and/or upon Lessee's posting an additional Security Deposit with Lessor

(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, which claims are or may be secured by any mechanic's or materialmen's lien against the Premises or any interest therein Lessee shall give Lessor not less than 10 days notice prior to the commencement of any work in, on or about the Premises, 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 and the Premises 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

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

(a) **Ownership.** Subject to Lessor's right to require removal or elect ownership as hereinafter provided, all Alterations and Utility Installations made by Lessee shall be the property of Lessee, but considered a part of the Premises Lessor may, at any time, elect in writing to be the owner of all or any specified part of the Lessee Owned Alterations and Utility Installations Unless otherwise instructed per paragraph 7.4(b) hereof, all Lessee Owned Alterations and Utility Installations shall, at the expiration or termination of this Lease, become the property of Lessor and be surrendered by Lessee with the Premises

(b) **Removal.** By delivery to Lessee of written notice from Lessor not earlier than 90 and not later than 30 days prior to the end of the term of this Lease Lessor may require that any or all Lessee Owned Alterations or Utility Installations be removed by the expiration or termination of



of Paragraph 26 below

Paragraph 7.4(c) without the express written consent of Lessor shall constitute a holdover

8 **Insurance; Indemnity.**

8.1 **Payment of Premium Increases.**

(a) Lessee shall pay to Lessor any insurance cost increase (**"Insurance Cost Increase"**) occurring during the term of this Lease. Insurance Cost Increase is defined as any increase in the actual cost of the insurance required under Paragraph 8.2(b), 8.3(a) and 8.3(b) (**"Required Insurance"**), over and above the Base Premium as hereinafter defined calculated on an annual basis. Insurance Cost Increase shall include but not be limited to increases resulting from the nature of Lessee's occupancy, any act or omission of Lessee, requirements of the holder of mortgage or deed of trust covering the Premises, increased valuation of the Premises and/or a premium rate increase. The parties are encouraged to fill in the Base Premium in paragraph 1.8 with a reasonable premium for the Required Insurance based on the Agreed Use of the Premises. If the parties fail to insert a dollar amount in Paragraph 1.8, then the Base Premium shall be the lowest annual premium reasonably obtainable for the Required Insurance as of the commencement of the Original Term for the Agreed Use of the Premises. In no event, however, shall Lessee be responsible for any portion of the increase in the premium cost attributable to liability insurance carried by Lessor under Paragraph 8.2(b) in excess of $2,000,000 per occurrence.

(b) Lessor may bill Lessee for any such insurance Cost Increase at the time that Lessor is invoiced by the insurance company(s) or Lessor may elect to estimate the amount of the Insurance Cost Increase which will be incurred during the coming year and require that 1/12th of such amount be paid each month by Lessee on the same day that the Base Rent is due. If at the end of such year the payments by Lessee exceed the actual Insurance Cost Increase incurred by Lessor then Lessor shall credit the amount of such over-payment against the payments next becoming due. If Lessee's payment were less than the actual Insurance Cost Increase incurred then Lessor shall bill Lessee for such shortfall. Payment shall be made by Lessee to Lessor within 10 days following receipt of an invoice. If the insurance policies maintained hereunder cover other property besides the Premises, Lessor shall deliver to Lessee a statement of the amount of such Insurance Cost Increase attributable only to the Premises showing in reasonable detail the manner in which such amount was computed. Premiums for policy periods commencing prior to, or extending beyond the term of this Lease, shall be prorated to correspond to the term of this Lease. Advance payments may be intermingled with other monies of Lessor and shall not bear interest. In the event of a Breach by Lessee then any such advance payments may be treated as an additional Security Deposit.

8.2 **Liability Insurance.**

(a) **Carried by Lessee.** Lessee shall obtain and keep in force a Commercial General Liability policy of insurance protecting Lessee and Lessor as an additional insured against claims for bodily injury, personal injury and property damage based upon or arising out of the ownership, use, occupancy or maintenance of the Premises and all areas appurtenant thereto. Such insurance shall be on an occurrence basis providing single limit coverage in an amount not less than $1,000,000 per occurrence with an annual aggregate of not less than $2,000,000. Lessee shall add Lessor as an additional insured by means of an endorsement at least as broad as the Insurance Service Organization's "Additional Insured-Managers or Lessors of Premises" Endorsement and coverage shall also be extended to include damage caused by heat, smoke or fumes from a hostile fire. The policy shall not contain any intra-insured exclusions as between insured persons or organizations, but shall include coverage for liability assumed under this Lease as an "insured contract" for the performance of Lessee's indemnity obligations under this Lease. The limits of said insurance shall not, however, limit the liability of Lessee nor relieve Lessee of any obligation hereunder. Lessee shall provide an endorsement on its liability policy(ies) which provides that its insurance shall be primary to and not contributory with any similar insurance carried by Lessor, whose insurance shall be considered excess insurance only.

(b) **Carried by Lessor.** Lessor shall maintain liability insurance as described in Paragraph 8.2(a), in addition to, and not in lieu of, the insurance required to be maintained by Lessee. Lessee shall not be named as an additional insured therein.

8.3 **Property Insurance - Building, Improvements and Rental Value.**

(a) **Building and Improvements.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor, with loss payable to Lessor, any ground-lessor, and to any Lender insuring loss or damage to the Premises. The amount of such insurance shall be equal to the full insurable replacement cost of the Premises, as the same shall exist from time to time, or the amount required by any Lender, but in no event more than the commercially reasonable and available insurable value thereof. Lessee Owned Alterations and Utility Installations, Trade Fixtures, and Lessee's personal property shall be insured by Lessee not by Lessor. If the coverage is available and commercially appropriate, such policy or policies shall insure against all risks of direct physical loss or damage (except the perils of flood and/or earthquake unless required by a Lender or included in the Base Premium), including coverage for debris removal and the enforcement of any Applicable Requirements requiring the upgrading, demolition, reconstruction or replacement of any portion of the Premises as the result of a covered loss. Said policy or policies shall also contain an agreed valuation provision in lieu of any coinsurance clause, waiver of subrogation, and inflation guard protection causing an increase in the annual property insurance coverage amount by a factor of not less than the adjusted U.S. Department of Labor Consumer Price Index for All Urban Consumers for the city nearest to where the Premises are located. If such insurance coverage has a deductible clause, the deductible amount shall not exceed $1,000 per occurrence, and Lessee shall be liable for such deductible amount in the event of an Insured Loss.

(b) **Rental Value.** The Insuring Party shall obtain and keep in force a policy or policies in the name of Lessor with loss payable to Lessor and any Lender, insuring the loss of the full Rent for one year with an extended period of indemnity for an additional 180 days (" Rental Value insurance"). Said insurance shall contain an agreed valuation provision in lieu of any coinsurance clause, and the amount of coverage shall be adjusted annually to reflect the projected Rent otherwise payable by Lessee, for the next 12 month period. Lessee shall be liable for any deductible amount in the event of such loss.

(c) **Adjacent Premises.** If the Premises are part of a larger building, or of a group of buildings owned by Lessor which are adjacent to the Premises, the Lessee shall pay for any increase in the premiums for the property insurance of such building or buildings if said increase is caused by Lessee's acts, omissions, use or occupancy of the Premises.

8.4 **Lessee's Property; Business Interruption Insurance.**

(a) **Property Damage.** Lessee shall obtain and maintain insurance coverage on all of Lessee's personal property, Trade Fixtures, and Lessee Owned Alterations and Utility Installations. Such insurance shall be full replacement cost coverage with a deductible of not to exceed $1,000 per occurrence. The proceeds from any such insurance shall be used by Lessee for the replacement of personal property, Trade Fixtures and Lessee Owned Alterations and Utility Installations. Lessee shall provide Lessor with written evidence that such insurance is in force.

(b) **Business Interruption.** Lessee shall obtain and maintain loss of income and extra expense insurance in amounts as will reimburse Lessee for direct or indirect loss of earnings attributable to all perils commonly insured against by prudent lessees in the business of Lessee or attributable to prevention of access to the Premises as a result of such perils.

(c) **No Representation of Adequate Coverage.** Lessor makes no representation that the limits or forms of coverage of insurance specified herein are adequate to cover Lessee's property, business operations or obligations under this Lease.

8.5 **Insurance Policies.** Insurance required herein shall be by companies duly licensed or admitted to transact business in the state where the Premises are located, and maintaining during the policy term a "General Policyholders Rating" of at least A-, VI, as set forth in the most current issue of "Best's Insurance Guide", or such other rating as may be required by a Lender. Lessee shall not do or permit to be done anything which invalidates the required insurance policies. Lessee shall, prior to the Start Date, deliver to Lessor certified copies of policies of such insurance or certificates evidencing the existence and amounts of the required insurance. No such policy shall be cancelable or subject to modification except after 30 days prior written notice to Lessor. Lessee shall, at least 10 days prior to the expiration of such policies, furnish Lessor with evidence of renewals or "insurance binders" evidencing renewal thereof, or Lessor may order such insurance and charge the cost thereof to Lessee, which amount shall be payable by Lessee to Lessor upon demand. Such policies shall be for a term of at least one year, or the length of the remaining term of this Lease, whichever is less. If either Party shall fail to procure and maintain the insurance required to be carried by it, the other Party may, but shall not be required to, procure and maintain the same.

8.6 **Waiver of Subrogation.** Without affecting any other rights or remedies, Lessee and Lessor each hereby release and relieve the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils

ired to be insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any ductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against Lessor or Lessee, as the case may be, so long as the insurance is not invalidated thereby.

8.7 **Indemnity.** Except for Lessor's gross negligence or willful misconduct, Lessee shall indemnify, protect, defend and hold harmless the Premises, Lessor and its agents, Lessor's master or ground lessor, partners and Lenders, from and against any and all claims, loss of rents and/or damages, liens, judgments, penalties, attorneys' and consultants' fees, expenses and/or liabilities arising out of, involving, or in connection with, the use and/or occupancy of the Premises by Lessee. If any action or proceeding is brought against Lessor by reason of any of the foregoing matters, Lessee shall upon notice defend the same at Lessee's expense by counsel reasonably satisfactory to Lessor and Lessor shall cooperate with Lessee in such defense. Lessor need not have first paid any such claim in order to be defended or indemnified.

8.8 **Exemption of Lessor and its Agents from Liability.** Notwithstanding the negligence or breach of this Lease by Lessor or its agents, neither Lessor nor its agents shall be liable under any circumstances for: (i) injury or damage to the person or goods, wares, merchandise or other property of Lessee, Lessee's employees, contractors, invitees, customers, or any other person in or about the Premises, whether such damage or injury is caused by or results from fire, steam, electricity, gas, water or rain, indoor air quality, the presence of mold or from the breakage, leakage, obstruction or other defects of pipes, fire sprinklers, wires, appliances, plumbing, HVAC or lighting fixtures, or from any other cause, whether the said injury or damage results from conditions arising upon the Premises or upon other portions of the building of which the Premises are a part, or from other sources or places, (ii) any damages arising from any act or neglect of any other tenant of Lessor or from the failure of Lessor or its agents to enforce the provisions of any other lease in the Project, or (iii) injury to Lessee's business or for any loss of income or profit therefrom. Instead, it is intended that Lessee's sole recourse in the event of such damages or injury be to file a claim on the insurance policy(ies) that Lessee is required to maintain pursuant to the provisions of paragraph 8.

8.9 **Failure to Provide Insurance.** Lessee acknowledges that any failure on its part to obtain or maintain the insurance required herein will expose Lessor to risks and potentially cause Lessor to incur costs not contemplated by this Lease, the extent of which will be extremely difficult to ascertain. Accordingly, for any month or portion thereof that Lessee does not maintain the required insurance and/or does not provide Lessor with the required binders or certificates evidencing the existance of the required insurance, the Base Rent shall be automatically increased, without any requirement for notice to Lessee, by an amount equal to 10% of the then existing Base Rent or $100, whichever is greater. The parties agree that such increase in Base Rent represents fair and reasonable compensation for the additional risk/ costs that Lessor will incur by reason of Lessee's failure to maintain the required insurance. Such increase in Base Rent shall in no event constitute a waiver of Lessee's Default or Breach with respect to the failure to maintain such insurance, prevent the exercise of any of the other rights and remedies granted hereunder, nor relieve Lessee of its obligation to maintain the insurance specified in this Lease.

9 Damage or Destruction.

9.1 Definitions.

(a) **"Premises Partial Damage"** shall mean damage or destruction to the improvements on the Premises, other than Lessee Owned Alterations and Utility Installations, which can reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total. Notwithstanding the foregoing, Premises Partial Damage shall not include damage to windows, doors, and/or other similar items which Lessee has the responsibility to repair or replace pursuant to the provisions of Paragraph 7.1.

(b) **"Premises Total Destruction"** shall mean damage or destruction to the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which cannot reasonably be repaired in 6 months or less from the date of the damage or destruction. Lessor shall notify Lessee in writing within 30 days from the date of the damage or destruction as to whether or not the damage is Partial or Total.

(c) **"Insured Loss"** shall mean damage or destruction to improvements on the Premises, other than Lessee Owned Alterations and Utility Installations and Trade Fixtures, which was caused by an event required to be covered by the insurance described in Paragraph 8.3(a), irrespective of any deductible amounts or coverage limits involved.

(d) **"Replacement Cost"** shall mean the cost to repair or rebuild the improvements owned by Lessor at the time of the occurrence to their condition existing immediately prior thereto, including demolition, debris removal and upgrading required by the operation of Applicable Requirements, and without deduction for depreciation.

(e) **"Hazardous Substance Condition"** shall mean the occurrence or discovery of a condition involving the presence of, or a contamination by, a Hazardous Substance, in, on, or under the Premises which requires restoration.

9.2 Partial Damage - Insured Loss. If a Premises Partial Damage that is an Insured Loss occurs, then Lessor shall, at Lessor's expense, repair such damage (but not Lessee's Trade Fixtures or Lessee Owned Alterations and Utility Installations) as soon as reasonably possible and this Lease shall continue in full force and effect; provided, however, that Lessee shall, at Lessor's election, make the repair of any damage or destruction the total cost to repair of which is $10,000 or less, and, in such event, Lessor shall make any applicable insurance proceeds available to Lessee on a reasonable basis for that purpose. Notwithstanding the foregoing, if the required insurance was not in force or the insurance proceeds are not sufficient to effect such repair, the Insuring Party shall promptly contribute the shortage in proceeds (except as to the deductible which is Lessee's responsibility) as and when required to complete said repairs. In the event, however, such shortage was due to the fact that, by reason of the unique nature of the improvements, full replacement cost insurance coverage was not commercially reasonable and available, Lessor shall have no obligation to pay for the shortage in insurance proceeds or to fully restore the unique aspects of the Premises unless Lessee provides Lessor with the funds to cover same, or adequate assurance thereof, within 10 days following receipt of written notice of such shortage and request therefor. If Lessor receives said funds or adequate assurance thereof within said 10 day period, the party responsible for making the repairs shall complete them as soon as reasonably possible and this Lease shall remain in full force and effect. If such funds or assurance are not received, Lessor may nevertheless elect by written notice to Lessee within 10 days thereafter to: (i) make such restoration and repair as is commercially reasonable with Lessor paying any shortage in proceeds, in which case this Lease shall remain in full force and effect, or (ii) have this Lease terminate 30 days thereafter. Lessee shall not be entitled to reimbursement of any funds contributed by Lessee to repair any such damage or destruction. Premises Partial Damage due to flood or earthquake shall be subject to Paragraph 9.3, notwithstanding that there may be some insurance coverage, but the net proceeds of any such insurance shall be made available for the repairs if made by either Party.

9.3 Partial Damage - Uninsured Loss. If a Premises Partial Damage that is not an Insured Loss occurs, unless caused by a negligent or willful act of Lessee (in which event Lessee shall make the repairs at Lessee's expense), Lessor may either: (i) repair such damage as soon as reasonably possible at Lessor's expense, in which event this Lease shall continue in full force and effect, or (ii) terminate this Lease by giving written notice to Lessee within 30 days after receipt by Lessor of knowledge of the occurrence of such damage. Such termination shall be effective 60 days following the date of such notice. In the event Lessor elects to terminate this Lease, Lessee shall have the right within 10 days after receipt of the termination notice to give written notice to Lessor of Lessee's commitment to pay for the repair of such damage without reimbursement from Lessor. Lessee shall provide Lessor with said funds or satisfactory assurance thereof within 30 days after making such commitment. In such event this Lease shall continue in full force and effect, and Lessor shall proceed to make such repairs as soon as reasonably possible after the required funds are available. If Lessee does not make the required commitment, this Lease shall terminate as of the date specified in the termination notice.

9.4 Total Destruction. Notwithstanding any other provision hereof, if a Premises Total Destruction occurs, this Lease shall terminate 60 days following such Destruction. If the damage or destruction was caused by the gross negligence or willful misconduct of Lessee, Lessor shall have the right to recover Lessor's damages from Lessee, except as provided in Paragraph 8.6.

9.5 Damage Near End of Term. If at any time during the last 6 months of this Lease there is damage for which the cost to repair exceeds one month's Base Rent, whether or not an Insured Loss, Lessor may terminate this Lease effective 60 days following the date of occurrence of such damage by giving a written termination notice to Lessee within 30 days after the date of occurrence of such damage. Notwithstanding the foregoing, if Lessee at that time has an exercisable option to extend this Lease or to purchase the Premises, then Lessee may preserve this Lease by, (a) exercising such option and (b) providing Lessor with any shortage in insurance proceeds (or adequate assurance thereof) needed to make the repairs on or before the earlier of (i) the date which is 10 days after Lessee's receipt of Lessor's written notice purporting to terminate this Lease, or (ii) the day prior to the date upon which such option expires. If Lessee duly exercises such option during such period and provides Lessor with funds (or adequate assurance thereof) to cover any shortage in insurance proceeds, Lessor shall, at Lessor's commercially reasonable expense, repair such damage as soon as reasonably possible and this Lease shall continue in full force and effect. If Lessee fails to exercise such option and provide such funds or assurance during such period, then this Lease shall terminate on the date specified in the termination notice and Lessee's option shall be extinguished.

9.6 Abatement of Rent; Lessee's Remedies.

(a) **Abatement.** In the event of Premises Partial Damage or Premises Total Destruction or a Hazardous Substance Condition for which Lessee is not responsible under this Lease, the Rent payable by Lessee for the period required for the repair, remediation or restoration of such damage shall be abated in proportion to the degree to which Lessee's use of the Premises is impaired, but not to exceed the proceeds received from the Rental Value insurance. All other obligations of Lessee hereunder shall be performed by Lessee, and Lessor shall have no liability for any such damage, destruction, remediation, repair or restoration except as provided herein.

(b) **Remedies.** If Lessor is obligated to repair or restore the Premises and does not commence, in a substantial and meaningful way, such repair or restoration within 90 days after such obligation shall accrue, Lessee may, at any time prior to the commencement of such repair or

10 **Real Property Taxes.**

10.1 **Definition.** As used herein, the term **"Real Property Taxes"** shall include 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 Project, 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 are located. Real Property Taxes shall also include any tax, fee, levy, assessment or charge, or any increase therein (i) imposed by reason of events occurring during the term of this Lease, including but not limited to, a change in the ownership of the Premises, and (ii) levied or assessed on machinery or equipment provided by Lessor to Lessee pursuant to this Lease.

10.2

(a) **Payment of Taxes.** Lessor shall pay the Real Property Taxes applicable to the Premises provided, however, that Lessee shall pay to Lessor the amount, if any, by which Real Property Taxes applicable to the Premises increase over the fiscal tax year during which the Commencement Date Occurs ("Tax Increase"). Payment of any such Tax Increase shall be made by Lessee to Lessor within 30 days after receipt of Lessor's written statement setting forth the amount due and computation thereof. If any such taxes shall cover any period of time prior to or after the expiration or termination of this Lease, Lessee's share of such taxes shall be prorated to cover only that portion of the tax bill applicable to the period that this Lease is in effect. Lessor may, however, elect to estimate the current Real Property Taxes, and require that the Tax Increase be paid in advance to Lessor by Lessee monthly in advance with the payment of the Base Rent. Such monthly payment shall be an amount equal to the amount of the estimated installment of the Tax Increase divided by the number of months remaining before the month in which said installment becomes delinquent. When the actual amount of the applicable Tax Increase is known, the amount of such equal monthly advance payments shall be adjusted as required to provide the funds needed to pay the applicable Tax Increase. If the amount collected by Lessor is insufficient to pay the Tax Increase when due, Lessee shall pay Lessor, upon demand, such additional sums as are necessary to pay such obligations. Advance payments may be intermingled with other moneys of Lessor and shall not bear interest. In the event of a Breach by Lessee in the performance of its obligations under this Lease, then any such advance payments may be treated by Lessor as an additional Security Deposit.

(b) **Additional Improvements.** Notwithstanding anything to the contrary in this Paragraph 10.2, Lessee shall pay to Lessor upon demand therefor the entirety of any increase in Real Property Taxes assessed by reason of Alterations or Utility Installations placed upon the Premises by Lessee or at Lessee's request or by reason of any alterations or improvements to the Premises made by Lessor subsequent to the execution of this Lease by the Parties.

10.3 **Joint Assessment.** If the Premises are not separately assessed, Lessee's liability shall be an equitable proportion of the Tax Increase for all of the land and improvements included within the tax parcel assessed, such proportion to be conclusively determined by Lessor from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

10.4 **Personal Property Taxes.** Lessee shall pay, prior to delinquency, all taxes assessed against and levied upon Lessee Owned Alterations, Utility Installations, Trade Fixtures, furnishings, equipment and all personal property of Lessee. When possible, Lessee shall cause its Lessee Owned Alterations and Utility Installations, Trade Fixtures, furnishings, equipment and all other personal property to be assessed and billed separately from the real property of Lessor. If any of Lessee's said property shall be assessed with Lessor's real property, Lessee shall pay Lessor the taxes attributable to Lessee's property within 10 days after receipt of a written statement setting forth the taxes applicable to Lessee's property.

11 **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, 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.

12 **Assignment and Subletting.**

12.1 **Lessor's Consent Required.**

(a) Lessee shall not voluntarily or by operation of law assign, transfer, mortgage or encumber (collectively, **"assign or assignment"**) or sublet all or any part of Lessee's interest in this Lease or in the Premises without Lessor's prior written consent.

(b) Unless Lessee is a corporation and its stock is publicly traded on a national stock exchange, a change in the control of Lessee shall constitute an assignment requiring consent. The transfer, on a cumulative basis, of 25% or more of the voting control of Lessee shall constitute a change in control for this purpose.

(c) The involvement of Lessee or its assets in any transaction, or series of transactions (by way of merger, sale, acquisition, financing, transfer, leveraged buy-out or otherwise), whether or not a formal assignment or hypothecation of this Lease or Lessee's assets occurs, which results or will result in a reduction of the Net Worth of Lessee by an amount greater than 25% of such Net Worth as it was represented at the time of the execution of this Lease or at the time of the most recent assignment to which Lessor has consented, or as it exists immediately prior to said transaction or transactions constituting such reduction, whichever was or is greater, shall be considered an assignment of this Lease to which Lessor may withhold its consent. **"Net Worth of Lessee"** shall mean the net worth of Lessee (excluding any guarantors) established under generally accepted accounting principles.

(d) An assignment or subletting without consent shall, at Lessor's option, be a Default curable after notice per Paragraph 13.1(c), or a noncurable Breach without the necessity of any notice and grace period. If Lessor elects to treat such unapproved assignment or subletting as a noncurable Breach, Lessor may either: (i) terminate this Lease, or (ii) upon 30 days written notice, increase the monthly Base Rent to 110% of the Base Rent then in effect. Further, in the event of such Breach and rental adjustment, (i) the purchase price of any option to purchase the Premises held by Lessee shall be subject to similar adjustment to 110% of the price previously in effect, and (ii) all fixed and non-fixed rental adjustments scheduled during the remainder of the Lease term shall be increased to 110% of the scheduled adjusted rent.

(e) Lessee's remedy for any breach of Paragraph 12.1 by Lessor shall be limited to compensatory damages and/or injunctive relief.

(f) Lessor may reasonably withhold consent to a proposed assignment or subletting if Lessee is in Default at the time consent is requested.

(g) Notwithstanding the foregoing, allowing a de minimis portion of the Premises, ie. 20 square feet or less, to be used by a third party vendor in connection with the installation of a vending machine or payphone shall not constitute a subletting.

12.2 **Terms and Conditions Applicable to Assignment and Subletting.**

(a) Regardless of Lessor's consent, no assignment or subletting shall: (i) be effective without the express written assumption by such assignee or sublessee of the obligations of Lessee under this Lease, (ii) release Lessee of any obligations hereunder, or (iii) alter the primary liability of Lessee for the payment of Rent or for the performance of any other obligations to be performed by Lessee.

(b) Lessor may accept Rent or performance of Lessee's obligations from 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 Lessee's Default or Breach.

(c) Lessor's consent to any assignment or subletting shall not constitute a consent to any subsequent assignment or subletting.

(d) In the event of any Default or Breach by Lessee, Lessor may proceed directly against Lessee, any Guarantors or anyone else responsible for the performance of Lessee's obligations under this Lease, including any assignee or sublessee, without first exhausting Lessor's remedies against any other person or entity responsible therefor to Lessor, or any security held by Lessor.

(e) Each request for consent to an assignment or subletting 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 or sublessee, including but not limited to the intended use and/or required modification of the Premises, if any, 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. (See also Paragraph 36.)

(f) Any assignee of, or sublessee under, this Lease shall, by reason of accepting such assignment, entering into such sublease, or entering into possession of the Premises or any portion thereof, be deemed to have assumed and agreed to conform and comply with each and every term, covenant, condition and obligation herein to be observed or performed by Lessee during the term of said assignment or sublease, other than such

[redacted] shall not be liable for any prepaid rents or security deposit paid by such sublessee to such sublessor or for any prior Defaults or Breaches of such sublessor.

(c) Any matter requiring the consent of the sublessor under a sublease shall also require the consent of Lessor.

(d) No sublessee shall further assign or sublet all or any part of the Premises without Lessor's prior written consent.

(e) Lessor shall deliver a copy of any notice of Default or Breach by Lessee to the sublessee, who shall have the right to cure the Default of Lessee within the grace period, if any, specified in such notice. The sublessee shall have a right of reimbursement and offset from and against Lessee for any such Defaults cured by the sublessee.

13. **Default; Breach; Remedies.**

13.1 **Default; Breach.** A **"Default"** is defined as a failure by the Lessee to comply with or perform any of the terms, covenants, conditions or Rules and Regulations under this Lease. 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 grace period:

(a) The abandonment of the Premises; or the vacating of the Premises without providing a commercially reasonable level of security, or where the coverage of the property insurance described in Paragraph 8.3 is jeopardized as a result thereof, or without providing reasonable assurances to minimize potential vandalism.

(b) The failure of Lessee to make any payment of Rent or any Security Deposit required to be made by Lessee hereunder, whether to Lessor or to a third party, when due, to provide reasonable evidence of insurance or surety bond, or to fulfill any obligation under this Lease which endangers or threatens life or property, where such failure continues for a period of 3 business days following written notice to Lessee. THE ACCEPTANCE BY LESSOR OF A PARTIAL PAYMENT OF RENT OR SECURITY DEPOSIT SHALL NOT CONSTITUTE A WAIVER OF ANY OF LESSOR'S RIGHTS, INCLUDING LESSOR'S RIGHT TO RECOVER POSSESSION OF THE PREMISES.

(c) The failure of Lessee to allow Lessor and/or its agents access to the premises or the commission of waste, act or acts constituting public or private nuisance, and/or an illegal activity on the Premises by Lessee, where such actions continue for a period of 3 business days following written notice to Lessee.

(d) The failure by Lessee to provide (i) reasonable written evidence of compliance with Applicable Requirements, (ii) the service contracts, (iii) the rescission of an unauthorized assignment or subletting, (iv) an Estoppel Certificate or financial statements, (v) a requested subordination, (vi) evidence concerning any guaranty and/or Guarantor, (vii) any document requested under Paragraph 42, (viii) material safety data sheets (MSDS), or (ix) any other documentation or information which Lessor may reasonably require of Lessee under the terms of this Lease, where any such failure continues for a period of 10 days following written notice to Lessee.

(e) A Default by Lessee as to the terms, covenants, conditions or provisions of this Lease, or of the rules adopted under Paragraph 40 hereof, other than those described in subparagraphs 13.1(a), (b), (c) or (d), above, where such Default continues for a period of 30 days after written notice; provided, however, that if the nature of Lessee's Default is such that more than 30 days are reasonably required for its cure, then it shall not be deemed to be a Breach if Lessee commences such cure within said 30 day period and thereafter diligently prosecutes such cure to completion.

(f) The occurrence of any of the following events: (i) the making of any general arrangement or assignment for the benefit of creditors; (ii) becoming a **"debtor"** as defined in 11 U.S.C. §101 or any successor statute thereto (unless, in the case of a petition filed against Lessee, the same is dismissed within 60 days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where possession is not restored to Lessee within 30 days; or (iv) the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the Premises or of Lessee's interest in this Lease, where such seizure is not discharged within 30 days; provided, however, in the event that any provision of this subparagraph is contrary to any applicable law, such provision shall be of no force or effect, and not affect the validity of the remaining provisions.

(g) The discovery that any financial statement of Lessee or of any Guarantor given to Lessor was materially false.

(h) If the performance of Lessee's obligations under this Lease is guaranteed: (i) the death of a Guarantor, (ii) the termination of a Guarantor's liability with respect to this Lease other than in accordance with the terms of such guaranty, (iii) a Guarantor's becoming insolvent or the subject of a bankruptcy filing, (iv) a Guarantor's refusal to honor the guaranty, or (v) a Guarantor's breach of its guaranty obligation on an anticipatory basis, and Lessee's failure, within 60 days following written notice of any such event, to provide written alternative assurance or security, which, when coupled with the then existing resources of Lessee, equals or exceeds the combined financial resources of Lessee and the Guarantors that existed at the time of execution of this Lease.

13.2 **Remedies.** If Lessee fails to perform any of its affirmative duties or obligations, within 10 days after written notice (or in case of an emergency, without notice), Lessor may, at its option, perform such duty or obligation on Lessee's behalf, including but not limited to the obtaining of reasonably required bonds, insurance policies, or governmental licenses, permits or approvals. Lessee shall pay to Lessor an amount equal to 115% of the costs and expenses incurred by Lessor in such performance upon receipt of an invoice therefor. In the event of a Breach, Lessor may, with or without further notice or demand, and without limiting Lessor in the exercise of any right or remedy which Lessor may have by reason of such Breach:

(a) Terminate Lessee's right to possession of the Premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession to Lessor. In such event Lessor shall be entitled to recover from Lessee: (i) the unpaid Rent which had been earned at the time of termination; (ii) 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; (iii) 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; and (iv) any other amount necessary to compensate Lessor for all the detriment 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, expenses of reletting, including necessary renovation and alteration of the Premises, reasonable attorneys' fees, and that portion of any leasing commission paid by Lessor in connection with this Lease applicable to the unexpired term of this Lease. The worth at the time of award of the amount referred to in provision (iii) 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 are located at the time of award plus one percent. Efforts by Lessor to mitigate damages caused by Lessee's Breach of this Lease shall not waive Lessor's right to recover damages under Paragraph 12. If termination of this Lease is obtained through the provisional remedy of unlawful detainer, Lessor shall have the right to recover in such proceeding any unpaid Rent and damages as are recoverable therein, or Lessor may reserve the right to recover all or any part thereof in a separate suit. If a notice and grace period required under Paragraph 13.1 was not previously given, a notice to pay rent or quit, or to perform or quit given to Lessee under the unlawful detainer statute shall also constitute the notice required by Paragraph 13.1. In such case, the applicable grace period required by Paragraph 13.1 and the unlawful detainer statute shall run concurrently, and the failure of Lessee to cure the Default within the greater of the two such grace periods shall constitute both an unlawful detainer and a Breach of this Lease entitling Lessor to the remedies provided for in this Lease and/or by said statute.

(b) Continue the Lease and Lessee's right to possession and recover the Rent as it becomes due, in which event Lessee may sublet or assign, subject only to reasonable limitations. Acts of maintenance, efforts to relet, and/or the appointment of a receiver to protect the Lessor's interests, shall not constitute a termination of the Lessee's right to possession.

(c) Pursue any other remedy now or hereafter available under the laws or judicial decisions of the state wherein the Premises are located. The expiration or termination of this Lease and/or the termination of Lessee's right to possession shall not relieve Lessee from liability under any indemnity provisions of this Lease as to matters occurring or accruing during the term hereof or by reason of Lessee's occupancy of the Premises.

13.3 **Inducement Recapture.** Any agreement for free or abated rent or other charges, or for the giving or paying by Lessor to or for Lessee of any cash or other bonus, inducement or consideration for Lessee's entering into this Lease, all of which concessions are hereinafter referred to as **"Inducement Provisions,"** shall be deemed conditioned upon Lessee's full and faithful performance of all of the terms, covenants and conditions

of Lease. Upon Breach of this Lease by Lessee, any such Inducement Provision shall automatically be deemed deleted from this Lease and of no further force or effect, and any rent, other charge, bonus, inducement or consideration theretofore abated, given or paid by Lessor under such an Inducement Provision shall be immediately due and payable by Lessee to Lessor notwithstanding any subsequent cure of said Breach by Lessee. The acceptance by Lessor of rent or the cure of the Breach which initiated the operation of this paragraph shall not be deemed a waiver by Lessor of the provisions of this paragraph unless specifically so stated in writing by Lessor at the time of such acceptance.

13.4 **Late Charges.** Lessee hereby acknowledges that late payment by Lessee of Rent will cause Lessor to incur costs not contemplated by this Lease, the exact amount of which will be extremely difficult to ascertain. Such costs include, but are not limited to, processing and accounting charges, and late charges which may be imposed upon Lessor by any Lender. Accordingly, if any Rent shall not be received by Lessor within 5 days after such amount shall be due, then, without any requirement for notice to Lessee, Lessee shall immediately pay to Lessor a one-time late charge equal to 10% of each such overdue amount or $100, whichever is greater. The Parties hereby agree that such late charge represents a fair and reasonable estimate of the costs Lessor will incur by reason of such late payment. Acceptance of such late charge by Lessor shall in no event constitute a waiver of Lessee's Default or Breach with respect to such overdue amount, nor prevent the exercise of any of the other rights and remedies granted hereunder. In the event that a late charge is payable hereunder, whether or not collected, for 3 consecutive installments of Base Rent, then notwithstanding any provision of this Lease to the contrary, Base Rent shall, at Lessor's option, become due and payable quarterly in advance.

13.5 **Interest.** Any monetary payment due Lessor hereunder, other than late charges, not received by Lessor, when due as to scheduled payments (such as Base Rent) or within 30 days following the date on which it was due for non-scheduled payment, shall bear interest from the date when due, as to scheduled payments, or the 31st day after it was due as to non-scheduled payments. The interest ("**Interest**") charged shall be computed at the rate of 10% per annum but shall not exceed the maximum rate allowed by law. Interest is payable in addition to the potential late charge provided for in Paragraph 13.4.

13.6 **Breach by Lessor.**

(a) **Notice of Breach.** Lessor shall not be deemed in breach of this Lease unless Lessor fails within a reasonable time to perform an obligation required to be performed by Lessor. For purposes of this Paragraph, a reasonable time shall in no event be less than 30 days after receipt by Lessor and any Lender whose name and address shall have been furnished to Lessee in writing for such purpose, of written notice specifying wherein such obligation of Lessor has not been performed; provided, however, that if the nature of Lessor's obligation is such that more than 30 days are reasonably required for its performance, then Lessor shall not be in breach if performance is commenced within such 30 day period and thereafter diligently pursued to completion.

(b) **Performance by Lessee on Behalf of Lessor.** In the event that neither Lessor nor Lender cures said breach within 30 days after receipt of said notice, or if having commenced said cure they do not diligently pursue it to completion, then Lessee may elect to cure said breach at Lessee's expense and offset from Rent the actual and reasonable cost to perform such cure, provided however, that such offset shall not exceed an amount equal to the greater of one month's Base Rent or the Security Deposit, reserving Lessee's right to seek reimbursement from Lessor for any such expense in excess of such offset. Lessee shall document the cost of said cure and supply said documentation to Lessor.

14 **Condemnation.** If the Premises 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 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 remaining, except that the Base Rent shall be reduced in proportion to the reduction in utility of the Premises 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 Paragraph. All Alterations and Utility Installations made to the Premises by Lessee, for purposes of Condemnation only, 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 caused by such Condemnation.

15 **Brokerage Fees.**

15.1 **Additional Commission.** In addition to the payments owed pursuant to Paragraph 1.9 above, and unless Lessor and the Brokers otherwise agree in writing, Lessor agrees that: (a) if Lessee exercises any Option, (b) if Lessee or anyone affiliated with Lessee acquires any rights to the Premises or other premises owned by Lessor and located within the same Project, if any, within which the Premises is located, (c) if Lessee remains in possession of the Premises, with the consent of Lessor, after the expiration of this Lease, or (d) if Base Rent is increased, whether by agreement or operation of an escalation clause herein, then, Lessor shall pay Brokers a fee in accordance with the schedule of the Brokers in effect at the time of the execution of this Lease.

15.2 **Assumption of Obligations.** Any buyer or transferee of Lessor's interest in this Lease shall be deemed to have assumed Lessor's obligation hereunder. Brokers shall be third party beneficiaries of the provisions of Paragraphs 1.9, 15, 22 and 31. If Lessor fails to pay to Brokers any amounts due as and for brokerage fees pertaining to this Lease when due, then such amounts shall accrue Interest. In addition, if Lessor fails to pay any amounts to Lessee's Broker when due, Lessee's Broker may send written notice to Lessor and Lessee of such failure and if Lessor fails to pay such amounts within 10 days after said notice, Lessee shall pay said monies to its Broker and offset such amounts against Rent. In addition, Lessee's Broker shall be deemed to be a third party beneficiary of any commission agreement entered into by and/or between Lessor and Lessor's Broker for the limited purpose of collecting any brokerage fee owed.

15.3 **Representations and Indemnities of Broker Relationships.** Lessee and Lessor each represent and warrant to the other that it has had no dealings with any person, firm, broker or finder (other than the Brokers, if any) in connection with this Lease, and that no one other than said named Brokers is entitled to any commission or finder's fee in connection herewith. Lessee and Lessor do each hereby agree to indemnify, protect, defend and hold the other harmless from and against liability for compensation or charges which may be claimed by any such unnamed broker, finder or other similar party by reason of any dealings or actions of the indemnifying Party, including any costs, expenses, attorneys' fees reasonably incurred with respect thereto.

16 **Estoppel Certificates.**

(a) Each Party (as "**Responding Party**") shall within 10 days after written notice from the other Party (the "**Requesting Party**") execute, acknowledge and deliver to the Requesting Party a statement in writing in form similar to the then most current "**Estoppel Certificate**" form published by the AIR Commercial Real Estate Association, plus such additional information, confirmation and/or statements as may be reasonably requested by the Requesting Party.

(b) If the Responding Party shall fail to execute or deliver the Estoppel Certificate within such 10 day period, the Requesting Party may execute an Estoppel Certificate stating that: (i) the Lease is in full force and effect without modification except as may be represented by the Requesting Party, (ii) there are no uncured defaults in the Requesting Party's performance, and (iii) if Lessor is the Requesting Party, not more than one month's rent has been paid in advance. Prospective purchasers and encumbrancers may rely upon the Requesting Party's Estoppel Certificate, and the Responding Party shall be estopped from denying the truth of the facts contained in said Certificate.

(c) If Lessor desires to finance, refinance, or sell the Premises, or any part thereof, Lessee and all Guarantors shall within 10 days after written notice from Lessor deliver to any potential lender or purchaser designated by Lessor such financial statements as may be reasonably required by such lender or purchaser, including but not limited to Lessee's financial statements for the past 3 years. All such financial statements shall be received by Lessor and such lender or purchaser in confidence and shall be used only for the purposes herein set forth.

17 **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, 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 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.

18 **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.

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

20 **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 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

21 **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

22 **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 Lessor and Lessee each represents and warrants to the Brokers 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 Brokers have no responsibility with respect thereto or with respect to any default or breach hereof by either Party

23 **Notices.**

23 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, and shall be deemed sufficiently given if served in a manner specified in this Paragraph 23 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, the Premises 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

23 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 guarantee next day delivery shall be deemed given 24 hours after delivery of the same to the Postal Service or courier Notices transmitted by facsimile transmission or similar means shall be deemed delivered upon telephone confirmation of receipt (confirmation report from fax machine is sufficient), provided a copy is also delivered via delivery or mail If notice is received on a Saturday, Sunday or legal holiday, it shall be deemed received on the next business day

24 **Waivers.**

(a) No waiver by Lessor of the 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

(b) 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

(c) THE PARTIES AGREE THAT THE TERMS OF THIS LEASE SHALL GOVERN WITH REGARD TO ALL MATTERS RELATED THERETO AND HEREBY WAIVE THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE TO THE EXTENT THAT SUCH STATUTE IS INCONSISTENT WITH THIS LEASE.

25 ***Disclosures Regarding The Nature of a Real Estate Agency Relationship.***

(a) When entering into a discussion with a real estate agent regarding a real estate transaction, a Lessor or Lessee should from the outset understand what type of agency relationship or representation it has with the agent or agents in the transaction Lessor and Lessee acknowledge being advised by the Brokers in this transaction, as follows

(i) *Lessor's Agent* A Lessor's agent under a listing agreement with the Lessor acts as the agent for the Lessor only A Lessor's agent or subagent has the following affirmative obligations *To the Lessor* A fiduciary duty and a duty to protect and promote the Lessor's interests. *To the Lessee and Other Parties* A duty to deal fairly with the Lessee and other parties to the transactions. To All Parties. A duty to disclose in writing any information known to the agent materially affecting the consideration to be paid by any Party or the value or desirability of the property An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above.

(ii) *Lessee's Agent* An agent can agree to act as agent for the Lessee only. In these situations, the agent is not the Lessor's agent, even if by agreement the agent may receive compensation for services rendered, either in full or in part from the Lessor An agent acting only for a Lessee has the following affirmative obligations. *To the Lessee*: A fiduciary duty and a duty to protect and promote the Lessee's interests *To the Lessor and Other Parties*: A duty to deal fairly with the Lessor and other parties to the transation To All Parties A duty to disclose in writing any information known to the agent materially affecting the consideration to be paid by any Party or the value or desirability of the property An agent is not obligated to reveal to either Party any confidential information obtained from the other Party which does not involve the affirmative duties set forth above

(iii) *Agent Representing Both Lessor and Lessee* A real estate agent, either acting directly or through one or more associate licensee, can legally be the agent of both the Lessor and the Lessee in a transaction, but only with the knowledge and consent of both the Lessor and the Lessee. In a dual agency situation, the agent has the following affirmative obligations to both the Lessor and the Lessee a A fiduciary duty and a duty to protect and promote the interest of both Parties in the dealings with either Lessor or the Lessee b Other duties to the Lessor and the Lessee as stated above in subparagraphs (i) or (ii). In representing both Lessor and Lessee the agent may not without the express permission of the respective Party, disclose to the other Party that the Lessor will accept rent in an amount less than that indicated in the listing or that the Lessee is willing to pay a higher rent than that offered. The above duties of the agent in a real estate transaction do not relieve a Lessor or Lessee from the responsibility to protect their own interests. Lessor and Lessee should carefully read all agreements to assure that they adequately express their understanding of the transaction A real estate agent is a person qualified to advise about real estate If legal or tax advice is desired, consult a competent professional

(b) Brokers have no responsibility with respect to any default or breach hereof by either Party The Parties agree that no lawsuit or other legal proceeding involving any breach of duty, error or omission relating to this Lease may be brought against Broker more than one year after the Start Date and that the liability (including court costs and attorneys' fees), of any Broker with respect to any such lawsuit and/or legal proceeding shall not exceed the fee received by such Broker pursuant to this Lease; provided, however, that the foregoing limitation on each Broker's liability shall not be applicable to any gross negligence or willful misconduct of such Broker

(c) Lessor and Lessee agree to identify to Brokers as "Confidential" any communication or information given Brokers that is considered by such Party to be confidential

26. **No Right To Holdover.** Lessee has no right to retain possession of the Premises 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 Nothing contained herein shall be construed as consent by Lessor to any holding over by Lessee

27 **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

28 **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.

29 **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 the State in which the Premises are located Any litigation between the Parties hereto concerning this Lease shall be initiated in the county in which the Premises are located

Subordination; Attornment; Non-Disturbance.

30.1 **Subordination.** This Lease and any Option granted hereby shall be subject and subordinate to any ground lease, mortgage, deed of trust, or other hypothecation or security device (collectively, **"Security Device"**), now or hereafter placed upon the Premises, to any and all advances made on the security thereof, and to all renewals, modifications, and extensions thereof. Lessee agrees that the holders of any such Security Devices (in this Lease together referred to as **"Lender"**) shall have no liability or obligation to perform any of the obligations of Lessor under this Lease. Any Lender may elect to have this Lease and/or any Option granted hereby superior to the lien of its Security Device by giving written notice thereof to Lessee, whereupon this Lease and such Options shall be deemed prior to such Security Device, notwithstanding the relative dates of the documentation or recordation thereof.

30.2 **Attornment.** In the event that Lessor transfers title to the Premises, or the Premises are acquired by another upon the foreclosure or termination of a Security Device to which this Lease is subordinated (i) Lessee shall, subject to the non-disturbance provisions of Paragraph 30.3, attorn to such new owner, and upon request, enter into a new lease, containing all of the terms and provisions of this Lease, with such new owner for the remainder of the term hereof, or, at the election of the new owner, this Lease will automatically become a new lease between Lessee and such new owner, and (ii) Lessor shall thereafter be relieved of any further obligations hereunder and such new owner shall assume all of Lessor's obligations, except that such new owner shall not: (a) be liable for any act or omission of any prior lessor or with respect to events occurring prior to acquisition of ownership, (b) be subject to any offsets or defenses which Lessee might have against any prior lessor, (c) be bound by prepayment of more than one month's rent, or (d) be liable for the return of any security deposit paid to any prior lessor.

30.3 **Non-Disturbance.** With respect to Security Devices entered into by Lessor after the execution of this Lease, Lessee's subordination of this Lease shall be subject to receiving a commercially reasonable non-disturbance agreement (a **"Non-Disturbance Agreement"**) from the Lender which Non-Disturbance Agreement provides that Lessee's possession of the Premises, and this Lease, including any options to extend the term hereof, will not be disturbed so long as Lessee is not in Breach hereof and attorns to the record owner of the Premises. Further, within 60 days after the execution of this Lease, Lessor shall, if requested by Lessee, use its commercially reasonable efforts to obtain a Non-Disturbance Agreement from the holder of any pre-existing Security Device which is secured by the Premises. In the event that Lessor is unable to provide the Non-Disturbance Agreement within said 60 days, then Lessee may, at Lessee's option, directly contact Lender and attempt to negotiate for the execution and delivery of a Non-Disturbance Agreement.

30.4 **Self-Executing.** The agreements contained in this Paragraph 30 shall be effective without the execution of any further documents; provided, however, that, upon written request from Lessor or a Lender in connection with a sale, financing or refinancing of the Premises, Lessee and Lessor shall execute such further writings as may be reasonably required to separately document any subordination, attornment and/or Non-Disturbance Agreement provided for herein.

31 **Attorneys' Fees.** If any Party or Broker brings an action or proceeding involving the Premises 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 or Broker 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 or Broker 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 resulting Breach ($200 is a reasonable minimum per occurrence for such services and consultation).

32 **Lessor's Access; Showing Premises; Repairs.** Lessor and Lessor's agents shall have the right to enter the Premises at any time, in the case of an emergency, and otherwise at reasonable times after reasonable 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 as Lessor may deem necessary or desirable and the erecting, using and maintaining of utilities, services, pipes and conduits through the Premises and/or other premises as long as there is no material adverse effect to Lessee's use of the Premises. All such activities shall be without abatement of rent or liability to Lessee.

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

34 **Signs.** Lessor may place on the Premises ordinary "For Sale" signs at any time and ordinary "For Lease" signs during the last 6 months of the term hereof. Except for ordinary "for sublease" signs, Lessee shall not place any sign upon the Premises without Lessor's prior written consent. All signs must comply with all Applicable Requirements.

35. **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, 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.

36 **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 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. The failure to specify herein any particular condition to Lessor's consent shall not preclude the imposition by Lessor at the time of consent of such further or other conditions as are then reasonable with reference to the particular matter for which consent is being given. 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.

37 **Guarantor.**

37.1 **Execution.** The Guarantors, if any, shall each execute a guaranty in the form most recently published by the AIR Commercial Real Estate Association for use in the State of Arizona.

37.2 **Default.** It shall constitute a Default of the Lessee if any Guarantor fails or refuses, upon request to provide: (a) evidence of the execution of the guaranty, including the authority of the party signing on Guarantor's behalf to obligate Guarantor, and in the case of a corporate Guarantor, a certified copy of a resolution of its board of directors authorizing the making of such guaranty, (b) current financial statements, (c) an Estoppel Certificate, or (d) written confirmation that the guaranty is still in effect.

38 **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 during the term hereof.

39 **Options.** If Lessee is granted an Option, as defined below, then the following provisions shall apply:

39.1 **Definition. "Option"** shall mean: (a) the right to extend or reduce the term of or renew this Lease or to extend or reduce the term of or renew any lease that Lessee has on other property of Lessor, (b) the right of first refusal or first offer to lease either the Premises or other property of Lessor, (c) the right to purchase, the right of first offer to purchase or the right of first refusal to purchase the Premises or other property of Lessor.

39.2 **Options Personal To Original Lessee.** Any Option granted to Lessee in this Lease is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and, if requested by Lessor, with Lessee certifying that Lessee has no intention of thereafter assigning or subletting.

39.3 **Multiple Options.** In the event that Lessee has any multiple Options to extend or renew this Lease, a later Option cannot be exercised unless the prior Options have been validly exercised.

39.4 **Effect of Default on Options.**

(a) Lessee shall have no right to exercise an Option: (i) during the period commencing with the giving of any notice of Default and continuing until said Default is cured, (ii) during the period of time any Rent is unpaid (without regard to whether notice thereof is given Lessee), (iii) during the time Lessee is in Breach of this Lease, or (iv) in the event that Lessee has been given 3 or more notices of separate Default, whether or not

a Defaults are cured, during the term of the lease 12 month period immediately preceding the exercise of the Option

(b) The period of time within which an Option may be exercised shall not be extended or enlarged by reason of Lessee's inability to exercise an Option because of the provisions of Paragraph 39.4(a)

(c) An Option shall terminate and be of no further force or effect, notwithstanding Lessee's due and timely exercise of the Option, if after such exercise and prior to the commencement of the extended term or completion of the purchase, (i) Lessee fails to pay Rent for a period of 30 days after such Rent becomes due (without any necessity of Lessor to give notice thereof), or (ii) if Lessee commits a Breach of this Lease

40 **Multiple Buildings.** If the Premises are a part of a group of buildings controlled by Lessor, Lessee agrees that it will abide by and conform to all reasonable rules and regulations which Lessor may make from time to time for the management, safety, and care of said properties, including the care and cleanliness of the grounds and including the parking, loading and unloading of vehicles, and to cause its employees, suppliers, shippers, customers, contractors and invitees to so abide and conform Lessee also agrees to pay its fair share of common expenses incurred in connection with such rules and regulations

41 **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, Lessee, its agents and invitees and their property from the acts of third parties.

42 **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 by Lessee Lessee agrees to sign any documents reasonably requested by Lessor to effectuate any such easement rights, dedication, map or restrictions

43 **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 such 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

44 **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

45 **Conflict.** Any conflict between the printed provisions of this Lease and typewritten or handwritten provisions shall be controlled by the typewritten or handwritten provisions.

46. **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 all Parties hereto.

47 **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 obligations hereunder, 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

48 **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 AGREEMENT.**

49. **Mediation and Arbitration of Disputes.** An Addendum requiring the Mediation and/or the Arbitration of disputes between the Parties and/or Brokers arising out of this Lease ☐ is ☒ is not attached to this Lease.

50. **Americans with Disabilities Act.** Since compliance with the Americans with Disabilities Act (ADA) is dependent upon Lessee's specific use of the Premises, Lessor makes no warranty or representation as to whether or not the Premises comply with ADA or any similar legislation In the event that Lessee's use of the Premises requires modifications or additions to the Premises in order to be in ADA compliance, Lessee agrees to make any such necessary modifications and/or additions at Lessee's expense

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

ATTENTION: NO REPRESENTATION OR RECOMMENDATION IS MADE BY THE AIR COMMERCIAL REAL ESTATE ASSOCIATION OR BY ANY BROKER AS TO THE LEGAL SUFFICIENCY, LEGAL EFFECT, OR TAX CONSEQUENCES OF THIS LEASE OR THE TRANSACTION TO WHICH IT RELATES. THE PARTIES ARE URGED TO:

1. SEEK ADVICE OF COUNSEL AS TO THE LEGAL AND TAX CONSEQUENCES OF THIS LEASE.

2. RETAIN APPROPRIATE CONSULTANTS TO REVIEW AND INVESTIGATE THE CONDITION OF THE PREMISES. SAID INVESTIGATION SHOULD INCLUDE BUT NOT BE LIMITED TO: THE POSSIBLE PRESENCE OF HAZARDOUS SUBSTANCES, THE ZONING OF THE PREMISES, THE STRUCTURAL INTEGRITY, THE CONDITION OF THE ROOF AND OPERATING SYSTEMS, AND THE SUITABILITY OF THE PREMISES FOR LESSEE'S INTENDED USE.

WARNING: IF THE PREMISES IS LOCATED IN A STATE OTHER THAN ARIZONA, CERTAIN PROVISIONS OF THE LEASE MAY NEED TO BE REVISED TO COMPLY WITH THE LAWS OF THE STATE IN WHICH THE PREMISES IS LOCATED.

Note: If either Party to this Lease is a married individual, both spouses may need to execute this Lease in order to bind the marital community.

The parties hereto have executed this Lease at the place and on the dates specified above their respective signatures.

Executed at:	Executed at:
On: 5/21/13	On:
By **LESSOR:**	By **LESSEE:**
J & J AJAX I, LLC,	AGRICANN, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY	AN ARIZONA LIMITED LIABILITY COMPANY
By:	By:
Name Printed: JOHN MASCIANDARO, JR.	Name Printed: BRIGHAM A. BURTON
Title: MANAGER	Title: MANAGING MEMBER
By:	By:
Name Printed:	Name Printed:
Title:	Title:
Address: 2323 W. UNIVERSITY DRIVE	Address: 1023 E. BARLETT WAY
TEMPE, ARIZONA 85281	CHANDLER, ARIZONA 85249
Telephone: (602) 432-9851	Telephone: (480)862-4974
Facsimile: (___)	Facsimile: (___)
Federal ID No.	Federal ID No.
LESSOR'S BROKER:	**LESSEE'S BROKER:**
J & J COMMERCIAL PROPERTIES, INC.	RUCCI GROUP LLC
Att: JIM STOCKWELL, CHAD NEPPL, JEFF HAYS	Att: BRIGHAM BURTON
Title:	Title:
Address: 2323 W. UNIVERSITY DRIVE	Address: 7135 E. CAMELBACK ROAD, SUITE 230
TEMPE, ARIZONA 85281	SCOTTSDALE, ARIZONA 85251
Telephone:(480)966-2301	Telephone:(480)338-3612
Facsimile:(480)966-2307	Facsimile:(___)
Federal ID No.	Federal ID No.

NOTICE: These forms are often modified to meet changing requirements of law and industry needs. Always write or call to make sure you are utilizing the most current form: AIR Commercial Real Estate Association, 800 W 6th Street, Suite 800, Los Angeles, CA 90017. Telephone No. (213) 687-8777. Fax No.: (213) 687-8616.

ADDENDUM "1"
TO THAT LEASE AGREEMENT DATED AUGUST 19, 2013
BY AND BETWEEN
J & J AJAX I, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY (AS LESSOR)
AND
AGRICANN, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY (AS LESSEE)

51. **Rental Schedule.**
September 15, 2013 – October 14, 2013 = RENT ABATED
October 15, 2013 – October 31, 2013 = $2,848.00 + Rental Tax** (Pro-Rated)
November 1, 2013 – September 30, 2014 = $5,027.00 + Rental Tax** Monthly
October 1, 2014 – September 30, 2015 = $5,800.00 + Rental Tax** Monthly
October 1, 2015 – September 30, 2016 = $6,187.00 + Rental Tax** Monthly
October 1, 2016 – September 30, 2017 = $6,574.00 + Rental Tax** Monthly

Upon execution of the lease, Lessee will pre-pay rent for the period of November 1-30, 2013. Lessee hereby acknowledges that Lessee shall pay, on or before October 15, 2013, the pro-rated rent for the period October 15-31, 2013 in the amount stated above.

*Should Lessee default under any of the terms and conditions of the above-referenced Lease, the total amount of rent hereby abated shall immediately become due and peyable to Lessor, by Lessee, upon written notice to Lessee.

**City of Phoenix Rental Tax is currently 2.6% and subject to change.

52. **Tenant Improvements.**
Lessee accepts the Leased Premises in an "AS IS" condition.

53. **Warranty.**
Lessor to ensure all mechanical equipment, lights, plumbing, electrical and roof are in good working order upon commencement of this Lease, and shall warranty them for thirty (30) days from the date of early possession or lease commencement, whichever occurs first.

Lessor to ensure the HVAC systems are in good working order upon commencement of this Lease, and shall warranty them for six (6) months from the date of early possession or lease commencement, whichever occurs first.

54. **Condition Precedent.**
The Lessee intends to use the property for the purposes of growing medical marijuana for sale as a state licensed cultivator wholesaler. The Lessee and/or its assigns is a licensed agent of a medical marijuana facility and therefore has the legal rights to operate such a facility. The Lessee's offer and the subsequent lease is fully contingent upon the Lessee being able to legally operate a medical marijuana cultivation business by the city, county, and state. Should the city, county or state or other entity decide for whatever reason to dismiss, withdraw, deny, change, cancel or substitute a law or ordinance that would cause the Lessee's intended business (to operate a medical marijuana cultivation center) to be deemed illegal or out of compliance with any city, county, or state law then the lease shall immediately become null and void and the Lessee shall have full claim on its refundable security deposit and any unused rent paid to Lessor.

Lessee shall pay Lessor a Lease Cancellation fee calculated on the unused amortization of abated rent and leasing commission. Lessor and Lessee will determine what the penalization will be on an annual basis of this lease term. All funds shall be due and payable upon cancellation of lease.

55. **Change in Law.**
If the licensed business activity were to be declared illegal by court order and there was a change in the existing law(s), including revoking Proposition 203, then this lease shall become null and void. Any pre-paid rent received by Lessor prior to such declaration shall be considered earned and shall not be refundable to Lessee.

56. **Condition of Leased Premises.**
Should Lessee fail to obtain a license to operate a medical marijuana grow facility from the City of Phoenix and the State of Arizona /Arizona Department of Health Services ("ADHS"), this Lease Agreement should be terminated. Lessee agrees that Lessee shall remove any improvements done to the Premises at Lessee's sole cost and expense, and the Premises returned to its original condition.

57. **Disclosure.**
John Masciandaro is a member of J & J Ajax I, LLC and a licensed Real estate Agent in the State of Arizona, employed by J & J Commercial Properties, Inc. Masciandaro will be collecting a real estate commission in this transaction. J & J Commercial Properties, Inc. is acting solely in the real estate brokerage capacity and does not have any interest in J & J Ajax I, LLC.

Should any discrepancy exist between this Addendum and the Lease or any prior agreement, the terms and conditions of this Addendum shall prevail.

SIGNATURES ON THE FOLLOWING PAGE

LESSOR:

J & J AJAX I, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY
2323 W. University Drive
Tempe, Arizona 85281
(602) 432-9851

By: _____
John Mesciandaro, Jr., Manager

Date: 8/21/13

LESSEE:

AGRICANN, LLC,
AN ARIZONA LIMITED LIABILITY COMPANY
1023 E. Bartlett Way
Chandler, Arizona 85249
(480) 862-4974

By: _____
Brigham A. Burton, Managing Member

Date: Aug. 21, 2013

INDEMNIFICATION AND HOLD HARMLESS AGREEMENT

Under this Agreement, dated August ____, 2013, between **J & J AJAX I, LLC, an Arizona Limited Liability Company ("Lessor/Owner"), and J & J Commercial Properties, Inc., an Arizona Corporation** ("Broker/Agent") hereby agrees to the following:

1. **Use of Premises.** The Premises consists of an approximately **7,734 square foot building** located at **1434 N. 26th Avenue, Phoenix, AZ 85009 ("Premises")**. The intended use of the Premises by Lessee shall be for **medical marijuana cultivation as licensed by the State of Arizona and for no other purposes**.

2. **Indemnification and Hold Harmless.** Lessor/Owner and Trust shall defend, indemnify and hold harmless the Broker/Agent and their past, present and future officers, directors, designated broker, employees, agents, successors and assigns against any and all losses, damages, liability, claims (including third party claims), demands, detriments, costs, charges, expenses (including reasonable attorneys' fees), and causes of action, suits, proceedings, interest, penalties, costs and expenses incurred in enforcing rights under this Agreement resulting from, arising out of, or incurred by Broker/Agent in connection with, or otherwise with respect to, any action which might be taken by the Lessor/Owner as a result of any action by the State of Arizona, or any agency of the United States government, or that in any way arises from the use of the Premises including Broker's/Agent's own active or passive negligence, against the Lessor/Owner or Broker/Agent on account of and relative to the leasing or use of the premises located at the referenced address and as leased to **Agricann, LLC, an Arizona Limited Liability Company ("Lessee")**: In all cases, Lessor/Owner shall be considered primary.

3. **Allocation of Risk of Damage or Injury.** Lessor/Owner and Trust, as a material part of the consideration to Broker/Agent, hereby assumes all risk of damage to property of Lessor/Owner or injury to a person, in, upon or about the Premises arising from any cause and Lessor/Owner and Trust hereby waives all claims against Broker/Agent in respect thereof.

4. **Intent.** It is the intent of this Agreement that Broker/Agent's sole obligation hereunder shall be not to intentionally obstruct Lessor/Owner's leasing of the Premises for the use describe above. Lessor/Owner agrees to bear the risks described herein. Lessor/Owner acknowledges that Broker/Agent would not have allowed the use of the premises for the stated purposes without Lessor/Owner's acknowledgement and directive to Broker/Agent to do so.

5. **Miscellaneous.** This agreement may not be modified except by a written amendment, signed by Lessor/Owner, Trust and Broker/Agent. No employee or agent of Landlord has authority to modify or increase Broker/Agent's obligation hereunder. If any provisions hereof are held for any reason to be unenforceable, then such provisions shall be enforced in accordance with the intent of this Agreement to the extent permitted by law and the remaining provisions shall be enforceable in accordance with their terms.

LESSOR/OWNER:

J & J AJAX I, LLC,
an Arizona Limited Liability Company
2323 W. University Drive
Tempe, Arizona 85281
(602) 432-9851

By:_____
John Masciandaro, Jr., Manager

Date: 8/21/13

BROKER/AGENT:

J & J Commercial Properties, Inc.,
an Arizona Corporation
2323 W. University Drive
Tempe, Arizona 85281
(480) 966-2301

By:_____
Leroy Breinholt, President and
Designated Broker

Date:_____

By:_____
James Stockwell, Agent

Date:_____

By:_____
John Masciandaro, Agent

Date:_____

CONTINUED ON THE FOLLOWING PAGE

HOLD HARMLESS AND INDEMNIFICATION AGREEMENT

This **HOLD HARMLESS AND INDEMNIFICATION AGREEMENT** is entered into as of this ____ day of _____, 2013, by and between the following **INDEMNITOR**:

Agricann, LLC
an Arizona limited liability company ("Lessee")
1023 E. Bartlett Way
Chandler, AZ 85249

for the benefit of the following **INDEMNITEES**:

J & J AJAX I, LLC,
an Arizona limited liability company ("Lessor")
2323 W. University Drive
Tempe, AZ 85281

and

J & J Commercial Properties, Inc.,
an Arizona corporation ("Broker")
2323 W University Drive
Tempe, AZ 85281

WHEREAS:

A. **Agricann, LLC, an Arizona limited liability company** desires to lease from Lessor, the property located at **1434 N. 26th Avenue, Phoenix, AZ 85009** (the "Premises").

B. The business conducted from the Premises is the legal cultivation of medical marijuana, in accordance with the laws of the State of Arizona, and the rules promulgated thereunder by the Arizona Department of Health Services;

C. The Premises will **not be used as a dispensary site in any form or fashion,** and there is consequently no public traffic onto the site for that purpose;

D. The Lessor has been fully informed, and is aware, of the intended use for which the Premises will be utilized;

E. Lessor has made a determination that requires the delivery of this Hold Harmelss and Indemnification Agreement holding Lessor harmless and indemnified before a Lease can be entered to; and

F. Broker was the procuring cause in the Lessor/Lessee relationship between the parties with respect to the Premises, and Broker, J & J Commercial Properties, Inc, Leroy Breinholt/ Designated Broker, Jim Stockwell, Leasing Agent, John Masciandaro, Leasing Agent, Chad Neppl, Leasing Agent, and Jeff Hays, Leasing Agent requires to be held harmless and indemnified by the Indemnitors.

NOW THEREFORE:

Indemnitors shall indemnify and defend the Indemnitees, and their past, present and future officers, directors, employees, stockholders, agents, successors and assigns against, and shall hold them harmless from, any and all losses, damages, expenses, claims (including third party claims), charges, liability, actions, suits, proceedings, interest,

penalties, costs and expenses (including legal, consultant, accounting and or other professional fees, and fees and costs incurred in enforcing rights under this agreement) resulting from, arising out of, or incurred by any Indemnitee in connection with, or otherwise with respect to, any action which might be taken by either Indemnitor as a result of any action by the State of Arizona, or any agency of the United States government against the Indemnitors, or any other entity owned or controlled by them which is involved in any way with the cultivation of medical marijuana.

INDEMNITORS:

Agricann, LLC,
an Arizona limited liability company

Brigham A. Burton, Managing Member Date: Aug. 21, 2013

ARIZONA

OPTION(S) TO EXTEND
STANDARD LEASE ADDENDUM

Dated AUGUST 19, 2013

By and Between (Lessor) J & J AJAX I, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

By and Between (Lessee) AGRICANN, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

Address of Premises: 1434 N. 26TH AVENUE, PHOENIX, ARIZONA 85009

Paragraph 57

A **OPTION(S) TO EXTEND:**
Lessor hereby grants to Lessee the option to extend the term of this Lease for ONE (1) additional THIRTY-SIX (36) month period(s) commencing when the prior term expires upon each and all of the following terms and conditions.

(i) In order to exercise an option to extend, Lessee must give written notice of such election to Lessor and Lessor must receive the same at least FOUR (4) but not more than SIX (6) months prior to the date that the option period would commence, time being of the essence. If proper notification of the exercise of an option is not given and/or received, such option shall automatically expire. Options (if there are more than one) may only be exercised consecutively.

(ii) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease, are conditions of this Option.

(iii) Except for the provisions of this Lease granting an option or options to extend the term, all of the terms and conditions of this Lease except where specifically modified by this option shall apply.

(iv) This Option is personal to the original Lessee, and cannot be assigned or exercised by anyone other than said original Lessee and only while the original Lessee is in full possession of the Premises and without the intention of thereafter assigning or subletting.

(v) The monthly rent for each month of the option period shall be calculated as follows, using the method(s) indicated below: (Check Method(s) to be Used and Fill in Appropriately)

~~☐ I. Cost of Living Adjustment(s) (COLA)~~
~~a On (Fill in COLA Dates):~~

~~the Base Rent shall be adjusted by the change, if any, from the Base Month specified below, in the Consumer Price Index of the Bureau of Labor Statistics of the U.S. Department of Labor for (select one) ☐ CPI W (Urban Wage Earners and Clerical Workers) or ☐ CPI U (All Urban Consumers), for (Fill in Urban Area).~~

~~All Items (1982-1984 = 100), herein referred to as "CPI".~~

~~b The monthly rent payable in accordance with paragraph A.I.a. of this Addendum shall be calculated as follows: the Base Rent set forth in paragraph 1.5 of the attached Lease, shall be multiplied by a fraction the numerator of which shall be the CPI of the calendar month 2 months prior to the month(s) specified in paragraph A.I.a. above during which the adjustment is to take effect, and the denominator of which shall be the CPI of the calendar month which is 2 months prior to (select one) ☐ the first month of the term of this Lease as set forth in paragraph 1.3 ("Base Month") or ☐ (Fill in Other "Base Month").~~

~~The sum so calculated shall constitute the new monthly rent hereunder, but in no event, shall any such new monthly rent be less than the rent payable for the month immediately preceding the rent adjustment.~~

~~c In the event the compilation and/or publication of the CPI shall be transferred to any other governmental department or bureau or agency or shall be discontinued, then the index most nearly the same as the CPI shall be used to make such calculation. In the event that the Parties cannot agree on such alternative index, then the matter shall be submitted for decision to the American Arbitration Association in accordance with the then rules of said Association and the decision of the arbitrators shall be binding upon the parties. The cost of said Arbitration shall be paid equally by the Parties.~~

☑ **II. Market Rental Value Adjustment(s) (MRV)**
a On (Fill in MRV Adjustment Date(s)) OCTOBER 1, 2017

the Base Rent shall be adjusted to the "Market Rental Value" of the property as follows:
1) Four months prior to each Market Rental Value Adjustment Date described above, the Parties shall attempt to agree upon what the new MRV will be on the adjustment date. If agreement cannot be reached, within thirty days, then:

(a) Lessor and Lessee shall immediately appoint a mutually acceptable appraiser or broker to establish the new MRV within the next 30 days. Any associated costs will be split equally between the Parties, or

(b) Both Lessor and Lessee shall each immediately make a reasonable determination of the MRV and submit such determination, in writing, to arbitration in accordance with the following provisions:

(i) Within 15 days thereafter, Lessor and Lessee shall each select an ☐ appraiser or ☑ broker (**"Consultant"** - check one) of their choice to act as an arbitrator. The two arbitrators so appointed shall immediately select a third mutually acceptable Consultant to act as a third arbitrator.

(ii) The 3arbitrators shallwithin 30days ofthe appointmentof thethird arbitratorreach adecision asto whatthe actualMRV forthe Premises is, and whether Lessor's or Lessee's submitted MRV is the closest thereto. The decision of a majority of the arbitrators shall be binding on the Parties. The submitted MRV which is determined to be the closest to the actual MRV shall thereafter be used by the Parties.

(iii) If eitherof theParties failsto appointan arbitratorwithin thespecified 15days, thearbitrator timelyappointed byone ofthem shall reach a decision on his or her own, and said decision shall be binding on the Parties.

(iv) The entirecost ofsuch arbitrationshall bepaid bythe partywhose submittedMRV isnot selected,ie. theone thatis NOTthe closest to the actual MRV.

2) Notwithstanding the foregoing, the new MRV shall not be less than the rent payable for the month immediately preceding the rent adjustment.

b. Upon theestablishment ofeach NewMarket Rental Value:

1) the newMRV willbecome the new "Base Rent" forthe purpose of calculating any further Adjustments, and
2) the first month of each Market Rental Value term shall become the new "Base Month" for the purpose of calculating any further Adjustments.

~~☐ III. Fixed Rental Adjustment(s) (FRA)~~
~~The Base Rent shall be increased to the following amounts on the dates set forth below:~~

~~On (Fill in FRA Adjustment Date(s)):~~	~~The New Base Rent shall be:~~

B. NOTICE:
Unless specified otherwise herein, notice of any rental adjustments, other than Fixed Rental Adjustments, shall be made as specified in paragraph 23 of the Lease.

C. BROKER'S FEE:
No Broker Fee to be paid for renewals. ~~The Brokers shall be paid a Brokerage Fee for each adjustment specified above in accordance with paragraph 15 of the Lease.~~

ARIZONA

AIR COMMERCIAL REAL ESTATE ASSOCIATION
OPTION TO PURCHASE
Standard Lease Addendum

Dated AUGUST 19, 2013

By and Between (Lessor) J & J AJAX I, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

(Lessee) AGRICANN, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

Address of Premises: 1434 N. 26TH AVENUE, PHOENIX, ARIZONA 85009

Paragraph 58

(a) Lessor hereby grants to Lessee an option to purchase the Premises upon the terms and conditions herein set forth.

(b) Option Period 1: In order to exercise this option to purchase, Lessee must give written notice of the exercise of the option to Lessor during the period from MARCH 15, 2014 to JULY 15, 2014 (the "Option Period 1"), time being of the essence.

Option Period 2: In order to exercise this option to purchase, Lessee must give written notice of the exercise of the option to Lessor during the period from MARCH 15, 2015 to JULY 15, 2015 (the "Option Period 2"), time being of the essence.

If such notice is not so given, this option shall automatically expire. At the same time the option is exercised, Lessee must deliver to Lessor a cashier's check in the amount of $20,000.00 payable to OLD REPUBLIC TITLE CO., as and for the Deposit referred to in paragraph 4.1 of the Standard Offer, Agreement and Escrow Instructions for the Purchase of Real Estate.

(c) The provisions of paragraph 39, including those relating to Lessee's Default set forth in paragraph 39.4 of this Lease are conditions of this Option.

(d) If Lessee elects to exercise this option to purchase as provided above, the transfer of title to Lessee shall occur on the close of escrow on OR BEFORE SEPTEMBER 15, 2014 FOR OPTION PERIOD 1 AND SEPTEMBER 15, 2015 FOR OPTION PERIOD 2 and until that time the terms of this Lease shall remain in full force and effect.

(e) If Lessee elects to exercise this option to purchase, the purchase price to be paid by Lessee shall be $650,000.00 FOR OPTION PERIOD 1 AND $725,000.00 FOR OPTION PERIOD 2

(f) Within 10 days after this option to purchase is exercised, Lessor and Lessee shall give instructions to consummate the sale to OLD REPUBLIC TITLE CO. (MARIE VOLM), located at 2201 E. CAMELBACK ROAD, #118B, PHOENIX, ARIZONA 85016, (602)631-3811, who shall act as escrow holder, on the normal and usual escrow forms then used by such escrow holder (Lessee may change title company if so desired), as follows:

(i) Escrow shall close 40 or 30 days after the exercise of the option to purchase by Lessee.

(ii) Lessor shall deposit the check referred to in paragraph (b) into escrow upon opening thereof, with the balance of the purchase price to be deposited into escrow no later then 2:00 P.M. on the last business day prior to the expected closing date.

(iii) The parties agree to execute any additional instructions as are normal and usual.

(iv) The balance of the terms and conditions of sale shall be as set forth in the AIR Commercial Real Estate Association "STANDARD OFFER, AGREEMENT AND ESCROW INSTRUCTIONS FOR THE PURCHASE OF REAL ESTATE", a copy of which will be drafted upon Lessee exercising Option Period 1 or Option Period 2. ~~is attached hereto, except for the following and paragraphs 4.2, 5, 6, 9.1 a,b,c,d,e,h,j,k and l, and 20, which do not apply.~~

(g) Either Lessor or Lessee shall, upon request of the other, execute, acknowledge and deliver to the other a short form memorandum of this Lease for recording purposes. The Party requesting recordation shall be responsible for payment of any fees applicable thereto.

(h) In the event that this option to purchase is not exercised by Lessee in a timely fashion, the Lessee shall, upon request of Lessor, execute, acknowledge and deliver to Lessor a quit claim deed releasing Lessee's interest in such option. Lessor shall be responsible for the preparation of such deed and the payment of any fees applicable to the recording thereof.

WARNING:

LESSEE SHOULD NOT EXERCISE THIS OPTION UNTIL LESSEE HAS COMPLETED SUCH INVESTIGATION AS MAY BE APPROPRIATE, OBTAINED ANY NECESSARY FINANCING, AND IS OTHERWISE IN A POSITION TO COMPLETE SUCH PURCHASE.

INITIALS INITIALS

ARIZONA

ARBITRATION AGREEMENT

Standard Lease Addendum

Dated AUGUST 19, 2013

By and Between (Lessor) J & J AJAX I, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

(Lessee) AGRICANN, LLC, AN ARIZONA LIMITED LIABILITY COMPANY

Address of Premises: 1434 N. 26TH AVENUE, PHOENIX, ARIZONA 85009

Paragraph 59

A **ARBITRATION OF DISPUTES:**
Except as provided in Paragraph B below, the Parties agree to resolve any and all claims, disputes or disagreements arising under this Lease, including but not limited to any matter relating to Lessor's failure to approve an assignment, sublease or other transfer of Lessee's interest in the Lease under Paragraph 12 of this Lease, any other defaults by Lessor, or any defaults by Lessee by and through arbitration as provided below and irrevocably waive any and all rights to the contrary. The Parties agree to at all times conduct themselves in strict, full, complete and timely accordance with the terms hereof and that any attempt to circumvent the terms of this Arbitration Agreement shall be absolutely null and void and of no force or effect whatsoever.

B **DISPUTES EXCLUDED FROM ARBITRATION:**
The following claims, disputes or disagreements under this Lease are expressly excluded from the arbitration procedures set forth herein: 1. Disputes for which a different resolution determination is specifically set forth in this Lease, 2. All claims by either party which (a) seek anything other than enforcement or determination of rights under this Lease, or (b) are primarily founded upon matters of fraud, willful misconduct, bad faith or any other allegations of tortious action, and seek the award of punitive or exemplary damages, 3. Claims relating to (a) Lessor's exercise of any unlawful detainer rights pursuant to applicable law or (b) rights or remedies used by Lessor to gain possession of the Premises or terminate Lessee's right of possession to the Premises, all of which disputes shall be resolved by suit filed in the applicable court of jurisdiction, the decision of which court shall be subject to appeal pursuant to applicable law and 4. All claims arising under Paragraph 39 of this Lease.

C **APPOINTMENT OF AN ARBITRATOR:**
All disputes subject to this Arbitration Agreement, shall be determined by binding arbitration before: ☐ a retired judge of the applicable court of jurisdiction (e.g., the Superior Court of the State of Arizona) affiliated with Judicial Arbitration & Mediation Services, Inc. ("JAMS"), ☐ the American Arbitration Association ("AAA") under its commercial arbitration rules, ☐ _____
or as may be otherwise mutually agreed by Lessor and Lessee (the "Arbitrator"). Such arbitration shall be initiated by the Parties, or either of them, within ten (10) days after either party sends written notice (the "Arbitration Notice") of a demand to arbitrate by registered or certified mail to the other party and to the Arbitrator. The Arbitration Notice shall contain a description of the subject matter of the arbitration, the dispute with respect thereto, the amount involved, if any, and the remedy or determination sought. If the Parties have agreed to use JAMS they may agree on a retired judge from the JAMS panel. If they are unable to agree within ten days, JAMS will provide a list of three available judges and each party may strike one. The remaining judge (or if there are two, the one selected by JAMS) will serve as the Arbitrator. If the Parties have elected to utilize AAA or some other organization, the Arbitrator shall be selected in accordance with said organization's rules. In the event the Arbitrator is not selected as provided for above for any reason, the party initiating arbitration shall apply to the appropriate Court for the appointment of a qualified retired judge to act as the Arbitrator.

D **ARBITRATION PROCEDURE:**
1 **PRE-HEARING ACTIONS.** The Arbitrator shall schedule a pre-hearing conference to resolve procedural matters, arrange for the exchange of information, obtain stipulations, and narrow the issues. The Parties will submit proposed discovery schedules to the Arbitrator at the pre-hearing conference. The scope and duration of discovery will be within the sole discretion of the Arbitrator. The Arbitrator shall have the discretion to order a pre-hearing exchange of information by the Parties, including, without limitation, production of requested documents, exchange of summaries of testimony of proposed witnesses, and examination by deposition of parties and third-party witnesses. This discretion shall be exercised in favor of discovery reasonable under the circumstances. The Arbitrator shall have the right to issue subpoenas and subpoenas duces tecum to the extent allowed by applicable law.

2 **THE DECISION.** The arbitration shall be conducted in the city or county within which the Premises are located at a reasonably convenient site. Any Party may be represented by counsel or other authorized representative. In rendering a decision(s), the Arbitrator shall determine the rights and obligations of the Parties according to the substantive laws and the terms and provisions of this Lease. The Arbitrator's decision shall be based on the evidence introduced at the hearing, including all logical and reasonable inferences therefrom. The Arbitrator may make any determination and/or grant any remedy or relief that is just and equitable. The decision must be based on, and accompanied by, a written statement of decision explaining the factual and legal basis for the decision as to each of the principal controverted issues. The decision shall be conclusive and binding, and judgment on the award rendered by the Arbitrator may be entered by a court of competent jurisdiction. The Arbitrator may award costs, including without limitation, Arbitrator's fees and costs, attorneys' fees, and expert and witness costs, to the prevailing party, if any, as determined by the Arbitrator in his discretion.

Whenever a matter which has been submitted to arbitration involves a dispute as to whether or not a particular act or omission (other than a failure to pay money) constitutes a Default, the time to commence or cease such action shall be tolled from the date that the Notice of Arbitration is served through and until the date the Arbitrator renders his or her decision. Provided, however, that this provision shall NOT apply in the event that the Arbitrator determines that the Arbitration Notice was prepared in bad faith.

Whenever a dispute arises between the Parties concerning whether or not the failure to make a payment of money constitutes a default, the service of an Arbitration Notice shall NOT toll the time period in which to pay the money. The Party allegedly obligated to pay the money may, however elect to pay the money "under protest" by accompanying said payment with a written statement setting forth the reasons for such protest. If thereafter the Arbitrator determines that the Party who received said money was not entitled to such payment, said money shall be promptly returned to the Party who paid such money under protest together with interest thereon as defined in Paragraph 13.5. If a Party makes a payment "under protest" but no Notice of Arbitration is filed within thirty days, then such protest shall be deemed waived. (See also Paragraph 42 or 43)

INITIALS _____ INITIALS _____

EXHIBIT 4

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AGRIGANN, LLC, an Arizona limited liability company; and PAY NOW, LLC, an Arizona limited liability company,	)	
Plaintiffs	)	
vs.	)	Case No. CV2016-001283
NATURAL REMEDY PATIENT CENTER, LLC, an Arizona limited liability company; and DAVID SANCHEZ,	)	
Defendants.	)	
NATURAL REMEDY PATIENT CENTER, LLC, an Arizona limited liability company; and DAVID SANCHEZ,	)	
Counterclaimants,	)	
vs.	)	
AGRIGANN, LLC, an Arizona limited liability company,	)	
Counterdefendants.	)	

THE 30 (b)(6) DEPOSITION OF BRIGHAM BURTON

Scottsdale, Arizona
July 13, 2023
9:53 a.m.

REPORTED BY:
Tracy A. Reinke, RPR, CRR, CRC
Certified Court Reporter
Certificate No. 50823

PREPARED FOR:
THE COURT

(Original)

A. Correct.

Q. Okay. And -- and also if you need anything to drink or anything, feel free to take whatever is back behind you.

As far as the payments that were to be made, so that would be -- I think The Court -- I can't remember the amount that The Court said it was, but after these three years of $20,000 a month, plus the $400,000 balloon payment, what would -- obviously, Agrigann would receive these payments. What would NRPC receive in -- in return of those payments?

A. Well, they received -- NRPC received control of the facility, keys to the building, possession of the equipment, possession of the lease, sublease.

Q. Okay. And when you say control of the building, are you saying that they would obtain ownership of the building?

A. No.

Q. Or --

A. No, we were the tenant in the building. Agrigann was the tenant.

Q. Okay.

A. And -- or it might have been Natural Agriculture. I can't remember. But -- but in any event, Agrigann locked NRPC out of the building because NRPC was not making any of

to this agreement that were -- was later executed by the parties?

A. After this?

Q. Yes.

A. I don't believe there was any other agreements that were signed by the parties.

Q. Okay.

A. There was -- yeah, I don't think there was.

Q. Okay. Now, let's talk about the equipment. I know that's one of the main issues here. What equipment was supposed to be transferred over to NRPC after these payments were made?

A. Just any and all equipment in the building. There were lights, tables, computers. Lots of equipment used for grow operations.

Q. And how -- how was it determined what qualified as equipment and what didn't?

A. Well, just anything and everything that was in the building, basically. NRPC took possession of it and maintained possession of it, and Agrigann never took repossession of it.

Q. So would these be all items that were used for the -- for the grow operation essentially?

A. Yes.

Q. Okay. Did you or any of the representatives for

A. It would have been absolutely not needed, not -- we never -- Agrigann never reentered the building after this note agreement was entered into. We didn't go back and check on them or inspect the building. It was their operation from the time that this was entered into. So it wasn't like -- it wasn't like Agrigann was gonna go back and say, oh, we forgot our laptop or this or that.

Everything that was in the building, it was understood belonged to NRPC, or once they made their final payment on this note, would belong to NRPC. But as far as operations, NRPC was to operate the business however they saw fit.

Q. Okay. Now, what -- what -- you had mentioned that it was all the equipment in the building. What would you -- what is your understanding of the value of that equipment in total?

MR. WINDTBERG: Form.

THE WITNESS: I don't know. I'm not sure what the total. It's been, what, almost 10 years. I don't know. I don't know what the total value of it is. It could be $100,000, $250,000. I'm not quite sure. I don't know.

BY MR. NAGEOTTE:

Q. Would you say it was more than $5,000?

A. More than $5,000, sure.

MR. WINDTBERG: Form.

Q. Okay. And you had said that you did not step foot in the property after entering into what we'll call the breakup deal agreement, the -- the exhibit that's in front of you, correct?

A. Correct.

Q. Did you speak with the landlord, either of the representatives for the landlord, since entering into that agreement?

A. Yes.

Q. Okay. When did those conversations take place?

A. I was still emailing the landlords throughout -- so after this note agreement was entered into, all the way until the time we were, I guess, evicted because I wanted to make sure that NRPC was making the lease payments, as they had promised, and they were up to a point.

And so I was emailing the landlord to confirm, hey, did -- did Dave or Kathy drop off a rent check? You know, did they do what they said they were going to do, you know?

Q. And did the landlord -- sorry, strike that.

When did the eviction happen?

A. They locked -- they locked NRPC, I guess by virtue of the fact that Agrigann was still technically on the lease, locked Agrigann out of the building sometime, I believe, in either April or May of 2016.

Q. Are you familiar with this document, Brig?
A. Yes.
Q. What is it?
A. This is the lease between Agrigann and J&J Ajax I, LLC. So this would be the landlord that Agrigann leased the building for -- from.
Q. And this is the facility at 1434 North 26th Avenue, Phoenix, Arizona, 85009, correct?
A. Yes, that is correct.
Q. And under this lease, what was Agrigann's obligations to the landlord?
A. Well, it's --
Q. And let me --
A. Well, there's a lot. Do you want me to read it word for word?
Q. No. No. Save some time. What was the primary obligation?
A. Basically, the landlord just wanted to make sure that they were being paid the rent on time each month.
Q. Okay. And under this, were you the only lessee, under this agreement?
A. Under this agreement, yes, Agrigann LLC, I believe, was the only lessor -- lessee under this agreement.
Q. Did any other party now listed -- or did any other party that was not Agrigann -- did any party besides

responsible ultimately.

Q. Did Agrigann maintain any type of insurance under -- in compliance with this agreement?

A. I believe -- I believe we did. I don't recall. It's been so many years.

Q. Do you recall what type of insurance you were supposed to maintain?

A. I don't recall.

Q. But whatever is listed in this lease is what you were required -- as Agrigann was required to do, correct?

A. Yes, whatever the -- the document says what it says after all.

Q. Were you -- was Agrigann responsible for maintaining and registering for utilities and services, multi-services?

A. Yes, I believe so.

Q. Was that ever the responsibility of the landlord?

A. No, I don't think so. That would have been -- the utility expenses were ours to bear. So --

Q. Okay. Which utility expenses? Is it just electric? Was it water? Gas?

A. Yeah, any and all, right, electric, water, I don't recall if gas was or not. Pest control services. Yeah.

Q. So anything that's listed in this lease?

A. Yeah, if it's listed in the lease, then obviously

So NRPC may have stripped it of all the equipment before that. I don't know. I'm not sure what happened because I couldn't get in there.

Q. Are you characterizing the equipment as collateral, though, just to be clear?

A. Well, call it what you will. I am not sure -- it was -- we didn't have, like, an official UCC lien on it or anything like that. Maybe we should have. But --

Q. So if -- if NRPC -- when you guys entered into the agreement, if NRPC had defaulted, is it your position that Agrigann would have then retained ownership of the equipment?

MR. WINDTBERG: Form and foundation.

THE WITNESS: Well, if they had defaulted, then I -- yeah, technically, legally speaking, wouldn't we? I mean, I'm not an attorney, but maybe that's a legal right that we would have. Again, I'm not an attorney, so I don't know. But to reconfiscate the equipment and reassume the lease, I would think that would be within our rights to do so.

BY MR. NAGEOTTE:

Q. Okay. And that -- but -- and I'm not trying to get you on a legal question or anything. Your understanding as a businessperson -- and I don't want to call you a layperson, because you are more than that, but as a

businessperson, your understanding was it would be Agrigann's property until the final payment?

MR. WINDTBERG: Form and foundation.

THE WITNESS: Well, yeah, it -- and, again, I'm not an attorney, but my understanding of how it works in Arizona, whenever I've, let's say, bought a business, and there's a lender involved in helping to provide the loan, they have -- they hold the title to the assets being purchased, whether it's the vehicles, the equipment, et cetera, until the -- the loan balance is paid off in full. And then they release the title back to me as the -- as the rightful owner.

BY MR. NAGEOTTE:

Q. Got it.

A. So usually, yeah. Typically, the lender maintains control of the title until the final note payment is made. So that's, I guess -- again, I'm not an attorney, but it would seem that that would be -- it would be an argument that Agrigann was, in fact, as -- as the seller, financier in this joint venture buyout agreement, that Agrigann would retain those rights to title or possession or whatever else if there was a default. So --

Q. Did you ever -- so when you spoke with John, and in your communications with Jim, did you ever say to them, okay, we understand the status of the lease, what about the

equipment invested? What was the response to that?

A. Their response was they owned it. And according to the terms of the lease, they're right. Everything that's in there became theirs. So did NRPC take the equipment out before the lockout? Probably. Maybe. I don't know. All I know is I couldn't get in. I had no access to it. I was already locked out.

Q. Did you ask if the equipment was there?

A. Yeah, I -- I'm trying to recall if I did. I did make some -- some type of petition to John to ask if there was any way we could get in there and get what's ours out. He said, no. There was no -- it now belonged to the landlord, and he referenced the lease and so forth and Arizona law and blah, blah, blah. There was nothing I could do from that point.

Q. But did he confirm whether the equipment was there or not?

A. I don't -- I don't recall if he did or didn't. I didn't get into a discussion, hey, are the LED lights still there? Is our computer still there? You know, what's still in there? It didn't matter. It was irrelevant. Just like this whole deposition. I mean, the line of questioning, were there scissors in there or were there plastic pots? It doesn't matter. NRPC was responsible for making the payments. They didn't make them, and we lost everything.

2015. November 2015 to November 2018.

A. Oh, yeah, yeah. Agrigann would have been on -- would have most likely been on the utility, the APS account from -- if it was 2015, yeah, we probably still would have been there.

MR. NAGEOTTE: Okay. Let me -- this is the last exhibit.

(Burton Deposition Exhibit No. 6 was marked for identification by the reporter.)

BY MR. NAGEOTTE:

Q. Do you recognize this document?

A. Yeah. I mean, it looks like a utility bill.

Q. Okay. And this is a utility bill from who?

A. From APS to Agrigann.

Q. And for what property?

A. This would have been for the property at 1434 North 26th Avenue.

Q. And that's the subject property to this proceeding?

A. Yes.

Q. Okay. Who is listed as the account holder?

A. Agrigann.

Q. Okay. Is NRPC listed on here at all?

A. No, not that I can see.

Q. The amounts of the -- the amount due and owing

under this bill is how much?

A. $24,614.10.

Q. And what was the date of this bill?

A. It looks like this was May 16th, 2016.

Q. Was that after you had been evicted from the property?

A. I believe so because I think we were evicted, what, around May 6th. So maybe a week before, possibly.

Q. Roughly the same time frame?

A. Roughly the same time frame, yeah.

Q. Do you know if this $24,614.10 was ever paid?

A. I believe so. I don't -- I don't recall, but --

Q. If APS were to tell us that it was not --

A. Then that would be more liability for NRPC, more claim that we have against NRPC for not paying what was owed. NRPC was to make the electric bill. They were making the electric bill, to the point you can see where it says payment made on May 5th, thank you. That payment, I'm sure, was not made by Agrigann but by NRPC.

So, again, going back to performance of the parties, it was understood, and it was -- and performance of the parties show that NRPC was responsible for the utility bill, even if the formal names on the account weren't changed.

So, yeah, we might want to add this to the list of

liabilities that NRPC owes us, if they are claiming that this bill wasn't paid.

Q. So, again, this doesn't have NRPC's name on it anywhere. It only has Agrigann's name on it, correct?

A. Correct.

Q. Okay. All right. From February 2016 to November 2018, did Agrigann or yourself make any rent payments to the landlord for the property?

A. What was the question again?

Q. From February 2016 --

A. February 2016. Okay.

Q. -- to November 2018, so the end of this agreement time frame, did you or Agrigann make any rent payments to the landlord for the property?

A. Well, there was obviously the -- the too late, sorry, you have been locked out payment that I made, and I got a receipt for. And I think I had also made a payment just as a buffer, in case they did default. I wanted to be one month ahead just in case. So I do recall, I think I had made one extra payment in addition to what NRPC was making, just so we had a buffer there.

Q. Okay. So in that time frame -- but -- let me rephrase.

So in that time frame, only one payment that was made and received from the landlord, correct?

A. I believe so.

Q. Because the May 2016 one was not actually received from the landlord, correct?

A. Correct. Yeah, once May 16th, 2016, hit, or shortly before or thereafter, we were no longer -- we were no longer considered valid tenants of the property by J&J.

Q. Do you have any documents showing the one payment that was made and received by the landlord, copy of the check or received or anything like that?

A. Oh, the one where he accepted it?

Q. Correct.

A. I might. I will have to go back and look. I might have a copy of that somewhere.

Q. Do you remember roughly what month it was?

A. It might have been in February or March. NRPC was once again late making the rent payment, and I thought just to cover my butt, I would make the -- I would make an extra rent payment to John and Jim, again, as a buffer so that there wasn't any claim of default or not being current with the rent. So --

Q. And when you say cover your butt, you mean Agrigann?

A. Yes, because we didn't want to lose the lease rights to the building if NRPC defaulted.

Q. And how was that payment made, check, wire, cash?

took and retained possession of the equipment in October 2015?

A. Correct.

Q. How do you know that they retained possession of the equipment?

A. Well, because they had possession of it at the time that they entered into that agreement. We gave them the keys to the building. When I say retained it, they were -- they were in control of the equipment for as long as I'm aware. I never -- I never saw the equipment after that.

Q. So do you know for certain that NRPC retained possession of the equipment after May 2015 -- or May 2016?

A. Well, they were ultimately responsible for it at that point. After the buyout agreement, they agreed to buy the equipment, the lease rights, et cetera. The whole business operation was now under their control.

Q. So you are stating that based off an assumption or in deduction; is that correct?

A. What's your question?

Q. You are stating that based off of deduction and assumption, as opposed to anything -- anything that can be shown as hard evidence proving that?

A. Oh, if you are asking if I had proof that they took the equipment out of the building, and that they have -- and that they retained possession of it to this day,

I don't have that proof, no. All I know is that the equipment was sold to them. They had possession of it. Where it is at this point, I don't know where it is, but I don't have it. Agrigann doesn't have it.

Q. In your discovery responses, you similarly referred to NRPC's obligations under the sublease. Have you produced all -- any and all documents related to that sublease, including the actual sublease that you have?

A. Well, again, I -- I don't -- there wasn't a formal sublease agreement entered into, other than what's in the Jeff Finley draft documents that outlines what the parties understood the sublease arrangement to be. And I don't believe that there was a formal sublease agreement entered into with J&J. I may be mistaken, but I don't -- I don't believe there was anything formal put together on that.

Q. What constituted a default under the sublease by NRPC?

A. Not paying the rent. Not paying the note payments. Not paying utility bills. Any of those could be constituted a breach.

Q. As of the date of May 2016, who was the lessee of the building?

MR. WINDTBERG: Form and foundation.

THE WITNESS: As of May 2016, who was the lessee? Well, I don't know. At that point, John and Jim locked us

EXHIBIT 5

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AGRICANN, LLC, et al., Plaintiff, vs. NATURAL REMEDY PATIENT CENTER, LLC, et al., Defendant.	) CV2016-001283
NATURAL REMEDY PATIENT CENTER, LLC, Counterclaimant, vs. AGRICANN, LLC, Counterclaim Defendant	

DEPOSITION OF JOHN MASCIANDARO

Scottsdale, Arizona
July 25, 2023
10:01 a.m.

REPORTED BY:
JENNIFER HANSSEN, RPR
Certified Reporter
Certificate No. 50165

PREPARED FOR:
ASCII/CONDENSED

(Certified Copy)

industry at the time being extremely unique because it was brand-new, no. I mean, nothing in here that I would -- you know, we obviously wanted to put things in here to protect us, to protect our firm in the event things went sideways. Hold harmless, for example, change in law. I mean, obviously, it was very -- nobody really knew what the law was going to be when it came out and, to us, it seemed a little bit like the wild West. Nobody knew really what anything really meant for lack of a better way, but we just wanted to make sure we were covered in the event of anything unforeseen to come through that we weren't ready for. Other than that, it's pretty standard.

Q. And aside from Agricann, were there any other lessees on this lease?

A. Well, no. Agricann was the only one on this lease.

Q. All right. And under the terms of this lease, can you walk me through the obligations of the lessee, Agricann in this case?

A. Well, it was a turnkey deal, meaning it was pre-permitted and it had all the necessities for a grow facility that they would need. What else. They needed to provide insurance. They needed to pay rent on time. Other than that, it's -- I mean, I'm trying to remember.

I don't think -- I think that's basically it.

Q. Who was responsible for the utilities, so, like, electric, water, gas?

A. The tenant.

Q. And when you say insurance, what type of insurance are you talking about?

A. Liability insurance, making the landlord additionally insured, which is pretty standard. It's pretty much boilerplate.

Q. So like a general commercial liability?

A. Yes.

Q. How about repairs or maintenance to the facility?

A. That's usually negotiable, but I believe in this instance, it was entirely up to the tenant.

Q. Meaning what?

A. Meaning if there was a repair that needed to be done, if there was something that needed to be fixed, that the tenant would take care of it.

Q. So aside from utilities, monthly rent, repairs and insurance, Agricann had no other obligations to you as the landlord?

A. No, I think that's it. I believe that's it.

Q. Did Agricann ever fail to satisfy any of these obligations during the term of this lease?

Q. Can I interpret you. Just to be clear, what do you mean by "operators"?

A. Growers, people that were actually cultivating the plants, growing them and setting them out to -- for distribution. They were bringing in new people it seemed like almost every couple of months. There was an attempt to sublease it. We didn't have a problem with subleasing as per the terms of the lease, but they -- there was some mixup where they thought that they had a sublease agreement out, but they didn't even have a signature line for the landlord, and so we did not recognize that as an enforceable sublease, and it wasn't, because per the terms of the agreement, landlord has to sign off and agree on any kind of subtenant that comes in.

Q. So there was nothing in writing approving any type of sublease?

A. Nothing that we were able to sign or that we agreed to, but we did say that we would be fine with a sublease being -- now the sublease is still the -- it's still the responsibility of the initial lessor -- lessee, so if the subtenant comes in and doesn't pay, it's the tenant, the original lessee, who is on the hook for that payment.

That being said, we were fine with a

sublessee coming in, but, again, there was never any kind of formal documentation to provide that that we and the tenant could agree on. We just never received it.

Q. So would it be correct to characterize it as -- sorry. Let me rephrase that.

Would it be -- would you say that there was any type of understanding or agreement, not written but just through conversations, that Agricann was allowed to bring in a subtenant or that you guys were okay with them bringing in a subtenant assuming you approved it?

A. Well, I mean, I don't remember if there was conversations, but I know that we did not have an issue with it assuming that they provided everything that they needed to provide, certificate of insurance being one of them.

Q. Did they provide those items that you required them to provide?

A. I don't believe they did. I don't believe they did.

Q. Did you ever, you or anyone else for the company, whether it's Jim or someone else, speak to Brig or any other representative of Agricann about them bringing in new subtenants or new operators and them not having provided you with the proper documentation?

A. We may have. I don't recall 100 percent, but I believe we did.

Q. Are you familiar with the company I represent, NRPC?

A. Maybe. Like I said, there was so many moving parts that, you know, if you gave me specific names of people, I would probably recognize, but as far as the companies concerned, I don't recall.

Q. How about a company called Natural Agricultural?

A. I don't recall that.

Q. Are you aware of any documents -- aside from the lease, are you aware of any documents or other instruments that provide any legal or contractual obligations that were owed by -- sorry. Let me rephrase that.

Are you aware of any contractual or legal obligations that are owed -- that were owed by NRPC to either of the two entities that you are a member for?

A. No.

Q. As far as J&J is concerned or 26th Avenue or yourself, who was legally responsible for making the rent payments to the entity for the lease?

MR. WINDTBERG: Form.

Q. BY MR. NAGEOTTE: Go ahead.

A. As far as I knew, Agricann. Agricann was responsible.

Q. Was that your understanding at the time, so back in 2016?

A. Yes.

Q. Was that your -- is that your understanding today?

A. Yes.

Q. As far as you, J&J -- I'm just going to call them J&J because I can't --

A. That's fine.

Q. As far as you, J&J and 26th Avenue, LLC are concerned, who was legally responsible for making the monthly payment for utilities and insurance premiums under this lease?

MR. WINDTBERG: Form and foundation.

A. Agricann.

Q. BY MR. NAGEOTTE: Is that your understanding today?

A. Yes.

Q. Was that your understanding back in 2016?

A. Yes.

Q. So in the event that NRPC or another entity that was not Agricann or any other operator moved out of the facility at 26th Avenue, who would be responsible

Q. So is it more of a just get-to-know-you relationship or did you guys have any substantive conversations about the operations or how payments were being made?

A. I believe he was coming in to take over Agricann. However, because of the breach of the failure to pay rent and failure to provide insurance, I think he was -- we were going to breach -- Brig had breached the lease and we were going to draft a new lease with Imran. That's, I think, what we were doing.

Q. Did you ever meet with anybody by the name of -- during these visits to the property by the name of Shadi Zaki?

A. Shadi sounds familiar. Zaki or was it Martinez? You probably know. You would know. Shadi, we called him Shady, for whatever the reason, but, yeah, that sounds familiar. He was, I believe, an operator or he was the guy who knew -- God. He said he had an operation up in northern Arizona and he had been doing this for years, and so he was the new operator. That's the impression I got, if I remember correctly.

Q. And I don't mean to be -- just to let you know, I'm not trying to be rude by not answering your questions. We just are interested in your testimony.

A. I hear you. I hear you.

A. With Imran?
Q. Imran or Brig.
A. Well, with Brig, it was basically to inform him that he was in breach, at least when we're getting up to this time period. And Imran, who I guess knew Brig in some capacity, he as a physician was interested in this type of business, and obviously he had the wherewithal -- the financial wherewithal to be able to make the payments. We sat down with him. He told us what he wanted to do. We agreed and we drafted a new lease with him, Imran, as the lessee. Yeah, that's -- pretty sure that's how it went down.
Q. Did you guys end up moving forward with that?
A. We did. We had a lease with Imran.
Q. Did you have a chance to review that lease?
A. I saw the cover of it. I didn't go over it. It was Kazam Investments I believe it was. It was a new entity that was taking over.
Q. Do you have a hard copy of that at the office?
A. Yes, somewhere I do, I believe.
Q. Could you produce that for us?
A. Yeah.
Q. And I'm assuming that would have the updated schedule of rent payments for the property?
A. Yeah, I'm sure it would, yeah.

Q. Okay. Since the termination of the lease, so May 2016, did you have any conversations or communications -- specifically from when you guys terminated the lease, did you have any conversations or communications with any of the people we talked about, so Brig, Imran, any of the Sanchezes or Shadi?

A. I think once we entered into the lease with Imran, we kind of just decided to deal with him solely. Imran I think had said that he would kind of -- in so many ways, he said he'll handle or deal with Brig in some capacity. I assume that meant financially. I didn't know what he was really referring to. But at that point in time as a real estate company, we were more interested in getting our rental payments with an individual -- with an entity that could provide those rental payments as opposed to somebody who just didn't seem to be able to do that.

Q. Do you recall when that lease began with Imran?

A. I don't, but obviously once I get you the hard copy, it will have the date on it. It's probably right after May, probably in June maybe.

Q. Yeah, we'll take a look at those. That would be great.

All right. So let's get into the actual default and primary events.

A. I don't even know if I had heard of NRPC at that point.

Q. Is there a reason that none of the operators are listed on this notice of default?

A. Again, the operators were coming and going. We didn't really have a handle on who was growing the plants or not. Brig was our main contact.

(Exhibit No. 3 was marked.)

Q. BY MR. NAGEOTTE: Do you recognize this document?

A. Sure. Same deal only, what, two months later, three months later.

Q. So what's the date on this one?

A. May the 6th.

Q. Same year?

A. 2016.

Q. And it was addressed to?

A. Addressed to Brig.

Q. And again, is this informing him that Agricann's in default of the lease?

A. Correct.

Q. And when you said -- I don't know if we addressed this in the last letter too, but for both of these exhibits, so the two notices of default, what was the reason for the default?

A. Looks like failure to pay rent.
Q. And this May 6th one, was this the last default letter that was sent?
A. I believe it was.
Q. Prior to these two default notices, had Agricann been in default in any point in time, would you have sent them a notice of default?
A. Yes.
Q. Similar to this?
A. Yes.
Q. Do you recall when you last received a rent payment for this property while Agricann was the lessee?
A. I do not.
Q. Do you recall who the rent payment was generally from when rent payments were made under this lease?
A. Where they come from? Oftentimes, I would get them from the operator in cash in a manila envelope with 5s and 10s. I remember walking around thinking I was going to get robbed when I got out of there.
Q. And did you guys know that it was going to be coming in cash like that?
A. No. It was very unusual.
Q. Would you have been okay with that had you known that ahead of time?

Q. So is there a follow-up --
A. We lock them out.
Q. So was there a follow-up letter sent after this notice of default?
A. There was, I believe. If you want to take a look at this.
Q. I appreciate you bringing that. We will look at that afterwards.
But as far as you know, was there a follow-up letter sent after this notice of default?
A. Yes. We informed them that we were going to lock them out and then we posted a letter on top of their -- on their door informing them of the lockout.
Q. Do you mind if I look at that?
A. Yeah.
MR. NAGEOTTE: Do you want me to have Marlee make a copy real quick to look at these?
MR. WINDTBERG: Yeah, it might be easier.
MR. NAGEOTTE: Do you mind if we take a two-minute break?
THE WITNESS: Sure.
(Recessed from 10:55 a.m until 11:08 a.m.)
Q. BY MR. NAGEOTTE: So, John, just as we get back on the record, you had mentioned that a follow-up email had been sent to Brig notifying him of being locked out

and that the lease had been terminated. Is that correct?

A. I believe so, yes. Yeah.

Q. And did Brig respond to -- from the sending of the May 6th, 2016, notice of default letter to the eventual lockout, did Brig have any communications with you guys?

A. I don't recall.

Q. And by "you guys," I'm sorry, you and Jim or anyone else.

A. Yeah, I don't remember, to be honest with you.

Q. These emails and documents you provided myself and Mark here, they appear to be emails from that time frame; is that correct?

A. Yeah. They seem to be time stamped right around that time, yeah, May 12th.

Q. And are any of these emails between yourself, Jim -- or Jim with Brig?

A. I think so. I mean, yeah, these are -- these from -- one's from Jim on the 12th. One's from the 6th. So it's all around in that same time frame, that one-week period.

Q. Do you recall if Brig ever went to your guys's office to talk about the default or anything?

A. I don't think so. I don't remember, but I

attempt to cure the default within the time frame, but I don't think -- let me backtrack on that.

I think because of the multiple breaches that we were not obligated to have to work with him. But we weren't trying to just railroad the guy. I mean, what we wanted was our rent to be paid on time and have everything buttoned up that needs to be and to provide, you know, the cash flow for the building. And it was becoming apparent more and more as time went on that Agricann was not going to be that tenant to be able to do that, to be able to fulfill that.

Q. Now, ultimately, did Agricann get evicted from the property?

A. Yes, they were -- the lease was breached and once there's no more lease, there's no more tenant, so we gained control of the property.

Q. Was there a formal eviction where you went to court and everything?

A. No, we didn't go through court. We went through basically on the language of the lease.

Q. So as far as the eviction or termination of the lease is concerned, that's all encapsulated in the documents provided us here today?

A. Yes, I believe so, yeah.

Q. So as far as the eviction is concerned, no

entity that we sold it to now. I believe it was somebody -- what was his name? Ono, does that sound right? The guy's last name is Ono or something.

Q. Do you have documents?

A. I'm sure we have a purchase contract, closing documents and all that.

Q. Could you produce those if we requested them?

A. Yeah, I could definitely dig those up at some point.

Q. When did that sale take place, roughly?

A. '18. I don't know, maybe it was spring of 2018. Maybe it was prior to that. I don't -- it was right around -- it was either '17 or '18 and I believe it was in the spring.

Q. You referenced the lease that you entered into with Imran.

A. Right.

Q. And it was roughly right after the eviction; correct?

A. Correct.

Q. Would it have been, like, immediately after the eviction or was this something that took place several months after the eviction?

A. More like a month, two months maybe, if I remember. It wasn't six months to a year down the road.

It was in relative short order for the most part. Maybe six to eight weeks to 10 weeks.

Q. And do you know what the term of that lease was?

A. No, I don't remember. I'd have to look at it.

Q. Were there any issues with Imran or his entity as far as rent payments or them fulfilling their obligations?

A. No. Imran was a physician and he had the wherewithal -- the financial wherewithal to be able to pay the rent and he understood that that's what we were looking for first and foremost, and so, no, there was no issues with him -- I don't recall any issues with him.

Q. Do you remember if his lease was transferred over to the new owner of the building or signed over?

A. I don't remember what they did.

Q. Was he still a tenant at that point?

A. I think he was considered a tenant, yes, but he was not the operator. And that was a whole other can of worms I went down with another operator in there and so it was -- it was just a big mess, and we were extremely ecstatic to get away from it when we did. We didn't want anything to do with it.

Q. Do you know if Imran took hold of the equipment after taking ahold of the property?

was something in place with Imran and perhaps Brig to figure out what to do with the property, who owned it and what was his, what was going to stay and the whole deal, so we just kind of left it at that.

Q. I'm assuming -- so with that in mind, you guys didn't have an inventory in place of what was there?

A. We did not.

Q. Did anyone that was not you or your company or any of its representatives have access to the building between locking out Agricann and the new lessee taking over?

A. No, they should not have. And we had keys. We had the locks changed. I don't know prior to that if anybody else was coming in or going out, but as soon as the locks were changed, we were the only ones with access to it.

Q. And the sheriff, too?

A. And the sheriff's department.

Q. Just one more time just to be clear, your position regarding who was responsible at the end of the day for making monthly rent payments, insurance premium payments and utility payments for this property was who?

A. From the time we signed the lease with Agricann?

Q. Yes.

A. It was Agricann. They were the ones that were responsible for it.

Q. Is there any doubt in your mind that it was Agricann?

A. No. They're the ones that signed the lease. They're the ones that are on the hook.

MR. NAGEOTTE: All right. That's all the questions I've got for right now.

MR. WINDTBERG: I have just a few.

EXAMINATION

BY MR. WINDTBERG:

Q. You had been to the property before the lockout and then again after the lockout; right?

A. We had been -- yeah, we had been there and then we were there when the lockout occurred because we have to provide proof of ownership.

Q. When you went after the lockout, did it look like any personal property or equipment had been removed from the property?

A. I don't recall.

Q. After the lockout, did you tell Brig or Agricann that they could come collect the personal property or equipment?

A. I don't recall because, again, I believe we

EXHIBIT 7

Go to Previous View

Go to Table of Contents - Appendix

Your electricity bill

Bill date: July 29, 2015

Summary of what you owe

Amount owing on your previous bill		$12,020.43
Less	Payment made on Jul 8, thank you	-$12,020.43
Equals	Your balance forward	$0.00
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$12,058.98
Equals	**Total amount due**	**$12,058.98**

Due date: August 11, 2015

AGRICANN LLC

Your account number: 152397281

For service at: 1434 N 26 Ave

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Bill date **July 29, 2015**

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Total amount due: **$ 12,058.98**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date: **Aug 11, 2015**

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Your electricity bill
July 29, 2015

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU XS/S

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.78
Demand charge on-peak - delivery	$684.15
Demand charge off-peak - delivery	$328.70
Environmental benefits surcharge	$296.56
Federal environmental improvement surcharge	$11.56
System benefits charge	$315.06
Power supply adjustment*	$94.10
Metering*	$31.65
Meter reading*	$2.04
Billing*	$2.25
Generation of electricity on-peak*	$2,053.13
Generation of electricity off-peak*	$4,295.75
Demand charge on-peak - generation*	$1,319.17
Demand charge off-peak - generation*	$549.54
Federal transmission and ancillary services*	$301.15
Federal transmission cost adjustment*	$179.93
Four-Corners adjustment*	$200.69
LFCR adjustor	$155.68
Cost of electricity you used	$10,824.89

Taxes and fees

Regulatory assessment	$21.47
State sales tax	$619.54
County sales tax	$77.44
City sales tax	$298.71
Franchise fee	$216.93
Cost of electricity with taxes and fees	$12,058.98

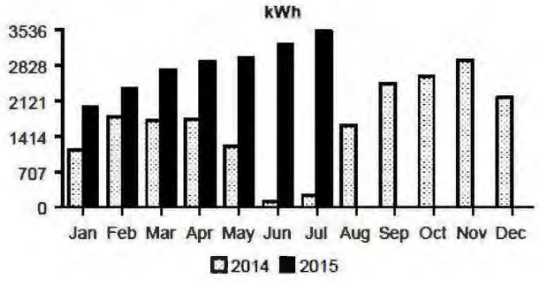
Total charges for electricity services **$12,058.98**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Jul 23	15302
Meter reading on Jun 23	13976
Read difference is	1326
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**106080**
On-peak meter reading on Jul 23	4005
On-peak meter reading on Jun 23	3642
Read difference is	363
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**29040**
Off-peak meter reading on Jul 23	11297
Off-peak meter reading on Jun 23	10334
Read difference is	963
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**77040**
On-peak demand meter reading	2 37
Multiplier applied to the read	80
Your total on-peak demand in kW	189 6
Your billed on-peak demand in kW	**190.0**
Off-peak demand meter reading	2 60
Multiplier applied to the read difference	80
Your total off-peak demand in kW	208 0
Your billed off-peak demand in kW	**208.0**

Average daily electricity use per month



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APP214

aps

Your electricity bill
July 29, 2015

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	30	32	30
Average outdoor temperature	95°	89°	95°
Your total use in kWh	106080	104800	8080
Percentage of on-peak use	27%	25%	36%
Your billed demand in kW	190.0	197.0	40.0
Your average daily cost	$401.96	$375.63	$56.79

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APS000198

APP215

Your electricity bill

Bill date: August 26, 2015

Summary of what you owe

Amount owing on your previous bill		$12,058.98
Less	Payment made on Aug 13, thank you	-$12,058.98
Equals	Your balance forward	$0.00
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$12,087.13
Equals	**Total amount due**	**$12,087.13**

Due date: September 9, 2015

AGRICANN LLC

Your account number: 152397281

For service at: 1434 N 26 Ave

Questions or Office Locations?
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Your account number **152397281**

Bill date **August 26, 2015**

Mailing address or phone number change?
Please call 602-371-6767.

Total amount due: **$ 12,087.13**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date: **Sep 9, 2015**

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Your electricity bill
August 26, 2015

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU XS/S

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$4.03
Demand charge on-peak - delivery	$679.41
Demand charge off-peak - delivery	$319.22
Environmental benefits surcharge	$293.78
Federal environmental improvement surcharge	$11.83
System benefits charge	$322.42
Power supply adjustment*	$96.29
Metering*	$33.76
Meter reading*	$2.18
Billing*	$2.40
Generation of electricity on-peak*	$2,002.22
Generation of electricity off-peak*	$4,474.18
Demand charge on-peak - generation*	$1,291.40
Demand charge off-peak - generation*	$488.77
Federal transmission and ancillary services*	$294.81
Federal transmission cost adjustment*	$176.14
Four-Corners adjustment*	$201.27
LFCR adjustor	$156.05
Cost of electricity you used	$10,850.16

Taxes and fees

Regulatory assessment	$21.52
State sales tax	$620.99
County sales tax	$77.62
City sales tax	$299.41
Franchise fee	$217.43
Cost of electricity with taxes and fees	$12,087.13

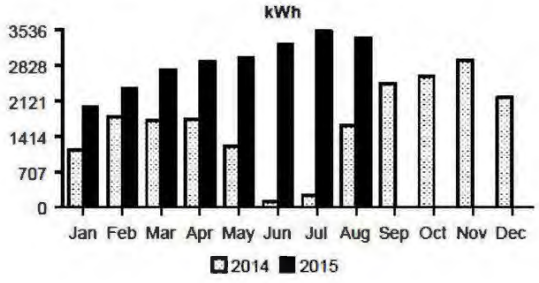
Total charges for electricity services **$12,087.13**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Aug 24	16659
Meter reading on Jul 23	15302
Read difference is	1357
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**108560**
On-peak meter reading on Aug 24	4359
On-peak meter reading on Jul 23	4005
Read difference is	354
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**28320**
Off-peak meter reading on Aug 24	12300
Off-peak meter reading on Jul 23	11297
Read difference is	1003
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**80240**
On-peak demand meter reading	2 32
Multiplier applied to the read	80
Your total on-peak demand in kW	185 6
Your billed on-peak demand in kW	**186.0**
Off-peak demand meter reading	2 31
Multiplier applied to the read difference	80
Your total off-peak demand in kW	184 8
Your billed off-peak demand in kW	**185.0**

Average daily electricity use per month



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APP218

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Your electricity bill
August 26, 2015

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	32	30	30
Average outdoor temperature	96°	95°	93°
Your total use in kWh	108560	106080	49920
Percentage of on-peak use	26%	27%	33%
Your billed demand in kW	186.0	190.0	110.0
Your average daily cost	$377.72	$401.96	$214.78

X

Go to Previous View

Go to Table of Contents - Appendix

Your electricity bill

Bill date: September 24, 2015

Summary of what you owe

Amount owing on your previous bill		$12,087.13
Less	Payment made on Sep 24, thank you	-$9,989.00
Equals	Your balance forward	$2,098.13
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$10,694.01
Equals	**Total amount due**	**$12,792.14**

Due date: October 7, 2015

AGRICANN LLC

Your account number: 152397281

For service at: 1434 N 26 Ave

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Your account number
152397281

Bill date
September 24, 2015

Mailing address or phone number change?
Please call 602-371-6767.

Total amount due: **$ 12,792.14**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date: **Oct 7, 2015**

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CHANDLER AZ 85249-3123

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Your electricity bill
September 24, 2015

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU XS/S

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.78
Demand charge on-peak - delivery	$687.71
Demand charge off-peak - delivery	$322.93
Environmental benefits surcharge	$298.65
Federal environmental improvement surcharge	$9.59
System benefits charge	$261.36
Power supply adjustment*	$78.06
Metering*	$31.65
Meter reading*	$2.04
Billing*	$2.25
Generation of electricity on-peak*	$1,606.30
Generation of electricity off-peak*	$3,635.55
Demand charge on-peak - generation*	$1,340.00
Demand charge off-peak - generation*	$512.55
Federal transmission and ancillary services*	$305.91
Federal transmission cost adjustment*	$182.77
Four-Corners adjustment*	$176.85
LFCR adjustor	$138.01
Cost of electricity you used	$9,595.96

Taxes and fees

Regulatory assessment	$22.68
State sales tax	$549.42
County sales tax	$68.68
City sales tax	$264.90
Franchise fee	$192.37
Cost of electricity with taxes and fees	$10,694.01

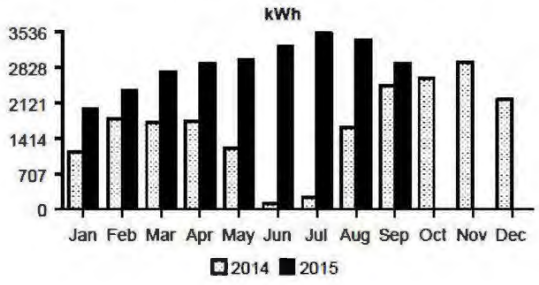
Total charges for electricity services **$10,694.01**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Sep 23	17759
Meter reading on Aug 24	16659
Read difference is	1100
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**88000**
On-peak meter reading on Sep 23	4643
On-peak meter reading on Aug 24	4359
Read difference is	284
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**22720**
Off-peak meter reading on Sep 23	13115
Off-peak meter reading on Aug 24	12300
Read difference is	815
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**65200**
On-peak demand meter reading	2.41
Multiplier applied to the read	80
Your total on-peak demand in kW	192 8
Your billed on-peak demand in kW	**193.0**
Off-peak demand meter reading	2.43
Multiplier applied to the read difference	80
Your total off-peak demand in kW	194.4
Your billed off-peak demand in kW	**194.0**

Average daily electricity use per month



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APP222

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Your electricity bill
September 24, 2015

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	30	32	32
Average outdoor temperature	90°	96°	90°
Your total use in kWh	88000	108560	79600
Percentage of on-peak use	26%	26%	27%
Your billed demand in kW	193.0	186.0	130.0
Your average daily cost	$356.46	$377.72	$277.58

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APP223

Bill date: October 29, 2015

AGRICANN LLC

Final notice to pay

Your electricity is about to be shut off.

*We have not received your payment of **$10,694.01**. The electric service is scheduled to be disconnected on **November 9**. If your power is shut off, we will restore it on the next business day after you pay all delinquent amounts and any additional deposit required. Your new charges of **$10,519.12** are due on November 12. To see if you qualify for a payment arrangement, visit aps.com or call our automated service at .*

Your account number: 152397281

For service at: 1434 N 26 Ave

Questions or Office Locations?
Call 602-371-6767,
Mon - Fri, 7:30am - 5:00pm
Website: aps.com
Para servicio en español llame al:
602-371-6861 (Phoenix)

Summary of what you owe

Amount owing on your previous bill		$12,792.14
Less	Payment made on Sep 24	-$1,896.07
Less	Payment made on Oct 12	-$202.06
Plus	Late charge (taxes included)	$178.77
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$10,340.35
Equals	**Total amount due**	**$21,213.13**

Due date for new charges: November 12, 2015

Ways to Pay Your Electric Bill

- Pay by phone or on-line at aps.com using a **free** electronic funds transfer. Go to aps.com or call 602-371-6555 or 800-253-9405.
- Pay your APS bill online or by phone through our payment vendor service using a credit card or debit card (in which case a processing fee will be assessed) by calling 866-261-2738.
- Pay your bill by cash or check at your nearest APS Customer Office. For a list of office locations, go to aps.com.

If you are experiencing financial hardship, contact Project SHARE, 602-267-4127 or call Community Information and Referral in Phoenix at 602-263-8856 or 800-352-3792 outside Maricopa County.

See page 2 for more information.

When paying in person, please bring the bottom portion of your bill.

aps

Your account number **152397281**

Bill date October 29, 2015

Mailing address or phone number change?
Please call 602-371-6767.

Total amount due: **$ 21,213.13**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date for new charges: **Nov 12, 2015**

If APS does not receive the past due amount of $10,694.01 before November 9, 2015, your electricity will be shut off.

AGRICANN LLC
1023 E BARTLETT WAY
CHANDLER AZ 85249-3123

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News from APS

The Regulatory Assessment, a cost imposed on customers of state-regulated utilities to help fund the Arizona Corporation Commission, increased in September from 0.1983% to 0.2364%. This change will increase typical monthly nonresidential bills by $0.09 to $0.38 based on average monthly consumption of 1,430 to 7,182 kilowatt hours. Your bill impact will vary with your actual energy usage and rate.

Things you need to know

Contacting APS

E-mail us at aps@aps.com
Call us at:
602-371-6767 (Phoenix) or 800-253-9407 (Other areas)
Mon-Fri, 7 30 am - 5:00 pm
Para servicio en español llame al:
602-371-686 (Phoenix) o 1-800-252-9410 (Otras areas)
Hearing impaired:
Dial 711 - AZ Relay Service
By mail: APS, Station 3200, PO Box 53933,
Phoenix AZ 85072-3933
Blue Stake - Before you dig, call:
811 or 800-782-5348 from anywhere within Arizona
Electrical emergencies other than power outages, call:
602-258-5483 (Phoenix) or 800-253-9408 (Other areas)

Important billing and collection information

Make checks payable to APS and mail to:
APS, PO Box 2906, Phoenix AZ 85062-2906

Credit and Collections:
602-371-7607 (Phoenix) or 1-800-253-9409 (Other areas)

All bills for utility services are due and payable no later than 15 days from the date of the bill. Any payments not received within this time-frame shall be considered delinquent and are subject to a late payment charge of 1.5% per month.

If your power is shut off for non-payment, you must pay all the delinquent amounts and a deposit or additional deposit before power is restored.
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. When we process your check electronically you will not receive your check back from your financial institution and funds may be withdrawn from your account on the same day we receive your payment.

Utility regulations and rates (Not an APS payment site)

Electricity regulations and rates are approved by:
Arizona Corporation Commission,
1200 W Washington, Phoenix AZ 85007
602-542-4251 (Phoenix) or 1-800-222-7000 (Other areas)
www.azcc.gov

aps
PO BOX 2906
PHOENIX AZ 85062-2906
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Your electricity bill
October 29, 2015

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU XS/S

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.78
Demand charge on-peak - delivery	$650.97
Demand charge off-peak - delivery	$310.16
Environmental benefits surcharge	$277.07
Federal environmental improvement surcharge	$9.73
System benefits charge	$265.16
Power supply adjustment*	$79.20
Metering*	$31.65
Meter reading*	$2.04
Billing*	$2.25
Generation of electricity on-peak*	$1,860.82
Generation of electricity off-peak*	$3,515.11
Demand charge on-peak - generation*	$1,124.77
Demand charge off-peak - generation*	$430.65
Federal transmission and ancillary services*	$256.77
Federal transmission cost adjustment*	$153.41
Four-Corners adjustment*	$171.62
LFCR adjustor	$133.45
Cost of electricity you used	$9,278.61

Taxes and fees

Regulatory assessment	$21.93
State sales tax	$531.25
County sales tax	$66.41
City sales tax	$256.14
Franchise fee	$186.01
Cost of electricity with taxes and fees	$10,340.35

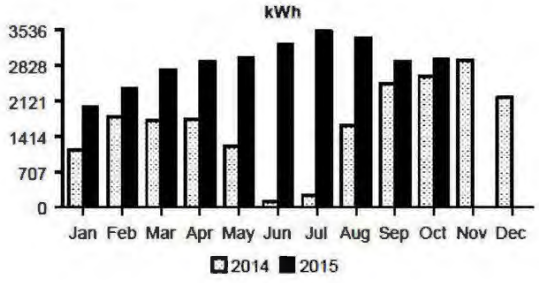
Total charges for electricity services **$10,340.35**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Oct 23	18875
Meter reading on Sep 23	17759
Read difference is	1116
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**89280**
On-peak meter reading on Oct 23	4972
On-peak meter reading on Sep 23	4643
Read difference is	329
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**26320**
Off-peak meter reading on Oct 23	13903
Off-peak meter reading on Sep 23	13115
Read difference is	788
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**63040**
On-peak demand meter reading	2 03
Multiplier applied to the read	80
Your total on-peak demand in kW	162.4
Your billed on-peak demand in kW	**162.0**
Off-peak demand meter reading	2 04
Multiplier applied to the read difference	80
Your total off-peak demand in kW	163 2
Your billed off-peak demand in kW	**163.0**

Average daily electricity use per month



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APP226

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Your electricity bill
October 29, 2015

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	30	30	30
Average outdoor temperature	83°	90°	81°
Your total use in kWh	89280	88000	79120
Percentage of on-peak use	29%	26%	26%
Your billed demand in kW	162.0	193.0	120.0
Your average daily cost	$344.67	$356.46	$291.45

X

Bill date: December 1, 2015

AGRICANN LLC

Final notice to pay

Your electricity is about to be shut off.

*We have not received your payment of **$10,340.35**. The electric service is scheduled to be disconnected on **December 10**. If your power is shut off, we will restore it on the next business day after you pay all delinquent amounts and any additional deposit required. Your new charges of **$8,365.49** are due on December 14. To see if you qualify for a payment arrangement, visit aps.com or call our automated service at .*

Your account number: 152397281

For service at: 1434 N 26 Ave

Questions or Office Locations?
Call 602-371-6767,
Mon - Fri, 7:30am - 5:00pm
Website: aps.com
Para servicio en español llame al:
602-371-6861 (Phoenix)

Summary of what you owe

Amount owing on your previous bill		$21,213.13
Less	Payment made on Nov 9	-$10,872.78
Plus	Late charge (taxes included)	$172.86
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$8,192.63
Equals	**Total amount due**	**$18,705.84**

Due date for new charges: December 14, 2015

Ways to Pay Your Electric Bill

- Pay by phone or on-line at aps.com using a **free** electronic funds transfer. Go to aps.com or call 602-371-6555 or 800-253-9405.
- Pay your APS bill online or by phone through our payment vendor service using a credit card or debit card (in which case a processing fee will be assessed) by calling 866-261-2738.
- Pay your bill by cash or check at your nearest APS Customer Office. For a list of office locations, go to aps.com.

If you are experiencing financial hardship, contact Project SHARE, 602-267-4127 or call Community Information and Referral in Phoenix at 602-263-8856 or 800-352-3792 outside Maricopa County.

See page 2 for more information.

When paying in person, please bring the bottom portion of your bill.

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Your account number **152397281**

Bill date **December 1, 2015**

Mailing address or phone number change?
Please call 602-371-6767.

Total amount due: **$ 18,705.84**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date for new charges: **Dec 14, 2015**

If APS does not receive the past due amount of $10,340.35 before December 10, 2015, your electricity will be shut off.

AGRICANN LLC
1023 E BARTLETT WAY
CHANDLER AZ 85249-3123

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News from APS

PSA charge to temporarily decrease beginning November 2015

The Arizona Corporation Commission (ACC) has authorized a decrease to the Power Supply Adjustor (PSA) beginning November 2015 until its annual reset in February 2016.

The PSA, which collects for fuel and purchased power costs beyond those in base rates, will decrease by $0.004936 to -$0.004049 per kilowatt hour. This change will decrease typical monthly bills for extra-small general service customers by $6.43 based on average monthly consumption of 1,430 kilowatt hours. For small general service customers with an average monthly consumption of 7,182 kilowatt hours the bill will decrease by $33.12.

Your bill impact will vary with your actual energy usage and service plan. For additional information on this charge or tips on how to reduce your energy usage, please visit aps.com or call (602) 371-6767 (metro Phoenix) or (800) 253-9407 (other areas).

Things you need to know

Contacting APS

E-mail us at aps@aps.com
Call us at:
602-371-6767(Phoenix) o800-253-9407(Other areas)
Mon-Fri, 7 30 am - 5:00 pm
Para servicio en español llame al:
602-371-686 (Phoenix) d -800-252-9410(Otras areas)
Hearing impaired:
Dial 711 - AZ Relay Service
By mail: APS, Station 3200, PO Box 53933,
Phoenix AZ 85072-3933
Blue Stake - Before you dig, call:
811 or 800-782-5348 from anywhere within Arizona
Electrical emergencies other than power outages, call:
602-258-5483 (Phoenix) or 800-253-9408 (Other areas)

Important billing and collection information

Make checks payable to APS and mail to:
APS, PO Box 2906, Phoenix AZ 85062-2906

Credit and Collections:
602-371-7607 (Phoenix) or 1-800-253-9409 (Other areas)

All bills for utility services are due and payable no later than 15 days from the date of the bill. Any payments not received within this time-frame shall be considered delinquent and are subject to a late payment charge of 1.5% per month.

If your power is shut off for non-payment, you must pay all the delinquent amounts and a deposit or additional deposit before power is restored.
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. When we process your check electronically you will not receive your check back from your financial institution and funds may be withdrawn from your account on the same day we receive your payment.

Utility regulations and rates (Not an APS payment site)

Electricity regulations and rates are approved by:
Arizona Corporation Commission,
1200 W Washington, Phoenix AZ 85007
602-542-4251 (Phoenix) or 1-800-222-7000 (Other areas)
www.azcc gov

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PO BOX 2906
PHOENIX AZ 85062-2906
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Your electricity bill
December 1, 2015

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU XS/S

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.91
Demand charge on-peak - delivery	$661.64
Demand charge off-peak - delivery	$315.92
Environmental benefits surcharge	$283.34
Federal environmental improvement surcharge	$9.80
System benefits charge	$267.06
Power supply adjustment*	-$364.09
Metering*	$32.71
Meter reading*	$2.11
Billing*	$2.33
Generation of electricity on-peak*	$1,142.31
Generation of electricity off-peak*	$2,658.43
Demand charge on-peak - generation*	$1,187.25
Demand charge off-peak - generation*	$467.63
Federal transmission and ancillary services*	$271.04
Federal transmission cost adjustment*	$161.94
Four-Corners adjustment*	$142.35
LFCR adjustor	$105.73
Cost of electricity you used	$7,351.41

Taxes and fees

Regulatory assessment	$17.38
State sales tax	$420.91
County sales tax	$52.61
City sales tax	$202.94
Franchise fee	$147.38
Cost of electricity with taxes and fees	$8,192.63

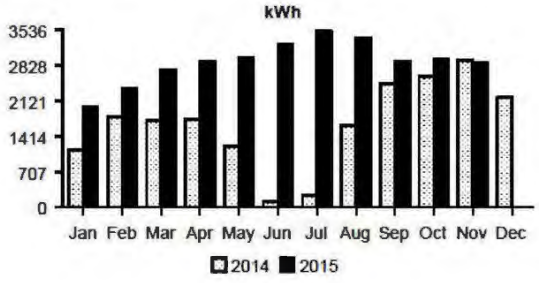
Total charges for electricity services **$8,192.63**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Nov 23	19999
Meter reading on Oct 23	18875
Read difference is	1124
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**89920**
On-peak meter reading on Nov 23	5238
On-peak meter reading on Oct 23	4972
Read difference is	266
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**21280**
Off-peak meter reading on Nov 23	14761
Off-peak meter reading on Oct 23	13903
Read difference is	858
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**68640**
On-peak demand meter reading	2.14
Multiplier applied to the read	80
Your total on-peak demand in kW	171.2
Your billed on-peak demand in kW	**171.0**
Off-peak demand meter reading	2.21
Multiplier applied to the read difference	80
Your total off-peak demand in kW	176.8
Your billed off-peak demand in kW	**177.0**

Average daily electricity use per month



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APP230

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Your electricity bill
December 1, 2015

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	31	30	29
Average outdoor temperature	66°	83°	71°
Your total use in kWh	89920	89280	85920
Percentage of on-peak use	24%	29%	31%
Your billed demand in kW	171.0	162.0	150.0
Your average daily cost	$264.27	$344.67	$277.00

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Your electricity bill

AGRICANN LLC

Bill date: January 7, 2016

Your account number: 152397281

For service at: 1434 N 26 Ave

Questions or Office Locations?
Call 602-371-6767,
Mon - Fri, 7:30am - 5:00pm
Website: aps.com
Para servicio en español llame al:
602-371-6861 (Phoenix)

Final notice reminder

*As a reminder, your account is delinquent and **subject to any previous notice of disconnect** unless payment arrangements have been made.*

Summary of what you owe

Amount owing on your previous bill		$18,705.84
Less	Payment made on Dec 9, thank you	-$10,513.21
Equals	Your balance forward	$8,192.63
Plus	Late charge (taxes included)	$136.95
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$7,397.40
Equals	**Total amount due**	**$15,726.98**

Due date: January 21, 2016

Stay ahead of your energy bill

Want to know when your energy bill reaches a specific dollar amount? How about a reminder before your bill is due? Or a confirmation when your payment has posted? We can send you billing and payment alerts via email, text or both. Learn more or sign up at aps.com/alerts.

See page 2 for more information.

When paying in person, please bring the bottom portion of your bill.

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Your account number **152397281**

Bill date **January 7, 2016**

Mailing address or phone number change?
Please call 602-371-6767.

Total amount due: **$ 15,726.98**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date: **Jan 21, 2016**

AGRICANN LLC
1023 E BARTLETT WAY
CHANDLER AZ 85249-3123

You can pay by phone or online at aps.com using a **free** electronic check, 24-hours-a-day, 7-days-a-week. Go to aps.com or call 602-371-6555 or 1-800-253-9405.

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News from APS

Bill Charge to Decrease Beginning in January 2016

The Arizona Corporation Commission (ACC) has approved a decrease to a charge on your bill that takes effect in January 2016.

The System Benefits Adjustor (SBA), currently set at $0.00 will decrease to -$0.000512 per kilowatt hour. The SBA decrease follows APS achieving its full funding obligations for the decommissioning of Palo Verde Nuclear Generating Station, Unit 2.

This change will lower typical average monthly general service bills by $0.75 based on average monthly consumption of 1,430 kWh or by $3.74 based on average monthly consumption of 7,182 kWh. Individual bill impacts will vary with customer's actual energy usage and rate. For more information or for tips on how to reduce your energy usage visit aps.com or call 800 253 9407 or 602 371 6767 (in Metro Phoenix).

Things you need to know

Contacting APS

E-mail us at aps@aps.com
Call us at:
602-371-6767 (Phoenix) o 800-253-9407 (Other areas)
Mon-Fri, 7 30 am - 5:00 pm
Para servicio en español llame al:
602-371-686 (Phoenix) o 1-800-252-9410 (Otras areas)
Hearing impaired:
Dial 711 - AZ Relay Service
By mail: APS, Station 3200, PO Box 53933,
Phoenix AZ 85072-3933
Blue Stake - Before you dig, call:
811 or 800-782-5348 from anywhere within Arizona
Electrical emergencies other than power outages, call:
602-258-5483 (Phoenix) or 800-253-9408 (Other areas)

Important billing and collection information

Make checks payable to APS and mail to:
APS, PO Box 2906, Phoenix AZ 85062-2906

Credit and Collections:
602-371-7607 (Phoenix) or 1-800-253-9409 (Other areas)

All bills for utility services are due and payable no later than 15 days from the date of the bill. Any payments not received within this time-frame shall be considered delinquent and are subject to a late payment charge of 1.5% per month.

If your power is shut off for non-payment, you must pay all the delinquent amounts and a deposit or additional deposit before power is restored.
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. When we process your check electronically you will not receive your check back from your financial institution and funds may be withdrawn from your account on the same day we receive your payment.

Utility regulations and rates (Not an APS payment site)

Electricity regulations and rates are approved by:
Arizona Corporation Commission,
1200 W Washington, Phoenix AZ 85007
602-542-4251 (Phoenix) or 1-800-222-7000 (Other areas)
www.azcc.gov

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PO BOX 2906
PHOENIX AZ 85062-2906
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Your electricity bill
January 7, 2016

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU XS/S

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.91
Demand charge on-peak - delivery	$650.97
Demand charge off-peak - delivery	$309.74
Environmental benefits surcharge	$277.07
Federal environmental improvement surcharge	$8.47
System benefits charge	$230.71
Power supply adjustment*	-$314.52
Metering*	$32.71
Meter reading*	$2.11
Billing*	$2.33
Generation of electricity on-peak*	$871.76
Generation of electricity off-peak*	$2,376.47
Demand charge on-peak - generation*	$1,124.77
Demand charge off-peak - generation*	$428.00
Federal transmission and ancillary services*	$256.77
Federal transmission cost adjustment*	$153.41
Four-Corners adjustment*	$127.69
LFCR adjustor	$95.47
Cost of electricity you used	$6,637.84

Taxes and fees

Regulatory assessment	$15.69
State sales tax	$380.05
County sales tax	$47.51
City sales tax	$183.24
Franchise fee	$133.07
Cost of electricity with taxes and fees	$7,397.40

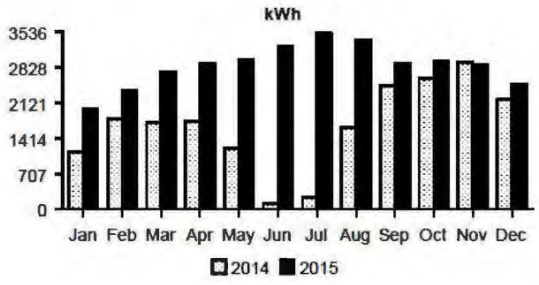
Total charges for electricity services **$7,397.40**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Dec 24	20970
Meter reading on Nov 23	19999
Read difference is	971
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**77680**
On-peak meter reading on Dec 24	5441
On-peak meter reading on Nov 23	5238
Read difference is	203
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**16240**
Off-peak meter reading on Dec 24	15528
Off-peak meter reading on Nov 23	14761
Read difference is	767
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**61360**
On-peak demand meter reading	2 02
Multiplier applied to the read	80
Your total on-peak demand in kW	161 6
Your billed on-peak demand in kW	**162.0**
Off-peak demand meter reading	2 03
Multiplier applied to the read difference	80
Your total off-peak demand in kW	162.4
Your billed off-peak demand in kW	**162.0**

Average daily electricity use per month



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APS000217

APP234

aps

Your electricity bill
January 7, 2016

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	31	31	33
Average outdoor temperature	55°	66°	60°
Your total use in kWh	77680	89920	73120
Percentage of on-peak use	21%	24%	24%
Your billed demand in kW	162.0	171.0	142.0
Your average daily cost	$238.62	$264.27	$216.79

X

Your electricity bill

Bill date: January 28, 2016

Summary of what you owe

Amount owing on your previous bill		$15,726.98
Less	Payment made on Jan 21, thank you	-$8,329.58
Less	Payment made on Jan 27, thank you	-$8,329.58
	Returned checks	$8,329.58
Equals	Your balance forward	$7,397.40
Plus	Returned check charge (taxes included)	$16.72
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$7,970.53
	Other charges	$16.72
Equals	**Total amount due**	**$15,401.37**

Due date: February 10, 2016

AGRICANN LLC

Your account number: 152397281

For service at: 1434 N 26 Ave

Questions or Office Locations?
Call 602-371-6767,
Mon - Fri, 7:30am - 5:00pm
Website: aps.com
Para servicio en español llame al:
602-371-6861 (Phoenix)

Stay ahead of your energy bill

Want to know when your energy bill reaches a specific dollar amount? How about a reminder before your bill is due? Or a confirmation when your payment has posted? We can send you billing and payment alerts via email, text or both. Learn more or sign up at aps.com/alerts.

See page 2 for more information.

When paying in person, please bring the bottom portion of your bill.

aps

Your account number **152397281**

Bill date **January 28, 2016**

Mailing address or phone number change?
Please call 602-371-6767.

Total amount due: **$ 15,401.37**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date: **Feb 10, 2016**

AGRICANN LLC
1023 E BARTLETT WAY
CHANDLER AZ 85249-3123

You can pay by phone or online at aps.com using a **free** electronic check, 24-hours-a-day, 7-days-a-week. Go to aps.com or call 602-371-6555 or 1-800-253-9405.

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News from APS

Bill Charge to Decrease Beginning in January 2016

The Arizona Corporation Commission (ACC) has approved a decrease to a charge on your bill that takes effect in January 2016.

The System Benefits Adjustor (SBA), currently set at $0.00 will decrease to -$0.000512 per kilowatt hour. The SBA decrease follows APS achieving its full funding obligations for the decommissioning of Palo Verde Nuclear Generating Station, Unit 2.

This change will lower typical average monthly general service bills by $0.75 based on average monthly consumption of 1,430 kWh or by $3.74 based on average monthly consumption of 7,182 kWh. Individual bill impacts will vary with customer's actual energy usage and rate. For more information or for tips on how to reduce your energy usage visit aps.com or call 800 253 9407 or 602 371 6767 (in Metro Phoenix).

Things you need to know

Contacting APS

E-mail us at aps@aps.com
Call us at:
602-371-6767 (Phoenix) o 800-253-9407 (Other areas)
Mon-Fri, 7 30 am - 5:00 pm
Para servicio en español llame al:
602-371-686 (Phoenix) o 1-800-252-9410 (Otras areas)
Hearing impaired:
Dial 711 - AZ Relay Service
By mail: APS, Station 3200, PO Box 53933,
Phoenix AZ 85072-3933
Blue Stake - Before you dig, call:
811 or 800-782-5348 from anywhere within Arizona
Electrical emergencies other than power outages, call:
602-258-5483 (Phoenix) or 800-253-9408 (Other areas)

Important billing and collection information

Make checks payable to APS and mail to:
APS, PO Box 2906, Phoenix AZ 85062-2906

Credit and Collections:
602-371-7607 (Phoenix) or 1-800-253-9409 (Other areas)

All bills for utility services are due and payable no later than 15 days from the date of the bill. Any payments not received within this time-frame shall be considered delinquent and are subject to a late payment charge of 1.5% per month.

If your power is shut off for non-payment, you must pay all the delinquent amounts and a deposit or additional deposit before power is restored.
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. When we process your check electronically you will not receive your check back from your financial institution and funds may be withdrawn from your account on the same day we receive your payment.

Utility regulations and rates (Not an APS payment site)

Electricity regulations and rates are approved by:
Arizona Corporation Commission,
1200 W Washington, Phoenix AZ 85007
602-542-4251 (Phoenix) or 1-800-222-7000 (Other areas)
www.azcc gov

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PO BOX 2906
PHOENIX AZ 85062-2906
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Your electricity bill
January 28, 2016

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU XS/S

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$4.16
Demand charge on-peak - delivery	$664.01
Demand charge off-peak - delivery	$315.10
Environmental benefits surcharge	$284.73
Federal environmental improvement surcharge	$9.38
System benefits charge	$255.66
Power supply adjustment*	-$348.53
Metering*	$34.82
Meter reading*	$2.24
Billing*	$2.48
Generation of electricity on-peak*	$1,047.83
Generation of electricity off-peak*	$2,580.97
Demand charge on-peak - generation*	$1,201.14
Demand charge off-peak - generation*	$462.35
Federal transmission and ancillary services*	$274.21
Federal transmission cost adjustment*	$163.83
System benefits adjustment	-$44.07
Four-Corners adjustment*	$138.95
LFCR adjustor	$102.86
Cost of electricity you used	$7,152.12

Taxes and fees

Regulatory assessment	$16.91
State sales tax	$409.49
County sales tax	$51.19
City sales tax	$197.44
Franchise fee	$143.38
Cost of electricity with taxes and fees	$7,970.53

Other charges and credits

Field call charge 01/20/2016	$16.72
Total other charges and credits	$16.72

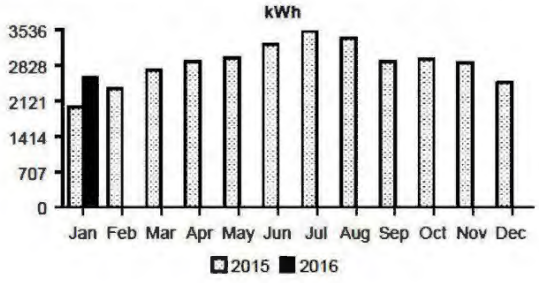
Total charges for electricity services **$7,987.25**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Jan 26	22046
Meter reading on Dec 24	20970
Read difference is	1076
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**86080**
On-peak meter reading on Jan 26	5685
On-peak meter reading on Dec 24	5441
Read difference is	244
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**19520**
Off-peak meter reading on Jan 26	16361
Off-peak meter reading on Dec 24	15528
Read difference is	833
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**66640**
On-peak demand meter reading	2.16
Multiplier applied to the read	80
Your total on-peak demand in kW	172 8
Your billed on-peak demand in kW	**173.0**
Off-peak demand meter reading	2.19
Multiplier applied to the read difference	80
Your total off-peak demand in kW	175 2
Your billed off-peak demand in kW	**175.0**

Average daily electricity use per month



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APS000221

APP238

aps

Your electricity bill
January 28, 2016

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	33	31	33
Average outdoor temperature	53°	55°	55°
Your total use in kWh	86080	77680	67040
Percentage of on-peak use	23%	21%	26%
Your billed demand in kW	173.0	162.0	119.0
Your average daily cost	$241.53	$238.62	$202.01

X

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APP239

Bill date: March 3, 2016

AGRICANN LLC

Final notice to pay

Your electricity is about to be shut off.

*We have not received your payment of **$7,971.37**. The electric service is scheduled to be disconnected on **March 14**. If your power is shut off, we will restore it on the next business day after you pay all delinquent amounts and any additional deposit required. Your new charges of **$8,452.27** are due on March 16. To see if you qualify for a payment arrangement, visit aps.com or call our automated service at .*

Your account number: 152397281

For service at: 1434 N 26 Ave

Questions or Office Locations?
Call 1-855-769-3729,
Mon - Fri, 7:30am - 5:00pm
Website: aps.com
Para servicio en español llame al:
602-371-6861 (Phoenix) o
1-800-252-9410 (Otras areas)

Ways to Pay Your Electric Bill

- Pay by phone or on-line at aps.com using a **free** electronic funds transfer. Go to aps.com or call 602-371-6555 or 800-253-9405.
- Pay your APS bill online or by phone through our payment vendor service using a credit card or debit card (in which case a processing fee will be assessed) by calling 866-261-2738.
- Pay your bill by cash or check at your nearest APS Customer Office. For a list of office locations, go to aps.com.

If you are experiencing financial hardship, contact Project SHARE, 602-267-4127 or call Community Information and Referral in Phoenix at 602-263-8856 or 800-352-3792 outside Maricopa County.

Summary of what you owe

Amount owing on your previous bill		$15,401.37
Less	Payment made on Feb 19	-$7,401.00
Less	Payment made on Mar 1	-$29.00
Plus	Late charge (taxes included)	$123.64
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$8,328.63
Equals	**Total amount due**	**$16,423.64**

Due date for new charges: March 16, 2016

See page 2 for more information.

When paying in person, please bring the bottom portion of your bill.

aps

Your account number **152397281**

Bill date **March 3, 2016**

Mailing address or phone number change?
Please call 1-855-769-3729.

Total amount due: **$ 16,423.64**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date for new charges: **Mar 16, 2016**

If APS does not receive the past due amount of $7,971.37 before March 14, 2016, your electricity will be shut off.

AGRICANN LLC
1023 E BARTLETT WAY
CHANDLER AZ 85249-3123

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News from APS

Changes to Bill Charges beginning February 2016

The Arizona Corporation Commission (ACC) has approved changes to two charges on your bill that take effect in February 2016.

The Renewable Energy Standard Adjustment (REAC), which funds renewable energy projects, decreased by $0.001705 to $0.009355 per kilowatt hour with a cap of $233.88 per month (or a $200.58 charge per month for customers with renewable systems installed after July 1, 2012). The REAC is combined with the Demand Side Management Adjustor and displays as "Environmental Benefits Surcharge" on your bill. The Power Supply Adjustor (PSA), which collects for fuel and purchased power costs beyond those in base rates, increased by $0.005727 to $0.001678 per kilowatt hour. The PSA increase is due in part to the temporary credit from this fall expiring.

Combined, these changes will increase average monthly business customer bills by $318.40 based on average monthly consumption of 62,238 kilowatt hours. Individual bill impacts will vary with customer's actual energy usage and rate. For more information or for tips on how to reduce your energy usage visit aps.com or call (602) 371-6767 (metro Phoenix) or (800) 253-9407 (other areas).

Things you need to know

Contacting APS

E-mail us at aps@aps.com
Call us at:
602-371-6767 (Phoenix) o800-253-9407 (Other areas)
Mon-Fri, 7 30 am - 5:00 pm
Para servicio en español llame al:
602-371-686 (Phoenix) d -800-252-9410 (Otras areas)
Hearing impaired:
Dial 711 - AZ Relay Service
By mail: APS, Station 3200, PO Box 53933,
Phoenix AZ 85072-3933
Blue Stake - Before you dig, call:
811 or 800-782-5348 from anywhere within Arizona
Electrical emergencies other than power outages, call:
602-258-5483 (Phoenix) or 800-253-9408 (Other areas)

Important billing and collection information

Make checks payable to APS and mail to:
APS, PO Box 2906, Phoenix AZ 85062-2906

Credit and Collections:
602-371-7607 (Phoenix) or 1-800-253-9409 (Other areas)

All bills for utility services are due and payable no later than 15 days from the date of the bill. Any payments not received within this time-frame shall be considered delinquent and are subject to a late payment charge of 1.5% per month.

If your power is shut off for non-payment, you must pay all the delinquent amounts and a deposit or additional deposit before power is restored.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. When we process your check electronically you will not receive your check back from your financial institution and funds may be withdrawn from your account on the same day we receive your payment.

Utility regulations and rates (Not an APS payment site)

Electricity regulations and rates are approved by:
Arizona Corporation Commission,
1200 W Washington, Phoenix AZ 85007
602-542-4251 (Phoenix) or 1-800-222-7000 (Other areas)
www.azcc gov

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PHOENIX AZ 85062-2906
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X

Your electricity bill
March 3, 2016

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU M

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.65
Delivery service charge	$730.91
Demand charge on-peak - delivery	$1,047.02
Demand charge off-peak - delivery	$470.95
Environmental benefits surcharge	$350.81
Federal environmental improvement surcharge	$8.75
System benefits charge	$238.55
Power supply adjustment*	$134.77
Metering*	$30.60
Meter reading*	$1.97
Billing*	$2.18
Generation of electricity on-peak*	$888.45
Generation of electricity off-peak*	$1,714.04
Demand charge on-peak - generation*	$884.18
Demand charge off-peak - generation*	$340.51
Federal transmission and ancillary services*	$266.28
Federal transmission cost adjustment*	$159.10
System benefits adjustment	-$41.12
Four-Corners adjustment*	$134.37
LFCR adjustor	$107.48
Cost of electricity you used	$7,473.45

Taxes and fees

Regulatory assessment	$17.67
State sales tax	$427.89
County sales tax	$53.49
City sales tax	$206.31
Franchise fee	$149.82
Cost of electricity with taxes and fees	$8,328.63

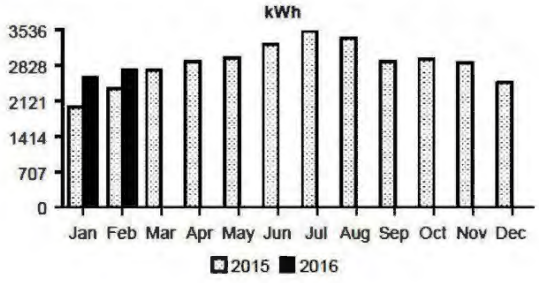
Total charges for electricity services **$8,328.63**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Feb 24	23050
Meter reading on Jan 26	22046
Read difference is	1004
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**80320**
On-peak meter reading on Feb 24	5958
On-peak meter reading on Jan 26	5685
Read difference is	273
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**21840**
Off-peak meter reading on Feb 24	17091
Off-peak meter reading on Jan 26	16361
Read difference is	730
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**58400**
On-peak demand meter reading	2.10
Multiplier applied to the read	80
Your total on-peak demand in kW	168.0
Your billed on-peak demand in kW	**168.0**
Off-peak demand meter reading	2.13
Multiplier applied to the read difference	80
Your total off-peak demand in kW	170.4
Your billed off-peak demand in kW	**170.0**

Average daily electricity use per month



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APP242

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Your electricity bill
March 3, 2016

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	29	33	29
Average outdoor temperature	63°	53°	64°
Your total use in kWh	80320	86080	69440
Percentage of on-peak use	27%	23%	26%
Your billed demand in kW	168.0	173.0	136.0
Your average daily cost	$287.19	$241.53	$240.46

X

Bill date: April 1, 2016

AGRICANN LLC

Final notice to pay

Your electricity is about to be shut off.

*We have not received your payment of **$8,328.63**. The electric service is scheduled to be disconnected on **April 12**. If your power is shut off, we will restore it on the next business day after you pay all delinquent amounts and any additional deposit required. Your new charges of **$8,744.81** are due on April 14. To see if you qualify for a payment arrangement, visit aps.com or call our automated service at .*

Summary of what you owe

Amount owing on your previous bill		$16,423.64
Less	Payment made on Mar 16	-$8,095.01
Plus	Late charge (taxes included)	$139.22
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$8,588.87
	Other charges	$16.72
Equals	**Total amount due**	**$17,073.44**

Due date for new charges: April 14, 2016

Your account number: 152397281

For service at: 1434 N 26 Ave

Questions or Office Locations?
Call 1-855-769-3729,
Mon - Fri, 7:30am - 5:00pm
Website: aps.com
Para servicio en español llame al:
602-371-6861 (Phoenix) o
1-800-252-9410 (Otras areas)

Ways to Pay Your Electric Bill

- Pay by phone or on-line at aps.com using a **free** electronic funds transfer. Go to aps.com or call 602-371-6555 or 800-253-9405.
- Pay your APS bill online or by phone through our payment vendor service using a credit card or debit card (in which case a processing fee will be assessed) by calling 877-409-2931.
- Pay your bill by cash or check at your nearest APS Customer Office. For a list of office locations, go to aps.com.

If you are experiencing financial hardship, contact Project SHARE, 602-267-4127 or call Community Information and Referral in Phoenix at 602-263-8856 or 800-352-3792 outside Maricopa County .

See page 2 for more information.

When paying in person, please bring the bottom portion of your bill.

aps

Your account number **152397281**

Bill date **April 1, 2016**

Mailing address or phone number change?
Please call 1-855-769-3729.

Total amount due: **$ 17,073.44**

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date for new charges: **Apr 14, 2016**

If APS does not receive the past due amount of $8,328.63 before April 12, 2016, your electricity will be shut off.

AGRICANN LLC
1023 E BARTLETT WAY
CHANDLER AZ 85249-3123

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Things you need to know

Contacting APS

E-mail us at aps@aps com
Call us at:
602-371-676 (Phoenix) o800-253-9407(Other areas)
Mon-Fri, 7 30 am - 5 00 pm
Para servicio en español llame al:
602-371-686 (Phoenix) o1-800-252-9410(Otras areas)
Hearing impaired:
Dial 711 - AZ Relay Service
By mail: APS, Station 3200, PO Box 53933,
Phoenix AZ 85072-3933
Blue Stake - Before you dig, call:
811 or 800-782-5348 from anywhere within Arizona
Electrical emergencies other than power outages, call:
602-258-5483 (Phoenix) or 800-253-9408 (Other areas)

Important billing and collection information

Make checks payable to APS and mail to:
APS, PO Box 2906, Phoenix AZ 85062-2906

Credit and Collections:
602-371-7607 (Phoenix) or 1-800-253-9409 (Other areas)

All bills for utility services are due and payable no later than 15 days from the date of the bill. Any payments not received within this time-frame shall be considered delinquent and are subject to a late payment charge of 1.5% per month.

If your power is shut off for non-payment, you must pay all the delinquent amounts and a deposit or additional deposit before power is restored.
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. When we process your check electronically you will not receive your check back from your financial institution and funds may be withdrawn from your account on the same day we receive your payment.

Utility regulations and rates (Not an APS payment site)

Electricity regulations and rates are approved by:
Arizona Corporation Commission,
1200 W. Washington, Phoenix AZ 85007
602-542-4251 (Phoenix) or 1-800-222-7000 (Other areas)
www.azcc.gov

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PO BOX 2906
PHOENIX AZ 85062-2906
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X

Your electricity bill
April 1, 2016

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU M

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.65
Delivery service charge	$770.22
Demand charge on-peak - delivery	$1,040.69
Demand charge off-peak - delivery	$477.94
Environmental benefits surcharge	$349.42
Federal environmental improvement surcharge	$9.23
System benefits charge	$251.38
Power supply adjustment*	$142.02
Metering*	$30.60
Meter reading*	$1.97
Billing*	$2.18
Generation of electricity on-peak*	$1,034.90
Generation of electricity off-peak*	$1,739.87
Demand charge on-peak - generation*	$873.66
Demand charge off-peak - generation*	$352.53
Federal transmission and ancillary services*	$263.11
Federal transmission cost adjustment*	$157.20
System benefits adjustment	-$43.34
Four-Corners adjustment*	$138.91
LFCR adjustor	$110.84
Cost of electricity you used	$7,706.98

Taxes and fees

Regulatory assessment	$18.22
State sales tax	$441.26
County sales tax	$55.16
City sales tax	$212.75
Franchise fee	$154.50
Cost of electricity with taxes and fees	$8,588.87

Other charges and credits

Field call charge 03/15/2016	$16.72
Total other charges and credits	$16.72

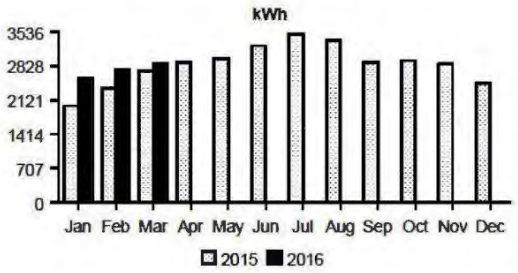
Total charges for electricity services **$8,605.59**

* *These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Mar 24	24108
Meter reading on Feb 24	23050
Read difference is	1058
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**84640**
On-peak meter reading on Mar 24	6276
On-peak meter reading on Feb 24	5958
Read difference is	318
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**25440**
Off-peak meter reading on Mar 24	17832
Off-peak meter reading on Feb 24	17091
Read difference is	741
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**59280**
On-peak demand meter reading	2.08
Multiplier applied to the read	80
Your total on-peak demand in kW	166.4
Your billed on-peak demand in kW	**166.0**
Off-peak demand meter reading	2.20
Multiplier applied to the read difference	80
Your total off-peak demand in kW	176.0
Your billed off-peak demand in kW	**176.0**

Average daily electricity use per month



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APS000229

APP246

aps

Your electricity bill
April 1, 2016

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	29	29	29
Average outdoor temperature	69°	63°	68°
Your total use in kWh	84640	80320	80240
Percentage of on-peak use	30%	27%	28%
Your billed demand in kW	166.0	168.0	159.0
Your average daily cost	$296.16	$287.19	$274.80

X

APS000230

APP247

Your electricity bill

AGRICANN LLC

Bill date: April 27, 2016

Your account number: 152397281

For service at: 1434 N 26 Ave

Final notice reminder

*As a reminder, your account is delinquent and **subject to any previous notice of disconnect** unless payment arrangements have been made.*

Questions or Office Locations?
Call 1-855-769-3729,
Mon - Fri, 7:30am - 5:00pm
Website: aps.com
Para servicio en español llame al:
602-371-6861 (Phoenix) o
1-800-252-9410 (Otras areas)

Summary of what you owe

Amount owing on your previous bill		$17,073.44
Less	Payment made on Apr 18, thank you	-$8,484.57
	Returned checks	$8,484.57
Equals	Your balance forward	$17,073.44
Plus	Returned check charge (taxes included)	$16.72
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$8,063.92
	Other charges	$16.72
Equals	**Total amount due**	**$25,170.80**

Due date: May 10, 2016

Want to optimize your energy use and save money? APS has a rebate for that.

Upgrading to energy-efficient equipment is one of the quickest, most cost-effective ways to reduce operating costs. And our Solutions for Business program is here to make it easy with rebates for energy-saving upgrades. From lighting to HVAC and more, we have a rebate for you.

Put our rebates to work for your business. Call (866) 333-4735 or visit aps.com/BetterBottomLine and start saving today.

See page 2 for more information.

When paying in person, please bring the bottom portion of your bill.

aps

Your account number 152397281

Bill date April 27, 2016

Mailing address or phone number change?
Please call 1-855-769-3729.

Total amount due: $ 25,170.80

Your optional contribution to SHARE: $_____

Total amount paid: $_____

Due date: May 10, 2016

AGRICANN LLC
1023 E BARTLETT WAY
CHANDLER AZ 85249-3123

Please remember to pay your APS bill with cash, a cashier's check or money order.
When paying in person, please bring the bottom portion of your bill.

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aps

News from APS

Change to bill charge beginning April 2016

The Arizona Corporation Commission (ACC) has approved an increase to the Environmental Improvement Surcharge (EIS) effective April.

The EIS, which is for mandated environmental improvements at generation facilities increased by $0.000051 to $0.000160 per kWh. This change will increase typical monthly business customer bills by $3.23 based on average monthly consumption of 62,238 kilowatt hours

Individual bill impacts will vary with customer's actual energy usage and rate. For more information or for tips on how to reduce your energy usage visit aps.com or call (602) 371-6767 (metro Phoenix) or (800) 253-9407 (other areas).

Things you need to know

Contacting APS

E-mail us at aps@aps.com
Call us at:
602-371-6767(Phoenix) o800-253-9407(Other areas)
Mon-Fri, 7 30 am - 5:00 pm
Para servicio en español llame al:
602-371-686 (Phoenix) d-800-252-9410(Otras areas)
Hearing impaired:
Dial 711 - AZ Relay Service
By mail: APS, Station 3200, PO Box 53933,
Phoenix AZ 85072-3933
Blue Stake - Before you dig, call:
811 or 800-782-5348 from anywhere within Arizona
Electrical emergencies other than power outages, call:
602-258-5483 (Phoenix) or 800-253-9408 (Other areas)

Important billing and collection information

Make checks payable to APS and mail to:
APS, PO Box 2906, Phoenix AZ 85062-2906

Credit and Collections:
602-371-7607 (Phoenix) or 1-800-253-9409 (Other areas)

All bills for utility services are due and payable no later than 15 days from the date of the bill. Any payments not received within this time-frame shall be considered delinquent and are subject to a late payment charge of 1.5% per month.

If your power is shut off for non-payment, you must pay all the delinquent amounts and a deposit or additional deposit before power is restored.
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. When we process your check electronically you will not receive your check back from your financial institution and funds may be withdrawn from your account on the same day we receive your payment.

Utility regulations and rates (Not an APS payment site)

Electricity regulations and rates are approved by:
Arizona Corporation Commission,
1200 W Washington, Phoenix AZ 85007
602-542-4251 (Phoenix) or 1-800-222-7000 (Other areas)
www.azcc gov

aps
PO BOX 2906
PHOENIX AZ 85062-2906
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X

Your electricity bill
April 27, 2016

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU M

Meter number: DP7681
Meter reading cycle: 15

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.65
Delivery service charge	$706.16
Demand charge on-peak - delivery	$1,028.03
Demand charge off-peak - delivery	$462.80
Environmental benefits surcharge	$346.63
Federal environmental improvement surcharge	$12.42
System benefits charge	$230.47
Power supply adjustment*	$130.21
Metering*	$30.60
Meter reading*	$1.97
Billing*	$2.18
Generation of electricity on-peak*	$797.33
Generation of electricity off-peak*	$1,699.95
Demand charge on-peak - generation*	$852.61
Demand charge off-peak - generation*	$326.49
Federal transmission and ancillary services*	$256.77
Federal transmission cost adjustment*	$153.41
System benefits adjustment	-$39.73
Four-Corners adjustment*	$129.90
LFCR adjustor	$104.07
Cost of electricity you used	$7,235.92

Taxes and fees

Regulatory assessment	$17.11
State sales tax	$414.29
County sales tax	$51.79
City sales tax	$199.75
Franchise fee	$145.06
Cost of electricity with taxes and fees	$8,063.92

Other charges and credits

Field call charge 04/14/2016	$16.72
Total other charges and credits	$16.72

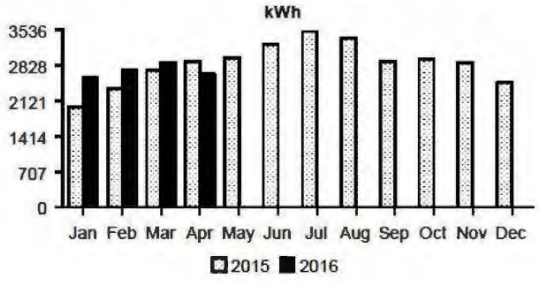
Total charges for electricity services **$8,080.64**

* *These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on Apr 22	25078
Meter reading on Mar 24	24108
Read difference is	970
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**77600**
On-peak meter reading on Apr 22	6521
On-peak meter reading on Mar 24	6276
Read difference is	245
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**19600**
Off-peak meter reading on Apr 22	18556
Off-peak meter reading on Mar 24	17832
Read difference is	724
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**57920**
On-peak demand meter reading	2 02
Multiplier applied to the read	80
Your total on-peak demand in kW	161 6
Your billed on-peak demand in kW	**162.0**
Off-peak demand meter reading	2 04
Multiplier applied to the read difference	80
Your total off-peak demand in kW	163 2
Your billed off-peak demand in kW	**163.0**

Average daily electricity use per month



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APS000233

APP250

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Your electricity bill
April 27, 2016

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	29	29	29
Average outdoor temperature	71°	69°	75°
Your total use in kWh	77600	84640	84880
Percentage of on-peak use	25%	30%	26%
Your billed demand in kW	162.0	166.0	180.0
Your average daily cost	$278.06	$296.16	$295.02

X

Your final bill

Bill date: May 16, 2016

AGRICANN LLC

Your account number: 152397281

For service at: 1434 N 26 Ave

Questions or Office Locations?
Call 1-855-769-3729,
Mon - Fri, 7:30am - 5:00pm
Website: aps.com
Para servicio en español llame al:
602-371-6861 (Phoenix) o
1-800-252-9410 (Otras areas)

Summary of what you owe

Amount owing on your previous bill		$25,170.80
Less	Payment made on May 5, thank you	-$8,500.00
Equals	Your balance forward	$16,670.80
Plus	Late charge (taxes included)	$285.40
Plus	Your new charges (details on following pages)	
	Cost of electricity (with taxes and fees)	$7,657.90
Equals	**Total amount due**	**$24,614.10**

Due date: May 27, 2016

See page 2 for more information.

When paying in person, please bring the bottom portion of your bill.

Your account number **Bill date**
152397281 May 16, 2016
Mailing address or phone number change?
Please call 1-855-769-3729.

Total amount due: $ **24,614.10**

Your optional contribution to SHARE: $ _____

Total amount paid: $ _____

Due date: May 27, 2016

Please remember to pay your APS bill with cash, a cashier's check or money order. When paying in person, please bring the bottom portion of your bill.

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AGRICANN LLC
1023 E BARTLETT WAY
CHANDLER AZ 85249-3123

15 N 1 32

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APS000235

News from APS

Things you need to know

Contacting APS

- E-mail us at aps@aps.com
- Call us at:
  602-371-6767 (Phoenix) or 800-253-9407 (Other areas)

- Para servicio en español llame al:
  602-371-6861 (Phoenix) o 1-800-252-9410 (Otras areas)
- Hearing impaired:
  Dial 711 - AZ Relay Service
- By mail: APS, Station 3200, PO Box 53933,
  Phoenix AZ 85072-3933
- Blue Stake - Before you dig, call:
  811 or 800-782-5348 from anywhere within Arizona
- Electrical emergencies other than power outages, call:
  602-258-5483 (Phoenix) or 800-253-9408 (Other areas)

Important billing and collection information

Make checks payable to APS and mail to:
APS, PO Box 2906, Phoenix AZ 85062-2906
Credit and Collections:
602-371-7607 (Phoenix) or 1-800-253-9409 (Other areas)

Ex. --,

frame shall be considered delinquent and are subject to a late payment charge of 1.5% per month.
If your power is shut off for non-payment, you must pay all the delinquent amounts and a deposit or additional deposit before power is restored.

When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic funds transfer from your account or to process the payment as a check transaction. When we process your check electronically you will not receive your check back from your financial institution and funds may be withdrawn from your account on the same day we receive your payment.

Utility regulations and rates (Not an APS payment site)

Electricity regulations and rates are approved by:
Arizona Corporation Commission,
1200 W Washington, Phoenix AZ 85007
602-542-4251 (Phoenix) or 1-800-222-7000 (Other areas).
www.azcc.gov

PO BOX 2906
PHOENIX AZ 85062-2906

Your electricity bill
May 16, 2016

AGRICANN LLC

Your account number
152397281

Your service plan: E-32 TOU M

Meter number: DP7681
Meter reading cycle: 15

Final bill

Charges for electricity services

Cost of electricity you used

Customer account charge	$3.02
Delivery service charge	$586.04
Demand charge on-peak - delivery	$842.68
Demand charge off-peak - delivery	$389.81
Environmental benefits surcharge	$281.76
Federal environmental improvement surcharge	$10.30
System benefits charge	$191.27
Power supply adjustment*	$108.06
Metering*	$25.32
Meter reading*	$1.63
Billing*	$1.80
Generation of electricity on-peak*	$694.53
Generation of electricity off-peak*	$2,173.34
Demand charge on-peak - generation*	$715.77
Demand charge off-peak - generation*	$294.84
Federal transmission and ancillary services*	$215.56
Federal transmission cost adjustment*	$128.79
System benefits adjustment	-$32.97
Four-Corners adjustment*	$124.55
LFCR adjustor	$115.50
Cost of electricity you used	$6,871.60

Taxes and fees

Regulatory assessment	$16.24
State sales tax	$393.43
County sales tax	$49.18
City sales tax	$189.69
Franchise fee	$137.76
Cost of electricity with taxes and fees	$7,657.90

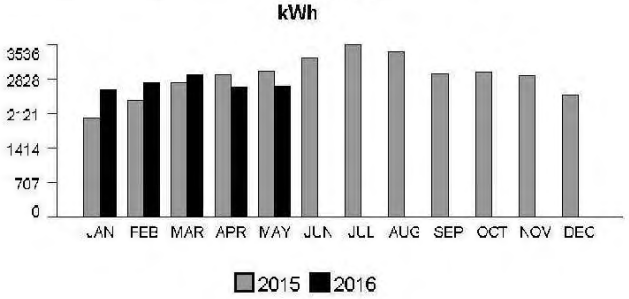
Total charges for electricity services **$7,657.90**

** These services are currently provided by APS but may be provided by a competitive supplier.*

Amount of electricity you used

Meter reading on May 16	25883
Meter reading on Apr 22	25078
Read difference is	805
Multiplier applied to the read difference	80
Total electricity you used, in kWh	**64400**
On-peak meter reading on May 16	6683
On-peak meter reading on Apr 22	6521
Read difference is	162
Multiplier applied to the read difference	80
On-peak electricity you used, in kWh	**12960**
Off-peak meter reading on May 16	19199
Off-peak meter reading on Apr 22	18556
Read difference is	643
Multiplier applied to the read difference	80
Off-peak electricity you used, in kWh	**51440**
On-peak demand meter reading	2.13
Multiplier applied to the read	80
Your total on-peak demand in kW	170.4
Your billed on-peak demand in kW	**170.0**
Off-peak demand meter reading	2.30
Multiplier applied to the read difference	80
Your total off-peak demand in kW	184.0
Your billed off-peak demand in kW	**184.0**

Average daily electricity use per month



Your final bill
May 16, 2016

AGRICANN LLC

Your account number
152397281

Comparing your monthly use

	This month	Last month	This month last year
Billing days	24	29	29
Average outdoor temperature	81°	71°	76°
Your total use in kWh	64400	77600	87040
Percentage of on-peak use	20%	25%	27%
Your billed demand in kW	170.0	162.0	177.0
Your average daily cost	$319.07	$278.06	$357.12

EXHIBIT 8

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AGRICANN, LLC, an Arizona limited liability company; and PAY NOW, LLC, an Arizona limited liability company,	)	
Plaintiffs,	)	Case No.: CV2016-001283
v.	)	
NATURAL REMEDY PATIENT CENTER, LLC, an Arizona limited liability company; and DAVID SANCHEZ,	)	
Defendants.	)	
Et al.	)	

DEPOSITION OF DR. IMRAN KAZEM

Chandler, Arizona
September 7, 2023
12:05 p.m.

REPORTED BY:
MICHELLE AYOUB, RPR
Certified Reporter
Certificate No. 51004

PREPARED FOR:
ASCII/CONDENSED COPY

(Certified Copy)

on my phone still. But that's probably 26th, if I could zoom.

Q. I can zoom in, if you'd like.

A. Yeah. Maybe one more -- one more zoom would be good.

Yeah, 26th Avenue Facility. There it is, yeah.

Q. And to be clear, is the 26th Avenue Facility the facility that was located at 1434 North 26th Avenue in Phoenix, Arizona?

A. Yes.

Q. Which is subject to this lawsuit involving NRPC?

A. Yes.

Q. And is that statement true that you were the tenant of the 26th Avenue Facility?

A. It is.

Q. When did that start? When did you become the tenant of this facility?

A. Well, I -- I can't remember the exact date. But there was a -- there was some -- some point in time when the payments couldn't be made, and the -- the -- I was already the guarantor of the -- the lease. And so the owner's basically -- when the lease was broken, gave it to me.

Q. Wait. Let me back up a little bit.

A. Okay.

Q. The facility --

A. Mm-hmm.

Q. I'm just going to call it the facility --

A. Okay.

Q. -- throughout this deposition.

The facility -- when you said that you were the tenant, was it you individually, or was it an entity that you owned that was the tenant of the facility?

A. Well, I don't remember exactly. But I think that although Agricann was sort of the company occupying the facility, they didn't -- you know, it didn't have any credit history or money.

And so I had to -- I had basically had to sign for that lease and be personally liable for it. So I can't remember exactly how that was worded in the actual lease agreement anymore. But essentially I became responsible for that lease.

Q. As the personal guarantor?

A. Correct.

Q. And when you say that lease, is that the lease that was entered into by Agricann and the owners of the facility prior to 2016?

A. Correct.

Q. And do you recall when that lease was entered

And I'll go through the whole thing so you can see it's just the complete lease; it's nothing else.

And that represents the lease as you know it?

A. I think it is, yeah. I mean, I haven't looked at a document for very long, but it looks like it is.

Q. Okay. So I'm going to go back to Exhibit 1.

And so you said that you took possession of the facility because you, as personal guarantor, retained the responsibilities for the obligations under the lease after a default; is that correct?

A. Correct.

Q. Okay. And so the default, do you remember when that occurred?

A. I don't remember the -- the date exactly. I don't.

Q. Okay. I'm going to --

This will be Document 3. I'm going to mark it as Exhibit 3.

I'm sending it to Mark right now.

(Exhibit 3 marked for identification.)

BY MR. NAGEOTTE:

Q. All right. Dr. Kazem, have you seen this document before?

A. Let me see here.

either, but I'm sure I could find it.

So at some point I'll shoot you an email. And -- and -- and I'm sure I have it. Once I get back to Indiana where I can get to my Dropbox, I'm sure I have their -- every -- you know, all the information there, regardless.

Q. And so did you sublet to this party, or did they essentially -- it was kind of a similar --

Was it a similar arrangement where, like, NRPC would use the facility that Agricann was leasing?

Is it a similar arrangement to that where this party was just using the facility while you leased it, or did you have an actual sublease and agreement in place?

A. It was actually -- I actually sold them the rights to the lease and had them take over for me.

Q. How much did you sell it for?

A. I think -- I think I sold it for $180,000. And I got only a portion of that, unfortunately, because, you know, how they -- they want to pay 50 percent up front, and then they pay you so much later.

And they -- they tried to make it really difficult to -- to really get the full amount later. So I -- I sort of took less than that at some point. But that's what happened.

30

Q. And was the $180,000 that you guys agreed upon, was that on top of them making monthly rent payments or was that in total, they gave you $180,000?

A. In total. They just -- yeah. They gave me $180,000 -- or, well, the -- the contract was for $180,000 to basically take over the lease. And they may have paid -- I'd have to remember, but I think they were -- I think they ended up paying $160- when it was all done.

Q. But you were not paying the monthly rent payments; correct?

A. Correct. I was off -- I was off the lease at that point.

Q. And with taking over control of the facility, did they also get to take over any and all things that were inside the facility?

A. They did.

Q. Including any equipment or tenant improvements?

A. Correct.

Q. Okay. So going back to Exhibit 1, if you look at the bullet points under the recitals on page 1 of 7 -- bullet points 4 and 5.

Do you see those?

A. Mm-hmm.

Q. Do you recall if there was a dispute between you and Brig or you and Agricann regarding who exactly was the

I don't know if they ever did or not, but I -- okay. So the person I remember now talking to -- his name came to me -- is Martin Yono.

He was sort of a manager, maybe part owner of the -- of the dispensary that took it over. And, you know, I remember him making a comment to me that, well, yes, there is equipment in this and that; but, you know, it wasn't really optimized to what they want to do. And they were going to have to make a substantial investment to basically renovate it again.

So, again, I don't know if they ever did that or not. But I -- that was just a statement he made to me at one point.

Q. But he did represent to you that there was equipment there?

A. Yes.

Q. And, again, after the default event, Brig and Agricann came to you and said you can have all the equipment in the building as well as the rights to the lease of this facility in exchange for you giving over all your rights to Agricann or any claims you have against it or any interest you have in it?

A. Correct.

Q. And do you have any type of working relationship with Martin Yono or the landlords of the facility?

we thought there would be, you know, $125,000 needed for this and we need $50,000 for people's, you know, salaries for that month or two months that we needed to get going.

So I had -- I had a good idea -- ballpark -- of what things were going to cost us, and what they did cost us.

Q. And so if you had to put a value on it -- because you did receive a benefit from this. But what value did you place on not only the equipment but also taking over the ownership rights of the lease?

A. Well, the value of the lease when I took it over, I really didn't -- didn't know what the value would be.

The equipment, I had sort of just -- you know, I figured that a ballpark number of what that used equipment would run might be something in the neighborhood, let's say, $50,000.

But the actual lease, I had no idea. I had to, you know, sort of negotiate something with the -- the people that were interested. And I don't know who I leaned on, but just in terms of -- in terms of people telling me what they thought it should be worth. And, you know, I asked for a certain number, and -- and they negotiated it down to something that I still thought was somewhat reasonable.

Q. But you never -- you guys never memorialized or

even put a value of -- assigned a value of any sort to the equipment or the lease itself; correct -- aside from what benefits were received and given in this settlement agreement; correct?

A. Correct.

Q. Do you know what happened to the equipment?

A. No, I don't.

Q. But it's your understanding the equipment was there when you took over the lease; correct?

A. Correct.

Q. All right. We're on the last set of questions here, so I appreciate your patience.

We're going to put in Document 2.

MR. NAGEOTTE: Michelle, mark that as Exhibit 5, please.

THE COURT REPORTER: Okay.

(Exhibit 5 marked for identification.)

MR. NAGEOTTE: I'll send that to you in one second, Mark. It's going to be the napkin deal.

Mark, I'm going to send you the other document that we're also -- that I'm also going to put in this.

MR. WINDTBERG: Okay. Thanks.

BY MR. NAGEOTTE:

Q. All right. Dr. Kazem, can I zoom out on this

reading that off?

A. No. January 18 of 2016.

Q. All right. So let's look at this document.

And do you know who prepared this document?

A. I believe Brig did.

Q. Was it common for him to prepare contracts on behalf of Agricann?

A. Yes. He would have been the only one.

Q. All right. So let's look in the recitals.

Under the --

And this is page 3 of 7, Mark.

MR. WINDTBERG: Thank you.

BY MR. NAGEOTTE:

Q. Third recital states:

(As read:) Whereas, NRPC desires to purchase substantially all of the equipment and lease rights of Agricann's grow operation at the facility.

Was that your understanding of what the breakup deal was, essentially?

A. Yes.

Q. That Agricann was going to be selling their rights to the equipment and lease over to NRPC?

A. Correct.

Q. Now, if we go to terms, towards the bottom of this same page, subsection C. Does C accurately -- and C

else that contacted me through the grapevine. You know, people know each other, and they -- and they wanted it.

And so that was a -- that was sort of a new -- you know, it was really just a little bit of luck, to be honest with you because I didn't market it or do anything to advertise it.

You know, I'm not a real estate agent. I didn't hire any real estate agents to go find something. Someone just really found me, and I just negotiated a deal by myself.

Q. And the deal you negotiated included all of the equipment that was inside the facility?

A. Correct.

Q. Did you obtain additional payment because the equipment was in the building?

A. Well, you know, the equipment and the -- and the lease itself were never parsed out. The -- I know that the entity that took it over was really just truly interested in the building.

And -- and like I'd mentioned before, they had told me that the equipment inside wasn't really very valuable to them; that they were going to have to redo things; and they had their own way of essentially setting up the grow and their equipment. And so they were going to make a pretty substantial investment after taking it

over.

I don't know if that ever happened or not. But I -- I tried to negotiate something that was, you know, reasonable in asking them that -- you know, there is -- there was some effort and -- and quite a bit of money put into making this thing a grow facility.

But I don't know if they were -- it was just a negotiating tactic, or if they really were earnest in saying that it wasn't, you know, very valuable to them -- our equipment and what we had done to set up the rooms.

Q. Okay. And you received payment from this new tenant; correct?

A. I did.

Q. Did you pay any of the amounts you received to Agricann?

A. I did not.

Q. Did you believe Agricann was entitled to any of that money?

A. Well, I mean, Agricann probably -- you know, here's the thing. Agricann probably was entitled to some of that money. But then Agricann was sort of obligated to pay most of that back to me personally. So I guess it all depends on where you want to start this chicken or egg argument.

Q. Okay. I want to step back a minute because you

So, like I said, originally, the -- I forget exactly the -- the amount. But it -- maybe, let's just call it a $125,000 was -- was to -- to get 35 percent ownership, and then everything that was paid after that was just -- instead of me getting more ownership for putting in more money, it was just counted as debt. So, you know, and it was over $400-. I -- I forget what the checks totaled. But it may have been, you know, $430-, you know, something like that, when -- with -- with all of it.

And then a certain percentage of it, like I said, was sort of just -- okay, this is your ownership. Agricann -- instead of Brig saying okay, the company is 80 percent yours now for putting in 80 percent of money, he was going to keep the percent ownership and convert the rest to just debt to try to equalize for -- so that his ownership interest didn't basically go down to a minority owner. He wanted to control the company still.

Q. And this will be my last question or set of questions. It's just a summary. I just want to confirm.

So to be clear, it's your position that under the settlement agreement you entered into with Agricann and Mr. Burton, you received the rights to the facility, and all the equipment inside of it; correct?

A. Correct.

Q. In exchange for that, you forgave approximately $400,000 in money owed to you in debt and other things from Agricann?

A. Correct.

MR. WINDTBERG: Objection. Form.

BY MR. NAGEOTTE:

Q. Your rights --

You also gave up your rights to any amounts of money that you would have received as a member of Agricann in any of the lawsuits including the $1.2 million award in this lawsuit; correct?

A. Correct.

MR. WINDTBERG: Object to form.

BY MR. NAGEOTTE:

Q. And you also gave up any rights you would've had for any amounts of money that you would have received in any other lawsuits, including the one that you filed against Brig and Agricann; correct?

A. Correct.

Q. And you received no other consideration outside of peace of mind, which no value can be put on; correct?

A. Correct.

MR. NAGEOTTE: All right. I think that's it for me.

MR. WINDTBERG: I have a few follow-up questions.

EXHIBIT 9

SETTLEMENT AND BUSINESS DISSOLUTION AGREEMENT

This Agreement is entered into and effective as of July 11, 2016 ("Effective Date") among and between Agricann, LLC, an Arizona limited liability company ("Agricann"), Brigham Burton ("Burton") and Carly Rae Burton ("Burtons"), 363, LLC, an Arizona limited liability company ("363 LLC"), 363 Business Alliance, LLC, an Arizona limited liability company ("363 BA") (363 LLC and 363 BA collectively referenced herein as the "363 Entities"), Rockline Equity Fund I, LLP, a limited liability partnership ("REFI"), Imran Kazem, an unmarried man ("Kazem"), and Kazem Investments and Professional Services, LLC ("KIPS").

RECITALS

- Burton owns 65% of the membership interests in Agricann and Kazem owns 35%.
- Kazem claims that he has invested and/or loaned approximately $400,000 to Agricann.
- Agricann is in the business of medical marijuana cultivation.
- Agricann was the tenant of and held the leasehold interest in the property and medical marijuana grow facility located at 1434 North 26th Avenue in Phoenix, Arizona ("26th Avenue Facility"), and claims and contends that it is still the tenant and holder of the leasehold interest.
- Kazem claims and contends that he has become and is the current tenant of and holder of the leasehold interest in the 26th Avenue Facility.
- Natural Remedies Patient Center, LLC ("NRPC"), owned by David and Kathy Sanchez, holds a State of Arizona Medical Marijuana Dispensary Certificate under which Agricann operates; in conjunction with that relationship NRPC exercised certain possessory and operational rights and operations in and at the 26th Avenue Facility.
- Agricann has and holds certain claims and causes of action against NRPC and the Sanchezes, and also against certain other entities and individuals who held State of Arizona Medical Marijuana Dispensary Certificates and had contracted with Agricann with respect to grow and cultivation operations at the 26th Avenue Facility, including without limitation Total Accountability Systems I, Inc. ("TASI"), Cannabis Research Group, LLC ("CRG"), and various of their respective principals, employees, and agents. Those claims and causes of action include, without limitation, those that were asserted in Maricopa County Superior Court Case Nos. CV2016-001283 (NRPC) and CV2014-051034 (TASI) and Pima County Superior Court Case No. C20160121 (collectively, the "Agricann Lawsuits").
- Pay Now, LLC is an entity owned 85% by Redwood Equity Partners Limited Partnership (an entity managed by Burton) and 15% by Robert Phillips, and which has received an assignment of a portion of Agricann's claims and Lawsuit against NRPC.
- The 363 Business Alliances, LLC ("363 BA") is an entity owned and/or controlled by Burton, which is the tenant of and holds the leasehold in a property and medical marijuana grow facility located at 2426 South 24th Street in Phoenix, Arizona (the "24th Street Facility").
- Kazem, along with Robert Phillips, filed a lawsuit against Agricann, Pay Now, LLC, The 363 Business Alliances, LLC, and Burton and his wife Carly Rae Burton, in Maricopa County Case No. CV2016-007845 (the "Kazem/Phillips Lawsuit"). Agricann and Burton deny the allegations, claims, and causes of action alleged therein, and believe they hold various claims and causes of action against Kazem that they have not asserted or sued on.

- At a settlement meeting on July 11, 2016, Burton and Kazem decided and agreed to mutually and amicably dissolve their business relationship in Agricann and with regard to its assets and related entities and assets, on the terms and conditions herein.

TERMS AND CONDITIONS

1. Redemption of Membership Interest; In-Kind Distribution:

A. Redemption of Kazem's membership interest in Agricann. Effective upon the Effective Date, and in exchange and consideration for the in-kind distribution referenced in Section 1.B herein and the other consideration provided herein, the receipt and sufficiency of which Kazem acknowledges, Kazem hereby sells, conveys, transfers, and assigns all of his membership interest in Agricann, and any and all other claims of ownership, right, title, or interest therein, to Agricann, and disclaims any further or remaining membership, ownership, or other right, title, or interest in Agricann or in any of its assets, except as provided in Section 1.B. In exchange and consideration for this redemption and disclaimer, Kazem shall have no further responsibility or liability for any expenses, obligations, or liabilities of Agricann, all of which shall be the responsibility of Agricann or its successor(s) or assign(s)

B. In-kind distribution of 26th Avenue Facility. Effective upon the Effective Date, and in exchange and consideration for the grant of the complete membership redemption referenced in Section 1.A herein and the other consideration provided herein, the receipt and sufficiency of which Agricann and Burton acknowledge, Agricann hereby makes an in-kind distribution to Kazem of any and all right, title, and interest Agricann has or may claim to have in the 26th Avenue Facility, including any claim for wrongful eviction from the 26th Avenue Facility, and/or in any improvements, furniture, fixtures, equipment, and other personal property, and Agricann, REFI, and Burton, and any other entity owned or controlled by Burton, hereby disclaim any further or remaining right, title, interest, or claim in or to the 26th Avenue Facility, including any claim for wrongful eviction from the 26th Avenue Facility, and/or in any improvements, furniture, fixtures, equipment, and other personal property, and in any and all proceeds from the sale or transfer of the assigned and disclaimed interest in the 26th Avenue Facility by Kazem. In exchange and consideration for this in-kind distribution and assignment, Agricann shall have no further responsibility or liability for any rent, utilities, taxes, or other expenses, obligations, or liabilities for or with respect to the 26th Avenue Facility, all of which shall be the responsibility of Kazem or his successor(s) or assign(s).

2. The Agricann Lawsuits. Agricann will retain all rights of contract enforcement and collection, all claims, causes of action and remedies, and all rights in and to the Agricann Lawsuits, and any other claims, causes of action, or remedies it has or may have against anyone else, including without limitation any settlement of or judgment upon the Agricann Lawsuits or upon any other claims or causes of action. Kazem hereby waives, discharges, disclaims, and releases any right to receive or share in any portion of any such settlement, judgment, collection, or recovery.

3. The 363 Entities and the 24th Street Facility. Kazem hereby waives, discharges, disclaims, and releases any claim, right, title, or interest, direct or indirect, in or to the 363 Entities or the 24th Street Facility, and in or to any of their respective assets, revenues, and profits.

4. Pay Now, LLC. Kazem hereby waives, discharges, disclaims, and releases any claim, right, title, or interest, direct or indirect, in or to Pay Now, LLC and in or to any of its assets, revenues, and profits, along with any claim that Pay Now, LLC or any of the assets or claims held by or assigned to it should have been held in, remained with, or returned to Agricann.

5. Mutual Release. Effective upon the Effective Date, (a) Agricann, REFI, and the 363 Entities (on behalf of themselves and their managers, members, officers, directors, agents, and representatives), and Burton, on the one hand, and (b) Kazem and KIPS (on behalf of itself and its managers, members, officers, directors, agents, and representatives), on the other hand, (i) fully release and discharge each other (including, as to the releases of Agricann, REFI, the 363 Entities, and KIPS, their managers, members, officers, directors, agents, and representatives, and affiliated entities and persons, including without limitation Pay Now, LLC, and as to the releases of Burton and Kazem, their respective spouses, heirs, agents, and representatives), and each other's respective successors and assigns, (ii) of and from any and all claims, causes of action, damages, and remedies, of any kind or nature, direct or indirect, matured or contingent, liquidated or unliquidated, known or unknown, which they have, may have, or contend to have against the other. The releases in this paragraph are not intended and shall not be interpreted or construed to cover or apply to any of the executory or other promises, commitments, duties, obligations, terms, or conditions herein.

6. Dismissal of Lawsuits. The parties hereby agree to and instruct their respective legal counsel that, promptly upon execution and delivery of this Agreement, they shall cause to be filed stipulations to entry of orders for dismissal, with prejudice, of all of their respective allegations, claims, causes of action, damages, and remedies that were or could have been raised in the following two lawsuits: (a) the Kazem/Phillips Lawsuit, and (b) Maricopa County Superior Case No. CV2016-010234; with each of the parties hereto to bear their own costs and attorneys' fees with respect to both of those Lawsuits.

7. Mutual Indemnification. The parties hereby agree to and shall indemnify each other with respect to any claims, causes of action, liabilities, and the like that any party's post-settlement actions or conduct may cause another party to incur. In addition, Burton and Agricann hereby agree to and shall indemnify Kazem and/or KIPS from 1) any and all liability, claims, demands, or causes of action asserted against them by any individual or entity related to Agricann or as a result of their previous membership interest therein, and 2) any liability, claims, or causes of action arising from or related to the letter provided to Burton by Kazem as part of this Agreement; except the indemnities in these clauses 1) and 2) shall not extend to any liability, claim, demand, or cause of action that results from, in whole or in part, the conduct, action(s), or statement(s) of Kazem and/or KIPS. Further in addition, Kazem and KIPS agree to and shall indemnify Burton and Agricann from any liability, claims, demands, or causes of action asserted against them by any individual or entity related to the 26th Avenue Facility; except the indemnity

in this clause shall not extend to any liability, claim, demand, or cause of action that results from, in whole or in part, the conduct, action(s), or statement(s) of Burton and/or Agricann.

8. Confidentiality, Non-Disparagement, and Non-Interference. The provisions of this paragraph 8 become effective upon execution and delivery of this Agreement, not upon the Effective Date.

A. Confidentiality. The parties agree that the terms of this Agreement, and the reasons for entering the same, are confidential and shall not be discussed with any third parties, except as may be reasonably necessary or appropriate to provide or discuss with professional tax accountants or advisors, attorneys, auditors, accountants, financial advisors, existing or potential lenders, investors, and insurers, legal and governmental authorities, and similarly situated persons or entities, for the performance of the services of such professionals or providers and/or for compliance with legal requirements and obligations, subject to their being advised as to their obligation to maintain the confidential nature of those terms. Any party hereto who receives a request for information related to this Agreement or any subject matter of this Agreement and/or the Recitals herein, including but not limited to informal requests, governmental or administrative requests, or subpoenas or other processes of law, shall before responding to such a request, promptly provide notice to the other parties to this Agreement of the request and the party's intended response thereto. Kazem's counsel Jason Venditti may also disclose the terms of this Settlement to Robert Phillips, Kazem's co-plaintiff in the Kazem/Phillips Lawsuit, but only upon and subject to his written agreement to maintain confidentiality as set forth in this paragraph.

B. Non-disparagement. Burton, on behalf of himself and his respective entities, on the one hand, and Kazem, on behalf of himself and Kazem IPS, on the other hand, covenant and agree that they will not (a) make any disparaging or negative statements or comments about one another to any third parties, including any derogatory statements or criticisms, (b) offer or provide to any third parties any information or opinions about one another, and if asked to do so shall merely state in response "no comment" or "I cannot discuss this topic," or (c) make any statement, oral or written, or perform any act or omission for the purpose of causing, or reasonably expected to cause, any material harm to each other or their respective business, business relationships, operations, goodwill, or reputation. This paragraph will not be construed to prevent any party from making truthful statements in response to direct questions asked pursuant to a valid and binding subpoena during any future legal proceedings, or from making truthful statements in connection with the fulfillment of any reporting or disclosure obligations; provided, however, that if any party receives a binding subpoena or similar governmental request or order that would require it to make statements or provide information about another, such party shall provide the other with reasonable notice and an opportunity to object. This provision is in addition to, and not in lieu of, the substantive protections under applicable law relating to defamation, libel, slander, interference with contractual or business relationships, or other statutory, contractual, or tort theories.

C. Non-Interference. As a material part of the inducement for both sides' entering into this Agreement, the parties agree that they will not interfere in any way, directly, or indirectly, with

each other's business activities, opportunities, deals, or operations. Lawful operation and competition in the medical marijuana industry, including without limitation at the 24th Street Facility or at the 26th Avenue Facility, or elsewhere or otherwise, would not be considered or construed as interference under this provision; it is expected that Agricann and/or other entities owned or controlled by Burton will operate and compete in the medical marijuana industry. In addition to any and all other available remedies at law or equity, the parties acknowledge that the material breach of this provision by either side may, under applicable principles of Arizona law, render all or part(s) of this Agreement void, voidable, and/or or subject to rescission or revocation. This provision is in addition to, and not in lieu of, the substantive protections under applicable law relating to defamation, libel, slander, interference with contractual or business relationships, or other statutory, contractual, or tort theories.

9. Representations and Warranties. Agricann, REFI, the 363 Entities, and Burton, on the one hand, and Kazem and Kazem IPS, on the other hand, represent and warrant to each other and acknowledge as follows:

A. Each party has (a) fully and carefully read and considered this Agreement prior to its execution; (b) been or has had the opportunity to be fully apprised by an attorney of the legal effect and meaning of this document and all terms and conditions hereof; (c) had the opportunity to make whatever investigation or inquiry deemed necessary or appropriate in connection with the subject matter of this Agreement; (d) been afforded the opportunity to negotiate as to any and all terms hereof; and (e) executed this Agreement voluntarily, free from any undue influence, coercion, duress, or fraud.

B. This Agreement shall not be deemed prepared or drafted by any one party; in the event of any dispute concerning this Agreement, any rule of construction to the effect that ambiguity in the language of the Agreement is to be resolved against the drafting party shall not apply.

C. Except as set forth in the Recitals above, no party has assigned, transferred, conveyed, sold, or hypothecated to anyone else any of its respective rights, claims, or causes of action relating to the subject matter of this Settlement, to Agricann, to the Lawsuit, to the Agricann Lawsuits, to the 26th Avenue or 24th Street Facilities, or to any matters covered by the releases in paragraph 5 herein; except to the extent of the rights and claims assigned by Agricann to Pay Now, LLC, of which Kazem is aware. Kazem is aware of the Assignment of Claims Agreement between REFI and Twenty Sixth Ave Ventures, LLC dated on or around October 8, 2016; Burton hereby confirms his belief and contention, as expressed therein, and pursuant to and as a result of this Agreement, that neither he nor any entity he owned or controlled had any rights or claims to assign to 26th Ave Ventures LLC or to anyone else as of the date of that Assignment of Claims Agreement and that he does not believe or intend that the Assignment of Claims Agreement assigned or conveyed any rights or claims to Twenty Sixth Ave Ventures, LLC.

D. Cooperation. Each party shall take any action and execute any documents reasonably necessary or appropriate to implement or effectuate this Agreement according to its terms.

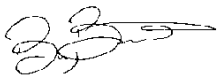
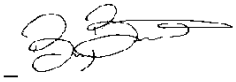
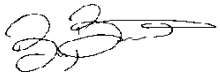
10. Letter: Kazem shall provide a letter to Burton in form and content to be mutually agreed.

11. Complete Agreement. This Agreement constitutes the complete and exclusive statement of agreement of each of the parties relative to the subject matter hereof, and supersedes all previous oral or written proposals, negotiations, representations, or understandings concerning the subject matter. This Agreement may not be modified except by a writing executed by all parties to this Agreement; and each of the Parties expressly disclaims any right to enforce or claim the effectiveness of any oral modification to this Agreement based upon a course of dealing, waiver, reliance, estoppel, or other similar theory of law.

11. Arbitration of Disputes. In the event of any conflict, claim, or dispute between the parties affecting or relating to the subject matter of this Agreement, the Parties agree that such conflict, claim, or dispute shall be submitted to attorney Richard Friedlander of the Dickinson Wright law firm (the "Arbitrator") for binding arbitration. If Mr. Friedlander is unavailable to serve as the arbitrator, the parties shall mutually agree upon another arbitrator. Arbitration shall be commenced by delivery of a written demand for arbitration to the Arbitrator, with a copy to the opposing party. In the Arbitrator's sole discretion, the Arbitrator shall decide the dispute by submission of written memoranda not to exceed ten (10) pages in length or by conducting a hearing and taking evidence.

12. Attorneys' Fees. In any action, arbitration, or other legal proceeding for breach, enforcement, or interpretion of this Agreement, the prevailing party shall recover from the non-prevailing party all costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in connection with enforcement of this Agreement.

13. Counterparts. This Agreement may be executed in one or more counterparts, including electronically transmitted counterparts, all of which, when taken together, shall be deemed one and the same instrument. Each signatory to this Agreement represents that he or she is fully authorized to sign for and bind the party on whose behalf the signature is provided.

Agricann, LLC By:  _____ Brigham Burton, Manager Dated: May 17, 2017_____	 Brigham Burton, individually Dated: May 17, 2017_____
Rockline Equity Fund I, LLLP By: _  Brigham Burton, General Partner Dated: May 17, 2017_____	363, LLC and 363 Business Alliances, LLC By:  Brigham Burton, Manager of Both Dated: May 17, 2017_____

Imran Kazem Imran Kazem, individually Dated: 5/19/2017	Kazem Investments and Professional Services, LLC By: Imran Kazem Imran Kazem, Manager Dated: 5/19/2017

EXHIBIT 10

SHARON A. URIAS (SBN 016970)
DANIEL F. NAGEOTTE (SBN 035562)
GREENSPOON MARDER LLP
8585 E. Hartford Drive, Ste. 700
Scottsdale, AZ 85255
Tel. 480.306.5458
Email: sharon.urias@gmlaw.com
Email: daniel.nageotte@gmlaw.com

Attorneys for Defendants/Counterclaimants Natural Remedy Patient Center, LLC

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

AGRICANN, LLC et al., Plaintiffs, v. NATURAL REMEDY PATIENT CENTER, LLC et al., Defendants.	Case No.: CV2016-001283 **DECLARATION OF SHADI ZAKI IN SUPPORT OF NATURAL REMEDY PATIENT CENTER, LLC'S SEPARATE STATEMENT OF CONTROVERTING FACTS IN OPPOSITION TO AGRICANN, LLC'S MOTION FOR SUMMARY JUDGMENT** **(Assigned to the Honorable Timothy Ryan)**
NATURAL REMEDY PATIENT CENTER, LLC, Counterclaimant, v. AGRICANN, LLC, Counterdefendant.	

I, Shadi Zaki, declare under penalty of perjury as follows:

1. I am over the age of eighteen (18) and am competent to attest to the matters set forth herein. I have personal knowledge of the facts set forth herein, and if called as a witness, I could and would testify competently thereto.

2. I am a former Management and Operations Consultant for Natural Remedy Patient Center, LLC ("NRPC"), and worked in this capacity from 2014 through mid-2016. I testified at the trial conducted in this matter before the Honorable James Smith as NRPC's authorized representative.

3. Beginning in or around 2014, NRPC and Agricann, LLC ("Agricann") participated in a joint cannabis operation in which the parties used a facility located at 1434 North 26th Avenue (the "Facility") in Phoenix, Arizona to conduct its grow operations.

4. The parties were able to use the Facility for its grow operations because Agricann was the lessee and tenant for the Facility, pursuant to the controlling lease (the "Lease").

5. The joint operation between NRPC and Agricann was governed by a Management for Grow and Dispensary Agency Contract (the "Management Contract").

6. Pursuant to the Management Contract, NRPC and Agricann were required to pay all expenses 50/50, including rent and utilities, related to the grow operation at the Facility from a bank account (the "Account") held by Natural Agriculture, LLC, a company jointly owned by NRPC and Agricann.

7. The Account was funded by NRPC, who deposited the sales proceeds into the Account, which was then used to pay the grow operation's expenses, including monthly rent and utility bills.

8. Sometime in the Fall 2015, representatives for Agricann and NRPC met to discuss a potential resolution for various disputes between the parties concerning the grow operation at the Facility.

9. During this meeting, terms for a proposed resolution were written on a piece of paper (the "Breakup Deal") under which it was proposed that NRPC would pay Agricann $20,000.00 as the monthly sublease rate for a term of 36 months under the Breakup Deal. Additionally, under this proposal, NRPC would make a $400,000.00 balloon payment to Agricann at the end of the 36 months, at which time Agricann was required to transfer legal title and ownership rights to all of the equipment in the Facility to NRPC.

10. Following this meeting, NRPC, believing Breakup Deal was nothing more than a proposal for a potential resolution, continued working with Agricann consistent with the terms of the Management Contract.

11. During my examination at trial, I was asked whether NRPC paid the rent and APS bills for the Facility. To these questions, I answered affirmatively because under the terms of the Management Contract, the grow operation's expenses, including rent and utilities, were paid

from the Account, which was funded by NRPC's sales proceeds. I was not testifying, nor do I believe, that NRPC was required to pay (or actually paid) rent and utilities in addition to the $20,000.00/monthly payments under the Breakup Deal.

12. At no point in time did Agricann and NRPC enter into any assignment, or any contract including an assignment, of Agricann's rights or obligations under the Lease. In other words, Agricann never assigned the Lease to NRPC. In fact, I have never even seen the Lease.

13. It was always NRPC's understanding that Agricann had a Lease with the landlord and that Agricann was solely responsible for its obligations under that Lease. To be clear, at no point in time did NRPC ever assume or otherwise take on Agricann's rights and obligations under the Lease.

I declare under penalty of perjury that to the best of my knowledge the foregoing is true and correct.

Executed on November 3, 2023, in Shelby Township, Michigan.

Shadi Zaki

EXHIBIT 14

May 6, 2016

Via Email: bburton@rocklineequity.com

Agricann LLC
Brig Burton
1023 E. Barlett Way
Chandler, AZ 85249

RE: Leased Premises at 1434 N. 26th Avenue, Phoenix, AZ 85009

Dear Brig:

You are in default of the Lease Agreement by and between Agricann LLC, as Lessee and J & J Ajax I LLC, as Lessor, which you signed as tenant for the above-referenced premises. The event, which has placed you in default, is your failure to pay the balance of **$7,229.00**, which represents rent, 10% late charge, and other charges due under the lease.

Demand is hereby made that you immediately cure said default by remitting the entire sum of **$7,229.00 in CERTIFIED FUNDS made payable to 26th Ave, LLC no later than Monday, May 9, 2016, by 5:00 P.M. local time.** Delivery must be made to John Masciandaro c/o Commercial Properties, Inc. 2323 W. University Drive, Tempe, AZ 85281.

If you fail to cure the default described herein from the giving of this notice, the undersigned may, at any time so long as said default continues, and without further notice or demand, exercise any or all remedies as are available under the terms of the Lease or as may be permitted in law or in equity.

This letter shall constitute your notification that the "Time is of the Essence" clause is hereby reinstated. This means that any and all future charges due under the Lease Agreement must be paid timely or else a default will exist.

Sincerely,

John Masciandaro
Member of 26th Ave, LLC

AG-WL 00026

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AGRICANN, LLC., et al., Plaintiffs, v. NATURAL REMEDY PATIENT CENTER, LLC, et al., Defendants.	)	CASE NO. CV2016-001283

Phoenix, Arizona
April 6, 2023
9:16 a.m.

BEFORE THE HONORABLE TIMOTHY J. RYAN
SUPERIOR COURT JUDGE

TRANSCRIPT: STATUS CONFERENCE

Transcript prepared by:

VERBATIM REPORTING & TRANSCRIPTION, LLC

A P P E A R A N C E S

On Behalf of the Plaintiffs:

Mark Windtberg, Esq.
7727 North Central Avenue, Suite 3j01
Phoenix, Arizona 85020

On Behalf of the Defendants:

Sharon Urias, Esq.
8585 East Hartford Drive, Suite 700
Scottsdale, Arizona 85255

P R O C E E D I N G S

(Parties appear virtually)

THE COURT: -- number 3 on the calendar, CV2016-001283, Agricann, LLC versus Natural Remedy Patient Center, LLC. This is the time set for status conference. Can I have Counsel please announce?

MR. WINDTBERG: Good morning, Your Honor. Mark Windtberg for Agricann, LLC. And I believe also on the call we have Brig Burton, who is a representative of Agricann.

THE COURT: Thank you.

MS. URIAS: Good morning, Your Honor. Sharon Urias on behalf of Natural Remedy Patient Center.

THE COURT: Thank you. Counsel, I remember the discussion we had March 2nd based on how to correctly interpret the Court of Appeals memorandum decision. The way I interpret it, I would -- it would be error for me to grant a proposed form of judgment and not reopen discovery and disclosure. So the motion to rule on the proposed judgment is denied without prejudice.

Mr. Windtberg, would you like a one-week stay to consider special action with the Court of Appeals?

MR. WINDTBERG: Your Honor, as to that decision, no. I -- but I believe the proper course, if the Court is not inclined to grant judgment right now, would to be providing NRPC with an opportunity to submit a brief to this Court with

citations to the trial record as to what evidence should have been considered, and allow the parties to brief that for the Court's consideration. And the Court can consider whether reductions are appropriate based on the evidence that was submitted at trial.

The discovery closed long, long ago. There's no reason to reopen discovery because Judge Smith didn't consider evidence that was submitted at trial. The evidence is already there. Trial has already been conducted. Discovery is already closed. And at this point, I think this Court complies with the mandate by simply considering the evidence, and give the parties an opportunity to put that in front of you, show you want to look at, and you can consider it. And that resolves the issue without expanding the proceeding beyond what was allowed by the Court of Appeals.

And I will remind the Court that the majority of the judgment was not vacated, so there's already a judgment that was approved. The Court of Appeals merely vacated the damages award for Your Honor to consider whether it should have been reduced. The evidence is before the Court. Let the parties point you in the right direction so you don't have to watch an entire trial. Consider that evidence, and make a ruling.

THE COURT: Ms. Urias?

MS. URIAS: Your Honor, I don't want to just re-argue what we argued at the last status conference, which I

believe is what Counsel is doing. And I agree with (indiscernible) and I propose that we move forward with the schedule.

THE COURT: Okay. Since it was your motion for a proposed form of judgment, anything else you wanted to add to the record?

MR. WINDTBERG: No, Your Honor. Thank you.

THE COURT: Okay. I'm going to affirm the rulings I just stated on the record. I'll give Plaintiffs' Counsel one week of a stay in case they would like to seek special action review from the Court of Appeals. The parties obviously agree to disagree about how to interpret it. If the Plaintiffs believe that this was in error as a matter of law, that's certainly their right, and I think you need to get the minute entry before you could ask the Court of Appeals to consider special action review.

What I'm going to do is set another status conference in about 60 days, and then ask the parties to submit a proposed scheduling order. And it's not waiving your rights to object, Counsel, on my rulings this morning. It's just trying to move the case forward in some fashion. But I want it to be something that works on your schedule if in fact the Court of Appeals doesn't want to get involved or you decide not to file a petition for special action.

MR. WINDTBERG: And, Your Honor, if --

MS. URIAS: Your Honor, I request that in your minute entry you instruct the parties as to what items you would like them -- you would like us to include in the scheduling order, unless you want us to just follow the, you know, provisions set forth in the rules. But given the more narrowed scope of the anticipated discovery, disclosures, and eventual evidentiary hearing, I would request that you tell us exactly what it is that you would like us to include in that order.

THE COURT: Well, I -- again, I think the Court of Appeals is indicating what they find -- the important issue that warranted remand. I'll --

MS. URIAS: I mean in terms of disclosure -- I'm sorry, Your Honor. I didn't mean to interrupt you.

THE COURT: Go ahead.

MS. URIAS: I just meant in terms of this is just going to be disclosure and discovery. So I assume that we would just follow the rules of whatever is set forth in 26 and 26.1 --

THE COURT: Correct. But I (indiscernible) --

MS. URIAS: -- (indiscernible). Okay. Thanks.

THE COURT: -- is along those lines, I'm reopening it because I think it isn't disputed that it was closed and it went to trial at one time. I'm just reading the Court of Appeals memorandum decision as requiring me to reopen for the

limited purpose of conforming with being allowed to present issues raised by the Court of Appeals.

MS. URIAS: Thank you, Your Honor.

THE COURT: So another status conference about 60 days out.

THE CLERK: June 6, Judge, at 8:30.

THE COURT: June 6th at 8:30. Does that work for your schedules?

MR. WINDTBERG: Your Honor, I have a hearing --

MS. URIAS: Yes.

MR. WINDTBERG: -- at 9:00 that morning.

THE COURT: We'll look for another date for you.

THE CLERK: June 14th at 8:30.

THE COURT: June 14th at 8:30. Does that work for your calendars?

MR. WINDTBERG: Yes, Your Honor.

MS. URIAS: Yes.

THE COURT: And, Counsel, if you'd like, I wouldn't be offended if you filed a motion in limine precluding additional discovery and disclosure based on your position that it's already gone to a trial and you believe that discovery and disclosure is closed, with case law, because we've just been talking about it informally about trying to interpret the Court of Appeals memorandum decision. If you believe as a matter of law that there should -- even if it's

the discovery and the disclosure is done, that it shouldn't be considered by the Court based on your arguments, I wouldn't be offended if you filed a motion in limine to that effect at all.

MR. WINDTBERG: Thank you, Your Honor.

THE COURT: Okay. Anything else we need to address or cover this morning before we haven't -- that we haven't addressed already?

MS. URIAS: No, Your Honor.

MR. WINDTBERG: No, Your Honor. Thank you.

THE COURT: Okay. Thank you very much.

MS. URIAS: Thank you.

(Proceedings concluded at 9:23 a.m.)

C E R T I F I C A T E

I, KIMBERLY McCRIGHT, CET, certified electronic transcriber, do hereby certify that the foregoing pages 1 through 8 constitute a full, true, and accurate transcript from electronic recording of the proceedings had in the foregoing matter.

DATED this 11th day of March, 2025.

/s/ Kimberly C. McCright
Kimberly C. McCright, CET
Certified Electronic Transcriber

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

AGRICANN, LLC., et al., Plaintiffs, v. NATURAL REMEDY PATIENT CENTER, LLC, et al., Defendants.	CASE NO. CV2016-001283

Phoenix, Arizona
July 13, 2023
9:32 a.m.

BEFORE THE HONORABLE TIMOTHY J. RYAN
SUPERIOR COURT JUDGE

TRANSCRIPT: STATUS CONFERENCE

Transcript prepared by:

VERBATIM REPORTING & TRANSCRIPTION, LLC

A P P E A R A N C E S

On Behalf of the Plaintiffs:

Mark Windtberg, Esq.
7727 North Central Avenue, Suite 3j01
Phoenix, Arizona 85020

On Behalf of the Defendants:

Sharon Urias, Esq.
Daniel Nageotte, Esq.
8585 East Hartford Drive, Suite 700
Scottsdale, Arizona 85255

P R O C E E D I N G S

(Parties appear virtually)

MR. WINDTBERG: -- and with me is Brig Burton, the representative of Agricann.

THE COURT: Thank you. Good morning.

MS. URIAS: Good morning, Your Honor. Sharon Urias and Daniel Nageotte on behalf of Natural Remedy Patient Center.

THE COURT: Good morning. Have you had -- I know I've got the agreement to disagree separate but joint statement of scheduling orders. Have you had any additional discussions about what would work as of July 13th?

MS. URIAS: We have not, Your Honor.

THE COURT: Okay. Did you want to say anything on your own behalf? I'll take a look at -- I think one had fewer dates than the other; some had more deadlines than the other. I think what I saw was -- Mr. Windtberg, what you have proposed is that there be a new discovery cutoff of July 28th. Is that correct?

MR. WINDTBERG: Yes, Your Honor.

THE COURT: Is that still your position as of this morning?

MR. WINDTBERG: Yes, Your Honor. I believe we can still get everything done by then.

THE COURT: Okay. Ms. Urias, would you like to

speak as to your proposed scheduling order?

MS. URIAS: Yes, Your Honor. So we are -- we've been diligent in doing discovery. We've issued, I think, three subpoenas. One of them was to the landlord of the property, and that landlord was unable to locate responsive documents. We need to take his deposition now. We just learned that he doesn't have responsive documents. I don't think that's possible to get done by July 28th.

We received documents from APS. There are actually a number of very interesting documents there that we received. We need to determine whether or not we need damages expert. There's more discovery that needs to be done, in other words, and we have been conducting it diligently.

I would request that Mr. Burton not be shaking his head and making faces now. This is a serious court proceeding.

THE COURT: Okay.

MS. URIAS: And I, you know, believe that we need additional time to conduct the discovery that the Court of Appeals thought was appropriate or, you know, what we believe is appropriate to do in order to comply with the Court of Appeals mandate.

THE COURT: Okay. Let me take a look at that mandate again, and I'll have a ruling for you today. Okay?

MS. URIAS: Thank you, Your Honor.

MR. WINDTBERG: Your Honor?
THE COURT: Yes, sir.
MR. WINDTBERG: Your Honor, if I could be heard in response.
THE COURT: Yes.
MR. WINDTBERG: This case already had a scheduling order discovery plan. There was a cutoff. The case proceeded to trial. It went to trial. All the evidence, all the discovery should have already been taken. What we're now doing is giving NRPC a second bite at the apple to go back and say, oh, that's an argument we should have raised at trial, we didn't do it, and now we want a second chance to find if there's anything that we can use to argue a basis for offsets.
It's our position that this matter really should be resolved by motion. NRPC should be ordered to file a motion that says point to the evidence at trial that shows an offset, give us an opportunity to respond to that, and then the Court can make the decision as to what offsets were established at trial. I believe that's all that is necessary for this Court to comply with the Court of Appeals mandate, which simply said the damages award is vacated because it wasn't clear that offsets were considered.
It didn't say that NRPC wasn't given an opportunity to present evidence as to the offsets, just that they weren't considered. So we think this Court should consider them, make

a ruling, enter judgment, and that's the end of this case.

THE COURT: Okay. I think we had this discussion already about whether this is a -- or what it was -- meant to have it remanded, because the Court of Appeals could have just -- if it's no new fact to be known, they could have just ruled on it on appeal and made the appropriate calculations. But let me -- like I said, let me look at it, and I will have a ruling for you today.

But I agree with you, Mr. Windtberg. A 2016 case should have quite a bit of urgency to it and as much streamlining as possible. Okay?

MS. URIAS: Your Honor, may I --

MR. WINDTBERG: Thank you, Judge.

MS. URIAS: -- be heard on that?

THE COURT: Sure, go ahead.

MS. URIAS: Okay. All I want to say, because I don't want to exhaust the Court's patience -- and I appreciate you allowing me to speak on this because we addressed this more than once before you -- since the Court was remanded.

The issue in terms of whether or not there is any discovery, I don't see that there is any harm to allowing the parties to take further evidence on it. The Court of Appeals did not say, as you indicated, that they -- we were limited to the trial record. And the court could have merely affirmed the judgment or could have made a decision based on what was

in the record. It did not.

This is something that you have already heard and rejected, and so I would stand by my position that it is appropriate. There is no prejudice to Agricann by allowing additional evidence to be conducted. And as I said, we've been diligent. We're trying to get this streamlined. I would like to have this heard. We'd like to have this done as well. But to simply basically affirm what the prior judgment was that had been vacated by the Court of Appeals would not be appropriate at this point in time. So thank you, Your Honor.

THE COURT: All right. Like I said, I'll take a look at the mandate in the case file. I'll have a ruling today.

Anything else we need to address in this matter that we haven't covered already?

MR. WINDTBERG: No, Your Honor, I don't believe so.

THE COURT: Okay. Ms. Urias, anything else?

MS. URIAS: No, Your Honor. There are some discovery issues that we do need to work out. I don't know if they'll arise during the deposition. What is the Court's preference? Would it be to contact you during the deposition if any issues arise, or just to go through --

THE COURT: When do the depositions start?

MS. URIAS: It's starting at 10:00.

THE COURT: Today.

MS. URIAS: Yes.
THE COURT: Are there issues right now?
MR. WINDTBERG: I believe, and Mr. Nageotte can speak to this, there are issues with respect to documents that we had requested be produced by Mr. Burton that have -- or by Agricann that have not been produced that we need to address during the deposition today.
THE COURT: Okay. If you don't have the documents, what's going to be the purpose of the deposition?
MS. URIAS: Well, no, no. We have plenty of questions to ask, but there is a certain category of documents that they have refused to produce that I anticipate may become an issue during the deposition. That was all --
THE COURT: Well, since --
MS. URIAS: -- that I was simply saying.
THE COURT: Since you have questions that you don't believe you need documents before you go forward with them, I would just recommend asking them. And then if you continue to agree to disagree, just file a joint statement of discovery dispute. Don't use up your allotted time in a deposition today at 10:00 if you believe you're going to ask -- I mean, because presumptively it's going to be four hours.
MR. WINDTBERG: Correct.
THE COURT: So if you believe you have document-related questions, then you'll need to build that

into the time you don't use this morning in your deposition.

MS. URIAS: Thank you, Your Honor.

THE COURT: And then just -- like I said, the parties can agree to disagree. Just give me a joint statement of discovery dispute. We'll get you on the calendar right away and we'll have a ruling for you. Okay?

MS. URIAS: Thank you, Your Honor.

THE COURT: Anything else?

MS. URIAS: Nothing else from the Defendant.

THE COURT: Okay.

MR. WINDTBERG: No, Your Honor. Thank you.

THE COURT: Thank you, Counsel. We'll stand in recess in this matter at this time. Have a good morning, and don't overheat today.

MS. URIAS: Likewise.

(Proceedings concluded at 9:40 a.m.)

C E R T I F I C A T E

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DATED this 11th day of March, 2025.

/s/ Kimberly C. McCright
Kimberly C. McCright, CET
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